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**THE PROTECTION OF THE EXTREMELY POOR
THROUGH THE HUMAN RIGHTS FRAMEWORK**

Master's Thesis in Public International Law
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Abstract for Master's Thesis

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<p>Abstract:</p> <p>Freedom from poverty is one of the most important human interests. In 2015, 735 million people were still living below the extreme poverty line, established at \$1.90 per day. Extremely poor people are unable to meet their basic needs for survival. They suffer from undernutrition, famine, illiteracy and death from poverty-related and preventable diseases. This thesis aims to establish the role of the human rights framework when tackling extreme poverty. In order to do this, four research questions are proposed: (i) In which ways can the international human rights framework be a resourceful tool for mitigating extreme poverty? (ii) Which human rights can be invoked in protecting the extremely poor? (iii) What are the obligations of states towards the extremely poor? (iv) How has extreme poverty been addressed by national and international courts when finding violations of human rights? In order to answer these questions, key international documents are analysed using the legal dogmatic method. Hard law documents do not prescribe poverty as a human rights violation, however, they prescribe the rights which have a constitutive relevance to poverty. Therefore, in order to establish a straightforward connection to extreme poverty, hard law provisions are complemented by soft law instruments.</p> <p>It is argued that there are four human rights which have a constitutive relevance to poverty: (i) the right to life, (ii) the right to adequate standards of living, including the right to adequate housing, the right to food and the right to water, (iii) the right to health and (iv) the right to education. Considering the minimum core content of these rights, it is possible to establish a straightforward connection to extreme poverty and invoke an immediate state obligation towards the extremely poor. Rather than presenting the content of each of these rights in a comprehensive way, it is proposed to discuss their most relevant features in connection to poverty. Furthermore, this thesis shows how national and international courts have addressed adjudication made by the extremely poor in relation to these rights, showing how poverty was considered as an important factor to asset the violation of human rights. This thesis focuses on the protection systems and jurisprudence developed in Africa and Latin America as extreme poverty as a social phenomenon is only found in developing countries. It is argued that, although there are obstacles that affect poor people disproportionately regarding access to justice, litigation is an important tool to empower and protect the poor.</p>	
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Abbreviations and Acronyms

ACHR - American Convention on Human rights

ACHPR - African Commission on Human and People' Rights

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

CESCR - Committee on Economic, Social and Cultural Rights

CRC - Convention on the Rights of the Child

ICCPR - International Covenant on Civil and Political Rights.

ICESCR - International Covenant on Economic, Social and Cultural Rights

ICJ - International Court of Justice

IDLO - International Development Law Organization

NGO - Non-Governmental Organization

OHCHR - Office of the High Commissioner for Human Rights

UDHR - Universal Declaration of Human Rights

UN - United Nations

UNDP - United Nations Development Programme

UNESCO - United Nations Educational Scientific and Cultural Organization

UNICEF - United Nations International Children's Emergency Fund

UNGA - United Nations General Assembly

WHO - World Health Organization

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1. Introduction

1.1. Extreme Poverty: Background of the Research Problem and Research Questions

During the last three decades, the number of people living in extreme poverty worldwide, considering the headcount ratio at \$1.90 a day, has decreased from 35.9% to 10%. While there has been undeniable progress, the number of people living in extreme poverty is still alarming. In 2015, 735 million people were living below the extreme poverty line, unable to meet their basic needs to survive.¹ As a consequence, extremely poor people experience chronic undernutrition, famine, illiteracy and death from poverty-related and preventable diseases.²

Extreme poverty is a multidimensional and complex issue caused by social, economic, cultural and political processes. This thesis embraces the concept of capability poverty, which considers both income and social well-being when defining the phenomenon. Freedom from extreme poverty is one of the most important human interests.³ Since the beginning of the 1990's, extreme poverty has been understood as a human rights issue by international organizations, including the United Nations (UN) system. During the last years, the UN system and other international agencies have been legitimating and increasing the recognition of the negative impact of extreme poverty on the ability of people to enjoy their basic freedoms and human rights.⁴

It is well established that extreme poverty and human rights are part of the same struggle and that improving human rights has a direct effect on diminishing extreme poverty.⁵ Regardless of the advocacy of international agencies for the understanding of extreme poverty as a human rights violation, extreme poverty itself is not established as a violation of human rights by any binding instrument.⁶ Even in resolutions adopted by the United Nations General Assembly (UNGA), extreme poverty is recognized as a violation of human dignity, an obstacle to the

¹ See World Bank, 2019(a) available at <http://povertydata.worldbank.org/Poverty/Home>.

² Pogge, 2007, p. 11-13.

³ Ibid. p. 11.

⁴ Economic and Social Council, Human Rights and Extreme Poverty: Report of the Independent Expert Arjun Sengupta, March 2006. UN Doc. E/CN.4/2006/43, para. 2.

⁵ Formisano Prada, 2011, p. 17.

⁶ E.g. Economic and Social Council, Human Rights and Extreme Poverty: Report of the Independent Expert Arjun Sengupta, March 2006.. UN Doc. E/CN.4/2006/43.

fulfilment of all human rights but not as a human rights violation as such.⁷ As consequence, extremely poor people are not entitled to claim in national courts, judicial bodies or international courts that their human rights are violated, solely on the basis of their poverty.

However, the absence of recognition of extreme poverty as a violation of human rights does not mean that the extremely poor have no protection under the human rights framework. Therefore, the research questions of this thesis are:

- (i) In which ways can the international human rights framework be a resourceful tool for mitigating extreme poverty?
- (ii) Which human rights can be invoked for protecting the extremely poor?
- (iii) What are the obligations of states towards the extremely poor?
- (iv) How has extreme poverty been addressed by national and international courts when finding violations of human rights?

It is important to clarify that the primary responsibility to guarantee the implementation of the rights which have a constitutive relevance to extreme poverty, and all human rights, belongs to national actors. As clarified by the former High Commissioner of Human Rights: “it is through action at the national level that international human rights obligations can be translated into reality”.⁸ The implementation of human rights occurs on a national level. Many states have human rights prescribed in their domestic legislation.

When a state ratifies regional and international human rights instruments, they are required to ensure that the individuals in their jurisdiction can benefit from the guarantees prescribed by these instruments.⁹ International treaties can be directly applicable at national level as well. In many cases, constitutional law provides the applicability of international treaties.¹⁰ In some countries all the international treaties are part of the domestic legislation automatically. In other states, international treaties are incorporated in domestic systems and, in a third group of countries, they are implemented through domestic legislation that makes human rights applicable without giving them the status of domestic law. National courts often rely on

⁷ The latest: General Assembly, Human Rights and Extreme Poverty, 15 January 2019. UN doc. A/RES/73/163. But also UN Doc. A/RES/57/211, UN Doc. A/RES/53/146, UN Doc. A/RES/47/196, UN Doc. A/RES/46/121.

⁸ General Assembly, In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary-General, Annex, Plan of Action, May 2005. UN doc. A/59/2005/Add.3, para. 22

⁹ Boerefijn, 2012, p. 631.

¹⁰ Scheinin, 2012, p. 19-37.

international instruments as a source of inspiration or as an interpretive guide to apply domestic legislation.¹¹ Furthermore, international systems have supervisory monitoring functions which have the capacity to contribute towards the implementation and evolution of international human rights law.¹²

1.2. Methodology

In order to answer the research questions, relevant international documents are analysed and systematised using the legal dogmatic method. There are three sources of international law defined by article 38 of Statute of the International Court of Justice (ICJ). These are: (i) international conventions which establish rules that are expressly recognized by the State parties, (ii) international customary law, as evidence of general practice accepted as law, and (iii) the general principles of international law recognized by civilized nations. Moreover, the article prescribes other sources which are considered subsidiary: judicial decisions and the teachings of the most highly qualified publicists.¹³

As previously argued, hard law instruments do not prescribe extreme poverty as a human rights violation. However, hard law instruments prescribe the rights which have a constitutive relevance to poverty, as will be analysed in the following chapter. Those considered in this thesis are: The International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights and the American Convention on Human Rights (ACHR).

In order to establish a straightforward connection to extreme poverty, hard law provisions are complemented by soft law instruments. Soft law documents have different legal implications than hard law provisions. However, human rights treaties tend to be textually abstract, Scheinin argues that “only through substantive knowledge of the case law, concluding observations, general comments or other interpretive material emanating from the international monitoring body, will national actors be able to understand what a human rights treaty really is about”.¹⁴

¹¹ Scheinin, 2012, p. 657.

¹² *Ibid.*

¹³ ICJ, Statute of the International Court of Justice, 1946, Article 38.

¹⁴ Scheinin, 2012, p. 676.

These above mentioned soft instruments are used to detail and clarify the provisions prescribed in hard law instruments.

There are different monitoring functions in international systems. Two of them will be discussed in the following chapters : (i) the function to clarify the content and obligations of states towards human rights and (ii) the function to offer subsidiary protection through complaints procedures which consider individual communication.¹⁵ Documents originated from the first function will be used to clarify the scope, nature and content of states obligations towards the extreme poor. Those documents are: the General Comments issued by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.¹⁶ To Scheinin, general comments are a form of institutionalized practise of interpretation. They are based in reporting procedures, case law, other sources of international law and academic writing.¹⁷ In the same way, Riedel clarifies that general comments aim to elucidate the understanding of the rights and obligations anchored in the covenants, orientating actions and policies for all actors involved in the promotion and fulfilment of human rights. Although general comments are not legally binding, Riedel argues that states generally apply the criteria developed in the comments and whenever a dialogue is settled with states, it usually follows the criteria prescribed in the general comments. They are legal standards that meet with little opposition from states.¹⁸ The case law originated from this second function will be used to support the claim that human rights litigation, also in international level, can be an important tool to empower and protect the poor. The cases of the UN system will not be considered, but the jurisprudence of the African and the Inter-American systems because of the concentration of extreme poverty in both regions.

There are also other relevant UN documents for discussing extreme poverty and human rights, such as the Special Rapporteur's reports on extreme poverty and human rights, which are included in this thesis. Additionally, reports from other international agencies are considered, such as UNESCO and UNICEF, as well as other academic publications in the human rights field.

¹⁵ Other international monitoring functions include reporting systems and inquiry procedures.

¹⁶ Von Schorlemer, 2011, p. 477.

¹⁷ Scheinin, 2012, p. 666-667.

¹⁸ Riedel, p.145-146.

1.3. Limitations

In order to maintain the focus on the research questions it is necessary to restrict the scope of this thesis. Firstly, it is important to acknowledge that once poverty is a multidimensional and complex issue it cannot be expected that the human rights field would offer all the answers to tackle the issue. Legal rules can affect the distribution of income, assets and power and they can contribute for the creation or perpetuation of imbalances between and within states. Therefore, only within the legal field there are many other areas that could be addressed in the attempt to tackle extreme poverty, such as trade, labour, contract, tort, taxation, intellectual property and immigration.¹⁹ These fields are important in addressing the causes of poverty and inequality, however, they are out of the scope of this thesis. There are many other areas outside the legal field that have relevant tools for tackling this complex issue, such as public policies related to cash transfer and redistribution of income. However, this thesis is limited exclusively on the tools that the human rights field can offer to mitigate extreme poverty.

Moreover, it is important to clarify that this thesis focuses only on extreme poverty. Poverty is a wider phenomenon. The current poverty line is established at the headcount ratio of \$5.00 per day. In 2013, more than 3 billion people suffered from poverty.²⁰ This thesis analyses only the poorest of the poor. Most of the connections between poverty and human rights can be established considering poverty as a wider phenomenon, for example, when establishing which human rights are considered to have a constitutive relevance to poverty. However, the limitation to extreme poverty is important when considering the rise of state obligations to tackle the issue. It is argued that only extreme poverty invokes an immediate obligation on states, once the survival of people is threatened.

Furthermore, extreme poverty as a social phenomenon is an issue that only affects developing states.²¹ Although it is recognized that poverty can be determined by domestic and international factors, this thesis focuses on developing states and their obligations towards their population. Nevertheless, it is important to notice that the international cooperation for development is an obligation for all states, especially of those which are able to assist others.²²

¹⁹ Williams, 2006, p. 1.

²⁰ UNICEF, 2016, p. 75.

²¹ Sachs, 2005, p. 20.

²² As established in the Declaration on the Right to Development (UN General Assembly, Declaration on the Right to Development: resolution / adopted by the General Assembly, 4 December 1986, UN Doc A/RES/41/128).

1.4. Structure

In order to answer the research questions, Chapter 2 establishes the connection between poverty and human rights. Poverty is defined by embracing the Amartya Sen's conception of capability poverty and basic freedoms. After that, it is shown how the human rights agenda and the poverty agenda are connected. Also, it is argued that although a wide range of human rights can be considered when addressing poverty, there are only a few human rights which are part of the definition of poverty or, in other words, which have a constitutive relevance to poverty. In order to define those rights, a correspondent human right to each basic freedom is established. Those are (i) the right to life, (ii) the right to adequate standards of living, including adequate food, housing and water²³, (iii) the right to health and (iv), the right to education.

Chapter 3 presents the international framework for the protection of extremely poor people and the nature and scope of the state's obligations towards those rights. This chapter is divided in two sections. The first presents the hard law instruments that prescribes the rights which have a constitutive relevance to poverty. The second section presents the nature and scope of those rights, analysing the obligations of states through soft law documents. In this section the minimum core obligations of states are introduced. Minimum core obligations are set to ensure that a minimum essential level of each right is realized in every state. Those are related to essential food, primary health care, basic shelter, housing and the most basic form of education.²⁴ The obligation to fulfil the minimum core is immediate and not passive to the progressive realization of rights. Therefore, it is argued that extreme poverty as a phenomenon can be considered a violation of the state toward its population.

Chapter 4 presents the content of the human rights in connection to poverty. In other words, the aim of this section is not to present an exhaustive analysis of the content of each of the rights, but rather, to concentrate on the matters which are mostly relevant to the poverty discussion. In this sense, the minimum core content of each of the rights is central. Moreover, it is demonstrated how national and international courts have addressed claims made by

International cooperation is also encouraged in the article 2 of the ICESCR (1966), related to states' obligations and article 11 related to adequate standards of living.

²³ The right to water was later understood as a part of the right to adequate standards of living in the International Covenant on Economic, Social and Cultural Rights. Those features will be further explained in the Chapter 4.

²⁴ CESCR, General Comment No. 3: The Nature of States Parties' Obligations, 14 December 1990. UN. Doc. E/1991/23, para. 9-10.

extremely poor people and how courts have considered poverty as a key factor when finding violations of human rights. The last section of Chapter 4 concludes the previous sections arguing that judicial protection is an important tool in mitigating poverty. Also, the judicial obstacles that poor people face when seeking judicial remedies are presented.

Extreme poor people are considered a vulnerable group. Vulnerable groups are composed by people that, because of certain social factors, find themselves or may find themselves affected by harm in a disproportional way when comparing to others in the society. To Nifosi-Sutton, the idea of vulnerability in international human rights law shall take in account: (i) the extent of the lack of legal protection and deprivation of rights which affects certain groups, (ii) whether the denial of those rights derives from discrimination based on prohibited grounds, (iii) the role that the states must play in order to deal with the protection of those groups and (iv) the empowerment of this groups in terms of participation and their access to justice and to seek redress when their rights have been violated.²⁵ As demonstrated in this introduction, this thesis discusses the main points proposed by Nifosi-Sutton, showing how deprivation of human rights affects disproportionately the extreme poor, what are the states obligation towards them and discuss how the international human rights law and access to justice can be a resourceful tool for mitigating extreme poverty.

²⁵ Nifosi-Sutton, 2017, p. 276-277.

2. Poverty and human rights - Establishing Connections

2.1. Defining Poverty

The conceptual debate on poverty began in the nineteenth century with the perspective of subsistence. Since then, the way to understand, characterize and measure poverty has evolved towards a more complex perception of the issue. In the 1950's, the perspective of basic needs was the first to consider private and public assets in the understanding of poverty. This perspective includes the possibility to afford food, shelter, clothes (as private assets) and also the access to water, sanitation, health care, education (as public assets).²⁶ In this sense, the perspective of basic needs was the first to establish a governmental responsibility when considering poverty. Additionally, the relative deprivation approach made important considerations regarding the social context of different societies and how this affect the way to understand the phenomenon.²⁷

At the international level, different actors adopt different approaches, in accordance with their mandates. The World Bank, for example, recognizes poverty as a multidimensional phenomenon, but uses the income poverty line methodology in its research. Income poverty is related to the lack of income or purchasing power. In the income poverty approach, poverty is classified into three different types: extreme poverty (absolute or severe), moderate poverty and relative poverty.²⁸

Below the extreme poverty line, people are not able to afford a nutritionally adequate diet and other essential non-food requirements.²⁹ In other words, they are unable to meet their basic needs to survive. Extremely poor people face hunger, lack of drinking water and sanitation. They are unable to access essential public services related to health care and education and they usually lack adequate shelter and basic articles of clothing and hygiene.³⁰

Currently, the extreme poverty line is established at \$1.90 per day.³¹ This line is calculated considering national poverty lines from selected poor countries in the world. Their average is

²⁶ Codes, 2008, p. 12-13.

²⁷ *Ibid.* p.15.

²⁸ Doz Costa, 2008, p. 83.

²⁹ UNDP, 1996, p. 222.

³⁰ Sachs, 2005, p. 20.

³¹ Unless otherwise noted, "\$" refers to US dollars.

converted to a common currency. It also considers purchasing power parity exchange rates to adjust differences in cost of living among the countries.³² Using this headcount ratio, the World Bank found that in 2015, 735 million people lived in extreme poverty, which represents 10% of the world’s population.³³

Moderate poverty refers to a condition in which people’s basic needs are met, but just barely. Relative poverty is associated with a given proportion of the average national income where the relatively poor suffer from lack of access to cultural goods and to quality public services.³⁴ However, the basic needs of people who live in relative poverty are met. For this reason, relative poverty falls outside the discussion of this thesis.

Although it can be argued that the income poverty approach is limited in terms of complexity, since poverty is not an objective and inflexible phenomenon capable of being measured by a universal line, the income poverty approach is useful for quantitative purposes.³⁵ It allows the identification of the most vulnerable among the poor and permits a focused analysis, as proposed in this thesis. Furthermore, it can be a guide of priority for the establishment of governmental action and policies.

A more complex understanding of poverty which considers not only income, but embraces the concept of well-being, has been widely recognized during the last three decades.³⁶ The ‘capability approach’ or ‘capability poverty’ is based on Amartya Sen’s idea of poverty as a ‘capability deprivation’. Capability poverty is connected to the notion of ‘impoverished lives’ and the deprivation- of basic freedoms. These include, according to Vizard, the freedom to be nourished, the freedom to enjoy adequate living conditions, the freedom to lead normal spans of life and the freedom to read and write.³⁷

In this sense, poverty is not only related to income poverty, but also to systematic deprivations of services, goods and other resources necessary for one’s survival and development, including the deprivation of medical care, housing, sanitation and education services.³⁸ It refers to the

³² UNICEF, 2016, p. 72.

³³ World Bank, 2019a, available at <http://povertydata.worldbank.org/Poverty/Home>

³⁴ Sachs, 2005, p. 20.

³⁵ Pogge, 2007, p. 11.

³⁶ Doz Costa, 2008, p. 84.

³⁷ Vizard, 2006, p. 3.

³⁸ *Ibid.*

non-fulfilment of human rights in connection with constraint of economic resources.³⁹ Sengupta has also included the social inclusion dimension to the composition of extreme poverty. It is sustained that extremely poor people are socially excluded, they are marginalized, discriminated and outside social relations. Therefore, extreme poverty can be understood as a combination of income poverty, deprivation poverty and social exclusion.⁴⁰

To conclude poverty can be understood as a multidimensional and complex issue as result of social, economic, cultural and political processes. In this context, different forms of deprivation are cumulative and reinforce one another forming a vicious circle of poverty.⁴¹ Extreme poverty is deeply connected to the idea of human dignity, which is one of the most fundamental ideas in international human rights law, a basic and core principle in which human rights are derived.⁴² Extreme poverty affects the enjoyment of human rights and can be related to several states' obligations, as will be demonstrated in the following chapters.

2.2. Poverty and Human Rights

Since the Universal Declaration of Human Rights (UDHR) in 1948 and until the 1990's, the human rights movement and the development (or poverty reduction) movement proceeded on different conception paths. Their agendas were set on parallel intergovernmental and nongovernmental organizations without overlapping or interacting with each other. The main reason pointed out for this distance was the strong influence of the cold war politics. Only after the World Conference on Human Rights in Vienna (1993), which reaffirmed the indivisibility, interdependence and interrelation of all human rights, did poverty start to be recognized as a human right issue.⁴³

The international concern with poverty as a human rights issue has been reflected in many of the UN General Assembly's and the UN Human Rights Commission's resolutions.⁴⁴ Since

³⁹ OHCHR, 2004, p. 8.

⁴⁰ Economic and Social Council, Human Rights and Extreme Poverty: Report of the Independent Expert Arjun Sengupta, March 2006. UN Doc. E/CN.4/2006/43, para. 4.

⁴¹ UN Commission on Human Rights, Report on Human Rights and Extreme Poverty, 28 June 1996. UN Doc. E/CN.4/Sub.2/1996/13, para.7.

⁴² Carozza, 2013, p.345 and 350.

⁴³ Doz Costa, 2008, p. 81.

⁴⁴ Vizard, 2006, p. 9.

1998, the Office of the High Commissioner for Human Rights (OHCHR) have even established the mandate of a Special Rapporteur on extreme poverty and human rights.⁴⁵

In many resolutions adopted by the United Nations General Assembly (UNGA), extreme poverty is recognized as a violation of human dignity, avoiding the recognition of the issue as violation of human rights. Those resolutions usually recognize extreme poverty as an obstacle to the fulfilment of all human rights.⁴⁶ However, other international bodies and agencies have taken a more straightforward approach, considering extreme poverty as a denial or a violation of human rights.

The Committee on Economic, Social and Cultural Rights (CESCR) has firmly recognized that poverty shall be understood as a human rights denial. To the CESCR, poverty is a condition of chronic deprivation of resources, choices, security and power necessary for the enjoyment of an adequate standards of living and other civil, cultural, political and social rights. It embraces the multidimensionality of poverty “which reflects the indivisible and interdependent nature of all human rights”⁴⁷. UNESCO goes even further and establishes poverty as a violation of human rights and, therefore, “illegal” in accordance to international law.⁴⁸ In the same way, Sengupta, an independent expert, recommended the Commission of Human Rights to adopt a resolution affirming that extreme poverty was to be considered a denial of basic human rights.⁴⁹

Mary Robinson, the former United Nations High Commissioner for Human Rights, sustains that the most serious form of violation of human rights in the present society is extreme poverty. According to Robinson:

Extreme poverty to me is the greatest denial of the exercise of human rights. You don’t vote, you don’t participate in any political activity, your views aren’t listened to, you have no food, you have no shelter, your children are dying of preventable diseases - you don’t even have the right to clean water. It’s a denial of the dignity and worth of each individual which is what the universal declaration proclaims.⁵⁰

⁴⁵ OHCHR, 2019. Available at <https://www.ohchr.org/en/issues/poverty/pages/srextremepovertyindex.aspx>.

⁴⁶ The latest: General Assembly, Human Rights and Extreme Poverty, 15 January 2019. UN Doc. A/RES/73/163. But also see UN Doc. A/RES/57/211, UN Doc. UN Doc. A/RES/53/146, UN Doc. A/RES/47/196, UN Doc. A/RES/46/121.

⁴⁷ UN Commission on Human Rights, Report on Human Rights and Extreme Poverty, 28 June 1996. UN Doc. E/C.12/2001/10, para. 1 and 8.

⁴⁸ Formisano Prada, 2011, p. 18.

⁴⁹ Economic and Social Council, Human Rights and Extreme Poverty: Report of the Independent Expert Arjun Sengupta, March 2006. UN Doc. E/CN.4/2006/43, para.10.

⁵⁰ BBC News, 2002. Available at http://news.bbc.co.uk/2/low/talking_point/forum/1673034.stm

The idea that extreme poverty in itself is a violation or a denial of human rights is mainly developed by the OHCHR in its publication *Human Rights and Poverty Reduction: a Conceptual Framework*. The main idea sustained in the publication is that the development and human rights agenda are not in fact two different agendas, but two mutually reinforcing approaches to the very same goal.⁵¹

Stating that poverty itself is a violation of human rights is nevertheless different than stating that poverty and the non-fulfilment of any kind of human rights have conceptually the same meaning. It is clear that there are several cases where there is a violation of human rights and no connection to poverty whatsoever. For example, if a government denies its political opposition the right to speak freely or even imprison its opposition for political reasons, although there is a clear violation of human rights law, this violation cannot be linked with poverty.⁵² In the same way, and as argued by Doz Costa, not every deprivation, meaning every situation where a basic human right is needed but not fulfilled, constitutes a violation of human rights.⁵³ As an example, to restrict an individual to use religious symbols in public institutions can be considered a deprivation, but in many cases such deprivation is not considered as a violation of international human rights laws, once the rights of others are also taken in consideration.

The idea that poverty itself is a violation of human rights takes the previous discussed capability approach⁵⁴ to define poverty and sustains that freedom is the common denominator that connects extreme poverty and human rights. Basic freedoms are recognized as fundamentally important to guarantee a minimal level of human dignity. Those are, for example, the freedom to avoid hunger, diseases and illiteracy. If someone has failed to acquire these basic freedoms it means that this person's rights to these freedoms have not been realized. In the words of the OHCHR "poverty can be defined equivalently as either the failure of basic freedoms – from the perspective of capabilities, or the non-fulfilment of rights to those freedoms – from the perspective of human rights".⁵⁵

⁵¹ OHCHR, 2004, p. 3.

⁵² *Ibid.*

⁵³ Doz Costa, 2008, p. 81.

⁵⁴ The capability approach is used by other international agencies such as the UNDP in the Human Development Reports (HDR).

⁵⁵ OHCHR, 2004, p. 10.

The OHCHR sustains that for a deprivation to be considered as a violation of human rights law, it must fulfil two premises. Firstly, the right in question must correspond to the capability that is considered basic by a certain society, for example, the right to be free from illiteracy correspond to the right of education and the right to be free from hunger to the right to adequate food. It is also argued that certain basic capabilities are common to all societies. Secondly, the deprivation must be caused by economic constraints, meaning that the lack of “economic resources must play a role in the causal chain leading to the non-fulfilment of the human rights”.⁵⁶

Lack of personal income is only one possible source for extreme poverty. Inadequate access to public services and goods can also be pointed as a cause of poverty. It is also sustained that capability poverty is not equivalent to a uniformly low level of command on economic resources because people have different means to convert resources into capabilities. People have different biological characteristics and live in different climatic and social environments. As an example, the amount of food or clothes needed for a person to have a minimally acceptable level of those goods may vary.⁵⁷

The OHCHR argues that all human rights are relevant when addressing poverty. It is not argued that all rights can be used as reference in the definition of extreme poverty, but instead, that all rights must be taken into consideration for elaborating strategies for addressing the issue, following the interdependence and indivisibility logic of human rights. In other words, while only certain rights can be used to define poverty, an anti-poverty strategy needs to take into consideration a much wider range of international human rights. It is sustained that human rights are relevant to poverty on three different levels of relevance, (i) constitutive, (ii) instrumental and (iii) constraint-based.⁵⁸ If the right in question falls within the two premises previously discussed - corresponds to a capability that is considered basic in a given society and, at the same time, inadequate economic resources play a role for the non-fulfilment of that right - then it has a constitutive relevance over poverty.⁵⁹

⁵⁶ *Ibid.* p. 3.

⁵⁷ *Ibid.* p. 8-9.

⁵⁸ *Ibid.* p. 11.

⁵⁹ *Ibid.*

Instrumental relevance is related to the ability of some rights to promote the reduction of poverty. The OHCHR presented two different types of instrumental relevance, causative and evaluative. Causative and evaluative are both related to civil and political rights. In relation to the causative relevance, it is argued that in a society where participation and accountability is exercised effectively it is unlikely that symptoms of poverty would be manifested. In other words, in a democracy with a reasonable degree of civil and political freedoms where the media can speak freely, the government tends to take all the measures to prevent the symptoms of poverty (for example: famine and a homeless crisis) to affect its population. Those measures would be taken because the government would fear for bad publicity and strikes. In the same way, evaluative relevance is related to the idea that poverty requires different forms of social evaluation. Even to define which capabilities are basic in a determined society, the community shall be able to be fully consulted and such participation is only possible when a wide range of human rights is respected.⁶⁰

Constrained-based relevance is related to which kinds of measures are permissible when tackling poverty. Policies which focus on population and birth control for example, cannot have as strategy to impose forced sterilization on the population once this measure would violate the populations' rights to privacy and personal integrity.⁶¹ In that case, although the content of a human right may not have a constitutive relevance to poverty nor have any instrumental value for reducing poverty, this right must still be respected when addressing poverty.⁶² The conclusion is that although only a few human rights are part of the definition of poverty, a large range of rights are vital in any attempt to discuss and to formulate policies for poverty.⁶³

The valuable work of the OHCHR and the definition proposed by the CESCR are important in translating the multidimensionality of poverty to the human rights language and connecting poverty with the principles of indivisibility and interdependence of international human rights. However, once extreme poverty as such is not established by any binding instrument as a violation of human rights, this approach, which defines poverty as a violation of human rights, does not give the extremely poor the tools to operationalize their demand and seek redress and remedies to their situation in courts or judicial bodies. As sustained before, this fact does not

⁶⁰ *Ibid.* p. 11.

⁶¹ *Ibid.* p. 12.

⁶² *Ibid.* p. 11.

⁶³ *Ibid.*

mean, however, that extremely poor people have no protection under international law once there are human rights which have a straightforward connection to extreme poverty, or in the word of OHCHR, have a constitutive relevance to extreme poverty. It is through those rights that extremely poor people can seek judicial protection to redress their situation.

It is important, therefore, to establish which human rights have a constitutive relevance to extreme poverty. Although the OHCHR did not clarify at the occasion which right shall be considered as constitutive to poverty, when combining the definition of constitutive relevance with the definition of extreme poverty through the capability approach proposed in the first section, it is possible to clarify which human rights fall within this category. The table below translates the freedoms presented in the definition of poverty into the language of human rights law.

Table 1. Constitutive rights to extreme poverty

Constitutive rights to extreme poverty	
Basic freedoms	Correspondent human rights
To be nourished	Right to adequate standards of living (specially the right to food and the right to water)
To enjoy adequate living conditions	Right to adequate standards of living
To lead normal spans of life	Right to health and the right to life
To read and write	Right to education

The findings of the table are also compatible with the premises of studies related to multidimensional poverty. In those studies, poverty is related to seven deprivations related to the access to shelter, food, water, sanitation, health care, education (and information⁶⁴)⁶⁵.

⁶⁴ Information is not included here as a right, but it will be explored when analyzing poverty and access to justice.

⁶⁵ See UNICEF, 2016; de Milliano, Marlous and Plavgo, Ilze. *Analysing Child Poverty and Deprivation in sub-Saharan Africa*, Office of Research Working Paper: WP-2014-19, UNICEF Office of Research, Florence, November 2014, p. 18 and ECLAC-UNICEF. *La pobreza infantil en América Latina y el Caribe*, CEPAL, Chile, December 2010.

In conclusion, although a vast range of human rights have to be taken in consideration when addressing extreme poverty, due its multidimensional facet, there are four human rights which have a constitutive relevance to extreme poverty. Those are: the right to life, the right to adequate standards of living (including housing, food and water) the right to health, the right to education and the most basic human right of all, the right to life. These are consequently the rights on which the next chapters will focus. It is important, therefore, to establish in which legal instruments these rights can be found, the nature and scope of states obligations and their content. Hence, those are the aim of the next two chapters.

3. The International Framework for the Protection of the Extremely Poor

3.1. Constitutive Rights to Extreme Poverty in International Instruments

This section presents the most relevant instruments at international and regional levels which embrace the human rights, which have a constitutive relevance for extreme poverty. At international level there are two main instruments: (i) The International Covenant on Civil and Political Rights (ICCPR) and (ii) The International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR and ICESCR are binding instruments which, together with the Universal Declaration of Human rights (UDHR), compose the International Bill of Human Rights. Moreover, the both international covenants have been ratified by a vast majority of the UN member states.⁶⁶ Binding instruments compel the states to take measures to protect and implement the rights prescribed by them and offer effective remedies in case of a violation.

The two international covenants embrace all the rights established in the previous chapters as having a constitutive relevance to extreme poverty, as summarized in the following table.

Table 2. International treaties in connection to extreme poverty

International treaties		
Instruments	Articles	Rights
International Covenant on Economic, Social and Cultural Rights (1966)	11	-Adequate standards of living, including adequate food, housing and water ⁶⁷
	12	-Health
	13	-Education
International Covenant on Civil and Political Rights (1966)	6	-Life

The rights which have a constitutive relevance to extreme poverty are presented in two different sets of rights. The right to life is presented as a civil and political right while the right to an

⁶⁶ Riedel, 2012, p.132.

⁶⁷ The right to water was later understood as a part of the right to adequate standards of living in the International Covenant on Economic, Social and Cultural Rights. These features will be further explained in the Chapter 4.

adequate standard of living, the right to health and the right to education are prescribed in the economic, social and cultural set.

In order to claim a violation at international level, a person must be in the jurisdiction of a state which has ratified one instrument which contents the rights understood as constitutive for extreme poverty. Admissibility criteria usually include that all available domestic remedies must be exhausted, that the same matter is not being examined by another international body, and there is also a time limit for submitting a complaint. Communications of both covenants can be submitted on the behalf of other (with their consent).

At international level, there are other conventions that reinforce the content of the constitutive rights to poverty focusing on specific and most vulnerable groups which can also be victims of extreme poverty⁶⁸. For example, the Convention on Elimination of All Forms of Discrimination against Women prescribes the right to health focusing on women,⁶⁹ the Convention on the Rights of the Child (1989) prescribes the right to health, especially in relation to diminishing child mortality, combat malnutrition and the right to adequate standard of living to child's development.⁷⁰ The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) prescribes again that immigrants shall have access to health and education.⁷¹

At regional level there are two continents that are deeply affected by extreme poverty and have own regional human rights protection systems: Africa and America (Latin -America, specifically). Extreme poverty is a problem that mostly affect the developing world, once the poverty observed in developed countries remains relative.⁷² The Sub-Saharan Africa is the region most affected by the issue. Still in 2015, 41.1% of its population faced extreme poverty. The percentage of people affected by extreme poverty in Middle East and North Africa in the same year was 5%.⁷³ In Latin America and Caribbean, 4.1% of the population faced extreme

⁶⁸ About children's poverty see UNICEF, 2016, p.3. About feminization of poverty and human rights see: Kuosmanen, Jaakko; Campbell, Meghan; Hilly, Laura. *Introduction - Women and Poverty: A Human Rights Perspective*. 24 Afr. J. Int'l & Comp. L. 469 (2016) and Fredman, Sandra. *Women and Poverty - A Human Rights Approach*, 24 Afr. J. Int'l & Comp. L. 494 (2016).

⁶⁹ CEDAW, 1979 art. 12.

⁷⁰ CRC, 1989, art. 24 and 27.

⁷¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, art. 28 and 30-43.

⁷² Sachs, 2005, p. 20.

⁷³ World Bank, 2019b available at <https://www.worldbank.org/en/topic/poverty/overview>.

poverty in 2015.⁷⁴ The African continent is covered by the African (Banjul) Charter on Human and Peoples' Rights (1981) and the American continent is covered by the American Convention on Human Rights (1969) and its additional protocol. The rights which have a constitutive relevance to extreme poverty are summarized in the table below.

Table 3. Regional Instruments in connection to extreme poverty

Regional Instruments⁷⁵		
Instruments	Articles	Right
Africa		
African [Banjul] Charter on Human and Peoples' Rights (1981)	4 16 17 22	-Life -Health -Education -Economic, social and cultural development
Americas		
American Convention on Human Rights (1969)	4 26	-Life -Progressive development (realization of economic, social, educational, scientific, and cultural rights)
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador" (1988)	10 12 13	- Health - Right to Food - Education

As demonstrated in the table, the African Charter on Human and Peoples Rights' is an instrument that presents a comprehensive set of rights in connection to poverty. It does not include the right to adequate standard of living but it embraces the right to economic, social and cultural development in its article 22. Furthermore the African Commission has already

⁷⁴ World Bank, 2018b, available at <https://www.worldbank.org/en/topic/poverty/overview>.

⁷⁵ OHCHR, 2019, available at: <https://www.ohchr.org/EN/Issues/Poverty/Pages/IStandards.aspx>.

recognized in the *Serac case*⁷⁶ that the right to housing and food is implicit in the Charter in connection to the right to life, health and economic, social and cultural development.

The African Commission is the quasi-judicial body in the African system and it can receive communications concerning violations of any individual, group or NGOs, at their behalf or of others.⁷⁷ In the beginning of the year 2019 only seven states have ratified the protocol recognizing the competence of the African Court on Human and People's right, the judicial body of the system, which started its operation in the end of year 2006.⁷⁸

The American Convention on Human Rights (ACHR) also embraces almost all the rights which have a constitutive relevance to extreme poverty. Extreme poverty is a central issue to the system. The Charter of the Organization of American States has among its purposes and principles the eradication of extreme poverty. Extreme poverty is understood as an obstacle to the full democratic development in the region.⁷⁹ A shared responsibility of the states regarding the issue is also established.⁸⁰ The system even has a general secretariat, which function is to promote economic, social, juridical, educational, scientific, and cultural relations among the States, with special focus on the cooperation for the elimination of extreme poverty.⁸¹ Furthermore, the article 34 presents several basic goals which are, among other things, the elimination of extreme poverty.

In the Inter-American system, the Inter-American Commission is the quasi-judicial body responsible for the individual petition system. It also monitors the human rights situation of the member states, sets priority to thematic areas and prepares studies and countries reports. Quasi-judicial bodies respond to claims and have the power to declare that violations have occurred. They also indicate or recommend that violations have to be corrected. However, there is no consensus on whether those decisions are considered to be binding. According to the Inter-American Court, the States have the obligation to make every effort to comply with the

⁷⁶ Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (Communication No. 155/96).

⁷⁷ See ACHPR, Information Sheet No 2: Guidelines for the Submission of Communications, African Commission Secretariat, 1987, p.7.

⁷⁸ African Union, 2019. Available at https://au.int/sites/default/files/treaties/36396-sl-protocol_on_the_statute_of_the_african_court_of_justice_and_human_rights.pdf

⁷⁹ Charter of the OAS, 1948, Article 2 (g).

⁸⁰ *Ibid.* Article 3 (f).

⁸¹ *Ibid.* Article 111.

Commission's recommendations.⁸² The Inter-American Commission can receive complaints of any individual or group of individuals, including recognized NGOs (non-governmental organizations).⁸³ It can also transfer contentious cases to the Inter-American Court, the judicial body of the system that can issue binding decisions. If the Court finds a violation, it will ask for remedy and fair compensation to the injured party. The decision of the Court is final, which means that no appeal is possible. States are under the obligation to comply with the judgement of the judicial bodies, which can also supervise their compliance.⁸⁴ Still, some countries which are members of the ACHR have not yet granted contentious jurisdiction to the Court, such as Dominica, Grenada, Jamaica and Trinidad and Tobago (withdrawal in 1999).⁸⁵

3.2. Nature and Scope of Legal Obligation

3.2.1. The Justiciability of Economic and Social Rights

As previously mentioned, the rights which have a constitutive relevance to poverty are part of two different sets of rights. The right to life is included in the civil and political set, while the right to an adequate standard of living, the right to health, and the right to education are understood as social and economic rights. Although the later set of rights was already presented on the ICESCR in 1966 and before that on the UDHR in 1948, economic, social and cultural rights have only recently become recognized as justiciable and legally enforceable rights. The right to adequate food, for example, had until 1996 a mere symbolic value.⁸⁶ Therefore, the right to food was not considered as a concrete or immediate obligation and victims of hunger could not seek judicial remedies to redress their situation.⁸⁷

The nature and scope of international legal obligations of the ICCPR were considered to be clear and straightforward, making civil and political rights clearly concrete and enforceable rights. However, differences between the provisions of the covenants prevented that economic and social rights to be immediately recognised in the same way.

⁸² Loayza Tamayo v. Peru, Judgment of September 17, 1997, (Ser.C) No. 33, para.80.

⁸³ American Convention on Human Rights, 1969, Art. 44.

⁸⁴ Quiroga, 2012, p. 537-538.

⁸⁵ IACHR, 2019. Available at <http://www.cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm>

⁸⁶ Since the World Food Summit in 1996, followed by the publication of the General Comment No 12 in 1999, the right to food has gained visibility and was transformed into an operational tool, currently leading to litigations before national courts, as will be demonstrated in the next chapter.

⁸⁷ Schutter, 2015, p. 13.

The article 2 of both covenants (2 (1) in the ICCPR and 2(2) in the ICESCR) guarantee that the rights prescribed in their content shall be guaranteed in accordance to the principle of non-discrimination, meaning “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.⁸⁸ However, the second part of the same article contains distinctions that led to the discussion of the justiciability of economic, social and cultural rights.

The articles that prescribes the nature and scope of both International Covenant can be seen in the table below.

Table 4. Scope of legal obligations in the ICCPR and in the ICESCR

ICCPR Article 2(2)	ICESCR Article 2(1)
“Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps , in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” ⁸⁹ (emphasis added)	“Each State Party to the present Covenant undertakes to take steps , individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources , with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” ⁹⁰ (emphasis added)

Some has argued that when comparing the article 2 of both Covenants it seems that the legal scope of the ICESCR is vague and imprecise, which makes it hard to determine what the legal obligations of the states are.⁹¹ While the obligations under article 2 of the ICCPR were considered to be immediate, absolute in nature and not limitable, the obligations in the ICESCR were qualified and limited, since its full realization could be achieved progressively and it was limited to the States’ maximum available resources. Some has argued that the rights in the ICCPR had a high degree of determination and low degree of discretion. Considering that the word ‘necessary’ is left out of the ICESCR, it was considered that the obligations of the states for these set of rights had a low degree of determination and a high degree of discretion. In other words, it was argued that there was a bigger margin of appreciation for states to decide

⁸⁸ ICCPR, 1966, Art. 2 (1).

⁸⁹ ICCPR, 1966, Art. 2 (2).

⁹⁰ ICESCR, 1966, Art. 2 (1).

⁹¹ Vizard, 2006, p.158-159.

on the fulfilment of economic, social and cultural rights.⁹² Going even further, it was generally claimed that civil and political rights are ‘real’ rights, legally binding and could be immediately secured in positive law while economic, social and cultural rights are mere programmatic policy goals, a different category without legal significance.⁹³

However, in the last three decades the normative standards have evolved in the field. Also, general comments were set by authoritative bodies at the international level to clarify the content, nature and scope of obligations towards human rights. The authoritative body responsible for the ICCPR is the Human Rights Committee. The Committee on Economic, Social and Cultural Rights is responsible for the ICESCR.⁹⁴

The Committee on Economic, Social and Cultural Rights adopted the general comment 3, the most important interpretive guide regarding the states obligations under the ICESCR in 1990. General Comment 3 sustains that although the full realization of economic, social and cultural rights can be fulfilled progressively, steps towards their realization must be taken by all appropriate means, including administrative, financial, educational and social measures. From a legal perspective, it is expected that states would adopt legislative measures prescribing economic, social and cultural rights and provide judicial remedies when these rights are violated. Additionally, the steps shall be taken within a reasonable time after the ratification of the Covenant.⁹⁵ These steps shall be “deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant”.⁹⁶

The progressive realization of economic, social and cultural rights is an immediate obligation of the states, it is not conditional on resources and must be read in accordance to the overall objective of the Covenant, which establishes a clear obligation of states to fulfil these rights.⁹⁷ To guarantee that economic, social and cultural rights are exercised without discrimination is also a provision which has an immediate effect. The idea of the use of the term “progressive realization” is to recognize that the full realization of all economic, social and cultural rights

⁹² *Ibid.* p.158-159.

⁹³ Vizard, 2006, p.158-159.

⁹⁴ Scheinin, 2012, p. 666-667

⁹⁵ CESCR, General Comment No. 3: The Nature of States Parties' Obligations, 14 December 1990, UN. Doc. E/1991/23, para. 2 and 5.

⁹⁶ *Ibid.*, para. 2.

⁹⁷ CESCR General Comment No. 3: The Nature of States Parties' Obligations, 14 December 1990, UN. Doc. E/1991/23, paras. 9. See also: Limburg Principles, 1987, principles: 1, 21, 22, 23, 24; and Maastricht Guideline, 1997, guideline 8.

could not be generally achieved by states in a short period. Therefore, progressive realization should not be interpreted as depriving the obligation to fulfil the meaningful content of the rights. Instead, it is a flexible device reflecting the realities and difficulties involved in ensuring the full realization of those rights. Based in General Comment 3, Riedel sustains that economic, social and cultural rights “are not variable, up to the free policy choices of states, nor do they lay down a double standard of morality vis- -vis developing and developed states: rather, they make the distinction based on the fact that states start from various initial factual bases”.⁹⁸

Article 2 does not release states to move as expeditiously as possible towards the full realization of those rights. States cannot use the progressive realization provision as a pretext for non-compliance. Furthermore, any deliberately retrogressive measure have to be fully justified in the context of the full use of the maximum available resources.⁹⁹

States have different sets of obligations in regard to each right. Those obligations are (i) obligation to respect, (ii) obligation to protect and (iii) obligation to fulfil. The obligation to respect generally refers to the State’s duty to not interfere on the enjoyment of human rights.¹⁰⁰ For example, it will be considered a violation of the right to water if states would arbitrarily disconnect water services or facilities, or if states would increase the price of water services in a discriminatory or in an unaffordable way.¹⁰¹ As another example, states would be respecting the right to adequate standards of living by refraining from interfering in the already existing levels of enjoyment of the right to food, housing and water by ensuring that those who produce their own food would continue to have access to the land on which their livelihood depends.¹⁰²

The obligation to protect refers to states’ due to take measures to ensure that enterprises or individuals (private parties) do not deprive people of their access to relevant rights.¹⁰³ In the example of the right to water, it would be considered a violation if states would fail to enforce

⁹⁸ Riedel, 2012, p. 139.

⁹⁹ CESCR, General Comment No. 3: The Nature of States Parties' Obligations, 14 December 1990, UN. Doc. E/1991/23, para. 9. See also: Limburg Principles 1, 21, 22, 23, 24; and Maastricht Guideline 8.

¹⁰⁰ Langford, 2008, p. 14.

¹⁰¹ CESCR, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003. UN. Doc E/C.12/2002/11, para. 44 (a).

¹⁰² Schutter, 2015, p. 13.

¹⁰³ CESCR, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999. UN. Doc. E/C.12/1999/5, para. 15.

laws to prevent the contamination and inequitable extraction of water by private parties or if states fail to protect water systems from a third party interference, damage or destruction.¹⁰⁴

Finally, the obligation to fulfil is related both to the obligation to facilitate access to a right and the obligation to provide. In other words, it means that states must proactively engage to strengthen access to the rights and when an individual or group of individuals are unable, for reasons beyond their control, to enjoy economic and social rights, the state has the obligation to provide the right directly.¹⁰⁵ Insufficient expenditure or misallocation of resources which would result in the non-enjoyment of the right especially by vulnerable groups, would be an example of violation in this case.¹⁰⁶ It would also be considered a violation if the state would allow starvation when people are in desperate need and are unable to provide food for themselves.¹⁰⁷

The obligation to fulfil has presented a controversial question in the jurisprudence. It has been argued that in accordance to the doctrine of separation of powers, the adjudication of economic and social rights would be considered anti-democratic in nature once issues related to social policy and the allocation of resources should be ruled by elected representatives. Additionally, it has been argued that courts would not have the experience or skill to deal with questions of policy nature. These concerns have, however, been rejected in recent years for being oversimplified and overstated. These arguments are weak to support the non-justiciability of economic and social right because the same concerns can be equally applied to the set of civil and political rights, once in some cases they also require the implementation of policies.¹⁰⁸ Additionally, Langford clarifies that courts are constitutionally empowered to make judicial review regarding the realization of economic and social rights. To address violations and apply remedies are simply part of their constitutional job. In this sense, courts are not asked to make policies or laws, they are asked to review existing laws and policies applying a set of criteria.¹⁰⁹ In the same way, Bilchitz clarifies that policies and rights are different conceptions. Policies

¹⁰⁴ CESCR General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, UN. Doc E/C.12/2002/11, para. 44 (b).

¹⁰⁵ CESCR, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999. UN. Doc. E/C.12/1999/5, para. 15.

¹⁰⁶ CESCR, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003. UN. Doc. E/C.12/2002/11, paras. 44 (c).

¹⁰⁷ General Assembly, The Right to Food. Preliminary Report of the Special Rapporteur of the Commission on Human Rights on the Right to Food, Jean Ziegler, 23 July 2001. UN Doc. A/56/210, para. 29.

¹⁰⁸ IDLO, 2015, p. 23.

¹⁰⁹ Langford, 2008, p. 21 and 31-34.

are up to governments, but courts should supervise and guarantee that peoples' basic rights are fulfilled. Therefore, courts shall be able to establish standards of economic and social provisions needed to guarantee the enjoyment of those rights.¹¹⁰

Due to these clarifications, the debate of the justiciability of economic and social rights has been resolved and this set of rights are firmly established as legally enforceable human rights. In other words, it is nowadays clear that there is the possibility for individuals, or a group of individuals, to claim a violation of economic, social and cultural right before a judicial body that can order remedies if a violation is determined. There is a vast jurisprudence supporting the enforceability of those rights.¹¹¹ The role of judges as guardians of the constitution are primordial for the enforceability of economic and social rights, having a transformative potential for combating poverty.¹¹²

An explicit example in the poverty jurisprudence concerning the justiciability of economic and social rights is found in the *Ibrahim Sangor Osman* case. The case was related to the right to adequate housing and the prohibition of forced eviction. At that occasion, the Court recognized that the state's organs have the duty to address the needs of vulnerable groups, especially the extreme poor.¹¹³

The Constitution of Kenya entrenches both civil and political rights and also social and economic rights, and makes both justiciable. It is an acknowledgment of the fundamental interdependence of these rights. The interdependence is out of the realization that people living without the basic necessities of life are deprived of human dignity, freedom and equality. Democracy itself is enhanced when citizens have access to the basic necessities of life.¹¹⁴

As suggested by Porter, the current debate is no longer related to whether economic and social rights are justiciable, but rather to understand how they should be adjudicated.¹¹⁵ Finally, States have obligations regarding the minimum core content of human rights.

¹¹⁰ Bilchitz, 2002, p. 488.

¹¹¹ Langford, 2008, p. 4.

¹¹² Formisano Prada, 2011, p. 29.

¹¹³ *Ibrahim Sangor Osman v Minister of State for Provincial Administration & Internal Security* (2011) eKLR Constitutional Petition No 2 of 2011.

¹¹⁴ *Ibid.*

¹¹⁵ Porter, 2008, p. 4.

3.2.2. Minimum Core Obligations

The CESCR establishes the idea of a minimum core obligation in the General Comment 3, regarding the nature of States obligation. The minimum core obligations are set to ensure that a minimum essential level of each of the rights is satisfied in all the States Parties. Those are related to essential food, primary health care, basic shelter, housing and the most basic form of education.¹¹⁶

According to the CESCR the obligation toward the fulfilment of a minimum core does not fall within the “progressive realization” and has immediate effect. In the same way, justifying the lack of compliance due to the lack of available resources is restricted. For states party to be able to claim that a lack of available resources is the reason why they are failing to fulfil its minimum core obligations “[States] must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations”.¹¹⁷ Additionally, even when the state’s resources are proven to be inadequate, there is still an obligation to ensure, as wide as possible, the enjoyment of the relevant rights under the circumstances.¹¹⁸

General Comment 3 clarifies that a state party “in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education”¹¹⁹ is failing to fulfil its obligations. In other words, a minimum protective floor shall be established for every right and if this floor is not provided, states are found in non-compliance with Article 2.¹²⁰ It is argued, therefore, that the minimum core obligation aims to address extreme poverty as a social phenomenon. Therefore, although the states have the obligation to fulfil its obligation as a matter of individual rights, the minimum core provisions shows the intention to apply the concept in places where many are deprived of basic essential services or, in other words, in places where extreme poverty is found. The minimum core discussion is about developing countries. The concept is built to give priority for those who experience situations that can threaten their survival capacities.¹²¹

¹¹⁶ CESCR, General Comment No. 3: The Nature of States Parties' Obligations, 14 December 1990. UN. Doc. E/1991/23, paras. 9-10.

¹¹⁷ *Ibid.* para. 10.

¹¹⁸ *Ibid.* para. 11.

¹¹⁹ *Ibid.* para. 10.

¹²⁰ Vizard, 2006, p. 169.

¹²¹ Bilchitz, 2003, p. 23.

Therefore, it would not be possible to find developed countries in violation with the minimum core, once their population have access to those essential basic services. They are nevertheless required to improve the levels of provisions until the full realization of the rights once all the states (developing and developed) are under the obligation towards the full realization of those rights.¹²²

The idea behind the minimum core obligation is that each human right contain an essential core. The minimum core obligations adopted by the CESCR is, therefore, a methodology for states to operationalize the essential core of economic and social rights.¹²³ There are not “core” and “non-core” rights, rather, one right can involve different levels of provisions and the states have to provide the minimum core immediately and increase the level of provisions progressively.¹²⁴

Young sustains that the minimum core conception reflects a minimalist strategy in terms of rights that aims to maximize the gains by minimizing the goals.¹²⁵ It offers an understanding of which direction the “deliberative, concrete and targeted” steps shall be taken and aims to set a baseline of economic and social protection across different levels of available resources and different economic policies. Bilchitz argues that the recognition of a minimum core attempts to prioritize survival interest and that it must be realized without delay. It is argued that without the protection of people’s survival necessities, all other rights become meaningless.¹²⁶ The idea of survival is also adopted by Riedel, who understands the minimum core as the obligation of states to provide a “survival kit” or an “existential minimum” of rights to everyone.¹²⁷

Some national courts¹²⁸ have already recognized a minimum core of some economic, social and cultural rights. An example, in *Quevedo, Miguel Ángel y Otros c/ Aguas Cordobesas SA*¹²⁹ the Argentinian Court established the minimum amount of water to guarantee basic hygiene and health conditions to an average family. At regional level, the African commission have

¹²² CESCR, General Comment No. 3: The Nature of States Parties' Obligations, 14 December 1990. UN. Doc. E/1991/23, paras. 9

¹²³ Scheinin, 2013, p. 538.

¹²⁴ Bilchitz, 2003, p. 13.

¹²⁵ Young, 2008, p. 113-114.

¹²⁶ Bilchitz, 2003, p. 12.

¹²⁷ Riedel, 2012, p. 140.

¹²⁸ As will be further demonstrated in the next chapter.

¹²⁹ *Quevedo, Miguel Ángel y Otros c/ Aguas Cordobesas SA*. Juez Sustituta de Primera Instancia Civil y Comercial (Ciudad de Córdoba) (08/04/2002).

established the minimum standards related to the right to shelter and food in *Serac case*¹³⁰. Both cases will be further explored in the following chapter.

However, other domestic courts have not yet adopted the idea of a minimum core. In the *Grootboom case*¹³¹, a case related to the right to housing, the South African Constitutional Court did not recognize the minimum core. The Court argued that the lack of sufficient information to determine what the minimum core obligation would be in the context of the constitution. In the *TAC case*, it stated that it was impossible to guarantee everyone access to a core immediately¹³² and in the *Soobramoney case* it considered the economic rights being dependent upon available resources.¹³³

Bilchitz refutes the argument that the South African Constitutional Court would not have sufficient information regarding the basic needs related to these rights. Bilchitz explains that universal standards must be met in order for an obligation to be fulfilled. To the author, establishing a minimum core is not to establish in which means economic and social rights shall be realized, rather, it shall be a standard of provision that are necessary to meet people's basic needs. The minimum core content does not vary in accordance to the characteristics of a specific group, rather, it is a general notion applicable to all human beings. In the *Grootboom case*, the community was clear about what they wanted: protection from elements and access to an environment that would not compromise their health. In this sense, no difficulty should be found in identifying the nature of the most basic need in relation to right to housing, nor would a vast source of information be necessary.¹³⁴

Bilchitz also refutes the argument that it is impossible to guarantee everyone's access to a core content immediately. The author sustains that this rigid, absolutist and not realist approach is unfair: "the minimum core approach does require us to take a rigid stance in one respect: it requires us to recognize that it is simply unacceptable for any human being to have to live

¹³⁰ Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (Communication No. 155/96).

¹³¹ Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000), para. 33.

¹³² Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721; 2002 (10) BCLR 1033 (5 July 2002), para. 35.

¹³³ Soobramoney v Minister of Health (Kwazulu-Natal) (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (27 November 1997), para. 11.

¹³⁴ Bilchitz, 2002, p. 488-489.

without sufficient resources to maintain their survival”.¹³⁵ To Bilchitz, the first point to be considered is that the minimum core approach is set to specify priorities and that priorities shall be given for those who have their survival capability threatened. When survival is at threat, states cannot treat the situation as one issue that can be dealt among many others. In this situation, states have the obligation to assist these people.¹³⁶

It is clarified that the lack of available resources does not affect the right that a person has, only the capacity of the government to realize them. In that case, the obligations of states may change but not the content of the right itself.¹³⁷ States’ obligations are defined regardless their economic resources but what is required of them depends on its available resources and capability.¹³⁸ Following the normative guidance of the general comment 3, when the government claims that it is not possible to fulfil core rights, the Court shall, then, require proof that the government is unable to do so.¹³⁹

Additionally to the standards established in the General Comment 3 (Essential foodstuff, essential primary health care, basic shelter, basic housing and most basic forms of education) the CESCR goes even further in the establishment of benchmarks to be followed when interpreting the minimum core in other General Comments. Although the General Comment related to the right to housing doesn’t specify the minimum core of this right, the ICESCR have already established the minimum core content of the right to food, water, health and education, which will be explored in the next chapter.

The minimum core obligations are set to protect the most vulnerable, the ones who lack basic shelter, food, water and health, and no group is more vulnerable to face those conditions than the extremely poor. Pogge argues that human rights deficits are currently mostly concentrated among the poor.¹⁴⁰ UNICEF observed that, when it comes to “realizing their right to survive and develop, the odds are stacked against those from the poorest and most disadvantaged households”.¹⁴¹ It can be argued that the situations considered as a violation of the minimum core content are mostly concentrated among those who suffer from extreme poverty. Hunger,

¹³⁵ Bilchitz, 2003, p. 15.

¹³⁶ *Ibid.* p. 18.

¹³⁷ *Ibid.* p. 20-21.

¹³⁸ *Ibid.* p. 23.

¹³⁹ *Ibid.* p. 16.

¹⁴⁰ Pogge, 2005, p. 2.

¹⁴¹ UNICEF, 2016, p. 9.

for example, is only faced by the extremely poor. Ahmed et al. made a survey among 20 developing countries clarifying that poverty and hunger overlap and suggest that although not all extremely poor people suffer from hunger, all people in hunger are extremely poor, which is consistent with the fact that poverty is the primary cause of hunger.¹⁴²

Through the minimum core doctrine it is possible to establish a straightforward obligation of States towards the constitutive rights to extreme poverty or, in other words, it is possible to invoke obligations more directly, making it difficult for the state to reject the appeals related to those obligations.¹⁴³ It is through the minimum core content that extreme poverty can be validated as a human rights violation. Therefore, it is expected that states would implement and give priority to policies to tackle extreme poverty.¹⁴⁴ Sengupta has even suggested that, in order to meet with their international obligations, states would have to identify a small percent of its population as the most vulnerable (suffering from extreme poverty) and guarantee the fulfilment of a minimum level of some basic human rights prescribed in both international covenants.¹⁴⁵

The minimum core content of the constitutive rights to extreme poverty are inseparable from human dignity and especially connected to the principle of human survival.¹⁴⁶ If the minimum core content of the rights which have a constitutive relevance to poverty were guaranteed, the vulnerabilities faced by extreme poor people would be overcome. In other words, the minimum core of those rights can provide the minimum essential level of basic services that, once respected, would make possible to live a life in dignity. In that sense, the development and advancement of those rights are expected to provide a solid base for the mitigation of extreme poverty.¹⁴⁷

¹⁴² Ahmed et al., 2007, p.40.

¹⁴³ Economic and Social Council. Human rights and Extreme Poverty: Report of the Independent Expert Arjun Sengupta, March 2006. UN Doc. E/CN.4/2006/43, para. 48.

¹⁴⁴ *Ibid.* para. 33.

¹⁴⁵ *Ibid.* para.10 and 57.

¹⁴⁶ As will be explored in the next chapter.

¹⁴⁷ Formisano Prada, 2011, p. 37.

4. The Content and Applicability of Human Rights with Constitutive Relevance to Poverty

4.1. The Right to Life

The right to life is the first human right presented in this chapter because it is connected to extreme poverty through the freedom mostly related to people's survival, the freedom to lead normal spans of life (see Table 1). Also, a severe denial of the freedom to enjoy adequate living conditions or to be nourished can ultimately lead to a violation of the right to life. As a consequence, more than being a premise for the enjoyment of all the other human rights,¹⁴⁸ the right to life is closely connected to the minimum core content of the other rights which have a constitutive relevance to extreme poverty (the right to education being an exception). In other words, it is argued that when states fail to provide the minimum core content of the right to housing, food, water and health, as will be further discussed in this chapter, they can, consequently, also be violating the right to life.

From the rights identified as having a constitutive relevance to extreme poverty, the right to life is the only one which belongs to civil and political set of rights. The right to life is prescribed in the ICCPR. According to article 6 “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.¹⁴⁹

The Human Rights Committee updated the General Comment regarding the right to life on October of 2018 and stated that the right to life has to be interpreted widely. The right to life concerns the right for individuals to be free from acts or omissions that are intended or may be expected to cause their unnatural and premature death. Also, the right to life concerns the right to enjoy a life in dignity. In this context, a deprivation of the right to life would involve an intentional or foreseeable and preventable life-terminating harm or injury. States have the obligation to respect and to ensure the right to life by legislative and other measures and to guarantee effective remedies to all the victims of the violation of this right.¹⁵⁰

¹⁴⁸ CCPR, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, 30 October 2018. UN. Doc. CCPR/C/GC/36, para. 2.

¹⁴⁹ ICCPR, 1966, art 6.

¹⁵⁰ CCPR, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, 30 October 2018. UN. Doc. CCPR/C/GC/36, para. 2-4 and 6.

Therefore, there are two obligations related to the right to life. The first is that states have the obligation to respect the right to life by not being responsible for unlawful deaths. Secondly, states have the obligation to ensure the right to life guaranteeing that their population have the necessary conditions to maintain their survival and to enjoy a life in dignity. Although the current jurisprudence also considers poverty when addressing cases related to the first obligation, the right to life is mostly connected to extreme poverty through the second obligation. Extreme poverty can lead people to die from preventable deaths, which includes starvation, malnutrition, preventable diseases and dehydration. Therefore, these deaths are related to the right to housing, food, water and health, more specifically to their core contents.¹⁵¹

The right to life is explicitly connected to extreme poverty in two paragraphs of General Comment 36. Paragraph 23 prescribes the duty of states to take special and urgent measures to protect the life of people in situation of vulnerability whose lives are under particular risk. This include, among others, the protection of children in street situation (homeless children). Furthermore, paragraph 26 prescribes the duty of states to take measures to address general conditions in society that can rise direct threats to life or could potentially prevent individuals to live in dignity. That specifically includes situations where individuals face widespread hunger, malnutrition, extreme poverty and homelessness. States shall ensure access without delay to essential goods and services such as foodstuff, water, shelter, health-care, electricity, sanitation, social housing programs and access to medical care to reduce maternal mortality.¹⁵² This provision is a clear connection between the right to life and the right to house, food, water and health. Additionally, the Committee highlights that the right to life is connected to the child's rights prescribed in the article 24 of the same Covenant and urge for the adoption of special measures to protect the life of every child. These measures shall be guided by the best interest of the child, the need to ensure children's survival, development and well-being.¹⁵³

There are substantive statistics supporting the connection of the right to life to the failures of the enjoyment of the minimum core content of the right to housing, food, water and health. As an example, a child born in sub-Saharan Africa is 12 times more likely to die before completing five years-old than those born in a high-income country. A child born in Sierra Leone is 30

¹⁵¹ *Ibid.* para. 2-4 and 6.

¹⁵² *Ibid.* para. 23 and 26.

¹⁵³ *Ibid.* para. 60.

times more likely to die before his or her fifth birthday than a child born in the United Kingdom. Within states, children who are born in the poorest 20% of the population, are almost twice as likely to die in this age group (0-5 years old) than those in the 20% richest, considering the global average. Of the 5.9 million under-five years old deaths in 2015, almost half were caused by pneumonia, diarrhoea, malaria, meningitis, tetanus, measles, sepsis and AIDS. Pneumonia and diarrhoea are the leading causes in the three regions with the highest rates of those deaths: Eastern and Southern Africa, South Asia and West and Central Africa. The most disadvantaged groups are the ones who suffer mostly from those diseases. In the case of pneumonia, children from the poorest households are also less likely taken to a health care centre. UNICEF predicts that in 2030, the global maternal mortality rate in low-income countries will be 161 deaths per 100.000 live births which is five time the level of high-income countries.¹⁵⁴

Correlating the right to life to the right to adequate standards of living, UNICEF sustains that:

Access to land, credit and property rights has a further impact on child survival prospects. Marginalized groups living in informal settlements, illegal dwellings or urban slums are vulnerable to health threats because of overcrowding, unsanitary conditions, high transportation costs, discriminatory practices and lack of access to basic services. These factors also create barriers to demand, impeding the initial and continued use of services by the most disadvantaged. When combined with low rates of immunization, this situation exacerbates the transmission of diseases such as pneumonia, diarrhoea, measles and tuberculosis.¹⁵⁵

Moreover, when water is insufficient, the poorest families are most likely to resort to unsafe water, which can lead to diseases such as cholera and diarrhoea. In low and middle- income countries there were a hundred deaths per day of under-five years old due to inadequate drinking water, sanitation and hygiene issues in 2012. The risk of morbidity for inappropriate water and sanitation is 38% higher on the age range of one to eleven months babies. Also, half of the deaths of children before five-years old are attributed to undernutrition.¹⁵⁶

Even when considering the right to education, which does not have a straightforward connection to survival, in South Asia and sub-Saharan African when mothers does not have education, their children are three times more likely to die than the children of mothers who

¹⁵⁴ UNICEF, 2016, p. 9, 10, 13, 20 and 24.

¹⁵⁵ *Ibid.* p.11.

¹⁵⁶ *Ibid.* p. 11 and 16.

have secondary education. Education gives the tools women need to delay the space between births and to seek and access health care when their children fall ill.¹⁵⁷

The right to life have been successfully invoked in national courts to protect the extreme poor in connection to other rights which have a constitutive relevance to extreme poverty. In *Ibrahim Sango Osman v Minister of State for Provincial Administration & Internal Security* the petitioner claimed that more than 1.000 people were violently forcedly evicted from their homes on public land occupied since the 1940s. People were in a situation where no basic condition for living could be found. Some children were even forced to drop out from school. The High Court of Kenya acknowledged that the evictions forced the claimants to live without shelter, food, water, sanitation and health care, which is a violation of the ICESCR. The Court recognized that people living in conditions where their basic necessities to live are not satisfied are deprived of human dignity, freedom and equality. The Court highlighted that under Kenyan Bill of Rights, all organs of the states have the obligation to address the needs of vulnerable groups within the society. It found that the violation of the right to adequate housing, of the right to be free from hunger and of the right to water and sanitation also led to a violation of the right to life. The Court issued an injunction for the state to return the land for the petitioners and to reconstruct or provide alternative housing and other facilities for them.¹⁵⁸

In *People's Union for civil liberties v Union of India & Ors* the state was accused of failing to address hunger conditions after starvation deaths occurred in Rajasthan. In other words, the state was failing to comply with the right to food, impacting the right to life. In this case, the Supreme Court of India made important considerations regarding the positive obligations of the state towards the extreme poor, including sustaining that economic constrains cannot be used as an excuse to not fulfil rights when the ability to people's survival is threatened, idea based on the minimum core obligations. In the words of the Court:

It is the duty of the State and the Union Government to enforce the right to life of all persons particularly in situations of drought. The right to live enshrined in Article 21, as interpreted by the Supreme Court, includes the right to food. Persons below the poverty line or persons who are drought-affected and who do not have the financial capacity to purchase food grains are entitled to be looked after by the State and the Union Government in this regard. As these persons move from chronic malnutrition to acute

¹⁵⁷ UNICEF, 2016, p. 16.

¹⁵⁸ *Ibrahim Sangor Osman v Minister of State for Provincial Administration & Internal Security* (2011) eKLR Constitutional Petition No 2 of 2011.

starvation, the State and Union Governments are duty bound to intervene and start relief works and distribute free grain to those unable to work. Financial constraints is no excuse when the issue is one of preservation of life, and has been rejected by the Supreme Court in this context.¹⁵⁹

Furthermore, the Court highlighted in the grounds of the decision that the state was negligent in performing their constitutional obligation to ensure the life of the people including living with dignity and have at least two square meals per day. The Court argued that the state have failed to use the available resources to drought relief, prevention of starvation and alleviation of misery.¹⁶⁰ The Indian Supreme Court found that the right to life was compromised and held that the state was failing to implement existing legislation and policies. The Court required, among other things, the implementation of a Famine Code and the increase of the amount of grain available for each household to 10kg. The Court also required the government of India to release food stocks for the state of Rajasthan to cover all the expenses related to the relief measures.¹⁶¹ In interim measures, it was established that the State would have to provide a ration card for free grain for those without the means for supporting themselves. The Court also ordered the progressively implementation of a mid-day meal at schools, especially in the most poor areas.¹⁶²

At the international level, the Inter-American Court has also held that if minimum conditions to live a life in dignity is not guaranteed by the states, then the state is violating the right to life. To make this assessment, the Court took into consideration the minimum core content of economic and social rights, as can be observed in the following cases. In the *Case of the Indigenous Community Yakye Axa v. Paraguay* an indigenous community had been displaced from their traditional land which led the community to extreme poverty. The Court sustained that their right to life was abridged by not allowing them to access conditions that would enable them to live a decent life.¹⁶³ The Court recognized that the precarious material conditions and the poverty that they were living at that time reflected the lack of the enjoyment of basic human rights to health, food and education and clarified that States are under the obligation to guarantee, protect and ensure the right to life through generating the minimum living conditions

¹⁵⁹ People's Union for Civil Liberties v. Union of India & Ors, In the Supreme Court of India, Civil Original Jurisdiction, Writ Petition (Civil) No. 196 of 2001 para. 50.

¹⁶⁰ Ibid. para. 51.

¹⁶¹ Ibid. para. 53.

¹⁶² People's Union for Civil Liberties v. Union of India & Ors, In the Supreme Court of India, Civil Original Jurisdiction, Writ Petition (Civil) No. 196 of 2001. Interim Order of May 2, 2003.

¹⁶³ Indigenous Community Yakye Axa v. Paraguay. Series C N. 125 (17/07/2005).

that are compatible with the dignity of people.¹⁶⁴ The Court evaluated whether the State had complied with its obligations regarding the right to life in combination to the general duty to respect rights and with the duty to progressively develop economic and social rights including the right to health, to food, and to a healthy environment.¹⁶⁵ At the occasion, the Court found a violation of the right to life, the right to property and the right to judicial protection.¹⁶⁶

The *Case of the X kmok K sek Indigenous Community v Paraguay* is another case related to an indigenous community’s right to their traditional land where a violation of the right to life was found. The Court considered the principle of equality and non-discrimination regarding people living in poverty. In light of several alleged violations, the Court sustained that the case was an illustration of the persistence of structural discrimination practices.¹⁶⁷ The Court also sustained that it is essential for States to give effective protection taking in consideration indigenous people’s “particularities, their economic and social characteristics, and also their situation of special vulnerability”.¹⁶⁸ The Court acknowledged that the community’s ability to survive was restricted so as its ability to develop. The Court found a violation of the rights to property, judicial guarantee and protection and of the right to life.¹⁶⁹

In 2006, another case involving the right to ancestral land of indigenous community and extreme poverty was analysed: the *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. While waiting on the decision the community did not have access to basic human rights such as water, food, education and basic health services and their livelihood was in an imminent danger. The community members suffered from unemployment, illiteracy, malnutrition, lack of access to basic services, marginalization due to economic, geographic and cultural reasons and faced high rates of death from preventable diseases. Related to the state obligations towards the extreme poor, the Court highlighted that from general obligations “special duties are derived that can be determined according to the particular needs of protection of the legal persons, whether due to their personal conditions or because of the specific situation they have to face, such as extreme poverty, exclusion or childhood”.¹⁷⁰

¹⁶⁴ *Ibid.* para. 158 (e) and 162.

¹⁶⁵ *Ibid.* para. 163.

¹⁶⁶ *Indigenous Community Yakye Axa v. Paraguay*. Series C N. 125 (17/07/2005).

¹⁶⁷ *Case of the X kmok K sek Indigenous Community v. Paraguay*. Series C No. 214. (24/08/2010).

¹⁶⁸ *Ibid.* para. 270.

¹⁶⁹ *Case of the X kmok K sek Indigenous Community v. Paraguay*. Series C No. 214. (24/08/2010).

¹⁷⁰ *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, (29/03/ 2006) paras.154.

Paraguay was found in violation to the right to life, to property, to a fair trial and judicial protection among others.¹⁷¹

Moreover, the Inter-American Court also related poverty with the first obligation towards the right of life, the obligation to respect this right by not being responsible for unlawful deaths. In order to do that, the Court focused in discrimination towards people living in poverty. It is argued in a report on poverty and human rights in the Americas made by the OAS that discrimination leads to stigmatization, social exclusion and violence.¹⁷² Non-discrimination is a clause valid for all articles presented in the Covenant, but the CCPR reinforces that the right to life must be respected without distinction of any kind such as race, colour, social origin, ethnicity and socioeconomic status.¹⁷³

States are expected to take all measures to prevent arbitrary deprivation of life committed by their law enforcement official. Those cases are a matter of “utmost gravity” in which the law must strictly control. Additionally, states have the obligation to take the necessary measures to protect the lives of those who are deprived of their liberty during arresting, detaining and imprisoning people. In those cases, states are responsible for people’s life and body integrity. Loss of life occurring on those circumstances must be properly investigated.¹⁷⁴

In the *Case of Servellón García et al. v. Honduras*, two minors and two young adults were arrested and extrajudicially killed in a preventive detention operation of the Public Security Force in Tegucigalpa. The Court argued that the cause of the violation of the right to life were the victims’ social condition. Moreover, the Court sustained that the State did not provide the children an environment protected from violence and abuse. They lacked access to basic service and goods that would have given them the opportunity to development. In this case, the Court highlighted that states have the obligation to “ensure the protection of children and youngsters affected by poverty and socially alienated and, especially, to avoid their social stigmatization as criminals”.¹⁷⁵ Honduras was found violating many rights of the Inter-American Convention,

¹⁷¹ Case of the Sawhoyamaya Indigenous Community v. Paraguay, (29/03/ 2006) paras.163.

¹⁷² OAS. *Report on Poverty and Human Rights in the Americas*. 7 September 2017. OEA/Ser.L/V/II.164. Doc.147.

¹⁷³ CCPR, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018. UN. Doc. CCPR/C/GC/36, para. 60.

¹⁷⁴ *Ibid.* para.13, 19, 25 and 29.

¹⁷⁵ Case of Servellón García et al. v. Honduras, Series C No. 152, (21/09/2006), para. 116.

including, among others, the right to life, to humane treatment, the prohibition of torture, the right to personal liberty and security, to a fair trial and the right of the child.

The *Case of Uzcátegui et al. v. Venezuela* was related to the execution of Néstor José Uzcátegui by the state police. At the time, no one was sent to trial nor punished for the execution. Additionally, it was argued that Uzcátegui's brother, who was in search for justice for his brother's death, was being persecuted. The Court made considerations about the right to property of people living in poverty, once the house of the Uzcátegui family was damaged during the raid.¹⁷⁶ The Court sustained that the damage to their property had a great impact considering the socio economic and vulnerability state of the family and sustained that "States must take into account that groups of people living in adverse circumstances and with fewer resources, such as those living in poverty, experience an increase in the extent to which their rights are affected, precisely because of their more vulnerable situation."¹⁷⁷ Venezuela was found violating many rights of the Inter-American Convention, including, among others, the right to life, the right to property, to humane treatment, to personal liberty, to a fair trial and to judicial protection.

Another relevant and important case concerning the right to life in the poverty jurisprudence is the *Case of Villagrán Morales et al. v. Guatemala*, also known as *the Case of the Street Children*. At the occasion, the Inter-American Court analysed the two obligations related to the right to life combined. It was first in this case, in 1999, that the Court established that the right to life covers not only the right of not being deprived of life arbitrarily but also the right to have access to the necessary and minimum conditions for living in dignity. The case is about the kidnapping, torturing and death of four minors and the murder of a fifth one by members of the security forces.¹⁷⁸ The Court held that when the state violates the rights of children in vulnerable and risk situations they are victims of a double aggression. Firstly, because the State failed to prevent them to live in misery, a situation which deprives them to the minimum conditions to live a life in dignity and where the development of their personality could be full. Secondly, because it violates their right to physical, mental and moral integrity, including their

¹⁷⁶ Case of Uzcátegui et al. v. Venezuela. Series C No. 249 (03/09/2012).

¹⁷⁷ *Ibid.* para. 204.

¹⁷⁸ Case of the "Street Children" (Villagrán Morales et. al.) v. Guatemala. Series C No. 63. (19/11/1999).

lives.¹⁷⁹ That is a very meaningful and powerful statement which established that the Court recognizes that being in misery, or facing extreme poverty, is a violation of human rights.

In the light of Article 19 of the American Convention, the Court wishes to record the particular gravity of the fact that a State Party to this Convention can be charged with having applied or tolerated a systematic practice of violence against at risk children in its territory. When States violate the rights of at-risk children, such as “street children”, in this way, it makes them victims of a double aggression. First, such States do not prevent them from living in misery, thus depriving them of the minimum conditions for a dignified life and preventing them from the “full and harmonious development of their personality”, even though every child has the right to harbor a project of life that should be tended and encouraged by the public authorities so that it may develop this project for its personal benefit and that of the society to which it belongs. Second, they violate their physical, mental and moral integrity and even their lives.¹⁸⁰

4.2. The Right to Adequate Standards of Living Including Housing, Food and Water

4.2.1. The Right to Adequate Standards of Living

The right to an adequate standard of living is connected to two basic freedoms: the freedom to be nourished and the freedom to enjoy adequate living conditions. The right to an adequate standard of living is straightforwardly connected to poverty. Eide argues that in purely material terms, the right to an adequate standard of living implies a living above the poverty line. The author sustains that the realization of human rights, in relation to the right to an adequate standard of living, clearly requires the eradication of poverty.¹⁸¹

The ICESCR is the international instrument which presents the most comprehensive, and according to the CESCR, the most important provision related to the right to an adequate standard of living.¹⁸² Article 11 of the ICESCR prescribes in its first paragraph that states shall recognize everyone’s right “to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.¹⁸³ Also, the right to be free from hunger is recognized in the second paragraph:

¹⁷⁹ *Ibid.* para.191.

¹⁸⁰ Case of the “Street Children” (Villagrán Morales et. al.) v. Guatemala. Series C No. 63, (19/11/1999), para. 191.

¹⁸¹ Eide, 2001, p. 133.

¹⁸² CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991. UN. Doc. E/1992/23, paras. 3.

¹⁸³ ICESCR, 1966, article 11.

The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.¹⁸⁴

There are other international instruments which also prescribe the right to an adequate standard of living. The article 25 of the UDHR, for example, clarifies that the standard of living shall be adequate for the health and well-being of a person and his or her family, including food, housing, medical care and necessary social services.¹⁸⁵ The CRC prescribes that the standard of living shall be “adequate for the child’s physical, mental, spiritual, moral and social development”.¹⁸⁶

Eide sustains that although the basic components of the right to an adequate standard of living is prescribed in international instruments (food, housing, and clothing) a more precise definition of “adequate standard of living” is not developed by those.¹⁸⁷ In order to better clarify the scope of this right and its basic components, the CESCR have adopted four General Comments related to the article 11 of the ICESCR. Those are General Comment No 4 related to adequate housing, General Comment No 7 also related to housing but addressing forced evictions specifically, General Comment No 12 related to the right to adequate food and finally the General Comment No 15 related to the right to water.

¹⁸⁴ *Ibid.*

¹⁸⁵ UDHR, 1948, article 25.

¹⁸⁶ CRC, 1989, article 27.

¹⁸⁷ Eide, 2001, p. 134.

4.2.2. The Right to Adequate Housing

Lack of adequate shelter may affect many social groups, however, homelessness is mostly faced by the extremely poor. Being homeless is, as sustained by Paraschiv, the most extreme manifestation of poverty in urban areas.¹⁸⁸ There is no consensus on the definition of homelessness, which is problematic to provide an accurate comparisons among nations. Nevertheless, it is estimated that not less than 150 million people are homeless and 1.6 billion people lack adequate housing worldwide.¹⁸⁹ Moreover, as observed by UNICEF, for the most poor, the right to adequate housing has an impact even on the right to life.¹⁹⁰

The most basic necessity related to adequate housing is shelter. The CESCR provides a broad definition of shelter in General Comment 4. Shelter is not merely having a roof and should not be understood as just a commodity. Adequate housing shall include the right to live in security, peace and dignity. The right to housing is connected to other human rights and the principle dignity, a premise of the Covenant. The CESCR, based on the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000, enumerates the basic necessities related to adequate shelter: “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities”.¹⁹¹

Also, it is recognized that adequacy can be partially determined by social, cultural and environmental factors. However, certain international standards shall be fulfilled in relation to right to adequate housing. Those are:

- (i) Legal security of tenure: all forms of tenure (rental, lease and owner-occupation) shall have a degree of security to guarantee legal protection (against forced evictions or harassment, for example).
- (ii) Availability of services, materials, facilities and infrastructure which are essential to health, security, nutrition and comfort. This provision includes the access to safe drinking water,

¹⁸⁸ Paraschiv, 2012, p. 226.

¹⁸⁹ Chamie, 2017, available at <https://yaleglobal.yale.edu/content/cities-grow-so-do-numbers-homeless>.

¹⁹⁰ UNICEF, 2016, p. 11. Better discussed in the next subchapter related to the right to life.

¹⁹¹ CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991. UN. Doc. E/1992/23, para. 7.

energy for cooking, heating and lighting and among others, access to sanitation and means of food storage.

(iii) Affordability: the cost of housing should not compromise or threaten the satisfaction of other basic needs. This provision includes the state's obligation to provide subsidies for those who are unable to afford housing.

(iv) Habitability: to guarantee environmental and physical protection and an adequate space.

(v) Accessibility: providing adequate resources and giving priority to disadvantaged groups with special needs such as the elderly, children, disabled and victims of natural disaster.

(vi) Location: related to the access to services, such as schools, health care centers, childcare and social facilities and employment options. It is noticed in this provision that financial costs of locomotion affect disproportionately poor households. The location shall also be safe and not threaten the health of the inhabitants.

(vii) Cultural adequacy: in the construction of the houses.¹⁹²

Following the principle of legal security of tenure, General Comment 4 sustains that forced evictions are, *prima facie*, incompatible with the provisions of the ICESCR and should be only sustained in exceptional circumstances and in accordance with the principles of international law.¹⁹³

The CESCR elaborates more deeply the issue of forced evictions in the General Comment 7, clarifying which evictions are legal and what protections are required in the light of the ICESCR, which prescribes in its article 17.1 the right not to be forcefully evicted without adequate protection.¹⁹⁴ Forced evictions are understood as permanent or temporary removal of individuals, families or communities from the homes they occupy. The removals are against their will and without the provision or access to appropriate form of legal or other forms of protection. The prohibition of forced evictions do not apply for those evictions carried in accordance with the law and in conformity with international human right law and the principles of reasonableness and proportionality.¹⁹⁵ In other words, there are circumstances where evictions may be justifiable, such as the persistent non-payment of rent or damaging a rented property without reasonable cause. However, states shall ensure that evictions are

¹⁹² *Ibid.* paras. 8.

¹⁹³ *Ibid.* para. 18.

¹⁹⁴ ICESCR, 1966, article 17

¹⁹⁵ CESCR. General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions, 20 May 1997. UN. Doc. E/1998/22, para. 2, 3 and 14.

carried out in a manner warranted by law, guaranteeing appropriate procedural protection, due process, and that all legal resources and remedies are available for the people affected by those evictions.¹⁹⁶

States shall ensure that all feasible alternatives are explored in consultation with the affected people before carrying out any eviction, especially in circumstances involving large groups. This action is especially important in order to avoid or minimize the need of use of force.¹⁹⁷ Other procedural protections include: (i) adequate and reasonable notice prior to the scheduled eviction date, (ii) information regarding the eviction in reasonable time and (iii) provision of legal remedies for those affected by the eviction.¹⁹⁸

Although General Comment 4 do not explicitly list the minimum core obligations in relation to the right to adequate housing, it says that there are certain steps that must be taken immediately, regardless of the stage of development of states. Those are: (i) to respect negative obligations, meaning the state should abstain from certain practises that could threat the enjoyment of the right to adequate housing, (ii) to facilitate ‘self-help’ by affected groups, (iii) to monitor the housing situation of: homeless people, the inadequately housed without access to basic amenities, people living in ‘illegal’ settlements, people subjected to forced evictions and low income groups (iv) to request appropriate international cooperation if those steps are beyond their available resources.¹⁹⁹

In the same way, General Comment 7 sustains that the progressive fulfilment of rights based in the availability of resources is rarely relevant for forced eviction, once it is mostly related to a negative obligation. It sustains that states must refrain from forced evictions and ensure that a third party also do not engage in this practise.²⁰⁰ Moreover, it is valid to highlight that General Comment No 3 clarifies that when a State have a significant number of people living, among other things, without basic shelter, it shall be considered that this state is violating its obligations regarding the minimum core.²⁰¹

¹⁹⁶ *Ibid.* para. 11 and 13.

¹⁹⁷ *Ibid.*, para. 13.

¹⁹⁸ *Ibid.* para. 15.

¹⁹⁹ CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, UN. Doc. E/1992/23, para. 10 and 13.

²⁰⁰ CESCR, General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions, 20 May 1997. UN. Doc. E/1998/22, 1997, para. 8.

²⁰¹ CESCR General Comment No. 3: The Nature of States Parties' Obligations, 14 December 1990. UN. Doc. E/1991/23, para. 10.

In connection to extreme poverty, the CESCR highlights that the right to housing shall be ensured to everybody, regardless their income or access to economic resources and that priority must be given for those social groups living in unfavourable conditions. According to this provision States should focus on the most vulnerable, including the extremely poor.²⁰² The CESCR also recognizes that vulnerable individuals and groups suffer disproportionately from forced evictions.²⁰³ Moreover, it highlights that evictions should not result in homelessness or leave people vulnerable to violations of other human rights. If an affected group or an individual are unable to provide housing for themselves, the state must take all appropriate measures to ensure an adequate alternative housing to the maximum of its available resources.²⁰⁴

Litigation on both national and international level has addressed the right to adequate housing in claims brought by the extremely poor. In those cases, the Courts can effectively provide remedies to the extremely poor, including guaranteeing the protection of those who are affected by forced eviction, as will be observed in the following cases.

On national level, as already mentioned in the previous section, in *Ibrahim Sango Osman v Minister of State for Provincial Administration & Internal Security* the Kenyan High Court found a violation in the right to adequate housing when accessing the extremely poor conditions of more than 1.000 people who were forcedly evicted. In conformity with the CESCR prescriptions, the Court held that eviction shall not result in an individual becoming homeless or vulnerable to other human rights violations.²⁰⁵

The case *Government of the Republic of South Africa and Others v Grootboom and Others* in South Africa was related to the eviction of a community of an informal settlement on private land. The community had set up minimal shelter made of plastic where people lacked access to sanitation and electricity. The community did not challenge the eviction but the lack of temporary accommodation. South African Constitutional Court held that the state has the

²⁰² CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991. UN. Doc. E/1992/23, para. 7 and 11.

²⁰³ CESCR, General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions, 20 May 1997. UN. Doc. E/1998/22 para. 10.

²⁰⁴ *Ibid.* paras. 16.

²⁰⁵ *Ibrahim Sangor Osman v Minister of State for Provincial Administration & Internal Security* (2011) eKLR Constitutional Petition No 2 of 2011.

obligation to take positive actions to meet the need of people living in extreme poverty, especially homeless people and those living in intolerable conditions. The Court also held that adequate basic temporary shelter shall be given to the petitioners. Although the South African Constitutional Court refused to establish the minimum core obligations of the state on this occasion, it held that the right of children to shelter cannot be subjected to the available resources. It held that by failing to provide for those who were most in need, the state had failed to take the reasonable measures towards the progressively realization of the right to housing. The Court ordered the state to implement and supervise measures to provide relief for those in most desperate needs.²⁰⁶

Another relevant case for the protection of the poor in South Africa was *Jaftha v. Schoeman and Van Rooyen v. Stoltz*. They were two similar cases related to the right to adequate housing. Maggie Jaftha was a poor, unemployed and sick woman who had only two years of formal education and had two children. She had borrowed 27 US dollars and fell behind in the payment after being charged a significant interest over it. This led to the sale execution of her house, which she got by state housing subsidy, once she failed to appear before Court due to a hospitalization for treating her heart problems. Van Rooyen was a mother of three who was also unemployed, poor and had never the chance to go to school. Her debt was around 35 US dollars and she also lost her house. The Court acknowledged that if the applicants would lose their house they would not be able to obtain another subsidy from the state and would be left without any alternative accommodation. It recognized the negative obligation of states to not interfere unjustifiably with any person's existing right to housing. The Court ordered that those sales could only be ordered with judicial oversight and stressed that some factors should be taken in consideration in those cases, such as the amount of the debt, the attempt to pay them and their vulnerable financial situation.²⁰⁷

At the international level, the *Endorois case* became famous for being the first case in which the African Commission recognized the right to development. In the 1970s the Kenyan government evicted the Endorois community from their ancestral land in order to create a tourist game reserve.²⁰⁸ The Commission held that Kenya had a higher duty in terms of taking

²⁰⁶ Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) para. 13, 24, 95, 96 and 99.

²⁰⁷ *Jaftha v. Schoeman; Van Rooyen v. Stoltz* 2005 (2) SA 140 (CC).

²⁰⁸ Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya 276 / 2003.

positive steps in protecting groups and vulnerable communities like the Endorois. Those steps should include “the creation of opportunities, policies, institutions, or other mechanisms that allow for different cultures and ways of life to exist. The Commission held that those measures shall be developed considering the challenges faced by indigenous communities. These challenges include: exclusion, exploitation, discrimination and extreme poverty”.²⁰⁹ The main focus of the case was the violation of property and forced eviction, but the Commission also found a violation of the rights to religious practice, to culture, to the free disposition of natural resources, and for the first time, to the right to development. The African Commission acknowledged that one of the key characteristic of indigenous groups is that their survival depends on their access to their traditional land and their natural resources.²¹⁰

Moreover, the jurisprudence has also engaged in the defining of the minimum core content to the right to housing. In the *Serac case*²¹¹, the first case where the African Commission outlined economic and social obligations of States in great detail.²¹² The Commission made considerations regarding the obligation of states to respect and protect the right to adequate housing. The Commission stated that, at a very minimum, the right to shelter obliges the states not to destroy houses of its citizens, not to obstruct their effort to rebuild lost homes and the obligation to prevent a violation when it is committed by other individual or non-state actors. The Commission concluded that Nigerian government had failed to fulfil those three minimum obligations.²¹³

4.2.3. The Right to Food

To the CESCR, poverty is the main drive to violations related to the right to food. Malnutrition and undernutrition are problems concerning developing countries. In the words of the Committee: “the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, inter alia because of poverty, by large segments of the world’s population”.²¹⁴ According to the newest hunger map of the World Food Programme, released

²⁰⁹ *Ibid.* para. 248.

²¹⁰ *Ibid.* para. 150.

²¹¹ Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (Communication No. 155/96). 1996.

²¹² Mzikenge Chirwa, 2008, p. 325.

²¹³ Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (Communication No. 155/96), 1996, para. 61.

²¹⁴ CESCR, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999. UN. Doc. E/C.12/1999/5, para. 5.

in August of 2019, still 821 million people do not have enough to eat.²¹⁵ The number presented in 1999, the year that the General Comment was published, was about 840 million.²¹⁶

As previously argued, violation of the right to food, specifically of its minimum core, leads to violation of the right to life. Hunger can lead people to die from starvation. Malnutrition affects the ability of people to enjoy other rights, it can compromise the cognitive development of children, lead children to stunting (a marker of poverty) and reduce productiveness in adults.²¹⁷

The CESCR clarifies that the right to adequate food would be realized when every person, alone or in community, would have, at all times, physical and economic access to adequate food or the means to its procurement.²¹⁸

The core content of the right includes the availability of food in accordance to the dietary needs of people, both in quality and quantity, to guarantee the nutrients needed to physical and mental development and maintenance. Food shall also be free from adverse substances and culturally accepted. Also, the accessibility of food shall be sustainable and it shall not interfere with the enjoyment of other human rights.²¹⁹

Accessibility embraces economic and physical accessibility. Both can be linked to extreme poverty. The CESCR clarifies that economic accessibility implies that the acquisition of food for an adequate diet shall not comprise the satisfaction of other basic needs and that socially vulnerable people, especially the landless and the poor, may need special attention. Physical accessibility requires that adequate food shall be accessible to all. Special attention and even priority shall be given to disadvantaged groups, which include the extremely poor. Moreover, the Committee highlights that many indigenous populations are in a particular vulnerable situation when their access to their ancestral land, which they depend on, may be threatened.²²⁰

²¹⁵World Food Programme, 2019, available at https://www.wfp.org/publications/2019-hunger-map?_ga=2.254566344.1536566393.1565344808-1515585449.1565344808.

²¹⁶ CESCR, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999. UN. Doc. E/C.12/1999/5, para. 5.

²¹⁷ UNICEF, 2016, p. 26 and 36.

²¹⁸ CESCR, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999. UN. Doc. E/C.12/1999/5, para. 6.

²¹⁹ *Ibid.* para. 8.

²²⁰ *Ibid.* para. 13.

Although it can be realized progressively, the article 11 (2) of the Covenant sustains that states specifically recognize the fundamental right to be free from hunger. States shall take a more immediate and urgent step in that direction. In that sense, the obligation to act for the mitigation and alleviation of hunger is considered to be the core obligation related to the right to adequate food. States have, therefore, the obligation to ensure that everyone in their jurisdiction has access to the minimum essential food. In order to ensure their freedom from hunger, the food shall be sufficient, nutritionally adequate and safe. A violation of the ICESCR occurs when these essential levels required to be free from hunger are not ensured.²²¹

States also have the obligation to respect existing access to adequate food and not to take any measures to threat such access. States shall also protect people from action of third parties which could compromise their access to adequate food. Regarding the obligation to fulfil, states have the obligation to facilitate (through positive actions) and provide food directly when the individuals are not able to enjoy this right due to reasons beyond their control.²²²

The CESCR also sustains that the right to adequate food is connected to the principle of human dignity, a precondition for the fulfilment of other basic human rights and it is inseparable from social justice. It is also argued that the realization of this right requires the adoption of appropriate measures, both on national and international levels, “oriented to the eradication of poverty and the fulfilment of all human rights for all”.²²³

The right to adequate food has been analysed by national and regional courts. The next part of this subsection focus especially on the right to be free from hunger, a core obligation related deeply to extreme poverty.

In the first case brought to the Indian Supreme Court regarding the right to food was *Kishen Pattnayak & another v. State of Orissa (1989)*. The case was concerning the situation of extremely poor people in Kalahandi/Orissa, where hundreds were dying of starvation, especially children. It is mentioned, that in order to save themselves for starvation, people had subjected themselves to “distress sale of labour on a large scale resulting in exploitation of

²²¹ *Ibid.* para. 6, 14 and 17.

²²² *Ibid.* para.15.

²²³ *Ibid.* para. 4

landless labourers by the well to-do landlords".²²⁴ The Court recognized that most of the people in the region were living below the poverty line and gave directions regarding necessary measures to prevent death by starvation, for example, by establishing a Committee to look after the welfare of the people of the region. However, the Court failed to give specific remedies to the situation.²²⁵

A development in the way to address and provide judicial remedies regarding the right to food in India was brought in *People's Union for civil liberties v Union of India & Ors*, a case already mentioned in the previous section. Differently than *Kishen Pattnayak & another v. State of Orissa*, the Supreme Court of India did not accept that the state had taken appropriate measure to address the starvations deaths in the area. In the words of the Court:

The Government programmes in the present drought grossly under-estimate the number of persons requiring immediate assistance, as well as the quantity of foodgrain needed immediately for distribution to the poor to stave off starvation. The efforts of the Government in fact amount to tokenism and represent a gross dereliction of duty and betrayal. Both Articles 14 and 21 are violated in that disregard for the drought-affected is harsh and discriminatory, affecting life itself.²²⁶

In this case, the Court argued that the right to life included not only the right to food but also the right to water, shelter, education, medical care and decent environment. As previous mentioned, it was ruled that people living in extreme poverty or those who do not have financial capacity to purchase food by themselves are entitled to states protection. The Court sustained that the state failed to prevent starvation and ordered a series of remedies to redress the situation.²²⁷

In Colombia, the Court reviewed the policy in place for the protection of displaced people in *T-602 of 2003*, a case related to a displaced family composed by an old woman and her two children. The Court sustained that affirmative actions have to satisfy the basic necessities of the most vulnerable groups to guarantee the minimum for their survival. Referring to a previous decision, the Court sustained that the victim of extreme social conditions, such as extreme

²²⁴ *Kishen Pattnayak & another v. State of Orissa* 1989 AIR 677, 1989 SCR (1) para.1.

²²⁵ *Kishen Pattnayak & another v. State of Orissa* 1989 AIR 677, 1989 SCR (1)

²²⁶ *People's Union for Civil Liberties v. Union of India & Ors*, In the Supreme Court of India, Civil Original Jurisdiction, Writ Petition (Civil) No. 196 of 2001. para. 51

²²⁷ *Ibid.* para. 26, 50, 51 and 53.

poverty, have to be covered by exception protection mechanisms once their survival capacity are threatened. In other words, it argued that extreme poverty (or misery, in literal translation) cannot be tolerated once it compromised the vital minimum. Extremely poor people shall also be included in permanent programs and projects as long as their vulnerability remain. The Court also stated that the state have to offer the indispensable conditions to secure that all inhabitants could live a life in dignity. It highlighted that the government is required to promote the capabilities of people and to act efficiently to increase the welfare of people, considering the rights to food, living, and social security.²²⁸

Basing its decision on international human rights treaties, the Court considered that economic accessibility and economic support were essential in helping people to escape from poverty and ordered the implementation of a food program focusing on displaced children. The Court also held that the petitioners were to be included in a food security plan within six months. In this case, the Court defined the right to food as part of the right to an adequate standard of living and found that the system of protection of displaced people at that time was not sufficient. This is an useful example of how the Court can change policies and expand its findings to protect other vulnerable people which are not connected to a specific case.²²⁹

In 2007, an Argentinian Human Rights Ombudsman asked the Supreme Court to adopt urgent measures to improve the living condition of the *Toba*, an indigenous community which was living in extreme poverty without access to food, housing, safe drinking water, the necessary medical assistance and education. At that time, eleven deaths were attributed by the lack of food and health assistance. The Ombudsman stated that the national government is obliged to ensure that the basic rights for all citizens are met, which means fulfilling the basic needs of the population, including realizing the rights to life and health. Considering the extreme degree of misery, the Ombudsman also argued that, undoubtedly, the state has not complied with its obligations towards the habitants of the Toba community. The Supreme Court granted precautionary measures regarding the immediate provision of not only food but also safe water and transportation for the sick to access public health care centres. Additionally, the Court requested the state to submit information regarding, among others, the resources allocated to

²²⁸ Colombian Constitutional Court Ruling T-602 of 2003, Ana Z rate de Bernal c. Red de Solidaridad Social y INURBE 10 and 12.

²²⁹ *Ibid.* p.44.

the Toba community and the implementation of programs related to food, housing, water, health care and education.²³⁰

Another domestic case connected to the right to food and adequate standard of living addressed the situation of an extreme poor group living in Maceio, capital of Alagoas state in Brazil. The case sparked due to the deplorable living conditions that affected the community of almost two thousand people living in four neighbour favelas (Mundaú, Sururu de Capote, Torre and Muvuca). Among other things, the State Public Ministry highlighted that the community could not satisfy their basic need for food. Children faced malnutrition and severe malnutrition and the community lacked basic infrastructure and sanitation with no regular access to water or electricity. Also, their houses were made of plastic and cardboard. Children were also vulnerable to child labour, including sexual exploitation. The existing social benefits (social security) and medical programs had a limited coverage in the area once many members of the community even lacked necessary basic documents to eligibility. Based on constitutional and international provisions, the municipality was found responsible for the violations of the rights to food, health and education of the children in the area. Among other things, the municipality was required to offer a plan to expand and create shelters to assist children and adolescents on emergency situations, to offer day care and access to school to all the children in the community and to promote campaigns to issue birth certificates and against child labour.²³¹

The already mentioned *Serac case*, is also an example of how the right to food have been understood at regional level. The communication alleged that a state-owned company (Nigerian Petroleum Company and Shell Petroleum Development Corporation) had committed a range of human rights violations in which the State could be held responsible. The companies had explored the area without considering the health and environmental impacts for the local population. As a result, the water, soil and air were polluted, causing long-term health problems for the people in the area. Furthermore, several military operations took place in the area against the Ogoni people, who were protesting against the oil companies. Several villages were burned and destroyed. Farm animals and even some people were killed. The petitioner alleged that the destruction of the farms, rivers, crops and animals led certain Ogoni communities to

²³⁰ Defensor del Pueblo Estado Nacional y otra (Provincia del Chaco) (Supreme Court) 18/9/2007.

²³¹ Action No. 4.830/07, 2ª Vara da Infância e Juventude de Maceió (District Court for Childhood and Youth), 2007.

malnutrition and starvation, a characteristic of extreme poverty.²³² The African Commission held that the Nigerian government had violated several of the human rights norms, including the right to life, to health, to property, to economic, social and cultural development and the right to food, implicitly contained in the right to life, as already mentioned. The Court made considerations regarding the minimum of the state's obligation to respect and protect regarding the right to food, saying that the minimum core of this right includes that the State should not destroy or contaminate the sources of food or let any private party to do so.²³³

4.2.4. The Right to Water

In 2000 it was estimated that 1.1 billion people did not have access to water supply and 2.7 billion people did not have access to adequate sanitation. Although the number have decrease in the last decades, still in 2017, there were 785 million people living without drinking water services and 2 billion without access to sanitation.²³⁴ As sustained by Angoua et. al., extremely poor people are the most affected by the lack of access to water and sanitation due their vulnerable and marginalized conditions. It includes slum dwellers living in precarious conditions in urban areas, disadvantaged urban community livings in fringes and people living in deprived rural areas. The problem also affects the developing world disproportionately. In 2014, the percentage of people in sub-Saharan Africa living in slums was 55%. In 2015, 70% of the population in the same area did not have access to proper sanitation and 32% were relying on improper sources of drinking water.²³⁵

The last General Comment related to the adequate standard of living addresses the right to water. The CESCR argues that although not explicitly included in the article 11 of the ICESCR, the right to water clearly falls within that provision once water is essential for securing an adequate standard of living and one of the most fundamental capabilities for survival.²³⁶ Additionally, the right to water supplies appears on the Convention on the Elimination of All Forms of Discrimination against Women as a necessity related to adequate living conditions.²³⁷

²³² Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (Communication No. 155/96).

²³³ *Ibid.* para. 66.

²³⁴ UNICEF and WHO, 2019, p. 7 and 8.

²³⁵ Angoua et. al., 2018, p.1.

²³⁶ CESCR. General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003. UN. Doc. E/C.12/2002/11, para. 3.

²³⁷ CEDAW, 1981, Article 14, para. 2(h).

The CESCR also connects the right to water to the right to the highest attainable standards of health.²³⁸ The Convention on the Rights of the Child requires states to tackle diseases and malnutrition “through the provision of adequate nutritious foods and clean drinking water”.²³⁹

The right to water entitles all individuals to “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.²⁴⁰ The water shall be safe and enough to prevent death from dehydration. It shall also be provided for cooking, personal and domestic hygiene requirements. The right to water includes negative and positive obligations. People have the right to maintain access for existing supplies, the right to be free from interference and to be free from arbitrary disconnection and contamination of water supplies. People have also the right to a system of water supply and management.²⁴¹

The Committee recognises that although the adequacy of water required can vary according to different conditions, three factors shall apply to all: (i) availability: states can resort to the guidelines to the World Health Organization (WHO) to establish the quantity of water needed per person; (ii) quality: related to the safety of the water and (iii) accessibility: including physical and economic accessibility provided without discrimination. Water services and facilities shall be accessible to all, including the most vulnerable and marginalized ones. In this context, economic accessibility means that water facilities and services must be affordable for all and the cost and charges related to these services shall not compromise or threat the realization of other human rights.²⁴²

The obligations of the state include (i) the obligation to respect, meaning the obligation not to interfere directly or indirectly in the enjoyment to the right to water, including limiting equal access to adequate water, (ii) the obligation to protect the people against interferences in the enjoyment of the right to water by third parties. When water services are provided by third parties the state must guarantee that they provide equal, affordable and sufficient, safe and

²³⁸ CESCR, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003. UN. Doc. E/C.12/2002/11, para. 3.

²³⁹ CRC, 1989, Article 24, paras. 2.

²⁴⁰ CESCR, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003. UN. Doc. E/C.12/2002/11, para. 2.

²⁴¹ *Ibid.* para. 10.

²⁴² *Ibid.* para. 2 and 12.

acceptable water and (iii) the obligation to fulfil, meaning to provide the right whenever people are unable, for reasons beyond their control, to realize the right to water by themselves.²⁴³

The core obligations regarding water includes (i) to ensure access to the minimum essential amount of water for personal and domestic use to prevent diseases, (ii) to ensure non-discriminatory access to water and water facilities, especially for disadvantaged or marginalized groups, such as the extremely poor (iii) to ensure physical access to water avoiding prohibitive waiting time and at a reasonable distance, (iv) to ensure personal security of people when having physical access to water, (v) to ensure equitable distribution, (vi) to adopt a national water strategy to address all its population, (vii) to monitor the realization of the right, (viii), to adopt low cost program targeting vulnerable and marginalized groups and finally (ix) to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.²⁴⁴ Additionally, states have the obligation to progressively extent sanitation services, especially in rural areas and deprived urban areas.²⁴⁵

Regarding the allocation of water, priority must be given for personal, domestic use guaranteeing that the water resources required to prevent starvation and diseases, are satisfied. The CESCR also notes that water is an important resource for agriculture, which connects the right to water to the realization of the right to adequate food. It is stressed that states shall give special attention to disadvantaged and marginalized farmers and to indigenous people, once access to water is essential in maintaining their livelihoods.²⁴⁶

The Committee recognizes that contamination of the water, as well as its exploration and unequal distribution exacerbates by poverty. For this reasons, priority shall be given to the water resources needed to prevent starvation, diseases and to meet the core obligations of other rights.²⁴⁷ Moreover, as already mentioned, states have obligations towards the extremely poor, such as the obligation to provide access to water for those who do not have sufficient means, giving special attention to individuals and groups who traditionally face difficulties in exercising the right to water.²⁴⁸

²⁴³*Ibid.* para. 21-26.

²⁴⁴*Ibid.* para. 37.

²⁴⁵*Ibid.* paras. 29.

²⁴⁶ *Ibid.* para. 6.

²⁴⁷ *Ibid.* para.1 and 6.

²⁴⁸ *Ibid.* para.15 and 16

The right to water has already appeared in some cases discussed in the section. Access to water and sanitation were key components in the *Grootboom case*²⁴⁹, *Centre on Housing Rights and Evictions (COHRE) v. Sudan*²⁵⁰ and in *Ibrahim Sango Osman v Minister of State for Provincial Administration & Internal Security*²⁵¹ in connection with the right to adequate housing. Also, in connection with the right to food in the *Toba case*²⁵², the Argentine Supreme Court issued precautionary measures guaranteeing the provision of water and ordered the state to implement a program in the community to ensure potable water.

Moreover, one case in Argentina shows that Courts can guarantee the right to water to those living in extreme poverty. In *Quevedo, Miguel Ángel y Otros c/ Aguas Cordobesas SA*, a private company responsible for water provision, disconnected the water supply of Miguel Ángel Quevedo and other low-income families due to lack of payment. The families lived in extremely poor conditions, facing vulnerable socioeconomic conditions and unemployment. The Court held that the right to drinking water is guaranteed by national and international law and its violation compromises the health and the physical integrity of individuals. It highlighted that the absence of drinking water has several implications, especially for those living in poverty. As mentioned in this section, the core obligations related to the right to water includes ensuring a minimum access to an essential amount of water. The Court held that the company would have to provide a minimum daily supply for each family and increase the minimum supply from 50 litres (as established in the country's Regulatory Framework) to 200 litres per household once it considered that 50 litres of water would not be enough to guarantee basic hygiene and health conditions to an average family. This is an example of a case where the national court successfully established the content of a minimum obligation for the State.²⁵³

Although the previous cases are presented in this section due to the important role of the violation of the right to adequate standards of living (including housing, food and water) plays in those judgements, they are clear examples of the multidimensional deprivations that

²⁴⁹ Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

²⁵⁰ Centre on Housing Rights and Evictions (COHRE) v. Sudan, Communication 296/2005.

²⁵¹ Ibrahim Sangor Osman v Minister of State for Provincial Administration & Internal Security (2011) eKLR Constitutional Petition No 2 of 2011.

²⁵² Defensor del Pueblo Estado Nacional y otra (Provincia del Chaco) (Supreme Court) 18/9/2007.

²⁵³ Quevedo, Miguel Ángel y Otros c/ Aguas Cordobesas SA. Juez Sustituta de Primera Instancia Civil y Comercial (Ciudad de Córdoba) (08/04/2002).

extremely poor people face, once there are violations of other rights which have a constitutive relevance to poverty, such as health and education. It is also a good example of the indivisibility, interdependence and interrelatedness of all human rights.

Moreover, some cases presented in this section show how poverty can also be the cause to other human rights violations, not only those which have a constitutive relevance to poverty but also those related to other civil and political human rights. The *Kishen Pattnayak & another v. State of Orissa* shows that extremely poor people are willing to accept exploited labour conditions in order not to die from starvation.²⁵⁴ In Maceio, extreme poverty also lead children to work, including sexual work.²⁵⁵

The Inter-American Court has already recognized this connection between extreme poverty and the violation of civil right related to forced labour and slavery. As the *Case of the workers of the Brazil Verde Estate against Brazil*, related to forced labour and slavery, the Court acknowledged that all the victims shared a common background: being poor. The Court emphasized that the victims came from the poorest regions of Brazil with the fewest work opportunities and the lowest level of human development. They were illiterate and placed in a situation in which they were more prone to be recruited via false promises. As a result, the Court sustained:

It appears from the evidence in the case file that there was a situation based on the economic status of the victims (...) that amounted to discriminatory treatment. According to several reports by the ILO and the Brazilian Ministry of Labor, “it is the extreme poverty of the worker that leads him spontaneously to accept the labor conditions offered,” particularly since “the more living conditions deteriorate, the greater the willingness of workers to face the risks of working far from home. In that sense, poverty is the main factor driving contemporary slavery in Brazil, because it increases the vulnerability of a significant segment of the population, making them easy prey for slave labor recruiters.”²⁵⁶

4.3. The Right to Health

The CESCR recognizes that the fulfilment of the provisions included in the right to health are still a distant goal, especially by those living in poverty.²⁵⁷ The right to health is also connected

²⁵⁴ *Kishen Pattnayak & another v. State of Orissa* 1989 AIR 677, 1989 SCR (1).

²⁵⁵ Action No. 4.830/07, 2ª Vara da Infância e Juventude de Maceió (District Court for Childhood and Youth).

²⁵⁶ *Case of the Hacienda Brazil Verde Workers v. Brazil*. Series C No. 318, para. 340 (20/10/2016).

²⁵⁷ CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000. UN. Doc. E/C.12/2000/4, para 5.

to extreme poverty through a freedom mostly related to people's survival, freedom to lead normal spans of life (see Table 1). Violations on the right to enjoy the highest attainable standards of health affects the extremely poor disproportionately. As sustained by Singh and Singh, people in developing societies fight mostly against infectious and communicable diseases while in the developed world the diseases are mostly related to lifestyle. The authors argue that there are also primary diseases related to poverty, such as tuberculosis, malaria and malnutrition.²⁵⁸ The denial of a minimum content of the right to health compromises the ability of people to survive. As previous mentioned, according to UNICEF, extremely poor children are twice as likely to die before completing five years and to be chronically malnourished than children from other social classes. In 2015, about 5.9 million children died before turning 5 years-old and in a projection, UNICEF estimated that by 2030, 69 million children will die before completing five years due to preventable diseases or causes. Poor women are also less likely to have access to prenatal care and skilled birth than the richer women. Also, women from socially vulnerable groups, often experience hostile treatment or lack of responsiveness from health care providers. Even in cases when health care services are accessible and affordable, poor women can suffer from discriminatory practices.²⁵⁹

The ICESCR prescribes the elements necessary to live a healthy life and the entitlement necessary to give significance to the right. Article 12 states that the right for everyone to enjoy the highest attainable standards of health shall be recognized by all States Parties and that steps have to be taken in order to achieve the full realization of the rights, including the following necessary provisions: (i) to reduce stillborn and infant mortality rates related to the health development of the child, (ii) to improve aspects of environmental and industrial hygiene, (iii) to prevent, treat and control, among others, epidemic, endemic and occupational diseases and (iv), to create conditions for ensuring medical service in the event of sickness.²⁶⁰

As sustained by the CESC, the right to health cannot be understood as the right to be healthy since being healthy cannot be addressed solely by states. It also depends on several variables such as genetic conditions, lifestyle and individual susceptibility. In that sense, the right to

²⁵⁸ Singh and Singh, 2008, p. 187.

²⁵⁹ UNICEF, 2016, p. 3 and 20.

²⁶⁰ ICESCR, 1966, article 12.

health shall be understood “as the right to enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health”.²⁶¹

There are four essential elements of the right to health, whose application would depend on the socioeconomic conditions of each State Party. The first is availability, meaning that public health care facilities, goods, services and programmes shall be available in sufficient quantity. Also, underlying determinants of health shall be available, such as safe and potable water, sanitation facilities, hospitals, health centres and essential drugs. The second element is accessibility. Health facilities, goods and services shall be accessible to the whole population without discrimination. That embraces information accessibility, physical accessibility and economic accessibility. Physical accessibility means that facilities and services shall be within safe physical reach for all the population, and especially for the most vulnerable and marginalized groups, which can include the extremely poor. Moreover, economic accessibility is related to affordability, meaning that all health services and goods shall be affordable to all, including the extremely poor. By the principle of equity, the poorest households should not be disproportionately burdened of expenses related to health in comparison to the richest households. The third element related to the right to health is acceptability, regarding respectful medical ethics which takes into consideration cultural dimensions. The last element is quality, meaning that the services and goods must be medically appropriate and in good quality.²⁶²

As any other right, states have the obligation to respect, protect and fulfil towards the right to health. More specifically, the obligation to respect would include, for example, to refrain from denying equal access to all the population or abstain from unlawfully polluting the air, water and soil. The obligation to protect includes, for example, to control health care related services provided by third parties and to guarantee that those services are in conformity with the essential elements of the right to health when those services are privatized. The obligation to fulfil includes taking positive measures to enable all individuals to enjoy the right to health and to directly provide for those who are unable, for reasons beyond their control, to enjoy the right to health by themselves.²⁶³

²⁶¹ CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000. UN. Doc. E/C.12/2000/4, para. 8-9.

²⁶² *Ibid.* para. 12.

²⁶³ *Ibid.* para. 33-37.

The core content of the right to health includes especially essential primary health care and (i) the right to access health facilities and services on a non-discriminatory basis and especially for the most vulnerable and marginalized groups, including the extremely poor, (ii) the right to access minimum essential food to ensure the freedom from hunger, a direct connection to the right to food, (iii) the right to ensure access to basic shelter, housing, sanitation and safe water, another straightforward connection to the right to adequate standards of living, (iv) the right to access to essential drugs, defined by the WHO Programme on essential drugs, (v) the right to equitable distribution of all health services and (vi) the implementation of public health strategies.²⁶⁴

Furthermore, the Committee establishes that there are obligations that are comparable in priority to those established minimum core contents. Those are (i) to ensure reproductive, maternal and child health, (ii) to provide information regarding major infectious diseases, (iii) to provide measures to prevent, treat and control epidemic and endemic diseases, (iv) to provide education and accessible information regarding birth control and main problems in the community and finally, (v) to provide adequate training for the health personnel.²⁶⁵

Extremely poor people have also been seeking remedies to their situation through the right to health. The right to health is also indispensable for the exercise of other human rights, including other core rights such as the right to food, housing and access to water, since these are determinants of health. In other words, the right to health embraces many socio-economic factors since they promote the conditions in which people can enjoy a healthy life. Also, the enjoyment of the right to health is a conducive to live a life in dignity.²⁶⁶ For that reason, the right to health have already appeared in the last two sections in connection to the right to an adequate standard of living and the right to life. To exemplify, the right to health was an important component in the cases related to the right to food. In Argentina, the Court have ordered the implementation of a health care program to the Toba community, since deaths were attributed to lack of food and health care assistance.²⁶⁷ At the international level, the *Serac case* also dealt with the right to health since the contamination of the soil led to long-term health

²⁶⁴ *Ibid.* para. 43.

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.* para.1 and 4.

²⁶⁷ Defensor del Pueblo Estado Nacional y otra (Provincia del Chaco) (Supreme Court) 18/9/2007.

problems in the Ogoni community in Nigeria.²⁶⁸ Considering the connections with the right to life, the right to health was evaluated in the *Case of the Indigenous Community Yakye Axa v. Paraguay*²⁶⁹ and in *Case of the Sawhoyamaya Indigenous Community v. Paraguay*²⁷⁰ when establishing the violation of the right to life.

There are also national and regional cases which are mostly connected to the right to health. Recently, several decision in India have found a constitutional right to maternal health in connection to the right to life. As stated before, maternal care is an obligation comparable in priority to those established in the core obligations. One example is *Premlata w/o Ram Sagar & Ors. v. Govt. of NCT Delhi* a case regarding six pregnant/lactating women living in a slum and facing poverty. They were denied food rations and access to prenatal and children care, including several national programmes which they were entitled to. The High Court of Delhi reaffirmed that the violation of the right to health derived from the right to life and made the same consideration about their right to food.²⁷¹

In the *Azanca Alheli Meza Garcia* case, in Peru, the Constitutional Tribunal considered the importance of the right to health to guarantee the full enjoyment of the right to life. The Court was favourable to the applicants request for the provision of HIV-AIDS full treatment stating that the State shall comply with its obligation within reasonable time since this condition is indispensable for realizing the right to health progressively.²⁷² In words of the Tribunal:

The Tribunal concludes granting legal protection to a social right, as is the right to health, because, in this case in particular, the conditions so merit. This judgment in favor of the appellant is founded not only on the potential violation of the right to life, but for reasons based on the legislation of the matters subject to this review for the maximum protection of HIV/AIDS patients, through the promulgation of Law N.º 28243, that modifies Law N.º 26626; moreover, when currently a campaign of antiretroviral treatment free of charge has been promoted for patients in conditions of extreme poverty, a group to which the appellant belongs, as she has in her favor an injunction issued by the Inter-American Commission on Human Right.²⁷³

²⁶⁸ Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (Communication No. 155/96).

²⁶⁹ Indigenous Community Yakye Axa v. Paraguay. Series C N. 125 (17/07/2005).

²⁷⁰ Case of the Sawhoyamaya Indigenous Community v. Paraguay (29/03/ 2006) para.163.

²⁷¹ *Premlata w/o Ram Sagar & Ors. v. Govt. of NCT Delhi*, W.P.C. 7687 of 2010.

²⁷² *Azanca Alheli Meza García*, EXP. N.º 2945-2003-AA/TC. Tribunal Constitucional (20/04/2004).

²⁷³ *Ibid.* para. 50.

As a result of this case, the tribunal asked the Minister of health not only to offer the access to HIV-AIDS's medication for the applicant but also to advance in the implementation of legislation that gives priority budget resources for people with HIV-AIDS living in extreme poverty. The Tribunal sustained that in line with the principles of justice and equality in a democratic state, it is necessary to guarantee the satisfaction of people's basic necessities giving priority for those who cannot afford to satisfy their basic needs, therefore, a priority must be given for those who face extreme poverty.²⁷⁴ This is another successful example of how the Tribunal can recommend changes in policies and expand its findings to protect other poor people.

In South Africa, the *TAC case* is also a good example of the protection of vulnerable and poor people which focused in the right to health. The Constitutional Court analysed the restriction of the policy adopted by the State in implementing a policy focusing in the prevention of AIDS' mother-to-child transmission through breastfeeding and birth. The program used a medication named Nevirapine, but it was only available and accessible in two medical sites in each province, which meant that only 10% of the population would have access to it. As a result of this policy, only private clinics which focused on research were allowed to prescribe Nevirapine, not the public hospitals. Although the state argued that the limitation was reasonable due financial constraints, the Court found that those restrictions were too rigid. The Court highlighted that it is the duty of the State to help parents to access healthcare when they are not able to afford it and stressed that the justiciability of economic and social rights improves the life of poor people and vulnerable segments. Although the Constitutional Court of South Africa sustained, as in the previous mentioned *Grootboom case*, that it was impossible to guarantee universal access to core services immediately, it stressed that the State's obligation towards the progressive realization of those rights and ordered that the medication shall be available in all the medical centres once it could save the lives of many.²⁷⁵

At the regional level, in *Purohit and Moore v. The Gambia* the African Commission examined the mental health legal framework in the country. The claimant alleged that they had not given their consent for medical treatment and the conditions of the hospital were not ideal. Additionally the applicants were denied of their political right to vote. The Commission

²⁷⁴ *Ibid.* para. 48.

²⁷⁵ *Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721; 2002 (10) BCLR 1033 (5 July 2002).*

acknowledged that the people in that psychiatric hospital were collected from the street, (where they were likely to be facing extreme poverty) and concluded that Gambia failed to satisfy the requirements to guarantee the right to enjoy the best attainable states of physical and mental health in conformity with article 16 of the African Charter on Human and Peoples' Rights. The Commission also held that, on the basis of the principle of non-discrimination and equal protection, Gambia should provide medical care services, material and medicines for all.²⁷⁶

The Commission acknowledged that the right to health should never be denied for people with mental illnesses once treatment is crucial to their survival and it also acknowledged that many countries at the African continent are facing poverty, which makes them incapable to provide the sufficient amenities and resources to facilitate the full enjoyment of rights. The Commission sustains that states are under the obligation to take concrete and target steps and full advantage of the resources available to ensure that the right to health is fully realized without discrimination of any kind.²⁷⁷

In the Inter-American system, the Court recognized for the first time in 2018 the right to health as an autonomous right and enforceable in the case *Poblete Vilches and others vs. Chile* concerning the death of Mr. Vinicio Antonio Poblete Vilches. His low-income family claimed that the public hospital's negligence have led to Mr. Vilches death and that the state failed to investigate the circumstances of his death. At the time, the Court found among other things a violation of the right to health, life and personal integrity.²⁷⁸ The Court acknowledged the Commission's argument that this case offer the possibility to analyse particular situations of vulnerability regarding the right to health, specially taking in consideration the right of people who live in poverty.²⁷⁹

Later in 2018, in a case related to poor people living with HIV, *Cuscul Pivaral and Others vs. Guatemala*, the Inter-American Court reaffirmed the right to health in connection with people living with HIV. The case was presented by 48 victims and their families, 15 of them had died while the case was under examination.²⁸⁰ They claimed that the anti-retroviral therapy was

²⁷⁶ Purohit and Moore v. The Gambia. Communication No. 241/2001, Sixteenth Activity report 2002-2003, Annex VII.

²⁷⁷ *Ibid.* para. 84 and 85.

²⁷⁸ *Poblete Vilches and others v. Chile* Case 12.695 (08/03/2018).

²⁷⁹ *Ibid.* para.85.

²⁸⁰ *Cuscul Pivaral and Others vs. Guatemala* (23/08/2018).

inadequate. All the victims shared intersecting characteristic that put them in a more vulnerable position, including being poor. The Court highlighted that, in accordance to article 10 of the San Salvador Protocol the states shall guarantee the “satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable”.²⁸¹ Therefore, the Court recognized a special obligation of the states to respect and guarantee the right to health for those who live in vulnerable conditions, stating that people living in poverty often have an unequal access to health services and information which exposes them to a higher risk of infection and to receive inadequate medical services.²⁸² The Court found Guatemala violating the right to health, to life, and to personal integrity, among others.

4.4. The Right to Education

Although the right to education is not related to a freedom directly connected to the ability of survival, this right is constitutive to extreme poverty because it can increase the possibility of a person to escape extreme poverty in many ways. In the words of the CESCR:

Education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth.²⁸³

In the same way, UNICEF argues that without education, poor children are more likely to grow as low-skilled adults who will be poorly paid and susceptible to unsecure employment. Education is, therefore, a key right from breaking the intergenerational cycle of extreme poverty.²⁸⁴ Moreover, education enables the most poor to know about their entitlements and could potentially provide them the capacity to claim a violation of their rights.²⁸⁵ Education is also crucial for the fulfilment of other human rights, including political and civil rights,²⁸⁶ such

²⁸¹ Protocol of San Salvador, 1988, art.10.

²⁸² Cuscul Pivaral and Others vs. Guatemala para. 131.

²⁸³ CESCR, General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999. UN. Doc. E/C.12/1999/10, para. 1.

²⁸⁴ UNICEF, 2016, p .6.

²⁸⁵ Formisano Prada, 2011, p. 47.

²⁸⁶ CESCR, General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant), 10 May 1999. UN. Doc. E/1992/23, para. 2.

as freedom of information, expression, assembly, or the right of equal access to public service once they depend on a very minimum level of education and literacy.²⁸⁷

According to UNICEF, 60% of the poorest population who are between 20 to 24 years old have less than four years of education. Also, as previously argued, children of mothers who have no access to educational services are three times more likely to die before completing five years than those whose mother attended to secondary education, which connects the right to education to the right to life, even if not in a straightforward way. In a prediction made for the year 2030, UNICEF sustain that 60 million children in primary school age will be out of school. Half of them will live in sub-Saharan Africa which will also account for 90% of the extremely poor children.²⁸⁸

The ICESCR is the international instrument which sets the most comprehensive content of the right to education. Article 13 recognizes education as a universal right and sustains that it “shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms”.²⁸⁹ Moreover education should “enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”.²⁹⁰

Primary education shall be compulsory and free of charge for everyone under the jurisdictions of the state, while secondary and higher education shall be made available and accessible. Those last two shall be offered on the basis of capacity, by all appropriate means, in particularly regarding progressively introduction as a free service. Furthermore, fundamental education shall be encouraged by those who did not receive it in the ideal time.²⁹¹

The CESCR clarifies that the right to receive education shall be firstly available. States shall have a sufficient number of education institutions providing educational services. In order to properly exercise its activities, educational institutions shall be protected from weather element, have adequate sanitation facilities, safe drinking water, trained teachers and, among

²⁸⁷ Novak, 2001, p. 245.

²⁸⁸ UNICEF, 2016, p. 3 and 11.

²⁸⁹ ICESCR, 1966, article 13.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*

others, teaching materials. Secondly, the right to education shall be accessible to everyone, without discrimination, especially towards the most vulnerable groups, including the extremely poor. Accessibility includes physical accessibility and economic accessibility. Schools must be reasonably located in order to allow attendance or offer the possibility to distance learning programmes via internet. Education shall also be affordable to everyone and primary education shall be free to all. The third element is acceptability. Educational provisions shall be relevant, culturally appropriate and of good quality. The last element is adaptability. Education must be flexible to the changes in society and respond to the diversity needs and cultural setting of all.²⁹²

States also have the obligation to respect, protect and fulfil towards the right to education. As previously mentioned, the obligation to respect require states to refrain from measures that prevent the enjoyment of the right such as not closing private schools. The obligation to protect is related to the adoption of measures to prevent that a third party would interfere in the right, for example, monitoring private schools. Finally, the obligation to fulfil is related to the provision of the right itself whenever individuals or groups cannot enjoy the right by themselves for reasons beyond their control. More specifically, although states have the principal responsibility for the provision of education in most circumstances, the obligation to fulfil are not the same at all the levels of education and priority shall be given for primary education, which shall be compulsory and free for all.²⁹³

Moreover, as clarified by the CESCR:

States parties are obliged to ensure that an educational fellowship system is in place to assist disadvantaged groups. The obligation to pursue actively the “development of a system of schools at all levels” reinforces the principal responsibility of States parties to ensure the direct provision of the right to education in most circumstances.²⁹⁴

The minimum core content for the right to education is also established. Those are (i) to provide access to public educational institutions on a non-discriminatory way, (ii) to provide primary education to all, (iii) to adopt national strategies in providing secondary, higher and

²⁹² CESCR, General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999. UN. Doc. E/C.12/1999/10, para. 6.

²⁹³ *Ibid.* para. 47-48.

²⁹⁴ *Ibid.* para. 53.

fundamental education, and (iv) to ensure a free choice of education in conformity with the minimum educational standards, without interference from the State or third parties (vi) to ensure that education confirms the objectives of the article 13, previous mentioned in this section.²⁹⁵

Still, 59 million children are denied access to primary school, of those, more than half lives in sub-Saharan Africa in 2013. Also children from the poorest households are, on their first day at school, unprepared to succeed in school and as they progress, they are more likely to drop out before completing primary school.²⁹⁶ In UNICEF's words:

The impact of poverty on education begins early, because the poorest children in any country are the least likely to attend early childhood education programmes. And the disadvantages continue. In sub-Saharan Africa, nearly 60 percent of 20- to 24-year-olds from the poorest fifth of the population have been through fewer than four years of schooling. By contrast, only 15 per cent in the richest quintile have been in school for less than four years. In Egypt and the United Republic of Tanzania, being born poor nearly doubles the risk of missing out on basic education relative to the national average. For poor women in both countries, the risk is even higher.²⁹⁷

Moreover, poverty also leaves children to develop learning deficits. Children of the poorest households are more likely to suffer from developmental delays in literacy and numeracy. Education can also be a tool to prevent the violation of other child rights, such as child labour.²⁹⁸

The right to education appears in some of the previous cases discussed in the previous sections of this chapter, although the focus on those cases were more closely related to rights that could jeopardize the applicants survival. In the *Toba case*, for example, when members of the community have died because of lack of food and basic health care, education was included in the many deprivation the community was facing. The Court also requested the state to implement educational programs in the areas.²⁹⁹ The right to education was also violated in the Brazilian case involving four favela's communities in Maceio. The Court held that all children in the community should be at school.³⁰⁰

²⁹⁵ *Ibid.* para. 57.

²⁹⁶ UNICEF, 2016, p. 43 and 44.

²⁹⁷ *Ibid.* p. 46.

²⁹⁸ *Ibid.* p. 49 and 56.

²⁹⁹ Defensor del Pueblo Estado Nacional y otra (Provincia del Chaco) (Supreme Court) 18/9/2007.

³⁰⁰ Action No. 4.830/07, 2ª Vara da Infância e Juventude de Maceió (District Court for Childhood and Youth).

More specifically, in 2015, the Inter-American Court considered poverty as one of the several factors that combined generated discrimination in the *Case of Gonzales Lluy et al. v. Ecuador* and recognized the right to education in connection to poverty. In the decision, there is a chapter which aim is only to analyse the situation of poverty faced by the Lluy family.³⁰¹ The petitioner was a three years-old girl, Talía Gonzales Lluy, who faced severe discrimination from the teachers and school officials including being banned from attending her class. She faced discrimination for being HIV positive, a condition that she obtained after multiple blood transfusions where the blood was not tested for infectious diseases. Furthermore, her family was evicted and forced to move several times when landlords became aware of Talía's condition. In the words of the Court:

In this case, statements that have not been contested by the State illustrate the impact that the Lluy family's situation of poverty had on the approach to Talía's HIV (...). These statements have also explained the discrimination in the educational environment associated with how, in a prejudiced and stigmatizing way, Talía Gonzales Lluy was considered a risk for her classmates, not only when she was expelled from the Zoila Aurora Palacios School, but at other time when she tried to access the education system.³⁰²

The Court also sustained that “the situation of poverty also had an impact on the difficulties to gain access to the education system and to lead a decent life”.³⁰³ The Court found that the case was a confluence of multiple intersecting vulnerabilities once the petitioner was a poor girl living with HIV and it emphasized that poverty had also an impact in the initial non access to adequate health care which lead to HIV transmission. Furthermore, the Court also found that poverty led to difficulties to gain access to adequate housing. Ecuador was found in violation of the rights to life, physical integrity and education.³⁰⁴

4.5. The Importance of a Poverty Jurisprudence and Access to Justice

The last sections have shown how courts have applied the human rights framework in cases claimed by the extreme poor. In these cases, poverty was considered an important factor to establish a violation of the right to life, to an adequate standard of living, to health and

³⁰¹ Case of Gonzales Lluy et al. v. Ecuador, Series C No. 298 XIII. (01/09/2015) para. 155.

³⁰² *Ibid.* para. 289.

³⁰³ *Ibid.* para. 290.

³⁰⁴ *Ibid.*

education. At national and international levels, the jurisprudence supports that states can be found responsible for failures to adopt measures to facilitate and provide access to the minimum conditions that would enable people facing extreme poverty to maintain their survival and live a life in dignity. In this sense, extreme poverty have been handled as a condition where dignified existence is not possible and the vulnerable conditions of the extremely poor have been understood as a violation of the core content of human rights.³⁰⁵

The national and international cases exemplify the national and international court's transformative capacity of changing the reality and providing effective remedies and standards for those who are struggling with the most inhuman deprivations. According to Formisano Prada:

Judicial decisions have accordingly an emancipatory impact since they propose ways of relief to marginalized people. Sometimes they even mark the beginning of social change. (...) Legal adjudication breaks the cycle of misrecognition, and thus of subordination, and institutionalizes transformative strategies to remedy their human condition to establish a life with dignity. Justiciability provides standards to redistribute social goods such as non-discrimination, equality, access to rights and resources, as well as minimum standards of legal protection. Justiciability therefore becomes a tool of transformation and empowerment by altering structured inequalities in society and empowering social relations. Justiciability balances socio-economic patterns by combating cultural, social, sexual and racial discrimination.³⁰⁶

Adjudication would, therefore, have the following positive consequences to the very poor: (i) gives visibility, (ii) gives voice, (iii) increases the accountability of duty bearers, (iv) protects and provides remedies for alleged violations, (iv) develops means of compensation, (vi) creates basis to policies and finally (vii) develops the legal framework.³⁰⁷

Access to justice at national and international level is, therefore, fundamental for tackling the causes of poverty. The right to access to justice is not considered a constitutive right to poverty in this thesis once it is not directly connected to a basic freedom, however, access to justice is a key right to empower the poor. It gives the extreme poor the means to obtain redress for the violations of the right to life, adequate standards of living, health and education. The right to effective remedy is a crucial element to ensure the protection of human rights. However,

³⁰⁵ OAS/OEA/Ser.L/V/II.164. Doc.147, 2017, para. 204-205.

³⁰⁶ Formisano Prada, 2011, p. 30-31.

³⁰⁷ *Ibid.* p. 31.

difficulties to access justice affect poor people disproportionately. The lack of effective remedies for violation in the rights which have a constitutive relevance to poverty are still a reality in many jurisdictions. Also, the inability of the extremely poor to pursue remedies through the existing judicial system increase their vulnerability to poverty which further hamper their ability to access the judicial systems. This vicious circle compromises the enjoyment of several human rights.³⁰⁸

Legal procedures can play a key role in facilitating poor people to have access to justice. Standing rules have a considerable impact regarding the accessibility of legal complaints by individuals and groups. At the domestic level, some systems support that different categories of individuals and groups can claim a violation of a right, not only the person who suffer the violation. In South Africa, for example, anyone can act in their own interest or on behalf of those who cannot act in their own name. There is also the possibility to act as a member or in the interest of a group. Additionally, anyone can act in the public interest and an association can act in the interest of their members.³⁰⁹ On those states, the work of NGO can be crucial to promote the rights of the most vulnerable.

In the same way, some systems guarantee the possibilities to bring collective claims, where all the victims can file a single claim together, on behalf of a large group or make a collective complain where the claimant is not required to be victim but a representative of the public interest.³¹⁰ States' restrictions on collective limitations represent an obstacle for bringing justice to people who live in extreme poverty, especially to bring remedies for structural or systemic abuses which affect a large number of people living under the same conditions.³¹¹ The collective nature of the constitutive rights in connection to poverty makes a decision regarding them to have practical consequences beyond interest of parties involved in the legal proceeding. In some jurisdictions, judgments establish precedent and can even propose measures to change the current legislation or policies. That was the case of *Azanca Alheli Meza Garcia*, when the Court required the implementation of legislation in order to give priority resources for people

³⁰⁸ General Assembly. Report of the Special Rapporteur on Extreme Poverty and Human Rights, 9 August 2012. UN. Doc. A/67/278, para. 5 and 8.

³⁰⁹ Constitution of the Republic of South Africa, 1996, article 38.

³¹⁰ Langford and Nolan, 2006, p. 18, includes Brazil, Argentina, India, Pakistan, Bangladesh, Sri Lanka, Nepal and Kenya.

³¹¹ General Assembly, Report of the Special Rapporteur on Extreme Poverty and Human Rights, 9 August 2012. UN Doc. A/67/278, para. 81.

with HIV-AIDS living in extreme poverty.³¹² Collective litigation mechanisms can ensure that rights would become meaningful for large groups and even for those who were not aware of their violation. There are many cases in the last sections that exemplifies the importance of collective claims, especially on those concerning indigenous communities which experiences extreme poverty such as *Sawhoyamaya Indigenous Community v. Paraguay* and *the Xákmok Kásek Indigenous Community v. Paraguay*. The findings of these cases had brought remedies to the whole community.

However, in other systems, narrow standing rules are settled. Considering that people living in extreme poverty often lack of resources and capacity to initiate judicial procedures by themselves, narrow standing rules may represent an obstacle to poor people to bring claims. In some domestic systems, for example in Switzerland, the Court can only establish individual remedies to the direct victims acting in their own interest.³¹³

In some areas, extremely poor people even lack legal identity. Formal registration is the first barrier in accessing the justice system. It also jeopardizes the access to other public services and the enjoyment of to political and civil rights.³¹⁴ That feature can be exemplified with previous mentioned Brazilian case, where the residents of a favela in Maceio could not access the existing social benefits and medical programs because they lacked the necessary basic documents for eligibility.³¹⁵

As explained by Sepúlveda Carmona, in a report given as former special rapporteur on extreme poverty and human rights, people living in poverty are usually deprived of the opportunities to acquire the necessary tools (social capital tools and basic legal knowledge) to engage in the legal system. Extremely poor people are often unaware of the existence and content of their legal rights and do not know how to formalize their demands or to seek the assistance they need.³¹⁶ In other words, people living in poverty are unaware that they have a right to adequate

³¹² EXP. N. ° 2945-2003-AA/TC.

³¹³ IDLO, 2015, p. 29.

³¹⁴ General Assembly, Report of the Special Rapporteur on Extreme Poverty and Human Rights, 9 August 2012. UN. Doc. A/67/278, para. 33. i

³¹⁵ Action No. 4.830/07, 2ª Vara da Infância e Juventude de Maceió (District Court for Childhood and Youth), 2007.

³¹⁶ General Assembly, Report of the Special Rapporteur on Extreme Poverty and Human rights, 9 August 2012. UN. Doc. A/67/278, para. 25.

housing, food, water, health and education and that they can claim redresses in courts if they believe they are suffering from a violation of these rights.³¹⁷

Additionally, fees and costs to legal assistance (when legal assistance exist), to obtain legal documents, to copy them, to get witness and experts, phone calls, among others, are all impediments that affect poor people disproportionately, making it difficult for them to access justice.³¹⁸ The work of NGOs is also important in this context, since they can reduce financial and personal burden of legal action for poor people.³¹⁹

The level of simplicity or complexity of formal requirement (for example: formal write and legal representation) are also very important regarding access to justice. In order to facilitate and speed access, many Latin American countries, such as Argentina and Brazil, adopted protection procedures with simple formalities where any person may file a claim to prevent the State to make an unlawful act that violates their rights. These protection procedures are usually decided in a very short period of time. In Colombia, complaints can be filed without a lawyer. In Costa Rica the procedure is so simple and straightforward that cases have been brought by children who were challenging educational decisions of their schools.³²⁰

Regarding these obstacles, which include social and cultural barriers and also institutional and structural issues, domestic system have been acting in the protection of the human rights of extremely vulnerable and marginalized groups by giving concrete remedies for the violation of their human rights and even impacting and strengthening the legal framework to promote the protection of the very poor. Litigation can, therefore, be pointed out as an important tool to tackle extreme poverty. When domestic avenues fail to give effective remedies, international protection mechanisms become important and they also have developed a jurisprudence regarding the protection of the very poor.

³¹⁷ UN Commission on Human Rights, Report on Human Rights and Extreme Poverty, 28 June 1996. UN Doc. E/CN.4/Sub.2/1996/13, para.101.

³¹⁸ General Assembly, Report of the Special Rapporteur on Extreme Poverty and Human Rights, 9 August 2012. UN. Doc. A/67/278, para. 51.

³¹⁹ *Ibid.* para. 81-82.

³²⁰ IDLO, 2015, p.29 -30.

5. Conclusions

Although extreme poverty has decreased during the last decades, tackling the issue is still an urgent matter since there are 735 million people who are unable to meet their basic needs to survive and still experience chronically undernutrition, famine, illiteracy and death from poverty-related and preventable diseases.³²¹ Because of this, mitigation of extreme poverty is one of the most important human interests.

Poverty is a multidimensional issue and many areas have to be involved in addressing this phenomenon at all its levels. This thesis has focused on establishing how the human rights framework can be a useful tool in this task.

Extreme poverty deprives people of their basic needs and places them in a situation of vulnerability where they have no rights. It is undeniable that the efforts made by states to comply with many human rights, such as the right to adequate standards of living, to education and to health, constitute a progressive step in both recognition of human rights and in the fighting of extreme poverty. In that sense, human rights are an integral component of the poverty reduction strategies and the human rights framework provide tools for the poverty eradication agenda in different ways.

It was argued that although many human rights are important to consider when addressing and formulating policies to tackle poverty, only a few of them have constitutive relevance to extreme poverty. Using the capability approach to define poverty, this thesis has established the human rights which have a constitutive relevance to poverty. These are: the right to life, the right to adequate standard of living, including housing, food and water, the right to health and the right to education. All of these rights are prescribed in international instruments as economic and social rights, the only exception is the right to life, which is presented in the civil and political set. It is through those rights that extreme poor people can resort to national, regional or international courts seeking remedies to their situation.

The fulfilment of these recognized and binding human rights can be described as the basis of conditions in which it is possible to live without poverty. The main advantage of building

³²¹ Pogge, 2007, p. 11-13.

strategies to poverty mitigation through the human rights framework is the notion that states' obligations can be raised.³²²

Through the minimum core content, which establishes the obligations of states to ensure that a minimum essential level of each of the rights is satisfied in their jurisdiction, it is possible to establish extreme poverty as a human rights violation. In other words, once the deprivation of a minimum essential level of rights are usually concentrated among the most poor, through the minimum core approach it is possible to establish the state's obligation to the most poor in a direct way. The obligation toward the fulfilment of a minimum core does not fall within the "progressive realizations" and has immediate effect.

Features of the content of the right to life, to adequate standards of living, to health and education was explored in connection to poverty. Additionally, it was shown the applicability of human rights norms by national and international courts and how courts have considered poverty as an important factor when finding violations of human rights. It was concluded that although there are obstacles, especially regarding the access of the most poor to the judicial system, successful adjudications on the human rights field have brought remedies to the extremely poor. Adjudication can, therefore, be considered an important tool to empower the extremely poor.³²³ Adjudication gives visibility, voice, increases the accountability of duty bearers, protects and provides remedies for alleged violation, develops means of compensation, creates basis to policies and develops the poverty legal framework.³²⁴

The implementation of human rights is a responsibility of national states and when a state ratifies regional and international human rights instruments they are required to ensure that the individuals in their jurisdiction can benefit from the guarantees prescribed by these instruments.³²⁵ International bodies have supervisory monitoring functions that contributes towards the implementation and evolution of international human rights law. International bodies clarify the content and obligations of states towards human rights and offers subsidiary protection through individual complaints mechanisms. Using jurisprudence from Africa and

³²² Economic and Social Council, Human rights and Extreme Poverty: Report of the Independent Expert Arjun Sengupta, March 2006. UN Doc. E/CN.4/2006/43, para. 41-42.

³²³ Formisano Prada, 2011, p. 37.

³²⁴ Formisano Prada, 2011, p. 31.

³²⁵ Boerefijn, 2012, p. 631.

Latin America it was possible to demonstrate that states have been held accountable for human rights' violations of the extremely poor at international level.

It is possible to observe from the international jurisprudence that in the African system there are important cases which recognized economic, social and cultural rights, including those that have a constitutive relevance to poverty. However, the African Commission has not yet established a clear connection between these violations and extreme poverty. Also, the relevant decisions on this system was only found in the African Commission, the quasi-judicial body of the system.

On the other hand, the Inter-American Court, the judicial body of the Inter- American system, has been considering poverty as a cause and as a consequence of human rights' violations, including in connection to other civil and political rights. Inter-American Court only recently started to recognize economic and social rights as enforceable per se, which represents a progress in the justiciability of economic and social rights. Nevertheless, economic and social rights have for long been considered as part of the evaluation of what would constitute the minimum requirement for survival and for living a life in dignity and therefore indispensable to determine a violation of the right to life.

This thesis showed that extremely poor people are a vulnerable group which are disproportionally deprived of rights, including their minimum core. It presented the obligations of the states towards the extremely poor people and highlighted the importance of access to justice as a key tool to empower the poor. Altogether, it is possible to conclude that human rights can offer a direction for states to formulate their policies in tackling poverty. International protection systems have been clarifying the content and obligation of states towards the human rights which have a constitutive relevance to poverty and regional systems have also started to develop a poverty jurisprudence that can effectively bring remedies to the very poor. Tackling poverty is a pressing human issue and can no longer be ignored. The world has reached a stage of development in which extreme poverty can no longer be considered beyond the reach of most of the countries. Policies focused on poverty reduction have not been

adopted because states have failed to accept their obligations following from their recognition of the human rights framework.³²⁶

³²⁶ Economic and Social Council, Human Rights and Extreme Poverty: Report of the Independent Expert Arjun Sengupta, March 2006. UN Doc. E/CN.4/2006/43, para. 43.

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