CÀTEDRA BARCELONA ESTUDIS HABITATGE

LITIGATION ON THE PROGRESSIVE REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: UNDER WHAT CONDITIONS MAY IT BE STRATEGIC?

Koldo Casla, Juli Ponce, Marion Sandner, María José Aldanas, Rafael Cid & Irene Escorihuela

December 2025

Abstract

Progressive realisation is proclaimed in international human rights treaties as a pillar of Economic, Social and Cultural Rights (ESCR). However, while the principle has been acknowledged in abstract terms by international and national judicial and quasi-judicial bodies, there are only a few examples of partial application of progressive realisation in individual cases. This paper contributes to the identification of the legal principles, arguments, jurisdictions and, in general, the conditions under which it may be fitting to explore and push the limits of judicial enforceability of the progressive realisation of ESCR in national, regional and international judicial and quasi-judicial bodies. The paper argues that at least the following criteria should be taken into account when pursuing litigation in this area: a) whether the legal obligation of progressive realisation exists in the first place, either as direct recognition in national law or via incorporation of international human rights law, b) whether the case can be articulated as a violation of an immediate obligation or minimum core obligation underpinning progressive realisation, such as the obligation to take steps and the obligation not to discriminate, c) the level of concreteness of the positive obligation to realise ESCR progressively, d) the existence, pros and cons and possible use of earmarking as a budgetary tool, e) the possible extension of principles and practices already embraced by judges to the realm of progressive realisation, principles and practices that will vary from jurisdiction to jurisdiction, f) the timeframe in which steps to the maximum of available resources were taken or not taken, g) in the case of domestic litigation, whether the State accepted the jurisdiction of an international monitoring body, where the case could be submitted after exhausting internal remedies, and i) the key role of civil society as leaders and galvanisers of an associated campaign or as providers of information relevant for the case and/or its implementation.

Keywords

Economic, Social and Cultural Rights; Progressive Realisation; Strategic Litigation.

Outline

Authors:

- Dr Koldo Casla. Senior Lecturer in International Human Rights Law at the University of Essex, member of the steering committee on strategic litigation of ESCR-Net, member of the advisory council of Gentium, member of FEANTSA's European network of advisors on the right to housing. koldo.casla@essex.ac.uk
- Prof Juli Ponce. Professor of Administrative Law at the University of Barcelona, Co-Director of the Barcelona Chair of Housing Studies, member of the Law Clinic of the University of Barcelona, responsible for the section on good administration and ombuds institutions. jponce@ub.edu
- Marion Sandner. Doctoral candidate in International Human Rights Law, Universities of Antwerp and Hasselt (Belgium). marion.sandner@uhasselt.be
- María José Aldanas. Housing Rights Watch network coordinator, FEANTSA (Brussels), the European Federation of National Organisations working with the Homeless. maria.jose.aldanas@feantsa.org
- Rafael Cid. Director, Gentium (Madrid). rcid@gentium.org
- Irene Escorihuela. Director, Observatori DESCA (Barcelona). irene@observatoridesca.org

Advisory Group:

- Meghna Abraham. Former Executive Director of the Center for Economic and Social Rights (CESR), and former Director of Global Issues and Head of Economic, Social and Cultural Rights at the International Secretariat of Amnesty International (UK).
- Lyle Barker. Campaigns Officer, Liberty (UK).
- Judith Bueno de Mesquita. Senior Lecturer in International Human Rights Law, University of Essex (UK).
- Dr Jackie Dugard. Senior Lecturer in Human Rights, Columbia University (USA), and former Executive Director of SERI (South Africa).
- Silvia Emanuelli. Director, Habitat International Coalition in Latin America (Mexico).
- Prof Paul Hunt. Emeritus Professor of International Human Rights Law, University of Essex; formerly, member of the UN Committee on Economic, Social and Cultural Rights (1999-2002), Special Rapporteur on the Right to Health (2002-2008), and Chief Human Rights Commissioner of New Zealand (2019-2024).
- Dr Antonio Madrid-Pérez. Senior Lecturer in Philosophy of Law, Director of the Law Clinic of the University of Barcelona.
- Mandi Mudarikwa. Deputy Programme Director Law and Policy Programme, Head of Strategic Litigation, Amnesty International - International Secretariat (South Africa).
- Kartik Raj. Senior Researcher on Poverty and Inequality, Europe and Central Asia division, Human Rights Watch (Barcelona).
- Julieta Rossi. Member of the UN Committee on Economic, Social and Cultural Rights (Argentina).
- Daniela Sánchez Carro. Director Housing Rights Clinic at the Ibero University (Mexico).

Members of the Advisory Group contributed in an individual capacity. The conclusions herein do not necessarily represent their views.

The team of authors is also grateful to participants at the event "Accountability and Progressive Realisation of Economic, Social and Cultural Rights" at the University of Barcelona in September 2025.

With support from the Socio-Legal Studies Association.

1. Introduction and rationale of the project

Economic, Social and Cultural Rights (ESCR) – including housing, health, food, education, water, social security and work – are recognised as human rights in international law and multiple constitutions and laws around the world.

Particularly since the 1990s, there have been very stimulating examples of justiciability of ESCR in a variety of jurisdictions – South Africa, Colombia, Brazil, India, Portugal, Italy, Latvia, Germany, etc. – as well as from international human rights bodies at the United Nations and the regional systems in Africa, the Americas and Europe. Beyond differences between monism and dualism, and between Civil Law and Common Law traditions, insightful jurisprudential ideas have provided a fertile ground to advance the judicial enforceability of ESCR, such as the principles of reasonableness, proportionality, meaningful engagement, and the right to good administration with its corresponding duty of due diligence.[1]

Despite progress in the constitutional and legal recognition of rights, the judicial enforcement of ESCR is not devoid of limitations, due to judicial abdication – where judges choose to be passive and refrain from intervention for ideological or technical reasons, deferring to the executive and the legislator –, shortcomings in relation to distributive inequality – the critique that the middle classes are the primary or sole beneficiaries of justiciable ESCR, and the effects do not make meaningful difference to people at a socio-economic disadvantage –, and diffuse impact – when authorities refuse to comply with judicial rulings, particularly when these come from international bodies.[2]

Having said that, legal advocacy has a role to play in accompanying social movements and civil society groups in their campaigns for transformative change. The fact remains that the justiciability of ESCR has advanced notably in the last three decades. However, by and large, while a number of international and national judicial and quasi-judicial bodies have acknowledged progressive realisation in principle, most of the comparative case-law focuses on the negative dimensions of ESCR, meaning, the obligation to respect – in the sense of not actively interfering with the actual enjoyment of rights – rather than requiring public authorities to take proactive measures to deliver the services necessary to ensure the satisfaction of ESCR. The prohibition of forced evictions is a clear expression of this in relation to the right to housing. In recent years, there have been cases invoking the doctrine of non-retrogression as well, meaning, the presumption that States should not take measures that would deliberately result in steps backwards in the protection of ESCR. Limiting the scope to international mechanisms, *Finnish Society of Social Rights v Finland* (European Committee of Social Rights, 2014) in relation to social security, *Ben Djazia and Bellili v Spain* (UN Committee on Economic, Social and Cultural Rights, 2017) on housing, *Vera Rojas v Chile* (Inter-American Court of Human

[1] See, for example: Malcolm Langford, César Rodríguez-Garavito and Julieta Rossi (eds.), *Social Rights Judgments and the Politics of Compliance* (Cambridge University Press, 2017); Katharine G. Young (ed.), *The Future of Economic and Social Rights* (Cambridge University Press, 2019); Katie Boyle, *Economic and Social Rights Law: Incorporation, Justiciability and Principles of Adjudication* (Routledge, 2020).

[2] Malcolm Langford, Judicial Politics and Social Rights, in: *The Future of Economic and Social Rights* 66 (Katharine G. Young, ed. Cambridge University Press, 2019), at 67.

Rights, 2021) regarding health, or *Sindacato autonomo dei Pensionati v Italy* (European Committee of Social Rights, 2023) in relation to workers' rights, are examples of this.[3]

As important as these cases are, there is no systematic analysis of claims in front of national or international courts and quasi-judicial bodies in relation to the obligation to advance progressively towards the full satisfaction of ESCR. Progressive realisation is a general principle of ESCR and is also a legal requirement in international human rights law (Article 2(1) of the 1966 International Covenant on Economic, Social and Cultural Rights, ICESCR). However, the general understanding of what sort of cases, rights and duties may work or not work requires further development when seeking to advocate for States' obligation to advance towards the progressive realisation of ESCR.

That is precisely the purpose of this paper: to contribute to the identification of the legal principles, arguments, jurisdictions and, in general, the conditions under which it may be fitting to explore and *push the limits* of judicial enforceability of the progressive realisation of ESCR in national, regional and international judicial and quasi-judicial bodies.

We say "push the limits" because we are aware that judges and members of international/regional oversight bodies may be wary of overreaching; many are likely to feel that they do not have the right tools, the resources, the technical knowledge or the democratic legitimacy to gauge the adequacy of a certain policy in terms of compliance with an obligation of progressive realisation. For example, in his defence of "judicial incrementalism", King argues that, "when adjudicating vague constitutional rights under conditions of uncertainty" – one may debate if progressive realisation is one of them – judges should "(1) avoid significant, nationwide allocative impact, and either (2) give decisions on narrow, particularised grounds, or (3) when adjudicating a macro-level dispute with significant implications for large numbers of people, decide in a manner that preserves flexibility".[4] Concerns about separation of powers and about judges' limited expertise and information are valid considerations. At the same time, however, progressive realisation is a legal requirement, and legislators and executives can set up an institutional framework for judges to adjudicate matters pertaining to progressive realisation.

Human rights litigation is a form of court-centred advocacy that aims to obtain a decision to acknowledge a violation, provide a remedy to the victim – including putting an end to the wrongdoing and/or requiring the public authority to take positive action – and, when applicable, order other forms of reparation. Litigation is deemed to be strategic when the goals go beyond the case at hand, for example, because the legal advocacy intends to clarify the meaning of the law, enforce rights, change policy or galvanise public support.[5]

[3] ECSR, *Finnish Society of Social Rights v Finland*, Collective Complaint No. 88/2012 (Decision on the Merits of 9 September 2014); CESCR, *Ben Djazia and Bellili v Spain*, Communication No. 5/2015 (Views of 20 June 2017); IACtHR, *Vera Rojas et al v Chile* (Judgment of 1 October 2021); ECSR, *Sindacato autonomo Pensionati Or.S.A. v Italy*, Collective Complaint No. 187/2019 (Decision on the Merits of 17 October 2023).

[4] Jeff King, *Judging Social Rights* (Cambridge University Press, 2012), 293.

[5] Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact* (Hart, 2018); Nikolaos A. Papadopoulos, Mobilising the European Social Charter's collective complaints procedure for

Following Rodríguez-Garavito and Langford, we can use a matrix to conceptualise the different forms of impact of strategic litigation on socio-economic rights, which may be direct or indirect on one axis, and material, political or symbolic on the other axis. Thus, strategic litigation may result in new public policy (direct and material impact), new jurisprudence (indirect and material), pressure on policy makers to eventually change policy (direct and political), social mobilisation to advocate for policy change (indirect and political), a change in the perception of a given issue as a rights violation (direct and symbolic), and/or the transformation of public opinion about the gravity and urgency of an issue (indirect and symbolic).[6]

We take note of Dugard and Langford's observation that litigation "is generally too unpredictable and diffuse for it to be adequately assessed through a formulaic or scientific approach".[7] Having said that, this paper hopes to contribute to the understanding of the conditions under which litigation on the progressive realisation of ESCR may result in some of the mentioned direct, indirect, material, political and/or symbolic impacts. Section 2 covers the meaning of progressive realisation as recognised in international human rights law. Section 3 presents key factors to consider when pursuing litigation to hold public authorities to account in relation to their progressive realisation obligations. The analysis of the opportunities and challenges stems from our reading of the literature and a collective exercise of reflection and lesson-sharing within the authoring team of academics and practitioners.

2. The meaning of progressive realisation of ESCR

States have a tripod of obligations in relation to ESCR: **respect, protect and fulfil**. Respect is the obligation to refrain from interfering directly or indirectly with the enjoyment of an individual's right. Protect requires States to prevent private actors from interfering with the enjoyment of a right by an individual. Finally, fulfil refers to States' obligation to take all appropriate measures – legislative, administrative, budgetary, judicial, etc. – to ensure a satisfactory level of enjoyment of the rights in light of all available resources and subject to progressive realisation.[8]

The principle of progressive realisation is proclaimed in Article 2(1) 1966 ICESCR, signed and ratified by more than 170 countries:

---

legal and social change, in: *Human Rights Strategies* 94 (Ingrid Westendorp, ed. Edward Elgar, 2024), at 96-101.

[6] César Rodríguez-Garavito, Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America, 89(7) *Texas Law Review* 1669 (2011), at 1679; Malcolm Langford, Introduction: Civil Society and Socio-Economic Rights, in: *Socio-Economic Rights in South Africa: Symbols or Substance?* 1 (Malcolm Langford, Ben Cousins, Jackie Dugard and Tshepo Madlingozi, eds. Cambridge University Press, 2013), at 22-23.

[7] Jackie Dugard and Malcolm Langford, Art or Science? Synthesising Lessons from Public Interest Litigation and the Dangers of Legal Determinism, 27(1) *South African Journal on Human Rights* 39 (2011), at 39.

[8] As an example, see: CESCR, General Comment No. 15: The Right to Water, UN Doc. E/C.12/2002/11 (20 January 2003), para. 20-25.

> "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

The idea of progressive realisation is also embedded in the formulation of specific ESCR. It is the case of the right to the "continuous improvement of living conditions" (Article 11(1) ICESCR), the right to the "highest attainable standard of physical and mental health" (Article 12(1) ICESCR), and the expectation in the 1961 European Social Charter (ESC) that States will "endeavour to raise progressively the system of social security to a higher level" (Article 12(3) ESC, and similarly in the ILO's Recommendation No. 202 on social protection floors, from 2012).

In General Comment No. 3 (1990), on the nature of States' ESCR obligations, the UN Committee on Economic, Social and Cultural Rights (CESCR) said:

> "The concept of progressive realization constitutes a recognition of the fact that full realization of all ESCR will generally not be able to be achieved in a short period of time… [This] should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights… It thus imposes an obligation to move as expeditiously and effectively as possible towards [the full realization of ESCR]…"[9]

More than an easily identifiable finish line, the idea of full realisation is a sort of compass for legislative, administrative, policy and judicial action. There is an open debate about whether the full satisfaction or realisation of ESCR is even possible in a world of limited resources, high levels of inequality, and existential environmental challenges.[10] Besides acknowledging the debate, we shall not delve into it for the purposes of this paper.

While progressive realisation entails the passing of time, States are expected to adopt "deliberate, concrete and targeted" actions "by all appropriate means, including particularly the adoption of legislative measures".[11] Some of these actions – whilst not the results – will be immediate obligations, including new legislation, regulation and

[9] CESCR, General Comment No. 3: The nature of States Parties' obligations, UN Doc. E/1991/23 (14 December 1990), para. 9.
[10] See, for example: Sigrun Skogly, The Right to Continuous Improvement of Living Conditions and Human Rights of Future Generations – A Circle Impossible to Square?, in: *The Right to the Continuous Improvement of Living Conditions: Responding to Complex Global Challenges* 147 (Jessie Hohmann and Beth Goldblatt, eds. Hart, 2021); Judith Bueno de Mesquita, Reinterpreting human rights in the climate crisis: Moving beyond economic growth and (un)sustainable development to a future with degrowth, 42(1) *Netherlands Quarterly of Human Rights* 90 (2024); Megan Donald, Greening State Obligations in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, 43(2) *Nordic Journal of Human Rights* 148 (2025).
[11] CESCR, General Comment No. 3: The Nature of States Parties' Obligations, UN doc. E/1991/23 (14 December 1990), para. 2-4.

policy guidelines.[12] This means that the principle of progressive realisation includes the immediate obligation to take measures and to act towards the end of ensuring the full realisation of ESCR in due course with due diligence and due care. Apart from the obligation to take steps towards the progressive realisation of ESCR, under ICESCR States are also under the immediate obligation of guaranteeing that these rights "will be exercised without discrimination of any kind" (Article 2(2) ICESCR).

There is also a presumption of non-retrogression derived from the principle of progressive realisation.[13] As interpreted by the UN CESCR and the Independent Expert on the effects of foreign debt on human rights, measures that would result in backwards steps in the enjoyment of ESCR would only be permissible if they are: a) strictly temporary, b) legitimate in light of the ultimate aims, c) reasonable in light of the appropriateness of the means for those aims, d) necessary, in the sense that there is no other reasonable and less harmful alternative, e) proportionate, because the benefits are greater than the costs, f) non-discriminatory, g) protective of the minimum core content of rights, h) based on transparent processes where active participation of people most affected is allowed, and i) subject to review, accountability and impact assessment.[14]

The CESCR found Spain in violation of the principle of non-retrogression in *Ben Djazia and Bellili v Spain* (2017). In summer 2013, the regional and local authorities of Madrid sold approximately 4,800 housing apartments and other immovable property assets to investment companies, thus reducing the available public housing stock. This was despite the small size of Spain's and Madrid's public housing stock – compared to other European countries – and the fact that this happened at a time of socio-economic crisis and growing demand for State support. For the CESCR, the sale constituted an unjustified and deliberate retrogressive measure in the protection of the right to adequate housing and other social rights:

> "The Committee considers that States parties have a certain amount of discretion to make the most appropriate use of tax revenue with a view to guaranteeing the full realization of the rights recognized in the Covenant, and that, in certain circumstances, they may take deliberately retrogressive measures. However, in such cases, the State must demonstrate that the decision was based on the most thorough consideration possible and was justified in respect of all the rights under the Covenant and that all available resources were used. In times of severe economic and financial crisis, all budgetary changes or adjustments affecting policies must be temporary, necessary, proportional and non-discriminatory. In this case, the State party has not convincingly explained why it was necessary to adopt the retrogressive measure [of selling the mentioned social housing units],

[12] Id.
[13] Id, para. 9.
[14] Independent Expert on the effects of foreign debt on human rights, Guiding principles on human rights impact assessments of economic reforms, UN Doc. A/HRC/40/57 (19 December 2018), Principle 10; CESCR, Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights: Statement, UN Doc. E/C.12/2016/1 (22 July 2016); CESCR, General Comment No. 19: Right to Social Security, UN Doc. E/C.12/GC/19 (4 February 2008), para. 42.

> which resulted in a reduction of the amount of social housing precisely at a time when demand for it was greater owing to the economic crisis."[15]

In light of the evolution of the CESCR's conceptualisation of non-retrogression since the 1990s, Warwick proposes a redefinition as follows: "1) an action, inaction, or contribution to a trend that is, 2) likely to negatively affect the progressive realization of, 3) individuals' ICESCR rights."[16] Warwick argues that a characterisation along these lines would put a degree of separation between progressive realisation and non-retrogression, "adopting distinct methods of assessing their fulfillment. […] While progressive realization demands a detailed and complex assessment of current ESR outcomes, the (re)constructed retrogression permits a necessarily more speculative assessment of the medium- and longer-term threats to the progressive realization of ICESCR rights".[17] Irrespective of the precise wording to set the parameters of non-retrogression, the analysis illustrates the existence of a conceptual gap between a breach of non-retrogression and a breach of progressive realisation through stagnation, omission and/or lack of due diligence or due care. In other words, there is scope, in principle, to determine an infringement of the requirement to take steps to advance towards the full realisation of ESCR beyond the monitoring of and accountability for retrogression.

The principle of progressive realisation has been recognised by regional human rights bodies in Africa, the Americas and Europe. We can find it in the 2011 Principles and Guidelines on the Implementation of ESCR developed by the African Commission on Human and Peoples' Rights,[18] and the African Court of Human and Peoples' Rights has endorsed the principle as contained in ICESCR and developed by the CESCR in its general comments.[19]

The Inter-American Court of Human Rights has also established that, under Article 26 of the American Convention on Human Rights, States are required to meet immediate and progressive obligations:

> "… [T]he Court recalls that concerning the former (obligations that are immediately enforceable), States must adopt effective measures to ensure access without discrimination to the services recognized as part of the right to health, ensure equality of rights between men and women, and generally make progress toward the full effectiveness of ESCER. With respect to the latter (progressive obligations), States Parties have the specific and continuous obligation to move as expeditiously and effectively as possible toward the full realization of those rights, subject to available resources, by legislation or other appropriate means.

[15] CESCR, *Ben Djazia and Bellili v. Spain*, Communication No. 5/2015, UN Doc. E/C.12/61/D/5/2015 (Views of 20 June 2017), para. 17.6.
[16] Ben T. C. Warwick, Concepts of Non-Retrogression in Economic and Social Rights, 47(1) *Human Rights Quarterly* 115 (2025), at 137.
[17] Id, at 139.
[18] ACHPR, Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (October 2011), para. 13-15.
[19] ACtHPR, *Sébastien Germain Marie Aïkoue Ajavon v Benin*, Application No. 62/2019 (Judgment 4 December 2020), para. 136.

> There is also an obligation of non-retrogression regarding the realization of the rights attained."[20]

The obligation to act and take measures towards the full realisation of ESCR includes adopting "judicial decisions and [lending] the means and tools necessary to respond to demands for the effective exercise of the rights involved, to the degree that available economic and financial resources allow…".[21]

The Inter-American Court has also established a link between progressive realisation and substantive equality:

> The principle "calls for an effective improvement of the enjoyment and exercise of these rights, so that social inequalities are corrected and the inclusion of vulnerable groups is facilitated. Accordingly, the obligation of progressive realization prohibits State inactivity in the task of implementing actions to achieve the comprehensive protection of these rights, especially when the total absence of State protection places the individual at risk of suffering harm to his or her life or personal integrity."[22]

Despite the initial caution shown by the Inter-American Commission and the Court about the ascertainment of progressive realisation in individual cases,[23] more recently the Inter-American Court has established the justiciability of progressive realisation in principle: "the progressive implementation of such measures may be subject to accountability and, if appropriate, compliance with the respective commitment made by the State may be claimed before the courts called on to decide eventual human rights violations".[24]

In the case of Europe, one needs to distinguish between the European Convention on Human Rights (ECHR), primarily devoted to civil and political rights, and the European Social Charter (in its original or revised versions), which focuses on ESCR.

In its interpretation of the ECHR, the European Court of Human Rights has not really dwelt upon the progressive realisation of ESCR. Having said that, Judge Pinto de

---

[20] IACtHR, *Vera Rojas et al v Chile* (Judgment of 1 October 2021), para. 96. See, also: IACtHR, *Acevedo Buendía et al v Peru* (Judgment of 1 July 2009), para. 102-103; IACtHR, *Poblete Vilches et al v Chile* (Judgment of 8 March 2018), para. 104; IACtHR, *Miskito Divers (Lemoth Morris et al) v Honduras* (Judgment of 31 August 2021), para. 66.

[21] IACtHR, Advisory Opinion OC-27/21, Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to Other Rights, With a Gender Perspective (5 May 2021), para. 117.

[22] IACtHR, *Cuscul Pivaral et al v Guatemala* (Judgment of 23 August 2018), para. 146.

[23] IACtHR, *"Five Pensioners" v Peru* (Judgment of 28 February 2003), para. 147-148; IACmHR, *Odir Miranda Cortez et al v El Salvador* (Report 27/09, Case 12249, Merits, 20 March 2009), para. 106-108.

[24] IACtHR, *Cuscul Pivaral et al v Guatemala* (Judgment of 23 August 2018), para. 81; IACtHR, *Acevedo Buendía et al v Peru* (Judgment of 1 July 2009), para. 102. See, also: Julieta Rossi, Progressive Realization, Nonretrogression and Maximum of Available Resources: Agreements and Disagreements between the Inter-American Court and the United Nations ESCR Committee, in: *Proportionality and Transformation: Theory and Practice from Latin America* 161 (Francisca Pou-Giménez, Laura Clérico and Esteban Restrepo-Saldarriaga, eds. Cambridge University Press, 2022).

Albuquerque endorsed this principle in separate opinions in two Grand Chamber cases dealing with parental leave and access to healthcare.[25]

Dealing more directly with socio-economic issues, the European Committee of Social Rights has required States to abide by the Charter in line with the progressive realisation of ESCR.

> "[T]he Committee holds that such realisation of the fundamental social rights recognised by the Revised Charter is guided by the principle of progressiveness, which is explicitly established in the Preamble and more specifically in the aims to facilitate the 'economic and social progress' of State Parties and to secure to their populations 'the social rights specified therein in order to improve their standard of living and their social well-being'."[26]

In *Autism-Europe v France* (13/2002), the ECSR said:

> "When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows [sic] it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others [sic] persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings."[27]

In *FEANTSA v France* (39/2006), the ECSR required States Parties to take certain decisions, through legal action and operational procedures, to make the right to housing practical and effective; these actions entail progressive realisation:

> "a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
> b. maintain meaningful statistics on needs, resources and results;
> c. undertake regular reviews of the impact of the strategies adopted;
> d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
> e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable."[28]

[25] ECtHR, *Konstantin Markin v Russia* [GC], Application No. 30078/06 (Judgment of 22 March 2012); ECtHR, *Lopes de Sousa Fernandes v Portugal* [GC], Application No. 56080/13 (Judgment of 19 December 2017).
[26] ECSR, *COHRE v Italy*, Collective Complaint No. 58/2009 (Decision on the Merits of 25 June 2010), para. 27.
[27] ECSR, *Autism-Europe v France*, Collective Complaint No. 13/2002 (Decision on the Merits of 4 November 2003), para. 53.
[28] ECSR, *FEANTSA v France*, Collective Complaint No. 39/2006 (Decision on the Merits of 5 December 2007), para 53-55.

The ECSR has also made clear that the principle of adequacy of social security entails a requirement of progressivity in the face of inflation and the cost-of-living crisis affecting low-income families:

> "Guaranteeing social protection-related Charter rights does not simply require States Parties to avoid proactive measures that undermine, reduce or interfere with rights enjoyment; it also obliges States to take all necessary actions needed to ensure that social security and assistance levels are adequate. This includes taking steps to ensure that these levels reflect inflation levels. This is particularly important given that the real inflation rate experienced by those most in need, (i.e. those with lower incomes) is frequently higher than that experienced by the general population. State omissions with regard to taking the actions necessary to ensure social security and assistance levels are adequate may result in violations of the Charter."[29]

The principle that the adequacy of the right to social security requires an uprating of the benefits in line with inflation and the overall cost-of-living has been endorsed by some European national courts as well.[30]

The ECSR has also recognised – even if implicitly – the principle of non-retrogression, interrogating whether austerity-driven policies that led to a rollback on the enjoyment of rights pursue a legitimate aim (pressing social need), are proportionate, and whether an appropriate balance was struck between the aim and the restrictive measure in question.[31] This includes the requirement to conduct research and analysis into the likely effects of preliminarily restrictive measures, in order to assess the impact on the most vulnerable groups, and to make sure that other less harmful options are not available.[32] This proportionality review, mostly based on the provisions of the general restrictions clause (Art. 31/G of the Charter), has evolved over time in relation to retrogression cases. In *Finnish Society of Social Rights v Finland* (88/2012), ruled in 2014, then ECSR president Luis Jimena Quesada disagreed with his colleagues, who had ruled that a finding of non-conformity of Article 12(1) of the European Social Charter – which requires a minimally adequate level of benefits – did not automatically mean that Article 12(3) – "to endeavour to raise progressively the system of social security to a higher level" – had been breached as well. For Jimena Quesada, the two observations – violation of 12(1) but non-violation of 12(3) – were essentially incompatible with each other: "Otherwise it would imply a

[29] ECSR, Statement of interpretation on social rights and cost-of-living crises (2025), 3. See also: Aoife Nolan, Human rights and the cost-of-living crisis, 41(1) *Netherlands Quarterly of Human Rights* 3 (2023).
[30] For example, Constitutional Court of Italy, Judgment 152/2020 (23 June 2020). https://www.cortecostituzionale.it/scheda-pronuncia/2020/152; [2024] Labour Court Essen, Germany 3 Ca 2231/23 (on the inflation adjustment of parental leave payments); *R (on the application of CB) v The Secretary of State for the Home Department [2022] EWHC 3329 (Admin)* [2022] High Court of England and Wales EWHC 3329 (regarding an asylum-seeker's right to protection from destitution).
[31] ECSR, *Sindacato autonomo Pensionati Or.S.A. v Italy*, Collective Complaint No. 187/2019 (Decision on the Merits of 17 October 2023), para 119-120; ECSR, *IKA-ETAM v Greece*, Collective Complaint No. 76/2012 (Decision on the Merits of 7 December 2012), para. 70; ECSR, *POS-DEI v Greece*, Collective Complaint No. 79/2012 (Decision on the Merits of 7 December 2012), para. 67; ECSR, *GSEE v Greece*, Collective Complaint No. 111/2014 (Decision on the Merits of 23 March 2017), para. 87.
[32] For example, ECSR, *IKA-ETAM v Greece*, Collective Complaint No. 76/2012 (Decision on the Merits of 7 December 2012), para 79.

kind of 'improved situation' of violation, but it would be a violation anyway".[33] Nevertheless, when the parties faced one another again eight years later, in 2022, in *Finnish Society of Social Rights v Finland* (172/2018), the ECSR reiterated its previous position that "a finding that the level of one or more social security benefits is inadequate under Article 12§1 of the Charter does not automatically lead to or determine a violation of Article 12§3 of the Charter".[34]

3. Strategic litigation on the progressive realisation of ESCR: key factors to consider

3.1. Existence and recognition of a legal obligation to start with

At the risk of stating the obvious, the first condition for strategic litigation on the progressive realisation of ESCR is that the requirement of progressive realisation ought to be established in law, either directly or via recognition of the principle from international human rights law. This means that the State or the public authority in question – in international and domestic settings – ought to be expected, as a matter of law, to advance progressively towards the full realisation of ESCR. This will be easier to establish in front of international human rights mechanisms in relation to countries that have accepted the relevant bodies' jurisdiction, since the principle is contained in the treaties and the courts and committees have embraced it (see section 2).

In international law, treaties are binding upon States Parties and must be performed by them in good faith; domestic law may not be invoked as a justification for a State's failure to abide by the treaty (Articles 26 and 27 of the 1969 Vienna Convention on the Law of Treaties). In addition, national constitutions often recognise the domestically legally binding nature of validly concluded international treaties.[35]

The principle of progressivity is proclaimed in multiple national constitutions: for example, in Articles 1 and 4 of the Mexican Constitution, as reformed in 2011 and 2024,[36] Articles 26 and 27 of the South African Constitution, dealing with housing, health, food, water and social security,[37] Article 21(2) in relation to Article 43 of the Kenyan Constitution, dealing with socio-economic rights in general,[38] Articles 31-38 of the

[33] ECSR, *Finnish Society of Social Rights v Finland*, Collective Complaint No. 88/2012 (Decision on the Merits of 9 September 2014) – Separate concurring opinion of Luis Jimena Quesada, para. 6.
[34] ECSR, *Finnish Society of Social Rights v Finland*, Collective Complaint No. 172/2018 (Decision on the Merits of 13 September 2022), para. 70.
[35] Article 96(1) of the Spanish Constitution of 1978, for example.
[36] Constitution of Mexico (in Spanish): https://mexico.justia.com/federales/constitucion-politica-de-los-estados-unidos-mexicanos/titulo-primero/capitulo-i/
[37] Constitution of South Africa: https://www.gov.za/documents/constitution/constitution-republic-south-africa-04-feb-1997 The principle has been recognised and applied by the Constitutional Court as well: *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000); *Minister of Health and Others v Treatment Action Campaign and Others* (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (5 July 2002).
[38] Constitution of Kenya: https://www.parliament.go.ke/sites/default/files/2023-03/The_Constitution_of_Kenya_2010.pdf Recognised and applied by the Supreme Court: *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others*; Initiative for Strategic Litigation in Africa (Amicus Curiae) [2021] KESC 34 (KLR).

Constitution of Fiji,[39] Articles 73-77 of the Constitution of Zimbabwe,[40] Article 23 of the Constitution of Maldives regarding economic and social rights,[41] and Article 154A(3) of the Constitution of Guyana regarding obligations under human rights treaties.[42]

3.2. Obligation to act as a minimum core obligation underpinning progressive realisation

While the full realisation of ESCR can only be achieved over time, as the CESCR puts it, States and public authorities must take "steps towards that goal… within a reasonably short time… Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations" derived from ESCR.[43] While the results may only be seen in full in a more or less distant future, taking deliberate, concrete and targeted actions towards the full realisation of ESCR is a minimum core obligation: an immediate obligation to act. In application of this principle, public authorities are expected to develop and implement deliverable and strategically minded plans. Litigation on ESCR could focus on whether such plans exist at the relevant policy level, whether the goals and actions are supplemented by the right indicators and benchmarks, and whether they are adequately targeted, specific, measurable and accountable. Besides the overall direction of progressive realisation, the plans should allocate resources in a way that ensures at least the minimum core content of the rights, without discrimination, prioritising the needs of most vulnerable groups, and preventing retrogression in breach of international standards.

Particularly noteworthy is the Colombian constitutional case-law in this respect. The Constitutional Court has held that progressive realisation entails that there must be a plan to realise the social right in question, that such a plan must be directed at guaranteeing the effective enjoyment of the right, and that the plan must be conceived in a participatory process.[44]

The Italian Council of State's *A.A. v Ministry of education* decision (2021) concerned a disabled pupil's access to distance learning during the Covid-19 pandemic. The Council of State stressed that the particular context of the pandemic intensified the State's positive obligation to devise a personalised teaching plan, developed with the involvement not only of teachers but also pupils and their families, as a "reinforced [constitutional] obligation" (*un obbligo rafforzato*) on the part of the State.[45]

---

[39] Constitution of Fiji: https://www.laws.gov.fj/ResourceFile/Get/?fileName=2013%20Constitution%20of%20Fiji%20(English).pdf

[40] Constitution of Zimbabwe: https://www.parlzim.gov.zw/download/constitution-of-zimbabwe-amendment-no-20-14-05-2013/

[41] Constitution of the Maldives: https://presidency.gov.mv/pages/index/15

[42] Constitution of Guyana: https://www.parliament.gov.gy/Constitution%20of%20the%20Cooperatiive%20Republic%20of%20Guyana.pdf

[43] CESCR, General Comment No. 3: The Nature of States Parties' Obligations, UN Doc. E/1991/23 (14 December 1990), para. 2.

[44] Constitutional Court of Colombia, Judgment T-595/02 (Judgment of 1 August 2002), para. 5.5. https://www.corteconstitucional.gov.co/relatoria/2002/t-595-02.htm

[45] *AA v Ministry of Education* [2021] Italian Council of State 780/2021.

Spain has been urged regularly by the UN CESCR to develop plans to make the right to housing real and effective.[46] While the results may take time to unfold, the adoption and implementation of a plan can be seen as a relatively immediate obligation. In *Cañada Real* (2024), a case primarily about minimum essential levels of access to housing and energy, the European Committee of Social Rights also held the State to account as regards the (in)ability of the existing plans to make the right to housing real and effective over time for the people at risk of homelessness.

> "[S]ome of the actions planned have a timeline for implementation of 2034, which is up to 14 years from the beginning of the power outages (October 2020). Even if re-housing was to be completed by 2027…, this would mean a period of around seven years since the power outages started in October 2020. This would not satisfy Charter requirements in terms of Article 31§1… Given the significant impact that the power outages has on the lives and enjoyment of rights of persons concerned, the very long period of deprivation of electricity, and the failure on the part of the State to ensure access to adequate electricity for the persons concerned while the rehousing process is carried out, the Committee considers that the measures taken in connection to rehousing are, in the absence of other measures, insufficient in terms of ensuring enjoyment of the right to housing under Article 31§1 of the Charter".[47]

3.3.Level of concreteness of the progressive realisation obligations

Under Article 2(1) ICESCR, States are required to "take steps" and mobilise the "maximum of available resources" and use "all appropriate means" to achieve progressively the full realisation of ESCR. In its 2007 statement on the meaning of "maximum of available resources", the CESCR said that the Committee would take into account, among other things:

> "(a) The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights;
> (b) Whether the State party exercised its discretion in a non-discriminatory and nonarbitrary manner;
> (c) Whether the State party's decision (not) to allocate available resources was in accordance with international human rights standards;
> (d) Where several policy options are available, whether the State party adopted the
> option that least restricts Covenant rights;
> (e) The time frame in which the steps were taken;
> (f) Whether the steps had taken into account the precarious situation of disadvantaged and marginalized individuals or groups and, whether they were

[46] CESCR, *Ben Djazia and Bellili v Spain*, Communication No. 5/2015 (Views of 20 June 2017), para. 21(d).
[47] ECSR, *DCI, FEANTSA, MEDEL, CCOO and ATD Fourth World v Spain*, Collective Complaint No. 206/2022 (Decision on the Merits of 11 September 2024), para. 96-97. See also: Koldo Casla and Rafael Cid, "Stable, consistent, and safe access to adequate energy: The case of Cañada Real in Madrid", *Open Global Rights* (15 May 2025). https://www.openglobalrights.org/stable-consistent-and-safe-access-to-adequate-energy-the-case-of-canada-real-in-madrid/

non-discriminatory, and whether they prioritized grave situations or situations of risk."[48]

The ICESCR expression "appropriate means" includes the provision of judicial remedies, as well as administrative, financial, educational and social measures.[49] Under Article 8(4) of the Optional Protocol to ICESCR, regarding the individual communication procedure, "the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant". The language is open enough to allow for a variety of policy options. For example, in relation to fiscal policy, the CESCR has called for tax systems that should be "adequate", "fair", "progressive", "socially equitable", and should generate "sufficient" revenue.[50] Generally speaking, the scrutiny of such positive obligations of States parties by the CESCR tends to be of lower intensity than that of negative obligations: the State is expected to prove the reasonableness of the measure or omission in question, whereas it is expected to prove that the measure it has taken is proportionate to the legitimate aim pursued, including being the least intrusive means available to it, when it comes to interferences with rights. Overall, ESCR-related case-law appears to indicate that the more implications the policy or measure has for resource allocation decisions or socio-economic policy matters more broadly, the more likely it is that courts will defer to other branches of the State.[51]

Progressive realisation is a positive obligation to act to fulfil ESCR. Positive obligations are not unique to ESCR. There are positive obligations pertaining to civil and political rights as well, such as the procedural obligation to investigate, and the substantive obligation to develop effective regulations, national procedures and protective operational measures,[52] to which we can add the general obligation to prevent human rights violations, which would also require positive measures.[53]

There are, in principle, multiple ways in which a State could fulfil the progressive realisation of ESCR. The State bears the burden to prove that its policies and measures are the most suitable to meet the standard, but the intensity of the judicial review is likely to vary depending on the level of concreteness of the obligations. In the case of absolute and concrete positive obligations with one – or possibly a limited number of – fulfilment option/s, States and public authorities would probably be granted a narrow margin of

[48] CESCR, An evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol to the Covenant: Statement, UN Doc. E/C.12/2007/1 (21 September 2007), para. 8.e.
[49] Id, para. 3; CESCR, General Comment No. 3: The Nature of States Parties' Obligations, UN Doc. E/1991/23 (14 December 1990), para. 7; CESCR, General Comment. No. 9: Domestic Application of the Covenant, UN Doc. E/C.12/1998/24 (3 December 1998), para. 3, 9.
[50] Allison Corkery and Ignacio Saiz, Progressive realization using maximum available resources: the accountability challenge, in: *Research Handbook on Economic, Social and Cultural Rights as Human Rights* 275 (Jackie Dugard, Burce Porter and Daniela Ikawa, eds. Edward Elgar, 2020), at 286. See also: CESCR, Statement on Tax Policy and the ICESCR, UN Doc. E/C.12/2025/1 (27 February 2025).
[51] César Rodríguez-Garavito and Diana Rodríguez-Franco, *Radical Deprivation on Trial: The Impact of Judicial Activism in the Global South* (Cambridge University Press, 2015), chapter 4.
[52] Vladislava Stoyanova, *Positive Obligations under the European Convention on Human Rights: Within and Beyond Boundaries* (Oxford University Press, 2023), chapters 6-7.
[53] Sigrun Skogly, Prevention is Better than a Cure: The Obligation to Prevent Human Rights Violations, 46(2) *Human Rights Quarterly* 330 (2024).

appreciation by courts; a wider margin would apply in case of abstract or qualified obligations with multiple fulfilment paths equally reasonable in principle.[54]

A case of retrogression may be more successful when framed as a breach of an existing right: before the right was articulated in policy, multiple fulfilment options might have existed, but the analysis of reasonableness should be more stringent after the fact, because the legislator and policymaker had already identified an appropriate measure, from which they intend to backtrack. However, by definition there would be more options when the observer is interrogating the possible paths to fulfil ESCR in the future. That is why in the case of progressive realisation judges are likely to be inclined to grant a wider margin of appreciation to States and public authorities. Claimants and their lawyers would need to consider whether the progressive fulfilment of the right in question requires a sufficiently concrete, specific and unqualified measure for judges to feel compelled to hold the State to deliver accordingly. Minimum core obligations to act and non-discriminate, an assessment of reasonableness of an implementation plan, and the passing of time may play a central role in this reflective exercise (see subsections 3.2, 3.5 and 3.6).

With respect to the spectrum of concreteness of progressive realisation obligations, some lessons can be drawn from recent jurisprudence in the context of the climate crisis. The Inter-American Court of Human Rights held in its Advisory Opinion on the climate emergency (2025) that "States must not only refrain from acting in a way that causes significant environmental damage, but have the positive obligation to adopt measures to guarantee the protection, restoration and regeneration of ecosystems", specifying that such "measures must be compatible with the best available science and recognize the value of traditional, local and indigenous knowledge. Additionally, they must be guided by the principle of non-retrogressivity and ensure the full exercise of procedural rights".[55] It also clarified that human rights-compliant development must be sustainable and requires concrete steps, such as national sustainable development strategies, an obligation that is "immediately enforceable, without prejudice to its step-by-step adaptation and improvement".[56] On the other hand, the Court acknowledged that the adoption of context-sensitive "measures to comply with this strategy" is an obligation of progressive realisation; hence, while acknowledging the flexibility of timeframes and methods, the Court underscored the enforceable obligation of States to act, albeit "to the extent of available economic and financial resources".[57] The Court held in its *La Oroya* judgment (2023) that, "in line with the precautionary principle, States must act with due care to prevent potentially serious and irreversible damage to the environment, even in the

[54] Marion Sandner, "Backwards steps on the enjoyment of rights – a matter of state intervention or of interference? Retrogressive measures before the European Court of Human Rights", *Strasbourg Observers* (30 April 2024) https://strasbourgobservers.com/2024/04/30/backwards-steps-on-the-enjoyment-of-rights-a-matter-of-state-intervention-or-of-interference-retrogressive-measures-before-the-european-court-of-human-rights/; Vladislava Stoyanova, *Positive Obligations under the European Convention on Human Rights: Within and Beyond Boundaries* (Oxford University Press, 2023), 181-197; Jeff King, *Judging Social Rights* (Cambridge University Press, 2012), 99-108; Johan Vorland Wibye, Beyond Acts and Omissions – Distinguishing Positive and Negative Duties at the European Court of Human Rights, 23(4) *Human Rights Review* 479 (2022).
[55] IACtHR, *Advisory Opinion: Climate Emergency and Human Rights* [2025] International-American Court of Human Rights AO-32/25 (29 May 2025), para. 283.
[56] Id, para. 371.
[57] Id, para. 372.

absence of scientific evidence".[58] In 2025, the International Court of Justice further concretised this duty with reference to the due diligence standard: "the higher the probability and the seriousness of possible harm, the more demanding the required standard of conduct."[59] Similar stances have been taken by domestic courts, such as the German Federal Constitutional Court in its *Neubauer* decision (2021).[60]

3.4. Earmarking as a budgetary tool

The CESCR has made the case for "progressive taxation schemes" so the State can secure the resources to discharge its obligation to fulfil human rights.[61] In its 2025 statement on tax policy, the CESCR called for "a well-designed tax system… to effectively raise revenue to secure economic, social and cultural rights, and reduce high levels of economic and social inequality".[62] Taxation is indeed an indispensable public tool to materialise ESCR. Budget and tax analysis are crucial to ascertain States' compliance with their international human rights obligations.[63]

Earmarking or budgetary pre-allocation may be an interesting tool to hold public authorities to account in relation to progressive realisation. Earmarking is a public management technique whereby a proportion of total public revenue is set aside and reserved for a specific social purpose. While earmarking is typically a fixed percentage, there is no reason why it could not be established in law as a percentage that grows over time to ensure the progressive realisation of rights. This would also depend on the level of costs associated with the satisfaction of a right – for example, if there are efficiency improvements, there may be increasing returns from additional investments.

There are international precedents studied by the Organization for Economic Cooperation and Development (OECD) and the World Health Organization (WHO).[64] Various constitutions and laws around the world establish budgetary pre-allocations or earmarking. The Constitution of Brazil of 1988, for example, states in Article 212: "The Union shall apply, annually, never less than eighteen percent, and the states, the Federal District, and the municipalities, at least twenty-five percent of the tax revenues, including those resulting from transfers, in the maintenance and development of education."[65] The

[58] IACtHR, *Inhabitants of La Oroya v Peru* (Judgment of 27 November 2023), para. 186.
[59] International Court of Justice, *Advisory Opinion on Obligations of States in Respect of Climate Change* (23 July 2025), para. 275.
[60] *Neubauer et al v Germany (Order of the First Senate of 24 March 2021 - 1 BvR 2656/18 -, paras 1-270)* [2021] German Federal Constitutional Court 1 BvR 2656/18 [185 (Engl.)]: "…the legislator may not allow climate change to progress *ad infinitum* without taking action. In this respect, the relevant aspect in terms of constitutional law is the obligation to take climate action…".
[61] CESCR, General Comment No. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UN Doc. E/C.12/GC/24 (10 August 2017), para. 23.
[62] CESCR, Statement on Tax Policy and the ICESCR, UN Doc. E/C.12/2025/1 (27 February 2025), para. 6.
[63] Special Rapporteur on Extreme Poverty and Human Rights, "Eradicating poverty beyond growth", UN Doc. A/HRC/56/61 (1 May 2024).
[64] OECD, *Government at a Glance. Latin America and the Caribbean 2014: Towards Innovative Public Financial Management* (OECD, 2014); World Health Organization, *Earmarking for health. From theory to practice* (WHO, 2017).
[65] Constitution of Brazil: https://www.globalhealthrights.org/wp-content/uploads/2013/09/Brazil-constitution-English.pdf

Constitution of Ecuador of 2008 has earmarking for education and health: "The State shall progressively allocate public resources from the General Budget of the State for initial basic education and secondary education leading to a high school diploma, with annual increments of at least zero point five percent (0.5%) of gross domestic product (GDP) until the share amounts to six percent (6%) of GDP" (Transitory Provision 18); "The General Budget of the State aimed at funding the national health system shall be increased every year by a percentage of no less man zero point five percent (0.5%) of gross domestic product (GDP) until it accounts for at least four percent (4%) of GDP" (Transitory Provision 22).[66]

Below the constitutional level, for example the Spanish Law 7/2021, on climate change and energy transition, establishes that a certain percentage ought to be allocated to the fight against climate change.[67] Earmarking is also used in relation to land use and housing in Article 14 of the Decree 336/1988 of Catalonia concerning local authority assets.[68] In the field of affordable housing, the proposal for a Human Rights Plan of Catalonia (2020-2023), elaborated by the Catalan Ombudsman and the Catalan Institute for Human Rights, recommended the use of earmarking to increase the social housing stock.[69]

Earmarking may result in positive outcomes – such as assured public investment – or negative outcomes – fiscal rigidity. The findings published by OECD in the field of health suggest that the results of earmarking are highly context-specific and dependent on a country's political priorities and budget processes.[70] In some cases, earmarking has been a tool to advance and sustain a national health priority. The OECD's findings also suggest that in most cases earmarking is unlikely to bring a significant and sustained increase in the priority placed on health in overall government spending. Budgets are fungible, and earmarking one revenue source is likely to result in offsets through cuts in other sources. Furthermore, earmarking can introduce rigidity into the budget process, and the

[66] Constitution of Ecuador, from Constitute Project: https://www.constituteproject.org/constitution/Ecuador_2021

[67] Translation is ours:
"1. At least a percentage equivalent to that agreed in the Multiannual Financial Framework of the European Union of the General State Budgets must contribute to the objectives established in terms of climate change and energy transition, in accordance with the methodology and deadlines established by regulation. (…) 4. The revenues from the auctioning of greenhouse gas emission allowances shall be used for the fulfilment of the objectives regarding climate change and energy transition. The second additional provision of Law 15/2012, of December 27, on fiscal measures for energy sustainability, is redrafted as follows: "1. In the General State Budget Laws for each year, an amount equivalent to the sum of the estimated annual collection derived from the taxes included in the Law on fiscal measures for energy sustainability shall be allocated to finance the costs of the electricity system foreseen in the Electricity Sector Law, referring to the promotion of renewable energies".

[68] Our translation: "14.1 Municipal land assets in municipalities that are required or choose to have them are assigned to urban planning for the immediate preparation and sale of building plots and the reservation of land for future use. They are also governed by specific legislation and are integrated into the local authority's assets as separate assets. 14.2 The town councils of the municipalities referred to in the previous section must specifically provide in their budgets for the establishment, conservation and expansion of municipal land assets. The amount of the expenditure may not be less than 5% of the total allocated in chapters I and II of the general revenue budget."

[69] Síndic de Greuges and Institut de Drets Humans de Catalunya, *Plan de Derechos Humanos: Estados Generales de Derechos* (2019), 39-40.

[70] OECD, *Government at a Glance. Latin America and the Caribbean 2014: Towards Innovative Public Financial Management* (OECD, 2014).

inefficiencies in some cases can be severe. Earmarking has been more effective when practices come closer to standard budget processes – that is, softer earmarks with broader expenditure purposes and more flexible revenue-expenditure links. In any case, the tool exists, has been tested and should be considered as an element in the toolbox for the progressive realisation of ESCR.

3.5.Extension of judicial principles and practices to progressive realisation

One relevant factor when considering expanding strategic litigation to progressive realisation is whether the claimant can build on judicial principles developed and widely accepted in the jurisdiction in question. The goal would be to try to persuade judges to apply the principles they are already familiar with to a scenario they may not have considered before, such as whether the progressive realisation is justiciable and, if so, whether public authorities' omission amounts to a violation of this legal requirement.

Various principles from comparative practice seem pertinent in this regard. In this paper we explore five of them: a) structural remedies (in Colombia and Brazil), b) reasonableness (in South Africa and the CESCR), c) meaningful engagement (in South Africa, Brazil and India), d) due diligence and good administration (in the Council of Europe, the European Union and their Member States, and Latin America), and e) the principle of equality and non-discrimination in various jurisdictions.

Colombia's Constitutional Court has used so-called structural decisions/remedies to require public authorities to take active measures in cases of systemic failure to fulfil ESCR. They can be, in this sense, a key case-law principle in relation to positive obligations. Structural orders and remedies are intended to deal with broader social problems; this includes the potential ruling of a "state of unconstitutional affairs", when the Court concludes that there is a systemic gap between public policy and constitutional standards.[71] Among other things, the Constitutional Court has resorted to the temporary suspension of a declaration of unconstitutionality in order to give the legislature time to develop a new system and policy framework before replacing the one deemed unconstitutional.[72] Similarly, the Brazilian Federal Supreme Court has increasingly issued structural remedies in recent years, for example, in relation to access to indigenous territories,[73] or to the country's homelessness crisis.[74]

The principle of reasonableness is contained in various provisions of South Africa's 1996 Constitution, as well as in Article 8(4) of the 2008 Optional Protocol to ICESCR, dealing with individual complaints to CESCR. In *Grootboom* (2000) – concerning a community of some 900 people, including 510 children, in an informal settlement – the South African Constitutional Court held that the State must take steps to implement a housing programme that is "coherent", "balanced and flexible", "comprehensive and workable",

[71] David Landau, The Colombian Model of Structural Socio-Economic Rights Remedies: Lessons from and for Comparative Experience, in: *Constitutionalism, New Insights* 258 (Alejandro Linares-Cantilo, Camilo Valdivieso-Leon and Santiago García-Jaramillo, eds. Oxford University Press, 2021), at 260.
[72] Constitutional Court of Colombia, Judgment C-747/1999 (6 October 1999), and Judgment C-700/1999 (16 September 1999).
[73] Federal Supreme Court of Brazil, ADPF 709 MC-REF / DF (2 February 2022).
[74] Federal Supreme Court of Brazil, ADPF 976 MC / DF (21 August 2023).

and that does not exclude a significant segment of society.[75] In that case, the Court also interpreted the principle of progressive realisation in line with the CESCR – even though South Africa had not yet ratified ICESCR at that time – and endorsed the Committee's presumption of non-retrogression derived from progressive realisation.[76] The Court ordered that Section 26(2) of the Constitution, on access to adequate housing, "requires the state to devise and implement within its available resources a comprehensive and coordinated programme progressively to realise the right of access to adequate housing".[77]

Reasonableness is also part of the CESCR's case-law. For example, in *Trujillo Calero v Ecuador* (2018), a case concerning the social security of an unpaid domestic worker, the Committee said:

> "States parties have a certain margin of discretion in adopting the measures they consider necessary to ensure that everyone enjoys the right to social security, with a view to, among other things, ensuring that retirement pension systems are efficient, sustainable and accessible for everyone. States may therefore establish requirements or conditions that claimants must meet in order to be eligible for social security schemes or to receive a retirement pension or other benefit, provided that the conditions are reasonable, proportionate and transparent."[78]

One of the strongest critiques of reasonableness is that it does not establish a minimum of adequacy in the provision of services necessary for the satisfaction of ESCR. That is why Young, Liebenberg and Chowdhury, among others, have advocated for a revised and more substantive interpretation of reasonableness to integrate it with minimum core obligations with a spectrum of weaker and stronger judicial scrutiny depending on the circumstances and enabling greater participation and deliberation.[79]

Active participation is indeed the foundational pillar of the third principle: meaningful engagement. When the matter of *Olivia Road* (2008) – the eviction of 400 occupiers of two buildings in the inner city of Johannesburg – came on appeal before the South African Constitutional Court, the Court adjourned the proceedings and issued an interim order requiring the parties to engage "with each other meaningfully… in an effort to resolve the dispute… in the light of the values of the Constitution, the constitutional and statutory

[75] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000), para. 41, 43, 38.
[76] Id, para. 45.
[77] Id, para. 99.
[78] CESCR, *Trujillo Calero v Ecuador*, Communication No. 10/2015 (Views of 14 November 2018), para. 12.1.
[79] Katharine G. Young, Proportionality, Reasonableness, and Economic and Social Rights, in: *Proportionality: New Frontiers, New Challenges* 221 (Vicki C. Jackson and Mark Tushnet, eds. Cambridge University Press, 2017); Joie Chowdhury, Unpacking the minimum core and reasonableness standards, in: *Research Handbook on Economic, Social and Cultural Rights as Human Rights* 251 (Jackie Dugard, Burce Porter and Daniela Ikawa, eds. Edward Elgar, 2020), at 270-273; Sandra Liebenberg, Reasonableness Review, in: *The Oxford Handbook of Economic and Social Rights* (Malcolm Langford and Katharine G. Young, eds. Oxford University Press, 2022).

duties of the municipality and the rights and duties of the citizens concerned".[80] As observed by Liebenberg, in subsequent case-law the Constitutional Court established a series of principles to ensure that meaningful engagement conforms to deliberate democratic decision-making: "structured interaction, justifications based on public reasoning, good faith, respect for the dignity and agency of poor people, flexibility, transparency, record-keeping and civil society involvement".[81] Others, like Gargarella and Wilson, have been more critical: while meaningful engagement might work in certain circumstances – Wilson mentions the negotiation of debt restructuring as an example – in general, since the engagement begins with a blank slate, a normatively empty form of engagement – with no set direction of travel – cannot really transform the underlying profound structural inequalities between the parties.[82] These observations are, in any case, not necessarily incompatible with one another. Be that as it may, where a participatory approach is endorsed by the courts, claimants may request judges to urge parties to engage with one another to identify processes and policies to track progress over time. The principle of meaningful engagement resonates with the CESCR's requirement that alternative housing options ought to be explored following "genuine consultation with the persons concerned" with an eviction.[83] Meaningful engagement has also been explicitly referenced in Indian case-law.[84] Brazilian courts have reiterated the importance of meaningful consultation of affected rights-holders in a range of judgments, including on the indigenous communities' right to effectively participate in decisions that may affect their way of life and culture in the context of a large-scale open-pit coal project,[85] and the eviction of particularly vulnerable individuals during the Covid-19 pandemic, where it ordered that affected communities be heard and that commissions to mediate evictions be established.[86]

The principle and right of good administration can be another tool for promoting progressive realisation of ECSR. It is recognised in the legal systems of several countries and used by different courts.

The Finnish Constitution includes references in Articles 21 and 124, the Mexico City's Constitution includes a right to good administration (Article 60), whilst the Italian Constitution refers to *buon andamento* in Article 97 (expression equivalent to good

[80] *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008), para. 5.
[81] Sandra Liebenberg, The Participatory Democratic Turn in South Africa's Social Rights Jurisprudence, in: *The Future of Economic and Social Rights* 187 (Katharine G. Young, ed. Cambridge University Press, 2019), at 199.
[82] Roberto Gargarella, Why Do We Care about Dialogue? 'Notwithstanding Clause', 'Meaningful Engagement' and Public Hearings: A Sympathetic but Critical Analysis, in: *The Future of Economic and Social Rights* 212 (Katharine G. Young, ed. Cambridge University Press, 2019); Stuart Wilson, *Human Rights and the Transformation of Property* (Juta, 2021), 63, 122-123.
[83] See, for example, CESCR, *Naser v Spain*, Communication No. 127/2019 (Views of 28 February 2022), para. 14.b.
[84] *Sudama Singh and Ors v Government of Delhi and Ors* 168 (2010) DLT 218 (Delhi High Court); *Ajay Maken v Union of India* WP(C) 11616/2015 (Delhi High Court); Gautam Bhatia and Rishika Sahgal, Evictions, Meaningful Engagement, and the Right to Housing in India: Two Roads, *Comparative Constitutional Studies* (2025, advanced online access).
[85] *Arayara Association of Education and Culture and others v FUNAI* [2022] Federal Court Rio Grande do Sul (Brazil) 5069057-47.2019.4.04.7100/RS 35.
[86] Federal Supreme Court of Brazil, ADPF 828/DF (1 December 2021).

administration, according to the Italian Constitutional Court). The Peruvian and Colombian Constitutional Courts have declared that the principle of good administration can be found implicitly in their constitutions.[87]

The European Court of Human Rights has built the notion of good governance, applying it to resolve conflicts both in the administrative and in the judicial fields.[88] A right to good administration is also recognised in Article 41 of the European Charter of Fundamental Rights, as well as in European Member States' legal systems, as a part of their constitutional traditions, according to the Court of Justice of the European Union.[89] At the national level, different laws recognise the principle and right to good administration.[90] The principle of good administration encompasses elements, such as the right to be heard, the obligation to provide adequate reasons for decisions, and specially and above all the duty of acting with due diligence and due care.[91] This duty entails a duty of collecting all relevant data (facts, interests, law, rights), a duty of considering the reasonable alternatives which arise during the procedure, a duty of taking into account all the relevant factors and dismissing all the irrelevant ones, and a duty of giving reasons.

The duty of acting with due diligence and due care is used, with or without reference to good administration, in relation to climate change cases. Due diligence is a concept well

[87] Constitutional Court of Peru, Judgment 2235-2004-AA/TC (18 February 2005); Constitutional Court of Colombia, Judgment TC/0285/22 (16 September 2022).
[88] Several decisions that use the concept of good governance to control public activity in different areas are of special interest. This is the case of the decisions *Cazja v Poland* (2 October 2012), *Rysovskyy v Ucrania* (20 October 2011), or *Öneryildiz v Turkey* (30 November 2004), among others.
[89] European Court of First Instance, *Max.mobil Telekommunikation Service GmbH v Commission of the European Communities* (30 January 2002). The EU Courts have used Article 41 several times to control administrative activity (For example, on 29 April 2015, in T-217/11, *Claire Staelen v European Union Ombudsman*).
[90] In the Spanish case, for example, though the Spanish Constitution does not include the words good administration (but the Supreme Court has stated the existence of an implicit principle of good administration, for example, on 4 November 4 2021), the Spanish legislator (for example, the 2013 Transparency Act) uses the term good government, and the regional legislators have included the right to good administration in the Autonomy Statutes of regional Government, Administrative Procedure Acts (e.g. Catalan Act of 2010) and legislation on transparency (e.g. Catalan Act of 2014). In relation to the Italian case and the role of the legislator, article 1 of the Italian Administrative Procedure Act that provides for administrative activity to be governed by the principles of EU law and therefore makes art. 41 of the Charter applicable in relation to Italian citizens in front of the national public administration.
[91] Regarding the ECJ, see C-260/90 *Technische University München v Hauptzollamt München-Mitle* (1991) ECR I-546 in which the duty of due care is connected to the right to be heard and to the duty of giving reasons. ECtHR, *Cazja v Poland* (2012), para 70. Decision of the Spanish Supreme Court of 4 November 2021 [Translation is ours]: "As can be inferred from the Supreme Court's statement, the principle of good administration has an indisputable constitutional and legal basis. We can distinguish two manifestations of this principle: on the one hand, it constitutes a duty and requirement for the Administration itself to guide its actions under the aforementioned parameters, including diligence and timeliness; on the other hand, it constitutes a right of the citizen, which can assert it before the Administration in defence of their interests and which, with regard to lack of diligence or administrative inactivity, is reflected not only in the prohibition of inactivity derived from national legislation, arts. 9 and 103 of the Spanish Constitution and 3 of Law 39/2015, - although this principle of good administration is not expressly mentioned -, but expressly and categorically in art. 41 of the ECHR." Juli Ponce, The Right to Good Administration and the Role of Administrative Law in Promoting Good Government, in: *Preventing Corruption and Promoting good Government and Public Integrity* 25 (Agustí Cerrillo and Juli Ponce, eds. Bruylant, 2017).

known in public international law,[92] and it has been used in the field of climate change by the European Court of Human Rights (case *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, 2024) and the Inter-American Court of Human Rights (*Pueblo Indígena U'wa and its members v Colombia*, 2024), and in the 2025 International Court of Justice's Advisory Opinion on climate change.

In relation to progressive realisation of ESCR, the good administration, linked to the positive duty of due diligence, would require that public authorities make informed decisions about the allocation of resources for ESCR, carefully weighing different priorities and obligations and giving reasons for the final decision, which must be consistent with the information considered. For example, challenges to austerity measures and lack of progressive realisation based on insufficient justification or failure to consider the impact on social rights and the available means could invoke the principle of good administration.

Neither legislation nor judges are providing sufficient clarity in relation to the level of diligence expected under due diligence. However, some case-law gives useful clues about how to generate a general orientation to be determined in accordance with the specific circumstances of each case. The Inter-American Court of Human Rights in case *Pueblo Indígena U'wa and its members v Colombia* (2024) established that the standard of due diligence "must be appropriate and proportionate to the degree of risk of the environmental harm, which implies that in activities known to be more risky, such as the use of highly polluting substances, the obligation has a higher standard".[93] The International Court of Justice, in the mentioned Advisory Opinion of 2025 expressed that "the degree of a given risk of harm is always an important element for the application of the due diligence standard: the higher the probability and the seriousness of possible harm, the more demanding the required standard of conduct".[94] In line with these perspectives, Juli Ponce has suggested the formula "c = p x D", where "c", the cost of the measure of good administration (level of care or diligence) must be equal at least to the result of multiplying "p", the likelihood of damage, by "D", the gravity of the potential harm.[95]

Lastly, the principle of equality has been advanced to judicially enforce ESCR, even in the absence of the express codification of ESCR in a given domestic context. This principle hence provides an alternative lever available before domestic courts in contexts without any enforceable ESCR, let alone a progressive realisation provision. The Inter-American Court's decision in the *The Fireworks Factory* case (2020) expressly mentions the substantive dimension of the right to equality, concluding that it entails the obligation "to provide individuals with the real possibility of achieving material equality".[96] Such

[92] Timo Koivurova, Krittika Singh, *Due Diligence Oxford Public International Law* (Oxford University Press, 2023).
[93] IACtHR, *Pueblo Indígena U'wa and its members v Colombia* (Judgment 4 July 2024), para. 293.
[94] International Court of Justice, *Advisory Opinion on Obligations of States in Respect of Climate Change* (23 July 2025), para. 275.
[95] Juli Ponce-Solé, Buen gobierno y derecho a una buena administración desde una perspectiva de calidad normativa. A propósito del libro de la profesora Maria De Benedetto, Corruption from a Regulatory Perspective, 24 *Eunomía: Revista en Cultura de la Legalidad* 377 (2023).
[96] IACtHR, *Fireworks Factory in Santo Antônio de Jesus and Their Families v. Brazil* (Judgement of 15 July 2020), para. 199.

material or substantive equality seeks to address indirect discrimination. The prohibition of indirect discrimination, widely recognised as a core obligation,[97] may also support litigation in cases concerning the progressive realisation of rights. This is particularly relevant in countries where such a prohibition is explicitly established in relation to any act or provision issued by public authorities (*e.g.*, Spain's Law 15/2022, on equal treatment and non-discrimination). Closely linked to the substantive equality approach, many UN and regional oversight bodies have recently expanded on the notion of vulnerability. In the realm of social rights in particular, the European Committee of Social Rights has applied the concept of vulnerability to various groups, including Roma communities, persons with disabilities, pensioners, migrant children, and, more broadly, individuals living below the poverty threshold, limiting the margin of appreciation of the States to guarantee that needs of those in a particularly vulnerable situation are adequately addressed.[98] In other instances at the domestic level, perhaps most prominently in the UK, certain (retrogressive) measures have been challenged based on their impact on equality. Notably, the primarily procedural statutory requirement for public authorities to afford due regard to the equality impact of their decision (Public Sector Equality Duty, Equality Act 2010, section 149) has served as a useful lever.[99] Also the Portuguese Constitutional Court has relied on the constitutional equality principle in its review of the post-financial crisis austerity budgets,[100] and a German labour court held that inflation adjustments of parental leave payments are necessary based on the constitutional equality principle.[101] While in these cases the equality principle proved to be an important tool to effectively enforce ESCR, these cases are not expressly linked to the principle of progressive realisation.

3.6.Progressive realisation implies time… but how long?

The importance of the passing of time is intrinsic to progressive realisation. The timeframe in which steps to the maximum of available resources were taken is one of the criteria used by the CESCR to assess whether a State meets its international obligations in relation to progressive realisation.[102] As appreciated by Young, waiting is ubiquitous in relation to ESCR; the assessment of public authorities' compliance with their obligations to realise these rights progressively "requires both more developed metrics – of how long a delay is too long – and a more nuanced approach to time", an approach that should be sensitive to rights-holders' perspectives, with an appreciation of the impact that

[97] CEDAW, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 CEDAW, CEDAW/C/GC/28 (16 December 2010), para. 16; CRPD, General Comment No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, (26 April 2018).
[98] Stefano Angeleri, *Irregular Migrants and the Right to Health* (Cambridge University Press, 2022), subsection 2.7.3.
[99] For example, *Harjula v London Borough Council 2011, and W, M, G & H, R v Birmingham City Council, 2011; R (on the application of DA and others) (Appellants) v Secretary of State for Work and Pensions (Respondent) R (on the application of DS and others) (Appellants) v Secretary of State for Work and Pensions (Respondent)* [2019] UKSC 21.
[100] Amongst others, Constitutional Court of Portugal, Judgment 187/133 (5 April 2013), and Judgment 574/14 (14 August 2014).
[101] [2024] Labour Court Essen, Germany 3 Ca 2231/23.
[102] CESCR, An evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol to the Covenant: Statement, UN Doc. E/C.12/2007/1 (21 September 2007), para. 8.e.

the passing of time has on them and their ability to see the rights realised in practice.[103] Indicators and benchmarks become essential tools in the assessment of States' compliance with social rights obligations over time.[104]

In 2008, the Colombian Constitutional Court issued a judgment calling on the Colombian Government to adopt a series of measures to realise the right to health progressively. In response to a large volume of cases and complaints regarding the functioning of the public health system, this important decision called for a significant restructuring of it. Among other things, the Court ordered the Government to ensure universal coverage by 2010, establishing that if such a deadline could not be met, the Government would have to propose a new target and provide a convincing justification for it.[105]

A case currently *sub judice* in South Africa presents an interesting opportunity to consider the State's compliance with the constitutional obligation to revert decades of land dispossession under apartheid. In December 2024, the Nelson Mandela Foundation brought a case in front of the Western Cape High Court to challenge the State on their failure to comply with Section 25(5) of the Constitution, which reads: "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis".[106] Time will tell whether judges will decide to provide teeth to the constitutional requirement to take reasonable measures to deliver on land reform. If judges were to take the challenge, they would need to consider whether the policies and measures by successive governments have been sufficiently reasonable considering that nearly three decades have passed since the adoption of the Constitution in 1996.

In the case *Matrika Devkota and et al v Prime Ministers et al* (2024), the Supreme Court of Nepal called on the Government to include mental health programmes in the national budget and the public health system. With references to ICESCR and the CESCR's interpretation of it, the Supreme Court endorsed the principle that the implementation of constitutionally guaranteed socio-economic rights should not be indefinitely delayed. Accordingly, the Supreme Court urged the executive to amend the mental health policy dating from 1996.[107]

The passing of time is just as relevant for non-retrogression. For example, the German Constitutional Court has long recognised that creating the conditions for leading an

[103] Katharine G. Young, Waiting for Rights: Progressive Realization and Lost Time, in: *The Future of Economic and Social Rights* 654 (Katharine G. Young, ed. Cambridge University Press, 2019), at 654, 675, 678.
[104] Special Rapporteur on the Right to Health, Report, UN Doc. E/CN.4/2006/48 (3 March 2006).
[105] Constitutional Court of Colombia, Judgment T-760/2008 (31 July 2008), para. 2.2.5.3; Camila Gianella-Malca, Oscar Parra-Vera, Alicia Ely Yamin, and Mauricio Torres-Tovar, ¿Deliberación democrática o mercadeo social? Los dilemas de la definición pública en salud en el contexto del seguimiento de la Sentencia T–760 de 2008, 11(1) *Health and Human Rights* 1 (2009).
[106] Nelson Mandela Foundation, "Nelson Mandela Foundation files legal challenge to realise equitable land access on the anniversary of Madiba's passing" (press release, 5 December 2024).
[107] Supreme Court of Nepal, *Matrika Devkota and et al vs Prime Ministers & et al*, Writ No.077- WO-0035, (Judgment of 2 December 2024); Nepal Disabled Women Association and others, "Submission to the Working Group on the Universal Periodic Review of Nepal" (16 July 2025), para. 41-43. https://www.icj.org/wp-content/uploads/2025/07/NDWA_UPR_Nepal_Joint-Submission.pdf?utm_source=chatgpt.com

independent and fulfilling life is part of the State's constitutional responsibilities. In November 2019, the Court ruled that, to be acceptable, sanctions imposed on recipients of unemployment benefits to enforce their cooperation obligations must be proportionate, and that, while the legislature does have a margin of appreciation in a democratic society, the longer the sanctions regime has been in force (withholding the payment of benefits to recipients), the more compelling the findings must be to prove that sanctions are suitable, necessary and reasonable.[108]

In 2024, the Brazilian Supreme Court established that, under certain circumstances, the executive may be forced by the courts to provide medications not covered by the public health system; the exceptions opened the door to the analysis of whether the State had been unreasonably slow, arbitrary or silent in incorporating essential medicines in the public list.[109]

3.7. Has the State accepted the jurisdiction of an international monitoring body?

Through individual and collective communications, international human rights bodies can shape domestic legislation and national judges' interpretation of the law.

Spain is a relevant example in this regard. Spain was the third country in the world to ratify the Optional Protocol to ICESCR. To this day, more than 90% of CESCR decisions concern this one country, and the vast majority of them deal with the right to adequate housing. Since 2019, Spain's legislation has been amended several times, and some of those amendments have brought to life some of the recommendations of the CESCR. Not all recommendations have been taken onboard yet; in particular, the issues of progressive realisation and the adoption of a national plan have not received sufficient consideration. However, judges are now given the opportunity to look at personal circumstances (while not obliged to do so), and there is an expectation of coordination between the judiciary and social services before an eviction is executed (but not a specific timeframe or duties on public authorities). Housing laws at regional as well as central/national levels have created additional duties for landlords owning multiple properties over small landlords, which the CESCR considers part of the proportionality test.[110] For Nic Shuibhne and Quintiá Pastrana, these legal reforms are evidence of the influence of international human rights law in relation to the right to housing "as conscious or unconscious source of inspiration" for domestic powers.[111]

---

[108] Federal Constitutional Court of Germany, 1 BvL 7/16 (Judgment of 5 November 2019). https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/11/ls20191105_1bvl000716en.html

[109] Federal Supreme Court of Brazil, Rep. Geral Tema: 6, RE 566471 (Judgment of 26 September 2024). https://portal.stf.jus.br/processos/detalhe.asp?incidente=2565078

[110] Koldo Casla, "From Judgment to Justice: Discussing the Implementation of International Judgments on Socio-Economic rights in Johannesburg", *Essex Law Research* (21 November 2023) https://essexlawresearch.uk/2023/11/21/from-judgment-to-justice-discussing-the-implementation-of-international-judgments-on-socio-economic-rights-in-johannesburg/; Global Initiative for Economic, Social and Cultural Rights, *Yearbook of the Committee on Economic, Social and Cultural Rights 2023* (GI-ESCR, 2024), 22-23; CESCR, *López Albán v Spain*, Communication No. 37/2018 (Views of 11 October 2019), para. 11.5.

[111] Emma N. Nic Shuibhne and Andrei Quintiá-Pastrana, The Influence of the International Right to Adequate Housing in Ireland and Spain: Aspirations, Indicators and Realities, 11(4) *European Journal of Comparative Law and Governance* 415 (2024), at 468.

Spain is also an interesting case study from the perspective of the binding nature of international decisions. Over the years, Spanish courts have zig-zagged around this question. However, on some occasions has the Supreme Court set the principle that Treaty Body decisions are legally binding on domestic authorities, the way that the judgements of the European Court of Human Rights are. In November 2023, for example, the Supreme Court established that, since Spain had voluntarily signed up and ratified a relevant treaty, public authorities were bound to adopt the necessary measures to fulfil the rights contained therein; international treaties are part of domestic law, and the constitutional bill of rights must be interpreted in accordance with international human rights law:

> "International obligations related to the execution of decisions by international monitoring bodies whose mandate has been accepted by Spain form part of our internal legal system, once they have been incorporated in the terms of Article 96 of the Constitution, and they enjoy the hierarchical status that both this article – above the law– and Article 95 – below the constitution – confer them."[112]

Many countries have not accepted the jurisdiction of international human rights accountability mechanisms. And even for those who have, not enough cases are brough to the attention of the relevant supranational committees, national authorities may simply disregard their decisions, and/or judges may not grant them sufficient legal significance. Having said all that, under certain circumstances, international bodies may play a role in contributing to advancing the agenda of the progressive realisation of socio-economic rights at the domestic level.

3.8. The role of civil society

Courts are structurally and politically constrained in their interpretation and application of the law: courts are "at the mercy of the applicants when it comes to the legal argument"; some judges may be receptive and sensitive to broad changes in society, and they may be inclined to act if they "face critique from the public or political opposition for judicial timidity".[113] Political opportunities for action and mobilising structures can indeed contribute to raising the political and strategic salience of a given human rights claim in

[112] Supreme Court of Spain, Judgment 1597/2023 (29 November 2023), Legal Foundation No. 7; Koldo Casla, "Spain's Supreme Court is at it again: UN Treaty Body decisions are binding", *EJIL:Talk!* (22 January 2024) https://www.ejiltalk.org/spains-supreme-court-is-at-it-again-un-treaty-body-decisions-are-binding/

[113] Malcolm Langford, Judicial Politics and Social Rights, in: *The Future of Economic and Social Rights* 66 (Katharine G. Young, ed. Cambridge University Press, 2019), at 81-82.

court.[114] Therefore, it should be considered whether there is a campaign and/or a movement in place to accompany – if not to lead – the process of legal advocacy.[115]

The influence between the judiciary and civil society can be a two-way street, in the sense that a case can also elicit public mobilisation. As said in section 1, some of the possible impacts of strategic litigation on ESCR may be that a case may trigger social mobilisation to advocate for policy change, alter the general perception of a given issue as a rights violation, or transform the public opinion about the gravity of the issue.[116]

A public campaign can be key to provide evidence, submit amici curiae, educate the public to demand rights, undertake research about the progressive improvement or potential retrogression of rights, and to inform the process of implementation. For example, in *People's Union for Civil Liberties v Union of India & Others* (2001), the Indian Supreme Court proclaimed the right to food as part of the constitutional right to live with dignity.[117] The Supreme Court appointed a commissioner that operated between 2002 and 2017 to monitor the implementation of the Court's orders. This mechanism allowed for a decentralised, collaborative and participatory approach to judicial remedies, where civil society was empowered to provide evidence for the commissioner's consideration in the spirit of public deliberation.[118] In Colombia, in a 2004 case concerning the social rights (emergency aid, food, healthcare, job training, housing, right to return…) of internally displaced persons, the Constitutional Court issued a series of structural remedies calling for effective public policies, and set up a civil society commission that was given the task of monitoring the process of implementation.[119]

Civil society can play a crucial role in the implementation process to overcome the reluctance of some States to comply with CESCR decisions and recommendations, particularly general recommendations, which often require structural changes in

[114] Examples include the South African case of Grootboom, in which a community of evicted residents supported by housing rights advocates successfully invoked the constitutional right to housing; the collective complaint of the FIDH v. Ireland (Complaint No. 110/2014) before the European Committee of Social Rights, which was prepared and supported by the Community Action Network, as well as a broad coalition of residents, community groups, NGOs, and legal experts, with the aim of placing tenant experience at the centre of the process; and the Woonzaak (Housing Case) in Flanders, in which many organisations and academics combined legal action before the ECSR with a large-scale communications campaign, public testimony, and alliances across civil society, in order to build political and social momentum for the right to housing.

[115] Malcolm Langford, César Rodríguez-Garavito and Julieta Rossi, *Social Rights Judgments and the Politics of Compliance: Making it Stick* (Cambridge University Press, 2017).

[116] César Rodríguez-Garavito, Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America, 89(7) *Texas Law Review* 1669 (2011), at 1679; Malcolm Langford, Introduction: Civil Society and Socio-Economic Rights, in: *Socio-Economic Rights in South Africa: Symbols or Substance?* 1 (Malcolm Langford, Ben Cousins, Jackie Dugard and Tshepo Madlingozi, eds. Cambridge University Press, 2013), at 22-23.

[117] *People's Union for Civil Liberties v Union of India & Ors*, Supreme Court of India, Civil Original Jurisdiction, Writ Petition (Civil) No.196 of 2001.

[118] César Rodríguez-Garavito, Empowered Participatory Jurisprudence: Experimentation, Deliberation and Norms in Socioeconomic Rights Adjudication, in: *The Future of Economic and Social Rights* 233 (Katharine G. Young, ed. Cambridge University Press, 2019), at 251-258.

[119] Constitutional Court of Colombia, Judgment T-025 (22 January 2004); David Landau, The Colombian Model of Structural Socio-Economic Rights Remedies: Lessons from and for Comparative Experience, in: *Constitutionalism: Old Dilemmas, New Insights* 258 (Alejandro Linares-Cantilo, Camilo Valdivieso-Leon and Santiago García-Jaramillo, eds. Oxford University Press, 2021), at 260-261.

legislation and public policy. It is therefore essential for groups supporting a case to develop and implement a long-term strategy. This strategy should recognise that the process involves, not only the complaint, interim measures and the final decision, but efforts to secure the implementation of the decision itself. Such work may include advocacy with relevant ministries, engagement with legislators, and mobilisation of support from ombuds institutions and other stakeholders. In terms of progressive realisation, civil society can contribute by building alliances across sectors, including academia and legal professionals, and by promoting awareness of relevant jurisprudence and international best practices that can inform domestic implementation.

4. Concluding remarks

Progressive realisation is proclaimed in international human rights treaties as a pillar of ESCR. It is also recognised by international human rights bodies. However, while the principle has been acknowledged in abstract terms by international and national judicial and quasi-judicial bodies, there are only a few examples of partial application of progressive realisation in individual cases.

While in some cases this may be due to ideological defiance from conservative judges, there are also valid reasons why courts may resist holding governments accountable for their alleged failure to advance progressively towards the full satisfaction of ESCR: lack of technical knowledge, guidance or ability, limited resources and information, the argument that individual cases cannot capture the full extent of structural inequalities and allocation of public resources, and concerns about democratic legitimacy. In this respect, as Landau put it, "we may continue to gain a more fruitful understanding of judicial politics by viewing judiciaries as integral parts of their own political regimes".[120] Courts do not need to do everything in a democratic society. Human rights are not their sole responsibility. The fulfilment of social rights requires the involvement of all powers of the State, not only the judiciary. King's metaphor of social rights as capstone is a helpful one:

> "I would argue that the idea of social rights as human or constitutional rights must be the crowning piece, the finishing touch (structural, not ornamental) on a broader institutional structure and system of supporting values that will make the real enjoyment of social rights a reality. The scholarly study of constitutional social rights in my view needs to be joined up to the fields of social policy, to political economy, to related fields of law such as labour, private and tax law and to a political philosophy that is a bit more elaborate about the questions and institutions for distributive justice than is even contemporary liberalism."[121]

Social rights justiciability can be "a piece in a democratic regime's puzzle… whose usefulness and precise design is to be decided by each country, according to their local

[120] David Landau, Socioeconomic rights and majoritarian courts in Latin America, in: *Constitutionalism in the Americas* 188 (Colin Crawford and Daniel Bonilla Maldonado, eds. Edward Elgar, 2018), at 214.
[121] Jeff King, The Future of Social Rights, in: *The Future of Economic and Social Rights* 289 (Katharine G. Young, ed. Cambridge University Press, 2019), at 315.

political culture and institutional performance…".[122] In other words, one-size does not fit all. And yet, legislators and judges can build on previous experiences and lessons from comparative and international practice. Where the institutional structure is in place for courts to have a say on ESCR, how can claimants and legal practitioners expand the boundaries of judges' capacity and legitimacy to hold public authorities to account for the progressive realisation of ESCR? In this paper we have argued that at least the following criteria should be taken into account when pursuing litigation in this area:

- Whether the legal obligation of progressive realisation exists in the first place, either as direct recognition in national law or via incorporation of international human rights law.
- Whether the case can be articulated as a violation of an immediate obligation or minimum core obligation underpinning progressive realisation, such as the obligation to take steps and the obligation not to discriminate.
- The level of concreteness of the positive obligation to realise ESCR progressively.
- The existence, pros and cons and possible use of earmarking as a budgetary tool.
- The possible extension of principles and practices already embraced by judges to the realm of progressive realisation – principles and practices that will vary from jurisdiction to jurisdiction.
- The timeframe in which steps to the maximum of available resources were taken or not taken.
- In the case of domestic litigation, whether the State accepted the jurisdiction of an international monitoring body, to which the case could be submitted after exhausting internal remedies.
- The key role of civil society as leaders and galvanisers of an associated campaign or as providers of information relevant for the case and/or its implementation.

[122] Octávio Luiz Motta Ferraz, The Court's Dilemma in Social Rights' Enforcement, in: *Constitutionalism: Old Dilemmas, New Insights* 202 (Alejandro Linares-Cantilo, Camilo Valdivieso-Leon and Santiago García-Jaramillo, eds. Oxford University Press, 2021), at 205.

Bibliography

ANGELERI, S., *Irregular Migrants and the Right to Health* (Cambridge University Press, 2022).

BHATIA, G., SAHGAL, R., Evictions, Meaningful Engagement, and the Right to Housing in India: Two Roads, *Comparative Constitutional Studies* (2025, advanced online access).

BOYLE, K. *Economic and Social Rights Law: Incorporation, Justiciability and Principles of Adjudication* (Routledge, 2020).

BUENO DE MESQUITA, J. Reinterpreting human rights in the climate crisis: Moving beyond economic growth and (un)sustainable development to a future with degrowth, 42(1) *Netherlands Quarterly of Human Rights* 90 (2024).

CASLA, K., "From Judgment to Justice: Discussing the Implementation of International Judgments on Socio-Economic rights in Johannesburg", *Essex Law Research* (21 November 2023).

CASLA, K., "Spain's Supreme Court is at it again: UN Treaty Body decisions are binding", *EJIL:Talk!* (22 January 2024).

CASLA, K., CID, R., "Stable, consistent, and safe access to adequate energy: The case of Cañada Real in Madrid", *Open Global Rights* (15 May 2025).

CHOWDHURY, J. Unpacking the minimum core and reasonableness standards, in: *Research Handbook on Economic, Social and Cultural Rights as Human Rights* 251 (Jackie Dugard, Burce Porter and Daniela Ikawa, eds. Edward Elgar, 2020).

CORKERY, A., SAIZ, I., Progressive realization using maximum available resources: the accountability challenge, in: *Research Handbook on Economic, Social and Cultural Rights as Human Rights* 275 (Jackie Dugard, Burce Porter and Daniela Ikawa, eds. Edward Elgar, 2020).

DONALD, M. Greening State Obligations in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, 43(2) *Nordic Journal of Human Rights* 148 (2025).

DUFFY, H. *Strategic Human Rights Litigation: Understanding and Maximising Impact* (Hart, 2018).

DUGARD, J., LANGFORD, M. Art or Science? Synthesising Lessons from Public Interest Litigation and the Dangers of Legal Determinism, 27(1) *South African Journal on Human Rights* 39 (2011).

GARGARELLA, R., Why Do We Care about Dialogue? 'Notwithstanding Clause', 'Meaningful Engagement' and Public Hearings: A Sympathetic but Critical Analysis, in:

The Future of Economic and Social Rights 212 (Katharine G. Young, ed. Cambridge University Press, 2019).

GIANELLA-MALCA, C., PARRA-VERA, O, YAMIN, A., TORRES-TOVAR, M., ¿Deliberación democrática o mercadeo social? Los dilemas de la definición pública en salud en el contexto del seguimiento de la Sentencia T–760 de 2008, 11(1) *Health and Human Rights* 1 (2009).

GLOBAL INITIATIVE FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *Yearbook of the Committee on Economic, Social and Cultural Rights 2023* (GI-ESCR, 2024).

KING, J. *Judging Social Rights* (Cambridge University Press, 2012).

KING, J. The Future of Social Rights, in: *The Future of Economic and Social Rights* 289 (Katharine G. Young, ed. Cambridge University Press, 2019).

KOIVUROVA, T., SINGH, K, *Due Diligence Oxford Public International Law* (Oxford University Press, 2023).

LANDAU, D., Socioeconomic rights and majoritarian courts in Latin America, in: *Constitutionalism in the Americas* 188 (Colin Crawford and Daniel Bonilla Maldonado, eds. Edward Elgar, 2018).

LANDAU, D., The Colombian Model of Structural Socio-Economic Rights Remedies: Lessons from and for Comparative Experience, in: *Constitutionalism, New Insights* 258 (Alejandro Linares-Cantilo, Camilo Valdivieso-Leon and Santiago García-Jaramillo, eds. Oxford University Press, 2021).

LANGFORD, M. Introduction: Civil Society and Socio-Economic Rights, in: *Socio-Economic Rights in South Africa: Symbols or Substance?* 1 (Malcolm Langford, Ben Cousins, Jackie Dugard and Tshepo Madlingozi, eds. Cambridge University Press, 2013).

LANGFORD, M. Judicial Politics and Social Rights, in: *The Future of Economic and Social Rights* 66 (Katharine G. Young, ed. Cambridge University Press, 2019).

LANGFORD, M., RODRÍGUEZ-GARAVITO, C., ROSSI, J. (eds.), *Social Rights Judgments and the Politics of Compliance* (Cambridge University Press, 2017).

LIEBENBERG, S., The Participatory Democratic Turn in South Africa's Social Rights Jurisprudence, in: *The Future of Economic and Social Rights* 187 (Katharine G. Young, ed. Cambridge University Press, 2019).

LIEBENBERG, S., Reasonableness Review, in: *The Oxford Handbook of Economic and Social Rights* (Malcolm Langford and Katharine G. Young, eds. Oxford University Press, 2022).

MOTTA-FERRAZ, O., The Court's Dilemma in Social Rights' Enforcement, in: *Constitutionalism: Old Dilemmas, New Insights* 202 (Alejandro Linares-Cantilo, Camilo Valdivieso-Leon and Santiago García-Jaramillo, eds. Oxford University Press, 2021).

NELSON MANDELA FOUNDATION, "Nelson Mandela Foundation files legal challenge to realise equitable land access on the anniversary of Madiba's passing" (press release, 5 December 2024).

NEPAL DISABLED WOMEN ASSOCIATION and Others, "Submission to the Working Group on the Universal Periodic Review of Nepal" (16 July 2025).

NIC SHUIBHNE, E., QUINTIÁ-PASTRANA, A., The Influence of the International Right to Adequate Housing in Ireland and Spain: Aspirations, Indicators and Realities, 11(4) *European Journal of Comparative Law and Governance* 415 (2024).

NOLAN, A., Human rights and the cost-of-living crisis, 41(1) *Netherlands Quarterly of Human Rights* 3 (2023).

PAPADOPOULOS, N. Mobilising the European Social Charter's collective complaints procedure for legal and social change, in: *Human Rights Strategies* 94 (Ingrid Westendorp, ed. Edward Elgar, 2024).

PONCE-SOLÉ, J., The Right to Good Administration and the Role of Administrative Law in Promoting Good Government, in: *Preventing Corruption and Promoting good Government and Public Integrity* 25 (Agustí Cerrillo and Juli Ponce, eds. Bruylant, 2017).

PONCE-SOLÉ, J., Buen gobierno y derecho a una buena administración desde una perspectiva de calidad normativa. A propósito del libro de la profesora Maria De Benedetto, Corruption from a Regulatory Perspective, 24 *Eunomía: Revista en Cultura de la Legalidad* 377 (2023).

RODRÍGUEZ-GARAVITO, C. Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America, 89(7) *Texas Law Review* 1669 (2011).

RODRÍGUEZ-GARAVITO, C., Empowered Participatory Jurisprudence: Experimentation, Deliberation and Norms in Socioeconomic Rights Adjudication, in: *The Future of Economic and Social Rights* 233 (Katharine G. Young, ed. Cambridge University Press, 2019).

RODRÍGUEZ-GARAVITO, C., RODRÍGUEZ-FRANCO, D., *Radical Deprivation on Trial: The Impact of Judicial Activism in the Global South* (Cambridge University Press, 2015).

ROSSI, J. Progressive Realization, Nonretrogression and Maximum of Available Resources: Agreements and Disagreements between the Inter-American Court and the United Nations ESCR Committee, in: *Proportionality and Transformation: Theory and Practice from Latin America* 161 (Francisca Pou-Giménez, Laura Clérico and Esteban Restrepo-Saldarriaga, eds. Cambridge University Press, 2022).

SANDNER, M., "Backwards steps on the enjoyment of rights – a matter of state intervention or of interference? Retrogressive measures before the European Court of Human Rights", *Strasbourg Observers* (30 April 2024).

SKOGLY, S. The Right to Continuous Improvement of Living Conditions and Human Rights of Future Generations – A Circle Impossible to Square?, in: *The Right to the Continuous Improvement of Living Conditions: Responding to Complex Global Challenges* 147 (Jessie Hohmann and Beth Goldblatt, eds. Hart, 2021).

SKOGLY, S. Prevention is Better than a Cure: The Obligation to Prevent Human Rights Violations, 46(2) *Human Rights Quarterly* 330 (2024).

STOYANOVA, V., *Positive Obligations under the European Convention on Human Rights: Within and Beyond Boundaries* (Oxford University Press, 2023).

WARWICK, B. Concepts of Non-Retrogression in Economic and Social Rights, 47(1) *Human Rights Quarterly* 115 (2025).

WIBYE, J.V., Beyond Acts and Omissions – Distinguishing Positive and Negative Duties at the European Court of Human Rights, 23(4) *Human Rights Review* 479 (2022).

WILSON, S. *Human Rights and the Transformation of Property* (Juta, 2021).

YOUNG, K., Proportionality, Reasonableness, and Economic and Social Rights, in: *Proportionality: New Frontiers, New Challenges* 221 (Vicki C. Jackson and Mark Tushnet, eds. Cambridge University Press, 2017).

YOUNG, K. (ed.) *The Future of Economic and Social Rights* (Cambridge University Press, 2019).

YOUNG, K. Waiting for Rights: Progressive Realization and Lost Time, in: *The Future of Economic and Social Rights* 654 (Katharine G. Young, ed. Cambridge University Press, 2019).

Decisions and other documents by judicial and quasi-judicial bodies

African Commission on Human and Peoples' Rights, Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (October 2011).

African Court on Human and Peoples' Rights, *Sébastien Germain Marie Aïkoue Ajavon v Benin*, Application No. 62/2019 (Judgment 4 December 2020).

Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States Parties' obligations, UN Doc. E/1991/23 (14 December 1990).

Committee on Economic, Social and Cultural Rights, General Comment. No. 9: Domestic Application of the Covenant, UN Doc. E/C.12/1998/24 (3 December 1998).

Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water, UN Doc. E/C.12/2002/11 (20 January 2003).

Committee on Economic, Social and Cultural Rights, An evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol to the Covenant: Statement, UN Doc. E/C.12/2007/1 (21 September 2007).

Committee on Economic, Social and Cultural Rights, General Comment No. 19: Right to Social Security, UN Doc. E/C.12/GC/19 (4 February 2008).

Committee on Economic, Social and Cultural Rights, Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights: Statement, UN Doc. E/C.12/2016/1 (22 July 2016).

Committee on Economic, Social and Cultural Rights, *Ben Djazia and Bellili v Spain*, Communication No. 5/2015 (Views of 20 June 2017).

Committee on Economic, Social and Cultural Rights, General Comment No. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UN Doc. E/C.12/GC/24 (10 August 2017).

Committee on Economic, Social and Cultural Rights, *Trujillo Calero v Ecuador*, Communication No. 10/2015 (Views of 14 November 2018).

Committee on Economic, Social and Cultural Rights, *López Albán v Spain*, Communication No. 37/2018 (Views of 11 October 2019).

Committee on Economic, Social and Cultural Rights, *Naser v Spain*, Communication No. 127/2019 (Views of 28 February 2022).

Committee on Economic, Social and Cultural Rights, Statement on Tax Policy and the ICESCR, UN Doc. E/C.12/2025/1 (27 February 2025).

Committee on the Elimination of Discrimination Against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 CEDAW, CEDAW/C/GC/28 (16 December 2010).

Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, (26 April 2018).

Constitution of Mexico of 1917.

Constitution of Spain of 1978.

Constitution of Guyana of 1980.

Constitution of Brazil of 1988.

Constitution of South Africa of 1996.

Constitution of Maldives of 2008.

Constitution of Ecuador of 2010.

Constitution of Kenya of 2010.

Constitution of Fiji of 2013.

Constitution of Zimbabwe of 2013.

Constitutional Court of Colombia, Judgment C-700/1999 (16 September 1999).

Constitutional Court of Colombia, Judgment C-747/1999 (6 October 1999).

Constitutional Court of Colombia, Judgment T-595/02 (Judgment of 1 August 2002).

Constitutional Court of Colombia, Judgment T-025 (22 January 2004).

Constitutional Court of Colombia, Judgment T-760/2008 (31 July 2008).

Constitutional Court of Colombia, Judgment TC/0285/22 (16 September 2022).

Constitutional Court of Germany (Federal), 1 BvL 7/16 (Judgment of 5 November 2019).

Constitutional Court of Germany (Federal), *Neubauer et al v Germany (Order of the First Senate of 24 March 2021 - 1 BvR 2656/18)* [2021] BvR 2656/18 [185 (Engl.)].

Constitutional Court of Italy, Judgment 152/2020 (23 June 2020).

Constitutional Court of Peru, Judgment 2235-2004-AA/TC (18 February 2005).

Constitutional Court of Portugal, Judgment 187/133 (5 April 2013).

Constitutional Court of Portugal, Judgment 574/14 (14 August 2014).

Constitutional Court of South Africa, *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

Constitutional Court of South Africa, *Minister of Health and Others v Treatment Action Campaign and Others* (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (5 July 2002).

Constitutional Court of South Africa, *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008).

Council of State of Italy, *AA v Ministry of Education* [2021] 780/2021.

European Committee of Social Rights, *Autism-Europe v France*, Collective Complaint No. 13/2002 (Decision on the Merits of 4 November 2003).

European Committee of Social Rights, *FEANTSA v France*, Collective Complaint No. 39/2006 (Decision on the Merits of 5 December 2007).

European Committee of Social Rights, *COHRE v Italy*, Collective Complaint No. 58/2009 (Decision on the Merits of 25 June 2010).

European Committee of Social Rights, *IKA-ETAM v Greece*, Collective Complaint No. 76/2012 (Decision on the Merits of 7 December 2012).

European Committee of Social Rights, *POS-DEI v Greece*, Collective Complaint No. 79/2012 (Decision on the Merits of 7 December 2012).

European Committee of Social Rights, *Finnish Society of Social Rights v Finland*, Collective Complaint No. 88/2012 (Decision on the Merits of 9 September 2014).

European Committee of Social Rights, *GSEE v Greece*, Collective Complaint No. 111/2014 (Decision on the Merits of 23 March 2017).

European Committee of Social Rights, *Finnish Society of Social Rights v Finland*, Collective Complaint No. 172/2018 (Decision on the Merits of 13 September 2022).

European Committee of Social Rights, *Sindacato autonomo Pensionati Or.S.A. v Italy*, Collective Complaint No. 187/2019 (Decision on the Merits of 17 October 2023).

European Committee of Social Rights, *DCI, FEANTSA, MEDEL, CCOO and ATD Fourth World v Spain*, Collective Complaint No. 206/2022 (Decision on the Merits of 11 September 2024).

European Committee of Social Rights, Statement of interpretation on social rights and cost-of-living crises (2025).

European Court of First Instance, *Max.mobil Telekommunikation Service GmbH v Commission of the European Communities* (30 January 2002).

European Court of Justice, *Technische University München v Hauptzollamt München-Mitle*, C-260/90 (1991).

European Court of Justice, *Claire Staelen v European Union Ombudsman*, T-217/11 (29 April 2015).

European Court of Human Rights, *Konstantin Markin v Russia* [GC], Application No. 30078/06 (Judgment of 22 March 2012).

European Court of Human Rights, *Lopes de Sousa Fernandes v Portugal* [GC], Application No. 56080/13 (Judgment of 19 December 2017).

Federal Court of Rio Grande do Sul (Brazil), *Arayara Association of Education and Culture and others v FUNAI* [2022] 5069057-47.2019.4.04.7100/RS 35.

High Court of Delhi, *Sudama Singh and Ors v Government of Delhi and Ors* 168 (2010) DLT 218.

High Court of Delhi, *Ajay Maken v Union of India* WP(C) 11616/2015.

High Court of England and Wales, *R (on the application of CB) v The Secretary of State for the Home Department [2022] EWHC 3329 (Admin)* [2022] EWHC 3329.

Independent Expert on the effects of foreign debt on human rights, Guiding principles on human rights impact assessments of economic reforms, UN Doc. A/HRC/40/57 (19 December 2018).

Inter-American Commission on Human Rights, *Odir Miranda Cortez et al v El Salvador* (Report 27/09, Case 12249, Merits, 20 March 2009).

Inter-American Court of Human Rights, *"Five Pensioners" v Peru* (Judgment of 28 February 2003).

Inter-American Court of Human Rights, *Acevedo Buendía et al v Peru* (Judgment of 1 July 2009).

Inter-American Court of Human Rights, *Poblete Vilches et al v Chile* (Judgment of 8 March 2018).

Inter-American Court of Human Rights, *Cuscul Pivaral et al v Guatemala* (Judgment of 23 August 2018).

Inter-American Court of Human Rights, *Fireworks Factory in Santo Antônio de Jesus and Their Families v. Brazil* (Judgement of 15 July 2020).

Inter-American Court of Human Rights, Advisory Opinion OC-27/21, Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to Other Rights, With a Gender Perspective (5 May 2021).

Inter-American Court of Human Rights, *Miskito Divers (Lemoth Morris et al) v Honduras* (Judgment of 31 August 2021).

Inter-American Court of Human Rights, *Vera Rojas et al v Chile* (Judgment of 1 October 2021).

Inter-American Court of Human Rights, *Inhabitants of La Oroya v Peru* (Judgment of 27 November 2023).

Inter-American Court of Human Rights, *Pueblo Indígena U'wa and its members v Colombia* (Judgment 4 July 2024).

Inter-American Court of Human Rights, *Advisory Opinion: Climate Emergency and Human Rights* AO-32/25 (29 May 2025).

International Court of Justice, *Advisory Opinion on Obligations of States in Respect of Climate Change* (23 July 2025).

Labour Court Essen, Germany 3 Ca 2231/23 [2024].

Organization for Economic Co-operation and Development, *Government at a Glance. Latin America and the Caribbean 2014: Towards Innovative Public Financial Management* (OECD, 2014).

Síndic de Greuges and Institut de Drets Humans de Catalunya, *Plan de Derechos Humanos: Estados Generales de Derechos* (2019).

Special Rapporteur on Extreme Poverty and Human Rights, "Eradicating poverty beyond growth", UN Doc. A/HRC/56/61 (1 May 2024).

Special Rapporteur on the Right to Health, Report, UN Doc. E/CN.4/2006/48 (3 March 2006).

Supreme Court of Brazil (Federal), ADPF 828/DF (1 December 2021).

Supreme Court of Brazil (Federal), ADPF 709 MC-REF / DF (2 February 2022).

Supreme Court of Brazil (Federal), ADPF 976 MC / DF (21 August 2023).

Supreme Court of Brazil (Federal), Rep. Geral Tema: 6, RE 566471 (26 September 2024).

Supreme Court of India, *People's Union for Civil Liberties v Union of India & Ors*, Civil Original Jurisdiction, Writ Petition (Civil) No.196 of 2001.

Supreme Court of Kenya, *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others*; Initiative for Strategic Litigation in Africa (Amicus Curiae) [2021] KESC 34 (KLR).

Supreme Court of Nepal, *Matrika Devkota and et al vs Prime Ministers & et al*, Writ No.077- WO-0035, (Judgment of 2 December 2024).

Supreme Court of Spain, Judgment 1597/2023 (29 November 2023).

Supreme Court of the UK, *Harjula v London Borough Council 2011, and W, M, G & H, R v Birmingham City Council, 2011; R (on the application of DA and others) (Appellants) v Secretary of State for Work and Pensions (Respondent) R (on the application of DS and others) (Appellants) v Secretary of State for Work and Pensions (Respondent)* [2019] UKSC 21.

World Health Organization, *Earmarking for health. From theory to practice* (WHO, 2017).