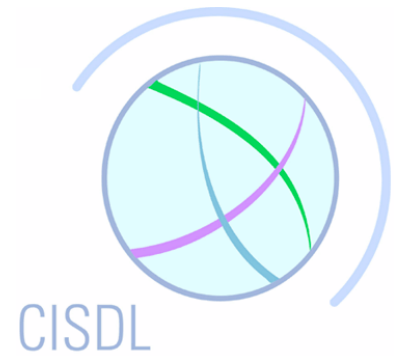


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Centre for International Sustainable Development Law

The CISDL should exist to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law.¹

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¹ In this context, sustainable development is defined as 'development which meets the needs of the present without compromising the ability of future generations to meet their own needs', as stated in 'Our Common Future: The Report of the World Commission on Environment and Development' (Oxford: Oxford University Press, 1987). Furthermore, sustainable development is seen as an open and participatory process of environmental, social, economic, cultural and political change. Sustainable development can be achieved through, *inter alia*, protecting and enhancing ecosystems, transforming the direction of investments and the orientation of technology, and re-designing institutions to ensure current and future potential to meet the needs and aspirations of communities.

Sustainable International Human Rights and Poverty Law: A Future Legal Research Agenda

With Sumudu Atapattu²

Economic growth and social development are important. The need for both priorities was recognized by the international community more than 50 years ago when the UN Charter was adopted. One of the objectives of the Charter, as reflected in its Preamble, is “to promote social progress and better standards of life in larger freedom,”³ and toward that end “to employ international machinery for the promotion of the economic and social advancement of all peoples.”⁴ An Economic and Social Council was established under the Charter to initiate studies and reports with regard to international economic, social, cultural educational, health and related matters. Its mandate includes the promotion of human rights and fundamental freedoms for all.⁵

The UN Charter was closely followed by the Universal Declaration of Human Rights (UDHR),⁶ which sought to expand on the basic rights referred to in the UN Charter. Albeit a non-binding instrument, the UDHR is widely acclaimed as laying the foundation for international human rights law. The UDHR contains both civil and political rights, and economic, social and cultural rights. The right relevant for the present discussion is contained in Article 25 which provides that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services ...”

Twenty years later, state Parties recognized in a binding instrument "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."⁷ Although access to water is not mentioned here, this void was filled in 2002 when the UN Committee on Economic, Social and Cultural Rights, through its General Comments, recognized the right to water as a basic human right under Article 11 of the ICESCR.⁸ The General Comment provides that “[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.”

Unfortunately, these basic rights have remained elusive to the majority of the world's population. Despite the developments in the human rights field, millions of people continue to live in poverty without adequate food and water and without adequate housing and sanitation. It is estimated that 1.2 billion people in the world today live on less than US \$ 1.00 a day and about 2 billion live on less than US \$ 2.00 a day.⁹ Many people have got poorer and marginalized, with a degrading environment exacerbating the issue, and the reference to the "continuous

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³ United Nations Charter, Preamble.

⁴ *Ibid.*

⁵ Article 62 of the UN Charter.

⁶ Adopted in 1948.

⁷ Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.

⁸ See General Comment No 15 (2002) on “The Right to Water,” E/C.12/2002/11, 26 November 2002.

⁹ See, *World Development Report 2000/01* (World Bank) and UN Secretary General's *Millennium Report* (2000) presented to the UN General Assembly's Millennium Summit.

improvement of living conditions" has become a non-starter as many millions of people in the world today continue live in squalor and starvation.

Poverty, human rights and sustainable development

Poverty drives dilemmas, and impinges upon, in many disciplines as well as branches of law. The solutions to poverty also come from many areas of law. There are tools to eradicate poverty in human rights law, economic and trade law, environmental law – it is a central goal of sustainable development. Since it has ramifications at the international level, international law must also grapple with the issue, though initial action must take place at the national and local levels.

The World Commission on Environment and Development defined sustainable development as “Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.”¹⁰ The report points out that this definition contains within it two key concepts:

- The concept of needs, in particular the essential needs of the world’s poor, to which overriding priority should be given;
- The idea of limitations on the environment’s ability to meet present and future needs.

The report further stresses that since poverty is a major cause and effect of global environmental problems, it is futile to attempt to deal with environmental problems without understanding the factors that underlie world poverty and international inequality.¹¹ Development in a broad sense requires dealing with these inequalities, demographic issues as well as trade issues which are closely related to economic development. Empowering the poor is another aspect that has received increasing attention by the international community¹² in order to lessen the sense of powerlessness that is experienced by poor people.

There is no doubt that poverty is the biggest violator of human rights. It leads to the deprivation of other rights enshrined in international human rights instruments, particularly the right to health, right to education, right to work, and the right to privacy. It also leads to the violation of other procedural rights such as the right to participate in the decision-making process and the right to information.¹³ Moreover, it is a violation of the principle of equality, a fundamental tenet of international human rights law, and of the principle of intra-generational equity¹⁴ which is generally considered as forming part of international environmental law and more particularly, a component of the principle of sustainable development.¹⁵

Poverty is also one of the most significant polluters. Many people live in dire poverty,¹⁶ which has exacerbated environmental degradation, as poor people often have no choice but to resort to unsustainable practices in order to eke out a meagre living. The link between poverty and environmental degradation is well recognized and constitutes, unfortunately, a vicious cycle: poverty leads to environmental degradation which, in turn, leads to more poverty which leads to even more environmental degradation. Desertification is a good example of this vicious cycle.¹⁷

¹⁰ World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987) at 43 [hereinafter *Our Common Future*].

¹¹ *Ibid* at 3.

¹² UNDP, *Human Development Report 2000* (New York: Oxford University Press, 2000).

¹³ See K. E. Mahoney & P. Mahoney eds., *Human Rights in the Twenty-first Century: A Global Challenge* (1993). See also Human Development Report 2000, *ibid*, which, referring to the 1993 Vienna Declaration on Human Rights, affirmed that: “extreme poverty and social exclusion constitute a violation of human dignity”.

¹⁴ See the WCED report, *supra* note 69.

¹⁵ See S. Atapattu, “Sustainable Development: Myth or Reality? A Survey of Sustainable Development under International Law and Sri Lankan Law,” (2001) 14 *Georgetown International Environmental Law Review* 265.

¹⁶ Various terms have been used to describe this – absolute poverty and extreme poverty are used often.

¹⁷ The Convention to Combat Desertification in those Countries Experiencing Serious Drought and or Desertification 33 ILM 1328 (1994) recognizes the link between poverty and desertification. Its Preamble notes “Conscious that sustainable economic

The international community has also recognized the link between poverty and sustainable development¹⁸ and proclaimed in the 1992 Rio Declaration on Environment and Development that “[a]ll states and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.”¹⁹

Poverty is also a developmental issue. Lack of economic development has contributed to the present problems associated with poverty. Thus, the UN General Assembly Resolution on the Right to Development²⁰ recognized thus “[t]he right to development is 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...”

Thus, poverty has the ability to cut across a wide spectrum of issues - social, economic and environmental – requiring an integrated approach.²¹ It is here that international sustainable development law - understood as the intersection between economic, social and environmental law²² - plays a significant role.²³

Many international instruments have grappled with the issue of poverty. Agenda 21, for example, devotes a separate chapter to “combating poverty.” It notes that “poverty is a complex multidimensional problem with origins in both the national and international domains.”²⁴ It points out that a uniform global solution cannot be found and advocates for country-specific programs with a parallel process of creating a supportive international environment. In order to achieve sustainable development, a specific anti-poverty strategy must be adopted. It further notes several conditions which should be included in such a strategy: focus on resources, production and people; cover demographic issues; enhance health care and education; provide for rights of women, youth and indigenous groups and local communities; democratic participation; and improved governance.

growth, social development and poverty eradication are priorities of affected developing countries, particularly in Africa, and are essential to meeting sustainability objectives. Mindful that desertification and drought affect sustainable development through their interrelationships with important social problems such as poverty, poor health and nutrition, lack of food security, and those arising from migration, displacement of persons and demographic dynamics...”

¹⁸ See A. Markandya, “Poverty alleviation and Sustainable Development: Implications for the Management of Natural Capital,” and D. Morrow, “Poverty Reduction Strategy Papers and Sustainable Development” (Workshop on Poverty and Sustainable Development, Ottawa, January 2001). See also, “Summary of the Workshop on Poverty Alleviation and Sustainable Development: Exploring the Links,” *Sustainable Developments* 146:1 (23 January 2001) online: <<http://www.iisd.ca/sd/poverty/sdvo146num1.html>> (date accessed: 4/25/2003).

¹⁹ *Rio Declaration on Environment and Development*, Report of the United Nations Conference on Environment and Development, U.N. Doc. A/CONF.151/6/Rev.1, (1992), 31 I.L.M. 874 (1992), Principle 5 [hereinafter *Rio Declaration*].

²⁰ UNGA Resolution 41/128 of 4th December 1986. It must be recognized, however, that this Declaration is a soft law instrument and that the notion of right to development has attracted vigorous debate in the literature. See generally: S. Marks, “Emerging Human Rights: A New Generation for the 1980s?” (1980-1)33 Rutgers L. Rev. 435; P. Alston, “Conjuring up New Human Rights: A Proposal for Quality Control” (1984) 78 AJIL 607; P. Alston, “A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?” (1985) 29 NETH. I.L. REV. 307; J. Crawford, ed., *Rights of Peoples* (1988); P. Alston, “Making Space for New Human Rights: The Case of the Right to Development” (1988) Harvard Human Rights Y.B. 3; A. Lindroos, *The Right to Development* (Helsinki: The Erik Castren Institute of International Law and Human Rights Research Reports, 1999). See also: U. Baxi, “The Development of the Right to Development” in J. Symonides ed., *Human Rights: New Dimensions and Challenges* (1998) at 99.; C. Weeramantry, “Right to Development” (1985) Indian JIL 482; J.C.N. Paul, “The United Nations Family: Challenges of Law and Development: The United Nations and the Creation of an International Law of Development” (1995) 36 Harv. Int’l L.J. 307. It is also of concern that the debate on the right to development has not integrated the parallel developments in relations to sustainable development.

²¹ J. Oloka-Onyango, “Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, or Retreating Horizons?” (2000) 6 Buff. Hum. Rts. L. Rev. 39.

²² See the JPOI, *supra* note 40 at para 2.

²³ See Trindade, ed., *Human Rights, Sustainable Development and the Environment* (1992) and A. Boyle & D. Freestone eds., *International Law and Sustainable Development: Past Achievements and Future Challenges* (1999).

²⁴ Exact wording can be found in the Programme of Action of the World Summit for Social Development, 1995 online: <<http://www.visionoffice.com/socdev/wssdpa-2.htm>> (date accessed: 4/23/2003).

Agenda 21 further notes that while promotion of economic growth in developing countries is important, such growth must be both sustained and sustainable and must strengthen employment and income-generating programs. The long-term objective is to achieve sustainable livelihoods (it should address development, sustainable resource management and poverty eradication). Empowering communities is an important issue and sustainable development must be achieved at every level of society. Agenda 21 estimates that the average annual cost of implementing this program would be about \$ 30 billion.²⁵

An important milestone in relation to social issues was the World Summit for Social Development held in 1995 at which Copenhagen Declaration was adopted. It devotes a separate chapter to poverty eradication. Commitment No 2 of the Declaration deals with “the goal of eradicating poverty in the world, through decisive national actions and international cooperation, as an ethical, political and economic imperative of humankind.”²⁶ The state parties have, toward this end, agreed, *inter alia*, to formulate at the national level policies to address the root causes of poverty and to provide for the basic needs of all. Basic needs has been defined as: elimination of hunger and malnutrition; provision of food security; education, employment and livelihood,²⁷ primary health care services including reproductive health care, safe drinking water and sanitation, and adequate shelter, and participation in social and cultural rights. In other words, basic needs means ensuring the protection of basic human rights enshrined in the International Bill of Rights. It further provides that special priority be given to the needs and rights of women and children and to the needs of vulnerable and disadvantaged groups and persons. Both the Declaration and the Program of Action call for national and international strategies to deal with the issue of poverty.

The most recent recognition of the need to combat poverty and global disparities was the Johannesburg Declaration on Sustainable Development of 2002. It calls upon states to “speedily increase access to such basic requirements as clean water, sanitation, adequate shelter, energy, health care, food security and the protection of biodiversity.”²⁸ Again, like Agenda 21, the Plan of Implementation devotes a separate section to poverty eradication. It notes that “eradicating poverty is the greatest global challenging facing the world today and an indispensable requirement for sustainable development, particularly for developing countries.”²⁹ It proposed the following:

- Halve by 2015 the proportion of people whose income is less than \$1.00 a day, those who live in hunger and those without access to safe drinking water.
- Establish a world solidarity fund to eradicate poverty (voluntary contributions)
- Develop national programs for sustainable development.
- Promote women’s access and full participation
- Deliver basic health services
- Ensure children have at least primary schooling
- Combat desertification
- Increase food availability and affordability
- Improve the lives of at least 100 million slum dwellers³⁰

²⁵ See Agenda 21, Chapter 3, paragraph 3.11.

²⁶ Ibid.

²⁷ Commitment 3 deals with sustainable livelihoods. See also K. Helmore & N. Singh, *Sustainable Livelihoods: Building on the Wealth of the Poor* (2001).

²⁸ Johannesburg Declaration on Sustainable Development, *supra* note 40 at para 18.

²⁹ JPOI, *supra* note 40 at para 7.

³⁰ Ibid.

It can thus be seen that poverty encompasses much more than mere economic development.³¹ It requires, *inter alia*, the promotion of women's rights, the provision of education, particularly, primary education, good governance and democratic participation. In its report on Human Rights, Poverty Reduction and Sustainable Development, the Office of the High Commissioner for Human Rights notes that "[i]t is now widely accepted that – on the one hand – poverty should not be seen only as a lack of income, but also as a deprivation of human rights, and – on the other hand – that unless the problems of poverty are addressed, there can be no sustainable development. It is equally accepted that sustainable development requires environmental protection and that environmental degradation leads directly and indirectly to violations of human rights."³²

The report which advocates a human rights approach to poverty points out that such an approach focuses on empowerment of the poor, and that this occurs through their gaining access to their rights. In the report, "accountability, the principle of non-discrimination, equality, and participation, and the recognition of the interdependence of rights"³³ are the most relevant parts of the human rights normative framework.

While enormous theoretical and legal strides have been made in international protection of human rights, a huge gap exists in practice between civil and political rights, on the one hand, and economic, social and cultural rights, on the other.³⁴ This gap reflects the North-South divide on these issues, and contributes to the marginalization of the poor. The time has come to bridge the gap between these two sets of rights, and give effect to the official UN position that all rights are indivisible, interdependent and inter-related.³⁵

The progressive realization of economic, social and cultural rights is imperative, if the present plight of the poor is to be ameliorated. The UNDP in its Human Development Report notes that all human rights are causally linked and can be mutually reinforcing: "They can create synergies that contribute to poor people's securing their rights, enhancing their human capabilities and escaping poverty. Because of these complementarities, the struggle to achieve economic and social rights should not be separate from the struggle to achieve civil and political rights. And the two need to be pursued simultaneously."³⁶ As explained by the Report, a decent standard of living, adequate nutrition, health care and other achievements are not just development goals - these are human rights inherent in human freedom and dignity.³⁷

Furthermore, governance issues have exacerbated the problems faced by the poor. Societies in which governments are corrupt and do not respect the rule of law or fundamental rights of peoples can further marginalize the poor.³⁸

Governance and institutional structures

There are many international players in this field, including the World Bank, the UNDP, UNEP, the Office of the UN High Commissioner for Human Rights and the various UN bodies

³¹ The Human Development Report 2000 points out that "poverty is broader than lack of income." It is deprivation across many dimensions. Thus, the UNDP prefers the broader term "human poverty" rather than the narrower term "income poverty", *supra* note 71 at 73.

³² *Ibid.*

³³ *Ibid.*

³⁴ A. Eide, C. Krause & A. Rosas eds., *Economic, Social and Cultural Rights*, 2nd ed. (2002).

³⁵ See Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights, A/CONF.157/23, 12 July 1993, paragraph 5.

³⁶ *Supra* note 71 at 73.

³⁷ *Ibid.*

³⁸ K. Ginther, E. Denters & P.J.I.M. de Waart eds., *Sustainable Development and Good Governance* (1995).

involved in promoting human rights, Commission on Sustainable Development, national governments and, of course, poor communities themselves.

While not originally established to deal with world wide poverty, the World Bank has become an important player. Its operational directive on Poverty Reduction states that sustainable poverty reduction is the Bank's overarching objective.³⁹ Environmental protection, institution building and investing in local capacity to assess poverty are essential to achieve this goal. The World Development Report, prepared annually by the Bank, provides useful information on poverty, economic growth, environmental protection and sustainable development.

The United National Development Program has got increasingly involved in sustainable human development linking poverty, environmental protection and human development through a paradigm of sustainable development. The Human Development Report published annually by the UNDP provides a wealth of material; its 1997 report focused on Poverty and its 2000 report on Human Rights and Human Development.

The Office of the UN High Commissioner for Human Rights deals with the issue of poverty through a human rights perspective. In 2002, it prepared a document entitled "Draft Guidelines: A human rights approach to poverty reduction strategies" which deals with poverty eradication through a human rights focus. In addition, its background paper on Human Rights, Poverty Reduction and Sustainable Development stresses the need to address issues related poverty if sustainable development is to be achieved.⁴⁰ The Commission on Human Rights appointed a Special Rapporteur on the subject of human rights and extreme poverty⁴¹ and an expert seminar on the subject was held in February 2001.⁴²

The UN General Assembly declared 1997-2006 as the first UN Decade for the Eradication of Poverty and in his report on the implementation of the first decade, the Secretary General notes that many obstacles to poverty eradication arise from political, economic and social conditions at the national level. While progress towards the millennium development goals has been uneven, the report points out that if international cooperation to achieve these is lacking, these goals will be unattainable by 2015. In addition, the Commission on Sustainable Development has also dealt with the issue of poverty eradication.⁴³

A Future Legal Research Agenda:

There is an important interrelationship between poverty, human rights and sustainable development. A human rights approach can frame and support sustainable development, and poverty eradication is both at the centre of sustainable development, and a necessary pre-condition to it. As such, an ISDL the research agenda in this area should consider the following issues:

Economic, Social and Cultural Rights, including Rights to Development and Environment

The starting point of a legal research agenda in this area focuses on defining and investigating the relevant international law and principles (including 'soft law' documents). Such principles, particularly in relation to economic, social and cultural rights, the right to development, and the

³⁹ *The World Bank Operational Manual on Poverty Reduction*, OD 4.15 (December 1991).

⁴⁰ *Human Rights, Poverty Reduction and Sustainable Development: Health, Food and Water* (Background paper prepared for the World Summit on Sustainable Development, 2002) available online at the OHCHR website.

⁴¹ The Special Rapporteur, Mr Leandro Despouy, submitted his final report to the Sub-Commission in June 1996 (E/CN.4/Sub.2/1996/13, 28 June 1996).

⁴² See Report of the Expert Seminar E/CN.4/2001/54/Add.1, 21 March 2001.

⁴³ See Report of the Secretary-General E/CN.17/2001/PC/5, 14 March 2001.

right to environment, need to be assessed and reconciled at the international level.⁴⁴ Research must also consider how these principles are reflected at the national level in human rights law, and any disconnects between international law and national law, as well as the reasons for such gaps.

Poverty Eradication

The role of international sustainable development law in achieving poverty eradication, as well as the obstacles impeding such achievement, is important. Legal scholarship is moving forward to define new ways to use human rights tools to empower vulnerable individuals and groups to defend their livelihoods. It can also address issues of land tenure and examine the provision of credit and extension services, analyse and propose changes to tax reform measures, and reveal budgetary allocations for social expenditure. Legal research is also necessary to develop measures to implement the concept of 'minimum core obligations',⁴⁵ improve compliance with the ICESCR, address legal aspects of vulnerability; and identify other mechanisms for more equitable distribution of wealth.

Good governance

It will be important to address the role of good governance and participatory rights and identifying the institutional structures at both national and international levels. This should include consideration of institutional development (legal and judicial reform) and anti-corruption approaches, and best practices in the devolution of power. Procedural human rights requirements are also relevant, including, as mentioned in Principle 10 of the *Rio Declaration*, the right to information, access to justice and the right to democratic participation.

Financing Mechanisms for Poverty Eradication

To reduce the gap between theory and practice, there is a need to consider financing mechanisms for poverty eradication and the role of development agencies.⁴⁶ Such work should canvass the application of the *Monterrey Consensus* in the context of sustainable development. It will also be important to consider the particular roles of domestic sources, debt relief, trade and investment.

Civil society

Civil society participation is necessary to achieve human rights, and ensure that programs for poverty eradication will support sustainable development. There is a need for research on the most effective forms of legal advocacy, dissemination of information and training, especially in the context of the roles to be played by international organizations, states, and the media. When communities mobilize in order to realise human rights and poverty eradication, this can affect the sustainability of their livelihoods, leading to empowerment or oppression. Participatory legal research, and action, will further advance these developments in the future.

Protection of vulnerable groups

⁴⁴ D. McGoldrick, "Sustainable Development and Human Rights: An Integrated Conception" (1996) 45 Int'l & Comp. LQ, 796; and A. Boyle & M. Anderson eds., *Human Rights Approaches to Environmental Protection* (1996); P. Sands, "International Law in the field of Sustainable Development" (1994) 65 Br. Yrbk. of IL 303; for a different view see M. Pallemarts, "The Future of Environmental Regulation: International Environmental Law in the Age of Sustainable Development: A Critical Assessment of the UNCED Process" (1996) 15 Journal of Law & Com. 623.

⁴⁵ An alternative formulation is the concept of 'reasonability' in state action. See the decision of the South African Constitutional Court as set out most recently in *Treatment Action Campaign v. Minister of Health*, 2002 SA 8 (CC) at para. 34-35.

⁴⁶ D. Bradlow, "Social Justice and Development: Critical Issues Facing the Bretton Woods System: The World Bank, the IMF, and Human Rights" (1996) 6 Transnat'l. L. & Contemp. Probs. 47.

How to give 'priority to the poor' in sustainable development? The future legal research agenda in this area should examine state obligations to groups especially vulnerable to the adverse effects of economic policies, and to environmental degradation (including desertification and climate change). Such an agenda can also assess the question of liability for causing climate change and obligations and approaches for addressing environmental racism. It is important to consider approaches to provide for non-discrimination and mechanisms for improving the participation in decision-making of socially excluded groups including racial, ethnic and religious minorities, poor and less-educated people, women, etc. In this respect, the *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* prepared by the Office of the High Commissioner for Human Rights can be assessed for its practical implementation, particularly with regards to legal and institutional reforms.

Conclusions

In this chapter, there is no attempt to provide a comprehensive overview of a future legal research agenda for human rights and poverty eradication as part of sustainable development law. Rather, the chapter signals certain key issues, seeking to give a flavour for the debate including the treaties, international institutions and in some cases, domestic legal implications.

There is a strong indication that a human rights approach can be helpful in addressing sustainable development issues. In addition, there is a need to ensure that sustainable development law does, indeed, make poverty eradication a centre of its analysis, an 'essential pre-condition' for the realisation of its goals. Much further legal investigation is necessary, starting from the understanding that human rights and poverty eradication, including the analysis of financing for development, is an area worthy of further legal study, and are essential to the achievement of sustainable development.