

CHAPTER THIRTY-ONE

HUMAN RIGHTS VIOLATION: A CATALYST TO POVERTY

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Summary of the Chapter

Poverty is not only lack of access to income necessary for subsistence or lack of access to basic needs of life, but also includes the non-fulfilment of a person's human rights to a range of basic capabilities. The persistence of poverty anywhere in the world is a serious human rights violation. Socio-economic human rights, such as that to a standard of living adequate for the health and well being of oneself and one's family, including food, clothing, and housing and medical care are currently, and by far, the most frequently violated human rights. The widespread violation of these rights required adequate safeguard and protection in its entire ramification in order to reduce the poverty endemic that has eaten up the fabric societies of both developing and developed countries. Thus, this chapter examines the relationship between poverty as it affects the human rights of a citizen.

Introduction

The rights to life, dignity of human person, personal liberty, fair hearing, private and family life as well as rights to own property, to have access to basic needs of life, to make choice and partake in decision making that affect the life of the people are fundamental to well-being of humans globally. However, when these rights are trampled upon, what tends to follow is poverty. This is a phenomenon that happened and which leads to prominence in the United Nations General Assembly in 1948 and the establishment of the Universal Declaration of Human Rights as well as other rights protective agencies and commissions.

According to the United Nations Assembly, not only are the poor in most countries deprived of their rights to an adequate standard of living and the right to choose one's place of residence, but they are also often deprived of the right to work, the right to education, the right to social security, the right to housing, the right to food, the right to health care as well as the right to equal access to justice. Because of these denials, the world has over the years witnessed the existence of impoverished groups of people such as the minorities or indigenous people, women and the girl child are denied their basic rights which in no small way has exacerbated poverty. For instance, most policies of the government especially in developing countries like Nigeria on education, health care, labour issues housing scheme and provision of basic infrastructures have never been in favour of the poor.

It is now accepted by policy makers at all levels that poverty is not merely the absence of an income adequate to meet the basic necessities of life. Human poverty is about the lack of opportunity, choice or qualities that facilitate a good life, defined in terms of access to the conditions that support a reasonable physical existence and enable individuals and communities to realise their spiritual and cultural potential. These include opportunities to work, to contribute to and participate in the political, social and economic life of the community, as well as opportunities for reflection, artistic creativity and for discourse on morality. Poverty has dehumanising effect. It robs self-confidence as much as capability and clings to nations, communities and families from generation to generation, forcing them to remain at subsistence level while others outdistanced them in all ways.

Poverty is the denial and absence of human dignity. Long-established norms of family are not possible when one is poor.

Children often get sold into bondage and young daughters and sons get forced into migration to distant places in often dangerous circumstances in order to send meagre savings back home. Men strained to the limit with the effort of supporting families draw away, or simply abandon their responsibilities and go in search of slim opportunities elsewhere, burdening wife and family with additional responsibilities to sustain themselves. Unable to bear the burden of continuous starvation, unemployment, debt or illness, families in many poor countries of South Asia are all too often documented in the media as having taken the terrible route of murdering their kith and kin and then killing themselves to end the suffering.

Conceptual Issues:

a. *Right and Human Right Concept Examined*

It is to be noted that in spite of the inalienable and naturally endowed rights of man, such rights cannot exist in a vacuum. A man cannot cry for his right unless he is a member of a society. Thus, there are moral relationships, social relationships as well as moral and social rights. The legal basis of the society existence is predicated upon its moral and social value and so the legal rights are founded on the moral and social relationships which are the concern of law or which the law recognises as enforceable. Hence it is pertinent to note that a legal right is not "a law" but a relationship, which is justiciable. This assertion was adumbrated by Professor Montrose thus

*Whereas "laws are concerned with abstract possibilities of application, rights are concerned with the application of legal propositions to specific individuals"*¹

The term right has several meanings. The concept of right of right as a human term appears in diverse contexts and situations

¹Quoted in Edmund Burke and Natural Law *Natural Law Forum*, Vol. 6 (1961) 32

and at different times and places. The term right is known as *rectors* in Latin, means straight, just and moral which the law directs, approves or supports. It has been described as a liberty or power of possessing something, the disturbance or infringement for which there is a legal sanction. A right in its most general sense is either the liberty protected by law of acting or reacting in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing or possessing a particular thing.²

A legal right for our purpose is a capacity resident in one person of controlling with the support of the legal order, the action of others. In other words, a right could be something extracted from the fundamental basis of freewill or sometimes based on legal relationship between person as determined by rule of law and sanctioned and protected by that legal order, or interest, claim, privilege duly recognised and protected by a rule of legal justice³

Human Rights can be classified into three main types: (i) rights of personal integrity; (ii) civil liberties; and (iii) social and economic rights. Rights of personal integrity involve rights to personal safety and freedom, which include freedom from slavery, torture, and unreasonable imprisonment. Civil liberties are the rights of each person to express beliefs through words and actions, which include freedoms of speech, association, thought, conscience, religion, the right to vote and run for office and the right to marry and have a family. Social and economic rights involve basic human needs and right to development which include right to food, shelter, medical care and education and the right to work and to form labour unions.

²Sengupta A 'Poverty Eradication and Human Rights' In T. Posse (ed) *Severe Poverty as a Human Rights Violation*. New York: UNESCO (2003) 22

³Ikhariale M 'The Jurisprudence of Human Rights' (1995). *Journal of Human Rights Law and Practice*. Lagos: CLON 23

⁴World Bank, *Attacking Poverty* World Development Report 2000/2001 (New York: Oxford University Press 2001) 57

When linked to development, human rights are inalienable entitlements; they constitute the ground-rules for human development. As such, the dignity and worth of the human person regarded as both a means and end of development.

The human rights framework reflects the crucial interdependence of economics, social and cultural rights, on one hand, and civil and political rights on the other.⁵ The situation whereby these rights are trampled with is referred as human rights abuses. It is also a concept that can be linked to exclusion, rejection, isolation, loneliness, voicelessness and powerlessness. Of all human rights abuses, exclusion seems to be the most pronounced form of human rights abuse. Exclusion thus referred to as the rupture of a social bonds or fabrics between the individual and society.⁶

b. *Causes of Human Rights Violations*

According to Sindzingre⁷ human rights abuses that are as a result of exclusion varies according to status. It can be non-negotiable, permanent, ensuring from gender or birth as with women, ethnic or religions, minorities, castes, and occupational specialization. It can result from sickness or handicap. Or it can be acquired, negotiable or transitory-type linked to a given profession or religion, to the degree of conformity with norms (for example, childless women or single mothers), to the level of assets and income, to the life cycle (orphans, youths and the elderly) or to the reproduction cycle of lineages.

Narayan, *et al*⁸ identified geographical locations, barriers to entry, corruption, intimidation and physical violence as manifestations of human rights abuses.

⁵United Nations Development Programme (UNDP) (note 5 above)

⁶Abbey J. L. S 'Inclusion, Justice and Poverty Reduction: Seminar Notes and Impressions.' In G. Koherdorfer-Lucius & B. Pleskovic. (eds) *Inclusion, Justice and Poverty Reduction Villa Bosisio Workshop Series 1999*. German Foundation of International development. Berlin (2000) 54

⁷Ibid 46-47

⁸Narayan D, Patel R, Schafft, K, Rademacher A & Koch-Schulte. S. *Voices of the Poor: Can Anyone Hear Us?* (New York: Oxford University Press 2000) 32

The denial of social services to some geographical areas, for example the rural areas or urban slums are abuses of the rights of the people that live there. The barrier to entry into state institutions by some category of people without documentation of a pass is an abuse of human rights. For instance in Cameroon, women access to national institutions in the far north is greatly handicapped by the fact that they do not possess national identity cards. Corruption through bribes among government officials is noted to be a common problem to the less privileged who do not have the right connections in gaining access to institutions and social services. As a mechanism to human right abuse, intimidation is often used to reinforce social stereotypes and power relation between men and women and between those in authority and the powerless. Human rights abuse has also resulted from direct physical violence either by the State on the people or violence against women in the household or in the community. The most common violence against women is domestic violence that is noted in norms of gender inequity and identity and often linked to alcohol and drug abuse.

c. *Effects of Human Rights Abuse*

According the Narayan et al,⁹ human rights abuse that is linked to physical violence can range from weak investor confidence, damage to the image-dependent tourism industry, higher health and police costs, the disaffection and migration of the urban middle class, higher mortality and morbidity rates, reduced access to social services, dysfunctional families, deeper oppression of women to the breakdown of community spirit and participation and the substitution of a climate of fear.

If human rights abuses are in a form of exclusion, the effects are reinforced dualism increased informalisation of activities and weakened legitimacy and credibility of the State.

⁹ Narayan et al (note 12 above) 34

Moreso, when institutions of the State such as the police or the judiciary are based in clientelism, vote-catching or ethnic preferences or when they are controlled by private interests, certain groups will be denied access.¹⁰ Abbey¹¹ also asserts that when people's rights are abused through exclusion it may intensify the vicious circle of low productivity and little possibility of seizing opportunities to escape from poverty because of deficits in human capital, low productivity and a return to poverty.

d. Evidence of Human Rights Abuses in Less Developed and Developed Countries

Most less developed countries have faced a difficult human right situation for a long time. This is evidence in the number of wars, ethnic and religious conflicts, extra judicial killings, indiscriminate killings, physical tortures, inhuman or degrading treatment, unlawful arrest and arbitrary detention, disappearance, excessive surveillance and destruction of property witnessed. For instance, the abuse of human rights remains another challenge facing most countries in Latin America. While some very difficult situations have subsided, such as the terror associated with the Shining Path in Peru and the destruction of Mayan communities in Guatemala, the list of on going violations is daunting. Rebels, paramilitaries and government forces continue to make Colombia one of the world's most violent and dangerous place. As the conflict in Colombia escalates, the consequences are being felt in neighbouring countries such as Ecuador, Venezuela, Peru, Panama and Brazil, with refugees and armed combatants spilling across borders. Prison conditions in Brazil, Haiti, Peru and elsewhere are terrible and torture by government security forces is widely reported through out the region. Human rights defenders and activists continue to be harassed and even disappeared.

¹⁰Sindzingre A (note 10 above) 47

¹¹Abbey J. L. S (note 9 above) 55

Sadly, the perpetrators of such abuses generally do so with impunity creating an environment of fear and intimidation¹²

Rumbiak¹³ also cited the case of countries in the South with resources favoured by the extraction industries, where there exist strong linkages between militaries and multinational corporations. In these countries there have been countless examples of military committing widespread human rights violations in the name of safeguarding some economic interest. One good example is the Nigerian military abuses and execution of Ken Saro Wiwa and other non-violent Ogoni activists who opposed the social and environmental harms caused by Royal Dutch Shell Oil Company.

In Nigeria for example, the informal sector operators most of them women have had their own share of human rights abuses by the local authorities and the police.

In most cases the abuses are in form of displacement, demolition of stalls, forced allocation and harassment, excessive trading fees and levies imposed by the authorities. Furthermore, because of their partial illegal status they do not enjoy full and enforceable property rights over their capital and products. This has a number of deleterious consequences: First informal producers are poorly protected by the State. Second, since they lack the capacity to enter into legally binding contractual obligations their access to money and capital markets for financial, insurance and cooperative purposes is seriously limited. And third they find obstacles in the use of some other public services, such as social welfare, skill training programmes and government-sponsored credit facilities¹⁴

¹²Brown C. L. & Kauffman C *Poverty Human Rights and Social Change* (2003) Southern Center for International Studies 73

¹³Rumbiak, J *Globalization, Rights and Poverty*. (2003) Center for the Study of Human Rights Columbia University 47

¹⁴Fapohunda O. J *The Informal Sector of Lagos: An Inquiry into Urban Poverty and Employment*. (Ibadan: University Press 1995) 76

Another significant of human rights abuses is in the case of the Niger Delta people of Nigeria who have become environmental refugees. Farmlands are degraded, fishing creeks and streams are polluted, and gas flaring lead to poor air quality. These operations raise difficult questions for sustainable livelihoods of local communities in the Niger Delta who traditionally are fishermen and subsistent farmers. Oil operations of multinational corporate entities have put severe ecological pressure on resource use and the Delta's delicate eco-system. Customary environmental laws of local communities in the Niger Delta are eroded by the common law framework and the operational policy of multinationals. Statutory provisions for oil pollution compensation are subject to the legalism and technicalities of the common law remedies: negligence, nuisance or trespass to land. The locus for any legal confrontation between impoverished local communities and wealthy multinational corporate oil giants recalls the disparities between the physical size of the biblical David and Goliath. Back in 1971, in the case of *Allar Irou v Shell-BP Petroleum Development Company*,¹⁵ the plaintiffs whose land, fishpond and communal creek had been polluted by oil spill, among other remedies, applied for an injunction. Refusing the injunction, the court ruled that nothing should be done to disturb the operations of Shell (the defendant) which, were the main source of Nigeria's foreign exchange.

Thomas¹⁶ further observed that in developed countries, despite the undisputed great importance of basic necessities for human life, the existence of social and economic rights is controversial, especially in the United States which never ratified the International Covenant on Social, Economic, and Cultural Rights (1966). Much of this controversy is due to the false assumption that a human right to freedom from poverty would entail correlative positive duties. Such human-rights-imposed positive duties to aid and protect any human beings who would otherwise suffer severe deprivations are widely rejected in the United States and in other affluent countries. But what is rejected here is not a specific class of rights, but a specific class of duties: positive duties.

He also, stated that the human right not to be tortured is violated by torturers as well as by many of those who cooperate in imposing social institutions under which human beings foreseeably suffer torture. The latter category includes in the first instance bureaucrats and politicians who permit or even order torture.

¹⁵ (Unreported, Suit No. W/89/71 High Court of Warri, Nigeria).

¹⁶ Thomas WP (note 13 above) 3

But it also includes ordinary citizen who make an uncompensated contribution to the imposition of social institutions that foreseeably give rise to an avoidable human rights deficit. For example, through their uncompensated support of a grievously unjust regime, many Germans facilitated the human rights violations it foreseeably it gave rise to. They participated in a collective crime and thereby violated the human rights of its victims, even if they never personally killed or tortured or otherwise harmed anyone directly.

Another very significant evidence of human rights abuses in the developed World as observed by Thomas is the feudal systems of France's Ancien Regime or tsarist Russia, for instance, or Stalin's economic policies during 1930-33, which caused some 7-10 million famine deaths among peasants, mostly in the Ukraine, whom he considered hostile to his regime.¹⁷

Poverty: Definition, Causes and Consequences

a. *Definition of Poverty*

Poverty can be defined as lack of material well-being, insecurity, social isolation, psychological distress, lack of freedom of choice and action, unpredictability, lack of long-term planning horizons because the poor can not see how to survive in the present, low self confidence and not believing in one self.¹⁸ Schubert¹⁹ saw poverty as either absolute or relative or both.

Absolute poverty being that which could be applied at all times in all societies, such as the level of income necessary for bare subsistence, while relative poverty relates to the living standard of the poor to the standards that prevail elsewhere in the society in which they live.

Sengupta²⁰ also saw poverty as not only an insufficient income to buy a minimum basket of goods and services but as lack of basic capabilities to live in dignity. This definition recognises poverty's broader features, such as hunger, poor education, discrimination, vulnerability and social exclusion.

¹⁷ Ibid 3

¹⁸ Narayan D et al (note 12 above) 34

¹⁹ Schubert R 'Poverty in Developing Countries: Its Definition, Extent and Implication' (1994) Vol. 49/50: 17

²⁰ Sengupta A (note 2 above) 22

In the light of the International Bill of Rights, poverty is defined as 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.²¹

In furtherance of poverty, Hunt et al²² saw poverty as either the failure of basic freedoms (from the perspective of capabilities), or the non-fulfilment of rights to those freedoms (from the perspective rights). Thus, from the human rights perspective, Poverty can be said to consist of the non-fulfilment of a person's human rights to a range of basic capabilities.

b. *Causes of Poverty*

The wide ranging root cause of poverty can be categorised into three broad groups: unequal distribution of assets; insecurity and vulnerability; and social exclusion and powerlessness. It was acknowledged that the persistence of high levels of inequality of income, assets and opportunities exacerbate poverty. High unemployment rates, lack of access to productive resources such as land, credit, market and information limits the productive capacity of the poor.

Lack of access to basic services, such as education and health care, results in limited opportunities for the poor. Vulnerability and insecurity among the poor is made worse by weak social protection programmes. In addition, long term civil conflict and the breakdown of the rule of law put the poor at more risk. The poor suffer from social exclusion and powerlessness and are hereby unable to participate in decisions that affect their lives.²³

²¹United Nations (UN) Substantive Issues Arising in the Complementation of the International Covenant of Economic, Social and Cultural Rights: Poverty and the International Covenant of Economic, social and Cultural Rights New York UN (2001)

²²Hunt P; Osmanis S & Nowak M Summary of the Draft Guidelines in a Human Rights approach to Poverty Reduction Strategies. <http://www.uhuchrich/development/poverty.html>.

²³Romero-Lozada A. M Conclusions of the High-Level Roundtable on Eradication of Poverty (2005) 1

The World Bank²⁴ identified the lack of voice, power and independences as causes of poverty which in effect subject the poor to rudeness, humiliation, shame, inhumane treatment and exploitation at the hands of the institutions of the state and society. In furtherance of the above, Narayan, et al²⁵ reiterates that lack of voice and power is experienced not only in interactions with the state, but also in poor people's interactions with the market, landlords, bankers, moneylenders and employers.

Yahie²⁶ observes that the factors that cause poverty include: (i) Structural causes that are more permanent and depend on a host of (exogenous) factors such as limited resources, lack of skills, locational disadvantage and other factors that are inherent in the social and political set-up; and (ii) the transitional causes that are mainly due to structural adjustment reforms and changes in domestic economic policies that may result in price changes, unemployment and so on. Natural calamities such as drought and man-made disasters such as wars, environmental degradation and so on also induce transition poverty.

The causes of poverty can also be viewed from the problem of urbanisation. According to Ward²⁷ the factors that cause poverty in most urban cities can be linked to the inner urban decay caused by poor urban public facilities because most infrastructure assets have been allowed to run down through lack of maintenance and investment.

Facilities have broken down because local administrations have had insufficient resources and inadequate skills to maintain them. In addition, many amenities have been unable to cope with the increasing demands being placed on them. It is also observed that the local authorities over the years have cut expenditure on infrastructure development and raise tax rates that are counter-productive since this encourages the private firms to migrate and thus reduces employment.

²⁴World Bank (note 7 above)

²⁵Narayan D et al (note 12 above) 33

²⁶Yahie *The Design and Management of Poverty alleviation Projects in Africa: Evolving Guidelines Based on Experience*, World Bank EDI Human Resources Division (19993)

²⁷Ward M 'Perceptions of Poverty: The Historical Legacy,' (1999) Vol.30 No.2 *IDS Bulletin* 23

c. *Consequences of Poverty*

Discussing the consequences of poverty Narayan et al²⁸ observed that because of poverty, most households in the urban cities are crumbling. While some households are able to remain intact, many others disintegrate as men, unable to adapt to their failure to earn adequate incomes under harsh economic circumstance, have difficulty accepting that women are becoming the main breadwinners that necessitates a redistribution of income within the households. The result is often alcoholism and domestic violence on the part of men and a breakdown of the family structure. Women in contrast, tend to swallow their pride and go out into the streets to do demeaning jobs, or in fact, to do anything it takes to put food on the table of their children and husbands.

Von Hauff and Kruse²⁹ highlighted on three major consequences:

(i) consequences for those affected. That is, for the people affected, poverty leads to physical and psychological misery, caused inter-alia by inadequate nourishment, lack of medical care, a lack of basic and job related education and marginalisation in the labour markets; (ii) consequences for the national economies of countries affected arising from the formation of slums in cities, a worsening of ecological problems particularly,

as a result of predatory exploitation in the agricultural sector and through the failure to use the available human resources; and (iii) consequences for the political and social development of the countries affected. That is, mass poverty tends to preserve or reinforce the existing power structures and thus also the privileges of a minority of the population. In some cases this involves corrupt elite.

²⁸Narayan D, et al (note 12 above) 35

²⁹Von Hauff M & Kruse B Conceptual Bases for a Consistent Poverty-Oriented Policy (1994)
Vol 49/50: 41-55

The World Bank³⁰ also observed that the consequence of poverty is the high level of vulnerability which is a constant companion of material and human deprivation given the circumstances of the poor and the near-poor. Instances have shown that most poor people usually live and farm on marginal lands with uncertain rainfall; live in crowded urban settlements where heavy rains can wipe out their houses; have precarious employment in the formal or informal sector; have a higher risk of diseases such as malaria and tuberculosis; have the risk of arbitrary arrest and ill treatment at the hands of local authorities (women in particular are at risk of being socially excluded and victims of violence and crime). The risk that the poor people face as a result of these circumstances is the cause of their vulnerability. But the deeper cause is the inability to reduce or mitigate risk or cope with shocks—a cause that both draws from and feeds into the cause of other dimensions of poverty.

Conclusion

Man, undoubtedly co-exists in the society with some form of norms, traditional, beliefs, values and customs. These values include certain inalienable rights that are fundamental to the smooth functioning of man and the continuation of human existence. It is on this basis that these rights need to be safeguarded and protected for a just and egalitarian society; otherwise the society shall be reduced to a state of anarchy.

Notwithstanding the inherent rights in man, which though arise from the very nature of man as a social animal and recognized and protected in a civilized legal order, they are not to be exercised to injure any other person, group or the society at large. In just 17 years since the end of the Cold War, some 270 million human beings have died prematurely from poverty-related causes, with some 18 million more added each year. Much larger numbers of human beings must live in conditions of life-threatening poverty that make it very difficult for them to articulate their interests and effectively to fend for themselves and their families.

³⁰ The World Bank (note 7 above)