

sur

international journal
on human rights

7

2007
Number 7 • Year 4
English Edition

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● **Interview with Juan Méndez**

By Glenda Mezarobba



HUMAN RIGHTS
UNIVERSITY NETWORK **SUR**

A project of Conectas Human Rights

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>>

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Pro! Editora Gráfica Ltda.

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

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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PRESENTATION



We have reached issue seven of *Sur – International Journal on Human Rights* with an excellent response from our readers and a new partnership with the International Center for Transitional Justice.

An evaluation of the journal was conducted to gain some feedback for us to improve the quality, to cater more to the interests of our readers and to make it even more accessible and critical. Of the 15% of readers who responded to an online survey, among them professors and human rights activists, 66% considered the journal to be excellent and 34% judged it to be good. The best qualities they identified were: (a) the high standard of the journal; (b) its potential to disseminate information on human rights; and (c) its broad application, both for university and non-university courses. The main challenges, meanwhile, are: (a) to address more specific thematic issues; (b) to publish new authors; and (c) to improve the dissemination of the journal. To meet these challenges, the following steps have already been taken: (a) we shall focus this and future issues on topics specifically related to the Global South, such as transitional justice, access to medicine and freedom of expression; and (b) we have staged launches in human rights centers at universities on different continents. Furthermore, we have plans in 2008 to establish a monitorial system, whereby new authors who have written promising articles will be supervised by more experienced researchers or professors. (For a more detailed account of the evaluation, please see the report at the end of this issue.)

In addition to the evaluation, we have also forged a partnership between Conectas Human Rights, which has published the journal since its first issue, and the International Center for Transitional Justice. This center was set up in 2000 with the mission to promote

justice, peace and reconciliation in societies emerging from repressive regimes or from armed conflicts, as well as to establish democracies where historical or systemic injustices remain unresolved.

The partnership was established so we could focus on a key topic for countries in the southern hemisphere: transitional justice. The balance between peace and justice and between reconciliation and retribution in post-conflict societies, or in cases of historical and persistent injustices, is dealt with by the authors from different geographical perspectives: Australia, Cambodia, Peru and Uganda. The authors, however, raise questions that often transcend these local contexts. By addressing the violated rights of aboriginal children in Australia who were forcibly taken from their families, for example, Ramona Vijayarasa questions whether Truth Commissions can help build more inclusive societies. By analyzing the Extraordinary Chambers in Cambodia, Tara Urs attempts to identify what truth commissions and extraordinary courts can realistically expect to accomplish. She also examines how culturally specific processes can help shape transitional justice and how best to respond to the interests of the victims. Looking at Peru's case, Elizabeth Salmón sheds some light on the links between conflict and poverty, and questions whether transitional justice should have a specific role beyond universalistic public policies. Finally, when addressing the situation in Uganda, Cecily Rose and Francis Ssekandi consider the role of amnesty in the consolidation of peace and question how to implement transitional justice in situations where peace agreements are still being reached.

To round off this subject, the journal is publishing an interview with Juan Méndez, director of the International Center for Transitional Justice.

This edition of the journal also carries an analysis of the recently established structure of the UN Human Rights Council (Lucia Nader) and a study on the influence of the inter-American system and "transnational legal activism" on the protection of human rights in Brazil (Cecília Santos).

We would like to thank the following professors and partners for their contribution to the selection of the articles for this issue: Glenda Mezarobba, Helena Olea, J. Paul Martin, Jeremy Sarkin, Juan Amaya Castro, Juan Carlos Arjona, Kawame Karikari, Maria Herminia Tavares de Almeida, Paula Ligia Martins, Richard Pierre Claude, Thami Ngwenya and Vinodh Jaichand.

Finally, we would like to announce that the next edition of the SUR Journal will be a special issue on access to medicine and human rights, to be published in collaboration with the Brazilian Interdisciplinary AIDS Association (ABIA). The journal will also carry articles on other topics.

The editors.

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ABSTRACT

This article proposes to find a possible legal basis for the fight against poverty, even in post-conflict contexts, taking into consideration the principle of human rights and the contemporary international order.

RESUMO

Este artigo tem como finalidade procurar por uma possível fundamentação jurídica da luta contra a pobreza, inclusive em contextos pós-conflito, levando em consideração o princípio dos direitos humanos e da ordem internacional contemporânea.

RESUMEN

La finalidad de este artículo consiste en acercarnos hacia una posible fundamentación jurídica de la lucha contra la pobreza, incluso en contextos post conflicto, que tenga en cuenta un principio del orden internacional contemporáneo y de los derechos humanos.

Original in Spanish. Translated by Barney Wheiteoak.

KEYWORDS

Concept of poverty – Development – Armed conflict – Human rights – Fight against poverty



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THE LONG ROAD IN THE FIGHT AGAINST POVERTY AND ITS PROMISING ENCOUNTER WITH HUMAN RIGHTS¹

Elizabeth Salmón G.

In times when all discussion often seems to revolve around the so-called “war on terror”, the debate on another war, also transcendental, against poverty, has been neglected, despite the enormous importance of the mission to put an end to a scourge that affects all the spheres of human existence.

This lack of attention has also become evident in the legal sphere. In fact, the basis for the fight against poverty has remained consistently isolated from the legal debate, despite the close relationship between the situation of poverty and the effective enjoyment of human rights. In view of this, the purpose of this article is to find a possible legal basis for the fight against poverty, even in post-conflict contexts, that takes into account a constitutional principle of the contemporary international order, which is respect for all human rights.

Stages of the fight against poverty

Needless to say, the very understanding of the phenomenon of poverty is controversial and complex, since it encompasses a range of problems and dimensions. Moreover, it is not a static concept; instead, as Nowak points out, the concepts of poverty and development, including their relation to human rights, have changed over time.²

In fact, this concept was initially addressed from a purely economic point of view. Poverty, in the 70s, was understood to be a significant lack of resources. Furthermore, it was believed that the free market would generate the economic development capable of eliminating poverty. However, the application of these economic policies only caused levels of poverty to rise and produced new human

Notes to this text start on page 162.

rights violations in the name of the market and the policies of northern countries, which were inclined to support southern dictatorial governments whenever they collaborated with their objectives.

A second stage began in the late 70s, when the focus shifted to the “right to development” and the “law of development”. Accordingly, the Charter of the Organization for African Unity, currently the African Union, drafted in 1981, included in article 22 the idea of a new more just and humane international economic order. The idea of development, then, emerged as an inalienable right by virtue of which all human beings and peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, and all human rights can be fully realized.

Finally, during the 90s, the fight against poverty was focused on the conditionality of international cooperation in the promotion of human rights. This conditionality could take two forms: negative conditionality, which implied not cooperating with governments that severely and systematically violate human rights; and positive conditionality, which implied a commitment to collaborate on programs to promote and disseminate human rights and to work towards the democratization of States that respected these rights.

Poverty as a multidimensional phenomenon: definitions and contributions to the human rights-based approach

This change of paradigm and focus in understanding poverty is also reflected in a statement by the World Bank, which stated in 2000 that “of the world’s 6 billion people, 2.8 billion live on less than 2 dollars a day and 1.2 billion live on less than 1 dollar a day. Out of every 100 infants, 6 do not survive a full year and 8 do not live to see their fifth birthday. Out of every 100 infants who reach school age, 9 boys and 14 girls do not attend school”.³ These figures illustrate that the concept of poverty is more complex than the traditional perception related to low income and consumption; it also encompasses other considerations such as health and education.

Similarly, poverty defined by the United Nations Development Programme (UNDP) as “a situation that prevents an individual or a family from satisfying one or more basic necessities and participating fully in the life of society”⁴ is characterized as a fundamentally economic phenomenon, although it does recognize that social, political and cultural dimensions exist within the concept.⁵

Presently, we no longer refer only to poverty, but also to “extreme poverty”, a category that involves a more complex and serious situation that calls for more urgent attention. Arjun Sengupta, the United Nations independent expert on Human Rights and Extreme Poverty, points out that the difference between poverty and extreme poverty is essentially a question of the degree or extent of the phenomenon,⁶ implying an access to goods and services that, according to the

UNDP, means people cannot meet basic needs for survival.⁷ In this sense, Sengupta holds that extreme poverty should be defined as “a composite of income poverty, human development poverty and social exclusion, to encompass the notions of lack of basic security and capability deprivation”. This results in the social exclusion of people, which restricts their status as citizens and, consequently, their status as subjects of law, meaning they are denied their fundamental rights and freedoms.⁸

Similarly, the United Nations ad hoc Group of Experts, created to draft the guiding principles for the implementation of existing human rights norms and standards in the context of the fight against extreme poverty, which for the purposes of this article we shall call the Group of Experts, noted that international organizations and specialized agencies had reached a consensus on the concept of “extreme poverty”, which it understood to be “a denial of fundamental human rights [that] prevents the effective realization of human rights”.⁹ Therefore, the existence of widespread and extreme poverty inhibits the full and effective enjoyment of human rights.¹⁰

Extreme poverty, therefore, is not just an economic problem, but also a more complex problem in different spheres, namely social and cultural. It has also become a political problem¹¹ that directly affects human development and, consequently, the fulfillment of human rights.

This is why, according to the Group of Experts, the problem of poverty needs to be tackled starting with extreme poverty. Any strategy aimed at solving the problem needs to focus on extreme poverty to provide a real basis for action to restore the rights of the most excluded and often the most overlooked individuals and populations.¹²

The combination of these assertions gives us a definition of poverty framed in human rights. The UNDP Poverty Report 2000 introduced the concept of *human development*, in which it established that this involves more than just income and economic growth; it encompasses the potentialities and capacities of the population. This development is the result of a process that incorporates social, economic, demographic, political, environmental and cultural factors, in which all the different social actors participate actively and with commitment.¹³ From this point of view, poverty emerges as the absence of denial of human development, since this development gives priority to the poor, broadening their options and opportunities.

It can be concluded, then, that the problem of poverty can be presented from two different perspectives: the first called “income poverty”, which basically refers to the absence of an income that can satisfy minimum necessities; and the second, “human poverty”, related to the lack of basic human capabilities, such as malnutrition and disease, among others. This position has been endorsed by Amartya Sen, who considers that poverty, rather than being merely a low-income problem, should be viewed as the deprivation of basic capabilities, although he does recognize that the lack of income is one of the principal causes of poverty.¹⁴

From this perspective, economic resources are a necessary condition to satisfy these minimum conditions and, consequently, develop such capabilities. However, it needs to be taken into account that not all lack of capabilities constitutes poverty: first, because we should only consider basic capabilities; and second, because if the lack of these conditions is caused by non-economic motives (such as, for example, an ongoing health problem), we cannot conclude that we are facing a condition of poverty, but rather a low level of general well-being. By and large, when talking about poverty, we should be referring to the lack of capabilities deemed basic by society, while the lack of command over economic resources must play an important role in the causal chain leading to this low level of well-being.¹⁵

To successfully combat poverty, it is necessary to postulate the effective implementation and guarantee of human rights. The first link between human rights and poverty is the discrimination to which people living in poverty are subjected. This discrimination adds to the social marginality and fuels the vicious circle in which poor individuals will never stop being poor, because they do not have the opportunities to escape this situation.¹⁶

This first approach enables us to understand the relation between poverty and other phenomena. Poverty discrimination is clearly an abuse of human rights, but this discrimination is a rights violation that stems from other causes that propelled the individual into a situation of poverty. Discrimination, while not wishing to justify it, is in fact the “consequence” – an unreasonable one – of a situation an individual has arrived at through the denial of other rights. That is to say, discrimination can cause poverty, just as poverty can cause discrimination.¹⁷

The rights that are denied because of the condition of poverty or, in other words, whose denial can cause a situation of poverty, can be either civil and political or economic, social and cultural. In this vein, the Copenhagen World Summit for Social Development, in 1995, debated the lack of sufficient income and productive resources 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.¹⁸

If we consider food, clothing, employment, housing and education to be the rights that are related to exclusion by poverty, then denying them is a violation of the most basic right of all: the right to life.

So the violation of the right to life – by which we mean a dignified life – contributes to a situation of poverty and vice-versa, which is reflected in the high mortality rates caused by poverty.¹⁹ However, the right to life²⁰ is also breached when, without causing or tolerating a person’s death, there is an abuse against “quality of life”, a notion that has been developed by international jurisprudence in recent years. In view of this, the violation of the right to life can occur in two different ways: (i) as a consequence of the lack of fulfilment of other rights we have referred

to; and (ii) as a direct violation, together with the other rights, of the so-called “quality of life” to which all people have a right.

The first type of violation occurs when poverty causes the death of many people.²¹ However, we should not overlook the other aspect of this right, which refers to a “dignified life” or an adequate “quality of life”. These terms refer to the fact that it is not enough for the State to guarantee that people will not be arbitrarily deprived of their lives; it must also guarantee a life in which people have the possibility to develop and enjoy the minimum conveniences, such as health, education and dignified employment, among other things. On this subject, the Inter-American Court of Human Rights ruled on the Villagrán Morales case as follows:

*[...] in essence, the fundamental right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.*²²

Similarly, the Group of Experts made the following observations:

*With regard to the threat that extreme poverty poses to the right to life, the ad hoc Group of Experts notes that regional systems of law, like international law, are developing a conception of the right to life that goes beyond the idea of biological survival and links the right to life with a dignified existence, which is the same approach as that adopted by the Commission on Human Rights in its successive resolutions.*²³

So, when a large part of the population is deprived access to services deemed basic for human development, what they are really being denied is an adequate quality of life, since without adequate housing, clothing, drinking water and shelter, a person cannot develop normally in society.

As Judges Cançado Trindade and Abreu Burelli point out in their joint concurring opinion on the judgment of the Villagrán Morales case, quality of life conceptualizes the right to life as belonging, at the same time, to the domain of civil and political rights, and also economic, social and cultural rights, which illustrates the interrelation and indivisibility of all human rights.²⁴ Therefore, although poverty is not directly related to the violation of all human rights, given their indivisible nature, a global strategy to combat poverty will be necessary.²⁵

In the field of economic, social and cultural rights, States are mistaken when they consider these rights to be “programmatic principles” that cannot be immediately realized since this would demand the use of scarce financial resources. The Committee on Economic, Social and Cultural Rights (CESCR) has made it

clear that while the full realization of these rights may be accomplished progressively, the steps taken to achieve this goal must be adopted within reasonably short period of time after the International Covenant on Economic, Social and Cultural Rights (ICESCR) came into force.²⁶ For this reason, using the principle of progressive realization as an argument to avoid implementing these rights is highly contentious. In the fight against poverty, all the rights involved, such as the right to health and housing, play a very important role, which is why States cannot be permitted to use these arguments to escape their international obligations.

In Peru, this reasoning was adopted by the Constitutional Court in judgment 2945-2003-AA/TC, which awarded protection to a person with HIV/AIDS, recognizing that person's right to permanently receive the medicine necessary for treatment. There was, therefore, a contradiction in the State's argument that the right to health was also considered a "programmatic principle", and as such it was not obligated to provide medical treatment, nor to supply free drugs. In the same judgment, the Constitutional Court stressed the need to consider, when dealing with social rights, the principles of solidarity and respect for human dignity, which are the cornerstones of the Welfare State.²⁷

Neither is the idea entirely correct that, on the one hand, the implementation of economic, social and cultural rights will always require a sizable investment from the State and, on the other, the implementation of civil and political rights will only require the State to abstain from performing certain acts that are banned by human rights treaties. In response to this, we can observe, as the CESCR points out, that many economic, social and cultural rights can be implemented immediately. This is the case, for instance, with the right to equal remuneration for work of equal value, the right to form and join trade unions, and the right for parents to choose schools for their children, among others.²⁸

All these rights find their point of convergence in a higher value, which is the dignity of the human person. This value is expressed in article 1 of the Universal Declaration of Human Rights and has been recognized numerous times in different international documents, such as Commission on Human Rights resolutions nos. 2002/30²⁹ and 2005/16.³⁰ These resolutions establish that extreme poverty and social exclusion constitute a violation of human dignity. The United Nations General Assembly made a similar declaration in its resolution no. 59/186.³¹

The idea is for human rights to work like a kind of guarantee to avoid reaching a degree of poverty that violates human dignity and creates situations of exclusion. As such, policies to combat poverty will be more effective when they are based upon human rights.³² It is the role of States, therefore, to promote and guarantee the effective fulfillment of human rights and to properly implement the most basic rights that assure people a dignified existence. To achieve this objective, it is necessary to first begin by recognizing the rights of the poor and the obligations of governments and the international community.³³

However, not all human rights can be included in the minimum required for the eradication of poverty, only those deemed essential for all people to be able to develop basic capabilities.³⁴ These rights include, as the CESCR has pointed out, the right to employment, an adequate standard of living, housing, food, health and education.³⁵ We are only dealing, then, with the human rights that constitute a minimum standard for meeting basic living requirements.

The fight against poverty in a post-conflict context

The struggle by States and the international community to afford all people the human rights that constitute a minimum standard for meeting basic living requirements becomes even more complex when this coexists with the fallout from an armed conflict.

According to a report prepared by Jane Alexander for the United Kingdom Department for International Development (DFID), the effects of conflict on levels of poverty include the hampering of economic growth and productivity at the macroeconomic level, and the destruction of state institutions and public infrastructure. From a microeconomic perspective, individuals and communities experience increased insecurity, loss of assets and employment, and diminished access to essential public services.³⁶

The report also points out that the human rights violations committed during conflict are inextricably linked to exacerbating poverty.³⁷ That is, people in a situation of poverty – particularly extreme poverty – are more vulnerable to human rights abuse during an armed conflict. In this sense, the United Nations Limburg Principles of 1987 on the Implementation of the International Covenant on Economic, Social and Cultural Rights establish in paragraph 65 that “[t]he systematic violation of economic, social and cultural rights undermines true national security and may jeopardize international peace and security [...]”.

In Peru’s case, this assertion was reinforced by the findings of the Peruvian Truth and Reconciliation Commission (TRC)³⁸ in its final report:

*There was a clear relationship between social exclusion and the intensity of the violence. It is no coincidence that four of the [places] most affected by the internal armed conflict were classified by different studies [...] on the list of the five [...] poorest in the country. [...] This does not mean that poverty is the primary cause of the conflict; however, it is possible to assert that when a process of armed violence is unleashed, the least privileged social sectors are the most vulnerable and the most affected.*³⁹

Furthermore, it is also possible to claim that the human rights violations perpetrated in the context of the Peruvian armed conflict were generators of poverty, which can

be seen, for example, in the various cases of forced displacement and destruction and ransacking of the communities investigated by the TRC.⁴⁰

It would be fair to say, first of all, that there was a close link between poverty and the causes of the armed conflict in Peru (although the TRC did not name poverty as the primary cause of the armed conflict, it did recognize that poverty was “one of the factors that contributed to igniting it and that it was the backdrop against which the tragedy unfolded”);⁴¹ second, that there was a link between poverty and the development of the conflict, since the intensity of the violence varied depending on the poverty of the population involved; and, finally, that there was a link between poverty and the stage that followed the end of the armed conflict.

In fact, the violence perpetrated over 20 years aggravated the difficult economic, social and cultural conditions that already existed in the country, particularly in rural areas. According to the TRC:

[the] internal armed conflict paralyzed the process of development in the rural world and left grave consequences for the productive structure, on social organization, on educational institutions and on the ambitions of the affected populations. Adding these repercussions to those [...] [produced] by the loss of human capital and by the ransacking and destruction of the community assets, it is possible to conclude that the process of violence left a desolate economic panorama with a huge number of affected people, to whom society and the State owe a debt of reparation.⁴²

Reparations for the victims of human rights violations are complementary to traditional justice, particularly as a means of restoring human dignity and repairing the damage caused by these violations.⁴³ According to the International Court of Justice, “it is a principle of international law (that is to say, a general concept of law) that every violation of an international commitment implies an obligation to make proper reparations”:⁴⁴ the human rights violations perpetrated by the Peruvian State – either by act or omission⁴⁵ – during the armed conflict constitute violations of commitments assumed through the ICCPR, the ICESCR and the American Convention on Human Rights, among other international instruments.

Therefore, the TRC presented together with its final report, the Comprehensive Plan for Reparations, or PIR,⁴⁶ that sought to make reparations for violations of civil and political rights. However, in practice, both nationally⁴⁷ and internationally,⁴⁸ reparations for these rights cannot be made without taking into account the aspects related to economic, social and cultural rights.⁴⁹

As a result, although the TRC did not intend to present the PIR as a response to violations of both types of rights, its implementation has demonstrated that their separation is extremely difficult.⁵⁰

While 'development' generally refers to programs and projects that build the social and economic infrastructure of local communities, [...] reparations seek to repair actual damage suffered by a human rights violation. In some cases the form of reparations may resemble development-like measures in content, but reparations also contemplate other measures such as monetary compensation, restitution of rights, and symbolic reparations, among others, that do not necessarily resemble development and more clearly emanate the sentiment of 'repairing' harm.⁵¹

The Inter-American Court, meanwhile, set a precedent for the concept of reparation in the scope of the Inter-American System of Human Rights Protection:

Reparation for the damage caused by the breach of an international obligation requires, whenever possible, full restitution [restitutio in integrum], which consists of restoring the prior situation. If this is not possible [...], the international court may order the adoption of measures to guarantee the violated rights, as well as to make reparations for the consequences that the breach produced, including payment of compensation for the damages caused.⁵²

Guillerot warns that the PIR should not turn into a means of resolving the country's structural, social and economic problems. On the contrary, the State has two different types of obligations to the population. On the one hand, it has social obligations, which are independent of the existence of a conflict or of victim status, and which are fulfilled through government social investment programs in health, education or housing. On the other hand, it has the obligation to make reparations to the victims of the internal armed conflict, which should be fulfilled by implementing a plan for reparations, adequately combining symbolic and material measures that are both individual and collective in nature.⁵³

As an illustration, the Peruvian State passed law no. 28,592, which created the Comprehensive Plan for Reparations on 28 July 2005, based on the recommendations of the TRC, and on 6 July 2006 it published the executive decree 015-2006-JUS, the regulation for the aforementioned law. Although the regulation included something not set forth in the law by establishing a program of individual economic reparations,⁵⁴ these have not yet been awarded. On the contrary, most of the reparations made so far by the government have been based on law no. 28,592 and represent collective or symbolic reparations, such as memorial parks and general programs in health and education.⁵⁵

These measures bear more resemblance to development policies promoting economic, social and cultural rights – to which the population has a right, independent of the existence of an armed conflict – than to reparations *per se*, which is a distortion both of economic, social and cultural rights, and of the reparation mechanisms. The State, instead of fulfilling its obligation to make reparations to the victims of the armed conflict, annuls this obligation by assuming

it is fulfilled through the recognition and protection of economic, social and cultural rights, to which all people have a right, regardless of whether or not they are victims of a conflict.

There is, therefore, a third type of violation against people who were already in a situation of poverty before the outbreak of the conflict. The first, as we have already seen, occurs when a human rights violation triggers the situation of poverty; the second, when, as a direct result of this situation and the social exclusion encountered, the poor were more intensely affected by the armed violence, both in terms of their civil and political rights, and their economic, social and cultural rights; and third, when the State fails to recognize that, as well as having economic, social and cultural rights, they also have the right, as victims of the conflict, to reparation.

Change of paradigm and the emergence of international obligations in a globalized context

The strategy that has been most traditionally used as a tool in the fight against poverty, both in peacetime and in post-conflict contexts, has not proved to be effective. We need, therefore, to develop a much broader vision more closely tied to human rights so as to acquire a first-rate legal dimension.

Confronting the topic in terms of legal obligations permits two approaches. First, that we address not only necessities, but also rights, which implies a genuine inclusion of human rights in public policies, that is, that the voice of the poor is heard (*empowerment of the poor*). Second, that we can also address the existence of duties.

In this vein, as the Group of Experts points out,⁵⁶ we can assert that effective poverty reduction is not possible without empowering the poor to participate in the policies for this purpose, which implies recognizing the poor as subjects of law. Poverty reduction, therefore, beyond just a moral obligation, can be regarded as a legal obligation.

Nevertheless, this legal obligation must be set apart from the obligation of the State to redress the victims of an armed conflict. As we have seen, there is a clear relation between a person's degree of poverty and the intensity of the violence in which they find themselves immersed during an armed conflict. As a result, the majority of conflict victims – and the Peruvian experience demonstrates this – are most frequently the population's poorest.

Although collective reparations often bear a resemblance to the development programs aimed at fulfilling economic, social and cultural rights, it is a serious violation of the rights of victims living in a situation of poverty to consider these obligations one and the same. This is akin to annulling the right to reparation, which only serves to perpetuate the vicious circle generated by poverty.

Moreover, it needs to be pointed out that the obligations that derive from rights need to be examined in light of the obligation to respect, protect and fulfill these rights. The duty to respect implies the duty to not directly or indirectly undermine the enjoyment of human rights. The duty to protect requires the adoption of provisions to prevent rights abuses by third parties. The duty to fulfill, meanwhile, consists of the obligation to adopt legislative, administrative and other such measures to give effect to these rights.⁵⁷

On the other hand, we should not overlook that International Human Rights Law recognizes the interdependence of human rights, meaning that the enjoyment of certain rights will depend on the observance of others, such as the rights that prevent people from falling into a situation of poverty. Therefore, even though poverty at first appears to be related to economic, social and cultural rights, the enjoyment of civil and political rights depends on the observance of the former.

One way of embarking on the road to eradicating poverty is to observe how States perform their duty to take all the reasonable means at their disposal to ensure the realization of human rights. If a State takes upon itself to make all provisions for these rights to be effectively realized, it will not be held responsible should some of these rights fail to be fully upheld, neither can it be said that the State has not fulfilled its obligations. Nevertheless, a State can be held responsible when it does not take all the measures at its disposal to ensure the progressive realization of these rights expeditiously, that is to say, as quickly as possible.

However, this approach does not sidestep the fact that the fight against poverty is not exclusively of interest of the State where the situation of poverty occurs. Obviously, the State has the obligation to prevent it, avert it and, above all, combat it. However, it was the international community as a whole that set the scene for and created these international norms.

Finally, it should be added that since the current state of International Law makes it extremely difficult to find a legal basis that actually compels States to launch a fight against poverty, a more human rights-based approach will undoubtedly result in empowerment through the use of the existing institutional mechanisms for observing human rights. Among these measures, we might mention, for example, the quest to expand poverty reduction strategies and the quest to tackle the structures of discrimination that cause and perpetuate poverty. Civil and political rights, which play a crucial role in helping reduce poverty, urgently need to be expanded. In this context, economic, social and cultural rights are both compulsory and urgent in the eyes of International Human Rights Law, not just “programmatic principles”. They lend legitimacy to the calls for the empowerment of the poor in decision-making processes, and they create and strengthen the mechanisms that one way or another monitor the actions of public policies and other such initiatives.

NOTES

1. The original version of the this article in Spanish, "El largo camino de la lucha contra la pobreza y su esperanzador encuentro con los derechos humanos", was published in the collective work *Justicia global, derechos humanos y responsabilidad*, Antioquia, Siglo del Hombre Editores, Centro de Estudios Filosóficos de la Pontificia Universidad Católica del Perú e Instituto de Filosofía e Instituto de Estudios Políticos de la Universidad de Antioquia, 2007. The author would like to thank Mariana Chacón for her support in the revision of this edition.
2. M. Nowak, *A human rights approach to poverty*, Human Rights in Development, Year Book 2002, Oslo, Nordic Human Rights Publications, 2004, p 17.
3. The World Bank (J D. Wolfensohn), *World Development Report 2000/2001, Attacking Poverty*, World Bank Oxford, Oxford University Press, p. 7.
4. United Nations Development Programme (UNDP), *Proyecto Regional para la Superación de la Pobreza. Desarrollo sin Pobreza, II Conferencia Regional sobre la Pobreza en América Latina y el Caribe*. Quito, 20-23 November, 1990.
5. Ibid.
6. Office of the United Nations High Commissioner for Human Rights (OHCHR), Commission on Human Rights, Economic, Social and Cultural Rights, *Report of the independent expert on the question of human rights and extreme poverty Arjun Sengupta*, Doc E/CN. 4/2005/49, 11 February 2005, p. 5.
7. United Nations Development Programme (UNDP), *Poverty report 2000: overcoming human poverty*, New York, UNDP, 2000, p. 20. Nowak, *op. cit.*, p. 23.
8. Commission on Human Rights, Economic, Social and Cultural Rights, *op. cit.*, par.12.
9. OHCHR, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Economic, Social and Cultural Rights, *Implementation of existing human rights norms and standards in the context of the fight against extreme poverty*, Progress Report submitted by José Bengoa, coordinator of the ad hoc Group of Experts, Doc E/CN.4/Sub.2/2005/20, 6 July 2005, par. 27.
10. Vienna Declaration and Programme of Action, *Vienna Conference on Human Rights*, 1993, par. 14.
11. Ibid., par. 12.
12. Sub-commission on the Promotion and Protection of Human Rights, *op. cit.*, par. 9.
13. UNDP, *Desarrollo sin Pobreza, op. cit.*
14. A. Sen, *Development as freedom*, New York, Anchor Books, 1999. M. Nowak, *op. cit.*, p. 25.
15. Office of the United Nations High Commissioner for Human Rights, *Human Rights and poverty reduction: a conceptual framework*, Nova York and Geneva, 2004, p. 7.
16. Sub-Commission on the Promotion and Protection of Human Rights, *op.cit.*, par. 12.
17. *Poverty and the International Covenant on Economic, Social and Cultural Rights*, Statement adopted by the Committee on Economic, Social and Cultural Rights (OHCHR) on 4 May 2001, Doc E/C.12/2001/10, par. 11.

18. Programme of Action of the World Summit for Social Development, Copenhagen, 1995, Doc A/CONF.166/9, par. 19.
19. According to the World Bank, for every 100 infants, 6 do not survive a full year and 8 do not live to see their 5th birthday. Of those who do reach school age, 9 of every 100 boys and 14 of every 100 girls do not attend school. The World Bank, *op.cit.*, p. 5.
20. The right to life is guaranteed in various international treaties. For example, in the universal system, it appears in article 3 of the Universal Declaration of Human Rights, and in item 1, article 6 of the International Covenant on Civil and Political Rights (ICCPR). In the inter-American system, it is mentioned in article 4 of the American Convention on Human Rights.
21. According to Thomas Pogge, 955 million citizens in high-income countries consume 81% of the global product, while paradoxically the 2,735 million people considered *poor* have just 1.3%. That is to say, as the Amnesty International 2002 report claims, “many of the world’s poor have been bypassed by the benefits of globalization”. This has had numerous consequences, among them the death of 18 million people each year due to poverty. In 2002, for example, the infant mortality rate was 82%, equivalent to 10,889 deaths per year. The World Bank considers “poor” to be people living on less than 2 dollars per day. See T. Pogge, “Symposium World Poverty and Human Rights”, *Ethics and International Affairs*, v. 19, n. 1, 2005, p. 1.
22. Inter-American Court of Human Rights (IACHR). The “Street Children” Case (Villagrán Morales et al), Judgment of 19 November 1999, Series C No. 63, par. 144. This position reflects a real jurisprudential trend of the Inter-American Court on the subject. See also: Zambrano Vélez et al. vs. Ecuador. Judgment of 4 July 2007. Series C No. 166, par. 78. Miguel Castro Castro Prison vs. Peru. Judgment of 25 November 2006. Series C No. 160, par. 237. Vargas Areco vs. Paraguay. Judgment of 26 September 2006. Series C No. 155, par. 14. Ximenes Lopes vs. Brazil. Judgment of 4 July 2006. Series C No. 149, par. 125. Sawhoyamaxa Indigenous Community vs. Paraguay. Judgment of 29 March 2006. Series C No. 146, par. 153. Yakye Axa Indigenous Community vs. Paraguay. Judgment of 6 February 2006. Series C No. 142, par. 162 and Mapiripán Massacre vs. Colombia. Judgment of 15 September 2005. Series C No. 134, par. 232.
23. Sub-Commission on the Promotion and Protection of Human Rights, *op.cit.*, par. 20.
24. IACHR, “Street Children” Case (Villagrán Morales et al.). Judgment of A. C. Trindade and A. A. Burrelli, *op.cit.*, par. 4.
25. United Nations High Commissioner for Human Rights, *op.cit.*, p. 11.
26. ICESCR (International Covenant on Economic, Social and Cultural Rights), General Observation No. 3, *The nature of the obligations of the States party*, adopted on 14 December 1990, par. 2.
27. Constitutional Court, Judgment 2945-2003-AA/TC of 20 April 2004, par. 15.
28. *Ibid.*, par. 5. Similarly, Peru’s Constitutional Court ruled in Judgment 2002-2006-PC/TC of 12 May 2006, paragraphs 5-11, in which it ordered the Ministry of Health to implement an emergency system for people with lead poisoning in the mining town of La Oroya.
29. Adopted on 22 April 2002.
30. Adopted on 14 April 2005.
31. Adopted on 10 March 2005.

32. CESCR, Substantive issues arising in the implementation of International Covenant on Economic, Social and Cultural Rights. *Poverty and the International Covenant on Economic, Social and Cultural Rights*. Doc E/C.12/2001/10, par. 1, 3 and 13.
33. OHCHR, Draft Guidelines, *A human rights approach to poverty reduction strategies*, Geneva, United Nations, 2002, par. 1-5.
34. According to the draft guidelines issued in 2002 by the group of experts appointed by the Office of the United Nations High Commissioner for Human Rights, these minimum rights are: the right to adequate food, the right to health, the right to education, the right to decent work, the right to adequate housing, the right to personal security, the right to appear in public without shame, the right of equal access to justice and political rights and freedoms. See OHCHR, Draft Guidelines, *op.cit.*
35. United Nations High Commissioner for Human Rights, *op.cit.*, p. 23.
36. J. Alexander, *A Scoping Study of Transitional Justice and Poverty Reduction*, Final Report, UK Department for International Development, January 2003, par. 2.1.
37. *Ibid*, par. 2.2.
38. The *Peruvian Truth and Reconciliation Commission* was established by the interim government of former president Valentín Paniagua in 2001 to shed some light on the country's violent past by investigating the causes, consequences and responsibilities of the armed conflict that plagued Peru between 1980 and 2000. "By its calculations, more than 69,000 people were killed or disappeared as a direct consequence of human rights violations and crimes. The mother tongue of 75% of them was quechua". J. Ciurlizza. "El Informe Final de la CVR y la judicialización de violaciones de derechos humanos", *Construyendo Justicia. Verdad, reconciliación y procesamiento de violaciones de derechos humanos*, Francisco Macedo (ed.), Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú – IDEHPUCP, Fondo Editorial PUCP, OXFAM-DIFD, 2005, p. 129 – 130.
39. H. Willakuy, abbreviated version of the Final Report of the Truth and Reconciliation Commission, 2004, p. 22.
40. There were multiple cases of forced displacement and ransacking of communities, which caused the loss of assets of the displaced. Topical Public Hearing before the TRC. "*Violencia Política y Comunidades Desplazadas*", 12 December 2002. Communities of Ostocollo, Tancayllo, Izcahuaca and Huayrapampa. Residents of Valle del Monzón and Alto Huallaga were displaced following the destruction their communities. Information available at: <http://www.cverdad.org.pe/ingles/apublicas/audiencias/atematicas/at05_sumillas.php>. Last access on 4 September 2007.
41. H. Willakuy, *op. cit.*, p. 337.
42. *Ibid*, p. 409.
43. L. Laplante and K. Theidon, "Reparations, international law, and global justice: a new frontier" in Pablo de Greiff (ed.), *The Handbook of Reparations*, Oxford, Oxford University Press, 2006, pp. 484-85.
44. Cited by C. Nash, *Las reparaciones en la jurisprudencia de la Corte IDH*, Centro de Derechos Humanos, Facultad de Derecho, Universidad de Chile, Lom Ediciones, Santiago, 2004, p. 10. This principle is also established in article 63.1 of the American Convention on Human Rights.
45. "(R)eparations exist not only when the violation was caused by agents of the State [respect for human

rights], but they also extend to human rights violations perpetrated by external actors [impose respect for human rights]. In the latter case, the State, by not preventing and reacting adequately to the actions of external actors that severely undermined the full enjoyment of human rights, by not assuring respect for human rights and not fulfilling its duty to protect its citizens, is also responsible and is legally bound to provide reparations to the victims." J. Guillerot, "*Hacia la reparación integral de las víctimas del conflicto*", Informe sobre la situación de los DESC 2002 – 2003 en el Perú: "*Dos años de democracia [...] ¿y los DESC?*", APRODEH, CEDAL, Lima, Peru, December 2003. Available at <http://www.aprodeh.org.pe/repares/opinión/Hacia_PIR_InformDESCdic2003.pdf>, last access on 4 September 2007.

46. Truth and Reconciliation Commission, *Final Report*, v. IX, part 4, 2003, par. 2.2.

47. See, on a national level, the reparation programs created by the *Comisión Especial de Atención a los Indultados Inocentes* (CEAI) and the *Comisión de Trabajo Interinstitucional para el Seguimiento de las Recomendación de la Comisión Interamericana de Derechos Humanos*. J. Guillerot, *op. cit.*

48. See C. Nash, *op. cit.*, pp. 43 – 44.

49. J. Guillerot, *op. cit.*

50. As L. Arbour points out in "*Economic and social justice for societies in transition*", *Second Annual Transitional Justice Lecture hosted by the New York University School of Law Center for Human Rights and Global Justice and by the International Center for Transitional Justice, October 2006*: "violations of civil and political rights are intrinsically linked to violations of economic, social and cultural rights, whether there are causes or consequences of the latter. We need only to think of Northern Ireland and South Africa to realize that systematic discriminations and inequities in access to health care, work or housing have led to, or exacerbated, social tension that led to conflict."

51. L. Laplante, *On the indivisibility of rights: truth commissions, reparations, and the right to development*, *Yale Human Rights & Development L.J.*, p. 161: to be published at <<http://islandia.law.yale.edu/yhrdlj/>>.

52. IACHR, *Trujillo Oroza Case, reparations*, par. 61; *Bámaca Velásquez Case, reparations*, par. 39; *Cantoral Benavides Case, reparations*, par. 41; *Durand y Ugarte Case, reparations*, par. 25 and *Barrios Altos Case, reparations*, par. 25. Cited by C. Nash, *op. cit.*, p. 25.

53. J. Guillerot, *op. cit.*

54. Coordinadora Nacional de Derechos Humanos, Informe Anual 2006, *Bajo el signo de un gobierno con pasado*, p. 51.

55. L. Laplante, *op. cit.*, p. 16.

56. OHCHR, Draft Guidelines, *op. cit.*, par. 3- 24.

57. IACHR, "*Velásquez Rodríguez*" Case, Judgment of 29 July 1988, Series C No. 4, par. 165 to 177.

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