HUMAN RIGHTS LAW, DEVELOPMENT AND SOCIAL ACTION LITIGATION IN INDIA

Wouter Vandenhove*

1. Introduction

There is a growing interest in the role human rights can and should play in development (nowadays often framed in terms of poverty reduction). At the international level, the right to development has long been the central focus. Since a number of years however, the field has fortunately been opened up to a number of other issues.

The internet pages of the Office of the High Commissioner for Human Rights are representative of this trend: till recently under the heading of “Right to Development”, they now cover issues like poverty, rights-based approaches, mainstreaming human rights, globalisation, good governance and right to development under the heading of “Human Rights in Development”.

By integrating human rights in development work, a rights-based approach to development links human rights to development both normatively and operationally. Normatively, it offers a conceptual framework for development that is based on international human rights standards. Operationally, it is directed to promoting and protecting human rights.

In the UNDP Human Development Report 2000 on Human Rights and Human Development, an attempt was made to conceptualise the added value of this human rights perspective for development.\(^2\)

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* Post-doctoral fellow Research Fund Catholic University of Leuven, Institute for Human Rights, Faculty of Law, Catholic University of Leuven (Belgium). This text is based on Ph.D. research conducted between 1995 and 2001.

1 See http://www.unhchr.ch/development/ (last consulted 16 April 2002).

In the present article, the focus is on the operational aspect, and it is narrowed down to the issue of the contribution of human rights law to development at the national level.

Considering the contribution of human rights law to development, it is argued first that procedural aspects of human rights law, namely human rights litigation, should receive more attention; secondly, that the procedural rules of human rights litigation need liberalisation; and thirdly, that the national level should not be lost out of sight in the conceptualisation of the operational side of a rights-based approach to development.

The option for emphasizing human rights litigation has to be understood against the background of the one-sided attention paid so far on the conceptual level to the elaboration of a new substantive human right, the right to development, rather than to the reorientation of human rights litigation procedures towards the poor and vulnerable. The latter is more in tune with the general shift from norm-setting to effective protection, and with growing "judicialisation" of society. It corresponds also to some of the lessons learnt in the field of law and development studies, in particular with regard to the failure of legal instrumentalism and to the crucial importance of the rule of law.

The need for liberalisation of procedural rules is deduced from the very instructive experience of pro-poor human rights litigation, termed Social Action Litigation (SAL), in India. It will serve as a starting point for our conceptualisation of a potential human rights law contribution to development at the national level.

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3 See for South Africa, V. GOVENDER, "Economic, Social and Cultural Rights in South Africa: Entitlements, Not Mere Policy Options" in B.K. GOLDEWIJK, A.C. BASPINEIRO and P.C. CARBONARI (ed.), Dignity and Human Rights. The Implementation of Economic, Social and Cultural Rights, Antwerp, Intersentia, 2002, 79: "Ideally courts should be seen as the last option, especially in light of the fact that access to court in South Africa is almost impossible to the most vulnerable (in terms of procedures and costs)."