

## **Adequate and Effective Remedies for Economic, Social and Cultural Rights**

**Background briefing paper for the National Taskforce on  
Human Rights Leadership  
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# 1. Introduction

This paper is to inform ongoing discussions of the National Taskforce on Human Rights Leadership in its consideration of adequate and effective remedies under a new statutory framework for human rights. It sets out the principles and standards relating to adequate and effective remedies in international law and gives 4 comparative examples of remedies in South Africa, Colombia, Spain, and Finland.

Remedies for economic, social and cultural rights need to acknowledge that violations of these rights are complex and often respond to structural problems. Violations are often the consequence of a set of policies or practices that are implemented by duty bearers and that affect a diversity of persons. However, sometimes considerable portions of such affected people might not be in a position to access administrative or judicial remedies. Frequently, this is caused by the lack of adequate and effective remedies available to human rights victims.

A lack of adequate and effective remedies for economic, social and cultural rights at the domestic level creates the perception that social policy is a charitable measure rather than part of an obligation to ensure the enjoyment of international human rights obligations.<sup>1</sup> Incorporating economic, social and cultural right into domestic legislation necessarily requires that adequate and effective remedies exist within the national legal system.

It is important to emphasise that remedies require to be both adequate and effective. The element of adequacy of a remedy is mostly concerned with access to justice, where considerations of accessibility, transparency, legal advice and aid, timeliness, affordability, are ensured. The effectiveness of a remedy, not only takes into account the elements of access to justice, but also requires that an appropriate reparation is issued, and that such reparation is complied with by the competent public authority.

## 1.1. General international law standards

The right to access judicial remedies is generally guaranteed in most international human rights treaties, and is considered by some as customary international law.<sup>2</sup>

There is a broad consensus that remedial justice – wiping out the consequences of a wrong – is a general principle of law. It derives from the Roman law principle of *Ubi ius ibi remedium*, which means that for the violation of every right, there must be a remedy. In a practical sense, the principle acknowledges that rights can become meaningless if there are no consequences when they are breached.

Remedies can provide redress for victims, but they also serve to ensure the rule of law. Remedies can serve the community's interest in sanctioning perpetrators and preventing future violations by the same or other wrongdoers.<sup>3</sup> In order to do so, however, remedies need to be effective.

The right to an effective remedy is enshrined both in the International Covenant on Civil and Political Rights (ICCPR),<sup>4</sup> as well as the European Convention of Human Rights (ECHR),<sup>5</sup> among other regional human rights treaties.<sup>6</sup> When interpreting the ICCPR, the UN Human Rights Committee has argued that:

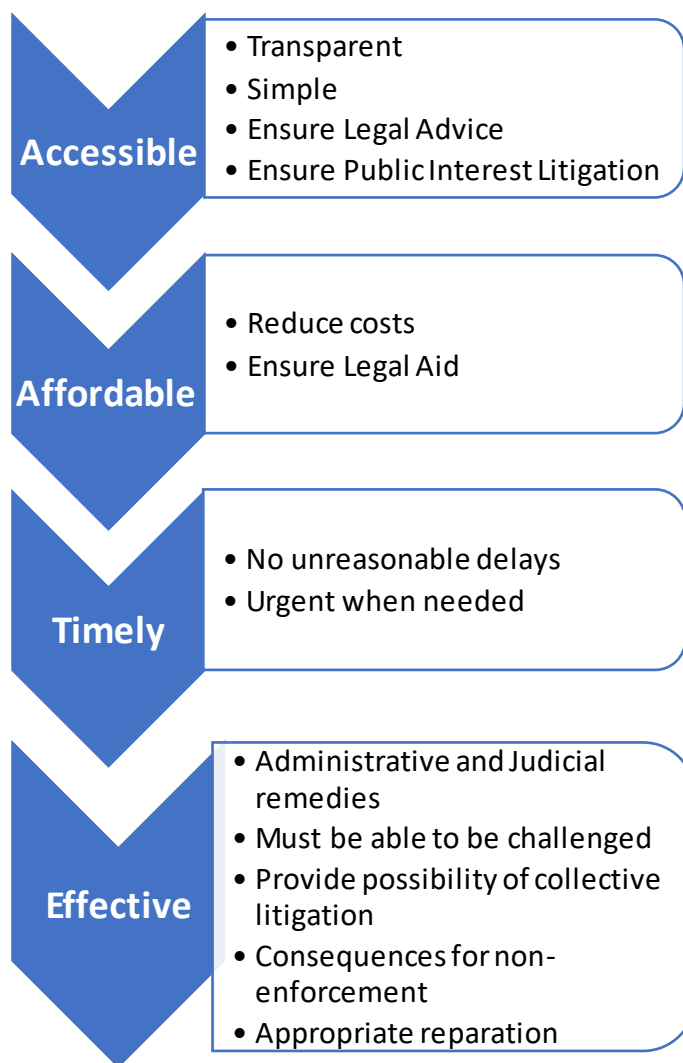
[...] States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children. The Committee attaches importance to States Parties' establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. [...] Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.<sup>7</sup>

In relation to the European Convention, the Court has indicated that a remedy is only effective if it is available and sufficient. It must be sufficiently certain not only in theory but also in practice, and must be effective in practice as well as in law, having regard to the individual circumstances of the case. It is particularly important to stress that, given State's margin of appreciation, the Convention does not require any particular form of remedy. However, the nature of the right at stake has implications for the type of remedy the State is required to provide.<sup>8</sup>

Under these considerations, it is important to stress that – despite the interdependence and interconnection of all human rights – economic, social and cultural rights have a specific nature, conditioned to specific obligations, and therefore require specific remedies.

## 1.2. Adequate remedies

For remedies to be adequate, the UN Committee on Economic Social and Cultural Rights (CESCR) has highlighted that they must be Accessible, Affordable, Timely, and Effective.<sup>9</sup> States must ensure the existence of concurring adequate administrative and judicial remedies.<sup>10</sup>



### **1.2.1. Accessible**

For remedies to be accessible, they first need to be transparent.<sup>11</sup> This is, information about their existence needs to be widely available, in different forms and languages, in order to ensure the population is aware of the existence of such remedies. However, simply making information available is not sufficient.<sup>12</sup> The obligation of transparency also implies that the state must properly invest financial resources in providing information of the existence of remedies,<sup>13</sup> so there must be a clear effort to communicate the existence of available remedies to the widest possible audience.

For remedies to be accessible they also need to be simple,<sup>14</sup> or at the very least, they must not be unreasonably complicated.<sup>15</sup> This is particularly important in order to ensure the rights of those living in poverty, as – without the resources to retain private legal assistance – they are often forced to navigate the judicial system alone. In doing so, they encounter a complex labyrinth of laws, traditions and interactions, the use of legal jargon and mainstream languages, and restrictive time limits, all of which can deter the people living in situations of poverty from seeking justice under formal systems.<sup>16</sup> In this sense, simple remedies, that are stripped of formalities, are those that can be most accessible for all human rights victims.

As a fundamental prerequisite of the accessibility of remedies for human rights violations, states need to ensure that legal advice is available for those who require it.<sup>17</sup> Particularly, a state needs to be able to provide free and competent legal advice and assistance – through whatever institution or mechanism it finds ideal – to those who are not able to afford it.<sup>18</sup>

A final essential requirement to ensure remedies are accessible, is the existence of public interest litigation. Rules need to ensure that legal standing is extended to civil society organisations that can support victims or bring cases on their behalf, therefore reducing the financial and personal burden of legal action of individuals who might not have the means or the capacity to do so themselves.<sup>19</sup>

### **1.2.2. Affordable**

In order for remedies to be adequate under international human rights standards, they must be affordable. For such purposes, remedies intended to address human rights abuses must not be costly<sup>20</sup> and ideally they should be free. There also are numerous costs associated with accessing justice which constitute a major barrier for people living in poverty – such as courts fees, obtaining a legal documents, witness costs, commissioning independent expertise, photocopies and phone calls – and they represent a further barrier to human rights victims accessing and benefiting from the justice system.<sup>21</sup> Consequently, states have a positive obligation to remove all economic and financial obstacles that can obstruct access to justice for human rights victims, particularly those living under conditions of poverty.<sup>22</sup>

A second and important element for ensuring affordable remedies is the existence of legal aid. The availability of legal aid for those without the means to pay for all costs of litigation is of incalculable instrumental value to ensure the enforceability of economic, social and cultural rights.<sup>23</sup> On the contrary, the lack of legal aid can seriously hamper the rights and interests of persons living in poverty, for example when they are unable to contest tenancy disputes, eviction decisions, eligibility for social security benefits, abusive working conditions.<sup>24</sup>

### **1.2.3. Timely**

Remedies need to be prompt,<sup>25</sup> and must ensure that there are no unwarranted delays.<sup>26</sup>

In certain circumstances, adequate remedies need to be processed and solved urgently. Given the effects in people's lives of certain human rights violations, remedies need to envision the possibility of having precautionary, provisional or interim measures that can: a) prevent a violation from happening, b) avoid continuing violations that are occurring; and c) repair at the earliest possible opportunity any harm that may have been caused by such violations.<sup>27</sup>

#### 1.2.4. Effective

As mentioned earlier, for remedies to be effective, administrative and judicial mechanisms must exist. Particularly relevant, is that international standards require that administrative remedies must be challengeable through a judicial procedure.<sup>28</sup>

They must also provide for the possibility of collective litigation. The existence of a collective litigation mechanism where the findings and benefits are generalised beyond the actual litigants can ensure that human rights become meaningful for large numbers of people.<sup>29</sup> As social rights undoubtedly have a collective dimension, their breach usually affects more or less established groups or collectives, and not just a specific individual. This is also reflected in the fact that government measures that affect vulnerable populations usually take the form of widespread practices that generate situations of a structural nature, and therefore, require collective remedies.<sup>30</sup> Remedies, therefore, could not be considered effective if they do not address the structural and systemic issues affecting the wider population, and therefore, perpetuating human rights violations.<sup>31</sup>

A central condition for a remedy to be effective is that it can actually fulfil its purpose or produce the results for which it was designed for.<sup>32</sup> Therefore, an effective remedy cannot be 'illusory' as it must ensure the proper enforcement by its judicial authorities. Under such circumstances, clear consequences must exist for the authorities who do not comply with the reparations ordered by a competent tribunal.

A final element to the effectiveness of a remedy, discussed in the following section, is the ability to issue appropriate reparations that take into account the nature of the human rights violation in question.



### **1.3. Appropriate Reparations**

The effectiveness of a remedy will necessarily depend on the appropriateness of the reparations ordered on a specific case. In this sense, the right to an effective remedy necessarily entails the right to reparation.<sup>33</sup> Specific situations require different forms of reparations, as some might be more appropriate under certain circumstances than others. The standard of international human rights law, applicable to repair violations of economic, social and cultural rights,<sup>34</sup> is that appropriate reparations can come in the forms of: a) restitution; b) compensation; c) rehabilitation; d) satisfaction; and e) guarantees of non-repetition.<sup>35</sup>

#### **1.3.1. Restitution**

Wherever it is possible, the state must restore the victim to the original situation before the human rights violation occurred. Restitution includes, as appropriate: enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property, among others.

It is important to mention, however, that in many situations relating to economic, social and cultural rights, restitution might not be an appropriate solution as the victim might have been suffering from multiple human rights violations before the specific breach in question. Example: To return someone to her previous social housing, when such place does not meet with the appropriate international law standards.

#### **1.3.2. Compensation**

Compensation should be provided for any financially assessable or determinable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting violations of international human rights law such as:

- Lost opportunities, including employment, education and social benefits;

- Material damages and loss of earnings, including loss of earning potential;
- Moral damage;
- Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

### **1.3.3. Rehabilitation**

Rehabilitation should include medical and psychological care as well as legal and social services that might be necessary to repair the human rights violation caused.

### **1.3.4. Satisfaction**

Measures of satisfaction should include, where applicable, any or all of the following:

- Effective measures aimed at the cessation of continuing violations;
- Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- Public apology, including acknowledgement of the facts and acceptance of responsibility;
- Judicial and administrative sanctions against persons liable for the violations;
- Commemorations and tributes to the victims;

- Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

### **1.3.5. Guarantees of non-repetition**

This form of reparation is intended to ensure that current violations are not perpetuated over time. They intend to respond to structural situations, that require measures that go beyond the sole victim of the case in question. When implemented, they prevent further human rights violations and ensure that others do not require to access the judicial system to ensure their rights. In general, guarantees of non-repetition should include, where applicable, any or all of:

- Reviewing, reforming, or striking down laws contributing to or allowing human rights violations;
- Requiring policies to be reviewed or changed in order to comply with human rights standards;
- Requiring appropriate authorities to create new policies in order to satisfy a human rights obligations and prevent future harm.

## **2. Comparative experiences**

### **2.1. South Africa**

South Africa incorporated most civil, political, economic, social, and environmental rights in its constitution.<sup>36</sup> For the effective protection of such rights, a wide range of administrative, quasi-judicial and judicial remedies are available.

#### **2.1.1. Administrative, quasi-judicial and specific remedies**

There is a set of administrative, quasi-judicial and judicial remedies that have been created within the South African legal framework in order to protect specific rights.

The South African Human Rights Commission has a power to process petitions and issue recommendations to public authorities based on its constitutional mandate to 'take steps and secure appropriate redress where human rights have been violated'.<sup>37</sup>

The Labour Relations Act sets up the Commission for Conciliation, Mediation and Arbitration (CCMA), a mechanism designed to resolve labour disputes.

Specific judicial processes have been designed for determined areas. For example, the Rental Housing Act creates a Rental Housing Tribunal intended to deal with complaints of violations of housing rights relating to rental arrangements. Other tribunals include the Children's Courts (for children's rights issues), the Labour Courts (for all workers' rights issues) and the Land Claims Courts.

#### **2.1.2. Constitutional remedies**

The Constitution establishes that anyone has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened.<sup>38</sup> When deciding a constitutional matter, all courts must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency, and they may make any order that is just and equitable.<sup>39</sup>

## **Who can present it?**

The constitution establishes that those entitled to approach the court for the protection of constitutional rights are:

- a. anyone acting in their own interest;
- b. anyone acting on behalf of another person who cannot act in their own name;
- c. anyone acting as a member of, or in the interest of, a group or class of persons;
- d. anyone acting in the public interest; and
- e. an association acting in the interest of its members.<sup>40</sup>

The South African Human Rights Commission is also empowered to “bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons”

Amicus curie interventions are also permissible.

## **What can it challenge?**

The constitution establishes that a judge can review any action which violated or threatened a constitutional right. For such purpose, however, it will take into account the reasonableness of the action, by which the judge must consider the obligations of progressive realisation and maximum available resources of economic, social and cultural rights.<sup>41</sup>

## **What can the judge order?**

The constitution empowers judges to grant ‘appropriate relief’. The Constitutional Court has indicated that for such purposes, the ‘nature of the right infringed and the nature of the infringement will provide guidance as to the appropriate relief in a particular case.’<sup>42</sup> The Court has affirmed the ability of courts to order guarantees of non-repetition and to retain supervisory jurisdiction in order to enforce socio-economic rights.

Remedies such as this one are often called structural interdicts, although such name does not appear in the Constitution. Overall, structural remedies are often embodied by reparations of guarantees of non-repetition, in which a court orders a set of measures that needs to be implemented to ensure a violation is not perpetuated in the future to others. For such purpose, after the court has issued a judgment, it will continue to play a role in monitoring the compliance of the judgment.

With this type of remedy, there are usually a set of stages which are followed until the court is satisfied that the violation of an economic, social or cultural right has been remedied. In this sense:

- 1) the court issues a declaration identifying how the public authority has violated the rights of an individual or a group;
- 2) the court orders the public authority to comply with its human rights obligations;
- 3) the public authority is ordered to prepare and submit a thorough report to the court on a specific date, in which it must detail a plan to remedy or continuously mitigate the harm caused by the violations in question;
- 4) the court evaluates whether the proposed plan sufficiently remedies the harm caused by the constitutional infringement and whether the government is complying with its obligations; and
- 5) the court grants a final order approving and integrating the plan as well as any court-ordered amendment (any failure to adhere to this plan amounts to contempt of court).<sup>43</sup>

The case of *Minister of Health and Others v. Treatment Action Campaign and Others* is an example of a judgment by the Constitutional Court in relation to economic, social and cultural rights, with a wide range of reparations ordered.<sup>44</sup>

## **2.2. Colombia**

Colombia has incorporated in its Constitution (1991) all rights enshrined in the International Covenant on Economic, Social and Cultural, as well

as the right to a healthy environment enshrined in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. In order to ensure the enforceability and justiciability of such rights, the constitution ensures access to administrative and judicial remedies.

### **2.2.1. Administrative remedies**

Under Colombia's law, there is a 'right to a petition' to any governmental or local authority.<sup>45</sup> This right to a petition implies that any citizen can request the review of any decision taken by a public authority. The public authority has a duty to ensure there is a fair procedure in place and must take into account all human rights enshrined in the constitution.

The decision of such administrative petition can be appealed through a judicial remedy to the Administrative Tribunals. As a last resort, the judgment issued by such Tribunals can be appealed to the Council of State (Consejo de Estado) which is Colombia's supreme tribunal for administrative issues.

### **2.2.2. Tutela**

The tutela (writ of protection) is a remedial mechanism enshrined in the Constitution<sup>46</sup> which is intended to prevent and repair human rights violations. It is simple, free of costs, and requires a summary proceeding (as a judge has only 10 days to issue a judgment). A tutela can only be used if no other means is available (such as administrative procedures described above), and can be used in urgent matters to avoid the occurrence of irreparable harm.

#### **Who can present it?**

Anyone can present it and requires no legal representation whatsoever. This means that a human rights victim can present it in 'simple writing', without any legal formalities necessary. The tutela can be presented to any first instance judge of any court or tribunal in the country (regardless of the jurisdiction of such court). A petitioner is not required to provide all of the legal arguments, only the facts in question, as it is the judge's role

to determine if such facts amount to a human rights violation under Colombia Law (this is based in the legal principle of *iura novit curia*).

Colombia's Ombudsperson (Defensor del Pueblo), which is the country's National Human Rights Institution, is also constitutionally empowered to present tutelas, either to those who request the support of the Ombudsperson or to those in situation of 'helplessness'.<sup>47</sup> The Ombudsperson is also empowered to provide legal assistance, without having to take the role of legal representative in the judicial process.

Public interest litigation is also permissible, therefore any civil society organisation can present a tutela to protect an individual or a group.

### **What can it challenge?**

The tutela can challenge the actions or omissions of any public authority (or a private entity providing a service on behalf of the state) that breaches the full range of human rights guaranteed under the constitution.

### **What can the judge order?**

Judges have discretion to determine the measures that they consider necessary to preserve or repair constitutional rights. Therefore, it can order a wide range of measures, including compensation, restitution, satisfaction, rehabilitation, and guarantees of non-repetition.

In this sense, it can order the immediate satisfaction of a right (eg. ordering an authority to provide a vital medical substance to the victim) or it can order the authority to implement policies that prevent the recurrence of a violation (eg. clear simple procedures to ensure that persons with a particular medical issue receive promptly a medication).

The Constitutional Court has the power to select tutelas for review. Under this process, the Court can unify standards of lower courts and order a wide range of guarantees of non-repetition, ensuring that structural issues are addressed across the country.<sup>48</sup> This type of reparations are similar to the South African model of structural interdict, in which the Court retains a supervisory power.



Judges are empowered to issue sanctions if the court order is not complied with. Such sanctions include the possibility of imprisonment to up to 6 months for public officials who disregard an order issued through a tutela.<sup>49</sup>

As an example of a judgment by the Constitutional Court in relation to economic, social and cultural rights, with a wide range of reparations ordered, see Judgment T-770/07.<sup>50</sup>

## **2.3. Spain**

Spain has incorporated in its constitution the full range of economic, civil, social, political, cultural, and environmental rights.<sup>51</sup> As seen below, however, limitations exist in relation to the available remedies for the protection of certain rights, particularly, economic, social and cultural rights.

### **2.3.1. Administrative remedies**

Spain has a complex set of administrative remedies enshrined in its legislation. Overall, there are three types of administrative remedies (recurso de alzada, recurso potestativo de revisión, and recurso extraordinario de revisión).<sup>52</sup> They can be presented directly by the victim without legal representation and can be used to challenge different decisions by public authorities.

The Ombudsperson (Defensor del Pueblo), as Spain's National Human Rights Institution, is also empowered to process petitions by any human rights victim, and to issue recommendations to public authorities when it believes a constitutional right has been breached.<sup>53</sup>

### **2.3.2. Amparo**

The Constitution provides for a specific remedial mechanism for the protection of constitutional right which is called Amparo. It is presented directly to the Constitutional Court, but must first exhaust all available judicial remedies.<sup>54</sup>

#### **Who can present it?**

A person who is directly a victim can present an Amparo and requires legal representation of a qualified lawyer and the direction/representation of an advocate (procurador). Although the process before the constitutional court is free, a victim is required to pay the fees of her legal representation. Legal aid is however a constitutional right which is available for those who do not have the means to pay for legal representation.

The Ombudsperson is also constitutionally empowered to present an Amparo on its own behalf or on behalf of any victim.

### **What can it challenge?**

An Amparo can challenge the constitutionality of decisions made by any public authority, including parliament and the judiciary.<sup>55</sup> However, the constitution establishes that an Amparo can only be presented to protect civil and political rights, and the right to education.

### **What can the judge order?**

The Constitutional court can:

- a) declare void an administrative act or judgment;
- b) recognition of the existence of a right;
- c) measures intended to ensure the restitution of the affected right.

It is important to stress, that despite the availability of administrative remedies, and the existence of the Amparo, the UN Committee on Economic, Social and Cultural Rights, has expressed its concern over that lack of adequate and effective remedies for Economic, Social and Cultural Rights in Spain. Particularly, in a petition related to adequate housing, it determined that Spain did not guarantee an adequate and effective remedy within its legislation that protected the obligations set forth in the International Covenant on Economic, Social, and Cultural Rights.<sup>56</sup>

## **2.4 Finland**

Finland has most civil, political, economic, social, and cultural rights enshrined within its constitution. However, the existence of administrative and judicial remedies are extremely limited.

The main monitoring body is the Constitutional Law Committee of the Finnish Parliament, which is understood by some as a quasi-judicial body as its main role is to carefully scrutinise all legislation before it is enacted, ensuring it is compatible with the Constitution (hence, with human rights). This process is however an *ex-ante review*, which means that the role of the Committee is only limited to providing an analysis of laws that have not been implemented. The Committee, therefore, has no powers to act if it believes that a law that is already in force is unconstitutional.<sup>57</sup>

One of its National Human Rights Institutions, however, has the power to receive individual petitions. The Parliamentary Ombudsman, therefore, has the power to examine complaints, takes initiatives on its own, and carry out inspections at offices and institutions, in particular at prisons, military garrisons and other closed institutions. Based on the conclusion of its investigation it can then issue recommendations to the public authority in question.<sup>58</sup>

There is, however, very limited scope for the judiciary to intervene on a human rights violation and issue reparation. The Constitution only provides courts with the power to give 'primacy to the Constitution' when it encounters a law that is in conflict with the Constitution. However, it cannot issue any appropriate reparations, and the law found to be incompatible with the constitution will remain in place.<sup>59</sup>

It is important to highlight that the UN Committee on Economic, Social, and Cultural Rights has expressed its concerns over the lack of clear information on the existence of an adequate and effective remedy in Finland that can address human rights violations.<sup>60</sup>

The above comparative examples are provided to inform the development of Scotland's system for adequate and effective remedies under a new statutory framework for rights.

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- <sup>1</sup> Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 32
- <sup>2</sup> Dinah Shelton, Remedies in International Human Rights Law, Oxford University Press (2010) at 465
- <sup>3</sup> Ibid
- <sup>4</sup> Article 2.3
- <sup>5</sup> Article 13
- <sup>6</sup> See for example article 25 of the American Convention on Human Rights.
- <sup>7</sup> UN Human Rights Committee, General Comment No. 31, "Nature of the General Legal Obligation on States Parties to the Covenant," 26 May 2004, paragraph 15
- <sup>8</sup> Council of Europe, Guide to good practice in respect of domestic remedies, adopted by the Committee of Ministers on 18 September 2013, available at [https://www.echr.coe.int/Documents/Pub\\_coe\\_domestic\\_remedies\\_ENG.pdf](https://www.echr.coe.int/Documents/Pub_coe_domestic_remedies_ENG.pdf)
- <sup>9</sup> See UN Committee on Economic, Social and Cultural Rights, General Comment No. 9: The domestic application of the Covenant, 3 December 1998, paragraph 9
- <sup>10</sup> See UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, paragraph 55; and UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, paragraph 55
- <sup>11</sup> UN Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, paragraph 49.h
- <sup>12</sup> Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 27
- <sup>13</sup> Ibid, paragraph 64
- <sup>14</sup> See Inter-American Commission on Human Rights, 'Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights', (2007) paragraph 326 available at <http://www.cidh.org/pdf%20files/ACCESS%20TO%20JUSTICE%20DESC.pdf>
- <sup>15</sup> Committee on Economic, Social and Cultural Rights, General Comment No.17: The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant), 12 January 2006, paragraph 52
- <sup>16</sup> Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 70-71
- <sup>17</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, paragraph 56. See also, UN Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, paragraph 17; UN Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, paragraph 57
- <sup>18</sup> Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 60
- <sup>19</sup> Ibid, 81-82
- <sup>20</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No.17 (2006) The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant), 12 January 2006, paragraph 52
- <sup>21</sup> Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 51
- <sup>22</sup> Inter-American Commission on Human Rights, 'Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights', (2007) paragraph 48 available at <http://www.cidh.org/pdf%20files/ACCESS%20TO%20JUSTICE%20DESC.pdf>
- <sup>23</sup> Ibid

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- <sup>24</sup> Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 62
- <sup>25</sup> UN Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, paragraph 64
- <sup>26</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 17 (2006) The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant), 12 January 2006, paragraph 52
- <sup>27</sup> UN Human Rights Committee, General Comment No. 31, "Nature of the General Legal Obligation on States Parties to the Covenant," 26 May 2004, paragraph 19.
- <sup>28</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 9: The domestic application of the Covenant, 3 December 1998, paragraph 9
- <sup>29</sup> Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 84.
- <sup>30</sup> Inter-American Commission on Human Rights, 'Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights', (2007) paragraph 268.
- <sup>31</sup> Ibid 271
- <sup>32</sup> Ibid 251
- <sup>33</sup> UN Human Rights Committee, General Comment No. 31, "Nature of the General Legal Obligation on States Parties to the Covenant," 26 May 2004, paragraph 16
- <sup>34</sup> See for example UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, paragraph 59
- <sup>35</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005) paragraph 18. The UN Committee on Economic, Social and Cultural Rights has considered that these forms of reparations are appropriate within the context of the covenant rights. See for example UN Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, paragraph 64
- <sup>36</sup> See articles 7 to 39 of the Constitution
- <sup>37</sup> Article 184.2.b of the Constitution
- <sup>38</sup> Article 38 of the Constitution
- <sup>39</sup> Article 172 of the Constitution
- <sup>40</sup> Article 38 of the Constitution
- <sup>41</sup> For further discussion of the reasonableness criteria, see ICJ A Guide for the Legal Enforcement and Adjudication of Economic, Social and Cultural Rights in South Africa (2019) at 98-131
- <sup>42</sup> Constitutional Court of South Africa, Minister of Health and Others v. Treatment Action Campaign and Others (1) (2002) 10 BCLR 1033 (CC) paragraph 106
- <sup>43</sup> For further discussions, see Strathmore Law Clinic, 'Structural Interdicts for Socio-Economic Rights: What Kenyan Jurisprudence has Missed', Strathmore Law Review (2019)
- <sup>44</sup> See the Court's ruling at [Minister of Health and Others v Treatment Action Campaign and Others \(No 2\) \(CCT8/02\) \[2002\] ZACC 15; 2002 \(5\) SA 721; 2002 \(10\) BCLR 1033 \(5 July 2002\) \(saflii.org\)](#)
- <sup>45</sup> Derecho a petición, under Colombia's Ley 1437 de 2011 (Código de Procedimiento Administrativo y de lo Contencioso Administrativo)
- <sup>46</sup> Article 86 of the Constitution
- <sup>47</sup> Article 282 of the Constitution. See also article 42 of 'LEY 24 DE 1992 - Defensoría del Pueblo'
- <sup>48</sup> See Constitutional Court's Judgment T770/07 of 2007 in relation to the right to health
- <sup>49</sup> Article 52 del 'Decreto No.2591 de 1991'
- <sup>50</sup> Available in Spanish at <https://www.corteconstitucional.gov.co/relatoria/2007/T-770-07.htm>
- <sup>51</sup> Articles 14 to 52 of the Constitution
- <sup>52</sup> These three different routes to remedies can be presented for different specific circumstances, and their overall effects (or reparations that can be ordered) are limited to the type of remedy itself. See more at <http://www.interior.gob.es/en/web/servicios-al-ciudadano/participacion-ciudadana/derechos-de-participacion-administrativa/recursos>
- <sup>53</sup> Article 9 and 30 of Ley Orgánica 3/1981, de 6 de abril, del Defensor del Pueblo.
- <sup>54</sup> Article 53 of the Constitution

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<sup>55</sup> Articles 42 and 43 of the Ley Orgánica del Tribunal Constitucional

<sup>56</sup> UN Committee on Economic, Social and Cultural Rights, Communication No. 2/2014

<sup>57</sup> Kaarlo Tuori, 'Rights, Democracy and Local Self-governance: Social Rights in the Constitution of Finland', *Juridica International Law Review* (2007)

<sup>58</sup> See more at [https://www.oikeusasiamies.fi/en\\_GB/web/guest/the-work-of-the-ombudsman](https://www.oikeusasiamies.fi/en_GB/web/guest/the-work-of-the-ombudsman)

<sup>59</sup> Section 106, The Constitution of Finland (1999) available in English at

<https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>

<sup>60</sup> See UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Finland, 1 December 2000, E/C.12/1/Add.52 at <https://www.refworld.org/publisher.CESCR..FIN.3f6cb1a34.0.html>