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## *Introduction*

# Situating the Right to Continuous Improvement of Living Conditions and Considering its Interpretations and Applications

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### I. INTRODUCTION

**T**HIS BOOK EXPLORES the meaning, implications, and possibilities of the right to continuous improvement of living conditions, contained in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>1</sup> We ask how the right can be unpacked, interpreted, and applied to respond to complex problems of poverty, inequality, environmental destruction and injustice. As we worked on the chapters, we watched as the unfolding Covid-19 pandemic not only took millions of lives, but worsened poverty and increased joblessness for millions around the world.<sup>2</sup> It has exposed health, housing, educational and many other inequalities, and deepened imbalances between countries of the global North and South in their capacity to weather economic crises and support their citizens.<sup>3</sup> At the same time, the

<sup>1</sup>International Covenant on Economic, Social and Cultural Rights, 16 December 1996, 993 UNTS 3.

<sup>2</sup>UNCESCR, 'Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights' (17 April 2020) UN Doc E/C.12/2020/1.

<sup>3</sup>C Bambra et al, 'The Covid-19 Pandemic and Health Inequalities' (2020) 74 *Journal of Epidemiology and Community Health* 964; S Nanda, 'Inequalities and Covid-19' in JM Ryan (ed), *Covid-19: Volumes I and II* (Routledge 2020) 109.

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bigger existential threat caused by human damage to the climate looms large in its present and future impacts.<sup>4</sup>

What might the right to continuous improvement of living conditions mean in such a context? How should it be understood on a theoretical and philosophical level? And how should it be translated into actual social change? In a world of unsustainable, yet vastly unequal, production and consumption, the right to the continuous improvement of living conditions can seem both naively and dangerously rapacious. At the same time, considering and seeking to embed this right into human rights in a way that responds meaningfully to these problems offers a potential break from a never-ending economic growth model to more sustainable ideas of what it means to be human.

We can use the right to continuous improvement of living conditions as a lens to focus attention both on this marginalised right, and on a number of questions that underlie its content, scope and potential for realisation. Examining the right gives us new ways in which to move beyond polarised debates in human rights. This is particularly the case for debates on whether human rights have anything to offer on questions of economic equality and distributive justice, and whether economic, social and cultural rights are concerned only with minimum standards, or with human flourishing. Considering the right forces us to examine a number of pressing and fundamental socio-legal questions – from why we have lost or turned away from utopian projects in international law, to issues of distributive justice, to fundamental issues of what constitutes a good life and a just international order. To address such questions, we need radical new ways of thinking about old problems, institutions and arrangements, which draw on the grounded and socially embedded work of scholars.

This collection is thus both a practical project with tangible application in developing the content of the right toward its realisation, and an imaginative project that involves critical exploration of what this right means for our understanding of human rights as a broader goal.

In this introductory chapter we situate the right, and the discussions it prompts, both within human rights scholarship, and within international and regional human rights instruments. Following this contextualisation, we draw together some key themes that emerge from the chapters in the collection that seek to recover the right from its largely forgotten status. These themes provide shape to this interpretive project and prompt important future research agendas on the right to continuous improvement of living conditions. We address the following: First, the question of how to interpret this right going forward, within the context of the ICESCR, human rights as a whole, and the wider architecture of international ordering such as through the international

<sup>4</sup>United Nations Human Rights Council, 'Human rights and climate change' (12 July 2019) A/HRC/RES/41/21; N Islam and J Winkel, 'Climate Change and Social Inequality', UN Department of Economic and Social Affairs (DESA 2017) Working Papers, No 152.

financial institutions. Second, we draw out the complex issue of resources. This involves both a fine-grained look at the measurement of poverty, for instance, and a wider discussion of the pressing need to reconsider the current global economic system, in which the structural injustice of human rights violation unfolds. A third theme is the need to define ‘living conditions’ and consider how an expansive meaning informs the right. A final theme we draw out is direction, trajectory and (forward) movement in human rights realisation, and its relation to recovering the right to continuous improvement of living conditions’ radical potential in human rights thought and practice. The right invites us to re-consider questions of the history, current interpretations and critical understandings of human rights, and their (utopian) futures. We conclude with some suggested future directions for work on this important right.

## II. SITUATING THE RIGHT

Article 11(1) enshrines a right to an adequate standard of living in the following terms:

The States Parties to the Present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, *and to the continuous improvement of living conditions*. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. (Emphasis added)

Article 11(1) has been interpreted as an umbrella for a number of separate rights. In particular, food and housing have received significant attention,<sup>5</sup>

<sup>5</sup>On the right to food see CESCR, ‘General Comment No. 12: The Right to Adequate Food (Art. 11)’ (12 May 1999) UN Doc E/C.12/1999/5; Food and Agriculture Organization of the United Nations (ed), *The Right to Food in Theory and Practice* (FAO 1998); B Saul, D Kinley and J Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (OUP 2004) 867–923; OHCHR, Special Rapporteur on the Right to Food <<https://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx>> accessed 16 March 2021. On the right to housing see CESCR, ‘General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)’ (13 December 1991) UN Doc E/1992/23; CESCR, ‘General Comment No. 7: The Right to Adequate Housing (Art. 11.1): Forced Evictions’, UN Doc E/1998/22; OHCHR, Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this context, <<https://www.ohchr.org/en/issues/housing/pages/housingindex.aspx>> accessed 16 March 2021; J Hohmann, *The Right to Housing: Law, Concepts, Possibilities* (Hart 2013). Although the right to clothing has received little attention from the CESCR or other UN actors, there has been some engagement with it: S James, *A Forgotten Right? The Right to Clothing in the Universal Declaration of Human Rights*, (2008), <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.615.860&rep=rep1&type=pdf#page=14>> accessed 7 February 2020; A Shahvisi, E Meskele and G Davey, *A Human Right to Shoes? Establishing Rights and Duties in the Prevention and Treatment of Podoconiosis* (2018) 20 *Health and Human Rights Journal* 53; Saul, Mowbray and Kinley, *ibid* 924–27.

as has an implied right to water and sanitation.<sup>6</sup> The final sentence of the right elaborates State obligations for realising the right, including the necessity of action taken in concert, beyond national borders. However, the last clause of the first sentence – the right to the continuous improvement of living conditions – has been largely ignored. It has not yet received extensive or substantive scholarly engagement, or been fleshed out by the relevant human rights bodies, despite otherwise exponential growth in the scholarship and practice on economic and social rights.

#### A. Consideration of the Right within Human Rights Scholarship

Explicit academic and scholarly attention to the right has been limited to date. This is the case across the leading texts, many of which should be otherwise commended for their rigorous interpretation and analysis of Article 11. For example, a leading Commentary on the ICESCR mentions the right only in a few sentences, and does not engage at all with its content, scope or meaning.<sup>7</sup> Recent handbooks have not picked up the right for analysis.<sup>8</sup> Books specifically on economic, social and cultural rights also fail to engage in a sustained way with this clause,<sup>9</sup> and more general textbooks on human rights have overlooked it.<sup>10</sup> Even those authors who focus specifically on the right to an adequate standard of living, doing much to advance understanding of Article 11, regularly omit any consideration of the right to continuous improvement of living conditions. For example, Eide, a leading expert on the right to an adequate standard of living,

<sup>6</sup> See eg CESCR, ‘General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)’ (20 January 2003) UN Doc E/C.12/2002/11; M Langford and AFS Russell (eds), *The Human Right to Water: Theory, Practice and Prospects* (CUP 2017); I Winkler, *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation* (Hart 2012); N Singh (ed), *The Human Right to Water: From Concept to Reality* (Springer 2016); S Takele Bulto, *The Extraterritorial Application of the Human Right to Water in Africa* (CUP 2014).

<sup>7</sup> Saul, Kinley and Mowbray (n 5) 862–63.

<sup>8</sup> See J Dugard et al (eds), *Research Handbook on Economic, Social and Cultural Rights as Human Rights* (Elgar 2020); C Binder et al (eds), *Research Handbook on International Law and Social Rights* (Elgar 2020).

<sup>9</sup> See eg M Ssenyonjo, *Economic, Social and Cultural Rights in International Law* 2nd edn (Hart 2016); K Young (ed), *The Future of Economic and Social Rights* (CUP 2019); P O’Connell, *Vindicating Socio-Economic Rights: International Standards and Comparative Experiences* (Routledge 2012); G MacNaughton and D Frey (eds), *Economic and Social Rights in a Neoliberal World* (CUP 2018); J Wills, *Contesting World Order? Socioeconomic Rights and Global Justice Movements* (CUP 2017).

<sup>10</sup> Neither Steiner and Alston’s ground-breaking *International Human Rights in Context* nor its successor, engage with the right, although Alston served as the Chair of the CESCR during the years of its most explicit engagement with the right. See HJ Steiner and P Alston, *International Human Rights in Context* (OUP 1996) and P Alston and R Goodman, *International Human Rights* (OUP 2012). It is also omitted from de Schutter’s exacting texts. See O de Schutter, *International Human Rights Law: Cases, Materials and Commentary* (CUP 2010); O de Schutter, *International Human Rights Law: Cases, Materials and Commentary* 2nd edn (CUP 2014).

has not referred to the right as a substantive head of Article 11 in his work.<sup>11</sup> Moreover, a number of important works on the link between human rights and development, a logical area in which to initiate a discussion, particularly given the definition of development as ‘the right of all peoples and individuals to the constant improvement of their well-being’<sup>12</sup> – do not engage with the right.<sup>13</sup>

There are important, if limited, exceptions to this neglect. Craven, an early commentator on the ICESCR, includes discussion of the drafting history of the clause in his authoritative text,<sup>14</sup> and Haugen includes a short, but specific, analysis, concluding that continuous improvement of living conditions is only an element of the right to an adequate standard of living, rather than a substantive right like food, clothing or housing.<sup>15</sup> Haugen’s analysis is based on the grammar of the clause, read in conjunction with the fact that the right ‘has never appeared in the literature as a substantive human right’.<sup>16</sup> Salomon engages with the right in critiquing minimalist approaches to economic, social and cultural rights.<sup>17</sup> And the previous United Nations Independent Expert on Foreign Debt and Human Rights began to engage with the right in the context of mass consumption, and the failure of exponential economic growth to fulfil human rights, in 2019.<sup>18</sup>

An important contribution considering the meaning of the right has also been made by Löfquist.<sup>19</sup> In a 2011 article on climate change, justice and the

<sup>11</sup> A Eide, ‘Adequate Standard of Living’ in D Moeckli, S Shah and S Sivakumaran (eds), *International Human Rights Law* 2nd edn (OUP 2014) 195, 195 (writing ‘[t]his chapter considers the right to an adequate standard of living and its components, namely, the rights to food, housing and health’).

<sup>12</sup> UNHRC, *Right to Development: Report of the High-level Task Force on the Implementation of the Right to Development on its Sixth Session*, UN Doc A/ HRC/15/WG.2/TF/2/Add.2, Annex, Implementation of the Right to Development: Attributes, Criteria, Sub-criteria and Indicators, 8 (8 March 2010).

<sup>13</sup> See eg P Alston and M Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement* (OUP 2005). Vanderbogaerde argues that all elements of a right to development are already present in international human rights. While invoking the definition of the High-level Task Force (n 12), he makes no reference to the right to continuous improvement under ICESCR, and only passing reference to the right to an adequate standard of living. All discussion of improvement is seen through the lens of Article 2(1)’s obligation of progressive realisation. See A Vanderbogaerde, ‘The Right to Development in International Human Rights Law: A Call for its Dissolution’ (2013) 21 *Netherlands Quarterly of Human Rights* 187, 197.

<sup>14</sup> M Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (OUP 1995) 94–95.

<sup>15</sup> HM Haugen *The Right to Food and the TRIPS Agreement: With A Particular Emphasis on Developing Countries’ Measures for Food Production and Distribution* (Brill 2007) 122–23.

<sup>16</sup> *ibid* 122.

<sup>17</sup> M Salomon, ‘Why Should it Matter that Others Have More? Poverty, Inequality, and the Potential of International Human Rights Law’ (2011) 37 *Review of International Studies* 2137.

<sup>18</sup> See UNOHCHR, End of Mission Statement by the Independent Expert on the Effects of Foreign Debt and other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, Particularly Economic, Social and Cultural Rights, Juan Pablo Bohoslavsky, on his Visit to Bolivia (6–15 May 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24607&LangID=E>> accessed 16 March 2021.

<sup>19</sup> L Löfquist, ‘Climate Change, Justice and the Right to Development’ (2011) 7(3) *Journal of Global Ethics* 251.

right to development, he situated the central aspect of the right to development (drawing from the Preamble of the Declaration on the Right to Development) as a ‘comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals’.<sup>20</sup> Although Löfquist makes only passing reference to ICESCR Article 11(1), concentrating instead on continuous improvement in the definition of the right to development, he proceeds to make a careful and close analysis of a right to continuous improvement of living conditions in a world of finite resources.<sup>21</sup> Even if, Löfquist argues, the right to continuous improvement of living conditions can be achieved sustainably – through for example an interpretation that focuses on well-being, rather than material standards (which he argues it can), there still remains a problem. This is the issue of who the right holder is: everyone, only some below a certain threshold, or no one? Löfquist seeks to find a solution to this issue that protects the universality of human rights, while at the same time giving extra weight to the needs of the poorest.<sup>22</sup> For Löfquist, there is no adequate solution to this problem in ethical and analytical terms: all three categories of rights-holder are, for him, problematic. He thus concludes that the Covenant, and the Declaration on the Right to Development, overreach in setting out such a right:

There is no need to claim that we have a right to an ever-increasing improvement. It is enough to claim that every person should have a right to reach a certain minimum level of well-being; an idea that is more in line with the Declaration from 1948, which stresses that we only have a right to an adequate standard of living.<sup>23</sup>

While Löfquist’s analysis rejects the right to continuous improvement of living conditions, it nevertheless provides one of the most explicit analyses of the right in scholarship to date.<sup>24</sup>

Given that the references to, and analyses of, the right to continuous improvement of living conditions can only be characterised as embryonic, the chapters in this collection significantly expand our understanding of the right, and its implications and importance.

## **B. The Centrality of the Right to the Human Rights Project**

Despite the general neglect of the right to continuous improvement of living conditions, the twinned projects of improved standards of living and human

<sup>20</sup> UNGA Res 41/128 (4 December 1986), preamble.

<sup>21</sup> Löfquist is primarily concerned with the issue of energy use and its effects on climate change in this respect. However, his analysis has broader relevance to the question of finite resources and environmental degradation.

<sup>22</sup> Löfquist (n 19) 255–56.

<sup>23</sup> *ibid* 259.

<sup>24</sup> The argument also relates in important ways to broader debates about minimum core obligations and progressive realisation of ICESCR rights, as discussed in a number of chapters in this volume. See discussion below.

rights lie at the heart of the post-war UN project. While the right to continuous improvement of living conditions has become a marginal right, continuous improvement of living conditions was not a marginal concern in twentieth century international law. The presumption that a main goal for States was to continuously improve living conditions through, or by the realisation of, rights was a familiar one for international organisations and institutions. In fact, the right to continuous improvement of living conditions was axiomatic to a broader, social justice-regarding, international framework, as a close reading of a number of international and regional instruments shows.

*i. International Instruments*

To begin with, the link between human rights and better standards of living is explicit in both the Universal Declaration of Human Rights and in the United Nations Charter.<sup>25</sup>

A main aim of the United Nations is set out in the first preambular paragraph of its Charter, which opens: ‘We the peoples of the United Nations, determined ... to promote social progress and better standards of life in larger freedom.’<sup>26</sup> Article 55, on International Economic and Social Cooperation, is phrased:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>27</sup>

The Universal Declaration of Human Rights’ (UDHR) 5th preambular paragraph, referring back to the UN Charter, states that:

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.<sup>28</sup>

These foundational documents of the post-war international order are clearly premised on a mutually reinforcing relationship between better standards of living and human rights.

<sup>25</sup> UN, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

<sup>26</sup> *ibid* preamble.

<sup>27</sup> *ibid* Art 55.

<sup>28</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), preamble.

A number of other international legal instruments also reflect this. For example, the Declaration of Philadelphia, concerning the aims and purposes of the International Labour Organization<sup>29</sup> (ILO) is similarly based on an underpinning assumption of continuous improvement of living conditions twinned with rights. One such framing is in Article III(e), which reads:

III The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve:

- (e) the effective recognition of the right to collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures<sup>30</sup>

This theme remains current in the work of the ILO. The 2008 ILO Declaration on Social Justice for a Fair Globalization, for example, makes similar links between improvement of living conditions, social justice and fundamental rights,<sup>31</sup> though neither the Declaration of Philadelphia nor the 2008 Declaration on Social Justice use the term ‘human rights’.

The United Nations General Assembly has also generated a number of important declarations which interlace improved living conditions and rights. For example, the Declaration on the Right to Social Progress and Development of 1969:<sup>32</sup>

Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals:

- Art 10 ... (c) The elimination of poverty; the assurance of a steady improvement in levels of living and of a just and equitable distribution of income.<sup>33</sup>

The 1986 Declaration on the Right to Development is also an important expression of the link between human rights and better standards of living, articulated strongly in a number of the preambular paragraphs, as well as infusing the text as a whole.<sup>34</sup> Here, development – in the sense of better living conditions – is sutured to human rights enjoyment and fulfilment. Indeed Saul, Kinley and Mowbray write, that, if not a central objective, then at least one intended consequence of the Declaration was to ‘enhance the means, methods

<sup>29</sup>International Labour Organization, Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia), 10 May 1944.

<sup>30</sup>*ibid* Art III(e).

<sup>31</sup>ILO, Declaration on Social Justice for a Fair Globalization, 10 June 2008.

<sup>32</sup>UNGA Res 2542 (XXIV) 11 December 1969.

<sup>33</sup>*ibid*.

<sup>34</sup>(n 20) See eg Arts 1, 2, 3, 6, 8, 10.

and magnitude of international development assistance and cooperation in the realization of economic, social and cultural rights'.<sup>35</sup>

UN-led efforts to implement a right to development continue, and in 2010 the High Level Task Force on the Implementation of the Right to Development expressed the 'core norm' of the right to development as 'the right of all peoples and individuals to the constant improvement of their well-being and to a national and global enabling environment conducive to just, equitable, participatory and human-centered development respectful of all human rights'.<sup>36</sup> The definition of development contained in this document is 'the right of all peoples and individuals to the constant improvement of their well-being'.<sup>37</sup>

There are also links in international trade regimes. For example, the Marrakesh Agreement preamble lists 'raising standards of living' as an objective of economic activity under the WTO,<sup>38</sup> and one commentator has noted, in discussing the right to food and the WTO rules on agriculture, that a right to continuous improvement of living conditions 'could contribute to the harmonious interpretation of the trade and international human rights regimes'.<sup>39</sup>

Focusing specifically on the ICESCR, in addition to Article 11(1) a number of Articles contemplate material improvement as the foundation for realising a right. Art 11(2) on the right to be free from hunger is premised on State obligations to:

11(2)(a) improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.<sup>40</sup>

The right to the highest attainable standard of health also requires '[t]he improvement of all aspects of environmental and industrial hygiene',<sup>41</sup> while the right to education must be underpinned by an adequate standard of living for teachers: 'the material conditions of teaching staff shall be continuously improved'.<sup>42</sup>

<sup>35</sup> Saul, Kinley and Mowbray (n 5) 140.

<sup>36</sup> A/HRC/15/WG.2/TF/2/Add.2 (n 12) Annex at 8.

<sup>37</sup> *ibid.*

<sup>38</sup> Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994, 1867 UNTS 154, preamble.

<sup>39</sup> R Ferguson, *The Right to Food and the World Trade Organization Rules on Agriculture* (Brill 2018) 118.

<sup>40</sup> ICESCR (n 1) Art 11(2)(a).

<sup>41</sup> *ibid* Art 12(2)(b).

<sup>42</sup> *ibid* Art 13(2)(e).

*ii. Regional Legal Instruments*

At the regional level, in the American Declaration on the Rights and Duties of Man<sup>43</sup> there is an explicit link between improvement of living conditions and rights within the right to education, which aims to ‘prepare [a person] to attain a decent life, and to raise his standard of living, and to be a useful member of society’.<sup>44</sup> In addition, the right to ‘betterment’ of whole peoples was a common right in Latin American constitutions, informing the inclusion of social and economic rights in the UDHR.<sup>45</sup>

This is also true of the European Social Charter of 1961.<sup>46</sup> The preamble notes one of the aims of the Council of Europe:

is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms<sup>47</sup>

Here, economic and social progress will be secured by the realisation of human rights. The preamble also notes that States Parties are ‘resolved to make every effort in common to improve the standard of living’.<sup>48</sup> These preambular paragraphs are repeated in the 1996 Revision to the Treaty.<sup>49</sup> The Preamble to the African Charter on Human and Peoples’ Rights reaffirms a pledge ‘to achieve a better life for the peoples of Africa’,<sup>50</sup> and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration acknowledges the role of the ASEAN Intergovernmental Commission on Human Rights ‘as a vehicle for progressive social development and justice, the full realization of human dignity and the attainment of a higher quality of life for ASEAN peoples’.<sup>51</sup> The ASEAN Human Rights Declaration, however, does not include a right that explicitly requires improvement, though it includes a right to development and a progressive obligations clause.<sup>52</sup> Finally, the Arab Charter on Human Rights,<sup>53</sup> adopted

<sup>43</sup> Inter-American Commission on Human Rights, American Declaration on the Rights and Duties of Man, 2 May 1948.

<sup>44</sup> *ibid* Art XII.

<sup>45</sup> See eg U Davy ‘How Human Rights Shape Social Citizenship: On Citizenship and the Understanding of Economic and Social Rights’ (2014) 13 *Washington University Global Studies Law Review* 201, 221.

<sup>46</sup> Council of Europe, European Social Charter, preamble, 18 October 1961, ETS No 035.

<sup>47</sup> *ibid*.

<sup>48</sup> *ibid*.

<sup>49</sup> Council of Europe, European Social Charter (Revised) preamble 5 March 1996, ETS No 163.

<sup>50</sup> Organization of African Unity, African Charter on Human and Peoples’ Right (Banjul Charter) preamble 27 June 1981, CAB/LEG/67/3 rev 5, 21 ILM 58 (1982).

<sup>51</sup> Association of Southeast Asian Nations, ASEAN Human Rights Declaration and Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration (February 2013) at 13, <[https://www.asean.org/storage/images/ASEAN\\_RTK\\_2014/6\\_AHRD\\_Booklet.pdf](https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf)> accessed 16 March 2021.

<sup>52</sup> Association of Southeast Asian Nations, ASEAN Human Rights Declaration, 18 November 2012, Arts 35–37 (right to development); Art 33 (obligations for economic, social and cultural rights).

<sup>53</sup> League of Arab States, Arab Charter on Human Rights, 15 September 1994.

in 2004, while self-consciously distinguishing itself from the UN Covenants and other regional sources, also opens in Article 1(1):

Article 1 The present Charter seeks, within the context of the national identity of the Arab States and their sense of belonging to a common civilization, to achieve the following aims:

1. To place human rights at the centre of the key national concerns of Arab States, making them lofty and fundamental ideals that shape the will of the individual in Arab States and enable him to improve his life in accordance with noble human values.

Considering these legal sources, we can see that some frame better standards of living as necessary underpinnings for the realisation of rights. Conversely, some express the purpose of human rights as enabling a better life. Some see human rights and improved standards of living as *inherently* intertwined.

Continuous improvement of living conditions and the equitable distribution of the world's resources are, therefore, 'part of a much larger post-1945 international effort to situate the eradication of material deprivation within a process of human-centered development'.<sup>54</sup> A *right* to continuous improvement is certainly the most explicit link between human rights and improvement of living conditions, making this a right itself, but it is a small – if important – further step when viewed within this broader context.

Having established that the right to continuous improvement of living conditions is an integral right to the human rights project, while also a neglected one in the interpretative literature, in the next section we draw out four central themes that emerge from the chapters in this collection. These advance the project of giving meaning to the right to continuous improvement of living conditions, and point to a research agenda moving forward.

### III. ORGANISING THEMES AND EMERGING IDEAS

#### A. Interpreting the Right

Pressing questions of interpretation face us in understanding the right to continuous improvement of living conditions since it has received only marginal attention to date. Fletcher's chapter (chapter thirteen) is a call to recognise and support this imaginative work. She reminds us that the work of imagining and actualising what rights might be is socially necessary labour, 'because rights struggle is one of the life-making activities that is routinely denigrated and devalued by the legal and other arrangements of our world'.<sup>55</sup>

<sup>54</sup> Salomon (n 17) 2152.

<sup>55</sup> Fletcher, chapter thirteen in this volume.

The *travaux préparatoires* provide some guidance on States Parties' understanding of the right at the time of drafting, as Hohmann (chapter two) shows, noting that the original emphasis for what ultimately became Article 11(1) was a right to continuous improvement of living conditions, rather than a list of social goods which are now usually foregrounded. Nevertheless, Hohmann notes, the delegates raised a number of interpretative issues which remain unanswered, such as who the rights holder is, and from what baseline improvement should be measured. Graham's chapter (chapter four) delves into both questions in interrogating the relationship between the right and poverty.

There are also important questions about the relationship between the right to continuous improvement of living conditions and other rights, both in the ICESCR and beyond it. Regarding the ICESCR, further work is needed to consider the relationship among the rights in Article 11: an adequate standard of living; food, clothing, housing; and the right to continuous improvement of living conditions, as Lott discusses (chapter seven); and the requirement of international cooperation, critically examined by Campbell (chapter three). The right prompts reflection on other ICESCR rights, too: rights to social security (discussed by Lamarche, chapter six), just and favourable conditions of work (discussed by Goldblatt, chapter eleven) as well as rights to health, education and culture, for example.

The right to continuous improvement of living conditions can help us to understand other rights. Lott (chapter seven) brings the right into dialogue with the also often forgotten right to play in the Convention on the Rights of the Child,<sup>56</sup> using her analysis of both rights to argue against a minimum 'set' of rights which are more important than others. De Paz González (chapter nine) sets out how the right might enrich the Inter-American Court's jurisprudence on social rights, economic equality and the 'vida digna', while Hewitt (chapter ten) brings into focus the potential of the right to critique the Canadian State's approach to its treaties with First Nations peoples. Skogly (chapter eight) questions, meanwhile, the relationship between the right to continuous improvement of living conditions, and the rights of future generations, asking whether it is 'a circle impossible to square'.

Returning to ICESCR, it will be important in advancing our understanding of the right to continuous improvement of living conditions to consider how the right might relate to other interpretive doctrines (of both rights and obligations) developed by the Committee on Economic, Social and Cultural Rights (CESCR). These include the concepts of minimum core obligations, progressive realisation, retrogression and interpretations of the maximum use of available resources. There are important synergies and tensions between the ICESCR's main 'obligations' clause, Article 2(1), and a right to continuous improvement of living conditions, and these are deserving of further attention.

<sup>56</sup>UN Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577, 3.

The lack of clarity around the meaning of the right to continuous improvement of living conditions may have been a factor in the amnesia around it, as Lott argues in chapter seven, and will certainly hamper efforts towards realisation. For this reason, as Lott suggests, the work of the CESCR, scholars and others in providing interpretive or conceptual clarity is vital to the right's recovery into the human rights corpus.

## **B. Resources: How the Right Challenges the Economic System**

A second central theme in the volume is how to interpret and realise the right to continuous improvement of living conditions in the context of poverty, extreme inequality within and between countries, and the resource limits of the earth. In chapter four Skogly makes it clear that by focusing on provision of resources at the levels and in the ways we currently understand these is unsustainable and in fact harmful for future generations. This dilemma requires an acknowledgment that rights' realisation must be informed by a long view of resource use.

Chapter five by Bohoslavsky and Cantamutto provides a devastating examination of how financial capitalism leads to continuous and growing indebtedness that essentially leads to deterioration rather than improvement of living conditions for the majority of the world's population. Increasing financialisation and commodification of services that should be provided by the State has severe implications for the realisation of human rights. The right to continuous improvement of living conditions requires public rather than private resourcing of the means to a better life, and a sharing of responsibility for this resourcing by society rather than further burdening the individual. The impact of reduced State provision due to privatisation, financial crisis and austerity has deepened poverty and the stresses that accompany it across the global North and South.

Graham in chapter four suggests that addressing poverty must be central to the right to continuous improvement of living conditions but this does not result in a minimalistic or unambitious understanding of the radical capacity of human rights to transform structural inequality. He argues that the right requires that poverty be overcome, but that the meaning of poverty must be understood as relative in a given society and may change over time and place. This conception of poverty eradication is also premised on the idea of development as requiring a wider, rights-informed conception of human need that goes well beyond a simple response to income deprivation. Meeting the broader need for 'resources, capabilities, choices, security and power'<sup>57</sup> leads to societies that are fairer and better for all. This value-informed conception of rights-based development is echoed by Fredman in chapter twelve, critiquing

<sup>57</sup> Graham, chapter four in this volume.

the quantitative and insufficiently nuanced measurement built into some of the targets in the Sustainable Development Goals. The right to continuous improvement of living conditions offers a richer understanding of resourcing, informed by the underlying values of the human rights project that can be socially transformative.

In chapter six, Lamarche suggests that the right to continuous improvement of living conditions can operate as a ‘meta right’ to inform the interpretation of other social rights in the Covenant. Her discussion of the right to social security, informed in this way, leads to a stronger and fuller right. It should be used to oppose retrogressive tax credit policies that have emerged in Canada that undermine social protection, leading to deterioration rather than improvement of living conditions. She suggests that the CESCR is adopting this broader reading of the right in its response to Canada.

These and other contributions in the volume point to the significant potential of the right to continuous improvement of living conditions in tackling key resource questions facing our world.

### C. Definitional Questions: What are ‘Living Conditions’?

The limited consideration of the meaning of the right to continuous improvement of living conditions and its open-textured nature make it ripe for definitional interrogation and imaginative interpretation. While there are many questions about the idea of ‘continuous improvement’ as it relates to time frame and notions of perpetual betterment (as discussed below), it is important to consider what is meant by the living conditions the right seeks to improve. A number of the chapters in the volume refuse to assume that living conditions are purely material or reducible to money, bricks, taps or nutrients.

Skogly argues in chapter eight for a focus on aspects of living conditions such as culture, nature, art, social interactions, rest and leisure, to name but a few. We also need to rethink our idea of resources and our use of them within the planetary boundaries – these less tangible goods must inform the meaning and application of the right to the continuous improvement of living conditions.

Understanding what is meant by ‘living’ in interpreting ‘living conditions’ requires a window into the private world of home and community. It is here where care occurs, often profoundly shaped by gender, and where society is reproduced both biologically and socially. In chapter eleven Goldblatt explores how a social reproduction lens offers insight into an interpretation of the right that sees opportunities for improved ways of living where caring activities are shared better and where unpaid work is recognised and valued. Showing how the focus on social reproduction might disrupt fast, linear, and extractivist readings, in chapter thirteen Fletcher raises questions about continuity and timeliness in the right.

In chapter ten, Hewitt powerfully demonstrates that repairing the ongoing damage of colonisation on the lives of Indigenous Peoples must be central to the human rights project. The impact on the lives of Canada's First Nations is evidenced not only in their lack of access to adequate housing, water and employment, but is experienced in the bodies and psyches of women and girls facing systemic violence and children removed from family and community. Indigenous Peoples draw on their own philosophies, laws, traditions and world views of what constitutes a good 'living', often informed by love, care of children and sustainability. Opening the interpretation of the right to continuous improvement of living conditions to such conceptions promises a richer meaning for this and other human rights. It may also orient the right towards reparation for historical harms and acknowledgment of Indigenous self-determination and fairer sharing of resources.

Further chapters develop arguments based on the underlying values informing the right. In chapter twelve, Fredman argues that the right to continuous improvement of living conditions requires attention to the values of positive freedom, substantive equality and social solidarity in exploring whether improvements are being made. The values behind the right to continuous improvement of living conditions are also foregrounded by de Paz González in chapter nine on the jurisprudence of the Inter-American Court of Human Rights on the subject of 'vida digna' or a life lived with dignity. This jurisprudence, emerging from cases concerning Indigenous communities and other vulnerable groups facing discrimination and deprivation, gives attention to environmental issues, spiritual and cultural concerns, alongside issues of health care, housing and land.

All of these approaches to interpreting 'living conditions' force a rethink about what it is we value and, as the next theme shows, how this changes over time.

#### **D. The Question of Direction, Trajectory and (Forward) Movement; and the Right's Radical Potential in Human Rights Thought and Practice**

The assumption of progress or movement toward something better is at the very least inherent in all human rights instruments, motivates countless human rights activists, advocates and scholars, and infuses the international machinery underpinning the international legal order.<sup>58</sup> The chapters in this volume demonstrate

<sup>58</sup> See eg MO Hudson, *Progress in International Organization* (Stanford University Press 1932); R Miller and R Bratspies (eds), *Progress in International Law* (Martinus Nijhoff 2008). See also the much more ambivalent sources on this question: T Skouteris, 'The Idea of Progress' in A Orford, F Hoffmann and M Clark (eds), *The Oxford Handbook on the Theory of International Law* (OUP 2016); K Young, 'Waiting for Rights: Progressive Realization and Lost Time' in K Young (ed), *The Future of Economic and Social Rights* (CUP 2019) 654; S Hopgood, *The Endtimes of Human Rights* (Cornell University Press 2015).

that the right to continuous improvement of living conditions offers important new perspectives on and resources for understanding the meaning of progress, helping to contextualise other forward looking provisions, as well as interpret them within the broader debates of what is meant by improved living conditions and an adequate standard of living.

At the same time, it cannot be denied that the right to continuous improvement of living conditions raises prospects that are not easy to resolve in human rights terms. For example, can it really be said that there is no human rights ceiling? Are all people – including ‘the one per cent’ – entitled to continuously improving living conditions? In this case, what is the threshold for a violation of the right to continuous improvement of living conditions, as Graham asks in chapter four? Or when might the obligation for cooperation in ensuring the right be triggered, as Campbell considers in chapter three? There are related conundrums about whether infinite human rights can have (legal) meaning, and how they can be squared with a finite planet and with the rights of future generations, as Skogly articulates in chapter eight.

These chapters demonstrate how questions of trajectory, progress and movement in human rights realisation are already present and are deeply important, if complex questions.

However, the right also opens up questions of a different order. For example, new avenues for considering human rights’ temporality and timeliness.<sup>59</sup> This possibility is taken up by Fletcher in chapter thirteen, which engages questions of law and time, the nature of continuity and linear progress, and those time-consuming activities seldom ‘captured’ in law’s accounting of time, for the purposes of building a dialogue between ‘rights labourers’.

The right’s always-future orientation points to the need for continual reflection. It invites us to see human rights not directed at a fixed end point, but as a part of an ongoing process of social, political and economic conversation (and/or contestation). These questions of improvement and progress point to the utopian potential of the right to continuous improvement of living conditions. A radical reading of the right suggest that there are always better ways of negotiating the tensions between individuals and the State, among individuals, and among States.

#### IV. UNANSWERED QUESTIONS AND FUTURE RESEARCH AGENDAS

The chapters in this collection are aimed at provoking thought about the possibilities of this under-explored right. They do not claim to be comprehensive

<sup>59</sup> See eg Young (n 58); K McNeilly, ‘The Temporal Ontology of the Human Rights Council’s Universal Periodic Review’ (2021) 21 *Human Rights Law Review*; K McNeilly and B Warwick, *The Times and Temporalities of International Human Rights Law* (forthcoming Hart). See more generally on law and time E Grabham and S Beynon-Jones (eds), *Law and Time* (Routledge 2018).

in their interpretations – in fact human rights interpretations, like the right itself, are a continuous project. It is our hope that, in time, the collection of papers here will be complemented by further research in a number of important areas.

First, while the book raises important questions about the environmental limits of continuous growth, further attention needs to be given to the particular effects of climate change and its implications for rights' realisation. Related to this, the ontological focus on the human as the subject of rights rather than our interdependent location within the ecological system, requires a reorientation of our understanding of living conditions and what it means for these to improve.

Second, the book has given some attention to certain groups such as women, Indigenous Peoples and children. However, the perspectives of other vulnerable groups such as people with disabilities, refugees or older persons might bring new insights into the meaning of the right.

A third avenue for further research is the regional and national human rights applications of the right to continuous improvement of living conditions in the ICESCR or rights closely resembling it at other levels. Likewise, while the collection has been situated in some countries (such as Canada) or regionally (such as the Americas), there would be value in hearing from grounded engagements in other parts of the world and reflections on the right from other cultures and belief systems. While the book has touched on the relationship between the right to continuous improvement of living conditions and other social and economic rights such as social security and work, further engagement with rights to housing, health, education and others will bring new depth to the right. This would be particularly valuable given the complex challenges arising from the impact of the Covid-19 pandemic across the world. Finally, the work we have done here is not academic alone, but is aimed at informing human rights practice. We would very much encourage further work showing how the right can and is being engaged in advocacy to address injustice and create a better world.

The profound hope, by the authors of this collection, is that the excitement informing our project to excavate and illuminate this neglected right, will be infectious in generating new insights into its meaning and potential applications.

