

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

COURTING SOCIAL JUSTICE

This book is a first-of-its-kind, five-country empirical study of the causes and consequences of social and economic rights litigation. Detailed studies of Brazil, India, Indonesia, Nigeria, and South Africa present systematic and nuanced accounts of court activity on social and economic rights in each country. The book develops new methodologies for analyzing the sources of and variation in social and economic rights litigation, explains why actors are now turning to the courts to enforce social and economic rights, measures the aggregate impact of litigation in each country, and assesses the relevance of the empirical findings for legal theory. This book argues that courts can advance social and economic rights under the right conditions precisely because they are never fully independent of political pressures.

Varun Gauri is Senior Economist in the Development Research Group of the World Bank. His research focuses on politics and governance in the social sectors and aims to combine quantitative and qualitative methods in economics and social science research. His research has addressed HIV/AIDS policies in Brazil, South Africa, and Mozambique; basic immunization in Pakistan; the behavior of development nongovernmental organizations (NGOs) in Bangladesh; payment modalities for health-care providers in Costa Rica and Nigeria; litigation for social and economic rights in developing countries; and the relationship between international human rights treaties and development outcomes. He is the author of *School Choice in Chile: Two Decades of Educational Reform*. He has published widely in development journals, including *World Development*, *Journal of Development Studies*, *Studies in Comparative International Development*, *World Bank Research Observer*, and *Health Policy and Planning*. Since joining the World Bank in 1996, he has also worked on and led a variety of operational and analytic tasks, including project and program evaluations, investments in privately owned hospitals, health-care decentralization, and public expenditure reviews.

Daniel M. Brinks is Assistant Professor of Government at the University of Texas at Austin. He teaches in comparative politics and public law, with emphasis on comparative judicial politics and democracy in Latin America, and his research focuses on the role of the law and courts in supporting or deepening democracy. In addition to his research on the judicial response to police violence in Brazil, Argentina, and Uruguay, he has written on judicial independence, the role of informal norms in the legal order, and the use of law-based approaches to extend social and economic rights in developing countries. His research appears in journals such as *Comparative Politics*, *Studies in Comparative International Development*, *Comparative Political Studies*, and *Texas International Law Journal*.

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights
in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

Courting Social Justice

JUDICIAL ENFORCEMENT OF
SOCIAL AND ECONOMIC RIGHTS
IN THE DEVELOPING WORLD

Edited by

Varun Gauri

The World Bank

Daniel M. Brinks

University of Texas at Austin



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press

32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org

Information on this title: www.cambridge.org/9780521873765

© Cambridge University Press 2008

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2008

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Courting social justice : judicial enforcement of social and economic rights in the developing world / edited by Varun Gauri, Daniel M. Brinks.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-87376-5 (hardback)

1. Human rights – Developing countries. 2. Social rights – Developing countries.
3. Law and economic development. 4. Social legislation – Developing countries.
5. Developing countries – Economic policy. I. Gauri, Varun, 1966– II. Brinks, Daniel M., 1961– III. Title.

K3240.C68 2008

341.4'8 – dc22 2008014565

ISBN 978-0-521-87376-5 hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

Contents

<i>Foreword</i>	<i>page</i> vii
<i>Preface</i>	xv
<i>Contributors</i>	xix
1 Introduction: The Elements of Legalization and the Triangular Shape of Social and Economic Rights	1
Varun Gauri and Daniel M. Brinks	
2 Litigating for Social Justice in Post-Apartheid South Africa: A Focus on Health and Education	38
Jonathan Berger	
3 Accountability for Social and Economic Rights in Brazil	100
Florian F. Hoffmann and Fernando R. N. M. Bentes	
4 Courts and Socioeconomic Rights in India	146
Shylashri Shankar and Pratap Bhanu Mehta	
5 The Impact of Economic and Social Rights in Nigeria: An Assessment of the Legal Framework for Implementing Education and Health as Human Rights	183
Chidi Anselm Odinkalu	
6 The Implementation of the Rights to Health Care and Education in Indonesia	224
Bivitri Susanti	
7 Transforming Legal Theory in the Light of Practice: The Judicial Application of Social and Economic Rights to Private Orderings	268
Helen Hershkoff	
8 A New Policy Landscape: Legalizing Social and Economic Rights in the Developing World	303
Daniel M. Brinks and Varun Gauri	
<i>Index</i>	353

Cambridge University Press

978-0-521-87376-5 - *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

Foreword

JUSTICE RICHARD J. GOLDSTONE

I believe it is important for governments and international institutions, including the World Bank, to encourage research into social and economic rights in developing countries, and I welcome this excellent work on the topic. The enforcement of these rights represents a new and controversial area of judicial intervention. Social and economic rights fall into that category of rights, often referred to as *second-generation rights*, that also includes cultural and developmental rights. They are distinguished from *first-generation rights*, which consist of political and civil rights such as equality and the freedom of speech and of assembly.

Second-generation rights were recognized in the 1948 Universal Declaration of Human Rights and given effect in the International Covenant on Economic, Social, and Cultural Rights, which became effective in 1976. However, until comparatively recently, these rights were not taken seriously and were subordinated to civil and political rights. Few states took steps to entrench such rights constitutionally or to adopt legislation or administrative provisions to make such rights enforceable.

A common objection to giving courts jurisdiction over second-generation rights is that judges are ill equipped to adjudicate on the manner in which the legislative and executive branches of government determine how the national budget should be allocated. In countries like the United States of America, there is an additional objection – traditionally only negative rights are enforceable and the courts are regarded as not having jurisdiction to adjudicate positive rights. The latter, so it is argued, should be left exclusively to the domain of the legislative branch of government. It is pointed out that these rights are polycentric and, for example, if more money is spent on defense and education, there will be less to allocate for health and social benefits. How can judges become involved in second-guessing decisions on these issues? They have neither the information nor the training to make such decisions.

On the other side, and especially with regard to new democracies in developing societies, it is persuasively argued that the majority of citizens are not primarily concerned with first-generation rights. They are less interested in the right to freedom of speech or to freedom of assembly and more concerned with having sufficient food to eat, a roof over their heads, and education for their children. If a new constitution is to have credibility and command the respect of the people subject to its provisions, it must take account of these demands and reflect them.

Cambridge University Press

978-0-521-87376-5 - *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

Hence, one finds the inclusion of justiciable social and economic rights in some modern constitutions.

In India, social and economic rights were contained in the Constitution but expressly stated not to be enforceable by the courts. It is telling that in response to popular demands, activist Indian judges carved out enforceable social and economic rights from the right to life that was judicially enforceable. In this way, they have recognized the right to health care, nutrition, clothing, and shelter.¹ The Supreme Court held that a lack of financial resources does not excuse a failure to provide adequate medical services. In this way, the judges of India have imaginatively fused social and economic rights with civil and political rights.

As far as I am aware, this is the first large-scale empirical study that systematically considers the feasibility and advisability of making social and economic rights justiciable. It focuses specifically on two areas: namely, the right to health and the right to education. It contains a structured comparison of five countries: Brazil, India, Indonesia, Nigeria, and South Africa. As such, it provides an indispensable guide for human rights activists, constitutional law practitioners, political scientists, economists, the international development community, and, of course, the judges who are increasingly being called on to enforce these rights.

Each of the country-specific chapters addresses four key steps in the impact of social and economic rights. This is a useful device to bring coherence and structure to the work. The first step is to consider the legal mobilization of demands, whether through negotiation with or without the threat of litigation, and court intervention; the second step relates to the consequences of court intervention, whether this be a negative or positive response or even a decision not to intervene; the third step is the response of the body, usually governmental, to a court intervention; and the fourth step is the reaction of the original claimants who might follow up a court decision by seeking appropriate enforcement of an order made by the court or even by launching a new round of litigation.

Lawyers tend to be primarily concerned with the second step. Their interest typically begins and ends with the outcome of negotiation or litigation, whether the result is positive or negative. However, for the would-be beneficiaries, it is the first, third, and fourth steps that are crucial. They would often prefer a negotiated outcome rather than placing all of their hopes in costly, time-consuming, and often risky litigation. It is the third and fourth steps that will determine whether they have really received any benefit from the enforceability of social and economic rights. They and nongovernmental organizations (NGOs) will wish to know and be advised on the various alternative approaches to realizing these rights. It is in this context that the comparative experience of the five chosen countries becomes so useful and relevant.

¹ See, for example, *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 2 SCR 516 (“The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.”).

Cambridge University Press

978-0-521-87376-5 - *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

Foreword

ix

In some of the chapters there is reference to the “unintended consequences” of litigation. Those consequences might be negative or positive. I recall two South African situations in which there were important and beneficial unintended consequences. The first was during the apartheid era. In 1982, I heard an appeal from a decision in a lower court on a provision of the Group Areas Act, 1950. This was the statute that enforced residential racial segregation. The legislation empowered the government to decree that certain areas of South Africa were to be reserved for the exclusive use of people of one or another color. It was a criminal offense for a person of the “wrong” color to reside or own property in such a group area. The most desirable areas were set aside for whites. Some areas were set aside for Asians. I wrote an appellate opinion in the case of *Mrs. Govender*, an elderly South African woman of Indian extraction. She faced a criminal charge of residing with her children and grandchildren in a rented house in a part of Johannesburg reserved for whites.

When *Mrs. Govender* appeared in the trial court, she pleaded guilty and was sentenced to a paltry fine or the alternative of fifteen days in prison, all of which was suspended for three years on condition that she was not convicted of a similar offense during the period of suspension. However, what was most serious for her was an order that she be ejected from her home. *Mrs. Govender’s* counsel had persuaded the judge to suspend the ejection order for nine months. He did so in light of evidence that established that there were no alternative accommodations for Asians in the Johannesburg area, that *Mrs. Govender* had been on a waiting list for seven years, and that she might have to wait for another ten years before such accommodations would become available to her. *Mrs. Govender* appealed to the High Court only on the ground that the judge should have suspended the ejection order indefinitely or until she was able to find alternative accommodations.

For some thirty years, the lower courts had uniformly and as a matter of course granted ejection orders in such cases. However, while listening to argument by counsel before the High Court, it struck me that the statute in question did not oblige the judge to grant an ejection order – it gave him discretion. On the basis of the plain text of the statute, we decided to rule that no such orders could be made without granting the affected party a full hearing and the exercise of judicial discretion. We ruled that in cases where there were no alternative accommodations available, an ejection order should not be made. We set aside the order made in the case of *Mrs. Govender*.²

The completely unintended consequence of the order was to bring to a permanent end all prosecutions under the Group Areas Act. Prosecutors stopped bringing cases because they were unable to establish the availability of alternative accommodations. Although the government could have amended the statute to make the ejection orders peremptory, this would have been too embarrassing politically, especially in light of the intense international scrutiny to which apartheid policies were being subjected at that time. In consequence, substantial areas of the

² *R v. Govender*, 1986 (3) SA 969 (T).

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

larger cities in South Africa became “mixed” in the years immediately following the *Govender* decision.

Another unintended consequence of a positive nature followed the 2000 decision of the Constitutional Court of South Africa in the *Grootboom* case. Reference is made to this decision in some of the chapters that follow. It was a decision that found the housing policy of the South African government, in some respects, to violate the right to housing contained in the Bill of Rights. In essence, the Court stated that insufficient attention had been given to the housing needs of the poorest in our nation and to emergency situations where, through natural calamities, people were rendered homeless. Less than a year after that decision was made, a group of residents were rendered homeless by a flash flood in a poorly resourced black township outside Johannesburg. The national government immediately established a Cabinet Committee and placed R300 million (South African rand) at its disposal for emergency relief to be given to the homeless families. There can be little doubt that that action would not have been taken prior to the decision in *Grootboom*.

It is rarely appreciated that rights are realized not only when the officials responsible for providing them take appropriate action in consequence of litigation but, more frequently, when they do so in order to preempt litigation. This is especially the case with regard to social and economic rights. It follows, I would suggest, that the instances of court proceedings or even the call for negotiations often reflect only the tip of the iceberg. The very recognition of these rights induces government officials to modify their behavior and take actions for the protection of needy people without any outside interventions. This is a much-neglected aspect of the realization of social and economic rights.

Another neglected issue, usefully canvassed in this book, is that a sustained litigation policy is often essential for the successful enforcement of these rights. It is in this context that the involvement of well-resourced and efficient NGOs is crucial. Too frequently and not unexpectedly, the lawyers involved in a discrete case consider their work to end with the issue of the court order. That is usually when the real work begins, if the court’s order is to be translated into benefits for a large number of people. A good illustration of this is provided by the *Treatment Action Campaign* case, which also came before the South African Constitutional Court in 2002. This case involved the availability in public hospitals of an antiretroviral drug – nevirapine – that prevents the transmission of the HIV virus from mothers to infants at the time of birth. The Court held that the government objections to the dissemination of the drug were without merit and ordered that the drug be made immediately available to all mothers who wished to take it. The government complied with the Court’s order. Treatment Action Campaign, a most efficient NGO, used the decision to press, with much success, for more substantial changes to the regrettable HIV/AIDS policies of the South African government. The most recent government program aims to provide treatment to 80 percent of the adults who need it by 2011, increasing the percentage of HIV patients overseen by professional health-care providers to 70 percent. Equally ambitious targets have been set for children. The plan calls for an annual review of treatment guidelines. The major problems are finding the R45 billion (South African rand)

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

Foreword

xi

that the South African treasury calculates the program will cost and increasing the capacity of the public health system to deliver the substantially increased health services.

Another much-neglected aspect of litigation based on social and economic rights is the problem faced by judges who are called on to adjudicate claims for the enforcement of those rights. The first problem is the often difficult navigation between the traditional domains of the organs of government – the separation of powers issue. In budgetary matters there is an obvious need for the judiciary to show appropriate deference to the executive and legislative branches. Especially in new democracies, it is important that there is a relationship of respect between the three organs of government. It is a truism that the judiciary is by far the weakest of those branches. The judges have no way, themselves, to enforce their orders. They are entirely reliant on the executive branch in that respect. Their public credibility is also important in ensuring that their orders are respected. If orders made by courts are not conscientiously respected and implemented by the executive branch, judicial credibility will inevitably be prejudiced, with possibly critical consequences for the rule of law.

Judges are frequently criticized by human rights activists for not making stronger orders against government in social and economic rights cases. This was the case with the *Treatment Action Campaign* case, in which our Constitutional Court refused to follow the lower court in issuing a structural order. We said the following:

The order made by the High Court included a structural interdict requiring the appellants to revise their policy and to submit the revised policy to the court to enable it to satisfy itself that the policy was consistent with the Constitution. In *Pretoria City Council* this Court recognized that the courts have such powers. In appropriate cases they should exercise such a power if it is necessary to secure compliance with a court order. That may be because of a failure to heed declaratory orders or other relief granted by a court in a particular case. We do not consider, however, that orders should be made in those terms unless this is necessary. The government has always respected and executed orders of this Court. There is no reason to believe that it will not do so in the present case.

That belief turned out to be justified, and the government did substantially execute the order made by the Court. However we were also aware that if the government flouted the order, the *Treatment Action Campaign* would have come back to court.

Human rights activists can and should encourage judges to make orders that are likely to yield the most beneficial results for the intended beneficiaries of the litigation and, indeed, also for those who might not be direct parties to such litigation. At the same time, however, human rights activists should be aware of and alert to the complex issues that are at work between the organs of state. In this regard, I emphasize the position of new democracies in which constitutional values might well be subject to stress.

It should also be borne in mind that in new democracies, the legal profession is still in a learning phase. Lawyers too frequently do not prepare their cases adequately at the trial level and expect courts of appeal to come to their relief on inadequate and incomplete records. The *Grootboom* case provides a good illustration.

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

For the first time on appeal before the Constitutional Court, counsel sought to rely on the approach of the United Nations Committee on Economic, Social, and Cultural Rights that socioeconomic rights contain a “minimum core.” (This issue is discussed in some detail in the chapter by Jonathan Berger.) It appears from the reports of the Committee that it considers that every state party to the Convention is bound to fulfill a minimum core obligation by ensuring the satisfaction of a minimum essential level of the socioeconomic rights in question, including the right to housing.

In his opinion on behalf of a unanimous Court, Justice Yacoob said that this minimum core was

the floor beneath which the conduct of the state must not drop if there is to be compliance with the obligation. Each right has a “minimum essential level” that must be satisfied by states parties. . . . Minimum core obligation is determined generally by having regard to the needs of the most vulnerable group that is entitled to the protection of the right in question. It is in this context that the concept of minimum core obligation must be understood in international law.³

There was no evidence at all on the record that would have enabled the Court to begin a consideration of an appropriate minimum core for the provision of housing or access to housing in the South African context. Justice Yacoob went on to say that

There may be cases where it may be possible and appropriate to have regard to the content of a minimum core obligation to determine whether the measures taken by the state are reasonable. However, even if it were appropriate to do so, it could not be done unless sufficient information is placed before a court to enable it to determine the minimum core in any given context. In this case we do not have sufficient information to determine what would comprise the minimum core obligation in the context of our Constitution.⁴

Many commentators have interpreted this passage as rejecting out of hand the minimum core approach. I do not agree and suggest that future litigants are open to raise the issue on the basis of an adequate factual record in the trial court. This is an issue that highlights the difficulties facing lawyers undertaking constitutional litigation in new democracies. There is a substantial need for learning about what is effectively a new development in the law. The comments of Justice Yacoob should have been seen by the legal profession as a challenge and not as a call to abandon any future reliance on the minimum core approach. South African lawyers, in particular, need to adopt what are, in the United States, often called “Brandeis briefs.” These are briefs that contain an analysis of factual data rather than relying solely on legal submissions. It was precisely such a brief that was fundamental to the success of the applicants in *Brown v. Board of Education of Topeka*.⁵

I would also suggest that there is a need in new democracies, and probably in many older ones too, for judicial education in the field of social and economic

³ Government of the Republic of South Africa v. Grootboom, 2001 (1) SA 46 (CC) at para. 31.

⁴ *Id.* at par. 33.

⁵ 347 U.S. 483 (1954).

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

Foreword

xiii

rights. This is a topic that few, if any, judges were taught at university. I would refer, in this regard, to the important experience of South African judges who attended conferences during the 1980s and 1990s that were designed to introduce them to domestic and international human rights law. They, too, had never enjoyed formal training in these subjects. Until 1994, human rights law was hardly relevant in a state where human rights were not recognized and violations of them were the order of the day. Those opportunities, enjoyed by a number of South African judges, opened windows and inspired us to use international human rights law norms in our own domestic courts.

I end with a reference to a statement to the Vienna World Conference in 1993 by the UN Committee of Economic, Social, and Cultural Rights. They said that there is

[t]he shocking reality . . . that States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action. . . . Statistical indicators of the extent of deprivation, or breaches, of economic, social and cultural rights have been cited so often that they have tended to lose their impact. The magnitude, severity and constancy of that deprivation have provoked attitudes of resignation, feelings of helplessness and compassion fatigue.⁶

I would suggest that by giving attention to this issue this book will influence governments to pay greater attention to the importance and utility of these rights and will also encourage NGOs to pursue their realization with even greater vigor in the interests of millions of people whose social and economic rights are being neglected.

⁶ U.N. Doc. E/1993/22, pars. 5 and 7.

Cambridge University Press

978-0-521-87376-5 - *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

Preface

VARUN GAURI AND DANIEL M. BRINKS

This book was conceived as an effort to join three streams of inquiry. First, ever since the mid- to late-1990s, when governance became a development priority, scholars and policy makers have sought institutional reforms to make governments more accountable for failures to provide basic services and alleviate poverty. Second, many of the innovative constitutions that emerged around the time of the “third wave” of democratization, as well as developments in legal and political theory, blurred the once bright-line distinction between negative and positive rights, with the consequence that legal or quasi-legal accountability for social and economic performance became more attractive. And third, studies in judicial politics have elaborated frameworks for assessing the causes and consequences of the legalization of political demands. Simply put, the time had come for a book on the role and impact of courts in fulfilling social and economic rights in the developing world.

A key initial conversation about this project occurred in Bangkok at the Fifteenth International AIDS Conference, where Varun met Jonathan Berger. Over a late-night beer, Jonathan agreed to write a review of social and economic rights court cases in South Africa. Shortly thereafter, Varun had the good fortune to meet Florian Hoffmann and Daniel Brinks, who drafted engaging analyses of health and education rights cases in Brazil. After a handful of conversations, it became clear that Dan and Varun shared research interests and a style of thinking, and that Dan’s experiences and skills would contribute enormously to the project, so he became a co-editor. By the summer of 2005, the other key collaborators for this project were also in place – Chidi Odinkalu, Pratap Bhanu Mehta, Bivitri Susanti, and Helen Hershkoff. We all gathered in Washington for two days in September of that year to present our chapter outlines and to propose, debate, repudiate, refine, and then settle on a comparative framework. It was a stimulating and productive meeting that was crucial for the development of a broadly similar methodology across the country studies, a quality that, hopefully, gives this book more argumentative coherence than that of many edited volumes. We also greatly benefited from the participation of Oscar Vilhena Vieira, Siobhan McInerney-Lankford, Caroline Sage, and Mark Tushnet in that workshop.

Well, that was so much fun we decided to do it again and assembled in Washington in the fall of 2006 to present and critique first drafts. Pratap could not attend, but his co-author, Shylashri Shankar, did join us, as did William Forbath and Gretchen Helmke, whose thoughtful comments from outside the project validated, as well

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

as challenged, aspects of our approach. On the second day, we held a public conference at the World Bank on the book draft and on the general topic of social and economic rights in developing countries. Speakers at the conference included, in addition to the contributors to this volume, Ana Palacio, Philip Alston, Shanta Devarajan, Sanjay Pradhan, William Forbath, Siobhan McNerney-Lankford, Jacques Baudouy, Chris Beyrer, Jodi Jacobson, Robin Horn, Mara Bustelo, and Michael Bochenek. A Web cast of that conference can be viewed at <http://info.worldbank.org/etools/BSPAN/EventView.asp?EID=902>.

In addition to those who participated in the conference, many others at the World Bank have given us crucial encouragement, support, and comments, including Beth King, who has backed and promoted our work throughout, as well as Steve Commins, Luis Crouch, Nina Cunanan, Adrian Di Giovanni, David Freestone, Sangeeta Goyal, Imran Hafiz, Susheela Jonnakuty, Steen Lau Jorgensen, Kai Kaiser, Rosalinda Lema, Rick Messick, Claudio Montenegro, Andy Norton, Oscar Picazo, Vikram Raghavan, Martin Ravallion, Lars Adam Rehof, Ritva Reinikka, Randi Ryterman, Hedy Sladovich, Galina Sotorova, Matt Stephens, Doris Voorbraak, and Alan Winters. To the others who in his ever-increasing forgetfulness Varun is neglecting to acknowledge here, let him make it up to you with a cup of coffee!

For their comments, insights, and even early advertising of this volume, we are grateful to many colleagues from the development, human rights, and academic communities, including Susan Aaronson, Chuck Beitz, Marcia Bento, Mônica Mendonça Costa, Mac Darrow, Ariel Dulitzsky, Betina Durovni, José Reinaldo de Lima Lopes, André de Mello e Souza, Carlos Alberto de Salles, Jackie Dugard, Antonio Gelis Filho, Marty Finnemore, Mariângela Graciano, Fatima Hassan, Larry Helfer, Jennifer Hochschild, George Hritz, Paul Hunt, Steve Kahanovitz, Sanjeev Khagram, Juana Kweitel, Malcolm Langford, Sandy Liebenberg, Janet Love, Craig Mokhiber, Helena Nygren-Krug, Cristina Pimenta, Flávia Piovesan, Thomas Pogge, Jamie Radner, Usha Ramanathan, Fernando Serec, Veena Siddarth, Judith Streak, Sérgio Luis Teixeira, Arun Thiruvengadam, Miriam Ventura, Faranaaz Veriava, and Alicia Yamin. To the others out there, please claim your cup of coffee as well. Kurt Weyland gave us detailed and extremely useful comments on our framework and findings. We also appreciated comments from participants in workshops held at the World Bank, Princeton University, the University of the Witwatersrand, the Human Sciences Research Council in Pretoria, the University of Texas at Austin, Notre Dame University, and Texas A&M University.

The principal sponsors of this research project have been the World Bank's Research Committee, the World Bank–Netherlands Partnership Program, and the World Bank Trust Fund for Environmentally and Socially Sustainable Development. Of course, the findings, interpretations, and conclusions expressed in this volume are entirely of the authors and do not necessarily represent the views of the World Bank or its executive directors. During the writing phase, Dan also received the financial support of the Kellogg Institute for International Studies of the University of Notre Dame, in the form of a one-year Visiting Fellowship, supplemented by a Faculty Research Assignment from the University of Texas at Austin. Dan would also like to thank the Government Department at the University of Texas for making possible a one-day workshop to review the nearly final

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

Preface

xvii

manuscript. At that workshop we had the good fortune to receive extensive, incisive, and helpful comments from Robert Kaufman and Zach Elkins. Not the least of their contributions was Robert's suggestion for a title, which we have partially adopted. We also thank Cristiano Ravalli for permission to reprint his striking photograph of a scene outside the Madras High Court.

We join the chapter authors in thanking a number of research assistants whose work has been crucial for the country analyses. They are acknowledged by name in the country chapters. In addition, we had terrific research assistants based in the United States who helped with background papers, project coordination, and data analysis, including Leila Chirayath, Mangesh Dhume, Kaushik Krishnan, Brett Stark, Megan Westrum, and Sam Wolfe. John Berger, our editor at Cambridge University Press, has been extremely supportive throughout, and three anonymous reviewers gave us valuable comments at an important stage of the research.

I, Dan, want to especially thank Varun for conceiving and putting together such a great project, for doing all the work of assembling the teams and the funding, and, most crucially, for inviting me to participate. It has truly been a great privilege to work with Varun, both for his intellectual companionship and for his friendship. This book is dedicated to my wife, Sandra, for her patience and support, and especially for moving from sunny Austin to frozen South Bend and back again, just so I could write with fewer distractions.

Finally, I, Varun, dedicate this book to my wife, Ayesha, who has offered comments and insights drawn from her work as a civil rights advocate, and whose support has been my rock during the course of this project, and to my wonderful and lovely children, Yasmeen and Sharif, who show me every day what it means to demand fairness and claim rights.

Cambridge University Press

978-0-521-87376-5 - Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World

Edited by Varun Gauri and Daniel M. Brinks

Frontmatter

[More information](#)

Contributors

Fernando R. N. M. Bentes is General Coordinator of Legal Studies at Doctum University in Juiz de Fora, Brazil.

Jonathan Berger is Senior Researcher and head of policy and research at the AIDS Law Project in Johannesburg.

Daniel M. Brinks is Assistant Professor of Government at the University of Texas at Austin.

Varun Gauri is Senior Economist in the Development Research Group of the World Bank in Washington, DC.

Richard J. Goldstone, who served as a Justice on the Constitutional Court of South Africa and as Chief Prosecutor at the UN International Criminal Tribunals for Yugoslavia and Rwanda, is Visiting Professor of Law at Harvard Law School.

Helen Hershkoff is Anne and Joel Ehrenkranz Professor of Law at New York University.

Florian F. Hoffmann is Lecturer at the London School of Economics and Political Science and Adjunct Associate Professor at the Catholic University of Rio de Janeiro.

Pratap Bhanu Mehta is President of the Center for Policy Research in New Delhi.

Chidi Anselm Odinkalu is Senior Legal Officer at the Africa Open Society Justice Initiative in Abuja.

Shylashri Shankar is a Fellow at the Center for Policy Research in New Delhi.

Bivitri Susanti has served as Executive Director of the Jakarta-based Center for Indonesian Law and Policy Studies, where she is now a Researcher.