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Promotion and protection of human rights: Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Extreme poverty and human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, in accordance with Human Rights Council resolution [44/13](#).

* [A/77/50](#).



Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter

Banning discrimination on grounds of socioeconomic disadvantage: an essential tool in the fight against poverty

Summary

In the present report, the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, discusses how discrimination against people in poverty operates and how it can be addressed. He argues that anti-discrimination frameworks should be strengthened to effectively prohibit discrimination on grounds of socioeconomic disadvantage.

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I. Introduction

1. Discrimination is part of the daily experience of people in poverty. It restricts access to employment, education, housing or social services. It may result in certain social goods or programmes not reaching people in poverty owing to discriminatory treatment by officials, employers or landlords, or to the fear of maltreatment. It discourages people who experience poverty from applying for a job, or from claiming certain benefits: it is thus a major source of non-take-up of rights.¹ Discrimination may also lead people in poverty to lower their aspirations regarding what they can achieve, either for themselves or for their children, leading to a reduced investment in education.² It explains in part why people in poverty are disproportionately represented in the criminal justice system, as judges may be biased against them or base their sentencing on anti-poor stereotypes.³

2. The 2005 Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies describe poverty as a process in which multiple deprivations are “mutually reinforcing”, and associated with “stigma, discrimination, insecurity and social exclusion”. The 2012 Guiding Principles on Extreme Poverty and Human Rights note that persons experiencing extreme poverty, in particular, “live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce one another”.

3. This corresponds to the experience of poverty as described by people in poverty themselves. Social discrimination was a major theme in the *Voices of the Poor* study of 2000,⁴ and “social maltreatment” is one of the “hidden dimensions of poverty” highlighted in the study conducted jointly by Oxford University and ATD Fourth World using the “Merging of Knowledge” methodology involving people in poverty.⁵ In this latter study, “social maltreatment” is described as “the way in which people in poverty are typically treated within and by the community”, often facing stereotyping, blame and stigma: “The process of othering is commonplace [where] people in poverty are thought to be different in kind and socially inferior, engaging in disreputable behaviour either as a cause or a result of their poverty”.⁶ Social maltreatment in turn feeds institutional maltreatment or abuse, defined as “the common failure of public and private institutions to respond appropriately to the circumstances, needs and aspirations of people in poverty”.⁷

4. In the report that follows, the Special Rapporteur on extreme poverty and human rights identifies how discrimination against people in poverty operates and how it can be addressed. He identifies povertyism – negative stereotyping against the poor⁸ – as

¹ See [A/HRC/50/38](#), and Laura Nyblade and others, “Stigma in health facilities: why it matters and how we can change it”, *BMC Medicine*, vol. 17 (2019); K. Canvin and others, “Can I risk using public services? Perceived consequences of seeking help and health care among households living in poverty: qualitative study”, *Journal of Epidemiology and Community Health*, vol. 61, No. 11 (2007).

² [A/76/177](#), para. 32; see also A. Appadurai, “The capacity to aspire: culture and the terms of recognition”, in *Culture and Public Action*, V. Rao and M. Walton, eds. (Stanford, California, Stanford University Press, 2004).

³ S. B. Starr, “The new profiling: why punishing based on poverty and identity is unconstitutional and wrong”, *Federal Sentencing Reporter*, vol. 27, No. 4 (2015).

⁴ D. Narayan and others, *Voices of the Poor: Crying Out for Change* (New York, Oxford University Press, 2000).

⁵ R. Bray and others, “Realising poverty in all its dimensions: a six-country participatory study”, *World Development*, vol. 134 (2020).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ S. Turkington, “A proposal to amend the Ontario Human Rights Code: recognizing povertyism”, *Journal of Law and Social Policy*, vol. 9 (1993).

part of the experience of living on low incomes, and he describes how the realization of socioeconomic rights depends on people in poverty being protected from discrimination.⁹ The strengthening of the prohibition of discrimination on grounds of socioeconomic disadvantage is a key tool towards poverty eradication: the present report explains why.

II. Anti-poor prejudice

5. Stereotyping the poor as “lazy”, as unable to keep their commitments or otherwise blaming them for their poverty¹⁰ feeds prejudice against them. This picture of poverty as attributable to a failure of the individual appears particularly dominant in countries where the welfare system is less developed and protective.¹¹ Indeed, the more people believe the society in which they live to be based on merit, the more inequalities will be accepted as simply the result of how society rewards deserving people and sanctions the others.¹² Such discourse has been increasingly dominant since the 1970s. Although in times of severe crisis explanations relating poverty to structural factors (attributing poverty to society’s lack of inclusiveness) or to institutional factors (such as how schools or promotion systems within firms operate) may gain in popularity,¹³ anti-poor discourse may also serve, especially in times of economic insecurity, as a device for people to protect themselves from the fear of falling down the social ladder.¹⁴

6. Such meritocratic views of society present poverty as the result of individuals making the wrong choices or failing to seize the opportunities they are presented with. They lead to the assignment of people in poverty to a distinct group, separate from the rest of society: prejudice then becomes part of an identity formation process, in which “us” is opposed to “them” – in which people who “succeed” are opposed to those who “fail”.¹⁵

⁹ S. Liebenberg and B. Goldblatt, “The interrelationship between equality and socio-economic rights under South Africa’s transformative constitution”, *South African Journal on Human Rights*, vol. 23 (2007).

¹⁰ J. R. Kluegel and E. R. Smith, “Beliefs about stratification”, *Annual Review of Sociology*, vol. 7 (1981); J. R. Kluegel and E. R. Smith, *Beliefs about Inequality* (New York, Routledge, 1986); J. Feagin, *Subordinating the Poor* (Englewood Cliffs, New Jersey, Prentice Hall, 1975). Media representations of the poor during the period 1980–2001 portrayed women who received public assistance in the United States of America as lazy, disinterested in education and promiscuous, leading to the stereotype of a supposed “welfare queen” (see H. E. Bullock and others, “Media images of the poor”, *Journal of Social Issues*, vol. 7 (2001)). With regard to France, see S. Paugam and M. Selz, “La perception de la pauvreté en Europe depuis le milieu des années 1970. Analyse des variations structurelles et conjoncturelles”, *Economie et Statistique*, No. 383–385 (2005).

¹¹ C. A. Larsen and T. E. Dejgaard, “The institutional logic of images of the poor and welfare recipients: a comparative study of British, Swedish and Danish newspapers”, *Journal of European Social Policy*, vol. 23, No. 3 (2013) (finding that negative stories were more frequent in the United Kingdom of Great Britain and Northern Ireland, representing 43 per cent of the media coverage, compared with 26 to 27 per cent in Sweden and Denmark).

¹² M. Sandel, *Tyranny of Merit: What’s Become of the Common Good?* (New York, Farrar, Strauss and Giroux, 2021).

¹³ L. B. Nilson, “Reconsidering ideological lines: beliefs about poverty in America”, *Sociological Quarterly*, vol. 22 (1981).

¹⁴ E. Maurin, *La peur du déclassement* (Paris, Seuil, 2009).

¹⁵ See A/76/177, paras. 38–39, as well as H. Tajfel, “Experiments in intergroup discrimination”, *Scientific American*, vol. 223, No. 5 (1970); H. Tajfel and J. C. Turner, “An integrative theory of intergroup conflict”, in *The Social Psychology of Intergroup Relations*, W. G. Austin and S. Worchel, eds. (Monterey, California, Brooks/Cole, 1979).

A. The systemic nature of anti-poor discrimination

7. Anti-poor prejudice corrodes different spheres of life. In France, a test relying on sending curricula vitae to employers showed a 30 per cent net discrimination rate against candidates presenting a curriculum vitae that included indicators of poverty (such as an address in a temporary housing shelter or previous employment in social enterprises).¹⁶ In Canada, a survey conducted by the Ontario Human Rights Commission showed that people experiencing poverty received more negative evaluations than any other group: only 39 per cent of those surveyed had “somewhat positive” feelings towards those receiving social assistance.¹⁷ Research conducted in The Netherlands showed how, in comparison to their higher-income peers, low-income students received lower-quality advice from their teachers regarding the level of secondary education they should pursue, compared with the level of secondary education indicated by the standardized test administered at the end of primary school.¹⁸

8. Discrimination against people in poverty thus affects low-income individuals across all the areas that matter the most for social cohesion. Schools tend to reproduce inequalities and reward the cultural codes acquired in better-off households. People living on low incomes cluster in certain neighbourhoods where housing is affordable, but which are often less well connected to job opportunities and closer to sources of pollution. The long-term unemployed and those who lack social connections experience the greatest difficulties in accessing employment, even when they have the right qualifications. Humiliating experiences with health-care providers, combined with an inability to pay, may discourage people in poverty from seeking health care.

9. Education, housing, employment and health care: instances of discrimination in these various spheres are mutually reinforcing. If they live in impoverished and remote neighbourhoods, people in poverty will face employers who will suspect that they are less reliable since they have to travel longer distances to work, and their health may deteriorate as a result of a lack of access to green areas, which may reduce their productivity at work. Children living in low-income neighbourhoods typically attend schools that prepare them less well for the world of work, which in turn increases the rate of dropout, especially if they anticipate that they will face discrimination in employment. These are self-reinforcing mechanisms that call for structural solutions.

10. Anti-poor prejudice is also systemic in that it is widespread, and may lead actors prone to discriminate to rationalize their behaviour as a response to the attitudes of others. The employer may anticipate that clients expect to be served by an employee who has a good presentation and uses the “right” cultural codes. School directions may be under the pressure of parents insisting that the school remains socially homogenous.¹⁹ Residents of a particular neighbourhood may express the fear that the value of their property will fall if the neighbourhood becomes more diverse, which in turn puts pressure on landlords to rent only to tenants who will present the right “fit” within the community. Moreover, discrimination within an organization means that fewer people from a low-income background will be in decision-making positions: the decisions made may therefore be systematically skewed against people in poverty,

¹⁶ *ATD Fourth World*, “France bans discrimination on the grounds of social conditions”, 2 August 2016.

¹⁷ Elizabeth McIsaac, “Discriminating against the poor is legal. That must change.”, *Maytree*, 12 January 2018.

¹⁸ Nederlands Jeugdinstituut, “Kind arme ouders krijgt vaak lager schooladvies”, 11 March 2020.

¹⁹ See, for example, European Court of Human Rights, *Lavida and Others v. Greece*, judgment of 30 May 2013.

whose specific life experiences will be ignored, and any selection process within the organization may be based on co-optation and therefore reduce the opportunities of individuals who have a different background.

B. The case of employment

11. It has sometimes been argued that well-functioning markets will ultimately wipe out discrimination as an irrational and thus non-optimizing behaviour, that the forces of competition would sooner or later eliminate.²⁰ In fact, markets register social norms, and will reflect dominant prejudice: just as landlords accept tenants whose “fit” is right (whom other residents will find congenial), employers will seek to recruit employees who have acquired the “right” codes, anticipating that this is what clients expect.²¹

12. The employment sphere exemplifies how anti-poor prejudice can lead to self-reinforcing mechanisms that entrench discriminatory behaviour. Facing prejudice leads people of lower socioeconomic status to invest less in the acquisition of qualifications that would allow them to have access to better-paid jobs: the more they confront discrimination in the field of employment, the lower their incentive to build human capital. Discrimination also results in situations where people in poverty lack role models to which they can relate and that would allow them to build confidence.²²

13. Indeed, even when people from a low-income background succeed in being employed, they will underperform if confronted with a manager who is biased against them (because the employer believes they are lazy, for example),²³ thus reinforcing further the negative prejudices of that manager.²⁴ This will particularly be the case if they face what is called the “stereotype threat” – the fear of being judged and confirming negative stereotypes, undermining self-confidence,²⁵ which has been documented both with regard to ethnic minorities²⁶ and to castes: in an experiment led in the Indian state of Uttar Pradesh, it was shown that the performance of 321 low-caste junior high school students on a maze-solving exercise (compared with that of 321 high-caste peers) was significantly lower when caste was publicly revealed,²⁷ that is, when the results of the test could be interpreted as confirming caste stereotypes.

14. As a result of these entrenched mechanisms, negative stereotypes about people in poverty will not disappear on their own, nor will they be wiped out by market competition alone. Indeed, what may be initially anti-poor prejudice based on false assumptions about the ability and reliability of people with low-income backgrounds

²⁰ G. S. Becker, *The Economics of Discrimination* (Chicago, Illinois, University of Chicago Press, 1957); R. A. Epstein, *Forbidden Grounds: The Case against Employment Discrimination Laws* (Cambridge, Massachusetts, Harvard University Press, 1995).

²¹ C. R. Sunstein, “Why markets don’t stop discrimination”, *Social Philosophy & Policy*, vol. 8 (1991).

²² Penelope Lockwood and Ziva Kunda, “Superstars and me: predicting the impact of role models on the self”, *Journal of Personality and Social Psychology*, vol. 73, No. 1 (1997).

²³ Empirical studies show that discrimination against job-seekers who are long-term unemployed is primarily to be explained by the employer’s belief that long-term unemployment betrays a lack of motivation. See Eva Van Belle and others, “Why are employers put off by long spells of unemployment?”, *European Sociological Review*, vol. 34, No. 6 (2018).

²⁴ Dylan Glover, Amanda Pallais and William Pariente, “Discrimination as a self-fulfilling prophecy: evidence from French grocery stores”, *The Quarterly Journal of Economics* (2017).

²⁵ Maria Cadinu and others, “Why do women underperform under stereotype threat?”, *Psychological Science*, vol. 16, No. 7 (2005).

²⁶ Claude M. Steele and Joshua Aronson, “Stereotype threat and the intellectual test performance of African Americans”, *Journal of Personality and Social Psychology*, vol. 69, No. 5 (1995).

²⁷ Karla Hoff and Priyanka Pandey, “Discrimination, social identity, and durable inequalities”, *American Economic Review*, vol. 96, No 2 (2006).

may gradually become a form of “statistical discrimination”: an economizing device that allows for decisions to be made with less effort based on generalizations about the relationship between poverty and ability.²⁸ In the case of people who experience long-term unemployment, this is further reinforced by “rational herding”: the assumption by prospective employers that a job-seeker must have been assessed by other employers and that there must have been a reason why the candidate was not hired.²⁹ The law must intervene to ban such discrimination as a major barrier to ensuring equal opportunities for people in poverty.

III. Socioeconomic disadvantage as a “suspect” ground in anti-discrimination law

15. In both international law and domestic legislation, the prohibition of discrimination has generally focused on status-based discrimination, prohibiting discrimination on grounds such as sex, race or ethnicity, religion, age, disability or sexual orientation. These grounds are deemed particularly “suspect” because they are largely inherited and immutable, making any difference of treatment based on such characteristics particularly unacceptable. Moreover, the categories of persons protected by such prohibitions have traditionally been subjected to prejudice, which calls for legal protection.

16. These traditional non-discrimination requirements play a major role in the fight against so-called “horizontal” inequalities, that emerge between different groups of society. Recognizing horizontal inequalities is essential in the fight against poverty, since victims of discrimination on the grounds of status are disproportionately represented among people living in poverty.³⁰ However, traditional status-based anti-discrimination norms are less effective at addressing “vertical” inequalities that exist between different percentiles of the population ranked by income or by wealth. This is the case especially in societies where the correlation is relatively weaker between membership in a group defined by certain characteristics, such as sex, ethnicity or religion, on the one hand, and socioeconomic condition on the other hand.³¹ Existing frameworks are ill-equipped to address socioeconomic disadvantage as such, when it does not square neatly with status-based disadvantage. Discrimination on the grounds of socioeconomic background should be treated as a specific suspect ground in anti-discrimination frameworks.

A. Poverty as a source of discrimination

17. Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights mentions “social origin” and “property” (in French: “fortune”; in Spanish: “posición económica”) among the prohibited grounds of discrimination, alongside,

²⁸ E. S. Phelps, “The statistical theory of racism and sexism”, *American Economic Review*, vol. 62, No. 4 (1972); K. J. Arrow, “The theory of discrimination”, *Discrimination in Labor Markets*, vol. 3, No. 10 (1973). See also D. J. Aigner and G. G. Cain, “Statistical theories of discrimination in labor markets”, *Industrial and Labor Relations Review*, vol. 30, No. 2 (1977).

²⁹ Felix Oberholzer-Gee, “Nonemployment stigma as rational herding: a field experiment”, *Journal of Economic Behavior & Organization*, vol. 65, No. 1 (2008).

³⁰ S. Fredman, “The potential and limits of an equal rights paradigm in addressing poverty”, *Stellenbosch Law Review*, vol. 22, No. 3 (2011).

³¹ R. Uprimny Yepes and S. Chaparro Hernández, “Inequality, human rights, and social rights: tensions and complementarities”, *Humanity*, vol. 10 (2019); S. Ganty, “Poverty as misrecognition: what role for anti-discrimination law in Europe?”, *Human Rights Law Review*, vol. 21 (2021).

inter alia, race, colour, sex, language or religion.³² The Committee on Economic, Social and Cultural Rights notes that “discrimination may cause poverty, just as poverty may cause discrimination”,³³ and it insists that such grounds should be included in the anti-discrimination framework adopted by the States parties to the Covenant.³⁴

18. In its general comment No. 20 (2009), on non-discrimination in economic, social and cultural rights, the Committee reiterated that:

Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person’s social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places.³⁵

19. While article 2 (2) of the International Covenant on Economic, Social and Cultural Rights speaks of “social origin”, the Committee refers more broadly to “a person’s social and economic situation”. Indeed, this expression (which also appears in article 1 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families), or that of “socioeconomic disadvantage”, is clearer because “social origin” is generally interpreted as referring to a person’s “inherited social status”,³⁶ thus strongly overlapping with “birth” (which the Committee on Economic, Social and Cultural Rights interprets as including “descent, especially on the basis of caste and analogous systems of inherited status”).³⁷

20. “Socioeconomic disadvantage” is also preferable to the reference to “property” or to “social condition”, since “socioeconomic disadvantage” is asymmetric: it

³² This is also reflected in a number of regional human rights instruments. The African Charter on Human and Peoples’ Rights prohibits discrimination in the enjoyment of the rights and freedoms of the Charter, inter alia, on grounds of “social origin” and “fortune” (art. 2). Article 1 (1) of the American Convention on Human Rights provides for the right to equality and non-discrimination on the basis of, inter alia, “social origin”, “economic status” and “any other social condition”. In Europe, both the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights refer to “property” as well as “social origin” in their respective anti-discrimination provisions, and the European Social Charter refers to “social origin”. The European Committee of Social Rights considers that the non-discrimination clause of the European Social Charter (art. E) “obviously includes non-discrimination on grounds of poverty” (European Committee of Social Rights, *Statement of interpretation - article 30* (2013); see European Committee of Social Rights, *Central Union for Child Welfare v. Finland*, 11 September 2019, complaint No. 139/2016 (discrimination where access to early childhood care and education is more limited for households where one parent is not in full-time employment), or European Committee of Social Rights, *International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium*, 9 September 2020, complaint No. 141/2017 (no discrimination, although children with a low socioeconomic background are disproportionately affected by the lack of inclusive education for children with intellectual disabilities)). The Arab Charter on Human Rights refers to “social origin” and “wealth”.

³³ E/C.12/2001/10, para. 11.

³⁴ See, for example, E/C.12/CAN/CO/6, para. 17.

³⁵ With regard to the houseless, see A/HRC/31/54, para. 39.

³⁶ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 24. See also Martha Jackman, “Constitutional contact with the disparities in the world: poverty as a prohibited ground of discrimination under the Canadian Charter and Human Rights Law”, *Review of Constitutional Studies*, vol. 2, No. 1 (1994); and S. Fredman, “The potential and limits of an equal rights paradigm in addressing poverty”.

³⁷ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 26. See also T. Kadar, “An analysis of the introduction of socio-economic status as a discrimination ground”, Equality and Rights Alliance, 2016.

protects people in poverty or who have low incomes from discrimination, without discouraging measures that would seek to remedy existing inequalities by imposing particular disadvantages or burdens on high-income or wealthy individuals.

21. A review conducted for the mandate of the Special Rapporteur in November 2020 found that, globally, 66 constitutions make explicit reference to economic disparities, and another 41 refer to social disparities or a related concept in their constitutional equality or non-discrimination clauses.³⁸ Poverty as such is increasingly invoked in anti-discrimination frameworks. In Canada, the Charter of Human Rights and Freedoms of Quebec now includes “social condition” as one of the prohibited grounds of discrimination. The Quebec Human Rights Commission has defined this prohibition as “referring to a rank, a social position, or a class attributed to someone mainly on the basis of their level of income, their occupation, and their education”.³⁹ On this basis, employers making adverse decisions on the grounds that a person receives social aid or on their type of residential tenure, or landlords refusing to rent an apartment to a person who depends on social assistance owing to that person’s presumed inability to pay, have been considered to be committing discrimination.⁴⁰

22. In France, a reference to “social precarity” (“précarité sociale”) was introduced into the legal anti-discrimination framework in 2016, following the societal debate launched after a family in poverty was expelled from a museum by security guards who considered that their odour might be disturbing other visitors. Discrimination on grounds of poverty (defined as economic vulnerability (“la particulière vulnérabilité résultant de sa situation économique, apparente ou connue de son auteur”)) is now defined as a criminal offence and prohibited in the Labour Code.⁴¹ This legislative amendment was adopted in part because the stigma facing people in poverty explains a high level of non-take-up of rights, and as a response to the phenomenon of “povertyism”.⁴² It allowed the French Ombudsman (Défenseur des droits) to condemn providing children in a school canteen with a meal different from that served to other children when their parents hadn’t paid the school meals fee,⁴³ or a mayor’s refusal to allow children to register for school because they were living in an informal settlement from which they had to be expelled.⁴⁴

23. In South Africa, the 1996 post-apartheid Constitution’s Bill of Rights lists “social origin” among the suspect grounds of differential treatment, an expression that has been interpreted to include class;⁴⁵ indeed, since the list of protected grounds is open,⁴⁶ class-based differences of treatment might also be used in a discrimination claim by people in poverty, even unrelated to descent or birth, as the expression “social origin” may imply. Indeed, the Promotion of Equality and Prevention of Unfair Discrimination Act, which gives effect to section 9 of the Constitution, extends the prohibition of discrimination, in addition to more traditional “suspect” grounds related to status, to “any other ground where discrimination based on that other

³⁸ The text of constitutions was analysed via the English translations available at www.constituteproject.org/?lang=en.

³⁹ J. C. Benito Sanchez, “Towering Grenfell: reflections around socioeconomic disadvantage in antidiscrimination law”, *Queen Mary Human Rights Law Review*, vol. 5, No. 2 (2019).

⁴⁰ Ibid.

⁴¹ Law No. 2016-832 of 24 June 2016.

⁴² Senate of France, report No. 507 of Philippe Kaltenbach, 10 June 2015.

⁴³ Défenseur des droits, decision No. 2018-063, 22 February 2018.

⁴⁴ Défenseur des droits, decision No. 2021-001, 21 January 2021.

⁴⁵ Constitutional Court of South Africa, *Mahlangu v. Minister of Labour*, case No. CCT 306/19, judgment of 19 November 2020, para. 18. See C. Albertyn and B. Goldblatt, “Equality”, in *Constitutional Law of South Africa*, 2nd ed., S. Woolman and M. Chaskalson, eds. (University of Pretoria, Centre for Human Rights, 2002).

⁴⁶ Constitutional Court of South Africa, *Harksen v. Lane*, case No. CCT 9/97, judgment of 7 October 1997, para. 49.

ground (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a [traditional status] ground" (sect. 1 (1) (xxii) (b)). The Act also contains a "Directive Principle" that requires the Minister to give special consideration to the inclusion of, inter alia, "socioeconomic status" in the list of prohibited grounds (sect. 34), which the Act defines as a "social or economic condition or perceived condition of a person who is disadvantaged by poverty, low employment status or lack of or low-level educational qualifications" (sect. 1 (1) (xxvi)). While this remains to be implemented by the Executive, the Act expressly provides that in the interim nothing prevents a court from determining that "socioeconomic status" constitutes an unlisted ground of discrimination or that it falls within the definition of any of the expressly listed grounds in section 1 of the Act.⁴⁹ In *Social Justice Coalition v. Minister of Police*, where complainants alleged that the resources dedicated to policing poor areas with a high level of crime were insufficient, a Western Cape Province High Court found that "poverty" qualified as such a ground, based on the consideration that poverty "causes or perpetuates systemic disadvantage, undermines human dignity, or adversely affects the equal enjoyment of the rights and freedoms".⁵⁰

B. The role of courts

24. The prohibition of discrimination on grounds of socioeconomic disadvantage empowers courts to contribute to the fight against poverty. In Colombia, the Constitutional Court deemed it discriminatory to provide inferior health benefits for people with lower incomes: it declared that a "precarious economic situation" should not lead to discrimination regarding access to a service as fundamental as health care.⁵¹ In Chile, a civil court in Santiago found discrimination on grounds of "socio-economic condition" (a suspect ground under Chilean law) in a case where the municipality had refused to allow a group of families living in the informal settlements (*pobladores*) to purchase land, due to pressure from people living in a nearby private housing condominium, who claimed that they did not want to bring "drug dealers or criminals" into their neighbourhoods.⁵² A Federal Court in Argentina noted that a lack of access to telephone or Internet services in poor areas diminished the "market competitiveness" of people living in "risk zones", ultimately reproducing the conditions of poverty.⁵³ The Supreme Court of Argentina found that the reduction of train services in disadvantaged areas, compared with wealthier areas, was in violation of the duty of public service providers to provide "dignified treatment" to all users and consumers pursuant to article 42 of the National Constitution.⁵⁴ In South Africa, the Constitutional Court found that exclusion of domestic workers from occupational injury and diseases compensation legislation constituted not only a violation of their right to social security, but also intersectional discrimination on the

⁴⁹ Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, sect. 34 (2). See Gideon Burnett Basson, *Poverty as a ground of unfair discrimination in post-apartheid South Africa*, LL.M. thesis, Stellenbosch University, March 2022.

⁵⁰ Equality Court of South Africa (Western Cape Division), *Social Justice Coalition v. Minister of Police*, case No. EC 03/2016, judgment of 14 December 2018, paras. 61–65. See Delano Cole van der Linde, "Poverty as a ground of indirect discrimination in the allocation of police resources – a discussion of *Social Justice Coalition v. Minister of Police* 2019 4 SA 82 (WCC)", *Potchefstroom Electronic Law Journal*, vol. 23, No. 1 (2020).

⁵¹ Constitutional Court of Colombia, case T-760/2008, sect. 4.4.3.

⁵² Second Civil Court of Santiago de Chile, *Comité de Allegados La Isla/Ilustre Municipalidad de Maipo*, 2016.

⁵³ Federal Civil and Commercial Court of Argentina, case No. 10 101 (2012), 5.a.3.

⁵⁴ Supreme Court of Justice of Argentina, *Unión de Usuarios y Consumidores v. Sec. Transporte*, 104/01, judgment of 24 June 2014.

grounds of race, class and gender.⁵³ Such cases illustrate how the requirement of non-discrimination on grounds of socioeconomic disadvantage can contribute to the effective enjoyment of rights to health care, housing or work, allowing to move beyond the obligation to guarantee the minimum essential content of such rights.⁵⁴

25. Where socioeconomic disadvantage is not explicitly listed among the suspect grounds of discrimination, courts may still be able to extend the protection against discrimination on the basis of that ground where the list of prohibited grounds of discrimination is open-ended. The interpretation given to article 14 of the Constitution of India provides an illustration. This provision guarantees equality before the law in general terms, without any specific reference to socioeconomic disadvantage. In the case of *State of Maharashtra v. Indian Hotel and Restaurants Association (Dance Bars)*,⁵⁵ however, the Supreme Court struck down amendments to the 1951 Bombay Police Act, which prohibited “bar dancing” in establishments on the grounds that such dancing was obscene and served as a pretext for prostitution rackets and criminal activities, while allowing three-star hotels and Government-associated places of entertainment to hold dance performances. This, the Court considered, violated article 14 the Constitution of India as it was based on an unacceptable presumption that the so-called elite (the rich and the famous) had higher standards of decency, morality or strength of character than their counterparts, who had to content themselves with lesser facilities of inferior quality in dance bars; the Court also noted that the ban left women from “socially and economically lower castes and class” in a precarious situation to earn their livelihood.

26. Similarly, in *Senior Divisional Commercial Manager v. SCR Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association*, which concerned the cancellation of licences of small-cart business owners at railway stations after the adoption of a new policy promoting competition, the Supreme Court of India interpreted article 14 based on the concept of “social justice” in the Constitution – the idea that law “is a tool to engineer a peaceful ‘civil revolution’, one of the components of which is a fair deal to the weaker human sector like the working class”.⁵⁶ It emphasized the vulnerable position of those with few or no other employment opportunities and the risk of them becoming even poorer, thus making poverty and its impact central to determining a violation of the Equality Clause.⁵⁷

C. Challenges

27. These advances are noteworthy. However, many jurisdictions are still reluctant to acknowledge the need to address discrimination on grounds of socioeconomic disadvantage.

28. First, it is sometimes alleged that people in poverty are a heterogeneous group and that poverty is not an “identity” that deserves protection or a characteristic that the individual cannot change. While this is correct in principle, poverty is

⁵³ Constitutional Court of South Africa, *Mahlangu v. Minister of Labour*.

⁵⁴ Alberto Coddou McManus, *A Transformative Approach to Anti-Discrimination Law in Latin America* (London: University College London, 2018).

⁵⁵ Supreme Court of India, *State of Maharashtra v. Indian Hotel and Restaurants Association (Dance Bars)*, judgment of 16 July 2013.

⁵⁶ Supreme Court of India, *The Life Insurance Corporation of India v. D. J. Bahadur and Others*, judgment of 10 November 1980.

⁵⁷ Shreya Atrey, “The intersectional case of poverty in discrimination law”, *Human Rights Law Review*, vol. 18, No. 3 (2018). Other judgments are less praiseworthy. In *Rajbala v. State of Haryana*, the Supreme Court of India upheld eligibility criteria for local elections, which included requirements that candidates possess a minimum level of education and have a functioning toilet in their home, requirements that the Special Rapporteur sees as discriminatory.

nevertheless a trap from which individuals may find it difficult to escape.⁵⁸ Negative stereotyping about people in poverty and the imposition of unfavourable treatment on them are common, moreover, and well documented as an obstacle to real equal opportunities for people in poverty: while the “poor” may not be a fixed social group to which an individual is assigned for life, “povertyism” does exist and should be addressed as such.

29. Second, it is sometimes argued that low-income groups affected by certain public policies or individual behaviours should rely on the political process to challenge the exclusion they face. This argument suggests that, if all societies must accept at least a certain degree of inequality, and if markets will inevitably be less hospitable to the groups that have less, courts should not be trusted to make choices about how much inequality is acceptable or decide on the threshold for when a failure to account for the specific circumstances of people in poverty should be deemed discriminatory: such choices, it is argued, are fundamentally political in nature. There is now ample research, however, demonstrating that the wealthiest groups of the population exercise a disproportionate influence on the political system,⁵⁹ and that this phenomenon has become worse with the growth of inequalities over the past 40 years: a study covering 136 countries for the period 1981–2011 showed that “as income inequality increases, rich people enjoy greater political power and respect for civil liberties than poor people do”.⁶⁰ Indeed, it is in part because recipients of public assistance are a “discrete and insular minority” who cannot count on the democratic political process to uphold their interests that in Canada, the Equality Clause of section 15 of the Charter of Rights and Freedoms could be invoked by people living on low incomes.⁶¹

30. Finally, in a number of areas, the distribution of goods and services on the basis of purchasing power is generally seen as acceptable, and it may therefore appear difficult to include the ability to pay as a suspect ground in an anti-discrimination framework. However, making access conditional upon purchasing power in this “commodity space” may result in a violation of human rights where the goods and services in question are essential to the enjoyment of social rights: the Committee on Economic, Social and Cultural Rights has noted that in areas such as the provision of water or electricity, education or health care, privatization should go hand in hand with “public sector obligations” to ensure that profit maximization does not lead to exclude people based on their inability to pay.⁶² Moreover, essential goods and services, such as water and sanitation,⁶³ food⁶⁴ or health care,⁶⁵ should remain affordable to all. The Special Rapporteur has also reminded governments that other socioeconomic rights, such as work⁶⁶ and social protection,⁶⁷ must also be guaranteed without discrimination. In other words, a State may be in violation of its duty to protect from discrimination on grounds of socioeconomic disadvantage if it fails to

⁵⁸ See [A/76/177](#).

⁵⁹ Martin Gilens, *Affluence and Influence. Economic Inequality and Political Power in America* (Princeton, New Jersey, Princeton University Press, 2012).

⁶⁰ Wade Cole, “Poor and powerless: economic and political inequality in cross-national perspective, 1981–2011”, *International Sociology*, vol. 33, No. 3 (2018).

⁶¹ *Federated Anti-Poverty Groups of British Columbia v. British Columbia (Attorney General)*, (1991) 70 B.C.L.R. (2d) 325 (S.C.) (Parrett, J.); *Schaff v. Canada*, [1993] T.C.J. (T.C.C.), para. 52.

⁶² Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), paras. 21–22.

⁶³ *Ibid.*, general comment No. 15 (2002), paras. 12 and 15.

⁶⁴ *Ibid.*, general comment No. 12 (1999), para. 13.

⁶⁵ *Ibid.*, general comment No. 14 (2000), para. 12.

⁶⁶ [A/HRC/50/38/Add.1](#), paras. 9, 32 and 36.

⁶⁷ [A/HRC/50/38/Add.2](#), paras. 24 and 73; [A/HRC/47/36/Add.1](#), para. 17 and footnote 47.

guarantee equal access to essential goods and services, either by regulating private actors, or by guaranteeing income security at a level that is adequate to ensure that all can enjoy the full range of Covenant rights regardless of income.⁶⁸

31. Similarly, the Human Rights Committee found a violation of the non-discrimination clause of article 26 of the International Covenant on Civil and Political Rights in the case of a woman who, owing to the criminalization of abortion in Ireland, had to travel to the United Kingdom of Great Britain and Northern Ireland to secure an abortion. The Committee noted that she had to do so at her own expense, leading her to incur “financial costs that were difficult for her to raise” and obliging her “to travel back to Dublin only 12 hours after the delivery, as she and her husband could no longer afford to stay in the “United Kingdom”. The Committee saw this as a failure of Ireland to “adequately take into account her medical needs and socioeconomic circumstances”, and thus as discriminatory.⁶⁹

32. Moreover, even where allocation based on purchasing power would in principle be acceptable, discrimination on grounds of socioeconomic disadvantage may occur where, despite individuals having an ability to pay, they are denied certain goods or services, for instance, because of the source of their income or because of the neighbourhood where they live. A landlord refusing to rent an apartment to a person relying on social assistance or a service provider refusing to serve certain poor neighbourhoods would be committing such discrimination. In Quebec, for instance, courts have repeatedly found that landlords cannot exclude prospective tenants based on assumptions about the ability of beneficiaries of social assistance to pay,⁷⁰ or of people, such as freelance writers, who hold precarious forms of employment.⁷¹ In Argentina, the Ombudsman of the City of Buenos Aires considered that the refusal of a telephone provider to install Internet service for a person living in an economically deprived area of the city of Mar del Plata, claiming that the area was considered a “risk zone”, resulted in discrimination against the person on the ground of “social position”, which is included in the Argentinian anti-discrimination law.⁷² In the United States of America, people receiving so-called Section 8 vouchers, granted to low-income families and individuals (those who earn less than 50 per cent of the median income in their location), are routinely rejected by landlords:⁷³ 67 per cent of Philadelphia’s landlords refused to consider voucher-holders, and rejection rates are even higher in cities such as Los Angeles,⁷⁴ a practice that contributes to the perpetuation of residential segregation on racial and socioeconomic grounds.⁷⁵ Indeed, it is in reaction to such practices that the New York City Human Rights Law includes “lawful source of income” as part of the protected grounds of discrimination, allowing the New York City Commission on Human Rights to protect tenants or prospective tenants against this form of exclusion, even obliging companies that have been found to discriminate to set aside apartments for residents who use vouchers.⁷⁶

⁶⁸ Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), para. 22.

⁶⁹ CCPR/C/116/D/2324/2013, paras. 7.10–7.11.

⁷⁰ *Leroux et CDPQ v. J.M. Brouillette Inc.*, [1994] JTDPQ no 16; *Reeves et Québec (CDPDJ) v. Fondation Abbé Charles-Émile Gadbois*, [2001] JTDPQ no 13.

⁷¹ *Bia-Domingo et Québec (CDPDJ) v. Sinatra*, [1999] JTDPQ no 19.

⁷² Ombudsman of Buenos Aires, decision 26 of 2013.

⁷³ United States, Department of Housing and Urban Development, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers* (2018).

⁷⁴ Mary Cunningham and others, “Landlords limit voucher holders’ choice in where they can live”, Urban Institute, 20 August 2018.

⁷⁵ Antonia Fasanelli and Philip Tegeler, “Your money’s no good here: combatting source of income discrimination in housing”, *Human Rights Magazine*, vol. 44, No. 3 (2019).

⁷⁶ See www1.nyc.gov/site/cchr/media/lawful-source-of-income-factsheet-for-tenants.page, accessed on 23 May 2022.

IV. A comprehensive anti-discrimination framework

33. The requirement of equal treatment includes four separate norms.⁷⁷ First, States should guarantee equality before the law, ensuring that the regulatory and policy frameworks do not discriminate against people in poverty. Second, States should guarantee the equal protection of the law, ensuring that State agents do not commit such discrimination. This norm should include a duty imposed on public bodies to proactively assess the impact of their decisions on inequalities and poverty. In the United Kingdom for instance, the Fairer Scotland Duty places a legal responsibility on public bodies in Scotland to “pay due regard” to how they can reduce inequalities of outcome caused by socioeconomic disadvantage when making strategic decisions;⁷⁸ and in South Africa, the 2021 Promotion of Equality and Prevention of Unfair Discrimination Amendment Bill proposes to strengthen section 24 of the Promotion of Equality and Prevention of Unfair Discrimination Act to impose on the State and public bodies a duty to “eliminate discrimination and to promote and achieve equality”.⁷⁹ Third, States should regulate private actors, such as employers and private educational institutions, to prohibit discrimination against people in poverty. Finally, States should guarantee to all persons equal and effective protection against discrimination by combating instances of structural or systemic discrimination through affirmative action.

34. At these different levels, legal provisions prohibiting discrimination on grounds of socioeconomic disadvantage should address not only direct discrimination (the adoption of adverse decisions on grounds of low income or wealth), but also indirect discrimination, where reference to seemingly neutral criteria or procedures deliberately or unconsciously affects people in poverty disproportionately. This is the case for criteria such as literacy, unemployment,⁸⁰ houselessness,⁸¹ place of residence (in disadvantaged neighbourhoods) or, as seen above, source of revenue (such as reliance on social assistance) or holding precarious forms of employment.⁸² Procedures that are informal, and leave a large space for subjective assessments by the decision-maker, may be as problematic as the use of formalized criteria, because such procedures may lead to the disadvantaging of people in poverty based on

⁷⁷ See International Covenant on Civil and Political Rights, art. 26.

⁷⁸ See www.legislation.gov.uk/sdsi/2018/9780111038086/body.

⁷⁹ This would imply a duty to “take reasonable measures, within available resources, to make provision in their budgets for funds to implement measures aimed at eliminating discrimination and promoting equality”. The same Bill aims at introducing a duty on public bodies to adopt action plans to promote and achieve equality (new section 26A).

⁸⁰ For instance, a company refusing to finalize a purchase contract with a social assistance recipient based on the assumption that “she had more free time to cause problems given that she was not employed”, was found to be discrimination on grounds of social condition. See Wayne MacKay and Natasha Kim, *Adding Social Condition to the Canadian Human Rights Act* (Final Report for the Canadian Human Rights Commission, 2009), p. 36 (citing *Sejko v. Gabriel Aubé, Inc.*, [1999] JQ no 2858 (CQ)).

⁸¹ United Kingdom, House of Lords, *R (on the application of R.J.M.) (FC) v. Secretary of State for Work and Pensions*, 25 June 2008, para. 42.

⁸² In Ireland, the Equality (Miscellaneous Provisions) Bill 2021, currently pending adoption, defines having a socioeconomic disadvantage as being member of a “socially or geographically identifiable group that suffers from such disadvantage resulting from one or more of the following circumstances: (a) poverty, (b) source of income, (c) illiteracy, (d) level of education, (e) address, type of housing or homelessness, (f) employment status, (g) social or regional accent, or from any other similar circumstance” (see <https://data.oireachtas.ie/ie/oireachtas/bill/2021/6/eng/initiated/b0621d.pdf>). While this provides a useful starting point, it is essential that such attempts to list grounds that may indirectly lead to discrimination against people in poverty include an open clause (such as the reference in the Bill to “any other similar circumstance”) to ensure that apparently neutral criteria or practices can nevertheless be assessed and, if found to result in de facto discrimination, challenged.

prejudice, including unconscious prejudice. A landlord, an employer or a schoolteacher, for instance, may be influenced by an accent, clothing, a way of speaking or non-verbal attitudes, all of which may betray a person's low-income background.

35. In addition, a failure to provide reasonable accommodation to consider the specific individual situation of a person experiencing poverty should be treated as discriminatory. A measure that does not directly discriminate against people in poverty, and that does not result in an indirect discrimination in general, may still fail to account for the individual circumstances faced by people in poverty and their particular vulnerability. In the case of *Lorne Walters v. Belgium*, the Committee on Economic, Social and Cultural Rights found a violation of the right to housing under article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, combined with the non-discrimination clause of article 2 (2), based on the consideration that the individual circumstances of the author were not taken into account, and that the legislation allowing landlords to terminate the lease periodically without having to provide a reason had instead been applied inflexibly.⁸³ The Committee noted that the author had lived in the same apartment for 25 years, had always fulfilled his contractual obligations and was now an older person with limited income who had strong social ties to his neighbourhood. Despite this, no alternatives had been explored that would have allowed him to stay in his apartment.⁸⁴ Belgium, the Committee concluded, should review the legislation allowing the landlord to terminate the lease without cause "in order to introduce flexibility and special measures to avoid a disproportionate impact on the right to adequate housing of disadvantaged groups, such as older persons in a disadvantaged socioeconomic situation".⁸⁵

36. In education and employment, the duty to provide reasonable accommodation is particularly relevant to people in poverty since such individuals often have non-standard life courses: they may have acquired skills or experiential knowledge that are not codified in a formal diploma, for instance, but that nevertheless ought to be valued and recognized.⁸⁶

V. The role of affirmative action

37. Affirmative action policies are essential to breaking the vicious cycles that result from the systemic nature of the discrimination faced by people in poverty. Whereas preferential treatment is well-established with regard to the allocation of goods or services that compensate for poverty or social exclusion, as in means-tested social protection schemes or in the award of scholarships to help overcome financial barriers to education, it is less common and more heavily contested where it is seen to challenge the mainstream narrative about "deservingness", such as access to employment or to the most coveted schools or universities. However, affirmative action is especially needed in such fields if real equality of opportunities is to be achieved.⁸⁷

⁸³ E/C.12/70/D/61/2018, para. 12.8.

⁸⁴ Ibid., paras. 12.4–12.5.

⁸⁵ Ibid., para. 16 (a).

⁸⁶ In the South African context, see Constitutional Court of South Africa, *MEC for Education: KwaZulu-Natal v. Pillay*, case No. CCT 51/06, judgment of 5 October 2007; and Gideon Burnett Basson, *Poverty as a ground of unfair discrimination in post-apartheid South Africa*.

⁸⁷ A/76/177, paras. 44, 49–50 and 60.

38. In the mid-2000s, Israel successfully designed a form of class-based affirmative action to access the country's most prestigious universities.⁸⁸ It determines socioeconomic disadvantage on the basis not only of financial status, but also of neighbourhood and high school attended, family socioeconomic status (including parental education and family size) and "individual and/or family adverse circumstances".⁸⁹ In India, while the Constitution includes various anti-discrimination provisions and bans the practice of "untouchability" (art. 17), it also states that special measures may be adopted "for the advancement of any socially and educationally backward classes of citizens", as a means to reduce social inequalities for members of these groups (art. 15 (4)–(5)). This mainly takes the form of reserved seats in public offices and educational institutions (both public and private), as well as job reservations in the public sector, for the castes and tribes mentioned in articles 341 and 342. In addition however, article 16 (4) of the Constitution now allows for "the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State". Consistent with this constitutional mandate, the Central Educational Institutions (Reservation in Admissions) Amendment Bill stipulates that 27 per cent of seats are reserved for "Other Backward Classes" in publicly funded higher education institutions, a policy which led to significantly improving socioeconomic diversity in universities.⁹⁰

39. Affirmative action is in principle acceptable under international law;⁹¹ indeed, both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights noted that it may be required to combat systemic discrimination,⁹² and domestic law occasionally frames it not as a derogation from the principle of equal treatment, but instead as an implication from that principle.⁹³ Domestic courts have correctly taken the view that such policies do not violate the principle of non-discrimination, but rather should be seen as implementing the mandate to ensure effective equality, in particular for low-income groups. In *Society for Un-aided Private Schools of Rajasthan v. Union of India*, the Supreme Court of India upheld a requirement imposed on private unaided schools under section 12 (1) (c) of the 2009 Right of Children to Free and Compulsory Education Act to fill 25 per cent of the seats in class I with children from weaker and disadvantaged groups, taking into account that the Act sought to remove "financial and psychological barriers which a child belonging to the weaker section and disadvantaged group has to face while seeking admission", and that this objective could justify reasonable restrictions to the economic freedoms of educational establishments.⁹⁴ In Kenya, a High Court allowed a Government policy providing more opportunities in national schools to students from public institutions as opposed to students from private institutions.⁹⁵ It found that this measure was aimed at achieving substantive equality by reducing the inequality gap between the rich and the poor and was consistent with article 27 (6) of the

⁸⁸ Sigal Alon, "Insights from Israel's class-based affirmative action", *Contexts*, vol. 12, No. 4 (2013).

⁸⁹ Sigal Alon and Ofer Malamud, "The impact of Israel's class-based affirmative action policy on admission and academic outcomes", *Economics of Education Review*, vol. 40 (2014).

⁹⁰ Rakesh Basant and Gitanjali Sen, "Quota-based affirmative action in higher education: impact on other backward classes in India", *The Journal of Development Studies*, vol. 56, No. 2 (2020).

⁹¹ For a systematic treatment, see [E/CN.4/Sub.2/2002/21](#).

⁹² Human Rights Committee, general comment No. 18 (1989), paras. 9–10; Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 9.

⁹³ In South Africa, see section 9 (2) of the Constitution and section 14 (1) of the Promotion of Equality and Prevention of Unfair Discrimination Act.

⁹⁴ Supreme Court of India, *Society for Un-aided Private Schools of Rajasthan v. Union of India*, writ petition (C) No. 95 of 2010, judgment of 12 April 2012, para. 10.

⁹⁵ High Court of Kenya at Nairobi, *John Kabui Mwai and Three Others v. Kenya National Examination Council and Two Others*, petition No. 15 of 2011.

Constitution of Kenya, which commits the State to give full effect to the realization of the right to equality and freedom from discrimination by taking legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

40. At a symbolic level, affirmative action recognizes the specific obstacles people in poverty face owing to the persistence of povertyism, thus questioning the mainstream narrative about society distributing outcomes on the basis of “merit”. Increased diversity in different sectors and levels of the professional sphere also provides role models for adolescents and young adults from underprivileged backgrounds and expands their “aspirations window”. It diminishes negative stereotyping of the poor, as shown by the branch of social psychology known as the “intergroup contact theory”.⁶⁶ Gautam Rao found, for instance, that negative prejudice against poor children diminished after elite schools in Delhi were forced to open more spaces to children from low-income families,⁶⁷ and a review of 515 studies found that in 94 per cent of the cases, mere intergroup contact (i.e. increased diversity) reduced prejudice.⁶⁸ Greater diversity also results in better-informed decision-making by institutions as they take into account the lived experiences of people in poverty, which in turn reduces the risk of indirect (including unconscious) discrimination; and the services provided by such institutions will be more attentive to the specific circumstances of low-income people.

⁶⁶ Negative stereotypes will diminish especially where members of different groups cooperate as equals towards common goals: see Gordon W. Allport, *The Nature of Prejudice* (Cambridge, Massachusetts, Addison-Wesley, 1954).

⁶⁷ Gautam Rao, “Familiarity does not breed contempt: generosity, discrimination and diversity in Delhi schools”, *American Economic Review*, vol. 109, No. 3 (2019).

⁶⁸ Thomas Pettigrew and Linda Tropp, “Does intergroup contact reduce prejudice? Recent meta-analytic findings”, *Reducing Prejudice and Discrimination*, vol. 93, No. 114 (2000).

VI. The role of intersectionality

41. Socioeconomic disadvantage exposes individuals to discrimination particularly when combined with another “traditional” status, such as ethnicity or sex. In turn, membership in a group traditionally subject to discrimination exposes the individual to the risk of discrimination, especially when the members live on low incomes or lack wealth. Only by addressing this intersectionality can the experience of those combining various “devalued social identities” be properly understood.⁹⁹ In *Trujillo Calero v. Ecuador*, the Committee on Economic, Social and Cultural Rights found intersectional discrimination on grounds of gender, ill-health, age and economic status due to barriers faced by poor women in accessing social security benefits; it held that intersectional discrimination triggered “special” or “strict” scrutiny.¹⁰⁰ This was also explicitly acknowledged, in particular, by the Inter-American Court of Human Rights, when faced in the case of *Gonzales Lluy y Otros v. Ecuador*¹⁰¹ with the situation of a child who tested positive for HIV following a blood transfusion and consequently faced severe social stigmatization and discrimination. The Court referred, *inter alia*, to the limitations on the child’s access to education as a result of having HIV, being a girl, having a disability, and being a child and living in poverty,¹⁰² and it noted that the accumulation of characteristics resulted in a “specific form of discrimination”.¹⁰³ The case of *Hacienda Brasil Verde Workers v. Brazil*,¹⁰⁴ which concerned the slavery-like working conditions of workers in a cattle ranch, led the Inter-American Court to highlight the central role played by structural discrimination based on “economic position” under article 1 (1) of the American Convention on Human Rights in the discussion of the merits. Relying on an “intersectional” type of analysis, it emphasized the particular victimization and vulnerability of the workers because they were poor, illiterate and Afro-descendants.¹⁰⁵

42. In order to recognize intersectionality, equal treatment legislation should define discrimination as including “a practice based on one or more prohibited grounds of discrimination or the effect of a combination of prohibited grounds”.¹⁰⁶ In South Africa, section 9 (3) of the Constitution provides explicitly for the possibility of using multiple grounds (“one or more grounds”) in a single claim, thus allowing intersecting forms of discrimination to be addressed. This is of particular importance in countries where class, race, and gender inequalities are closely intertwined: the South African Constitutional Court itself recalled that grounds should not be forced “into neatly self-contained categories” since there is often a “complex relationship” between them.¹⁰⁷

⁹⁹ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 17. See also Kimberle Crenshaw, “Demarginalizing the intersection of race and sex: a Black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics”, *University of Chicago Legal Forum*, vol. 1989, No. 1 (1989); Canan Corus and others, “Transforming poverty-related policy with intersectionality”, *Journal of Public Policy & Marketing*, vol. 35, No. 2 (2016); Wayne MacKay and Natasha Kim, *Adding Social Condition to the Canadian Human Rights Act*.

¹⁰⁰ E/C.12/63/D/10/2015, para. 19.2.

¹⁰¹ Inter-American Court of Human Rights, *Gonzales Lluy y Otros v. Ecuador*, judgment of 1 September 2015, para. 298.

¹⁰² *Ibid.*, para. 285.

¹⁰³ *Ibid.*, para. 290.

¹⁰⁴ Inter-American Court of Human Rights, *Hacienda Brasil Verde Workers v. Brazil*, judgment of 20 October 2016.

¹⁰⁵ *Ibid.*, paras. 339–340.

¹⁰⁶ Canadian Human Rights Act, s. 3.1 (as amended in 1998).

¹⁰⁷ Constitutional Court of South Africa, *Harksen v. Lane*, para. 50. See also Constitutional Court of South Africa, *Mahlangu v. Minister of Labour*, and Shreya Atrey, “Beyond discrimination: *Mahlangu* and the use of intersectionality as a general theory of constitutional interpretation”, *International Journal of Discrimination and the Law*, vol. 21, No. 2 (2021).

43. Such formulations ensure that victims of discrimination are protected against discrimination (for instance) on grounds of sex, race or disability, when such grounds operate in combination with their socioeconomic condition, even in circumstances where it would not be possible for such victims to prove that they have been subjected to discrimination based either on traditional status grounds or on poverty alone.¹⁰⁸

44. The recognition of intersectionality is also important where certain schemes provide for a monitoring of the impact of certain policies or regulations on specific groups, in order to prevent disparate impacts on such groups. For instance, the 2005 Mahatma Gandhi National Rural Employment Guarantee Act of India guarantees a minimum of 100 days of employment on public works projects to rural households who have no other source of income. A number of provisions of the Act and its implementing regulations provide that certain groups must be prioritized with regard to access to the programme: this is the case for women (one third of the employment opportunities are set aside for them), as well as for members of “scheduled castes” (Dalits) and “scheduled tribes” (the indigenous communities). Official data therefore track the extent to which women, scheduled castes and scheduled tribes benefit from the programme.¹⁰⁹ Such data, however, provide no indication of the representation of scheduled castes and scheduled tribes among the women who benefit from the programme, or the representation of women among the scheduled castes and scheduled tribes categories. It is possible, therefore, that very few of the women belong to scheduled castes or scheduled tribes, or that women who are members of scheduled castes or scheduled tribes are underrepresented among the participants in the programme coming from these groups. Taking intersectionality into account, in contrast, would ensure that not only women, and not only members of Dalit or indigenous communities benefit, but also that women from such groups benefit from the programme to an extent at least roughly proportionate to their representation within the rural population.

45. As noted by the South African Human Rights Commission in its *Equality Report 2017/18*,¹¹⁰ intersectionality is particularly important to guide affirmative action policies in order to ensure that such policies will not benefit primarily the most fortunate segments of the group targeted as beneficiaries, defined by criteria such as sex or ethnicity, and instead that they take into account both socioeconomic factors and traditional status grounds.¹¹¹ The affirmative action programmes launched in India, for instance, might fail to adequately protect certain groups disproportionately affected by poverty and face historical discrimination, such as Muslims, where such programmes benefit only specific castes or ethnic groups. They may also fail to address intra-caste disparities, with the risk that such programmes will primarily benefit the better-off and better-educated of the groups concerned (the so-called “creamy layer”¹¹²), without helping the most socially and economically

¹⁰⁸ Beth Goldblatt, “Intersectionality in international anti-discrimination law: addressing poverty in its complexity”, *Australian Journal of Human Rights*, vol. 21, No. 1 (2015).

¹⁰⁹ These categories account for 55, 22 and 18 per cent, respectively.

¹¹⁰ See www.sahrc.org.za/home/21/files/SAHRC%20Equality%20Report%202017_18.pdf.

¹¹¹ E/CN.4/Sub.2/2002/21, paras. 11–12 and 15.

¹¹² In *State of Kerala v. N. M. Thomas* (1976), Justice V. R. Krishna Iyer noted that one danger of the reservations system is that “its benefits, by and large, are snatched away by the top creamy layer of the ‘backward’ caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake” (at 363). In *Indra Sawhney and Others v. Union of India* (1992), the Supreme Court of India took the view that the reservation in favour of “Other Backward Classes” should not extend to those who are already “highly advanced socially as well as economically and educationally”. This mandate was later clarified, most notably in the cases of *Indra Sawhney and Others v. Union of India* and *Jarnail Singh v. Lachhmi Narain Gupta*.

disadvantaged.¹¹³ Indeed, it was in order to remedy this that the reservations system was extended to the “Other Backward Classes” in 1990, thus introducing socioeconomic criteria to the definition of the target population of affirmative action, and the Constitution of India was amended in 2019 to introduce a “special provision for the advancement of any economically weaker sections of citizens”.¹¹⁴ This represents a step forward in the fight against poverty-based discrimination, as it recognizes that caste can no longer be the sole criterion for detecting social backwardness. At the same time, it is essential that, as long as caste-based discrimination persists, specific castes-based affirmative action programmes be maintained: the fight against poverty-based discrimination should supplement, not undermine, the fight against other forms of discrimination.¹¹⁵

VII. Conclusion

46. States should ensure their anti-discrimination framework effectively prohibits discrimination on grounds of socioeconomic disadvantage: rules that directly or indirectly discriminate against people in poverty, or that do not provide for the necessary flexibility to accommodate the specific circumstances they face, should be revised; public authorities should not be allowed to commit such forms of discrimination; private agents (landlords, employers, private schools and hospitals) should face similar prohibitions; and affirmative action should be considered in order to address the systemic nature of the discrimination people in poverty face. This would acknowledge the reality of povertyism, as well as the need to effectively remove the obstacles people in poverty face in areas such as housing, employment or education.

47. Three provisos are in order, however. First, for courts to effectively protect people in poverty from discrimination, they need to be accessible. In addition to the provision of legal aid to help overcome barriers that result from the cost of litigation, the creation of specialized courts specifically constituted to treat cases of discrimination may be considered. In South Africa, the 2000 Promotion of Equality and Prevention of Unfair Discrimination Act established “Equality Courts” to improve access to justice for victims of discrimination, providing a quick and inexpensive avenue for redress.¹¹⁶ This solution inspired the Indian Centre for Legal and Policy Research to include the same in its draft Equality Bill,¹¹⁷ and it could inspire others.

48. Second, neither the prohibition of discrimination on grounds of socioeconomic disadvantage, nor pro-poor affirmative action policies specifically, should be seen as a substitute for policies that provide low-income individuals with the kind of support that would ensure real equality of opportunities. In India, for instance, even with reservation policies in place, it was noted that gaps remain in pre-college preparation, college participation and college academic performance: disadvantaged students require improved guidance before and throughout higher education.¹¹⁸ Even the more robust of anti-

¹¹³ U. Bhojani and others, “Affirmative action, minorities, and public services in India: charting a future research and practice agenda”, *Indian Journal of Medical Ethics*, vol. 4 (2019).

¹¹⁴ Constitution 103rd Amendment Act, 2019.

¹¹⁵ See, in the context of Nepal, [A/HRC/50/38/Add.2](#), paras. 22–30.

¹¹⁶ See Dana Kaersvang, “Equality courts in South Africa: legal access for the poor”, *Journal of the International Institute*, vol. 15, No. 2 (2008).

¹¹⁷ Centre for Legal and Policy Research, “The Equality (Prohibition of Discrimination) Bill”, 8 January 2021.

¹¹⁸ Surendrakumar Bagde and others, “Does affirmative action work? Caste, gender, college quality, and academic success in India”, *American Economic Review*, vol. 106, No. 6 (2016).

discrimination frameworks does not diminish the need for investments in education, housing or social protection to break the cycles that perpetuate poverty.¹¹⁹

49. Finally, the prohibition of discrimination on grounds of poverty in areas related to the enjoyment of socioeconomic rights such as housing, education or employment should not distract from the urgent need to address imbalances in political power. In India, affirmative action was extended to electoral quotas in order to ensure a more balanced representation in public office, helping to fight caste-based discrimination: such quotas reduced street exclusion by one fifth and achieved some redistribution in public office.¹²⁰ In addition to improved access to jobs and education, another advantage of these policies, according to the International Dalit Solidarity Network, is that they “have provided some space and confidence for Dalits and have made them more assertive of their rights”.¹²¹ It is this space and this confidence that must urgently be created.

¹¹⁹ [A/76/177](#). See also G. Calvès and Diane Roman, “La discrimination à raison de la précarité sociale: progrès ou confusion?”, *Revue de droit du travail* (2016).

¹²⁰ Victoire Girard, “Don’t touch my road. Evidence from India on affirmative action and everyday discrimination”, *World Development*, vol. 103 (2018).

¹²¹ International Dalit Solidarity Network and others, “Caste-based discrimination in India: civil, political, economic, social and cultural rights of Dalits in India”, 2008, p. 4.