1. Introduction

Social rights are the main concern of current human rights studies. Whether in favour of justiciability, public policy programmes, or by its role in democracy, most contemporary literature agrees on the urgent necessity of complying with the promise of social justice. However, we cannot expect romantic solutions thinking that courts will act as Hercules to adjudicate[1] all sort of Economic Social Rights (ESR) to solve profound human rights problems such as poverty or financial cuts to social expenditure. Therefore, the role of judges adjudicating social rights must be accompanied by the multidimensional actions of both public and private actors.

During the last 20 years, the Inter-American system has increased its influence on the academic field, domestic legal standards and jurisprudence. Communitarian peace, justice and democracy are the core Inter-American values, the very essence of the American Convention on Human Rights (ACHR). However, the respect of human rights in the ACHR Member States depends mainly on the strengthening of the rule of law. Legal and constitutional changes are emerging fast, but public policies are moving slowly, from authoritarian patterns to human rights schemes. In fact, when one reads that the current approach of the UN is to give advice on budget allocations in scenarios of economic contraction,[2] the Inter-American insights seem modest but with a clear purpose of protecting groups and communities exposed to adverse conditions.

[1] Compliance is becoming the main issue of social rights justiciability. A specific study of these problems in Argentina, Brazil, Africa, Canada, Colombia, India and United States, under the framework of economic, legal, political and civil society variables, is provided by Malcolm Langford et al (eds), *La lucha por los derechos sociales. Los fallos judiciales y la disputa política por su cumplimiento* (Dejusticia 2017).

[2] See OHCHR, *Report of 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* (A/HRC/37/54, 20 December 2017).

1.1 THE BEGINNING OF SOCIAL RIGHTS DIRECT INTERPRETATION

We are seeing the dawn of direct interpretation of ESR. The major triumph is the recent declaration of violation of Article 26 ACHR, in the cases of *Lagos del Campo v. Peru* [2017] and *Petroperú Workers v. Peru* [2017]. The substantive and groundbreaking violation of economic rights integrates a new model of direct justiciability of social rights. It combines three main sources of Member States' obligations: the Inter-American *corpus iuris*, national constitutions, and the international plethora of human rights law.

At this early point in the direct interpretation of Article 26 ACHR, one must bear in mind that the ACHR provisions are emerging from the shadows of authoritarian contexts. By this reason, in its 40 years of compulsory jurisdiction, Inter-American agenda has focused on civil liberties and political rights. Nonetheless, before the cases of *Lagos del Campo* and *Petroperú*, the Inter-American jurisprudence had protected health, education, collective property, by means of civil and political rights and restorative measures.

With this scenario in mind, social rights are becoming the protagonist in the Inter-American compulsory jurisdiction. The declaration of violation of Article 26 ACHR announces changes in the immediate future in favour of the direct application of social rights. The commitment of the Inter-American Court of Human Rights (IACtHR) to ESR has expanded its interpretation to environmental rights. In its Advisory Opinion OC-23/17 the IACtHR recognised the individual and collective dimension of the right to a healthy environment, according to Article 11 of the San Salvador Protocol and Articles 1.1, 1.2, 26 and 29 ACHR, and the indivisibility, interdependence and universality of human rights.[3] The OC-23/17 will bring significant stimulation for public policies and justiciability of environmental rights in domestic legislative bodies and courts.

This way, the overall purpose of the book is to expose the narrative of the cases showing that Inter-American social rights jurisprudence granted better conditions of life, accountability of their government and justice for the most vulnerable people. The book is designed to contribute a more context-specific discourse of the Inter-American Court on ESR case law.

[3] Advisory Opinion OC-23/17; IHR Court (15 November 2017) Requested by Colombia, paras 25, 38, 59.

1.2 STRUCTURE OF THE BOOK

This book offers an overview of the landmark decisions regarding ESR in the IACtHR. For readers, practitioners and legal scholars, the book provides the narrative of cases from the last 20 years (1998–2017). Each case presents an important type of adjudication of social rights. I seek to show the evolutive interpretation of the IACtHR through its case law, along with a brief reflection on each case. I hold that much of the Inter-American advances are indebted to victims, survivors and civil society organisations that accompanied them on their path to get justice.

Chapter 2 describes how the IACtHR is interacting with national State Parties' constitutional law and constitutional courts. The chapter touches on the following topics: the 'conventionality control doctrine', its advantages and defects, the ACHR Member States' constitutional law dispositions regarding human rights internationalization, the rejections and acceptance of Inter-American jurisprudence, and the current debate over ESR rights jurisprudence.

Chapter 3 examines indigenous case law, its advanced features and the theoretical approaches of the IACtHR on the property, consultation and right to the land. According to the interpretation of Article 21 ACHR, property rights are inextricably linked to freedom of beliefs, land tenure, cultural identity, housing, education and so on. To do so, the IACtHR, has deconstructed, to all intents and purposes, the puritan analysis of public and private law and accepted the abovementioned categories to shape a new dimension of collective property. Certainly, when dealing with the facts over indigenous rights, the IACtHR have focused only on States' obligations rather than private actor's responsibilities.

Chapter 4 studies those cases related to vulnerable children and their inhumane living conditions. From the early day's jurisprudence to the contemporary age, the IACtHR has taken concrete steps to strengthen children's rights. Using the indirect effect doctrine, departing from personal integrity, access to justice and the right to life, the Court has focused on Member States' failures to comply children's basic needs, such as healthcare, access to justice, education, housing, family income and the right to a decent and peaceful life.

Chapter 5 focuses on the evolution of the right to health and vulnerable groups in the Inter-American jurisprudence and the different methods of the Court to protect the right to health in conjunction with the right to life, access to justice and personal integrity. The Inter-American judgments on health have addressed its batteries to public and private services in Member States. However, national courts are the best protectors of health and education. The constitutional law indeed provides specific rights and mechanisms to regulate public and private activity interacting with the right to health and education.

Chapter 6 captures the current stage of Article's 26 ACHR interpretation: *Lagos del Campo v. Peru* [2017], and *Dismissed Employees of Petroperú et al v. Peru* [2017]. In both cases the court: (a) declared violated Article 26 ACHR; and (b) recognised the interdependence of the right to work in both public and private spheres. Both cases represent the cornerstone of the direct effect doctrine of ESR proposed by Judge Eduardo Ferrer Mac-Gregor in his concurring votes of *Suárez Peralta v. Ecuador* [2013], *Gonzales Lluy v. Ecuador* [2015] and *Canales Huapaya v. Peru* [2015].

Chapter 7 addresses the most challenging jurisprudential contribution of the IACtHR up until now: the possibility of judging poverty to be a form of discrimination according to the guidelines of *Hacienda Brazil Verde v. Brazil*. The IACtHR, for the very first time, adopts a position on structural discrimination and slavery. The aim of my approach in this chapter is to expose that political and legal intervention is indispensable in understanding that poverty is a matter of justiciability, whether in domestic, regional and international arenas, as it has been done to shape the legal concepts of slavery and human trafficking.

Finally, in the background of the book, I expose the possibility of judging inequalities as a mark of the Inter-American Court rulings. Vis-à-vis gross human rights violations, the Inter-American judges are becoming the guardians of moral, legal and even political justifications to reduce human suffering in the Americas. Nevertheless, the IACtHR can actually put human rights law in operation if all domestic authorities collaborate to integrate the Inter-American rulings, adopting enough legislation, public policies and budget allocations to truly comply with the ESR.