

The United Nations and the advancement of human rights in Africa

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Abstract

This paper seeks to interrogate the rights-based approach to development and poverty reduction as espoused by the instruments and policies of the United Nations, considering Africa as the key beneficiary of the UN Millennium Development Campaign. The author will also enumerate the justifications for considering poverty as a human rights issue under international human rights law, and how this impacts on the advancement of human rights in Africa. Included is an endeavour to locate the direct and indirect contributions made by the different sections of the international community, including the international criminal justice system, to significantly reduce extreme poverty and hunger and, in so doing, preserve human dignity in Africa as envisioned by the international human rights regime.

Furthermore, the paper seeks to justify the responsibility of the State in poverty alleviation from a juristic perspective, and argues for the domestication of international human rights standards in developing countries as well as the ratification of the Rome Statute of the International Criminal Court as complementary actions towards improving the state of human rights in Africa. The paper will also analyse human rights gaps, particularly those emerging from the socio-economic fabric of developing countries, such as a lack of fundamental freedoms and impunity.

Introduction

That poverty is a universal phenomenon and a matter of significant global concern can hardly be disputable. The international community, under the auspices of the United Nations (UN) has itself recognised this and acted upon its responsibility to uphold the principles of human dignity, equality and equity at the global level, by committing to the Millennium Declaration, the targets of which are commonly referred to as the *Millennium Development Goals*.

One of the most important provisions of the Millennium Declaration is perhaps that of the commitment to development and poverty eradication. By this Declaration, the international community commits to spare no effort in their

¹ I wish to express my gratitude to James Gondi for his assistance with some of the background research that went into this paper.

pursuit of the complete eradication of poverty. The particulars of the international community's commitment towards poverty eradication include the following:²

To halve by the year 2015, the proportion of the world's peoples whose incomes are less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water.

The particulars of the poverty scourge are more prevalent in developing countries, particularly Africa, and are characterised by hunger, no access to safe drinking water, and the inability of the majority of the population to achieve the minimum acceptable standards of living that are required in order to ensure basic human dignity.

In the Millennium Declaration, the global human family resolves to –³

[c]reate an environment – at the national and global level alike – which is conducive to development and to the elimination of poverty.

It is the position of this paper that creating such an environment requires a multi-pronged approach to dealing with poverty: an approach which dares to transcend the boundaries of economics and to address wider issues which affect the global environment's capacity to generate development and, in so doing, reduce poverty and hunger.

Any poverty eradication strategy would involve creating income-generation opportunities. The reality, however, is that such opportunities cannot be created in an anarchical or unstable socio-political environment. Hence, there is a need for a multifaceted approach to dealing with poverty which, in addition to addressing the strictly economic issues, also tries to enrich the socio-political fabric of a nation or region in which the war against poverty is being waged. Thus the Millennium Declaration calls upon the international community to –⁴

[s]pare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.

² UN General Assembly Resolution 55/2 at para. 19.

³ (ibid.:para. 12).

⁴ (ibid.:para. 19).

This averment in the Declaration is not a separate abstract goal, but is a complementary commitment made in full cognisance of the fact that poverty eradication efforts must have a strong socio-political base, characterised by respect for the rule of law, human rights and democracy.

Indeed, creating a stable political, legal and economic environment friendly to entrepreneurship and investment is a precursor for effectively fighting poverty.

Nobel Economist Amartya Sen⁵ acknowledges the argument set forth above in *Development as freedom*.⁶

Freedom, the ability of a person to make decisions about his or her life, is not only the most efficient means for building a healthy developed society, but also its ultimate goal. When you put assets in the hands of the poor in a politically distorted environment, not much happens.

This sums up the nexus which binds the human rights movement and the global effort to fight poverty and, more importantly, offers succinct authentication for considering poverty as a violation of human rights.

Defining poverty as a human rights issue

Arjun Sengupta⁷ argues that human rights are legal rights with binding obligations on the duty-bearers, who are primarily the States.

This legality of rights and the binding nature of their obligations is the main attraction of claiming human rights. It underlines the importance of bringing the issue of poverty within the realm of the human rights movement, and defining freedom from hunger and poverty within the framework of human rights norms

⁵ Amartya Sen is a Professor of Economics at Trinity College in Cambridge, a citizen of India, and winner of the 1998 Royal Swedish Academy of Sciences Bank of Sweden Prize in Economic Sciences in Memory of Alfred Nobel, for his contributions to welfare economics.

⁶ Sen (1999).

⁷ Arjun Sengupta is a former Professor at the School of International Studies, Jawaharlal Nehru University, and currently an Adjunct Professor at the Harvard School of Public Health and Chairman of the Center for Development and Human Rights in New Delhi. He is also the former UN Independent Expert on the Right to Development, and current United Nations Independent Expert on Human Rights and Extreme Poverty.

and standards. It follows that, once the aforementioned are accepted as human rights, then they become legal rights and the State becomes a legal duty-bearer, charged with ensuring that its citizens are free from extreme hunger and poverty as demanded by the Millennium Declaration. Sengupta adds:⁸

The duty[-]bearers are primarily the states. They are supposed to be accountable for any failures to carry out their obligations and are expected to take remedial actions if their non-compliance with their duties is determined by an appropriate independent mechanism.

Hence, the theoretical advantage of placing the global poverty eradication effort under the realm of the international human rights philosophy is clear. It establishes a legal aspect to the fight against poverty and, most importantly, devises a duty-bearer in the form of the State. It is also important for jurists to establish a theoretical basis for defining poverty eradication as a human rights issue.

Taking a human rights approach to poverty is a path towards the empowerment of the poor. A background paper published by the Office of the High Commissioner for Human Rights (OHCHR) states that the modern-day challenge in the fight against poverty is to establish mechanisms which erode powerlessness and enhance the social capacity of the poor. The OHCHR advances the case for a human rights approach to poverty reduction as follows:⁹

When human rights are introduced in policy[-]making, the rationale of poverty reduction no longer derives only from the fact that the poor have needs but is based on the rights of poor peoples' entitlements that give rise to obligations on the part of others that are enshrined in law.

The OHCHR furthers the juristic approach to the eradication of poverty from a practical angle exemplified by empowerment. The argument is that defining poverty in a human rights context not only gives it a legal status and legal rights which can be claimed with respect to poverty, but also serves to empower the poor. Just as civil and political rights have, with the aid of the civil rights movement, empowered minorities and disadvantaged groups in the past, the components of a human rights normative framework can contribute to the empowerment of the poor in Africa.

⁸ Sengupta [Forthcoming].

⁹ OHCHR (2002).

The following is an account of the ‘evidence’ – first in political theory, then by international human rights law – that serves to advance our proposition that the issue of poverty can be defined as a human rights issue. By extension, failure by the State to intervene in curbing poverty becomes a violation of human rights. The medium which brings the aspects of poverty eradication and human rights together is *the inherent dignity of humankind*, which the State has a duty to protect as established by early political theorists. The protection of the inherent dignity of humankind is also entrenched in modern international human rights law.

Social and political theory

Jurists come across various political and social theories in search of jurisprudential concepts that form a good proportion of the basis for legal learning. In *Leviathan*, Thomas Hobbes¹⁰ advances the theory of the *social contract*. This is the contract between the citizen and the State, i.e. the body politic, in which the people advance from an anarchical ‘state of nature’ by handing over their instincts of self-preservation and, as such, mutually destructive powers to a central authority (the *Leviathan*) to enable the central authority to exercise the collective power for the benefit of the whole populace. Liberal analysis of the social contract theory stipulates that it is from this contract between man and State, that the latter derives its legitimacy. In return, the populace is entitled to certain fundamental rights and freedoms.

Like any contract, the social contract entails both rights and duties for both parties. As such, citizens have duties to fulfil as subjects, and have natural rights they should enjoy as human beings. Hence, the very legitimacy of the State is partially based on the ability of the citizens to enjoy certain basic rights. It is the proposition of this paper that no right could be more fundamental, basic or natural than the right to basic human dignity: a right recognised by the social contract, and which forms the basic ethos of the human rights philosophy. Hobbes, John Locke and Jean-Jacques Rousseau are the best-known proponents of this immensely influential theory, which has been one of the most dominant within the moral and political ambit. Rousseau, an influential 18th-Century

¹⁰ Hobbes (1998/1651).

political theorist, elaborates on the social contract (also referred to as the *social compact*) as follows:¹¹

The social compact sets up among the citizens an equality of such a kind, that they all bind themselves to observe the same conditions and should therefore all enjoy the same rights. Thus from the nature of the compact, every act of Sovereignty, i.e., every authentic act of the general will, binds or favours all the citizens equally; so that the sovereign recognizes only the body of the nation, and draws no distinctions between those of whom it is made up. It is legitimate, because based on the social contract, and equitable, because common to all; useful because it can have no other object other than the general good, and stable because it is guaranteed by the public force and the supreme power.

To retain its legitimacy, the sovereign must meet its obligations to the citizen, which include ensuring that the citizen is entitled to his or her fundamental rights. This includes the right to minimum standards of human dignity – which may, from one perspective, be interpreted as the right to be free from poverty and hunger. This is because poverty and hunger deny the citizen the ability to live within minimum acceptable standards of human dignity.

This brings out the equality dimension of liberal political theory. In reality, true equality is difficult to achieve, but the argument is that there should be a certain basic minimum standard available to all citizens to ensure that their lives are commensurate with the basic acceptable standards of human dignity. It follows that the right to basic human dignity entails the right to be free from poverty and hunger.

International human rights law

As members of the international community that recognise human rights and ratify treaties and covenants, all States and institutions take on the obligation of ensuring these rights.

Poverty has always been considered as a degradation of human dignity. Indeed, poor people lack the freedom to lead a life with dignity. International human rights law preserves and protects the inherent dignity of the human being and the states parties to international human rights treaties, particularly the Universal

¹¹ Boyd (1963).

Declaration of Human Rights (UDHR),¹² are obligated to preserve and protect the inherent dignity of their citizens. By logical abstraction, states parties to international human rights instruments such as the UDHR are obliged to take active measures to deal with all things which violate the inherent dignity of their citizens. Poverty and its consequences are, from a juristic perspective, some of the greatest hindrances to human dignity.

An analysis of the provisions of international human rights instruments which emanate from the forum of the UN reveals the express protection of human dignity and the protection of human beings from the derogatory conditions that are synonymous with poverty. The following sample of international human rights instruments portrays this position.

The UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) will be applied below to expound the international legal basis under which poverty can be viewed as a violation of human rights.

The Preamble to the UDHR is unequivocal about the need to preserve human dignity.¹³

The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

This is the root of the protection of inherent human dignity in international law as well as of the argument set forth herein that poverty is a violation of human rights because it deprives people of the capacity to live within the minimum acceptable standards of human dignity.

Article 22 of the UDHR stipulates the following:¹⁴

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

¹² Universal Declaration of Human Rights; adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948.

¹³ (ibid.).

¹⁴ (ibid.).

This provision fully portrays the aspect of multiple responsibility and approaches to ensuring human dignity by setting out certain minimum rights requiring pursuit through the concerted efforts of a wide spectrum of actors at national and international level. By preserving the right to social security, protecting economic, social and cultural rights – including the free development of the individual – and placing the onus for the fulfilment of these rights at the at both the national and international level, this provision of the UDHR cements the value of ensuring certain minimum standards of living for citizens by way of the use of State resources as a precursor to preserving human dignity. When poverty prevails, these minimum standards are out of reach. Therefore, any poverty alleviation effort needs to consider ensuring these basic rights as a cornerstone of its strategy.

Similarly, Articles 23, 25 and 26 of the UDHR address issues related to basic minimum living standards aimed at preserving human dignity, and similarly crucial to poverty eradication. In summary, the aforesaid articles of the UDHR demand that everyone has the following rights:

- Work
- A standard of living adequate for his health and well-being and that of his family, including food, clothing, housing and medical care, and the necessary social services, and
- Education.

In similar fashion, the International Covenant on Economic, Social and Cultural Rights (ICESCR) contains provisions which aim to preserve basic rights related to living standards.

Article 11(2) of the ICESCR states the following:¹⁵

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

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

¹⁵ Ghandhi (2002).

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

This goes to the heart of the juristic argument that poverty is a human rights issue, and that creating stable political and socio-economic structures in which respect for human rights related to ensuring minimum standards of human dignity are observed is a precursor to any credible poverty eradication strategy.

Furthermore, Articles 6, 7, 9, 12 and 13 of the ICESCR seek to preserve the following:

- The right to work and to enjoy just and favourable conditions at work, which ensure fair wages and equal remuneration for work of equal value.
- The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and
- The right to the highest attainable standard of physical and mental health.

Article 14(2) of CEDAW states the following:¹⁶

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counseling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

¹⁶ (ibid.).

The relationship between the rights of women and development vis-à-vis poverty eradication is well established. In developing countries, the burden of direct provision for the family in terms of basic necessities is predominantly carried by women. It is they that till the soil. Thus, the empowerment of women serves as a useful avenue to the achievement of poverty eradication goals and objectives. Hence, it is important that women are not denied a suitable environment for the creation of opportunities for the generation of income.

This means that women in developing countries should have similar access to capital as their male counterparts. This includes access to loans, membership of cooperatives, and equal treatment in land matters among other rights, as stipulated in CEDAW. To improve the position of women with respect to access to capital, the support for women's inheritance rights should be strengthened. As such, human rights non-governmental organisations (NGOs) in the developing world that promulgate women's inheritance rights should be applauded and given additional support by the international community. The argument here is that inherited property, such as land, serves as an asset that can be used to obtain investment capital and generate income and, in so doing, contribute to the eradication of poverty.

Furthermore, particular attention should be directed at the education of women as a means of raising their living standards, in conformity with minimum acceptable standards inspired by the inherent dignity of man – which the international community seeks to preserve and protect.

Preservation of the above rights under the various international instruments ensures minimum standards of living commensurate with human dignity. Hence, the fulfilment of these rights by States and the participation of the international community are an invaluable contribution to efforts aimed at eradicating extreme poverty and hunger as per the Millennium Declaration.

The People's Decade for Human Rights Education (PDHRE)¹⁷ asserts that the human right to live in dignity is a fundamental right and, more importantly,

¹⁷ Founded in 1988, PDHRE International is a non-profit, international service organisation that works directly and indirectly with its network of affiliates – primarily women's and social justice organisations – to develop and advance pedagogies for human rights education relevant to people's daily lives in the context of their struggles for social and economic justice and democracy. PDHRE's members include experienced educators, human rights experts, UN officials, and world-renowned advocates and activists who collaborate to

is essential to the realisation of all other human rights. The PDHRE specifies the particular rights that constitute the overall right to live in dignity. These include –

- the right to be free from hunger
- the right to live in adequate housing
- the right to safe drinking water, and
- the right to a healthy and safe environment.

These rights are not static and inelastic: they are fluid, interconnected, and interdependent.

Synergy between the efforts of different international institutions and other actors in the fight against poverty

Women, conflict and poverty

The Millennium Declaration resolves as follows:¹⁸

To promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.

The focus on gender in the poverty eradication effort is significant. Modern thinking demands improvement of gender equality as a means of reinforcing the development agenda. Women who have low levels of education and training, poor health and nutritional status, and limited access to resources have the

conceive, initiate, facilitate, and service projects on education in human rights for social and economic transformation. The organisation is dedicated to publishing and disseminating demand-driven human rights training manuals and other teaching materials, and otherwise servicing grass-roots and community groups engaged in a creative, contextualised process of human rights learning, reflection, and action. The PDHRE views human rights as a value system capable of strengthening democratic communities and nations through its emphasis on accountability, reciprocity, and people's equal and informed participation in the decisions that affect their lives. The PDHRE was pivotal in lobbying the UN to found a Decade for Human Rights Education, and in drafting and lobbying for various resolutions by the World Conference on Human Rights, the UN General Assembly, the UN Human Rights Commission, the UN Treaty Bodies, and the Fourth World Conference on Women.

¹⁸ UN General Assembly Resolution 55/2 at para. 20.

effect of reducing the quality of life of the entire population. This is because women are the driving force behind the family – the basic unit of the community. Discrimination against women then impairs other elements of development.

Different components of the human rights normative framework can contribute to the empowerment of the poor and provide useful poverty alleviation input. Women's rights are one such component. The empowerment of women is central to combating all manner of international scourges and the pursuit of developmental goals worldwide. The participation of women in mainstream development activity and poverty reduction strategies is essential. For this to take place, all factors which tend to discriminate against the participation of women in income-generating opportunities and other poverty reduction strategies need to be abolished.

In cases of genocide, war crimes and crimes against humanity, over which the International Criminal Court (ICC) has jurisdiction, women and children are the primary victims of inhumane and cruel acts, which are inextricably connected to armed conflict. Women are captured, raped and tortured. In recognition of this, the Rome Statute includes such acts of cruelty against women in defining *war crime* and *crime against humanity*.

In seeking to combat impunity, the Rome Statute seeks accountability to women for gender-specific offences that are expressly defined in it. In the past, treaties have failed to address crimes against women with the requisite specificity:¹⁹

Treaties have been drafted outlawing, in excruciating detail, everything from particular kinds of bullets to the destruction of historical buildings, while maintaining enormous silence or providing only vague provisions on crimes against women. Provisions are needed in international humanitarian law that take women's experiences of sexual violence as a starting point rather than just a by-product of war.

The experiences of the ad hoc tribunals for Rwanda and Yugoslavia have contributed greatly to the growing recognition for and action against crimes committed against women in armed conflict. This journey has culminated in the express definition of crimes of sexual violence being included in the Rome Statute. In a United Nations Development Fund for Women (UNIFEM) publication

¹⁹ Askin (1997).

entitled *Women, war and peace*, Elizabeth Rehn and Ellen Sirleaf capture the recent history of mainstreaming crimes against women into international law:²⁰

The campaign to end violence against women took root and gained momentum throughout the 1990's on the agendas of the UN World Conferences, from Vienna in 1993 to Cairo in 1994 to Beijing in 1995, where the principles for codifying international law on violence against women began to be recognized. Those principles were later tested in landmark decisions by the International Criminal Tribunals for the Former Yugoslavia and Rwanda and ultimately informed the definition of crimes of sexual violence included in the Rome Statute of the ICC.

The continued progress of bringing gender violence issues to the fore of international law now lies partly with the ICC. It is our hope that the gains already made will be tested and strengthened further in proceedings before the Court. Justice Theodore Morton of the International Criminal Tribunal for the former Yugoslavia (ICTY) echoed these sentiments:²¹

The crimes recognized by the ICC Statute, including the gender-specific offences, may well take on a life of their own as an authoritative and largely customary statement of international humanitarian and criminal law and become a model for national laws to be enforced under the principle of universality of jurisdiction.

In addition, post-conflict jurisdictions are normally devastated and the remaining populations stay destitute as a result of the destruction of assets and economic endeavour. Yet again, those who suffer the most are women, as they bear the onus of rebuilding their family structures. This is part of the ethos behind the establishment of the ICC's Trust Fund for victims of these atrocities, since it recognises the poverty scourge that is characteristic of post-conflict jurisdictions. Thus, in addition to seeking justice for the victims of genocide, war crimes and crimes against humanity (for which women suffer the most), the ICC recognises the poverty dimension. It is hoped that proceeds from the Trust Fund will help victims, particularly women, to have a fresh start to their lives by creating income opportunities which help to alleviate poverty.

Traditionally, reparations for violations of international humanitarian law are the subject of States, and are paid to States rather than to the individual. Now, however, important developments are taking place in this respect. The OHCHR

²⁰ Rehn & Sirleaf (2002).

²¹ (ibid.).

has appointed a Special Rapporteur on the right to reparations, and principles relevant to reparative remedies have been drafted by the Office of the High Commissioner for Human Rights.²² In fact, the *Draft basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*, if adopted as they are, will require the State to —²³

[p]rovide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

Also interesting to note in the above respect is that the Preamble to the *Draft basic principles* refers to a right to remedy for victims of violations of international human rights found in regional conventions, particularly the *African Charter on Human and Peoples' Rights* at Article 7, among other regional human rights instruments.²⁴ Article 75 of the Rome Statute of the ICC extends reparation rights to individual victims. Article 75, titled *Reparations to victims*, reads as follows:

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.
2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

²² (ibid.).

²³ Van Boven (2004).

²⁴ (ibid.).

4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.
5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.
6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

It is hoped that the proceeds from such reparations will go towards rebuilding efforts and, in so doing, inject some finance, however modest, towards re-establishing post-conflict economies.

Thus, two dimensions are recognised here by the goals of the ICC and the Trust Fund in relation to poverty alleviation:

- The first dimension, as argued above, is that the empowerment of women serves as a useful avenue to the alleviation of poverty because women in the developing world are the driving force of the family, the basic unit of society, and
- The second dimension is to seek justice for the victims of war crimes – the most ravaged group being women. Reparations for victims, as envisaged by the Rome Statute, are a key component of this quest for justice.

Convergence between international criminal justice and poverty alleviation efforts

The legendary philosopher, pacifist, and leader of the people of India, the late Mahatma Gandhi, saw the human being as a limited creature capable of cruelty, narrow-mindedness and violence. Indeed, this character or weakness is observed daily when we see women and children marching in their thousands across national borders trying to escape from violence and genocide. Such are the human weaknesses which make the world susceptible to breeding a culture of impunity. With this in mind, the international criminal justice system seeks justice for the victims of genocide, war crimes and crimes against humanity, with one of the intended outputs being deterrence against the culture of impunity.

The link is clear: impunity leads to armed conflict, which leads to anarchy, which in turn yields poverty. Nevertheless, we realise that this relationship between

impunity, conflict and poverty is not absolutely linear, and that each factor contributes to the other in some way. However, the experience of those involved in international criminal justice is that a poverty-stricken environment is always one of the most grievous outcomes of a post-conflict situation. As such, from the lens of transitional justice, dealing with impunity contributes to preventing the exacerbation of poverty brought about by armed conflict.

As stated earlier, the fight against poverty is itself a demonstration of respect for the inherent right to human dignity. A world community in which a culture of impunity is allowed to thrive will be characterised by gross contempt for human dignity. In tackling the problem of impunity through ad hoc tribunals, special tribunals and the ICC, the international community is effectively combating one of the triggers of poverty. Thus, the international criminal justice system should be viewed partly as an indirect actor in the effort to eradicate poverty. This would be in keeping with the collective responsibility with which the entire international community (including all international institutions) is charged by the Millennium Declaration.

Furthermore, it is agreed that poverty alleviation requires the creation of income-generating opportunities. History teaches us that armed conflict destroys the economic fabric of society and creates anarchy. It is impossible for income-generation activities to take place in an armed conflict situation. Having seen that a culture of impunity provides a breeding ground for armed conflict which yields poverty, it is arguable that the international criminal justice system, by deterring impunity, indirectly acts to prevent the destruction of stable socio-economic environments and, in so doing, helps to prevent the exacerbation of poverty.

A further area of convergence and synergy between international criminal justice and the global poverty eradication effort – keeping in mind that international criminal justice mechanisms are arms of the wider system of international law – is revealed by a conceptual analysis of *justice* in international law on the one hand, and economic and social justice on the other.

Any conceptual analysis of *justice* explores the ideals of equity and fairness. *Justice* in the international realm comprises a sense of horizontal equity between States, and vertical equity between States and their citizens. This is a conceptual

analysis of *justice* as viewed through the lens of international law. The same is expressed by Sengupta:²⁵

International law should concern itself with a just and fair relationship between the States, and the vertical relationship between the States and their citizens should be treated separately, through constitutional reforms within the sovereign states. But when the claims of equality of relationship are advanced in terms of human rights, such as the right to development, vertical relations also come within the purview of discussions.

If the equality of human rights relationships referred to by Sengupta include freedom from extreme poverty and hunger (and, by extension, the right to development), as we have experienced in our sample analysis of key international human rights instruments, the vertical equity conceptual aspect of justice in international law also encompasses the duty of States to take all necessary measures to free their citizens from hunger and poverty. Thus, in seeking justice from the perspective of international law, States are, by extension, simultaneously obliged to address the economic and social aspects of justice by fighting poverty.

This analysis reveals that, although all international actors in the global fight to eradicate poverty may pursue separate avenues and be inspired by various economic, social and political concepts which all contribute greatly to the fight, we are all intrinsically motivated by a desire to achieve justice. The international criminal justice system pursues legal justice for victims of crimes against humanity through international courts, while other international actors (more inclined towards scientific and economic approaches) seek economic and social justice for the world population through the implementation of poverty eradication programmes on the ground. Indeed, this idea of a common intrinsic motivation finds support in the Preamble to the Constitution of the United Nations Educational, Scientific and Cultural Organisation (UNESCO), which declares as follows:²⁶

The wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable for the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern.

The vertical equity relationship between States and their citizens, as sought by international human rights law and explored above, is similar to the Hobbesian

²⁵ [Forthcoming].

²⁶ Preamble to the UNESCO Constitution, which came into force on 4 November 1946 after ratification by 20 countries.

social contract. Hence, the common intrinsic pursuit of justice by various international actors (including the international criminal justice system and the poverty eradication movement) is visible both at the level of international law and within the sphere of political theory.

Responsibility of the State in poverty alleviation from a juristic perspective

Domestication of international human rights standards

A proposed new focus within the human rights framework itself would aid the fight against poverty and, in so doing, cement the human rights approach to poverty eradication. For decades, human rights advocacy has leaned more towards civil and political rights and less towards the sister economic and social rights. This is due partly to the impetus for democratisation and ending discrimination, which were major features of international affairs after World War II.

The 21st Century presents the international community with new challenges and new priorities. The human rights movement and the international community as a whole must, in keeping with new priorities espoused by the Millennium Declaration such as the eradication of extreme poverty and hunger, apply economic and social rights advocacy towards the reduction of poverty. The OHCHR supports such a renewed approach.²⁷

Recognition of the complementary relationships between civil and political rights on the one hand, and economic, social and cultural rights on the other, can strengthen as well as broaden the scope of poverty eradication strategies.

In expounding on the scope of the right to health, the Economic and Social Rights Committee – a body established by the ICESCR to monitor compliance by states parties with its provisions – says that –²⁸

[t]he right includes a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

²⁷ OHCHR (2002).

²⁸ (ibid.).

These underlying determinants go to the heart of the most crucial poverty-related problems, and would constitute part of an effective human rights approach to poverty eradication as well as support the arguments in favour of defining *poverty* as a violation of human rights.

Returning to the obligation of States to their citizens under international law and backed by political theory, the ICESCR demands that states parties take steps, utilising their maximum available resources, to progressively achieve the realisation of the rights contained in the Covenant by, among other initiatives, adopting appropriate legislative measures to this end. The duty to take steps constitutes an immediate obligation. The aspect of duties and obligations (to be performed by the State for the benefit of the citizen) attached to economic and social rights, which include factors central to poverty eradication such as the provision of food and clean water, provide a legalistic colour to the provision of basic human needs and, in so doing, support the juristic view of poverty as a violation of human rights.

Overall, the domestication of international human rights standards – civil and political, and economic, social and cultural – in the national legal systems of developing countries would create a suitable foundation for the generation of income opportunities and contribute to the alleviation of poverty, while reinforcing the juristic consideration of poverty as a violation of human rights.

Ratification of the Rome Statute and implementation of the necessary national legislation

The Millennium Declaration calls upon States to consider signing and ratifying the Rome Statute as part of their commitment to peace, security and disarmament. Looking at the Millennium Declaration holistically, a perspective is developed which portrays the different development goals and declarations in pursuit of those goals (e.g. peace, security and disarmament; development and poverty eradication; human rights democracy and good governance) as interlinked and interdependent.

Thus, the commitment to the theme of peace and security, for example, is not a commitment to the theme in itself, but a complementary commitment to the wider, more holistic goals of the Millennium Declaration, which includes

the pursuit and achievement of the other thematic goals such as development and poverty eradication. These portray the challenges facing the international community in the 21st Century in striving to make the world a better place for the entire human family.

Therefore, just as the commitment to peace, security and disarmament is complementary to the goal of development and poverty eradication, the signing and ratification of the Rome Statute is a correlative and facilitative pathway to the achievement of both poverty eradication and the aforesaid wider objective.

More directly, the ratification of the Rome Statute and the implementation of relevant legislation in national legal systems provide a stable platform for transitional justice, and deal a fatal blow to the culture of impunity which is the cause of international armed conflict, characterised by genocidal ambivalence, within the remit of the ICC. To belabour the point, transitional justice in the developing world contributes to peace, stability and the rule of law – which are the ingredients of a suitable income-generation environment that, in turn, is crucial to the eradication of poverty and hunger.

The substance of this paper poses certain fundamental questions worth pondering. What part can jurists play in the fresh impetus to eradicate poverty, as embodied in the Millennium Declaration? What is the role of the international criminal justice system in these efforts? Just as justice is fundamental to the widening of democratic space, it is equally important to bridging the poverty gap. The international criminal justice system will play its role in contributing to these efforts by adhering to the principles of zero tolerance for impunity and delivering justice to the victims of genocide, war crimes and crimes against humanity.

The international criminal justice system recognises that impunity breeds violence, which destroys the environment for income-generation and, thus, exacerbates poverty. This is why the Preamble to the Rome Statute recognises that grave crimes threaten the peace, security and well-being of the world, and is determined to put an end to impunity for the perpetrators of these crimes.

The Millennium Declaration further resolves to –²⁹

²⁹ UN General Assembly Resolution 55/2 at para. 12.

[c]reate an environment at the national and global levels alike – which is conducive to development and to the elimination of poverty.

In so doing, the Declaration recognises the importance of international systems that, through various aspects and initiatives, contribute to dealing with the causes, triggers and aggravators of poverty. International criminal justice mechanisms seek justice and deter impunity – a cause of conflict and, thus, an aggravator of poverty. This recognition, coupled with the plea to ratify the Rome Statute in the Millennium Declaration, inspires an increasing convergence of thought, effort and interaction between the spheres of international criminal justice and economic development.

Conclusion

Poverty is a violation of human rights because States are obligated, under international human rights law and the social contract from which the State derives its legitimacy, to remove the impediments to the enjoyment of resources required to sustain a standard of living commensurate with the minimum acceptable level of human dignity. The consequences of poverty deny the citizen a standard of living commensurate to his or her inherent dignity. Thus, a human rights approach to poverty eradication has a strong foundation both in theoretical dimensions and at a practical level.

The OHCHR argues for the active participation of the poor in poverty reduction strategies, in keeping with the right of citizens to participate in decision-making. In arguing for such participation, the OHCHR provides a linkage between poverty reduction and human rights, arguing that the poor –³⁰

[m]ust be free to organize without restriction (right of association), to meet without impediment (right of assembly), and to say what they want without intimidation (freedom of expression); they must know the relevant facts (right to information) and they must enjoy an elementary level of economic security and well-being (right to a reasonable standard of living and associated rights).

In so doing, all persons will enjoy the basic rights and freedoms that enable them to participate in the conduct of public affairs and decision-making. This ultimately involves the distribution of resources key to the alleviation of poverty.

³⁰ OHCHR (2002).

Thus, not only is poverty itself a violation of human rights, but the key to its alleviation lies in the conferment and entrenchment of fundamental rights and freedoms in developing nations.

Considering poverty as a violation of human rights is not merely a theoretical endeavour: the output of such consideration addresses the specific issue of the lack of sufficient quantities of basic necessities. Once poverty is well established as a violation of human rights, resultant advocacy will pursue the attainment of basic necessities by advocating for the right to food, the right to health, the right to education, and so on. In so doing, the human rights movement will be contributing directly and substantially to the global effort to eradicate extreme poverty and hunger, as resolved in the Millennium Declaration.

Therefore, through the construction of poverty reduction as a positive human rights obligation, the adoption of a rights-based approach to development and support for international criminal justice, the UN has accelerated efforts to advance human dignity, particularly on the African continent, which is most affected by the scourge of poverty.

References

- Askin, Kelly Dawn. 1997. *War crimes against women: Prosecutions in international war crimes tribunals*. The Hague: Kluwer Law International.
- Boyd, W. 1963. *The educational theory of Jean Jacques Rousseau*. New York: Russell & Russell.
- Ghandi, PR (Ed.). 2002. *Blackstone's international human rights documents* (Third Edition). 2002). London: Blackstone Press.
- Hobbes, Thomas. 1998 [1651]. *Leviathan*. Edited by JCA Gaskin. New York: Oxford University Press.
- OHCHR/Office of the High Commissioner for Human Rights. 2002. "Human rights, poverty reduction and sustainable development: Health, food and water". Unpublished paper for the World Summit on Sustainable Development, Johannesburg, September 2002.
- Rehn, Elizabeth & Ellen Sirleaf. 2002. *Women, war and peace: The Independent Experts' assessment on the impact of armed conflict on women and women's role in peacemaking*. New York: United Nations Development Fund for Women.

- Sen, A. 1999. *Development as freedom*. Oxford: Oxford University Press.
- Sengupta, A. [Forthcoming]. "Poverty eradication and human rights". In Pogge, Thomas (Ed.) "Severe poverty as a human rights violation". New York: United Nations Educational, Scientific and Cultural Organisation.
- Van Boven, Theo. 2004. *Draft basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. Third Consultative Meeting, Geneva 29 September to 1 October 2004*. Geneva: Office of the High Commissioner for Human Rights.