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The relationship between economic development and the law: How can law reduce poverty in developing countries?
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The relationship between economic development and law: How can law reduce poverty in developing countries?

Can the instrument of law reduce poverty? If so, which laws, and how can this be achieved?

The relationship between law and poverty

The role that law can play in reducing poverty has an important place in the international community.¹ Foundation documents such as the International Covenant on Economic, Social and Cultural Rights at Article 2(1), for instance, prescribe an obligation on all states parties (and preferably all states) to take ‘all appropriate means, including particularly the adoption of legislative measures’² to alleviate poverty. Other covenants of fundamental importance place a similar focus on the issue of poverty, as a burden that stretches throughout all peoples through history.

Its importance notwithstanding, the connection needs explanation, as poverty has a direct relationship with economics rather than law. Poverty by nature is a (severe) economic situation whereby a population lacks the ability to fulfil basic needs, not a legal construct – though law, as we shall see, may help lessen poverty and eradicate its causes. Income poverty, hunger, disease, the lack of adequate shelter, gender inequality, poor education and environmental degradation are identified as dimensions of poverty under the United Nations Millennium Development Goals.³ Whether or not intrinsic to poverty, certainly most of these attributes accompany it and go a long way to describing what living in poverty is often like.

Law, on the other hand, is a set of binding rules regulating the behaviour of individuals and backed by sanctions. Law regulates societal relations and systematises the roles and relations of a government with its public. Among the types of behaviour and

relations that are governed are those that may be causal to poverty, including crimes against private property, other economic crimes, corruption and inequality or other harmful practices.

In regulating a people through government, the law may play both positive and negative roles. Law may impose obligations on the state to promote economic development by playing an active role in ensuring that economic needs are met. This may include a state’s obligation to protect the liberties and human rights of individuals and groups so that each is able to pursue happiness and the realisation of their wants (including economic wants and needs). The state may also be required by law to refrain from activity that impairs legitimate economic activity within its boundaries.⁴ If such obligations need enforcement, it is effective to incorporate them into law. As pointed out by Hart, the most prominent general feature of law at all times and in all places is that its existence means that certain kinds of human conduct are no longer optional but, in some senses, obligatory.⁵

The role that law plays is basically after the fact. The reason here is that we are concerned with the role that law can play in developing nations where poverty has already taken root. There are countless intricacies causal to this difficult economic situation, not all of which are amenable to a legal solution. Law is not an end in and of itself but a means to an end or an instrument of change, but that change may be positive.

Meritorious legislation (‘good law’)

For it to be effective in answering the question at hand, law (here meaning legislation) must be ‘good’ in that it must be able to tackle the root causes of poverty. In my view, such legislation must have the aim of

reducing poverty and promoting economic development for all, namely through the equitable distribution of resources, fair labour relations, equality before the law, and greater empowerment of the poor and marginalised in society.⁶ ‘Good’ legislation should also address factors that contribute to under-development by proscribing against harmful state and non-state acts including economic crimes, abuses of power and other practices that make some groups economically unproductive.⁷

Law can prescribe a fair utilisation and protection of natural resources – most importantly of land. Guaranteeing the autonomy of people over natural resources and the benefits of the fruits of such resources is important in maximising economic productivity.⁸ The effective management of land and resources is another factor to be considered in the fair distribution of resources and the empowerment of the poor over such resources. The goals here are to help all people produce at a level that meets their consumption needs, combating the scourge of hunger and starvation that has caused such devastation in some places. Backing such values in law enables the beneficiaries to pursue a legal remedy where there is violation.

The marginalisation of certain groups or parts of society is a waste of labour and the productivity of such groups. In economic terms, this is a disadvantage for both the marginalised and society at large. Gender-based exclusion, for instance, leads to a society that uses only about half of its available resources, which may be presumed to be half as productive. Discrimination against other groups such as the disabled and certain ethnic groups can also have a degrading effect on both the groups discriminated against as well as against society at large, which could have availed itself of these groups’ productivity.⁹

Some discrimination against groups is pernicious against the groups but not against their economic productivity. Some societal prejudices against artisans and handicraftsmen, for instance, have led to such groups being unable to go to the market to sell their products; the community utilises the person’s products in these cases but stigmatises the producers. The poverty of these groups derives from societal practices that violate their rights to equality and to support themselves from their work. In economic terms, productivity is discouraged and the public will suffer its consequences.

Education may be effective here by making the public aware of the harm discrimination brings to the community at large. Such activities can be backed by law so that society is forced to take lessons against the sanction of law. The ‘carrot and stick’ nature of the law may here be visible as, at first, an opportunity is given to change behaviour naturally, then the law implements such values by force.

Having a strong criminal justice system encourages people to work and accumulate assets with protection against criminal activity robbing them of their labours; the contrary demonstrates the importance of such a system. A loose criminal justice system that does not deter criminals against violating rights to private property is ultimately destructive. Corruption – the abuse of resources in public hands to private ends – undermines developmental pillars, individual human rights and the legal frameworks intended to protect them. In countries where governments can pass policies and budgets without consultation or accountability for their actions, undue influence, distortions of development and widespread poverty are often the result.¹⁰ Thus, anti-corruption laws that punish the *ultra vires* acts of officials can also contribute to poverty reduction. It is also considered a regressive tax that robs resources from already hard-pressed households; bribes and embezzled assets could have been used in the development of public endeavors.¹¹

Corruption and other crimes therefore have the effect of discouraging investment that could have improved the economic situation of many through job creation and by increasing governmental income. Good laws contribute to good governance, and bolster the confidence of investors who can rely on the legal framework in place for the protection of their investments and assets. Investment creates job opportunities and strengthens government; these will further result in the economic self-reliance of families and the wider economic development of a country.

There can be two methods to reach a certain goal, especially for a multi-dimensional problem that needs resolution. One is systematically tackling the symptoms of a problem in order to eradicate the main challenge. The second is curing the problem at its root so as to stop its effects from occurring in the first place. Both at international and domestic levels, attempts are made to reduce crime, stop terrorism, broker peace between armed groups, prevent



communicable diseases, ensure gender equality and child protection, etc; but I would argue that these are often the symptoms and not the cause, the common predecessor of which is typically poverty.

To be effective, law should therefore aim first at solving the problem of poverty. This would obviate the futility of layering regulation upon regulation proscribing these acts without first solving the underlying problem. Yet, this underlying problem is vicious; with growing populations around the world taxing a limited resource base and competing interests as a constant factor in all populations at all times, deriving an overarching universal solution to eradicate poverty is difficult, either through law or through any other means. By contrast, poverty is not a concrete problem that is tangible: it is revealed through a *lack* of food to live on, a *lack* of healthcare to combat illness and disease, a *lack* of education to function in society, etc. Tackling even one of these aspects – symptomatic though they may be – will solve a part of the poverty manifested in that situation.

Execution of the law

It is not difficult to list factors that contribute to poverty with a statement that these may be remedied through law. Law would be paramount if all that was required was legislative enactment. As we know, however, law depends on implementation (enforcement) to achieve its purposes. It is also of paramount importance to have a government committed to solving the country's problems (poverty reduction) through enacting appropriate legislation and the implementation of such laws. This takes us to the principle of democracy, and to popular sovereignty manifested through the appointment of government by the general public.

In reducing poverty across a broad spectrum, popular consent to devolve power on a government through open elections may be the best political methodology thus far discovered. The construct of a popular voice able to achieve popular elections is both cause and effect of a power shift that typically translates into a more widespread involvement in popular economic development as well as this political process. Competition provides preference of policies and enables the public to gauge the competencies and determination of the candidates in the sphere of poverty alleviation.

The rule of law

Having meritorious laws and the capacity to implement them are both necessary but not sufficient conditions. A precept of the rule of law is that the law should apply to all in an equal manner without discrimination.¹² Impoverishing factors do not survive on thin air; they are attributed in some way to the acts and behaviour of people. If there is discrimination among individuals or in groups applying laws, the factors attributed to these groups or individuals in the favour of whom the law is not applied will remain unaddressed and resume their impoverishing role thereby rendering the attempt of poverty reduction through the instrumentality of the law of no effect.

To exemplify this, we can take the consequence of a violation of the rule of law in the fight against corruption. The law is a good tool – even axiomatic – in the prevention and control of crime, and there may also be a financial capacity to enforce such laws. However, if the law is applied discriminately among public officials of different ranks and positions, the problem is not solved, as it will be perpetuated by those whom the law failed to govern.

International law and poverty reduction

Without international law, poverty may well have worsened to a greater degree than its present situation. That poverty reduction at the global level has become a pressing concern of states across the world – without distinction as to their economic status – is inspirational; as is the fact that the world is working to halve poverty by the year 2015.

Inter-state relationships affect the benefits that accrue to contracting parties as much as individual relationships. Such state relationships are manifested through the conclusion of treaties, the establishment of international and regional organisations, and trade relations need to be based on a fair determination of the benefits and burdens on both sides. Developing countries with much greater needs expect to be assisted through their international relationships. These objectives are very desperate as it is the welfare of citizens of these states that hinge on success at this international stage. This makes such states dire expectants of direct aid, technical support and other kinds of help from their more developed counterparts.

Bargaining power in international relationships between developed and developing states has never been equal. This inequality pre-determines the outcome of international efforts to reduce poverty. With the rich dictating terms to its poor relations, the outcomes promote the interests of the former at the expense of the latter. Gratuitous economic relations are said to entail the forfeiture of an essential portion of the sovereignty of poor states because of the interference the developed world is able to exercise over the domestic affairs of its developing counterparts. This kind of undertaking can mitigate poverty in poor countries in the short term; but exacerbates it in the long run, as in the long run, it produces what colonisation caused in former colonies of the major powers. These products include, inter alia, economic and political dependence and the subservience of poor states that are not only dumping grounds but also serve as fields for the experimentation of ideologies that are not contextualised to the local situation. Developing countries are often the producers of raw materials on subsistence scales; there is a rent-seeking tendency by both state and private entities which makes the economy depend on short-term benefits, affecting its overall survival, and the country as a polity as rent-seeking tendencies trigger continual conflict that gives rise to peril and undermines the survival of the state.

Inequitable interstate relationships have led to economic and political dependencies and inefficiencies with regard to the problem at hand: poverty reduction. Internal armed conflicts caused by attempts to scramble the limited resources of a country also increase under-development as the work forces of the country engage in disputes and devote their time and energies in such destructive (unproductive) activities. Governments also engage in war instead of in development activities. War and conflict lead to the displacement of people from their home lands if not also from their home state. What extent may poverty reach other than this? The root cause of these inequitable relationships perpetuates asymmetrical international relations.

What remedy can law provide to redress this situation? The answer to this gives rise to the role of international law in reducing poverty. The force of international law lies in the will of states to respect and ensure the implementation of international rules. The Millennium Declaration, for instance,

adopted by leaders the world over, promises to 'free all men, women, and children from the abject and dehumanising conditions of extreme poverty'.¹³ States aim to work together for the accomplishment of these goals through international cooperation. The source of this obligation is the law or the international declaration enacted by the umbrella organisation; that is, the UN which itself is an indicator of the existence and efficiency of international law. The Declaration creates competition between poor states in their efforts to achieve the goals in an achievable time and to free their people from poverty. It also makes great powers compete among themselves for the support they can muster toward the defeat of poverty.¹⁴ These show the need not necessarily for a world police, for prosecutors and courts, to prosecute states for failing to fulfill or for breaching their obligations; rather it demonstrates international law as a covenant between states and the compilation of rules prescribes existing values and practices of the states that is self-executable. At this stage, an attempt is not being made to stress that international law is always and absolutely effective even without the usual enforcement institutions and mechanisms; rather it should be noted that no law has ever been guaranteed as to its absolute governance, this is so even where there is fierce state machinery dedicated to enforcing it.

The sovereign equality of states needs practical implementation. Moreover, states need to consider their domestic situation and the needs of their population in their international undertakings, and give heed to each other's concerns. This turns the wheel of discussion to the force of law through the gratuity of states to aid their counterparts. But, this is how international law works; its force emanates from the work of states to respect it and ensure its respect by others. Still, it has force and there is reason to respect it or not to breach it. International credibility and image have more consequences than are at first apparent, which is why states do not want to appear as violators and many governments agree to the proposals and treaties of organisations like the UN.

International law may play a significant role in poverty reduction by addressing global issues which, in turn, imposes challenges on poor states in their attempts to feed their population. As the world still depends on the



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earth for its sustenance, environmental issues are critical. This global phenomenon does not differentiate between the industrialised and the non-industrialised. It is also transcendent; no one may control the effects of other countries' faults within its boundaries. However, the primary victims of environmental damage are those who still depend on agricultural produce for their livelihoods. These countries constitute the poorest countries and their populations comprise the extremely indigent in world society.

Environmental degradation undermines the economic basis of states, leading to widespread displacement and migration to urban areas or to more developed countries. The learned few who were supposed to shed light on their people flee to these countries that pay well for their job. This can be seen from two perspectives pertinent to the theme of this article:

- the poor country that pays for the expenses of education and training of such would-be immigrants is disadvantaged in incurring the costs without return and without its needs being addressed; and
- the destination countries benefit from their wrong, through the improper utilisation of the environment that leads to the economic degradation of poor states and the disproportionate payment of professionals (in their home states) that flee to the latter to provide the services employers did not pay for. Therefore, the situation can be explained as a friend causing disability of the other and gaining from the outcomes of such disability.

It will, however, be short of reality to limit the influence of environmental change to only poor countries. The same cause is destroying developed civilisations too through natural catastrophes. Hence the continuing degradation is increasing the world's poor population and deepening the intensity of poverty, thus requiring more effort and greater mechanisms to alleviate it. It is also unwise to assume that the responsibility is solely that of industrialised countries: poor states must also adopt domestic environmental protection laws and protect their environments from possible pollution through industrial activities concentrated in the country which entail the destruction of forests and other natural resources.

International law may, in this regard, play a positive role in combating continual degradation by requiring states to reduce emissions that pollute their surroundings. This will create a better chance of rehabilitating natural resources

and resurrecting the economic activities attached thereto. On the other hand, law may oblige states to redress the damages already caused by over-utilisation of the environment, which is a *res communes*, although such remedy depends on the willingness of states to compromise their interests. Such 'forfeiture' (not the case if seen from a wider perspective) can be achieved through diplomacy and through relaying to the great powers the importance of such measures. Such efforts should reach the extent of exposing governments to the world including to their own population and influencing them by putting their political credibility at stake because of their failures to take measures that support the environment. Gas-releasing countries that fail to improve the environment with a corollary of resulting poverty will be outcast and lose the trust of the world population. This will force it to show commitment and discharge its responsibility, which will be one step towards alleviation of poverty in developing countries.

Conclusion

Both international and domestic laws can and do contribute to the reduction of poverty in developing countries. The laws that address the causes of poverty through rules and sanctions can achieve their objectives. However, for different laws to work, effective state machinery needs also to exist. This presumes, in my view, a democratic and liberty-respecting government prepared for and bound by law to develop and enforce policies for poverty eradication. In poor states where every basic item of life is lacking or in short supply, the first thing that comes to everyone's mind is to give food to the crying infant, clothes to the shivering elderly, to loosen the binds of discrimination and the disabled that are the poorest of the poor so that they can be self-sufficient. We hold that the law can foment all these societal challenges.

Problems are solved by governments by using laws to communicate with their population. Laws are backed by sanction, hence obedience results from such force of the law, and the power of the government is borne from the force of law in regulating human behaviour. So long as it is agreed that laws are capable of molding behaviours, resort can be made to the question 'how can law reduce poverty?' To the author, enactment of laws

that address social, political and economic interaction is a key factor. Following this is to ensure the proper implementation of good laws, which can be put in place if there is government of the people, for the people and by the people. Such a government will be accountable for its acts and responsible for its failures, including the failure to reduce poverty and to cause poverty through its own conduct. When such obligations are embraced by law, the citizenry will have an enforceable action against any contrary conduct constituting breach of the legal rule.

With respect to the role of international law, essentially diplomacy and state negotiations, we can conclude similarly. No major power will remain the same eternally, but a poor state will likely remain indigent for generations. How can international law fail to notice these states and fail to try to free such sections of the world population from poverty? The reason is international law as the law of states and the reflection of the basic norms in society has accomplished the orders of its day. It was colonisation that was the order of the day, it was slavery that was once the legitimate mode of labour relation, and it was subjugation of the mass for the pleasure of the few that regulated the world, hence there was none other than these to be enshrined under the laws.

International law is constantly changing; it is the manifestation of the will of the states, now even more than at the outset 100 years ago. It is a positive sign that international law evidences concern for the misery of poor states. We are not, however, at the zenith that can be reached; diplomacy and international law remain insufficient, and counterbalancing forces include those of might and competing questions of strategic importance.

International law needs also to introduce a mechanism to discipline relations between states and to develop an independent way of providing support for strategically unimportant states. Such developments will have some force if inscribed in binding legal instruments. Law may establish that all states have an obligation to reduce poverty which must be adhered to, thus contributing to the reduction of poverty in developing countries.

Law may do the following to reduce poverty in developing nations:

- promote economic development through the fair distribution of property and

resources and through the empowerment of the poor and the marginalised;

- address factors that contribute to under-development, proscribing against conditions such as crimes against property, the economy, and corruption; and
- require active implementation if it is to be more than words on paper.

Above all, effective law depends on its being respected and adhered to on every subject without discrimination. The rule of law therefore is a determining factor with regard to achieving the purpose of the law, both at the international, national or local level.

Notes

- 1 Anon, 'Poverty Reduction', *United Nations Rule of Law* (date unknown), www.unrol.org/article.aspx?article_id=26 accessed 12 December 2010.
- 2 'The nature of States parties obligations' (Article 2, paragraph 1): 14 December 1990, Comment 3 (General Comments) Office of the High Commissioner for Human Rights.
- 3 The Millennium Development Goals (MDGs) are based on the United Nations Millennium Declaration, *United Nations Rule of Law*, www.unrol.org/doc.aspx?doc_id=2108 accessed 12 December 2010.
- 4 General comment No 16 (2005), *International Covenant on Economic, Social and Cultural Rights*, Article 3, GENERALE/C.12/2005/4, 11 (2005), paragraphs 18, 19 and 21.
- 5 Hart, HLA, 'The Concept of Law', *Clarendon Law Series*, Oxford University Press, 1961, p6.
- 6 Presentation by Commissioner Ashraf Ghani, *Economic Development, Poverty Reduction and the Rule of Law, Lessons from East Asia: Successes and Failures*, United Nations Development Programme (UNDP) Commission on Legal Empowerment of the Poor (date unknown), www.undp.org/legalempowerment/pdf/economic_poverty_rule_of_law.pdf accessed 8 January 2012.
- 7 Protecting the vulnerable is one of the values adopted on the Millennium Development resolution of the UN to reduce poverty.
- 8 Aart, Dollar, David and Kraay 'Growth is Good for the Poor', *Journal of Economic Growth*, Vol 7, No 3 (2002), pp195, 215.
- 9 The World Programme of Action concerning Disabled Persons, the Standard Rules on Equalization of Opportunities for Persons with Disabilities and the Convention on the Rights of Persons with Disabilities recognise persons with disabilities as both development agents and beneficiaries in all aspects of development, realising the Millennium Development Goals for persons with disabilities through the implementation of the World Programme of Action concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities Report of the Secretary-General, UN General Assembly A/64/180, July 2009, p3.
- 10 'Transparency International', working paper (2008), p2, www.transparency.org.
- 11 Ibid.
- 12 United Nations Millennium Declaration, Resolution adopted by the General Assembly, without reference to a Main Committee (A/55/L.2), 55/2, the rule of law is taken to be one factor in poverty reduction endeavour on the UN Millennium Declaration, Art 24.
- 13 Supra note 8, Article 11.
- 14 Global parameters for the implementation of the MDGs up to and beyond 2015 – challenges and current discussion, MDG Unit 2485(2009) p5.