

Year 5 • Number 9
December 2008
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SUR - INTERNATIONAL JOURNAL ON HUMAN RIGHTS is a biannual journal published in English, Portuguese and Spanish by Sur - Human Rights University Network. It is available on the Internet at <<http://www.surjournal.org>>

SUR - International Journal on Human Rights is listed in the *International Bibliography of the Social Sciences* (IBSS).

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SUR - HUMAN RIGHTS UNIVERSITY NETWORK is a network of academics working together with the mission to strengthen the voice of universities in the South on human rights and social justice, and to create stronger cooperation between them, civil society organizations and the United Nations. Conectas Human Rights, a not-for-profit organization founded in Brazil, is home to Sur. (See website <www.conectas.org> and portal <www.conectasur.org>. To access the online version of the journal, please go to: <www.surjournal.org>.)

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The financial assistance of the Ford Foundation, the United Nations Democracy Fund and the United Nations are gratefully acknowledged.

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PRESENTATION



The ninth issue of the *Sur Journal* is dedicated to the commemoration of the sixty years of the Universal Declaration of Human Rights. The articles on this subject were chosen in collaboration with the International Service for Human Rights (ISHR). Two main issues were addressed in the selected articles: the indivisibility and the universality of human rights. These two issues were initially raised sixty years ago by the Universal Declaration of Human Rights as the pillars of international human rights law. In this ninth issue of the *Journal*, they are revisited under an especially critical light.

The issue of indivisibility is analyzed by both Eitan Felner and Fernanda Doz Costa. Felner adopts a pragmatic perspective: how can economic and social rights not only be recognized as human rights, but also be effectively implemented? The author proposes a methodological framework to assess whether or not a State has violated human rights obligations related to this set of rights. He also reveals some of the challenges in identifying violations of economic and social rights. Doz Costa approaches the issue from a conceptual perspective, discussing the possible connections between human rights and poverty.

Anthony Romero, Executive Director of the American Civil Liberties Union (ACLU), in an interview with Conectas Human Rights, sheds light on how important the human rights movement is for the protection of individuals in the currently most powerful country in the world, a country that has “seen a remarkable loss of human rights” in the last eight years. In Romero’s words: “[t]he existence of a global human rights movement is actually, for this very reason, vitally important. Even if one government of one country sets back human rights, there is a movement of leaders and human rights NGOs that can keep the pressure on and keep pushing for advances in human rights.”

Katherine Short’s paper analyzes to which extent the Human Rights Council has been successful in overcoming the over-politicized approach adopted by the former UN Commission on Human Rights. Short highlights, however, that the Council’s effectiveness has been partially “undermined by both its failure to implement mechanisms to prevent its own membership to include acknowledged human rights violators and its continuing inability to harness US support.”

This issue of the *Sur Journal* also includes an analysis of the UN human rights system from an internal perspective: the perspective of Paulo Sergio Pinheiro, former UN Special Rapporteur on the Situation of Human Rights in Myanmar (2001-2008), former UN Independent Expert for the Study on Violence against Children (2003-2006), and former UN Special

Rapporteur on the Situation of Human Rights in Burundi (1995-1999). Pinheiro is currently member of the Inter-American Commission on Human Rights.

This issue of the *Sur Journal* also includes three thought provoking articles by Barbora Bukovská, Jeremy Sarkin and Rebecca Saunders. Bukovská defends an idealistic view of human rights organizations, a view that is not content with mere normative achievements in the field. According to the author, as human rights should always result in concrete protection for victims of violations, Bukovská highlights the need to bridge the gap that frequently exists between international human rights organizations and the actual victims of violations.

Sarkin examines the historical development of African prisons from colonial to modern times, raising two issues: first, he understands that African prisons current conditions are in great part a legacy of colonialism; second, he argues that overcrowding and violence are a widespread problem in prisons all over the world.

Finally, Saunders criticizes the system of transitional justice established in South Africa after Apartheid. In her own words, her article addresses "what is gained and lost when expressions of human suffering are translated into a standardized language of human rights." The author also questions the priority given to national over individual forms of healing.

These three articles invite discussion. We therefore invite readers to respond either with another article or with a three-to-five-page essay. Articles and essays will be subjected to the *Journal's* selection process, and hopefully will encourage further discussion on these key issues.

We would like to thank the following professors and partners for their contribution to the selection of the articles for this issue: Andre Degenszajn, Andrea Pochak, Fabián Sanchez, Flavia Piovesan, Habib Nassar, Inês Lafer, Juan Amaya Castro, Kwame Karikari, Lucia Nader, Magdalena Sepúlveda, Mustapha Al-Sayyed, Olga Espinosa, and Richard Pierre Claude. We would also like to inform that Profesor Upendra Baxi (Warwick University) has accepted our invitation to join the *Sur Journal* Editorial Board.

Finally, we would like to announce that the next edition of the *Sur Journal* will be a special issue on "People on the Move: Migrants and Refugees", to be published in collaboration with the Office of the UN High Commissioner for Refugees (**UNHCR**). The journal will also carry articles on other human rights topics.

The editors.



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ABSTRACT

There is still lack of conceptual clarity in the notion of poverty as a violation of human rights. This is a problem for human rights practitioners that take the indivisibility of human rights seriously, understand the centrality of poverty in the plight of many human rights victims and want to work professionally, through binding internationally recognized human rights obligations, in the fight against poverty. This paper tries to clarify the conceptual gap. It presents a critical summary of the most important attempts to conceptually clarify the connection between poverty and human rights from an international human rights law perspective. It analyzes different conceptual frameworks, their strengths and weaknesses. The paper identifies three different models for linking both concepts: (1) theories that conceive poverty as *per se* a violation of human rights; (2) theories that conceptualize poverty as a violation of *one specific human right*, namely the right to an adequate standard of living or to development; and (3) theories that conceive poverty as a *cause or consequence of human rights violations*. The paper concludes that the third approach is the most useful in the current state of development of international human rights law and jurisprudence, but that the second approach has a lot of potential to push the poverty and human rights agenda forward and it should be developed further.

Original in English.

KEYWORDS

Poverty - Human rights - Development - Adequate standard of living - Legal obligations.



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POVERTY AND HUMAN RIGHTS: FROM RHETORIC TO LEGAL OBLIGATIONS

A CRITICAL ACCOUNT OF CONCEPTUAL FRAMEWORKS¹

Fernanda Doz Costa

This world, that offers a banquet to all and closes the door in the noses of so many, is, at the same time, equalizer and unequal: equalizer in the ideas and the customs that it imposes, and unequal in the opportunities that it offers. (Eduardo Galeano)²

Introduction

The often quoted statement that “*poverty itself is a violation of numerous basic human rights*”,³ expresses the moral intuition that, in a world rich in resources and the accumulation of human knowledge, everyone ought to be guaranteed the basic means for sustaining life, and that those denied these are victims of a fundamental injustice.⁴ This is reinforced by another intuition, which is that the average opulence in most societies, and definitely so in developed countries, is more than sufficient to eradicate poverty from the face of the Earth.⁵ Although those intuitions may be true, such a broad statement may fall into the so-called “*fallacy of exaggeration*”. This fallacy calls every situation of deprivation (i.e. every situation where a basic human need is not satisfied) a violation of human rights.⁶ However, from an international human rights law perspective, not every denial constitutes a violation of human rights. The extent to which it does, is an underdeveloped conceptual discussion in the human rights literature and practice. This gap has a historic and ideological reason.

Immediately after the drafting of the Universal Declaration of Human Rights -which proclaimed both freedom from want and freedom from fear- the human rights and the poverty reduction -or development- movement proceeded on separate conceptual tracks. This was strongly influenced by cold war politics. Human rights and development experts worked through parallel sets of intergovernmental institutions without overlapping and so did the majority of non-governmental organizations in both fields.⁷

Since the mid 1990s, there has been increasing recognition of poverty as a

Notes to this text start on page 101.

human rights problem. The human rights movement has begun to take economic, social and cultural rights seriously and to recognize the centrality of poverty and their worst consequences in many human rights violations. The development movement on the other hand, have adopted rights-based approaches to their work. Within the United Nations (UN) this happened particularly after the World Conference on Human Rights in Vienna in 1993, where the indivisibility, interdependence and interrelation of all human rights were affirmed.⁸ This was followed by several declarations and resolutions acknowledging the international preoccupation with global poverty as a human right issue.⁹

However, these were very broad claims that did not help to clarify the complex problem of classifying poverty or extreme poverty as a violation of human rights. The major attempts in this regard were made in the United Nations (UN) by the UN Development Program (UNDP), the former Commission on Human Rights (replaced by the Human Rights Council), the Office of the High Commissioner for Human Rights (OHCHR), and the Educational, Scientific and Cultural Organization (UNESCO).¹⁰ Almost all these efforts were made within the framework of the reforms introduced by the Secretary-General in 1997 of “mainstreaming human rights”¹¹ and the UN common understanding on the Human Rights Based Approach to Development.¹²

Consequently, UN materials are mainly addressed to poverty reduction and development officials explaining how the mainstreaming human rights approach should apply to their real life job.¹³ However, international human rights practitioners still lack conceptual clarity in what is exactly meant by the statement that *poverty violates human rights*, especially from an international human rights law perspective. Is it a rhetorical declaration expressing moral condemnation or is it a legal claim? If the latter, what would be the legal consequences for states and other duty holders? Can the denial of certain rights be described as poverty? Are those rights codified under human rights law? Do they entail binding obligations for identified duty-bearers? Are those duties of plausible compliance?

All these questions are complicated, and if they cannot be solved both in theory and practice, “the notion of poverty as a violation of human rights cannot be taken as more than an empty and ineffective slogan”.¹⁴ This is a problem for human rights practitioners that take the indivisibility of human rights seriously, understand the centrality of poverty in the plight of many human rights victims and are worried about working professionally, through internationally recognized binding human rights obligations, in the fight against poverty. There is a notable lack of literature addressed to human rights defenders and practitioners to help them in their work.¹⁵ There are also many uninformed or ideologically biased oversimplifications that have contributed to the confusion.¹⁶

This paper tries to clarify this conceptual gap, presenting a critical summary of the most important attempts to conceptually clarify the connection between poverty and human rights from a human rights law perspective. Its objective is to analyze different conceptual frameworks, their strengths and weaknesses and to suggest which one is the most accurate approach from an international human rights law perspective. Chapter I will address definitions of poverty and human rights, as a first step to build conceptual clarity. Chapter II will explore the conceptual frameworks developed

to explain poverty as a human rights violation or denial and will give a critical account of each of them. These are going to be divided into three groups for reasons of clarity. The first group will contain the theories that conceive poverty as *per se* a violation of human rights. The second group will include the conceptualization of poverty as a violation of *one specific human right*, namely the right to an adequate standard of living or to development. Here I will divide the claims between moral and legal human rights. Finally, the third group will include those theories that conceive poverty as a *cause or consequence of human rights violations*. I will conclude that the third approach is the most useful in the current state of development of international human rights law and jurisprudence, but that the second approach has a lot of potential to advance the human rights and poverty agenda forward and should be developed further.

I. Towards conceptual clarity: the notions of poverty and of human rights

At a conceptual level, one can define the work towards poverty reduction and towards human rights protection with a sufficient degree of abstraction as to be virtually identical.¹⁷ A closer view will show that there are significant overlaps and common objectives but that they are in fact distinct though intersecting endeavors.¹⁸ Thus, part of the conceptual confusion is based in this lack of clarity of what is meant by the term *poverty* and by the term *human rights*. In this section I will analyze the main possible meanings of both terms that should be taken into account by human rights practitioners when analyzing and understanding the three different approaches to poverty and human rights that will be developed in the next section.

I.A. The concept of poverty

Some of the most eminent social scientists have been trying to define poverty for more than 200 years.¹⁹ The significant divergences between the different concepts of poverty have an impact on the alleged conceptual link between poverty and human rights. When some people talk about poverty they refer to *income poverty*, others to *capability deprivation* and others to *social exclusion*.

I.A.1. Income poverty

Poverty has been conventionally viewed as the lack of income or purchasing power.²⁰ According to Jeffrey Sachs, there is agreement on the distinction of three different types of income poverty: Extreme (or absolute) poverty, moderate poverty, and relative poverty.

“*Extreme poverty* means that households cannot meet their basic needs for survival. They are chronically hungry, unable to access health care, lack the amenities of safe drinking water and sanitation, cannot afford education for some or all of the children, and perhaps lack rudimentary shelter and basic articles of clothing, such as shoes. Unlike moderate and relative poverty, extreme poverty occurs only in developing

countries. *Moderate poverty* generally refers to conditions of life in which basic needs are met, but just barely. *Relative poverty* generally construed as a household income level below a given proportion of average national income. The relative poor, in high income countries, lack access to cultural goods, entertainment, recreation, and to quality health care, education, and other prerequisites for upward social mobility”.²¹

The World Bank uses this paradigm by measuring a person’s income and establishing a “poverty line” (US\$1 a day measured in purchasing power parity), which represents an income level below which a person is held to be in extreme poverty.²² Another World Bank category, income between US\$1 per day and US\$2 per day, can be used to measure “*moderate poverty*”.²³

I.A.2. Capability poverty

In the last two decades, the poverty discourse has moved much beyond the income criterion to the concept of well being.²⁴ This was mainly due to UNDP *Human Development Report* (HDR), clearly influenced by Amartya Sen’s “*capability approach*”, where poverty is seen as “*capability deprivation*”. This approach relates the notion of poverty to the notion of “impoverished lives” and to deprivations in the basic freedoms that people can and do enjoy. These deprivations include the freedom to be adequately nourished, the freedom to enjoy adequate living conditions, the freedom to lead normal spans of life, and the freedom to read and write.²⁵ It recognizes that deprivations in basic freedoms of this type are associated not only with shortfalls in income but also with systematic deprivations in access to other goods, services and resources necessary for human survival and development as well as with interpersonal and contextual variables.²⁶

The UNDP’s Human Poverty Index (HPI) for example, is an average of three measures of deprivation: vulnerability to death, deprivation in knowledge and lack of decent living standards.²⁷

I.A.3. Social exclusion

In the 1970s the concept of social exclusion came into the literature to analyze the condition of those who are not necessarily income-poor –though many are too- but who are kept out of the mainstream of society.²⁸ The European Foundation described it as “the process through which individuals or groups are wholly or partially excluded from full participation in the society in which they live”.²⁹ In the HPI, the indicator for social exclusion is unemployment and it is exclusively measured in industrialized countries.

I.B. *The concept of human rights*

Another difficulty when trying to clarify the links between poverty and human rights is the confusion between referring to human rights in the moral or in the legal sense. This is of the utmost importance for human rights practioners. Although the rhetoric

of human rights is very powerful, most of their work is based on emphasizing the legally binding obligations of states and other actors regarding international human rights law. However, the human rights movement is much broader than the international legal arena. There is an increasing trend to use human rights language as a legitimating moral discourse that evokes universality and consensus of fundamental values among otherwise competing traditions on a shared minimum standard of human dignity.³⁰

Although both notions of human rights can coexist in harmony, it is clear that the consequences of calling poverty a violation of human rights in the moral or in the legal sense are different. The discrepancies are often recalled with regard to economic and social rights discussions, mainly because of the well known position of the USA and other international actors who haven't accepted economic and social rights as legally binding rights, despite the several international declarations of the indivisibility of all human rights and the legally binding Covenant on Economic, Social and Cultural Rights (ESCR) among other legally binding instruments. However, most of the institutions and states that do not accept such legally binding obligations do not deny the morality of these claims as ethical entitlements of all civilized members of the community.³¹

While poverty can not be seen as a denial of economic and social rights exclusively (because also civil and political rights are compromised), its connection with human rights is mainly addressed through them. As a consequence, the discussions about whether economic and social rights create legal or moral obligations are particularly relevant to the poverty and human rights discussion. Unfortunately this is not always clear in the positions of those who worked on the issue, particularly in the UN context. Those positions often mix political declarations with legal binding norms when referring to the links between poverty and human rights, creating more confusion than clarification.³²

Thus, it is important to keep in mind that confusion when analyzing the different approaches to poverty as a human rights violation. In my analysis, I will always refer to human rights in the legal sense, as a set of internationally legally binding norms based on international treaties as well as agreed and/or authorized interpretations of those instruments.

II. The link between poverty and human rights: three conceptual frameworks

When experts and scholars refer to links between poverty and human rights, they hardly ever refer to poverty as exclusively "lack of income", but to a complex concept of poverty which also involves "capability deprivation". This is so because the 'capability approach' is widely recognized as the conceptual "bridge" between poverty and human rights, since it incorporates new variables to economics that reflect the intrinsic and instrumental value of fundamental freedoms and human rights.³³

While exploring the literature on poverty and human rights, I found different approaches that can roughly be classified into three conceptual frameworks. One is

to consider poverty *per se* as a violation of all or several human rights. The second is to consider freedom from poverty as an independent human right. Finally, poverty is seen as a cause or consequence of the violation of some human rights. These three approaches are not incompatible. In fact, sometimes they overlap. However, there are clear differences among them, especially in relation to the legal obligations of states and other actors. Thus, for the sake of conceptual clarity, I have considered it useful to divide their analysis into three categories.

II.A. Poverty itself as a denial (or violation) of human rights

This approach sees poverty as incompatible with human dignity. Given that human dignity is the foundation for human rights, poverty is therefore a denial of all human rights. In Mary Robinson's words:

[e]xtreme poverty to me is the greatest denial of the exercise of human rights. You don't vote, you don't participate in any political activity, your views aren't listened to, you have no food, you have no shelter, your children are dying of preventable diseases - you don't even have the right to clean water. It's a denial of the dignity and worth of each individual which is what the universal declaration proclaims.³⁴

The UNDP has also followed this approach, stating that “[p]overty is a denial of human rights’ and that the “*elimination of poverty should be addressed as a basic entitlement and a human right – not merely as an act of charity*”.³⁵

The most developed version of this approach was done by the Office of the High Commissioner for Human Rights (OHCHR); so I will concentrate my analysis in their account of this approach. “Poverty can be defined equivalently as either the failure of basic freedoms – from the perspective of capabilities- or the non-fulfillment of rights to those freedoms – from the perspective of human rights.”³⁶ However, according to the OHCHR non-fulfillment of human rights constitutes poverty only when:

- The human rights involved are those that correspond to the capabilities that are considered *basic* by a given society; and
- Inadequate command over economic resources plays a role in the causal chain leading to the non-fulfillment of human rights.³⁷

The OHCHR argues that the widespread use of Sen's “capability approach” is an appropriate conceptualization of poverty from a human rights perspective and that there is a “*natural transition from capabilities to rights*”.³⁸ The focus on *human freedom* is the common element that links the two approaches according to them.³⁹ They explain that under the capability approach, poverty is “the *failure of basic capabilities* to reach certain minimally acceptable levels”⁴⁰ and it is also “the absence or *inadequate realization of certain basic freedoms*”.⁴¹ Under this explanation, it would seem logical to assume “*basic capabilities*” and “*basic*

freedoms” as equivalent terms. Consequently, being freedom the common element that links the two approaches, there is a conceptual equivalence between *basic freedoms* (or *basic capabilities*) and *rights*, according to them.

I find some difficulties in this theoretical correspondence. First, the concept of basic capabilities is contingent (i.e. what is basic in one society may not be basic in another), while human rights are not. Second, the content of each basic capability is also contingent (i.e. what is basic shelter in one society may be less or more than basic in another), while international human rights law and jurisprudence is defining universal minimum core content of rights.⁴² I will analyze those difficulties in more detail below.

According to the OHCHR “since poverty denotes an *extreme* form of deprivation, only those capability failures would count as poverty that are deemed to be *basic* in some order of priority”.⁴³ The OHCHR argues that different communities may *of course* have a different understanding of what would qualify as “basic” capabilities.⁴⁴ There is a tension here with the human rights discourse which jeopardizes the alleged conceptual equivalence. The “capability set” that each society will list as basic can’t be equivalent to human rights; because the universality of the catalogue of human rights is beyond any political discussion and communities preferences. The OHCHR implicitly recognize this conflict arguing that although there is some degree of relativity in the concept of poverty; from empirical observation it is possible to identify certain basic capabilities that would be common to all.⁴⁵ But still here there is a conceptual pitfall, because the human rights discourse does not claim universality based on an empirical observation but rather on a moral and legal imperative.

Anticipating some of these criticisms, the OHCHR argues that the human rights definition of a social phenomenon does not need to be made in reference to all human rights in order not to violate the principle of indivisibility.⁴⁶ Thus, the characterization of poverty does not necessarily have to include all human rights to be compatible with the indivisibility of these rights. This is perfectly logical. But this is precisely another reason to avoid considering the concept of *basic capabilities* as equivalent to the notion of *human rights*.

In my opinion, the proposed conceptual equivalence between *basic capabilities* and *human rights* is both inaccurate and too risky. Having a contingent definition of the basic capabilities that constitute poverty is acceptable. However once you have entered into the human rights discourse, the catalogue of rights is not contingent upon different community preferences, life styles or resources. If what is deemed “basic” in one society is not “basic” in another, then it is too risky to make this contingent concept of “basic capabilities” equivalent to human rights without further clarification.

My second concern with the proposed conceptual equivalence refers to the definition of the content of basic capabilities and human rights. According to the OHCHR the capability approach “people living in different cultural environments might feel that they need different amounts of clothing in order to have the capability to be clothed at a minimally acceptable level [...] It would, therefore, be a mistake to define and measure poverty in terms of a uniformly low level of command over economic resources, when the fundamental concern is with a person’s capabilities”.⁴⁷

The human rights movement is, on the other hand, struggling to define and create consensus on the *minimum core content* of economic and social rights. The using of this relative concept of basic capabilities as equivalent to human rights may be counterproductive in this attempt.

In this respect, the OHCHR argue that while the human rights approach imposes an obligation on duty-holders to work towards poverty reduction, it does not make the unreasonable demand that all human rights must be realized immediately, but progressively and subject to the availability of resources. Accordingly, the precise obligations arising from some human rights vary over time in relation to the same State (progressive realization) and from one State to another (because of differing resource availability).

Although this is true, I still find a conceptual difficulty here. There is a difference between the *content* of a human right and the *obligations* that arise for the State. The concept of progressive realization does not mean that the content of the rights are variable. The rights have different components, some of them characterized as “minimum core content”, which are defined as the “minimum essential levels of each right”⁴⁸ and which constitute the nature or essence of the right. This minimum core content must be immediately ensured by each state party of the ICESCR.⁴⁹ However, all the components of the right are important and the ultimate goal is full implementation. This is why states have *progressive obligations* towards the full realization of the right. Those progressive obligations are the ones that may vary from state to state. However, the nature and core content of the rights are not contingent upon a state’s resources nor do they vary within or between states as suggested.

My view is that this valuable intent to close the gap between the language of both movements goes too far and can be counterproductive for the claim of universality and equal enforceability of economic, social and cultural rights. “From the human rights perspective, it is of the utmost importance to clarify (vague) treaty norms in order to make clear to governments and other actors involved the precise meaning of treaty obligations.”⁵⁰ Linking human rights with an essentially contingent concept of ‘basic capability’ without further clarification seems to move exactly in the opposite direction. As we will see below (in II.B.2.3: Poverty as the violation of the right to an adequate standard of living), there is another possible way of linking capabilities and human rights without compromising human rights law developments towards clarification of state obligations and instead strengthening that effort.

II.B. A human right to be free from poverty

This proposal comes from the idea that poverty is a distinct violation of one specific human right, the ‘right to be free from poverty’. This is the main thesis underlying UNESCO’s draft document “*Abolishing Poverty Through the International Human Rights Framework*”.⁵¹ Although it is very similar to the previous paradigm, the main difference is that here poverty is not considered the denial of all or several human rights but the violation of *one specific human right*. It is different from the third

conceptual framework as well, since the latest considers poverty as a *cause* or as a *result* of human rights violations, while here poverty is *itself* the human right violation.

This proposal focuses on the so called *absolute (or extreme) poverty*, defined as a deprivation of what is required to live a life that is worth living.⁵² In this sense, it expounds that everyone has the right to the means of basic subsistence. In this approach, the moral claim is clearly differentiated from the legal claim; so I will analyze them separately.

II.B.1. Freedom from poverty as a moral human right

Vizard argues that many influential political theories -both in the libertarian and the liberal traditions- failed to include poverty in the characterization of human rights.⁵³ According to her, such theories have searched for impartiality in ethics (as a response to the relativist critique) and claimed to be independent from any conception of good or from any particular view of the ends freedom can serve. They have built an exclusively negative theory of freedoms and human rights. Although freedom from poverty could fit within a theory of negative freedom (e.g. Pogge's thesis explained below), traditionally it was rejected, basically because the theory was extended to necessarily require negative obligations of non-intervention and non-interference, while freedom from poverty also requires positive freedoms.⁵⁴ This is clearly the basis upon which was built the categorical differentiation between civil and political rights (the so called negative-rights) and economic and social rights (or so called positive-rights).

The liberal tradition very much influenced human rights practice and theory, and it is not surprising that poverty was conceived, in the best case scenario, as a national problem of social injustice but not as a violation of universal human rights. However, liberalism is not the unique philosophical foundation of human rights. Indeed, it is not possible to find one specific philosophical foundation of human rights. Not even its cornerstone, the universal Declaration of Human Rights, has an unique philosophical foundation because it was the result of a political compromise not a self-evident truth.⁵⁵ However, the influence of the liberal tradition in the human rights discourse can not be denied. In this sense, the theories grouped here are of utmost importance to contest the liberal assumptions related to poverty and to advocate the inclusion of freedom from poverty as a fundamental human rights concern.

In this context, Pogge's thesis in *World Poverty and Human Rights* is a major attempt to move this debate forward, locating his theory within the traditional liberal idea of negative obligations. In this collection, including several of his essays on global justice, he argues in favor of a *moral human right that everyone has to a standard of living adequate for health and well being*.⁵⁶ He goes further to give meaning to this right, positing that governments and citizens of affluent democracies have a *negative duty* towards the global poor, namely a duty not to uphold a global structure that violates human rights.⁵⁷ Pogge contests Rawls' thesis that equality is a political demand that only applies to the Nation State,⁵⁸ arguing that the global order in which all

national governments participate, along with international and supranational institutions, generates injustice.⁵⁹ Indeed, he argues that poverty in developing countries cannot be seen as disconnected from industrialized countries' affluence.⁶⁰

Amartya Sen has also contributed to the debates in ethics and political theory to overcome the theoretical obstacles to viewing global poverty as a violation of human rights.⁶¹ His 'capability approach' departs from many other frameworks and moves beyond Rawls position in many ways.⁶² Particularly relevant here is that Sen, unlike Pogge, contests the liberal assumption that freedoms only imply negative obligations. Sen builds a broad theory that incorporates positive obligations of assistance and aid towards the global poor and supports a sub-class of fundamental freedoms and human rights that focuses directly on the valuable things that people can do and be.⁶³

Both Pogge and Sen have developed political and moral theories that include freedom from poverty as a major human rights concern. There is not doubt that those theories will have a major impact in the development of a legal human right to be free from poverty in the future. Especially since, as I will argue in the following section, the legal human right to be free from poverty needs further development.

II.B.2. Freedom from poverty as a legal human right

Because the "*right to be free from poverty*" is not recognized as such in international human rights law; the legal dimension of this approach is built from one or several legally binding obligations that have already been recognized in international human rights law. There are several versions of this approach that I will summarize below. On the one hand, those who build a right to be free from *extreme* poverty with *several* already recognized human rights law obligations (see II.B.2.1). On the other hand, those who argue that the right to be free from poverty is the logic flip side of the *right to an adequate standard of living* (see II.B.2.2) or the *right to development* (see II.B.2.3).⁶⁴

II.B.2.1. A legal human right to be free from extreme poverty

The former UN Independent Expert for Human Rights and Extreme Poverty argued that poverty is not to be defined as the absence of human rights, as these two concepts are not equivalent (this position will be analyzed in the third approach, poverty as a cause or consequence of human rights violation). However, when the analysis is narrowed to extreme poverty, he argues that there is a legally binding obligation upon states to end poverty.⁶⁵ This is why his position towards *extreme* poverty will be analyzed under this second approach.

Extreme poverty is extreme deprivation of income, capabilities and social exclusion.⁶⁶ By narrowing the analysis, he is trying to constrict the number of people involved in the concept, with a pragmatic view.⁶⁷ According to him, the international community will be more willing to accept this binding obligation if there is a more manageable number of people (the extremely poor), who are clearly and demonstrably most vulnerable to suffering from all forms of deprivation.⁶⁸ He strengthens his

position arguing that the denials related to extreme poverty are easily identified with already recognized human rights law obligations⁶⁹ and that poverty eradication procedures would qualify as customary law.⁷⁰ “Removing conditions of extreme poverty then should be treated as a ‘core’ obligation which should be realized immediately and not subjected to progressive realization.”⁷¹

Although very appealing, I find this position problematic from a human rights perspective because there is an assumption that although many human rights of poor people are being denied or violated, to achieve results it is necessary to make a compromise. Thus, to convince the international community (which is a euphemism for donor-countries) to accept this legally binding obligation, he is prepared to “leave outside the deal” a group of people who are also suffering human rights violations. This is problematic in two senses. First, because it is far from clear that by reducing the number of people involved in the concept of a human right violation, governments will be more willing to accept their obligations. In fact in the same report the Independent Expert recognizes that the main reason why poverty eradication programs have not been adopted is that countries have shown no political will and because of groups pressing for competing objectives.⁷² Second, I agree that poverty reduction strategies need to involve tradeoffs and the human rights movement should acknowledge this. However, I think it is unacceptable if the tradeoffs are made in a normative claim such as here. It is acceptable to recognize the need to prioritize when allocating resources as a matter of policy, but it is unacceptable to make the definition of a human rights violation dependant on this tradeoff. Even in the hypothesis that his definition of extreme poverty is accurate from a human rights perspective, I do not think it is acceptable to justify a normative claim for doubtful pragmatic reasons.

I am not convinced by the idea that the best way to eradicate poverty, and the human rights violations connected to it, is to establish a new definition of poverty. I agree that making a human rights claim and defining legally binding obligations for states and other actors is desirable and a compelling resource to the fight against poverty. However, I think what is needed here is conceptual clarity of the links between two already developed fields and not a re-definition of them.

II.B.2.2. Poverty as the violation of the right to development

In a recent paper, Sengupta⁷³ argued in favor of considering poverty as a violation of the human right to development. That right has been recognized by the international community in the 1986 UN Declaration on the Right to Development and in the Vienna Declaration of 1993, but it has not been codified in a legally binding document.⁷⁴ “This is the *right to a process of development* in which all human rights and fundamental freedoms are realized, and is seen as an evolving social arrangement and international order that facilitates the realization of, and actually realizes in a progressive manner, all those rights.”⁷⁵ In this definition, the right to development is a human right in itself but it is also a composite right, constituted by other human rights that form the core of its content. Thus, “the composite right improves, that is, is increasingly realized, if some rights are improved, but no right regresses or is violated”.⁷⁶

This last characteristic of the right to development is viewed as the comparative advantage of recognizing poverty as a violation of a specific but complex human right. It helps to determine that the right to development is violated when some of the component rights have regressed or deteriorated. At the same time, it avoids defining poverty in unreasonably large human rights terms (i.e. like a violation of all human rights), making the claim virtually useless. Lastly, the obligation of the duty-holder (which is to undertake a development policy that will progressively realize the component rights without regressing any of them) is realizable in a progressive way and it is more clearly identifiable.

Although this is a very compelling argument, the problems with this position are straight forward. It is already difficult to reach international consensus regarding the scope, core content and nature of many economic and social rights which are codified in international human rights law and have monitoring bodies which are slowly building their substance. It is therefore much more difficult to make the case for the right to development, a discussion which is not without difficulties in the international community and has been extremely politicized. However, it is clear that there is a right to development recognized in international human rights law and; given that in the future agreement is reached about its scope, clear obligations, duty bearers and duty holders this approach has an important potential to explain the link between poverty and human rights.

II.B.2.3. Poverty as the violation of the right to an adequate standard of living

Vizard also makes a legal claim about poverty as a human rights violation.⁷⁷ Her work is a valuable and useful attempt to justify a legally binding obligation on states and other actors to eradicate poverty. According to her, the capability approach provides a framework in which “the capability to achieve a standard of living adequate for survival and development- including adequate nutrition, safe water and sanitation, shelter and housing, access to basic health and social services and education- is characterized as a basic human right that governments and other actors have individual and collective obligations to defend and support”.⁷⁸

She justifies a broad conception of legal human rights that takes into account global poverty in several international norms,⁷⁹ as well as regional and national ones. She also points to authoritative international standards and other “soft law” principles. Vizard claims that the capability approach can be used as a conceptual framework by international human rights law practitioners to deal with the complexities of poverty and its implications for the enjoyment of human rights.⁸⁰ She reinforces this claim pointing out eight correlations between the “capability approach” and evolving standards in international human rights law and jurisprudence.⁸¹

Unlike the paper of the OHCHR discussed in chapter II.A, she concedes that her proposal is not a *necessary* consequence of the ‘capability approach’ and that Sen himself has often downplayed the necessity of international human rights law in codifying and reinforcing human rights.⁸² Acknowledging that the ‘capability

approach' is substantially incomplete and that it can be consistent and combinable with several different theories of value, she proposes to use international human rights law and standards as a *background theory*.⁸³ The practical consequences of this proposal would be to give to the contingent concept of 'basic capabilities set' a normative background. In this way, both the list of basic capabilities and their content would have universality through international human rights norms. If this proposal is adopted, the list of basic capabilities will not be contingent upon different states preferences any more but will be specified by the human rights catalogue which is binding on that state. The content of those basic capabilities in turn, will be specified by international human rights law standards.

I believe that this is a very attractive proposal and one that should be developed forward. However, the obvious difficulty here is that the set of standards and indicators to measure state compliance in relation to economic and social rights, which are necessary to give universal content to some basic capabilities, is notably underdeveloped. The political and ideological reasons for this reality have been pointed out several times, just as the different intellectual "obstacles" to give these rights full enforceability have also been successfully contested.⁸⁴ However, given the current state of affairs, it is unfortunately an underdeveloped field. Vizard's proposal thought, could be instrumental in putting pressure on the monitoring bodies and other relevant actors to fully develop clear standards and indicators. Another issue to be developed further in this theory is the link of poverty with the violation of several civil and political rights.

Vizard's work is addressed to human rights and development communities. She highlights that international human rights law and the "capability approach" have complementary and reinforcing elements and that these elements provide the basis for a cross-disciplinary framework for analyzing poverty as a human rights issue. I believe she provides an important framework and conceptual clarity to the actual links between the idea of a "basic capability set", international human rights law and international machinery for monitoring and enforcement.

This is particularly important for the human rights community. It should be acknowledged that one of the main difficulties for human rights specialists is the lack of analytical tools to deal with complicated policy questions related to social and economic rights. Such questions call for interdisciplinary work, incorporating notions of economics, sociology and public policy into a human rights analysis. In this respect, Vizard's monograph is an important conceptual work for human rights practitioners, which helps to understand how to apply some basic economic concepts.

II.C. Poverty as a cause or consequence of human rights denials (or violations)

This third conceptual approach conceives poverty as the cause of many human rights violations, mainly economic and social rights, but also civil and political rights. The difference with the first approach is that poverty is not considered *a priori* a human rights violation but a *cause* of human rights violations (because it socially excludes a group of people whose human rights are then systematically violated). Neither is it

considered a necessary result of human rights violations, pointing out however that some human rights violations lead to poverty.⁸⁵ The difference with the second approach on the other hand; is that poverty is not the violation of *one human right* such as the right to development; the right to an adequate standard of living or a combination of several others; but as a factual situation that may cause or be the result of several human rights violations.

The Vienna Declaration has characterized *extreme poverty as a violation of human dignity*⁸⁶ but avoided calling it a violation of human rights, arguably because of the reluctance of governments to accept legal responsibility.⁸⁷ It observes that the “existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights”.⁸⁸

It seems that poverty is conceptualized as a situation where human rights are unlikely to be fulfilled and the fight against poverty as a beneficial atmosphere to the achievement of human rights. However poverty is not *per se* a violation of human rights, since there are several conceptual steps before naming poverty as a human rights violation. Philip Alston for example, considers that poverty is a violation of human rights only:

- to the extent that a government or other relevant actor has failed to take measures that would have been feasible (“to the maximum of its available resources”, as the language of the ICESCR puts it); and
- where those measures could have had the effect of avoiding or mitigating the plight in which an individual living in poverty finds him or herself.⁸⁹

In a similar vein, the former UN Independent Expert on Human Rights and Extreme Poverty argued that poverty cannot be defined as the absence of human rights as these two concepts are not equivalent.⁹⁰ According to him, the link between the two concepts is not straight forward, since the space of ‘capability’ (the denial of which constitutes poverty) is much broader than human rights.⁹¹ Poverty can be alleviated and human rights still violated. However, if human rights are realized there may not be any poverty.⁹² He suggested that it would be more accurate to consider poverty eradication as playing an *instrumental role* in creating conditions of well-being for the rights holder⁹³ He pointed out that here the policy discussion will be centered on the fulfillment of those rights that may or may not be sufficient to eradicate poverty. He defended this proposition arguing that “[i]t can be demonstrated, both empirically and logically, that a violation of human rights would cause and be instrumental in creating a state of poverty”.⁹⁴ Thus, there are several steps from denial to violation:⁹⁵

- First, identify concrete programs of action that are technically possible and institutionally viable (such as resource constraints and rules of international transactions).
- Second, identify duty holders and their specific duties, which if fully carried out would implement those programs (even if they do not have direct

responsibility for creating conditions of poverty it would be possible to say that the duty bearers are violating their obligations to fulfill the rights if there are feasible programs and they are not implementing them).

This position seems to be more realistic and legally accurate than the two previous ones. The complexities of the phenomenon of poverty, especially the diverse causes which are not always within the state's control, make it very difficult to assume that poverty implies human rights violations without further inquiries. It is clear that civil, political, economic and social rights will not all be fulfilled in a poverty scenario. However, with the present development of international human rights law and standards, it seems reasonable to require empirical and analytical evidence to establish that one specific deprivation, which is clearly characterized as poverty, is at the same time a human rights violation. The analytical effort needed is to prove that the state had violated a concrete human rights obligation that was feasible and could have had a positive impact.

Conclusion

The different approaches summarized in this paper share the conviction that poverty is not only a deprivation of economic or material resources but also a violation of human dignity too. In that respect, it is indisputable that there are links between human rights violations and the complex social, cultural, political and economic aspects of the phenomenon of poverty. As a consequence, the development and the human rights field are beginning to overlap. For moral, legal and practical reasons that are beyond the scope of this paper; there is a consensus between the different conceptual frameworks analyzed here that a rights-based approach to poverty reduction is the best way of approaching the issue and will reinforce the fight against poverty in many significant ways. That is the main rationale behind the UN efforts to mainstream human rights into all their activities, particularly in the work of development agencies. With different degrees of success, ranging from UNDP unconditional adherence to this principle to IMF absolute ignorance, it is true that the discussion is alive and many interesting conclusions have been reached. In particular, the OHCHR *Draft Guidelines*⁹⁶ and a recent UNDP work on indicators,⁹⁷ as well as the work of several scholars, are important efforts to give concrete shape and guidelines to the claims of a human-rights based approach to development.

However, it is less clear what the implications for human rights practitioners of this human rights-based approach to development are. There is still a lack of clarity on basic conceptual notions relating to human rights violations which are somehow related or caused by poverty. As stated in this paper, this was mainly due to a political bias of the human rights community, exacerbated by Cold-War false dichotomy between civil and political rights on the one hand, and economic and social rights on the other.

Thus, there is a compelling need to develop analytical and strategic materials

that will link the phenomenon of poverty to human rights violations. This is especially important for human rights practitioners that takes the indivisibility of rights seriously and have empirical evidence of the range of human rights violations that people living in poverty suffer in a disproportionate way, compared to those who are not living in poverty. From that point of view; this paper summarized three different approaches that explain the link between poverty and human rights. They were critically analyzed not only according to their conceptual accuracy from a human rights law perspective; but taking into account how useful they are for human rights practitioners.

In my view, the first one is the least accurate and helpful; i.e. to consider poverty as a *per se* violation of human rights. It contains the risk of oversimplifying the issue and loosing clarity and impact in the attempt to link both fields. In the current state of affairs the third approach, which is to consider poverty as a cause of human rights violations, seems to be the safest and clearest. It does not require further elaboration by the international community given the consensus that has been expressed, at least rhetorically, many times. It also presents challenging questions such as defining clear obligations of duty holders, and presents an opportunity to further develop indicators, standards and other analytical tools to measure the compliance of obligations regarding economic and social rights. However, the second approach -to consider poverty as the violation of one specific human right- is normatively feasible and is the most ambitious. Among the different proposals, I believe Vizard's effort to conceptualize poverty as the violation of the human right to an adequate standard of living is the most powerful and promising one. In this respect, since human rights law is an evolving discipline and the human rights movement was effective and powerful in setting far reaching goals that will push the social change forward, this is an approach that should be developed and which the human rights movement should pay attention to.

More research needs to be done. In particular, some of the questions on definition of legal obligations, duty-holder and duty-bearer need to be answered. Also, whether there is a right to a particular action or to a reasonable policy and how that reasonableness should be defined. Moreover, we need to scrutinize whether the traditional human rights outcome-focus policy analysis needs to be revisited, particularly when a reasonable policy is not producing the fulfillment of human rights because of other social (or international) arrangements, which are outside the state's control. Finally, the donor-countries, intergovernmental agencies and private actors all have strong influence in the efforts to eradicate poverty and in associated policy decisions and their responsibility needs to be address. As such a central issue is to develop the nature of their obligations.

In today's world, the human rights movement is risking its credibility and moral strength if it fails to take account of the suffering of millions of people living in poverty and to name that suffering as a human rights violation. Intellectual obstacles cannot be used as an excuse anymore. The powerful human rights machinery needs to be put to the service of those who are still waiting to be invited to the banquet of this opulent world.

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NOTES

1. The present paper was first written as a directed research project undertaken under the supervision of Professor Philip Alston in his seminar "Human Rights Accountability" at New York University Law School, in August 2006. I would like to thank professor Alston for his guidance and support. The present version was corrected after the insightful comments of Maria Juarez, Andrew Hudson and Eitan Felner, to whom I would also like to thank. Especial thanks to Gabriel Pereira, for his support and encouragement and for being a constant inspiration and to my colleagues from ANDHES, who teach me every day the value of human rights militancy with commitment and professionalism. As it is usually said, all the views expressed are my exclusive responsibility. Please send comments to fernandadozcosta@hotmail.com.
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8. Vienna Declaration and Programmed of Action (U.N. GAOR). **World Conferences on Human Rights**, 1993, UN DOC A/CONF.157/24.
9. Resolutions of the Commission on Human Rights on Extreme Poverty: E/CN.4/RES/2004/23, E/CN.4/RES/2003/24, E/CN.4/RES/2002/30, E/CN.4/RES/2000/12, E/CN.4/RES/1999/26, E/CN.4/RES1998/25, E/CN.4/RES/1997/11, E/CN.4/RES1996/10, E/CN.4/RES1995/16, E/CN.4/RES1994/12, E/CN.4/RES/1993/13, E/CN.4/RES/1992/11, E/CN.4/RES/1991/14, E/CN.4/RES/1990/15, E/CN.4/RES/1989/10, E/CN.4/RES/1988/23. Relevant resolutions of the General Assembly: A/RES/57/211, A/RES/53/146, A/RES/47/196, A/RES/46/121. Cited in Vizard, supra note 2, FN 12.
10. UNDP set the basis for conceptually linking human rights and poverty mainly through *The Human Development Reports* (HDR), a series of independent reports commissioned by the UNDP and written by experts. A second attempt in the UN was made by the UN Commission on Human Rights who appointed an *independent expert on the question of human rights and extreme poverty*. The position was originally held by Ms. A. M. Lizin (Belgium), from April 1998 to July 2004. Since 2004 is held by Mr. Arjun Sengupta (India), who was previously the UN Independent Expert on the Right to Development from 1999 to 2004. This new expert produced two interesting and much more sophisticated reports, which also tried to fill the conceptual gap. On the other hand, in 2001, the Chairperson of the United Nations Committee on Economic, Social and Cultural Rights requested the Office of the High Commissioner for Human Rights (OHCHR) to develop the "*Draft guidelines: A Human Rights Approach to Poverty Reduction Strategies*", which aim to provide practitioners involved in the design and implementation of poverty reduction strategies (PRS) with operational guidelines for the adoption of a human rights approach to poverty reduction. After their preparation, three experts -Professors Paul Hunt, Manfred Nowak and Siddiq Osmani- prepared a *discussion paper* that identified some of the key conceptual and practical issues which arise from the application of human rights principles to poverty reduction strategies (HUNT, P., NOWAK, M. & OSMANI, S. **Human Rights and Poverty Reduction, a conceptual framework**, OHCHR, HR/PUB/04/1. 2004). Finally, UNESCO launched a major project in 2001 called "*Poverty Dimensions Relatives to Ethics and Human Rights: Towards a New Paradigm in the Fight Against Poverty*" (UNESCO. **Poverty Dimensions Relatives to Ethics and Human Rights: Towards a New Paradigm in the Fight Against Poverty**, 2001). The project is aimed at developing the conceptual framework for the consideration of poverty as a human right violation (a compilation of main papers discussed on that project were published: POGGE, T. (ed.). **Freedom from poverty as a human right – Who owes what to the very poor?**. Oxford, Oxford University Press, 2007.
11. In 1997 the Secretary-General designated

human rights as a cross-cutting issue in his reform programme (UNITED NATIONS Secretary-General. **Renewing the United Nations: A Programme for Reform, A/51/950**, 14 July 1997. Available at: <<http://www.unhcr.ch/development/mainstreaming-01.html>>, last access on August 2008). Mainstreaming human rights refers to the concept of enhancing the human rights programme and integrating it into the broad range of United Nations activities, also in the areas of development and humanitarian action.

12. UNITED NATIONS. The Human Rights Based Approach to Development: Towards a Common Understanding Among UN Agencies. **Inter-Agency workshop on Human Rights Based Approach in the context of UN Reform**, Stamford, May 5-7 2003.

13. See for example "*Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*", prepared by Paul Hunt, Manfred Nowak and Siddiq Osmani for the Office of the United Nations High Commissioner for Human Rights (OHCHR); UNDP. **Indicators for human rights based approaches to development in UNDP Programming: a user's guide**, Mar. 2006.

14. SENGUPTA, A. Poverty eradication and human rights. UNESCO project entitled "Ethical and human rights dimensions of poverty: towards a new paradigm in the fight against poverty". Paper produced for a philosophy seminar, Sept. 2003, New Delhi. Available at: <http://www.hsph.harvard.edu/xfbcenter/No.20_Sengputa.pdf>. Last access on: 18 Nov. 2008, p. 4.

15. In the academic literature, although many scholars discussed the issue, there are two main attempts to overcome this difficulty and to construct a coherent theory of poverty and human rights. One was made by Thomas Pogge: Pogge, T. **World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms**. Cambridge, Polity Press, 2002. Pogge argues that Western government and citizens have a negative duty to relieve the deplorable situation of the globally worst-off, because they imposed a coercive global order that perpetuates severe poverty for many who cannot resist this imposition, "depriving them of the objects of their basic rights". The other attempt was made by Vizard, 2006.

In this book she analyses how Amartya Sen's work advanced international thinking about global poverty and human rights. Her main thesis in this respect is that Sen's development of the 'capability approach' provides a framework in which the capability to achieve a standard of

living adequate for survival and development is characterized as a basic human right that governments and other actors have individual and collective obligations to defend.

16. For example the magazine *The Economist* have said that giving to economic and social rights a similar status to civil and political ones would produce a "morally distasteful" outcome because "some nations would be subject to condemnation simply because of their poverty, while others would be arraigned for the policy outcomes of decisions taken democratically". Righting wrongs. **The Economist**, London, 16 August 2001.

17. Marks, S.P. The Human Rights Framework for Development: Seven Approaches. In: BASU, M., NEGI, A. & SENGUPTA (eds.). **Reflections on the Right to Development**. New Delhi: Sage Publications, 2005, pp. 23-60. Available at: <<http://www.hsph.harvard.edu/xfbcenter>>. Last access on August 2006.

See also ALSTON, P. Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals. **Human Rights Quarterly**, vol. 27, n. 3, Aug. 2005, 755-829 p., p. 799.

18. SACHS, J. **Human Rights Perspectives on the Millennium Development Goals: Conference Report**. Center for Human Rights and Global Justice/New York: NYU School of Law, 2003, 10-11 p. Available at <<http://www.nyuhr.org/images/NYUCHRGMJDGREPORT2003.pdf>>. Last access on August 2006.

19. SAUNDERS, P. Towards a Credible Poverty Framework: From income Poverty to Deprivation. **Social Policy Research Center Discussion Paper**, Sydney, University of New South Wales, n. 131, Jan. 2004, p. 7.

20. COMMISSION ON HUMAN RIGHTS. Economic, Social and Cultural Rights, Human Rights and extreme poverty. **Report of the independent expert on the question of human rights and extreme poverty by Arjun Sengupta**. UN DOC: E/CN.4/2005, 11 Feb. 2005, § 3. From now on cited as "*Independent Expert Report 2005*". Even within this usual definition of poverty, there are several disagreements in conceptual terms and even greater ones regarding how to measure it; the analysis of which exceeds the scope of this paper.

21. SACHS, J. D. **The end of poverty, economic possibilities for our time**. New York, The Penguin Press, 2005, p. 20.

22. ALLEN, T. & THOMAS, A. (eds.). **Poverty**

and Development into the 21st Century. Oxford: Oxford University Press, 2000. p. 10.

23. SACHS, 2005, p. 20. Although the WB poverty line is very well known, both in scholars and popular circles, it was also critiqued. See for example REDDY, S.G. & POGGE, T. **Unknown: The Extent, Distribution, and Trend of Global Income Poverty**. Available at: <<http://www.socialanalysis.org/>>. Last access on August 2006.

(arguing that an arbitrary international poverty line unrelated to any clear conception of what poverty is, employs a misleading and inaccurate measure of purchasing power 'equivalence' that creates serious and irreparable difficulties for international and inter-temporal comparisons of income poverty, and extrapolates incorrectly from limited data and thereby creates an appearance of precision that masks the high probable error of its estimates). Allan Thomas has also acknowledged that "what it is regarded as poverty is not absolute but depends on the value system of a particular society." Allen & Thomas (eds.), 2000, p.20.

24. "Income poverty is only one constituent element of well-being and plays an instrumental role determining the enjoyment of other elements constituting well being." UN DOC: E/CN.4/2005, 11 Feb. 2005, § 8.

25. VIZARD, 2006, p. 3.

26. DRÈZE, J. & SEN, A.K. **India: Development and Participation**. New Delhi: Oxford University Press, cited in VIZARD, 2006, p. 3.

27. There are two HPIs, one for developing countries and another one for industrialized ones. They use different standards for measure those three dimensions and the latest includes a fourth dimension: social exclusion. UNDP. **Human Development Report 2003: Millennium Development Goals: a Compact Among Nations to End Human Poverty**. New York: Oxford University Press, 2003, p. 61.

28. UNDP. **Human Development Report 1997: Human Development to Eradicate Poverty**, p. 17. Available at <<http://hdr.undp.org/reports/global/1997/en/>>. Last access on August 2006.

29. European Foundation for the Improvement of Living and Working Conditions. **Public welfare Services and Social Exclusion: the Development of Consumer Oriented Initiatives in the European Union**. Dublin, 1995, cited in ALLEN & THOMAS (eds.), 2000, p.14.

30. RAWLS, J **The Idea of Public Reason Revisited**. In: **The Law of Peoples**. Cambridge: Harvard University Press, 1999, p. 133. See also

RAWLS, J. **Political Liberalism**. New York: Columbia University Press, 1996, ch. *Xviii* and *xx*, pp. 227-230.

31. Commission on human rights. Economic, Social and Cultural Rights, Human Rights and extreme poverty. **Report of the independent expert on the question of human rights and extreme poverty by Arjun Sengupta**. UN DOC: E/CN.4/2005, 2 Mar. 2006 and COMMISSION ON HUMAN RIGHTS. Economic, Social and Cultural Rights, Human Rights and extreme poverty. **Report of the independent expert on the question of human rights and extreme poverty by Arjun Sengupta**. UN DOC: E/CN.4/2006/43; 2 March 2006, § 55.

32. At a conceptual level, the moral discussion about why and how poverty is a human rights violation – as well as a violation of the economic and social rights usually primarily compromised by poverty - is particularly important, because of the rudimentary development of the field, in comparison with the ethical and political justification for civil and political rights. A brief summary of this difficulty and the main answers is discussed on chapter II.B.

33. VIZARD, 2006, p. 103.

34. ROBINSON, M. BBC NEWS, Thursday, 21 Nov. 2002. Available at <http://news.bbc.co.uk/2/low/talking_point/forum/1673034.stm>. Last access on August 2006.

This approach is re-stated in her preface to the OHCHR. **Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies**, Preface, 2002. Available at <www.unhchr.ch/development/povertyfinal.html>. Last access on August 2006.

35. UNDP. **Poverty reduction and human rights: a practice note**, 2003. Available at: <<http://www.undp.org/poverty/practicenotes/povertyreduction-humanrights0603.pdf>>. Last access on August 2006.

36. OHCHR, **Human Rights and Poverty Reduction, a conceptual framework**, New York and Geneva, 2004, available at <http://www.unhchr.ch/html/menu6/2/povertyE.pdf>. Last access on August 2008.

37. *Ibid*, p. 10.

38. *Ibid*, p. 6. As it will be shown bellow, it was argued that the transition from capabilities to rights is not "natural" or necessary.

39. Freedom here is conceived in a broad sense, to encompass both positive and negative freedoms. Thus, a person's freedom to live a healthy life is contingent both on the requirement

that no one obstructs her legitimate pursuit of good health – negative freedom, and also on the society's success in creating an enabling environment in which she can actually achieve good health – positive freedom. *Ibid*, p. 7.

40. *sen, A. Inequality Re-examined.*

Cambridge: Harvard University Press, 1992, p. 109, cited in HUNT, NOWAK & OSMANI, HR/PUB/04/1, 2004, p.7.

41. OHCHR, *Human Rights and Poverty Reduction, a conceptual framework*, New York and Geneva, 2004, p. 9. Available at <<http://www.unhcr.ch/html/menu6/2/povertyE.pdf>>. Last access on August 2008.

42. "The Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party." UNITED NATIONS. Committee on Economic, Social and Cultural Rights. *The nature of States parties obligations*. General Comment 3, UN Doc. HR1/GEN/1/Rev.1 at 45, 1990, § 1 and 10.

43. HUNT, P. NOWAK, M. & OSMANI, S. *Human Rights and Poverty Reduction, a conceptual framework*, OHCHR, HR/PUB/04/1. 2004, p. 7. Emphasis added.

44. *Ibid*, p. 6.

45. *Ibid*, p. 8.

46. *Ibid*, p. 11.

47. *Ibid*, p. 9.

48. UNITED NATIONS. Committee on Economic, Social and Cultural Rights. *The nature of States parties obligations*. General Comment 3, UN Doc. HR1/GEN/1/Rev.1 at 45, 1990, par.10.

49. *Ibid*.

50. CHAPMAN, A. & RUSSELL, S. (eds.). *Core Obligations: building a framework for economic, social and cultural rights*. Brussels: Intersentia, 2002, p. 16.

51 International Social Science Council. Comparative Research Programmed on Poverty (CROP), UNESCO Sector for the Social and Human Sciences/CROP consultation on the Draft Document *Abolishing Poverty Through the International Human Rights Framework: Towards an Integrated Strategy for the Social and Human Sciences*. *Draft V.3 24.03.03*, Report, 2003, p. 3.

52. CAMPBELL, T. Poverty as a violation of Human Rights: Inhumanity or Injustice? In: *Freedom from poverty as a human right – Who*

owes what to the very poor?. Pogge, T. (ed.). Oxford, Oxford University Press, 2007, page 55.

53. VIZARD, 2006, *supra* cited.

54. *Ibid*.

55. MORSINK, J. *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*. Philadelphia, PA, University of Pennsylvania Press, 1999, p. 88-91.

56. POGGE, T. *World poverty and human rights: Cosmopolitan responsibilities and reforms*. Cambridge: Polity Press, 2002, p. 53.

57. *Ibid*, p.145 and 172.

58. Rawls influential thesis of justice as fairness argues that the liberal requirement of justice includes a strong component of equality among citizens, because of the importance of a person's real opportunity to pursue his or her objectives. Thus, Rawls' famous principles of justice, aim to (1) equalize the basic liberties enjoyed by all people and (2) maximize the value of equal basic liberties of the least advantaged by regulating inequalities in primary goods according to the 'difference principle'.

RAWLS, J. *Political Liberalism*. New York: Columbia University Press, 1993). However, according to Rawls the component of equality is a political demand, not a moral one, and thus applies only to the nation state (NAGEL, T. *The Problem of Global Justice*. *Philosophy and Public Affairs*, v. 33, n. 2, 2005, p. 144, citing RAWLS, J. *The Law of Peoples*. Cambridge: Harvard University Press, page 37, 1999). As a consequence he argued that although we might have a duty to assist 'burdened societies' to overcome their 'unfavorable conditions', we have no responsibility for poverty in many developing countries because it is caused by the incompetence, corruption and tyranny entrenched in their governments, institutions and cultures (according to TSAGOURIAS, N., POGGE, T. *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Book Review). *Leiden Journal of International Law*, The Hague, v. 17, p. 631-644, 2004.

Thus, under Rawl's theory then, there is not an universal human rights to be free from poverty.

59. TSAGOURIAS, 2004, *supra* cited, p. 631-644.

60. Pogge describes a proposal in which governments must pay a small part of revenues for using or selling the natural resources extracted from their territory to a 'global resources dividend' (comparable to the Tobin Tax). These revenues then are redistributed to the globally worst-off to ensure that they can meet

their own basic needs. POGGE, 2002, p. 196-7.

61. VIZARD, 2006, *supra* cited, p. 25.

62. Vizard argues that Sen has moved forward the Rawlsian position by contesting the concept of 'primary goods' of Rawls' second principle of justice, because of its failure to capture the interpersonal differences and the valuable ends of different people. Sen argues that this variable can be taken into account without losing objectivity and that it is in fact critical to the characterization of someone's lack of freedoms. He proposes to replace the 'primary goods' concept with the 'capability of functions', which is better suited to achieve real or substantive opportunity. VIZARD, 2006, p. 65-70.

63. VIZARD, 2006, p. 81. "On the other hand, Sen is contesting some of the basic assumptions of both the libertarian and liberal tradition, specially through the support of a system of ethical evaluation that are sensitive to consequences, outcomes and results; support for positive obligations of assistance and aid, including the relaxation of the condition of 'co-possibility' and support for the general class of meta rights; support for human rights in the context of 'imperfect obligations and support for universalism against the relativist and culture-based critiques." For a complete account of Sen's contributions to the ethical and political debate see VIZARD, 2006, ch. 2 and 3.

64. ICESCR, 1966, articles 1.1 (right to development) and 11 (right to an adequate standard of living). See for example Campbell, 2007, p. 60.

65. UN DOC: E/CN.4/2006/43, 2 Mar. 2006, §41.

66. *Ibid*, §60.

67. *Ibid*, §62.

68. *Ibid*, §70. He argues that "the principal reason why poverty eradication has not become a general objective of social policy in all societies, superseding all other objectives, as the case would be for human rights norms, would be the unmanageability of the total number of people suffering from such poverty. The definition of extreme poverty set out in this report would meet this problem by reducing the total number of people affected". *Ibid*, §62

69. Such as the right to food, health, education, social security and an adequate standard of living from the ICESCR; and the right to association, information and freedom of expression from the ICCPR. *Ibid*, §49.

70. *Ibid*, §61.

71. *Ibid*, §70.

72. *Ibid*, §§ 31,33 and 43.

73. Arjun Sengupta was UN Independent Expert of Extreme Poverty and human Rights from August 2004-April 2008. His position as UN expert was summarized above. He was previously the Independent Expert for the Right to Development. In this recent paper, prepared for the mentioned UNESCO international seminars, he presents his own views which have some differences from his position expressed as Independent Expert in his reports of 2005/6.

74. See UNITED NATIONS. **Declaration on the Right to Development**, Adopted by United Nations General Assembly resolution 41/128 of 4 December 1986 and **Vienna Declaration and Programme of Action**, adopted by the World Conference on Human Rights on 25 June 1993 (UN DOC: A/CONF.157/23). See also SENGUPTA, A. *The Theory and Practice of the Right to Development*. **Human Rights Quarterly**, The Johns Hopkins University Press, Volume 24 Number 4 pages 837-889, Nov. 2002.

75. SENGUPTA, A. *Poverty Eradication and Human Rights*, In: **Freedom from poverty as a human right – Who owes what to the very poor?**. Pogge, T. (ed.). Oxford, Oxford University Press, 2007, page 338.

76. *Ibid*.

77. VIZARD, 2006.

78. *Ibid*, p. 66.

79. United Nations Charter, articles 55 and 56; the Universal Declaration of Human Rights (UDHR), articles 1(1), 25 and 26; the International Covenant on Civil and Political Rights (ICCPR), preamble and article 6; the International Covenant of Economic, Social and Cultural Rights (ICESCR), preamble and articles 11, 12, 13 and 14; International Convention on the Elimination of All forms of Racial Discrimination, article 5 (e); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), articles 11, 12, 13, 14(1-2) and the Convention on the Rights of the Child, articles 1, 24, 26, 27, 28, 29. VIZARD, 2006, p. 143.

80. In this sense, although her position is categorized in this third group of conceptual proposals, which defends the notion of an independent human right to be free from poverty, her work is much broader and more useful in clarifying the consequences of any of the previous approaches. Moreover, her monograph is

important for the much needed clarification of the content and scope of many economic and social rights.

81. The connections are: (1) a broad conception of human rights that takes account of global poverty (2) Rejection of 'absolutism' and the view that resource constraints represent a theoretical obstacle to the establishment of international legal obligations in the field of global poverty and human rights; (3) Recognition of positive obligations of protection and promotion; (4) Recognition of general goals (as well as specific actions) as the object of human rights; (5) Assessment of the 'reasonableness' of state actions; (6) Importance of rights to policies and programs (or 'meta rights') when resource constraints are binding; (7) Recognition of collective international obligations of cooperation, assistance and aid; (8) Recognition of the importance of outcomes and results to the evaluation of human rights. VIZARD, 2006, p. 141.

82. Ibid, pp. 242-3.

83. Ibid, p. 244.

84. Particularly useful is BEETHAM, D. What Future for Economic and Social Rights?. *Political Studies*, Sheffield, v. XLIII, p. 41-60, 1995.

For a complete critical account and response to all the obstacles to economic and social rights justiciability see ABRAMOVICH, V. & CURTIS, C. *Los Derechos Sociales como Derechos Exigibles*. Buenos Aires: Trotta Ed., 255 p. 2002.

85. Campbell, 2007, p. 60.

86. VIENNA DECLARATION AND PROGRAMME OF ACTION, adopted by the World Conference on Human Rights on 25 June 1993 (UN DOC: A/CONF.157/23).

87. ALSTON, 2005, p. 787.

88. UN DOC A/CONF.157/24, 1993, cited in Alston, 2005, p. 786.

89. ALSTON, 2005, p. 787.

90. UN DOC: E/CN.4/2006/43, 2 Mar. 2006, §41.

91. Ibid, §27.

92. Ibid.

93. Ibid.

94. UN DOC: E/CN.4/2005, 11 Feb. 2005, §29. Nonetheless, in his 2006 report he argues in favor of considering *extreme poverty* as a violation of a human right to an adequate standard of living (UN DOC: E/CN.4/2006/43, 2 Mar. 2006, §48.). This approach was analyzed above in the second group of theories: A human right to be free from poverty.

95. UN DOC: E/CN.4/2005, 11 Feb. 2005, §27.

96. OHCHR, *Draft guidelines: A Human Rights Approach to Poverty Reduction Strategies*, Geneva, 2002. Available at <www.unhchr.ch/development/povertyfinal.html>. Last access on August 2008.

It aims to provide practitioners involved in the design and implementation of poverty reduction strategies (PRS) with operational guidelines for the adoption of a human rights approach to poverty reduction.

97. UNDP, *A Users's Guide*, Mar. 2006. This practical guide addressed to UNDP Country Offices contain different aspects relating development and use of indicators across the key elements of human rights programming, summarizing the main existing indicators for human rights and discussing their limitation for development programming.

RESUMO

Definir a pobreza como uma violação de direitos humanos envolve conceitos ainda pouco claros. Isto é especialmente problemático para aqueles que trabalham em direitos humanos e levam a sério a indivisibilidade própria destes direitos; para aqueles que procuram entender o papel central da pobreza no sofrimento de muitas vítimas de direitos humanos e se preocupam em atuar de maneira profissional neste tema, utilizando como ferramenta na luta contra a pobreza as obrigações de direitos humanos já reconhecidas internacionalmente. O presente artigo procura esclarecer esta lacuna conceitual, apresentando um resumo crítico das principais propostas para elucidar, a partir de uma perspectiva jurídica dos direitos humanos, os conceitos pertinentes à relação entre pobreza e direitos humanos. Este artigo identifica três formas distintas de relacionar estes conceitos: (1) teorias que concebem a pobreza, *por si só*, como uma violação de direitos humanos; (2) teorias que definem a pobreza como uma violação de *um direito humano específico*, a saber, o direito a um nível de vida adequado ou o direito ao desenvolvimento; e (3) teorias que consideram a pobreza como *causa ou consequência de violações de direitos humanos*. Defenderei, em minha conclusão, que a terceira abordagem é a mais útil diante do atual estágio do direito e da jurisprudência internacionais de direitos humanos. A segunda perspectiva, no entanto, tende fortemente a promover o debate sobre pobreza e direitos humanos e, portanto, deveria ser melhor elaborada.

PALAVRAS-CHAVE

Pobreza – Direitos humanos – Desenvolvimento – Nível de vida adequado – Obrigações jurídicas

RESUMEN

La autora afirma que no existe aún claridad conceptual en la noción de la pobreza como violación a los derechos humanos. El artículo intenta clarificar este vacío conceptual. Presenta un resumen crítico de los intentos más importantes de clarificar la conexión entre pobreza y derechos humanos desde la perspectiva del derecho internacional de los derechos humanos. Analiza diferentes marcos conceptuales, sus fortalezas y sus debilidades. El artículo identifica tres modelos diferentes para vincular ambos conceptos: (1) teorías que conciben a la pobreza como una violación de derechos humanos *en sí misma*; (2) teorías que conceptualizan a la pobreza como una violación a *un derecho humano específico*, a saber el derecho a un nivel adecuado de vida o al desarrollo; y (3) teorías que conciben a la pobreza como una *causa o consecuencia de violaciones a los derechos humanos*. El ensayo concluye que el tercer enfoque es el más útil en el estado actual de desarrollo del derecho y la jurisprudencia internacional, pero que el segundo enfoque tiene mucho potencial para avanzar la agenda de pobreza y derechos humanos que debe continuar siendo desarrollada.

PALABRAS CLAVES

Pobreza - Derechos humanos - Desarrollo - Nivel adecuado de vida - Obligaciones legales

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