Socio-Economic Rights | Section I

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Revising the ICESCR's individual complaint mechanism: the transformative potential of a right to a "dignified minimum existence" for the CESCR's standards of review.

In June 2015, the International Human Rights Clinic at Santa Clara University's School of Law submitted a written contribution to the United Nations Human Rights Committee, in view of its preparation of General Comment 36 on the ICCPR's Article 6 (the right to life). The Clinic prompted the Committee to integrate the Inter-American Court of Human Rights' "rich jurisprudence" on the "right to a dignified life,"[1] or "vida digna."[2] The introduction of this right in the Court's jurisprudence can be traced back to the landmark case *Villagrán Morales et al. v. Guatemala* (1999),[3] in which the state was found in breach of its obligation to protect five "street children" from "systematic aggressions" by state security forces, and prevent them from "living in misery."[4] As a result, the Court concluded that the state had effectively deprived the five victims of the "minimum conditions for a dignified life."[5] Since this decision, the Court has interpreted the right to a "vida digna"[6] as "inextricably intertwined with certain basic socio-economic rights, such as the right to adequate healthcare, education, food, water, and other minimum essential rights necessary for the enjoyment of a dignified existence."[7]

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[1] Francisco J. Rivera Juaristi, "Written Contribution in View of the Preparation by the U.N. Human Rights Committee of the General Comment on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights," June 25, 2015, https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/Discussion/2015/InternationalHRClinic.pdf.
[2] Jo M. Pasqualucci, "The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System," *Hastings International and Comparative Law Review* 31, no. 1 (2008), https://repository.uchastings.edu/hastings_international_comparative_law_review/vol31/iss1/1.
[3] Villagran-Morales et al. v. Guatemala (Inter-American Court of Human Rights November 19, 1999.
[4] Meri Khananashvili, "Villagrán Morales et Al. ('Street Children') v. Guatemala," ed. Grace Kim, Sasha Meisel, and Sarah Frost, *Loyola of Los Angeles International and Comparative Law Review* 36, no. 1817 (n.d.).
[5] Villagran-Morales et al. v. Guatemala (Inter-American Court of Human Rights November 19, 1999.
[6] Jo M. Pasqualucci, "The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System," *Hastings International and Comparative Law Review* 31, no. 1 (2008), https://repository.uchastings.edu/hastings_international_comparative_law_review/vol31/iss1/1.
[7] Francisco J. Rivera Juaristi, "Written Contribution in View of the Preparation by the U.N. Human Rights Committee of the General Comment on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights," June 25, 2015, https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/Discussion/2015/InternationalHRClinic.pdf.

According to Thomas M. Antkowiak, this "conceptual breakthrough"[8] attests to an innovative trend among supranational tribunals to bridge the justiciability gap between civil and political rights (CPRs) and economic, social, and cultural rights (ESCRs). Uncertainties about the meaning and scope of ESCRs and concerns about their potential for enforcement have long maintained them in the "margins of international human rights law."[9] While the International Covenant on Political and Civil Rights (ICCPR) calls on state parties to "undertake to respect and to ensure to all individuals within [their] territory and subject to [their] jurisdiction the rights recognized,"[10] delimitations on parties' obligations with regard to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) remain particularly vague and grant considerable leeway for states' interpretation. Indeed, Article 2 of the Covenant requires "each state party to take steps (...) to the maximum of its available resources, with a view to achieving progressively the full realization of the rights."[11] To give concrete substance to the realization of such rights, the 2008 Optional Protocol to the ICESCR established the Committee on Economic, Social and Cultural Rights (CESCR) which "receives and considers"[12] individual complaints pertaining to alleged violations of rights protected in the Covenant by a state party. After having evaluated the complaint's admissibility, the Committee brings it to the attention of the relevant state which must respond within six months. In turn, the CESCR determines whether the state has effectively violated the plaintiff's rights, and formulates non-binding "general recommendations"[13] for the state to follow.

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[8] Thomas M. Antkowiak, "A 'Dignified Life' and the Resurgence of Social Rights," *Northwestern Journal of Human Rights* 18, no. 1 (2020), https://scholarlycommons.law.northwestern.edu/njihr/vol18/iss1/1.
[9] Dr. Jackie Dugard's expression in the syllabus for Socio-Economic Rights (SERs), M.A. Program in Human Rights, Fall 2022
[10] UN General Assembly, *International Covenant on Civil and Political Rights* (United Nations, Treaty Series, vol. 999, p. 171, 1966), https://www.refworld.org/docid/3ae6b3aa0.html.
[11] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights* (United Nations, Treaty Series, vol. 993, p. 3, 1966), https://www.refworld.org/docid/3ae6b36c0.html.
[12] UN General Assembly, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights : Resolution / Adopted by the General Assembly*, A/RES/63/117 ed., 2009, https://www.refworld.org/docid/49c226dd0.html.
[13] Ibid

For its assessment of a complaint's merits, the CESCR utilizes interpretative approaches to the ICESCR that take inspiration from judicial bodies' own standards of review for adjudicating ESCRs. For instance, in its early jurisprudence, the Committee resorted to the concept of the 'minimum core.' As described in its General Comment n.3, the Committee would find a state party "failing to discharge its obligations under the Covenant," if a "significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education"[14] in its territory. However, the Committee avoids determining what this "international minimum standard of achievement"[15] concretely entails for each right. While it has referred to "20 liters of safe water per person a day"[16] as the 'minimum core' of the right to water in its General Comment 15, states have raised the "practical impossibility"[17] of imposing the same standard upon all parties when they radically differ in their economic capacities to implement its directives. As such, when reviewing complaints from individuals belonging to the most vulnerable groups of society, the Committee must constantly avoid setting a particular threshold as *the* 'minimum standard' for a particular right to prevent state parties' criticism. As a result, its recommendations remain particularly amorphous, thereby granting significant leeway to states when fulfilling their obligations.

In its attempt to remediate the minimum core's deficiencies, the CESCR has turned to "reasonableness"[18] as an alternative standard of review. Per Article 8(4) of the Optional Protocol, in deciding whether a state's measure is reasonable, the CESCR may consider whether it is "deliberate, concrete and targeted towards the fulfillment of ESCRs," whether it is "arbitrary or

[14]UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, E/1991/23 ed., 1990, https://www.refworld.org/docid/4538838e10.html.
[15] UN Commission on Human Rights, *Note Verbale Dated 5 December 1986 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva Addressed to the Centre for Human Rights ("Limburg Principles")*, E/CN.4/1987/17 ed., 1987, https://www.refworld.org/docid/48abd5790.html.
[16] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, E/C.12/2002/11 ed., 2003, https://www.refworld.org/docid/4538838d11.html.
[17] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.
[18] UN General Assembly, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights : Resolution / Adopted by the General Assembly*, A/RES/63/117 ed., 2009, https://www.refworld.org/docid/49c226dd0.html.

discriminatory" and if it "prioritize[s] marginalized groups and grave situations."[19] Although this proportionality inquiry attempts to reduce states' room for maneuver, it reaches its limits when addressing individuals in particularly precarious situations. Indeed, in cases where the Committee finds that the State has taken sufficiently reasonable steps to address a plaintiff's situation, but the plaintiff still considers the measures as insufficient to reach his "vital minimum,"[20] how can the Committee maximize vulnerable groups' socio-economic rights while acknowledging states' efforts to fulfill their obligations?

In an attempt to bridge these requirements, legal scholars have identified innovative methods in national jurisprudence that help enhance ESCRs' justiciability. In February 2010, the German Federal Constitutional Court (FCC) developed an unprecedented procedure to evaluate the constitutionality of a social benefit scheme through the right to "a dignified minimum existence"[21] (the "Hartz IV" decision.[22]) Although it had developed the concept in earlier judgments, the Court dealt with the actual "scope and content of this right in much detail"[23] in this case. Scholars Inga T. Winkler and Claudia Mahler claimed that the "Hartz IV"[24] decision marked a "new era in German socio-economic jurisprudence."[25] Similarly, the Inter-American Court of Human Rights has used the right to a "vida digna"[26] to assess states' compliance with the provision of a "vital minimum."[27]

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[19] Ibid
[20] International Commission of Jurists, "Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability," 2008, https://www.refworld.org/docid/4a7840562.html.
[21] Inga T. Winkler and Claudia Mahler, "Interpreting the Right to a Dignified Minimum Existence: A New Era in German Socio-Economic Rights Jurisprudence?," *Human Rights Law Review* 13, no. 2 (June 1, 2013): 388–401, https://doi.org/10.1093/hrlr/ngt013.
[22] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).
[23] Inga T. Winkler and Claudia Mahler, "Interpreting the Right to a Dignified Minimum Existence: A New Era in German Socio-Economic Rights Jurisprudence?," *Human Rights Law Review* 13, no. 2 (June 1, 2013): 388–401, https://doi.org/10.1093/hrlr/ngt013.
[24] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).
[25] Inga T. Winkler and Claudia Mahler, "Interpreting the Right to a Dignified Minimum Existence: A New Era in German Socio-Economic Rights Jurisprudence?," *Human Rights Law Review* 13, no. 2 (June 1, 2013): 388–401, https://doi.org/10.1093/hrlr/ngt013.
[26] Jo M. Pasqualucci, "The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System," *Hastings International and Comparative Law Review* 31, no. 1 (2008), https://repository.uchastings.edu/hastings_international_comparative_law_review/vol31/iss1/1.
[27] International Commission of Jurists, "Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability," 2008, https://www.refworld.org/docid/4a7840562.html.

Drawing from an analysis of Germany's Federal Constitutional Court's (FCC), the South African Constitutional Court's (SACC), and the Inter-American Court of Human Rights' (IACtHR) jurisprudence, this paper will assess whether their respective methods of adjudication of the right to a dignified minimum existence provide promising alternatives to the CESCR's current standards of review (the 'minimum core' approach and the 'reasonableness test.') More precisely, this paper will weigh on the following interrogation: how might the adoption of the right to a dignified minimum existence advance the CESCR's standards of review for individual complaints?

This essay will first analyze how the non-quantifiable and abstract character of this right could offer the CESCR the possibility to circumvent the practical requirements imposed by a 'minimum core' approach (I); before delving into the right's potential to re-model the 'reasonableness test' to help inform the CESCR's adjudicative methodology when assessing individual complaints indicative of highly precarious circumstances (II).

Part I: Interpreting the Right to a Dignified Minimum Existence: the Possibility to Evade the Impractical Implications of the 'Minimum Core.'

The CESCR's use of the 'minimum core' as a standard of review to evaluate states' respect of their obligations under the ICESCR has become subject to states' criticism "on the grounds of its absoluteness"[28] for it requires the Committee to identify a precise threshold or quantity that would be considered as an official minimum for each right. Not only does this approach fail to take into account states' different "practical circumstances,"[29] but it also sets a precedent in the CESCR's jurisprudence, making it difficult to justify future attempts at

[28] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.
[29] Ibid

modifying the threshold. Yet, drawing from the FCC's interpretation of a 'dignified minimum existence,' the right's addition to the Covenant might help the Committee circumvent the minimum core's impractical implications: it would not require it to specify *how much* of a right is needed for an individual to live a dignified life, but simply find that what they were provided was "evidently insufficient"[30] to do so. The CESCR could then avoid identifying the right's minimum core content which would enhance its individual-focused approach. Moreover, the FCC and IACtHR's interpretation of this right as relatively abstract might inspire the CESCR to identify which rights are most relevant for the plaintiff to reach *their* "vital minimum,"[31] thereby also confirming that human rights are interdependent and interrelated.

A - Giving Concrete Meaning to the Principle of Indivisibility Through an Abstract Right.

The right to a dignified minimum existence is a novel legal principle that has either been codified in constitutions or emerged as part of national courts' "interpretative standards of review"[32] when adjudicating ESCRs. For instance, the constitutional guarantee to a minimum level of subsistence is embedded in Belgium's constitution as the "minimex,"[33] as the "minimo vital"[34] in Colombia, and as the "minimo existencial"[35] in Brazil. While the German Constitution does not provide for an explicit right to a 'dignified minimum existence,' the FCC's interpretation of Article 1 of the German Basic Law ("Human dignity shall be inviolable."[36]) in conjunction with the Social State Principle,[37] has effectively created a right to an

[30] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).
[31] International Commission of Jurists, "Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability," 2008, https://www.refworld.org/docid/4a7840562.html.
[32] Joie Chowdhury, "Unpacking the Minimum Core and Reasonableness Standards," *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, 2020, 251–74, https://doi.org/10.4337/9781788974172.00022.
[33] International Labour Organization, "Belgium - Loi Instituant Le Droit à Un Minimum de Moyens D'existence.," www.ilo.org, n.d., https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=14857&p_classification=12.02.
[34] Lucía Del Carmen Bolaños Bolaños and Iván Andrés Ordoñez-Castaño, "El Mínimo Vital Como Límite al Deber de Contribuir En Colombia*," *Revista de Derecho*, no. 54 (2020): 59–88, https://www.redalyc.org/journal/851/85168441004/html/.
[35] Claudia Toledo, "Mínimo Existencial E Dignidade Humana (Existential Minimum and Human Dignity)," papers.ssrn.com (Rochester, NY, December 2, 2019), https://ssrn.com/abstract=4062397.
[36] "Basic Law for the Federal Republic of Germany," Gesetze-im-internet.de, 2019, https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.
[37] Ibid

"existenzminimum."[38] Similarly, the right to a "vida digna"[39] stems from the IACtHR's interpretation of the Convention's Article 4 ("In no case shall capital punishment be inflicted for political offenses or related common crimes."[40]) The Court has indicated in its jurisprudence that such a right falls under states' positive obligation to "ensure the minimum conditions of existence to all persons under their jurisdiction."[41]

Thanks to its relatively novel and indeterminate character, the right's content derives from judicial interpretations of national constitutions, which grants courts significant latitude to adjust their interpretation in light of each case's circumstances. For instance, in the Hartz IV case (2010), the FCC underlined that the "types of needs and means" that the right to human dignity required could not be "directly derived from the constitution," but depended "on the concrete living circumstances of the person in need of assistance."[42] In this case, the new social security scheme considerably reduced benefits for "irregularly occurring special needs."[43] Under the new legislation, the plaintiffs (a family of three with a sixteen-year-old daughter) would only be provided with "home-equipment purchases," equipment related to "pregnancy and birth," and money for "class trips"[44] in *exceptional* circumstances. In light of the case at hand, the FCC interpreted the "existenzminimum"[45] in a particularly expansive manner, considering that the right covered "the **physical existence** of the individual, that is food, clothing, household goods, housing, heating, hygiene and health, and ensuring **the possibility to maintain inter-human relationships** and **a minimum of participation in social, cultural and political life.**"[46] By

[38] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).
[39] Jo M. Pasqualucci, "The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System," *Hastings International and Comparative Law Review* 31, no. 1 (2008), https://repository.uchastings.edu/hastings_international_comparative_law_review/vol31/iss1/1.
[40] "American Convention on Human Rights," Oas.org, November 22, 1969, https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm.
[41] Ibid
[42] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).
[43] Lucy A. Williams, "The Role of Courts in the Quantitative-Implementation of Social and Economic Rights : A Comparative Study," *Constitutional Court Review* 3, no. 1 (January 2010): 141–99, https://doi.org/10.2989/ccr/2010.0006.
[44] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).
[45] Ibid
[46] Ibid

acknowledging that the daughter would be denied social participation with the suppression of "class trip" money, and that the mother would not have access to "pregnancy and birth"[47] equipment and clothing, the Court complemented precise socio-economic rights with political guarantees. Similarly, the IACtHR tailored its ruling in *Yakye Axa Community v. Paraguay* (2005) in light of the Yakye Axa Indigenous Community's specific circumstances. Refusing to limit its interpretation of the "vida digna"[48] to a lack of access to "food, water, and health care," it determined that the group's "special vulnerability" also required that they would be guaranteed "the right to a fair trial, and the right to judicial protection."[49]

This rights' degree of abstractness and remarkable flexibility become fully apparent when one observes how those courts have re-interpreted it in other cases. Indeed, while the FCC chose to solely infuse the right to a minimum dignified existence with "the right to social security, the right to take part in cultural life, [and] the right to education" in the "Asylum Seekers" case of July 2012[50]; the IACtHR confined the right to a "vida digna"[51] to "the right to life, right to humane treatment, right to a fair trial, rights of the child, and judicial protection," in *Juvenile Reeducation Institute v. Paraguay* (2004).[52] In turn, the CESCR could draw inspiration from the fluctuating nature of those interpretations in its determination of which rights are most relevant to each case's circumstances when determining the right to a dignified minimum existence's content. This would give full meaning to the principle of indivisibility of rights and evade what Bruce Porter describes as the "dilemma"[53] of the treaty-body, namely the fact that the CESCR

[47] Ibid
[48] Jo M. Pasqualucci, "The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System," *Hastings International and Comparative Law Review* 31, no. 1 (2008), https://repository.uchastings.edu/hastings_international_comparative_law_review/vol31/iss1/1.
[49] Yakye Axa Indigenous Community v. Paraguay (Inter-American Court of Human Rights June 17, 2005).
[50] 1 BvL 10/10 , 1 BvL 2/11 (BVerfG, Judgment of the First Senate July 12, 2012).
[51] Jo M. Pasqualucci, "The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System," *Hastings International and Comparative Law Review* 31, no. 1 (2008), https://repository.uchastings.edu/hastings_international_comparative_law_review/vol31/iss1/1.
[52] Juvenile Reeducation Institute v. Paraguay (Inter-American Court of Human Rights September 2, 2004).
[53] Bruce Porter, "Reasonableness and Article 8(4)," in *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary* (Pretoria University Law Press, 2014), https://doi.org/10.2139/ssrn.2481712.

only retains authority over the ICESCR, and cannot find that a SER violation also constitutes an infringement of civil and political rights. Inscribing the right to a dignified minimum existence in the ICESCR would allow the Committee to bring CPRs within the scope of this right without needing to reach beyond its jurisdiction. In practice, this adjustment would also reflect the concrete reality that plaintiffs in vulnerable situations have to endure: one cannot expect ESCRs to be sufficient to attain a *minimum* standard of living but has to acknowledge that the right to privacy is indispensable to enjoy the right to housing for instance.[54] Adopting this holistic approach would also reflect new trends in international human rights law, notably the abandonment of the "strict separation"[55] in recent treaties such as the Convention on the Rights of the Child or the Convention on the Rights of Persons with Disabilities. This would encourage progress towards rights' "de-categorization,"[56] to use legal scholar Ioana Cismas' expression, while also helping mark the "clear connection between a dignified life and the realization of all human rights," as noted by the UN Special Rapporteur on the Right to Housing, Leilani Farha, in her 2016 report.[57]

Finally, finding violations of multiple rights within breaches of the right to a minimum dignified existence would advance possibilities for the Committee to order remedies that reach beyond a single right. For instance, in his analysis of the *Yakye Axa Community v. Paraguay* case, Thomas M. Antkowiak explains that should the IACtHR have "limited itself to finding violations of the rights to collective property, it then likely would [have] order[ed] a return of the

[54] As the UN General Assembly stated in 1952, "the enjoyment of CP rights and of ESC rights is interconnected and interdependent (...) when deprived of ESC rights, man does not represent the human person whom the UDHR regards as the ideal of the free man."
[55] Gauthier De Beco, "The Indivisibility of Human Rights in Light of the Convention on the Rights of Persons with Disabilities," *International and Comparative Law Quarterly* 68, no. 1 (2019): 141–60, https://doi.org/https://doi.org/10.1017/S0020589318000386.
[56] Ioana Cismas, "The Intersection of Economic, Social, and Cultural Rights and Civil and Political Rights," in *Economic, Social, and Cultural Rights in International Law. Contemporary Issues and Challenges* (Oxford: Oxford University Press, n.d.), 448–72, https://ssrn.com/abstract=2430369.
[57] Leilani Farha, UN. Human Rights Council. Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and UN. Human Rights Council. Secretariat, "Report of the 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 : Note / by the Secretariat," January 18, 2017, https://digitallibrary.un.org/record/861179?ln=en.

communal lands."[58] Instead, having found a violation of the "vida digna"[59], it "substantiate[d] wider remedies such as medical attention, shipments of food and potable water."[60] Consequently, the right to a minimum dignified existence would offer continuity in the application of ICESCR's principle of indivisibility, and help alleviate particularly complex situations where an individual's vulnerability requires the state's action on multiple fronts.

B - Optimizing The Assessment of Individual Complaints with a Non-Quantifiable Guarantee.

The right's abstract nature offers judges the opportunity not to "fall prey to the risk of the absolute definition of minimum core guarantees,"[61] which constitutes the primary source of criticism from state parties to the ICESCR. Indeed, as Ingrid Leijten argues, it is "considered impossible to come up with a workable standard all states can comply with" for the "actual provision of essential means might be too big a burden,"[62] in particular for states with fragile economies and poor or absent social security schemes. Should the ICESCR find that a complainant's right to food's 'minimum core" was violated for they were not provided with 2,000 to 2,500 calories per day,[63] this ruling would raise a fundamental interrogation: how can the Committee expect low-income countries such as Uganda, which holds a score of 47.7 on the Global Food Security Index of 2022, to immediately provide its citizens with the same minimum as Qatari nationals, whose country scored 72.4 on that same index?[64] Furthermore, the Committee would need to define the exact *content* of the calories prescribed as a minimum

[58]Thomas M. Antkowiak, "A 'Dignified Life' and the Resurgence of Social Rights," *Northwestern Journal of Human Rights*18, no. 1 (2020), https://scholarlycommons.law.northwestern.edu/njihr/vol18/iss1/1.
[59]Jo M. Pasqualucci, "The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System," *Hastings International and Comparative Law Review* 31, no. 1 (2008),
[60] Ibid
[61] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.
[62] Ibid
[63] WHO, "Healthy Diet," Who.int (World Health Organization: WHO, April 29, 2020), https://www.who.int/news-room/fact-sheets/detail/healthy-diet.
[64] Economist Impact, "Global Food Security Index (GFSI)," foodsecurityindex.eiu.com, 2022, https://impact.economist.com/sustainability/project/food-security-index/.

subsistence level. Indeed, while 2,000-2,500 calories correspond to the recommended daily intake for an adult by the World Health Organization, this number *in absolute* fails to provide any indication of their nutritional value. From a hypothetical standpoint, this would allow some states to 'shield' themselves from individuals who claim that the minimum core provided is not sufficient when left with non-nutritious foods that technically still amount to the prescribed number of daily calories.

However, instead of explaining that an individual's minimum core guarantee was infringed upon for it did not live up to a precise standard, the Committee can take inspiration from the FCC and IACtHR's jurisprudence and use the leeway provided by the unspecified nature of the concept of dignity to "entirely refrain from defining the subsistence minimum in a quantifiable sense."[65] For instance, in the "Asylum Seekers" case of 2012, the FCC compared the benefits granted to asylum seekers with "the generally applicable benefits paid according to the Twelfth Book of the Code of Social Law,"[66] and found that they were one-third lower than those provided to nationals. In addition, the Court noted that the benefits had not been adjusted since 1993, "despite significant price increases" in Germany.[67] The FCC abstained from establishing that 129.75 € (the amount accorded by the Code of Social Law for people older than 18 years old),[68] constituted the 'minimum core' of the right to social benefits, but simply concluded that the asylum seekers' benefits were "evidently insufficient"[69] to live a dignified minimum existence. Similarly, the IACtHR "limited itself to a test of evidence control"[70] instead of finding violations of *quantifiable* minimum cores in *Juvenile Reeducation Institute v. Paraguay* in 2001.

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[65] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.

[66] 1 BvL 10/10 , 1 BvL 2/11 (BVerfG, Judgment of the First Senate July 12, 2012).

[67] Ibid

[68] International Labour Organization, "Germany - Social Code - Book XII - Social Assistance.," www.ilo.org, n.d., https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=83685.

[69] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).

[70] Lucy A. Williams, "The Role of Courts in the Quantitative-Implementation of Social and Economic Rights : A Comparative Study," *Constitutional Court Review* 3, no. 1 (January 2010): 141–99, https://doi.org/10.2989/ccr/2010.0006.

In this case, the Court refrained from finding that the inmates were not provided with the right to education's minimum core because they were not given access to a *specific* number of teachers, or certain *kinds* of school furniture, but ruled that the education program at the rehabilitation center "did not have sufficient teachers and was inadequately funded" to allow inmates to "pursue elementary studies and/or learn trade."[71] Combined with the "lack [of] adequate bathrooms, medical care, and food," the Court determined that the states "did not provide the basic needs essential to living a life with dignity."[72] As such, the right to an "existenzminimum"[73] or "vida digna,"[74] allow the Courts to provide a "minimum social protection," while "invalidating some of the criticism that is regularly directed at the use of minimum core guarantees,"[75] by finding living conditions to be 'evidently insufficient.'

Finally, it is indispensable to note that the ICESCR's minimum core approach raises an ultimate issue: by fixing what a right's minimum core *quantifiably* entails, the Committee necessarily binds future decisions to resort to identical standards. Even if one acknowledges that by virtue of not being a judicial court, the ICESCR is not technically bound by the doctrine of *stare decisis*, it remains a matter of credibility for the Committee not to face stringent scrutiny for its method of computation when defining *how much* a minimum core is. Inversely, the abstractness of the right to a dignified minimum existence would translate into the Committee finding violations of different rights according to each case's circumstances, thereby adjusting this right's interpretation instead of having to justify variations in the minimum core's content: not every plaintiff is faced with identical infringements upon his right not "to fall into

[71] Juvenile Reeducation Institute v. Paraguay (Inter-American Court of Human Rights September 2, 2004).
[72] Ibid
[73] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).
[74] Jo M. Pasqualucci, "The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System," *Hastings International and Comparative Law Review* 31, no. 1 (2008), https://repository.uchastings.edu/hastings_international_comparative_law_review/vol31/iss1/1.
[75] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.

destitution,"[76] and through its interpretation, the Court acknowledges the heterogeneous nature of precarious vulnerability.

Finally, as scholar Ingrid Leijten emphasizes, while the "existenzminimum['s]"[77] degree of abstraction leaves judges with significant interpretative space, "it is also a guarantee that is not likely to be questioned."[78] As an illustration of that assertion, one can turn to the fact that states can "request an interpretation of an [IACtHR's] decision" when they are particularly critical of the court's reasoning and yet, as of writing, "there have been no interpretation judgments on the right to a *vida digna*."[79]

To conclude this first part, examining the FCC and IACtHR's adjudication methods in cases concerned with the right to a dignified minimum existence provides practical examples for the ICESCR to fully tailor its judgments to each complainant's circumstances. Not only would the right's abstract character help bridge the justiciability gap between ESCRs and CPRs, but it would also allow the Committee to evade the minimum core's assessment of quantifiable translations of the Covenant's rights. Both the "Asylum Seekers" and *Juvenile Reeducation Institute v. Paraguay* cases have illustrated the right's potential to avoid the risk of substantiating amorphous remedies while keeping away from determining the *exact* quantity by which a certain right should be provided for. As the SACC emphasized in *Minister of Health Others v. Treatment Action Campaign & Others* (2002), "this minimum core might not be easy to define, but [it] includes at least the minimum decencies of life consistent with human dignity."[80]

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[76] Katie Boyle, "Models of Incorporation and Justiciability for Economic, Social and Cultural Rights" (Scottish Human Rights Commission, November 2018), https://www.scottishhumanrights.com/media/1809/models_of_incorporation_escr_vfinal_nov18.pdf.
[77] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).
[78] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.
[79] Thomas M. Antkowiak, "A 'Dignified Life' and the Resurgence of Social Rights," *Northwestern Journal of Human Rights*18, no. 1 (2020), https://scholarlycommons.law.northwestern.edu/njihr/vol18/iss1/1.
[80] Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) (Constitutional Court of South Africa 2002).

Part II: Interpreting the Right to a Dignified Minimum Existence: The Potential to Circumvent the Reasonableness Test's Deficiencies.

In its assessment of individual complaints, the CESCR has not only relied on the minimum core but has also increasingly resorted to a 'reasonableness test' which considers whether a state's policy is "deliberate, concrete and targeted towards the fulfillment of ESCRs."[81] While the right to a minimum dignified existence might offer an innovative approach to defining the minimum core, its benefits might not be appreciated should the CESCR wish to prioritize this proportionality inquiry. In "The Role of Courts in the Quantitative-Implementation of Social and Economic Rights: A Comparative Study," legal scholar Lucy A. Williams hints at the risk for Courts to adopt a strict "reasonableness" standard by formulating the following hypothesis: "suppose the government has made reasonable or even elaborate efforts to estimate basic subsistence income, but the litigants challenge the reliability and coherence of the government's calculations, as well as challenging the bottom line amount at which the government arrived."[82] As such, how should the Committee prioritize "marginalized groups and grave situations,"[83] while acknowledging states' efforts to fulfill their obligations?

A - An Absolute Right: the Possibility to Escape Strict Procedural Requirements?

Dr. Katie Boyle characterizes the right to a minimum dignified existence as a "non-negotiable, absolute right,"[84] and legal scholar Ingrid Leijten helps illustrate the right's absolute nature when explaining the FCC's methodology in the "Hartz IV" and "Asylum Seekers" cases. She notes that "once the FCC [had] found an interference with human dignity, it

[81] UN General Assembly, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights : Resolution / Adopted by the General Assembly*, A/RES/63/117 ed., 2009, https://www.refworld.org/docid/49c226dd0.html.
[82] Lucy A. Williams, "The Role of Courts in the Quantitative-Implementation of Social and Economic Rights : A Comparative Study," *Constitutional Court Review* 3, no. 1 (January 2010): 141–99, https://doi.org/10.2989/ccr/2010.0006.
[83] UN General Assembly, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights : Resolution / Adopted by the General Assembly*, A/RES/63/117 ed., 2009, https://www.refworld.org/docid/49c226dd0.html.
[84] Katie Boyle, "Models of Incorporation and Justiciability for Economic, Social and Cultural Rights" (Scottish Human Rights Commission, November 2018), https://www.scottishhumanrights.com/media/1809/models_of_incorporation_escr_vfinal_nov18.pdf.

[did] not review the interference in light of the requirements of proportionality," instead, "it directly [found] that the Constitution ha[d] been violated."[85] The CESCR could transpose this approach by discharging itself from weighing a state's efforts to provide for the realization of the plaintiff's rights when it has found that the plaintiff's conditions are 'evidently insufficient.' In such cases, if the state in question has violated the right to a dignified minimum existence, it "cannot plead that the interference was proportionate or reasonable in light of legitimate public interests."[86] However, while the right to a minimum dignified existence helps circumvent the implications of having to determine *what* this right concretely entails, it is necessary to delve deeper into the complications raised by "quantitative-implementation" cases (ones in which plaintiffs claim that the state's provision of a "guaranteed social good" is insufficient in "quantitative terms.")[87] As Lucy A. Williams underlines, the "legal test applied by the FCC in dignity cases is not a reasonableness test (..) at least *on paper*,"[88] which poses the following question: how might the CESCR find that the plaintiff's conditions are 'evidently insufficient' to reach a subsistence minimum without falling prey to an application of procedural standards[89]?

The risks of procedural standards are best illustrated by the SACC's adjudicative method in the case *Mazibuko v. City of Johannesburg* in 2009.[90] The applicants, five residents of the Phiri neighborhood in Soweto, challenged the constitutionality of the City of Johannesburg's Free Basic Water policy, by claiming that "the allocation of 6 kilolitres of free water per stand per month [was] unreasonable within the meaning of section 27 of the Constitution"[91] (the right of access to sufficient water) for 6 kilolitres were "insufficient," and allocated "regardless of

[85] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.
[86] Lucy A. Williams, "The Role of Courts in the Quantitative-Implementation of Social and Economic Rights : A Comparative Study," *Constitutional Court Review* 3, no. 1 (January 2010): 141–99, https://doi.org/10.2989/ccr/2010.0006.
[87] Ibid
[88] Ibid
[89] The author of this paper understands a judicial 'procedural approach,' to be one where the Court only looks at the merits of a state's procedure when designing and implementing a policy. This approach weighs on whether the steps, the processes taken by the state fall within the scope of what is 'reasonable.'
[90] Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) (Constitutional Court of South Africa October 8, 2009).
[91] Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) (Constitutional Court of South Africa October 8, 2009).

household size or need."[92] In turn, the SACC refused to determine what a "sufficient amount" would be by evoking the necessity to respect judicial deference,[93] and by asserting that claims pertaining to the provision of SERs had to "hold the government to account for the *manner* in which it seeks to pursue the achievement of social and economic rights,"[94] instead of challenging the "bottom line amount"[95] at which it arrived. This was justified on the grounds that "the state was not able to furnish citizens immediately with all the basic necessities of life,"[96] making the "concept of reasonableness"[97] the only viable adjudication method. Consequently, the Court conditioned its assessment of whether the amount was 'evidently insufficient' on procedural standards that sought to determine whether the government's program was reasonable. As Joie Chowdhury underlines, the Court found the City to have "demonstrated flexibility" by "shift[ing] its course during the litigation period"[98] (the ruling underlined that the State "ha[d] engaged in considerable research and continually refined its policies in light of the findings of its research.")[99] Moreover, the Court argued that under a "universal allocation" approach, the free basic water allowance was "generous in relation to 80% of households," therefore the FBW had been "implemented in a procedurally fair manner."[100] This conclusion inevitably entailed that the plaintiffs could not be found to live in conditions below their minimum dignity for the state had

[92] The other claim also pertained to the installment of "prepayment water meters which automatically disconnected the water supply if additional water credit was not purchased following the exhaustion of the FBW allocation," violated their "right of access to sufficient water," under section 27(1) and (2) of the South African Constitution. See: Stuart Wilson and Jackie Dugard, "Taking Poverty Seriously : The South African Constitutional Court and Socio-Economic Rights," *Stellenbosch Law Review* 22, no. 3 (January 1, 2011), https://doi.org/https://journals.co.za/doi/10.10520/EJC54799.

[93] This paper will not address the Court's 'deference' argument but will focus on the second argument used by the SACC to set aside the 'minimum core' approach. For reference, the framework of deference is explained in detail by Lucy A. Williams, "both the *Hartz IV* and *Mazibuko* Courts operated within a jurisprudential framework of deference to the elected branches. Both Courts affirmed that their respective constitutions do not empower them to set any quantitatively specific amount for constitutionally guaranteed social goods such as basic income or free basic water supply. The FCC and the SACC agreed that, pursuant to basic principles of separation of powers, it is the prerogative of the representative branches to assign quantitatively specific values to social and economic rights." See: Lucy A. Williams, "The Role of Courts in the Quantitative-Implementation of Social and Economic Rights : A Comparative Study," *Constitutional Court Review* 3, no. 1 (January 2010): 141–99, https://doi.org/10.2989/ccr/2010.0006.

[94] Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) (Constitutional Court of South Africa October 8, 2009).

[95] Lucy A. Williams, "The Role of Courts in the Quantitative-Implementation of Social and Economic Rights : A Comparative Study," *Constitutional Court Review* 3, no. 1 (January 2010): 141–99, https://doi.org/10.2989/ccr/2010.0006.

[96] Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) (Constitutional Court of South Africa October 8, 2009).

[97] Ibid

[98] Joie Chowdhury, "Unpacking the Minimum Core and Reasonableness Standards," *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, 2020, 251–74, https://doi.org/10.4337/9781788974172.00022.

[99] Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) (Constitutional Court of South Africa October 8, 2009).

[100] Ibid

taken "reasonable measures"[101] to provide them with their right to water. As Dr. Jackie Dugard highlights, there is a staggering discrepancy between the reality of the situation,[102] "the facts that the applicants were desperately poor, had inadequate access to water, and suffered greatly as a result," and the Court's reasoning which evaluated the city's policies "in the abstract," focusing on a "plethora of bureaucratic data concerning the difficulties the City said it faced in supplying water to Soweto."[103] Such inconsistency sheds light on the necessity for the Court and the CESCR to base its conclusion "on something more than the mere recitation of the reasonableness standard,"[104] in the words of Lucy A. Williams. To determine that a plaintiff's claim demonstrates his conditions to be 'evidently insufficient' for a dignified life, the Committee has to find a way to reconcile the "non-negotiable"[105] character of the right, without falling prey to evaluating the degree of 'reasonableness' characterizing the State's procedures in fulfilling its ESCRs obligations.

B - "Substantive Reasonableness": Realizing the Full potential of the Right to a Minimum Dignified Existence.

While finding a plaintiff's living circumstances to be 'evidently insufficient' provides many benefits to circumvent the minimum core's impracticality, the CESCR should determine the 'insufficient' character of such conditions in a way that bypasses the 'reasonableness test['s]" deficiencies. In its adjudication of the "Asylum Seekers" case, the FCC's 2-step approach provides a workable model for the Committee. The Court found that the "amounts provided"

[101] Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) (Constitutional Court of South Africa October 8, 2009).
[102] In the words of Mazibuko herself: "Each person in our household of 20 would only be able to flush the toilet less than once every two days (...) After all the free basic water budgeted for that day was used, no water would be left for anything else, such as drinking, cooking, cleaning the house and watering my food garden," See: Stuart Wilson and Jackie Dugard, "Taking Poverty Seriously : The South African Constitutional Court and Socio-Economic Rights," *Stellenbosch Law Review* 22, no. 3 (January 1, 2011), https://doi.org/https://journals.co.za/doi/10.10520/EJC54799.
[103] Stuart Wilson and Jackie Dugard, "Taking Poverty Seriously : The South African Constitutional Court and Socio-Economic Rights," *Stellenbosch Law Review* 22, no. 3 (January 1, 2011), https://doi.org/https://journals.co.za/doi/10.10520/EJC54799.
[104] Lucy A. Williams, "The Role of Courts in the Quantitative-Implementation of Social and Economic Rights : A Comparative Study," *Constitutional Court Review* 3, no. 1 (January 2010): 141–99, https://doi.org/10.2989/ccr/2010.0006.
[105] Katie Boyle, "Models of Incorporation and Justiciability for Economic, Social and Cultural Rights" (Scottish Human Rights Commission, November 2018), https://www.scottishhumanrights.com/media/1809/models_of_incorporation_escr_vfinal_nov18.pdf.

were "evidently insufficient" because they had not been estimated on a "realistic, needs-oriented approach."[106] It specified that "the legislature need[ed] to comply with the following four criteria: (1) covering and describing the objective of ensuring an existence in line with Article 1.1; (2) selecting a procedure of calculation fundamentally suited to an assessment of the subsistence minimum; (3) ascertaining the necessary facts completely and correctly; (4) staying within the bounds of what is justifiable within the chosen method and its structural principles at all steps of the calculation process."[107] As Inga T. Winkler underlines, the 4th requirement had not been fulfilled for "expenditures [had] not [been] fully considered in calculating the subsistence minimum, and deductions had been estimated randomly."[108] The strength of this model lies in the way it substantiates procedural conditions with the right to a minimum dignified existence's tangible exigencies: the four requirements are designed to assess whether the policy was 'reasonable,' but such standards of reasonableness are informed by the *content* of the right to a minimum dignified existence. Indeed, the first two criteria verify that the state designed its policy with the necessity to provide a "subsistence minimum"[109] in mind, the third criterion imposes a heavy burden of proof on the "non-discriminatory"[110] character of the policy, and the last criterion ensures that compliance with the previous requirements stay "within the bounds of what is justifiable,"[111] meaning that a policy's degree of 'reasonableness' cannot be appreciated if the most basic subsistence level was not provided for. Should the SACC have adopted such reasoning in *Mazibuko*, it would have found that the state had not ascertained the "necessary

[106] Inga T. Winkler and Claudia Mahler, "Interpreting the Right to a Dignified Minimum Existence: A New Era in German Socio-Economic Rights Jurisprudence?," *Human Rights Law Review* 13, no. 2 (June 1, 2013): 388–401, https://doi.org/10.1093/hrlr/ngt013.
[107] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.
[108] Inga T. Winkler and Claudia Mahler, "Interpreting the Right to a Dignified Minimum Existence: A New Era in German Socio-Economic Rights Jurisprudence?," *Human Rights Law Review* 13, no. 2 (June 1, 2013): 388–401, https://doi.org/10.1093/hrlr/ngt013.
[109] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.
[110] UN General Assembly, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights : Resolution / Adopted by the General Assembly*, A/RES/63/117 ed., 2009, https://www.refworld.org/docid/49c226dd0.html.
[111] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.

facts completely and correctly"[112] (requirement n.3) otherwise it would have taken into account the evidently extreme poverty of the Phiri neighborhood's residents, and the diversity of "household size [and] need"[113] when arriving at the bottom line of 6 kiloliters per household per day. If the right to a minimum dignified existence is correctly interpreted by the court as *minimal* meaning that it does not "ensure too-far reaching social protection, given what should be covered by [this] right in the first place,"[114] then the Court cannot find that the state's calculation method "stay[ed] within the bounds of what is justifiable"[115] (4th requirement) when the policy failed to provide for the most vulnerable groups of society.

One could see in the FCC's methodology a practical application of Sandra Liebenberg's "substantive reasonableness"[116] as described in Constitutional Conversations (2008). Indeed, the Court first moved away from "a rigid formulation of [the] minimum core"[117] by not defining the acceptable minimum benefits that asylum seekers had to be provided with, thereby acknowledging the "government's constraints,"[118] but it infused the values and content of the "existenzminimum"[119] into the 'reasonableness approach' by adapting it to the group's precarious situation. Ingrid Leijten applauded the Court's enhancement of the "absoluteness and robustness of the right [to a minimum dignified existence] by applying it with the help of concrete, but non-quantifiable requirements."[120] As such, in its adjudication of SERs, the FCC provided a

[112] Ibid
[113] Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) (Constitutional Court of South Africa October 8, 2009).
[114] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.
[115] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.
[116] Sandra Liebenberg, "Socio-Economic Rights: Revisiting the Reasonableness Review/Minimum Core Debate," in *Constitutional Conversations* (Pretoria University Law Press, 2008), 303–29.
[117] Joie Chowdhury, "Unpacking the Minimum Core and Reasonableness Standards," *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, 2020, 251–74, https://doi.org/10.4337/9781788974172.00022.
[118] Ibid
[119] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).
[120] Ingrid Leijten, "The German Right to AnExistenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection," *German Law Journal* 16, no. 1 (March 1, 2015): 23–48, https://doi.org/10.1017/s2071832200019416.

normative framework that is "mindful of the potential and pitfalls of each standard," and " in harmonization with other key human rights standards such as proportionality."[121]

Finally, Sandra Liebenberg underlines the advantages of "substantive reasonableness"[122] by describing it as a "principled and systematic interpretation of the content of rights, the values at stake in particular cases, and **the impact of the denial of access of these rights on the complainant group.**"[123] This component was reflected in the "Asylum Seekers case" for the FCC's choice of method implied that an adequate understanding of asylum seekers' vulnerability could not be met by procedural reasonableness: the interpretation of the right to a minimum dignified existence must rest upon holistic and substantive requirements. The SACC's ruling in *Daniels v. Scribante and Another* (2017) also considered this reality by recognizing that the plaintiffs' "intrusion" into the "common law rights of [their] property owners" had to be understood in light of the "prejudice [that] would be suffered by the respondents" if denied the ability to "make improvements"[124] to the dwelling farm they occupied illegally. If the SACC proved able to "take poverty seriously,"[125] then it falls upon the CESCR to take dignity equally seriously. To that effect, the CESCR should adopt a high burden of justifications for states when dealing with the right to a minimum dignified existence for the implications of denying a plaintiff their subsistence level is much higher than in cases pertaining to the fulfillment of rights beyond their minimal level. As Jackie Dugard emphasizes in her analysis of the SACC's ruling in *Mazibuko,* courts must recognize that "litigants approach courts after the democratic process has failed," and "on the basis that their interests are worthy of legal protection."[126] If the CESCR

[121] Ibid
[122] Sandra Liebenberg, "Socio-Economic Rights: Revisiting the Reasonableness Review/Minimum Core Debate," in *Constitutional Conversations* (Pretoria University Law Press, 2008), 303–29.
[123] Sandra Liebenberg, "Socio-Economic Rights: Revisiting the Reasonableness Review/Minimum Core Debate," in *Constitutional Conversations* (Pretoria University Law Press, 2008), 303–29.
[124] Daniels v Scribante and Another (CCT50/16) (Constitutional Court of South Africa May 11, 2017).
[125] Stuart Wilson and Jackie Dugard, "Taking Poverty Seriously : The South African Constitutional Court and Socio-Economic Rights," *Stellenbosch Law Review* 22, no. 3 (January 1, 2011), https://doi.org/https://journals.co.za/doi/10.10520/EJC54799.
[126] Stuart Wilson and Jackie Dugard, "Taking Poverty Seriously : The South African Constitutional Court and Socio-Economic Rights," *Stellenbosch Law Review* 22, no. 3 (January 1, 2011), https://doi.org/https://journals.co.za/doi/10.10520/EJC54799.

truly serves as the Committee of 'last resort,' its adjudication methods must reflect its position to shed light and correct[127] the "problems occasioned by [states'] legislative[s'] "blind spots" or "burdens of inertia"[128] to use Joie Chowdhury's expression. In the same way "adjudicative contexts" at a national level "allow for the participation of multiple contributory perspectives," the integration of a right to a dignified minimum existence in the ICESCR would provide the Committee with a tool to create a "democratic space" between individuals "facing rights violations" and "institutional actors"[129] (represented by states). By following the substantive reasonableness methodology, the Committee would support a "dialogic approach" by integrating the views of "affected individuals and communities, government actors, jurists, civil society actors, judges, and experts."[130] In this manner, the CESCR's adjudicative method could provide "states, judges, and lawyers" with "guidance on the use of standards in ESCR litigation,"[131] especially for countries where such litigation is episodic, and could provide other jurisdictions with an important illustration of the right to a dignified minimum existence's value and robustness.

III - Conclusion

If the right to a dignified minimum existence remains a particularly novel legal principle, its adjudication by the Federal Court of Germany and the Inter-American Court of Human Rights has given rise to unprecedented procedures to evaluate the constitutionality of state policies and their effects on socio-economic rights. Both Courts have exploited the right's potential to

[127] Due to the fact that the CESCR is not a judicial body, it only has the ability to issue "recommendations" to the State party, and the absence of an international human rights court means that there are no enforcing mechanisms to ensure that the State enforces the Committee's recommendations. As such, the choice of the word "correct" has to be nuanced, and should be understood to mean that the CESCR can "correct" the state's action to the extent that the state complies with its recommendations.
[128] Joie Chowdhury, "Unpacking the Minimum Core and Reasonableness Standards," *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, 2020, 251–74, https://doi.org/10.4337/9781788974172.00022.
[129] Ibid
[130] Joie Chowdhury, "Unpacking the Minimum Core and Reasonableness Standards," *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, 2020, 251–74, https://doi.org/10.4337/9781788974172.00022.
[131] Ibid

respond to individuals who were left behind by the "democratic process,"[132] and endured highly vulnerable and precarious circumstances. Transposing this innovative judicial method to the international level, the adoption of the right to a dignified minimum existence in the ICESCR could offer new interpretative tools to the CESCR when assessing states' compliance with their ESCRs obligations. Following the FCC and IACtHR's examples, the Committee should engage with the right to a minimum dignified existence's abstract character by integrating the rights it deems most relevant to the circumstances that each case presents. An expansive interpretation of the right would help bridge the justiciability gap between CPRs and ESCRs, and give full effect to the principle of indivisibility of rights which would be in adequation with the values and wording of recent international human rights treaties. Even more, the Committee should understand the right's abstractness as a means to formulate non-quantifiable requirements, which would help evade states' criticism about the 'impractical requirements' usually inferred from the interpretation of a right's 'minimum core.' In turn, the indeterminate nature of the right to a dignified minimum existence will avoid creating precedents that would bind the CESCR's future re-interpretations of this right, thereby strengthening the Committee's credibility and enhancing its individual-focused approach. Furthermore, an analysis of the FCC and IACtHR's jurisprudence indicates that the treaty-body could find a plaintiff's living conditions to be "evidently insufficient"[133] in a manner that would also circumvent the 'reasonableness test' deficiencies. The Committee would prioritize "marginalized groups and grave situations,"[134] while acknowledging states' efforts to fulfill their obligations by informing procedural requirements with the substantive values that the right to dignified minimum existence endeavors

[132] Stuart Wilson and Jackie Dugard, "Taking Poverty Seriously : The South African Constitutional Court and Socio-Economic Rights," *Stellenbosch Law Review* 22, no. 3 (January 1, 2011), https://doi.org/https://journals.co.za/doi/10.10520/EJC54799.
[133] Hartz IV GFCC (BVerfG, Judgment of the First Senate February 9, 2010).
[134] UN General Assembly, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights : Resolution / Adopted by the General Assembly*, A/RES/63/117 ed., 2009, https://www.refworld.org/docid/49c226dd0.html.

to sustain. The "Asylum Seekers" case in Germany is an example of a Court's practical translation of Sandra Liebenberg's "substantive reasonableness"[135] which provides a workable model for the CESCR to integrate into its own adjudicative framework. From this perspective, the integration of a right to a dignified minimum existence would provide the Committee with an approach that reflects the significance of this right in fulfilling the ICESCR's aspirations and an opportunity to bring the "needs of the most vulnerable"[136] to the foreground of international human rights law. To that effect, the Committee should draw inspiration from the groundbreaking case *Daniels v. Scribante and Another* (2017)[137] in which the SACC considered the seriousness of denying the plaintiffs access to a basic level of subsistence. The case proved the practical feasibility and necessity for the Committee to adapt its adjudicative model when assessing individuals whose national judicial systems have failed to address their extreme living conditions. In his comments, Justice Raymond Zondo noted that the improvements envisioned by Ms. Daniels could only "enable [her] and her children to live in the dwelling in conditions of human dignity,"[138] reminding the Committee that dignity should not be interpreted in any other way than for what it truly stands for: a human being's last safeguard against complete destitution.[139]

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[135] Sandra Liebenberg, "Socio-Economic Rights: Revisiting the Reasonableness Review/Minimum Core Debate," in *Constitutional Conversations* (Pretoria University Law Press, 2008), 303–29.
[136] Joie Chowdhury, "Unpacking the Minimum Core and Reasonableness Standards," *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, 2020, 251–74, https://doi.org/10.4337/9781788974172.00022.
[137] Daniels v Scribante and Another (CCT50/16) (Constitutional Court of South Africa May 11, 2017).
[138] Ibid
[139] **Note**: To expand on the subject presented in this paper, future research should endeavor to explore the role that judicial deference plays when applied to the CESCR's particular status, by assessing how the method of "substantive reasonableness" would pose risks for the Committee to overstep its mandate. It is often understood that the CESCR possesses quasi-judicial functions when addressing individual complaints, however, unlike the FCC, the Committee does not possess the competence to impose a deadline on states' legislatures for revising their policies, as such, future research should address how the right to a dignified minimum existence could modify the CESCR's status and enforcement mechanisms. Finally, some legal scholars brought forward concerns about the "norm diluting" effect of the right to a minimum dignity's repetitive use, emphasizing that it might come to restrict the idea of "dignity" to a particularly low subsistence level, thereby "diluting" the right to dignity's full potential in international human rights law. Further research should therefore investigate this subject matter by analyzing the legal repercussions of national and regional courts' adjudication of the right to a dignified minimum existence on the right to dignity in their respective jurisdictions.

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