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Forced Economic Migration: Towards a Regime of International Protection on Grounds of Socioeconomic Deprivation?

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“Segue o teu destino,
Rega as tuas plantas,
Ama as tuas rosas.
O resto é a sombra
De árvores alheias.”

Fernando Pessoa

"The shocking reality…is that states and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action."

Statement to the Vienna Conference by the UN Committee on Economic, Social and Cultural Rights

Abstract

Human mobility is a constant, as people have been moving for years and for many distinct reasons. One can affirm that migration is one of the most persistent characteristics of humanity. As a result of globalization, the opening of borders for trade purposes, and the emergence of new actors, the global economic structure changed, so as the motivations for departing. Nowadays, a primary motivation for emigration lies on the contrasting socioeconomic conditions amongst countries, especially the North-South disparities. Nevertheless, forced economic migration and the need to escape economic oppression remains unsettled and unrecognized in international law. Although many scholars deal with the issue of economic migration, few works have been devoted to the phenomenon of economic forced migration taking place alongside voluntary economic migration. The lack of protection by the State of origin, in the form of not granting basic tools to its citizens, can lead an individual to go away because there are no prospects of improvement. Almost everyone fleeing situations of socioeconomic deprivation are fleeing state incompetence, and, more than looking for economic improvement, it is a mere question of survival.

To highlight the urgency of recognizing this situation, an overall analysis on the possible causes of its perpetuation will be presented. Despite the existence of the “refugee” *status*, international law does not recognize claims to refugee status based on economic forms of persecution nor does it recognize this contemporary cause of migration. In Africa, Latin America, and Europe, supplementary regional instruments broadening the definition of “refugee” and protection mechanisms for individuals who fall outside that status have been developed, which sets a landmark in the acceptance of socioeconomic deprivation as a valid reason for protection.

This study aims to further reach two main goals: demonstrating that situations of socioeconomic rights deprivation are not an unfortunate and unchangeable event of life and require protection; and that, within the right interpretation, it may be possible to protect this category of migrants in the future. To achieve this, it takes a shift on the perspective that socioeconomic rights are unworthy of protection, and the acknowledgement that socioeconomic deprivation implies the violation of core rights and hazards to human dignity.

Keywords: refugee; forced migration; globalization; economic migration; socioeconomic rights; human rights; extreme poverty; international protection.

Resumo

A mobilidade humana tem sido uma realidade constante, uma vez que as pessoas se deslocam há anos pelas mais variadas razões. Pode afirmar-se que a migração é uma das características mais persistentes da humanidade. Em resultado da globalização, da abertura das fronteiras ao comércio mundial e ao aparecimento de novos atores, a estrutura económica global alterou-se, bem como as motivações para a migração internacional. Atualmente, uma das principais motivações para a emigração são as disparidades socioeconómicas entre os países, principalmente as disparidades Norte-Sul. No entanto, a migração económica forçada e a necessidade de escapar da opressão económica não são reconhecidas pelo direito internacional. Embora muitos estudiosos abordem a questão da migração económica, poucos trabalhos têm sido dedicados ao fenómeno da migração económica forçada, que ocorre paralelamente à migração económica voluntária. A falta de proteção do Estado de origem ao não conceder aos seus cidadãos ferramentas básicas, pode levar um indivíduo a abandonar esta situação por não sentir que há perspetivas de melhoria da mesma. A maioria dos indivíduos que abandonam situações de privação socioeconómica estão, na realidade, a fugir da incompetência do Estado de origem, e não o fazem apenas para melhoria económica, mas para sobreviver.

Para destacar a urgência de reconhecer esta situação, será apresentada uma análise global sobre as possíveis causas da sua perpetuação. Apesar da existência do estatuto de "refugiado", o direito internacional não reconhece as reivindicações ao estatuto de refugiado baseadas em formas económicas de perseguição, nem reconhece esta causa contemporânea da migração. Em África, na América Latina e na Europa, foram desenvolvidos instrumentos regionais complementares que ampliam a definição de "refugiado" e oferecem mecanismos de proteção para indivíduos que não se enquadram nesse *status*, constituindo marcos no reconhecimento da privação socioeconómica como motivo válido de proteção. Este estudo visa ainda atingir dois objetivos principais: demonstrar que as situações de privação de direitos socioeconómicos não são um evento infeliz e imutável da vida e requerem proteção e reconhecimento; e que com a interpretação correta pode ser possível proteger esta categoria de migrantes no futuro. Para que isso aconteça, é necessário mudar a perspetiva de que os direitos socioeconómicos são indignos de proteção e reconhecer que a privação socioeconómica implica a violação de direitos fundamentais e põe em risco a dignidade humana.

Palavras-chave: refugiado; migração forçada; globalização; migração económica; direitos socioeconómicos; direitos humanos; pobreza extrema; proteção internacional.

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INTRODUCTION

In a utopian world, everyone should be able to fully exercise their human rights, enjoy a sustainable standard of living, and live unafraid fear of political, social, or economic oppression. However, this reality seems distant. Migration as a result of the deprivation of socioeconomic human rights is a controversial issue that gives rise to complex legal, moral, and ethical questions. It is estimated that 836 million people around the world live in extreme poverty. Starvation, homelessness, and lack of adequate healthcare continue to pose a threat to the survival of many individuals around the world. The deprivation experienced by those affected may trigger a need to leave the intolerable conditions and seek refuge abroad. Socioeconomic deprivation is a condition in which individuals struggle to meet their basic needs. It is common to associate the concept of poor countries with undeveloped countries.

Therefore, the starting point of this thesis is the recognition of the emergence of the phenomenon of migration driven by economic insecurity built on the establishment of an unequal economic global structure and the consequent enhancement of inequalities between developed and undeveloped countries. These new realities, which led to the growth of human and economic insecurity, mostly in developing countries, stand as a cause for migration that still needs to be properly addressed by law at an international level. The issue of economic insecurity, namely extreme poverty and the inherent lack of basic needs, and the global processes that enhanced it emerged as a new setting which has not been recognized by international protection schemes. Hence, people who want to leave their countries due to the lack of economic and human security are not seen as electable for international protection. This is a clear gap in Refugee Law and its underlying document - the 1951 Convention Relating to the Status of Refugees, as well as in International Law. The Convention does not recognize the claims of forced economic migrants, i.e., people who flee their country of origin due to the severe violation of their socioeconomic rights (Chimni, 2000). Hence, this is a subject that needs to be analysed more deeply.

The legal distinction between migrants and refugees takes root in the Cold War era, fueled by the ideological opposition between Eastern and Western blocs (Blanc, 2021:4). The distinction formally emerged in the early 1950's, as an anti-communist tool created by the Western blocs. According to the U.S. law, a refugee was an individual who sought protection in non-communist countries, and since the United States played a key international role this openness to people escaping communism was fundamental to building a powerful leading position (Lazare, 2018). Nowadays to consider narrowing the meaning of "refugee" should no longer be acceptable, due to all the economic and environmental changes the world went through. The impact of globalization and the consequent global economic structural changes need to be considered when assessing a claim based on economic deprivation. These economic changes aggravated inequalities between nations, led to the growth of poverty rates and should, therefore, be considered a valid cause for leaving a country where basic survival needs are not fulfilled.

According to Flegar, it is common to assume that economic migration is voluntary (Flegar, 2015:1). For this reason, forced economic migrants remain outside the international protection regimes. The collective understanding of an economic migrant defines it as someone who migrates with a view to improving their financial status by finding employment in a host country (UNHCR, 2016:14). However, it becomes imperative to set a distinction between those who flew voluntarily and those who feel that need because of the non-observance of their socioeconomic rights in a severe way. Moreover, the dichotomy between "forced" and "voluntary" is not as linear as it may have seemed. Not all forced migrants can be considered refugees *stricto sensu*, as we will further address. The theoretical framework on migration has already highlighted the possible forced nature of some economic migration movements. Moreover, these so-called "social welfare rights" imply state responsibility for the provision of dignified and adequate living standards, such as access to housing, food, and water. This state responsibility is settled in the Universal Declaration of Human Rights, in the International Covenant on Economic, Social, and Cultural Rights and other regional instruments. When this responsibility is not carried out, situations that force individuals to make difficult and rushed decisions may occur. However, this is an issue that is already rooted within the marginalization of socioeconomic rights, since they are regarded as "second generation" rights, as opposed to "first generation" civil-political rights. This tradition of regarding economic rights as secondary is regrettable, considering its fundamental nature (Litinski, 2019).

Furthermore, neither migration nor inequality is a recent phenomenon; in fact, the breaches between developed and developing countries were accentuated through globalization. Thus, it is common for individuals to move to improve their life prospects or to gain new experiences, but one must note that they can also be led to the decision to flee insecurity, disaster, or famine. Hence it is important to undertake an assessment of the claims based on severe deprivation of socioeconomic rights.

According to migration literature, numerous situations of poverty, conflict, and bad governance lead poor people to decide to leave in search for a better life elsewhere (Dadush et al, 2016:2). According to International Human Rights Law, both socioeconomic rights and civil and political rights hold the same status. However, a hierarchy persists in many political and legal spheres, namely in terms of decision-making within the context of refugee law. This hierarchy was affirmed by wealthier nations and guided by neoliberal ideologies and is still acknowledged in International Refugee Law (Jackson, 2011). According to Agbakwa (2002) the urgency to realize socioeconomic rights in developing countries is much more important than the observance of civil and political rights, yet it is unreal how these violations are not recognized in international law as valid reasons for claiming protection in a receiving country. Despite the existence of some international and regional mechanisms, there is no specific and binding legal regime to deal with the issue and no recognition of the former. The divergent political and economic interests contribute to this gap.

Against this background, this thesis aims to emphasize the fundamental nature of recognizing violations of socioeconomic rights as a migration factor, overcoming the simplistic dichotomy between "voluntary" and "forced" migration. Moreover, by deconstructing the main assumptions that perpetuate the marginalization of socioeconomic rights, which affect the understating of this issue, we also intend to offer some recommendations for a future integration of this migratory cause within the scope of international protection.

We believe that due to the changes in global economy, the observable inequality between developed and underdeveloped countries, and the lack of equal opportunities when it comes to the satisfaction of basic human rights, the international community shall develop a recognition of these topics and extend protection to severe economic deprivation situations. These new realities demand an adaptation of the law, and it is this balance - between earlier legal instruments and new situations - that demand a standpoint and action on the part of the States.

RESEARCH AND METHODOLOGY

Taking into consideration the new international challenges, the inequalities in economic global order, and the threats to human rights it is urgent to address the new causes for displacement, such as economic deprivation, global warming caused by environmental changes, systematic violation of human rights, such as socioeconomic rights, among other factors. Claims regarding impoverishment and the violation of socioeconomic rights in the country of origin should be eligible to request international protection. The various assumptions regarding forced migration and socioeconomic rights continue to validate this non-recognition.

Denying protection to a group of vulnerable individuals establishes a disrespect for human rights and for the founding values of the United Nations, namely human dignity. In this sense, we see as fundamental the deconstruction of all these assumptions and the understanding of how it is possible to recognize the violation of socioeconomic rights within the scope of international protection.

It is rather safe to affirm that globalization, combined with the influence of wealthier states, enhanced the unfolding of inequalities between poorer and richer nations, and undermined the possible development of underdeveloped nations. Hence, by not recognizing extreme poverty- i.e., the severe deprivation of socioeconomic rights/basic human needs, such as food, safe drinking water, sanitation facilities, health, shelter, education and information- as a reason to flee, international community fails to observe the protection of rights foreseen in International Human Rights law instruments, such as the International Covenant on Social, Cultural, and Economic Rights, the Universal Declaration of Human Rights, and the Charter of the United Nations. We believe that by deconstructing the assumptions regarding socioeconomic rights and considering the developments on the recognition of such rights in the analysis of claims, it might be possible to protect this category of migrants within the international protection framework.

Nevertheless, the topic of extending the “refugee” definition or the recognition of another category of forced migration has always been controversial. Some authors, such as Foster or Storey, argue for the inclusion of forced economic migration within the international protection spectrum, however, we believe a deeper analysis, based not only on the nature of the "refugee status", but also on the concept of "forced migration", would be an advantage. According to the 2022 IOM (International Organization for Migration) Migration Report, there was a global estimate of 281 million international migrants in the world, which means 3,6 percent of the global population. The report states that the number of international migrants has been increasing for the last decades. Only 26,4 million of those met the requirements to be deemed refugees. Thus, we intend to analyze the incongruity of the concept of refugees in the face of current challenges, specifically economic changes, and economic inequalities, as well as to explore the assumptions that need to be demystified as to recognize that people fleeing severe economic deprivation are in danger in their country of origin.

The main question guiding this thesis is:

How can economically forced migration be considered under the international law protection framework?

In line with the above main question, some sub-questions arise, such as: How are the protection gaps regarding forced economic migrants made possible by contemporary international legal arrangements? What are the assumptions that contribute to the creation of these gaps? And how can formalized regional complementary protection standards, case law and international human rights interpretations conceptualize protection for economically forced migration?

Hypotheses: by means of the deconstruction of assumptions and the definition of specific parameters to define "forced economic migrants", it might be possible to include claims based on socioeconomic rights violations in the international protection framework.

To answer the research question and sustain the hypothesis, a doctrinal research method will put forward. We will look at the main relevant international and regional legal instruments and cases, as well as supporting literature, and commentaries on the issue. In methodological terms, the objective will be to elaborate an exhaustive and pragmatic analysis. Our starting point "is not a theory and a framework of hypotheses, but a situation, a problem, a real and concrete practice" on which we believe it is important "to make the rules of the social game clearer, in a concrete context of action, supporting a reflection on the consequences and constraints arising from it" (Guerra, 2006: 53).

The analysed sources will be primary ones - international treaties and conventions, namely the 1951 Geneva Convention and Additional Protocol, jurisprudence, regional instruments, complementary protection status, and case law of the ECtHR (European Court of Human Rights), CJEU (Court of Justice of the European Union), and other relevant court decisions - and secondary ones, including academic literature, and opinion articles.

Firstly, it is essential to understand that the changes we have been observing regarding migration have been widely influenced by the globalization process and its impact on the global economy and global powers. Furthermore, this thesis is organized into five chapters. The first chapter provides an initial approach on the two essential theories regarding economic migration, followed by an analysis of the phenomenon of Globalization as a catalyst for inequalities and poverty and a consequent influencer of forced economic migration. In Chapter 2 we will try to deconstruct the idea of an existing hierarchy between rights, arguing equality between human rights and demonstrating the elementality of recognizing this category of forced migrants, based on the essentiality of socioeconomic rights to human dignity.

Subsequently, in Chapter 3 we will question the adequacy of the 1951 Geneva Convention status regarding the protection of forced economic migrants. Several features of the definition will be analysed, as well as the simplistic dichotomy between forced and economic migration. With this analysis, it is expected to understand the existing gaps, and the reasons for their persistency, namely the restrictive understanding on the concept of "persecution" and the issue with its indeterminacy. Chapter 4 will focus on regional instruments concerning protection, such as the Convention of the Organization of African Unity (OAU), the Cartagena Convention, and the Qualification Directive of the EU and relevant case-law related to socioeconomic rights. It is noteworthy to analyze these instruments and decisions since they provide a broader definition of "refugee", as well as protection of those who do not fit in that concept, and several interesting parameters that can provide a profitable basis for a future recognition of the issue and its inclusion in the international protection regime. In the final Chapter we will present some suggestions on how socioeconomic deprivation situations could be included in the international framework of protection.

Chapter 1: The roots of "economic migration" and socioeconomic disparities

1.1. Theorizing Economic Migration

1.1.1. Neo-classical equilibrium perspective

Throughout history, there have always been, to a greater or lesser extent, population movements in response to population growth, climate change and economic needs" (Castles, 2000: 273). This is a present reality, but the complexity of factors that lead to these movements is now more complex than ever.

The United Nations Department of Economic and Social Affairs has defined a migrant as:

> "While there is no formal legal definition of an international migrant, most experts agree that an international migrant is someone who changes his or her country of usual residence, irrespective of the reason for migration or legal status. Generally, a distinction is made between short-term or temporary migration, covering movements with a duration between three and 12 months, and long-term or permanent migration, referring to a change of country of residence for a duration of one year or more."

The UNHRC Glossary defined an "economic migrant" as someone who leaves "their countries purely for economic reasons unrelated to the refugee definition, or in order to seek material improvements in their livelihood". Hence, they do not fall within the criteria for refugee status and are not eligible for international protection. Economic migrants are ineligible for asylum because they are merely pursuing a better life, while refugees are trying to escape a threat that can endanger their lives (Foster, 2007: 2-20; Steinbock, 1998).

This legal distinction between refugees, defined as forced migrants, and economic migrants, defined as voluntary ones, is fundamental since the Article 33 of the 1951 Convention inhibits states from returning refugees to their country of origin, since there is a great risk to put their human integrity at stake. Nevertheless, as it will be further addressed, the distinction between "voluntary" and "forced" is unclear. One can claim that, even if a refugee is escaping danger, there is still some degree of voluntarism in their choice to abandon their country of origin. On other hand, some economic migrants may be forced to migrate due to severe situations such as hunger or disease (Dadush *et al*, 2016).

Castles states that "migration definitions are not objective. These are the results of state policies, aiming at political and economic objectives, and in response to public reactions" (2005: 18). Consequently, theoretical elaborations are not able to portrait all aspects of migratory movements. As Joaquín Arango points out, "migrations are too diverse and complex for a theory to be able to explain them" (2000: 33). In line with this, Maria Ioannis Baganha also states that, "even if such a theory were to emerge, it would have to be constructed at such a level of abstraction that its operationalization would not only be highly problematic but, probably, condemned to circularity" (2001: 136).

Following, this thesis opposes this mainstream approach to economic migration, by exploring the reasons to considered it as "forced migration" in situations of severe socioeconomic deprivation. Before moving forward, it is important to understand how migration and asylum where theorized. In 1885, Ravenstein sought to theorize migration outlining a methodological framework and carried out classifications of migrations and migrants in a task that persists to the present day (Nolasco, 2016). He developed a framework based on *"push and pull factors"* which confronts two places with unequal levels of socioeconomic development and privileges the individual decision to migrate in the face of divergences in income and employment between countries. The notion of "push" applies to the migrant's place of origin and is based on the idea of precarious or low quality living conditions, pushing individuals out of their country. On the other hand, the notion of "pull" applies to the place of destination, referring to the satisfactory and attractive living conditions existing in other countries, capable of attracting individuals (Nolasco, 2016).

In 1966, Everett Lee reformulated the interpretation of "push and pull factors", and considered other intervening factors which, in his opinion, could encourage or prevent migratory flows, namely: political borders, travel costs; distance; physical barriers and national migration laws (Massey et al., 1993; 434). Lee also claimed that personal factors, such as education, information about the population in the destination places and family ties, can facilitate or delay emigration (Lee, 1966: 48).

Thus outlined, the “attraction v. repulsion”, conceived by Ravenstein, has multiple developments, acting like a foundation on which the theoretical corpus of migrations is built. Inheriting Ravenstein's migration laws, and based on the push-pull model, the neoclassical theory interprets migrations from an approach arising from political economy, where rationalism, individualism and liberalism work as a triad of principles that conceives man as a free and rational being, capable of choosing between different alternatives in order to achieve the best results at the lowest costs" (Castles, 2000: 272; Keely, 2000).

The neoclassical perspective of international migration privileges the individual as the unit of analysis. It considers that the migration process emerges from rational individuals who decide on what is more profitable, after analysing the costs and benefits of migration and with the idea of weighing the costs of emigrating in order to maximizing income. In this rational equation, the migrant takes into account all the costs and gains associated with this decision of leaving the country of origin.

Moreover, these are some basic assumptions of the neoclassical school: at the center of the analysis stands the individual who, as we have already mentioned, acts rationally, analysing the costs and benefits of migration, in order to maximize his well-being and his individual utility; there is perfect information about the mode of action of the markets which, in turn, function without any inefficiency; the various existing productive factors have a homogeneous character and are perfectly mobile (Figueiredo, 2004:18).

We do not agree with this theory, and authors such as Alejandro Portes and Jósef Böröcz (1998: 69) also questioned the limitations of this model. Lee (1966) considered that “work flows as a result of poverty and backwardness in the sending regions” (Portes and Borocz, 1989: 607). This affirmation does not uphold reality, since there is an enormous diversity of flows, and not all take place from less developed countries to more developed ones. Moreover, the “push factor” can work separately if living conditions in the country of origin are so precarious that put human dignity at stake and pressure an individual to leave. Likewise, the “pull factor” can work alone, if, for example, individuals already enjoy good living conditions in their place of origin but choose to migrate to have even better conditions. This means that it is not fundamental that there is a pull and a push factor since it is dependent on the overall scenario.

Furthermore, critics of this approach argue that inequalities deriving from centuries of poor countries being exploited by the rich ones leveraged migration, which was perpetuated by the structures of labour markets in richer countries (Castles and Kosack 1973). This is a reality that was even more aggravated by globalization, as we will further elaborate on.

Furthermore, Keely (2000) refers that each migratory movement includes not only elements of choice, but also of pressure. So, we can argue that voluntarism and rationality of choice are not as linear as policymakers and refugee-law decision-makers usually advocate. An individual may feel pressured to leave their country of origin due to severe factors such as the deprivation of socioeconomic rights: hunger; illnesses; lack of sanitation and access to clean water are some examples. In these cases, there is an obligation to look for a place with better conditions in which they can safeguard their human dignity and their fundamental rights.

Till this day, this theory is still acknowledged and accepted by academics and decision-makers (Guild, 2020). However, as Guild states it is a useful theory towards analysing asylum, since the push factor is already recognized in the 1951 Convention- persecution. Nevertheless, has previously discussed, regarding non recognized forced migration, it is not easy to identify push factors, since there may be an overlap of factors that drive migration, let alone pull factors (Guild, 2020).

According to Castle (2000), international migration flows are a fundamental part on the globalization process. Nevertheless, oppositely to positive flows and liberalization of capital, migrations are considered as "potential threats to national sovereignty and identity and many Governments and political movements seek to restrict them" (Castles, 2000; 271). Hence, as we will further elaborate on, globalization enhanced the opening of markets, competition, and the expansion of capitalism. Therefore, it highlighted the already existing inequalities and contributed to the persisting underdevelopment in some poorer countries.

1.1.2. Historical-structural theory

In the 1960's, a different interpretation of migration emerged based on the historical-structural paradigm on development, with its roots in political economy and in the world systems theory (Castles & Miller 2003: 25). The theory argues that economic and political power is unevenly distributed, and that this perpetuates inequalities between develop and underdeveloped countries. This distribution leads to unequal access to resources, which in turn was enhanced by capitalist expansion and globalization. The process of globalization is a result and force of capitalist expansion, since it enhanced the integration of economic activity into "a global market" that transcends geo-political borders and is not subject to regulation by states (Guttal, 2010). This reality was not entirely positive for poor countries, and as Haas (2008) argues that "Instead of modernizing and gradually progressing towards economic development, underdeveloped countries are trapped by their disadvantaged position within the global geopolitical structure".

Historical structuralism perceives migration as an outgrowth of these inequalities, and a manifestation of the capitalist accumulation and unequal terms of trade between developed and underdeveloped countries (Massey et al 1998:36). Moreover, this school of thought has been critical of the "push and pull" theory arguing that individuals do not have a free choice, since they are constrained by structural forces (Haas, 2008). Rather than a choice, people are forced to leave their countries due to the persisting underdevelopment, which most of the times leads to socioeconomic deprivation. The undeveloped world does not own the structures that allow an incorporation into the global political-economic system, which can create a push factor to abandon that deprivation situation. Hence, the Historical-Structuralist paradigm acknowledges migration as a "flight from misery", caused by global capitalist expansion, which precludes improvement or change in the structural conditions that cause migration (de Haas, 2010:7). The "World Systems Theory" emerged as a variant of the Historical Structural paradigm and presents a more complete analysis on the development of the capitalist system (Wallerstein, 1979: 27). It emerged in the wake of dependency theory: that resources flow from a "periphery" of poor and underdeveloped states to a "core" of wealthy states, enriching the latter.

Wallerstein related the ""determinants of migration to structural change in world markets and views migration as a function of globalization, the increased interdependence of economies and the emergence of new forms of production" (Lencho, 2017).

We do realize that this is not the only reason that perpetuates underdevelopment and the stagnation of these economies. Besides, we acknowledge that not everyone fleeing a country seeks to survive unbearable conditions. However, these people exist, and economic migration might not always be a consequence of "push and pull" factors, but rather just "pull" factors, namely extreme poverty and hunger, lack of access to sanitation, to water, health or education because of that economic condition. This theoretical framework introduced that same idea: the unequal development of the global structure and its consequences should be considered a migration pull factor.

1.2. What is Poverty[1]?

"Poverty is hunger. Poverty is lack of shelter. Poverty is being sick and not being able to see a doctor. Poverty is not having access to school and not knowing how to read. Poverty is not having a job, is fear for the future, living one day at a time.

Poverty has many faces, changing from place to place and across time, and has been described in many ways. Most often, poverty is a situation people want to escape. So poverty is a call to action -- for the poor and the wealthy alike -- a call to change the world so that many more may have enough to eat, adequate shelter, access to education and health, protection from violence, and a voice in what happens in their communities."

World Bank Report: "Can anyone hear us?", 2000

Poverty is a serious economic and social problem that affects a large proportion of the world population. It can manifest itself in many forms, such as chronic hunger, lack of access to drinking water, lack of income, lack of healthcare and education, among others (Sneyd, 2015: 55-74). Due to the non-existence of a consensual definition, we may argue that it is both a cause and a consequence of socioeconomic deprivation. Hunger, lack of

[1] The author of this thesis acknowledges extreme poverty as the visual deprivation of socioeconomic rights, since according to the UN the concept is characterized by severe deprivation of socioeconomic rights / basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information.

access to drinking water, lack of access to education, to shelter, to sanitation, can be construed as a cause and a consequence of poverty. For us, extreme poverty can be seen as the deprivation of socioeconomic rights – the non-observance of rights equals living in a situation of severe poverty. Socioeconomic deprivation is a multidimensional concept, that refers to the disadvantage of an individual or social group to access economic, material or social resources and opportunities (Lamnisos, et al, 2019).

Because poverty has detrimental impacts on human well-being and human dignity, its eradication has been set as one of the most important global priorities. The eradication of poverty and hunger was set out as a key target in the Millennium Development Goals of the United Nations (2000) and continues to be a priority acknowledged by the Sustainable Development Goals of the United Nations General Assembly, ratified in 2016 (Ferreira *et al*, 2016).

Although the lack of socioeconomic conditions is observed in all countries, it is more urgent and widespread in developing countries such as Sub-Saharan Africa and South Asia, considered fragile states (Kharas et al, 2022). There are a lot of causes for this scenario in these countries and amongst them we find the pursuit of economic policies that tend to be more favourable towards developed countries and exclude the poor; lack of access to markets; exploitation of poor communities by political and economic elites; governance failures; inadequate financing of pro-poor programs; conflicts and social strife; fiscal trap; governance failures, among others (Ayoo, 2022). All these factors have been enhanced by the globalization process and the perpetuation of an unequal global economic order. As Sachs points out, although markets can be powerful for economic development, they can also impoverish countries that already have economic, structural and political problems (Sachs, 2005).

We believe that poverty is a man-made phenomenon, since its perpetuation results from policies, regulations, and other mechanisms created by man. Also, the inertia of the governments of poorer states when it comes to implementing human development policies also involves human power, hence deprivation of socioeconomic rights is not an unfortunate and unpredictable challenge. The causes for this deprivation are rooted in the global system, which tends to benefit the richest and the more powerful and that enhanced the disparities between rich and poor countries. There is no doubt that nowadays a notable number of individuals live under extreme poverty[2] conditions, lacking access to basic rights, such as food, water, or health care (Haydar, 2005: 240). Undeveloped states deal with internal issues such as poor governance; corruption; weak capacity or lack of will to provide services and enhance development, protection and promotion of citizens' rights and freedoms (Betts, 2013).

There is no boundary between these weak states and global economy. This represents an issue, since the political instability, poor governance and physical insecurity associated with these sates did not result in a lack of interest from international corporations, a major economic actor (Kragelund et al, 2008). Foreign investment in these areas became focused on the exploitation of natural resources and, instead of leading to a development situation, it enhanced the stagnation of these states. For example, Sub-Saharan Africa is the world region where most extreme poverty is located. It is also a well-known region for its richness in oil resources, metals, and minerals. Not surprisingly, the foreign investment of companies - focused on resources exploitation, use of cheap labour, in a negative economic and political environment - has detrimental results. It intensifies global inequality, cements political power of oppressive governments and creates a lack of development (Kragelund et al, 2008).

The repercussions of the private sector being active in poor states has been highlighted by NGO's, such as "Action Against Hunger" or "Human Rights Watch", which have been calling out attention for the resources exploitation by the private sector in these areas. Hence, we can argue that private sector, an important aspect of the capitalist system, and the exploitation of these regions by international corporations hindered peace and development. We do acknowledge that nowadays there are many international corporations observing human rights policies and environmental protection mindsets. However, there are still a lot of companies that continue to favor self-enrichment through the accumulation of capital, and stimulating competition instead of the actual surrounding issues.

Moreover, the structural composition economy rests on three main pillars: the World Trade Organization (WTO), the International Monetary Fund (IMF) and the World Bank. These three institutions underwrite the basic rules and regulations of economic, monetary,

[2] According to the World Bank, extreme poverty means living on less than 1,90 dollar a day. Since September 2022 this number was updated to 2,15 dollar a day. In 2021, an estimated 698 million people (9% of the world population) lived in extreme poverty.

and trade relations between states. The unequal participation of Southern developing countries - which may best be designated as junior partners - in the global capitalist order breeds and consolidates structural imbalances between the industrial North and the undeveloped South (Nuruzzaman, 2007: 112).

Further, according to the World Bank[3] (hereinafter WB), to measure global poverty we need to have a "poverty line[4]" as a basis. Also, in line with this position, the WB defends that poverty is reduced or eliminated when an individual achieves a minimum standard of living (WB, 1996). Furthermore, several critics argue that this line misrepresents the extent of poverty worldwide (Sundaram, 2012:22). Many analysts question how poverty has diminished, as reported by the WB, while, according to the Food and Agriculture Organization[5], hunger and calorific undernourishment have increased over the last decades[6]. The answer is obvious, since the poverty line created by the WB solely regards monetary income and an approach based on income and consumption levels is too reductive.

> "It is estimated that between 702 and 828 million people were affected by hunger in 2021. The number has grown by about 150 million since the outbreak of the COVID-19 pandemic – 103 million more people between 2019 and 2020 and 46 million more in 2021, considering the middle of the projected range.
>
> It is estimated that nearly 670 million people will still be undernourished in 2030 – 8 percent of the world population, which is the same percentage as in 2015 when the 2030 Agenda was launched. This is 78 million more undernourished people in 2030 compared to a scenario in which the pandemic had not occurred."

[3] International financial institution that provides loans or grants to government of low and middle-income countries. The World Bank Group is composed by 5 organizations that make leveraged loans to developing countries with the aim of ending extreme poverty.

[4] The international poverty line is the universal standard for measuring global poverty. Until now it was set at 1,90 dollar a day, however since September 2022, and due to the difference in price levels worldwide, it was updated to 2,15 dollar a day.

[5] The Food and Agriculture Organization (FAO) is a specialized agency of the United Nations that leads international efforts to defeat hunger.

[6] Report "The State of Food Security and Nutrition in the World 2022" by FAO: "This year's report should dispel any lingering doubts that the world is moving backwards in its efforts to end hunger, food insecurity and malnutrition in all its forms. We are now only eight years away from 2030, but the distance to reach many of the SDG 2 targets is growing wider each year. There are indeed efforts to make progress towards SDG 2, yet they are proving insufficient in the face of a more challenging and uncertain context. The intensification of the major drivers behind recent food insecurity and malnutrition trends (i.e. conflict, climate extremes and economic shocks) combined with the high cost of nutritious foods and growing inequalities will continue to challenge food security and nutrition."

The State of Food Security and Nutrition in the World 2022 Report (Chapter 2)

While attempting a definition of poverty, many researchers reject this approach based on income and consumption levels, which does not define the various features of being socioeconomic deprived. Extreme poverty has been defined as encompassing various elements, such as income poverty, social exclusion, human development poverty, and deprivation during extended periods (Sengupta, 2010:276). Individuals suffering from extreme poverty consist of a combination of people who are suffering from one or more of these elements: (1) income poverty, meaning lack of income or purchasing power to secure basic needs; (2) human development poverty, or the deprivation of elements of well-being such as health, education, food nutrition, and other basic requirements for a decent life which are seen as indicators of human development; (3) social exclusion, understood as the marginalization and discrimination of an individual, which leads to a lack of basic security and the incapability to lead a life of value. Extreme poverty can hazard human dignity, and life.

In terms of international human rights law, poverty *per se* is not defined as a human rights violation. Conditions of poverty are simultaneously causes and consequences of the non-observance of rights endorsed by human rights instruments. From a rights perspective, society must help the most vulnerable individuals, but this is not always a reality (Sengupta, 2010). It is impossible to reach a universally accepted definition of this concept since there are authors who perceive it as subjective, others as absolute, or as a multidimensional phenomenon. However, in this thesis, we shall define it as socioeconomic deprivation which entails the lack of basic needs, such as food, water, shelter, healthcare, and others that have already been mentioned, that are necessary for the well-being and human survival (Metselaar, 2018:2).

As aforementioned, one of most affected regions by extreme poverty is Sub-Saharan Africa, where nearly 40% of the population lives in situations of socioeconomic deprivation (Roser, 2021). There are, of course, other regions where these conditions prevail, namely South Asia. Although there are fluctuations amongst the populations in the affected countries, they share a character that is central to our analysis: they live in extreme poverty conditions and the reason for their plight is related to socioeconomic rights deprivation which we understand that can constitute a basis for *non-refoulement.*

1.3. Globalization and Economic Deprivation

> "War and human rights violations are already scattering millions across the world in search of safety.
> Globalization, with its attributes of economic expansion, unresolved poverty, and enduring insecurity, is prompting many people to leave their homes in search of better lives."
>
> *"Millions Uprooted, Saving Refugees and the Displaced",*
> *Antonio Guterres, October, 2008.*

The debate about globalization is controversial since there is no clear and agreed upon definition of this phenomenon by scholars. McGrew (2010: 16) defines it as "a long-term historical process that denotes the growing intensity of worldwide interconnectedness: in short, a 'shrinking world'".

In brief, the economic characteristics of globalization are the increasing openness of countries to international trade, the increasing liberalization of markets, particularly through the elimination of barriers to trade of goods and services and the development of an integrated international financial market. It is a process which was driven by technological, political and economic factors, the latter of which arose due to previous political changes and created a "global economy", defined by free market-oriented policies (Figini and Santarelli, 2006: 130).

In the past years, globalization transformed the world on a political, economic, and social scale (Ciarniene, 2008:43). The process of global integration, changes in the global economy, in the power positions of states and trade policies has been developing throughout the years. This process opened borders between countries and consequently encouraged free trading agreements, free flow of goods, and multinational and transnational corporations. Economic globalization includes the development of national economies according to rules and regulations formulated by international organizations such as the WB, the WTO, and the IMF. There seems to be a view that globalization led to innovation and entrepreneurship in a lot of countries, which is true. However, developing countries did not feel those benefits, and problems such as unemployment, and poverty persist (Siddiqui, 2017) The integrated economy adversities through globalization have not been successful in answering all the issues that developing countries are facing.

Shaikh (2016:759) stated in a recent study that: “Globalization involved colonization, force, pillage, slavery, slaughters of native peoples, the targeted destruction of potential competitors, and a huge transfer of wealth into the rich countries.” In this line, Ecker-Ehrhardt (2014:1276) also argued that: “Economic globalization (…) has had far-reaching repercussions for domestic politics by fomenting conflicts between the “winners” and the “losers” on a highly competitive world market, resulting from intensified exchange relations between societies.”

International institutions claimed that globalization and free market policies would lead to rapid growth and higher employment and prosperity. Nevertheless, after pursuing these policies for more than three decades , the statistics show that globalization and economic reforms have promoted inequality and poverty, increased economic vulnerability, and enhanced economic stagnation in most underdevelopment countries (Zhou et al., 2011). This did not prevent many economists from defending the view that economic liberalization promotes growth and prosperity.

Moreover, there are a lot of critiques regarding trade liberalization and globalization as perpetrators of poverty and underdevelopment in poorer nations. Pilger is one of the specialists who argues that: “Global economy is a modern Orwellian term. On the surface, it is instant financial trading, mobile phones, McDonald’s, Starbucks, and holidays booked on the net. Behind this glass, it is the globalization of poverty, a world where most human beings never make a phone call and live on less than two dollars a day, where 6,000 children die every day from diarrhoea because most have no access to clean water. In this world, unseen by most of us in the global north, a sophisticated system of plunder has forced more than ninety countries into ‘structural adjustment’ programs since the eighties, widening the divide between rich and poor as never before” (Pilger (2002:2). Yet, even with c acknowledgments regarding the deficiencies resulting from economic globalization and the liberalization of markets, this is not yet a fully accepted perspective.

The globalization process evolved in several phases, but at the end of the 20th century, a fiduciary of free trade observed the increase in capital mobility, and the emergence of transnational corporations. This diffusion of free trade and global capitalism imposed the idea of competitiveness among companies, which began to aim at a reduced and more qualified workforce, which is the reason why companies move to places that offer qualified, cheap, and affordable labour. According to Chossudovsky, “the world economy is characterized by the transfer of a substantial part of the industrial base of developed countries to locations with cheap labour in developing countries” (Chossudovsky, 1999, p. 65). We argue that the regulation of wage levels and labour costs in developing countries does not change the fact that globalization is a stimulus for poverty, since international production became based on cheap labour, represses the internal demand and destroys the national production for the internal market due to the low purchasing power.

Economic development is closely linked to the historical processes of a given location, in which one must consider the trajectory of capital accumulation and technological increment. In addition, economic development was born supported by two ideologies: liberalism and nationalism. This way, the idea of economic development takes place by means of the market and the State; the first provides the accumulation of capital, which generates economic growth; the second is the fundamental institution for planning development strategies. The problem is that underdeveloped countries are known for high rates of corruption and lack of governance, which is evident in the lack of human development policies. Aiming to improve the living conditions of their citizens, rulers are granted loans by richer nations, companies, or international organizations. However, most of the time, the acquired resources do not always have in mind the well-being of the population. Obviously, a country that is governed mainly through corruption and not with a view to its development does not have the economic, administrative, and governmental capacity to be included in the global economic market and eventually becomes dependent (Hassan, et al, 2022). The poor class of society suffers from inequality due to corruption and all the consequences and factors that strengthen it (Arora, 2009).

Globalization has highlighted existing inequalities and the yearning for higher corporate profits continues to perpetuate the non-development of these countries. Although many support the idea that globalization reduces poverty and that, as advocated by Bhagwati and Srinivasan (2002), trade, by increasing the export prices of products from less developed countries, which are intensive in low-skilled labour, will lead to the raise of the wages of these workers, it is not adequate to reality. Countries with less developed economies, especially in Asia and Africa, due to technological underdevelopment and other factors such as ineffective use of natural resources, have low productivity rates.

This supposed "integration" of developing countries does not seem real, since giving these countries the possibility of working in inhumane conditions, in which human rights are not respected, is not including them. It is taking advantage of cheap labour in order to get rich. It seems that this "development" is invisible and accentuates inequalities between countries. Moreover, multinational and transnational companies not only increase their profits but also their power vis-à-vis Nation-States because they end up defining business and financial strategies on a global scale, jeopardizing the observance of human rights and the respect of the environment The uncontrolled environmental exploitation has aggravated the problems of water scarcity and contributed to climate change, as well as to the movement of migrations on an intercontinental scale. Deep down, the thirst for enrichment of large corporations and large economic actors combined with the lack of governance and the corruption rates in undeveloped countries, are the main driver of this perpetuation of inequalities. Globalization and the consequent economic liberalization merely opened more doors to feed this thirst for enrichment at the expense of the poorest. It is crucial that developing countries commit themselves to adopt current global trading policies since they are part of the global economic order. For example, the Uruguay Round Accord (URA), codified under the WTO, reflects this commitment stating that developed as well as developing countries "…recognize the contribution that liberal trading policies can make to the healthy growth and development of their own economies and f the world economy as a whole" (quoted in Adams, 1997: 178). This neoliberal[7] position argues that all nations developed and developing, will benefit from being global free (Berg and Krueger, 2003; Krueger, 1997). Other critics, such as Greenway (2002) and Rodriquez and Rodrik (2001) conclude that there is no decisive connection between trade openness and economic growth.

Further, the geographical polarization is enhanced by the rise of the intangible economy which creates further forms of inequality (Haskell and Westlake, 2018). As Vandebroucke argues, states gathered divergent experiences within the globalization process, so, normally, there are noticeable patterns of inequality between them. In response to these constant economic global changes, human displacement increased on an unprecedented scale. This derived from the establishment of a hierarchical structure of

[7] Neoliberalism: political philosophy that defends that a society's political and economic institutions should be robustly liberal and capitalist. It supports the maximization of the individual economic freedom, reducing state intervention. Harmes (2012) states that, this philosophy advocates the elimination of government-imposed restrictions on transnational movements.

the international system of states that began to operate within a global capitalist economy, in which transnational capital was more important than the protection of human and economic security (Falk,1999).

Being unable to follow the development of a global capitalist economy, and give the lack of proper governance skills, the poorest states were not able to ensure economic security in their countries. As Buzan (1991) recognized: "less developed states find themselves locked into a cycle of poverty and underdevelopment from which there is no obvious escape." By exacerbating inequality between nations, migration became a necessity and not a choice for many individuals (Ciarniene et al, 2008:43). As stated by Nuruzzaman (2005): "poverty, as an economic and social outcome, has its roots in the structural composition of the global economic order".

Poorer states are unable to manage their economies and are therefore subject to external market forces, resulting in a dependency of developed countries- the Global North (Gilpin, 1987). The central driver of fragility in poor and developing countries is the lack of strong political institutions, since without them there is no establishment and embodiment of rules and procedures on the governance of a state (Vallings *et al*, 2005). Without a legislative, executive and judicial structure, and an effective political leadership free of corruption, there is no bright future ahead (Vallings *et al*, 2005). The international system is also a driver of fragility in poorer countries, and, in our view, multinational and transnational corporations remain as central actors for this. FDI became an important source of private external financing for developing countries, many of which wrongly saw it as a salvation.

Economic insecurity leads to a lack of income that can result in difficulties to get food, access to water, and health care. According to Alcock (1977): "the violence of starvation and malnutrition [which] accounts annually for the death of upwards of 18 million people" constitute structural violence. Falk argues that this structural violence is a consequence of the structure of the international system and the global capitalist economy, which values the circulation of capital at the expense of economic human safety,. Hence it is hard to protect and ensure economic security for individuals living in the poorest states since there is no even development resulting from the global economy, and its actors (Tickner, 1995: 189).

Although globalization led to worldwide developments, it also aggravated already-rooted structural problems (Ahmed, 2004: 115). It led to the growth of extreme inequalities in income distribution, falls in the living standard and it increased poverty (Conteh-Morgan, 2002). Therefore, globalization in connection with the international economic order compromised economic and human security in less developed countries.

We believe that poverty cannot be attributed to a single actor or even a single factor. On one hand, responsibility can be attributed to local conditions, i.e., practices, decisions, and policies- or the lack of it- by the local government. On the other hand, it is also possible to attribute it to global factors, global institutions, and policies by international actors, and the private sector which have been taking advantage for economic growth purposes. There is a plurality of actors who contribute for the persistence of this gap between rich and poor.

What matters is that this is a serious challenge that developing countries are facing and it requires action to break this cycle. Until then, some other protection mechanisms need to be active such as international protection for economic migrants who are facing this severe deprivation of rights in their country of origin.

Chapter 2: Deconstructing a hierarchy premise

In the introductory Chapter of this thesis, we argued that "socioeconomic deprivation" conditions do not evolve naturally. They are a result of policies, political and, more importantly, economic interests. There is a vast correlation between "underdevelopment", "stagnation" and the evolution of the global economic order. Regardless of the economists' perspective defending otherwise, there are many situations that demonstrate the dependency to which poorer countries are subject, the dangerous exploitation of resources and cheap labour by corporations. Besides, this idealized concept that the FDI (Foreign Direct Investment), trade openness, TCN's (Transnational Corporations) and MNC's (Multinational Corporations) are the door for development is not entirely true. There are multiple causes for socioeconomic deprivation; the institutional and global economic order -the external factors -, but also internal factors such as lack of governance, corruption, and others, which undermine development.

Hence, it is not correct to advocate a simple dichotomy between "political persecution" and "economic migration", and the idea that it implies positive action by an actor towards an individual or group, nor to defend that economic degradation, which has been seen as inevitable and a sad fact of life. Moreover, this ends up perpetuating the way decision-makers analyze claims, since they automatically resort to this dichotomy of "refugee v. migrant", "voluntary v. forced", based on the justification that political rights provide immediate obligations, and economic rights require progressive realization, to justify the non-recognition of socioeconomic deprivation as a cause for requiring protection (Foster, 2007).

Positive developments on this matter have been made, however there are some assumptions that continue to guide the tone of policy decision-makers and refugee law decision-makers. We need to deconstruct this premise, to lead the way for the justification of assessing claims based on the violation of socioeconomic rights.

"(…) when someone is tortured or when a person's right to speak freely is restricted, observers almost unconsciously hold the state responsible. However, when people die of hunger or thirst or when thousands of urban poor or rural dwellers are evicted from their homes, the world still tends to blame nameless economic or 'development' forces, or the simple inevitability of human deprivation, before placing liability at the doorstep of the state."

Leckie, 1998

To tackle extreme inequality there is the need to erase the theory of "first" and "second" generation rights. Policies and programs must give equal value and attention to economic, social, and cultural rights and civil and political rights. Mr. Sen is correct when noting that "the exclusion of all economic and social rights from the inner sanctum of human rights, keeping the space reserved only for liberty and other first-generation rights, attempts to draw a line in the sand that is hard to sustain" (Sen, 2011: 385).

Hence, in this Chapter we will commit ourselves to deconstruct the idea of an existing hierarchy between rights. It is fundamental to raise awareness of the international community, policymakers, decision-makers in every area about this matter. If this is a fully accepted idea, there will be a brighter future to protect those fleeing from socioeconomic deprivation situations. We will first delve in the development of this hierarchy and later address the current reality and views and the reasons for refugee law decisionmakers to adopt them.

Most people from developing countries (the ones more affected by changes in global economy) seeking asylum are defined as "economic migrants" and are therefore subject to national immigration laws and not refugee law (Harris, 1993:128). However, as Harris points out and as we have been exploring throughout this work, these people are in fact, most of the times, driven by poverty situations that compel them to leave their countries of origin. Hence, we can affirm that they are forced migrants being expelled because of economic processes (Maharaj, 2002:48). Moreover, these migrants are driven by transnational economic dynamics combined with weak governments, which undermined the possibility of development within their countries of origin.

There were developments in regional instruments and jurisprudence has already recognized the essentialness of socioeconomic rights. Still, there is a stigma around these rights, which continue to be analysed through secondary approach, and are left behind due to a hierarchical construction of human rights. What needs to be understood is that the view of an "hierarchy" of human rights no longer exists. As soon as this view is accepted, it will be easier to assess claims based on socioeconomic desperation.

2.1. Hierarchy between Human Rights: does it exist?

Nowadays, the notion that economic, social, and cultural rights are inferior to civil and political rights is no longer in step with international law (Foster, 2007: 158). Nevertheless, some scholars have been distinguishing between both categories, defending the idea of a "first", "second" and "third generation" of rights.

This theory was first introduced in 1977, when the UNESCO Courier published an essay by Karel Vasak, the director of UNESCO's Division of Human Rights and Peace. This essay arranged human rights in "three generations": the first, referring to civil and political rights; the second concerning economic, social and cultural rights and the third one he named "solidarity rights" (Vasak, 1977: 29-31; Macklem, 2015: 51).

This categorization was accepted by human rights researchers, academic community and even judges. Despite its many flaws, which will be further addressed, it continues to be mentioned on many occasions, studies and journals (Jensen, 2017). The most obvious flaw of this theory is the unclear period, since Vasak did not provide any arguments providing context to the generational concept. Further, there are countless that remain unanswered, such as the ones presented by Macklem: Do "generations" refer to temporal differences concerning the emergence of different human rights in international law? Do they refer to distinctive properties that some rights share with others or analytical differences among rights? Or do they refer to the possibility that the protection of certain kinds of rights is conceptually prior to the protection of other kinds of rights?.

Hence, the theory was left with little explanations, broadening the scope of interpretation, and thus leading to an understanding that, in our view, was historically inaccurate and conceptually fallacious.

This hierarchy of rights was based on the idea that civil and political rights were true liberal rights, enforcing only negative duties on states, and that socio-economic rights only enforced positive duties, thus imposing the expenditure of state resources to be fulfilled. Moreover, the hierarchy theory also supported the view that civil and political rights are justifiable, and economic and social rights are not. All these assumptions were enough to support the idea that civil and political rights are more legitimate and important than socioeconomic ones (Alston et al, 1987: 159).

As Macklem (2015) argues:

> "Different human rights seek to protect different kinds of interests, and the nature of these interests will require different means of protection. Whether chronological or analytical, generational conceptions that stylize these differences distract from the function that human rights play in international law by portraying them as belonging to different generations of discovered moral truths. Specifically, generational conceptions miss the fact that, despite the diverse sets of interests they seek to protect, human rights in international law share a common purpose, which is to mitigate injustices produced by the ways in which international law brings legal order to global politics. In this sense, civil and political rights and social, economic, and cultural rights, as well those thought of as third-generation rights, comprise but one generation: a single population of entitlements, speaking to different features of the structure and operation of international law."

Originally, Vasak proposed this theory based on a 30-year span dating back to the 1948 Universal Declaration and subsequent Covenants. Two years later, it changed the generation concept by linking these generations to the French Revolution's motto of *Liberté, Egalité and Fraternité*. He then asserted the view that a generation concept of human rights captured the existence of historical "waves". The first wave, backdated to the French Revolution, led to the generation of civil and political rights. The second wave, related to the economic, social and cultural rights generation was set after the Russian Revolution in 1917. According to the author, the third wave emerged with "the emancipation of colonized and dominated peoples" in the middle of the twentieth century (Vasak, 1977).

This metaphor of generations does not capture the nature of human rights, since rights, unlike generations in life, are not replaced with one another (Macklem, 2015: 52). As Carl Wellman argues: "[g]enerations succeed one another, not only in that the members of one generation are born before those of the next generation, but also in that parents tend to die before their children." (Wellman, 2000: 649-651).

If we analyze when human rights were given formal legal expression, the chronology set out by Vasak is incorrect. Human rights were given legal expression only as of 1948, upon the ratification of the Universal Declaration. Alston argues that human rights emerged alongside with international labour rights, i.e., during World War I with the creation of the International Labour Organization and subsequent treaties (Alston,1982: 317). Moreover, the 1948 Universal Declaration settled both civil and political rights and economic, social, and cultural rights, which means that, taking this as the starting point for human rights, both categories arose at the same time. Thus, this shatters Vasak's generational theory since it means that both sets of rights emerged at the same time in international legal history (Macklem, 2015: 57).

Regarding the abovementioned categories , if we analyzed through an even more positivist perspective, it is possible to set the beginning of the chronology in 1976 upon the coming into force of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Thus, a new chronological order appears based as well in the view that both sets of rights emerged at the same time, discrediting Vasak's theory.

Characterizing human rights chronologically fails to suitably refer the timing of their origination in international law. As we can conclude, to attribute a chronology and a generation to human rights is much more complex than Vasak suggested.

From an analytical point of view, Vasak defined these generations referring to the obligations they bring about and the actors under those same obligations. He wrote that civil and political rights are "negative rights, in the sense that their respect requires that the state do nothing to interfere with individual liberties" (Vasak, 1977: 29). On the other hand, Vasak argued that social, economic, and cultural rights, required positive action by the state to be implemented" and were to be progressively fulfilled.

Contrary to Vasak's view, who insisted on a clear distinction between positive and negative rights, it is acknowledged that all rights—whether civil, political, social, or economic— impose "negative" and "positive" obligations with the aim to protect certain interests. Fredman also mentioned the need to rethink the approach to the first- and second-generation rights as being strictly negative and positive. She argued that, within the contemporary concept of human rights, to divide positive and negative duties becomes progressively blurred (Fredman, 2006).

2.2. Human Rights interdependence

Fortunately, this "hierarchy theory" has already been defeated in literature and practice (Foster, 2007: 159). It is now *trite* that almost all rights include both positive and negative components, regardless of their nature (Hunt, 1996: 60). This idea was already sustained in General Comments regarding rights such as the right to life, prohibition of torture and inhuman treatment and punishment, among others (Foster, 2007: 160).

It is now clear that the ICESCR imposes both "negative" and "positive" obligations. Further, even though most scholars defend those rights, such as the right to food or to water, they impose negative obligations on the state, by affirming that the enjoyment of these rights requires that states "refrain from interfering directly and indirectly" (Foster, 2007: 161). However, such an assertion is not as linear as we might have thought, since many specialists affirm that negative obligations are inherent to these rights. Hence, the classification of rights as positive or negative is, as Henry Shue asserts, an "artificial, simplistic and arid exercise" (Shue, 1984: 84).

Further, the argument that socioeconomic rights are not justifiable is also easy to eliminate, and it has been challenged in literature. Some authors argue that these rights are not justifiable, because they can only be observed through policy choices which cannot be managed by judicial considerations (Vierdag, 1978). Nevertheless, this view based on the difficulty in providing normative meaning, as well as identifying violations of those rights has been undermined since the division between socioeconomic and civil and political rights into two categories is too broad. Moreover, this grouping into two different covenants, the ICESCR (International Covenant on Economic, Social and Cultural Rights) and the ICCPR (International Covenant on Civil and Political Rights), did not aim to divide rights into categories. The explanation for this is "accepted to be ideological considerations related to the Cold War" (Foster, 2007:164). Craven explained that the decision to create two covenants was made under the understanding that "the enjoyment of civil and political freedoms and economic, social and cultural rights are interconnected and interdependent" (Craven, 1999: 102). This should be firmly accepted, since both United Nations International Covenants (1966) recognized the importance of their counterpart in the respective Preamble, as it can be acknowledged in ICESCR:

> "Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."

Any argument based on the existence of a rights hierarchy is not sustainable, since in the First World Conference on Human Rights in Teheran (1968) it was proclaimed that "human rights and fundamental freedoms are indivisible (…)". The idea that the observance of civil and political rights requires other social, economic or cultural rights is, nowadays, widely accepted among the academic community. This idea has also been expressed in Article 6 of the Declaration on the Right to Development (1986):

1. "All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights."

Furthermore, the idea that human rights are indivisible, interdependent, and interrelated was also expressed in paragraph 5 of the Vienna Declaration and Programme of Action 1993, which was adopted at the Second World Conference on Human Rights:

> "Human rights are […] indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair an equal manner, on the same footing and with the same emphasis […]"

Hence, advocating for a hierarchy of human rights is incompatible to all the contemporary developments in the field of human rights (Koji, 2001: 918). As Koji states "The notion of indivisibility means that specific human rights cannot have hierarchical status and that all human rights hold the same standing (…)" (Koji, 2001: 919).

Considering this, it is clear that grounding an analysis on an existent hierarchy between human rights is unaligned with all the developments and the understanding regarding this issue in contemporary human rights law. As Turk has asserted, all categories are interdependent and interrelated, there is no superiority of one over another, hence human dignity is "inherent in the realization of all human rights" (Turk, 1999). The 1951 Convention is a living instrument, which means that refugee law decision-makers should update their approach in view of all the new challenges, as well as of the idea that there is no hierarchy between rights. As Foster argues: "This is important in order to ensure that refugee jurisprudence does not remain mired in Cold War ideas about the relative importance of rights". If refugee law continues to support the approach in regard to the notion that economic and social rights are "secondary", there will be no development towards expanding international protection, considering recent migration causes, and insurance of human dignity. Moreover, this idea is inconsistent with the principles of international human rights law and produces "a negative assessment of refugee claims based on economic and social rights" (Foster, 2007: 167).

This discordance between the treatment given by international law and international refugee law to socioeconomic rights also reflects the fragmentation of the international legal system (International Law Commission, 2006). Concluding, if these issues were addressed considering contemporary understandings, there would be a wider protection of individuals in situation of human rights violations, and it would be easier to include socioeconomic rights deprivation as deserving of international protection.

Hence, it is extremely important to strengthen the idea that all rights are indivisible, as opposed to prioritizing ones to the disadvantage of others. Rights are interconnected, and as Jackson points out: “the right to water springs from its inherent connection to the right to life, a civil and political right”. If an individual feels pressured to flee because, in the country of origin, socioeconomic rights are unobserved, it is understood that civil and political rights may also not be respected in that same country.

2.3. Socioeconomic rights in International Human Rights Law Framework

IHRL is a panoply of international norms and rules, established by both treaty and custom, laying out rights of individuals that must be protected and respected by States and other actors. The IHRL movement was strengthened in 1948 upon the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly (OHCHR). Drafted as “a common standard of achievement for all peoples and nations”, it presented for the first time the civil, political, economic, social, and cultural rights that should be exercised by all human beings.

It was only in 1966 that IHRL was fully completed, with the adoption of two specific treaties: the International Covenant on Civil and Political Rights - and its two Protocols-, and the International Covenant on Economic, Social and Cultural Rights (ICRC, 2015a). The UDHR, together with these Covenants, form the so-called Bill of Human Rights.

Since all these documents referred and enhanced the importance of socio-economic rights, it is not understandable why there still exists an inequality between civil and political rights and the latter category.

Article 22 of the UDHR states that:

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic,

social and cultural rights indispensable for his dignity and the free development of his personality."

Moreover, Article 25 of the UDHR (1) provides that:

"**Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services**, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

These provisions regarding socio-economic rights were reinforced by the ICESCR, both in Article 2 and Article 11:

"1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

Article 2 of ICESCR

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

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

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

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

Article 11 of ICESCR

Moreover, the United Nations International Covenants (1966) recognized the importance of their counterpart in their Preamble:

“Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are **created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.”**

Preamble of the International Covenant on Economic, Social and Cultural Rights

In this sense, the prevailing idea of interdependence and indivisibility of human rights and the recognition of the importance of socioeconomic rights in IHRL makes the notion of hierarchy controversial.

As the former Secretary-General of the United Nations Kofi Annan declared in the foreword of the UDHR:

“**The Universal Declaration promises to all the economic, social, political, cultural and civic rights that underpin a life free from want and fear.** They are not a reward for good behaviour. They are not country-specific, or particular to a certain era or social group. They are the inalienable entitlements of all people, at all times, and in all places — people of every colour, from every race and ethnic group; whether or not they are disabled; citizens or migrants; no matter their sex, their class, their caste, their creed, their age or sexual orientation.”

The idea that human rights are indivisible and equal in value was strengthened with the adoption of UN GA Resolution 41/128 in 1986, the United Nations Declaration on the Right to Development, which established development as a right and put people at the center of the development process.

This inalienable right was first declared in this ground-breaking document declaring that everyone is “entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized.", regardless of their origin, history, or maturity (Karadzhova, 2002: 232-233). This was, as previously referred, reaffirmed in the Vienna Declaration and Programme of Action in 1993. Thus, there was an evident discordance between the theory defended by Vasak and the development of the UN's position in this matter. In conclusion, all rights are equally fundamental to human dignity, and this should be an accepted idea among international community. Perpetuating a view that some rights are more essential than others is not in line with contemporary human rights developments. CJEU and ECtHR case-law, which we will later explore, already presented some progress regarding the acknowledgement of socioeconomic conditions has fundamental for human dignity.

Moreover, human rights experts recognize five categories of rights- civil, political, social, economic, and cultural- all outlined in the 1948 Universal Declaration of Human Rights. However, not all rights are fully exercised since socioeconomic rights are, most of the time, regarded as "second-generation" rights that should be fulfilled according to the state resources (Litinski, 2019; Vasak 1977:29–32).

The classification provided by Karek Vasak in 1977, provided the idea of three generations of rights (Vasak, 1977: 29-32), and still is invoked in international law these days (Stein, 2007). However, it is not clear what these "generations" meant, which leaves us with an important question: Do "generations" refer to the possibility that the protection of certain kinds of rights is more important than the protection of other kinds of rights?

Following this issue, a misconception of the theory is found in considering that first-generation rights are negative and that second-generation rights are positive. This view considers that civil and political rights (freedom, as Vasak defined) would have a negative status, as they would imply a non-action (omission) by the State; social and economic rights (equality rights), in turn, would have a positive status, since their implementation would require an act (action) on the part of the State, through the expenditure of public funds (Lima, 2003). This distinction, which has been used by almost all magistrates, leads to the main critique that can be raised regarding the theory of generations of fundamental rights, since as Lima points out it weakens the normativity of socioeconomic rights. The gaps in this theory will be properly addressed in Chapter 4.

All fundamental rights have a structural affinity, and as Storey advocates, all categories of fundamental rights, whether civil and political rights or social, economic, environmental, and cultural rights, require negative or positive obligations on the part of the State. Civil and political rights are realized not only through negative obligations, just as social, economic, environmental, and cultural rights are realized not only through positive obligations.

Furthermore, Sérgio Moro brightly states that: "it is even valuable to relate social rights to freedoms so that, from the outset, it becomes clear that it is not a question of choosing between the former and the latter. In both these cases, democracy and the principle of human dignity would be compromised."

Socioeconomics includes the observance of primary rights such as housing, education, food, employment, and access to health care. Therefore, socioeconomic rights are central to human development and survival. The dichotomy between "economic migrant" and "refugee" was also influenced by this hierarchical distinction that put civil and political rights in front of socioeconomic rights.

Chapter 3: Inadequacy of "conventional" refugee status to address socioeconomic deprivation situations

3.1. Who is a "Refugee"?

> "Behind the phenomena of moving lie deeper and often interrelated patterns of political, economic, ethnic, environmental or human rights pressures which are further complicated by the interplay between domestic and international factors…there are as many reasons for moving as there are migrants"
>
> (UNHCR, 1993 in Soguk, 1999:4).

International Refugee Law- hereinafter IRL- is a regime of protection connected to a legally constructed status with specific guarantees, codified in the 1951 Convention and

1967 Protocol (Harvey, 2014: 43). Refugees are not just protected by the guarantees of their status, but also through the human rights framework, just for being "human".

The rights settled in the Convention include several fundamental protections, which relate to the most basic aspects that its protection offers such as the need to flee, to be accepted by the receiving country and to be sheltered and protected. The most fundamental right of a refugee is the right to not be sent back to a country where there is a risk of persecution, the so-called principle *of non-refoulement*. Article 33(1) of the Convention stipulates:

> "1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

According to the UNHRC, the term "refugee" is reserved for the beneficiaries of the status granted by the 1951 Convention and its 1967 Protocol. Article 1er A of the Geneva Convention states that a refugee is someone who:

> "…owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Thus, the Convention provides four cumulative elements that altogether form the refugee status: 1) leaving the country of origin; 2) not being able to avail protection from such country, 3) well-founded fear of persecution, 4) for reasons of race, religion, nationality, membership of a particular social group or political opinion.

All these elements need to be cumulatively met so the person can be considered a refugee. For example, a person might have a well-founded fear and be unable to get protection, but if that person does not fear being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, then they are not a refugee in legal terms (Colin Yeo, 2022).

This idea is also stated in the UNHCR (UN Refugee Agency) Handbook on Procedures and Criteria for Determining Refugee Status which states that *"a person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition"*.

Originally, the Convention aimed to protect post-war Europeans, hence the definition was subject to geographical and temporal limitations, and a refugee was anyone who, due to a well-founded fear of being persecuted on the five grounds, but specifically "as a result to events occurring before 1 January 1951", was unable to return to the country of origin. However, in 1967 some parts of the Convention were changed in the new Protocol which extended this protection to the entire world:

> "For the purpose of the present Protocol, the term 'refugee' shall... mean any person within the definition of Article 1 of the Convention as if the words 'As a result of events occurring before I January 1951...' and the words '...as a result of such events', in Article 1A(2) were omitted."
>
> Article I (2) of the 1967 Protocol to the Convention

Nevertheless, the same definition has been used as a guideline for more than 50 years. This definition defends that the reason for an individual to escape to a safe place is fundamental to understand who is in fact a "refugee" (Miranda, 1989: 315). However, this provides States with a power to prevent the influx of certain individuals who, due to political, economic, or social internal reasons, do not fit under the special status of "refugee." The fact is that, in the last years, the causes for displacement have changed, and factors such as environmental damage and economic deprivation became reasons for forced people to abandon their countries of origin (Regis Blanc, 2021).

Until now the definition of "conventional refugees" has suffered no noticeable update to address these new realities. Thus, it is easy to understand that this definition is not enough to fit different categories of people who leave their countries of origin not only for fear of political persecution, but also for other reasons directly related to the violation of human rights (Costa Sousa e Valles Bento, 2013: 26-27; Worster, 2012). Authors such as, Shacknove (1985), Carens (2013) or Gibney (2015) have defended the idea that the Convention's definition is too narrow.

According to Taran (2000), some of the main factors that compel an individual to leave their country of origin are armed violence; environmental degradation; denial of democracy; development-induced displacement; large-scale corruption, and aspects of globalization. We acknowledge the fact that globalization gave rise to a new reality that is opposed to the bipolar world of 50 years ago when the international community accepted a common definition of refugee. Moreover, as a Mathiason (2008) argues:

> "Other factors besides direct persecution can threaten the safety, dignity and human rights of people, but there is no international standard to recognize and measure the protection needs for people fleeing generalized civil disorder, environmental devastation or economic collapse that threatens human survival."

As previously discussed, socioeconomic deprivation was enhanced by globalization and the consequent economic liberalization, which in turn highlighted inequalities between nations and perpetuated the underdevelopment of poorer countries. Therefore, it created a new cause for migration. This phenomenon of departing due to extreme poverty conditions may not have been anticipated by the 1951 Convention Relating to the Status of Refugees, hence the need to interpret the concept of "refugee" considering these constant changes. Economic forced migrants *"are thus labelled as undeserving and yet most refugees hail from countries where economic failure, political instability, poverty, and persecution are indissolubly linked"* (Mutsvara, 2020).

Two main discussions preoccupy the policy debate on forced migration: status and protection. The legal definition of refugee exposes forced migrants who are not officially recognized as refugees or asylum seekers to increasing risks, since they are not under the protection granted by the Convention/Protocol. This label has become increasingly inadequate within the characterization of the variety of factors that prompt migration, beyond the narrow interpretation that is given to the element of "persecution" (Palattiyil et al, 2021: 6-7).

More accurately, the term "forced migrants" describes the broader population whose circumstances area misaligned with traditional definitions and formal designations (Zetter, 2015; Rita Gil, 2020:82). According to Newman, there is the need to re-evaluate the adequate vocabulary according to the new causes for the migration influxes (Newman and van Selm, 2003).

We are dealing with a matter of human rights, and people flee not only due to the fear of being persecuted, as it is interpreted, but also to escape natural disasters, intolerable human conditions, famine, and other factors (Goodwin-Gill, 1985). The debate on the extension of the definition of "refugee" has been controversial, and as Worster (2012) points out:

> "If we were motivated strictly by human-centred interests, we would find a broadening of the definition, although perhaps with limited state compliance. If we were motivated strictly by state-centred interests, we might find a narrowing of the definition, although perhaps abandoning desperate individuals truly in need."

We concluded that the lack of will by the States relating to the allocation of resources to protect all human rights, and to regard them as interdependent, interconnected, and interrelated is perhaps the major reason for the limitation of refugee law. States – based on the principle of sovereignty and on the grounds of national security – establish their own migration policies, defining who can and who cannot enter their territory and under what conditions, leaving migrants no chance but to adapt, or, at most, to report human rights abuses.

Moreover, the "individuality" aspect of the refugee status takes away any application on the grounds of the overall situation at the country of origin. Hence, for eligibility purposes, one must demonstrate that is being subject to a personal fear of persecution. Identifying forced economic migrants within this "individuality" feature is not easy, since the socioeconomic threat they face is not individual in its nature (Piekutowska et al, 2018: 125). Also, the unspecific definition of "being persecuted" in the Refugee Convention leaves space for several interpretations within the specific criteria referred there.

This being said, severe violations of socioeconomic rights can jeopardize human dignity (Rita Gil, 2020:81). Therefore, by not including socioeconomic deprivation within the meaning of "persecution", refugee law fails to recognize and protect fundamental rights.

3.2. Persecution Criteria

Although considered the main instrument of protection for refugees, the definition of refugee brought by the Geneva Convention came to be seen as too restrictive and insufficient to answer serious situations calling for protection. The protection is based on the idea of "persecution", thus removing from the equation several other situations of international displacement, and excluding categories of people who, while not considered persecuted, also need protection.

Furthermore, this conception of "persecution" is, most of the times, directly related to the idea of an authoritarian, tyrannical and repressive State, where the population is oppressed and freewill is obliterated. However, in practice, several serious violations of human rights do not result from oppressive and arbitrary States, but from a mere failure of the State, i.e., the absence of structures capable of successfully protecting their citizens (Oliveira, 2017: 48). Nevertheless, some developments on the concept of "persecution" have been made, which compels us to address both the indeterminacy and the different interpretations of the matter suggested in order to understand the common factors we can identify in each analysis.

People fleeing economic degradation are seen as not "deserving of protection" since they are not obviously escaping a single and identifiable aggressor, but rather indiscriminate hardship or natural disasters. Jeremy Harding (2000: 122) argues:

> "In the past, refugees have won greater international sympathy than economic migrants. Theirs has been the more identifiable grievance: at its source there is often an identifiable persecutor. Yet the order of economic difficulty that prevails in some parts of the world is akin to persecution. No consensus exists about the identity of the tormentor, and so those who try to put it behind them are more easily reviled than others fleeing the attentions of secret police or state militias."

This leads to the assumption that people fleeing situations in which they do not have access to basic economic and social rights do not need or deserve protection, since their position is not a result attributed to the government or any other actor (Foster, 2007: 9) As previously explored, it is not clear who plays the main role in the promotion of economic deprivation. However, we settle down that there are various agents that contribute to the perpetuation of those situations, mainly: states or origin countries by not protecting their citizens and by not enhancing development; developed/richer nations; multinational and transnational corporations who take advantage of poorer countries; economic international institutions and actors, among others. Extreme poverty situations, hence socioeconomic rights deprivation, are not a sad fact of life. They emerge from an unequal global economic order that is perpetuated by different actors with interests that undermine human development. Therefore, arguing that poverty is just a sad reality that we must take as part of the world organization should not be accepted.

Furthermore, economic migration is understood as a phenomenon caused by the voluntary will to look for better jobs or education opportunities, lacking the element of persecution (Long, 2013; Cortes, 2004). However, the concept of “persecution”, although central to the determination of refugee status, is not defined. According to the UN Handbook on Refugee Status, “the phrase well-founded fear of being persecuted is the key phrase of the definition” (UNCHR, 1979: 37). Persecution, when linked to “race, religion, nationality, membership of a particular social group or political opinion” is seen as a reason to qualify as a refugee (Maiani, 2022).

There is a discussion among the international community regarding the lack of a concrete definition of what is or should be understood as “persecution” within the scope of international protection. This discussion results from the indeterminacy and gave rise to multiple interpretations on the concept. Acknowledging that this is a key concept but not finding a definition of persecution or protection- another key term of the Convention- is confusing and makes us assume that the 1951 Convention is not as protective as it could be. Many legal experts seek to interpret the Convention’s key terms in accordance with the Vienna Convention of the Law of Treaties (VCLT), aiming to find a universal definition (Storey, 2013). Yet, legal experts have not reached a universally agreed definition of the concepts. To study new forms and causes of migration without a lead on what is universally understood by “persecution” and “protection” creates a gap and space for several interpretations according to different individual interests. In our view, the significance of the Convention becomes impaired due to the lack of a clear definition of such fundamental concepts, since this opens doors for individual States to develop their own definitions, thus conceding a power to “define something so important in a way that can be restrictive” according to political and economic internal interests (Storey, 2013). States end up imposing measures to control the migratory flows and, therefore, allowing them to interpret a concept that can help in this control will always be an asset (Hathaway, 1991:231-233).

We do believe that a consensual, and universal definition of the term “persecution” regarding human rights protection, and a vision that all rights are fundamental would lead to a more just and updated definition of “refugee”. Since this is not yet a reality, it is essential to analyze the various definitions argued by scholars, legal bodies, and courts, and pinpoint the common factors.

According to Storey, "most common way textbooks seek to convey what persecution means is by enumerating examples drawn from the *travaux preparatoires*, case law, UNHCR materials (…)" (Storey 2013). These examples can help comprise indicators of what is meant by being persecuted and support decision-makers when faced with cases where they can then apply the principle previously used.

Nevertheless, we do believe that a universal definition would facilitate the decision-making process and create a fair process of application. Refugee protection has been delimited to persons who fear persecution for a reason listed in the 1951 Convention. Thus, it is important to understand what could be meant by "being persecuted", considering the issue we are addressing: the right to request asylum due to socioeconomic deprivation situations, especially in developing countries which are deeply affected by the structure and interests of the global economic order.

Paragraph 55 of the UNHCR Handbook describes persecution as:

> "There is no universally accepted definition of 'persecution', and various attempts to formulate such a definition have met with little success. From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights — **for the same reasons** — would also constitute persecution."

Moreover, the UN Handbook on Refugee Status states specifically that, within the meaning of the convention, it must relate to threat to life or physical and moral integrity of the claimant, based on the five grounds referred in the Convention. However, it also mentions that reasons such as famine or environmental disasters do not fall within this scope:

> "It rules out such persons as victims of famine or natural disaster, **unless they also have well-founded fear of persecution** for one of the reasons stated. Such other motives may not, however, be altogether irrelevant to the process of determining refugee status, since all the circumstances need to be taken into account for a proper understanding of the applicant's case."

(UNHCR, 1979: 39)

To support the argument on the recognition of forced economic migration, it takes a persecutor and a victim. It is important to remember that the matter we are addressing in this thesis consists of situations of socioeconomic deprivation, in developing countries with already precarious circumstances. By contributing, even indirectly, to the non-development of the country's socioeconomic situation, States of origin, richer states, corporations, and economic institutions end up perpetuating the already existing circumstances of deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education, and information. We are not referring to someone who for some reason is pursuing a wealthier lifestyle, even though they already benefit from all those rights. We are dealing with a fraction of people who do not have access to basic rights, which are fundamental and universal. Hence, there is only one pull factor: to leave that unbearable situation. And, when citizens do acknowledge the inexistence of developments, they should have the right to request protection elsewhere, unafraid of being sent back to the country of origin, and to be treated with dignity.

3.2.1. Conceptual approaches to persecution

There are two main models for conceptualizing the "concept" of persecution in literature: Carlie's Three Scales and Hathaway's model.

Carlie's model is based on a normative hierarchical approach, in which disproportionality is the essential criteria to assess the manifestation of a severity in the treatment (Foster, 2007:113). Moreover, Carlier also highlights the importance of knowing which basic human right is being violated. In other words:

> "The more fundamental the right in question (right to life, physical integrity, freedom.), the less quantitative and qualitatively severe the treatment need be. The lower the priority attributed to the violated freedom (economic, social, or cultural rights), the more quantitively and qualitatively severe the treatment must be."
>
> Carlier, 1997

This model defends the prioritization of civil and political rights over economic, social, and cultural rights, thus perpetuating the idea of a hierarchy between rights. Nevertheless, this model has rarely been referred to in case law, when compared to the model designed by Hathaway (Foster, 2007: 113).

In a study carried out in the 1990s in Europe, it was found that the States were focusing on the merely literal meaning of "persecution" as taken from the dictionary (Pinto, 2017). I.e., it focused on the idea of persecution by state authorities through violence and aggression. The construction of the definition based on a core concept for the legal protection of refugees meant the complete restriction of the meaning settled in the Convention.

Exactly in this sense, James Hathaway influenced the transformation of the concept of persecution, connecting it to the rights foreseen and protected by the International Law of Human Rights.

Moreover, Hathaway defended that the "International Bill of Rights"- UDHR, ICCPR and ICESCR, embody a good basis to interpret "being persecuted" in light of human rights (Foster, 2007: 113). Furthermore, and even tough Hathaway was not the first to argue for a human rights approach to the refugee law, his model is a cornerstone on the matter over the last 25 years.

In 1991, Hathaway built a model for the interpretation of the Refugee Convention based on a human rights approach. According to the author, refugee protection was needed to fill in a gap resulting from the lack of protection by a country of origin (Foster, 2007: 115). This means that the failure of a country of origin to realize the duty of protection triggered the need to claim protection from an external country (Hathaway, 1991: 124).

Taking into account the importance of human rights, he then presents a definition of persecution defining it as "the sustained or systemic violation of basic human rights demonstrative of a failure of state protection" (Hathaway, 1991: 105). Thus, the need to claim asylum comes as a consequence of the lack of protection of human rights by the state of origin. The author references the Convention grounds, defending that refugee protection should be provided to those suffering of human rights violations, due to state inaction as well as due to the membership of marginalized groups listed on the Convention grounds (Hathaway, 1991: 135). Yet, in his analysis, the author explained that is necessary to keep in mind that the abovementioned international covenants impose different legal obligations upon state parties, which means it matters to assess "whether a right has been breached according to the nature of the right" (Foster, 2007).

He proposed a scheme based on the idea that there are "four distinct types of obligations" (Hathaway, 1991). The first arises from rights contained in the UDHR that are immediately biding and codified in the ICCPR, for which no derogation is permitted even "in times of compelling national emergency" (Foster, 2007:114). The second category is composed by the rights set out in the UDHR an codified in ICCPR, but which states can derogate during a national emergency. Hence, the author's view is that the failure to ensure these rights constitutes a violation of the state's duty of protection, unless the derogation of that duty was required due to a public emergency (Foster, 2007; Hathaway, 1991: 110). The third category comprises rights contained in the UDHR, codified in the ICESR. Contrary to the ICCPR, the ICESR does not impose "absolute and immediately binding standards of attainment, but rather requires states to take steps to the maximum of their available resources to progressively realize rights in a non-discriminatory way" (Hathaway, 1991: 110). The last category comprises miscellaneous human rights found in the UDHR and not codified in either of the covenants.

Regarding socioeconomic rights, Hathaway's considers that a state fails its obligation if it "ignores these interests notwithstanding the fiscal ability to respond, or where it excludes a minority of the population from their enjoyment" (Hathaway, 1991: 111).

Storey argues that Hathaway's definition offers a limited definition of persecution, and a simple and precise basis for further application. Many courts in the UK, Canada and New Zealand adopted Hathaway's view in some cases, clearing the way for the acceptance of claims resulting from violations of socioeconomic rights and general human rights violations (Foster, 2007: 120). However, the way in which the model has been understood and applied by tribunals and courts is problematic. It has been widely implemented by means of an approach based on a hierarchical categorization in terms of the normative value of human rights. So, the model of the "four-level hierarchy of obligation" was misunderstood and led some decision-makers to treat socioeconomic rights as inferior to civil and political rights (Foster, 2007:127). Hathaway's purpose with this scheme was to convey "the point that measuring the implementation of a right, and consequently the question whether a relevant right has been breached, is less straightforward in the context of economic and social rights; not that such rights are regarded as normatively less important than non-absolute civil and political rights" (Foster, 2007: 120; Hathaway, 1991: 108). Therefore, it is an issue that this is the current dominant approach regarding the evaluation of claims based on socioeconomic rights. It perpetuates the idea of an existing hierarchy between human rights, previously presented by Karel Vasak.

Hugo Storey makes his analysis concluding that it takes a more systematic definition of the refugee term, in which time, material and personal scopes are clarified (Storey, 2014:516). The author also concludes that the Convention is an instrument that is constantly changing alongside with the world. Still, Storey argues for a more expansive definition of "persecution":

> "Persecution is to be understood as a severe violation of international law norms, in particular international human rights norms."

With such a definition, Storey advocates the expansion of the concept of refugee *stricto sensu*, amending the 1951 Convention definition (Rita Gil, 2020:81). The author also acknowledges that actors of persecution can be either states or non-state actors; that there is no requirement of persecutory intent, and that persecution can consist of violations of basic socio-economic rights. Besides, the author argues that the "well-founded fear of being persecuted denotes an objective test in which fear is understood as a forward-looking expectation of risk" (Storey, 2013).

There are important thoughts to gather from both Hathaway's and Storey's approaches: the view of state obligation to comply with human rights; the view of inexistent requirements of persecutory intent and the accepted view that non-state actors can also be considered as persecutors. This idea of state protection and obligation to comply is also supported by other specialists such as Haines (2001), who defines "persecution" as *"the sustained or systemic failure of state protection in relation to one of the core human rights entitlements recognized by the international community*." These obligations are often disregarded, and states fail to protect their citizens, ending up violating human rights by failing to act (Jackson, 2011:160).

As analyzed in Chapter 2, human rights violations do not underlie on an indirect action, and most of the times occur upon the failure of the state in protecting the citizens' rights (Fredman, 2006). We argue that a State which is subject to the control of other non-state actors, guided by an unequal economic global order, is perpetuating socioeconomic rights violations. Moreover, and according to a UNHRC position from 1995, although the concept of "persecution" is not universally defined, the message conveyed in the Preamble is that persecution embraces all serious violations of human rights. A person lives in a "well-founded fear" given the absence of national protection against that persecution, even if the latter didn't result directly from the State. Moreover, it was not shown that this "well-founded fear" must emanate from the government, which makes sense because it would be against the motivations of the Convention to protect human rights if "an asylum seeker should be denied needed protection unless a State could be held accountable for the violation of his/her fundamental human rights by a non-governmental actor" (UNHRC, 1995). Here, the UNHCR stated that persecution can also be perpetrated by non-state actors.

This position is argued in paragraph 65 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1979), which reads:

> "Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection."

Therefore, UNHRC accepts that the persecutor might be a non-state actor, but state is considered partly liable for this persecution because it was unwilling or unable to offer effective protection (Hathaway, 1991).

In Chapter 2, we explored the significance of socioeconomic rights, which are as important as civil and political rights, deconstruing the idea of an existent hierarchy between those rights. The Universal Declaration of Human Rights enhances, in Article 22, that "(…) everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". If the world order is focused on protecting larger economies at the expense of the development of poorer countries- both economically and politically-, that cannot go on. There will not be a full understanding of how fundamental these rights are for the protection and conservation of human dignity.

Moreover, nowadays, International Law and all its domains reflect the balance of power being held by wealthier nations, which dominate developing countries through economic policies and markets- directly or indirectly (Pogge, 2002). Through the establishment of an economic global order based on unfair economic and political interventions, through the control of this order by financial institutions led by current global superpowers, there is an enhancement of underdevelopment and bad governance in poorer countries, which altogether are causes for departing the so-called third world.

As we have analyzed, extreme poverty is manufactured and perpetuated by people who took certain policy decisions and created it, and, by not being able to distance themselves from this subversion, poorer states fail to protect their citizens' socioeconomic rights. Moreover, extreme poverty is a condition which tends to affect people who live in rural areas, without access to several rights. A weak government, and a global order which fails to address the difficulties of these citizens, and takes advantage of their resources, a future equity will hardly be achieved. By not looking at the unbearable conditions in which these people are living, the international community turns a blind eye to human rights violations, contributing to a world where only some nations offer the observance of such rights.

There is a myriad of causes for extreme poverty and for the stagnation of development in developing countries. Among them we find geographical matters, climate matters, corruption of the governments, lack of investment by the governments, lack of robust development policies. Because of this diversity, it is difficult blame a specific cause. However, the global economic order, which was supposed to enhance development, appears as one of the causes for the stagnation of developing countries. It seems that this global order made the rich richer and the poor poorer.

The 1951 Convention and other human rights treaties are "living instruments whose interpreters must consider changes over time and present-day conditions" (McKeever, 2015). However, it seems there was no legal innovation guiding the recognition of economically forced migrants and no consideration of the factors that led the rise of this category. This promotes exclusion and a vision in which people in need are seen as unworthy of protection. Many of the serious violations of human rights are caused by the failure of the State to protect citizens, or to create favorable conditions for their development (Oliveira, 2017: 48). Hence, the state failure to fulfil should be an essential factor to consider upon assessing an asylum request.

The UNHCR Handbook notes, at paragraph 51, that there is no universally accepted definition of "persecution" and various attempts to formulate such a definition have met with little successes. The UNHCR handbook emphasizes the failure of state protection at paragraph 98: "denial of protection may confirm or strengthen the applicant's fear of persecution and may indeed be an element of persecution". To advocate for the expansion of the meaning of refugee, stating that "a refugee is anyone who flees from the violation of human rights" could lead to immeasurable "floodgates" and end up trivializing the protection granted by the 1951 Convention, yet there are authors who defend this expansion (Jackson, 2011). Moreover, Marissa Jackson (2011) points out that: "Citizens of developing nations do experience intentional persecution by foreign states or non-state actors who wish to maintain a certain institutional order, but this would not be evident at the level of an individual claim and would be nearly impossible to prove." Therefore, the easiest path to defend the inclusion of such claims in the refugee status would be to reinterpret it considering new migration causes.

Further, Hathaway (1991) states that the failure of refugee law "can be found in the fact that states pursuit their own well-being" and prioritize their internal interests. Furthermore, many of the citizens of the developing world are unable to claim asylum because the reasons for leaving their countries of origin, such as "economic turmoil", are not seen as "persecution, at least as that it is understood in the neo-liberal Western[8] context" (Chimni, 2000:7-8).

Based on the aforementioned definitions, we understand that there is a common understanding that the violation of human rights and the failure of the states of origin to protect citizens from these violations, which in this case means creating dignified living conditions, are the premises for displacement. With this, we consider that "persecution" might be defined in these terms: perpetuation of the violation of human rights by state and non-state actors, and lack of state protection towards citizens. By recognizing that the failure of the state of origin can lead to deplorable situations, a reinterpretation of the Convention may be possible. Even so, it is necessary to consider that the "discrimination" criterion is an intrinsic component of the concept of persecution, so that the persecutory act must be driven by discrimination based on "race, religion, nationality, membership of a particular social group, or political opinion".

[8] EU, U.K., Norway, Iceland, Switzerland, the United States, Canada, Australia and New Zealand.

3.3. Economic Migrant, Refugee and Forced Migration

Migration is a complex phenomenon. There are a lot of factors that generate population flows; hence we need to understand these the distinctions between refugees, voluntary migrants and forced migrants.

This analysis is fundamental, because, depending on the reasons that lead someone to abandon their country, the State has different obligations, and that person has different rights and protections. There are three main distinctions to take into consideration: the geographic one; the classification of temporary or definitive movements and, finally, the one that matters most to us, the distinction between forced migration and voluntary migration.

Voluntary migration happens when there is a planning and when it results from personal will; forced migration occurs when the person is forced to move due to pressure and external factors (Betts, 2013). States are obliged to allow the entry and permanence of all individuals considered refugees, i.e., who fear persecution for one of the reasons listed in the Convention. It is important to make clear that a refugee is also a migrant who, however, is subject to this protection due to certain specificities and vulnerabilities. Every refugee is a forced immigrant, but not every forced immigrant is a refugee. It is important to note that "forced migrants" make up a category that is neither recognized nor protected by international law. As we know there are several categories of forced migration that, so far, are not subject to international refugee protection, namely forced migration due to natural disasters and economic deprivation.

"Forced migrant" and "refugee" should, therefore, not be referred to as synonyms, and there should be a clear distinction between both concepts (Rita Gil, 2020: 82). As indicated by UNHCR:

> "Forced migration is not a legal concept, and similar to the concept of "migration", it is not there is a universally accepted definition. It encompasses a wide range of phenomena. Refugees, on the other hand, are clearly defined by international and regional law. of refugees, and States have agreed on a specific and well-defined set of legal obligations towards them. Referring to refugees as "migrants" forced" draws attention to the specific needs of refugees and the obligations laws that the international community has agreed to direct to them. To avoid confusion, UNHCR avoids the use of

the term "forced migration" when referring to refugee movements and other forms of displacement".

Furthermore, the distinction between voluntary and involuntary migration is also a complex one. According to Betts (2013):

> "Forced migration is often assumed to have a political basis, being based on flight from persecution or conflict; voluntary migration is generally assumed to be underpinned by economic motives. However, in practice, this distinction is problematic; it is not possible to distinguish sharply between volition and coercion, and they exist on a spectrum. In practice, most migration has elements of both coercion and volition, and is likely to be motivated by a mixture of economic and political factors."

In other words, it is not easy to define whether there was voluntary action or not. It should be noted that the line between voluntary and forced migrant is not always easy to distinguish. Let us take the example of a person forced to abandon their country due to total lack of access to water, or a family forced to move because of food insecurity. In these cases, it cannot be affirmed that these people have voluntarily chosen to leave their countries. It is a case of force majeure.

Hence, the distinction "voluntary v. involuntary" and "forced migration v. refugee v economic migration" is not as straightforward as one might have thought.

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services (…)."
>
> Article 25 of The Universal Declaration of Human Rights

According to general literature, the difference between refugees and economic migrants is that refugees are forced to migrate, while economic migrants do it voluntarily (Long, 2013). However, some economic migrants flee their countries due to extreme poverty, economic desperation that disables them from having access to basic human rights; therefore, this distinction cannot be so elementary. Economic migrants are ineligible for asylum because they are merely pursuing a better life, while refugees are trying to escape a threat that can endanger their lives (Foster, 2007: 2-20; Steinbock, 737-738). Michelle Foster affirms that this distinction "underpinned the rejection of entire classes of applicants on the basis that their claims are clearly those of economic migrants rather than refugees" (Foster, 2007: 2).

Nevertheless, economic inequalities can threaten the right to life, liberty, and security and put human dignity at stake (Rita Gil, 2018: 81). According to Todd Landman and Marco Larizza, in a study from 2009 using data from 162 countries referring to the period 1980–2004, there is a firm link between income inequality and the violations of personal integrity rights in the studied countries. Moreover, the lack of access to essential goods and the consequent violation of economic rights is, according to experts on migration law, a predominant cause for forced migration, however, it is not legally recognized (Frelick, 1987:25; Betts, 2013; Storey, 2011; Foster, 2007).

IOM defined forced migrations as: "A migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g., movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects)." Hence, by acknowledging that underdevelopment is being perpetuated by political and economic policies and regulations, we can argue that migration resulting from socioeconomic deprivation is considered forced migration.

The distinction between "refugees" and "economic migrants" has been useful to Western receiving-states, especially as a justification to impose strict measures in order to control migration flux (Dummett, 2001). Nevertheless, there is an accepted idea among scholars that the lines between these categories are not clear and that there are claims that challenge this dichotomy. The latter persists since the debate within IRL does not show any evolution. Even the UNCHR has already assumed that people fleeing severe economic conditions are outside the protection scope[9]. As we know, it is important to change this dichotomy, since there are numerous claims that challenge this distinction between economic migrants and political refugees. An example referred by Foster in her book is a child from the Democratic Republic of Congo, whose government fails to provide the basic tools for survival, such as food, water, and shelter. At first glance, this claim would

[9] In UNHCR, *Global Consultations on International Protection, Refugee Protection and Migration Control: Perspectives* from UNHCR and IOM, UN Doc. EG/GC/01/11 (2001), the UNCHR treated separately the issue on 'serious human rights violations or armed conflict' and 'economic marginalization and poverty'.

be expected to be accepted, and international protection to be granted, however it is not under the auspices of the Refugee Convention.

Zolberg, Suhrke and Aguayo explained this dichotomy, stating that the distinction is based on the following formula (Zolberg et al, 1989:30):

Voluntary economic= migrants

Involuntary political= refugees

However, the concept of "voluntary" is an interesting one since, as Richmond explains, "human agency implies an element of choice and ensures that some degree of uncertainty is always present, even when the choices in question are severely constrained by external considerations" (Richmond, 1993: 7). This means that there is always some degree of "voluntarism" even within the taken definition of refugee. As Foster argues, political and religious "dissenters" are a good example, since they reject the religious alternative offered by their government. In other words, the choice to leave such a scenario is in fact personal (Zolberg et al, 1989: 31). Therefore, it is impossible to have a precise distinction between forced and voluntary, meaning that it is not incorrect to consider that economic migration can be either voluntary or forced, depending on the situation.

The international community has been prioritizing civil and political rights; hence the 1951 Convention has been restrained to "an inadequate understanding of the equal importance and seriousness of violations of economic, social and cultural rights rather than because it is inherently incapable of responding to some of the challenging predicaments" (Foster, 2007: 16). We believe that human rights are universal, indivisible, and interdependent which means that they should be considered with the same significance, since the observance of one's rights cannot occur if not at a hundred percent. Economic migrants are ineligible for asylum because, according to the definition, they pursue a better life in economic terms, and are not escaping a severe threat or persecution that puts their life at stake (Foster,2007:6-7). However, as Litinski (2019) states: "The enforcement of economic rights is instrumental to the amelioration of the ubiquitous and damaging economic crisis domestically and abroad."

Some opinions argue that economic migrants lack a sense of urgency, which means that the reason to leave their country of origin is not compelling. Yet, violations of economic and social rights may threaten life and liberty, since without food or water, and in a situation of extreme poverty, starvation can lead to gradual death (Jackson, 2011:157). As Jackson firmly states: "(…) persons who flee severe, systematic violations of their social and economic rights are also "pushed" away from their countries of origin by the necessity of self-preservation, just as much as traditional political refugees are attracted to a life free of violations of civil and political rights."

As Marissa Jackson (2011) points out, not all migrants are certainly refugees, but this cannot be the rule, but the exception. The politics involved in maintaining the dichotomy between political refugees and economic migrants result from the goal of containing migratory flows towards developed countries. Wealthy, neo-liberal, and industrialized countries feel as if they are not obligated to share their internal resources with people from developing countries, "because the developing nation simply lost the competition for wealth" (Jackson, 2011: 155).

The domain of studies on refugees and forced migration has grown considerably over the last 60 years (Black, 2001; Neumann et al., 2014). Nevertheless, there is no common understanding about socioeconomic violations as migration drivers. Even so, it is evident that the so-called exponential growth of inequalities at local, national, and global levels led to an increase in the rate of forced mobility related to extreme poverty (Terminski, 2012; Alvaredo et al, 2018). Poor governance, political instability, environmental causes, and resource scarcity are agreed to also drive forced migration (Zetter, 2015).

As Zetter (2015) pointed out:

> "The lack of resources drives global forced migration by means of water shortages, unreliable food supplies, pollution, famine, and climate change. These factors may not directly displace populations, but when combined with other elements, including generalized poverty, they do. The continual crisis in Somalia is a clear example: three decades of clan conflict and government failure have led to insecure food supplies and fragile livelihoods."

This means migration is a complex and dynamic process and there is a variety of factors that can influence an individual to migrate. The situation can be even more urgent due to only one factor or a combination of several. In any case, it must always be considered both civil, political and social, economic and cultural rights are equally essential for human dignity.

There is always a degree of voluntarism in some decisions, even in the ones that match the refugee concept, however there must be a casuistic analysis. Refugees are considered forced migrants, however if "forced migration" requires a coercion factor, it is clear that there are several categories of migrants that, even though not within the scope of the Convention, should be considered "forced migrants". Forced movement implies the deprivation of the person from their community, family, and livelihood and implies a wider level of powerlessness in which moving is not a choice (Mota Borges, 2015:61). Economic migration can be voluntary if one is searching for a better wage, a better life, not meaning that life in the country of origin was undignified and insufficient (Casella, 2005; Rita Gil, 2020:82). It can also be considered forced if someone is leaving due to the impossibility of access to basic survival rights, namely water, food, sanitation, health care. In other words, it includes everyone who is unable to satisfy basic needs and is driven by a survival instinct (Cunha, 2008:192). Hence, it is fundamental to draw this line and to take into consideration that all refugees are forced migrants, and that all economic migrants are voluntary ones.

According to UNHCR, at the end of 2021, the number of people forced to flee conflict, persecution, and human rights violations reached 89.3 million. In this report, food shortages were also referred to as a cause for flight (UNHCR, 2021). It is increasingly evident how the 1951 Convention and the subsequent protocol are inadequate instruments to address all current causes for migration.

Cunha (2008) states that it is not possible to universalize the application of international refugee protection since this could culminate in the termination of the system and denigrate its applicability. Even so, we believe that forced economic migration should be recognized and that it may be possible to reinterpret the 1951 Convention in light of this issue, dismissing the universalization of the application.

The pressures of economic globalization are aggravating global economic disparities and contributing to the insecurity that forces people to flee to other countries (Boswell and Crisp, 2004:4). So, the distinction between forced immigration and voluntary immigrant should be based on the idea of determining if, in the country of origin, it is possible to live without risk to life, dignity, freedom, and personal integrity, regardless of the source of the threat (Rita Gil, 2020:83), focusing on the forced nature of the movement rather than on its legal status. International Organization for Migration (IOM) has also addressed the expression "vulnerable migrants" to refer to people needing protection and assistance, even if not being refugees. All these terms and expressions are inclusive and acknowledge that people who cannot qualify as refugees are also in need of protection, even if not recognized under that *status*. Without legal recognition, forced migrants who cannot be considered refugees are still vulnerable. The refugee regime is based on a definition that recognizes the seriousness of violations of political and civil rights, and the need for international protection of victims of such violations. However, there is no instrument nor protective measure for people who may be forced to leave their homelands as a result of violations of socioeconomic rights, where victims perceive that survival in minimally acceptable conditions is at risk or impossible (Taran, 2000:12).

The statement that "poverty itself is a violation of numerous basic human rights" enhances the idea that our world should ensure the observance of the basic means of sustaining life for everyone and that those not benefiting from those rights are victims (Robinson, 2006; Beetham, 1995).

Chapter 4: Human Rights protection through Complementary Protection and Regional Instruments

The international protection of refugees derived from the Convention is, evidently, flawed and imperfect. Given the current scenario of mass migrations, former mechanisms were adapted and others were created, such as the 1950 European Convention on Human Rights with the prohibition of torture and inhuman and degrading treatment, the extension of the principle of *non-refoulement*, the Complementary or Subsidiary Protection in European Union Law pursuant to Directive 2011/95/EU, as well as the creation of new instruments by regional organizations, namely the Organization of African Unity and the Members of the Organization of American States. In this way, it is easily understandable that there were situations that did not find answers in legislation, doctrine or jurisprudence and that demonstrated the need and urgency of international protection of other vulnerable groups.

Some regional instruments already felt the need to adapt the concept of "protection" in view of the respective migration realities, thus setting remarkable landmarks for human rights protection. This Chapter will explore regional refugee protection instruments and complementary protection systems that can represent the first steps to recognize the phenomenon of forced economic migration on an international level. In our view, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the Cartagena Convention and the EU Temporary Protection and Qualification Directive represent a good point to argue that there is a way, and a need, to recognize new realities of human rights violations.

African and Central American countries experienced a massive influx of migrants fleeing neighboring countries due to various factors, such as natural disasters, political instability, or economic turmoil. To deal with this migration flux as best as possible, those countries felt the need to adopt a broader definition of "refugee" that could approach their realities.

In Europe, a complementary protection system was created to protect those who fall outside the 1951 Convention definition of the 1951 Convention. The criteria underlining this regime are very comprehensive, which can represent an open door to protect economic forced migrants.

4.1. OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

Although there are various treaties in refugee law, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (the 1969 OAU Convention), a binding legal instrument, offers the most expansive definition of a refugee. The Convention was adopted in reaction to the constantly increasing flux of refugees in Africa, caused by the waves of decolonization, which occurred in the 1960s, that led to a huge wave of displacement.

The 1951 definition was not perfectly adaptable to the African reality, since most of the causes for this displacement were related to the civil war and other disruptive events not implied in the Refugee Convention (Rankin, 2005: 406).

The Convention was designed as regional instrument complementing the international refugee protection regime, as it is stated in Article 8 (2):

"The present Convention shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees".

In Article 1 (I), the OAU reaffirms the definition foreseen in the 1951 Refugee Convention, but in Article I (2) of the 1969 OAU Convention it broadens the international definition by stating that:

> "The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."

This definition eliminates the element of "fear of persecution" as claimants do not have to justify this fear but prove that their claim is based on one of the grounds enumerated in the provided definition. So, this subjective criterion disappears and, as Awuku asserts, protection will be provided "irrespective of whether or not they can satisfy the subjective criteria" (Awuku, 1995: 81). Moreover, it does not focus on the persecuted individual but rather on the dangerous conditions and events that will affect the order of society, and that can lead someone to abandon their country of origin. Furthermore, it recognizes the effects of the unfair institutional order on African's lives and freedoms. It also considers that rights violations can be inflicted by external states and actors (Jackson, 2011: 169).

It even broadens the grounds for claiming asylum, defining four events that can be divided into two categories: events related to "external aggression, occupation and foreign domination" and "events seriously disturbing public order".

The expression "events seriously disturbing public order", under the 1969 OAU Convention, can be perceived as a wider interpretation to events such as economic disruption, meaning severe lack of the basic needs of life. Such events could include serious disruptive economic crisis that result in life-threatening situations where basic human rights are not respected, and people feel the need to abandon their country to survive (Kapindu, 2014). Also, by addressing "foreign domination" as a ground for asylum it could – even though it is a utopic assumption - open a gateway to the inclusion of our argument that poorer/developing nations are subject to persecution by foreign states and private actors, by means of the instituted global economic order that perpetuates the stagnation of those nations. Nevertheless, this is a difficult argument to pursue since there is no definition of this concept in the OAU, which makes it necessary to look to other areas of international law. Therefore, and according to the Resolution 3314 (XXIX) of the UN General Assembly, aggression consists of "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or any other manner inconsistent with the Charter of the United Nations." Hence, three criteria must be met to deem an act as "aggression": it must (1) perpetrated by a State; (2) involve the use of armed force; and (3) reach a level of sufficient gravity, as defined by the UNSC (Dinstein, 1988). It excludes ideological and economical aggressions, which eliminates the possibility to assume that socioeconomic deprivation might amount to "foreign aggression".

Moreover, this Convention represents an advancement regarding the "principle of non-refoulement". The general rule, which is codified in several international refugee and human rights instruments, provides that an individual shall not be returned to a state where he or she will face persecution. In the context of refugee law, in Article 33 (1) of the 1951 Convention, this norm prohibits states from returning a refugee to a territory where they may face a risk to life or where life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion. The second paragraph of this article provides a national security exception, that we already referred to in Chapter 3. The non-refoulement provision of the 1969 OAU Convention, in Article II(3), provides that "[n]o person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2." This definition is quite broader than the one contained in the 1951 Convention. It does not provide for an exception on national security, referring that the provision applies upon crossing borders. - i.e., when the individual arrives -, and referring to "persons", whereas the 1951 Convention applies only to refugees (Westerflier, 1989). Moreover, the 1969 Convention may indeed protect a broader class of persons from refoulement than the 1951 Convention.

Also, the focus of this Convention is that it opens a "gateway to a host of rights aimed at protecting refugees from future harm and preserving their dignity until a durable solution can be found" (Wood, 2019). The expansive nature of the African definition holds a more humanitarian and humane sense, and it takes into account current causes for displacement, which represents an example for a future broadening of the international definition.

Furthermore, Coles defends that this definition also applies where there has been widespread disease and famine (Coles, 1984).

Given our analysis, one can argue that International Refugee Law should reflect the current causes of international displacement, being socioeconomic deprivation one of them. This was exactly the purpose of the OAU: to create a legal definition that could reflect the causes of regional displacement, since the one provided by the 1951 Convention was insufficiently protective.

4.2. Central America and the Cartagena Declaration

The Cartagena Declaration was adopted in 1984 by a group of experts from various Latin-American countries[10], as a result of a colloquium on the international protection of refugees in Central America, Mexico and Panama. The colloquium aimed to discuss legal and humanitarian issues that were affecting displaced people due to conflicts in Central America.

Under this Declaration, and alongside the lines of the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa (OAU Convention), which broadened the definition of "refugee", it was recommended to expand the conventional "refugee" definition (Miranda, 1989: 324). Even though it is not binding on any government, it was an important statement in Central America since it represented a response to the movement of groups due to conflicts and other forms of threats to life, security and freedom.

According to the Cartagena Declaration it was recommended that the concept of refugee was enlarged as to include:

> "(…) among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."

[10] Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela.

Hence, it represents a progress towards the protection of individuals not covered by the criteria settled out in the 1951 Refugee Convention, but who are in clear need of international protection[11].

Also, this extended refugee definition also aims to provide protection from situational or group-based displacement. The five "situational events" of the definition "are characterized by the indiscriminate, unpredictable, or collective nature of the risks they present to a person or group of persons, or even to the population at large" (UNHCR, 2013).

The Cartagena refugee definition contains three criteria: 1) the person needs to be outside his/her country; 2) the country in question is experiencing at least one of the situational events; and 3) the person's life, security or freedom is threatened (at risk) because of one or more of the situational events.

When referring to human rights, the Declaration does not separate civil and political rights from socioeconomic rights and does not defend a hierarchy between those (Jackson, 2011:170). Instead, it recognizes that "economic, social, and cultural rights…are the only means of self-defence for millions of impoverished and marginalized individuals and groups all over the world" (Agbakwa, 2002: 177).

As with any refugee claim, the Cartagena refugee definition requires an examination of the overall situation at the country of origin. It also requires an analysis of the situation of the individual or group of persons seeking asylum.

According to the "Expert roundtable Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees", that took place in Montevideo in 2013, being in the wrong place at the wrong time represents the risk to a person's security if the temporal and spatial criteria of the Declaration are fulfilled. Moreover, the Cartagena Declaration also covers the indirect effects of the five situational events, which include poverty, economic disruption, food insecurity, inflation, violence, health insecurity and displacement (UNHCR, 2013).

By including "massive violation of human rights" in its refugee definition, as well as including group displacement as one of the five reasons previously enunciated, this

[11] See Recommendation E of the Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1, available at: http://www.refworld.org/docid/40a8a7394.html.

definition offers an approach to human rights that should be seen as an example by International Law as to reinterpret the definition of refugee in light of or to extend an international complementary protection based on human rights violations.

4.3. Europe

> "Protection has, in effect, been co-opted and instrumentalized as never before to serve national interests and a political discourse which reinforces the securitization of migration and asylum (predominantly in post-industrial countries) at the expense of the rights and protection of migrants (Zetter, 2015)"

As explored, the international protection of refugees under the Convention is flawed and given the current scenario of mass migrations, complementary instruments were developed and adapted, in addition to the creation of new protection mechanisms beyond the 1951 Convention. Instances of this include the 1950 European Convention on Human Rights, prohibiting torture and inhuman and degrading treatment, the broadening of the principle of non-refoulement, the Complementary or Subsidiary Protection in Union Law European Union in accordance with Directive 2011/95/EU, which establishes the conditions to be met by a foreigner to benefit from refugee status or subsidiary protection.

This regime of complementary protections creates an umbrella for those who do not qualify as refugee within the meaning established by the criteria settled in the 1951 Convention. It increases the possibility to require protection, by focusing on the concept of "torture, inhuman or degrading treatment or punishment", rather than on the narrow criteria of the current refugee concept. Under this regime, the priority is to protect someone from being sent back to a situation of real risk of such a treatment, dismissing any justification on the grounds of the Convention.

4.3.1. European Convention on Human Rights and related case-law

The principle *of non-refoulement*, applicable to refugees within the 1951 Convention, was expanded by other international standards, including the European Convention on Human

Rights (ECHR), which provides in Article 3 the prohibition of torture or inhuman and degrading treatment. The Convention does not contain any provision related to the right of asylum, even though the ECtHR jurisprudence, which is based on the interpretation of the ECHR, has shown that in certain cases there is a prohibition of non-refoulement, including in cases related to social, economic and cultural rights.

Although ECHR decisions are not binding, the co-operation developed between the ECtHR and the CJEU means that many ECtHR decisions become part of EU law, which is binding for the US states (Timmermans, 2013). As Kargopoulos (2014) states, even though this relationship is informal, it consists of the "presumption of equivalent human rights protection and of an abstract legal commitment on the part of the CJEU to follow the jurisprudence of the ECtHR."

Since its establishment in 1959, the European Court of Human Rights (ECtHR) has been the guardian of the Convention. The ECtHR has played a pivotal role in developing the key principles of the European Convention on Human Rights. It monitors the observance of human rights by state parties, so the petitions against states parties due to human rights violations can be brought before the ECtHR. It only has jurisdiction over MS that are signatories to the European Convention on Human Rights. The ECHR is traditionally seen as a civil and political document, since its positions are non-binding (Thornton, 2014). A crucial element that has been emphasized by the ECtHR is that there are certain positive obligations[12] emanating from the Convention rights towards states. Positive obligations require national authorities to take action or regulate conducts in order to protect Human Rights (Mowbray,2004)

The topic as to whether ECHR protects or not socioeconomic rights at a European level has been recently refereed by some academics. Opinions about the level of protection under the Convention are divergent; however, it is worth taking a brief survey of views before our personal analysis.

In his article "Economic and Social Interests and the European Interests and the European Convention on Human Rights", Warbrick argues that the ECHR is not "explicitly or impliedly" protective in terms of socioeconomic rights (Warbrick, 2007: 241-256).

Moreover, there are some questions regarding the legitimacy of courts to act as "the final arbitrators of whether socio-economic rights are violated due to government action or

[12] "Positive obligations place a duty on State authorities to take active steps in order to safeguard Convention rights." In https://www.coe.int/en/web/echr-toolkit/definitions .

inaction" (Thornton, 2014). Nolan defends a controversial view of delivering this power of decision on violations of socioeconomic rights on judges, since he defines them as "predominantly members of social elites" who do not have the right view to tackle issues of poverty, deprivation, homelessness and lack of food and water (Nolan et al, 2011:234).

Others, such as Palmer (2009), have argued that the ECHR can extend its interpretations:

> "for the protection of vulnerable individuals....to receive a minimum standard of living consistent with their basic human dignity."
>
> Palmer, E., Judicial Review, Socio-Economic Rights and the Human Rights Act

We will further analyze the jurisprudence of the ECtHR, as to conclude how socioeconomic rights recognition has been developed.

Article 3 of the European Convention for the protection of Human Rights and Fundamental Freedoms states that: "No one shall be subjected to torture or to inhuman treatment or punishment." According to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, human rights are universal, indivisible, interdependent and interrelated. Hence, it seems that it should be possible to acknowledge socioeconomic rights as deserving of protection. This affirmation allows room for a connection between Article 3 of the ECHR and the violation of socioeconomic rights (Flegar,2015:2).

Article 3 of the ECHR entails the freedom from torture and inhuman and degrading treatment, and it has been one of the most effective bases for the protection of individual cases specially from expulsion. (McAdam, 2005:474; Arai-Yokoi,2003 :386) The Article is not subject to any limitation and the prohibition cannot be derogated, even in times of war. Hence, this provision holds an absolute nature, being "one of the fundamental values of the democratic societies making up the Council of Europe", which means that the violation of this obligation is an assault to the European public order (Arai-Yokoi, 2003:386). As Arai-Yokoi refers, "the non-derogable character of Article 3 and its obligations *erga omnes* lend support to the view that prohibition of torture or other forms of ill-treatment constitutes part of *jus cog*ens in the normative hierarchy of international law".

In *Ireland v. UK* (1978), the ECtHR ruled that "torture" was deliberate inhuman treatment causing very severe and cruel suffering. Being deliberate, we consider that it is not applicable to forced economic migration, since this arises from the lack of state protection and economic and political policies that, even if unintentionally, perpetuate the underdevelopment of the poorest countries. "Inhuman treatment", in turn, is defined as a conduct that causes mental or physical suffering but is not intended to have such effect - is not deliberate - or does not reach the severity of "torture". In the description of "inhuman treatment", we could include claims based on socioeconomic deprivation, since even if it is not deliberate, it puts human life and dignity at risk.

Degrading treatment, on the other hand, is one that - with severity and gravity - humiliates the victim, causes agony and inferiority, is capable of humiliating or making someone act against their will or conscience, by breaking their physical or moral resistance (Costa, 2000). Here, as with the concept of torture, it would be difficult to include the phenomenon of forced economic migration.

Although the article itself does not refer to the principle of *non-refoulement*, in the wake of the judgement of the *Soering v. UK* case (*1989*), the ECtHR recognized the obligation of prohibition to send back a person who is threatened or would face a real risk of torture, inhumane or degrading treatment. Hence, this provision is now one of the strongest protection mechanisms in the European Council domain, and, according to Article 3, states cannot rely on any justification to violate this principle, due to the absolute character of the Article. (*Soering v* UK, 1986: para. 88; Weissbrodt et al, 1999; Goodwin-Gill and McAdam, 2007:311)

To reach the so-called *degrading* threshold, some aspects must be considered: a) the severity of suffering and b) the real risk that this treatment would inflict if the person were deported. According to *Soering v. UK,* the act needs to be "such as to arouse in its victims feelings of fear, anguish, and inferiority capable of humiliating and debasing them and possibly breaking their physical and moral resistance" (Soering v. UK, 1986: para. 100)

Nevertheless, under the *Soering* case, the court made clear that the previously mentioned aspects should be considered concerning the circumstances of every case. Thus, considering an individual as deserving of this protection settled by Article 3 depends "on all circumstances of each case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim." (Soering v. UK, 1986: para.100). According to the court's decision in *Chahal v. UK*, the real risk should be rigorously assessed, since "the present conditions are decisive". With this, the

ECtHR brought to light the idea that it is the circumstances of each case that provide the court a view of the compliance with the threshold of severity and real risk. Also, this risk assessment should be based on general and personal circumstances since it is essential to analyze whether the individual in question would be in a worse position than the rest of the people in an analogous situation (Vilvarajah and Others v. UK: para.11). The "mere possibility" of ill treatment is not sufficient to claim protection based on Article 3 ECHR.

However, the court also applied a group-oriented approach in other cases, such as *Salah Sheekh v. the Netherlands,* in which case the "mere possibility of ill treatment" was understood as sufficient to grant protection. This means that the scope of the Article is constantly changing, and gradually evolving, which can be an open door to assess claims based on socioeconomic rights violations.

i. Exceptional circumstances

Case law by the ECtHR shows that the circumstances of each case are decisive to determine of the applicability of Article 3. Thus, it is necessary to conduct a detailed analysis of the circumstances of each case considering two fundamental factors: the exceptionality of the circumstances and the vulnerability of the victim (Flegar, 2015:6).

The case of *D. v. The United Kingdom (1997)* is one of the most well-known cases regarding the decision of the court given the circumstances surrounding the plaintiff. The case dealt with an AIDS victim from St. Kitts Island who was to be deported to their country of origin by the UK government. However, the court decided that due to the circumstances regarding health issues, the deportation would not be positive. In this case, even though the conditions being met on the country of origin, the court decided, on humanitarian grounds, that the "critical stage" of the illness and deportation could put the person in real risk of ill-treatment, which allowed the protection under Article 3 ECHR.

Here, the illness circumstances were essential and decisive to meet both aspects: severity of the suffering and substantial grounds for real risk of ill treatment. However, in this specific case, the final decision was not a result of a failure on the part of the system of the country of origin. However, Stoyanova enhances that this case highlighted the idea that the failure of the state of origin to observe the citizens' rights can be sufficient to establish a violation under Article 3 (Stoyanova, 2018). We can argue that the application of this Article, according to the decision on the case D. v, UK, can be broadened or limited depending on the exceptionality of each case (Flegar, 2015:7)

ii. Vulnerability of the victim

The vulnerability of the victim was one of the aspects referred by Flegar to address socioeconomic conditions in connection with Article 3 of ECHR and the principle *of non-refoulement*. The former EU Commission on Human Rights rejected any interpretation of Article 3 ECHR that would present an obligation to guarantee basic goods for everybody to ensure human dignity (Cassese, 1991:141-145)

In many cases, the threshold of degrading treatment was not met, and the minimum required level of severity was not attained. Nevertheless, this threshold was met in the case *MSS v. Belgium (2011)*, which gave rise to the potential considerations of socio-economic obligations upon **contracting** ECHR States.

As previously mentioned, the case of *MSS v. Belgium and Greece* was remarkable. MSS was an asylum-seeker from Afghanistan who entered the European Union through Greece and heading to Belgium where he was registered (Paragraph 10, MSS Belgium). Based on the European Dublin II Regulation, Belgium intended to send him back to Greece. Upon his return to Greece, he was subjected to degrading treatment in the form of extreme poverty, or in the words of the ECtHR "the inability to cater for his most basic needs: food, hygiene and a place to live". According to the applicant, he was living in a park with other Afghan asylum seekers, without sanitation, hygiene, and relied on organizations and other individuals to have access to food. MSS then lodged a complaint against Belgium and Greece based on Articles 2, 3 and 13 of the ECHR, namely the right to life, prohibition of torture and inhuman and degrading treatment and the right to remedy.

It was the first time that the ECtHR established that certain living conditions can be considered inhuman and degrading treatment in the context of the ECHR (Clayton:765). It considered that the conditions of asylum seekers in Greece constituted a breach of Article 3 ECHR. (Costello, 2012:321). The applicant's situation was considered very severe, since he claimed he had been homeless for several months without access to food or sanitation (MSS v. Belgium and Greece, para. 254). This was the origin of the condition of a certain level of severity to be met in all cases (MSS v. Belgium and Greece, para(s). 219 and 254).

The court concluded that the conditions to which the victim had been subject were humiliating and enter the sphere of human dignity, being considered inhuman since it "was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering", as well as degrading treatment since it "humiliates and debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and psychical resistance." Hence, the court decided that a certain degree of humiliation needed to be met to apply Article 3 of the ECHR. The ECtHR determined that Greece had violated Article 3 upon allowing an asylum seeker to live in conditions of extreme poverty. It also blamed Belgium for having carried out the transfer of the individual to Greece. The ECtHR emphasized that this Article does not provide a right to a home or to a certain standard of living. However, it stated that, under the RCD (EU Reception Conditions Directive/2003), which establishes minimum standards for the reception of asylum seekers, i.e., "positive law", states were obligated to provide accommodation and decent material conditions to asylum seekers, who are considered an especially vulnerable group. Therefore, in addition to recognizing that the deprivation of socioeconomic rights can jeopardize human dignity, it also established that the concerned state must assess whether the individual will or will not suffer a violation of their rights upon return. He also recognized Greece's liability for the inobservance of human rights. This is important because it establishes that the States of origin and destination carry a certain responsibility regarding the protection of the human rights. In the case of forced economic migration, as it results from the political and economic positioning of various actors, and from the lack of protection by the State of origin, it is essential that the State of destination assesses the conditions in the country of origin. That is, there is an obligation for both states: the home state must protect the citizens; the destination state must assess whether the return is safe - if the person felt the need to flee, the answer will certainly be negative. Moreover, in this case, the court clearly practiced a more liberal standard of severity, since it did not require the fulfilment of "exceptional circumstances" and relied on the general situation. Along with medical conditions, it specifically referred to the living conditions of (MSS, Paragraph 263 and 367).

In an earlier judgement in *Budina v. Russia,* the ECtHR noted that a contracting state may have obligations under Article 3 and that, in a situation of severe deprivation, the state inaction can lead to state responsibility (Flegar, 2015:10). This was a remarkable point for forced economic migrants who do not want to be refouled to extreme poverty, since most of the times a situation of this kind is created due to the inaction[13] of a state (Sachs, 2005: 226f). By excluding the requirement of proving public officials or non-State actors' action, it provided an opening of the ECHR to protect forced economic migrants.

The ECHR has already considered that, in situations of lack of social and economic conditions in the country of origin, Article 3 of the ECHR can be applied to prohibit the return of the individual in question to such a situation. The decision in the case *Sufi and Elmi v. UK (2011)* is paradigmatic, in which two nationals, Mr. Sufi and Mr. Elmi from Somalia arrived in the UK and had their application for asylum rejected. The applicants claimed that the expulsion back to Somalia would jeopardize their human rights and they would suffer a serious risk of "inhuman treatment" (Rita Gil, 2020). They claimed that going back to their country would mean returning to a refugee camp with limited access to food and water, as well as sanitation and shelter.

The threshold of Article 3 was the one adopted in M.S.S. v. Belgium and Greece, which required the Court take into account an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of improvement of his situation within a reasonable period. Here, the court concluded that the return of individuals to Somalia would constitute a breach of Article 3 of the Convention, as they would not be able to see their basic needs met, such as access to food, hygiene conditions and shelter, and there were no prospects for improvement. these conditions in a reasonable time (Rita Gil, 2020: 81). Still, the ECtHR declared this to be an extremely exceptional case, as did the decision, which proved to be true in subsequent cases where it has not been concluded that there might be a breach of the article.

This represents a huge development, and it should be considered by international refugee law as an example for the recognition of claims based on socioeconomic rights violations, as well as the recognition that the lack of access to basic rights can amount to inhuman treatment and hazard human dignity. However, the application of Article 3 of the ECHR

[13] According to Jeffrey Sachs, inaction manifests itself, for example, in an insufficient program for poverty relief, lacking security system, poor political responsibility and other structural gaps.

in cases of extreme poverty is still very ambiguous and the decisions on the matter are few and seen as exceptional. We do believe that, as argued by Judge Pinto de Albuquerque, it is time for a rights-based approach to deal with this category of migrants.

There are several aspects that should be considered upon the arising of an asylum request based on the lack of access to essential goods. The jurisprudence of the ECtHR, and consequently of the CJEU, suggested a few, namely the severity of the situation, the applicant's vulnerability, the applicant's ability to cater for most basic needs, such as food, hygiene and shelter, and the prospect of the improvement of the situation within a reasonable period.

4.3.2. Qualificative Directive and related case-law

Despite the obvious legislative and jurisprudential evolutions resulting from the expansion of the concept of a person deserving international protection, it is mandatory to recognize that it is still necessary to broaden this protection. While the refugee concept remained unchanged - not detailing all international protection needs, including those resulting from a broad sense of the principle of *non-refoulement* - the need has been proven to recognize the existence of other groups of people who also could not return to their country of origin for fear of their lives or personal integrity, giving rise to the figure of subsidiary protection.

In the European countries, the protection of these people was granted by means of the creation of a protection status that complements the refugee status: "subsidiary protection" – currently regulated by Directive 2011/95/EU (known as the Qualification Directive). Subsidiary protection aims to protect the individual who, even though he does not meet the requirements of the refugee concept, is also unable to return to his country of origin, under penalty of his human rights being violated (Rita Gil, 2020).

To normalize legal standards among Member States regarding asylum law, the EU adopted various directives and regulations that were in the origin of the Common European Asylum System (Boeles et al, 2014: 245). The 2011 Qualification Directive was one of those instruments, which established the minimum standards to qualify individuals in need of international protection.

In addition to the common standards for the qualification of refugees, the Qualification Directive introduces a legal basis for complementary protection through the concept of *subsidiary protection* (McAdam, 2007). It defines "subsidiary protection" as applicable to a "person who does not qualify as a refugee [but who] … if returned to his or her country of origin … would face a real risk of suffering serious harm" (Article 2f QD).

According to the preamble of this Directive, the criteria eligibility for "subsidiary protection" are drawn from "international obligations under human rights instruments and practices existing in Member States". However, one must note that those allowed to stay for discretionary humanitarian or compassionate reasons are not included in this Directive, as asserted in paragraph 9 of the Preamble.

When establishing the criteria for the qualification as a refugee, the Directive enhances the protection of human rights within the meaning of "persecution" as stated in Article 9:

> "1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:
>
> (a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
>
> (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a)."

The concept of "persecution" is much more clearly defined in the QD than in the 1951 Convention. Nevertheless, Article 10 of the Directive specifies that, to request asylum based on that understanding of persecution, the grounds/reasons for the latter must be one of the five listed in the Convention.

The Qualificative Directive also sets out a protection framework for residents of third country or stateless persons who do not qualify as a refugee, but if returned to the country of origin can face real risk of suffering serious harm and the state of origin would be unable or unwilling to provide protection.

Qualifying for subsidiary protection focuses on the concept of "serious harm", which is described in Article 15 as:

> "(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
>
> (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict."

According to Tiedemann, the wording of Article 15 (b) of the QD mirrored the content of Article 3 of the European Convention on Human Rights (Tiedemann, 2012: 127). Thus, by considering that deprivation of socioeconomic rights constitutes inhuman and degrading treatment; hence, persons in these situations could be eligible for complementary protection at the European Union level, which *per se* already constitutes a milestone in view of socioeconomic rights as deserving of protection.

The Court of Justice of the European Union (CJEU) has the primary function of interpreting the EU law to ensure consistency across the Member States and settle disputes between MS and EU institutions. Individuals, companies, or organizations can also bring cases before the Court, if they believe that their rights have been infringed by an EU institution. The EU Law is binding, and so are the CJEU judgements, thus the Court is empowered to provide authoritative interpretations of the Qualification Directive- more precisely, of its application in cases where the applicant cannot qualify as a refugee.

The CJEU has two cases in which the lack of socioeconomic conditions was addressed. It is fundamental to analyze the conclusions of both cases to establish the CJEU's position regarding the recognition of socioeconomic deprivation as a core violation of human rights and dignity. The case C-411 *N.S. v. United Kingdom* and *M.E. v. Ireland,* from 2011, concerned an Afghan national who came to the UK via Greece. He claimed that, in Greece, in 2008, the authorities detained him for four days. He did not apply for asylum there and was ordered to leave the country within 30 days. The applicant claimed that when he was about to leave the country he was arrested again by the authorities and sent to Turkey where he was imprisoned for 2 months under dreadful conditions. He then escaped Turkey and requested asylum in the UK, where he was placed under a Dublin procedure[14]. The UK issued the transfer decision to Greece. The applicant claimed that, under the Art. 3 (2) of the Dublin II Regulation (EC) 343/2003, there was a risk of breach of his fundamental rights under EU Law, the ECHR and the Geneva Convention if he was

[14] Regulation 2003/343/EC establishing the criteria and mechanisms to determine the Member State responsible for examining an asylum application lodged in one of the MS by a third country national.

sent back to Greece. This was refused, but an appeal was made leading to the following decisions:

- In response to the first question in the case C-411/10, the Court held that the discretionary power conferred on the Member States by Article 3(2) is part of the mechanisms for determining the Member State responsible for an asylum application and therefore is an element of the CEAS (para. 68). Therefore, a Member State which exercises that discretionary power must be considered as implementing the EU law within the meaning of Article 51(1) of the Charter.

-The Court noted that the Common European Asylum System was build up in a context that favoured the assumption that the participating Member States or third states observe fundamental rights and respective protection, including those based on the Geneva Convention and the ECHR. The Court also noted in paragraph 78 that "the Member States can have confidence in each other in that regard". In paragraph 79, it argued that it was "because of that principle of mutual confidence that the European Union legislature adopted Regulation No 343/2003".

Nevertheless, in paragraph 81, the Court considered that, perhaps, "that system may, in practice, experience major operational problems in a given Member State, meaning that there is a substantial risk that asylum seekers may, when transferred to that Member State, be treated in a manner incompatible with their fundamental rights". The fundamental conclusion of this case was that the Court acknowledged the possibility of prohibiting the transfer if the nature of the infringements originated a real risk for this asylum seeker to suffer inhuman and degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union:

> "(…) if there are substantial grounds for believing that there are systemic flaws in the asylum procedure and reception conditions for asylum applicants in the Member State responsible, resulting in inhuman or degrading treatment, within the meaning of Article 4 of the Charter of asylum seekers transferred to the territory of that Member State, the transfer would be incompatible with that provision."

This was a remarkable acknowledgement by the CJEU regarding the protection of fundamental rights. It recognized that "appalling conditions", namely the lack of access to basic needs, endangered the individual.

To reach conclusions, the Court considered the ruling of the ECHR Grand Chamber on MSS v. Belgium and Greece and "noted that the extent of the infringement of fundamental rights described in that judgment shows that there existed in Greece, at the time of transfer, a systemic deficiency in the asylum procedure and reception conditions".

The CJEU ruled that Member States cannot work based on the mere presumption of compliance with fundamental rights; a conclusive and undeniable presumption that fundamental rights are not at stake is paramount.

Article 4 of the Charter of Fundamental Rights of the European Union, which prohibits torture and inhuman or degrading treatment or punishment, must be interpreted as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the Member State responsible (in the present case, Greece). "Within the meaning of Regulation No. 343/2003, where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision".

In this case, the CJEU prioritized the protection of the asylum seeker's rights and human dignity, by setting a precedent which requires full certainty that the MS responsible for analysing the asylum request will respect the fundamental rights of the individual. It was also highlighted that the Member State in which the asylum seeker will remain until the determination of the MS responsible for that request, must ensure the protection of his fundamental rights.

Following the *N.S. v. United Kingdom* and *M.E. v. Ireland* cases, on March 2019, the CJEU delivered judgement in the case C-163/17 Jawo. The applicant, a Gambian national who reached Italy by sea and then travelled to Germany and requested asylum there(paragraph 26). However, Mr. Jawo had already lodged an asylum request back in Italy and, therefore, German authorities considered his request inadmissible and requested his return to Italy. In June 2015, the applicant was due to be transferred to Italy. There were two attempts to send him back: firstly, he was not present at the accommodation center where he lived in Heidelberg (June 2015), and, later, he refused to board the aircraft (June 2016).

The applicant brought an appeal asserting that his transfer to Italy constituted a breach of the protection of his rights, and that Germany had become the Member State responsible due to the expiry of the 6 months period for transfer. Mr. Jawo argued that he could not be sent to Italy due to the systemic deficiencies and the lack of living conditions for beneficiaries of international protection (paragraph 38). Following, a request for a ruling on the interpretation of Articles 3(2) and 29(1) and (2) of the Dublin III Regulation as well as Article 4 of the Charter of Fundamental Rights of the European Union (CFR) was submitted to the CJEU.

According to CJEU case law, an asylum application cannot be transferred under the Dublin Regulation to the Member State responsible for processing their application, if the living conditions can expose them to extreme material poverty amounting to inhuman or degrading treatment within the meaning of Article 4 of the CFR.

Regarding this, the Court ruled that:

"Article 4 of the Charter of Fundamental Rights must be interpreted as not precluding such a transfer of an applicant for international protection, unless the court hearing an action challenging the transfer decision finds, on the basis of information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law, that that risk is real for that applicant, on account of the fact that, should he be transferred, he would find himself, irrespective of his wishes and personal choices, in a situation of extreme material poverty."

Furthermore, the Court defined that the threshold for Article 4 was only met where, analysing the circumstances of the individual case, there is a prominent level of severity and insecurity or a significant degradation of living conditions. The latter finding is also supported by the jurisprudence of the European Court of Human Rights. Correspondingly, national courts have the obligation to examine whether there was a real risk for the applicant to find himself in such situation of extreme material poverty, based on objective, reliable and updated information as well as on the standards of protection of fundamental rights guaranteed by the EU Law.

To conclude, the Court acknowledged that this analysis must also be made not only regarding the reception conditions during the procedure "but must also include the situation thereafter." Hence, the protection of the individual must be absolute during the procedure, and subsequently. Again, this represents a huge recognition of the deprivation of socioeconomic rights as a violation of human dignity and the recognition of the fundamentality of these rights. It supports our argument on the recognition of forced economic migration in the sense that, by acknowledging the importance of protecting socioeconomic rights and keeping individuals away from “extreme material poverty”, it represents a positive basis for recognizing that people who find themselves in countries where these conditions are perpetuated should be able to request asylum in a safe country.

Chapter 5: Possible solutions to recognize “Forced Economic Migration”

As previously stated, the concept of “persecution” is central to the universal definition of Refugee, being therefore essential to define who is entitled to such protection. According to the UN Handbook on Refugee Status, “the phrase well-founded fear of being persecuted is the key phrase of the definition” (UNCHR, 1979: 37). Only persecution linked to “race, religion, nationality, membership of a particular social group or political opinion” is considered a reason to qualify as a refugee (Maiani, 2022). Yet, there are individuals who can be considered forced migrants, but are not eligible under international law (McAdam, 2009). In the previous Chapter, we analyzed Regional Instruments and Complementary Protection and concluded that this could represent the first steps to recognize socioeconomic deprivation as a cause to flee.

5.1. Socioeconomic deprivation as a reason for persecution

Refugee protection has been delimited to persons who fear being persecuted for a reason listed in the 1951 Convention. In Chapter 3, the issue on the indeterminacy of the concept of “persecution” was analyzed. We concluded that there is no universal and consensual definition of this term, even though it is the keystone of the Convention. Nevertheless, all the definitions by scholars, and courts had some criteria in common, namely that “persecution” is the violation of human rights, and that it can happen when there is a failure of the state of origin to protect citizens from such violations. To be granted the refugee status one must prove that is being persecuted due to discrimination based on “race, religion, nationality, membership of a particular social group, or political opinion”.

Hence, our view is that it could be possible to include claims based on the deprivation of socioeconomic rights within the ground of persecution due to the "membership of a particular social group".

In her book "International Refugee Law and Socio-Economic Rights: Refuge from Deprivation," Michelle Foster defends this same argument to include socioeconomic claims based on the interpretation of the criterion "membership in a particular social group" (Foster, 2007 293). The author claims that it could be possible to include these claims if courts consider "the poor" a social group subject to persecution.

The reason this could, in theory, be possible results from the open interpretation of the concept of "particular social group", hereinafter "PSG", allowed by the Convention and respective Protocol. Since there is no "closed list", States have gradually recognized women, families, tribes, homosexuals as PSG for the purpose of the 1951 Convention and its Protocol. However, it is not clear that economic desperation and the "poor" can be considered within this ground, but, if states gradually recognize other situations, such a possibility can be true in the future.

In order to make clear such an ambiguous notion, the UNHCR adopted the following definition:

> "A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's."

Nevertheless, one may wonder whether the immutable character required to fall within the category of "membership in a particular social group" may apply to economic forced migration or, as we will continue to refer, the PSG of "extreme poor". In this line, Andrew Simms asserts that:

"In terms of well-founded fears, drowning, homelessness or starvation would seem to fit the bill. In terms of membership of a particular group, any community or indigenous group similarly prone would also fit. Numerous countries already cannot afford to meet the basic needs of their people."[15]

Furthermore, this group must exist apart from the persecution - it already existed before the persecution (Foster, 2007: 293). This is understandable, since without this criterion one could argue that they were part of a PSG because they feared persecution, and that was the feature that connected them. In the case of extreme poverty, these realities were structurally rooted, but were emphasized by other factors.

The PSG "extreme poor" can be characterized by the fact belonging to this social group of States that are politically unable to have the same economic power as developed countries, being trapped in an economic order that is more favorable to wealthier nations. Jessica Cooper explains her view on the issue of "environmental migrants", but that perspective can be applied to forced economic migration. She argues that *"(...) because the citizens of the nations to be most severely affected by global change warming are members of 'social group' without political power to protect their environment that the governments of the developed world continue to expose them to the risks of environmental degradation"* (Cooper, 1998*).*

This idea can be applied to our study, since forced economic migrations are part of a group that is affected by political and economic power of the developed world in relation to poorer nations. Also, there is an idea that people fleeing situations of economic deprivation do it due to natural causes, which does not fall within the meaning of persecution. However, we believe that people live in these conditions because wealthier states led poorer states to a global economy and to policies in which they cannot be included. Besides, poor economic growth leads to bad governance, which in turn was already there most of the times, and a lack of respect for the rule of the law, which leads do the inobservance of international obligations regarding the creation of good conditions for citizens. In this sense, the inaction of the state to protect the citizens' human rights should account as persecution, and wealthier states have a responsibility to allocate resources for that purpose.

Hathaway argued that the deprivation of rights such as the right to food, shelter, water or health care "will at an extreme level be tantamount to the deprivation of life or cruel, inhuman or degrading treatment, and hence unquestionably constitute persecution"

[15] In "The Guardian- Unnatural disasters", accessed on November 29, 2022 https://www.theguardian.com/environment/2003/oct/15/guardiananalysispage.climatechange .

(Foster, 2007: 116). Case-law by the CJEU and the ECtHR already recognized that socioeconomic deprivation may amount to inhuman and degrading treatment, as we have analyzed in the previous Chapter.

Having the state attempting to fulfil human rights obligations is not enough, it must provide protection to eliminate any possible well-founded fear (Foster, 2007: 202). Moreover, we believe that persecution can be characterized by a government's failure to fulfil its obligations, i.e., to create a society where everyone enjoys their socioeconomic rights. Of course, this does not mean that whenever a state is uncapable of providing conditions to the citizens, this gives people the right to ask for asylum elsewhere.

Extreme poverty should be accounted as persecution, due to the lack of protection by the state of origin but also on the grounds that the "extreme poor" can be seen as a "particular social group". With this, it would be possible for refugee law decision-makers to analyze claims based on extreme economic deprivation, making a division between who in fact is an economic forced migrant, or in this case an economic refugee, and those who are economic migrants who already have a stable lifestyle but are in the pursuit to make it better (Flegar, 2016; Storey, 2014). The term "economic refugees" has been as misnomer, but, as it was previously explored in Chapter 1, migration driven by economic inequalities and economic deprivation outbroke due to globalization (Guy, S. Goodwin-Gill and Jane McAdam, 2007; Grahl-Madsen, 1983; Foster 2007).

To be able to be considered as a "member of a particular social group", based on an economic class, the PSG needs to be defined by an immutable and unchangeable characteristic (Foster, 2007: 304). Moreover, several decisions lead us to the conclusion that "the poor" can be considered an economic class and PSG, since it falls within the above-mentioned characteristics. In a Canadian Federal Court appeal, it was held that "the poor" could constitute a PSG. The case of *Li v. Canada (Minister of Citizenship and Immigration* provided an openness by the Canadian Federal Court who held that the tribunal's assessment of the claim was not the best, since it failed to consider if underaged applicants fear of being sent back to China was due to their "membership of a particular social group":

> " (…) The applicants had further characteristics in common, those being that they were all from poor families, they all had little education and their all faced the depressing prospect of little opportunity to rise above the level of poverty in Fujian province."

Li v. *Canada (Minister of Citizenship and Immigration)* FCJ No. 2037. 245 para. 22 in Foster, 2007

Moreover, Foster states in her book that in the UK there was also the recognition of claims based on socio-economic elements, such as the example of the young girls from Nigeria where the socioeconomic situation was unbearable (Foster, 2007: 307). However, some courts reject this idea by affirming that "the poor" is not a PSG, since it is a condition that can be changed. We do not share this vision since it does not take into account the difficulties and obstacles to reducing poverty. Furthermore, we are addressing the recognition of the PSG "extremely poor", which we defined as a group living in unbearable, unhuman conditions without access to basic needs.

Moreover, most of the "extreme poor" are found in developing countries, with no prospects of development. Hence, changing a situation of poverty is, most of the time, not in the hands of the applicant, but depend upon external circumstances such as state protection and external economic and political policies that influence sub development at their homeplace. As Roser (2021) argues:

> "The poorest people today live in countries which have achieved no growth. This stagnation of the world's poorest economies is one of the largest problems of our time. Unless this changes millions of people will continue to live in extreme poverty."

We are reflecting upon situations where fundamental human rights are not a reality, so saying that poverty is something that can simply be changed is unreasonable. Furthermore, the Commission on Human Rights already claimed that poverty is a structural problem and the United Nations Commission on Human Rights also stated that "the lack of political commitment, not financial resources, is the real obstacle to the eradication of poverty" (2000), enhancing the idea that to possibly change a poverty situation national action and international cooperation is required (Foster, 2007: 309). Additionally, considering diverse reports on poverty and human rights it is possible to assume that "the extreme poor" should be considered a PSG, and therefore be eligible for protection under the 1951 Convention. Finally, one must note that a claim can be made within the PSG ground but also consist of a set of combined factors for the risk of being persecuted (Foster, 2007:311).

Upon the interpretation of the grounds of the Convention, we believe that assessing the ground of "membership of a PSG" and bearing in mind the protection of socioeconomic rights, and the fundamentality of all rights, it is possible to include claims based on economic desperation. Concluding, by understanding persecution as "the systemic failure of the state of origin to protect their citizens' human rights, based on the discrimination of the extreme poor", we can affirm that we have a path to pursue in terms of the reinterpretation of the Convention.

This conclusion gives rise to multiple question regarding policy, namely the capacity of the refugee-receiving states to accept such an expansive interpretation. Steinbock (1998) argues it might lead to uncontrollable floodgates:

> "(…) a large body of rights violations are equated with persecution. The broad range of human rights identified in this list would make millions of people potential refugees in today's world. (…) the practical impact of this approach would be enormous".

It is true that, if the Convention were to be amended and expanded to include all human rights, thus recognizing the fundamentality of all categories, it would impose new obligations on states and the need to create and allocate resources. It could also create the so-called "floodgates," which nevertheless is irrelevant under a human rights protection view (Jackson, 2011). Furthermore, some common law courts already made the conclusion that the floodgates argument if not valid, and as the Justice of the High Court of Australia stated:

> "The mere fact that, potentially, very large numbers of persons might qualify for refugee status in Australia if the appeal to this Court were upheld…is not, of itself, sufficient to show that the decision was wrong".[16]

Also, the Canadian Supreme Court considered that this argument is not "appropriate for legal consideration" since it is "an artificial and inhuman criterion" (Foster, 2007: 344). Also, to defend an expansive interpretation does not mean to support the revision or amendment of this status. Hence, it limits the scope of application since the suffered harm must be serious enough to be considered "persecution" and constitute a failure of the state of origin to protect the applicants. There must be an assessment of the key reasons for the departure, to know the kind of violations that are relevant for a refugee claim and which fundamental socioeconomic rights are violated (Foster, 2007). Thus, there is a common understating that the possibility of "floodgates" is not in line with the protection of human

[16] Applicant A (1997) 190 CLR 225 at Michelle Foster, 2007.

rights, which should be the main goal of states. The greater obstacle for this is that states would have to accept the need to allocate more resources to receive this people, and that would claim it to be unmanageable. However, if this interpretation were to be achieved it would reflect contemporary understandings on human rights and value social, economic and cultural rights as they should.

5.2. Towards the future recognition of "forced economic migrants"?

Forced displacement has increased over the last decade, affecting more than 1% of humanity - 1 in 97 individuals. According to UNHCR data, at the end of 2021, around 90 million people were forced to leave their homes, being the vast majority unable to return as a result of the violation of their human rights. Thus, we understand that denying protection to any vulnerable individual, who was involuntarily pressured to leave his country, is a disrespect of human rights and basic principles of equality and justice.

We previously analyzed the possibility of interpreting the 1951 Convention - that is, the adaptation of an existing instrument by interpreting its application to the situation of forced economic migration -, which meant a less controversial step than suggesting its full reformulation. Even so, the expansive interpretation, although it has already been carried out with subtlety by some courts, would meet its own practical limitations and the refusal of States. Nevertheless, we believe that for this to happen there are certain distinctions that need to be clarified and accepted by States, namely the distinction between voluntary economic migrants and forced economic migrants.

All rights are "core human rights," since, as we argue, they are interdependent, indivisible, and interrelated, which rejects the vision of a hierarchy between human rights. All rights are fundamental, both civil and political ones and economic, social, and cultural. The UN Committee on Economic, Social and Cultural Rights affirms in its General Comment 16[17] that socioeconomic rights are fundamental rights. Even though the interdependence of rights emerges from soft law and doctrine, it is logical that all human rights are connected. It is already accepted among experts that human rights are equal, interdependent, interrelated (Scott, 1989: 798-811). Besides, any argument based

[17] General Comment 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights, U.N. Doc. E/C12/2005/4 (2005)

on this hierarchy should no longer be accepted after the Vienna declaration enhanced the non-existence of an "importance scale" of rights (Foster, 2007:167). As previously stated, this is not yet an idea fully settled in refugee law, but it is imperative that refugee decision-makers update their view on the significance of all human rights. If decision-makers continue to apply the traditional approach, based on the assumption that there are rights that are more fundamental than others, it will be difficult to address all the contemporary forced migration realities such as economic desperation (Foster, 2007: 213).

A human rights approach, and reinterpretation, to the Convention is not an easy path to pursue, since many states might assert that refugee law was not created to protect these rights, but to help countries deal with the migration flux (Foster, 2007: 38-39). Hathaway argues that refugee law can be seen as a "compromise between the sovereign prerogative of states to control immigration the reality of coerced movements of persons at risk", with the purpose to regulate "international migration in accordance with the interests of states" (Hathaway, 1991). It is precisely because we are aware of the obstacles, that we understand that a concrete definition of the concepts and a broadening of the concept of "forced immigrants" - which considers individuals who are pressured to flee but are not under the refugee status - might represent the first step towards the future recognition of the issue

We started this thesis trying to understand and identify the main actors and processes behind the perpetuation of an unequal economic global order. We concluded that there are several reasons for this, but that no matter who the main actor is, attention should be given to the protection of the rights of individuals in situations of economic deprivation. Since in their countries of origin there is an inability or unwillingness to develop social and economic development policies, it is expectable that the most affected individuals - those who suffer the most from these inequalities, either because they live in more remote areas or because they already live in extreme poverty that is merely enhanced by these inequalities - feel pressured to abandon their homes. Hence, we agree that the international community must recognize economic deprivation as a reason to migrate. In addition, it is essential to make a distinction between leaving the country in search of a better life - which does not imply they found themselves in a non-dignified environment, and migrants who are pressured to do so because of the lack of access to basic survival rights, namely food, water, sanitation, health, education, among others. One must be aware that there is a striking difference between a clear situation of economic migration, in which, for example, an individual is not satisfied with his salary, with his working conditions and/or considers that there are more opportunities in another country; and an individual who lives in a deplorable situation of hunger and thirst, without any future vision of human development in his country of origin.

After deconstructing the assumptions based on an existing hierarchy between human rights, marking out their importance for human dignity, it is understood that continuing to marginalize socioeconomic rights is not in accordance with human rights. Moreover this marginalization results mainly from political and economic pressure from states and economic actors, primarily to maintain a certain restriction on migratory flows and to prevent the extension of international protection. Secondly, because the global economic structure is based on gains and competitiveness, this will always end up denigrating the poorest economies and using them for personal gain - this perpetuates the stagnation situation in poorer countries.

According to Joseph Carens, what should matter is the seriousness of the threat to the most basic human rights, not its source (Carens, 2013). Currently, only the violation of civil and political rights gives rise to international protection, even if the violation of economic, social and cultural rights also hazards human dignity in the same way. As Ana Rita Gil (2020) points out: “A situation of generalized violence and the generalized lack of access to potable water threatens both human life and physical integrity.” Despite developments in acknowledging socioeconomic rights in some case law, there is yet a long path to pursue to put these rights on the same level of protection as political and civil ones.

Moreover, as analyzed in Chapter 3, the distinction between “voluntary migration v. involuntary migration” and “forced migrant v. voluntary migrant v. refugee” is not as straightforward as it might seem. Migration is a complex concept to define, and even in forced movements there is always a degree of voluntarism which allows to argue that analysing claims solely based on that idea might be deceitful (Arango, 2000). Furthermore, considering all the current causes of migration – environmental, disparities in wealth between the countries of the world, among others – it cannot be assumed that all forced migrants are refugees, since this view is quite restrictive and does not acknowledge contemporary migration realities.

So far there is no recognition of the category of “forced economic migration”. Even so, some nomenclatures to define the phenomenon of forced migration due to socioeconomic deprivation have already been presented. The term “economic refugees” has already been defended by several authors, including Hugo Storey. We consider that it is not correct to assume right away that they are refugees, as the concept can lead to the weakening of the legitimacy of protection for people who meet the conditions of the 1951 Convention. This does not mean that a possible reinterpretation of the Convention on grounds of socioeconomic rights violations cannot be made, and we have previously concluded that is possible. However, one must note the difficulty of pursuing that and the fundamentality to first recognize the facet of forced migration of economic movements. Also, Alexander Betts coined the concept of “survival migration” to refer to “people who are outside their country of origin because of an existential threat for which they have no access to a domestic remedy or resolution” (Betts, 2010). He argued that the primary cause of cross-border displacement was deprivation, and not persecution. By this, the author acknowledged that the 1951 Convention is unable to recognize people fleeing serious human rights deprivations. The concept is valuable, but we chose to use “forced economic migration” because it focuses specifically on socioeconomic deprivation, and it tries to avoid the increasingly disparaging notion of “forced migration”.
Moreover, all persons, even those who do not qualify as refugees, have rights under international human rights law and related standards (Rita Gil, 2018). Throughout this work we strongly defended the idea that human rights are universal, inalienable, indivisible, and interdependent (Storey, 2013). By becoming parties to international human rights treaties, States assume obligations under international law to establish domestic measures and legislation reflecting those obligations (CESCR, 2009). Moreover, when the international community adopted the Universal Declaration of Human Rights in 1948, it was accepted as a common standard. It stated the minimum civil, political, economic, social, and cultural rights of human beings. These rights were enshrined in the so-called Bill of Human Rights, which consists of the ICCPR, and the ICESCR.

In this sense, we understand that a way to recognize forced economic migration as valid for not being subject to “*refoulement”* is firstly, the concrete definition of the difference between “forced migrant” and “voluntary migrant”, bearing in mind that we are not only referring to persons with refugee status, but to all forms of forced migration currently unrecognized.

For this purpose, Joseph Carens proposes a test based on the idea of special gravity (Carens, 2013). He then suggests that it could be defended that any individual who does not meet the conditions for survival and is forced to leave his country of origin due to lack of access to basic goods, can be considered a forced immigrant. All those who gather the minimum conditions of survival intending only to improve them, would be considered voluntary immigrants.

Carens suggests a pragmatic test for the delimitation between these two types of immigrants: the real forced immigrant would be willing to leave his country to settle in a refugee camp, also known for the lack of conditions as we have acknowledged in the *Sufi and Elmi v. UK case*, while the former who only wants to improve their living conditions, would not do so (Storey, 2014:498). Drivers such as extreme poverty, lack of access to rights to education, food, water or health should be recognized as a reason to flee because most of the times these circumstances can make it impossible or unwilling to return to the country of origin.

States should respect, protect and observe human rights obligations. However, when some states are unable or unwilling to do it, this can create situations of vulnerability, and consequently prompt migration. Hence, migrants who find themselves in situations of serious risk of harm due to namely inequality and structural dynamics that hinder unequal levels of power and enjoyment of rights, should be able to be protected even if they do not fit into the refugee status.

We can say that the biggest problem of recognizing "forced economic migration" is the political influence behind it and the lack of interest of the more developed countries in developing or applying any type of protection to this category, as this would increase the migratory flow, as well as create additional pressures to allocate internal resources. Nevertheless, there are several general norms and international principles of human rights that might allow the minimum protection of this category of migrants (Kent, 2001). The establishment and internationalization of human rights began with the Universal Declaration of Human Rights in 1948 and the consequent ICERSR and ICSCSR in 1966. It was the first time that basic human rights and the universal protection of human rights were established, representing a milestone in history.

Article 25 of the UDHR establishes that everyone has the right to an adequate standard of living in which it is possible to secure basic goods. In this sense, the establishment and universalization of human rights can be considered one of the greatest legacies of modern ages (Bittar, 2009). Despite being settled in national and international instruments, serious violations of these rights or inaction towards its fulfilment continue to be a reality. In this scenario, it matters to seek the realization of these rights, besides mention them in legal norms, and to recognize the significance of socioeconomic rights for human life.

Cançado Trindade (1993) notes that:

> "In short, human rights instruments have been developed, in terms of normative and procedural [...] as responses to human rights violations of various types.
> Therefore, it is not surprising that certain gaps emerge, as that one becomes aware of the growing need for protection".

Furthermore, the principle of *non-refoulement* constitutes the main guarantee of those covered by the refugee status, but some authors have already considered that the principle has reached the form of *jus cogens* (Goodwin-Gill, 1988). In Article 53 of the Vienna Convention on the Law of Treaties, we find the definition of a *jus cogens* norm:
Any treaty which, at the time of its conclusion, is incompatible with a peremptory norm of general international law is void. For the purposes of this Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a norm from which no derogation is permitted and which can be modified only by a new norm of general international law with the same nature. This article reveals the relevance of a *jus cogens* norm in international law, since it can only be modified by another norm with the same status. These norms cannot be derogated by the will of the parties, because, since the principle of non-refoulement is considered *jus cogens*, this creates a capacity to protect human rights that states cannot deny.
This principle is foreseen in Article 33 of the 1951 Convention, and in Article 19 of the Charter of Fundamental Rights of the European Union, which prohibits the expulsion of a persecuted individual to a territory where their rights are in danger. Even so, this principle – which, at first, was only applicable to convention refugees -, was expanded by other international standards, the most relevant of which is the ECHR, which, in Article

3, provides the prohibition of torture or inhuman and degrading treatment. Through the jurisprudence of the ECtHR, which is based on interpretative principles such as the maximum effectiveness of protected rights, it is possible to identify an extension of this principle that must be applicable to vulnerable individuals even if they do not meet the conditions to be considered refugees *stricto sensu*. The ECHR has extended this protection to people not covered by the refugee concept of the Geneva Convention, combined with the theory of indirect protection. According to this theory, the State that removes or expels a foreigner to a territory where he is subject to torture or inhuman and degrading treatment is liable just as if the state itself had directly inflicted such treatment on the person in question. Thus, States are not only prohibited from directly exercising torture and other prohibited treatments on a given person, but also from allowing referral of that person to another State where that person may be in danger.

As we have been presenting, we argue that, before suggesting any possible expansion of the refugee concept, or the creation of a specific document, it is necessary to simplify the distinction between "voluntary economic migrant" and "forced economic migrant". Continuing to perpetuate the view that forced migrants are refugees is reducing the realities of forced migration that surround us and ends up leaving vulnerable individuals completely unprotected.

Therefore, Caren's idea of "special gravity" turns out to be a starting point to foster this distinction. Furthermore, the ECHR has also proven to be an expansive and comprehensive document of other migratory realities, as such it is also an important instrument for defining these categories. The "subsidiary protection" regime also represents a huge step forward the recognition of other forms of forced migration, by establishing complementary protection applicable to those who do not fit into the refugee category *stricto sensu.* In the European Union, being eligible for subsidiary protection status means being a third country national or stateless who would face a real risk of suffering serious harm if returned to the country of origin. Hence, the Directive already makes space to grant subsidiary protection at the European Union level, which is a remarkable development. Even so, its application in cases relating to socio-economic rights is almost inexistent. At the EU level, subsidiary protection already opens doors for this, but there is still great plainness upon the analysis of cases based on socioeconomic rights, and there is still great difficulty in understanding what *de facto* can be understood as forced migrations. Also, the assumptions based on the idea that socio-economic rights are progressive and civil and political rights are immediate create a rationale for courts to treat cases of flight for economic reasons with less urgency and with the assumption that it is a strictly voluntary movement.

Moreover, by taken into account Caren's idea, and analysing the developments in the European sphere concerning the protection of individuals who may be at stake in terms of "inhuman and degrading treatment", it is possible to set some criteria that could be essential to answer the following question: "Who can be considered a forced economic migrant?". The answer to this question is fundamental in the search for the future recognition of this category of migrants, whether through the reinterpretation of existing statutes or the creation of new ones.

Also, a "voluntary economic immigrant" is anyone who leaves their country in search for a better life, higher salary, more favorable public conditions, but who can return at any time without penalty of their human rights being violated. A "forced economic immigrant" should be seen as an individual who flees his country of origin because he does not see his basic needs satisfied, namely lacking access to drinking water, food, sanitation, health care, education, between others. That is, he cannot return to his country without having his human rights, personal integrity and dignity violated (Rita Gil, 2020: 83).

This distinction requires a case-by-case analysis, based on the following criteria: assessment of the severity of the socioeconomic situation in the country of origin; analysis of the government's inaction to change the situation - whether by identifying high rates of corruption, or for other reasons; migrant vulnerability, i.e., analysing if the individual would face a real risk of suffering serious harm and inhuman treatment if he/she returned to the country of origin; inexistence of prospect of improvement of socioeconomic conditions. With a correct analysis of these factors, it is possible to conclude whether we are claiming a vulnerable-forced-migrant, or a voluntary migrant who will be able to return without any kind of danger (Flegar, 2015).

Afterwards, this distinction would serve to determine who has a right to international protection. Thus, those who did not have fundamental rights and prospects of development in their countries of origin would have to be protected by the receiving States. The State's decision would have to be made based on the above description, remarkably similar to Article 3 of the ECHR and Qualificative Directive and its interpretation by the ECtHR and CJEU, and the *jus cogens* norm of the principle of non-refoulement. The principle of State discretion would prevail, with the obligation to protect all those who, proven through a case-by-case analysis, were within the definition of "forced economic migrant". Basically, what is at stake is an immediate protection system based exclusively on protection and humanitarian assistance and on the protection of human rights – recognizing the fundamentality and interdependence of all categories.

“”From a human rights point of view, the priority is to protect these rights. It is important to keep in mind that defining the concept and understanding "who can and who cannot be considered a forced economic migrant" determines the level of international protection that each will receive. Therefore, a fundamental starting point would be to acknowledge the expansive meaning of "forced migration" and the fact that socioeconomic deprivation conditions can hazard human dignity. It's imperative to set as international responsibility the provision of protection to those who do not have their basic rights guaranteed in their country of origin. At the European level, albeit rather slowly, there has already been an undoubtedly fundamental opening. Even so, there is still a long way to go, which must first be based on the recognition of the expansive meaning of "forced migration" and on the recognition of the fundamentality of socioeconomic rights.

6. CONCLUSION

This dissertation aims to understand the theme of forced migration caused by the deprivation of socioeconomic rights in the country of origin. Recognizing the deprivation of socio-economic rights as a reason to migrate is essential since these situations jeopardize human dignity and often the lives of those involved.

It is undeniable that the world has always been divided into rich and poor, developed, and undeveloped countries. It would be expectable that this division would not persist eternally, however, the phenomenon of globalization, the expansion of capitalism, and the uneven growth of economies contributed to the stagnation of developing countries. The dependency of developing countries on richer countries continued to underline the domination of world markets by the latter. Moreover, the poorest countries already had internal problems such as corruption and lack of governance that became even more pronounced.

The non-recognition of the issue of economic deprivation/extreme poverty as a cause for migration arises from various assumptions, namely that migration associated with the search for economic improvement is merely voluntary; the persisting idea that there is a certain hierarchy of human rights and that socioeconomic rights – being progressively realized – are not as urgent as civil and political rights. Although these perspectives have already been argued against, as we have been presenting throughout the thesis, the truth is that they are still present. Socioeconomic deprivation is visible in various forms, namely in extreme poverty. Attributing extreme poverty to a simple actor responsible for its perpetuation is difficult, as there are several factors that perpetuate this situation, namely, the construction of an unequal global economy, based on capitalism; the power of multinational and transnational companies in the economic sphere and the exploitation of resources in the poorest countries; the power of richer states in international economic organizations and institutions; and the internal problems of non-developed states– which are the most affected by extreme poverty. We conclude that the perpetuation of this problem is, in fact, man-made and not just a sad circumstance of life, as believed by many. It is important to understand that forced migration is a way out for all those who do not benefit from most fundamental rights in their country of origin, i.e., vulnerable people. We are not referring to individuals who migrate with the objective to find better jobs, but who can return to the country at any time without risking inhumane treatment. Forced economic migrants, as we choose to call them, are all individuals who live in severe situations of economic deprivation, without access to basic needs.

The expression "economic refugee" has already been academically presented by several authors; however, we believe that by using it we would be recognizing a term that is legally inadequate. Furthermore, the recognition of this migration goes far beyond the recognition of forced economic migrants as refugees. Firstly, it takes recognizing that the concept of "forced migration" is not as straightforward as it is supposed to be, and that not all forced migrants are included in refugee status. That is, it is first necessary to recognize the extension of this concept to then acknowledge the forced aspect of economic migration. For this reason, we decided to use the expression "forced economic migrant" throughout the thesis, precisely to convey the complexity of this subject and all the recognitions that must take place in order to analyze this cause of migration with due attention.

The States – based on the principle of sovereignty and with the justification of national security – establish their migration policies and own the discretion to decide who can and cannot enter their territory, and migrants will eventually be able to denounce possible abuses of human rights. As we were able to analyze, it is very little in line with reality that claims are still analyzed based on the simple distinction between "forced migration" and "voluntary migration" and the consequent connection with the concepts of "refugee" and "economic migrant", respectively. The causes of migration have changed and today there are not only people fleeing "persecution" for violating their political and civil rights, as understood in the 1951 Convention. There is a whole new category of forced migration that must be recognized on an international level, namely forced economic migration and forced environmental migration. Even so, and despite the changes in international instruments alongside with the surrounding changes, the same definition of refugee has been used in the last 50 years with the same understanding. Now, this does not show any kind of evolution and it should, since, as we could analyze, this international protection has some gaps. The concept of "persecution", the keystone of the Convention, does not yet have a concrete definition, which ends up leaving to the power of the States, obviously based on court case law, to decide what may or may not be considered "persecution". This openness also allowed us to collect definitions and identify common criteria, so that we could reach a more concise concept. The main certainty is that "persecution" arises from the inaction of the home state to protect citizens and creates an international responsibility to protect them. However, in response to the normative void in the 1951 Convention of Genera and its non-applicability in some cases of migration, other regional and supplementary instruments were developed in order to extend protection to other categories of people who, for different reasons, fled from their country of origin. In the dissertation we analyzed the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, The Cartagena Convention and, in Europe, the EU Temporary Protection and Qualification. Through the analysis of these instruments and the case-law of the ECtHR and the CJEU, it was possible to conclude that there was already an openness regarding the inclusion of claims based on the deprivation of socioeconomic rights. This recognition is already a great achievement, yet decisions related to these rights have always been made with a certain level of exceptionality. That is, although there was an opening, it was not total.

In any case, the figure of subsidiary protection and the consequent expansion of the principle of *non-refoulement* prove to be a strong commitment towards the protection of all those who are in danger of inhuman and degrading treatment in the countries of origin - including forced economic migrants. We are looking trying to advocate not only a fair "Refugee Law", but an "International Protection Law", a broader category that considers the vulnerability and severity of migrants in the act of analysing their claims.

There are several authors who have already advocated for the full alteration of the 1951 Convention to accommodate new causes of migration. We believe that this vision turns out to be a bit utopian - although ours is too -, since it would require to persuade the states to ratify it. The current position of most states regarding migratory flows is a restrictive one, so opening the door to an increase of these flows would be their last goal.

In this way and based on the premise that human rights are the cornerstone to include social economic claims within the international protection scheme, we explored two possible solutions for the recognition and inclusion of "forced economic immigration" in international protection regimes. The indivisibility, interdependence and interrelatedness of human rights must be accepted concepts among refugee law decision-makers, and states. The fact is that all human rights are fundamental and universal, which means that every citizen should have their rights fulfilled and should not live in a situation without access to basic survival tools.

Hence, the second hypotheses claims that it is possible to include the group "extreme poor" within the meaning of particular social group. As it was previously analysed, this group owns a relevant characteristic that provides the definition for PSG: immutability. When observing extreme poverty and poverty, one can conclude that these are not changeable situations for most of the people subject to it. Furthermore, we are addressing clear and extreme violations of socioeconomic rights, such as no access to water, food, sanitation, or health care for example. If refugee law decision-makers do their analysis based on the severity and harm suffered, involving the failure from the state of origin to protect their citizens based on the discrimination due to their PSG, this can amount to persecution. This means that it would still be possible to exclude countless claims based on social economic harm and assess the clearly systematic and extreme ones (Foster, 2007: 345). Also, our study recognizes that it is possible to distinguish between those who flee due to the violation of their fundamental rights and those who flee for other reasons that are not severe. As Foster concludes: "(…) the fact that some people leave their country for non-persecutory reasons should not obscure the fact that many leave for persecutory economic reasons.” In this line, it is possible to extend the protection provided by the 1951 Convention to economic forced migrants, or economic refugees as many scholars already refer to.

Although this is a practical solution and does not imply restructuring the Convention, we believe that the first step is to recognize that we are dealing with a category of forced migrants. In this way, we present another solution based on the principle of discretion of the States but influenced by subsidiary protection and the expansion of the principle of non-refoulement. We then define the criteria that define a “forced economic migrant” so that, when analysing the claims of economic migrants, a distinction is made between “forced” and “voluntary”. It is understood that the concept of “voluntary” and “forced” is not as simplistic as it seems and, therefore, it is necessary to recognize that the world has changed economic and environmental realities as well and that, for this reason, an individual can feel pressured to leave his country, even if he is not deemed a *de facto* refugee. The main problem with the non-recognition of this cause for migration is the persistence of restrictive views regarding socioeconomic rights and other assumptions on what is forced and voluntary migration, based on ideas that are no longer aligned with the contemporary understanding of human rights.

All these solutions are dependent on the acceptance of the States, and their interpretations. In recent years, we have observed opposition from countries regarding the flexibilization of their migration policies. Therefore, in view of such difficulty in the admittance of foreigners into the territory, it would be even more difficult to accept the entry of migrants , who do not even benefit from a specific and binding system of protection.

Regardless of the adopted solution, the point is to recognize that this phenomenon is a reality. It is essential to recognize that socioeconomic deprivation and the consequent extreme poverty are a threat to human rights, human dignity, and life. We are facing a humanitarian crisis that requires immediate solutions as well as the attention of states and the international community. If States continue to apply restrictive migration measures, and avoid recognizing the urgency of some situations, such as those herein exposed, millions of vulnerable people will continue to have no access to their most fundamental rights or any way out of this situation to save themselves.

States, the international community, and the law itself need to adjust to contemporary realities. If the states of origin fail to observe the citizens' basic human rights, the international community shall have the obligation to protect those who leave in such unbearable conditions that they feel the pressure to do so. The power to decide, change and recognize this cause of forced migration is in the hands of the most developed States, international institutions, and bodies that promote human rights. The international protection regime should be flexible and dynamic, yet it has not kept pace with the contemporary nature of human mobility. Nevertheless, human rights law has proven to be a valuable tool to widen the categories of people whom the States must not discard. Therefore, international protection regimes, refugee law, and all the possible protection schemes must be centered on contemporary human rights realities and keep pace with new migration realities and the protection of new vulnerable people classes. As Nelson Mandela said: "To deny people their human rights is to challenge their very humanity."

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