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Lex:lead Group annual scholarship competition 3

IBA Foundation 3

Lex:lead 2011 annual scholarship winning articles

Laws to assist recovery in the wake of armed conflict
Edwin J Webiro 4

The contribution of law in post-conflict economic, social and cultural recovery
Sousena Kebede Tefera 6

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Lex:lead Group annual scholarship competition

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Laws to assist recovery in the wake of armed conflict

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Armed conflict has been dreadful in the history of mankind. Since time immemorial, the entire international community has tried to build mechanisms to avoid the occurrence of conflict in society. After the scourge of different wars that brought untold sorrow to mankind, the United Nations came up with the UN Charter. The Charter's preamble expresses regret for past conflicts and invites all people to practice tolerance, live together in peace with one another as good neighbours and unite their strength to maintain international peace and security. Regardless, conflict is still a reality in the world. In response to the effects of conflict, laws have been put in place to enhance post-conflict social, economic and cultural recovery. Their aim is to restore people to the place they were before the occurrence of the conflict. This article will review different laws that make post-conflict social, cultural and economic recovery possible.

It has long been a challenge that most of the post-conflict settlement laws do not include economic, social and cultural recovery. This is because peace action is mostly taken to end the coercive action. Economic and social rights are perceived as pertaining to development, rather than being central to establishing political stability and security. But the issue of social and economic recovery can affect the entire recovery.

Still, there are several laws that have dealt with economic, social and cultural recovery. First is an Agreement on Socio-economic Aspects of the Agrarian Situation concluded on 6 May 1966 between the Presidential Peace Commission of the Government of Guatemala and the Unidad Revolution Group. Article 13 of the Agreement required the government to improve the economic and social welfare of the people who were affected by the war. The economic strategies focused on women and children. Some of the provisions also provided for education and training, housing, health, labour and social security. This law contributed to economic, social and cultural recovery because it compelled the state to provide these rights, and thus it improved the standard of living for citizens.

Next is a law seen after the great atrocities committed in Bosnia and Herzegovina in the early 1990s. There we witnessed a peace agreement that recognised social, economic and cultural recovery. Article 1 of that agreement provided for the right of property and the right to education, which the state is compelled to provide to citizens who were badly affected by the hostilities. The most celebrated aspect of this agreement is that it includes some of the UN human rights conventions that provide for economic, social and cultural rights to individuals.

Also, another recently developed agreement that provides for post conflict economic, social and cultural recovery is the Great Lakes Protocol on Internally Dispaced Persons. Article 4 of the Protocol requires member states to assist internally displaced persons and refugees to recover their properties on their return after the end of the conflict. Under Article 8 of the Protocol, there is a requirement for full compensation to the people whose properties have been affected by the conflict and cannot be recovered. The protocol also recognises the economic, social and cultural rights enshrined in the Universal Declaration of Human Rights (UDHR) of 1948 which has acquired the status of *jus cogens*.

Further, the Government of Nepal and the Communist Party of Nepal also concluded a post-conflict agreement for the sole purpose of social, economic and cultural recovery. Article 3 of that agreement provides for the adoption of a policy that establishes rights of all citizens in education, health, housing, employment and food reserves. It goes on to provide economic protection to landless squatters and economic backward sections. Article 7 provides for economic and social rights to food security, health, education, private property and social security. All of these are strategies to affect post-conflict social, economic and cultural recovery. The presence of this law led to social, economic and cultural recovery in Nepal because the state was bound to provide all these rights.

Rwanda is one of the Great Lakes countries that witnessed the killing of about 800,000 people within a year between January

and December 1994. After this desperate situation, laws were put in place that aimed at making transitional justice where all people who instigated genocide were to be held liable. In addition, Rwanda created a law for economic and cultural recovery. This law is famously known as Organic Law No 2000 and sets up *Gacaca*, meaning the adoption of cultural methods of solving conflict. Law No 2000 allows the whole community to come together and solve their misunderstandings amicably. Through *Gacaca*, people forgive each other and forget about the past and restore their former friendship – a cultural recovery. Also, the laws require compensation to persons who have suffered material losses and damages to their property. In Rwanda, one can conclude that, apart from punishing criminals of genocide, G*acaca* is vital for economic and cultural recovery.

Apart from these express post-conflict agreements addressing social, economic and cultural recovery, the UN Security Council worked on this area through its resolution No 1325 of 2000 to reaffirm the need to implement fully international humanitarian and human rights laws that protect the rights of women and girls during and after conflicts. It also calls upon states to 'adopt a gender perspective' when dealing with 'the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction'. Though the resolution is not a binding law, it has still created commitment among states.

Most of the post-conflict agreements have not covered fully the social, economic and cultural recovery issues, but all is not lost because most global human rights conventions provide for social, economic and cultural rights and states are bound by these conventions before, during and even after a conflict. Some of these conventions are like the UN Charter, which could be simply referred to as the constitution of the world. Article 1(3) of the UN Charter reminds us that the purpose of the UN is to achieve cooperation in solving international problems of economic, social, cultural and humanitarian character. The Charter binds and compels all members of the UN after a conflict to make economic, social and cultural recovery so as to achieve the major aims of the Charter.

Other conventions that deal with human rights are the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children; the Convention against Transnational Organized Crime; and the Convention on the Rights of Persons with Disabilities of 2006. All of these conventions have special provisions providing for the social, economic and cultural rights that states parties have to protect at all times, even after the conflict.

At the regional level, there are also numerous conventions that create human rights that protect the social, economic and cultural rights of citizens. One is the Inter-American Convention on Human Rights. Article 26 of this Convention provides for the rights of education, health and employment. All member states are obligated to comply with all of these provisions at all times. The AFCHR is another regional convention which, under Articles 15, 16 and 17, provides for the right to work, mental health, the right to education and the right to take part in the cultural life of the community. The ESC, under Articles 13 and 14, also provides for education rights and the right of employment.

On the issue of human rights, there are also some soft laws that, although they are not binding, still show and express state commitment. The Universal Declaration of Human Rights under Articles 22–26 provides for social security, the right to education and the right to participate in cultural life. These are effective in assisting with social, economic and cultural recovery.

At the time of winning this award Edwin J Webiro was a law student at the University of Dar es Salaam, Tanzania. His article was a winning submission in the Lex:lead Group's 2011 annual scholarship competition, open to a majority of the world's 48 developing countries, with an award to the chosen student funded by International Bar Association Foundation, US. For more information, please visit www.lex-lead.org.

The contribution of law in post-conflict economic, social and cultural recovery

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In a post-conflict society, recovery is challenging because the grass-roots are in a state of confusion, scepticism and doubt about the veracity of every relationship they engage in. The challenge is not only posed against the citizens of that particular state or the victims of that conflict; it is also a headache for immediate neighbours and the rest of the international community. As can be observed from the contemporary global situation, those post-conflict zones that have been left aside are proving to be a harbour and safe haven for terrorists and other destructive groups. To make matters worse, they are being spearheaded by individuals who are cold blooded and who show no signs of remorse when destroying the lives of many.

In addition, the absence of peace and security is creating chaos and distress in other nations around the world. The influx of refugees to Europe is a recent phenomenon following the unsolved and unmanaged conflict in Somalia, and it is costing billions of dollars to fund the refugee camps. On top of that, these countries face challenges with the grant of asylum and refugee status because most of the refugees from post-conflict zones lack the proper skills and intellectual training, and thus are difficult to integrate into the workforce of the host nation. The list goes on because the dimension of the problem of a nation that fails to recover, and the possibly serious problems that come along with it, is multifaceted. This makes the successful recovery of post-conflict zones essential.

It is achieved by the implementation of various tools, and the burden of accomplishing this task should not be left to the nation that is the immediate victim. It also has to be the duty and mandate of the international community, the nations of the world, international and national non-governmental organisations and other stakeholders.

Various disciplines can and should be used for the successful recovery of post-conflict zones. Law is a mechanism of social engineering for regulating a given society, be it national or international, and can be used successfully as an agent for transformation. The aim of this article is to pinpoint how law can be used in the recovery process by considering the following:

- relevant steps that need to be followed in law-making procedures;
- types of laws that are aimed at healing the wounds caused by conflict;
- utilisation of the native culture in making the laws;
- considering who should be the focal point of any given law;
- domesticated versions of democratic form of governance;
- the type of institutions that should be legally established and their aim;
- parties that should be given a role in the national law of the recovering state; and
- the mechanisms that are put in place by international law and the role played by international law.

Relevant steps that need to be followed in the law-making procedure

The law maker in any democratic society should strictly follow certain procedures for creating legislation that is legitimate and accepted by the majority of society regardless of the differences in status of individual citizens. This would save the law from being a dead letter. The procedures that we follow not only guarantee the future acceptance and applicability of the law, but help to address the concerns of society and the root causes of conflict. Law-making procedures should also be addressed by proper administrative legal legislation that would guide any law-making process. This would bind any law maker, be it the law-making organ of the nation or any other executive as delegated by parliament. As a result, arbitrary law making in the various tiers of the government could be controlled.

Unique to post-conflict zones, law-making procedures should be commenced by a Post-Conflict Needs Assessment (PCNA).

The circumstances on the ground need to be addressed by a law that has the strength to encourage the peace-building mechanism of these fragile zones. The focus of the PCNA must be to address the cause of the past conflict, the present challenges that the society is facing in the peace-building process and future potential stumbling blocks. These types of assessments should not be done solely by the governmental agencies of the post-conflict zones because the governments of the post-conflict zones, as observed in many instances, do not possess the required skills and resources to come up with a well-rounded result.

Types of laws that should be aimed at healing the wounds caused by conflict

The source of any conflict is where parties come to possess mutually incompatible goals (whether the parties are individuals, nations, social groups or organisations). What sorts of conditions regularly give rise to mutually incompatible goals? The major source of incompatible goals lies in a mismatch between social values and social structures. Many conflicts involve conditions of scarcity and differing values, incompatibilities regarding use or distribution of resources, differing social and political structures or opinions about the beliefs and behaviours of others. In more complex social settings, both intra-nation and inter-nation conflicts arise from a scarcity of goods that existing value systems define as worthwhile or desirable and over which competition occurs. If there is scarcity, then it is almost inevitable that incompatibilities over distribution will arise, which ultimately leads to a full-blown conflict.

Law is a quintessential tool for minimising the incompatibility of goals by giving proper solutions to problems, for instance, by distributing resources. The law has a dual benefit: first, it might contribute to the prevention of the conflict that might arise from a scarcity; and second, even in post-conflict zones, it is a social engineering device to rectify problems of the past and to speed up the peace-building process.

After conducting the PCNA, the legislation of a nation should reflect the needs of the society and be comprehensive and coherent. A given law is comprehensive and reflective of the need of the society when, from its very inception, stakeholders from all of the society are part of the legislation process. This is important because each and every part of the society has their own perspective on the situations or problems. The lawmaking process has to take into consideration all of these viewpoints to avoid future conflict and to successfully get over the situation of the past.

The best mechanism to come up with coherent legislation is to follow proper law-making procedures. For instance, holding consultations with the public and, more specifically, with legal research centres and law teaching institutions would enable the law maker to know the possible contradictions that may arise or render the would-be law unconstitutional. The fact that these centres and institutions make their analysis for academic reasons would make their analysis reliable and impartial.

Laws that utilise the culture of a society

Most nations that are known as centres of violence and conflict are endowed with a very rich culture and tradition. These cultures and traditions include alternative dispute resolution mechanisms that are unique, and which lead to high rates of case disposition. This is because the indigenous societies give high regard to a process that has earned the complete trust of that society, mainly due to the fact that the judgment is rendered by local elders who are elected through a mechanism that has been locally developed by the community. Hence, recognition of these dispute-resolving mechanisms through a law passed by the legislature can serve two goals at the same time:

- ensure the quick disposition of the case before deep rooted hatreds are developed; and
- maintain and develop national culture.

Who should be the focal point of any given law?

There are two prime targets of any law in post-conflict zones. The first should be those who were victims or form a vulnerable group, such as ethnic minorities, women, internally displaced people or certain classes in society. This is because the past injustice committed against these groups should be adequately addressed in a way that ensures their resentments are resolved. Failure to give proper attention might bring about conflicts *de novo*. The second should be the potential 'powerhouse' of the recovery: those agents of change that create a sustainable economic development, such as youth, foreign investors and diasporans.

It is quite challenging to appeal to these groups because they have their own concerns; for example, a reservation against engaging in an economy that is fragile. Also, the nation's youth may have developed violent behaviours as a result of their experiences through the period of conflict. Foreign investors might fear the greater risks they are undertaking for investing their assets. The diasporans, who are likely equipped with better skills and knowledge, might be less tempted to work in the country as they are likely to be employed with little money and forced to live with lower standards of living. However, if the post-conflict zone manages to establish a democratic government that would hear the people and address their problems, then the agents of change might overlook the above-stated problems.

Domesticated version of democratic form of governance

The law adopted in post-conflict zones should reflect the actual needs of the society and it should, if it is a nation of diversity, obtain legitimacy from a majority of the society regardless of the differences they possess. With this in mind, direct application of policies and laws that have proven to be successful in foreign nations might not result in the desired outcome in another nation. Hence, the legislature should be meticulous in forecasting the probable result of a given law, thinking carefully about it at the time of incorporation.

Moreover, emphasis should be given to the applicability of ideology. For instance, the concept of liberal democracy is not the same in both western democracy and a nation recovering from the trauma of conflict. The way a certain legal system appreciates this concept has the potential to determine the future of the nation. Many sceptics doubt that the model of good governance applied in a liberal democracy works in poorer societies or post-conflict zones with acute religious or ethnic divisions, because free political competition sometimes has adverse effects, such as exacerbating ethnic/religious majority tyranny or separatist tensions that might have been the cause of the conflict in the first place. Thus, it is essential to consider what is on the ground when incorporating a law, a policy or an ideology into one's legal system because it may lead to unintended consequences.

Legally-established institutional structures

The institutional set up of any government, including in post-conflict zones, reflects the legitimacy of the entire legal system. The process of establishing institutions should be based on constitutional law. The benefit of law in this process is to define the structure, responsibility and power of the government, and also to devise mechanisms that help control the power of the various tiers of the government, such as checks and balances, transparency and accountability. If the power of the government is constitutionally limited, then there is a *prima facie* safeguard of the rights of citizens.

The process of implementation is not easy – not just for post-conflict zones, but also for other nations. The process should be supplemented by financial (fiscal) or monetary laws, focusing on narrowing the gap between the two extreme wings of the rich and the poor. If the rule of law is properly adhered to, the pace of recovery both economically and at a societal level will be hastened because the confidence of citizens, the diasporans and foreigners will encourage others to come and invest. This ultimately results in economic growth and stability.

The role played by international law for recovery

International law is a mechanism to regulate the behaviour of individual states by requiring compliance with their international obligations. The principle of international law – that the sovereignty of states be respected – has an exception that was developed following the atrocities committed by and against mankind during the First and Second World Wars, in which states failed to protect, fulfill or promote the rights of their citizens. The international community now has a duty to render aid to states that are under oppression by their government.

The Security Council of the United Nations can take proportionate and necessary measures against those states that systematically oppress their citizens. The basic standards for evaluating whether a given state is violating the rights of citizens are within the international human rights instruments that have been ratified by the state in question. International human rights, which are composed of economic,

social, cultural, civil and political rights, are expected to be fulfilled, protected and respected by the governments of the signatory states. Even though the direct obligation lies on the particular nation, the international community is also under the obligation to provide technical assistance and financial support to states that seek assistance as provided under Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights. The obligation of the international community helps post-conflict nations to speed up their peace-building processes.

In practice, this obligation is deemed successful if it is consistently and strictly followed by the nations of the world in a uniform manner, without discrimination by those nations that render aid. That it is not is mainly due to the political and ideological affiliations that exist among states.

Conclusion

The recovery of post-conflict zones is so complex that success needs the participation of many. Different disciplines of knowledge are vital, but it is undeniable that the role to be played by law is indispensable. Any change should be spearheaded by the law, whatever type of law that may be: international, national or customary. Law should be made after having passed all the necessary requirements. This enables the law to be applicable, and not just a dead letter law. The effective application of laws results in economic, social and cultural development, which works as true recovery for post-conflict zones.

Sousena Kebede Tefera is a law student at Addis Ababa University, Ethiopia. Her article was a winning submission in the Lex:lead Group's 2011 annual scholarship competition, open to a majority of the world's 48 developing countries, with an award to the chosen student funded by Lex:lead Advisory Board member Dr Sabine Midderhoff, Germany. For more information, please visit **www.lex-lead.org**.