

# Protection and Assistance to the Family: Interpreting and Applying Article 10 of the International Covenant on Economic, Social and Cultural Rights from Learnt and Lived Experiences

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## Abstract

This article conceptualizes and operationalizes the right to protection and assistance to the family (Article 10 of the International Covenant on Economic, Social and Cultural Rights) in relation to child protection services in England and the removal of children from birth families that are deemed to pose a risk to them. It identifies the differences between the social right to protection and assistance to the family and the more commonly known civil right to private and family life. The article merges doctrinal analysis of international human rights law with a peer-led methodology of socio-legal research reliant on issue prioritization and observations from social workers, families in poverty—primarily mothers—and young people who have experience of the care system. The process aims to respect all different forms of knowledge and to challenge the epistemic injustices that result from the systematic silencing of people in poverty. Besides this epistemic value, lived experience can illuminate the academic and practitioner understanding of the main problems facing people in poverty. In particular, in relation to the right to protection and assistance to the family, lived experience can shed light on the human impact of prejudice and the lack of adequate material support.

**Keywords:** children; economic, social and cultural rights; England; epistemic justice; family; lived experience; poverty; United Kingdom (UK)

## 1. Introduction

The number of child protection interventions in England has grown significantly in the last ten years. According to official data, more than 83,000 children lived away from their birth parents and were cared for by local authorities in 2023, an increase of 23.2 per cent compared to 2013 ([Department for Education 2023](#)). Child interventions affect families in poverty disproportionately. Research by Bywaters and colleagues shows that working class families and unemployed people are approximately twice as likely to encounter child

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protection services than the general population, and children living in the 10 per cent most deprived areas in England are ten times more likely to be part of a child protection plan than children living in the 10 per cent least deprived areas (Bywaters et al. 2022: 70). In 2021, Isabelle Trowler, the Government's Chief Social Worker for Children and Families, admitted that 'too many children are wrongly being taken into care' (Dugan 2021). In the words of Josh Macalister, Chair of the Independent Review of Children's Social Care, 'the current system of social care is often dysfunctional, and reform is urgent' (MacAlister 2022: 2–3).

As a matter of human rights law, both domestic and international (as covered in Section 3), UK public authorities must be guided by the best interests of the child as a primary consideration in all matters concerning children. They must also protect children from neglect and violence and other serious risks to their lives and physical integrity. At the same time, public authorities must be respectful of private and family life, meaning that they should abstain from interference as much as possible. The UK has three legal jurisdictions: Northern Ireland, Scotland, and England and Wales, this last one having its own autonomous subsystem of law for matters devolved to the Welsh Parliament. Unless indicated otherwise, this article focuses on English law applicable in England and Wales.

In recent years, scholars have looked at child protection through the prism of human rights law. For example, Davey (2020) examined the compatibility of England's practice of contested adoptions with the European Convention on Human Rights and with the UN Convention on the Rights of the Child (UNCRC). However, shockingly, despite the scale and importance of the problem, very little attention has been paid by academics and practitioners to the assessment of child protection services from the perspective of the right to protection and assistance to the family, proclaimed in Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This treaty and other treaties concerning socio-economic rights have not been incorporated into the UK's legal system, and therefore they cannot be claimed in domestic courts (Boyle 2020). However, the lack of attention to the social rights angle in child protection is especially striking considering the very lively political and technical discussions about recognition of socio-economic rights in the UK. After years of deliberation, in 2023, the Scottish Government issued a consultation on a future human rights bill for Scotland that would include economic, social, cultural (ESCR) and environmental rights (Scottish Government 2023), and former Prime Minister Gordon Brown's Commission on the UK's Future recommended the Labour Party to advocate for 'constitutionally protected social rights' (Commission on the UK's Future 2023: 12).

That is indeed the focus of this article. It identifies and articulates the added value of Article 10 ICESCR to child protection services in England, and it does so with a peer-led participatory action research method that combines lived and learnt experiences of poverty. The article conceptualizes and operationalizes the right to protection and assistance to the family in relation to child protection services and the removal of children from birth families that are deemed to pose a risk to them. The article uses socio-legal analysis of the lived experience of cases in which children were removed from birth families in England.

Lived experience refers to the knowledge gained by a given person from their personal experience: in this case, experience concerning a potential breach of human rights. Understanding lived experience requires qualitative phenomenological research. The purpose is not to extract information about a certain policy, but to understand and to reflect on the meaning of the experience for the person living it (Adams and Manen 2008). In phenomenological research, investigators aim to respect participants' perception of their own situation and the meaning attributed to their experiences in their own terms, identifying patterns that may be shared and recognized by others. The perception and meaning are not *the* only truth about the enjoyment of social rights by families in poverty, but they are part of a complex picture, they are *a* truth that often goes unnoticed in law and policy

analysis concerning poverty (De Schutter 2021). By contrast, learnt experience, for the purposes of this article, is understood as knowledge of relevant law and policy acquired through academic and/or professional practice of human rights. Lived and learnt experiences are not a binary choice, since people can have both, as do in fact many social workers, lawyers and academics. Learnt experience need not be doctrinal, but in this article that is the methodological approach taken to identify the uniqueness of Article 10 ICESCR, vis à vis related rights in other treaties relying on authentic and authoritative interpretations of international legal instruments.

This article presents an original and significant contribution to the knowledge and practice of the right to protection and assistance to the family in relation to child protection services in an advanced economy like the UK. As we demonstrate in Section 3, despite the right's recognition in ICESCR, the UN Committee on Economic, Social and Cultural Rights (CESCR) has not defined the meaning of the right to protection and assistance to the family with the authoritative guidance of a General Comment. There is no relevant case-law yet in application of the Optional Protocol to ICESCR, and the impact of child protection services on families in poverty has not received sufficient attention from the Committee in its country reports (Concluding Observations). The article reveals the added value of applying the social right to protection and assistance to the family over the more commonly deployed civil right to private and family life, proclaimed in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 8 of the European Convention on Human Rights (ECHR), as well as treaties in the other regional systems. Civil and political rights (CPR) tend to enjoy greater protection in international law and in domestic legal systems. Section 3 elaborates the right to protection and assistance to the family in light of State responsibilities under ICESCR and having due regard to related rights recognized in other international human rights treaties. It identifies the two differential elements of Article 10 ICESCR as opposed to the right to private and family life (Article 17 ICCPR, 8 ECHR and UK's Human Rights Act 1998): the social security requirement of child and family benefits, and the need to address prejudice and stereotyping against people in poverty as a form of indirect discrimination based on socio-economic status. Understanding the differences between Article 10 ICESCR and Article 17 ICCPR/Article 8 ECHR illustrates the importance and potential impact of taking ESCR seriously in law and policy implementation.

The article merges learnt experiences embedded in doctrinal analyses of international law with the lived experiences of child protection services in England, drawing on the perspectives of social workers, families in poverty—primarily mothers—and young people who went through the care system. Lived experience in human rights research has both epistemic and instrumental value. In relation to the first, as elaborated in Section 2, in a peer-led process, people with lived experiences of poverty do not simply provide evidence, data and information. Instead, they prioritize their concerns, frame their grievances in their own terms and decide the structure of the focus groups of which they are part. This approach intends to address the epistemic injustice that silences people in poverty and dismisses their knowledge. In relation to the second value, the instrumental one, lived experience helps detect the real impact of the distinguishing features of the right to protection and assistance to the family (Article 10 ICESCR). Section 4 puts the epistemological and instrumental values of lived experience to test in human rights research by presenting the methodology and some of the findings of an empirical study carried out by the authors on the impact of child protection services on families in poverty in England (Barker and Casla 2023).

## 2. The epistemic value of lived experience in human rights research

David Goodhart argues in *The Road to Somewhere* (2017) that the most significant political cleavage of our times is not social class, age or beliefs about the extent to which the State should interfere with a market economy. The greatest divide, Goodhart writes, is the

clash between the ‘anywheres’ and the ‘somewheres’. The ‘anywheres’ would be the highly educated and often polyglot cosmopolitan elite that believes in and is motivated by universal ideas. They triumph in the knowledge economy, they are citizens of the world, and they could live anywhere. On the other hand, the ‘somewheres’ are deeply rooted and they are generally less educated. Unlike the other group, their identity is highly dependent on the place where they are based, which often is the same place where they were born and grew up in. They are somewhere and they could hardly be anywhere else. In Goodhart’s account, Brexit and the victory of Donald Trump in the US presidential election of 2016 would be best explained as expressions of a revolt of the ‘somewheres’ against the ‘anywheres’. Since international human rights is an idea with a universal aspiration, it would belong to the ‘anywheres’, and the ‘somewheres’ would be either uninterested or actively against the spread of human rights legislation (Goodhart 2017: 5, 113).

The combination of lived and learnt experiences in the co-creation of human rights is our attempt to test and challenge Goodhart’s controversial proposition. It is not only that human rights can and should serve the needs of everyone, anywhere and somewhere. That is a praiseworthy goal in itself, but we believe more is needed. We contend that there is a path to bridge the apparent gap between the abstract idea of universal human rights and the day-to-day realities on the ground for people with little or no technical knowledge of international law. That path, we argue, is the epistemic value of combining lived and learnt experience in human rights research.

Not too far from Goodhart, Hopgood (2013) argued that there is an alleged confrontation between an elite-driven top-down international system of Human Rights (upper-case), on the one hand, and some sort of bottom-up and popular notion of human rights (lower-case), on the other hand. While grassroots human rights, irrespective of the frame, would remain relevant for as long as local injustices persist, the rules and institutions of Human Rights would become less and less meaningful in contemporary global politics as the international system would approach its ‘endtimes’. Contrary to both Goodhart and Hopgood, the approach we hereby take provides support to de Búrca’s experimentalist thinking and action, based on ‘an iterative system of contestation and learning from on-the-ground experience, in conjunction with ongoing collective reflection, reaction, and institutional response, and in the interaction over time between multiple actors and institutions at various levels’ (De Búrca 2021: 38). It is a situated, inclusive, pluralistic and agonistic approach that engages with theorists and with agents for change (Hoover 2016: chs 4 and 5), but which starts with the very same people whose lives are most affected by social rights. This messy, experimentalist, reflective and sometimes painfully slow approach is necessary because, as Kaur and colleagues remind us, human rights research does not only exist to inform human rights advocacy: ‘The ideal of human rights has also served as an epistemic project which creates narratives around some of the most structurally marginalized people in the world’ (Kaur et al. 2023: 373). There is also evidence to suggest that bottom-up campaigning led by popular social movements can support more egalitarian and transformative interpretations and practices of social rights (Baer and Gerlak 2015; Jordan 2024).

Active participation can foster some of the fundamental values underpinning the recognition of social rights as human rights: equal dignity, fair opportunity, autonomy and agency (Liebenberg 2018). Moreover, participatory approaches in the advocacy for human rights have shown that, when rights are constructed bottom-up, the alleged separation between CPR, on the one hand, and ESCR, on the other, tends to fall apart (Alston 2017; Gready 2019, 2020; Hunt 2019). Despite the supposed lack of ‘water-tight division’ between CPR and ESCR (*Airey v. Ireland*: para. 26), and declarations about the alleged indivisibility, interdependence and interrelatedness between both categories of rights (Vienna Declaration 1993: para. 5), the fact of the matter remains that CPR still enjoy considerably stronger protection than ESCR both in international law and in domestic settings. This is a technical and academic distinction that is not intuitively grasped by non-lawyers, let alone by people

in poverty for whom the line between CPR and ESCR does not speak to their lived experience (Januszewski and Nowak 2021).

By merging lived and learnt experiences, our approach applies lessons and processes from critical anthropology and phenomenological research to recognize the agency of people at higher risk of harm, abuse, discrimination or disadvantage, and to locate legitimacy in ‘translocal belonging and action’ (Goodale 2006, 2022: 47). It is also based on the principle that, as a matter of human rights, the voices of families with lived experience of poverty must be heard in the development of policies that affect their lives (UN CESCR 2001b: para. 12). The approach is also consistent with decolonial perspectives of human rights that strive to find an ‘overlapping consensus’ from multiple communities about what should actually be considered a human right (An-Naim 2021: 21).

Our approach is informed by the ‘epistemic agency’ of people with lived experience of poverty, meaning their capacity ‘to think and to act in this world’ (Mignolo 2005: 396). It is participatory action research where people with lived experience of poverty engage in the production of knowledge in a participatory process alongside people with learnt experience. Both lived and learnt experiences are treated as equally valuable types of knowledge that aim to respect and enrich each other. From this perspective, research on poverty and human rights is not something done *to* people with lived experience of poverty; it is not even something done *for* them, but inasmuch as possible it is done *with* them and *by* them. This presents epistemic and methodological duties for people with learnt experience of poverty, who must beware of the dangers of knowledge extractivism. In other words, they must not behave as if lived experience brought data (through interviews, focus groups, and so on) that only *they* could turn into knowledge by processing it through the sausage filler of learnt experience. Instead, they must act in consistency with the principle that both lived and learnt experience bring unique knowledge to the table.

The ambition of the approach is to address the power imbalance that exists between the two, imbalance that hides an ‘epistemic injustice’, understood as the unjustifiable inequality in ‘knowledge, understanding, and participation in communicative practices’ (Kidd et al. 2017: 1). Knowledge, including knowledge about one’s own situation, is indeed vital, because knowing is an essential requirement to be able to track performance, progress and retrogression in relation to human rights. A suitable example can be found in research conducted by the Belfast-based NGO Participation and Practice of Rights (PPR) with Irish Travellers in County Cork. Between 2016 and 2018, there was a noticeable increase in the number of families reporting worsening housing conditions, but this was not necessarily due to objectifiable external factors, but markedly due to a reported improvement in the community’s self-awareness of their rights (Casla 2018). Because they knew more about their rights, they expected more from public authorities.

The views of people with lived experience of poverty are generally silenced and ignored, and their views, when heard at all, are frequently dismissed, co-opted, distorted and misrepresented. Fricker distinguishes between ‘testimonial injustice’ and ‘hermeneutical injustice’: the former ‘occurs when prejudice causes a hearer to give a deflated level of credibility to a speaker’s word’, while the ‘hermeneutical injustice occurs at a prior stage, when a gap in collective interpretive resources puts someone at an unfair disadvantage when it comes to making sense of their social experiences’ (Fricker 2007: 1). Our ambition is to challenge both forms of epistemic injustice, the testimonial and the hermeneutical one. We do not claim to have been entirely successful in this regard. We are mindful of the steep hierarchies and power dynamics that exist between researchers and subjects of research in empirical human rights analysis (Sharp 2016; White 2019).

The next section (3) will take the discussion from lived to learnt experience to seek to identify the conceptual and operational distinctiveness of Article 10 ICESCR over other related rights in international human rights law, primarily the right to private and family life (Article 17 ICCPR and Article 8 ECHR). The following section (4) will show how,

besides being epistemically valuable, lived experience can be instrumentally valuable as well, by providing the tools and the evidence to assess the reality of the distinctive features of the right to protection and assistance to the family.

### 3. What is different about the right to protection and assistance to the family?

#### 3.1 A right in need of interpretation

Article 10(1) ICESCR declares the right to protection and assistance to the family: ‘The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children’. Article 10(3) ICESCR goes on to state, among other things, that ‘special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions’.

The right to protection and assistance to the family is connected with other rights recognized in ICESCR, particularly the right to work and rights at work (Articles 6 and 8), the right to social security (Article 9), the right to an adequate standard of living (Article 11), which includes housing and food, the right to the highest attainable level of mental and physical health (Article 12), the right to education (Article 14), and the right to take part in cultural life (Article 15).

Alongside the right to form and join trade unions (Article 8), protection and assistance to the family is one of the only two rights in ICESCR for which the UN Committee (CESCR) is yet to issue a General Comment. At the time of writing, there is no relevant case-law either. Only one individual petition concerning Article 10 ICESCR has reached the stage of views on merits in application of the Optional Protocol to ICESCR. The case was *S.C. and G.P. v. Italy* (2019), and the subject matter was regulation of *in vitro* fertilization. The main legal question was whether the right to health had been breached (Article 12 ICESCR), and when the UN CESCR established that such was the case, the Committee did not deem it necessary to examine the authors’ claim under Article 10 ICESCR (*S.C. and G.P. v. Italy*: para. 11.3). The UN CESCR issues recommendations to States in relation to Article 10 ICESCR relatively frequently. A search in the Universal Human Rights Index shows that between 2007 and 2023 there were at least 260 recommendations in 87 Concluding Observations in relation to children in vulnerable situations, such as child victims of abuse, living on the street, institutionalized, indigenous children or migrant children.<sup>1</sup> The majority of these recommendations dealt with important issues other than the impact of child protection services on families in poverty, issues such as the age of child marriage, birth registrations, State surveillance, child labour, corporal punishment, or protection from trafficking and exploitation. However, there are some relevant recommendations in recent Concluding Observations, for example concerning the pattern of institutionalization of children with disabilities in Armenia (UN CESCR 2023b: para. 41–42), the need to provide alternative care arrangements and guardianship protection for unaccompanied and separated children in Serbia (UN CESCR 2022a: para. 32–33), the fragmentation of the childcare system and the lack of a deinstitutionalization policy for children in Czechia (UN CESCR 2022b: para. 30–31), the negative mental health impact of the removal of children from parental care in Norway (UN CESCR 2020: para. 30–31), or the lack of early development services and the poor qualification of staff assigned to children placed in family-type accommodation in Bulgaria (UN CESCR 2019: para 29–30). Despite the lack of case-law on Article 10 ICESCR, some of these country observations and recommendations could contribute to

1 Universal Human Rights Index: <https://uhri.ohchr.org/>.

build the CESCR's position, general understanding and application of the right to protection and assistance to the family.

Section 3 contributes to defining the contours of this right from a doctrinal perspective of international law, having due regard to human rights treaties other than ICESCR, including the authentic interpretation by the relevant judicial and quasi-judicial bodies. The section aspires to make the right meaningful for situations concerning child protection services and families in poverty in an advanced economy like the UK. The right to protection and assistance to the family is closely related to Article 23 ICCPR, which recognizes that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State', and Article 17 ICCPR, which prohibits arbitrary or unlawful interference with the family. In the European human rights system, the right to private and family life is contained in Article 8 ECHR. The following pages will compare Article 10 ICESCR and Article 8 ECHR to identify the added value of the former in relation to the latter. Article 8 ECHR is preferred for the purposes of comparison because it is more detailed than Article 17 ICCPR, and because we are dealing with a country bound by the European human rights system and the ECHR is part of the domestic legal framework through the Human Rights Act 1998. Families in poverty in the UK are technically protected by the right to private and family life of Article 8 ECHR; what sort of additional protection would Article 10 ICESCR provide if such a right was incorporated into UK law? That is indeed the rationale of this comparison.

### 3.2 Child protection, the ECHR, the Convention on the Rights of the Child, and other international standards

Article 8 ECHR declares:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

International human rights law uses a broad notion of family. The European Court of Human Rights has established that family includes marriage-based relationships but also other de facto family ties, including couples of same sex or different sexes who are living together outside marriage (*Paradiso and Campanelli v. Italy*: para. 140; *Oliari and Others v. Italy*: para. 130). The UN Committee on the Rights of the Child (CRC 2013: para. 60) and the European Court of Human Rights (*Marckx v. Belgium*: para. 45; *Bronda v. Italy*: para. 51; *T.S. and J.J. v. Norway*: para. 51) have stated that family life includes at least the ties between near relatives, for instance those between grandparents and grandchildren (on this, see also Davey 2020: ch. 5; Davey and Lindsey 2023). Similarly, the UN Human Rights Committee has declared that Article 17 ICCPR provides a subjective and broad interpretation of 'family' to 'include all those comprising the family as understood in the society of the State party concerned' (Human Rights Committee 1988: para. 5).

The removal of children from their birth family is one of the most severe forms of interference with the right to private and family life. However, such an interference may in principle be justified under Article 8(2) ECHR when it is necessary and proportionate to intervene. In fact, besides respecting the right to private and family life, public authorities have a positive obligation to protect children's right to life (Article 2 ECHR) and children's right not to be subjected to torture and inhuman or degrading treatment or punishment (Article 3 ECHR). Physical integrity is considered part of a person's private life (Article 8

ECHR), and the European Court of Human Rights has established that positive obligations also apply when another individual poses a risk of severe harm (for example, a parent who neglects their child), even when the harm does not reach the threshold of Article 3 ECHR (Kilkelly 2010). In other words, public authorities are required to strike the right balance between their obligations vis à vis children and parents in light of different provisions of the ECHR. In difficult circumstances, children's right to life and right to physical integrity may clash with the right to family life, a right that parents and children are equally entitled to. As a matter of principle, though, in line with Article 8 ECHR, it may be necessary to limit the right to family life, including via family separation, when there is a risk of significant harm to the children.

The European Court of Human Rights has made clear that, when carrying out this balancing exercise, depending on the nature and seriousness of the situation, the best interests of the child may override those of the parent (*Johansen v. Norway*: para. 78). This is so because the European Court observes there is 'a broad consensus—including in international law—in support of the idea that in all decisions concerning children, their best interests must be paramount' (*Neulinger and Shuruk v. Switzerland*: para. 136). Similar to the European Court of Human Rights, the UN Human Rights Committee has established that, when it is in the best interests of the child, public authorities are not only allowed but required to take exceptional measures to protect children when circumstances so require where parents or the extended family ill-treat, neglect or otherwise fail in their duties vis à vis the children (Human Rights Committee 1989: para. 6). English law in this area, Children Act 1989 and Adoption and Children Act 2002, refers to the child's 'welfare' rather than their 'best interests', but both terms can be considered interchangeable in this regard (Davey 2020: 12).

The principle of the best interests of the child is recognized in Article 3 of the Convention on the Rights of the Child (UNCRC). Accordingly, the best interests of the child must be 'a primary consideration' for all public and private social welfare institutions. At the same time, however, it is important to remember that children, just like their parents, are also entitled to family life (Article 9 UNCRC), and that their views and opinions must be 'given due weight in accordance with the age and maturity of the child', and this includes in court and in administrative proceedings (Article 12 UNCRC). In difficult cases, there may be a clash between Articles 3 and 12 UNCRC when a child may express their wish to remain with their birth family, when in fact separation, or even adoption, may be the best way of looking after their wellbeing and best interests (Davey 2020: 37). Like the vast majority of countries, the UK has ratified the UNCRC. While the Convention has not been incorporated into English law, it permeates the interpretation of the Human Rights Act, and it is considered 'intermittently' by domestic courts (Davey 2020: 38). The UNCRC recognizes that children deprived of their family environment are 'entitled to special protection and assistance provided by the State' (Article 20(1)); the preamble declares that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

The Committee on the Rights of the Child provides a non-exhaustive list of the prohibited forms of violence against children, which would include neglect or negligent treatment, mental violence, physical violence, corporal punishment, sexual abuse and exploitation, torture and inhuman or degrading treatment or punishment, violence among children, self-harm, and other harmful practices (CRC 2011: paras. 19–31). Child protection services should seek a very difficult equilibrium between the assessment of safety, risk and harm in the present time, as well as the potential for future risk and future harm to the child's safety in the short term and in the long term in the case of family separation and institutionalization of the child (CRC 2013: paras. 74, 84). In sum, the best interests of the child require that the child will be protected in case of significant risk of serious harm, but also that the



family separation will only be an exceptional measure of last resort, after exhausting less intrusive alternatives, and having due regard to the child's opinions.

In several cases the European Court of Human Rights has censured child protection services for punishing parents—primarily lone mothers—by removing their children simply because they lived in poverty. The European Court of Human Rights held that poverty must not be conflated with neglect, and it cannot be the sole ground for separating children from their families (*RMS v. Spain*: para. 84; *Soares de Melo v. Portugal*: paras. 106–8; *Y.I. v. Russia*: paras. 88–91). The principles that poverty is not equal to neglect, and that family separations must be exceptional and preferably temporary, are reinforced by the case-law of the European Committee of Social Rights (ECSR 2011) and of the Inter-American Court of Human Rights (*Juridical Condition and Human Rights of the Child*. Advisory Opinion: paras. 76–77; *Gelman v. Uruguay*: para. 125; *Atala Riffo and Daughters v. Chile*: para. 169; *Fornerón and Daughter v. Argentina*: para. 47; *Family Pacheco Tineo v. Bolivia*: para. 26).

As indicated earlier, in accordance with Articles 2, 3 and 8 ECHR, States have a positive obligation to protect children from significant harm in the form of serious risks to their life and physical integrity. They must take reasonable measures of investigation and protection (Davey 2020: 50). In addition, the positive obligations derived from Article 8 ECHR include the obligation to provide support to parents to ensure that non-consensual family separation, temporary or permanent via adoption and special guardianship orders, is only the last resort when there is no alternative. This is so because public authorities must respect the right to private and family life, and any interference must be exceptional and only justifiable on the basis of necessity and proportionality. In this regard, when assessing the necessity and proportionality of a family separation, the European Court of Human Rights has required States to provide information about the measures taken to seek the reunification of children and birth parents, even if those efforts were unsuccessful (*Johansen v. Norway*; *Neulinger and Shuruk v. Switzerland*). Even when child protection services intervene and separate the family, the European Court of Human Rights has examined how public authorities facilitated contact between children and birth parents (*Aune v. Norway*). However, in the case of an abusive or seriously neglectful family, regular contact may not be in the best interests of the child, and reunification may not always be possible or desirable if it is likely to result in a violation of Articles 2 or 3 ECHR.

But how far do the positive obligations of Article 8 ECHR go? Davey argues that it may include a requirement to provide financial assistance to families (Davey 2020: 188). However, Strasbourg has been clear that there is no right to a certain type or amount of social security or housing or family benefit under ECHR (*Stec and Others v. UK*: para. 53; *Tchokontio Happi v. France*: para 59–60; Leijten 2019). This is one key issue where Article 10 ICESCR could make a difference, as we will see in the next subsection.

### 3.3 The added value of Article 10 ICESCR: material support and anti-povertyism

The right to assistance and protection to the family overlaps to some extent with Article 8 ECHR. However, Article 10 ICESCR is not confined to the prohibition of interference with family life and limited positive obligations. It has a wider remit that includes 'the widest possible' measures of assistance and protection, in the language of Article 10(1) ICESCR. That is to say, Article 10 ICESCR includes the negative dimension of the right to private and family life, but also requires an additional layer of social protection and positive duties for public authorities.

As pointed out earlier, the UN CESCR has not developed the meaning of Article 10 ICESCR in case law, General Comments or Concluding Observations. However, one can rely on a comparatively similar provision in the European regime, namely, the right of the family to social, legal and economic protection under Article 16 of the European Social

Charter (ESC), which is the closest to the right to protection and assistance to the family in the regional human rights system. ‘Family benefits’ are explicitly mentioned in Article 16 ESC. In line with both the European Social Charter and the ICESCR, family benefits should be sufficient in quantity, and should meet the standards of availability, adequacy and accessibility of the right to social security of Article 9 ICESCR (UN CESCR 2008: para. 18). As noted by former President of the European Committee of Social Rights, Karin Lukas, other forms of economic protection, like birth grants, additional payments for large families, tax reliefs and in-kind contributions can be considered family benefits as well (Lukas 2021: 221). Similar expectations of positive obligations are observable in the African human rights system (Murray 2019: 461). ILO Convention No. 102, concerning social security, includes under ‘family benefits’ those related to child maintenance, either on a contributory insurance or universal means-tested social security basis, and involving either cash payments and/or direct support for children—for food, clothing, housing, holidays or domestic help.

The positive duty to provide assistance to the family includes, as noted by the European Committee of Social Rights, the provision of appropriate social services suited to the family’s needs, including counselling and psychological advice (ECSR 2019a, 2019b), and adequate housing, including prohibition of forced evictions (*ERRC v. Bulgaria*: para 9; *COHRE v. Italy*: para. 115; *FIDH v. Ireland*: para. 121). Along similar lines, the Inter-American Court of Human Rights has established that the State must take ‘positive steps to ensure exercise and full enjoyment’ of children’s rights, including socioeconomic measures and the provision of assistance to the family (*Juridical Condition and Human Rights of the Child*: para. 88; *Case of the ‘Las Dos Erres’ Massacre v. Guatemala*: para. 190).

Like all other rights recognized in ICESCR, the right to protection and assistance to the family is subject to maximum available resources, progressive realization and non-retrogression (Corkery and Saiz 2020; Uprimny et al. 2019; Warwick 2019; Young 2019). As observed by the UN CESCR, ‘the concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time’ (UN CESCR 1991: para. 9). The idea of progressive realization ‘imposes an obligation to move as expeditiously and effectively as possible towards that goal’, and ‘any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources’ (UN CESCR 1991: para. 9). The principle of non-retrogression means that economic measures that may result in impermissible retrogression are to be considered, in principle, in breach of human rights; unless the State can prove that such measures are only temporary, legitimate, reasonable, necessary, proportionate, non-discriminatory, and protective of the core content of the rights at play, and that the decisions were taken in a transparent and participatory process, subject to meaningful accountability and impact assessment (UN Independent Expert on Foreign Debt and Human Rights 2018: 6). The burden of proof lies with the State, which must be able to show that the policies under question are indeed the most appropriate and suitable ones to prevent undue retrogression and to advance progressively towards the goal of fulfilling ESCR (UN CESCR 2007: para. 9). Despite the expectation that the full satisfaction of economic and social rights will only be achieved over time, certain obligations in relation to Article 10 ICESCR would have immediate effect. At least the prohibition of discrimination and the principle of gender equality are to be considered immediate, as well as the need for the State to adopt a national policy or plan towards the realization of the right to protection and assistance to the family, paying special attention to particularly vulnerable families, mothers and children (Saul, Kinley and Mowbray 2014: 727–28).

The scope of the positive obligations under Article 10 ICESCR would be wider than those of Article 8 ECHR, as they would require the State to provide assistance with antenatal and

postnatal care, early childhood education, and social security benefits, including benefits specifically oriented to housing and family support. This would draw explicit links between Article 10 and Articles 9 (social security), 12 (health) and 14 (education) ICESCR. From the perspective of Article 10 ICESCR, the assessment of proportionality would require the State to prove that the exceptional measure of separation of a family in poverty was necessary despite the public provision of adequate material support in the form of the mentioned benefits and support. While courts may focus on the individual case, from a contextual policy perspective it would be necessary to look at progressive realization and non-retrogression as well.

The consideration of material support provided to the family when assessing the necessity and proportionality of the separation would be the first significant contribution of the social right to protection and assistance to the family. The second contribution would be the specific need to have due regard to socio-economic status as one of the prohibited grounds of discrimination. As observed by the UN CESCR, discrimination that occurs on the ground of poverty and socio-economic status is in direct contradiction of the principle of non-discrimination of Article 2(2) ICESCR (UN CESCR 2009: para. 35). Poverty, for the Committee, ‘may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living’ and other human rights (UN CESCR 2001a: para. 8). Then UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, noted in his 2017 report that the relationship between poverty and material inequalities, on the one hand, and discrimination and disadvantage, on the other, remains unelaborated and understudied by human rights bodies (UN Special Rapporteur on Extreme Poverty and Human Rights 2017: para. 2). Along similar lines, both Chimni (2010) and Fagan (2023) have critiqued the insufficient attention paid to social class in the application of international law and in human rights discourse and practice. People with lived experience of poverty are often stigmatized and punished for their situation, as if they were undeserving of social protection (Sepúlveda Carmona 2021: 34–35). In this context, the 2022 report by the current UN Special Rapporteur on Extreme Poverty and Human Rights, Olivier de Schutter, is a valuable contribution. Inspired by the work of organizations like ATD Fourth World, and by the idea of ‘aporophobia’—rejection of the poor—coined by Cortina (2022), de Schutter used the expression ‘povertyism’ to call out the negative stereotyping of people in poverty; de Schutter also encouraged all States to ensure that their domestic anti-discrimination legal framework effectively prohibits direct and indirect discrimination on the ground of socio-economic disadvantage (UN Special Rapporteur on Extreme Poverty and Human Rights 2022: paras. 4, 46). As part of ICESCR, the right to protection and assistance to the family would mandate the recognition of socio-economic status as a protected characteristic under domestic equality legislation. It would also require States to take active measures to prevent and tackle negative stereotyping of the poor in child protection services. The next section will introduce the process and some of the findings of the participatory action research, which will shed light on the prevalence and damage of poverty-ridden prejudice in child protection services.

#### 4. Bringing epistemic value and instrumental value together in human rights research

The purpose of this section is to present how the authors’ research on the impact of child protection services on families in poverty in England (Barker and Casla 2023) benefitted from the epistemic and instrumental value of putting people with lived experience first.

Our study was carried out between May 2022 and June 2023. It consisted of a combination of literature review and qualitative phenomenological research. The review covered grey literature and academic research in Sociology, Anthropology, Psychology

and Social Work, as well as official data and statistics, and doctrinal analysis of International Human Rights Law in relation to Article 10 ICESCR. The empirical qualitative research consisted of: a) seven study groups with parents—particularly mothers—and young people (16–18-year-olds) with lived experience of going through child protection systems in the UK, as well as academics, parent advocates and social workers; b) eight focus groups; and c) ten interviews, all in partnership with ATD Fourth World UK.

The qualitative research followed the Merging of Knowledge methodology developed by ATD Fourth World ([ATD Fourth World UK 2021](https://www.atd-fourthworld.org/)). Merging of Knowledge begins with a first stage where academics, practitioners and people with lived experience of poverty build knowledge independently in peer meetings, to then in a second stage merge the various streams of knowledge to seek synergies, insights and new and complementary perspectives. The methodology is based on the recognition that each individual and group of people offer different types of knowledge, some based on experience, others based on theoretical or practical law and policy analysis, both lived and learnt experiences being valuable in their own right. The process exposes participants to the knowledge and standpoints of others, while seeking to create a space of trust, security and mutual recognition. The work of ATD Fourth World is a reminder of the potentially life-changing contribution that civil society, community groups, trade unions and other forms of local activism can make in enabling people in poverty to become advocates of their own rights.

It is important to contextualize this project in the long-lasting partnership between the authors and ATD Fourth World UK. One of us began collaborating with ATD Fourth World UK in November 2018, when the then UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, carried out an official UN mission to the UK. On behalf of a local social rights NGO, the author co-convoked an open-mic event in Newham (East London) so the UN Special Rapporteur could hear testimonies from people with lived experience of poverty. Since 2020, under the umbrella of the project Human Rights Local of the University of Essex, the authors have worked with ATD Fourth World UK and community groups from different parts of the UK to raise awareness, boost confidence, communicate and disseminate findings, and manage expectations about international human rights law and international accountability mechanisms.<sup>2</sup> This enduring relationship contributed to building trust over the years, and hopefully to the reduction of the epistemic gap between lived and learnt experience, or at least to make all participants aware of the existence of such a gap.

Qualitative research consisted of study groups, focus groups and interviews. The goal of the study groups was to bring parents—primarily mothers—and young people (16–18-year-olds) with lived experience of going through child protection systems in the UK, together with academics, parent advocates and social workers with learnt experience of the system to share problems and to identify possible solutions. Importantly, the study groups set the frame for the overall research project. Each study group covered a different theme, and people with lived experience of poverty had a leading role in the identification of what those issues should be. The authors had no say in the selection of topics or methods of the study groups. The desk-based literature review focused on seven key themes, which were selected by members of ATD Fourth World UK and PFAN (Parents, Families and Allies Network) in a participatory and peer-led process involving nine members and associates of both organizations, members who had lived experience themselves. The seven themes were: a) risk and fear in children's social care; b) poverty as neglect; c) community resilience, strengths-based agency, and parent-to-parent advocacy; d) discrimination in the context

<sup>2</sup> See Human Rights Local: <https://www.essex.ac.uk/research-projects/human-rights-local>. Human Rights Local, ATD Fourth World and others are part of GRIPP (Growing Rights Instead of Poverty Partnership): <http://staging.gripp.org.uk/>.

of children's social care; e) stigmatizing and jargonistic language; f) youth voices; and g) gender-specific challenges.

Focus groups intended to identify patterns among the testimonies gathered from parents, young people, parent advocates and social workers. Parent advocacy can be defined as a model of child protection where parents with child welfare experience work with other parents to provide support and advocacy in relation to the case, the process, the plan and policy matters (PFAN 2020). The three types of interactions—study groups, focus groups and interviews—and the mentioned methodology—Merging of Knowledge—permitted the authors to identify the topics that were particularly salient for people with lived experience of poverty, listening attentively to their testimonies and allowing space for reflection and interpretation. These methodological choices, alongside the leading role of people with lived experience of poverty in the selection of the themes that framed the research, speak to the epistemic value of putting lived experience first in human rights research (as developed in Section 2).

While the analysis included some cases from Scotland, the bulk of the research focused on England and on English law. There are important legal and procedural differences between the two jurisdictions. However, empirical research shows that Scotland and England have similar rates of interventions, despite some disparities at the level of local authorities in the rates of children in care, which appear to be moderately correlated with levels of deprivation (Bilson and Macleod 2023). In Wales, there were 7,080 children in care in 2022, which is a decrease of 2 per cent compared to the previous year (Welsh Government 2022). Still, this is a noticeably higher rate than in England, with 112.4 cases per 10,000 people under 18 in Wales, for 71 per 10,000 in England (Department for Education 2023; Welsh Government 2022).

Interviews and focus groups were conducted with a view to gathering a direct understanding of the lived experience in relation to the issues identified in the desk-based research. Interviews and focus groups were conducted with: a) parents, primarily mothers, who had experience with social work services, and/or had their children in care; b) young people (16–18-year-olds) who had experience with social work services and people with experience in care as a young person; and c) social workers and parent advocates who provide peer support to other parents in processes with social workers. We reached participants through ATD Fourth World UK, PFAN and their partner organizations. Participation was entirely voluntary. We collected data on the participants' gender, age and location. Most were based in different parts of England, and three came from the Northern Isles of Scotland. All participants were white and, to the best of our knowledge, they were British citizens. This means that important issues affecting migrants, such as 'no recourse to public funds' (House of Commons Library 2023), were not covered in the study, which is an important limitation of our research.<sup>3</sup>

In total, 33 people participated in the study. This includes 17 parents with present or past experience with child protection services, 15 of them female, between 30 and 52 years of age, based in Birmingham, Buckinghamshire, Hertfordshire, Ipswich, London, the Northern Isles of Scotland, Newcastle, Peterborough, Liverpool and Stoke-on-Trent. It also includes ten social workers and parent advocates, eight of them female, between 32 and 56 years of age, and based in Bedfordshire, Blandford, Brighton and Hove, Buckinghamshire, Ipswich, Leicester, Liverpool, Staines-upon-Thames and Wivenhoe. Finally, we met with six young people with experience with social work services and/or experience in care, five of them female, three between 16 and 18 years of age, and three more in their 30s; they were based in Liverpool, London, Reading and the Northern Isles of Scotland. Eight focus

3 Under Section 115 of the Immigration and Asylum Act 1999, people who do not have any immigration permission or whose visa comes with an individual 'no-recourse to public funds' condition are excluded from benefits and housing support.

groups and ten interviews were held in-person and virtually in November and December 2022. Interviews lasted approximately one hour, and focus groups lasted approximately two hours each. Focus groups were facilitated by members and allies of ATD Fourth World UK, while interviews were facilitated by the authors. Interviews were semi-structured with questions in the form of a checklist to facilitate a thread in the narrative. Inasmuch as possible, interviewers avoided interrupting interviewees, respecting their choices in the way they framed their grievances in their own terms, including questions of identity and intersectionality (Atrey 2016). Both authors are male, but in all interviews, there was at least one female member of ATD Fourth World UK or a partner organization present. Each focus group and interview adhered to safe and ethical practices of the University of Essex, going over issues of consent, data protection and anonymity at the beginning of each session. Participants were free to withdraw their consent at any point during the conversation, or indeed afterwards until the moment of publication of the report in June 2023. Participants remained anonymous, unless they expressly stated that they wanted to be named. In the case of children, authorization was given by parents or legal guardians.

The study group sessions were facilitated and hosted by ATD Fourth World UK at their base in Addington Square in South London between May 2022 and June 2023. Study groups were led by ATD Fourth World UK as part of their own research, while the focus groups were often facilitated by members of ATD Fourth World UK. Questions and goals of the focus groups were co-defined by the two authors and by members of ATD Fourth World UK to ensure that they were accessible to all participants. Discussions for these sessions were chosen in advance by a smaller, yet diverse in experience, steering group, including people with lived experience of poverty. The discussion in the study groups revolved around the key themes identified by the steering group. Each session lasted approximately three hours, with a one-hour break in between so that all involved could share a meal as part of ATD Fourth World's philosophy of coming together (ATD Fourth World UK 2016). Each participant with lived experience of poverty received compensation for their travel expenses and were provided with lunch.

The final report was published on the website of the University of Essex (Barker and Casla 2023). It was shared with the partner organization and with all participants. Together with ATD Fourth World UK, the authors submitted a summary of the preliminary conclusions to the UN CESCR for the seventh review of the UK's compliance with ICESCR, which is taking place between 2022 and 2025 (ATD Fourth World UK and Human Rights Local 2023). A person with lived experience of poverty representing ATD Fourth World UK, together with one of the authors of the report, presented the submission to the UN Committee in March 2023 remotely (ATD Fourth World UK 2023). The Committee's List of Issues for the UK Government included one of our concerns, not addressed in any other submission, namely, the regulation and monitoring of private and for-profit providers of child protection (UN CESCR 2023a: para. 27), as well as other issues raised by us and other organizations, such as direct and indirect discrimination, and adequacy of social security benefits (UN CESCR 2023a: para. 7). The research was also used and cited by the European Committee of Social Rights in their 2023 conclusions on rights of children, families, and migrants in the UK (ECSR 2024).

In sum, the epistemic value of merging of knowledge stemming from lived and learnt experiences was expressed in different forms: researchers were mindful of their positionality, and transparent about it in personal interaction with other participants; participants framed their grievances in their own terms, including questions of identity; research themes were selected by the steering group, which included voices of people with lived experience of poverty; the researchers were not involved in the selection of themes, which they took as given; and the focus groups took place at the headquarters of the partner organization in South London, and the timing, structure and checklist of the focus groups were negotiated between the researchers and ATD Fourth World UK.

Besides the epistemic value, the combination of lived and learnt experiences also had instrumental value, as it shed light on the human impact of povertyism and lack of material support. Evidence shows that British children and families in poverty are significantly more likely to be the subject of State intervention (Morris et al. 2018: 1). Bennett and others observed a clear correlation between the rise in child poverty growth and the rate of children entering care in England between 2015 and 2020 (Bennett et al. 2022: 500). Families that go through the system of child protection often have a history of sexual abuse, domestic violence, drug abuse and sex work. These phenomena are not exclusive to people in poverty. However, wealthier families often have resilience, resources and connections to deal with these situations without the interference of the State (Bywaters et al. 2022: 34, 74). On the contrary, people in poverty are less likely to 'be taken seriously, seen or heard' (Bywaters et al. 2022: 75). As observed by Curtis, 'we all have lapses in standards sometimes; but being comfortable enough to have those lapses is a privilege in itself' (Curtis 2022: 196).

The context of violence, sex abuse and drug abuse was a recurrent feature of the testimonies from parents and young people, for example in relation to the dangers of unregulated accommodation for 16–18-year-olds:

I was placed in adult accommodation and was abused by all of them [other adults in the accommodation] and this was extremely problematic. If you can't be placed in an order, someone has to be responsible, so they just place them in this type of this accommodation.<sup>4</sup> When I was 16, my first placement when I left care was in a shared house with one girl that was in her 20s and a girl that was about 18. Both girls were actually using the place to have—I'll say 'clients'—come in, and that was my first house. One of the girls stole from me. I reacted and kicked off her door to get back my belongings. Guess who's getting in trouble—me, so I got moved. They then put me in a high-rise flat by myself in an area that was cordoned off as like the safe zone for the red-light district so it can be monitored. I lived on the fifth floor and the lift quite regularly was covered in toilet and alcohol all over the floor, and God knows what else on the walls. I used to have to go up the stairs and there would be working girls doing their business on the stairs, and drug users injecting and smoking. There was a bail hostel as well for people on the sex offenders register, literally over the road from where I was living, and then there was lots and lots of single men in the area. A lot of them were migrants, not that there's a problem with that, but there are obviously language barriers and cultural barriers. That was where I had to live for three years. I got a guy who punched me in the face, so then I got a dog to protect myself. But when the council found out I had a dog, they evicted me. That was my first four years living in care.<sup>5</sup>

Evidence shows that the tighter policing of people in poverty is not accompanied by stronger material support for them. This is relevant from the perspective of necessity and proportionality assessment under Article 10 ICESCR, as seen in Section 3. Participants in interviews and focus groups expressed that they felt monitored and under control, but not supported in their material needs, while experienced social workers reported that they used to have more resources in the past. Measures of austerity, cuts and privatization of child protection services have all contributed to families being unable to receive the assistance they require, which in turn traps and pulls them further into poverty. Along with austerity cuts to social security benefits, public services for families passing through the system of child protection rapidly decreased since the beginning of the 2010s (Public Services Committee 2022: 3). International human rights bodies have described austerity cuts that disproportionately

<sup>4</sup> Interview with adult with experience of the care system, conducted by the authors and ATD Fourth World UK on 26 November 2022 via Zoom.

<sup>5</sup> Testimony of a young person in a focus group with teenagers, children, young people and people that have experienced the care system as a child, conducted by the authors on 2 December 2022 via Zoom.

target particularly marginalized people as retrogressive and contrary to the realization of the right to social security (UN CESCR 2016: paras. 18–19, 40–42; Casla 2022). In its 2023 Concluding Observations, the UN Committee on the Rights of the Child urged the UK Government to introduce a series of improvements to childcare financial support (CRC 2023: para. 36). Among other things, the Committee expressed concerns about the large number of children in social care, including unregulated accommodation, and the insufficient support for children living away from their birth families (CRC 2023: paras. 37–38). As Bywaters and others observe, ‘child protection system responses sometimes interact with policies covering housing, benefits and employment to exacerbate economic and other pressures on parents while making recovery and the reunification of separated families more difficult’ (Bywaters et al. 2022: 7).

Various academic studies have highlighted the over-zealous nature of England’s child protection system (Featherstone et al. 2018: 7; Kemshall 2010; Fenton and Kelly 2017; Keddel 2017: 411), a theme identified as key by the steering group with people with lived experience of poverty. For Featherstone and colleagues, the risk-averse model views the parent as needy rather than a rational and responsible actor; not only does it punish the parent because of this, but it is also neglectful of the social determinants that place parents in poverty (Featherstone et al. 2018: 10–16). Risk-aversion in child protection services is motivated by the understandable eagerness to prevent any imaginable situation where a child could suffer severe harm. However, evidence shows that the culture of risk-aversion can have very harmful consequences for families, with disproportionate impact on families in poverty, particularly mothers. It can result in severe trauma and damage the mental and physical health of adults and children (Sankaran and Church 2023; Wall-Wieler et al. 2017). Parents we met with perceived that the lack of attention to the trauma they endure, and the disregard to the harm that family separation can cause in the future, were evidence that they were being targeted due to their socio-economic status. Parents and young people who have had experience with social work interventions and removal told us how they have experienced emotional harm which has resulted in a subsequent distrust in authorities:

It [social work intervention] does not improve anyone’s mental health. We all as adults and children want to have agency in life. People want to be actively engaged in their lives and want to do meaningful and positive things. But this kind of intervention is the opposite, and it is debilitating. You cannot even go to work; you have to go to court and get abuse screamed at you. Then you have to pretend to be okay when you go and pick up your other children. Doing things well, doesn’t fix anything, it just keeps things afloat. There’s all stick and no carrot.<sup>6</sup>

Being removed as children made my kids worry about becoming parents themselves. When their child gets the slightest bruise, they’re terrified they won’t manage to prove to a social worker that it was an accident.<sup>7</sup>

Social workers don’t really talk to children or explain anything at all. They just walk into your life and, ‘oh, here are these adults with power over us and I have no idea what they’re doing’. They tell you they’re doing it for your own good. Not that they explain what they think that is or how this helps meet that. They just expect you to put up with them. Our trust in professionals is destroyed because of the way professionals treated our family. That doesn’t just affect us. My children will never trust professionals, and probably their children as well.<sup>8</sup>

6 Interviews with mothers, conducted by the authors and ATD Fourth World UK on 6 December 2022 in South London.

7 Testimony of a mother in a study Group session with social workers, parents, parent advocates and academics, conducted by ATD Fourth World UK on 15 July 2022 in South London.

8 Testimony of a young person in a focus group with teenagers, children, young people and people that have experienced the care system as a child, conducted by the authors and Youth Voices on 26 November 2022 via Zoom.



Social workers drew an explicit connection between the reduction in available resources and the culture of disproportionate risk-aversion in child protection services:

On a board with names, staff can see each other's progress. It's upsetting to see how you're performing in comparison to your peers when you might have outstanding cases and targets, perhaps in red. That puts the pressure on you to turn the cases over and make decisions and therefore you're not given that focused time. Time is so precious in children's social care and that's a commodity that we must give to our parents and children; but we don't because we are so driven by targets, on our timescales, just processing people through. It is very risk averse.<sup>9</sup>

Researchers have documented how stigmatization and prejudice lies behind the lack of attention to lived experience in social security policymaking in the UK (Speed and Reeves 2023). When speaking to families that have experienced discrimination on the grounds of poverty, a couple spoke of their son's nursery referring them for investigation by children's social care three times in a year because of the child's frequent bruises. Each time, children's social care concluded that the bruises were the natural result of rambunctious play and closed the case. The third social worker put a note against their names to say: 'There's nothing wrong with this family, please leave them alone'.<sup>10</sup> That stopped the investigations, but the mother felt that povertyism played a role in the referrals.

## 5. Concluding remarks

This article has argued that researchers, practitioners and policy-makers should take social rights more seriously in the understanding of State's responsibilities vis à vis families, particularly families in poverty. We have shown that a socio-legal approach to social rights can serve two mutually enriching goals. First, when seeking to work alongside people with lived experience of poverty, human rights research acknowledges the existence of an epistemic injustice and attempts to challenge it. Second, the combination of learnt and lived experience can contribute to define the meaning of a social right like the right to protection and assistance to the family (Article 10 ICESCR) in relation to child protection services in an advanced economy, and to assess the state of the right in a particular context.

This project had two methodological components: doctrinal analysis and participatory action research. The two components run in parallel, but they remained reasonably separate. This was a conscious decision in order to ensure that academic engagement did not overshadow the role of 'people in poverty as knowers', which is part of the research code of practice of ATD Fourth World (Skelton et al. 2024: 94). The authors carried out the doctrinal analysis relying on international human rights law and literature in the field. For its part, the function of the participatory action research was twofold: first, to respect the agency of people with lived experience of poverty when research relates to their everyday lives. That is why they selected the topics and the frame of the discussion in the study groups, and they co-designed the structure of the focus groups. Second, their testimony and active participation were indispensable to identify the breaches of Article 10 ICESCR in relation to care, benefits, other forms of family support, and prejudice and stereotyping.

We have shown that the right to protection and assistance to the family of Article 10 ICESCR goes farther than the right to private and family life (Article 17 ICCPR and Article 8 ECHR). It does so by creating an additional layer of social protection and positive duties on public authorities. International human rights law adopts a broad

<sup>9</sup> Testimony of a social worker in a study Group with social workers, parents, parent advocates and academics, conducted by ATD Fourth World UK on 6 June 2022.

<sup>10</sup> Interview with mother, conducted by ATD Fourth World UK on 7 July 2022 in Feltham, West London.

interpretation of the idea of family and sees it as the primary unit of human organization and cohabitation. Human rights bodies at the United Nations and the regional human rights systems have established that poverty is not neglect; in other words, poverty by itself is not a sufficiently valid reason to take a child away from their family. Family separation must be a truly exceptional, and preferably temporary, measure, where the child's best interests must be the primary consideration, and where the child's expressed wishes and opinions must be taken into account. When there is no other alternative, it may become necessary to separate the child from the birth family. However, the right to protection and assistance to the family means that the State must not take poverty for granted as if it were a mere social reality in which public authorities operate. The positive obligation of Article 10 ICESCR means that the State must take appropriate measures, including allocation of necessary financial resources, to provide assistance to families in poverty. For a family separation to be truly exceptional, necessary and proportionate, from the perspective of Article 10 ICESCR, public authorities would be expected to prove that they have provided the family with an adequate level of social protection in the form of antenatal and postnatal support, early childhood education, social security benefits, and family and housing benefits. Article 8 ECHR is less ambitious and does not make such requirements. A social rights approach to family protection would also ask for the recognition of socio-economic status as a protected characteristic in equality law. At the same time, public authorities and child protection services should avoid rejection and negative stereotyping of people in poverty, aporophobia and povertyism. Article 10 ICESCR remains largely unexplored in academic circles and among human rights NGOs. To this day, there is no General Comment on Article 10 ICESCR. The UN CESCR should consider launching a participatory process to elaborate an authentic interpretation of this right. The Committee can expand on some of the areas of concern identified in Concluding Observations recently and borrow from case-law from the three regional systems and from CRC's application of Article 20 UNCRC.

The peer-led and participatory action research with families with lived experience of poverty showed that one of the instrumental values of putting lived experience first in human rights research is that it can reveal the true nature, prevalence and damage of povertyism, and how important it is for people with lived experience of poverty. The process aimed to respect all different forms of knowledge and to challenge the epistemic injustices that result from the systematic silencing of people in poverty. We began to co-construct the right to protection and assistance to the family combining doctrinal analysis of international human rights law with phenomenological qualitative research with people with lived experience of poverty. Besides the epistemic value, lived experience can also illuminate the academic and practitioner understanding of the main problems—themes, in our project—facing people in poverty. In particular, they can explain the human impact of aporophobia or povertyism, as well as of the lack of adequate material support. While our empirical analysis, published separately in the report, provided some evidence to this effect, more qualitative research is needed to focus on these two issues specifically.

## Acknowledgements

This article is the result of intense collaboration between the authors and ATD Fourth World UK, a human rights-based anti-poverty organization with 60 years of practice in the UK. We are particularly grateful to Diana Skelton for her guidance and inspiration. Our thanks go to Angela Babb, Taliyah Drayak, Anna Gupta, Simon Haworth, Gwennaelle Horlait, Tammy Mayes, Yuval Saar-Heiman and others associated with ATD Fourth World UK and PFAN (Parents, Families and Allies Network) for preparing and facilitating study group sessions in South London. We are also immensely grateful to all parents, young people (16–18-year-olds), social workers and parent advocates who took the time to share their

challenging stories with us. This article was presented at the Public Law/Socio-Legal Studies research cluster meeting of Essex Law School in June 2023, and at the Family Law Reform Now Network's Supporting Families Conference in Birmingham in September 2023. We say thank you to Judith Bueno de Mesquita, Lorna Fox O'Mahony, Sabine Michalowski, Maurice Sunkin, one editor and two anonymous reviewers for their valuable feedback and helpful comments. Mistakes are only ours.

## Conflict of interest

None declared.

## Funding statement

This article has not received specific funding. The empirical research underpinning the report in collaboration with ATD Fourth World was supported by ESRC Impact Acceleration Account and by the Centre for Public and Policy Engagement of the University of Essex.

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