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And Justice for All

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Enforcing Human Rights for the World's Poor

Gary Haugen and Victor Boutros

FOR A POOR person in the developing world, the struggle for human rights is not an abstract fight over political freedoms or over the prosecution of large-scale war crimes but a matter of daily survival. It is the struggle to avoid extortion or abuse by local police, the struggle against being forced into slavery or having land stolen, the struggle to avoid being thrown arbitrarily into an overcrowded, disease-ridden jail with little or no prospect of a fair trial. For women and children, it is the struggle not to be assaulted, raped, molested, or forced into the commercial sex trade.

Efforts by the modern human rights movement over the last 60 years have contributed to the criminalization of such abuses in nearly every country. The problem for the poor, however, is that those laws are rarely enforced. Without functioning public justice systems to deliver the protections of the law to the poor, the legal reforms of the modern human rights movement rarely improve the lives of those who need them most. At the same time, this state of functional lawlessness allows corrupt officials and local criminals to block or steal many of the crucial goods and services provided by the international development community. These abuses are both a moral tragedy and wholly counter-

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productive to the foreign aid programs of countries in the developed world. Helping construct effective public justice systems in the developing world, therefore, must become the new mandate of the human rights movement in the twenty-first century.

COLD CASES

IN A JUNE 2008 report, the United Nations estimated that four billion people live outside the protection of the rule of law. As the report concluded, “Most poor people do not live under the shelter of the law”; instead, they inhabit a world in which perpetrators of abuse and violence are unrestrained by the fear of punishment. In this world, virtually every component of the public justice system—police, defense lawyers, prosecutors, and courts—works against, not with, the poor in providing the protections of the law. Take, for example, the police. For most of the world’s poor, the local police force is their primary contact with the public justice system. The average poor person in the developing world has probably never met a police officer who is not, at best, corrupt or, at worst, gratuitously brutal. In fact, the most pervasive criminal presence for the global poor is frequently their own police forces. A 2006 study in Kenya, for example, revealed that 65 percent of those citizens polled reported difficulty obtaining help from the police, and 29 percent said they had to make “extraordinary efforts” to avoid problems with the police in the past year. According to a 1999 World Bank study, poor people in the developing world view the police as a group of “vigilantes and criminals” who actively harass, oppress, and brutalize them. Making matters worse is that in the cases in which local police officers are inclined to protect the poor, they frequently lack the training, resources, and mandate to conduct proactive investigations. As a result, when faced with danger or a crisis, the poor do not run to the police—they run away from them.

When a poor person does come into contact with the public justice system beyond the police, it is frequently because he or she has been charged with a crime. With incomes for the global poor hovering around \$1–\$2 a day, the average poor person cannot hope to pay legal fees. Many countries in the developing world do not recognize a right to indigent legal representation, leaving those who cannot afford

a lawyer to navigate the legal process without an advocate. This means that a local official—or, for that matter, anyone in the community—can make an unsubstantiated accusation against a poor person that could put his or her liberty at risk without legal representation.

This problem is made worse by the simple scarcity of lawyers in the developing world. The average person in the developing world has never met a lawyer in his or her life. In the United States, there is approximately one lawyer for every 749 people. In Zambia, by contrast, there is only one lawyer for every 25,667 people; in Cambodia, there is one for every 22,402 people. There are more lawyers in the New York offices of some major law firms than there are in all of Zambia or Cambodia. Of this small class of lawyers, prosecutors represent an even tinier subset—and some of these are not even trained lawyers, and others, much like the police, extract bribes to drop cases. When cases are reported and referred for trial, there are frequently too few public prosecutors to handle the volume. This creates an enormous backlog, allowing cases to languish indefinitely on overloaded dockets.

Some experts, for example, have estimated that at the current rate, it would take 350 years for the courts in Mumbai, India, to hear all the cases on their books. According to the UN Development Program, India has 11 judges for every one million people. There are currently more than 30 million cases pending in Indian courts, and cases remain unresolved for an average of 15 years. Someone who is detained while awaiting trial in India often serves more than the maximum length of his or her prospective sentence even before a trial date is set. The International Center for Prison Studies at King's College London found that nearly 70 percent of Indian prisoners have never been convicted of any crime. Even those who are not held in custody before trial face difficulties: some courts are so far away that it is too costly or logistically challenging for the poor to reach them, and the cases are decided in their absence. In India, like in many countries in the developing world, judges and magistrates sometimes solicit bribes in exchange for favorable verdicts or, in other cases, to continue the case

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indefinitely. Some courts do not even have access to the applicable legal texts, and judges consequently reach decisions without consulting the relevant legal standards.

In communities where *de facto* lawlessness reigns, even if a poor person is aware that he or she is being illegally abused, it is unlikely that such a person has ever seen a law against such abuse enforced on behalf of someone of similar social status. On the contrary, a poor person in the developing world is far more likely to know someone who has been a victim of the public justice system than a beneficiary of it. As a result, the idea of “law enforcement” is not one of the social mechanisms that most poor people in the developing world consider useful for navigating the threats of daily life.

A THIRD ERA?

THE MODERN human rights movement began in the years following World War II, when a number of scholars and diplomats began an effort to articulate and codify international standards on fundamental rights. Documents such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights—as well as conventions on discrimination, torture, children’s rights, and women’s rights—are the products of this movement. Over time, it produced a body of rights and norms to which all people of the world can lay claim. This work continues today, as international organizations and countries draft and amend treaties, conventions, and protocols that obligate states to extend fundamental legal protections to those within their borders.

If the first stage of the modern human rights movement was largely intellectual, the second was political. During this stage, the movement worked to embed the growing body of international norms into national law. Individual governments throughout the developing world began to enact reforms that protected political, civil, and economic rights. South Asian countries, for example, passed laws outlawing bonded slavery; African countries threw off centuries of traditional cultural practice and gave women the right to own and inherit land and to be free of ritual genital mutilation; Southeast Asian governments

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elevated the status of women and girls, creating new laws to protect them from sexual exploitation and trafficking; and Latin American countries adopted international standards for arrest and detention procedures and codified land reform rights. As a result of this global political movement, hundreds of millions of vulnerable and abused people became entitled to global standards of justice and equity under local law.

The tragic irony, however, is that the enforcement of these rights was left to utterly dysfunctional national law enforcement institutions. Most public justice systems in the developing world have their roots in the colonial era, when their core function was to serve those in power—usually the colonial state. As the colonial powers departed, authoritarian governments frequently took their place. They inherited the public justice systems of the colonial past, which they proceeded to use to protect their own interests and power, in much the same way that their colonial predecessors had. Rather than fulfill the post-colonial mandate of broad public service, the police and the judiciaries of the developing world often serve a narrow set of elite interests. The public justice systems of this part of the world were never designed to serve the poor, which means that there is often no credible deterrent to restrain those who commit crimes against them.

In the absence of functioning justice systems, the private sector has developed substitutes: instead of relying on the police for security, companies and wealthy individuals hire private security forces; instead of submitting commercial disputes to clogged and corrupt courts, they establish alternative dispute-resolution systems; and instead of depending on lawyers to push legal matters through the system, those with the financial means may seek and, in some cases, purchase political influence.

Without pressure from other powerful actors in society, elites have little or no incentive to build legal institutions that serve the poor. A properly functioning legal system would only limit their power—and require a substantial commitment of financial and human resources. At the moment, they see no serious benefits to justify the effort: for them, a functioning public justice system might, in fact, be a problem.

Two generations of global human rights efforts have been predicated—consciously or unconsciously—on assumptions about the effectiveness

of the public justice systems in the developing world. But those systems clearly lack effective enforcement tools; as a result, the great legal reforms of the modern human rights movement often deliver only empty parchment promises to the poor. In large part, the human rights community—which includes various UN bodies and agencies, government offices, nongovernmental organizations, and individual jurists and scholars—exists to defend the victimized, particularly where more powerful actors have little incentive to act on their behalf. Yet throughout the history of the modern human rights movement, this community has largely neglected the task of helping build public justice systems in the developing world that work for the poor.

THE HIGH COSTS OF LOW ENFORCEMENT

THE UNREALIZED potential of the human rights movement should not eclipse the significance of its enormous contributions over the last half century. Suppose that scientists had worked feverishly for two generations to develop and fill warehouses with miracle vaccines that hundreds of millions of vulnerable people desperately needed—but could not access. Theirs would be a great achievement, but the absence of an effective delivery system would present an urgent new priority for the international public health community. Similarly, after 60 years of developing and refining human rights law, few of the gains are reaching the people who need them most.

The absence of functioning public justice systems for the poor also jeopardizes half a century of development work, because there is no effective mechanism to prevent those in power from taking away or blocking access to the goods and services the development community is providing. Resources earmarked for aid efforts often never reach their intended beneficiaries. A World Bank study found that as much as 85 percent of aid flows are diverted away from their intended targets. To be sure, a considerable amount of the money and materials that go missing is siphoned off by corrupt leaders and high-level officials. But those resources that do reach local communities do not fare much better. Farming tools are of no use to widows whose land has been stolen, vocational training is not helpful for people who have been thrown in jail for refusing to pay a bribe, local medical clinics cannot treat bonded

slaves who are not allowed to leave the factory even when they are sick, and microloans for new sewing machines do not benefit the poor if the profits are stolen by local police.

Similarly, a culture of impunity for such abuses undermines attempts to improve the health of the poor in the developing world. Take, for example, the damaging public health consequences of sex crimes. A 1994 World Bank report estimated that women in the developing world are as likely to die at the hands of an abuser as they are from cancer, and it found that their chances of being incapacitated by abuse are greater than their combined chances of being incapacitated by traffic accidents or malaria. A 2002 World Health Organization report, meanwhile, showed that in some countries, nearly two out of three women reported having been physically assaulted, and nearly half reported that their first instance of sexual intercourse was forced. The problem is pervasive. Surveys of villages in India cited by the United Nations reveal that in the 1990s, 16 percent of all maternal deaths during pregnancy came from domestic abuse. In Peru, about 40 percent of girls will be victims of rape or attempted rape by the age of 14. In parts of southern Africa, 78 percent of HIV-infected women and girls report having been raped—AIDS-education programs do little to help these women and children. As the sad facts surrounding sex crimes show, the unchecked violation of human rights in many parts of the developing world reflects an enforcement gap with disastrous effects on health, economic productivity, and stability.

PULLING UP SHORT

FEW, IF ANY, international human rights or development organizations focus on building public justice systems that work for the poor. Although the United Nations, some government agencies, and human rights organizations do important work in calling attention to human rights violations and lobbying for legal reforms, none measures its success by its ability to bring effective law enforcement to local communities in the developing world.

The problem is not that these groups fail to see the dysfunction of public justice systems in the developing world. Indeed, some of their

researchers have been meticulously documenting this problem for decades. Why, then, have none of these agencies made the effectiveness of public justice systems a fundamental priority?

First, international human rights and development agencies may fear that building functioning public justice systems in the developing world is impossible. The evolution of these systems in the developed world suggests that such fear is unwarranted. A century ago, police and courts in the United States were nothing like the professional—albeit imperfect—U.S. law enforcement system that is now taken for granted. Instead, they resembled public justice systems in the developing world today. In 1894 and 1895, for example, the Lexow Committee in the New York State Senate collected testimony from hundreds of witnesses regarding pervasive extortion, bribery, counterfeiting, voter intimidation, election fraud, torture, and general brutality by the New York City Police Department. Police officers spoke openly of purchasing appointments to a particular rank or duty. The most lucrative assignments were in the red-light districts, where officers could extract hefty bribes in exchange for ignoring the criminal enterprises of brothel owners. This culture was challenged by a relatively small band of local crusaders and outsiders, who gained federal support to establish police and courts in New York City that were not controlled by patronage and corruption. Similar movements took place in other cities across the United States, and the deficiencies in public justice systems in the developing world today can be overcome in much the same way. Justice systems ruled by corruption, cronyism, and theft do not change by themselves—they need external pressure and resources.

Second, international human rights and development agencies may sense that larger bodies, such as the United Nations and the World Bank, are already undertaking such efforts. But sustained efforts to develop functioning public justice systems in poor countries have rarely been tried. Recently, there have been some attempts to build them as part of larger nation-building strategies in postconflict environments such as Afghanistan and Iraq. These efforts reflect a growing—if not desperate—recognition that public justice systems are fundamental to socioeconomic progress. To date, however, there have not yet been similar investments in more stable developing

countries, such as Bolivia, India, Indonesia, Kenya, or the Philippines, to name a few.

Much more money, intellectual effort, professional investment, and political and diplomatic capital have been poured into traditional development activities—fixing health care, distributing food, providing access to water, strengthening financial systems, and so on—than into supporting public justice systems. For example, excluding Afghanistan and Iraq, the United States allocated less than 1.5 percent of last year's foreign aid budget to rule-of-law programs.

When donor countries have invested in law enforcement training in the developing world, they have largely focused on transnational criminal issues, such as narcotics, arms trafficking, and terrorism. Such initiatives largely ignore the daily struggles that stem from the lack of legal protections for the global poor. And the little funding that has supported rule-of-law, anticorruption, and good governance programs has generally focused on reducing the theft or misappropriation of aid dollars or on strengthening legal protections for business and commerce. On those rare occasions when donors have invested in public justice systems with the goal of serving the indigenous public, the investments have been small, isolated, and ineffective.

CASEWORKERS FOR THE POOR

THE MODERN human rights movement must enter into a new era, shifting its focus from legal reform to law enforcement. In other words, the time has come to move human rights from wholesale to retail—to take the human rights promises stored in the warehouses of national law and deliver them to the poor standing in line for justice.

Admittedly, creating functioning public justice systems in the developing world will be difficult. It will require political will, steadfastness, and local knowledge and creativity. On the local level, approaches must focus on directly cultivating the political will and capacity of the police, prosecutors, and judges who are supposed to enforce the law on behalf of the poor. This could include providing financial assistance to build police and judicial units with salaries high enough to make petty corruption less likely; material resources that give police, prosecutors, social workers, and judges

the basic tools of their trade; practical on-the-ground casework training; and legal aid and social services to the poor. These would be expensive investments, but they would represent a small fraction of the trillions of dollars that governments have spent on development aid—much of which has been of questionable long-term value given the absence of effective law enforcement systems for the poor. Indeed, rule-of-law aid and development aid are mutually reinforcing: as functioning public justice systems in the developing world mature, the poor will begin to fully reap the benefits of the enormous investments in development being made on their behalf.

At the state level, aid must focus on developing both the political will and the capacity of government elites to enforce existing laws.

This aid should target the diplomats, politicians, and policymakers

Rule-of-law aid and development aid are mutually reinforcing.

who set the agendas for the large cadres of enforcement personnel under their authority. To push this along, developed-country governments should link their international development assistance to the willingness of developing-country governments to

improve their public justice systems. One example of such a strategy is already working its way through the U.S. Congress: the Child Protection Compact Act would authorize U.S. government grants to developing countries that have demonstrated a commitment to combating child trafficking with effective tools, measured by concrete benchmarks. Likewise, the United States and other governments in the developed world should cut off or limit foreign aid to countries that are unwilling to improve their capacity to protect the poor from abuse and violence—especially since rampant lawlessness is likely to make any such assistance unproductive in the first place.

In places where central and local governments do show a willingness to reform, international agencies should be prepared to help. One promising model is called “collaborative casework.” In such programs, human rights lawyers and law enforcement professionals work with local officials to identify individual victims of violent abuse, extricate them from oppressive criminal enterprises, and support the prosecution of the perpetrators in the local public justice system. The International Justice Mission (IJM) has helped pioneer the

collaborative-casework approach over the last decade and has worked with local authorities to prosecute thousands of cases of violence against the poor.

A case-driven agency—whether it is a nongovernmental organization such as IJM or an office within the United Nations or within a national government—could select a particular geographic area and focus on a single abuse that is relatively uncontroversial and the targeting of which would not threaten the local political establishment—helping authorities in one city fight sexual violence against children, for example.

As part of this collaborative process, a case-driven agency builds the crime-fighting and judicial capacity of local police, prosecutors, and court officials. It identifies, for example, case after case of child rape and works with the relevant authorities to overcome any obstacles or chokepoints in the justice system. It does not publicly embarrass officials if they lack competence or integrity, except as a last resort—rather, it trains them in professional methods and facilitates their getting public credit for good work.

It is simply not true that all public authorities in the developing world are hopelessly corrupt, apathetic, and brutish. In places where the case-driven model has succeeded—such as in Cebu, in the Philippines, where two years of collaborative casework led by IJM resulted in a 70 percent reduction in the victimization of children in the commercial sex trade—it has required the courage and competence of local authorities. Such partners exist; they just need political support, training, and resources. When empowered, local law enforcement officials no longer treat serious crimes, such as child rape, as peripheral offenses. Instead, the effort to combat such crimes receives special training, international resources, and professional regard. As the authorities successfully solve and prosecute the kinds of cases that were once ignored, the poor and the underrepresented start to demand more justice. At the same time, dormant demands for the rule of law among the middle class are reignited, local leaders encouraged by these demands begin to emerge, and obstructionists begin to be marginalized.

Over the last decade, IJM has used this model to provide legal assistance to nearly 15,000 individual clients in poor countries throughout

Africa, Asia, and Latin America. There is no reason this approach cannot work on a larger scale with greater resources and investment. Working with local officials to protect against one category of abuse provides those officials with experience, allies, assets, and self-confidence, which then allow the justice system to work against other types of abuse—whether land seizures, forced labor, domestic violence, illegal detention, or police abuse.

To accomplish this goal, the human rights and development communities will have to restructure themselves to include those with the backgrounds and technical skills to diagnose and repair the ailments of broken public justice systems. Of course, these experts will not come with ready answers or quick solutions—but they will know where to start looking and will recognize what matters and what does not. And given even a small fraction of the time and money that have been devoted to fixing roads, improving health systems, providing clean water, and building schools in developing countries, they will begin to enable the poor to retain the benefits of such development assistance. On behalf of the billions of poor people in this world who are made small under the vast shadow of lawlessness, the time has come to construct a shelter of justice. 🌍