



chapter
four

PROTECTING CIVIL LIBERTIES &
PROMOTING HUMAN RIGHTS **FOR ALL.**

**THE UNITED NATIONS POST-2015 DEVELOPMENT
AGENDA**

***THE NEED FOR A SUSTAINABLE DEVELOPMENT GOAL ON HUMAN
RIGHTS.
APRIL, 2015.***

1. *Brief Overview*

The Millennium Development Goals (MDGs) will expire in September 2015. In view of this, the membership of the United Nations is undertaking an extensive process of establishing the next step, post the time period set for the MDGs, through an initiative for Sustainable Development Goals (SDGs). This process is set to build on the gains from the MDGs, while steering the international community to handle the still outstanding scourge of poverty.

At the Rio+20 Conference, world leaders, along with thousands of participants from governments, the private sector, Non Governmental Organisations (NGOs) and other groups, converged to discuss strategies for poverty eradication.¹ The conference also sought ways to advance social equity and ensure environmental protection on the globe.² During this United Nations Conference on Sustainable Development in Rio de Janeiro, Brazil from 20 to 22 June 2012, organised in pursuance of the United Nations General Assembly (UNGA) Resolution 64/236 (A/RES/64/236),³ an outcome document entitled, 'The future we want' was produced and later adopted by the UNGA in Resolution 66/288 on 27th July 2012.⁴

Pursuant to the adoption of the outcome document, the UNGA established the Open Working Group on Sustainable Development Goals, in accordance with paragraph 248.⁵ The Working Group subsequently released a detailed proposal for the SDGs in a report to the UNGA.⁶ Among the seventeen (17) SDGs proposed, Goal sixteen (Goal 16) is the closest to an express emphasis on human rights. It states:

“Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

16.1 Significantly reduce all forms of violence and related death rates everywhere

16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children

16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime

¹ See Rio+20 – United Nations Conference on Sustainable Development at <http://www.uncsd2012.org/about.html> - visited on 8/4/2015.

² Ibid.

³ See para. 20 of UNGA Resolution A/RES/64/236.

⁴ This Resolution adopted in the 123rd Plenary Meeting annexes the Outcome Document from the Rio Conference.

⁵ UNGA Decision 67/555 implementing UNGA Resolution A/RES/66/288, para. 248 (annex)

⁶ UNGA A/68/970.

16.5 Substantially reduce corruption and bribery in all their forms
16.6 Develop effective, accountable and transparent institutions at all levels
16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels
16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance
16.9 By 2030, provide legal identity for all, including birth registration
16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
16.a Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime
16.b Promote and enforce non-discriminatory laws and policies for sustainable development.”

With reference to the above, this paper therefore proposes two alternative positions: Either Goal 16 be revised into a more explicit human rights goal; or a ‘Goal 18’ be introduced to deal squarely with human rights and its bearing on the eradication of poverty.

2. General Human Rights Considerations:

Civil and Political Rights,⁷ as well as Economic Social and Cultural Rights,⁸ are both pivotal in the realization of sustainable development. Although social economic rights primarily hinge on development related matters, civil and political rights are equally relevant, in view of the inter-relatedness and interconnectedness of all human rights.

Civil and Political Rights are especially relevant for access to justice and the rule of law. This guarantees the observance of the dignity of persons within a country and allows them the proper context to be productive economically. Specifically, the protection from discrimination, the right to privacy, the freedoms of thought and conscience, speech and expression, religion, the press, assembly, and movement, as well as the right to a fair trial and due process, are very critical stalwarts for the building of a proper functioning and economically vibrant society. This could be exemplified as follows:

In the event that an individual is not discriminated against and therefore has access to opportunities; when that person has the freedom to think creatively and express him/herself; further, if that person has the protection of his/her property and developments due to the existence of a proper criminal justice system with fair trial and due process; that individual, therefore, has the requisite conditions to foster his/her productivity and economic engagement. The need to prioritise these rights is directly linked to the development of a particular society or state.

⁷ The International Covenant on Civil and Political Rights. 1966.

⁸ The International Covenant on Economic, Social and Cultural Rights, 1966.

With regard to social economic rights, these directly affect the economic growth of a state. Particularly, these rights directly impact the different pillars of growth and productivity in any country. Specifically, the right to education, the right to housing, the right to an adequate standard of living, the right to health and the right to science and culture, all address critical areas of growth in any economy. This is exemplified as follows:

The rights to education and health are important for building a formidable and productive labour resource in a state. The rights to housing and an adequate standard of living are very vital in fostering infrastructural development. Finally, the right to science and culture is critical in aiding scientific research and technological advancement, as well as cultural diversity; both very fundamental areas for advancement of trade and recreation.

Thus, a discussion of human rights in general, is intrinsically linked with the economic advancement of any society. Human rights must be an integral part of any sustainable development agenda. However, specificity is also important. In the next section, a specific appraisal of human rights as a tool for poverty eradication is explored, underlining the practicalities of a human rights based approach to development. The appraisal is done, based on the work and research published by the United Nations Commission on the Legal Empowerment of the Poor.

3. *Human Rights: A Tool for the Eradication of Poverty*

Human Rights is critical in the process of eradication of poverty. It is particularly relevant in creating a favourable context and dispensation for countries and developing economies to initiate effective policies for economic growth.

The United Nations Commission on the Legal Empowerment of the Poor,⁹ in a two-volume report, expounded on the impact that a rights-based approach can have on lifting persons out of poverty. Using legal empowerment as a development strategy, the Commission identified four (4) pillars of legal empowerment for systemic change aimed at unlocking the civic and economic potential of the poor, namely: *access to justice and the rule of law, property rights, labour rights, and 'business rights'*.¹⁰ In identifying them, the Commission indicated that these four pillars reinforce and rely on each other; and that through their convergence and synergy, legal empowerment (and thus, societal development) can be achieved.¹¹

⁹ In 2005, a distinguished group of scholars, former heads of state, senior policy makers and thinkers came together to explore the issue of legal empowerment of the poor. The United Nations Development Programme (UNDP) hosted them.

¹⁰ Making the Law Work for Everyone, Volume I, Report of the Commission on the Legal Empowerment of the Poor, 2008, p. 5.

¹¹ Ibid.

3.1 First Pillar: Access to Justice and The Rule of Law

According to the Commission, first among rights is that which guarantees all others: access to justice and the rule of law.¹² Legal empowerment is impossible when, *de jure or de facto*, poor individuals are not permitted access to a well functioning justice system.¹³ Where clear laws protect and enforce the rights and obligations of society, the benefits to the poor are considerable; but, equal access to justice can only be achieved through commitment of the state and public institutions.¹⁴

Therefore, the Commission proposes that legal empowerment measures in this domain must: ensure that everyone has the fundamental right to legal identity, and is registered at birth; repeal or modify laws that are biased against the rights, and livelihoods of poor people; facilitate the creation of state and civil society organizations and coalitions, especially those that work in the interest of the excluded; establish a legitimate state monopoly on the means of coercion, through, for example, effective and impartial policing; make the formal judicial system, land administration systems, and relevant public institutions more accessible by recognizing and integrating customary and informal legal procedures that the poor are conversant with; encourage the courts to give due consideration to the interests of the poor; support mechanisms for alternative dispute resolution; foster and institutionalize access to legal services so that the poor will know about and take advantage of the law; support concrete measures for the legal empowerment of women, minorities, and indigenous peoples.¹⁵

Therefore, proper infrastructure (or structure) is important for development. Access to justice and a well functioning system allow all human rights to thrive; creating an enabling environment for development.

It is critical that the SDGs clearly provide, either for a detailed facet on access to justice and the rule of law, or for a single provision within a wider SDG that incorporates all these pivotal aspects. As mentioned in the previous section, this pillar is a very imperative aspect of civil and political rights, and represents the foundation upon which other rights and also, economic development policies, can be built upon.

3.2 Second Pillar: Property Rights

The Commission recounts that the ownership of property, alone or in association with others is a human right; and proceeds to propose four building blocks to a fully functioning property system, namely: a system of rules that defines the bundle of rights and obligations between people and assets reflecting the multiplicity and diversity of property systems; a system of governance; a

¹² Ibid. For more detailed discussion, *see also*, Making the Law Work for Everyone, Volume II, Report of the Commission on the Legal Empowerment of the Poor, 2008, Chapter One.

¹³ Making the Law Work for Everyone, Volume I, Report of the Commission on the Legal Empowerment of the Poor, 2008, p. 5.

¹⁴ Ibid.

¹⁵ Ibid., pp. 5-6.

functioning market for the exchange of assets; and an instrument of social policy.¹⁶ Therefore, to be fully productive, assets need to be formally recognized by a system of individual and collective property rights; a system that includes recognition of customary rights, standard records, titles, and contracts.¹⁷

Thus, it is proposed that the legal empowerment measures in this domain must: promote efficient governance of individual and collective property in order to integrate the extralegal economy into the formal economy and ensure it remains easily accessible to all, especially the poor; ensure that all property recognized in each nation is legally enforceable by law and that all owners have access to the same rights and standards (that includes effective and inclusive land tenure systems); create a functioning market for the exchange of assets that is accessible, transparent, and accountable; broaden the availability of property rights, including tenure security, through social and other public policies, such as access to housing, low interest loans, and the distribution of state land; promote an inclusive property-rights system that will automatically recognize real and immovable property bought by men as the co-property of their wives or common-law partners.¹⁸

Property is a critical pillar for development. Specifically, land is an area of deep confusion and conviction, particularly in developing countries. With a human rights approach, it is pivotal that these rights (especially land rights in developing countries) are streamlined. It is imperative that the SDGs provide for the protection and enhancement of property rights so that this factor of development is maximized. The protection of property rights means the protection and promotion of productive assets that would be critical for economic development.

3.3 Third Pillar: Labour Rights

The Commission states that the legitimacy of the economy depends upon basic labour rights and the development of human capital necessary for sustained growth.¹⁹

Therefore, for this pillar to be effective, the Commission proposes that the following must be done: respect, promote, and realize freedom of association so that the identity, voice, and representation of the working poor can be strengthened; improve the quality of labour regulation and the functioning of labour market institutions, thereby creating synergy between the protection and

¹⁶ Ibid., p.6. For more detailed discussion, *see also*, Making the Law Work for Everyone, Volume II, Report of the Commission on the Legal Empowerment of the Poor, 2008, Chapter Two.

¹⁷ Making the Law Work for Everyone, Volume I, Report of the Commission on the Legal Empowerment of the Poor, 2008, p. 6.

¹⁸ Ibid., p. 7.

¹⁹ Ibid. For more detailed discussion, *see also*, Making the Law Work for Everyone, Volume II, Report of the Commission on the Legal Empowerment of the Poor, 2008, Chapter Three.

productivity of the poor; ensure effective enforcement of a minimum package of labour rights for workers especially those in the informal economy; increase access to employment opportunities in a growing and more inclusive market economy; expand social protection for poor workers in the event of economic shocks; promote measures that guarantee access to medical care, health insurance, and pensions; ensure that legal empowerment drives gender equality, thus meeting the commitments under the International Labour Organization (ILO) standards that actively promote the elimination of discrimination and equality of opportunity for, and treatment of, women, who have emerged as a critical force in poverty reduction in poor communities.²⁰

Labour and human resource is extremely important for the growth of an economy. Effective labor rights increase the level of productivity of the human resource in any developing economy. As noted in the prior section, economic, social and cultural rights are pivotal for the protection and enhancement of the quality of labour resource in a country. It is therefore critical that the SDGs incorporate the protection and development of labour and human resource as of right; highlighting as well, the direct link between a thriving labour force and a booming economy.

3.4 Fourth Pillar: Business Rights

The Commission, finally, proposes that the access to basic financial services is indispensable for potential or emerging entrepreneurs; equally, the access to protections and opportunities such as the ability to contract, to make deals, to raise investment capital through shares, bonds, or other means, to contain personal financial risk, and to pass ownership from one generation to another, are critical for the realization of economic advancement.²¹

Accordingly, legal empowerment measures in this domain must: guarantee basic business rights – including the right to vend, to have a workspace, and to have access to necessary infrastructure and services (shelter, electricity, water, sanitation); strengthen effective economic governance that makes it affordable to set up and operate a business, to access markets, and to exit a business if necessary; expand the definition of legal person to include legal liability companies that allow owners to separate their business and personal assets, thus enabling risk-taking; promote inclusive financial services that offer entrepreneurs in the developing world – savings, credit, insurance, pensions, and other tools for risk management; expand access to new business opportunities through specialized programs to familiarize entrepreneurs with new markets that support backward and forward linkages between larger and smaller firms.²²

²⁰ Making the Law Work for Everyone, Volume I, Report of the Commission on the Legal Empowerment of the Poor, 2008, pp. 7-8.

²¹ Ibid., p. 8. For more detailed discussion, *see also*, Making the Law Work for Everyone, Volume II, Report of the Commission on the Legal Empowerment of the Poor, 2008, Chapter Four.

²² Making the Law Work for Everyone, Volume I, Report of the Commission on the Legal Empowerment of the Poor, 2008, pp. 8-9.

Productivity and economic development thrive on well-established business policies. However, a rights based approach to these business matters highlights the regard for the individuals involved in the process and places emphasis on their needs for economic productivity. It is more than critical that the SDGs provide for rights leaning approach to business matters, highlighting the needs of individuals as they seek to explore markets and business opportunities.

4. *The Human Right to Development*

The United Nations Declaration on the Right to Development defines the right as *an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.*²³

‘The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.’²⁴

Importantly, according to the Declaration, *states have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.*²⁵

The right to development has been a subject of repeated deliberation at the United Nations Human Rights Council. In one of the most recent resolutions by the Human Rights Council on the right to development, the Council underlined the need for the post-2015 development agenda to aim at strengthening new, more equitable and sustainable national and international order, as well as promote and protect all human rights and fundamental freedoms.²⁶ It further encouraged Member States to *pay particular consideration to the right to development in the context of the elaboration of the post-2015 development agenda.*²⁷

This right provides a proper context for the appropriation of development as of right. It pushes economic development policy in developing states not just to be rights based, but also to acknowledge the centrality of a development agenda as a specific rights issue, in and of itself. It anchors development of the people as fundamental to their existence, for their own growth, welfare, and success.

Despite the fact that the contours of the right to development are still under development and discussion, it is clear that there is need for the SDGs to reflect

²³ UNGA Resolution A/RES/41/128, adopted on 4th December 1986, Article 1(1).

²⁴ Ibid., Article 1(2).

²⁵ Ibid., Article 3(1).

²⁶ Human Rights Council Resolution A/HRC/RES/27/2, adopted on 25th September 2014, para. 11 of the Preamble.

²⁷ Ibid., para. 12.

the growing centrality of this right in the formation of a post-2015 development agenda. This right must be a subject of serious consideration in the formation of goals that hinge on the very nature of the right itself. In concert with the rights based approaches discussed above, as well as a purposive reading of the general human rights framework, the right to development will greatly contribute to a positive and sustainable scaffold for the eradication of poverty. The right to development must be reflected in the SDGs.

5. *Curving Out a Human Rights SDG*

With regard to the foregoing, it is very critical that the SDG discussion bears a clear goal on human rights. This is proposed, notwithstanding the cursory reference to human rights in the conversations surrounding the SDGs in the United Nations system.

Indeed, in a synthesis report of the Secretary General of the United Nations, on the post-2015 sustainable development agenda, he proposed a transformational approach that should, among others, *ensure that all actions respect and advance human rights, in full coherence with international standards.*²⁸ It is clear that human rights considerations are being addressed (*or at least being discussed*) in the development of the post-2015 agenda.

However, it is proposed that more needs to be done, in light of the centrality of human rights. Human rights are not merely meant to be in the background, informing the nature of the SDGs, they need to be at the foreground, as part of the SDGs with clear identifiable parameters and targets, for development and the eradication of poverty.

Specifically, it is proposed that the SDG should have the following:

- 1) A clear reference to, and inclusion of, the general framework of both civil and political, and social economic rights, as a foundational consideration.
- 2) A clearly enunciated link between human rights and economic development and the eradication of poverty.
- 3) Incorporate the four pillars advanced by the Commission on the Legal empowerment of the Poor, clearly highlighting the importance of a rights based approach to development.
- 4) Reference to the right to development and its central role in lifting persons out of poverty.
- 5) Two sets of targets: Rights exclusive and specific targets; and rights targets intertwined with development specific targets.

Therefore, in light of the above considerations, the following is proposed as an SDG on human rights:

²⁸ UNGA A/69/700, para. 65.

Goal 16 or 18:

Respect, protect and fulfill the rights of all persons, especially the right to development, provide for access to justice and the rule of law, safeguard the property, labour, and business related rights, and promote human rights compliant policies for sustainable development.

The detailed contours of the SDG can be formulated, guided by the discussion in this document and by the five summarized aspects mentioned above as ideal contents for this potential SDG. It is appreciated that some other SDGs may overlap with this one; however, it is imperative that an SDG on human rights is as comprehensive and ascertainable as possible.

6. Conclusion

It is abundantly clear that human rights are critical and fundamental in the eradication of poverty. With the growth of the recognition of the human rights based approach to development, the timing cannot be any riper for a candid, purposeful and practical conversation on how to place human rights in the development agenda.

The SDG process does provide a window of opportunity for clear steps to be taken to make human rights work in the development agenda. The small strides taken in the human rights arena need to be consolidated and directed on a path of practical application in the transformation of the quality of life and wellbeing of impoverished societies.

Critically, with the evidence of considerable work being done within the United Nations system to protect and promote human rights, all these initiatives need to mean something in the growth and development of states and societies. Positive steps need to be taken to make the connection and foster the practical benefits of human rights adherence.

The time to take that bold step is now.