

The Merits of Treating Severe and Systemic Poverty as a Human Rights Violation

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What are the Merits of Treating Severe and Systemic Poverty as a Human Rights Violation?

'People living in extreme poverty are often neglected or overlooked by politicians, service providers and policy-makers due to their lack of political voice, financial and social capital and their chronic social exclusion. They are disproportionately affected by many human rights violations. Discrimination against people living in poverty is widespread and widely tolerated' (OHCHR 2013:1). Poverty is not solely an economic issue but rather a multidimensional phenomenon that encompasses a lack of both income and the basic capabilities to live with dignity. In recent years, there has been talk about 'the bottom billion(s)' (Hammond et al. 2007:1) in reference to the world's poor who live on less than minimal income. Shockingly, as the parentheses suggest, their exact numbers are unknown. The term, 'bottom billion(s)' was popularized by Prahalad (2006) who stated, in relation to the worlds extremely poor, that 'be it four or five billion, and if it is only 3.5 billion, so be it' (Prahalad, 2006:11). The fact that these number represent human lives is terrifying and one of the effects of aggregating the world's poor in this way is that they seem to become numerical rather than human entities.

A human rights approach provides a framework for the long-term eradication of extreme poverty based on the recognition of persons living in extreme poverty as right holders and agents of change. This paper shall use the UN definition of absolute poverty as... 'A condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to services' (Poverty and Social Exclusion, 2014). Everyone has a right to the means of basic subsistence: the right to the material and social conditions necessary to remain alive, in normal health, and reasonable comfort. This is a universal right (it applies to everyone everywhere), as it is undeniably an important (perhaps the most important) right, and 'it is something that we can individually and collectively do something about so that it is a clear candidate for being categorized as a human right' (Campbell, 2007:61). Another key term, which requires definition, is 'violation'; from a legal human rights perspective, it is necessary to draw a distinction between the non-enjoyment of human right and the violation of human rights. To establish a violation under human rights law, it is necessary to ascertain whether human rights obligations have been violated. To determine a violation, first it is necessary to identify a specific human right, identify the duties imposed by that right on governments – or other actors – and then identify whether there has been a breach in meeting those duties. As the Center for Economic and Social Rights (2009) discusses, before determining a 'violation', it is crucial to identify the intentions and efforts of the state or other actors. An analysis of actions and efforts is fundamental in determining whether or not the non-enjoyment of certain rights constitutes a violation. As many poverty-related violations are closely related to available resources, it is crucial to distinguish the inability from the unwillingness of a state to realize those human rights. Therefore this paper shall support the fact that 'poverty is not, in itself, a violation of human rights. However, governments action or inaction leading to poverty, or government failure to response adequately to the conditions that create, exacerbate and perpetuate poverty and marginalization often reflect violations of human rights' (Braveman & Gruskin, 2003:540).

This paper shall take the position that severe and systematic poverty, defined as absolute poverty, is unequivocally a violation of our most fundamental human right 'the right to a standard of living adequate for the health and well-being

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of himself and of his family, including food, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control' (UDHR, 1948:Article 25.1). This paper is intentionally omitting discussion surrounding the eradication of poverty, whether that be dependent on how that poverty comes about or whom is to blame; there will however be discussion on the notion of accountability and possible responsibility. The focus shall primarily be on the merits of treating absolute poverty as a human rights violation, using the UN Guiding Principles on Extreme Poverty and Human Rights adopted by the Human Rights Council by consensus on September 27th 2012, in resolution 21/11 (OHCHR, 2013:1). These Guiding Principles marked a potentially historic advance in the overall process of incorporating issues related to poverty and inequality into broader frameworks regarding the conceptualization of human rights. They also have implications concerning the implementation and enforcement of human rights standards regarding poverty. The Guiding Principles 'are premised on the understanding that eradicating extreme poverty is not only a moral duty but also a legal obligation under existing international human rights law' (OHCHR, 2013:2).

The structure of this paper shall be as follows: firstly global poverty shall be contextualized, followed by a discussion surrounding human rights in the moral or legal sense. Next, an alternative viewpoint of poverty by Amartya Sen shall be explored. Following this the three primary merits identified; empowerment of the poor, accountability and non-discrimination shall be critically analysed. Finally there shall be a brief examination of a critic, William Easterly, who does not believe that extreme poverty should be considered a human rights violation and the paper will end with an analytical conclusion, drawing together all the arguments presented.

In the context of global poverty, as discussed by Vizard (2006), the cultures of indifference, passivity, and the inaction that underlie the failure to address global poverty have themselves been reinforced and perpetuated by theoretical perspectives that fail to give adequate weight to global poverty as a human rights concern. However global poverty has rapidly moved up the international human rights agenda in recent years. Whereas in the past, poverty was systematically downgraded and neglected as a human rights concern, the proposition that global poverty represents a violation and denial of human rights on a persistent, systematic, and massive scale has had, and indeed is having, an increasing influence on international debates, policies, and programmes aimed at poverty reduction and elimination, and on the advocacy work of major international human rights and development NGOs. In 1993, the World Conference on Human Rights in Vienna was 'something of a watershed with 131 governments agreeing that all human rights – civil, political, economic, social and cultural – are indivisible, interdependent and interrelated' (Vizard, 2006:9). What this formally declared was that all human rights have equal importance and should be given the same level of urgent consideration by the international community and indeed that the promotion and protection of one category of human rights does not exempt or excuse states from the promotion and protection of the other. It is frequently noted that people living in extreme poverty are often marginalized and segregated so that poverty leads to a violation of their human rights in general. This assumption is 'frequently associated with the view that the poor are systematically excluded from society; which is one of the factors that render extreme poverty morally unacceptable. From this perspective poverty is viewed as a cause of human rights violations' (Arzabe, 2001:30). According to Vizard (2006) the failure to give adequate weight to global poverty as a human rights concern has been reinforced and perpetuated by the tendency to analyze human rights issues from traditional mono-disciplinary perspectives. In the past, philosophers have focused on foundational debates in ethics, lawyers on questions of legal obligation – and both disciplines have tended to neglect institutional, economic, and structural processes that impact on human rights outcomes. However, as this paper suggested, extreme poverty is a multi-dimensional phenomenon and the merits of treating it as a violation of human rights must be viewed in the same way. The merits cannot be considered from solely an economic nor legal perspective but rather must 'be subject to moral considerations including the ethical and legal principles entailed by the idea of human rights' (Vizard, 2006:12).

Before examining the question at hand, an area, which must be addressed, is the confusion when referring to human rights in the moral or legal sense. The international human rights movement was internationally formalized when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10 December 1948. Drafted as 'a common standard of achievement for all peoples and nations', the Declaration for the first time in human history outlined basic civil, political, economic, social and cultural rights that all human beings should enjoy. According to the United Nations Office of the High Commissioner for Human Rights (OHCHR, 2014) it has, over time

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been widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, together with the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the International Bill of Rights.

A series of international human rights treaties and other instruments adopted since 1945 have conferred legal form on inherent human rights and developed the body of international human rights. There has also been regional adoption of other instruments with relation to the particular human rights concern of the state/region in question and additionally most States have also adopted constitutions and other laws, which formally protect basic human rights. While international treaties and customary law form the backbone of international human rights law other instruments, such as declarations, guidelines and principles adopted at the international level contribute to its understanding, implementation and development. 'Respect for human rights requires the establishment of the rule of law at the national and international levels' (OHCHR, 2014). By becoming parties to international treaties, states assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. However it is agreed that the human rights movement is much broader than the international legal arena. 'There is an increasing trend to use human rights language as a legitimating moral discourse that evokes universality and consensus of fundamental values among otherwise competing traditions on a shared minimum standard of human dignity' (Rawls, 1999:133).

This paper maintains that both notions of human rights can coexist in harmony, whilst acknowledging that treating severe poverty as a human rights violation is both a legal and moral duty. However as Sengupta (2006) notes; the discrepancies are often recalled with regard to economic and social rights discussions, mainly because of the well known position of the USA and other international actors who haven't accepted economic and social rights as legally binding rights, despite the several international declarations of the indivisibility of all human rights and the legally binding Covenant on Economic, Social and Cultural Rights (ESCR) among other legally binding instruments. Nevertheless most of the institutions and states that do not accept such legally binding obligations 'do not deny the morality of these claims as ethical entitlements of all civilized members of the community' (Sengupta, 2006:55).

There are numerous ways in which scholars, governments, and organizations such as the UN approach poverty. This paper has specified the definition of severe poverty, which shall be used, however it is important to consider other interpretations as well. Amartya Sen's (1992) 'Capability Approach' discusses poverty with respect to underlying a specific conception of what constitutes human well-being. At a very basic level, well-being can be thought of as the quality or the 'well-ness' of a person's being or living, and living itself can be seen as consisting of a set of interrelated 'functionings' – the things that a person can do or be. The level of well-being, according to Sen is therefore dependent on the level of those functionings. To exemplify how well a person 'can do or be the things he/she values' he uses an example of the extent to which people living in severe poverty can be free from hunger, or take part in the life of their respective communities. The concept of 'capability' refers to a person's freedom or opportunities to achieve well being in this sense. Whilst this paper focuses on the merits of using a human rights framework to view poverty, one measure of poverty as suggested by Sen is to determine the opportunities faced by the very poor to pursue their 'well-being'. Thus one interpretation is that poverty can be seen as low levels of capability or 'the failure of capabilities to reach certain minimally acceptable levels' (Sen, 1992:107). Whilst this paper acknowledges there are definitely merits in Sen's capability approach, it was not measurably specific enough to base the discussion on, hence the reason that an alternate UN definition of poverty was used. This paper shall now discuss the three primary merits of treating extreme poverty as a human rights violation: empowerment, accountability and non-discrimination.

One of the underlying themes of poor people's experiences is one of powerlessness; human rights can empower both individuals and communities by granting them basic entitlements that give rise to legal obligations on others. The OHCHR (2004) boldly states that human rights can 'mitigate the powerlessness of the poor'. Extreme poverty is a combination of social, economic and legal hardships and the challenge for development professionals, and for policy and practice, is to 'find ways to weaken the web of powerlessness and to enhance the capabilities of poor women and men so that they can take more control of their lives' (Narayan et. Al. 2000:235). Indeed, in the UN Guiding Principles on Extreme Poverty and Human Rights, article 36 express the importance of empowerment:

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Persons living in poverty must be recognized and treated as free and autonomous agents. All policies relevant to poverty must be aimed at empowering persons living in poverty. They must be based on the recognition of those persons' right to make their own decisions and respect their capacity to fulfill their own potential, their sense of dignity and right to participate in the decisions affecting their lives. (OHCHR, 2013:8)

Campbell (2007) fundamentally agrees with this notion and believes that further legal remedies should be developed to empower the poor to obtain their rights. It is vital to bear in mind that the rights in question are those outlined in the UDHR, which are supposedly 'universal' rights, applicable to everyone, everywhere. Thus, those living in extreme poverty, 'by dint of their humanity' (Tasioulas, 2007:76) should be granted and allowed to exercise these basic human rights. Therefore it is clear that a major contribution of a human rights approach to poverty reduction is the empowerment of poor people, 'expanding their freedom of choice and action to structure their own lives' (OHCHR, 2004:14).

The second merit will shall be analysed is the notion of accountability with regards to extreme poverty, when viewing it through a human rights lens. The human rights approach to poverty reduction emphasizes obligations and requires that 'all duty-holders, including states and intergovernmental organizations, be held to account for their conduct in relation to international human rights' (OHCHR, 2004:16). Indeed one of the core violations of human rights that is properly associated with extreme material poverty is the failure to respond effectively to poverty by those who are able to do this. Whilst this paper is proposing that the notion of accountability is a merit of treating severe poverty as a violation of human right it does accept that 'at least some of the inaction over global justice has to do with the absence of agreement as to responsibility for taking remedial action, and of what sort' (Campbell, 2007:63). However it is not the inaction that is the primary concern, but rather the more optimistic position that 'there is a growing consensus on the centrality of accountability in poverty reduction and developmental strategies' (Fakuda-Parr, Lopez & Malik, 2002:17). The UN Guiding Principles summarize this position in article 45:

Persons living in poverty are often seen as passive recipients of Government aid or charity when, in fact, they are right holders with entitlements to whom policymakers and other public officials must be accountable. (OHCHR, 2013:11)

There are two ways in which to approach severe poverty, as agreed by Campbell (2007). There is an approach that sees poverty as simply a grave evil experienced by those who are poor. Here the focus is on suffering. The other looks at poverty mainly as the product of grave injustice deriving from the relationship between those who are poor and those who are not. Here the focus is not on the poverty itself, but on who is responsible for it. This paper ascertains that the latter approach, of poverty being a product of grave injustice, is more likely to yield any form of eradication or reduction of severe poverty. This is not to claim that accountability will be easy to place but rather that it should be a focal consideration. As Robinson (2001) argued 'the defining attribute of human rights in development is the idea of accountability. All partners in the development process – local, national, regional and international – must accept higher levels of accountability'. Indeed for Oxfam, human rights principles compel it and similar agencies to 'raise the bar on their own accountability, lest they unwittingly perpetuate outmoded notions of charity, overlook discrimination and exclusion, and reinforce existing imbalances of power' (Green, 2008:27). Whilst the paper does not wish to confuse or merge the concepts of poverty and development, it is clear that the same holds true for both.

It appears clear therefore, that through approaching severe poverty as a violation of human rights it is plausible to consider accountability as a merit for this approach. However it would be amiss not to acknowledge that, in legal terms, there is neither a single definition nor mechanism for accountability. The OHCHR (2004) outlines four broad categories of accountability mechanisms: judicial (e.g. judicial review of executive acts and omissions), quasi-judicial (e.g. ombudsmen, international human rights treaty bodies), administrative (e.g. the preparation, publication and scrutiny of human rights impact assessments) and political (e.g. through parliamentary processes). There is an important difference between judicial and non-judicial mechanisms of accountability. In the context of poverty reduction strategies, international human rights law requires effective mechanisms of accountability, but it does not require judicial mechanisms of accountability. In other words, while there is a binding legal obligation to establish accountability mechanisms, they need not necessarily involve the courts. For example, 'while the World Bank Inspection Panel is a mechanism of accountability, it is not a judicial mechanism' (OHCHR, 2004:16). It is not the

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intention of this paper to evaluate mechanisms of accountability; however it was felt necessary to establish that there is no single, simple solution, but rather numerous options which become available by treating extreme poverty as a human rights violation. Campbell (2007) suggests that in both domestic and international law, new remedies could be developed, such as civil liability for behavior negligently fostering poverty, or criminal penalties for knowingly implementing policies and practices, both in government and business, that avoidably increase, or fail to decrease, poverty. What this paper aims to demonstrate is that it is through the consideration of severe and systemic poverty as a human rights violation that there is a possibility of considering accountability, and even though the notion may be problematic in practical terms, it is unquestionably a merit that it is being considered at all.

Having discussed that accountability is a merit of the human rights framework when considering severe poverty, it seems necessary to discuss how this might be done. It is not straightforward, nor universally agreed upon as to where the accountability, or in this case blame, should lie but this paper has decided to consider the views of one of the leading figures in this discipline. Thomas Pogge (2005) argues that the issue of severe poverty is not unsolvable, despite its magnitude, and could have been eradicated decades ago. He is a firm believer that accountability for severe poverty can be placed and that 'citizens of the rich countries are conditioned to downplay the severity and persistence of world poverty and to think of it as an occasion for minor charitable assistance' (Pogge, 2005:1). He goes on to further claim that it is due to the rationalizations dispensed by economists that most people believe that severe poverty and its persistence are caused by local issues. 'Few realize that severe poverty is an ongoing harm we inflict upon the global poor' (Pogge, 2005:3). This is a very bold allegation and one which Pogge supports by acknowledging that although we (global rich) call it tragic that the basic human rights of so many are unfulfilled, it is 'unthinkable to us that we are actively responsible for this catastrophe' (Pogge, 2005:1). However, he cites the enormous inequality in income and wealth around the world as a rationale that the more affluent could, and should, indeed be taking steps to reduce severe poverty. Pogge (2005) strongly denies the popular assumption that reducing poverty would be an act of generosity, not something which is owed and thus the failure to do anything would, at most, be a lack of generosity not 'make us morally responsible for the continued deprivation of the poor' (Pogge, 2005:2).

This paper is in agreement with Pogge that 'the 955 million citizens of the affluent countries are not morally entitled to their 81% of the global product in the face of three times as many people mired in severe poverty' (Pogge, 2002:59). He believes that global institutional arrangements are 'casually implicated in the reproduction of severe poverty' (Pogge, 2005:5) and that it is the governments of affluent countries who bear primary responsibility for these arrangements and can foresee their detrimental effects. Furthermore, many citizens of these affluent countries bear responsibility for the global institutional arrangements their governments 'have negotiated in their names' (Pogge, 2005:5). Pogge ascertains that once the causal nexus between the global institutional order and the persistence of severe poverty is understood, the injustice becomes apparent. He asks 'what entitles a small global elite – the citizens of the rich countries and the holders of political and economic power in the resource-rich developing countries- to enforce a global property scheme under which we may claim the world's natural resources for ourselves and can distribute these among ourselves on mutually agreeable terms?' (Pogge, 2005:7). Whilst this paper has focused on the fact that through the prism of human rights, accountability for extreme poverty can be ascertained, the work of Pogge and others in pinpointing where the accountability should lie is vitally important.

The integration of human rights into anti-poverty strategies helps to ensure that vulnerable individuals and groups are treated on a non-discriminatory and equal basis and are not neglected and this shall form the third merit to be considered by this paper. The human rights experience also provides numerous valuable insights regarding the efficacy of anti-discrimination and equality laws, policies and practices. 'Discrimination may cause poverty, just as poverty may cause discrimination' (Committee on Economic, Social and Cultural Rights, op. cit. at note 5, para. 11). Thus from this standpoint it is clearly meritorious to consider the human right of those living in severe poverty as it is often more than simply economic reasons which cause them to be discriminated against. According to the OHCHR (2013), persons living in poverty often experience disadvantage and discrimination based on race, gender, age, ethnicity, religion, language or other status. Thus, it appears that those living in poverty tend to experience several intersecting forms of discrimination, including on account of their economic status. The UN Guiding Principles have acknowledged this fact in clause number 19:

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States must ensure that persons living in poverty are equal before and under the law and are entitled, without discrimination, to the equal protection and benefit of the law. States must repeal or modify laws and regulations that are biased against the rights, interests and livelihoods of persons living in poverty. All forms of legislative or administrative discrimination, direct or indirect, on grounds of economic situation or other grounds associated with poverty must be identified and eliminated. (OHCHR, 2013:5)

Whether it is severe poverty that causes discrimination or discrimination that can lead to poverty this paper maintains that in either instance it is paramount to consider the human rights of those involved. Poverty not only arises from a lack of resources – it may also arise from a lack of access to resources, information, opportunities, power and mobility and it is these resources which, when combined, enable individuals to fulfill their right to ‘an adequate standard of living’.

When discussing the merits of treating extreme poverty as a human rights violation it would be amiss not to consider the arguments of those who have an opposing viewpoint. William Easterly (2009) is one of the most prominent critics, and this paper shall focus on his post for the Aid Watch blog entitled, simply, ‘Poverty is not a Human Rights Violation’. Easterly claims that the only useful definition of human rights is one where a human rights crusader could identify whose rights are being violated and who the violator is and he believes that this is what historically led to progress on human rights. He uses the examples of the Atlantic slave trade in the US and the apartheid government in South Africa to exemplify how, when a clear violator can be identified, the violation can be brought to an end. Easterly does not believe poverty can fit into this category, as, in his opinion, there is not a clear identification of the violator. Furthermore, to him, ‘human rights are a clear dichotomy – someone violated your rights or they do not’ (Easterly, 2009:10). He goes on to discuss that the line between poor and not poor is arbitrary, and on a global scale there is a lack of clarity with regards to the ‘dividing line that constitutes poverty’. He concludes his critique with the decisive statement that ‘to confuse poverty and human rights violations is to slow down the solutions to both’ (Easterly, 2009:11). Amnesty International was quick to respond to Easterly’s claims, and completely refuted them. Sameer Dossani (2009) who was the Demand Dignity Campaign Director for Amnesty International firmly stated that Easterly was ‘off base’. He agreed that lack of income, in and of itself, was not a human rights violation. However as the paper has suggested, poverty is about a lot more than a lack of income; ‘lack of income implies lack of access to services, clean drinking water, adequate education, housing, employment and so on’ (Dossani, 2009). He goes on to further emphasize the fact that people living in poverty are vulnerable to violations of their civil and political rights as well. In response to Easterly’s claim that one cannot determine a violator he clarified that it was ultimately the responsibility of respective governments to ensure that human rights – including the right to live a life of dignity – are respected. ‘Human rights abuses cause poverty and keep people poor – and living in poverty makes you more likely to suffer violations of your human rights’ (Dossani, 2009). This paper firmly agrees that severe poverty and human rights are intrinsically connected and must be considered in conjunction.

To conclude, this paper has demonstrated that some of the merits of treating extreme poverty as a human rights violation are empowering the poor, assigning accountability and ensuring non-discrimination. For those reasons it has become evident that the merits are numerous; however this paper believes that these advantages form part of a much bigger picture. As Campbell (2007) discusses, approaching poverty through the prism of human rights is to lift it from a status of a social problem to that of a moral catastrophe. The fact that there are billions of people living in unimaginable circumstances is the issue at hand and by using human rights this not only ensures that the issue is on focus but also that there is a moral, and possibly legal, duty to act to eradicate this. ‘Poverty is too readily accepted by majorities as regrettably accidental, or natural or inevitable, or perhaps even the fault of the poor, rather than the outcome of conscious policy choices’ (Arbour, 2008:11). Whilst there are critics who believe that severe poverty does not constitute a human rights violation, this paper maintains that it is the most effective way to alleviate and work towards eradicating the issue. The discussion should not be around semantics with regards to the wording of a ‘right’ or ‘violation’ but rather the realization that billions are ‘leading lives of indigence, adversity and neglect’ (Despouy, 1996). The importance of seeing poverty through a human rights lens is that it becomes evident that it is ‘neither natural nor inevitable but becomes something done to people, for whom certain actors bear responsibility’ (Gready, 2008:742). It is by using established human rights principles that this issue cannot be avoided and as noted by CARE International (2004) whilst ‘needs’ can be seen in isolation, ‘rights’ are relational and generate responsibility. This paper firmly maintains the UN Guiding Principles on Extreme Poverty and Human Rights provide a global standard in

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the fight against extreme poverty, focusing on the rights of people living in poverty. The United National Special Rapporteur on Extreme Poverty stated in a UN press release that 'these Principles represent an explicit recognition by States that the existence of extreme poverty is an urgent human rights concern and a moral scandal, whose eradication requires concrete and coordinated action at the national and international level' (Sepúlveda, 2012). This paper thus concludes that tackling and eradicating extreme poverty, which is a multidimensional phenomenon, will require cross disciplinary efforts, which are best suited to be viewed through the universal language of basic human rights.

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The Merits of Treating Severe and Systemic Poverty as a Human Rights Violation

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