

Inclusion by Exclusion? An assessment of the justiciability of socio-economic rights under the 2005 Interim National Constitution of the Sudan

Dissertation submitted in partial fulfilment of the requirements for the degree LLM (Human Rights and Democratisation in Africa) Faculty of Law, University of Pretoria

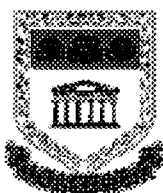
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8 November 2008

Dedication;

**To my darling wife Mrs. Alina Ramona for loving without reserving some for herself,
my son Crystal Sokifasi, who daily remind; me of million; of weak and powerle;;
people whose only guarantee for a future is their faith in the value; and virtue; of
other; , and to my mother Mrs. Margreat Abugu Baradio for her resilience in spite of
all odd;.**

Declaration

I, Remember Philip Daniel Miamingi declare and certify that this work is a product of my thoughts. Where works of other scholars have been used to situate these ideas in context, such works have been duly acknowledged. To the best of my knowledge, this work has not in part or in whole been presented to any institution(s) other than this one. Errors either of omissions or commissions are mine.

Signed at----- on this----- day of November 2008

Remember Philip Daniel Miamingi

LLM candidate 2008

I, Professor Julia Sloth-Nielsen confirm that this work was done under my direct supervision. Having considered that this work has satisfied the requisite standards, I approve it.

Signed

Professor Julia Sloth-Nielsen

(Supervisor)

Acknowledgment

Even though the Bible declares that there is nothing new under the sun, God has graciously granted me the opportunity to witness new things daily. The honour of participating in this award-winning program was another new and rewarding experience for which I remain grateful to God.

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List of Abbreviations

ACHPR	African Commission on Human and People's Rights
CC	Constitutional Court of the Sudan
CESCR	International Covenant on Economic, Social and Cultural Rights
CHRGJ	Centre for Human Rights and Global Justice
CPA	Comprehensive Peace Agreement
CPR	Civil and Political Rights
CRC	United Nations Convention on the Rights of the Child
ESCR	Committee on Economic, Social and Cultural Rights
CPD	Guiding Principles and Directives
GoS	Government of the Sudan
ICCPR	International Covenant on Civil and Political Rights
IHRIs	International Human Rights Instruments
INC	Interim National Constitution
IT	International Treaties
SA	South Africa
SACC	South African Constitutional Court
SAJHR	South African Journal on Human Rights
SER	Socio-economic rights
SERAC	Social and Economic Rights Action Centre
SPLM	Sudanese People's Liberation Movement
TAC	Treatment Action Campaign
UN	United Nations

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Abstract

This research is an attempt to ascertain whether or not socio-economic rights provided for in the International Covenant on Economic, Social and Cultural Rights (CESCR), (and by implication all other international human rights instruments ratified by the Sudan) are justiciable and enforceable before the courts in the Sudan. The concern to determine the legal status of these rights in the Sudan is informed by the fact that, whereas section 27 (3), the first and the founding section of the Sudan Bill of Rights incorporates all international human rights instruments and makes them an integral part of a justiciable and enforceable Bill of Rights; section 22 which is the last section to the Guiding Principles and Directives, ousts the jurisdiction of the court with respect to socio-economic rights provided for in that chapter. Incidentally, socio-economic rights provided for under the Guiding Principles and Directives chapter, are equally contained in the CESCR. This creates a legal tension between these two sections, leading to reasonable uncertainty. This work resolves this tension in favour of the justiciability of all socio-economic rights provided for in the CESCR notwithstanding the fact that they are contained in the Guiding Principles and Directives chapter. Proceeding on this premise, the author proposes a theoretical framework for the justiciability of socio-economic rights that combines the South Africa's reasonableness test to enforcing SER with the minimum core approach of the Committee on ESCR for the Sudan.

Key words

Constitution -International human rights law -Bill of Rights -Socio-economic rights-justiciability-enforcement-remedy- the Sudan.

Chapter One

1.0 Introduction

1.1 Background to the study

On 9 July 2005 the Sudan ushered in an Interim National Constitution ('Constitution'). The Constitution was a part of a Comprehensive Peace Agreement (CPA) which was concluded between the government of the Sudan (GoS) and the Sudanese People's Liberation Movement (SPLM) in Naivasha, Kenya, on the 5 January 2005. The agreement brought to an end one of Africa's longest and most brutal civil wars. The Constitution will be in force in the Interim Period, which began on 9 July 2005 and ends in January 2011.

Part I of the Constitution deals with the nature of the State and the Constitution. This part has two chapters. Chapter one, titled 'The State and the Constitution' has 9 articles covering: nature of the State;¹ sovereignty;² supremacy of the Constitution³; fundamental bases of the Constitution⁴; sources of legislation⁵, religious rights⁶; citizenship and nationality⁷; language and National symbols⁸.

Chapter two is the 'Guiding Principles and Directives' (GPD) section. It has 12 articles covering a range of issues including socio-economic rights (SER) such as: the right to clean environment;⁹ employment,¹⁰ the rights of physically disabled persons to participate in social, vocational, creative or recreational activities,¹¹ the right to establish educational institutions;¹² the right of children to welfare and protection from abuse and abandonment;¹³ the right to culture;¹⁴ the right to language;¹⁵ the right to marry and found a family;¹⁶ gender equality;¹⁷ and access to primary health care.¹⁸

¹ Sec 1
² Sec 2
³ Sec 3
⁴ Sec 4
⁵ Sec 5
⁶ Sec 6
⁷ Sec 7
⁸ Sec 8
⁹ Sec 11
¹⁰ Sec 12(1)
¹¹ Sec 12(2)
¹² Sec 13(1)(a)
¹³ Sec 14
¹⁴ Sec 13
¹⁵ Sec 8
¹⁶ Sec 15(1)
¹⁷ Sec 15(2)
¹⁸ Sec 19

Section 22, the last section of chapter two contains a 'saving' clause which provides:

unless this *Constitution otherwise provides*,¹⁹ or a duly enacted law guarantees the rights and liberties described in this chapter, the provisions contained in this chapter are not *by themselves* (emphasis is mine) enforceable in a court of law; however, the principles expressed therein are basic to governance and the State is duty-bound to be guided by them, especially in making policies and laws.

Part II of the Constitution contains a justiciable Bill of Rights. The Bill of Rights has 22 sections. It provides for civil and political rights (CPR) and some SER. The following are the rights provided for under the Sudan Bill of Rights: the right to life and dignity;²⁰ personal liberty;²¹ sanctity from slavery and forced labour;²² equality before the law;²³ the right of women and children;²⁴ sanctity from torture;²⁵ the right to fair trial;²⁶ the right to litigation;²⁷ restriction on death penalty;²⁸ the right to privacy;²⁹ freedom of creed and worship;³⁰ freedom of expression and media;³¹ freedom of assembly and association;³² the right to vote;³³ the freedom of movement and residence;³⁴ the right to own property;³⁵ the right to education;³⁶ the rights of persons with special needs and the elderly;³⁷ public health care;³⁸ and the right of ethnic and cultural communities.³⁹

Section 27 which is the first and founding section of the Bill of Rights provides:

- (1) The Bill of Rights is a covenant among the Sudanese people and between them and their governments at every level and a commitment to respect and promote human rights and fundamental freedoms enshrined in this Constitution; it is the cornerstone of social justice, equality and democracy in the Sudan.
- (2) The State shall protect, promote, guarantee and implement this Bill.
- (3) All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.

¹⁹ The emphasis is mine. The intention is to show later on that s.27 (3) is already anticipated here.

²⁰ Sec 28

²¹ Sec 29

²² Sec 30

²³ Sec 31

²⁴ Sec 32

²⁵ Sec 33

²⁶ Sec 34

²⁷ Sec 35

²⁸ Sec 36

²⁹ Sec 37

³⁰ Sec 38

³¹ Sec 39

³² Sec 40

³³ Sec 41

³⁴ Sec 42

³⁵ Sec 43

³⁶ Sec 44

³⁷ Sec 45

³⁸ Sec 46

³⁹ Sec 47

- (4) Legislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate any of these rights.

Section 48 is the last provision in the part dealing with the Bill of Rights provides for the 'Sanctity of the Rights and Freedoms' as follows:

No derogation from the rights and freedoms enshrined in this Bill shall be made except in accordance with the provisions of this Constitution and only with the approval of the National Legislature. The Bill of Rights shall be upheld, protected and applied by the Constitutional Court and other competent courts; the Human Rights Commission shall monitor its application in the state.

Section 27 (3) has been a subject of an ongoing scholarly debate with scholars lining up on both sides of the debate. There are at least two issues that can be distilled from this academic intercourse: the first is what does the Constitution mean when it says: '*All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill?*'

Does it mean that 'all the rights and freedoms' provided for in all human rights instruments ratified by the Sudan form substantive provisions of the Constitution thereby actionable before courts in the Sudan? Or should this subsection be construed to mean that those human rights instruments referred to do not form substantive provisions, but interpretative tools for construing the meaning of the 20 rights and freedoms expressly provided for in the Bill of rights? The second bone of contention is the meaning of the word 'ratified' as used in this subsection. Does it refer to human rights instruments that were ratified before the Constitution came into force or only those ratified after the Constitution entered into force?

Arising from the first issue are other conceptual concerns. If all the international human rights instruments (IHRIs) form substantive part of the Constitution, what are the legal implications? What in essence is constitutionalised – the instruments themselves, and would this include the standards as well as the Decisions and General Comments of their monitoring bodies? Or only the substantive provisions of these instruments form integral part of the Constitution? Furthermore, in the events of conflict between the explicit text of the Constitution and those of the IHRIs, which one takes precedence?

Even though the Sudan has ratified many IHRIs, the International Covenant on Economic, Social and Cultural Rights (CESCR)⁴⁰ will be the focus of this work. This is primarily because it is relevant

⁴⁰ The Sudan has *inter alia* ratified the African Charter on Human and People's Rights and the United Nations Convention on the Rights of the Child all provide for SER. For analytical purposes, this work will concentrate on the CESCR

to the subject matter of this investigation⁴¹ - that is the justiciability and enforceability of SER in the Sudan. Central to this enquiry is the relationship between sections 27 (3) and 22 of the Constitution. There is a tension between these two provisions.

This conflict arises from the fact that whereas the CESCRC forms an '*integral part*' of a justiciable and enforceable Bill of Rights, the provisions of the GDP are merely 'code of conducts' for the state, and not enforceable.⁴² Consequently, even though, the SER provided for under GDP are equally contained in the CESCRC, section 22 provides that they cannot be subjects of adjudication by the courts. Can section 22 limit the extent of the Sudan's obligations under CESCRC or its operation as part of the Constitution? On the other hand can CESCRC trump section 22 with respect to mutually shared SER?

2. Statement of the research problem and questions

Constitutional interpretation is not a zero-sum game. A constitutional value may not be realised at the expense of a competing constitutional value.⁴³ Practical concordance i.e. the harmonisation of constitutionally protected legal values when such values conflict with one another is vital to constitutional optimisation.⁴⁴ Thus, unless the relationship between and the legal effect of sections 22 and section 27(3) are clarified, the smooth interpretation of constitutional rights will likely be hampered.

The legal implication of section 22 is that no right or liberty provided for under the GDP can be enforced, in the absence of any enabling legislation, before courts in the Sudan. The intention of section 22 then is for it to serve as an exception or a limitation clause probably with implication for section 27(3). This would mean that, even though international human rights instruments are an integral part of the Bill of Rights in the Sudan, with regard to SER expressly mentioned in the GDP, the Sudan has reserved for itself the right not to render them justiciable and enforceable constitutionally, unless the legislature deems it fit in the future. If section 22 is a limitation, is it not an absolute one, given that it already provides that '*unless the Constitution otherwise provides*', has the Constitution not indeed provided otherwise in section 27(3)?

It is a cardinal constitutional principle that every word ought, *prima facie*, to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or by the context.⁴⁵ Any interpretative exercise must give effect to a statutory provision which, when

⁴¹ Any conclusion reached with respect to it is likely to be valid for all other instruments.

⁴² B De Villiers 'Directive principles of state policy and fundamental rights: the Indian experience' (1992) 8 *South African Journal on Human Rights (SAJHR)* 29.

⁴³ T Aleinikoff 'Constitutional law in the age of balancing' (1987) 96 *Yale Law Journal* 943.

⁴⁴ As above

⁴⁵ S Woolman *Constitutional law of South Africa* (2007) 17.

reasonably interpreted within the semantic limits of the terms used in the text of the law, should reflect the intention of legislature. One American Supreme Court justice has put it in these terms:

When the court disregards the express intent and understanding of the Framers [of the constitution], it has invaded the realm of the political process to which the amending power was committed, and has violated the constitutional structure which is its highest duty to protect.⁴⁶

One exception to the rule that effect should be given to the plain meaning of the words used in a statute is, if giving:

the plain words of the statute their ordinary meaning would lead to an absurdity so glaring that it could never have been contemplated by the legislature... the courts may depart from the ordinary effect of the words to the extent necessary to remove the absurdity and to give effect to the intention of the legislature.⁴⁷

It could be argued that, whichever way section 22 is interpreted, there is really no absurdity or ambiguity. Consequently, there is no reason to depart from the plain meaning of the words used.

Absurdity definitely is not the only reason; inconsistency within the instrument is another reason to warrant a departure from the ordinary meaning of the words. According to Lord Wensleydale:

The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid the absurdity and inconsistency, but no further.⁴⁸

The legislature did intend surely that the words used in section 27 (3) bear their natural meaning. It is suggested that the implication of this provision is that in order to know how many rights and freedoms are protected and enforced in the Sudan, the answer would be the 20 rights and freedoms explicitly provided for in sections 28 to 47 of the Bill of Rights of the Sudan, and those provided for in all international human rights treaties ratified by the Sudan. Certainly, asserting that SER which are provided for in these instruments are justiciable and enforceable in the Sudan whether or not they are also mentioned in the GDP is not a platitudinous act; otherwise section 27(3) will effectively be eviscerated of any real meaning.

Whatever way, one looks at it, even though there is no manifest ambiguity in section 22 of the Constitution, section 27(3) has introduced structural ambiguity and consequently uncertainty as to whether or not an aggrieved litigant can approach the Constitutional Court in the Sudan to enforce his socio-economic rights (SER). This work is an attempt to investigate the legal tension

⁴⁶ Per Harlan J *Oregon v. Mitchell*, 400 U.S. 112 (1970).

⁴⁷ *Thomson Newspapers Ltd v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission et al* (1990) 167 DLR (4th) 161 (SCC) 192.

⁴⁸ *Grey & others v Pearson & others* [1843-60] ALL ER Rep 21 (HL) 36.

that exist between sections 22 and 27(3) of the Constitution and proffer a theoretical framework for robust and purposive interpretation of the two provisions aimed at affirming the justiciability and enforceability of SER in Sudan.

This research will attempt to answer the following questions:

1. What is the scope and extent of the Sudan Bill of Rights?
2. What is the effect of section 27(3) on section 22 of the Constitution?
3. Does the Constitution provide for justiciable SER, if yes, can the South African model of rendering SER justiciable and their standard of review provide useful guide to the Sudan?

4. Purpose and significance of the study

The purpose of this work is to establish that all rights and freedoms provided for in all the IHRIs ratified by the Sudan form substantive part of the Bill of Rights. Consequently, all the rights and freedoms enshrined in them, having been clothed with constitutional status are justiciable and enforceable by the courts in the Sudan. As a result, SER provided for in the GPD which are also contained in the CESCRR are equally justiciable and enforceable in the Sudan.

There is presently a dearth of literature on the constitutionalisation and justiciability of SER with respect to the Sudan. This is presumably because the Constitution is a relatively new and an unknown document, and may be because the Sudan has other pressing issues that are presently engaging the minds and hearts of academics.

This study is significant in at least three ways: first, this work critically examines the Sudan model of constitutionalising SER by cross-reference, and the legal implications of this model. Secondly, it does not only prove justiciability of SER, it proposes theoretical framework for adjudicating not only the SER explicitly provided for in the Constitution, but also those incorporated by reference. It engages the South African SER jurisprudence and that of the Committee on ESCR to clarify and delineate the obligations the government of the Sudan has imposed on itself by constitutionalising SER and propose how the government can effectively and efficiently discharge these obligations. Thirdly, this work proposes an interpretative framework for the Constitution that permits the precedence of IHRIs without atrophying judicial activism and innovation domestically.

It is hoped that this research will serve as an interpretative guide for the judiciary in the Sudan and as an advocacy tool for civil society organisations. The study intends to provoke more research into this question, provide future researchers, judicial officers in the Sudan, constitutional drafting committee members, civil society activists and politicians with further research materials.

5. Scope and limitation of the study

This study covers the justiciability of SER as provided for under the Constitution of the Sudan. Reference to wider debate and jurisprudence in respect of the justiciability of SER is limited to the extent that they clarify and consolidate the position of these rights under the Constitution. The study is not an attempt to delve into the wider debate around the relationship between international law and domestic legal systems; suffice to say that only aspects of that discourse relevant to section 27(3) that will be alluded to. Since this study is undertaken outside Sudan, only materials that are in libraries outside Sudan or accessible electronically will be consulted and used in this study.

6. Hypothesis

This work proceeds from the assumption that SER are constitutionally justiciable in the Sudan. This is founded on the presumption that a purposive, generous, robust or pro-rights interpretation of the sections 22 and 27(3) of the Constitution cannot escape this conclusion.

7. Literature review

Although the jurisprudence surrounding the constitutionalisation, justiciability and enforceability of SER at the international, regional and domestic levels is still evolving and dynamic, a number of scholars have written extensively on the subject in books and journals.

The writings of: Henry Steiner and Philip Alston,⁴⁹ Henry Shue,⁵⁰ Sandra Liebenberg,⁵¹ Craig Scott and Patrick Macklem,⁵² Marius Pieterse,⁵³ G Van Hoof,⁵⁴ Asbjørn Eide,⁵⁵ Etienne Mureinik,⁵⁶ and other notable scholars are invaluable sources of research materials on the constitutionalisation, justiciability and enforceability of SER.

⁴⁹ H Steiner & P Alston *International law in Context: Law, politics and morals* (2008).

⁵⁰ H Shue *Basic rights: Subsistence, affluence and US foreign policy* (1996).

⁵¹ S Liebenberg 'Social and economic rights' in M. Chaskabon et al(eds) *Constitutional law of South Africa* (1996) 41.

⁵² C Scott & P Macklem 'Constitutional ropes of sand or justiciable guarantees: Social rights in the new South African Constitution' (1992) 141 *University of Pennsylvania Law Review* 1.

⁵³ M Pieterse 'Coming to terms with judicial enforcement of socio-economic rights' (2004)20 *SAJHR* 383.

⁵⁴ G Van Hoof 'The legal nature of economic, social and cultural rights: A Rebuttal of some traditional view' in P Alston & Tommersk (eds) *the Right to food* (1994) 97.

⁵⁵ A Eide et al *Economic, social and cultural rights* (ed) (2001) 9, see also A Eide & Rosas *economic, social and cultural Rights: a Textbook* (2005).

⁵⁶ E Mureinik 'Beyond the charter of luxuries: Economic rights in the constitution' (1992)8 *SAJHR* 464.

As useful as they are, none of these works has considered the question of justiciability and enforceability of SER within the context of the Sudan. The author is equally not aware of any work that has specifically dealt with the subject matter of this investigation.

8. Methodology

This study is based on existing literature. There is a vast pool of literature on the justiciability of SER. This work intends to critically engage with relevant works in this field and juxtapose them with the provisions of the Constitution of the Sudan in order to establish whether or not SER are indeed justiciable in the Sudan. In addition, a comparative study of the South African experience in the field of SER is undertaken to elucidate the issues involved. South Africa has a lucid SER jurisprudence that is widely respected. Even though, South Africa has one of the world's international law friendly constitutions, it has nevertheless, evolve a unique SER jurisprudence different from international jurisprudence. These attributes combine to make it a suitable comparative case study.

9. Chapter Overview

This work is divided into five chapters.

Chapter one is an introduction to the study.

Chapter two considers the arguments for and against the justiciability and enforceability of SER. The concepts and contents of SER will be discussed within the general jurisprudential debate on their constitutionalisation. The intention is to demonstrate that in spite of all the arguments against their justiciability, they are nonetheless justiciable and judicially enforceable.

Chapter three will attempt to interpret sections 27(3) and 22 of the Constitution using principles and theories of constitutional construction. The justiciability of SER in the Sudan will be established in this chapter. Ratification as used in 27(3) will be explained and relying on the principles of international law, the precedence of the IHRI will be proved.

Chapter four having established the justiciability of SER in chapter three, the question of how can the Constitutional Court of the Sudan successfully adjudicate them will be considered in this chapter. The experience of South Africa in the area of adjudicating SER will be used to chart the way forward for the Sudan.

Chapter five will conclude and make recommendations.

Chapter Two

Are socio-economic rights Human Rights? A conceptual Clarification

*All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis.*⁵⁷

*All animals are equal, but some animals are more equal than others.*⁵⁸

2.0 Introduction

The debate about whether or not SER are capable of judicial enforcement is as old as the history of the struggle for human rights. The anachronistic nature of the debate does not, however, mean that it has faded away. What is beginning to happen is that the debate is yielding more light than heat. Nevertheless, many scholars still see sharp distinctions between SER and civil and political rights ('CPR'). To them the concept and the content of SER exclude them from adjudication by courts. Others argue that the so-called distinctions are more of a political rather than legal nature.

The purpose of this chapter is not to advance the frontiers of these arguments by presenting novel ones, but to consider existing relevant *argumentum contra et pro* justiciability of SER. The arguments are divided into two groups: philosophical and practical concerns with the justiciability of SER. After examining the merits and demerits of the arguments against and the arguments for the justiciability of SER, the chapter concludes that instead of discrediting the judicial enforceability of SER, the arguments have provided good understanding of SER of why and how SER should and can be judicially enforceable.

Concerns about the justiciability of SER centre on three general propositions:

- i) that SER are fundamentally different from CPR;
- ii) that it is inappropriate for the courts to intrude into the sphere of social and economic policy; and

⁵⁷ Vienna Declaration and Program of Action 25 June 1993, para 5

⁵⁸ G Orwell *Animal farms: A fairy story* (1996)137.

- iii) That courts lack the capacity and expertise required to properly adjudicate and enforce SER.⁵⁹

2.1 Philosophical barriers to justiciability of socio-economic rights

2.1.1 Socio-economic rights are different from civil and political rights

Philosophically, human rights were traditionally conceived as inherent, fundamental, absolute and universal.⁶⁰ SER lack all such basic characteristics, therefore, SER are not human rights, it is argued.⁶¹ Human rights are said to be universal if they accrue to every individual by virtue of their humanity, rather than as a result of their position or role in society.⁶² SER accrue to a class of people and as such lack universality. They are mere aspirations and are not enjoyed by virtue of one's humanity.⁶³ A right is absolute if it is available to all human beings on the ground of their humanity without any prerequisite conditions. SER are said not to be absolute, because their realisation is subject to conditions, for example, available resources.⁶⁴ All human rights protect individual as well as collective interests. With respect to absoluteness of rights, there are CPR that are not absolute, whose enjoyment depend on other conditions. The right of freedom of expression, for example, is not absolute; it is limited by the rights of others. Any effort to discredit SER on this ground is therefore not tenable.

2.1.2 Civil and political rights engender negative obligations whereas socio-economic rights impose positive obligations.

The nature of a right and the obligation it imposes are of a paramount importance to adjudicating that right.⁶⁵ It is equally important from the remedial point to determine whether a right imposes a negative or positive obligation.⁶⁶ Negative obligations require the government to refrain or abstain from interfering with the enjoyment of a right, while positive obligations demand that government undertakes affirmative action to give effect to the right.⁶⁷

⁵⁹ A Nolan et al 'The justiciability of economic, social and cultural rights: An updated appraisal' (2007) 15 Centre for Human Rights and Global Justice 1

⁶⁰ K Raes 'The philosophical basis of economic, social and cultural rights' in P Van der Auweræker et al(eds) *Socio-economic rights: An appraisal of current European and international developments* (2000)48.

⁶¹ M Cranston *What are human rights* (1973)67.

⁶² M Craven 'The protection of economic, social and cultural rights under the Inter-American human rights system' in D Harris *The Inter-American System of human rights* (1998)289.

⁶³ Cranston n 61 above 68.

⁶⁴ M Bossuyt 'The legal distinction between civil and political rights and economic, social and cultural rights' (1975) 8 *Human Rights Journal*783.

⁶⁵ J Berryman *The law of equitable remedies* (2000)40.

⁶⁶ As above.

⁶⁷ K Roach *Constitutional remedies in Canada* (1994) 3.