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Realising Social and Economic Rights through the Courts:

Lessons and Experiences from South Africa, Israel and the USA

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Introduction

Human Rights have long been hailed as indivisible and interdependent. The Universal Declaration of Human Rights (UDHR) is structured so as to ensure the equality of all kinds of rights, be they political, social, economic or cultural. However, social, economic and cultural rights have been largely neglected, at least in terms of having constitutional status or as legally enforceable rights. This has been particularly true in Europe. Social, economic and cultural rights are absent from the European Convention on Human Rights (ECHR), the legal instrument which make rights enforceable throughout the many signatory states.

It has often been asserted that economic and social rights cannot be adjudicated and enforced by the courts by their very nature. It is said that economic and social rights are questions of resource and policy, and are therefore political questions which should be left to government, not to the judiciary. Aside from the democratic issue, judges lack the expertise to decide on allocation of state resources required for the fulfillment of social and economic rights.

This paper considers how social and economic rights have been adjudicated in courts in South Africa, Israel, and the USA. The cases examined provide a comparative tool from which the UK may draw ideas. It is hoped that the lessons can be drawn on by the UK in its ongoing debate regarding the creation of a British Bill of Rights, and the potential inclusion of social and economic rights into that Bill. The country case studies also illustrate strategies for litigation that have proved to be successful/helpful (and indeed unsuccessful or unhelpful) in the three jurisdictions and may therefore also be useful for legal practitioners and NGOs who themselves may find themselves in court arguing cases regarding social and economic rights.

Economic and Social Rights in the UK: the current position

In contrast with an increasing number of other countries, the UK does not afford domestic recognition to economic and social rights. This may be regarded as something of an anomaly, as the UK has ratified the majority of relevant international conventions, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the European Social Charter (EU Charter). Each of these

instruments imposes a range of legal obligations on the UK, some of which are for immediate effect and some are 'progressive' in nature.¹

There are currently a number of ways in which social and economic rights are, or may be, enforced through domestic law in the UK. They may be enforced through:

- enforcement of social and economic rights and entitlements provided for by statute. For example, education rights have been enforced through the Education Acts;
- the public sector equality duty in the Equality Act 2010;
- judicial review and the Human Rights Act 1998.

It may therefore be argued that, given these avenues and the existence of a welfare state, the UK does not require express legal protection of social and economic rights. However, the UN Committee on Economic, Social and Cultural Rights (CESCR) has been critical of the UK's record. In 2009 the CESCR commented critically on the UK's failure to adopt a human rights action plan which included programmes for the realization of social and economic rights. The Committee also commented on the low level of awareness about social and economic rights amongst judges, public officials, the police, medical practitioners, and the public at large. The Committee also expressed concern in respect of the following:

- poverty and fuel poverty;
- child poverty;
- disproportionately high unemployment rates in ethnic minority communities;
- the pay gap between men and women;
- unsafe working conditions and low wages for migrant workers; and
- destitution and difficult access to health care for rejected asylum seekers.

The enforceability of social and economic rights in the UK is also very limited in scope. The UK therefore differs from some other European countries, such as Germany, where social and economic rights are far more embedded and enforced through administrative and legal structures. We also differ from countries like South Africa, which will be discussed at length in the remainder of the report, which explicitly enshrine social and economic rights in domestic law. The significance of this kind of legalization of social and economic rights is that it makes it clear that these rights are binding on all branches of government and must be taken into account and implemented through law and policy at all levels of government.

¹ The 'progressive realisation' of rights is essentially a right which is not afforded immediate effect, but where a state is obliged to work towards and not retract from a particular aim. Examples of the progressive realisation of rights can be found, for example, in the Constitutions of Ireland and of India.

Making social and economic rights justiciable: giving meaning to rights

It has been said that social and economic rights are too vague to be regarded as individually enforceable rights. For example, the right to health and the right to housing have been said to offer no obvious standard whereby a violation can be determined.

It is certainly true that rights must be adequately defined in order to be legally certain and thus enforceable. However, to say that this is an issue that only applies to economic and social rights, and not to political and civil rights, cannot be correct. The right to property for example, may be labeled as a 'classic' civil right, and has been zealously protected by the US Supreme Court. Freedom of expression is another classic 'civil' right that has been rigorously upheld by the US Supreme Court.

However, it is unclear how or why the right to property or the right to freedom of expression is any more capable of precise definition than the right to health or the right to housing. Many legal rules are expressed in broad terms and general wording. What could be more imprecise or general, for example, than the word 'reasonableness', upon which virtually the entire body of English tort law is based?

Vague terminology cannot therefore be said to defeat the enforceability of a right. Rather, what are required are attempts to specify the content and limits of such rights: through case law, jurisprudence, statutory lawmaking, codes, guidance and regulations. Canada, for example, through the Canada Health Act 1985, has successfully given meaning to the right to health by establishing the basis of the health system, its goals and objectives, the standards that should govern it, and the content and coverage of its services.

Using international guidance: an idea from South Africa

International law and international guidance could also be drawn upon to give meaning to the vague notions such as the right to health or the right to housing. The CESCR, for example, produces General Comments which set out examples of how the rights in the ICESCR may be interpreted. The experience of South Africa shows how such international standards can play a role in the interpretation of domestic law, or could be directly applied by judges. South Africa is not a party to the ICESCR, yet the South African Constitutional Court used the ICESCR's General Comments to interpret the social and economic rights enshrined in the South African Constitution, thus giving scope and meaning to those rights.²

The British Courts, which owing to their familiarity with the European Union principles of direct and indirect effect, are well used to interpreting domestic law in light of foreign guidance, could make use of this principle in giving scope and meaning to any social and economic rights included in any future Bill of Rights.

² See *Government of the Republic of South Africa and others v Irene Grootboom and others*, 2001 (1) SA 46 (CC), 4 October 2000.

Social and economic rights in the Israeli Constitution: judge made rights and the 'Minimum Core' approach

A number of different mechanisms have been adopted by courts in defining the scope of social and economic rights to give them meaning and legal force. One such conceptual tool is the notion of the 'minimum core'. This concept entails a definition of the absolute minimum needed, without which the right would be meaningless.

The minimum core concept has been employed by the Supreme Court of Israel. Like the UK, Israel has no written constitution. For historical reasons associated with the degree of diversity in and conflict between various factions of Israeli society (including secular Jews, Orthodox Jews, Arabs, recent Jewish migrants, and non-Jewish refugees), Israel has been unable to draft a constitution that can be said to represent the entire nation. Human rights protections have instead emerged in a piecemeal fashion: developed by Parliament through the Basic Laws, and given meaning and definition by judicial interpretation. This can be equated with the way in which human rights in the UK have been given meaning by the English judiciary, interpreting ECHR rights following their incorporation through the Human Rights Act 1998.

There are a number of Israeli Basic laws dating back many decades. They deal with the role of state institutions and relationships between the individual and the state. Although originally drafted as draft chapters of a future constitution, they are now used by the courts on a daily basis. However, they are not said to be a complete constitution in and of themselves. The most important Basic Laws in respect of social and economic rights is the 1992 Basic Law on Human Dignity and Liberty.

The 1992 Basic Law declares that basic human rights in Israel are based on the recognition of the value of man, the sanctity of his life and the fact that he is free. The Basic Law defines human freedom as the right to leave and enter the country, privacy, intimacy, and protection from unlawful searches of person and property.

The Basic Law does not therefore expressly make provision for social and economic rights. It does not state that 'Everyone shall enjoy the right to housing', or that 'Everyone shall enjoy the right to health', or that 'Everyone shall enjoy the right to food', for example. However, despite this lacuna in black letter human rights protection, the High Court has interpreted reference to human dignity as justifying a minimum level of social rights protection. In fact, on 28 February 2012 the Israeli Supreme Court held that social rights were so fundamental to the notion of human dignity that there could be no distinction between social and civil rights in terms of the state's obligation to realize the rights and allocate budgets to this end.³

However, even prior to this groundbreaking declaration of February 2012, the Israeli court had harnessed the concept of dignity to make provision for social and economic rights. According to the Israeli interpretation of the 'minimum level of existence' core, the state is

³ See Israeli Supreme Court judgment of 28 February 2012 in joint applications 10662/04; 3282/05; 7804/05.

obliged to ensure that persons within its borders enjoy the minimum conditions for a dignified existence. Using this doctrine, the courts have ruled in favour of social and economic rights:

- In the *Gamzo* case, Mr. Gamzo could not pay alimony due to his difficult economic situation. His ex-wife started proceedings against him but Mr. Gamzo said that if the debt was not eased, he would become homeless. The Supreme Court held that for poor people who cannot pay their debts, the risk of homelessness and of starving was a real and true danger. The Court held that the constitutional right to dignity, protected by the Basic Law, also protects the right to exist in dignity. A person who is forced to live on the street and who has no accommodation is a person whose dignity has been violated.⁴
- In 9535/06 *Abadallah Abu Massad et al v Water Commissioner and Israel Lands Administration* (2011), the Israeli Supreme Court ruled that the right to water deserves constitutional protection under the Basic Law on Human Dignity and Liberty. At the same time, it held that the right was not absolute but had to be balanced against the rights of the state. The case was brought by unrecognized Bedouin villagers in the Negev, who did not have access to household water.

The benefits of the Israeli approach

This approach enables a development of rights protections through judicial interpretation. It would be very possible for the UK courts to go the same way. Very basic social and economic rights could easily be read into ECHR rights, such as the right to life and the right to freedom from torture, or cruel, inhumane or degrading treatment. Furthermore, the recent coming into force of the European Charter makes the right to dignity legally enforceable, at least in the sphere of areas governed by EU law.

The benefit of the minimum core is that it allows the court to make provision for social and economic rights but without going so far as to be said to be becoming policy makers. Court intervention is a last resort and very limited.

A further benefit of the minimum core approach, as developed by the common law, is that it allows for an evolving definition. The minimum acceptable level may change over time, with the advancement of technology. The minimum core of the right to shelter, for example, may at one point have simply meant a roof over one's head. It may now be interpreted as a roof over one's head with basic facilities such as electricity and running water.

Dangers of the Israeli approach

The obvious danger is: what if that minimum level is set too low? There are clear difficulties with attempts to rationalize what the 'minimum level necessary for existence is'. If the courts

⁴ 4905/95 *Gamzo v Yeshayahu*, 95 (3), 360.

try too hard to interpret state obligations as close to that minimum base line as possible, there is a considerable risk that they will actually fall below it.

Furthermore, there are political problems associated with the minimum core approach. Some lawyers working on social rights in Israel reported that the minimum core approach brings with it considerable litigation risk of setting bad precedent, and consequently stifling other avenues of realizing social rights, such as political lobbying and popular mobilization. Imagine, for example, a scenario whereby individuals are being housed in very poor conditions: the houses are damp and overcrowded and the residents have reported negative health implications. Lawyers argue that this is a breach of their basic minimal right to housing, and it infringes on their dignity. However, the court finds against them, ruling that simple shelter is sufficient to meet minimum human needs. Once the court has made this finding, it is difficult to depart from this in future cases as the precedent has been set. Further, once a court has stated that there is no human rights infringement, this makes it more difficult to mobilize public support for a campaign or to successfully lobby for change.

Finally, enabling the enforceability of social and economic rights solely through judicial interpretation risks falling foul of the doctrine of parliamentary supremacy. Judge made laws, no matter how subtle, are often at risk of being found to have been activist and illegitimate.

A similar approach in the US: protecting the right to shelter

Israel is not alone in having made this leap from 'dignity', or 'bare necessities' to social and economic rights. The US Courts, have also been willing to enforce social and economic rights through interpretative exercises.

For example, in *Callahan v Carey* the National Coalition for the Homeless filed a class action law suit in the state court on behalf of a homeless man in Manhattan, relying on provisions of the New York Constitution to demand that the city provide shelter to any man that requested it. Article VII of the Constitution provides that 'The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in a manner and by such means, as the legislature may from time to time determine.' The Constitution therefore requires the state to assume a major role in the field of social welfare. However, the New York Courts have also ruled that the legislature has great discretion in setting the criteria for defining need and establishing programmes to aid those in need.⁵ The clause, for example, does not mandate that public assistance be granted on an individual basis in every instance, nor does it require the state always to meet in full measure all legitimate needs of each recipient of welfare.⁶

However, in *Callahan v Carey* the Court looked to the language of Article VII and interpreted it as intending to confer rights to those 'who must look to society for the bare necessities of

⁵ *Kircher v Perales* (1985)

⁶ *Bernstein v Toia* (1977).

ife.’ Using similar logic to the Israeli Courts, the New York Court ruled that the City was required to furnish sufficient beds for every homeless man applying for shelter who met certain needs criteria.⁷

Other American courts have recognized a right to shelter based on ‘general welfare’ provisions of their state constitutions. For example, the New Jersey Supreme Court has held that a zoning ordinance violated the constitutional requirement that the state’s police promote ‘public health, safety, morals or the general welfare’. Because the land use controls excluded low income families from the district, they were deemed invalid. The court stated that ‘there cannot be the slightest doubt that shelter, along with food, are the most basic human needs’, and that it was beyond dispute that adequate housing is ‘an absolute essential in promotion of the general welfare required in all local land use regulations.’ The court imposed an obligation on every developing municipality to provide realistic opportunity for ‘decent and adequate low and moderate income housing’.

These cases, although an exemplary example of the ability of the courts to ensure protection of the most vulnerable, are also exemplary examples of the danger, stated above, of standards being set too low. The courts’ decisions, although essentially claiming a right to shelter, fall far short of recognizing a right to adequate housing as defined under international law. The ESCR Committee has stated that there are seven criteria for housing adequacy. These include security of tenure; availability of services, facilities and infrastructure; affordability; habitability; accessibility; access to employment, healthcare, schools etc; and cultural adequacy. And although the judgment in *Callahan* prioritises the most vulnerable and disadvantaged in terms of protection, it does not address whether the remedies provided are adequate to meet the needs of that particular group: it provides for very minimal protection indeed. That said, it is submitted that such a situation could be avoided if the courts took into account, as does South Africa (see above) international guidance in its decision making.

Reasonableness and Proportionality

An alternative test to determine the scope and extent of social and economic rights is found in the test of reasonableness. Very few human rights are absolute. This is true of civil and political rights as much as social and economic rights. The European Court of Human Rights and UK courts have become well used to applying the principles of necessity and proportionality in human rights cases. For example, the right to freedom of expression, is not absolute. Under the ECHR the right to freedom of expression may be lawfully interfered with where that interference is proscribed in law; is for a reason specified in the convention, such as for reasons of national security; and is limited only so far as is necessary in a democratic society. In other words, the interference must be proportionate to a legitimate aim.

The courts, therefore, are well used to carrying out balancing tests: weighing up individual rights on the one hand and public policy concerns on the other. There is no reason why the courts should not apply such standards of review to social and economic rights. Indeed, the

⁷ *Callahan v Carey*, No. 42582/79 (Sup. Co. N.Y. Co.).

language of the ICESCR establishes goals to be complied with, and requires states to use means that are consistent with these goals. They further require that any limitations imposed on these rights are compatible with their nature and solely justified by the purpose of promoting the welfare of democratic society.

The reasonableness test and the right to due process: a lesson from the USA

Many jurisdictions, notably many developing countries, have given substance to social and economic rights by adopting reasonableness and proportionality tests as standards of judicial review. Even the USA, often cited as hostile to the notion of social and economic rights, has embraced reasonableness as part and parcel of the constitutional right to 'due process', and has thus given effect to social rights through that mechanism. For example, in *US Department of Agriculture v Moreno*,⁸ the applicant challenged a statutory restriction on the eligibility conditions for a food stamp programme as unconstitutional. Under the statute, food stamps would not be available to household members who were unrelated to other household members. The US Supreme Court held that the exclusion violated the due process clause of the US constitution, stating that the distinction was without 'rational basis'. Effectively, it was unreasonable.

The South African Reasonableness Test: a case study in protecting the right to housing

The approach employed by the South African Constitutional Court in adjudicating social and economic rights is remarkably similar to the standard applied by the European Court of Human Rights and the British Courts in considering civil and political rights.

For example, in the *Grootboom* case,⁹ the Court applied the tests of necessity and proportionality in assessing the constitutional compatibility of a government housing policy. The circumstances of the case were thus:

A local authority in the Western Cape, one of the poorest regions of South Africa, evicted a group of people from their informal settlements. The evictees were consequently made homeless. They applied to the High Court for an order obliging the state to provide them with temporary shelter until such time as they were able to find more permanent housing. The High Court granted the order, holding that the children in the group were entitled to be provided with shelter at state cost under section 28 of the South African Constitution. This in turn meant that their parents also had to be provided with shelter, as removing the children from their parents would not be in their best interests and thus also contrary to section 28 of the Constitution, which provides that the best interests of the child must be paramount in all decisions affecting children.

⁸ 413 US 528, 25 June 1973.

⁹ See note 2.

The case was then appealed to the Constitutional Court. The constitutional question for consideration was whether, more generally, the state was obliged to provide homeless people with temporary accommodation. The court held that the state did have such an obligation, based on the right of everyone to have access to adequate housing under section 26 of the constitution. The court ruled that the state had to put in place a comprehensive and workable plan to meet its housing rights obligations, including consideration of the following:

1. The need to take reasonable legislative measures;
2. The need to achieve the progressive realization of the right;
3. The requirement to use available resources.

The state therefore had a legal duty to at minimum put in place a plan of action to deal with those who were absolutely homeless. The court examined the housing policy currently in place and noted that it focused on providing long term, fully adequate low-cost housing, but took no account whatsoever of the basic needs of homeless people for temporary shelter. Thus, in considering the 'reasonableness' of the measures adopted by the state, the court held that it was plainly unreasonable and therefore unconstitutional to fail to make any adequate provision for homeless people whatsoever.

The South African Reasonableness Test: a case study in protecting the right to health

Another case in which the South African Constitutional Court has applied a reasonableness test in respect of government policy around social and economic rights was *South African Minister of Health v Treatment Action Campaign*.¹⁰ In this case, the South African Constitutional Court dealt with the adequacy of the state's efforts to prevent the spread of HIV, in particular the transmission of HIV from mothers to their babies at birth. Studies by the World Health Organisation and by the South African Medicines Control Council had shown that the administration of a single dose of Nevirapine, an antiretroviral drug, to a mother and child at birth, prevents the transmission of HIV in a majority of cases. The state nevertheless generally refused to provide the drug for this purpose.

The Treatment Action Campaign, an umbrella group of NGOs, sought an order directing that the state must make Nevirapine available at all public health facilities with maternity units. The order was made by the High Court and upheld on appeal to the Constitutional Court. The Constitutional Court stated that the state's refusal to make Nevirapine available more broadly, and its failure to have a comprehensive plan to deal with mother to child HIV transmission was unreasonable and breached the right of mothers and babies to have access to health care services under s27 of the Constitution.

In light of the evidence provided, the Court rejected the states arguments as to the safety and effectiveness of the drug. The Court also rejected the argument that there was not

¹⁰ 2002 (5) SA 721, 5 July 2002.

sufficient capacity within the public health service to administer the drug and monitor its effects.

Going further: the 'adequacy test' and the right to education in the USA

A test has emerged in the USA that can be said to push the state even further than that required when reasonableness comes into play. This may appear surprising given that the USA is often cited as a state somewhat hostile to the notion of 'social rights', and that it is not a signatory of the ICESCR.

However, the right to education is a right guaranteed in the constitutions of every single US state. It is therefore easily the most far reaching socioeconomic right tested in US jurisprudence. And it is very highly protected. A test of 'adequacy' has emerged in some states, requiring that the executive act to ensure that that right is enjoyed adequately by all. A proportionality test in which reasonableness is weighted against state resources does not come into play. Indeed, the courts have at times ordered the state to find sources of funding in order to achieve a level of adequacy in the enjoyment of rights.

For example in *Rose v Council for Better Education* the Supreme Court of Kentucky examined the constitutional requirement that the state provide an 'efficient system of common schools throughout the state'.¹¹ The Court held that this required not merely that schools were built and open, but that the education provided sought to endow each child with knowledge of economic, social and political systems, strong communication skills and training in academic or vocational fields to enable him or her to choose and pursue his or her life's work intelligently. In response to the decision, the Kentucky Assembly passed the Kentucky Education Reform Act 1990 which raised taxes to raise revenue to pay for reforms. Research indicates that the schools have steadily improved since.

In *Campaign for Fiscal Equity v New York*,¹² the New York Court of Appeals interpreted the provision of the right to education in the state constitution entitles all students not only to education but to a 'meaningful' education and one which 'prepares them to function productively as civil participants'. In making his decision, the Judge evaluated evidence including so-called 'inputs' (such as teacher certification; teachers' professional development opportunities; teachers' salaries; the curriculum; the physical facilities of the schools; the number of books available) and so-called 'outputs' (such as graduation and dropout rates and student performance in standardized tests). The Court found that there was a causal link between the funding system and the poor condition of the city schools. The State was given one year to introduce reforms, including a provision that the schools be given the necessary resources for them to perform adequately.

¹¹ *Rose v Council for Better Education*, 790 S.W.2d 186.

¹² 86 N.Y.2d 307.

These cases demonstrate the ability of courts to develop tools to give meaning to constitutional rights. They demonstrate the possibilities of the court going beyond the 'minimum core' and even beyond a reasonableness test, where deemed necessary.

The importance of equality and non-discrimination in advancing social and economic rights

The prohibition of arbitrary discrimination is a fundamental of international human rights law and is a constitutional right in very many countries all over the world. Equality and non-discrimination provisions are extremely important tools in advancing social and economic rights for particular groups, particularly in states that make no express provision for social and economic rights in their constitutions, and particularly because the people most affected by social and economic rights violations frequently belong to a group that is treated as suspect or undesirable.

Perhaps the classic case in which equality rights were invoked in order to improve a socioeconomic right for a particular group is the US case of *Brown v the Board of Education*.¹³ In this case, the US Supreme Court relied on the Equal Protection Clause in the US Constitution to hold that racial segregation in schools was unconstitutional. It articulated the principle that separate could not mean equal as segregation generated a sense of inferiority that would impair an ability to learn.

The US State Courts have also used equality provisions to protect the housing rights of particular groups. In *Braschi v Stahl Associates Co.*, the New York Court of Appeals held that the same-sex partner of a tenant of a controlled-rent housing scheme could be considered a family member and thus protected from forced eviction.

The South African Constitutional Court has also made use of equality provisions in the Constitution to extend socioeconomic rights to unpopular groups. For example, *Khosa and others v Minister of Social Development and others*,¹⁴ concerned the provision of welfare rights to non-nationals. The applicants, a group of Mozambican nationals with permanent residence in South Africa, argued that the Social Assistance Act, which restricted access to social assistance benefits to South Africans only, discriminated against them on the basis of their nationality. The government argued that their policy was justified as to extend welfare benefits to non-nationals would result in a flood of immigration to South Africa, which would place an unsustainable burden on the state. The Court rejected the government's arguments and held that discrimination on the basis of nationality was incompatible with the right to equality in the constitution.

The Israeli High Court has also heard a number of cases concerning the unequal allocation of health, housing and social services. Geographical inequality in the distribution of services in

¹³ 347 U.S. 483 (1954).

¹⁴ 2004 (6) SA 505 (CC), 4 March 2004.

Israel is often based on ethnic lines, disproportionately effecting Arab communities, who are in turn generally poorer. In *Adalah v Ministry of Health*,¹⁵ which eventually settled out of court, the government agreed to provide health care services in unrecognized Bedouin settlements. In *Committee of the Heads of Arab Municipalities in Israel v Minister of Construction and Housing*,¹⁶ the High Court required the Government to expand a renovation program to more Arab municipalities.

Arbitrary discrimination on the basis of gender, race, religion or belief, age, sexual orientation, or disability is unlawful in England and Wales under the Equality Act 2010. In the passing of that Act, Parliament also considered adding to that list socioeconomic status, but eventually declined from doing so. This would have expanded protection to a much greater population. Despite this omission from the Act, there is always potential to revisit this, or any other new criteria, to prevent discrimination faced by other social groups. In the meantime, the Act may be an effective tool in developing social and economic rights for particular groups.

Conclusion

The experiences of South Africa, Israel and the USA demonstrate that social and economic rights cannot be considered too vague or indeterminate to be justiciable, and it is submitted that the UK would benefit from greater enforceability of social and economic rights through the courts.

It seems clear from the American, South African and Israeli experiences that the judicial enforcement of social and economic rights hardly have drastic and negative constitutional implications. The courts, though active in removing inequality and in pushing the state to make changes in order to give meaning to rights, have not set about devising mass social welfare programmes or similar. What court enforcement has meant is that where legislators have failed to see every eventuality, the court can ensure that individuals do not suffer while waiting for amendments to be put through Parliament to close gaps. Court enforcement has also meant that where the state has entirely failed to act in respect of a particular group, or where the decision-making has been entirely unreasonable, they can meaningfully be held to account. This is precisely what the courts already do in respect of civil and political rights covered by the Human Rights Act 1998, and in respect of public law decisions amenable to judicial review.

Furthermore, the courts are well equipped to judge the quality of laws according to a broad range of principles and entitlements. Administrative law has long required the courts to scrutinize the exercise of executive power against principles of the common law and specific provisions found in primary legislation. Often primary legislation bestows wide powers on secretaries of state and when asked the courts must examine whether the exercise of those powers is legal and in accordance with the fundamental purpose of the overarching

¹⁵ H.C. 7115/97.

¹⁶ HCJ 727/00, 56(2) P.D.79.

legislation. Courts in the UK frequently deal with complex financial and scientific information in the context of tax, medical law and other cases. There is no reason to assume that they would be unable to process the information entailed in a case involving socioeconomic rights. Indeed, comparative experience from Israel, the USA and South Africa demonstrates that courts have been able to deal ably and effectively with social and economic rights.

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