Contents

Pre	eface			V
	Foreword			
Lis	List of Abbreviations			
	List of Cases			
			slation	xxvii
Pai Rei		ing	Economic, Social and Cultural Rights	1
1	The	Inte	ernational Legal Protection of Economic, Social and Cultural Rights	3
	I.		roduction	3
	II.	Hu	man Rights Obligations under International Law	6
		A.	Background	6
		B.	Towards Some Definition	9
		C.	Human Rights Obligations and Responsibilities	17
		D.	Globalisation and ESC Rights	18
		E.	Obligation of Conduct and Result in International Law	22
	III.	Tri	partite Typology of Obligations	23
		A.	Obligation to Respect	23
		B.	Obligation to Protect	24
		C.	Obligation to Fulfil	25
			Obligation to Recognise?	26
	IV.	The	e International Covenant on Economic, Social and Cultural Rights	26
			ICESCR—Adoption and Ratification	26
			Overview of the ICESCR	27
		C.	Treaty-Monitoring Body: CESCR and the Examination	
			of State Reports	28
		D.	A Complaints Procedure Under the ICESCR and the	
		_	Optional Protocol to the ICESCR	30
			Substantive Rights	38
			Non-Derogability of ESC Rights	39
	T 7		Extra-Territorial Application	42
	V.	Co	nclusion	47
2	Stat	e Ol	bligations under the ICESCR	49
	I.	Int	roduction	49
	II.	Art	ticle 2(1)	50
		A.	Obligation to 'Take Steps by All Appropriate Means'	52

		B. Obligation of Progressive Realisation	58
		C. Obligation to Utilise 'Maximum Available Resources'	61
		D. Minimum Core obligations	65
		E. Obligations Regarding International Assistance and	
		Co-operation Co-operation	69
		F. The Application of International Co-operation and Assistance	77
	III.	Articles 2(2) and 3: Obligation to 'guarantee' Non-Discrimination	
		and Promote Equality	84
		A. Prohibition of Discrimination	85
		B. Equality between Men and Women	88
		C. Eradication of <i>De Jure</i> and <i>De Facto</i> Discrimination	90
		D. Temporary Special Measures	93
		E. Discrimination by Non-State Actors	96
	IV.	Article 2(3): Non-Nationals in Developing Countries	97
	V.	Articles 4 and 5: Limitations on ESC Rights and Safeguards	
		Against Abuse	100
	VI.	Conclusion	102
3	Non	-State Actors and the ICESCR	105
	I.	Introduction	105
	II.	Definition of Non-State Actor	108
	III.	State Obligation to Protect against Human Rights Violations by	
		Non-State Actors	109
		A. State Obligation to Protect	109
		B. Protection against Discrimination	115
		C. Global Actors/Institutions	117
		D. Remedies against Violations by Non-State Actors	119
	IV.	Direct Human Rights Responsibilities of Non-State Actors with Responsibilities	ect
		to ESC Rights	121
		A. Responsibilities of NSAs in International Human Rights	
		Instruments	122
		B. The IMF, World Bank and Human Rights	128
		C. The WTO and Human Rights	136
		D. Corporations and Human Rights	142
	V.	Conclusion	144
			4 40
4	The	Domestic Protection of Economic, Social and Cultural Rights	149
	1.	Introduction	149
		The ICESCR on the National Plane	151
	Ш.	Examples of the Application of the ICESCR on the National Plane	156
		A. United Kingdom	156
		B. South Africa	164
		C. Uganda	173
		D. Italy	181
		E. India	185
	IV.	Towards an Effective Domestic Application of the ICESCR:	
		The Role of Independent National Human	
		Rights Institutions	190

Contents

V.	Conclusion	201
5 Stat	te Reservations to the ICESCR	203
I.	Introduction	203
II.	Permissible Reservations to the ICESCR and the Effect of an	
	Invalid Reservation	208
	A. Permissible Reservations Under the ICESCR:	
	The 'Object And Purpose' Test	208
	B. Effect of an Invalid Reservation	211
III.	Questionable Reservations Made to the ICESCR	218
	A. Kuwait's Reservations	219
	B. Pakistan Reservations	226
	C. Turkey Reservations	232
IV.	Reservation by other States: Examples from Africa and Europe	236
	A. Reservations by African States	236
	B. Reservations by European States	238
V. C	Conclusion	241
6 Wo	men's Economic, Social and Cultural Rights	245
I.	Introduction	245
II.	Background and Context	247
III.	Human Rights of Women to Equality and Non-Discrimination:	
	African Experiences	249
	A. The ACHPR and the Rights of Women in Africa	250
	B. Protocol to the African Charter on the Rights of Women	
	in Africa	252
	C. The State of Women's Rights in Africa in Practice	257
IV.	Prejudicial Cultural Practices and Customs as an Obstacle to the	
	Realisation of Women's Economic, Social and Cultural Rights	
	in Africa	258
	A. African Culture in General	258
	B. Right to Inheritance	263
	C. Right to Equality and Polygamous Marriages	268
	D. Right to Equality and Divorce	275
V.	Conclusion: the Duty to Uproot Cultural Obstacles to Enhance	
	Women's Enjoyment of ESC Rights	277
Part II		
Substan	tive Economic, Social and Cultural Rights: Selected Examples	281
7 Rig	ht to Work and Rights in Work: Articles 6 and 7	283
I.	Introduction	284
II.	Non-Discrimination and Equal Protection of Employment	285
	A. Non-nationals	288
	B. Equal Remuneration of Men and Women	294
III.	Freedom from Slavery, Forced and Compulsory Labour	297
	A. General Overview	297
	B. Protection against Exploitative Child Labour	300

xii Contents

	IV.	Conclusion	310
8	The Right to Health: Article 12		
	I.	Introduction	313
	II.	The International Protection of the Right to Health	316
		Scope and Content of the Right to Health	324
		A. The Right to Healthcare	325
	T.	B. Underlying Determinants of Health	327
	IV.	State Obligations Regarding the Right to Health	331
		A. Availability	331
		B. Accessibility	331
		C. Acceptability and Quality	334
	V	Levels of Obligations	335
	٧.	A. Obligation to Respect the Right to Health	336
			339
		B. Obligation to Protect the Right to Health	
	T/T	C. Obligation to Fulfil the Right to Health	340
		Minimum Core Obligations of the Right to Health	341
	VII.	Justiciability of the Right to Health	343
		A. General Overview	343
		B. Progressive Realisation and Resource Availability	348
		C. Immediate Obligations	348
		D. Available, Accessible, Acceptable and of Good Quality	349
		E. Reproductive Rights and Freedom from Non-consensual	
		Sterilisation	351
	VIII	. Conclusion	353
9	The	Right to Education: Articles 13 and 14	355
	I.	Introduction	356
	II.	International Protection of the Right to Education	359
	III.	Scope and Content of the Right to Education	376
		A. Scope and Content	376
		B. Levels of Education	377
	IV.	Human Rights Obligations in the Context of Education	386
		A. Making Education Available, Accessible, Acceptable and	
		Adaptable	386
		B. Levels of State Obligations: Respect, Protect and Fulfil	388
	V	Conclusion	398
	•		370
10	Con	clusion: Towards a World Court of Human Rights	401
Ap	pendi	ces	407
Ap	pendi	x A: International Covenant on Economic, Social and Cultural Rights	407
An	nendi	x B: Optional Protocol to the International Covenant on Economic,	
		nd Cultural Rights	415
		x C: States Parties to the International Covenant on Economic,	400
500	cial a	nd Cultural Rights	422

Appendix D: A List of the General Comments of the Committee on Economic, Social and Cultural Rights	427
Appendix E: Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, Maastricht, 2–6 June 1986	430
Appendix F: Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 22–26 January 1997	441
Appendix G: Montreal Principles on Women's Economic, Social and Cultural Rights	448
Appendix H: Declarations and Reservations to the ICESCR and Objections	462
Appendix I: Guidelines on Treaty-Specific Documents to be Submitted by States Parties under Articles 16 and 17 of The International Covenant on	
Economic, Social and Cultural Rights	494
Appendix J: List of Least Developed Countries	505
Selected Bibliography	507
Index	521