

Research papers

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The approach
based on
human rights
and the
reduction
of multi-
dimensional
inequalities.

A combination
inextricably linked
with the achievement
of the 2030 Agenda

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The approach based on human rights and the reduction of multi-dimensional inequalities

A combination inextricably linked with the achievement of the 2030 Agenda

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Résumé

Cette étude identifie comment les droits humains peuvent guider une forme de développement qui donne la priorité à l'amélioration du bien-être des populations, tout en participant à la transformation écologique – une forme de développement qui, au lieu de tout miser sur la croissance de la richesse monétaire, place en son centre la justice sociale et la nécessité de réduire la ponction sur les ressources et la production de déchets, y compris de gaz à effet de serre. La croissance économique, mesurée en augmentation du produit intérieur brut, a longtemps orienté les choix de politique publique, non seulement sur les plans macro-économique et monétaire, mais également dans des domaines tels que la structure de la fiscalité, l'encouragement au commerce international ou à l'investissement étranger, les réformes du marché du travail, ou l'investissement social dans des domaines tels que la santé ou l'éducation : tout, jusqu'à récemment, paraissait devoir être passé au crible des impacts de nos choix sur les perspectives de croissance. L'Agenda 2030 du développement durable invite à changer de cap. La référence aux droits humains peut y contribuer. Ils sont comme le mât auquel Ulysse demande qu'on l'attache, afin de pouvoir mieux résister au chant des sirènes. Car il est tentant, afin de ne pas avoir à œuvrer pour davantage de justice sociale en améliorant la progressivité de l'impôt, en renforçant les services publics, et en augmentant l'investissement social, de tout miser sur la croissance de la richesse monétaire, y compris si celle-ci paraît exiger des politiques telles que la réduction des

dépenses publiques, la privatisation ou la dérégulation du travail qui, à court terme, augmentent les inégalités et imposent des sacrifices à la population. Stimuler la création de richesse par tous les moyens, pour ensuite compenser le creusement des inégalités et réparer le dommage causé aux écosystèmes: telle a été l'approche dominante des cinquante dernières années. Replacer les droits humains au centre des trajectoires de développement, les constituer à la fois en objectif à réaliser et en outil permettant de progresser vers un développement humain et durable, c'est nous aider à sortir de notre addiction à la croissance. Les droits humains sont une boussole, et ils constituent des verrous : c'est précisément par ces contraintes qu'ils imposent qu'ils nous obligent à imaginer un avenir différent.

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Thématiques

Droits humains, inégalités, croissance, justice, transition écologique, développement

Mots-clés

Droits humains, inégalités, croissance, justice, transition écologique, développement

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Abstract

This study examines how human rights can guide a form of development that gives priority to improving the well-being of populations, while contributing to the ecological transformation – a form of development focused much less on growing monetary wealth, and paying much more attention to social justice and the need to reduce resource use and the production of waste, including greenhouse gases. Economic growth, measured as the increase of gross domestic product, has long guided public policy choices in the macroeconomic and monetary areas. It has also impacted fiscal reform, encouragement to international trade or foreign investment, employment market reforms, or social investment in education or health. Everything, until recently, seemed to have to be tested against the impacts of our choices on the prospects of growth. The 2030 Agenda for Sustainable Development proposes to change course. The reference to human rights can contribute to this objective. They are like the mast to which Ulysses asks to be tied, in order to be able to resist the songs of the Sirens. Indeed, improving social justice by making taxation more progressive, by strengthening public services, and by increasing social investment, is an enormous and difficult take. It may therefore be tempting to bet everything on the increase of monetary wealth, even if this seems to require policies such as the reduction of public expenses, privatization or the deregulation of labor, which, in the short term, increase inequalities and impose sacrifices on the population.

Stimulate wealth creation by all means, in order to later compensate for the worsening of inequalities and to repair the damage caused to ecosystems: this has been the dominant approach for the past fifty years. By replacing human rights at the center of development pathways, by defining them both as the objective to be realized and as a tool that can allow us to move to a more human and sustainable form of development, is to help us get rid of our addiction to growth. Human rights are a compass, and they lock out certain choices: it is precisely because of the constraints they impose that they oblige us to imagine a different future.

Keywords

Human rights, inequalities, growth, justice, ecological transition, development

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Introduction

Today, the idea of development no longer rests exclusively on the imperative of economic growth, as in the previous century, measured by an indicator such as per capita gross domestic product (GDP).¹ Its objective is the well-being of people, or what Amartya Sen called the expansion of capabilities of individuals² – or what the United Nations Development Programme (UNDP) has called human development since 1990.³ Human rights can serve as the compass to guide this trajectory towards new development models. Firstly, they make it possible to define development objectives, including by helping to give an understanding of poverty reduction which considers it in a multidimensional way, without reducing it to the purely monetary dimension.⁴ Secondly, they make it possible to identify

the ways in which these objectives can be achieved: the principles of accountability, non-discrimination and participation, in particular, guide development policies to ensure that they serve the interest of people and not only, or as a matter of priority, to increase monetary wealth. The need for a fair distribution of development gains contributes to building this new path: here again, through their contribution to the fight against income and wealth gaps in society, human rights can serve as a useful resource.

This study aims to clarify this guiding role of human rights and illustrate how they are used as tools to work towards human development. It focuses particularly on how human rights contribute to reducing inequalities. The commitment to reduce

¹ On the weight of this indicator of progress, see Sakiko Fukuda-Parr, “The Human Development Paradigm: Operationalizing Sen’s Ideas on Capabilities”, *Feminist Economics* 9(2-3) (2003), pp. 301-307.

² Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999); Amartya K. Sen, “A Decade of Human Development”, *Journal of Human Development*, Vol 1, n° 1 (2000), pp. 17-23.

³ On the role of the Human Development Index in UNDP annual reports on human development, see Elizabeth A. Stanton, “The Human Development Index: A History”, *Political Economy Research Institute Working Paper Series*, n° 127 (University of Massachusetts Amherst, February 2007).

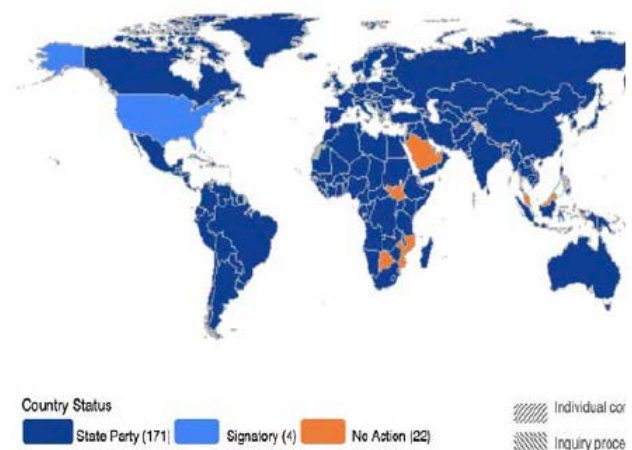
⁴ See Olivier De Schutter, “A Human Rights-Based Approach to Measuring Poverty”, in Martha F. Davis and Morten Kjaerum (Eds.), *Research Handbook on Human Rights and Poverty* (Edward Elgar Publ., 2021), pp. 2-20. The turning point

towards a multidimensional understanding of poverty dates back to the World Summit for Social Development held in Copenhagen in March 1995, whose Program of Action states that “Poverty has various manifestations, including lack of income and productive resources sufficient to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion. It is also characterized by a lack of participation in decision-making and in civil, social and cultural life.” (UN doc. A/Conf.166/9, para. 19). See also Sudhir Anand and Amartya Sen, “Concepts of Human Development and Poverty: A Multi-dimensional Perspective”, in UNDP, *Human Development 1997 Papers: Poverty and Human Development* (New York: UNDP, 1997).

inequalities is central to the 2030 Agenda for Sustainable Development,⁵ and the fight against inequalities is a prerequisite for both social justice and the ecological transformation of societies. Human rights, which are largely covered by the Sustainable Development Goals,⁶ can guide the action of both States and development actors towards the search for a development model that is at the same time more socially inclusive and more respectful of planetary limits, and thereby enable the achievement of the Sustainable Development Goals. It is this framework provided by human rights that the study aims to describe.

To outline this framework, the study draws on the recent advances in international human rights law, in particular in the field of economic, social and cultural rights, arising from the positions adopted by expert committees set up by the United Nations treaties on human rights, as well as the contributions of the special procedures established by the Human Rights Council.

The International Covenant on Economic, Social and Cultural Rights is the most important treaty covering the fields of education, health, housing, food, work and social security. This treaty came into force in 1976 and therefore guarantees the human rights the most directly related to the fight against poverty conceived from a multidimensional perspective.⁷ The treaty has also been widely ratified, with 171 States parties as at 18 June 2021. The map below shows the level of adhesion of States to the Covenant:



⁵ Transforming our World: the 2030 Agenda for Sustainable Development, Res. A/70/1 of the United Nations General Assembly (25 September 2015).

⁶ The 2030 Agenda for Sustainable Development promotes the vision “of a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination” (Res. 70/1, para. 8). The Heads of State and Government “reaffirm [their] commitment to international law and emphasize that the Agenda is to be implemented in a manner that is consistent with the rights and obligations of States under international law” (para. 18), and emphasize “the responsibilities of all States, in conformity with the Charter of the

United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status” (para. 19). However, the 17 Sustainable Development Goals and the 169 associated targets are presented as goals set by the international community, rather than rights that the holders can have enforced before national or international courts.

⁷ U.N.T.S., volume 993, p. 14531. The International Covenant on Economic, Social and Cultural Rights was approved by Resolution 2200A of the UN General Assembly, adopted on 16 December 1966.

Source: Website of the Office of the United Nations High Commissioner for Human Rights
<https://indicators.ohchr.org/>

Notes: Signatures and ratifications of the International Covenant on Economic, Social and Cultural Rights (in dark blue: State parties, having ratified the Covenant; in light blue: Signatory States that have not yet ratified the Covenant; in orange: States that have neither signed nor ratified the Covenant).

The International Covenant on Economic, Social and Cultural Rights is placed under the supervision of the Committee on Economic, Social and Cultural Rights, set up to receive the reports submitted by the States parties to the Covenant outlining the measures adopted for its implementation, and (for States parties that have accepted this competence) in order to adopt the decisions on the individual communications denouncing infringements of the rights guaranteed by the Covenant.⁸ In view of its role, which is to provide a particularly authoritative interpretation of the International Covenant on Economic, Social and Cultural Rights, the study will focus in particular on outlining the positions adopted by the Committee which clarify the contribution that economic, social and cultural rights make to the fight against

inequalities as a component of the 2030 Agenda for Sustainable Development.

Special attention is also given to the reports submitted by the independent experts appointed under the “Special Procedures” established by the Human Rights Council. In accordance with the practice initially developed by the Human Rights Commission, since the early 1970s, the Human Rights Council (which succeeded the Human Rights Commission in 2007) has decided to appoint “Special Rapporteurs”, “Independent Experts” and “Working Groups”, so that independent experts can contribute to inter-governmental discussions on the situation of human rights around the world, through the submission of reports on thematic issues or on the situation of human rights in certain countries. These independent experts together form the “Special Procedures” of the Human Rights Council. They are sometimes described as the “eyes and ears” of the international community: through the organization of consultations, the preparation of studies and the missions they carry out in countries at the invitation of governments that accept to collaborate with the human rights system, these independent experts provide the Human Rights Council with analyses and recommendations that enable it to take a stand with full knowledge of the facts on issues referred to it. This study will focus in particular on drawing on the positions adopted by the

⁸ The Committee on Economic, Social and Cultural Rights is composed of 18 independent experts, elected by the UN Economic and Social Council. It

was established by Resolution 17/1985 of the Economic and Social Council. It held its first session in 1987.

Special Rapporteur on extreme poverty and human rights, the Special Rapporteur on the right to physical and mental health, the Special Rapporteur on the right to education, the Special Rapporteur on the right to housing, and the Independent Expert on foreign debt and economic, social and cultural rights. Indeed, these Special Procedures are the most relevant to an understanding of the contribution that human rights make to the fight against poverty and reduction of inequalities referred to in Sustainable Development Goals 1 and 10.

Part 1 of the study outlines the links between the reduction of inequalities in each country, which constitutes Goal 10 of the Sustainable Development Goals, and the achievement of the other components of the 2030 Agenda. In this respect, it emphasizes the complementarity between the reduction of inequalities, on the one hand, and the eradication of poverty, responsible consumption and production and climate action, on the other hand (SDGs 1, 12 and 13). It also identifies how this complementarity is affirmed in the doctrine of human rights protection mechanisms.

Part 2 of the study subsequently examines the contribution that international human rights law makes to the fight against income and wealth inequalities, as well as against multidimensional inequalities. To date, human rights treaties have mainly focused on “horizontal” inequalities that may lead to discrimination between various categories of population defined by common characteristics such as race

or ethnic origin, gender or disability. But these treaties are less explicit on “vertical” inequalities resulting from income and wealth gaps, or access to goods and services, between different percentiles of the population.

However, recent developments in international human rights law make it possible to build on these rights in order to renew the fight against vertical inequalities: this is what this part of the study seeks to demonstrate. The first section (2.1.) illustrates how the identification of a “core content” in fundamental rights, which all States must guarantee regardless of their level of development, limits the impact of the commodification of goods and services that are essential to a decent life: it is a first channel through which human rights can contribute to limiting, if not the increase in income inequalities, at least the impacts that this increase can have on the enjoyment of economic, social and cultural rights. Section 2.2. shows how the obligation on States to progressively realize economic, social and cultural rights, “to the maximum of available resources” requires them to establish a sufficiently progressive taxation and to make budgetary choices that give priority to social investment: both this taxation and budgetary stance have redistributive effects which help fight against vertical inequalities. Section 2.3. develops an alternative to the opposition between “vertical” inequalities and “horizontal” inequalities, by showing that under certain conditions, the situation of poverty or social precariousness can be a prohibited

ground of discrimination and is increasingly considered as such. Finally, Section 2.4. highlights the content of the right to participation, by emphasizing why it is essential for the adoption of reforms to strengthen the guarantee of economic, social and cultural rights and fight against inequalities.

While the world is gradually emerging from the major economic and social crisis caused by the Covid-19 pandemic and must, at the same time, address the environmental crisis, governments now need to seek a new development model.

Focused on improving the well-being of people rather than solely on increasing monetary wealth, this development model must allow for the full realization of human rights, and in particular economic, social and cultural rights. The latter are both the objective and the means. This study clarifies the essential role they can play in the successful ecological and social transformation of societies.

1. The contribution of the fight against inequality to the 2030 Agenda for Sustainable Development

One of the Sustainable Development Goals (SDGs) is to “reduce inequality within and among countries” (Goal 10). By including this objective, the 2030 Agenda for Sustainable Development highlights the objective of inclusive growth that benefits the most disadvantaged groups as a priority: target 10.1 of the SDGs is to “achieve and sustain income growth of the bottom 40% of the population at a rate higher than the national average”, and target 10.4 is to adopt policies, especially fiscal, wage and social protection policies, to achieve greater equality.

However, the available data concerning the situation of inequalities around the world indicate that to date, the instruments that have served to stimulate economic growth have not sufficiently benefited the 40% of the population with the lowest incomes. Out of the 92 countries for which reliable data are available for the period 2011–2016, and while the incomes of the poorest 40% have increased in 69 of these countries, these incomes have increased faster than the average in only 50 countries, and even in these countries, the share of incomes going to the poorest 40% has not exceeded 25% of the wealth produced. In addition, the share of incomes going to the richest 1% has increased in a number of countries.⁹ Since inequalities started to rise in the early 1980s in most parts of the world, they have reached a point where a vicious circle is emerging: the economic elites manage to translate their economically dominant position into political influence, which allows them to strengthen their situation of rent by capturing State power, preventing it from compensating for the inequalities produced by the market (Stiglitz, 2012) (Alston, 2015) (UNCTAD, 2017).

These inequalities are today a major obstacle to sustainable development (Atkinson, 2015). Section 1 shows the role that the fight against inequalities plays in the eradication of poverty. Section 2 explains the importance of reducing inequalities for ecological transformation. These links are not highlighted through a systematic review of the available literature, but by identifying how they are addressed by the human rights protection mechanisms in the United Nations system.

1.1 Reduction of inequalities and eradication of poverty

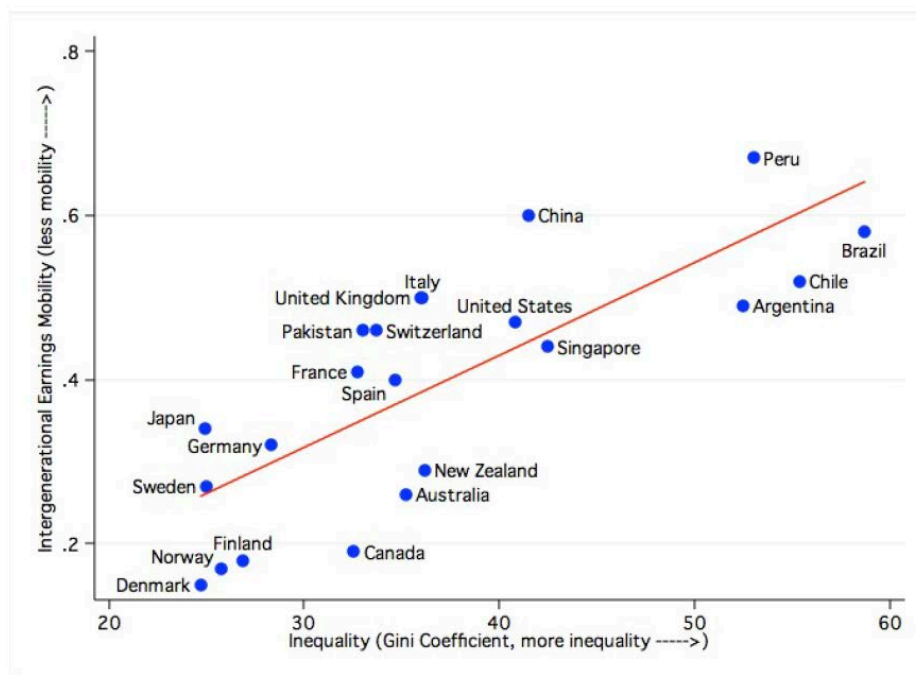
While there have been significant strides in the reduction of extreme poverty, the persistence of inequalities hinders the continuation of these efforts. Contrary to the common assumption that inequalities contribute to stimulating effort and therefore generate productivity gains which eventually benefit society as a whole through the resulting increase in monetary wealth, inequalities instead constitute a barrier to social mobility (OECD, 2015). This is partly because inequalities prevent people living in poverty from

⁹ See <https://unstats.un.org/sdgs/report/2019/goal-10/> (consulted on 6 September 2021).

investing in education and training, therefore in human capital, and because the ability to seize opportunities to move up the social ladder depends on access to both monetary and non-monetary resources, which the more underprivileged social groups find it harder to mobilize.

As a result, countries with the highest levels of inequality are also the ones with the most significant perpetuation of the intergenerational transmission of both privileges and poverty. This is what economists refer to as the “Great Gatsby Curve”.¹⁰ The following graph illustrates this correlation:

The links between levels of inequality (horizontal axis) and social mobility (vertical axis)



Source: M. Corak, Inequality from Generation to Generation: the United States in Comparison (2012) (<https://milesorak.files.wordpress.com/2012/01/inequality-from-generation-to-generation-the-united-states-in-comparison-v3.pdf>)

Among the OECD countries, the weakest link between the economic situation of parents and the remuneration received by their children in adulthood is to be found in Denmark, Finland and Norway, countries where inequalities are limited. It is however most evident in Italy, the United Kingdom and the USA, where children from families in the highest and lowest income deciles are much more likely to find themselves in the same socio-economic situation as their parents. This link is even stronger in low-income countries (Corak, 2013), as highlighted by studies on the city of Bangalore in India (Krishna) about people living in rural areas in

¹⁰ The expression was introduced by Alan B. Krueger, Chair of the Council of Economic Advisors of President Obama at the time, at a conference at the Center for Economic Progress 12 012012: https://obamawhitehouse.archives.gov/sites/default/files/krueger_cap_speech_final_remarks.pdf
The story of “Great Gatsby” is about a character who is unable to break through the partitions between social classes despite his monetary gains.

Bangladesh (Quisumbing, 2017), or about residents of favelas in Brazil (Perlman, 2011). In Africa, mobility in terms of completed studies and professional occupation is greater in countries with lower income inequalities, such as Ghana and Uganda, than in countries where they are higher, such as Côte d'Ivoire, Guinea and Madagascar (Bossuroy and Cogneau, 2013). This correlation between inequality and social stratification also holds if inequalities in human development are measured, using a multidimensional approach to inequalities, instead of only looking at income inequalities (UNDP, 2019).

In this respect, the persistence of certain myths has sometimes adversely affected the quality of public debate. One assumption in particular, popularized under the name "Kuznets Curve", posits that the increase in inequalities would be the unavoidable price to pay for economic growth. Under this approach, the introduction of policies to combat inequalities, if they are implemented prematurely, could be detrimental to development prospects. However, the observation made by Simon Kuznets (Kuznets, 1955) in an article about a correlation between growth in inequalities and GDP growth, only applied to developing countries, therefore high-growth countries experiencing rapid industrialization and urbanization processes. The observation cannot be extended to advanced industrial economies or even emerging countries where these structural transformation processes have already been completed. Moreover, the ideological use that has been made of his work does not correspond to the actual results of Kuznets. While there may have been a historical correlation between the structural transformation related to industrialization and the increase in inequalities, this does not mean that such an increase must be considered as a condition for industrialization.

In contrast, the data collected since then lead to the conclusion that the agrarian transition and industrialization would have had much less harmful consequences for social cohesion, which would therefore have been much more sustainable, if it had been accompanied with strong redistributive schemes compensating the losers by transferring resources from the winners. Among the special procedures of the Human Rights Council, it is the Special Rapporteur on extreme poverty and human rights who has mainly emphasized social protection as an investment to make societies more resilient to shocks.¹¹ Social protection plays a stabilizing role in times of economic slowdown, as it contributes to reducing poverty and increasing the consumption level of low-income households. It also allows households to increase their savings (Handa *et al.*, 2014), which prevents them from having to sell productive assets in times of crisis (Ralston, Andrew and Hsiao, 2017) and plunging into poverty because of catastrophic health expenditure, which fell from 4% in 2003 to 1% in 2013 (Elbers, 2018). Moreover, it is essential for ensuring inclusive and sustainable growth, conducive to a more equitable sharing of development and generating stronger effects on poverty reduction (Soares *et al.*, 2007) (UNDP, 2011). Social protection also contributes to making the economy more competitive and has considerable multiplier effects. It results in an increase in school enrolment and academic achievement rates (studies on the impact of cash transfer programs in Ethiopia, Kenya, Lesotho and Zimbabwe showing that these programs have reduced the number of children working on family farms (FAO, 2017)

¹¹ Report of the Special Rapporteur on extreme poverty and human rights at the 47th session of the Human Rights Council (A/HRC/47/36) (2021).

(Kesteren *et al.*, 2018)),¹² has improved the health situation and has increased the labor force participation rate, benefiting local economies as a whole. Even old-age pensions have this type of effect, as the surplus of disposable household income is often invested in education. For example, in Lesotho, recipients of the old-age allowance spend a large share on uniforms, books and school supplies for their grandchildren, while in Zambia, the Kalomo program, which targets households headed by elderly people, has led to a 16% increase in school attendance (Kesteren *et al.*, 2018).

Conversely, attempts to stimulate growth to the detriment of guarantees under the right to social protection have shown their limits. Similarly, labor market reforms in the interests of competitiveness and growth have not produced the expected results, although the “flexibilization” of workers’ rights has had a real impact. This is the observation made by the Independent Expert on the impacts of foreign debt on the enjoyment of economic, social and cultural rights in a 2016 report which reviews the available economic data:

“Empirical findings overall do not seem supportive of the claim that labor law deregulation fosters recovery after economic crises. Indeed, the evidence seems to be more in line with the argument that ‘pressure towards labor market flexibilization, aimed at boosting export-led growth, will eventually lead to lower consumption, net exports and employment’ at the global level.”¹³

Today, there is consensus about the fact that policies to tackle inequalities with respect to labor law, taxation and social protection are far from being an obstacle to economic development, but are one of its ingredients. In addition to fostering the formation of human capital, on which the long-term competitiveness of the economy depends, investments in social protection generate considerable revenues for the local economy as the beneficiaries spend in local companies. The Food and Agriculture Organization of the United Nations (FAO) has used the local economy-wide impact evaluation (LEWIE model) to measure the multiplier effect of cash transfers in seven Sub-Saharan African countries and has found that the income multipliers varied, in nominal terms, between 2.52 in Ethiopia and 1.34 in Kenya (FAO, 2017, cited above). According to a more recent study, two cash transfer programs set up in Zambia (the Child Grant Program and the program targeting several categories of the population) have each generated an income multiplier effect of 1.67 on average (Handa, Natali, Seidenfeld, Tembo and Davis, 2018). Researchers at the International Monetary Fund (IMF) note that “the combined direct and indirect effects of redistribution – including the growth effects of the resulting lower inequality – are on average pro-growth” (Ostry, Berg and Tsangarides, 2014) (Berg and Ostry, 2011). More recent research has also generalized certain results (which originally only focused on OECD countries) showing that the concentration of wealth at the top slows growth, while on the contrary, growth is stimulated by the increase in the share of total wealth going to the lowest quintile of the population or to the middle class: the IMF researchers have therefore established “an inverse

¹² In India, the establishment of the National Rural Employment Guarantee Act has reduced child labor by 13.4% for boys and by 8.2% for girls (UNICEF, 2012).

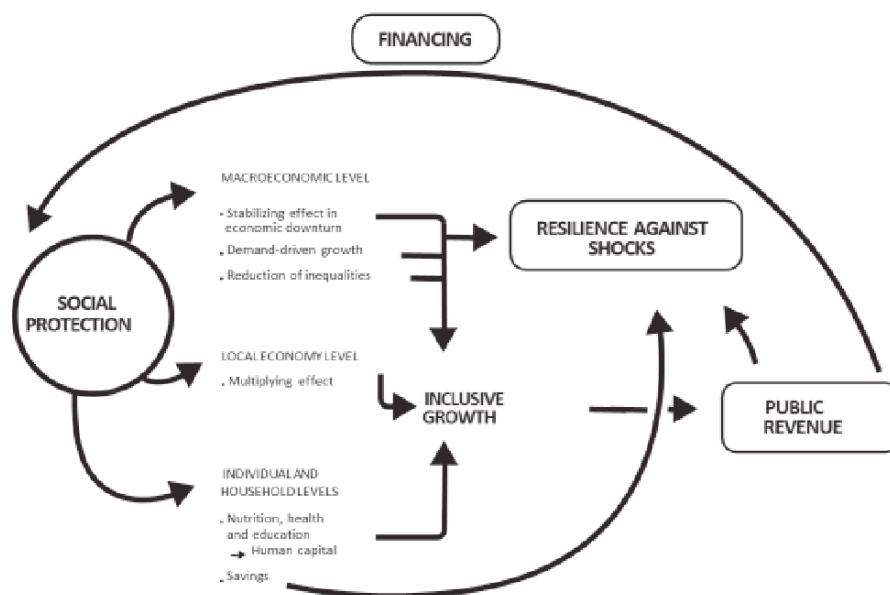
¹³ Report of the Independent Expert mandated to examine the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, A/HRC/34/57 (27 December 2016), para. 51.

relationship between the income share accruing to the rich (top 20 percent) and economic growth”:

“If the income share of the top 20 percent increases by 1 percentage point, GDP growth is actually 0.08 percentage point lower in the following five years, suggesting that the benefits do not trickle down [to the economy]. Instead, a similar increase in the income share of the bottom 20 percent (the poor) is associated with 0.38 percentage point higher growth. This positive relationship between disposable income shares and higher growth continues to hold for the second and third quintiles (the middle class).” (Dabla-Norris, Kochar, Ricka, Suphaphiphat and Tsount, 2015) (Ostry, Berg and Tsangarides, 2014, cited above).

In a recent report on the establishment of a new international financing mechanism for social protection in countries of the Global South, the UN Special Rapporteur on extreme poverty and human rights summarized the links between social protection and sustainable and inclusive growth in this diagram:

The contribution of social protection to sustainable and inclusive growth



Source: Global Fund for Social Protection: International Solidarity in the Service of Poverty Eradication, Report of the Special Rapporteur on extreme poverty and human rights at the 47th session of the Human Rights Council (A/HRC/47/36) (2021).

Irrespective of the *pace* of economic growth (increase in monetary wealth), it is the *sources* of growth that a greater consideration of inequalities should influence. The way in which economic growth as such has previously been promoted may in fact have contributed to what has sometimes been called the “modernization of poverty”. It has widened income disparities between population groups, depending on the economic sectors in which these groups are employed, by only protecting less competitive sectors in the context of the

opening up of markets, or by not compensating for the losses incurred by these sectors. The pursuit of growth has sometimes encouraged the privatization of resources previously managed as “commons”, and therefore freely accessible to all members of communities. This has deprived groups whose purchasing power is too low of access to these resources (De Wolf, 2012). It has reduced the protection of workers to satisfy the need for labor flexibility. It has sometimes drawn countries into a tax race, under the pretext of attracting investors through a low corporate tax rate or other tax benefits. These measures aimed at creating growth may have contributed both to increasing the wealth generated across the country and to widening income disparities. They may even have put certain population groups in a vulnerable situation. These observations had already been made by the Sub-Commission on Human Rights – a group of independent experts set up to inform the work of the UN Human Rights Commission – when it looked at the links between economic growth, the guarantee of human rights and income inequalities. It analyzed these links ten years after the fall of the Berlin Wall, which accelerated economic globalization in such a spectacular manner, and came up with the following conclusions, as summarized by Mr. José Bengoa, its rapporteur on these issues:

- “a. The benefits of global economic growth after 1987 are very unevenly distributed. Indeed, growth has been accompanied by clearly negative income distribution both at the international and national levels (“the globalized capitalist economic growth [over the period 1988–1998] has produced social consequences consisting of two simultaneous phenomena: the concentration of wealth, and social exclusion. Countries' areas and entire regions of the world have been excluded from the tempo of growth, technological change and dizzying transformations to be found today. There are areas, urban zones and especially rural zones, and sometimes even entire regions of countries, which are a part of the third or fourth world and are excluded from the benefits of economic growth; other areas, on the other hand, are becoming ‘globalized’ and internationalized, and are benefiting from economic growth, constituting first world enclaves in ‘thirdworldized settings’”);
- b. When income distribution begins to be concentrated in the hands of a small number of beneficiaries, both relative poverty and extreme poverty increase, both in developed countries and in developing countries;
- c. Unequal income distribution in a context of economic growth creates “*explosive*” social situations (‘Young people in particular lose confidence in the value of democracy; many disadvantaged, impoverished or discriminated sectors of the population see their commitment to democracy weaken, and the political system loses its effectiveness. Societies and social groups become increasingly vulnerable, creating a situation of uncertainty and social instability. The emergence of authoritarian, undemocratic political forms, chauvinistic nationalist movements, new forms of xenophobia, hatred of migrant workers, and other manifestations are the direct consequences of this type of development’);
- d. Income distribution is very closely linked with the full enjoyment and full realization of fundamental rights and the persistence of inequalities in income distribution is also the cause of a persistent violation of the rights of individuals. In cases of intolerable inequalities, there is a violation of the rules of national and international coexistence and consequently of the rights of individuals (“Distribution of the benefits of economic growth

is not only a charitable grant by persons, groups or countries of goodwill, but is fundamentally an obligation constituted by the inherent rights of persons, groups and countries, as set forth in international agreements and treaties. Growth with negative income distribution at a level considered 'intolerable' – that is, one which endangers human life and human rights – constitutes a violation of the norms of national and international coexistence and therefore of the rights of person”);

- e. Income distribution should become an economic and social indicator for international financial institutions and other international organizations (“Just as they have for many years used monetary indicators, inflation levels, public debt, a balanced national budget, etc. for granting credit, making investments and establishing development and cooperation programs, they should also use income distribution as an indicator, bearing in mind that bad income distribution causes much greater instability than many conditions shown by macroeconomic and financial indicators”).¹⁴

These observations concern the impacts of the form of growth encouraged by economic globalization since the early 1990s. They have been confirmed more recently by the research of B. Milanovic, who has attempted to assess trends in inequalities over the period 1988–2008: during this period where there was a sharp rise in globalization, between the fall of the Berlin Wall and the major financial crisis, growth has generally been robust, but inequalities have increased in most countries, which has only been partially offset by the “catching-up” of certain low-income and middle-income countries (Milanovic, 2016). Using data concerning Guatemala, Malawi and Myanmar, IMF researchers have also noted that measures to stimulate economic growth have sometimes led to an increase in inequalities, as they have not been offset by a strengthening of social protection (Fabrizio *et al.*, 2017). The special procedures of the Human Rights Council and, more generally, human rights monitoring mechanisms, have also expressed explicit reservations over the impacts on these rights of the measures taken by States to promote economic growth. These measures mainly include the conclusion of free trade and investment agreements; the privatization of services or state-owned enterprises; and the “flexibilization” of labor law:

Free trade agreements and investment treaties

“States parties should identify any potential conflict between their obligations under the Covenant and under trade or investment treaties, and refrain from entering into such treaties where such conflicts are found to exist, as required under the principle of the binding character of treaties. The conclusion of such treaties should therefore be preceded by human rights impact assessments that take into account both the positive and negative human rights impacts of trade and investment treaties, including the contribution of such treaties to the realization of the right to development. Such impacts on human rights of the implementation of the agreements should be regularly assessed, to allow for the adoption of any corrective measures that may be required.” (Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State obligations under the International

¹⁴ Report of the Special Rapporteur on the relations between the enjoyment of human rights, particularly economic, social and cultural rights, and income distribution (E/CN.4/Sub.2/1998/8 (10 June 1998), paras. 4 to 9).

Covenant on Economic, Social and Cultural Rights in the context of business activities (E/C.12/GC/24, 10 August 2017, para. 13).

“Free trade agreements and/or bilateral investment treaties may have a number of retrogressive effects on the protection and promotion of human rights, including by lowering the threshold of health protection, food safety and labor standards. Investment agreements might aggravate extreme poverty, jeopardize fair and efficient foreign debt renegotiation and affect the rights of indigenous peoples, minorities, persons with disabilities, older persons and others in vulnerable situations. Without assessments of potential human rights impacts, free trade agreements and bilateral investment treaties might jeopardize the call contained in the Declaration [on the right to development] for an enabling environment for development, an element that is also essential to realizing the Sustainable Development Goals.” (Report of the Secretary-General and the High Commissioner on the right to development (A/HRC/36/23) (26 July 2017), para. 45).

“Increased foreign direct investment flows to developing countries can contribute to reducing poverty and promoting prosperity. However, whether this happens depends on the nature of the strategies pursued to attract these investments and whether investments are made in a responsible manner, *i.e.*, whether they are conducive to social development, protective of the environment and respectful of the rule of law and fiscal obligations in host countries. Investors and States must ensure that profit considerations do not trump human rights protection.” (Report of the Secretary-General and the High Commissioner on the right to development (A/HRC/36/23) (26 July 2017), para. 46).

Privatization

“Privatization is not per se prohibited by the [International] Covenant [on Economic, Social and Cultural Rights], even in areas such as the provision of water or electricity, education or health care where the role of the public sector has traditionally been strong. Private providers should, however, be subject to strict regulations that impose on them so-called ‘public service obligations’: in the provision of water or electricity, this may include requirements concerning universality of coverage and continuity of service, pricing policies, quality requirements, and user participation. [...] Goods and services that are necessary for the enjoyment of basic economic, social and cultural rights may become less affordable as a result of such goods and services being provided by the private sector, or that quality may be sacrificed for the sake of increasing profits. The provision by private actors of goods and services essential for the enjoyment of Covenant rights should not lead the enjoyment of Covenant rights to be made conditional on the ability to pay, which would create new forms of socioeconomic segregation.” (Committee on Economic, Social and Cultural Rights, General Comment n° 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (E/C.12/GC/24, 10 August 2017, paras. 21-22).

“Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable

water. To prevent such abuses an effective regulatory system must be established, [...] which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.” (Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002): Right to water (E/C.12/GC/11), para. 24).

“Privatization of health, education, social security, water, and personal liberty and security services must not take place at the expense of equitable access to these services and the protection of human rights, and should be subject to human rights impact assessments.” (Report of the Secretary-General and the High Commissioner on the right to development (A/HRC/36/23) (26 July 2017), para. 55).

“Privatization breeds exclusion, as those who are disadvantaged are unable to access private schools. This aggravates existing disparities in access to education, further marginalizing the poor. Furthermore, voucher schemes purported to provide economically disadvantaged parents with the means to select a private school in fact promote group differentiation.” (Report of the Special Rapporteur on the right to education (A/HRC/29/30, 10 June 2015), para. 43).

“Privatization is premised on assumptions fundamentally different from those that underpin respect for human rights, such as dignity and equality. Profit is the overriding objective, and considerations such as equality and non-discrimination are inevitably sidelined. Regulatory and other constraints are viewed as obstacles to efficiency, and accountability for other than economic outcomes sits uneasily at best. Rights holders are transformed into clients, and those who are poor, needy or troubled are marginalized.” Report of the Special Rapporteur on extreme poverty and human rights (A/73/396, 26 September 2018), para. 82).

Flexibilization of labor markets

“In many countries, austerity-related labor law reforms have been promoted by international financial institutions on the assumption that they will lead to economic growth and thus prevent or help overcome debt crises. These reforms have included freezing or reducing wages and minimum wages, extending working hours, placing workers on precarious contracts or labor reserve schemes and facilitating dismissals. Of particular concern are reforms that have targeted collective bargaining systems, for example by restricting the extension of sector agreements and pushing bargaining down to the workplace level or permitting bargaining with non-union representatives. [...] These reforms often erode labor rights and result in retrogression of work-related gender equality. They have frequently contributed to an increase in inequality and insecure and informal employment; fostered discrimination in the labor market towards young and older persons and individuals belonging to marginalized social groups; and resulted in the reduction of job-related social protection. Furthermore, it is questionable whether eroding labor rights generates economic and social benefits to other rights holders that would justify encroaching on them.” (Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, A/HRC/34/57 (27 December 2016)).

Contrary to widespread belief, disseminated in particular by the work of the economist Art M. Okun (OKUN, 1975), no tradeoff is therefore required between the understandable desire of low-income countries to pursue their economic development and the reduction of inequalities in these countries. The opposite is true: the reduction of inequalities serves prosperity, but an inclusive prosperity, and therefore has greater impacts on the eradication of poverty.

1.2. Reduction of inequalities and ecological transformation

The persistence of inequalities also complicates the social transformation required to halt the degradation of ecosystems, referred to by SDGs 12 and 13, respectively concerning responsible consumption and production and climate action. There are three reasons for this. Firstly, the more income distribution is unequal, the more it will be necessary to increase the monetary wealth available at the community level to fight poverty, as this growth will not mainly benefit people living in poverty.¹⁵ Conversely, the more the wealth created is equally distributed between populations, the more economic growth will serve the poverty reduction objectives, and the more the benefits of increased prosperity will reach the poorest in society: in a society that reduces disparities of income, less growth will be required to meet the basic needs of all.

This is a crucial point, as economic growth (measured by the increase in per capita gross domestic product) automatically results in an increase in the ecological footprint, considering both the drain on resources and the production of waste, and including greenhouse gas emissions, caused by growth. The “relative” decoupling of growth from the degradation of the environment is, of course, common, as growth becomes less resource- and carbon-intensive and a larger proportion of waste is recycled. However, “absolute” decoupling, whereby the increase in monetary wealth goes hand in hand with a reduction in the use of resources and the production of waste (which implies that the efficiency gains increase faster than total production), rarely occurs (Wiedmann *et al.*, 2020) (Hickel and Kallis, 2019).¹⁶

Changes in the structure of greenhouse gas emissions confirm the risk that a strategy focusing on “absolute” decoupling would pose. With the exception of rare periods of economic slowdown, the reduction of the volumes of these emissions in some jurisdictions is due to the strictly territorial accounting of emissions, which takes into account what is produced and consumed in the territory, but not emissions embedded in goods or services imported from abroad. In fact, the rare examples sometimes held up of an absolute decoupling of growth from emissions are due to the method used under the United Nations

¹⁵ The “just transition” in the economic recovery: eradicating poverty within planetary boundaries. Report of the Special Rapporteur on extreme poverty and human rights (A/75/181, 20 July 2020, para. 44).

¹⁶ These authors challenge the idea that “green growth” is a realistic strategy on a global scale, and call for the search for other development models. The idea that economic growth is compatible with respecting planetary limits finds its most caricatural form in the assumption of an “environmental Kuznets curve”, positing that development necessarily involves a highly polluting and resource-intensive phase, and subsequently enters into a phase where growth goes hand in hand with a reduction of the ecological footprint: this idea has now been widely discredited (Dasgupta, *et al.* 2002).

Framework Convention on Climate Change: the apparent gains in high-income jurisdictions have been associated with the externalization of pollution towards other countries (generally resource-rich countries and poor countries), and the “imported” emissions are not taken into account (De Schutter, 2016) (Jackson, 2017).¹⁷

Secondly, the reduction of inequalities is also crucial to the search for a development model that moves towards a low-carbon society and reduces biodiversity loss, as more egalitarian societies use resources more efficiently. The allocation of resources through market mechanisms serves to satisfy demand, expressed by the purchasing power of the richest sections of the population, rather than meeting the needs of the poorest. Consequently, the frivolous desires of the richest, however unsustainable they may be, can prevail over the basic needs of the less affluent. This is what is referred to by the notion of an “environmental cost of inequality” (Boyce, 2018) (Cushing *et al.*, 2015): worldwide, the 10% of the largest emitters account for about 45% of global carbon dioxide emissions, while the 50% of the lowest emitters account for 13% of global emissions.¹⁸

Thirdly, the fight against inequalities is important because policies to reduce the ecological footprint can only be successful if they are perceived as legitimate by the population and if they are not hindered by the elites who benefit the most from existing distribution patterns. The most egalitarian societies are therefore better equipped to drive transformational changes, both because, in these societies, the veto of economic elites plays a less important role, through a greater participation of low-income groups in civic and political life, and because these societies can develop the “public ethics” required to address these challenges at the level of society (Rothstein and Uslaner, 2005) (Uslaner and Brown, 2005).

1.3. Conclusion

Societies with a more egalitarian income distribution (in line with the ambition of SDG 10) and that ensure respect for the economic, social and cultural rights of all its members are therefore both better equipped to put welfare gains at the service of poverty reduction, and to reduce their ecological footprint, in accordance with the commitments made under the 2030 Agenda for Sustainable Development. The *content* of growth needs to change, to be part of a development model different from the dominant extractive model and become both more inclusive and respectful of planetary limits. It is not a matter of setting the growth pursued until now against a “degrowth” reducing the scope for improving the well-being of the population, but rather of proposing another type of growth that contributes to a prosperity built on other bases than increasing material consumption, and promoting more environmentally-friendly ways of producing and consuming. Consequently, a type of growth

¹⁷ In addition, the disposal of hazardous waste from rich countries in developing countries has for a long time caused concern, in particular at the Human Rights Council (see in this respect the Guidelines for good practices relating to human rights obligations concerning the environmentally sound management and disposal of hazardous substances and wastes, presented by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (A/HRC/36/41, 20 July 2017)).

¹⁸ Independent group of scientists appointed by the Secretary-General, The Future is Now: Science for Achieving Sustainable Development – Global Sustainable Development Report 2019, p. 17 (Chancel and Piketty 2015).

very different from the growth we have built on until now. The fight against inequalities, combined with an approach based on human rights, has an essential role to play in the pursuit of this model.

2. Human rights as a compass for development

International human rights law has until now made a modest contribution to the fight against vertical inequalities promoted by SDG 10. This is the observation made in 2015 by the Special Rapporteur on extreme poverty and human rights, Mr. Philip Alston:

“The international human rights community has largely reciprocated the economists’ neglect by ignoring the consequences of extreme inequality in the vast majority of its advocacy and analytical work. It does so at its peril, however, since a human rights framework that does not address extreme inequality as one of the drivers of extreme poverty and as one of the reasons why over one quarter of humanity cannot properly enjoy human rights is doomed to fail.”¹⁹

This relative indifference of the human rights system to the fight against income disparities, at least until recently, is due to the fact that human rights have focused on the fight against “horizontal” discrimination, rather than on the need to fight income and wealth disparities within a given population. As again noted by the Special Rapporteur on extreme poverty and human rights:

“Despite all the attention given to affirmative obligations to eliminate discrimination, the bulk of the work of treaty bodies seems unduly focused around particular violations of the principle of non-discrimination. Related to this is a reluctance to define notions relative to distributive equality, which is extensively discussed in the literature and would give a further dimension to efforts to fight extreme inequalities.” (Moyn, 2014, 2017).

The relative indifference of human rights monitoring mechanisms towards vertical inequalities undoubtedly also lies in the difficulty of objectively defining the threshold above which these inequalities become too great, to the extent that they can constitute a barrier to the realization of human rights.

This has made some authors conclude that international human rights law was not equipped to fight against vertical inequalities, *i.e.* the increase in income or wealth disparities between individuals or households within a given society, when these individuals or households do not have a common characteristic, for example, related to ethnic origin, religion or language (Ragnarsson, 2020). This conclusion is, however, incorrect. In reality, the interpretation of economic, social and cultural rights recognized in international law has developed in recent years in such a manner that it constitutes a bulwark against growth in vertical inequalities. Four developments are in particular noteworthy: all States, regardless of their level of development, must at the minimum guarantee the “core content” of economic, social and cultural rights (Section 2.1); beyond this, they are required to “progressively realize” these rights, by mobilizing the resources available (combining national resources and the resources they can obtain through development assistance) (Section 2.2); they must guarantee economic, social and cultural rights without

¹⁹ Report of the Special Rapporteur on extreme poverty and human rights (A/HRC/29/31, 27 May 2015), para. 3.

discrimination, *inter alia* on the basis of socioeconomic status (Section 2.3.); finally, they must guarantee the right to participation, in order to decentralize power and promote a real democratic ownership of development trajectories (Section 2.4.).

2.1. The “core content” of human rights

One of the first attempts to go beyond a definition of development focused solely on economic growth, measured by GDP growth, dates back to the early 1980s, when the International Labour Organization (ILO) promoted the idea that each individual had “basic needs” to be met – a set of goods and services essential to a decent life, comprising housing, food, health and education. This approach already calls for us to go beyond a definition of poverty purely focused on the monetary income of the individual, since these goods and services can be “decommodified” and provided as public goods, benefiting all the members of the community, either regardless of their level of income or when they are below a certain level of income, and financed by the public purse, notably through taxes.

In 1982, ILO defined these “basic needs” as follows:

“Firstly, certain requirements essential to the consumption of the household or adult equivalent: adequate food, shelter and clothing, as well as the equipment and furniture in the living space. Secondly, [these basic needs comprise] essential services provided by and for the community, such as drinking water, sanitation public transport, health services, education and culture.” (ILO,1982).

The interpretation of economic, social and cultural rights has used this approach. Each individual has the right to an adequate standard of living for themselves and their family: this is what is expressed in Article 11 of the International Covenant on Economic, Social and Cultural Rights. This requirement translates into the guarantee that everyone must be given the right to have access to a set of goods and services essential to a life in conformity with human dignity, protecting them from poverty conceived in a multidimensional manner (and not only as a lack of sufficient income). While the economic, social and cultural rights recognized in the International Covenant on Economic, Social and Cultural Rights must be subject to a “progressive realization” taking into account the resources of each country, each State must at the minimum guarantee the “core content”, corresponding to the satisfaction of the basic needs of the individual. Authors have noted that the “core content” approach was not always coherent, in particular on the part of the Committee on Economic, Social and Cultural Rights (Young, 2008). However, while variations can be observed, the essence of the doctrine is rooted in this idea by which it would be possible to identify the basic needs of an individual, whose satisfaction would be necessary to a decent life.

These requirements apply to all States, regardless of their level of economic development.²⁰ When the State is faced with resource constraints, it must demonstrate that it has given

²⁰ See the Concluding Observations of the Committee on Economic, Social and Cultural Rights on the initial report of Cabo Verde (E/C.12/CPV/CO/1, 27 November 2018), para. 13, c) (recommending that Cabo Verde “Ensure that public policies guarantee enjoyment of the minimum core content of rights at all times”).

priority to “at the very least, minimum levels of rights fulfilment” from the Covenant, which corresponds to the minimum core obligations of the State in this regard. The Committee on Economic, Social and Cultural Rights considers 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 is, *prima facie*, failing to discharge its obligations under the Covenant”.²¹ This idea was already expressed in 1986 in the Limburg Principles which posited that “States parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all”.²² In various general comments and declarations, the Committee has also indicated that the obligations to ensure adequate food,²³ guarantee access to water to satisfy essential needs,²⁴ guarantee access to essential medicines,²⁵ provide an education that complies with the “minimum standards of education”²⁶ and the enjoyment of a social protection floor²⁷ are part of these minimum core obligations that every State must in principle be able to assume, regardless of their level of development.²⁸

This obligation has a link with the fight against vertical inequalities, as it imposes limits on the allocation of certain goods and services by market mechanisms, whereby access to these goods and services is conditional on sufficient purchasing power. If each individual must be able to have access to a “*core minimum*” for food, shelter, health and education, and has the right to a “*sufficient standard of living*”, it is necessary that either the redistributive social policies in place protect them against destitution, or that these services are provided as non-market public services. Yet each of these options requires that the State does not remain passive in the face of mounting inequalities, in a context where public services are increasingly being privatized and where access to the goods and services

²¹ General Comment n° 3 (1990): The Nature of States Parties' Obligations (E/1991/3), para. 10. The idea expressed in General Comment n° 3 of the Committee on Economic, Social and Cultural Rights has in particular been supported by Philip Alston, a member of the Committee who, writing as an academic, also strongly urged that the Committee “find a way to sensitize States to the fact that priority must be given to the satisfaction of a vital minimum level of enjoyment of relevant rights by all individuals” (Alston, 1987) (This is the position which he encouraged the Committee to adopt during its third session (see the Summary Record of the 3rd session, Committee on Economic, Social and Cultural Rights, UN document E/C.12/1989/SR.3, p. 3).

²² E/C.12/2000/13, para. 25. The Limburg Principles emerged out of an expert meeting held in Maastricht from 2 to 6 June 1986. Their influence, as a guide to the interpretation of the International Covenant on Economic, Social and Cultural Rights, further increased after they were officially transmitted to the Commission on Human Rights at the request of the Netherlands (see UN document E/CN.4/1987/17).

²³ General Comment n° 12 (2000): The right to adequate food (E/C.12/1999/5), paras. 6, 14 and 17.

²⁴ General Comment n° 15 (2002): The right to water (E/C.12/2002/11), para. 37.

²⁵ General Comment n° 14 (2000): The right to the highest attainable standard of health (E/C.12/2000/4), para. 43.

²⁶ General Comment n° 13 (2000): The right to education (E/C.12/1999/10), para. 57.

²⁷ Similarly, the letter of 16 May 2012 addressed to the States Parties to the International Covenant on Economic, Social and Cultural Rights by the Chair of the Committee on Economic, Social and Cultural Rights regarding the austerity measures stresses that any regressive measure (*i.e.* constituting a retrogressive step, counter to the progressive realization of economic, social and cultural rights) “must identify the minimum core content of rights or a social protection floor, as developed by the International Labour Organization (ILO), and ensure the protection of this core content at all times”.

²⁸ See the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, para. 10 (“resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights”). The Maastricht Guidelines were adopted by a group of experts gathered in Maastricht from 22 to 26 January 1997. (Dankwa, Flinterman and Leckie, 1998).

provided by the State is increasingly conditional on a financial contribution. Indeed, the privatization of certain public services, or the introduction of fees imposed on users, can result in access being dependent on the ability to pay, leading to unacceptable forms of exclusion depriving individuals of an effective enjoyment of fundamental rights, such as the right to water, electricity or health.²⁹ This can be exacerbated by the tendency of private service providers to focus mainly on urban areas and, within these areas, on the most affluent neighborhoods, where population groups with the highest purchasing power are concentrated, to the detriment of rural areas or poorer neighborhoods.³⁰ More generally, the financialization of the provision of services or goods essential to the enjoyment of basic rights, such as housing or water, leads to the interests of the beneficiaries being sacrificed to those of the shareholders. The Special Rapporteur on the right to adequate housing made this observation in a report on the financialization of the real estate market:

“Financialized housing markets respond to preferences of global investors rather than to the needs of communities. The average income of households in the community or the kinds of housing they would like to inhabit is of little concern to financial investors, who cater to the needs or desires of speculative markets and are likely to replace affordable housing that is needed with luxury housing that sits vacant because that is how best to turn a profit quickly. Financialized housing thus precipitates what has been referred to as ‘residential alienation’, the loss of the critical relationship to housing as a dwelling and the diverse set of social relationships that give it meaning. In financialized housing markets, those making decisions about housing – its use, its cost, where it will be built or whether it will be demolished – do so from remote board rooms with no engagement with or accountability to the communities in which their “assets” are located.”³¹

Consequently, the identification of a “core content” in economic, social and cultural rights, which must be guaranteed to all without discrimination, including in low-income countries, is a bulwark against the effects of exclusion resulting from commodification. It is also a first instrument aimed at combating vertical inequalities. The obligation of States to make progress in the realization of economic, social and cultural rights “to the maximum of available resources” is a second instrument.

²⁹ Consequently, for example, in its report of Mali, the Committee on Economic, Social and Cultural Rights expresses its concern about “The growing disparities in access to a quality education, which are partly the consequence of hidden costs and the high tuition fees charged by private schools, which create a situation that disproportionately affects children from low-income families” (Concluding Observations on the initial report of Mali (E/C.12/MLI/CO/1, 6 November 2018), para. 51, c)).

³⁰ See the Report of the Special Rapporteur on extreme poverty and human rights, presented at the 73rd session of the General Assembly, A/73/396 (26 September 2018), para. 36.

³¹ Report of the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/34/51 (18 January 2017), para. 31.

2.2. The obligation of progressive realization

Article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights states that each State must “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”. This obligation of a “*progressive realization*” of rights embodied in the International Covenant on Economic, Social and Cultural Rights therefore requires States to devote the “maximum of available resources” to the implementation of these rights. They must either mobilize these resources at national level, or request and obtain support from the international community.³² But these terms remain vague, although they do indicate how to proceed. However, they do not specify at what pace States must progress, or what efforts they must make to pursue the objective assigned. The indications that the Committee on Economic, Social and Cultural Rights sought to give at the time of the negotiation of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights establishing an individual communication mechanism remain insufficient to guide the choices of States.

The obligation of “progressive realization” in the doctrine of the Committee on Economic, Social and Cultural Rights

8. In considering a communication concerning an alleged failure of a State party to take steps to the maximum of available resources, the Committee will examine the measures that the State party has effectively taken, legislative or otherwise. In assessing whether they are “*adequate*” or “*reasonable*”, the Committee may take into account, *inter alia*, the following considerations:
 - (a) The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights;
 - (b) Whether the State party exercised its discretion in a non-discriminatory and non-arbitrary manner;
 - (c) Whether the State party’s decision (not) to allocate available resources was in accordance with international human rights standards;
 - (d) Where several policy options are available, whether the State party adopted the option that least restricts Covenant rights;
 - (e) The time frame in which the steps were taken;
 - (f) Whether the steps had taken into account the precarious situation of disadvantaged and marginalized individuals or groups and, whether they were non-discriminatory, and whether they prioritized grave situations or situations of risk.

³² Article 2 para. 1 states: “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”.

Source: Committee on Economic, Social and Cultural Rights, An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” under an Optional Protocol to the Covenant (E/C.12/2007/1, 21 September 2007), para. 8).

In addition, the formulation of Article 2, para. 1, of the International Covenant on Economic, Social and Cultural Rights creates confusion in two respects. Firstly, it encourages the idea that wealth creation must *precede* the investment in certain social goods and services or in redistributive social policies. Indeed, it presents the availability of resources as a prerequisite for investment. However, Keynesian economic thinking – which, as we know, did not come about with the publication in 1936 of the General Theory of J. Maynard Keynes (Keynes, 1936)³³ – suggests that the reverse logic is equally valid: social spending is a prerequisite for sustainable economic growth and must consequently be considered as an investment rather than a burden for the economy. Today, we understand much more clearly that it would be a mistake to pursue growth strategies if this would be at the expense of social investments or redistributive strategies: James Heckman, for example, illustrated this in his work on investment in early childhood (Heckman, 2012). James Heckman emphasized four messages: social capabilities and skills, such as attention, perseverance and the ability to work with others, develop at an early age and are essential to productivity in adult life; an early investment in childhood is much more profitable than corrective measures later in the life cycle; society as a whole will face enormous economic and social difficulties if disadvantaged families do not benefit from more support for the development of young children; and this type of investment results in significant benefits for society in the form of increased personal fulfilment and social productivity. Another Nobel Prize winner in economics, Angus Deaton (Deaton, 2013), pointed out that countries which have focused on economic growth to the detriment of social investments (*i.e.* which have considered growth as a prerequisite for social investment rather than the result of an investment in the population) obtained poorer results with indicators of progress in human development.³⁴ Yet the clause on “progressive realization”, as formulated in the International Covenant on Economic, Social and Cultural Rights, seems to presuppose that the realization of economic,

³³ The main policy recommendations from Keynesian macroeconomics had been anticipated in the USA by authors such as Stuart Chase and John Maurice Clark, whose intellectual influences were among the most important in the second New Deal of President F.D. Roosevelt in 1935. Like Keynes, these authors considered inequalities and the lack of purchasing power of the poor as the main barrier to the capacity of the economy to get out of the Great Depression, a depression which they attributed, again like Keynes, to underinvestment. In 1932, Stuart Chase expressed the opinion that “It is not so much over-production as underconsumption which is the appalling fact... Millions of tons of additional material could readily be marketed if purchasing power were available. Alas, purchasing power is not available” (Stuart Chase, *A New Deal* (New York: Macmillan, 1932), p. 3). Clark argued that spending on public works could be an “antidote to oversaving” and could “increase general purchasing power in order to offset the reduction due to the industrial contraction” (Clark, 1935). For an excellent intellectual story about the policies of the New Deal, see Alan Brinkley, *The End of Reform. New Deal Liberalism in Recession and War* (New York: Vintage Books, 1995).

³⁴ Deaton notes that in China “the general pattern [concerning child mortality rates] is of rapid decline until about 1970, followed by much slower decline after 1970. This is precisely the opposite of what we would expect if the fall in infant deaths had been driven by economic growth, which would be the case if the death of babies were a direct consequence of poverty. What happened in China is no mystery. When the authorities decided to focus on growth, resources were switched to making money and away from everything else, including public health and health care”).

social and cultural rights must follow wealth creation rather than being considered as an ingredient of sustainable and inclusive prosperity. This is a first difficulty.

The second difficulty is that due to the vagueness of its implications, the “progressive realization” clause is often perceived as impeding the full recognition of economic, social and cultural rights as fully justiciable rights (which may be subject to control by a judge), and thereby showing signs of a difference of treatment between these rights and civil and political rights. However, this is not the only possible interpretation. In a more liberal interpretation, the “progressive realization” clause can rather be used in a more offensive manner when the Committee on Economic, Social and Cultural rights and national courts use it to examine the macroeconomic and budgetary choices of State parties with regard to the requirements of the Covenant.³⁵ An offensive use of the “progressive realization” clause concerns both (from the aspect of revenues) the mobilization of resources (in terms of expenditure) and the investment choices of the State. We examine the implications of this here.

2.2.1. Mobilize national resources

The obligation of devoting the “maximum of available resources” to the realization of economic, social and cultural rights firstly requires that States seek to increase the means to finance redistributive social policies and the provision of public services. They have several options in this respect (Ortiz, 2019). They can increase tax revenues, in particular in countries with the lowest the tax-to-GDP ratio. They can extend social coverage and increase contributory revenues by encouraging the formalization of work in a context where, worldwide, the two billion informal workers account for almost 60% of the labor force.³⁶ They can step up their efforts to tackle illicit financial flows (OECD, 2014).³⁷ They can reduce military expenditure or expenditure generating major negative externalities, such as fossil fuel subsidies. They can borrow or request the restructuring of existing debt. They can adopt a macroeconomic framework which, instead of aiming at balancing public finances by reducing public investments in infrastructure and human capital, which hinders long-term growth, on the contrary allows them to borrow to finance sustainable growth. Finally, they can request an increase in Official Development Assistance.

In the specialized doctrine and in the practice of mechanisms for the protection of economic, social and cultural rights, the most recent advances have concerned the issue of resource mobilization through taxation. The former Special Rapporteur on extreme poverty and human rights argued that States should be encouraged to:

³⁵ For attempts of systematization: (Balakrishnan, Elson, Heintz and Lusiani, 2011) (Nolan, O’Connell and Harvey, 2013) (O’Connell, Nolan, Harvey, Dutschke and Rooney, 2014) and (De Schutter, 2018).

³⁶ World Social Protection Report 2020–2022 (Geneva, ILO, 2021), p. 49.

³⁷ See also the final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development presented by the independent expert on the effects of foreign debt and other related international financial obligations of State on the full enjoyment of all human rights, in particular economic, social and cultural rights, Mr. Juan Pablo Bohoslavsky (A/HRC/31/61) (15 January 2016), paras. 10–11.

“Set up a progressive tax system with real redistributive capacity that preserves, and progressively increases, the income of poorer households. It also implies that affirmative action measures aimed at assisting the most disadvantaged individuals and groups that have suffered from historical or persistent discrimination, such as well-designed subsidies or tax exemptions, would not be discriminatory. In contrast, a flat tax whereby all people are required to pay an equal proportion of their income would not be conducive in achieving substantive equality, as it limits the redistributive function of taxation.”³⁸

Her successor in this mandate, Philip Alston, placed stronger emphasis on this point, regretting that we are still far away from recognizing the fact that “tax policy is, in many respects, human rights policy”, despite the obvious contribution that taxation makes to the realization, *inter alia*, of economic, social and cultural rights: “The regressive or progressive nature of a State’s tax structure, and the groups and purposes for which it gives exemptions or deductions, shapes the allocation of income and assets across the population, and thereby affects levels of inequality and human rights enjoyment”.³⁹ A recent report by the current Special Rapporteur on extreme poverty and human rights, on ways to break out of the vicious circles that contribute to perpetuating poverty, emphasizes the potential role of an inheritance tax to finance social investment. It notes that “In OECD countries, the inheritances and gifts reported by the wealthiest households (top 20 per cent) are close to 50 times higher than those reported by the poorest households (bottom 20 per cent), which illustrates the important role of inheritance in perpetuating and even reinforcing inequalities since wealth inequalities lead to increased income inequalities.” However, “only 24 out of 37 OECD countries tax inheritance, estate or gifts across generations, and the levies are typically very low, accounting for only 0.5 per cent of total tax revenues on average for the 24 countries concerned.”⁴⁰ The information available for developing countries suggests that wealth inequalities in them play an even more important role and that inheritance tax, when it exists, is even lower, whereas it would be an easy instrument to use to address inequalities and improve social mobility.⁴¹

³⁸ Report of the Special Rapporteur on extreme poverty and human rights, Madgalena Sepúlveda Carmona, presented at the 26th session of the Human Rights Council (A/HRC/26/28) (22 May 2014), para. 16.

³⁹ Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, at the 29th session of the Human Rights Council (A/HRC/29/31) (26 May 2015), para. 53.

⁴⁰ Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, at the 46th session of the General Assembly (A/76/177) (19 July 2021), para. 52. These data are from the report published by the OECD on the issue: OECD, *Inheritance Taxation in OECD Countries* (Paris, 2021).

⁴¹ For example, in 2015, the inheritance tax stood at 8% in Brazil, 6% in Guatemala, 5% in Botswana and Zimbabwe, and 3% in Guinea and Senegal (data collected by the Tax Foundation. <https://taxfoundation.org/estate-and-inheritance-taxes-around-world>). These data are questionable, as these average rates do not take into account either the degree of kinship between the deceased and the beneficiary of the inheritance or its amount.

Progressive taxation for the realization of economic, social and cultural rights

By both reducing the weight of income inequalities before taxes and increasing the fiscal capacity of the State, a progressive tax system therefore has a major role to play in the realization of social rights (Alston and Reisch, 2019). The Committee on Economic, Social and Cultural Rights has consequently regularly expressed its concern over reforms to the tax system that would make it less progressive (for example, by shifting the tax burden on companies towards families or by increasing VAT rates on basic necessities).

“The Committee is concerned that the flat-rate tax system, currently applied to both personal and corporate income, contributed to an increase in income and social inequalities in the State party, and may prove inadequate in maximizing the available resources for implementation of the obligations arising from the Covenant and ineffective in addressing tax evasion. [and recommends that Russia] take measures to ensure that its tax policy is effective and socially just, with a view to maximizing the availability of resources for the realization of Covenant rights, and effectively addressing economic inequalities and tax evasion.” (Committee concluding observations on the sixth periodic report of the Russian Federation (E/C.12/RUS/CO/6, 16 October 2017), paras. 16-17 (under Article 2 paragraph 1 of the International Covenant on Economic, Social and Cultural Rights)).

The Committee on Economic, Social and Cultural Rights insists that States parties to the International Covenant on Economic, Social and Cultural Rights mobilize the resources needed to finance redistributive social policies and public services allowing the realization of economic, social and cultural rights, in particular by strengthening progressive taxation, by putting an end to the “tax loopholes” that benefit certain privileged groups or investors,⁴² and by stepping up the fight against tax evasion.

More recently, a group of independent experts gathered at the initiative of the Center for Economic and Social Rights, a non-governmental organization based in New York, sought to highlight a set of Principles for Human Rights in Fiscal Policy, codifying the implications for tax policy choices arising out of human rights.⁴³ Principle n° 3 of this text insists on the compatibility of tax policy with the social justice requirement. States must in this regard:

“Design tax policy in accordance with the principles of horizontal and vertical equity, legality, equality, non-discrimination, generality, ability to pay, progressiveness, and other fair tax principles enshrined in their constitutions, international law, and other complementary frameworks.

⁴² Concluding Observations on the initial report of Mali (E/C.12/MLI/CO/1, 6 November 2018), para. 13 (“The Committee recommends that the State party increase the availability of domestic resources, including by continuing to review tax exemptions such as those granted for the exploitation of natural resources, and particularly mineral resources, with a view to raising the level of public spending for the progressive realization of economic, social and cultural rights”).

⁴³ https://derechosypoliticafiscal.org/images/ASSETS/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf (consulted on 6 September 2021).

They must ensure that the tax system promotes substantive equality and that all people comply with their duty to pay taxes in accordance with their ability to contribute. States must establish an appropriate tax threshold. They should refrain from adopting fiscal measures that impose burdens which manifestly worsen the situation of those who lack the necessary material resources to live with dignity and autonomy.”

There are good reasons for making the adoption of progressive tax systems a condition for the realization of economic, social and cultural rights and therefore an obligation for States parties to the International Covenant on Economic, Social and Cultural Rights. However, two clarifications are required.

Firstly, even for a tax system with a certain degree of progressivity, the capacity to reduce inequalities does not only depend on the *percentage* contributions of the richest segment of the population to public revenues, but also on the *absolute* levels of these contributions: if, for example, the richest decile of the population pays 90% of the income tax collected in the country, the tax system can be described as progressive according to the Kakwani index, which is the most common measurement of tax progressivity. However, if these richest 10% are subject to very low tax rates, the redistributive capacity of the tax will remain very limited: this redistributive capacity is represented by another index, called the Reynolds-Smolensky index, which measures the difference between income distribution before and after tax.⁴⁴ An important consequence of this distinction is that a tax reform which may, *prima facie*, seem regressive because the total share of tax revenues paid by the richest segment of the population will decline (which, in other words, amounts to distributing the effort over a broader segment of the population), can nevertheless have progressive consequences if the overall tax rates, and therefore the revenues the State can mobilize, are raised.

Secondly, for a number of governments, in particular in least developed countries, a progressive taxation with significant impact on the reduction of inequalities may be difficult to implement. For tax administrations that are almost non-existent or poorly equipped, indirect taxes (such as VAT) are the easiest to collect. Despite their regressive impacts (as the poorest households spend a higher proportion of their income on the purchase of daily consumer goods (Elson, Balakrishnan and Heintz, 2013) (Saiz, 2013),⁴⁵ they may be the preferred means to collect revenue for governments with a weak administrative capacity. In addition, because capital is more mobile than the workforce and households, it is tempting to reduce the tax rates on capital, especially by reducing corporate tax and

⁴⁴ The Kakwani and Reynolds-Smolensky indexes appeared simultaneously in the economic literature (Kakwani, 1977) (Reynolds and Smolensky, 1977) (Haughton and Khandker). These different ways of assessing the contribution of the progressivity of tax to the reduction of inequalities have been criticized because they do not take into account, from a dynamic perspective, changes in income that may arise from the introduction of tax reforms (Díaz de Sarralde, Garcimartín and Ruiz-Huerta, 2010).

⁴⁵ However, it is important to note that while VAT is regressive when the calculations cover income (the poorest households devote a larger proportion of their income to it), this regressivity either disappears or is considerably reduced when the calculations are made based on consumption: the higher levels of consumption of the rich and the high VAT levels on certain luxury products which only the rich can afford can indeed lead to a situation whereby the rich contribute more than the poor to VAT revenue. See Ana Corbacho, Vicente Frebes Cibils and Eduardo Lora (Eds.), *More than Revenue: Taxation as a Development Tool* (Inter-American Development Bank and Palgrave Macmillan, 2013), here pp. 167-168.

income tax on the highest earners,⁴⁶ and to offset these reductions by increasing taxation on employees and households.

Given both the insufficient capacity of tax administrations, which hinders income tax collection, and the tax competition between States, we are faced with tax policies that end up taxing salaried individuals and consumers through VAT and the imposition of fees on beneficiaries in sectors such as health and education, rather than placing the tax burden more on the most successful companies and the wealthiest individuals (which would be called for by both economic common sense and the obligation of the progressive realization of human rights “to the maximum of available resources” that the State can mobilize). According to World Bank calculations, the total tax rate payable by companies on their commercial profits fell, on average worldwide, from 53.5% to 40.8% between 2005 and 2015.⁴⁷ While some countries have moved in the opposite direction (this is the case, for example, of Argentina, Chile, Malaysia and Niger), the general downward trend is evident: in many countries, corporate tax has seen a double-digit reduction over this period. The phenomenon is particularly spectacular in countries classified by the United Nations as the least developed countries, where the rate has on average fallen from 75.4% to 44.7%. If only the highly-indebted poor countries are taken into account, the reduction is from 81.2% to 52.7%. These are States which are already poor and at risk of further impoverishment, under the pretext of attracting investors. But these investors will not come to these countries to avoid paying taxes there, but due to the geographical advantages of the country, or because its macroeconomic environment is favorable, because the public services work and because the workforce is sufficiently skilled.

2.2.2. Increase social investment

Progressive taxation (combined with strengthening the fight against tax evasion) is essential to the realization of economic, social and cultural rights. However, to assess whether a State party to the International Covenant on Economic, Social and Cultural Rights complies with its obligation to dedicate the “maximum of available resources” to the progressive realization of the rights of the Covenant – as it is required to do under its Article 2, para. 1 –, it is necessary to establish the link between the progressivity of tax systems and the fight against illicit financial flows (in particular against tax fraud), on the one hand, and the scope of application and content of the redistributive policies adopted in each country on the other hand.

⁴⁶ International Monetary Fund, Policy Paper, Fiscal Policy and Income Inequality, Jan. 2014, p. 37 (estimating that the marginal income tax rates of individuals have fallen by about 30% on average since 1980).

⁴⁷ It is an unweighted average: in the calculation, small savings count as much as large savings. For the purpose of this calculation, the total tax rate is the “sum of all the different taxes and contributions, expressed as a percentage, payable by companies after accounting for allowable deductions and exemptions”.

For further details, see:

<https://data.worldbank.org/indicator/IC.TAX.TOTL.CP.ZS?end=2015&start=2005&view=chart> (last consultation on 9 September 2016)

Some countries have reduced their corporate tax more rapidly than others: over this 10-year period, Albania reduced corporate tax from 58.2% to 36.5%, Belarus from 137.3% to 51.8% and Uzbekistan from 96.7% to 41.1%; Canada went from 47.5% to 21.1%, Paraguay from 54.5% to 35.0% and Turkey from 52.8% to 40.9%.

This link is essential, as illustrated by the comments made on the review of the situation of Brazil by the UN Special Rapporteur on the right to food during his visit there in 2009. While the social programs established by Brazil under the administration of President Lula da Silva were in many respects remarkable – with real impacts, in particular on the reduction of child malnutrition –, questions were raised over the funding sources of these programs:

“The tax structure in Brazil remains highly regressive. Tax rates are high for goods and services and low for income and property, bringing about very inequitable outcomes. [...] [W]hile the social programs developed under the ‘Zero Hunger’ strategy are impressive in scope, they are essentially funded by the very persons whom they seek to benefit, as the regressive system of taxation seriously limits the redistributive impact of the programs. Only by introducing a tax reform that would reverse the current situation could Brazil claim to be seeking to realize the right to adequate food by taking steps to the maximum of its available resources.” (De Schutter, 2009).

But the inverse relationship can also exist and raise the same doubts: even it is indeed highly progressive, a tax system can only have an impact on the reduction of inequalities if the revenue from the taxes collected is redistributed *via* social policies that benefit the poor, rather than being devoted to investments that will simply allow the rich to become richer. For the effective realization of economic, social and cultural rights, what matters is the *combination* of revenue mobilization and expenditure choices. Neither of these two elements taken separately will allow an assessment of whether the State’s efforts are sufficient: while it is easy to imagine that a State that has established generous social policies to tackle poverty will finance these policies mainly through the poor themselves (for example, through an increase in VAT rates on fast-moving consumer goods, or a high tax rate on earned income, while there is only a low tax on capital income), it also is possible that a State will tax the rich but not use the revenues generated to ensure that they have a significant impact on reducing inequalities.

The objective of realizing human rights therefore also guides State expenditure, so as to encourage an increase in social investment. The increase in budgets devoted to social investment and public services, for example, in the fields of education or water and electricity supply, or the right to social security, contributes to strengthening the effectiveness of social rights, by improving the economic accessibility of goods and services to ensure, *inter alia*, the right to water and sanitation, housing, food, education or health. As noted above, it is also an essential instrument for strengthening gender equality, in view of the fact that women still carry out most of the unpaid work in the household: it is women who – in the current distribution of the gender-based roles which remain dominant in most parts of the world – have traditionally shouldered the care of infants, children and the elderly and collected firewood or water to meet the needs of the household (Carmona, 2013 (a)). This explains why the human rights treaty bodies link social investment and gender equality (Elson, 2006). The Committee on Economic, Social and Cultural Rights thereby requests that States “Adopt and implement the national budget while making every effort to avoid

retrogressive measures, and ensure that the budget reflects a human rights and gender-sensitive approach.”⁴⁸

It is widely accepted that, given the objective of progressive realization, a State cannot in principle, unless there is a special justification, adopt “regressive” measures that go against this objective. The Committee on Economic, Social and Cultural right thereby regularly recalls that “If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources.”⁴⁹ For example, as regards the right to social security, when the Committee is faced with regressive measures adopted by States, it will examine whether: “(a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.”⁵⁰ The Maastricht Guidelines on violations of economic, social and cultural rights, adopted in 1997 on the occasion of the tenth anniversary of the Limburg Principles (Dankwa, Flinterman and Leckie, 1998, cited above), develop this notion by enumerating among the acts of commission giving rise to a violation of the rights of the Covenant “The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.”⁵¹

The Committee clarified the prohibition on adopting “deliberately regressive” measures in a statement adopted in 2007, as governments were negotiating the content of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, aiming at conferring on the Committee the competence to receive individual communications from victims of violations of their rights.

⁴⁸ Concluding Observations on the fourth periodic report of Argentina (E/C.12/ARG/CO/4, 1 November 2018), para. 6, d).

⁴⁹ Committee on Economic, Social and Cultural Rights, General Comment n° 19 (2007): The right to social security (Art. 9) (E/C.12/GC/19), para. 41. See also the letter of 16 May 2012 addressed by the Chair of the Committee on Economic, Social and Cultural Rights (emphasizing that, to comply with the Covenant, the austerity measures or adjustment programs adopted by several States after 2009 to address the financial and economic crisis must be “necessary and proportionate, in the sense that the adoption of any other policy, or a failure to act, would be more detrimental to economic, social and cultural rights”).

⁵⁰ Committee on Economic, Social and Cultural Rights, General Comment n° 19 (2007): The right to social security (Art. 9) (E/C.12/GC/19), para. 42.

⁵¹ Maastricht Guidelines, para. 14 g).

The obligation of “non-retrogression”

- “9. The Committee notes that in case of failure to take any steps or of the adoption of retrogressive steps, the burden of proof rests with the State party to show that such a course of action was based on the most careful consideration and can be justified by reference to the totality of the rights provided for in the Covenant and by the fact that full use was made of available resources.
10. Should a State party use “resource constraints” as an explanation for any retrogressive steps taken, the Committee would consider such information on a country-by-country basis in the light of objective criteria such as:
- (a) The country’s level of development;
 - (b) The severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant;
 - (c) The country’s current economic situation, in particular whether the country was undergoing a period of economic recession;
 - (d) The existence of other serious claims on the State party’s limited resources; for example, resulting from a recent natural disaster or from recent internal or international armed conflict.
 - (e) Whether the State party had sought to identify low-cost options;
 - (f) Whether the State party had sought cooperation and assistance or rejected offers of resources from the international community for the purposes of implementing the provisions of the Covenant without sufficient reason.”

Sources: Committee on Economic, Social and Cultural Rights, An evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the Covenant (E/C.12/2007/1, 21 September 2007), paras. 9-10.

The “non-retrogression” rule therefore in principle prohibits States from adopting measures that work against the progressive realization of economic, social and cultural rights, unless they can justify such a regression with regard to all the rights of the Covenant which guarantee them. The Committee on Economic, Social and Cultural Rights has regularly used this rule. For example, in its concluding observations on Argentina in 2018, the Committee was “concerned to note that the levels of effective protection of the rights enshrined in the Covenant, in particular for disadvantaged individuals and groups, have been reduced as a result of inflation and austerity measures” and it is “also concerned to note that, under the agreement with the International Monetary Fund, the Government has set a zero-deficit target for 2019, entailing further cuts in social spending.”⁵² It recommends in particular that the adoption of measures to address the financial crisis be preceded by impact studies on economic, social and cultural rights “in order to ensure that they do not have disproportionate effects on disadvantaged groups; Strengthen budget planning and execution in order to avoid the underutilization of resources”, and that the budgets devoted to social investments for the most disadvantaged groups be preserved.⁵³ The same

⁵² Concluding Observations on the fourth periodic report of Argentina (E/C.12/ARG/CO/4, 1 November 2018), para. 5.

⁵³ Id., para. 6, a) to c).

formulations are made in the recommendations addressed to many other States parties to the International Covenant on Economic, Social and Cultural Rights.⁵⁴

The requirement of “*non-retrogression*” in the realization of economic, social and cultural rights and the “golden rule” limiting State expenditure: the case of Brazil

It follows from the “*non-retrogression*” rule that the establishment of a “*golden rule*” as a constitutional norm limiting an increase in social budgets will be regarded with suspicion, and in principle constitutes a violation of the obligation to progressively realize economic, social and cultural rights. This can be illustrated with the exchange which led to the establishment of a provision in the Constitution of the Federative Republic of Brazil of 1988, imposing on the State a freeze on the increase in public expenditure, in principle for a period of 20 years.

In December 2016, the Federal Senate of Brazil had begun examining a proposal for a constitutional amendment (PEC 55/2016), referred to as the “*new fiscal regime*”. It aimed to freeze the amount of expenditure of the federal government (excluding adaptation to the consumer price index) in order to counter the risk of an increase in debt. The UN Special Rapporteur on extreme poverty and human rights and other special procedures sent a communication to the Brazilian government in which they expressed their concern over the impact that such a budgetary discipline rule would have on the health or education sectors, or on financing for social security regimes.⁵⁵ According to these independent experts, the “*non-retrogression*” rule would require Brazil to precede the adoption of this constitutional amendment with at the very minimum a debate associating the groups the most affected by the freeze on social budgets; an independent study on the impacts on the enjoyment of economic, social and cultural rights; an examination of alternative measures to reduce government deficits; and, finally, the identification of the direct or indirect discrimination that could arise from the adoption of this constitutional amendment. The exchange on this communication in particular concerned the impact of the constitutional amendment (adopted, meanwhile, in the form of Constitutional Amendment n° 95, voted by the Brazilian National Congress on 15 December 2016) on the most disadvantaged categories of the population of Brazil.

A communication sent to Brazil on 18 May 2018 reiterates these concerns in light of the impacts of Constitutional Amendment n° 95 since its adoption in December 2016. This communication in particular refers to studies showing the disproportionate impacts resulting from the budgetary decisions made following Constitutional Amendment n° 95 on women and the most disadvantaged categories of the population, including people of

⁵⁴ Concluding Observations on the initial periodic report of Cabo Verde (E/C.12/CPV/CO/1, 27 November 2018), paras. 12–13.

⁵⁵ Communication n° AL BRA 7/2016, 8 December 2016
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22891>.
The Brazilian government replied to this communication on 15 February 2017, highlighting the need for a constitutional amendment in order to reduce the level of public debt and control inflation
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33389>.
On 23 March 2017, the independent experts reacted to this response from the government
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23011>.

African descent and people living in poverty, such as residents of favelas and rural dwellers: these categories of the population have indeed been the most affected by the budget cuts made, for example, in school-feeding programs (Programa Nacional de Alimentação Escolar – PNAE) or in the Bolsa Família aid program for the most deprived.⁵⁶ However, the concerns expressed by the special procedures were not sufficient to call into question Constitutional Amendment n° 95, which is still in force and must, in principle, impose strict limits on any increase in the expenditure of the federal government until 2036.

However, beyond this obligation of non-retrogression, compliance monitoring mechanisms on the obligation to progressively realize economic, social and cultural rights have not yet defined specific criteria, or proposed a methodology, to assess whether the level of social investment made by a State complies with the requirements of its international commitments. It is in this sense that the potential of this obligation, which is nevertheless central to the International Covenant on Economic, Social and Cultural Rights, is still not fully realized.

2.3. The prohibition of discrimination

The States parties to the International Covenant on Economic, Social and Cultural Rights have pledged to “guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁵⁷ In addition, the non-discrimination rule is set out in all the international human rights treaties, and certain treaties are specifically devoted to protecting certain categories of the population against discrimination: this is the case of the Convention on the Elimination of All Forms of Racial Discrimination of 1965, the Convention on the Elimination of All Forms of Discrimination against Women of 1979, and the Convention on the Rights of Persons with Disabilities of 2006.

The following paragraphs take a more in-depth look at the content of the requirement of non-discrimination. They give a reminder of the distinction between “horizontal” inequalities and “vertical” inequalities (2.3.1). They subsequently describe the emergence of the prohibition of discrimination on grounds of socio-economic precariousness (2.3.2). By prohibiting this particular form of discrimination, it is not simply a matter of protecting individuals from the reality of “povertyism”, *i.e.* stereotypes and prejudices suffered by people living in poverty, but also of ensuring that if the measures, even seemingly neutral, have a disproportionate impact on people with the lowest incomes, they are reexamined and, if necessary, reformed. There are significant consequences, given the systemic nature of the discrimination suffered by people living in poverty.

⁵⁶ Communication n° OL BRA 4/2018, 18 March 2018
<https://www.ohchr.org/Documents/Issues/Development/IEDebt/OL-BRA-4-2018.pdf>.

⁵⁷ See Art. 2(2) and 3 of the International Covenant on Economic, Social and Cultural Rights (requiring the rights of the Covenant to be guaranteed without discrimination and, in particular, that men and women be treated equally regarding the enjoyment of these rights), and General Comment n° 20 of the Committee on Economic, Social and Cultural Rights on non-discrimination in the exercise of economic, social and cultural rights (Art. 2, para. 2) (E/C.12/GC/20) (2009).

2.3.1. Horizontal and vertical inequalities

The prohibition of discrimination mainly targets “*horizontal*” inequalities, which may exist between certain categories of the population defined by characteristics such as race or ethnic origin, religion, language, gender, disability or sexual orientation. It is prohibited to make differences of treatment between these categories, unless these differences of treatment are objectively justified and proportionate: this is what is covered by the prohibition of direct discrimination. There is also the requirement to take account of the actual differences between these population groups, particularly where the application of uniform rules would result in disproportionate discrimination against some of them: this is what the prohibition of indirect discrimination refers to. The general norms set out in this regard in the International Covenant on Civil and Political Rights or in the International Covenant on Economic, Social and Cultural Rights are complemented by specialized treaties to protect specific groups against discrimination: this is the case of the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities.

However, the prohibition of discrimination has generally not managed to condemn “*vertical*” inequalities, which stem from differences in income or wealth, or in access to certain goods or services, between individuals or households, in a given society, when these individuals or households do not belong to a category identified by a common characteristic. As a result, wealth gaps, including the most extreme, have rarely been directly condemned under the UN human rights protection system. This is despite the fact that they are viewed with concern by economists and public health specialists (Piketty, 2013) (Stiglitz, 2012, cited above) (Atkinson, 2015, cited above) (Wilkinson and Pickett, 2009) and are increasingly perceived, including in the International Monetary Fund, as a barrier to development (Clements, Benedict, Ruud A. de Mooij, 2015). In this respect, it is quite telling that in the Guidelines for the Implementation of the Right to Adequate Housing she proposed in 2019, the Special Rapporteur on the right to adequate housing decided to include a Guideline (n° 8) “Address discrimination and ensure equality”, which identifies a set of categories of persons particularly at risk of homelessness, but without including low-income groups in these categories:

“Refugees, asylum seekers, migrants, especially those who are undocumented, internally displaced persons, stateless persons, persons with disabilities, children and youth, indigenous peoples, women, lesbian, gay, bisexual, transgender and intersex persons, older persons and members of racial, ethnic and religious minorities are disproportionately represented among those living in homelessness, in informal accommodation and inadequate housing, and are often relegated to the most marginal and unsafe areas.”⁵⁸

The omission of low-income groups among the groups particularly affected by homelessness no doubt reflects the fact that we are used to considering that access to

⁵⁸ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha (UN doc. A/HRC/43/43, 26 December 2019).

adequate housing may depend on the purchasing power of the persons concerned, whereas this is tantamount to subordinating the enjoyment of a fundamental right to a condition of resources.⁵⁹ But this omission also reveals the difficulty of including vertical inequalities in international human rights law, when a wide range of goods and services essential to a decent life are in fact treated like commodities, *de facto* only accessible to those who can afford them.

However, there are two links between the prohibition of discrimination to fight against horizontal inequalities, on the one hand, and the fight against vertical inequalities on the other hand. Firstly, a substantial proportion of inequalities in income or wealth in a society appear to be attributable to horizontal discrimination, *i.e.* to the disadvantages faced by certain population groups sharing a common characteristic, such as race or ethnic origin, gender or disability.⁶⁰ In this sense, the fight against horizontal discrimination is a powerful tool for the reduction of poverty and vertical inequalities.

Secondly, we are gradually seeing the emergence of a prohibition of discrimination based on the situation of poverty or socio-economic precariousness. In its Article 2, para. 2, the International Covenant on Economic, Social and Cultural Rights includes “*social origin*” and “*property*” among the prohibited grounds of discrimination. According to the Committee, the criterion of social origin “refers to a person’s inherited social status” (membership of a disadvantaged “caste” constituting the paradigm of such a position), while “property status, as a prohibited ground of discrimination, is a broad concept and includes real property (*e.g.* land ownership or tenure) and personal property (*e.g.* intellectual property, goods and chattels, and income), or the lack of it.”⁶¹

The notion of property therefore includes a reference to the situation of poverty, or absence of property: this is confirmed in the English and Spanish versions of the Covenant, where the French “*fortune*” is respectively “*property*” and “*posición económica*”. The prohibition of discrimination must therefore extend to discrimination based on socio-economic status or, more specifically, on socio-economic precariousness. It is more appropriate to refer to discrimination based on the poverty situation, on social precariousness or on socio-economic disadvantage, rather than referring to discrimination based on property, on income, or on the socio-economic situation. Indeed, these latter expressions function in a symmetrical manner, *i.e.* they would in principle also denounce as discriminatory the differences of treatment experienced by people with high-incomes or a sizeable fortune, for

⁵⁹ The concrete measures for the application of Guideline n° 8 go beyond the groups identified in paragraph 44 of the report, as these concrete measures refer to “disadvantaged groups” in general, recommending that States prohibit “all forms of discrimination in housing by public or private actors and guarantee not only formal but also substantive equality, which requires taking positive measures to address housing disadvantages and ensure equal enjoyment of the right to housing” (para. 48, a)).

⁶⁰ World Development Report 2006: Equity and Development (Washington, D.C.: World Bank, 2005), p. 43 (“[H]igher overall inequality is associated with a larger between-group share of overall inequality, which is attributable to the rural-urban breakdown, to differences across social groups, to differences in education, and (weakly) to differences in broad occupation class of the household head. ... [B]etween-group differences account for, and possibly explain, a non-negligible portion of overall inequality”).

⁶¹ General Comment n° 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/20, 2 July 2009), para. 24-25.

example, if there is an increase in progressive taxation or ambitious programs for redistributing resources. The following paragraphs explore the consequences of this.

2.3.2. The prohibition of discrimination on grounds of socio-economic precariousness

The Committee on Economic, Social and Cultural Rights has reaffirmed that individuals “must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person’s social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of –or unequal access to– the same quality of education and health care as others, as well as the denial of or unequal access to public places”.⁶² It also insists that these grounds be included in the fight against discrimination adopted by the States parties to the Covenant.⁶³

The principle of prohibition of discrimination based on social origin, property, or social and economic situation, to use the terminology of the International Covenant on Economic, Social and Cultural Rights, is not new. But this prohibition has only gained visibility in recent years, as shown by the introduction in French law in 2016 of the prohibition of discrimination based on “social precariousness”.⁶⁴ Two observations explain the increasing importance of this prohibition.

Firstly, people living in poverty are victims of discrimination on a daily basis. This was one of the key lessons of the research conducted by ATD Fourth World and Oxford University in 2017–2019, using the merging of knowledge methodology. This methodology consists in combining the knowledge of academic experts, of people working with poor families (social workers and non-governmental organizations) and of people in poverty themselves. The objective is to arrive at a common diagnostic through a hybrid form of this knowledge. The “*hidden dimensions of poverty*” that the research has brought to light, *i.e.* the components of the lived experience of poverty, include social and institutional violence, alongside more traditional dimensions of poverty, such as the lack of income and material and social deprivation (Bray, de Laat, Godinot, Ugarte and Walker, 2019, 2020).

Secondly, while it may be a temporary situation, poverty can also constitute a *status*. This is what differentiates “*transient poverty*” from “*chronic poverty*”: when it takes the latter form, poverty indeed assigns the individual to a certain position in the community, by creating considerable barriers to escaping from poverty for children from families in precarious situations (De Schutter, 2021). Longitudinal studies conducted by Anirudh Krishna and his colleagues between 1979 and 1994 on 36 rural communities in Uganda and 40 rural

⁶² General Comment n° 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/20, 2 July 2009), para. 35.

⁶³ See, for example, Concluding observations on the 6th periodic report of Canada (E/C.12/CAN/CO/6, 23 March 2016), para. 17 (mentioning the “social condition” as prohibited grounds of discrimination).

⁶⁴ Law n° 2016-832 of 24 June 2016 to fight discrimination on grounds of social precariousness (criminalizing discrimination based on the “the particular vulnerability arising from [the] economic situation [of the victim], apparent or known to the perpetrator”, while providing that “the measures taken for the benefit of vulnerable persons due to their economic situation and aimed at fostering equality of treatment do not constitute discrimination”).

communities in Peru (Krisna *et al.* (b) and (c)) also confirm that the longer poverty lasts, the more it will be difficult for the individual to get out of their situation (ODI, 2014). Poverty is in this sense comparable to ethnicity or gender: it is a characteristic which the individual is subject to, which exposes them to various forms of discrimination or exclusion, and which they cannot freely dispose of.

The prohibition of discrimination on grounds of socio-economic precariousness calls for three remarks. Firstly, this prohibition is not there to compete with more traditional prohibitions, prohibiting discrimination on grounds of ethnic or national origin, gender or disability, and thereby fighting “horizontal” inequalities. It rather complements them and is superimposed on them, in order to ensure that “class” distinctions will not be forgotten in the fight against discrimination in general (a). Secondly, the prohibition of discrimination on grounds of socio-economic precariousness includes both the prohibition of direct discrimination and the prohibition of indirect discrimination. While direct discrimination may result from the difference of treatment on grounds of poverty itself, indirect discrimination can be rooted in measures which may appear “neutral”, but *de facto* lead to disadvantages being imposed on people in poverty. The prohibition of indirect discrimination results in the need to establish mechanisms to monitor the impacts of the measures (legislative, budgetary, political, but also adopted by private actors) (b). Finally, the discrimination experienced by people living in poverty is “systemic”, covering an array of spheres of economic and social life: there are several consequences, in particular the need to establish programs for affirmative action to overcome the handicap this represents (c).

a) Intersectional or multiple discrimination: the perspective of intersectionality

The progressive recognition of the prohibition of discrimination on grounds of socio-economic status will, in the future, firstly allow a better understanding of the reality of intersectional or multiple discrimination. This intersectional or multiple discrimination corresponds to the reality experienced by people living in poverty who are *also* victims of discrimination on other grounds, such as ethnic or national origin, sex/gender or disability. This is what the Special Rapporteur on the right to adequate housing noted in a report submitted in 2014, where she presented the outline of her work program:

“[T]he unique effects of “multiple discrimination” (such as the experience of women belonging to racial or ethnic minority groups) have now been recognized as requiring specific consideration and remedies. In addition, the ground of “economic and social situation”, including homelessness and poverty, is now understood as a distinct ground of discrimination. It is recognized that those facing discrimination in access to housing because of ethnic origin, sex or disability, for example, are often subject to further stigmatization, discrimination and criminalization because of their socioeconomic and housing status, such as living on the streets, in informal settlements or in substandard housing.” (Farha, 2014).

Consequently, far from reducing the effectiveness of the prohibition of horizontal discrimination on relatively traditional grounds of the individual belonging to a particular category, such as ethnic or national origin, gender or disability, the recognition of the

prohibition of discrimination on grounds of socio-economic status strengthens the more traditional forms of prohibition of discrimination. Indeed, the prohibition of “traditional” horizontal discrimination alone appears increasingly inadequate, as in the reality of social life, members of historically disadvantaged categories (women, members of ethnic or national minorities, or people with disabilities) are typically discriminated against in access to goods and services corresponding to the enjoyment of basic rights not only because they belong to one of these categories, *but also* because they are poor: it is the *combination* of these two characteristics which generally exposes them to discrimination.

This was the initial intuition of Kimberli Crenshaw, when she introduced the notion of intersectionality in the right to equal treatment (Crenshaw, 1989). But the references to intersectionality in international human rights law anticipates this theorization (Goldblatt). For example, in its preamble, the Convention on the Elimination of All Forms of Discrimination Against Women states that State parties are “Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs”. It also includes provisions based, at least implicitly, on the notion of intersectionality, for example, the “particular problems faced by rural women” referred to in its Article 14. When it adopted its general comment on the prohibition of discrimination under the International Covenant of Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights also argued that the notion of “*substantive discrimination*” should complement “*formal discrimination*” arising out of differences of treatment set out in regulatory texts or political strategies, in particular because giving attention to situations of substantive (or *de facto*) discrimination provided an understanding of multiple or intersectional discrimination:

“Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.”⁶⁵

Moreover, since the list of prohibited grounds of discrimination included in Article 2.2 of the International Covenant on Economic, Social and Cultural Rights is not exclusive (“...or *other status*”), the Committee also does not exclude the extension of the prohibition of discrimination included in this clause to cases where discrimination is based on “the intersection of two prohibited grounds of discrimination, e.g. where access to a social service is denied on the basis of sex and disability.”⁶⁶ This echoes its observation that the requirement of non-discrimination should be able to take account of situations of multiple discrimination: “Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious

⁶⁵ General Comment n° 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/20, 2 July 2009), para. 8, b).

⁶⁶ Idem para. 27.

minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.”⁶⁷ Similarly, the Committee on the Elimination of Discrimination against Women notes that affirmative action towards “achieving women’s *de jure* and *de facto* equality with men” could target women victims in addition to other forms of discrimination, for example, related to belonging to a “class” or “caste”. Indeed:

“Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.”⁶⁸

Intersectional discrimination: the example of the National Rural Employment Guarantee Act (NREGA) in India

A simple example serves to illustrate the interest of an anti-discrimination approach which recognizes such forms of intersectionality. The Mahatma Gandhi National Rural Employment Guarantee Act (NREGA) came into force in India in 2006. It is the largest public works scheme in the world. It guarantees adult members of rural households 100 days a year of wage employment in public works, with a remuneration corresponding to the legal minimum wage. People who have not been provided a job within 15 days of their application receive, as compensation, the equivalent of unemployment benefit. According to the most recent available data, which covers the financial year 2015–2016, 53.5 million people had applied to benefit from this scheme and 48.2 million of them had been offered a job.⁶⁹

Since its launch, the NREGA has been criticized on several counts: studies have shown that salaries were sometimes paid late; that the type of work entrusted to the participants did not always contribute to rural poverty reduction; that many job applicants had not been offered a job; and that to participate in the scheme, the participants had sometimes had to sacrifice other opportunities which would have allowed them to have an income (Murgai, Ravallion and Van de Walle). But we are interested in another aspect of the scheme here. Several provisions of the Act of 2005 creating the NREGA and the directives which implement it provide for women to benefit from priority access to the scheme (a third of jobs are in principle reserved for them), and for the same to apply to members of “Scheduled Castes” (the Dalits) and “Scheduled Tribes” (indigenous communities). These provisions explain that the statistics concerning the beneficiaries of the scheme indicate that the representation of

⁶⁷ Idem para. 17.

⁶⁸ Committee on the Elimination of Discrimination against Women, Recommendation n° 25: First paragraph of Article 4 (special temporary measures) (2004), paras. 8 and 12.

⁶⁹ Performance, Initiatives and Strategies (FY 15–17 and FY 16–17) (Mahatma Gandhi NREGA Division, Ministry of Rural Development, Government of India), available at:

https://nrega.nic.in/Circular_Archive/archive/MGNREGA_PerformanceReport27June2016.pdf

women stands at 55%, while the representation of members of “Scheduled Castes” (SCs) is 22% and 18% for members of “Scheduled Tribes” (STs). However, we know nothing about the representation of women within the categories of “Scheduled Castes” or “Scheduled Tribes”. Therefore, it cannot be excluded that the good representation of women in the scheme *in general* especially concerns women who do not belong to these categories, which are among the most disadvantaged in Indian rural society. **A recognition of the reality of intersectional discrimination should have prompted the collection of data on the representation of women in the SCs and STs, in order to be able to adjust the scheme, where necessary, to ensure that they can benefit from it.**

b) Direct and indirect discrimination

The prohibition of discrimination on grounds of the poverty situation may be invoked in two sets of situations. It is firstly an instrument to fight various manifestations of “povertyism” originating from the perpetuation of stereotypes about poor people. The notion of “povertyism” was introduced by Sheilagh Turkington in a study where she recommends the introduction of the prohibition of discrimination on grounds of poverty in legislation in the Canadian province of Ontario (Turkington, 1993),⁷⁰ and which results in a *direct* discrimination on grounds of the poverty situation. Such discrimination can take various forms, including unintentional, such as when an employer refuses to hire a person whose clothing and manners of speaking reveal their modest origins during the job interview, or an owner who refuses to rent their property to a potential tenant whose income is below a certain level because they fear that the rent will not be paid. However, the prohibition of discrimination also covers the various forms of *indirect* discrimination, which result from decisions made for apparently neutral reasons but disproportionately affect people living in poverty.⁷¹

The prohibition of discrimination on grounds of socio-economic status firstly concerns public authorities. The latter should not be authorized to take political decisions or decree regulatory reforms without examining their potential impact on people living in poverty, and without ensuring that they do not exacerbate inequalities. In Scotland, for example, the Fairer

⁷⁰ Other authors have proposed the term of “aporophobia” (derived from the Greek ἀπορος (á-poros), “without resources”) to describe this “anti-poor racism”, based on stereotypes about people with low incomes (Cortina, 2017) (Comin, Borsi and Mendoza).

⁷¹ In Ireland, the draft Equality (Miscellaneous Provisions) Bill of 2021, which is currently pending adoption, defines socio-economic disadvantage as the fact of having a “disadvantaged social status or disadvantaged economic status, or both, that may be indicated by a person’s inclusion, other than on a temporary basis, in a socially or geographically identifiable group that suffers from such disadvantage resulting from one or more of the following circumstances: (a) poverty, (b) source of income, (c) illiteracy, (d) level of education, (e) address, type of housing or homelessness, (f) employment status, (g) social or regional accent, or from any other similar circumstance.”

Available at: <https://data.oireachtas.ie/ie/oireachtas/bill/2021/6/eng/initiated/b0621d.pdf>

In South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act (which aims to give full effect to Article 9 of the Constitution) contains a guiding principle by which particular attention must be paid, *inter alia*, to the socio-economic situation in the list of prohibited grounds of discrimination: this expression is defined as follows “‘socio-economic status’ includes a social or economic condition or perceived condition of a person who is disadvantaged by poverty, low employment status or lack of or low-level educational qualifications the social or economic condition, whether effective or perceived as such.”

Scotland Duty, which came into force in 2018, places a legal responsibility on public bodies to “actively consider (‘pay due regard’ to) how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions.”⁷² In practice, this means that decisions concerning, for example, the location of a hospital or the adoption of support measures in a neighborhood should be taken with the participation of the residents concerned and with the objective of creating a more inclusive society, which does not exclude on the basis of income levels. Similarly, in South Africa, a court in the Western Cape Province responsible for equality issues considered that the marked difference between the resources allocated by South African policing services to predominantly black poor communities and those allocated to more affluent white communities amounted to discrimination based on race and poverty, the latter constituting “similar” grounds to race and “prohibited grounds”, on which a discrimination complaint can be based because it “adversely affect[s] the equal enjoyments of a person’s rights and freedoms in a serious manner that is comparable to discrimination on any of the prohibited grounds.”⁷³

The prohibition of discrimination on grounds of socio-economic status, including indirectly, extends to private actors. Employers, for example, should not be permitted to reject job applicants due to their place of residence (if it is located in neighborhoods with a low socio-economic index) or the reputation of the schools where they have studied (if they are schools attended disproportionately by students from disadvantaged backgrounds). Owners should not be permitted to refuse to rent an apartment to a tenant who is on social assistance. Schools should not be able to penalize students who cannot afford to buy educational material or who do not have Internet access.

More generally, the prohibition of indirect discrimination requires that private actors, like public actors, regularly evaluate the impact of the policies or practices they have implemented on people living in poverty, in order to ensure that they do not have a disproportionate impact on this category of persons, or that if there is such an impact, that the measures at issue are justified by a legitimate objective and are proportionate to it. The procedures or practices in question may be of a formal nature (for example, selection criteria defined in the context of a recruitment procedure) or informal nature (for example, the atmosphere created in school): if, among the job applicants who fail to be recruited, or among the children who drop out of school or choose less valued “professional” options, there are a disproportionate number of people from disadvantaged backgrounds, it will be necessary to review the conditions of recruitment or the way in which children are received at school, in order to remove as much as possible all the factors which may account for these impacts. This requirement presupposes collecting data on the socio-economic situation of the people concerned, to allow an ongoing revision of positive procedures and practices in order to achieve progress towards real inclusiveness.

⁷² See the Regulations (2018) of the Equality Act 2010 (Authorities subject to the Socio-economic Inequality Duty) (Scotland).

Available at the address: <https://www.legislation.gov.uk/sdsi/2018/978011038086/body>

⁷³ Western Cape Division of the High Court, Social Justice Coalition and others v. Minister of Police and others, case n° EC03/2016, judgement approved, 14 December 2018, para. 65.

c) Systemic discrimination and affirmative action

In addition, the prohibition of discrimination on grounds of socio-economic disadvantages must take into account the fact that it is a form of *systemic* discrimination, meaning it affects an array of areas, including health, education, housing and employment, which are the main spheres of social integration. Consequently, the fight against this discrimination remains ineffective if it is confined to a single area. For example, ensuring that employers do not discriminate on grounds of poverty will have little effect if the disadvantaged people continue to come up against obstacles which deprive them of access to quality education or are forced to remain in poor neighborhoods far from their place of work (Krishna, 2016).⁷⁴ Similarly, providing support to schools with a high proportion of marginalized students is likely to make little difference if the residential segregation which leads to the concentration of these students in certain schools is not called into question. Nor is it enough to fight discrimination in employment and education if inequalities in healthcare persist and hold back the productivity of workers and the educational outcomes for children. In other words, what is required is a policy to fight discrimination based on socio-economic status covering *all* the spheres of integration of an individual in society (health, housing, education and employment). This is the only way to overcome the limitations of a naively meritocratic approach that ignores the factors connected to the life course of an individual which constitute an obstacle to truly equal opportunities.

It also follows from the systemic nature of discrimination on grounds of poverty that simply *prohibiting discrimination* is not sufficient: *affirmative action* programs should be envisaged to facilitate access for disadvantaged people to higher education and employment sectors where they are not underrepresented. Under international law, affirmative action refers to “a coherent packet of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality.”⁷⁵ The Committee on Economic, Social and Cultural Rights encourages the adoption of affirmative action measures when this appears necessary for the elimination of discrimination which does not arise from regulatory texts or policy frameworks, but from social practices:

“In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved.”⁷⁶

⁷⁴ Chronic poverty is highly correlated with geographical segregation. For Mexico (Monkkonen, 2010) and for Argentina (Groisman and Suarez, 2009).

⁷⁵ It is the definition proposed in the Final Report submitted by Mr. Marc Bossuyt, entitled “The concept and practice of affirmative action”, for the Sub-Commission on the Promotion and Protection of Human Rights (UN doc. E/CN.4/Sub.2/2002/21, 17 June 2002).

⁷⁶ General Comment n° 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/20, 2 July 2009), para. 9.

Affirmative action is explicitly prescribed in instruments which deal with the elimination of racial discrimination or discrimination against women, where it is seen as a necessary tool for the achievement of substantive and not only formal equality.⁷⁷ The Committee on the Elimination of Discrimination Against Women has also emphasized the interest of adopting affirmative action measures taking into account the intersectionality between discrimination based on gender and discrimination based on other grounds, which include belonging to a class or caste. This is what it notes in its General Recommendation n° 28 (2010):

“Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in Article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize⁷⁸ such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation N° 25.”⁷⁹

The reference made by the Committee on the Elimination of Discrimination Against Women to the adoption of affirmative action that specifically targets women who are disadvantaged due to their socio-economic status or their social origin (which the notions of “class” or “caste” refer to) should not surprise. It is true that, in States where there is a strong correlation between ethnicity or religious affiliation, or national origin, on the one hand, and the situation of poverty on the other hand, affirmative action that benefits people from a disadvantaged ethnic, religious or national group is sometimes perceived as dispensing with the adoption of affirmative action measures based on the socio-economic situation. It would, however, be wrong to hold to this approach, as in reality, within the targeted group of beneficiaries, the affirmative action measures generally benefit men (and, more rarely, women) who are best placed to seize the opportunities they offer. Therefore, in the very recourse to affirmative action to address the barriers faced, in particular, by women and

⁷⁷ See Article 2, para. 2, of the International Convention on the Elimination of All Forms of Racial Discrimination (“States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”).

⁷⁸ The official French translation refers to an obligation to “legally provide for” these forms of “intersectional” discrimination.

⁷⁹ Committee on the Elimination of Discrimination Against Women, General Recommendation n° 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (UN doc. CEDAW/C/CG.28, 16 December 2010), para. 18.

members of certain ethnic groups, there may be a need to give priority to the women and men who are at social risk.⁸⁰

Undoubtedly, affirmative action measures are generally planned for groups of people with the same innate or inalienable characteristic, such as gender or ethnicity. However, affirmative action for people in situations of socio-economic precariousness is not only conceivable, it is even common in a number of areas, where the issue involves providing access to goods and services for them to lead a decent life, whether for social protection mechanisms, subject to a survey on the resources in order to target the disadvantaged households, social tariffs for access to water or electricity, or for disadvantaged households to be given priority in the allocation of social housing.

The question now is whether affirmative action should be extended to areas such as access to education or employment in order to create truly equal opportunities. This would involve addressing not only the *consequences* of poverty, by compensating for the lack of resources of disadvantaged households through measures to increase the affordability of essential goods and services, but also its *causes*, which first and foremost include a low level of education and a low employment rate. Moreover, one of the interests of affirmative action is that it can help break the vicious circle linking discrimination against people living in poverty, underinvestment in education and training, and the reinforcement of prejudices against people living in poverty which some sections of public opinion tend to criticize for not doing enough to lift themselves out of poverty.⁸¹ The vicious circle is caused by the fact that when people from disadvantaged backgrounds are subject to discrimination on a daily basis, in particular in education and access to employment, they can draw the conclusion that their efforts towards integration are doomed to failure. They therefore decide not to invest in education or in improving their professional skills, at the risk of reinforcing the stereotypes that assimilate poverty to laziness or lack of motivation.

Breaking this circle can involve affirmative action programs. Indeed, these programs can serve to combat class stereotypes and thereby help fight the povertyism mentioned above. For example, a study on 395 elitist schools in Delhi, after Delhi High Court demanded in 2007 that they reserve 20% of their places for families earning less than ₹100,000 (about 2,000 US dollars) a year, concluded that this “forced integration” of disadvantaged groups had made students from more affluent backgrounds adopt a greater pro-social behavior and made them less inclined to discriminate against their less fortunate classmates. In other words, a

⁸⁰ See M. Bossuyt, “The concept and practice of affirmative action” (UN doc. E/CN.4/Sub.2/2002/21, 17 June 2002), para. 11 (“beneficiaries of affirmative action programmes tend to be the wealthier and least-deprived members of a group”). M. Bossuyt deduces that it would be “the importance of not basing affirmative action solely on group membership, but of taking other factors, such as socio-economic factors, into account to verify if someone qualifies for affirmative action. This means a more individualized approach towards affirmative action, awarding opportunities to an individual on the basis of individual needs, rather than only on the basis of group membership” (para. 15).

⁸¹ On the different perceptions of poverty and the tendency of public opinion to support poverty reduction programs that benefit the most “deserving”, rather than those who are by contrast accused of “playing the system”, see Martin Gilens, *Why Americans Hate Welfare: Race, Media, and the Politics of Antipoverty Policy* (Chicago: Univ. of Chicago Press, 1999) (in the context of the USA) and Wim Van Oorschot and Loek Halman, “Making the Difference in Social Europe: Deservingness Perceptions Among Citizens of European Welfare States”, *Journal of European Social Policy*, vol. 16 (2006), pp. 33–42 (in the European context).

greater educational integration, promoting more “inclusive” schools, is an effective way of combating the prejudices suffered by people from disadvantaged backgrounds (Rao, 2019). These conclusions are consistent with the research in psychology, which shows that the fact of being around minorities, in particular in informal situations, increases tolerance and empathy towards them (Lee, Farrell and Link, 2004) (Wilson, 1996). In addition, for the members of the more disadvantaged groups, access to high levels of education or good jobs for certain members of these groups can allow an identification (with reference to a “role model”), and thereby constitute a major source of motivation. There is little empirical literature on the importance of this tool to fight discrimination, apart from the impact that reserving certain municipal council seats for women during a defined period of time may have had on the aspirations of parents for their daughters (Beaman, Duflo, Pande and Topalova, 2012).

2.4. The right to participation

The previous sections have highlighted how international human rights law has changed in recent years in ways that impose the adoption of measures to fight inequalities, including vertical inequalities originating from differences in income or wealth among the population. However, it is also in the decision-making procedures that the requirements stemming from the human rights framework must be taken into account.

The participation of all members of society in public affairs is recognized as an important instrument for the achievement of the 2030 Agenda for Sustainable Development. Sustainable Development Goal 16 comprises several targets to ensure responsive, inclusive, participatory and representative decision-making at all levels (target 16.7), and ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements (target 16.10). Moreover, the implementation and monitoring of the 2030 Agenda as a whole is itself based on a constructive participation of all actors in society, and especially those who run the greatest risk of being victims of discrimination or left behind.

The right to participate in public affairs is not only a component of the 2030 Agenda for Sustainable Development and a prerequisite for the success of this Agenda. It is also an internationally recognized human right which must be guaranteed and protected.

This right is affirmed in the International Covenant on Civil and Political Rights,⁸² and participation, in both an electoral and non-electoral context, constitutes a major principle to guide a development based on human rights.⁸³

⁸² Article 25 of the International Covenant on Civil and Political Rights recognizes the right to participate in public affairs, which comprises the following elements: a) the right to take part in the conduct of public affairs; b) the right to vote and be elected; and c) the right to have access to public service.

⁸³ See in particular in this respect, the Guidelines for States on the effective implementation of the right to participate in public affairs, which the Human Rights Council noted with interest in its Resolution 39/11 (October 2018).

The free, prior and informed consent of indigenous communities and peasants and other people working in rural areas for measures that concern them

The right to participation is particularly affirmed for indigenous communities, in both the Indigenous and Tribal Peoples Convention of 1989 (n° 169) of the International Labour Organisation and in the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly in 2007.⁸⁴ The ILO Convention (n° 169) lays down an obligation to “consult the [indigenous] peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly” (Art. 6, para. 1, a); and specifies that the consultations in question “shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures” (Art. 6, para. 2). The United Nations Declaration on the Rights of Indigenous Peoples, which is not as such binding, but is considered as having acquired a certain customary value, provides that:

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. In the guidelines prepared in 2018 by the High Commissioner for Human Rights on the implementation of the effective right to participate in public affairs,⁸⁵ these provisions are summarized as follows:

States should consult with indigenous peoples, and respect and give effect in practice to their right to free, prior and informed consent, when adopting or implementing measures that may affect them. Consent should be sought through indigenous peoples’ own representative institutions in accordance with their customary laws and practices, and through procedures determined by indigenous peoples themselves.

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, adopted on 17 December 2018 by the United Nations General Assembly,⁸⁶ similarly provides that (in Article 2, para. 3):

⁸⁴ Res. 61/295 of 13 September 2007.

⁸⁵ A/HRC/39/28 (20 July 2018), para. 20, g). On these guidelines, see also the following clarifications.

⁸⁶ Res. A/73/165.

[B]efore adopting and implementing legislation and policies, international agreements and other decision-making processes that may affect the rights of peasants and other people working in rural areas, States shall consult and cooperate in good faith with peasants and other people working in rural areas through their own representative institutions, engaging with and seeking the support of peasants and other people working in rural areas who could be affected by decisions before those decisions are made, and responding to their contributions, taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.

Under the International Covenant on Economic, Social and Cultural Rights, the principle of participation derives from the right to self-determination, defined as the right of peoples to freely dispose of their natural wealth and resources. The self-determination of peoples implies that “the population has a right to enjoy a fair share of the financial and social benefits that natural resources can bring. This requires ensuring participation, access to information and high standards of transparency and accountability in decision-making about the use of natural resources” (Carmona, 2014). However, the requirement of participation goes beyond the exploitation of natural resources, even in the International Covenant on Economic, Social and Cultural Rights, and it requires more than the regular organization of free elections. The Committee on Economic, Social and Cultural Rights reiterates the importance of participation in a Statement adopted in 2001 on Poverty and the International Covenant on Economic Social and Cultural Rights:

“[T]he international human rights normative framework includes the right of those affected by key decisions to participate in the relevant decision-making processes. The right to participate is reflected in numerous international instruments, including the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Right to Development. In the Committee’s experience, a policy or programme that is formulated without the active and informed participation of those affected is most unlikely to be effective. Although free and fair elections are a crucial component of the right to participate, they are not enough to ensure that those living in poverty enjoy the right to participate in key decisions affecting their lives.”⁸⁷

The Committee on Economic, Social and Cultural Rights has regularly underlined that it would examine the development choices made by a State in particular on the level of participation which has, or has not, accompanied this choice. In this respect, in its statement of 2007 on the way in which it intends to evaluate the obligation to act “to the maximum of available resources” in the context of the Optional Protocol to the Covenant, it states that:

“In its assessment of whether a State party has taken reasonable steps to the maximum of its available resources to achieve progressively the realization of the provisions of the

⁸⁷ Committee on Economic, Social and Cultural Rights, Statement on Poverty and the International Covenant on Economic Social and Cultural Rights (E/C.12/2001/10, 4 May 2001), para. 12.

Covenant, the Committee places great importance on transparent and participative decision-making processes at the national level.”⁸⁸

The Committee on Economic, Social and Cultural Rights thereby recommends that the State make its budgetary choices in a transparent and participatory manner, in order to ensure that these choices will be guided in the interests of the progressive realization of the rights of the International Covenant on Economic, Social and Cultural Rights.⁸⁹ When it recommends the adoption of national strategies aiming at the realization of rights such as the right to health, water or education, it emphasizes the importance of popular participation in the development of such strategies. In terms of health, for example, which is guaranteed by Article 12 of the International Covenant on Economic, Social and Cultural Rights:

“The formulation and implementation of national health strategies and plans of action should respect, *inter alia*, the principles of non-discrimination and people’s participation. In particular, the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge governmental obligations under Article 12. Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people’s participation is secured by States.”⁹⁰

Here again, when retrogressive measures are adopted in the field of social security, the Committee on Economic, Social and Cultural Rights considers it relevant to question whether such measures have been decided with the “genuine participation of affected groups in examining the proposed measures and alternatives”,⁹¹ and when a State is unable to ensure a minimum level of protection against all the risks and hazards of life, it is recommended that it “after a wide process of consultation, select a core group of social risks and contingencies.”⁹²

This insistence on the right to participation is perfectly understandable, given the importance of participation in the reduction of poverty and inequalities. As the Special Rapporteur on extreme poverty and human rights wrote in 2013:

⁸⁸ Statement of the Committee on Economic, Social and Cultural Rights, An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” under an Optional Protocol to The Covenant (UN Doc. E/C.12/2007/1), para. 11.

⁸⁹ Concluding Observations on the initial report of Mali (E/C.12/MLI/CO/1, 6 November 2018), para. 13 (“The Committee also recommends that the State party... ensure that all budget proposals are prepared in a transparent and participatory manner with a view to the progressive realization of the rights enshrined in the Covenant”).

⁹⁰ Committee on Economic, Social and Cultural Rights, General Comment n° 14 (2000): The right to the highest attainable standard of health (E/C.12/2000/4), para. 54.

⁹¹ General Comment n° 19 (2007): The right to social security (E/C.12/GC/19), para. 42.

⁹² Id., para. 59.

“Lack of power is a universal and basic characteristic of poverty. Poverty is not solely a lack of income, but rather is characterized by a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce each other. Powerlessness manifests itself in many ways, but at its core is an inability to participate in or influence decisions that profoundly affect one’s life, while decisions are made by more powerful actors who neither understand the situation of people living in poverty, nor necessarily have their interests at heart.” (Carmona, 2013 (b)).

The participation of the most disadvantaged groups in the formulation of policies that concern them, as well as their implementation and evaluation, is essential if these policies are to take greater account of the difficulties that these groups encounter. Otherwise, these policies will continue to perpetuate inequalities and to give priority to the interests of the most powerful groups in society. In addition, the services that are supposed to address the needs of the disadvantaged groups, for example, for housing, health or education, will continue to be of poor quality, without those responsible being held accountable or ensuring they are improved. However, the participation of people living in poverty comes up against several obstacles. These obstacles stem from both the lack of resources (including cultural or social capital) allowing an effective participation, and from the situation of economic dependence that people living in poverty generally find themselves in, which may deter them from exercising their participatory rights for fear of losing the meager benefits granted to them (if, for example, they criticize the company which employs a family member or the government in place). In this sense, poverty is both the cause and consequence of the lack of power: people living in poverty are not able to participate effectively in decision-making given the obstacles they come up against, and their situation remains unchanged because they are marginalized from decision-making.

Assuming that participation constitutes both a human right in itself and a way to ensure respect for other rights, as well as an important instrument to fight poverty and inequalities, what conditions must be met to ensure that it is effective? The exercise of the right to participation can only be envisaged if all the human rights that contribute to encouraging the population to express themselves are guaranteed: freedoms of expression and association, freedom of peaceful assembly (*i.e.* to demonstrate), and the right to seek, receive and impart information must, in particular, be guaranteed. However, it is possible to be more specific. In a General Comment concerning the right of the child to be heard, the Committee on the Rights of the Child considers that for this right to be actually exercised, it is necessary to ensure “access to appropriate information, adequate support, if necessary, feedback on the weight given to their [the child’s] views, and procedures for complaints, remedies or redress.”⁹³ In other words, it is necessary for the right to participation to be backed by mechanisms to ensure that it is respected, and for its exercise to be accompanied with measures allowing it to be actually exercised, in particular in terms of access to relevant information.

⁹³ Committee on the Rights of the Child, General Comment n° 12: The right of the child to be heard (UN doc. CRC/C/GC/12, 20 July 2009), para. 48.

This latter right is in particular derived from Article 19, para. 2, of the International Covenant on Civil and Political Rights.⁹⁴ The Human Rights Committee specifies its content:

“To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.”⁹⁵

At the request of the Human Rights Council, in 2018, the High Commission for Human Rights prepared draft guidelines on the effective implementation of the right to participate in public affairs.⁹⁶ While it is not possible to review all the elements set out in these guidelines here, it is worth noting the close links highlighted in these guidelines between the right to participate in public affairs and the fight against discrimination. The persistent discrimination facing certain groups of the population may hinder their effective participation (“The adverse impact of discrimination, including multiple and intersecting forms of discrimination, on the effective exercise of the right to participate in public affairs should be recognized...”).⁹⁷ Consequently,

“The necessary legislative and policy measures, including temporary special measures, and institutional arrangements should be identified and adopted to promote and ensure equal participation of individuals and groups that are marginalized or discriminated against, at all levels of decision-making processes and institutions. Such measures should be continuously re-examined and evaluated to ensure equal participation and adequate representation of such groups in practice.”⁹⁸

The Special Rapporteur on extreme poverty and human rights also highlights this point, in the report she submitted on the exercise of the right of participation of people living in poverty:

⁹⁴ It mentions, as part of freedom of expression, “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

⁹⁵ Human Rights Committee, General Comment No.34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34, 12 September 2011), para. 19.

⁹⁶ A/HRC/39/28 (20 July 2018). On 26 September 2018, the Human Rights Committee adopted without a vote a resolution by which it welcomes this work and “Presents [the] guidelines as a set of orientations for States, as well as for, where appropriate, other relevant stakeholders in relation to the effective implementation of the right to participate in public affairs” (A/HRC/39/L.14/Rev.1).

⁹⁷ A/HRC/39/28, para. 20, c).

⁹⁸ Id., para. 20, e).

“The principle of equality and non-discrimination requires affirmative action to ensure that everyone has equal opportunities to participate. This means that the barriers that prevent vulnerable and disadvantaged groups from participating must be identified and actively tackled to ensure substantive equality. A human rights approach requires focusing on power asymmetries at the community level and on the removal of physical, economic, legal, cultural and political obstacles that prevent marginalized groups from enjoying their right to participation. Participatory processes should not only avoid perpetuating asymmetries of power in the communities, but should actively seek to enable the most disadvantaged and excluded members of the community to participate as a matter of priority.” (Carmona 2013 (b), cited above para. 44).

The guidelines drafted by the High Commission for Human Rights in 2018 also recognize the importance of the right to access information (for which they outline the details),⁹⁹ as well as the need to remove the barriers resulting from the lack of resources and capacities of marginalized people and groups in society, which include people living in poverty:

“Targeted capacity-building and civic education programmes should be provided for individuals and groups that are marginalized or discriminated against, and should take into account specific challenges, such as illiteracy and language and cultural barriers, in order to empower them to be active participants in public life. This includes the adoption of measures promoting the engagement and collaboration of all relevant civil society actors, including the media, and community and religious leaders, to bring about a shift in the norms and values restricting the exercise of the right to participate in public affairs, especially for women.”¹⁰⁰

However, a crucial point is to know what the ultimate objective of the participation is, and what differentiates it from a simple “consultation”, through which the authorities gather opinions to help them better assess the impacts of the decisions they are preparing to take, and therefore improve the quality of public decision-making. Indeed, real participation goes further than this: it entails a redistribution of decision-making power. This is what Sherry Arnstein highlighted, in an influential article in 1969, where she points out that participation should allow people who have traditionally been excluded from political and economic decision-making processes to be included in them, and thereby contribute to defining how the information will be shared, how the resources will be allocated, or the content of the strategies that will be implemented: in short, citizen participation “is the means by which [the have-nots] can induce significant social reform which enables them to share in the benefits of the affluent society... participation without redistribution of power is an empty and frustrating process for the powerless” (Arnstein, 1969). However, there is a whole spectrum of situations, between the provision of information to the public and consultation for purely cosmetic purposes, at one end, and the possibility for the communities concerned to exercise power at the other end, as with the experiences of participatory budgets. The Special Rapporteur on extreme poverty and human rights refers to this distinction when she

⁹⁹ A/HRC/39/28, para. 22. See, in addition, on access to information, the report cited above of the Special Rapporteur on extreme poverty and human rights (A/HRC/23/36, 11 March 2013), paras. 60–64.

¹⁰⁰ A/HRC/39/28, para. 24, c).

stresses that real participation, based on human rights, must at the very least allow the people concerned to influence the decision:

“Participatory processes that are not designed and implemented with a human rights perspective may in fact be disempowering, and serve to exclude or reinforce existing power structures. In contrast, human rights-based participation is an important tool to empower people living in poverty by allowing them to exercise their voice to influence relevant decision-making processes.”¹⁰¹

It follows from this requirement that to be effective, the participation must take place sufficiently in advance of the decision-making. It should focus on issues that are not marginal or peripheral, but central to improving living conditions for communities, such as the quality of public services, the definition of priority budgets, or the structure of the tax system. It should also be accompanied by a learning and capacity building process for people living in poverty, so that they can make an effective contribution.

¹⁰¹ A/HRC/23/36, para. 72.

Conclusions

Human rights are generally perceived as a constraint, including by actors of development policies. At best, they are an unnecessary source of distraction, deflecting us from the priority objective: increase the available wealth, considered as the prerequisite for all the rest, including the financing of public services and redistribution through taxation and social protection. At worst, they are considered counterproductive, both because their implementation would be unrealistic in the context of low-income countries where administrations have a poor capacity, and because they would create mistrust between the development partners when they accompany or are a condition for development assistance.

In contrast, this study proposes to consider human rights as a tool to better focus development efforts, to ensure that these efforts serve the interests of people and thereby contribute to the achievement of the 2030 Agenda for Sustainable Development. The reference to human rights does not have a simply symbolic value. In reality, it serves three objectives.

Firstly, it transforms the relationship between the State, which provides the public service and ensures social protection, and the beneficiaries. All too often, and even more so in times of crisis, government responses are in the humanitarian field: people are assisted, in an emergency situation, with financial resources that can be mobilized in the short term, and with no guarantee that the assistance will last over time and protect people against material deprivation or economic insecurity, from a lifecycle perspective. This support is improvised. It is often allocated in an arbitrary manner, and sometimes only to part of the population. It does not allow individuals or households to anticipate the future and therefore does not constitute a means to encourage investment in the formation of human capital. This assistance saves lives, but is not sufficient to build lives, in particular because there is no guarantee of its continuity. The levels of non-take-up among the population are high, both because the information on how to obtain the assistance is difficult to access and because the potential beneficiaries of the assistance are afraid of being stigmatized, or consider that as they do not have good family, ethnic or political ties, they will find themselves excluded. Arbitrariness prevails.

On the contrary, when the State provision of certain goods and services, such as water or electricity, healthcare or social protection, is defined as corresponding to the exercise of a right, the relationship with the beneficiaries is transformed. From assisted individuals, the beneficiaries now hold rights which they can claim against the authorities. The conditions for granting the benefit or service are defined in legislation or regulations, as are the levels of assistance that the State has pledged to provide. In the event of exclusion, the beneficiaries have access to independent bodies, before which they can claim their right to certain benefits. Arbitrariness is replaced by the demand for predictability, the guarantee of non-discrimination, and the prohibition of corruption or patronage. The reference to human rights is first and foremost this: it means breaking away from the system of charity and

entering into a system that characterizes the link between the right of the individual (or of groups of individuals) and the obligation of the State.

Secondly, the reference to human rights helps guide the development policies of the State. This study has highlighted the principal directions in question. Taking the economic, social and cultural rights guaranteed under international law seriously means giving priority to providing people with a set of goods and services which at least allow them to have a decent life, in which their basic needs are met: people can demand from the State access to sufficient food, water and sanitation, accommodation, free education at least until the completion of the primary cycle, essential medicines and a social protection floor (III, 1). The State can either provide these goods and services directly, or can create the conditions allowing people to have access to sufficient income to acquire these goods or services through the market. But the obligation to ensure access is legally indisputable and human rights protection mechanisms, including courts, can be mobilized to ensure that this obligation is respected.

The State must also establish national strategies for the progressive realization of economic, social and cultural rights. This means mobilizing resources for this purpose, and giving priority to the satisfaction of these rights in the definition of public budgets. Human rights protection mechanisms increasingly recognize their competence to evaluate the choices of the State in this respect: they will examine whether the tax system is sufficiently progressive, and whether the budget priorities take sufficient account of human rights requirements (III, 2). The State must also guarantee economic, social and cultural rights in accordance with the requirement of non-discrimination. Differences of treatment between categories of individuals will be regarded with suspicion, if they place people in a disadvantaged situation, for example, due to their race or ethnic origin, their gender, their sexual orientation or their disability. But this requirement of non-discrimination also excludes the possibility of a less favorable treatment of certain individuals due to their situation of poverty: it is in this sense that international human rights law helps fight not only “horizontal” inequalities between groups of individuals with a common characteristic, but also “vertical” inequalities between percentiles of the population, classified according to the level of income or wealth, or according to access to certain goods and services (III, 3).

Finally, international human rights law imposes a requirement of participation. It must be considered not only as an obligation to consult the people affected by a given development project or by a given policy, but as involving a real right to take part in the decision, as far as possible, including through a direct participation in the context of local projects. Participation is a way of ensuring that the development will effectively benefit communities, and particularly the most disadvantaged among them. It is a way of preventing power from being seized by economic, political or cultural elites. It is a way of ensuring that the “hidden” dimensions of poverty will not be ignored. These non-visible dimensions of poverty are those that are not reflected in macroeconomic indicators or development indicators, but which the voices of people living in poverty bring to light: what participation reveals is therefore institutional abuse, the non-recognition of the contributions of people living in poverty, the powerlessness, or the discrimination against them (III,4) (Bray, de Laat, Godinot, Ugarte and Walker, 2019, cited above).

These are the various channels through which human rights contribute to the fight against multidimensional inequalities, and therefore to the achievement of the 2030 Agenda for Sustainable Development. These inequalities within States have increased over the last 40 years, to the extent that they have now become a barrier both to the social mobility of members of the most disadvantaged groups and to the fight against poverty in general (II, 1). These inequalities are also a barrier to ecological transformation. Societies that reduce income and wealth gaps are better equipped to foster a type of development ensuring prosperity for all, without the forcing of economic growth being the condition of possibility. They also make better use of the resources available to them, giving priority to meeting the basic needs of the least privileged groups in their society, rather than to the consumption patterns of the richest (II, 2). When the realization of human rights helps fight multidimensional inequalities, by ensuring access to a set of goods and services essential to a decent life for each member of the community, it can contribute both to the eradication of poverty, which corresponds to the first Sustainable Development Goal, and to the pursuit of development objectives related to the ecological transformation of societies.

It is true that human rights impose significant constraints on the State and, one can hope, on international agencies: taking them seriously means accepting that they can guide the development trajectory. Human rights (like the fight against climate change) offer counter-narratives to the idea that development must first and foremost pursue the growth of monetary income, in spite of the ecological damage and increase in inequalities which result from the form of growth that has dominated until now. They are like the mast which Ulysses asked to be tied to, so that he could resist the songs of the Sirens: human rights force us to stay the course, rather than continue on the path of extractive and unsustainable growth, both for populations and for ecosystems. And human rights protection mechanisms – courts, national human rights institutions, expert committees, the special procedures established by the Human Rights Council – are mechanisms like the sailors who accompanied Ulysses on his return to Ithaca and tied him to his mast: they allow States to pursue a sustainable development trajectory, without taking the easy option of short-term solutions or the lazy route of path dependency.

References

Alston, P. (2015), Report of the Special Rapporteur on extreme poverty and human rights at the twenty-ninth session of the Human Rights Council (A/HRC/29/31 (27 May 2015)), para. 18–21.

Alston, P. (1987), "Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights", *Human Rights Quarterly*, vol. 9, pp. 359–360).

Alston, P. and **N. Reisch** (2019), *Tax, Inequality and Human Rights* (Oxford Univ. Press).

Arnstein, S.R. (1969), "A Ladder of Citizen Participation", *Journal of the American Institute of Planners*, vol. 35(4) pp. 216–224. [doi: 10.1080/01944366908977225](https://doi.org/10.1080/01944366908977225)

Atkinson, A. (2015), *Inequality: What Can Be Done?* (London: Harvard University Press).

Balakrishnan, R., D. Elson, J. Heintz and N. Lusiani (2011), "Maximum Available Resources and Human Rights" *Analytical Report* (Center for Women's Global Leadership, Rutgers State University of New Jersey).

Beaman, L., E. Duflo, R. Pande and P. Topalova (2012), "Female Leadership Raises Aspirations and Educational Attainment for Girls: A Policy Experiment in India", *Science*, 335 (6068), pp. 582–586.

Boyce, J.K. (2018), "The Environmental Cost of Inequality", *Scientific American*, vol. 319, n° 5.

Berg, A. and **J.D. Ostry** (2011), "Inequality and Unsustainable Growth: Two Sides of the Same Coin?", IMF Staff Discussion Note 11/08 (International Monetary Fund, Washington).

Bossuroy, T. and **D. Cogneau** (2013), "Social Mobility in Five African Countries", *The Review of Income and Wealth*, vol. 59, n° S1, pp. 84–110.

Bray, R., M. de Laat, M. Godinot, A. Ugarte and R. Walker (2020), "Realising Poverty in all its Dimensions: A Six-country Participatory Study", *World Development*, vol. 134 <https://doi.org/10.1016/j.worlddev.2020.105025>

Bray, R., M. de Laat, M. Godinot, A. Ugarte and R. Walker (2019), *The Hidden Dimensions of Poverty*, International Movement ATD Fourth World (Montreuil).

Carmona, M.S. (2014), Report of the Special Rapporteur on extreme poverty and human rights submitted at the twenty-sixth session of the Human Rights Council (A/HRC/26/28 para. 18).

Carmona, M.S. (2013) (a), Report of the Special Rapporteur on extreme poverty and human rights, submitted at the sixty-eighth session of the General Assembly, A/68/293.

Carmona, M.S. (2013) (b), Report of the Special Rapporteur on extreme poverty and human rights, at the twenty-third session of the Human Rights Council (A/HRC/23/36), para. 12.

Chancel, L. and **T. Piketty** (2015), "Carbon and Inequality: From Tokyo to Paris" (Paris School of Economics).

Clark, J.M. (1935), *Economics of Planning Public Works* (Washington: The National Planning Board), pp. 155–159.

Clements, B.J., R.A. de Mooij, G. Sanjeev and M. Keen (2015), *Inequality and Fiscal Policy* (Washington: International Monetary Fund).

Comim, F., M.T. Borsi and O.V. Mendoza (2020), "The Multi-dimensions of Aporophobia", IQS School of Management, vol. 1, University Ramon Llull, 2).

Corak, M. (2013), "Income Inequality, Equality of Opportunity, and Intergenerational Mobility", *Journal of Economic Perspectives*, vol. 27, n° 3, p. 79–102, here p. 81–82.

Cortina, A. (2017), *Aporofobia, el rechazo al pobre: un desafío para la democracia* (PAIDÓS Estado y Sociedad).

Crenshaw, K. (1989), "Demarginalizing the Intersection of Race and Sex: A black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics", *University of Chicago Legal Forum*, p. 139.

Cushing, L. et al. (2015), "The Haves, the Have-nots, and the Health of Everyone: The Relationship between Social Inequality and Environmental Quality", *Annual Review of Public Health*, vol. 36.

Dabla-Norris, E., K. Kochar, F. Ricka, N. Suphaphiphat and E. Tsount (2015), "Causes and Consequences of Income Inequality: A Global Perspective", IMF Staff Discussion Note, Strategy, Policy and Review Department, p. 7.

Danka, V., C. Flinterman and **S. Leckie** (1998), "Commentary on the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights", *Human Rights Quarterly*, vol. 20, Issue 2, pp. 705-730.

Dasgupta, S. et al. (2002), "Confronting the Environmental Kuznets Curve", *Journal of Economic Perspectives*, vol. 16 (1) 147-168).

Deaton, A. (2013), "*The Great Escape. Health, Wealth, and the Origins of Inequality*" (Princeton and Oxford: Princeton Univ. Press, pp. 114-115.

De Schutter, O. (2021), Report of the Special Rapporteur on extreme poverty and human rights, at the seventy-sixth session of the General Assembly (A/76/177).

De Schutter, O. (2018), *The Rights-based Welfare State: Public Budgets and Economic and Social Rights* (Geneva: Friedrich-Ebert-Stiftung Geneva Office).

De Schutter, O. (2016), *Trade in the Service of Sustainable Development* (London, Hart Publishing).

De Schutter, O. (2009), Report of the Special Rapporteur on the right to food at the thirteenth session of the Human Rights Council, Addendum: Mission to Brazil (A/HRC/13/33/Add.6), para. 36.

De Wolf, A.H. (2012), *Reconciling Privatization with Human Rights* (Intersentia).

Díaz de Sarralde, S., C. Garcimartín and **J. Ruiz-Huerta** (2010), "The Paradox of Progressivity in Low-tax Countries: Income Tax in Guatemala", *CEPAL Review*, n° 102, pp. 85-99.

Elbers, C. et al. (2017), "Impact of Social Protection Interventions for Basic Health Care Provision", Policy Brief.

Elson, D. (2006), *Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW* (New York, UNIFEM).

Elson, D., R. Balakrishnan and **J. Heintz** (2013), "Public Finance, Maximum Available Resources and Human Rights", in **Nolan, A., R. O'Connell** and **C. Harvey**, *Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights* (Oxford: Hart Publishing, pp. 13-39, here p. 28.

Fabrizio, S. et al. (2017), *Macro-Structural Policies and Income Inequality in Low-Income Developing Countries*, IMF Staff Discussion Note SDN/17/01.

FAO (2017), United Nations Food and Agriculture Organization, *The Economic Case for the Expansion of Social Protection Programmes*.

Farha, L. (2014), Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Sixty-ninth session of the General Assembly (A/69/274), para. 46.

Goldblatt, B., "Intersectionality in International Anti-discrimination Law: Addressing Poverty in its Complexity", *Australian Journal of Human Rights*, 21:1, 47-70, doi: [10.1080/1323238X.2015.11910931](https://doi.org/10.1080/1323238X.2015.11910931)

Groisman, F. and **A.L. Suarez** (2009), "Residential Segregation in Greater Buenos Aires", in **Roberts, B.R.** and **H.W. Robert** (Eds.), *Urban Segregation and Governance in the Americas* (New York: Palgrave Macmillan), pp. 39-54.

Handa, S. et al., *Livelihood Empowerment against Poverty Program Impact Evaluation* (Chapel Hill, University of North Carolina at Chapel Hill).

Handa, S., L. Natali, D. Seidenfeld, G. Tembo and **B. Davis** (2018), "Can Unconditional Cash Transfers Raise Long-term Living Standards? Evidence from Zambia", *Journal of Development Economics*, vol. 133, pp. 42-64, <https://doi.org/10.1016/j.jdeveco.2018.01.008>

Haughton, J. and **S. Khandker** (2009), *Handbook on Inequality and Poverty* (Washington, D.C.: World Bank) (chap. 15: "The Effects of Taxation and Spending on Inequality and Poverty").

Heckman, J.J. (2012), *Giving Kids a Fair Chance* (Cambridge, MA: MIT Press).

Hickel, J. and **G. Kallis** (2019), "Is Green Growth Possible?" *New Political Economy* doi: [10.1080/13563467.2019.1598964](https://doi.org/10.1080/13563467.2019.1598964)

ILO, International Labour Organization (1982), *Target Setting for Basic Needs* Geneva: p. 1.

Jackson, T. (2017), *Prosperity Without Growth: Foundations for the Economy of Tomorrow* London, Routledge, chap. 5.

Kakwani, N.C. (1977), "Measurement of Tax Progressivity: An International Comparison", *The Economic Journal*, vol. 87 (345), pp. 71-80.

Kesteren (van), F. *et al.* (2018), "The Business Case for Social Protection in Africa", Synthesis Report Series: Social Protection (INCLUDE: Knowledge Platform on Inclusive Development Policies).

Keynes, J.M. (1936), *The General Theory of Employment, Interest, and Money* (New York: Harcourt, Brace and World).

Krishna, A. (2016), "The Dynamics of Poverty", in: Brady, D. and L.M. Burton (Eds.), *The Oxford Handbook of the Social Science of Poverty* (Oxford, Oxford Univ. Press) pp. 293–314, here p. 306.

Krishna, A. (2013) (a), "Stuck in Place: Investigating Social Mobility in 14 Bangalore Slums", *Journal of Development Studies*, vol. 49(7), pp. 1010–1028.

Krishna, A. *et al.* (2013) (b), "Fixing the Hole in the Bucket: Household Poverty Dynamics in Forty Communities of the Peruvian Andes", *Development and Change*, vol. 37(5), pp. 997–1021.

Krishna, A. *et al.* (2013) (c), "Escaping Poverty and Becoming Poor in 36 Villages of Central and Western Uganda", *Journal of Development Studies*, vol. 42(2), pp. 346–370.

Kuznets, S. (1955), "Economic Growth and Income Inequality", *American Economic Review* 45 pp. 1–28.

Lee, B.A., C.R. **Farrell** and B. **Link** (2004), "Revisiting the Contact Hypothesis: The Case of Public Exposure to Homelessness", *American Sociological Review*, vol. 69, pp. 40–63.

Milanovic, B. (2016), *Global Inequality. A New Approach for the Age of Globalization* (Cambridge, Harvard University Press).

Monkkonen, P. (2010), *Measuring Residential Segregation in Urban Mexico: Levels and Patterns*, Working Paper 2010–05 (Berkeley, Institute of Urban and Regional Development).

Moyn, S. (2017), "Not Enough: Human Rights in an Unequal World" (Harvard Univ. Press).

Moyn, S. (2014), "A Powerless Companion: Human Rights in the Age of Neoliberalism," *Law and Contemporary Problems* 77, n° 4, pp. 147–169.

Murgai, R., M. **Ravallion** and D. **van de Walle** (2013), "Is Workfare Cost-effective against Poverty in a Poor Labor-surplus Economy? Policy Research Working Paper n° WPS 6673 (Washington, D.C.: World Bank Group, <http://documents.worldbank.org/curated/en/922511468269114807/Is-workfare-cost-effective-against-poverty-in-a-poor-labor-surplus-economy>)

Nolan, A., R. **O'Connell** and C. **Harvey** (2013), "Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights" (Oxford: Hart Publishing).

O'Connell, R., A. **Nolan**, C. **Harvey**, M. **Dutschke** and E. **Rooney** (2014), "Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources (London: Routledge).

ODI (2014), Overseas Development Institute, *The Chronic Poverty Report, 2014–2015: The Road to Zero Extreme Poverty* (ODI, United Kingdom).

OECD (2015), Organisation for Economic Co-operation and Development, *In It Together: Why Less Inequality Benefits All*, p. 27.

OECD (2014), *Development Co-operation Report, Mobilising Resources for Sustainable Development* (OECD Publishing, Paris, chapter II.13.

Okun, A.M. (1975), *Equality and Efficiency: The Big Trade-Off* (Washington: Brookings Institution Press).

Ortiz, I. *et al.* (2019), *Fiscal Space for Social Protection: A Handbook for Assessing Financing Options* (Geneva, ILO).

Ostry, J.D., A. **Berg** and C.G. **Tsangarides** (2014), "Redistribution, Inequality and Growth", IMF Staff Discussion Note (International Monetary Fund (also quoted by the Special Rapporteur on extreme poverty and human rights, M.S. Carmona, submitted at the 26th session of the Human Rights Council (A/HRC/26/28) (22 May 2014), para. 40).

Perlman, J. (2011), *Favela: Four Decades of Living on the Edge in Rio de Janeiro* (Oxford: Oxford Univ. Press).

Piketty, T. (2013), *Le Capital au XXI^{ème} siècle* (Paris, Éd. du Seuil).

UNCTAD (2017), United Nations Conference on Trade and Development, *Beyond Austerity: Towards a Global New Deal. Trade and Development Report 2017* (Geneva), p. 217.

UNDP (2019), United Nations Development Programme, *Human Development Report*, p. 74.

UNDP (2011), United Nations Development Programme, *Sharing Innovate Experiences: Successful Social Protection Floor Experiences*, vol. 18.

Quisumbing, A.R. (2007), "Poverty Transitions, Shocks, and Consumption in Rural Bangladesh: Preliminary Results from a Longitudinal Household Survey", CPRC Working Paper 105 (Manchester, Chronic Poverty Research Centre).

Ragnarsson, K.H. (2020), "Humanizing Not Transformative? The UN Committee on Economic, Social and Cultural Rights and Economic Inequality in OECD countries 2008-19", *London Review of International Law*, doi:10.1093/lri/lraa020

Ralston, L., C. Andrews and H. Hsiao, "The Impacts of Safety Nets in Africa – What Are We Learning?", Policy Research Working Paper, n° 8255, World Bank.

Rao, G. (2019), "Familiarity does not Breed Contempt: Generosity, Discrimination and Diversity in Delhi Schools", *American Economic Review*, vol. 109, n° 3, pp. 774–809.

Reynolds, M.O. and E. Smolensky (1977), *Public Expenditures, Taxes and the Distribution of Income: The United States, 1950, 1961, 1970* (New York, Academic Press).

Rothstein, B.O. and E.M. Uslaner (2005), "All for All: Equality, Corruption, and Social Trust", *World Politics*, vol. 58, n° 1, pp. 41–72.

Saiz, I. (2013), "Resourcing Rights: Combating Tax Injustice from a Human Rights Perspective", pp. 77–104, here p. 84.

Soares, S. et al. (2007), "Conditional Cash transfers in Brazil, Chile and Mexico: Impacts Upon Inequality", Working Paper n° 35 (Brasilia, International Poverty Centre).

Stiglitz, J. (2012), *The Price of Inequality: How Today's Divide Society Endangers Our Future*, (New York: Norton).

Turkington, S. (1993), "A Proposal to Amend the Ontario Human Rights Code: Recognizing Povertyism", *Journal of Law and Social Policy*, vol. 9, p. 134)

UNICEF (2012), "The Impact of Social Protection on Children: A Review of the Literature", Working Paper of the Office of Research, n° WP–2012–06 (Florence).

Uslaner, E.M. and M. Brown (2005), "Inequality, Trust, and Civic Engagement", *American Politics Research*, vol. 33, n° 6, pp. 868–894.

Wiedmann, T. et al. (2020), "Scientists' Warning on Affluence", *Nature Communications* 11(1), p. 3107, DOI: 10.1038/s41467-020-16941-y

Wilkinson, R. and K. Pickett (2009), *The Spirit Level. Why Greater Equality Makes Societies Stronger* (London: Bloomsbury Press).

Wilson, G. (1996), "Towards a Revised Framework for Examining Beliefs about the Causes of Poverty", *Sociological Quarterly*, vol. 37, pp. 413–428.

Young K.G. (2008), "The Minimum Core of Economic and Social Rights: A Concept in Search of Content", *Yale Journal on International Law*, vol. 33, pp. 113–175.

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