

Coding Manual:

A description of the methods and decisions used to build
a cross-national dataset of economic and social rights in developing country
constitutions

Courtney Jung

Professor

Department of Political Science

University of Toronto

courtney.jung@utoronto.ca

Last Modified March 8, 2011

INTRODUCTION

In order to create a comprehensive database of social and economic rights and their level of protection in world constitutions, the research team developed a Survey Instrument.

Survey Instrument

The survey instrument was based in part on a template used by researchers in the Comparative Constitutions Project (comparativeconstitutions.org) to code the constitutions of the countries of the world. This project is much more limited, in the sense that it codes only social and economic rights, in extant constitutions, in developing countries. It is somewhat more expansive, however, in that it also attempts to ascertain the constitutional status of such rights – as justiciable or aspirational.

While initial drafts of the survey instrument for each country included the actual language used in the constitution, the final edited versions usually include only the location of the relevant passage in the constitution by title, chapter and article.

Coding Manual

Metrics

| Score | Meaning | Criteria |
|--------------|---|--|
| 2 | Justiciable | <ul style="list-style-type: none">• The government can be taken to court for failing to guarantee the social and economic rights promised in the constitution.• i.e. Citizens have legal recourse to ensure the fulfillment of their constitutional rights; usually a mechanism for judicial review enshrined in the constitution |
| 1 | Directive Principles of State Policy/ Aspirational | <ul style="list-style-type: none">• Enumeration of constitutional rights intended to guide state policy and/or express ideals but they are not binding. Directs government to take social welfare into account when making policy decisions, but creates no obligation to do so.• i.e. Citizens do not have legal recourse to ensure the fulfillment of their constitutional rights• SER are not considered fundamental rights |
| 0 | Absent | <ul style="list-style-type: none">• The item is not mentioned in the constitution, either as a justiciable or aspirational right, or as a directive principle. |

Rationale

Two questions in the survey instrument ask researchers to identify the type of protection covering “social and economic rights” (SER) as a discrete category of rights:

4. **[JUST]**–Are social and economic rights included as justiciable fundamental rights?

5. [DPSP]-Are social and economic rights included as directive principles of state policy?¹

Whether rights are in fact justiciable depends on extra-constitutional factors. Nevertheless, constitutions enshrine different rights differently, often explicitly as fundamental, justiciable, aspirational, or directive. Where constitutions do not use such language explicitly, we used the following criteria to establish the textual status of particular rights.

Courtis defines justiciability as “the possibility for alleged victims of violations of ESC rights to file a complaint before an impartial body, and request adequate remedies or redress if a violation is deemed to have occurred.”² This definition approximates the working definition of justiciability used in this investigation.

Mapulanga-Houston and Jackbeth note that the key factors in determining whether rights are justiciable or not are “whether the right would be suited to determination in judicial proceedings, whether it vests an enforceable right in the individual, and whether it lends itself to sufficiently specific obligations on the part of states.”³

Researchers were concerned with each of these factors when determining whether SER were justiciable rights. Researchers looked for:

- i) **the review mechanism.** While Mapulanga-Houston and Jackbeth are careful to distinguish “justiciability” from “judicialism”, noting that the review mechanism need not be *judicial*, the review mechanisms for SER was always judicial. Constitutions that enshrine justiciable SER usually have provisions for people to make claims in court to demand the review of alleged human rights violations.
- ii) **the standing of individuals in the review process.** Many constitutions clearly state or at least imply that individuals have the power to initiate judicial review. This indicated justiciable SER. Where the standing of individuals in the review process was unclear, or did not exist, the researchers made a note and coded as “not justiciable.”
- iii) **the language and context of the relevant clauses.** Researchers tried to determine what kind of entitlements and obligations the constitution conferred on the people and the state in the realm of SER based on what section of the constitution the right was found in and how it was described. Researchers deliberated at length over the significance of such differences in language, especially with respect to obligations of the state versus rights of the people. (*See discussion of language to follow*)

¹ We use the terms “aspirational” and “directive” interchangeably. While they may not be, strictly speaking, synonymous in all cases, it has not been possible to identify reliable differences in the way they are used across jurisdictions.

² Christian Courtis, “The Right to Food as a Justiciable Right: Challenges and Strategies,” Max Planck yearbook of United Nations Law (11) 2007, 318

³ Mapulanga-Hulston, Jackbeth K. “Examining the Justiciability of Economic, Social and Cultural Rights.” The International Journal of Human Rights, 6:4 (2002), 36

These questions attempt to simplify the process of identifying whether SER, as a general category of rights, are justiciable or aspirational. However, different rights are often protected differently. Although SER are often treated in the literature as a discrete category of rights, constitutions do not always enshrine SER separately from other constitutional rights like civil and political rights. By extension, it is not possible to assume that constitutions always offer the same protection to each of the social and economic rights.

The first questions on the survey instrument account for the importance of *context* in the determination of whether SER are justiciable:

1. **[RTSC]**-In what form are "rights" included in the constitution (as a separate heading, dispersed throughout, as an appendix)?
2. **[SERW]**-Does the constitution use the words (socio-) economic rights or similar?
3. **[SERC]** - Are social and economic rights delineated in their own unique constitutional chapter? (Asked only if answered 'yes' to [SERW])

These questions are important because they identify how SER are treated in comparison to other constitutional rights. The following examples illustrate why establishing the textual context of SER is so important.

1. In Latin American constitutions, the guarantee of *amparo* (protection) is often enshrined as a means of judicially enforcing the rights enumerated in the constitution. The following example is taken from **Guatemalan** constitution which extends *amparo* to the entire constitution. The constitution explicitly declares that *anything* in the constitution is subject to judicial review. Any SER enshrined in the Guatemalan constitution are, by extension, justiciable rights. In this case, context is unimportant in determining whether SER are justiciable rights.

TITLE VI: Constitutional Guarantees and Defense of the Constitutional Order

[...]

CHAPTER II
Amparo

Article 265.
Proceeding of Amparo.

Amparo is instituted for the purpose of protecting persons against the threats of violations of their rights or to restore the rule of same should the violation have occurred. There is no area which is not subject to amparo, and it will always proceed whenever the acts, resolutions, provisions, or laws of authority should imply a threat, restraint, or violation of the rights which the Constitution and the laws guarantee.

For Guatemala, all SER were coded as "2."

2. Another example where the status of SER is clear is the **Chilean** constitution. Here, only a limited number of clearly identified rights are justiciable, That is, the constitution only permits citizens to use the judiciary to demand a specific set of rights. In this case, the constitution puts the protection of SER into context without ambiguity:

CHAPTER III

Constitutional Rights and Obligations

[...]

Article 20.- He who should, due to arbitrary or illegal actions or omissions, suffer privation, disturbance or threat in the legitimate exercise of the rights and guarantees established in Article 19, numbers 1, 2, 3 (paragraph 4), 4, 5, 6, 9 (final paragraph), 11, 12, 13, 15, 16 relative to freedom to work and the right of freedom of choice and freedom of contract, and to what is established in the fourth paragraph and numbers 19, 21, 22, 23, 24 and 25, may on his own, or through a third party, resort to the respective Court of Appeals, which shall immediately take the steps that it should deem necessary to re-establish the rule of law and ensure due protection to the person affected, without prejudice to the other rights which he might assert before the authorities or the corresponding courts. The appeal for protection in the case of No 8 of Article 19, shall also be applied when the right to live in a contamination-free atmosphere has been affected by an arbitrary or unlawful action imputable to an authority or a specific person.

For Chile, only SER enshrined in the Articles listed in the text of Article 20 were coded as “2.” The rest were coded as “1” (aspirational).

3. The **Indian** constitution is perhaps the best-known example of a constitution that explicitly defines most social and economic rights as directive principles of state policy (DPSP). The constitution clearly distinguishes between justiciable rights and DPSP with two separate sections of the constitution. *Part III: Fundamental Rights* is subject to judicial review, while *Part IV: Directive Principles of State Policy* is not. Many other countries have adopted this same model.

PART III FUNDAMENTAL RIGHTS

Right to Constitutional Remedies

32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

[...]

PART IV: DIRECTIVE PRINCIPLES OF STATE POLICY

37. Application of the principles contained in this Part

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

For India, SER found in *Part III: Fundamental Rights* were coded “2.” SER found in *Part IV: Directive Principles of State Policy* were coded “1” (directive).

4. The **Slovenian** constitution is an example of one where the textual context of SER seems to be important. Article 15 of the constitution enshrines “judicial protection of human rights and fundamental freedoms.” The constitution contains a chapter entitled “Human Rights and Fundamental Freedoms” that includes many SER, implying that these rights are covered under Article 15. However, a number of SER are enshrined in a separate chapter entitled “Economic and Social Relations,” implying that this section has a legal status distinct from that of “Human Rights and Fundamental Freedoms.”

II. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

[...]

Article 15 (The Realization and Limitation of Rights)

Human rights and fundamental freedoms are exercised directly on the basis of the Constitution.

The manner in which human rights and fundamental freedoms are exercised may be regulated by law whenever the Constitution so provides or if this is necessary because of the particular nature of individual rights or freedoms.

Human rights and fundamental freedoms are limited only by the rights of others and in such cases as are provided by this Constitution.

Judicial protection of human rights and fundamental freedoms, and the right to obtain redress for such rights and freedoms, are guaranteed.

No human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognize that right or freedom or recognizes it to a lesser extent.

For Slovenia, SER found in Part II: Human Rights and Fundamental Freedoms were coded “2.” SER found in Part III: Economic and Social Relations were coded as “1.”

Key Differences in Language

Constitutions have clauses that discuss SER without using the word “right”, but by outlining functions, duties, obligations and/or guarantees of the state (and there are surely more variants). Although the latter phrasing might seem to exclude SER from the jurisdiction of judiciary by placing it into the realm of the “state”, and may seem to exclude SER from protection clauses that emphasize the protection of “rights”, **language alone does not stand in for a principle of either justiciability or non-justiciability.**

It is difficult to identify why constitution drafters might phrase different SERs in different ways even if they are to be interpreted in a functionally similar way. Such differences in language may be a product of the scholarly debate over the merits of a vague constitution versus a more specific one.

This is particularly likely when dealing with SER, whose constitutional incorporation is often controversial. Many experts discourage treating SER as functionally equivalent to civil and political rights. This opposition is both practical (how to fund judicially-mandated SER remedies?) and philosophical (what is the appropriate limit of judicial power?). By enshrining a right in terms of “the state will provide” rather than “all people have the right to education” drafters may have intended to leave no doubt that it is the state, and not some other entity, that bears the obligation. This sort of speculation is nevertheless impossible to generalize across

jurisdictions, let alone across rights in a single constitution, even if it offers clues as to why constitutions would enshrine SER in such a variety of ways.⁴

5. In many cases these differences in language correspond with contextual cues that indicate the legal status of SER. In **India's** constitution, SER enshrined under *Part IV: Directive Principles of State Policy* tend to be phrased in a way that suggests that these rights are the primarily the concern of legislators, not judges (which they are). The language under *Part III: Fundamental Rights* are phrased primarily in terms of "rights." Examples of SER from the Indian constitution are illustrative:

PART III
FUNDAMENTAL RIGHTS
19. Protection of certain rights regarding freedom of speech, etc.
(1) All citizens shall have the **right**—
[...]
(c) to form associations or unions;

Part IV.—Directive Principles of State Policy.—

43. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and **full enjoyment of leisure** and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

[...]

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

The right to education is expressed in language more commonly used for directive principles of state policy (as it was before 2002). The clause implies a primary role for legislators, and not the court, in ensuring access to education. Nevertheless, education is located in the Fundamental Rights section of the constitution, in Article 21, *Part III*.

Part III.—Fundamental Rights

21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

For India, the right to education (and the right to form unions) were coded as “2”, while the right to health and the right to adequate working conditions were coded as “1” (directive).

6. **Guatemala** was the same. Many SER were phrased without reference to “rights”, and Article 265 guarantees the protection of human “rights.” It was arguably ambiguous

⁴ For a helpful introduction to this debate, see Mapulanga-Hulston, Jackbeth K. "Examining the Justiciability of Economic, Social and Cultural Rights." *The International Journal of Human Rights*, 6:4 (2002), 29-48. For a useful examination of the financial implications of enshrining SER in constitutions, see Robertson, Robert E. "Measuring State Compliance with the Obligation to Devote the 'Maximum Available Resources; to Realizing Economic, Social and Cultural Rights." *Human Rights Quarterly*, 16:4 (1994), 693-714

whether, because some SER were not *textually* described as human “rights”, these SER should be considered justiciable:

Article 68. Lands for Indigenous Communities.

Through special programs and adequate legislation, the State will provide State lands to the indigenous communities that may need them for their development.

[...]

Article 99. Feeding and Nutrition.

The State will see to it that the food and nutrition of the population meet the minimum health requirements. The specialized institutions of the State will have to coordinate their actions among themselves or with international organizations dedicated to public health to achieve an effective national food delivery system.

For Guatemala, the right to access land and the right to food were coded as “2.”

Short Variable Descriptors

In the dataset, rights are abbreviated with short variable descriptors (eg. [DISC]). A score of 0, 1 or 2 was coded in the case of each of these rights, based on the level of protection the constitution accords each right. The criteria that researchers based their coding upon are outlined in the table above and in the explanation of this investigation’s treatment of the distinction between justiciable/fundamental and directive/aspirational rights.

6. Equality and non-discrimination

[DISC]- Does the constitution mention a right to equality or freedom from discrimination?

The right to equality is concerned with citizens’ equality under the law and also in any area that is managed by the public authority (Jayawickrama 818). It is not a social and economic right. Nevertheless, it is often used to advance social and economic claims, for example by arguing that the state does not allocate benefits equally but discriminates by gender, age, ethnicity, region, etc. Therefore it is an important right to consider for this project.

A constitution may state that all citizens are equal before the law and/or are entitled to the equal protection of the law without discrimination, but this right must also be justiciable for it to be coded “2”. If the constitution expressed a commitment to citizens’ equality and non-discrimination but did not have a judicial review mechanism to supplement this right, then the right to equality was coded a “1”. No mention of a right to equality, or an insufficient commitment, was coded “0”. Most states’ constitutions articulate a fundamental right to equality under the law and equal protection by the law. Even states whose citizens do not have legal recourse to ensure the fulfillment of their constitutional rights often make a presentation of the right to equality in the constitution.

India’s constitution provides an example of a very strong commitment to the right to equality. The right to equality is considered a fundamental right and as India explicitly differentiates between fundamental rights and directive principles for state policy, the right to equality is a justiciable right. For DISC, India is coded a “2”.

PART III
FUNDAMENTAL RIGHTS

(...)

Right to Equality

14. Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

Qatar is an example of a state whose constitution expresses a commitment to equality, but citizens do not have legal recourse to ensure the fulfillment of their constitutional rights. For DISC, Qatar is coded a “1”.

CHAPTER III
PUBLIC RIGHTS AND DUTIES

Article 34

Citizens are equal in public rights and duties.

Article 35

People are equal before the law. There shall be no discrimination against them because of sex, race, language, or religion.

FREE MARKET

The following three provisions, the right to private property, a commitment to a free market, and the government’s right to expropriate property, are not SER. They reflect a commitment to a free market. They are included in the database because one interest of the researchers was to ascertain the extent to which constitutions were attempting to guarantee both a free market and state responsibility for the well-being of citizens.

7. Property rights

[PROP]-Does the constitution provide for a right to own property?

In constitutions, the right to own property is enshrined in both/either a negative and a positive sense. Generally, these rights were fundamental justiciable rights. Property rights are often related to expropriation rights (see below), and applied equally to corporations as well as individuals. There is often some form of limitation on the right to own property.

8. Free Market or similar

[FMKT] Does the constitution refer explicitly to a free/competitive market, or use similar language?

Quite often, constitutions enshrine the *right* of citizens to engage in any economic practice. This may be phrased in terms of private enterprise, freedom of trade and industry, a ban on monopolistic practices, free competition, etc. If located, this right was coded as present and assigned a “1” or “2” based on the type of judicial protection enshrined in the constitution.

The free market is sometimes located separately from “rights” in constitutions and phrased in such a way that distinguishes it from rights. Constitutions that referred to the economy in this context were coded “1”.

9. Expropriation

[EXPR]-Can the government expropriate private property under at least some conditions?

The government’s ability to expropriate private property is an important limit to property ownership rights. It may allow the government to conduct certain policies requiring access to private property. In the survey instrument, expropriation was further determined using two additional questions:

10. Under what conditions or for what purposes can the state expropriate private property?

11. What limits/conditions are placed on the ability of the government to expropriate private property?

EXPR is usually phrased in terms of procedures to be carried out by the state in certain circumstances. **Because [EXPR] was clearly distinct from other categories in that expropriation is not a human right, the coding means something different. [EXPR] was coded on a “0” – not present, “1” – present scale.**

Although these questions provide important insights into when, why and how governments could legally expropriate private property, in compiling the CCD Question 9 was the only one that was considered. The information collected in response to the remaining questions will be kept for future reference.

ECONOMIC RIGHTS

Rights 12-18 are grouped together and generally considered specifically “economic” rights – related to employment. These are rights that generally apply to workers alone.

12. Fair wage

[FRWG]-Does the constitution provide the right to just remuneration, fair or equal payment for work?

Constitutions contained various phrasings to this effect. The key was that the constitution clearly referred to the notion that people have the right to payment that is just or fair based on the services rendered. “Just remuneration”, “fair pay”, or anything that tied pay to the amount and quality of services rendered indicated the protection of FRWG. **Minimum wage or “satisfactory pay” clauses alone did not – just remuneration may imply that there is a minimum wage, but a minimum wage does not necessarily imply that just remuneration has been tendered. Clauses referring to “equal pay for equal work” were taken to be more closely fitted with non-discrimination rights, and as such were not included under FRWG but instead under DISC.**

Bhutan’s constitution makes a clear distinction between the right to equal pay and the right to fair and reasonable remuneration. The former is a justiciable fundamental right, and the latter is a directive principle of state policy. The language reflects the difference between the two concepts and the level of constitutional protection they are each accorded. Bhutan was coded “1” for FRWG:

Article 7.11 (Fundamental Rights)

11. A Bhutanese citizen shall have the right to equal pay for work of equal value.

Article 9.14 (Principles of State Policy)

14. The State shall endeavour to ensure the right to fair and reasonable remuneration for one’s work.

13. Join Trade Union/Workers’ Union

[TRDU]-Does the constitution provide for the right to form or to join trade unions?

The right to join a trade union or workers’ union indicates that workers have the right to organize collectively to bargain with management for their rights as workers. TRDU is a right that is related to, but distinct from, the right to freely associate. The right to form or join trade unions must be explicitly stated in the constitution, and not simply implied by the freedom of association.

A “2” was assigned to constitutions that explicitly recognized the right to join trade unions, coupled with strong judicial protection of constitutional rights. A “1” was coded where TRDU was not justiciable. A “0” was assigned to constitutions that made no mention of trade unions. Where states were able to limit the freedom of trade union association, or where certain groups (e.g. public workers) were excluded from the right to form or join trade unions, the right was still coded according to the scale described above.

14. Strike

[STRK]-Does the constitution provide for a right to strike?

The right to strike, when present, was sometimes coupled with limitations, as with TRDU. “2” indicates a justiciable/ fundamental right to strike, “1” represents a directive principle/ aspirational right in the absence of justiciability, and “0” indicates the absence of STRK. In

cases with broad limits, a note was made, but the right was still coded based on the dichotomous criteria indicated here.

15. Rest and Leisure

[LEIS]-Does the constitution provide for a right of rest and leisure?

The right to rest and leisure can be enshrined in various ways and to various extents. Essentially, researchers looked for clauses that protect people from being over-worked, and/or clauses that entitle workers to some sort of reprieve from work. LEIS might include the right to vacations, the guarantee of weekly holidays, and leaves with pay. Clauses may also mention working hours, bonuses and overtime pay. “2” indicates a constitution that explicitly recognizes the right to any of these items, supported by judicial review mechanism(s). “1” refers to an aspirational or directive principle to this end, and “0” means that [LEIS] was not present in the constitution.

16. Standard of Living

[STANDLIV]-Does the constitution provide for a right to an adequate or reasonable standard of living?

Synonyms included “adequate well-being,” “suitable existence,” or “life worthy of a human being.” The mention of a right to a basic standard of living or a certain quality of life counted, but the mere enumeration of various SER should not be understood as adding up to a right to an adequate or reasonable standard of living. A “2” was coded where the constitution explicitly identifies the right to such a standard of living, backed by judicial review. If the only mention is of a duty/goal/objective of the state to raise the standard of living, a “1” was coded. Minimum wage provisions were coded as “0”, because they were felt to fit more appropriately with FRWG, **unless they were specifically guaranteed to provide a certain “dignified”, “suitable”, “basic”, “normal” etc. standard of living.** If the right is granted only to certain subgroup (e.g. workers), coding was conducted as outlined above, but a note was made.

Provisions related to standard of living were ultimately excluded from the dataset because the term “standard of living” seemed too much of a catch-all phrase -- **similar (yet distinct) clauses are abundantly common in constitutions.**

Ecuador’s constitution enshrines the right to a certain quality of life inclusive of standards of social and economic well-being, backed by *amparo* review. Ecuador was coded “2” for SLIV:

Chapter 2: Of Civil Rights

Article 23.

Without prejudice to other rights established in this Constitution and in international instruments in force, the State recognizes and guarantees the following to persons:

[...]

20. The right to a quality of life that assures health, food and nutrition, potable water, environmental conditions[,] education, work, employment, recreation, housing, clothing and other necessary social services.

Japan's constitution seems to indicate the right to a minimum standard of living, backed by Article 17, which gives citizens the right to seek compensation for alleged rights violations.⁵ It was coded as a "2":

Chapter III: Rights and Duties of the People

Article 25

All people have the right to maintain the minimum standards of a wholesome and cultured living.

In all spheres of life, the State shall endeavor for the promotion and extension of social welfare and security, and of public health.

Colombia's constitution identifies a social purpose of the state as raising the standard of living. As indicated above, this means Colombia was coded with a "1" for SLIV:

TITLE XII: CONCERNING THE ECONOMIC AND FINANCIAL REGIME

CHAPTER 5: CONCERNING THE SOCIAL PURPOSE OF THE STATE AND OF THE PUBLIC SERVICES
[...]

Article 366. The general welfare and improvement of the population quality of life are social purposes of the state. A basic objective of the state's activity will be to address unsatisfied public health, educational, environmental, and potable water needs.

The **Peruvian** constitution enshrines the right to adequate compensation, such that workers and their families achieve "material and spiritual well-being". Peru was coded "2" for SLIV:

TITLE I: PERSON AND SOCIETY
CHAPTER II: SOCIAL AND ECONOMIC RIGHTS

Article 24

The worker is entitled to an adequate and fair compensation **ensuring himself and his family material and spiritual well-being.**

Payment of wages and social benefits of the worker takes priority over any other obligation of the employer.

Minimum wages are regulated by the State with participation of representative organizations of workers and employers.

17. Safe and healthy work environment

[HWRK]-Does the constitution provide a right to a safe or healthy work environment?

A constitution that enshrined a right to a safe or healthy work environment, or a right to safe conditions for work, was coded "2" if the right was justiciable. If the right was expressed, or an aspiration to fulfill this goal was articulated in a constitution, but there was no legal recourse for citizens to ensure its fulfillment, the right was coded "1". No mention of a right to or guarantee of a safe and healthy work environment was coded "0".

⁵ However, the inclusion of the word "maintain" makes this case somewhat ambiguous, as it seems to indicate a negative rather than a positive right.

Serbia's constitution includes a right to a safe and healthy work environment that is a justiciable right. Accordingly, it is coded "2".

PART TWO
HUMAN AND MINORITY RIGHTS AND FREEDOMS

(...)

2. Human Rights and Freedoms

(...)

Article 60
Right to work

Right to work shall be guaranteed in accordance with the law.

Everyone shall have the right to choose his occupation freely.

All work places shall be available to everyone under equal conditions.

Everyone shall have the right to respect of his person at work, safe and healthy working conditions, necessary protection at work, limited working hours, daily and weekly interval for rest, paid annual holiday, fair remuneration for work done and legal protection in case of termination of working relations. No person may forgo these rights.

Women, young and disabled persons shall be provided with special protection at work and special work conditions in accordance with the law.

Bulgaria's constitution includes a right to safe and healthy work conditions under the fundamental rights section, but there is no mechanism through which a citizen can ensure their fundamental rights are fulfilled by submitting a case for judicial review. The only recourse available is a citizen's right to an appearance with his or her legal counsel before a state institution (Chapter 2, Article 56). The right is not justiciable, therefore it is coded "1" (directive).

Chapter Two
FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

[...]

Article 48

(...)

(5) **Workers and employees have the right to healthy and safe working conditions,** minimum wage, and remuneration corresponding to the performed work, as well as to rest and leave, under conditions and according to a procedure determined by law.

18. Social security related to employment

[SSEM]-Does the constitution provide a right to social security related to employment? (retirement benefits, sick or maternity leave, unemployment insurance, severance pay, etc.)

In constitutions where a “right to social security” was not explicitly stated, but a right to assistance in the case of illness, unemployment, maternity leave, etc. was mentioned, it was understood as providing a right to social security. The level of protection by social security related to employment is not considered by this question. If a constitution included a right to social security related to employment as a justiciable right, it was coded a “2”. If a constitution mentioned the right to social security related to employment as a directive principle of state policy, or a goal towards which the public authority would endeavour, it was coded a “1”. No mention of social security related to employment was coded “0”.

Ecuador provides an example of a constitution with a very strong commitment to the right to social security related to employment. According to the constitution, a person whose constitutional right to social security is unfulfilled may propose an *amparo* case before the organ of the Judicial Function designated by law. For this reason, Ecuador’s constitution is coded a “2” For SSEM.

TITLE III
Of Rights, Guarantees and Duties

(...)

Chapter 4
Of Economic, Social and Cultural Rights

(...)

Fifth Section
Of Vulnerable Groups

(...)

Article 55.

Social security is a duty of the State and a right of all of its inhabitants that cannot be renounced. It shall be provided with the participation of the public and private sectors, in conformity with the law.

Article 56.

The national system of social security is established. Social security is governed by the principles of solidarity, obligatory participation, universality, equity, efficiency, subsidies [subsidiaridad] and sufficiency, to address individual and collective needs in the promotion of the common good.

Article 57.

Obligatory social security covers the contingencies of sickness, maternity, work risks, dismissal, old age, invalidity, disability and death.

The protections of the obligatory general social security shall be progressively extended to the entire rural and urban population, in relation to employment [dependencia laboral] or without that relation, in conformity to that permitted by the general conditions of the system.

Obligatory social security is a right that cannot be renounced and is imprescriptible for workers and their families.

In **Nigeria’s** constitution, social security is not expressed as a justiciable right of citizens, but as a directive principle of state policy. Although this directive principle does not explicitly mention “social

security,” pensions and unemployment assistance are considered to be “social security” related to employment. Therefore, for SSEM, Nigeria’s constitution is coded a “1”.

CHAPTER II
**FUNDAMENTAL OBJECTIVES AND DIRECTIVE
PRINCIPLES OF STATE POLICY**

[...]

16. Economic objectives.

[...]

(2) The State shall direct its policy towards ensuring—

(a) the promotion of a planned and balanced economic development;

(b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;

(c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and

(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

SOCIAL RIGHTS

Rights 19 – 34 are social rights. They are not related to employment and should be expected to be vested in all citizens, regardless of work status.

19. Social security not related to employment

[SSEC]-Does the constitution provide a right to social security not related to employment? (old-age pension, disability, welfare)

Similar to social security related to employment, if a right to non-employment related assistance was expressed in the constitution – for example, assistance for old-age, welfare, long-term disability – but a “right to social security” was not explicitly articulated, this was coded by the researchers as a right to social security. If the right was justiciable it was coded “2,” directive/aspirational was coded “1”, and no mention of any social security/welfare or assistance was coded “0”.

The constitution of **Venezuela** enshrines a right to social security not related to employment (as well as for employment related circumstances). This right is justiciable, so Venezuela is coded “2” for SSEC.

TITLE I
FUNDAMENTAL PRINCIPLES

(...)

Chapter V
Of the Social Rights and of the Families

(...)

Article 80.

The State will guarantee to elderly men and women the full exercise of their rights and guarantees. The State, with the joint participation of families and society, will be obligated to respect their human dignity, their autonomy and will guarantee to them integral attention and the benefits of social security that elevate and ensure their quality of life. The pensions and retirement payments granted by means of the system of social security cannot be inferior to the minimum urban salary. The right to an appropriate [acorde] job for those who express their desire and who [have] capacity for it, will be guaranteed to elderly men and women.

(...)

Article 86.

Every person has a right to social security as a public service of non-lucrative character, which guarantees health and ensures protection for contingencies of maternity, paternity, illness, invalidity, catastrophic illnesses, disability, special needs, labor risks, loss of employment, old age, widowhood, orphanhood, dwelling, responsibilities [cargas] deriving from family life and any other circumstance of social specification [previsión]. The State has the obligation to ensure the effectiveness of this right by creating a universal, integral, unitary, efficient and participatory system of social security with joint financing and direct and indirect contributions. The absence of contributory capacity will not be [a] reason to exclude people from its protection. The financial resources of social security cannot be allocated to other purposes. The obligatory taxations that workers make to cover medical and assistance services and the other benefits of social security will be administered only with social purposes under the rectorship of the State. The net residuals [remanentes] of capital allocated for health, education and social security will be accumulated with the purposes of their distribution and contribution to those services. The system of social security will be regulated by a special organic law.

Myanmar's constitution expresses a commitment to providing social assistance in non-employment related life circumstances. It is only a directive principle of state policy though, and is therefore coded a "1".

CHAPTER I
BASIC PRINCIPLES OF THE REPUBLIC OF THE UNION OF MYANMAR

(...)

Basic Principles

(...)

32. The Union shall:

(a) **care for mothers and children, orphans, fallen Defense Services personnel's children, the aged and the disabled;**

(b) ensure disabled ex-Defense Services personnel a decent living and free vocational training.

20. Financial support to vulnerable groups

This question does not refer to any rights; it asks if the constitution provides for some kind of support to four “vulnerable” groups. As with the social security questions, the survey instrument is not concerned with the level or form of support provided to these groups:

Does the constitution provide for either general or financial support by the government for any of the following groups?

- Elderly-[FSUP_1]
- Unemployed-[FSUP_2]
- Disabled-[FSUP_3]
- Children, orphans-[FSUP_4]

To make a distinction between justiciable and directive guarantees, coders took into account whether or not this support was articulated as a right. A constitution that guaranteed financial or general support as a justiciable right of the vulnerable group in question was coded “2”, whereas a constitution that guaranteed support to the particular group as a directive or aspirational policy of the state, without legal recourse available to the citizen to ensure its fulfillment, was coded “1”. No mention of financial support for the particular vulnerable group was coded “0”. A constitution that entitled members of a vulnerable group to State protection was coded “2” if this guarantee was justiciable and “1” if the guarantee was a directive principle.

21. Rights of children

[CPRO] - Does the constitution guarantee the rights of children?

The object of this question was to identify a commitment to the social and economic rights of children. The specific social and economic rights that were guaranteed to children by a constitution were not important to this question. A constitution that articulated a justiciable commitment to the rights of children was coded “2”. If the rights of children were expressed but not made justiciable, the constitution was coded “1” for CPRO. Constitutions that explicitly mention the Convention on the Rights of the Child were coded “2” if these rights were justiciable, and “1” if they were directive/aspirational. Many constitutions expressed a commitment by the state to “protect children”, or offered “special protection” to minors. These kinds of statements were understood by the researchers as referring to children’s rights to social assistance and were coded “2” if the clause was justiciable and “1” if it was non-justiciable. Accordingly, no mention of children’s rights was coded “0”. A constitution that protected only the civil and political rights of children was coded “0.”

Constitutions that did not guarantee social and economic rights for children, but did mention that all children had equal rights regardless of their filiation were coded “0”. Nevertheless, this clause was noted in the documentation if it appeared as the only mention of children’s rights in the constitution.

El Salvador’s constitution makes a clear commitment to the social and economic rights of children, expressing a commitment from the state to guarantee children’s rights to education and assistance. In El Salvador’s constitution, *amparo* is available to citizens for the protection of constitutional rights and guarantees, making children’s rights justiciable. Consequently, El Salvador is coded “2” for CPRO.

CHAPTER II
SOCIAL RIGHTS

FIRST SECTION
THE FAMILY

(...)

Article 34

Every child has the right to live in familial and environmental conditions that permit his integral development, for which he shall have the protection of the State.

The law shall determine the duties of the State and shall create institutions for the protection of maternity and infancy.

Article 35

The State shall protect the physical, mental and moral health of minors, and shall guarantee their right to education and assistance.

Antisocial conduct of minors that constitutes a crime or misdemeanor shall be subject to a special juridical regime.

Article 36

Children born in or out of wedlock and adopted children, shall have equal rights before their parents. It is the obligation of these to give their children protection, assistance, education and security.

The records of the Civil Register shall not indicate any sign (calificación) of the nature of filiation, nor shall birth certificates express the civil status of the parents.

Every person has the right to have a name that identifies him. The secondary law will regulate this matter.

The law shall also determine the forms of investigating and establishing paternity.

Argentina's constitution explicitly obligates congress, and not the judiciary, to provide social security protection for children. This is not a guarantee or entitlement to social security, nor a directive principle of state policy. Argentina is therefore coded "0" for CPRO, even though it refers to the rights of children (among others).

CHAPTER IV

Powers of Congress

Section 75.- Congress is empowered:

(...)

23.- To legislate and promote positive measures guaranteeing true equal opportunities and treatment, the full benefit and exercise of the rights recognized by this Constitution and by the international treaties on human rights in force, particularly referring to children, women, the aged, and disabled persons.

To issue a special and integral social security system to protect children from abandonment, since pregnancy up to the end of elementary education, and to protect the mother during pregnancy and the period of lactation.

Costa Rica's constitution does not mention the rights of children, but does articulate that children are entitled to State protection. Costa Rica's constitution also has the *amparo* mechanism available to its citizenry, and consequently this clause entitling children to State protection is justiciable and coded "2".

TITLE V

SOCIAL RIGHTS AND GUARANTEES

Sole Chapter

(...)

ARTICLE 51. The family, as a natural element and foundation of society, is entitled to State protection.
Mothers, children, the elderly and the destitute infirm are also entitled to such protection.

(...)

ARTICLE 55. The special protection of mothers and minors shall be entrusted to an autonomous institution named Patronato Nacional de la Infancia (National Infancy Foundation), with the collaboration of other State institutions

(...)

ARTICLE 71. The laws shall provide special protection to women and minors in their work.

22. Particular children's rights

This question is a continuation from CPRO, now inquiring about the existence of particular children's rights. Does the constitution protect children's rights to:

shelter [CPRO_1]
basic nutrition [CPRO_2]
social services [CPRO_3]
healthcare services [CPRO_4]
family [CPRO_5]

This question was fairly specific in its objective. To be coded "2" a constitution had to explicitly express children's entitlement to, or a guarantee to provide to children, a specific social or economic right. This guarantee or right had to be justiciable. Non-justiciable clauses that guaranteed these rights were coded "1".

A constitution may express a constitutional right of citizens to healthcare and not specifically state that children are also entitled to this right. In this case, children's right to healthcare can definitely be inferred, but the constitution would still be coded "0" for CPRO_4 because the right of children to healthcare was not explicitly articulated. This determination was made to avoid repetition of other questions in the survey instrument and also to emphasize the objective of this question.

If a constitution did not explicitly mention these particular children's rights, but did mention the Convention on the Rights of the Child, the researchers coded CPRO_X "0" and made a note that these rights could be inferred because they are located in said Convention.

23. Health

[HEALTH]-Does the constitution mention the right to health care?

The right to health care, health, health protection, and medical services were considered synonyms. A “2” was coded for constitutions that explicitly identified a right to healthcare (or similar) and backed that right with judicial review mechanisms. This includes cases where the constitution identifies the provision of healthcare as a duty of the state, where the constitution outlines procedures for the state to care for the health of the population, or to undertake policies aimed at providing healthcare. A “1” where the right to health (or similar) is not backed by judicial review.

As with education, the right to equal access to healthcare was coded as “0.”

24. Healthcare free of charge

[HLFR]-Does the constitution specify that healthcare should be provided by government free of charge?

This was treated as a yes or no question. Although a few constitutions specified such an obligation, the vast majority did not. Because of its rarity, we ultimately dropped this question from the database, but it remains in the survey instrument because the information had already been collected.

25. Emergency medical treatment

[EMER] Does the constitution prohibit the refusal of emergency medical treatment?

Few constitutions specified such an obligation. Where the right was justiciable – if explicit mention was made of the right of a citizen to seek legal redress in the event emergency medical treatment was refused – the right was coded as a “2.” Otherwise it was coded as a “1.” Because of its infrequency, we ultimately dropped this question from the database, but it remains in the survey instruments because the information had already been collected.

26. Citizen’s access to land

[LAND]-Does the constitution require the state to enable citizens to gain access to land?

Sometimes, particular groups (e.g. farmers, indigenous people) were guaranteed access to land, but in most of the cases where land was mentioned, the constitution made provisions for land reform programs designed to increase access to land. A “2” was coded where the constitution explicitly enshrined such provisions, and backed them with judicial protection. Such cases not backed by judicial review were coded “1”. Cases where land was not mentioned were coded as “0”.

In cases where the “right to own land” was enshrined without being supplemented by language directing the state to increase access to land for its citizens, researchers coded “0” because such language would be covered under property rights **[PROP]**. **[LAND]** was understood in such a way that access to land requires some positive protection or action on the part of the state.

27. Housing

[HOUS]-Does the constitution provide a right to access to adequate housing and/or prohibit arbitrary evictions?

A right to housing, more simply stated than a right to “adequate housing,” was taken as an equivalent. This includes cases where the constitution outlines procedures for the state to provide adequate housing, or to undertake policies aimed at providing adequate housing. In cases where the constitution explicitly outlines a right to adequate housing (or similar) and backs it with a judicial review process, researchers coded a “2.” Where any of the above is enumerated without judicial review, researchers coded “1.” In cases where the constitution only provides the right to a subset of the population (e.g. women, workers) the right is still coded as outlined above, but a note will be made on the restriction.

28. Food and Water

[FOWA]-Does the constitution guarantee access to food and/or water?

Constitutions that enshrined the right to food **and/or** water were counted. Constitutions that identified as the duty of the state the provision or increase of access to food and/or water were also counted. An acceptable synonym for food was “nutrition”. Coding was based on the same dimensions as other rights. An explicit right to food and water backed by judicial review was coded a “2”. A right to food and water not backed by judicial review was coded “1”.

29. Education

[EDUC]-Does the constitution guarantee a right to education?

A right to education is often clearly and explicitly recognized. In some constitutions, however, the right to education is not enshrined explicitly and unequivocally. The right to equal access to education was seen as distinct from the right to education. This is a clear difference in language that has different implications and when present alone was coded as “0”. The right to equal access was considered as being closer to non-discrimination. References to “freedom of education” (which implies negative protection) were not considered the same as the “right to education” (which more plausibly implies positive protection).

Constitutions that explicitly mention a right to education and/or mention that the state will provide education (sometimes free and/or compulsory education) were coded “2.” The enshrinement of a right to education, without the backing of judicial protection mechanisms was coded “1” (aspirational.)

30. Detainee Rights

[DETN]-Does the constitution mention the rights of detained persons?

Researchers did not look for the protection of the civil and political rights of detained persons, only noting where constitutions identified detainees’ access to specific social and economic rights. If there is any expression of justiciable social and economic rights of detained persons in a constitution, it was coded “2” for DETN. If the social and economic rights of detained persons are expressed as

directive/aspirational principles of state policy, the constitution was coded “1” for DETN. No mention of social and economic detainee rights was coded “0”.

31. Particular Detainee Rights

This question asks whether detained persons are entitled to particular social and economic rights. Does the constitution provide detained persons with the right to:

- adequate nutrition, [DETN_1]
- adequate accommodation, [DETN_2]
- medical care, [DETN_3]
- reading material. [DETN_4]

A constitutional clause that articulated a particular social or economic right of detained persons was coded “2” for DETN_X if the right was justiciable. If the social and economic right of detained persons was expressed as directive/aspirational, the constitution was coded “1” for DETN_X. No mention of this social and economic detainee rights was coded “0”.

32. Development

[DEVT]- Does the constitution provide a right to development?

Taking the definition of ‘development’ from the United Nation’s 1986 Declaration on the Right to Development, the right to development is fulfilled when an individual possesses both their “first generation” political and civil rights, as well as their “second generation” social and economic rights (Davis 175). Peter Uvin reports that “According to most legal scholars, the declaration was bad law: vague, internally contradictory, duplicating other already codified rights, and devoid of identifiable parties bearing clear obligations” (598). Because of this vagueness of definition, researchers considered only an explicitly articulated “right to development” as representing this right. Only a constitution that enshrined a justiciable “right to development” was coded “2” for DEVT, and a constitution with a directive policy that aspired to guarantee the “right to development” would be coded “1”. No mention of the “right to development” warranted “0”.

Peru’s constitution enshrines a justiciable right to development. This constitution is coded “2” for DEVT.

TITLE I
PERSON AND SOCIETY

CHAPTER I
FUNDAMENTAL RIGHTS OF THE PERSON

(...)

Article 2

Every person has the right:

1. to life, his identity, his moral, psychic and physical integrity and **his free development** and well-being. The unborn child is a rights-bearing subject, in any event which is beneficial for him;

33. Healthy Environment

[HENV]-Does the constitution specify a right to a safe or healthy environment?

HENV often included references to freedom from contamination, hygiene, and suitability for human life. It was treated as distinct from the right to a healthy work environment [HWRK]. A score of “2” indicates a justiciable right to a safe or healthy environment, while a score of “1” identifies an aspiration or goal of the state. A score of “0” indicates the environment is not mentioned or recognized within the constitution.

34. State responsibility to protect the environment

[ENVP]-Does the constitution require that the state protect the environment?

There was often overlap between the right to a safe or healthy environment and the state’s duty to protect the environment (see ENVP). An important distinction between HENV and ENVP is that HENV includes, more broadly, items like “the living environment” for example, whereas ENVP is related more specifically to the natural environment. The right to a safe and healthy environment might imply that the state has a duty to protect the environment, just as a requirement of the state to protect the environment might imply direction to the state to see that the right to a healthy environment is fulfilled.

Under analysis, the distinction between HENV and ENVP was nevertheless often easy to recognize. HENV might imply ENVP and vice versa, but the constitutions that had enshrined the strongest safeguards for the environment tended to include both HENV and ENVP as outlined here.

[ENVP] is coded 1 or 2 depending on the context of the relevant language. When the state was charged with protecting the environment, or the protection of the environment was a duty of the state, researchers coded “2” or “1” depending on whether the relevant language was protected by judicial review. A “0” was coded where the constitution did not enumerate environmental protection as a duty of the state.

INTERNATIONAL TREATIES

International instruments to which a state is a signatory, like the Universal Declaration of Human Rights or the International Covenant on Economic, Social, and Cultural Rights, are another way social and economic rights can be established in domestic jurisdictions. The survey instrument enquired about international instruments, such as treaties and covenants, as named in the constitution, and how such treaties, whether named or not, are incorporated into constitutional law:

35. **[INTLa]** Does the constitution mention any international or regional treaties, covenants, or agreements? If so, which ones?

36. **[INTLb]** Does the constitution INCORPORATE the provisions of the treaties or instruments to which the state is a signatory?

For question 36, the goal was essentially to determine, based on the constitution, if the country had a monist legal system that incorporated international or regional treaties, covenants or agreements into national law, or a dualist system that did not.

Constitutions often mention a commitment to the UDHR. Fewer constitutions mention the ICESCR specifically, but a majority of countries have signed and ratified the Covenant. A “2” was coded where the ICESCR had full legal status (either explicitly or implicitly), and where constitutional rights were backed with judicial review. A “1” was coded for cases where the country had signed and ratified the ICESCR and adopted it into domestic law but not protected constitutional rights with judicial review. A “1” was also coded where exceptions were made regarding the status of human rights treaties. A “1” also signified cases in which countries with a monist legal system had signed, but not ratified the Covenant. A “0” was coded for countries with dualist legal systems, for countries that have not ratified and/or signed the ICESCR, and in cases where the constitution made no mention of the status of treaties. Researchers made notes in all cases coded “1” or “0”.

Paraguay’s constitution clearly incorporates international treaties into domestic law. Having signed and ratified the ICESCR, and possessing a constitution that protects human rights with *amparo* review, Paraguay was coded “2” for INTL:

Part II: About the Political Organization of the Republic
Title I: About the Nation and the State
Chapter II: About International Relations

Article 141
About International Treaties
International treaties that were properly concluded and approved by a law of Congress and the instruments of ratification which have been exchanged or deposited are part of the domestic legal system in keeping with the order of preeminence established under Article 136.

Article 142
About the Renouncement of Treaties
International treaties concerning human rights cannot be renounced, but must follow the procedures established herein for the amendment of this Constitution.

The **Colombian** constitution is an interesting case because it actually places international human rights treaties *above* the constitution. It says that the constitution should be interpreted according to international treaties. This poses a problem for the coding system. Although Colombia’s constitution does not protect SER with judicial review, the ICESCR seems to have a privileged status, meaning that the courts may interpret issues of SER differently than the constitution would indicate.⁶ This case was ambiguous, and the researchers were unable to code it:

TITLE II: CONCERNING RIGHTS, GUARANTEES, AND DUTIES
[...]

CHAPTER 4: CONCERNING THE PROTECTION AND APPLICATION OF RIGHTS
[...]

Article 93. International treaties and agreements ratified by the Congress that recognize human rights and that prohibit their limitation in states of emergency **have priority domestically.**

The rights and duties mentioned in this Charter will be interpreted in accordance with international treaties on human rights ratified by Colombia.

⁶ Court decisions indicate that this may, in fact, be the case.

Article 94. The enunciation of the rights and guarantees contained in the Constitution and in international agreements in effect should not be understood as a negation of others which, being inherent to the human being, are not expressly mentioned in them.

Outstanding issues/cases

The legal status of social and economic rights was unclear in some cases.

1. **Ethiopia's** constitution does not indicate that *rights* are justiciable, but does speak of a "justiciable matter."

Article 37 (Right of Access to Justice):

1. Everyone has the right to bring a justiciable matter to, and to obtain a decision or judgement by, a court of law or any other competent body with judicial power.

Thus, it is not clear whether human rights, or more specifically SER, are justiciable matters.

In other cases, it was difficult to determine whether people were entitled to bring rights complaints before the court.

2. **Rwanda's** constitution names the judiciary as the guardian of rights and freedoms of the public, but it does not mention whether citizens are entitled to make claims in front of a court:

Article 44

The judiciary as the guardian of rights and freedoms of the public ensures respect thereof in accordance with procedures determined by law.

While human rights seem to be protected by the judiciary in theory, there is no mechanism described for how the infringement of constitutionally protected human rights might be brought before a court.

3. It was similarly difficult to determine if **Tajikistan's** constitution enshrined justiciable SER, although for Tajikistan it was even more difficult to determine if the judiciary protected constitutional rights. It only refers to the judicial review of one's "case":

CHAPTER TWO: THE RIGHTS, FREEDOMS, AND BASIC OBLIGATIONS OF THE PERSON AND THE CITIZEN

Article 19: Every person is guaranteed judicial protection. Every person has the right to demand review of her or his case by a competent and non-partisan court. Without lawful grounds, no one may be subjected to detention, arrest, or deportation. From the moment of detainment, a person has the right to employ the services of a lawyer.

4. **Croatia** has a constitutional court but does not provide for petitions to be made to the court. There are not constitutionally enshrined institutions to help citizens initiate proceedings, and citizens don't explicitly have the right to initiate constitutional review. On the other hand, the constitution provides an explicit role for the judiciary, and the constitutional court in particular, to defend human rights. Like Rwanda this may indicate justiciable SER, or at least fundamental rights, even though the citizens standing is not explicit. However, it remains unclear.

V. The Constitutional Court of the Republic of Croatia

[...]

Article 128

The Constitutional Court of Croatia:

- decides on the conformity of laws and the Constitution;
- decides on the conformity between other regulations and the Constitution and law;
- can determine whether laws are constitutional, and whether regulations that ceased to be valid within one year are still lawful;
- has the power to overrule Constitutional rulings made by governmental bodies, bodies of local and regional self-government, or attorneys holding a public office if these rulings violate human rights, fundamental freedom, or the right to local and regional self-government guaranteed by the Constitution;

In some cases, it was unclear which rights were protected judicially.

5. In **Argentina's** constitution, the amparo clause in Article 43 says:

This summary proceeding against any form of discrimination and about rights protecting the environment, competition, users and consumers, as well as about **rights of general public interest**.

Based on the language alone, it is difficult to determine what is meant by “rights of general public interest.” Based on the relative inclusiveness of Latin American *amparo*, the SER specifically mentioned in the Argentine constitution were coded as justiciable.