



Food and Agriculture  
Organization of the  
United Nations

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# The role of law in the reduction of rural poverty

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Towards leveraging  
legal frameworks

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## FOREWORD

The reduction and eventual elimination of poverty takes centre stage in the Sustainable Development Goals (SDGs) that countries have pledged to achieve by 2030. Many of the goals and targets have a lot to do with the overall mission of the Food and Agriculture Organization of the United Nations (FAO) to end hunger and poverty. In fact, one of the strategic objectives of the Organization is to reduce rural poverty, by strengthening the capacity of countries “to design, implement and evaluate gender equitable multi-sectoral policies, strategies and programmes to contribute to the achievement of SDG 1”. This is particularly relevant to some of the indicators under SDG 1, which include ensuring equal rights to economic resources, ownership and control over land and other forms of property and natural resources, and access to basic services, appropriate new technology, finances and social protection systems.

Considering the importance of legal frameworks in laying down governance and accountability frameworks, clarifying the responsibilities of relevant public and private entities and defining the long term and budgetary commitment of states, the capacity of countries to formulate, adopt and enforce laws in pertinent areas is crucial to reducing rural poverty. Most countries have signed up to international and regional legal and policy instruments that are of relevance to rural poverty. Many countries have also adopted some form of policies and legislation in relevant areas. However, a number of normative, institutional and operational challenges exist in different countries. These include regulatory gaps in some areas such as social security for agricultural workers; the existence of laws that sustain discriminatory practices, for example, in relation to inheritance of property; and inconsistencies in norms and institutional mandates in the area of natural resource governance. Even where there are relatively good laws, their practical implementation may be wanting due to limitations of capacity to implement them or lack of awareness to make use of them. These problems would require a range of measures on the part of state and non-state actors, including the adoption or revision of laws as well as awareness-raising and legal empowerment.

The present legal paper explores the significance of legislative frameworks to poverty reduction efforts, with a particular focus on human rights. The paper highlights sectoral areas for legislative intervention and identifies normative, procedural and institutional challenges that states encounter while implementing poverty reduction programmes. It further refers to examples from state practice and provides recommendations on how relevant actors can make use of legislation to address rural poverty.

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The research for the paper was undertaken by Professor Danwood Chirwa of the University of Cape Town, under the supervision of and with substantive inputs from Margret Vidar and Sisay Yeshanew. Anastasia Clafferty was responsible for editing and layout. Thanks go to the researcher, the supervisors and the editor of this paper.



## ACRONYMS AND ABBREVIATIONS

CESCR	UN Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
ETO	Extra Territorial Obligations (Consortium)
FAO	Food and Agriculture Organization of the United Nations
ICCPR	International Covenant on Civil and Political Rights
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
IMF	International Monetary Fund
LIETI	Liberia Extractive Industries Transparency Initiative (Act)
MDI	Multidimensional poverty index
NGO	Non-governmental organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
SDG	Sustainable Development Goal
SERAC	Social and Economic Rights Action Centre
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
USD	ISO Currency Code of the United States of America



## 1. INTRODUCTION

The eradication of poverty presents one of the most pressing human rights challenges of our time. While statistics indicate that the number of people living in poverty has decreased in the last two decades, a significant proportion of the world's population is still trapped in poverty. By some estimates, about 2.2 billion people live in poverty, 76–80 percent of which live in rural areas. An estimated 10 percent of the global population lives in extreme poverty, mostly in the rural areas of low-income and lower middle-income countries (World Bank, 2018).

The high preponderance of rural poverty has led the Food and Agriculture Organization of the United Nations (FAO) to adopt the reduction of rural poverty as one of its main strategic objectives. The work of FAO under this and other objectives feeds into the international community agenda as part of Transforming Our World: the 2030 Agenda for Sustainable Development, especially Sustainable Development Goal (SDG) 1, which is to “end poverty in all its forms everywhere”. In an effort to contribute towards the realization of this goal, FAO established the corporate Framework on Rural Extreme Poverty to orient its relevant work (FAO, 2019). FAO has also developed studies and guidance materials with a view to strengthening the capacity of countries “to design, implement and evaluate gender equitable multi-sectoral policies, strategies and programmes to contribute to the achievement of SDG 1” (De la O Campos *et al.*, 2018). The investigating of the role of law in facilitating poverty reduction, especially in rural areas, is part of these exercises.

There is a dearth of literature that explores the significance of law, especially human rights and legislation, to poverty reduction efforts. This is despite the fact that economic, social and cultural rights have increasingly gained domestic and international recognition (Chenwi and Chirwa, 2016; Langford, ed., 2008). This research is an attempt to fill this gap by investigating four major questions. The first is: what role can legislative frameworks play in efforts to reduce rural poverty? In answering this question, the paper seeks to highlight the crucial role that legal frameworks play, or can play, in shaping long-term commitments of states, clarifying the responsibility of relevant public and private entities, and putting in place accountability frameworks, and to demonstrate how this is relevant to poverty reduction and the achievement of SDG 1. The second question is: what sectoral areas are amenable to the use of legal interventions? Answering this question involves an analysis of SDG 1 and other SDGs and an exploration of state practices on the legal measures on poverty in the sectoral areas highlighted by the SDGs. The third question concerns the legal, normative, procedural and institutional challenges that states encounter while implementing poverty reduction programmes. The fourth question involves a discussion of the legislative and institutional measures that can be taken to address the gaps, weaknesses and inconsistencies identified by the paper.

Entirely desktop based, this paper drew on a wide range of reports on global poverty, including the reports of the World Bank, the United Nations Development Programme (UNDP), FAO, the International Labour Organization (ILO) and various human rights monitoring bodies and procedures. To understand the nature of poverty and suitable solutions, recourse was had to the literature that discusses the causes of poverty and that explores the link between poverty and the law – literature was limited for the latter. As to identifying the key approaches that states have used to combat poverty, the paper benefitted from the database of the International Monetary Fund (IMF) on poverty reduction strategies (IMF, 2016), as well as secondary literature. The FAO and ILO databases

(FAOLEX and NATLEX respectively)<sup>1</sup> on state policies and laws in the areas of food, agriculture, labour and human rights, also proved very useful.

It is hoped that this legal paper will be beneficial to: policy and law-makers in the countries that implement poverty reduction measures; international and domestic experts who provide technical legal support in pertinent areas; international development assistance practitioners and officials who are directly or indirectly involved in the technical and practical aspects of reducing poverty; and civil society organizations implementing poverty reduction programmes or advocating for pro-poor legal reform. The aim of the paper is to enable all these actors to appreciate the relevance of legal frameworks and leverage legislative measures in their work.

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<sup>1</sup> FAO FAOLEX database is available at: <http://www.fao.org/faolex/en/>; and ILO NATLEX database is available at [http://www.ilo.org/dyn/natlex/natlex4.home?p\\_lang=en](http://www.ilo.org/dyn/natlex/natlex4.home?p_lang=en)

## 2. UNDERSTANDING THE CONCEPT OF RURAL POVERTY

### 2.1 Defining poverty

The term 'poverty' does not lend itself to easy definition, partly because poverty is a relative condition and, as a result, the determination of the poor across disparate societies living under different circumstances is extremely difficult (UNICEF, 2005). However, attempts have been made to define the term. Initially, poverty was largely viewed as a lack of sufficient income to buy goods and services (CESCR, 2001). This approach has been much criticized, not least for failing to take full account of the complex condition of poverty and human well-being (Reddy and Pogge, 2005). Due in part to the influential work of economic theorist Amartya Sen (1985, 1999), poverty is now widely seen as a complex condition that has both monetary and non-monetary dimensions. Seen in this way, poverty is not just about lack of income or capacity for consumption but also about constraints on human capacities and functioning: it signifies multiple interlocking deprivations.

This broad understanding of poverty is reflected in the Declaration of the World Summit on Social Development held in 1995 in Copenhagen where it was agreed that:

Poverty has various manifestations, including lack of income and productive resources sufficient to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion. It is also characterized by a lack of participation in decision-making and in civil, social and cultural life. (World Summit for Social Development, 1995)

Such an understanding has also been endorsed by the United Nations Committee on Economic, Social and Cultural Rights (CESCR), which has said that poverty is a "human condition characterised by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights" (CESCR, 2001, p. 2). The World Bank, which is known for the income-based definition of poverty, also accepts this more nuanced definition of poverty. The World Bank now demonstrates a multidimensional understanding of poverty as pronounced deprivation of human well-being based on a lack of basic human necessities (food, water, shelter and clothing); lack of access to basic education; lack of primary healthcare; lack of security and protection against discrimination; lack of freedom from violence; and lack of freedom to decide (Beegle *et al.*, 2016). Similarly, UNDP's human development index and multidimensional poverty index use the capabilities approach to poverty and has hence developed indices covering achievements in health, living standards and education.<sup>2</sup> FAO also uses the multidimensional indices of extreme poverty in addition to monetary-based measurements that are adopted in SDG 1, Target 1.1 (FAO, 2019). SDG indicator for Target 1.1 is based on a monetary definition of poverty, using a threshold established by the World Bank.

From this discussion, it can be deduced that rural poverty refers to a condition where rural people experience lack of income and a broad spectrum of intersecting deprivations which

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<sup>2</sup> See UNDP's human development reports, available at <http://hdr.undp.org>

prevent them from satisfying basic human needs, constrain their life choices and render them vulnerable to abuse, exploitation and marginalization.

## 2.2 The prevalence and distribution of rural poverty

While statistics reveal a significant decrease in poverty worldwide over the last decade or so (World Bank, 2016), the total size of the global population that remains in poverty is still appallingly high, whether one uses income or multi-dimensional determinants of poverty. According to the World Bank, the number of people living below the poverty mark of USD 1.90 a day stood at 736 million in 2015 (World Bank, 2019). According to UNDP's 2018 Global Multidimensional Poverty Index, 1.3 billion people live in multidimensional poverty, almost half of which – 46 percent – in severe poverty (UNDP, 2018).

Statistics on the proportion of the poor who live in rural areas vary but show nevertheless that the majority of the poor is composed of rural dwellers. For example, UNDP (2014) estimates that 76 percent of the poor live in rural areas, while the World Bank (2016) puts the proportion at 80 percent. Most of the rural poor are agricultural workers, constituting up to 64 percent of the poor (World Bank, 2016). Some are involved in subsistence farming or wage agricultural work, while others depend on forestry, fisheries and related activities for survival (De la O Campos *et al.*, 2018, pp. 12–29; Anriquez, 2007; FAO, undated; European Commission, 2008). Economically, the rural poor tend to have limited access to social services and credit facilities and “are caught in intractable cycles of low productivity, seasonal unemployment and low wages” (UNDP, 2014). Among other things, the rural poor live in remote areas that lack technological and other infrastructure; they lack access to land and natural resources or enjoy insecure land tenure; and they are socially marginalized (De la O Campos *et al.*, 2018, pp. 24–27).

Poverty disproportionately affects women, children, people with disabilities, refugees, internally displaced persons, the elderly, ethnic minorities and indigenous groups (United Nations Secretary General, 2009; Commission on Legal Empowerment of the Poor, 2008). Orphaned children and female headed households are particularly affected by poverty in developing countries. In 2012, about 3.5 million children in Africa were two-parent orphans, while 28.6 million children were single-parent orphans (World Bank, 2016). While at the regional level, 26 percent of all households are female-headed, in southern Africa, that proportion rises to 43 percent (Beegle *et al.*, 2016). About 15 percent of the poor are people with disabilities (UNDP, 2014). According to the United Nations (UN), older persons in sub-Saharan Africa and Asia are more likely to be poorer than younger people (UN, 2015).

## 2.3 Causes and effects of poverty

Just as perceptions of who is poor are numerous and differ from place to place, causes of poverty are many and vary widely. As a result, factors contributing to poverty in one nation, or even in one part of a country, might not be necessarily the factors accounting for the incidence of poverty in another (part of a) nation. Even in countries with similar conditions, the factors causing poverty differ. For instance, if lack of food is a contributing factor to poverty, in some countries it might be due to conflict, in others it might be due to climate change, while in others it might be due poor policies and inequitable access to land. Thus, for efforts to eradicate poverty and to address root causes of poverty, they must be informed by a careful consideration of the context in which it occurs. This does not mean that the causes and effects of poverty are wholly localized. In a vastly globalized context, actions and omissions of one or more states can have a significant impact on poverty in

other countries. For example, the collapse of the housing bubble in the United States of America experienced in 2008, and the economic repression it precipitated, eventually caused considerable economic stress in developing countries including job losses and contraction of economies (UN, 2010a). As the causes of poverty tend to be systemic and institutionalized by law, culture, tradition, usages and practices that operate and intersect at all levels – local, national, regional and international – solutions to poverty have to be located in both their broader and localized contexts.

Bearing the above in mind, the causes and effects of poverty can be grouped under four broad categories: economic, political, social, and environmental (see Shepherd and Brunt, eds, 2013; Adde-Korankye, 2014). The causes and effects of poverty interrelate greatly given that poverty is a vicious cycle in which the factors that cause poverty constitute the multiple intersecting deprivations that reproduce and sustain the condition of poverty.

Economic causes of poverty include slow economic growth and development, unfair trade, poor infrastructure, lack of industrialization, inadequate natural and other resources. In turn, poverty slows economic growth and the poor often lack access to employment, markets, energy, and basic infrastructure such as roads and communication (Jalan and Ravallion, 2000; Akindola, 2010; Pouliquen, 2000). Political causes of poverty include unequal political power, poor governance, the absence of the rule of law, internal and international conflicts, corruption, poor and inadequate policies, and policy implementation deficits (Tilly, 2007). On the other hand, the poor experience political exclusion, powerlessness, lack of access to justice and lack of voice (Akindola, 2010). Social causes of poverty include illiteracy, discrimination, and negative cultural and traditional beliefs about gender, identity, authority and social roles. In turn, poverty limits access to education, inhibits full expression of one's identity and renders people vulnerable to abuse, violence, enslavement and exploitation. Environmental causes of poverty include high population density, shortage of fertile land, climate change and environmental disasters such as floods, droughts, drying of water sources and earthquakes, all of which disrupt agricultural production and other forms of livelihoods (Redclift, 2010). In turn, poverty renders its victims more vulnerable to environmental and natural disasters partly because the poor tend to live in areas that are more prone to disasters and lack the means of escaping from, or insuring themselves against, such disasters (Hallegate *et al.*, 2017; Lal, Singh and Holland, 2009)

### 3. THE ROLE OF LAW IN POVERTY REDUCTION

#### 3.1 Law's potential role

This Section seeks to demonstrate the links between poverty and human rights and to highlight the important role that the law can play in efforts to combat poverty. Although discussed under separate sub-headings, the various roles identified below overlap and interrelate significantly. The limits of the law are briefly discussed under Section 3.2, including its potential to be used to sustain power imbalances.

##### 3.1.1 The significance of human rights to poverty eradication

As the discussion of the definition of poverty has shown, poverty constitutes a composite denial of human rights. To the extent that poverty represents multiple deprivations linked to the basic means of human survival and flourishing, the implementation of economic, social and cultural rights is pivotal to combating poverty (Alston, 2005). When the poor have access to the necessities of life such as water, food, housing and education, they can live in dignity and acquire the capabilities for autonomous decision-making, including to pursue a livelihood of their choice and to participate in the socio-economic and political life of their societies. Conversely, poverty stands in the way of the full realization of economic, social and cultural rights. One cannot enjoy the right to education, the right to an adequate standard of living, or the right to adequate housing if he or she lacks the means of providing for himself or herself.

The link between poverty and human rights stretches beyond economic, social and cultural rights. As Alston (2005, pp. 778–789) and Van Bueren (1999, pp. 53–54) respectively argued, “poverty does not subdivide neatly into separate rights”, and “there is no single right which protects against poverty, because by its very nature, poverty alleviation requires holistic solutions.” Poverty has an exclusionary effect. As the poor are rendered voiceless and marginalized or lack the means to participate effectively in economic and political spheres of their societies, the condition of poverty signifies a denial of civil and political rights. It follows that the implementation of civil and political rights is vital to the fight against poverty (Van Bueren, 2010). For example, such rights as the right to just and fair administrative justice can be used to challenge unfair decisions by public authorities administering welfare benefits, while political rights can facilitate the involvement of the poor in decisions that affect them in public decisions which could result in pro-poor policies.

In short, both civil and political rights and economic, social and cultural rights are critical to ending poverty. As Alston (2005) has argued, the realization of both sets of rights can create “synergies that contribute to poor people’s securing their rights, enhancing their human capabilities and escaping poverty”. These synergies can be achieved by recognizing the inter-connections between, and the inter-dependence and indivisibility of, all human rights. At a policy level, this would require states to consider possible and actual impacts of their policies on all sets of rights, or that public decisions, actions and policies are informed by all these rights. At the level of judicial enforcement, leveraging synergies between rights would require the courts, within the scope allowed by their respective constitutional frameworks, to interpret and enforce their bills of rights holistically, taking full account of the context in which they are applied, in order to resolve issues of socio-economic and political exclusion fully.



### 3.1.2 Poverty eradication as a binding legal obligation

The immediate consequence of problematizing poverty as a human rights issue is that the question of combating poverty is no longer dictated by considerations of politics alone. Rather, combating poverty is transformed into a binding human rights obligation. This has radical ramifications. For one thing, it transforms the relationship between the poor and the state and other political and social institutions. The poor are no longer considered beneficiaries of charity, good will and generosity. They are instead recognized as bearers of legal rights and entitlements to whom legal obligations are owed. Legal obligations elevate the poor to the position of rights holders who can enforce their rights and demand accountability from duty bearers, and relegate the state and other actors to the status of duty bearers who are obligated to respect and ensure the implementation of human rights and to be held accountable for such implementation. A human rights-based approach to development requires that development interventions advance the rights of the intended beneficiaries and facilitate the fulfilment of the obligations of duty bearers through inclusive, participatory and transparent processes, supported by appropriate accountability mechanisms.

Seen in the above sense, human rights, as Van Bueren (2010) has argued, “establish a culture of continuing justification for areas that had been previously relegated to a largely unfettered political arena”. The advantage of legal obligations over political commitments is that they can be more durable than political commitments which can change according to the vagaries of political priorities. In addition, legal obligations can be enforced by the courts and bind successive governments irrespective of change in the political landscape (Tomasevski, 2006).

The obligations that flow from human rights arise from domestic constitutions and laws and from international law. They primarily bind states individually within their territories and jurisdiction (UNGA, 1966, Art. 2), or in territories under their effective control.<sup>3</sup> Increasingly, international law is recognizing extra-territorial obligations of states, especially the duty not to violate the rights of individuals and groups in other states, the duty to cooperate with other states, and the duty to provide international assistance.<sup>4</sup> The SDGs represent an effort by states to fulfil their territorial and extra-territorial human rights obligations.

### 3.1.3 Protection of existing access

Traditionally, the law has played the important role of protecting the rights of individuals from being violated. In outlining this traditional conception of freedom, Berlin (2006, p. 369) famously said: “you lack political liberty or freedom only if you are prevented from attaining a goal by human beings. Mere incapacity to attain a goal is not lack of political freedom.” In the minimalist traditional sense of the role of law mentioned above, human rights serve as “trumps against collective goals”, as Dworkin (1984) would put it, or serve as a counter-weight to majoritarian public decision making.

<sup>3</sup> See *Nicaragua v United States of America*, 1986; *Prosecutor v Tadic*; and *Issa & Others v Turkey*, 2004.

<sup>4</sup> See Art. 2(1) of the ICESCR, 1966; Art. 4 of the General measures of implementation of the Convention on the Rights of the Child, 2003; and the preamble and Art. 21 of the African Charter on Human and Peoples’ Rights (African Charter), Organization of African Unity, 1981. See also the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, ETO Consortium, 2011; De Schutter, *et al.*, 2012; Gibney & Skogly, eds, 2010; and Langford *et al.*, eds, 2012.

The idea of “rights as trumps” means that all public policies including anti-poverty measures, however benevolent, should be developed and implemented without unfairly and unjustifiably undermining the rights of individuals or groups. Crucially, the law must protect existing access to public and private goods and services such as land, pasture, water sources, food, education, social security and health care. This function of the law emanates from the duty to respect human rights, which requires the state and other relevant actors to refrain from interfering with the enjoyment of human rights. In various general comments, the CESCR has popularized the duties to ‘respect, protect, promote and fulfil’ human rights. This typology was preceded by Henry Shue’s seminal work on ‘subsistence rights’ published in 1980, in which he argued that every basic right entails three duties: ‘to avoid depriving’, ‘to protect from deprivation’, and ‘to aid the deprived’ (Shue, 1996). This classification of duties was adopted and refined by Eide (1987), who termed these duties the duty to ‘respect’, ‘protect’ and ‘fulfil’.

The duty to ‘respect’ applies even where access to basic goods and services is provided by the state. As the CESCR has said, the withdrawal of such access could constitute an unacceptable retrogressive measure if it is not justified (CESCR, 1990), such as by showing that the retrogressive measure is reasonable, that alternative measures have been considered and made available, that those affected by the measure have been consulted, and that the impact of such a measure on the realization of the rights in question is not too severe (CESCR, 2007 and CESCR, 2008). If the retrogressive measures are being justified on the grounds of lack of resources, their justification will depend on the level of development of the state concerned, the extent of the breach, especially if it relates to the minimum core of a right, competing claims on the state’s resources, and the state’s efforts to find alternative options and seek international co-operation and assistance.

#### **3.1.4 Protection from third parties**

The protective function of the law does not only attach to acts of the state: it also extends to acts of non-state actors, both directly and indirectly. The state is obligated both to refrain from interfering with the enjoyment of rights and to protect individuals from violations of rights that may be committed by third parties, and where the violations by third parties have already been committed, to provide avenues for redress. In *Velásquez Rodríguez v Honduras* (1988), the Inter-American Court of Human Rights held that a human rights violation which is initially not directly imputable to a state can lead to international responsibility of the state “not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it” (*Velásquez Rodríguez v Honduras*, 1988, para 172). According to the Court, the due diligence obligation is in effect a duty to “take reasonable steps” to prevent and seriously investigate abuses committed within a state’s jurisdiction, to identify those responsible, and to impose appropriate punishment or provide adequate compensation to victims.

While in *Velásquez Rodríguez v Honduras*, Honduras was found responsible for its failure to prevent and effectively investigate the disappearances of a considerable number of its citizens, in *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria*,<sup>5</sup> Nigeria was found responsible for failing to regulate oil companies whose activities had caused environmental pollution resulting in health complications among the Ogoni population

<sup>5</sup> For another example, see *Sudan Human Rights Organization and Another v Sudan* (2009) AHRLR 153 (ACHPR 2009).

(AHRLR 60). Similarly, in *Guerra v Italy* in 1998,<sup>6</sup> Italy was found responsible for failing to protect its people from toxic emissions and an explosion from a fertilizer factory which adversely affected more than 150 people living within the vicinity of the factory (ECHR 7; 26 EHRR 357). Both SERAC and *Guerra* demonstrate that development initiatives can have a negative impact on the rights of some people and highlight the need for states not to compromise the rights of the people for the sake of development.

In addition to the due diligence obligation of states defined above, domestic constitutions and international law are increasingly also imposing human rights obligations on non-state actors. At the domestic level, this is being done mainly through the recognition of the horizontal application of constitutional rights,<sup>7</sup> or by the courts using human rights provisions in the interpretation and development of private law – in Germany, this is called the ‘third-party effect of basic rights’ and has been adopted by a number of other countries including Italy, Spain, Switzerland and Japan, and the European Court of Human Rights (see Barak, 1996; Clapham, 1993; and for Japan, see Horan, 1976). At the international level, the resolutions on Human Rights and Transnational Corporations and Other Business Enterprises (Res26/22 and Res35/7) of the UN Human Rights Council have underlined that while the primary obligation to promote and protect human rights lie with the state, transnational corporations and other business enterprises have the responsibility to respect human rights. The notion of human rights responsibilities of non-state actors can be used to address abuses of power in the private sphere such as between corporations and communities, employers and employees, men and women, or adults and children.

### 3.1.5 Protection of individual and collective identity

One of the core functions of the law is the protection of individual and collective identity. The right to identity is a fundamental composite human right that provides the foundation for the recognition of the individual as an autonomous human being with legal personality, rights and duties. According to Van Bueren (1995, p. 117), “an individual’s identity is at root an acknowledgement of a person’s existence: it is that which makes a person visible to society”. A range of rights protects individual identity, including the rights to be registered at birth, to a name and nationality, to know and be raised by one’s parents, and to a nationality. The law also recognizes that identity can be shared and individual identity sometimes makes sense only in relation to collective identity. This is recognized largely through non-discrimination and equality provisions, which proscribe unfair and unjustified discrimination based on characteristics such as race, gender, ethnic or social origin, religious affiliation or opinion, disability, birth status and sexual orientation; the right to participate in cultural activities of one’s choice; and the rights of minorities and indigenous groups.

Individual and group identity is relevant to poverty reduction efforts because empirical evidence shows that some groups of people such as woman, children, minorities, indigenous peoples, persons with disabilities, older persons and rural dwellers are particularly prone to,

<sup>6</sup> For another example, see *López Ostra v Spain* (1994) 303-C ECHR (ser A) 41; 20 EHRR 277.

<sup>7</sup> See the Constitutions of Cabo Verde (Art. 18), the Gambia (Section 17), Ghana (Art. 12(1)), Kenya (Art. 20(1)), Lesotho (Section 4(2)), Malawi (Section 15(1)), Namibia (Art. 5), and Uganda (Art. 20). In other countries such as Ecuador (Art. 83), Dominican Republic (Section 75), and Colombia (Section 95), the constitution imposes obligations on citizens or individuals to respect the constitution and human rights. European Court of Justice has held that the human rights provisions of the Treaty of Rome such as Article 7 apply to private organizations and employers – see *Walrave v Association Union Cycliste Internationale* (1974) E.C.R. 1405; and *Defrenne v Sabena*, (1976) E.C.R. 455.

and disproportionately affected by, poverty (see Section 2.2). This is indicative of the failure to implement the identity rights mentioned above and other relevant rights. The failure to protect identity rights may be manifested in different ways. These include the absence of identification documents, such as identity cards and birth certificates, which impairs access to services and support to the poor, particularly indigenous peoples, minorities and immigrants, in many developing countries. Without such documents, the poor would have difficulty having access to needed goods and services. The non-issuance of identity documents could therefore lead to secondary violations such as socio-economic and political exclusion, prejudice, violence, abuse, sexual and economic exploitation, enslavement and displacement.

The link between identity and secondary violations of human rights was recently underlined by the African Committee of Experts on the Rights and Welfare of the Child in *Institute for Human Rights and Development in Africa and Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) v Kenya* (Decision No. 002/Com/002/2009). In this communication, it was alleged that Kenya had, since gaining independence from Britain, denied the Nubians living in Kenya citizenship as it considered them to be aliens who did not own any ancestral lands in Kenya. These Nubians are of Sudanese origin but were forcibly conscripted into the British army in the early 1900s and brought to Kenya, resettled in Kibera, and refused repatriation by the colonial government. Since gaining independence, Kenya had refused to register at birth, children of Nubian descent, to recognize them as Kenyans, or had subjected them to cumbersome application procedures for nationality. The African Committee of Experts found that Kenya's treatment of these children was discriminatory, and that Kenya was liable for the consequential violations that these children suffered, such as lack of access to health care and educational facilities, as a result of lack of documents to prove their birth and nationality.

Implementing the right to identity in terms of avoiding exclusion and enabling individuals to access services would require taking legislative and other measures to put in place a system of registration of all people in a country or all the beneficiaries of a programme. The Brazilian social welfare system called *Bolsa Familia* was accompanied by a massive registration effort to identify and reach poor Brazilian families with financial and other forms of aid. In India, the identification of households eligible to receive food-grains at subsidized prices or under the targeted public (food) distribution system is based on a system of registration, including the definition of the oldest woman in a household as the "head of household" for the purpose of the ration cards.

### **3.1.6 Legal empowerment of the poor**

The marginalization of a group of people not only prevents them from contributing meaningfully to their societies but also denies them equal access to the opportunities and public resources necessary for them to maintain a livelihood. The law has a critical role to play in ensuring that the poor are empowered to pursue their freely chosen livelihoods, to participate in public decision making, and to claim and enforce their rights and other legal interests. According to the Commission on Legal Empowerment of the Poor (2008, p. 26), "legal empowerment is the process through which the poor become protected and are enabled to use the law to advance their rights and their interests, vis-à-vis the state and the market. It involves the poor realising their full rights, and reaping the opportunities that flow from that, through public support and their own efforts as well as the efforts of their supporters and wider networks".

A critical component of legal empowerment of the poor is giving them a voice. As rights holders, the poor have the right to be heard and to take part in decisions affecting them and to demand accountability from those who owe them legal duties and responsibilities. In this way, legal empowerment is rooted in human dignity and seeks to protect and give expression to the autonomy of the individual. In *Occupiers of 51 Olivia Road and Others v City of Johannesburg and Others* in 2008,<sup>8</sup> the City was seemingly acting entirely out of a genuine concern for the safety and welfare of a group of about 400 poor people who were occupying terribly run-down buildings when it sought a court order to evict them on the ground that the buildings were unsafe and uninhabitable. When the occupiers challenged the eviction, the Constitutional Court held that the City had a constitutional duty to engage meaningfully with the occupiers before seeking the eviction.<sup>9</sup> This judgement underlines the fact that the poor cannot be treated as objects of goodwill: they are rights holders whose voices must be considered before policies intended for their benefit are adopted and implemented.

Access to justice is also a critical component of legal empowerment of the poor.<sup>10</sup> This is understandable given that the poor are more likely to be in legal jeopardy than those well off: they are prone to evictions, displacement, and disconnection of services such as water, electricity and communications (UN Special Rapporteur on Extreme Poverty and Human Rights, 2017, paras 6–30). Mostly involved in informal work which is generally unprotected by law, the poor often have insecure land tenure and lack the means to defend and demand their rights (FAO, IFAD and ILO, 2010). Access to justice can give the poor the legal means of protecting themselves, protectively or reactively, from violations of their rights by the state or other actors, and from the damaging effects of acts of nature and collective human actions and omissions that contribute to climate change, droughts, deforestation, desertification, and natural disasters (UN Secretary General, 2009).

The benefits of legal empowerment of the poor are numerous. Among other things, by encouraging and facilitating the participation of the poor in policy making and implementation, the poor are likely going to gain a sense of belonging and self-worth. Their views might result in pro-poor policies that are informed and responsive to the needs of their intended beneficiaries. Legal empowerment of the poor is beneficial beyond the poor themselves. As the Commission on Legal Empowerment of the Poor (2008, p. 11) has said: “A country with laws and institutions that do not shut out the poor will benefit from the contributions of its entire population and from a legal, social and economic order in which all segments of society have both a voice and a stake.”

### 3.1.7 Provision of access to basic necessities of life

For a long time, the empowering potential of the law was understood from the narrow prism of the doctrine of the rule of law. As long as the law guaranteed freedoms and political

<sup>8</sup> See also *Port Elizabeth Municipality v Various Occupiers*, 2005; 2004.

<sup>9</sup> At para 13, the Constitutional Court said: ‘It became evident during argument that the City had made no effort at all to engage with the occupiers at any time before proceedings for their eviction were brought. Yet the City must have been aware of the possibility, even the probability, that people would become homeless as a direct result of their eviction at its instance. In these circumstances those involved in the management of the municipality ought at the very least to have engaged meaningfully with the occupiers both individually and collectively.’

<sup>10</sup> In addition to participation and access to justice, others argue in favour of protecting labour rights, property rights and business rights. Legal measures to protect these rights are discussed in Section 4. See Commission on Legal Empowerment of the Poor (2008, pp. 31–39).

rights, an independent judiciary and effective remedies, and protected business interests and freedoms, all individuals were guaranteed freedom to pursue their own livelihoods. The inadequacy of this approach is self-evident. For one thing, it assumes that there is equality in fact. Now international human rights law and, increasingly, comparative constitutional law, recognize that the state has a duty to facilitate access to health care, education, food, social security, housing, sanitation and water as well as to provide such access to those who cannot afford it using their own means (CESCR 2000; Dankwa, Flinterman and Leckie, 1998). In recognizing the state's duties to facilitate and to provide access, the state is obligated to demonstrate that it has adopted appropriate policies in this regard.

In determining whether the state has fulfilled its obligation to facilitate access to or provide a given socio-economic good or service, the courts have used the standard of reasonableness. Developed by South African courts based on Articles 26 and 27 of the Constitution, this standard has been adopted in international law via two major protocols, namely, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure. This standard asks whether the measures taken are capable of facilitating the realization of economic, social and cultural rights; whether the steps taken are not discriminatory and arbitrary; whether the policy chosen does not unduly restrict the enjoyment of the relevant rights; and whether the measures take into account the precarious situation of disadvantaged and marginalized individuals or groups, or those in grave situations or situations of risk (CESCR, 2007. para 8).

One famous case explains the application of the duty to take reasonable measures. In, *Government of the Republic of South Africa and Others v Grootboom and Others*, facing a suit by a group of people consisting of families, women and children who had been evicted and were left homeless, to be provided with temporary shelter, the government of South Africa argued that it had a policy on housing such that the group could not be provided with temporary housing on demand. However, the Constitutional Court held that the policy the government had produced only catered for long-term needs, and neglected the immediate needs of those in desperate situations. It therefore ordered the government to expand the policy "to provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations" (*Government of the Republic of South Africa and Others v Grootboom and Others*, para 99).

### **3.1.8 Empowering and enabling the state to implement policies fairly and effectively**

The general function of the law is to establish state institutions, allocate power, establish checks and balances, and protect the rights of the people. With respect to poverty, the law is needed in particular to establish and empower institutions that should coordinate and lead efforts to combat poverty. Although the responsibility of fighting poverty is largely a political one, the institutions that are involved in implementing poverty reduction policies have to be established and properly authorized by law. More importantly, the intervention of legislation is often needed for policies that grant specific benefits, privileges and rights to people. Thus, welfare legislation, for example, not only identifies the benefits, privileges, and interests that stipulated individuals or groups can claim, but also defines the conditions and procedures upon which such benefits, privileges and interests may be accessed or forfeited (see Section 4.1). The principles and procedures of just and fair administrative action have been developed to ensure that the administration of such benefits is fair and just (Morris, 1968; Titmuss, 1971).



In translating poverty reduction measures into law and regulating how it is implemented, the law can help to depoliticize poverty reduction and focus the state's attention on implementing policies irrespective of who is in power. It also gives the beneficiaries of the policy a chance to enforce the law or hold those responsible for its implementation to account, if it is not being implemented. Since poverty is a cross-cutting theme and requires all structures of government to contribute to its eradication, the law can prevent problems of bulk-passing, skirmishes over mandate, and inertia, by clearly demarcating the respective powers and responsibilities of the various state agencies, creating coordinating, accountability and monitoring mechanisms, and defining decision-making processes.

### 3.2 The limits of law

While the law is demonstrably crucial to the successful implementation of poverty reduction programmes, the law is not always effective in bringing about change in society. In fact, there are serious philosophical questions about the role of law in society. It has been argued, for instance, that the law produces and reproduces hierarchies of authority that keep the poor in bondage. Marx and Engels, for example, famously argued that the law is not neutral, and that it rather masks class struggles and maintains the dominance of the capitalist class over the working class (Marx & Engels, 2014). Along the same lines, critical legal theorists argue that the law is inherently biased in favour of the powerful in society who create and enforce the law to advance their narrow interests (Douzinas and Perrin, eds, 2012).

While these critical theories ignore some of the positive functions of the law and over-emphasize its negative effects, they highlight the fact that the effectiveness of the law as an instrument of poverty reduction should not be taken for granted. Law's effectiveness in this regard depends on many factors including whether the law accurately and effectively captures the attitudes and social expectations of the people, particularly the most vulnerable, and whether the people participate effectively in processes of law-making and of implementing and enforcing it. This is why the notion of legal empowerment of the poor discussed earlier, places at its core the idea of giving the poor a voice and guaranteeing them access to remedies. As will be shown later, one of the major challenges to poverty reduction efforts lies in the practice of transplanting policies from elsewhere and implementing them in new contexts without full engagement with the intended beneficiaries of these policies.

## 4. SOME AREAS FOR LEGISLATIVE INTERVENTIONS IN POVERTY REDUCTION EFFORTS

As has been shown earlier, it is beyond question that the law is pivotal to efforts at combating poverty. Not surprisingly, the SDGs recognize the “essential role of national parliaments” to enact legislation, make appropriate budgetary allocations and ensure accountability for the implementation of the stipulated goals (UNGA, 2015. para 45). Although the 17 SDGs are set out separately, they are clearly interdependent, “integrated and indivisible” (UNGA, 2015. Para 18). Given especially that poverty is a manifestation of various interlocking deprivations, SDG 1 to “end poverty in all its forms everywhere” is clearly linked to other SDGs such as SDG 3 to “ensure healthy lives and promote well-being for all at all stages”, SDG 4 to “ensure inclusive and quality education”, and SDG 8 to “promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”.

Thus, in identifying the sectoral areas where legal measures could play an important role in order to achieve SDG 1, attention is also given to other relevant SDGs. As will become evident, the sectoral areas amenable to the use of the law are numerous. Therefore, this Section highlights only some of these areas in order to demonstrate how the law can be deployed to bolster poverty reduction efforts.

### 4.1 Social protection and social security

Social protection is widely recognized as one of the principal means of ending poverty or reducing its impact. It is thus not surprising that SDG 1 gives prominence to it. This goal expects states to “implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable” (SDG 1.3). Social protection is a broad term that encompasses a wide range of measures aimed at reducing the risk of, or preventing, deprivation or vulnerability to poverty and other social hardships, providing relief from deprivation when it occurs, providing protection from social injustice, and providing access to opportunities for enhancing human capabilities (Devereux, 2016; Devereux and Sabates-Wheeler, 2004). Viewed in this broad sense, social protection overlaps with other legal interventions related to the protection and promotion of people’s livelihoods and assets which are discussed in Sections 4.4 and 4.5.

Social insurance and social assistance are some of the most common forms of social protection recognized by states through legislation. Social insurance encompasses social benefits to beneficiaries who participate in an insurance scheme as part of their employment to which the beneficiaries or/and employers contribute. Anchoring social protection programmes in legislative framework is important in terms of laying down long-term commitments, assigning institutional responsibilities and ensuring coordination among relevant sectors. In many countries, laws make provision for compulsory pension schemes, employment protection schemes, medical insurance, disability insurance, occupational injury insurance, or retrenchment benefits for both public and private employees.<sup>11</sup>

<sup>11</sup> See Thailand, 1990; Barbados, 2007; United Kingdom of Great Britain and Northern Ireland, 1988; Cyprus, 2010; Ireland, 1993; and the Netherlands, 1986. For the extent to which countries recognize various forms of social insurance, see ILO (2014, 25–98); and ILO (2015, 27–36).



However, in many developing countries, state-run social insurance mechanisms tend to focus on the formal sector, thereby excluding the vast majority of rural populations employed in the informal sector (ILO, 2015; Stewart and Yermo, 2009; Oduro, 2010). Those employed in small-scale agriculture are usually not covered by social insurance schemes (ILO, 2014). Within the African context, the importance of traditional family support systems has been recognized through the recently adopted Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, which requires states parties in Article 10 (1) to "adopt policies and legislation that provides incentives to family members who provide home care for older persons", and in Article 10 (2) to "identify, promote and strengthen traditional support systems to enhance the ability of families and communities to care for older family members" (Africa Union, 2016). Such incentives could include tax credits, older persons' financial support grants or recognition of care for sick older persons as a basis for special leave from work. As the Protocol is not yet in force, it remains to be seen what legislative measures states will adopt to implement these provisions.

Efforts to address social insurance for informal workers, especially farmers, have led some states to adopt laws to promote and provide income security for farmers. In Sri Lanka, for example, the Agricultural and Agrarian Insurance Act (1999) established an Agricultural and Agrarian Insurance Board to provide insurance for agricultural and horticultural crops and medicinal plants, livestock, fisheries and forestry and produce for the benefit of farmers. In the United States of America, the Agricultural Risk Protection Act (2000) provides for insurance protection from risks arising from catastrophes. Like Sri Lanka's Act, Canada's Farm Income Protection Act (1991) authorizes the government and provinces to make provision for the protection of the income of the producers of agricultural products.

In addition to social insurance, other countries make legal provision for social assistance to certain groups such as older persons, persons with disabilities, or children who lack parental care, with poor parents or with special needs. For example, provisions in Iceland (1992 and 1997), provide for financial aid for those looking after children who are seriously ill or have disabilities; Namibia (1994) and South Africa (2004 Social Assistance Act), provide for old-age and child support grants; and Lesotho (2011 and the National Strategic Plan on Vulnerable Children 2012–2017), provides for a child support grant.

Such social assistance consists of cash benefits that do not depend on the contribution of the beneficiary to a particular scheme. While the number of countries providing for cash benefits in one form or another has increased (ILO, 2014; Devereux, 2016), many do so without any specific legislative framework. Of the countries that have legislated social assistance benefits, many are in Latin America and the Caribbean, and very few are in Africa, Asia and the Pacific (ILO, 2014, 17). Rural households are also more likely than urban households to receive social protection, particularly when that includes agricultural subsidies (FAO., 2015). However, programmes often fail to reach the poorest. The absence of appropriate framework for social protection programmes could result in problems of fair and effective implementation for the benefit of all eligible beneficiaries (Baltzer and Hansen, 2011).

Some states have taken legislative measures to provide social assistance during emergency or disaster situations such as floods, earthquakes, fire and drought. These measures are consistent with SDG 1.5, which expects states to build resilience among the poor and to reduce their exposure and vulnerability to climate-related extreme events and disasters. For instance, in Taiwan Province of China, the Social Assistance Act of 1980 provides for the assistance of low-income and middle-income households during an emergency or disaster.

Such assistance includes living support cash transfers, medical subsidies, and emergency aid. Others do not specify the forms of assistance to be provided, but establish agencies and institutions to coordinate the provision of emergency relief to victims, to monitor disaster preparedness, to prevent or minimize the effects of emergencies, and to develop plans and policies on disaster preparedness and management.<sup>12</sup> While many countries have adopted national legislation to address any disaster or emergency situation that arises anywhere within the country, other countries have enacted legislation to address specific emergency and disaster situations in a particular area of the country (for example, Kenya in 2015 and 2016 West Pokot Act). This has potential to limit the effectiveness of disaster preparedness and management if an emergency arises in a different location for which there is no relevant legislation.

Much less prominence in social protection legislation has been given to social services. As Huebner notes, social services are critical to poverty reduction since they contribute to improving access by vulnerable communities to key services such as health care, food, legal protection, psychological support and skills development (Huebner, 2016). However, some countries like Indonesia (2009), Namibia (2004) and South Africa (1978) have adopted legislation regulating the provision of social services including the social services profession.

## 4.2 Decent rural employment

Promoting full and productive employment and decent work for all is the focus of SDG 8. This goal is closely linked to the SDG 1. For one thing, decent work provides the income to families that could be used to guard against deprivation. For another, one of the main causes of poverty in rural areas has been the lack of decent work. Promoting decent work is therefore one major way of combating poverty. As SDG 8.3 suggests, for states to create decent work, they need to support entrepreneurship, creativity and innovation, and micro-, small- and medium-sized enterprises.

Although many states have adopted labour laws guaranteeing labour rights, occupational safety, and equal pay for men and women, it has been widely noted that such legislation largely applies to formal employees and not informal workers (ILO, 2015; Stewart and Yermo, 2009; Olivier, Kaseke and Mpedi, 2008; Oduro, 2010). To address this problem, some countries such as Canada have adopted specific legislation to guarantee certain minimum rights to agricultural employees taking into account the unique nature of agricultural work (Canada, 2002). In Thailand, regulations have been promulgated to provide labour protections for agricultural work including “work related to plantation, animal husbandry, forestry, salt-field, and fishing other than sea fishing” (Thailand, 2014). In the Islamic Republic of Iran, the Law on Agricultural Labour of 1974, prohibits the employment of children under the age of 12, sets minimum and maximum working hours, and makes provision for paid and unpaid leave and equal pay for women and children (Islamic Republic of Iran, 1974). The Law on Employment in Viet Nam of 2013 guarantees rural workers who are involved in “occupation or employment change” vocational training support, free counselling, free job recommendation, and access to loans from the National Employment Fund. The Act also makes provision for support to be given to small and medium sized enterprises and cooperatives to support the employment of workers in rural areas. In other countries, labour protections have been tailored to specific agricultural sectors (Yeshanew, 2018). For example, in South Africa in 2006, the Department of Labour has promulgated

<sup>12</sup> See Australia, 2013; Estonia, 2000; Nigeria, 1999; Saint Vincent and the Grenadines, 2006; and Samoa, 2007.

minimum wage and conditions of employment for the forestry sector, pursuant to the Basic Conditions of Employment Act, 1997.

In a bid to promote rural employment, India's National Rural Employment Guarantee Act of 2005 guarantees a minimum of 100 days of paid work to rural households whose adult members volunteer to provide unskilled manual labour (Sections 3 and 4). Through this Act, the rural poor benefit directly from an employment creation programme through the income provided by jobs and indirectly through the implementation of investment projects aimed at improving productivity in agriculture and alleviating land degradation (Ehmke, 2016). Apart from facilitating women's empowerment and providing opportunities for other marginalized groups, the Act also promotes transparency and community participation in the administration of the programme (Sections 12 and 13). Similar employment schemes have been implemented in Argentina, China, Indonesia and the Republic of Korea. While the significance of such employment programmes has been noted, some have argued that they are usually designed for short durations and thus tend not to be sustainable, and to lack the legislative backing (UN, 2010b). However, the importance of such legislation should be seen in the context of the difficulties of enforcing labour legislation in rural areas. Employment schemes, especially those that are administered in a transparent manner and allow for community participation, have great potential to enhance the implementation of labour standards in the agriculture- and related sectors, especially in rural areas.

### 4.3 Enhancement of human capabilities

SDG 1 calls upon states to ensure that "all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services". States are thus expected to combat poverty by investing in social sectors such as health and education in order to enhance human capabilities for autonomous decision-making concerning their livelihoods (Sen, 1992; Hick, 2012). By gaining relevant human capabilities, the poor are empowered to pursue development opportunities freely. Poverty reduction policies using this approach typically focus on providing access to health care facilities, free elementary education and secondary education, housing, energy or electricity, social security, clean water and other basic services.

Policies on the provision of access to basic services can be supported by a constitutional bill of rights guaranteeing the rights of access to health care, housing, food, water and social security, as many countries have increasingly done,<sup>13</sup> or in specific legislation aimed at regulating access to a given basic service or good.<sup>14</sup> International human rights bodies have emphasized the need for legislation to establish the modalities for the implementation and enforcement of each right.<sup>15</sup>

For example, it is common for free education measures to be implemented via the instrumentality of compulsory education laws as happened in China (2006) or Mongolia (2002). In countries such as Bangladesh, China, India, Philippines and Thailand, efforts have been made to implement non-formal educational programmes aimed at equipping designated disadvantaged groups with skills in certain income generating activities. It is

<sup>13</sup> For example, Angola, Ethiopia, Ghana, Kenya, Zimbabwe, Malawi, Mozambique, and Uganda (Chirwa & Chenwi, eds, 2016). For South Asia, see Byrne & Hossain, 2008. For South American countries see Sepulveda, 2008; Curtis, 2008; Piovesan, 2008; and Gonzalez, 2008.

<sup>14</sup> With respect to the provision of water and sanitation, see Finland, 2001; Ireland, 2017; and Portugal, 2009.

<sup>15</sup> See CESCR, 1990; CESCR, 1998; CRC, 2003; CCPR, 2004.

unclear whether these measures are implemented via legislation (APPEAL Resource and Training Consortium, 2003).

The advantage of constitutional guarantee of access to basic services over legislative protection is that the former offers more durable protection since constitutions are generally more difficult to amend. Moreover, constitutional rights normally override other sources of law, which in effect means that access to basic services cannot be subordinated to other goals set out by ordinary legislation.

#### 4.4 Protection of people's livelihoods

Key to eradicating poverty is protecting and enhancing people's livelihoods. Although SDG 1 does not expressly call upon states to promote livelihoods, other goals do so. For example, SDG 2.3 commits states to doubling agricultural productivity and incomes of "small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers". Furthermore, SDG 8.9 commits states to the promotion of "sustainable tourism that creates jobs and promotes local culture and products".

Underpinning SDG 2 is the livelihoods approach to poverty which recognizes that the poor are best placed to understand their own needs, context and situation, and therefore that their views and perspectives should inform the interventions made to improve their wellbeing. This approach makes no assumptions about possible sectoral areas for policy intervention for purposes of eliminating rural poverty, but concentrates instead on understanding the current livelihoods of the people in order to find suitable entry points for intervention. This involves finding out what people do to earn their livelihoods, what resources they have at their disposal, the risk factors relevant to their use and management of their resources, and the institutional and policy context in which they maintain their livelihoods (Ellis, 2003; Krantz, 2001).

The nature of the legal interventions needed to protect and enhance people's livelihoods therefore depends on the livelihood that a rural community maintains. For example, in a community whose livelihood depends on small-scale fishing, the law can be used to regulate the sustainable use and management of fisheries resources and the environment.<sup>16</sup> In Indonesia, Law of the RI No 7/2016 provides for the protection and empowerment of fishers, fish raisers and salt makers by, among other things, providing them with access to financial assistance, enhancing their capacity and providing relevant infrastructure. Similarly, in the Democratic People's Republic of Korea, the Act on Fisheries of 1999 regulates the conservation and management of fisheries resources and the production and processing of fish. Among other things, the Act obligates the state to develop marine aquaculture, regulates the allocation of fishing grounds, and provides for the investigation of fish stocks and monitoring of marine resources. Another Act, on the Promotion of Electrification in Agriculture and Fishing Villages of 1965 in the Republic of Korea, obligates the state to improve the livelihoods of farmers and fishers by promoting the supply of electricity to agricultural and fishing villages.

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<sup>16</sup> For a discussion of some of the issues arising from a livelihoods approach in the context of small-scale fishing, see Allison & Ellis, 2001.

In South Africa, the Policy for the Small-Scale Fisheries Sector of 2012, and the Marine Living Resources Act of 1998, regulate the management of small-scale fisheries, establish the institutional apparatus for community-based fishing, provides for the allocation of small-scale fishing rights and the transfer of fishing rights, and regulates fish processing establishments. Furthermore, the Marine Living Resources Act creates a system of allocating fishing rights for subsistence and commercial purposes with not just the specific aim of protecting community fishing rights but also of bringing in new entrants into the commercial fishing industry who were previously excluded based on race. Among other things, the Act creates a Fisheries Transformation Council whose primary responsibility is to facilitate fair and equitable access to fishing rights (Section 30), and to develop the capacity of previously disadvantaged groups and small and medium fishing enterprises (Section 31). In India, the Kerala Fishermen Welfare Societies Act of 1981 has made provision for the establishment of fishers' welfare societies whose function is to develop the socio-economic and cultural life of fishing communities and to protect them from money lenders. In order to promote the livelihoods of local fishers in the Philippines, the Fisheries Code (Republic Act No. 8550) of 1998 codifies a policy to limit access to fisheries and aquatic resources for the exclusive use and enjoyment of Philippine citizens (Sections 2 and 5).

Domestic legislation has gone beyond protecting existing access and facilitating access to new entrants to fisheries and aquatic resources, to recognizing the need to protect workers, usually vulnerable and poor, involved in commercial fishing as a primary means of earning their livelihoods. For instance, such legislation has regulated hours of work, prohibited forced labour, and prescribed occupational safety and security standards.<sup>17</sup>

In Georgia, Law No. 2376 of 1999 promotes several socio-economic activities connected with livelihoods of the populations that eke out a living in the high mountainous regions of the country. The Law makes provision for the development of field cropping, cattle husbandry, vegetable growing, apiculture, fish-breeding, hunting and forestry; for soft loan investment strategies; and for sustainable exploitation of the natural resources of those regions. In communities where people's livelihoods depend on subsistence farming, legal interventions have included enhancing security of tenure for customary land (Malawi, 2016). For example, in Malawi and the United Republic of Tanzania, where small-holder farming is a dominant livelihood, issues of access to land especially for women, access to markets and the role of traditional resolution mechanisms have been identified as needing attention (Ellis, Kutengule & Nyasulu, 2003; Ellis & Mdoe 2003). In the United Republic of Tanzania, legal interventions to facilitate access to finance by rural farmers can be seen in the Cooperative and Rural Development Act No. 5 of 1996, which creates a bank to provide medium and long-term finance for rural development. Similarly, in Uganda the Agricultural and Livestock Rural Development Fund Act of 1976 provides for access to loans by farmers and guarantees credits to them. In many countries, legal interventions provide for the establishment of farmers' cooperatives.<sup>18</sup> Where people's livelihoods depend on livestock, legal measures in the United Republic of Tanzania in 2010, have included the establishment of agencies responsible for the administration, development and management of grazing land and animal feed sources.

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<sup>17</sup> See Thailand, 2015 (Chapter three); Philippines, 1998 (Section 37); and New Zealand, 1996 (Part 6A). For a detailed summary of emerging national legislation on fisheries and aquaculture, see Yeshanew, 2018.

<sup>18</sup> See China, 2017; Myanmar, 2012; the United Republic of Tanzania, 2013; Namibia, 1996; and Georgia, 2013.

## 4.5 Access to productive assets

SDG 1 expressly identifies “equal rights to economic resources” including “ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including finance” as an important means of combating poverty. This goal is informed by the asset-based approach to poverty, which emphasizes the role that access to productive assets can play to sustain people’s livelihoods. Accordingly, the measures this approach embraces are geared towards enabling the poor “to acquire and accumulate long-term productive assets” (Ssewamala *et al.*, 2010). As the emphasis is on the productive resources, this approach makes use of legal measures that protect and facilitate access to the resources that are used to sustain livelihoods. Increasingly, legislative measures to protect and promote access to and the accumulation of productive assets have focused on land, especially agricultural land, natural resources, and financial resources.

### 4.5.1 Land rights

It is well known that the rural poor either lack secure land tenure or have no access to land at all. The majority of rural landowners also enjoy traditional, often informal, land rights that increases the risk of dispossession and reduced investment opportunities. Protecting the land rights of the rural poor is therefore critical to improving their wellbeing. It is thus not surprising that in countries which have prioritized access to land as an important intervention in eliminating rural poverty, land reforms have taken centre stage (Deininger, 2003; Holden, Otsuka and Deininger, eds, 2013). National efforts at such reforms benefit from internationally negotiated instruments such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, which provide guidance on how to ensure the recognition, respect, safeguard and facilitation of legitimate tenure rights (FAO, 2012).

The nature of the land reforms and associated institutional mechanisms of implementation have differed from one country to another (Cotula, 2002). Land reform in India, for example, has focused on the abolition of intermediaries, tenancy laws to enhance security of tenure, and limiting the amount of agricultural land holding and thus providing a basis for expropriating any excess agricultural land for purposes of redistribution to poor farmers (India, 1960; see also Besley & Burgess, 2000). In Namibia, Zimbabwe and South Africa, land reform has centred on land redistribution to address the exclusionary history of racial discrimination and on customary or communal land tenure.<sup>19</sup> In some East African countries such as Uganda and the United Republic of Tanzania, land redistribution has also been a central feature of land reform as has been the recognition and reform of customary land tenure.<sup>20</sup> In some countries in West Africa, Latin America and the South Pacific (Papua New Guinea, 1963 and Vanuatu, 2013), legal reforms have concentrated on transforming informal land tenure into secure tenure (Toulmin, 2009). A number of countries, including Botswana, Mozambique and the United Republic of Tanzania, have adopted laws that recognize customary, communal and/or indigenous tenure rights (FAO, 2010).

<sup>19</sup> See Namibia, 1995; Namibia, 2002; South Africa, 2004 (Communal Land Rights Act); South Africa, 1991; South Africa, 1994; Zimbabwe, 1963; Zimbabwe, 1992; and Zimbabwe, 1985. See also Werner & Kruger, 2007 and Lahiff, 2007.

<sup>20</sup> See the United Republic of Tanzania, 1999 (Village Land Act No. 5); Uganda, 1998; and Kenya, 2012 (Land Act No. 6).



The idea of turning informal land tenure into secure tenure is often touted as a means of improving the chances that the rural poor can pledge their land as security for credit which can be used to buy inputs and farming equipment to improve agricultural productivity. Added benefits allegedly include a more efficient redistribution of property, increased revenue base and better input and output choices (Sjaastad and Cousins, 2008). This often involves passing laws facilitating the registration of communally-owned property in the name of a family head, a cooperative or an individual.<sup>21</sup> It has however been questioned whether such formalization of land does improve the probability of the rural poor accessing credit and deriving other benefits therefrom (Sjaastad and Cousins, 2008; Sanga, 2009). Indeed, in some countries, such efforts have served as a precursor to commercialization of land, which has resulted in further marginalization of household or clan members, especially women and children (Burke and Kobusingye, 2014).

The above-mentioned problem highlights the need for land reforms to be sensitive to the prevailing power structures in society, especially gender inequalities, which impede women's access to land or prevent women from benefiting from, or having control over, the productive resources they have access to and the fruits of their labour (Office of the United Nations High Commissioner for Human Rights [OHCHR] and UN Women, 2013). A number of studies have demonstrated the positive implications of gender-equitable land tenure for poverty reduction, food security and rural development while referring to legal and policy measures taken in some countries to ensure gender-equality in land governance (FAO, 2016b and FAO, 2017a).

#### **4.5.2 Other natural resources**

The productive resources that people use for sustaining their livelihoods extend beyond land to include fisheries, mountains, lakes, minerals and forests. Often such resources are owned by the state on behalf of the population as a whole. However, in recognition that some groups of people have historically earned their livelihoods by having access to such natural resources, some states have used legislation to protect and facilitate access to such resources and to regulate such access in order to promote sustainable use and ecological goals and to eliminate systemic inequalities – see Section 4.6 for more discussion on legal measures to address systemic inequalities. In India, for example, the Recognition of Forest Rights in 2006 was enacted to recognize the rights of tribal communities to have access to forest lands in protected areas. In the Democratic People's Republic of Korea, the Act on Fisheries imposes an obligation on the state to develop aquaculture in rivers, lakes and reservoirs and the allocation of fishing rights.

Where the management and control over natural resources are entrusted to the state for the benefit of all citizens in a country, the exploitation of those resources often raises tensions between the communities living within the proximity of these resources and the rest of the citizens. There are many instances where natural resources-rich communities have resorted to protests and other forms of political mobilization to voice the complaint that they have not benefited from those resources. For example, in Sudan, this was one of the factors that led to the separation of Sudan and South Sudan (see Sudan Human Rights

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<sup>21</sup> The Agriculture Law of the People's Republic of China, 1993, provides that rural and suburban land not owned by the state can only be owned by cooperatives. See also Myanmar, 2012, which provides for the acquisition of land use certificates in connection with farmland and the rights attached to such certificates; and Ethiopia, 2007, which provides for the acquisition of rural land by adult residents of the Oromia region whose lives depend on agriculture.

Organization and Another v Sudan, 2009). In Nigeria, the struggles of the Ogoni people against oil exploitation led to many deaths (Naanen, 1995). This problem has led some states to recognize the need for communities living close to major natural resources to benefit from the exploitation of those resources. For instance, the Strong and Sustainable Resource Communities Act of Australia (Queensland) 2017 imposes certain expectations on owners or proponents of large resource projects to employ residents of the communities that live in the vicinity of the relevant resource and for impact assessments.

While many countries have adopted legislation that stipulates the equity and royalty benefits the government expects to derive from the exploitation of natural resources,<sup>22</sup> very few make express provision for the allocation of some of those benefits to communities inhabiting the region where the resources are exploited. In Vanuatu, the Forestry Act of 2001 provides that indigenous groups must be given assistance and protected in the negotiation of the sale of timber rights, and in Papua New Guinea, similar provisions are noted in the Unconventional Hydrocarbons Act of 2015. As noted earlier, in countries such as the Philippines (1998) and South Africa (1998), legislative measures have been taken to protect and facilitate access by the local population, especially previously disadvantaged groups, to fisheries resources. In New Zealand, the Maori Fisheries Act No. 78 of 2004 makes specific provision for the development of the interests of the *Iwi* in fisheries for the benefit of all Maori people. In Sierra Leone, the Mines and Minerals Act No. 12 of 2009 imposes an obligation on mining licence holders to assist in the development of mining communities affected by its activities to promote sustainable development and the welfare, quality of life and culture of those communities. It also specifies in Section 141(2) some of the measures the mining licence holders are supposed to take, such as: to provide educational scholarships, apprenticeships, employment opportunities; to contribute to infrastructural development; to support small-scale business enterprises; to ensure environmental protection; and to support local governance. Liberia is one of the few developing countries to recognize by legislation, transparency as an important means of ensuring that the revenue derived from extractive resources benefits the population. Its Liberia Extractive Industries Transparency Initiative (LIETI) Act of 2009 establishes a transparency agency whose membership includes a wide range of stakeholders with the specific mandate to bring about accountability in the extractive industry.

#### 4.5.3 Financial resources

Financial resources are obvious productive assets that poor people need in order to escape from poverty. In this regard, SDG 9.3 calls upon states to “increase access of small-scale industrial and other enterprises...to financial services, including affordable credit”. It has become common for states to adopt legal measures to establish rural banks to enable the poor to save and invest, and to facilitate access to financial services and credit.<sup>23</sup> To ensure that access to credit and financial services bears fruit for the rural population, legislation has also been enacted to regulate micro-lending and, more importantly, to protect vulnerable people from unscrupulous money lenders.<sup>24</sup> As Chowdhury (2009) stated, “Unless properly regulated, finance-based poverty reduction measures are unlikely to benefit the poor. In the Republic of Korea, the Act on Credit Guarantees for Farmers and Fishermen, 1971, provides

<sup>22</sup> See Azerbaijan, 1995; Australia, 1982; Jamaica, 1947; South Africa, 2008; and Thailand, 1973.

<sup>23</sup> See Australia (Commonwealth), 1992; Bangladesh, 2014; Belize, 2009; Papua New Guinea, 1965, repealed and replaced by Papua New Guinea, 2007. Savings initiatives for the poor have been implemented in many countries including Namibia and Uganda. See Ssewamala *et al.*, 2010, 436–439; and UN, 2010b, 135–143.

<sup>24</sup> See Fiji, 2010; Ethiopia, 2009; Uganda, 2016; Malawi, 2010; Kenya, 2012 (Microfinance Act).



for credit guarantee to farmers who are unable to secure finance for agricultural, forestry and fisheries' industries. South Africa's Debt Management Act No. 21 of 2001 establishes a mechanism for managing agricultural debt repayment. In Uganda, the Agricultural and Livestock Development Fund Act (Cap 233 of 1976) created the Agricultural and Livestock Development Fund with the responsibility to develop agriculture and livestock farming in Uganda, primarily by extending loans to farmers and guaranteeing them credit.

A growing number of countries, such as Argentina, Brazil, India, the Philippines, Turkey, Uganda, the United Republic of Tanzania, the United States of America and Zambia, have adopted warehouse receipts legislation (Wehling and Garthwaite, 2015).<sup>25</sup> Warehouse receipt systems have become an important means of expanding the financial resources available to farmers. These systems allow farmers to store their produce in warehouses for which they are given receipts which they can pledge as security for credit. They make it possible for farmers to delay the sale of their produce until competitive prices materialize. However, the delay does not deprive them of access to the money that they would have had if they had sold the produce, because they can use the warehouse receipts to access credit.

Another finance facility which has become the subject of legislative regulation is that of contract farming, which involves partnerships between the private sector and government with farmers, whereby the sponsor normally contracts to purchase all the produce and farmers are allowed access to certain services and goods such as inputs and equipment. These contracts make it possible for farmers to gain access to credit. Although these agreements have been noted to be mutually beneficial to sponsors and farmers, it has been argued that they entail an unequal relationship which militates against the farmers (Eaton and Shepherd, 2001).<sup>26</sup> Not surprisingly, some countries, such as India (Haryana Amendment, 2006), Thailand (2017), and the United Republic of Tanzania, have enacted legislation that promotes and facilitates but also regulates contract farming. For example, the Contract Farming Promotion and Development Act (BE 2560 of 2017) of Thailand establishes the Office of the permanent Secretary for Agriculture and Co-operatives to disseminate information and give advice to farmers on farm contracts, access to finance and agricultural technology. The Act also creates a procedure for resolving disputes arising from such contracts.

As noted in Section 4.1, financial security is critical to protecting the rural population from poverty. Here too, there has been significant legislative activity aimed at providing social assistance and relief during emergencies, monitoring, preventing or mitigating disasters, and facilitating access to insurance to farmers.

#### 4.6 Discrimination, redress and vulnerable groups

Ensuring equality for all, especially the poor and vulnerable and between men and women, is a core component of the commitment states have undertaken under SDG 1. This commitment is further amplified by SDGs 4 and 5, which are about equal and equitable access to education, and the achievement of gender equality and the empowerment of women and girls respectively. As noted earlier, poverty disproportionately affects certain groups of people such as the rural poor, women, children, ethnic minorities and indigenous groups. On the one hand, socio-economic exclusion is one of the major causes of poverty.

<sup>25</sup> See also Brazil Law 9973/00, 2000; Saint Lucia, 2001; the United Republic of Tanzania, 2005; Zambia, 2010; Uganda, 2006; Ethiopia, 2003; Philippines, 1912; United States of America, 1919 (as amended up to 2000).

<sup>26</sup> For a detailed discussion of the complexities of contract farming, see Swain, 2009.

On the other hand, poverty operates as a basis on which the poor are discriminated against in various sectors of society. It is therefore clear that combating discrimination and ensuring equality for all are critical to achieving SDG 1. They are also key to meeting the pledge to leave no one behind in the 2030 Agenda.

Being legal concepts, discrimination and equality are best guaranteed when enacted within the constitution and legislation. Many domestic constitutions now recognize aspects of the right to equality such as the right not to be discriminated against, the right to equal protection before the law, the right to equal opportunity, the right to equal treatment between men and women and the right to redress for past discrimination. According to MacKinnon (2014, p. 579), about 184 out of 200 written constitutions in the world protect some aspects of the right to equality. To implement these rights, some states have adopted various measures including employment and self-employment schemes for the designated groups and supporting community-based initiatives such as those of farmers' groups or small businesses, which have been previously mentioned. However, it is rare to find a piece of legislation that comprehensively addresses the plight of all vulnerable groups.

One of the notable exceptions is the Poverty Reduction Act, 2009, of Ontario, Canada, which specifically recognizes that "not all groups of people share the same level of risk of poverty" and provides that "the poverty reduction strategy must recognize the heightened risk among such groups as immigrants, women, single mothers, people with disabilities, aboriginal peoples and racialized groups" (Section 2(2.3)). The Act lays down at least three fundamental principles governing the Government of Ontario's approach to poverty: respect for those living in poverty, consultation and involvement of the affected groups, and sustained commitment to the poor (Sections 2(2.5–2.7) and 5(2)). It also expects the government to adopt specific targets for poverty reduction (Section 3).

The Indigenous Peoples Rights Act No. 8371 of 1997 of the Philippines makes specific provision for the promotion and protection of the rights of indigenous cultural communities in that country. Among other things, it recognizes the rights of these groups to ancestral domains and lands, to cultural integrity and to self-governance. The Act establishes a national commission on indigenous peoples as the principal government agency to develop and implement policies to promote and protect the rights of indigenous peoples.

The focus on gender equality in the SDGs recognizes the gendered nature of poverty. Poverty affects women more than men worldwide and more so in developing countries (see Section 2.2 of this study). Apart from bearing their own burden of poverty, women also act as shock absorbers of poverty as they take the responsibility of looking after members of their families, the sick and weak, and engage in various informal economic activities to support their families. Poor women are also often denied the fruits of their labour and are prone to abuse, exploitation and violence (FAO, IFAD and ILO, 2010). Legal measures to protect women for discrimination and promote their equality are therefore critical to poverty reduction efforts.

One of the areas of attention for legislative intervention in this regard is facilitating access to and control over land and other productive assets. As the OHCHR and UN Women have rightly pointed out:

Women's access to, use of and control over land and other productive resources are essential to ensuring their right to equality and to an adequate standard of living. The resources help to ensure that women

are able to provide for their day-to-day needs and those of their families, and to weather some of life's most difficult challenges. Women's access to land and other productive resources is integrally linked to discussions around global food security, sustainable economic development, as well as the pressing fight against the HIV epidemic and prevention of and responses to gender-based violence.

(OHCHR and UN Women, 2013, p. 2)

SDG indicator 5.a.2 commits states to ensuring women's legal rights to land. To measure progress, 6 proxies are considered:

**Proxy A:** Is the joint registration of land compulsory or encouraged through economic incentives?

**Proxy B:** Does the legal and policy framework require spousal consent for land transactions?

**Proxy C:** Does the legal and policy framework support women's and girls' equal inheritance rights?

**Proxy D:** Does the legal and policy framework provide for the allocation of financial resources to increase women's ownership and control over land?

**Proxy E:** In legal systems that recognise customary land tenure, does the legal and policy framework explicitly protect the land rights of women?

**Proxy F:** Does the legal and policy framework mandate women's participation in land management and administration institutions?

(FAO, 2018).

One of the common means by which access to land for women has been facilitated has been through reforming land tenure, especially customary holding. As noted earlier, the reform of customary land holding has generally tended to focus on formalizing customary tenure through registration in order to boost the economic potential of the holding to attract agricultural loans. While common, this approach has received some significant criticism from scholars who point out that formalization of customary land holding often ignores various secondary rights and interests that women have in land as wives, mothers and grandmothers, and places them at the risk of total exclusion from land (Yngstrom, 2002; Lastarria-Cornhiel, 1997). It has thus been argued that land reform should instead be viewed in tandem with the reform of family law and succession law. For example, Yngstrom argues:

Owing to the complex nature of landholding systems and the interdependencies of rights and interests in productive resources, land tenure and associated institutional reforms are not well suited to tackling the problems of tenure insecurity faced by women. They would be far better tackled as issues of family law. An example of successful reform in this area has occurred in Ghana with the 1985 Intestate Succession Law. This has ensured that a woman has the right to her deceased husband's land in the face of claims from the husband's kin. Reform of marriage laws could enable divorced women to claim rights to a proportion of land

acquired upon marriage, and married women could be protected against sales of conjugal land.

(Yngstrom, 2002, p. 34)

In recognition of this, states have increasingly adopted legal measures to improve the overall wellbeing of women. Such measures have included regulating: matrimonial property, marriage and inheritance in order to protect women from abuse and exploitation (OHCHR and UN Women, 2013); and building capacity in women through promoting their access to education, and guaranteeing them equal access to employment, business and other opportunities (UN Women, 2018). States have also enacted laws that seek to protect women from violence and harmful cultural practices.<sup>27</sup> More importantly, some states have constitutional provisions that guarantee a wide range of women's rights.<sup>28</sup>

In addition to these measures, some states have established gender commissions, committees or councils whose functions include coordinating government efforts to ensure gender equality, proposing suitable policy measures, facilitating the participation of women in all sectors of society, and in some cases hearing and adjudicating complaints alleging violations of women's rights.<sup>29</sup> Others have gone further and imposed an obligation on government to conduct gender impact assessments of their policies (Republic of Korea, 2011), or create a development fund to promote the rights of women (Ethiopia, 2001; Kenya, 2016).

#### 4.7 Interim conclusion

The foregoing has shown that while the task of eliminating poverty involves making difficult policy choices that are best left to political negotiations and compromise, the law is still needed to support those policies. Through an analysis of SDG 1 and other related SDGs, this discussion shows that there are many entry points for legislative interventions in poverty alleviation efforts. At least six sectoral areas have been identified and discussed, but this is not exhaustive. There are many more sectoral areas where legislation is needed to support the fight against poverty. The suitability of the legislative intervention a state chooses depends largely on the specific context in which poverty occurs and the needs of the poor.

<sup>27</sup> See Costa Rica, 2007; Guatemala, 2008; Uganda, 1998; Namibia, 2002, as amended by Act No. 13 of 2012; and the United Republic of Tanzania, 1999 (Land Act No. 4). For more examples, see UNITE & UN Women, 2012.

<sup>28</sup> For example, Brazil, Paraguay, Bolivia, Ecuador, Malawi, Japan and South Africa; see OHCHR & UN Women, 2013, pp. 23–24.

<sup>29</sup> See Barbados, 1996; Australia (Queensland), 1994; Canada (Manitoba), 2006; Brazil Law 271/00, 2000; Montenegro, 2009; Sierra Leone, 2001; Bangladesh, 1982; Pakistan, 2015; Philippines (Republic Act), 1997; the United States of America, 1994; and Ghana, 1994.

## 5. GENERAL LEGAL CHALLENGES TO POVERTY REDUCTION EFFORTS

Legal challenges to poverty reduction manifest themselves in different ways and their impact differs widely depending on the context in which poverty is produced, reproduced and experienced and on the manner in which the law is marshalled to support particular poverty reduction measures. Some relate to the substance of poverty reduction programmes and their theoretical foundation, while others concern the procedure by which these programmes are devised and implemented. Other challenges concern the broader domestic and international political environment in which they are implemented. This Section will discuss three major legal challenges.

### 5.1 Normative basis for poverty reduction programmes

Poverty reduction programmes have traditionally been founded on economic theory rather than on human rights in general and on economic, social and cultural rights in particular. For a long time, the predominant economic theory that informed poverty reduction efforts in developing countries emphasized the achievement of economic objectives. Much has changed since the mid-1990s as the IMF, the World Bank and donor agencies accepted economic paradigms that lay emphasis on human development, especially human capabilities.

The Millennium Development Goals played an instrumental role in bringing about this shift as the UN and development agencies promoted a human rights-based approach to poverty reduction, and adopted and implemented the capability, livelihood and asset-based approaches to poverty reduction around the world (Handley, Higgins and Sharma, 2009, pp. 12–13; OHCHR, 2004; and Sarr & Moser 2007).

However, policy documents on poverty reduction by donor agencies and governments are still skewed in favour of macro-economic goals.<sup>30</sup> According to Sakiko Fukuda-Parr, although “the Washington Consensus may be dead, the basic macro-economic policy prescriptions for macro-economic stability and privatisation of economic activity remain the core of both World Bank and IMF lending operations and conditions” (Fukuda-Parr, 2011, pp. 128-129). Noting that the “post-2000 architecture of international development has changed in terms of instruments and narratives”, Fukuda-Parr (2011), argues that this has not happened at the level of content. Even in countries that have recognized economic, social and cultural rights in their constitutions, many poverty reduction strategies and policies are not founded on these and other rights.<sup>31</sup>

As the discussion of sectoral areas for legal interventions has shown, some states have adopted legislation specially to address gender discrimination and equality, labour and employment right and access to productive assets, but there are rarely any laws that comprehensively address poverty. The Canada (Ontario) Poverty Reduction Act, 2009, stands

<sup>30</sup> See the poverty reduction strategies at <http://www.imf.org/external/np/prsp/prsp.aspx>.

<sup>31</sup> See the poverty reduction strategies of Ghana (2012), Mozambique (2011), Nicaragua (2010), and Senegal (2012). Compare with the poverty reduction strategy of Malawi (2012), which cites the promotion and protection of human rights as a goal but does not structure the strategy around those rights; that of Uganda (2010) which outlines key principles of its strategy drawn from core rights such as equality, human dignity, and the right to life; and South Africa’s Policy for the Small-Scale Fisheries Sector which is underpinned by constitutional rights and values.

out in this regard because it provides a clear normative framework for the development and implementation of poverty reduction strategies. This framework has potential to influence the attitude of state officials to the poor. If state officials see the poor as beneficiaries of good will of their political leaders, not of rights, they are less likely to feel compelled to implement the policies as a matter of duty and to involve the poor in decision making.

## 5.2 Participation

The initial poverty reduction efforts spear-headed by the IMF and the World Bank were widely criticized for their top-down approach. The resultant poverty reduction strategies were seen as a Western imposition on developing countries that did not sufficiently take into account the specific conditions of poverty obtaining in each country and allowed for cosmetic involvement of local political institutions such as legislatures, civil society and the poor themselves (Jones and Hardstaff, 2005; Mouelhi and Rückert, 2007; Fraser, 2005). The World Bank and the IMF have since acknowledged the importance of national ownership of poverty reduction policies and allowed for more involvement of civil society in their development and implementation (Craig and Porter, 2003; Cornwall and Brock, 2005; Bwalya *et al.*, 2004). In some ways, the livelihoods approach to poverty which many development agencies are promoting, seeks to model poverty reduction programmes on the lived experiences of the poor themselves. Significant attention in international development assistance has also focused on bolstering the oversight role of parliaments and other accountability institutions in developing countries (Burnell, 2009; Brösamle *et al.*, 2007). For example, FAO has worked with parliamentarians in South America and the Caribbean to combat hunger and malnutrition through the enactment of appropriate legislations and policies (FAO, 2017b).

However, participation remains a concern of poverty reduction efforts (Selbervik and Wang, 2006). The participation challenge operates at both the design and implementation levels. Although development agencies and donor countries have increasingly adopted poverty reduction approaches that are founded on the livelihoods of the poor, questions remain about the extent to which blueprints for poverty reduction adopted by development agencies and international non-governmental organizations (NGOs) are sufficiently adjusted to local contexts in which they are implemented and the extent to which local voices are considered. For example, Handley *et al.* (2009, p. 34), note that “Few African governments have poverty policies that are separate from donor frameworks” (see also Banks, Hume and Edwards, 2015, p. 710).

Involving the legislature in the development and implementation of poverty reduction policies could go some way in solving this problem. This is possible if legislation is recognized as an important means of combating poverty. Involving poor communities in public decision-making processes in general and in decisions concerning poverty in particular is also critical. Here again, stipulating as a fundamental principle for the development and implementation of poverty reduction policies, the duty to consult and involve vulnerable groups, as per the Ontario Poverty Reduction Act, would be an important measure. The Ghanaian National Development Planning (Systems) Act, 1994, is another notable example of a legal measure that encourages public participation. Among other things, it expressly requires district and local planning authorities to conduct public hearings on any district or local development plan before such a plan is adopted (Section 3) and recognizes the right of any person aggrieved by any matter relating to the exercise of any power by a district planning authority to submit grievances to the National Planning Commission (Section 6). Codifying the duty of public authorities to carry out rural, social or gender impact assessments when developing

and implementing any policy is another way of ensuring that the poor are heard or that their wellbeing and welfare is considered when developing and implementing government policies, as do the Northern Ireland Rural Needs Act (United Kingdom of Great Britain and Northern Ireland, 2016), the Strong and Sustainable Resource Communities Act of Australia (Queensland), 2017, and the Republic of Korea Gender Impact Analysis and Assessment Act 2011.

### **5.3 Neglect of legislative grounding, legal advocacy and judicial remedies**

The final is closely linked to the problem of normativity and neglect of legislative grounding of poverty reduction programmes. Where poverty reduction strategies and programmes are not grounded in human rights, especially economic, social and cultural rights, and legislation, their implementation becomes a matter wholly for political expediency, negotiation, and horse-trading and compromise. The poor do not have access to the courts to enforce their rights.

While the use of NGOs for development delivery has increased opportunities for the involvement of the general public in poverty reduction, development assistance and philanthropic agencies and institutions have given more support to NGOs that provide direct services which are easily measurable in the short-term for reporting purposes than those that provide indirect services such as public interest litigation, legal advocacy and research (Parks, 2008; Jalali, 2013). This has ignored the short and long-term value of legal accountability for the implementation of poverty reduction programmes and of advocacy initiatives aimed at legal reforms to support poverty reduction efforts.



## 6. CONCLUSIONS

### 6.1 The importance of law to realizing Sustainable Development Goal 1

There is no doubt that significant progress has been made worldwide to reduce poverty. However, too many people – the majority of which live in rural areas – are still poor. This means that for the international community to achieve SDG 1 to eradicate poverty by 2030, concerted efforts have to be made at local, regional and international levels by state and non-state actors to combat rural poverty.

The task of combating rural poverty does not only require the formulation and implementation of appropriate policies and programmes; it also requires the enactment of relevant laws to translate policies into specific implementable principles, entitlements and procedures, and to establish relevant structures and institutions to implement and monitor their implementation. When properly deployed, the law performs or can perform various crucial functions in poverty alleviation efforts:

- It can recognize the rights whose violation constitutes the deprivations that give rise to, and define, the condition of poverty.
- The recognition of the rights linked to poverty means that the occurrence of poverty constitutes a *prima facie* violation of human rights and that society has a collective duty to adopt measures to eliminate poverty.
- Once the elimination of poverty is considered a human rights duty, victims of poverty regain their dignity and voice: they become right holders who can claim their rights against the state and other relevant actors, including by holding the duty bearers accountable for the manner in which they have implemented the rights linked to poverty and, more specifically, for the policies they have adopted (or failed to adopt) to combat poverty.
- As rights holders, the poor can seek judicial and other remedies to protect existing access to basic services and goods to sustain their lives. They can also rely on the state to protect their resources from being arbitrarily deprived by third parties.
- Human rights, supported by appropriate sectoral legislation, can provide a normative and procedural framework for poverty reduction efforts. They can provide a firm basis on which poverty reduction strategies can be designed and implemented.
- Using the law to support poverty reduction policies has the effect of balancing politics with individual and group rights, short-term political considerations with long-term legal obligations. There is wide scope for the exercise of policy discretion in decisions concerning poverty for which political institutions and procedures are most appropriate, but when poverty is considered a *prima facie* violation of human rights, states have some obligations which cannot simply be negotiated away on the political market.

The degree to which the law can play a useful role in poverty reduction depends on many factors including the extent to which the law is responsive to the specific needs and circumstances of the people, the extent to which the poor and the general public are involved in the enactment and implementation of the law, respect for the rule of law, and political will. Legal frameworks on poverty reduction can provide the terms for parliamentary oversight, and lay down procedures for the participation of stakeholders, including the poor themselves.



## 6.2 Sectoral areas for which law is relevant

The SDGs expressly recognize the need for legislation to support and implement various policies on poverty. They also help to identify the sectoral areas for which legal interventions are germane and needed. The range of the sectoral areas is wide and an exhaustive discussion of them is impossible. This study has identified seven of them and shown, using existing legislative interventions from around the world, how the law can be deployed to support and bolster poverty alleviation efforts. The seven sectoral areas identified and discussed are:

- *Social protection and security*: Mentioned specifically by SDG 1, social security and protection has traditionally been addressed via legislation, and plays an important role in protecting employees, the unemployed, farmers, poor children, older persons and other groups of vulnerable people from deprivation or vulnerability to poverty and other socio-economic hardships. Some of the gaps in social security and protection legislation are the failure to cover informal workers, the lack of organized social services, and the absence of comprehensive social welfare systems in many developing countries.
- *Decent rural employment*: While the promotion of productive and decent work for all is specified as an independent goal, it is clearly linked to SDG 1. This area of policy activity has also seen many legislative interventions including those that seek to regulate informal work or agricultural labour, prohibit child labour, set minimum and maximum hours of work, or create rural employment schemes.
- *Human capabilities*: SDG 1 expressly commits states to ensuring that everyone has access to basic services. This goal taps into the capabilities approach to poverty which gives states a chance to use legal measures to guarantee access by the poor to basic goods and services necessary to enhance people's capabilities and functionings. Such access can be legally guaranteed by enshrining socio-economic rights in the constitution or legislation. While some states have done this, others have not, which means that the poor in these states may not be able to demand access to basic services as matter of right.
- *Livelihoods protection*: The idea of protecting people's livelihoods is impliedly mentioned in SDG 2. It requires states to double agricultural productivity and incomes of small-scale food producers, and to promote sustainable tourism that creates jobs and promotes local culture and products. The law has been used to protect and enhance people's livelihoods such as by regulating sustainable use and management of fisheries and the environment, facilitating access to energy sources, regulating the allocation and processing of fisheries and other food products, providing for the development of specific socio-economic activities such as fish-breeding, hunting, forestry, subsistence farming, and facilitating the formation of cooperatives.
- *Access to assets*: Access to economic resources including land, inheritance, natural resources, financial services and finance are expressly mentioned by SDG 1. This goal draws on the asset-based approach to poverty which takes as its premise the fact that control over productive resources is pivotal to people's ability to sustain their livelihoods and escape from poverty. The law can be, and has been used, to facilitate access to land and natural resources by the poor, to regulate micro-finance and

banking services, to facilitate access to finance by rural populations, and to protect vulnerable people from micro-finance lenders. Special attention should be paid to the equal rights of men and women in the access to and control of these assets (e.g. SDG 5.a.2 regarding women's legal rights to land).

- *Equality*: Equality for all, forms the foundation for SDG 1 and is further specified as a separate SDG. The areas of discrimination and equality for all have widely been addressed by legislation and constitutional law, with an emphasis on promoting vulnerable groups such as women, children, persons with disabilities, migrant workers, refugees, ethnic minorities, and indigenous groups. As poverty affects these groups more than anybody else, some countries have enacted legislation that gives priority to these groups' anti-poverty policies. Importantly, given that gender equality is specifically mentioned as a sustainable development goal, legislation protecting women's rights and wellbeing has to be given priority.

### 6.3 Legal challenges

Given that poverty is a cross-cutting issue and is addressed by various government agencies, it requires a wide range of legal measures. As this paper has shown, the kinds of legal interventions needed to address various aspects of poverty are infinite: each country needs to assess the root causes of poverty within its jurisdiction and prioritize interventions accordingly. The neglect of legislative frameworks, including the neglect of the recognition of economic, social and cultural rights, has left some poverty reduction policies without durable and effective implementation mechanisms, or victims of poverty without effective judicial and other avenues of holding states accountable. For states that use legal measures, many do not expressly use human rights as their normative basis. As a result, poverty reduction policies are crafted out of sync with states' international and domestic legal obligations, especially those emanating from human rights. Another major legal challenge relates to the participation of the public in general and the poor in particular in the formulation and implementation of poverty reduction policies. Much progress has been made to promote the participation of civil society organizations; but concerns remain about the extent to which grassroots organizations and legislatures are involved, and about the extent to which poverty reduction blueprints imported from elsewhere are adapted to the new contexts in which they are applied. Notable in this regard is the exclusion of informal workers and rural dwellers from labour legislation and social security legislation, which continues to happen in many countries. In some cases, there are inconsistencies between the various laws addressing specific sectors. For example, laws promoting market liberalization in some cases clash with legal measures to protect rural farmers.

## 7. RECOMMENDATIONS

Given the legal and institutional coordination challenges highlighted above, the following recommendations can be made:

- *Explicitly accept human rights as a normative basis for poverty eradication:* The idea of a human rights-based approach to poverty, long advocated by the Office of the United Nations High Commissioner for Human Rights (OHCHR, 2004), needs to be taken seriously and implemented by states. This means that states must recognize their duties flowing from their international and domestic laws, including the duty to eradicate poverty. A human rights-based approach to poverty eradication places the principles of non-discrimination, human dignity, participation, accountability and access to basic services at the centre of poverty eradication efforts (OHCHR, 2004). As has been pointed out in this paper, the Canadian Ontario, Poverty Reduction Act provides an example of such a framework, with its emphasis on consultation with the poor, involvement of the poor in decisions of poverty, respect for the human dignity of the poor, and recognition that vulnerable groups are disproportionately affected by poverty as core principles underpinning poverty alleviation efforts (see Section 5.1).
- *Give special legal protection to vulnerable groups:* While all people are prone to poverty, some groups, such as women, children, rural dwellers, the elderly, the disabled, refugees and minorities, are more prone and disproportionately affected by poverty. Special legislative and other legal measures need to be devised to protect these groups. There clearly is evidence that states are addressing issues of gender equality, violence and abuse, but the implementation of those measures remains a concern. Other vulnerable groups need more legislative protection specifically and targeted poverty reduction policies (see Section 4.7).
- *Ensure coherency in the law and institutional apparatus for poverty reduction:* Given the cross-cutting nature of poverty and the need for it to be addressed in a holistic fashion, a clear coherent coordinating system for the formulation and implementation of poverty reduction measures seems to be most pertinent. Such a system needs to provide for accountability and monitoring mechanisms which can be accessed by, and can provide redress to, victims of poverty. So far, some states have established rural poverty coordination commissions, committees or authorities, but these need to have more clearly defined functions, institutional, financial and functional independence and autonomy, and the authority to command respect for the decisions they make.

Also critical is rationalizing all poverty-related laws so that they are consistent and coherent. This can be achieved partly by adopting clear principles that should underpin all poverty reduction efforts.

- *Enact and institutionalize participatory procedures:* In order for poverty reduction policies to succeed, they need to be owned by the states that implement them. This means that they must be formulated in a participatory manner, involving civil society, relevant political and other institutions, and the poor themselves. This also means that the poor must be involved in their implementation and evaluation. Such

participation procedures could include social or rural impact assessments in which the people are involved (see Section 5.2).

- *Involve parliament:* Although the responsibility to devise policies rests with the executive, policies need parliamentary approval for them to be given legal effect and legitimacy. It is important that poverty reduction strategies specify, even if this is done in broad strokes, the legislative measures needed to support the specific policy. Legislation helps to translate the principles underpinning a policy into general rules that can be applied by administrators fairly and equitably and to establish the mechanisms of implementation and accountability, and appropriate remedial action for lack of implementation. The successes that FAO and the legislators in Latin America and the Caribbean have achieved in combating hunger and malnutrition through legislation and policies underline the significance of parliaments to poverty reduction.
- *Strengthen and establish judicial and other remedies:* Since poverty largely represents deprivations that mirror economic, social and cultural rights, domesticating these rights and rendering them, justiciable is critical to poverty reduction. Other remedies such as investigative remedies and complaints mechanisms by national human rights institutions need to be taken to complement judicial remedies and to address systemic problems about poverty.
- *Establish an appropriate enabling and regulatory framework for NGOs:* Given the importance that NGOs are playing in poverty reduction, legislative measures to remove obstacles to the operation of NGOs and to establishing appropriate legislative measures and self-regulatory and accountability mechanisms is critical. The legal framework should not only make provision for NGOs providing direct services but also those pursuing policy advocacy, research, legal reform and public interest litigation. States also need to create domestic avenues for providing financial support for local NGOs.

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