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Access to justice through the obligations developed by the United Nations Human Rights treaty bodies

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Abstract: *Access to justice is not a new theme in the academic literature, and there are several approaches to the subject. Nevertheless, the objective of this article is not the analysis of access to justice in theory. Instead, it aims to reflect on it as a human right. Indeed, there is a close link between human rights violations and the need for remedies and/or access to justice mechanisms in general. In addition, the consideration of access to justice as a human right in itself and a precondition for all other human rights leads us to investigate the specific state's obligations. Hence, the article focuses on the general comments/recommendations of UN treaty bodies, as they represent the authoritative interpretation of legally binding treaties, consequently establishing consolidated positions on the state's obligations regarding access to justice. The article's objective is, in a legal analysis, to identify the precise duties encompassing the right to access justice. By recognizing these obligations, the article aims to systematize some trends in their evolution, striving to pinpoint which vectors drive such tendencies, with a brief contextualization in the studies on the renewal waves of access to justice. Finally, after acknowledging these obligations/standards, their implications for realizing the right to access justice in practice from the perspective of states, treaty bodies, victims, and other human rights actors, are reflected upon.*

Key words: *Access to justice, remedies, human rights treaties, UN treaty bodies, vulnerability*

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1. Introduction

Access to justice is a theme that is not new in the academic literature, and there are several approaches to the subject. For example, authors such as Paterson (2011), Garth (2015), Alves (2005), and Esteves (2017), who are the coordinators of the Global Access to Justice Project (n.d), are aligned with the legacy of the Florence Access to Justice Project and continue to develop worldwide research on access justice in its procedural and material perspectives. This background also relates to the debate on the empowerment of the poor in the ambit of the UN (United Nations), whose Commission on Legal Empowerment of the Poor (2008) produced reports covering a broad range of issues, including access to justice. In this sense, the development of legal aid for poor persons put the obstacles people face to access justice in practice at the centre of the discussions, and later on, other barriers concerning varied vulnerabilities are taken into account (Global Access to Justice Project, n.d.).

This approach allowed the perception of renewal waves of access to justice, which are briefly contextualized in section 1 of this article (as explained later on). Nevertheless, the objective of this article is not to analyze access to justice in theory. Instead, it aims to reflect on it as a human right in practice.

Considering access to justice as a right requires a legal analysis of its content. Indeed, there is a close link between human rights violations and the need for remedies, as in art. 2.3 of ICCPR (International Convention on Civil and Political Rights). Additionally, the consideration of access to justice as a human right in itself and a precondition for all other human rights (CMW 2022 §53; 2017,§14), as part of the rule of law and good governance (CEDAW 2015 §1), leads us to identify specific obligations of states.

In this manner, the article concentrates on building a legal overview of the precise duties of states that encompass the right to access to justice. Plus, by recognizing these obligations, the article aims to systematize some trends in their evolution, striving to pinpoint which vectors drive such tendencies. Finally, when acknowledging these sets of obligations/ standards comes the question of the following implications for realizing the right to access to justice in practice.

The article's envisioned hypothesis is that the recognition of trends in the work of UN Committees about access to justice, in its different angles, leads to the specification of standards regarding States' obligations that comprise the right to access to justice more as a right in itself, rather than a fragmentary accessory right. Such a result could allow an overview of access to justice as a multifaceted right as a whole.

Hence, the article focuses on the GCs/GRs (General Comments/ General Recommendations) of UN Treaty bodies, namely, HRC (Human Rights Committee), CERD (Committee on the Elimination of Racial Discrimination), CESCR (Committee on Economic, Social and Cultural Rights), CEDAW (Committee on the Elimination of Discirmination Against Women), CAT (Committee Against Torture), CRC (Committee on the Rights of the Child), CMW (Committee on the Protection of the Rights of All on Migrant Workers and Members of Their Families). CRPD (Committee on the Rights of Persons with Disabilities), and CED (Committee on Enforced Disappearances/International Convention on Enforced Disappearances). Notwithstanding the presence of relevant trends in concluding observations and individual communications, the study of GCs/GRs brings a pertinent examination of consolidated positions on the matter, as they are the authoritative interpretation of legally binding documents and, as such, provide a guide for the activities of treaty bodies, states, and other human rights actors, especially from the viewpoint of the victims of human rights violations.

The GCs/GRs were approached by using the software Orange (DEMSAR *et al.* 2013), in which keywords linked with the topic enabled the finding of texts with more relevant elaborations on the subject. The database https://lszoszk.pythonanywhere.com/ was also used for this aim. Once the main GCs/GRs were identified, a further examination was made.

Although the aim of the article is not a theoretical discussion on renewal waves of access to justice, a brief contextualization of this perspective (section 1) was, indeed, useful to shed light on the trends/standards of obligations while examining the GCs/GRs, which enabled the recognition of a broader universe of state's duties beyond the judicial field. On the other hand, it was useful to somehow keep the division between civil/ political rights' TBs (sections 2 and 3 – HRC and CAT), all other TBs (Treaty Body) whose gaze is on all human rights targeting specific persons/ groups (section 4 - CRPD, CERD, CEDAW, CRC, CMW, and CED[1]), and the economic and social rights viewpoint (section 5 - CESCR), so we could check whether the type of human rights at stake would influence the type of obligations on access to justice, as well as perceive commonalities or differences in the trends.

The importance of the present work resides in a comprehensive vision of standards on access to justice found in the UN treaty bodies, allowing the identification of issues about which the Committees can learn from each other, aiming at creating a compelling and broader interpretation of treaties – which is very important while several states have ratified only a few conventions. Additionally, the reform of the UN treaty bodies monitoring procedure, with the list of issues before states' reports, may allow the

1 CED is cited here because its first GC targets migration.

mainstreaming of certain matters. Plus, the article can give a useful map of the state's obligations, both for practical use by human rights actors and states and for pointing out new paths for further evolution and implications.

2. A Brief Contextualization: The Waves of Access to Justice

Cappelletti and Garth expose the transformation of access to justice in the last centuries. Firstly, in the 18th and 19th centuries, from the liberal perspective of the individual and the judicial proceeding, the impossibility of accessing justice institutions was not a preoccupation for states (Cappelletti & Garth, 1988, 9). Later on, as the "Laissez-faire" societies became more complex, the concept of human rights underwent a profound transformation, overcoming the individual approach to rights and putting into light the positive State's duties to realize social rights (10-11). In this context, access to justice became crucial for all rights because their existence would be meaningless without enforcement mechanisms (11-12). Still, the mere availability of courts or remedies lacked a reflection on what hinders the effective claim.

The same authors theorized about the renewal waves of access to justice due to diverse strategies to redress its barriers. The first wave dealt with "legal aid for the poor", enabling persons to participate fairly in proceedings (Cappelletti & Garth, 1988, 31-46). The second wave refers to the legislative and institutional modifications for collective and diffuse rights (49-67). The third wave involves the reform of legal proceedings to make them easier and more accessible, as well as the possibility of alternative conflict resolution means (64-73).

Ulteriorly, other authors elaborated on further waves of access to justice. When elaborating on the fourth wave, (Economides apud Orsini, 27-28) stresses the relevance of education of justice professionals, considering the ethical and political dimensions of the administration of justice as vectors of transformation of social relations. The fifth wave concerns what Trindade (2006, 426-427) calls "Lato sensu" access to justice, which includes the international judicialization and the legal personality/capacity of any human being in international mechanisms. In turn, the sixth wave, according to Carvalho and Alves (2020), acknowledges the lack of information/education about rights as an obstacle and emphasizes education on rights and the use of technology for inclusion. Finally, the seventh wave, as theorized by Lima (2022, 116-117), proposes the democratization of international cooperation through extra-judicial human rights solutions (in domestic and international fields) involving national and constitutional human rights institutions and civil society in the monitoring of policies, interinstitutional dialogues and legislative solutions.

This overview of the renewal waves stimulates us to have a wide perception of the diverse state obligations concerning access to justice.

In this manner, while investigating the GCs/GRs, it was crucial: to see access to justice beyond the judicial field or remedies; thinking about the several kinds of human rights requiring specific access to justice mechanisms, and their effectiveness. have in mind the obstacles to access to justice (and the responsibility of states to redress them); consider the international human rights environment not only as a set of available mechanisms in the case of violations but also as a public space to foment access to justice initiatives domestically; and underline the importance of education in human rights within and outside judicial/non-judicial bodies; among many other possibilities. It is from this wide viewpoint on access to justice that the article strives to identify the main trends regarding states' duties encompassing the right to access to justice.

3. Access to Justice in the Realm of Civil and Political Rights: Courts and Remedies

The first clear obligation connected to access to justice refers to court remedies, as stated in art.8 of UDHR (Universal Declaration of Human Rights). A second development on remedies deals with their various categories. While UDHR mentions tribunals, the ICCPR opens the way to any "competent judicial, administrative or legislative authorities, or by any other competent authority", although still citing the central role of "judicial remedy" (art. 2.3).

In the articles above, there is a preoccupation solely with the availability of institutions/proceedings that could enforce legislation - and is it frequent, in the HRC's work, generic recommendations in this sense (e.g., HRC 1988,§11; 1986,§10; 1992,§7; 2014,§49-50). In fact, art.14 of ICCPR refers to remedies before independent and impartial courts both in criminal and other types of proceedings and adds minimum guarantees in the criminal field, such as the rights to information, to an interpreter, and to defend himself or through legal assistance, including without payment when needed.

These minimum guarantees indicate that the mere availability of remedies is not enough to protect human rights. They suggest strategies for the persons's fair participation in proceedings in the context of a broad administration of justice (HRC 1984,§§ 5ff.). For that, the HRC extended the above-mentioned guarantees not only to criminal charges but to any procedures "in a suit law" (HRC 1984,§2).

Especially about legal assistance, the HRC acknowledges that its absence can impact fair participation in proceedings and encourages states "to provide free legal aid in other cases" beyond criminal ones (HRC 2007,§10). These cases could involve contracts, property, administrative law, social security, etc (§16).

There is another interesting change in the wording used in GC (General Comment) n.28 (HRC, 2000), on equality between men and women. Firstly, the Committee does not use the word "remedies" isolated but "access to justice and the right to a fair trial", denoting a broader meaning to the state's obligations. In this way, it does not "encourage", but imposes the obligation "to ensure legal aid for women, in particular in family matters" (§18).

In the realm of civil and political rights, where the main target was, at first, stipulating more guarantees in criminal proceedings, we find a movement pushing such protections to embrace other fields in civil proceedings and to emphasize a very important responsibility: to provide legal aid. And the angle of equality and non-discrimination – in this example, gender – strengthens this move.

A further movement concerns the substantive content of decisions. The HRC affirms that the reparation (art. 2.3 of ICCPR) may involve "restitution, rehabilitation and measures of satisfaction, like public apologies, public memorials, guarantees of non-repetition and changes in relevant law and practices", besides punishing perpetrators (HRC 2004,§16).

It is noticed that, in the HRC, the main developments in the states' obligations firstly focus on the availability of remedies when referring to courts or administrative bodies, which could be linked with a liberal perspective; then pushes forward reflections on legal aid and other guarantees in all types of proceedings, in line with the idea of "legal aid to the poor", which is corroborated in a gender perspective, targeting the obstacles; finally, it addresses the substantive effectiveness of decisions on human rights violations and starts to use the term "access to justice" beyond mere "remedies". These trends resonate with some of the renewal waves of justice, primarily with the first and third ones, while striving to redress obstacles to the full exercise of the right to access justice.

4. The Impulse from the Protection Against State's Abuses in the CAT

The preamble of the CAT refers to the UDHR and ICCPR and focuses on the violations of the prohibition of torture and other cruel, inhuman, degrading treatment or punishment committed by the state. In the context of law enforcement and custody activities, persons face a greater risk of human rights violations, which requires detailed access to justice duties to "redress" and enforce "the right to fair and adequate compensation" (art.14.1).

Therefore, besides citing the availability of remedies in both collective and individual dimensions (CAT 2008, §18; 2012, §§ 5, 20), the CAT urges the states to tackle marginalized/vulnerable groups (CAT 2012,§39) and recognizes obstacles to access to justice due to inadequate legislation,

discrimination, inadequate custody of perpetrators, amnesties, lack of legal aid and protection to victims and witnesses, and so on (CAT 2012, §38).

Hence, the Committee imposes obligations on states related to the availability of information about rights (CAT 2008, §13; 2012, §23); legal aid (CAT 2012, §30; 2017, §18.b); participation of victims in proceedings for redress (CAT 2012, §30); training of law enforcement, judicial, and immigration officials (CAT 2012, §35; 2017, §18) human rights offices in police stations targeting women, children, and ethnic/religious minorities (CAT 2012, §35); availability of civil proceedings for reparation besides criminal investigation (CAT 2012, §26); among others.

Additionally, it asseverates that redress mechanisms should avoid revictimization, ensure a non-discriminatory approach, as well as provide culturally sensitive reparation (CAT, 2012, §32). Moreover, the CAT is vigilant about the content of the "compensation" and stresses that it comprises "restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (§6). On the latter, the CAT underlines its "important potential for the transformation of social relations" as it can involve changes in legislation, elimination of impunity and preventive measures (§18).

Even though the Committee relates mostly to civil and political rights (as in HRC), it is interesting to perceive how the CAT builds another perspective by considering the greater vulnerabilities related to the state's enforcement activities and introducing the viewpoint of specific groups. In this way, it determines many other state's obligations, reflecting not only the first wave of access to justice (legal aid), but also the second (collective rights), the fourth (training of personnel and changes in the procedures to avoid discrimination, revictimization, etc), and the sixth (information on rights) waves. Similar approaches based on particular vulnerabilities are found in other committees, as exposed hereafter.

5. The Impulse from the Perspective of Equality and Non-Discrimination

When the committees deal with certain persons/groups from the perspective of non-discrimination and equality, they foment more access to justice-related duties. Truly, in the dimension of equality and non-discrimination, access to justice should consider structural processes that define distinct characteristics of human rights violations to be duly addressed. Plus, since the non-discrimination clause is a crucial element of all human rights that creates a cross-cutting obligation (CESCR 2009, §§1-6) and establishes a "duty to respect, protect and fulfill equality rights" (CRPD 2018, §14), access to justice comes to light as an essential right in an equality angle.

In the example of ICERD (International Convention on the Elimination of all Forms of Racial Discrimination), we notice that access to justice – in the form of "remedies" in art. 6 – is linked with civil, political, social, and economic rights without distinction and includes all kinds of discrimination. The terms "with purpose or effect of nullifying or impairing" the enjoyment of human rights (art. 1.1) denote not only individual and direct discrimination but also structural and institutional forms of racial discrimination (CERD, 2009, §§6-8), which could be redressed by art. 6. Equivalently, the CRPD highlights the importance of access to justice to intervene in "actions or omissions (…) that violate the right to equality and non-discrimination" regarding all human rights (CRPD 2018, §73.h).

Similar synergies between equality/non-discrimination and access to justice, as well as equality before the law, are found in other treaties – e.g., CEDAW, arts. 2. c and 15.2, in a gender viewpoint; CRC, art. 3, through the lens of children's best interest; ICMW (International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families), arts. 18 and 83, on migrant workers; and CRPD, art. 13, about the specific needs of persons with disabilities. In turn, throughout the GCs/GRs, the Committees outline several measures and concerns related to access to justice for particular groups, such as non-citizens, about racial violence and deportation (CERD 2005, §18, 25); Romanies (CERD 2000, §7); women (CEDAW 2015), migrant women (CEDAW 2008, §21); children (CRC 2002; 2003); migrant children (CMW 2007, §§14ff.), disabilities (CRPD 2018, §55.h); among many others.

Furthermore, it is perceived that discrimination imposes several obstacles to access to justice. For example, CEDAW mentions the structural impediments to women to equally access justice mechanisms due to "stereotyping, discriminatory laws, intersecting or compounded discrimination" and omission of states to ensure that judicial mechanisms "are physically, economically, socially and culturally accessible to all women" (CEDAW 2015, §3).

On the other hand, although the ICED (International Convention for the Protection of All Persons from Enforced Disappearance) does not expressly deal with discriminated persons, the CED, in its first GC targeting migration issues, acknowledges discrimination on the grounds of age, race, ethnicity, sex, gender identity, and sexual orientation as a factor of concern (CED 2023, §§8, 8.d, 50). For that, the CED notices that discrimination hinders access to justice, which results in the lack of "participation in the investigation and search", absence of legal aid and language adaptations, and deficiency of "protection and support, and presence during court proceedings" (CED 2023, §8.d).

The main idea in the realm of equality/non-discrimination is the recognition of specific vulnerabilities and the greater importance of

access to justice for discriminated persons/groups, which requires a more consistent state action targeting the obstacles in exercising such a right. Hereafter, we spotlight some of the main duties/features that give broader and stronger contours to access to justice.

5.1 Legal Aid and Co-Related Institutions as a Crucial Element of Access to Justice

From the viewpoint of equality/non-discrimination, there is a consolidated obligation to provide legal aid in criminal, civil, and administrative proceedings, as well as in individual and collective claims (e.g., CERD 2002, §5.u; CERD 2011, §35; CEDAW 2015, §17.a; CEDAW 2008, §24.f; CRC 2003, §24; CRC 2019, §89; CMW 2017, §§16,17.f). Certainly, legal support is crucial to eliminating obstacles to access to justice.

The committees present different features of how this legal aid should be provided. The CRPD introduces the provision of "affordable quality legal aid" (CRPD 2018, §55.h) and "financial support" for it (§52.d), which indicates a more private model. Differently, the CERD obliges the states to institute "free legal help and advice centres" (CERD 2005, §8) and the possibility of partnerships "with associations of lawyers, university institutions, legal advice centres, and NGOs (Non-governmental Organization) specializing in protecting the rights of marginalized communities" (§9). The CEDAW, in turn, adds the specific duty to "institutionalize systems of legal aid and public defence that are accessible, sustainable and responsive (…) in all stages of judicial or quasi-judicial proceedings" (CEDAW 2015, §37.a). Hence, there is an urge for states to create public institutional arrangements for legal aid.

Similarly, some TBs mention the critical role of NHRI (National Human Rights Institution) and Ombudspersons, which should provide specialized services for particular persons/groups, like children (CRC, 2013, §120) and women (CEDAW 2014, §81.e). Moreover, one can identify recommendations to coordinate the activities of NHRI with other "authorities, communities, civil society organizations" also in consultation with "judicial authorities and other organs administering justice" (CERD 2020, §41).

Undeniably, we observe deeper elaborations on legal aid – related, thus, to the first wave of access to justice – as the committees delineate how it should be provided and indicate certain institutions that have a vital role in this regard, pointing to more comprehensive policies/strategies targeting vulnerable persons/groups.

5.2 Information About Access to Justice Mechanisms and Education in human rights

Access to justice mechanisms is meaningless if persons do not have information on rights, remedies, or any other means to claim human

rights. Therefore, the committees underline the responsibility of states to implement education on rights and human rights, aiming at empowerment.

For example, the CERD, on the administration of criminal justice, recommends that states "supply the requisite legal information to persons belonging to the most vulnerable social groups, who are often unaware of their rights" (CERD 2005, §7).

Likewise, CEDAW refers to popularizing information on rights and justice mechanisms through activities for women, with ethnic and language adaptations (CEDAW 2015, §17.c). The Committee also prescribes the inclusion of gender and rights literacy in the schools (2015, §32.c). The CRC, in turn, refers to child-friendly information as crucial for the justiciability of human rights alongside legal assistance (CRC 2003, §24).

Surely, such trends reflect the sixth wave of access to justice, putting information/education not outside, but at the centre of measures concerning this right.

5.3 Redressing Institutional Discrimination and Seeking Structural Changes

Besides indicating the obligations of states to create mechanisms to provide access to justice, the equality and non-discrimination perspective pays attention to the fact that these exact mechanisms can be themselves vectors of discrimination. Such an outlook is evident, for example, when CERD (2020) discusses racial profiling. The committee investigates how justice systems and law enforcement activities inadequately target persons of racially discriminated groups and recommends numerous measures to eliminate these practices. Similarly, the CEDAW notices the discriminatory impacts of "the lack of capacity and awareness on the part of judicial and quasi-judicial institutions to adequately address the violation of women's human rights" (CEDAW 2015, §22).

The recognition of institutional discrimination as an obstacle to the realization of access to justice leads to the creation of other state duties, such as:

a) Training and capacity-building on human rights and non-discrimination for justice professionals and other state officials, aiming at building a non-discriminatory approach about race (CERD 2002, §5.y; 2011, §41; 2020, §42), gender (CEDAW 2013, §38.c; 2014, §§73.d, 87.c; 2015, §29.a), disabilities (CRPD 2018, §55.a, highlighting an intersectional approach), among others;

b) Consideration of the necessary cultural/ethnic and language adaptations – for example, in "non-judicial or para-judicial

procedures for dealing with an offence", especially when it comes to Indigenous peoples (CERD 2005, §36);

c) Consideration of the necessary age adaptations, such as regarding children, guaranteeing a child-sensitive approach in legal procedures (CEDAW 2014, §87.d; CRC 2003, §24; CRC 2019, §40, stressing the intersectional relation between age, gender, and disabilities; CRPD 2018, §51, underlining the intersectional perspective of age and disabilities);

d) Consideration of specific barriers faced by certain discriminated persons, which requires tailored policies and legal arrangements including, for example: the provision of access to justice mechanisms in rural and remote areas (CEDAW 2015, §§16.a); the creation of accessible centers with interdisciplinary legal and social services to address "violence against women, family matters, health, social security, employment, property, and immigration" (CEDAW 2015, §17.f); the establishment of "specialized units within the police, the judiciary, the court system, and the prosecutor's office, as well as specialized defenders" for children's rights (CRC 2019, §106); the provision of a separate legal representation for children when child's views conflict with those of his/her representative (CRC 2013, §§90, 96); the prohibition of deportation/expulsion of "disappeared migrants found alive and their relatives" due to "irregular migratory status" before "the final decision in criminal procedings" as it could result in denial of access to justice (CED 2023, §46); the establishment of "transnational, regional or subregional mechanisms for search for disappeared migrants" aiming at guaranteeing "access to justice for the victims and relatives" (CED 2023, §52); among many other measures;

e) Diversification of the participation of discriminated persons/groups in all decision-making processes, including in judicial and administrative bodies – this obligation is based on the understanding that the change of State's practices depends on the participation of discriminated groups. Besides instructions on participation and consultation (like in CERD 1997, §4.d, on indigenous peoples; CERD 2011, §4.d, on African descents; CERD 2020, §42, on racial profiling), there are recommendations related to the inclusion of professionals from discriminated groups in judicial and non-judicial institutions (e.g., CEDAW 2013, §46.b; CRPD 2018, §81). Furthermore, one can find the strategic role of access to justice to guarantee the participation of discriminated persons in all areas (e.g., CRPD 2018, §66);

f) Ensuring that the content of decisions is non-discriminatory and redress human rights issues in a broad sense – this obligation relates to the duties of states to change the mindset through which

judicial decisions and acts of public officials are taken, ensuring that they do not reproduce but redress discrimination (e.g., CERD 2002, §5.v; CEDAW 2015,§15.c). The Committees also present significant recommendations on the shift of the burden of proof when the applicant establishes a prima facie case of discrimination (CERD 2005, §24; CEDAW 2015, §15.g; CRPD 2018, §73.i).

Also, there is a tendency to widen the scope of decisions redressing violations so that they include, besides punishment, restitution, rehabilitation, satisfaction (both in individual and collective reach), guarantees of non-repetition, and changes in legislation and practices (e.g., CEDAW 2015, §§19.b, 19.f, 19.g; CRC 2013, §24; CED 2023, §44). The CEDAW, when discussing transitional justice, stresses the redressing of violations of economic, social, and cultural rights beyond the punishment of civil and political rights violations.

These trends of obligations involve further reflections in the light of the fourth wave of access to justice. If the aim is to enable access to justice mechanisms to play an important role in the transformation of social relations – which requires redressing discrimination processes – the first task must begin within these mechanisms by training professionals, adapting proceedings, including the participation of discriminated groups, and so on, which shall have the effect of both increasing the access to such systems and improve the quality of decisions.

5.4 Alternative Conflict Resolutions: Challenging the Limits of a Tribunal

Despite the importance of judicial or quasi-judicial mechanisms of access to justice, these means may not always be efficient owing to time, costs, and the subjective and cultural characteristics at stake. Thus, alternative conflict resolutions and awareness-raising activities can be valuable strategies to empower persons to enjoy human rights. In this sense, the CEDAW, in the analysis of harmful practices, requests the states support alternative dispute resolutions from a human rights perspective (CEDAW 2014, §73.b), conjointly with public discussions aiming at a collective agreement to eliminate harmful practices (§76) through the work of stakeholders, institutions and civil society organizations (§77).

The CEDAW also refers to alternative dispute resolution mechanisms and restorative justice processes combined with institutionalized legal aid and public defence (CEDAW 2015, §37). Similarly, the CRC, when elaborating on the best interest of the child, acknowledges that rehabilitation and restorative justice objectives should have a more critical role than the retribution/repression objectives in child justice (CRC 2013, §28). In turn, the CERD mentions the obligation of states to create "centres for conciliation and mediation" (CERD 2005, §8).

In a further step, the CEDAW, in its approach to transitional justice, affirms that, from the angle of women's participation, access to justice should comprise both judicial and non-judicial mechanisms - all of them aiming at ensuring democratic governance and protection of human rights (CEDAW 2013, §75). Such systems and participation should cover "international negotiations, peacekeeping activities and all levels of preventive diplomacy, mediation, humanitarian assistance, social reconciliation, and peace negotiations at the national, regional, and international levels" (§42).

Undeniably, the boundaries of "available remedies" are challenged as long as it is acknowledged that other means of conflict resolution can be equally or more successful than court decisions while empowering people to be protagonists in human rights solutions. Surely, such a viewpoint is in line with the third wave of access to justice. Also, the example brought by CEDAW on transitional justice reflects the possibilities of the seventh wave as long as it diversifies the dialogues among domestic and international mechanisms through non-judicial approaches.

6. The Impulse From the Perspective of Economic, Social, and Cultural Rights

Access to justice in economic, social, and cultural rights is closely linked with the debate on their enforceability and justiciability. The CESCR, when referring to the application of ICESCR (International Convention on Economic, Social, and Cultural Rights) in the domestic legal order, points to the redaction of art. 2.1, which enshrines the progressive realization of economic, social, and cultural rights "by all appropriated means" (CESCR 1998, §1), affirming that the CESCR has a "broad and flexible approach that enables the particularities of the legal and administrative systems of each state." Nevertheless, the Committee clarifies that such flexibility does not withdraw the responsibility of states to provide "appropriate means of redress, or remedies (…) to any aggrieved individual or group" as well as means for "ensuring governmental accountability" (§2), both through judicial or administrative bodies (§3). Further, as solid arguments reinforcing access to justice as an intrinsic aspect of economic, social and cultural rights, it highlights the indivisibility and interdependence of all human rights (§10), the rule of exhaustion of domestic remedies (§3), the redaction of art. 8 of UDHR, and the principle that the state should not "invoke provisions of its internal legislation as justification for its failure to perform a treaty" (§3).

Moreover, while elaborating on the right to equality/non-discrimination, CERD affirms the critical role of remedies (CESCR 1998, §9) and, later on, urges the states to establish "national legislation, strategies, policies and plans" for "mechanisms and institutions that effectively address the individual and structural harms caused by discrimination" in the enjoyment of economic, social and cultural rights (CESCR 2009, §40).

It is not for nothing that, in the CESCR, we find this clear synergy between access to justice and non-discrimination, as in the Committees exposed in section 5. Hence, in the work of CESCR, it is interesting to notice similar developments in the obligation of states.

Firstly, access to justice guarantees are reinforced beyond the criminal field and the mere passive role of states. Surely, issues on the enforceability of rights like the right to health (CESCR 2000, §§59 ff.) and right to work (CESCR 2006, §§48 ff.), as well as the regulations on forced evictions (CESCR 1991, §17; 1997, §13 ff.) and protection against abuses in business (CESCR 2017, §51) are examples located in the field of civil and administrative proceedings which, in its last consequences, can redress the omissions of states. In this sense, the CESCR also accentuates the monitoring of policies and affirms that both omissions and actions hindering the enjoyment of economic, social, and cultural rights are violations of ICESCR, thus requiring adequate remedies (e.g., CESCR 2016, §78-80).

Secondly, strategies to eliminate barriers to access to justice are cited. For that, the recommendations on the right to legal aid and participation/consultation of the implicated persons are strengthened (e.g., CESCR 1997, §15; 2003, §56; 2008, §77). Plus, the role of National Human Rights institutions like National Human Rights Commissions, ombudsman offices, and "defensores del pueblo", among others, with a significant degree of independence, is underlined (CESCR 1998, §2). The CESCR uses a broader meaning to NHRI than that described in the Paris Principles (UN, 1993), which allows different institutional arrangements in this regard[2].

Additionally, the CESCR points to a broader sense of access to justice that includes education and information on human rights and remedies, work on law projects, technical advice, and monitoring of policies through the above-cited human rights institutions (CESCR 1998, §3). Furthermore, there are recommendations for training professionals, like judges and public officials, in a non-discriminatory approach (e.g., CESCR 2005, §21).

A third significant contribution of the CESCR is the preoccupation with access to justice in the context of business activities. It recognizes the possibility of persons claiming negative or positive duties from private actors in several fields, such as "non-discrimination, health-care provision, education, the environment, employment relations, and consumer safety" (CESCR 2017, §4). Accordingly, it underlines the obligation of states to

2 The Brazilian Public Defender's Office, for example, is a unique model of an independent institution provided for in the Federal Constitution (Brazil 1988), comprising a public model of access to justice for persons in vulnerability with a wide judicial and non-judicial mandate described in the Complementary Law n.80/1994 (Brazil 1994). For more, see Alves (2005), Lima (2022), Moreira (2017).

provide access to justice for victims of violation" (§40), and determines certain requeriments, for example: removal of "substantive, procedural and practical barriers to remedies" by "establishing parent company or group liability regimes"; provision of legal aid; the possibility of "class actions and public interest litigation"; facilitation of "access to relevant information and the collection of evidence abroad" (§44); the shift of the burden of proof (§45); access to judicial and non-judicial procedures for indigenous peoples (§46) and the recognition of their "customary laws, traditions and practices" with "legal services" and "training of court officials" on indigenous issues (§52); protection of human rights defenders (§78); criminal liability both for companies, individuals, and authorities (§49), combined with administrative sanctions (§50) and civil remedies (§51); the presence of "labour inspectorates and tribunals, consumer and environmental protection agencies and financial supervision authorities"; and NHRIs to "monitor states' obligations with regard to business and human rights" (§54).

Finally, the CESCR has a constant focus on a broader comprehension of remedies that involve compensation, reparation, restitution, rehabilitation, guarantees of non-repetition, as well as educational programs and prevention measures (CESCR 2003, §55; 2005, §21; 2006, §48), including with intervention of national ombudspersons, human rights commissions and other human rights institutions (CESCR 2008, §77; 2003, §55).

The trends above in states' obligations show how the perspective from economic, social, and cultural rights, as it dialogues with the link between discrimination and their enforceability/justiciability, stimulate new specific duties for states, resonating similar developments found in other committees that presupposed analogous vulnerability perspectives. Still, we underline the thought-provoking debate on the association of access to justice – and its co-related institutions - with monitoring of policies, law projects, and other actions aiming at government's accountability that goes beyond the strict sense of remedies (although remedies play an important role in CESCR's viewpoint). This approach reverberates the debate on the seventh wave of access to justice as long as it opens up possibilities of domestic and international cooperation through the protagonism of such institutions alongside persons claiming human rights.

7. Conclusion

The first outcome from the examination of the UN Committees' consolidated work is that the content of a human right should never be taken for granted. Instead, the development of a human right depends on the ability of several actors in the domestic and international fields to create and recognize more and more obligations to be imposed on states. These obligations are, thus, the specific elements that embody, in practice, a human right.

In the case of the right to access to justice, one can conclude that the UN treaty bodies, in their different angles, have established a very complex set of state duties that are not limited to a liberal view of the mere availability of courts or remedies. In reality, they have covered a wide range of responsibilities involving criminal and civil, judicial and non-judicial fields, including the redress of structural inequalities and the participation of several actors (like NHRIs, NGOs, civil society, etc). They also targeted the participation of persons affected by violations in the process, incorporated dimensions of education and training, and introduced elaborations on alternative conflict solutions. These are just a few examples from the numerous trends explored by the committees that are mapped in this article, showing the importance and reach of such an approach inspired by the work of these bodies.

A second outcome from the analysis herein proposed is inciting a dialogue between the academic/theoretical perspective and the practical, legal approach aiming at the realization of the right to access justice on the ground. In this sense, the brief contextualization on the waves of access to justice (Section 1), as a result of theoretical and interdisciplinary efforts to understand the developments in this area, provided an important lens through which we could find, in the extensive GCs/GRs consolidated understandings, trends on the obligations resonating the renewal waves of access to justice.

Therefore, the debate is not about seeing these waves from a chronological/linear viewpoint but, above all, considering them as different aspects that, through the state's obligations, comprise the right of access to justice as a multifaceted right requiring manifold measures. Additionally - which is even more interesting – acknowledging the right of access to justice in itself as this whole/multidimensional right opens ways to diverse strategies for persons/groups to have specific claims on the matter, independently of which other human right could it be linked to.

A third conclusion refers to the vectors that motivated the development of many states' obligations integrating the right to access to justice. It is perceived that the primary vector consists of the Committees' focus on varied vulnerabilities. In other words, the more attentive the Committees are to specific vulnerabilities, the more sophisticated the obligations regarding access to justice become. When it comes to recognizing these vulnerabilities, the non-discrimination/equality perspective plays a crucial role, as seen mainly in Section 5. Still, in Sections 3 and 4, whose committees dealt mostly with civil and political rights, resonances are found in the evolution of obligations in the moments that these treaty bodies address certain marginalized/disadvantaged persons/groups. In the same way, as long as CESCR refers to both enforceability/justiciability of economic, social, and cultural rights and its close relation with equality/non-discrimination, it can also go further in other varied elaborations on

states' duties. On the other hand, despite the HRC's first focus on courts and remedies, it is interesting to notice that, when it focuses on certain persons – like women – it broadens the guaranties and reinforces an important feature: legal aid in all kinds of procedures.

In summary, the main vector of vulnerabilities turns our gaze not to the type of human right to which the right to access justice could be related, but primarily to the persons/groups for which the right to access justice gains more importance and needs to be adapted. It is in this gaze that we better recognize access to justice as a right in itself, comprising its own sets of state's specific duties/standards.

A further question concerns the implications of the findings on the right to access to justice from the angle of related state's obligations. For the states, the first implication is the duty to design access to justice measures not only for "persons in general" but principally for persons in vulnerability. Consequently, states must redress the obstacles that persons in vulnerability face to access to justice. Surely, the committees designate actions tailored to eliminate these barriers, as exposed in the article. These features involve a complex set of measures that will only be accomplished if states consider access to justice an object of a comprehensive public policy. That is, states must deal with access to justice as a right in itself demanding a far-reaching public strategy comprising precise legislation, governmental planning, and institutional components.

In turn, from the perspective of victims, civil society, and other human rights actors, the recognition of the several obligations shaping the right to access to justice is critical for specific claims involving access to justice in a whole/broad sense rather than in a fragmentary view throughout other human rights. Moreover, it provides a guide for both established consolidated understandings of the obligations comprising access to justice and identifying deficiencies where further evolution is vital.

Furthermore, there are other implications for the committees. The first one connects with the concept of minimum core obligations. Could we think of access to justice as a part of the minimum core obligation of other human rights? The consolidated duties designed in the GCs/GRs illustrate a legal framework to be observed by states. However, there is no specific elaboration about the interplay between minimum core obligations and access to justice, despite the discussions on the latter as an intrinsic element of all human rights. Yet, one can also inquire about the minimum core obligations of the right to access justice. Certainly, these matters suggest directions for future elaborations.

A second implication deals with individual complaints. It is known that access to human rights mechanisms is subject to the exhaustion of

domestic remedies. What should the "exhaustion of domestic remedies" mean, having in mind all the numerous standards on the right to access to justice previously displayed? Undoubtedly, the duties imposed by the treaty bodies point to a substantive evaluation of the exhaustion of domestic remedies that considers both their formal availability and other access to justice obligations – for example, the existence of quality legal aid[3] and information, to name a few. Indeed, pushing the fifth wave of access to justice to its last consequences, the treaty bodies need to make a quite complex analysis of the right to access to justice's parameters in the reality of each country/case. And, if the committees identify that the state did not comply with all its access to justice obligations, the decision could redress this failure alongside the recommendations about the other human rights at stake in the case.

Thirdly, as access to justice as a human right demands the states to establish comprehensive frameworks, it requires that the committees, in their dialogues with states in the monitoring activities, enhance the evaluation of access to justice policies through systematized indicators[4] and appropriate data. In this task, Committees can count on the participation of civil society and other human rights institutions/actors to get qualified data and create conjointly measures to enhance the realization of the right to access to justice domestically – which is, by the way, linked with the seventh wave of access to justice.

In all manners, the main outcome from the analysis herein proposed is the acknowledgement, through an overview of consolidated understandings of the treaty bodies, of a substantial set of obligations that are to be taken seriously by the states and be used strategically by human rights actors and victims, which can continuously be further expanded.

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3 Also, see, e.g, ICHR (Inter-American Court of human rights) (1990).

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