

Mar 27 2015

## The promise of eradicating poverty through human rights

Andrew Small

*[Rafael Silva](#) is a senior human rights lawyer at the Research Centre of the Chilean Supreme Court, and was formerly Director of [Techo-Chile](#) in the Region of Valparaiso. He holds an LLM with a specialism in Human Rights from LSE. This is the second in a [series](#) of posts Rafael is writing about human rights and global poverty.*



Urban poverty in Jakarta, Indonesia (photograph: J. McIntosh)

Certainly the most relevant contribution of human rights to the struggle against poverty is the introduction of a [new logic](#) to understand and to face this problem. Replacing the language of opportunities (characteristic of neoliberal approaches) with one of rights means that development is no longer a chance that benefits exclusively those who are able to demonstrate specific abilities or to conduct particular actions. Instead, it is a [universal entitlement](#), especially for those unable to satisfy their most basic needs, and a legal obligation for those who are in a position to respect, to protect and/or to fulfil these entitlements.

The result of this new logic is that the eradication of poverty is now a mandatory legal aim for governments and non-state actors supported by a set of national and international law instruments and principles that demand the inclusion of all, not only of those who are functional to economic growth. Nevertheless, an effective deployment of the logic of

rights has been obstructed in a manner that affects its essential features while undermining its impact. Especially, the role of duty-bearers and rights-holders has not been fully developed as in other kind of legal relations, either for lack of understanding of its particularities or of willingness.

Human rights obligations have usually been understood as binding legal duties exclusively to states, leaving non-state actors out of the equation. But the current economic global order has highlighted the role of non-state actors in the delivery of welfare. When transnational companies surpass the economic power and political influence of some developing countries, it is essential to hold them accountable for the human impact of their actions. Otherwise, as it has been experienced through the [financial crises of the last decade](#), it will create a legal vacuum where human rights are being massively violated with no one being accountable, leaving their universal enjoyment as illusory. At this point, it deserves to be mentioned that the UN has attempted to establish a framework that sanctions and compensates the negative human rights impact of business. Although, it is still a weak [framework](#) that does not establish a mandatory set of legal obligations for corporations, it is certainly a step towards the recognition of a normative rhetoric against the impunity of these entities.

On the other side, the notion of the most excluded as rights-holders of legal entitlements that can satisfy their most basic needs has the capacity to create profound social transformation. First it has the empowering potential to enhance their protagonism towards their development, and secondly, it is particularly valuable when it is capable of breaking the status quo and the position of the poor as losers of the system established by the pace and decisions adopted by ruling elites. However, the logic of rights has been distorted through the inclusion of alien elements that directly affect the quality and effectiveness of the human rights (particularly social rights) that are held by people living in poverty. For instance, the process of [commodification](#) undermines the position of the most excluded, who are no longer perceived as citizens but as customers whose development will exclusively depend on their purchasing power. This model considers distribution as a political-economic issue instead of a legal matter. This will mean that the decisions adopted in this regard are based on the 'market' that is presented as an abstraction that is technical, anonymous and incapable to produce social harm, consequently, not subject to legal responsibility.

In a similar vein, political actors have affected the efficiency of social rights in poverty eradication establishing their conditionality. The discourse of citizenship that promotes the individual not just as a rights-holder, but also as a duty-bearer, could be convenient to enforce behaviours that are probably desirable for a given society. But, when the execution of a specific action is the condition to satisfy basic needs it could easily lead to the establishment of a framework for social control where the ruling elites employ social rights to regulate the behaviour of the poor.

The deprivation of essential attributes of social rights through commodification or conditionality impedes the empowerment of the most marginalised based on a language of rights, basically because entitlements will not be used to satisfy their basic needs, instead to enhance the market and to control their behaviour. Moreover, this approach would only foster capitalism while undermining individuals. These welfare systems (according to Marxist criticism) would only ensure that citizens are able

to satisfy the demands of companies, using public expending to guarantee the production of mentally and physically suitable workers. As a consequence, through ideologically loaded social provisions, the state would aim to transform citizens into wage-labourers.

However, arguably, the most harmful deprivation of social rights attributes is the questioning on their legal enforceability. Some arguments to impede the proliferation of social rights litigation comprise the imperfect obligations they would originate, the non-democratic intrusion of courts in political affairs, and even the unlikelihood to achieve pro-poor involvement of judges. Nevertheless, it is difficult to deny the practical value of judicial strategies of social development when we focus on the needs of the poor and on effective and inclusive strategies of poverty eradication, rather than theoretical legal debates. Under a framework of entitlements and duties, it becomes fundamental to establish an accessible and efficient mechanism of judicial redress, because it is necessary to hold accountable those who violate human rights, maintaining the rule of law and democracy. But, more importantly, it has the potential to foster social change by empowering the poor, introducing human rights standards in social policies and breaking the status quo in the distribution of resources and power.

For example, the experience on [right to food](#) litigation in Camotan (a rural council in Guatemala), the first of its kind in Latin America, has shown the different levels of impact of social rights litigation on jurisprudence and rights realisation. At a recognition level, the Guatemalan tribunal [has reasserted](#) the poor as a right holder. It has concluded that the undernourishment of children is not the result of personal failures or negligence of their parents, but the result of a violation of social rights because the state did not adopt the necessary measures to fulfil its legal obligations. At a political level, human rights standards must be taken into consideration in the design and implementation of social policies. In a settlement as Camotan, with 89 per cent of its population living in poverty, those who experience severe deprivation need strong legal and political mechanisms to break a reality that seems predestined and to call the attention of political elites to represent their interests. Irrespective of the initial reticence of the Guatemalan authorities to comply with the [22 measures](#) ordered by the tribunal, the withdrawal of the appeals and the progressive compliance of the measures can contribute to a rights-based comprehension of poverty.

The human rights approach is certainly neither the panacea nor the definitive solution for defeating poverty. Indeed, it needs to urgently overcome the series of obstacles that have been described in this article in order to reach its full deployment and stop being more a promise than a reality. But, it is definitely a framework with the potential to create social and structural transformation and to empower the poor, guaranteeing their treatment as citizens, not as subjects of charity. Also, this approach allows the identification of duty bearers, which is particularly relevant when the persistence of poverty and high rates of inequality are definitively the result of conscious decisions adopted by political elites. Maybe, for its capacity to create change in favour of the poor, it is time to seriously take this approach into consideration, particularly when adopting the international consensus that will replace the Millennium Development Goals.

*Interested in the intersection of human rights, fairness and justice with economic globalisation? The [Laboratory for Advanced Research on the Global Economy](#) (based in the Centre for the Study of Human Rights) probes the challenges posed by the complexities of the global economy and their implications for human well-being.*

---

This entry was posted in [Alumni](#), [Poverty](#) and tagged [development](#), [Guatemala](#), [International law](#), [litigation](#), [poverty](#), [United Nations](#). Bookmark the [permalink](#).