

Contribution to the call on the legal enforcement of economic, social and cultural rights (ESCR)
Submitted to the Advisory Committee of the United Nations Human Rights Council

1. Introduction

The increasing recognition of the justiciability of economic, social and cultural rights (ESCR) marks a significant development in international and regional legal systems. Courts and quasi-judicial bodies are progressively engaging with these rights, both directly and indirectly, contributing to the clarification of their normative scope and enforceability.

However, the central issue no longer concerns recognition.

It concerns effectiveness in practice.

2. Legal framework and obligations

Under the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, as interpreted by **General Comment No. 3**, States are required not only to take steps, but to ensure the realisation of rights in a manner that is effective.

General Comment No. 14 further clarifies that the right to health includes core obligations that are of immediate effect and not subject to progressive realisation.

At the regional level, the **European Convention on Human Rights (ECHR)** establishes:

- under Articles 2 and 3, positive obligations to prevent serious harm
- under Article 13, the requirement of an effective remedy

Similarly, the **Charter of Fundamental Rights of the European Union** provides:

- Article 24: best interests of the child
- Article 41: right to good administration, including reasonable time
- Article 47: right to an effective remedy

These frameworks converge on a common requirement:
protection must be effective, not merely declaratory.

3. Structural gap between recognition and effectiveness

Despite the evolution of jurisprudence, a structural gap persists between the formal recognition of ESCR and their effective implementation.

This gap manifests in several recurring patterns:

- judicial intervention occurring after the consolidation of harm
- remedies operating primarily in a post-factum context
- fragmentation between recognition, interpretation and execution
- delays in institutional coordination, particularly in cross-border contexts

As a result, rights may be legally affirmed while remaining operationally constrained.

4. The role of time in the effectiveness of rights

A critical but under-examined dimension in the enforcement of ESCR is **time**.

Legal systems often assess:

- whether a right is recognised
- whether a remedy exists
- whether a decision has been issued

However, they rarely assess:

- when protection becomes effective
- whether intervention occurs before or after irreversible harm
- whether procedural structures are capable of activating in time

Where protection activates only after harm has materialised, its capacity to fulfil its function is inherently limited.

In such conditions, effectiveness is formally satisfied but substantively weakened.

5. Illustrative structural context

In cross-border cases, these limitations become more visible.

Situations involving:

- jurisdictional misclassification
- delays in cooperation between authorities
- fragmented procedural responses

can result in the absence of timely protection, even where legal frameworks are formally applicable.

This dynamic is observable, for example, in cross-border contexts involving access to essential services for children subject to unilateral measures.

Such contexts highlight the importance of evaluating not only legal entitlement, but the **operational capacity of systems to deliver protection in time.**

6. Implications for justiciability

The expansion of ESCR justiciability is a necessary development.

Justiciability alone does not guarantee effectiveness.

Without a structural capacity to ensure timely activation of safeguards:

- judicial recognition risks remaining reactive
 - remedies risk addressing consequences rather than preventing harm
 - compliance risks being assessed without reference to real-world impact
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7. Conclusion

The current evolution of ESCR enforcement reflects significant progress in legal recognition and access to remedies.

However, a critical dimension remains insufficiently addressed:

the relationship between legal protection and the moment at which it becomes operative.

Assessing effectiveness requires moving beyond the existence of rights and remedies, toward an evaluation of whether systems are structurally capable of ensuring protection before harm becomes irreversible.

Where this condition is not met, protection remains formally present but functionally constrained.

Protection fails when activation comes after effect.

Structured Procedural Safeguards Framework (SPSF)

Concept developed by Sanaa Rezk