

A 'Law and Development' Perspective on Law, Poverty and Human Rights

Wouter Vandenhole

Introduction

In international law and politics, global poverty has been conceptualised – or 'framed' – in many different ways over the past 40 years. No less than six distinct approaches are evident. Initially, global poverty issues were predominantly framed as development challenges. Over time, they were gradually and increasingly articulated in the language of human rights. But has this helped to better understand and address poverty?

I will look at the main global poverty framings. Each of these might be seen as going beyond what was traditionally a 'Westphalian frame' for understanding poverty and law, namely a tendency to conceive of poverty, and possible legal solutions to it, as exclusively within the capabilities of the modern nation state.¹ As Nancy Fraser has argued:

The Westphalian framing of poverty and law is problematic in a globalising world. Its constitutive assumptions are belied by the increasingly salient fact of 'global poverty'. That expression names modes of impoverishment whose causes and manifestations cannot be located within a single territorial state. Generated by transborder processes, the harms suffered by 'the global poor' largely escape the parameters of national law and the control of national states. To locate them within the Westphalian frame is to *misframe* them.²

An examination of global poverty in a post-Westphalian manner by reference to transnational processes and international institutions has yielded not one, but six distinct framings. They are: (1) the New International Economic Order; (2) the right to development; (3) poverty reduction strategy papers; (4) human rights-based approaches to development; (5) the millennium development goals

¹ My use of the language of 'frames' is similar to that of social movement theorists, who have used it to refer to the interpretive packaging of core ideas, ie what makes an idea attractive: see in particular, Nancy Fraser, 'Social Exclusion, Global Poverty, and Scales of Injustice: Rethinking Law and Poverty in a Globalising World' in Sandra Liebenberg and Geo Quinot (eds), *Law and Poverty: Perspectives from South Africa and Beyond* (Juta, 2012), 10-20. For a discussion of the concept of framing and its critics, see Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108(1) *American Anthropologist* 38 at 41-42.

² Fraser, *ibid* 10.

This is a preview. Not all pages are shown.