Chapter 45
Poverty

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Contents

Abstract This chapter introduces readers to the literature on the relationship between poverty and conflict and the role of international law in addressing poverty. How political actors consider or neglect poverty concerns in the context of security studies matters. Poverty does not automatically lead to conflict and insecurity, but poverty and inequalities can be a crucial aspect in the explanation of conflict and post-conflict dynamics. Therefore, poverty should also be a consideration in the measures taken during conflicts, in transitional justice or post-conflict interventions. Indeed, international law provides a valuable normative framework that can be used to address poverty. At the same time, however, there is a dark side to international law where its norms and the ways in which they are used contribute to the maintenance of a world order in which most of the world's population remains poor.

Keywords Poverty · Inequality · (In)security · Armed conflict · Root causes · Transitional justice

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45.1 Introduction

In August of 2018, Kofi Annan passed away in my hometown of Berne, Switzerland. A little over ten years earlier, in the spring of 2006, I sat an undergraduate exam at the University of Geneva where we were asked to comment on Annan's report *In Larger Freedom.* I vaguely remember the exam and my answer even less, but I do have a vivid memory of the admiration with which our professor, the late Victor-Yves Ghebali, and the teaching assistants spoke of Annan's report. I agreed that they had good reasons to be enthusiastic about the report—Annan's diagnosis seemed convincing: security, development and human rights must go hand in hand if we want to prevent conflict and create a world 'in larger freedom'.[1] Annan recognized the strong links between poverty and conflict and tried to mobilize resources at the UN to ensure better coordination and more effective responses to threats that became known as human security. *In Larger Freedom* is a testimony to the influential *Human Development Report* of 1994 which is widely perceived as having shifted the discourse on security and development towards a more holistic notion of security. The concept of human security insists on freedom from fear and the necessity to integrate people's everyday concerns into a new concept that no longer focuses exclusively on military security.[2] Today, Annan's emphasis of the link between poverty, conflict and insecurity remains as relevant as it did in 2005. Across times and cultures, human beings have always tried to secure their economic well-being and livelihoods as part of their survival and dignity. Poverty means vulnerability both at the individual level but also at a macro-level: armed conflicts tend to take place in poor countries and unsurprisingly, conflict-affected countries tend to lose development opportunities.[3] Hence, it is undeniable that poverty and insecurity are inextricably linked.

The chapter begins by introducing the various definitions and measurements of poverty and underlines the importance of paying attention to the framing of this notion. The way we speak or write about poverty or the poor is never neutral. The core of the chapter is the analysis of the multifaceted links between poverty and conflict. When referring to conflict, I do not limit the analysis to the concept of armed conflict in international law, but I include broader instability and violence. Section 45.4 begins with an outline of the main sources and documents in international law that are relevant to poverty and it is followed by a conclusion at Sect. 45.5 with a reflection on the role of international law in relation to poverty and conflict.

[1] UN Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for all (21 March 2005) A/59/2005, para 14.

[2] United Nations Development Programme 1994, p. 1.

[3] Fearon and Laitin 2003, p. 82. Goodhand 2001, p. 4. Addison et al. 2013, p. 160.

45.2 Defining, Measuring and Framing Poverty

Various definitions of poverty have been proposed—each with some advantages and disadvantages. A common way to define poverty is by considering the income of a person and to measure whether this income falls below some minimum level necessary to meet basic needs. This approach relates to *absolute poverty*. Basic needs can be defined very narrowly as the needs required for a human being to survive physically, such as a minimum number of calories per day or a basic shelter. Alternatively, basic needs can be defined in broader terms to include all those resources which are needed to 'keep body and soul together'.[4] The advantage of defining poverty in absolute terms is the relative simplicity of the definition. It suffices to define a minimum threshold below which an individual is considered poor. Absolute poverty measurements allow for comparisons over time in order to assess whether changes in the number of absolutely poor persons are really due to changes in the distribution rather than changes in the poverty threshold. However, the concept of absolute poverty is criticized because absolute poverty measurements fail to take into account horizontal inequalities and are silent on the social relations and the opportunities of an individual.[5]

Relative poverty defines poverty by reference to the relative standard of living as compared to other members of a given social community at a specific time.[6] According to this approach, a person is poor if his or her living standards fall below a certain prevailing standard. In Luxembourg or Switzerland, a person could be relatively poor whereas a person with the same income would be considered rich in another context. Relative poverty definitions have the advantage of taking into account the socio-economic context of an individual. Nonetheless, it is more difficult to assess the evolution of poverty over time. As with absolute poverty, relative poverty is concerned with income or consumption and thus attracts some of the same criticism as the definition of absolute poverty. How much a person earns or consumes does not necessarily say much about the quality of the person's life.

Extreme poverty is defined as a particularly severe form of absolute poverty. Since 2015, the World Bank uses a standard of extreme poverty defined as a person having less than 1.90U$ a day (equivalent to 1 U$ in 2011 prices).[7] The purpose of a definition of extreme poverty is to assist political actors in setting the priorities towards helping those within a population who are most desperately in need of support. The standard to measure extreme poverty is controversial. Some consider that it is too low and that there should be a more nuanced range of poverty lines.[8] The

[4] Committee on Scottish Affairs (2000) First Report. https://publications.parliament.uk/pa/cm199900/cmselect/cmscotaf/59/5908.htm. Accessed 14 May 2020.

[5] Waglé 2014, p. 5450.

[6] Ibid., p. 5449.

[7] World Bank (2015) Global Poverty Line Update. http://www.worldbank.org/en/topic/poverty/brief/global-poverty-line-faq. Accessed 12 February 2022.

[8] Pritchett 2006, p. 1, arguing that the poverty line should be differentiated beyond a binary model of 'poor' and 'non-poor', distinguishing between destitute, extremely poor and globally poor people.

UN Special Rapporteur on extreme poverty and human rights, for instance, criticizes the fact that rigid measures based exclusively on income 'fail to capture the depth and complexity of extreme poverty and do not reflect the significant impact of poverty on the full enjoyment of human rights'.[9] The UN Human Rights Council took note of this proposal to define extreme poverty as a combination of income poverty, human development poverty and social exclusion.[10]

Poverty as exclusion has been suggested as an alternative (or complementary) approach to define poverty. According to this view, the poor are those whose socio-economic situation is such that they cannot fully take part in activities of the daily life of a community and 'interact freely with others'.[11] Taking social exclusion into account in the conceptual understanding of poverty has the advantage of broadening the attention beyond simple measures of income, assets or consumption. Those defining poverty in relation to social exclusion also look at whether a household has sufficient resources to meet needs related to social participation in a community and whether the individuals are able to function according to their own capabilities.[12] A criticism of this approach is that it fails to take into account the fact that poor people may well be integrated in a society, but in ways that perpetuate their poverty, e.g. by their unavoidable participation in highly imperfect markets and relationships of dependency or even exploitation.[13]

To understand the phenomenon of poverty, it is particularly instructive to consider how poor people themselves define poverty. When poor people are asked to define poverty, it becomes apparent that 'many factors converge to make poverty a complex, multidimensional phenomenon'.[14] Poor people refer to their vulnerability to rudeness, humiliation, and inhumane treatment by both private and public agents of the state from whom they seek help. They also allude to their inability to respect certain social norms,[15] the social exclusion and 'adverse incorporation'[16] all of which play a major role.

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[9] UNESCO Poverty. http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/poverty/. Accessed 14 May 2020. (A/HRC/7/15 (28 February 2008), para 23ff.

[10] Human Rights Council, Human Rights and Extreme Poverty (18 June 2008) A/HRC/RES/8/11, para 1.

[11] Böhnke and Silver 2014, p. 6065.

[12] Robeyns 2016. The so-called 'capabilities approach' has notably been developed by Martha Nussbaum: Nussbaum 2013.

[13] Hickey and du Toit 2007, p. 3f.

[14] Narayan-Parker et al. 2000, 26.

[15] Ibid., 31.

[16] Hickey and du Toit 2007, 1, the term 'adverse incorporation' builds on the literature on social exclusion but takes into account that the poor are often 'incorporated' into society but in ways that have adverse effects on their well-being.

45.2.1 How Prevalent Is Poverty?

Poverty continues to be prevalent, but some say that it is decreasing over time. In 2018, the UN Development Programme (UNDP) estimated that acute multidimensional deprivations occur in 105 countries and 1.3 billion people in these countries lived in multidimensional poverty between 2006 and 2016–17. Statistics measuring the proportion of the world's population living below a certain poverty line indicate a decline from 94% in 1820 to approximately 10% today.[17]

Researchers agree that poverty is not permanent but there is controversy about whether poverty really has been decreasing over the past two centuries. According to Hickel, the problem with the above-cited statistics is that they are based on measurements of a household's monetary resources, keeping in mind that this data is scarce for the 19th and most of the 20th century and that China disproportionally affects the statistical results and obscures the lack of progress elsewhere.[18] Several authors argued that 'the empirical evidence in favor of the view that global poverty is declining rests on a dubious methodology for counting the poor'.[19] Whether or not someone has an income is possibly a very unreliable indicator of the person's situation and opportunities. Arguably, where people can make a living in subsistence economies with access to land, resources and opportunities, they do not necessarily need a monetary income to have a satisfactory standard of living. Dispossession of land and livelihoods increases the reliance on wages, which results in an income. But this alone does not automatically indicate a reduction in poverty—far from it.[20] It is therefore important to reflect cautiously on statistical data in order to determine what the numbers really reveal.

It is particularly relevant for this chapter to note that poverty continues to be widespread in countries affected by conflict. The UN Food and Agriculture Organization and the World Food Programme recently presented a report to the UN Security Council measuring the prevalence of conflict-driven hunger in the eight countries and regions that have the world's highest burden of people in need of food. According to the authors, in five of these regions [Yemen, South Sudan, Afghanistan, Democratic Republic of the Congo and Central African Republic], 'the number of people experiencing acute food insecurity increased in the latter part of 2018 because of conflict, demonstrating that the link between conflict and hunger remains all too persistent'.[21]

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[17] Roser (2018) Our World in Data. https://ourworldindata.org/wrong-about-the-world. Accessed 12 February 2022.

[18] Hickel (2019) Bill Gates Says Poverty Is Decreasing. He Couldn't Be More Wrong. https://www.theguardian.com/commentisfree/2019/jan/29/bill-gates-davos-global-poverty-infographic-neoliberal. Accessed 12 February 2022.

[19] Sonderholm 2012, p. 371 with further references.

[20] Keswell and Carter 2014, p. 260, finding an inverse relationship between land asset transfer and poverty. Hence, access to land contributed to decrease poverty in the studied population.

[21] FAO and World Food Programme, Monitoring Food Security in Countries with Conflict Situations (28 January 2019), p. iv.

45.2.2 Different Views on the Causes of Poverty and Implications for Poverty Reduction Strategies

There are broadly three groups of perspectives on the causes of poverty: poor decision-making, environmental causes or multicausal explanations.

First, some believe that poverty is the result of an individual's sub-optimal decisions (such as not saving enough by not foregoing immediate payoffs). In the most extreme free choice models, individuals control their own destiny and can thus be the cause of their own poverty.[22] In more nuanced accounts on the links between poor decision-making and poverty, researchers consider that suboptimal decisions can often be explained by factors that are not under the poor person's control.[23] These accounts rejoin multicausal explanations (see below).

Second, extreme environmental conditions can certainly cause or exacerbate poverty. If a large-scale meteorite impact would hit the earth, soil, crops, infrastructure would be destroyed, and poverty may be the result. Scenarios in which poverty results from (or is aggravated by) environmental changes should therefore not be dismissed. However, as the next section explains, studies caution against deterministic views.

A third and predominant group of accounts emphasize multicausal explanations for poverty and argue that there are structural conditions that affect different groups of people differently. Nobel Prize winner Amartya Sen explained in 1981 already, that the overall availability of food is not the most important factor in explaining how and why abject poverty and famine occurs but rather it is the question of who gets what type of entitlements and opportunities.[24] In 2018, de Waal argued that 'climate change makes some poor and vulnerable populations less food secure. But the risk of these insecurities turning into famine will depend on political decisions'.[25] He believes that climate change and environmental decay alone cannot explain famines and thus the worst forms of abject poverty. Yet, the political failure to mitigate or adapt to climate change does undoubtedly and strongly increase vulnerability: Fears of future deterioration can be seized by political actors taking dangerous political decisions with potentially violent outcomes, sometimes leading to conflict.[26] Such multicausal explanations are, in my view, the most convincing. Poverty is influenced by the social, physical and cultural context in which people live and which are governed by power dynamics. Moreover, other societal conditions such as gender, all play a role (see Sect. 45.3.2).

The framing of poverty has implications on the extent to which one believes that law is relevant to reduce poverty, or whether other approaches to poverty alleviation should be resorted to. Those who see multiple causes, including structural ones, as

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[22] For a discussion of the various nuances of the views on the extent of poor people's personal responsibility for poverty, see Wolff et al. 2015, p. 43.

[23] E.g. Mani et al. 2013, p. 976, arguing that 'poverty itself reduces cognitive capacity'.

[24] Sen 1981.

[25] De Waal 2018, p. 172.

[26] Ibid., pp. 173–5.

a main explanation for poverty tend to understand poverty as a form of injustice. In this view, people are poor—at least in part—because they do not have the same opportunities to use their capabilities as others. In this account, the law should thus be used to enhance substantive equality, notably by enhancing social rights and protections against discriminations. A prominent example of the use of law to fight extreme deprivation comes from the Indian Supreme Court. In 2001, the highest Indian court found that starvation deaths in Rajasthan did not result from an absolute lack of food but from the fact that applicable domestic legislation on the release of grain stocks in times of famine was not properly enforced. The Supreme Court concluded that the right to life was violated given that there were excess stocks available that were not used to alleviate starvation.[27]

In times of conflict, the framing of poverty and the underlying assumptions on its cause further impact on whether poverty is seen as a violation of legal norms or as contextual background information. If we view poverty as the result of natural causes or simply as the common fate of societies facing a conflict, we tend to portray poverty as information about the background of an armed conflict and our approaches to alleviate poverty are likely to be framed primarily in relation to the humanitarian needs of the affected population. On the other hand, those who view poverty at least in part as the result of adverse human agency and thus potentially as a violation of human rights or even a crime are more likely to display poverty as a phenomenon on its own term and alongside other abuses getting attention from international lawyers.[28]

Before Sect. 45.4 turns to the international law instruments that address poverty, we will consider in the next section how poverty and conflict influence each other.

45.3 The Various Relationships between Poverty and Conflict[29]

Poverty, conflict and instability interrelate in various and often overlapping ways. The relations between them are multifaceted, context-dependent and multi-directional (implying, for instance, that poverty can exacerbate conflict and vice versa).

Conceptually, it is possible to group the relationships between poverty and conflict into five categories. First, poverty can cause, drive or exacerbate instability. Second, poverty can be a symptom and a consequence of conflict. Third, poverty can also be a phenomenon that is sometimes best described as the result of criminal intent or the deliberate infliction of poor living conditions to achieve a certain aim related to the conflict. Fourth, poverty can be a primary concern in the aftermath of conflict. Transitional justice actors can be confronted with questions of how they could or should

[27] Supreme Court of India, People's Union for Civil Liberties v. Union of India and Others, Writ Petition (Civil) No. 196/2001, India.

[28] Schmid and Nolan 2014, p. 376ff.

[29] Some of the ideas to structure this chapter go back to my previous work. I adapted selected parts of these previous texts for the purposes of this chapter. See notably Schmid 2017; Schmid 2020.

address poverty in transitional justice attempts. Fifth and lastly, a consideration of the relationship between poverty and conflict would not be complete without analysing the impact of 'post-conflict' economic measures on poverty, such as the impact of new fiscal policies, measures to attract foreign investment or social security reforms.

45.3.1 Poverty as a Cause or a Driver of Instability

Many have argued that poverty plays a role in the explanations behind armed conflicts and other forms of violence and instability.[30] Poverty and inequality can lead to discontent with the state and may lead to reinforcing existing cleavages that can cause, drive or exacerbate conflict. It should be noted that the literature on links between poverty and security concentrates almost exclusively on the intrastate level, i.e. conflicts within a single state but not conflicts involving two or more states (international armed conflicts). While there may be spillover effects at the regional level when a state faces a conflict caused, driven, or exacerbated by poverty, common explanations of international armed conflicts focus on factors other than poverty.[31]

Since the 1990s there is a debate as to what extent 'greed' or rather 'grievance' is the most pertinent explanations for the outbreak of civil war.[32] Those on the side of the explanations related to greed or a 'resource curse' argue that greedy politicians can mobilize armed violence when there is a sizable opportunity for economic enrichment (by exploiting national resources for example).[33] On the other hand, those adhering to explanations related to grievances claim that perceptions of poverty and inequality have important psychological effects. Perceptions of poverty may lead to grievances of the relatively poor and this mobilization of discontent increases the likelihood of conflicts.[34] Poverty can make a country more prone to armed conflict because poverty correlates with weaker institutions and a reduced capacity for the provision of public services and social security. Poverty lowers the opportunity costs for the recruitment of armed fighters and for the prolonged engagement of fighters.[35] As

[30] Amongst the most explicit writings in this regard, see Rice 2007; Braithwaite et al. 2016; Addison et al. 2013, p. 161. The latter authors suggest that context-specific factors influence the specific outcome (see also the next footnote).

[31] In a well-known book, Blainey evaluated the commonly discussed causes of interstate war and argued that nations start international armed conflicts 'when two nations decide that they can gain more by fighting than be negotiating', taking into account at least seven factors when making that assessment, including the state of the economy. (Blainey 1988, pp. 123 and 159). While poverty may have some influence on the decision-making to start or end a war, it is not a primary candidate for explaining interstate war.

[32] On the limitations of the research on the causes of civil war and the various variables that seem to influence whether a specific situation degenerates into a civil war, see Dixon 2009, p. 713ff for a review of the 'greed versus grievance' debate.

[33] Berdal and Malone 2000, p. 4.

[34] E.g. Collier et al. 2009. For the argument on the perception of poverty and the effect on mobilization, see Fair et al. 2018.

[35] Addison et al. 2013, p. 163.

James Fearon and David Laitin famously and convincingly argued in 2003, poverty increases the risk of insurgency, i.e. non-international armed conflict.[36]

Political scientists caution against deterministic and mono-causal explanations for the outbreak of conflicts and instability. An increased risk of insurgency does not yet mean that conflict will break out. Mark Duffield, for instance, advocates against simplistic assumptions on the association between conflict and poverty.[37] Many poor countries are relatively stable, and some relatively well-off countries can be marked with insecurity. Danielle Beswick and Paul Jackson review a number of studies showing that 'it is possible for individuals and societies to live in relative security despite levels of development that would be considered low on international indicators'.[38] Simplistic assumptions of a deterministic link between poverty and conflict should thus be avoided.

The common assumption that development cannot take place without security and conversely, that security cannot exist without development, deserves to be reassessed. There are several additional factors (such as failures of governance and state control, geography or regional stability) that play a role in explaining the outbreak of conflict.[39] Poverty is often 'just' one amongst several factors that drive conflict. As a consequence, it is important not to gloss over the socio-political nuances that influence whether a certain level of poverty or inequality leads to conflict. That said, it is fair to argue that widespread poverty and inequality tend to increase the population's dissatisfaction with the government and correlate with other indicators that point to possible danger. On that basis, the UN Committee on the Elimination of Racial Discrimination urged for disparities in socio-economic indicators or access to essential goods or services to be part of the aspects analyzed in the prevention of genocide[40] and conflict more broadly[41] and should be monitored in early warning strategies.[42]

The idea that development activities such as poverty alleviation can contribute to conflict-prevention is attractive. The so-called *securitization* of development, i.e. the labelling of poverty and development as concerns of security, 'lends a certain urgency to the need to intervene.'[43] Putting poverty on the security agenda is also morally justifiable given 'the limited political interest, at international, national, and

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[36] Fearon and Laitin 2003, p. 88.

[37] Duffield 2014, p. 117ff, and notably p. 121ff.

[38] Jackson and Beswick 2018, p. 14. Referring notably to Duffield 2014.

[39] Jackson and Beswick 2018, p. 13.

[40] CERD Committee, Decision on Follow up to the Declaration on the Prevention of Genocide: Indicators of Patterns of Systematic and Massive Racial Discrimination, CERD/C/67/1, 14 October 2005), notably paras 14f.

[41] An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping (17 June 1992) A/47/277, paras 15, 18 and 81.

[42] OHCHR (2016) Early Warning and Economic, Social and Cultural Rights. http://www.ohchr.org/Documents/Issues/ESCR/EarlyWarning_ESCR_2016_en.pdf. Accessed 14 May 2020.

[43] Duffield 2014, p. 122.

local levels'.[44] Nonetheless, as mentioned, care must be taken not to oversimplify the relationship between poverty and security.

45.3.2 Poverty as a Symptom and Consequence of Conflict

Unsurprisingly, conflict can increase poverty and therefore poverty constitutes a symptom and a consequence of conflict.[45] Conflicts usually imply a general decline in employment and economic activity, economic productivity and opportunities for most individuals and households to sustain themselves and thrive economically and socially. Young and able-bodied individuals are recruited, sometimes killed or injured; many do not receive the healthcare they need. Assets ranging from infrastructure to land and livestock are destroyed, pillaged or abandoned and what remains is often more difficult to trade. Moreover, some armed conflicts go hand in hand with the creation or strengthening of war economies relying sometimes on the extraction and trade of primary resources in ways that can threaten long-term stability.[46] The level of poverty of those that are already poor before the conflict is sometimes worsened. Unsurprisingly, conflict also creates educational and social security deficits, making it more difficult for survivors to get out of poverty or avoid that poverty being passed on to the next generations.

Armed conflict also goes hand in hand with other economic and human losses. A state in conflict can face economic sanctions or the suspension of cooperation agreements by trade partners, both of which can increase poverty. The UN Security Council might adopt sanctions under Chapter VII of the UN Charter (such as was the case in relation to Iraq or North Korea),[47] and such sanctions can aggravate poverty.[48]

Gender discrimination often exacerbates the consequences of conflict, both for direct and indirect victims. It is well known, for instance, that the family members of a disappeared person often face significant problems in accessing social security or are prevented from access to land or other forms of inheritance and may therefore, be confronted with (increased) poverty as a result.[49] In the absence of certainty about whether an individual has died (and thus, for instance, the possibility of getting a death

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[44] Moore and Brunt 2013, p. 1. Similarly, Addison et al. 2013, p. 168. The authors write that 'the need to appease warring factions or to pacify potential 'spoilers' to peace detracts attention from the needs of the chronically poor'; see also p. 171: 'there is a moral imperative to support society's weakest members, and this too often goes missing, or is downgraded'.

[45] Justino 2006, p. 4ff.

[46] E.g. for recent evidence from Liberia, see Cheng 2018.

[47] The Situation between Iraq and Kuwait (6 August 1990) S/RES/661. Democratic People's Republic of Korea (22 December 2017) S/RES/2397.

[48] Committee on Economic, General Comment 8 on the Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights UN Doc ID, (12 December 1997) para 3. So-called targeted sanctions try to avoid increasing the poverty of the general population by only targeting those responsible for abuses.

[49] A/HRC/30/38/Add.5.

certificate), family members face difficulties in obtaining pensions. These problems increase the vulnerability for poverty and are sometimes exacerbated by gender discrimination and stereotypes, particularly for women (e.g. women not being able to decide matters related to land or other assets without the consent of the husband who has disappeared, etc.). According to the former Deputy UN High Commissioner for Human Rights: 'In societies where gender-based discrimination in laws and policies hinders the full realization of the human rights of women and limits their autonomy and participation in aspects of public and political life, the social and economic impact of disappearances is felt more strongly and, in turn, renders women and their children more vulnerable to exploitation and social marginalization.'[50] Moreover, evidence shows that those who were exposed to violence during an armed conflict are more prone to face long-term poverty.[51]

45.3.3 Poverty as a Result of Deliberate Harm

Poverty is sometimes the result of criminal intent or other forms of adverse human agency. Unfortunately, humans have time and again inflicted poverty on others—often with certain political goals in mind. As a result, there exist situations in which poverty is inflicted for reasons related to the conflict and situations in which poverty is part of the facts that might lead to a criminal conviction for a war crime, a crime against humanity, genocide or another international crime.

In previous research, I presented evidence that all four groups of war crimes, at least eight of the crimes against humanity, genocide and other offences can overlap with violations of economic, social and cultural rights.[52] This evidence is relevant when we assess the relationship between poverty and conflict. Economic, social and cultural rights include rights such as the right to food, shelter, work, education and social security—to name just a few. Not every occurrence of poverty amounts to a violation of economic, social or cultural rights. However, when poverty is due to human rights violations, states incur international legal responsibility for wrongful acts and omissions.[53] In some instances, it is possible and legally accurate to conclude that the same factual scenario is both a human rights violation and simultaneously gives rise to an international criminal responsibility, i.e. the criminal responsibility of one or several specific individuals for an international crime such as a war crime or crimes against humanity. Contrary to widespread assumptions in the literature, contemporary international criminal law is capable of addressing at least some violations of economic, social and cultural rights and, therefore, some instances of poverty.

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[50] OHCHR Protecting Women from the Impact of Enforced Disappearances, 14 December 2012. http://www.ohchr.org/EN/NewsEvents/Pages/ProtectingWomenFromImpactOfEnforcedDisappearances.aspx. Accessed 14 May 2020.

[51] Annan et al. 2011; Hegre et al. 2013.

[52] Schmid 2015. This section is also partially based on Schmid 2020.

[53] Schmid 2015, 45ff.

Some of the earliest materials on international criminal law already indicate that abuses related to the deliberate infliction of poverty have always been part of the thinking on international criminal law.[54]

Consider crimes against humanity. The legal development of this category of crimes was inspired by the international community's desire to punish mass abuses of human rights by states against their own citizens. Sadly, states have sometimes been involved in deliberately starving or otherwise depriving people of their livelihoods. The offence of forcible transfer, a crime against humanity, for instance, often goes hand in hand with measures that deliberately increase the poverty of the affected population, particularly forced evictions or discriminatory measures in the realm of people's access to jobs, conditions of survival and well-being.[55] The destruction of livelihoods, by burning victims' homes for example,[56] can constitute a serious deprivation of fundamental rights for the purpose of a persecution charge as a crime against humanity.[57] The hindrance of humanitarian assistance,[58] contaminating water sources[59] and withholding essential (and available) medicine, food[60] or water[61] to individuals under one's control are other straightforward examples of conduct that occurs in conflicts and that exacerbates poverty. Such abuses can potentially constitute both violations of social or economic rights and crimes against humanity (or genocide[62] or war crimes—depending on the legal qualification of the situation and the intent with which the conduct was inflicted).

Several war crimes can overlap with deliberate infliction of poverty. As an example, pillage, which is regarded as an ancient war crime, can amount to the infliction or exacerbation of poverty. The Trial Chamber II of the International Criminal Court, for instance, recognized that the theft of household items, food or livestock could have extremely serious consequences for the daily life of survivors and can constitute pillage.[63] As mentioned in Sect. 45.3, international humanitarian law, inter alia, specifically prohibits starvation as a method of war, the poisoning of water sources or, under certain conditions, the obstruction of humanitarian assistance.[64] International law criminalizes a number of prohibitions provided for in international humanitarian law. This means that certain activities are not only prohibited

[54] Further references and a more detailed analysis, ibid., chapters 4–7.

[55] Prosecutor v. Krajišnik, IT-00-39-T, 27 September 2006, ICTY, para 729.

[56] Prosecutor v. Kupreškić, IT-95-16-T, 14 January 2000, ICTY, para 336.

[57] Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (7 February 2014) A/HRC/25/CRP.1, paras 115ff and 1084.

[58] Second Decision on the Prosecution's Application for a Warrant of Arrest against Al Bashir, 12 July 2010, Pre-Trial Chamber I, ICC-02/05-01/09, ICC, para 35.

[59] Ibid., para 37f.

[60] Prosecutor v. Delalić, IT-96-21-T, 16 November 1998, ICTY, paras 1092ff.

[61] Ibid., paras 1097ff. United States of America v. Toshino et al., Case No. 154, 4 May 1948, US Military Commission at Yokohama, USA.

[62] Schmid 2015, chapter 6.

[63] Prosecutor v. Katanga, Judgment Pursuant to Article 74 of the Statute, 7 March 2014, Trial Chamber II, N° ICC-01/04-01/07, ICC, para 953.

[64] For an overview, see Giacca 2014; Müller 2013.

but amount to a war crime. Some war crimes are specific to armed conflicts of an international character, while others attract special legal consequences (so-called grave breaches). Additionally, there are war crimes that exist in all types of armed conflicts. The relationship between war crimes and poverty is particularly relevant when it comes to the legal status of starvation as a method of war because starvation is an extreme manifestation of poverty. Starvation as a method of war is listed as a war crime in international armed conflicts.[65] The same crime was not listed in the Rome Statute list of war crimes for non-international armed conflicts. The most plausible explanation for this gap is that the drafters forgot the inclusion of this crime at the late hours of the drafting of the Rome Statute, which is why Switzerland proposed to add starvation to the list of war crimes in non-international armed conflicts in the Rome Statute. In December 2019, the ICC Assembly of States Parties, by consensus, adopted an amendment which is now subject to ratification or acceptance.[66] This amendment eradicates any doubt on the status of this crime in both types of armed conflict.[67] In any event, even without this amendment, starvation as a method of war is, in my view, criminalized in non-international armed conflicts in customary international law.[68] A range of poverty-related scenarios can potentially be captured under the lenses of international criminal law. There is no legal justification for claiming that poverty can or should not be addressed by the existing mechanisms that rely on international criminal law, such as truth commissions with a mandate covering crimes against humanity or war crimes. This leads us to transitional justice.

45.3.4 Poverty as a Subject of Transitional Justice

Transitional justice denotes 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'.[69] International criminal law, human rights law and international humanitarian law are usually the main normative frameworks of transitional justice approaches. Given the manifold ways in which poverty is relevant to all three of these sub-branches

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[65] Rome Statute of the International Criminal Court, 2187 UNTS 90, 17 July 1998 (entered into force 1 July 2002), Article 8(2)(b)(xxv).

[66] ICC-ASP, Resolution on amendments to article 8 of the Rome Statute of the International Criminal Court, ICC-ASP/18/Res.5 (6 December 2019). For a recent report on the criminalization of starvation in NIAC, see Global Rights Compliance 2019.

[67] For an outline of the debate, see Non-Paper Submitted by Switzerland: Proposed Amendments to Article 8 of the Rome Statute on the Inclusion of Starvation as a War Crime in Non-International Armed Conflicts (20 September 2018) ICC-ASP/17/35, Annex IV. The proposal followed the adoption of a resolution in which the Security Council strongly condemned starvation of civilians and the unlawful denial of humanitarian access. S/RES/2417 (24 May 2018).

[68] Schmid 2015, p. 200ff.

[69] Report of the SG on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (23 August 2004) S/2004/616, para 8.

of international law, transitional justice has ample leeway in considering poverty-related abuses and problems. Whether this is a good idea is subject to debate. Some have argued that transitional justice should focus on a limited set of civil and political rights in order to avoid overburdening transitional justice mechanisms and placing unavoidably high (and often unrealistic) expectations on transitional justice endeavors. Others have countered that the consideration of socio-economic aspects in transitional justice can be promising as such consideration puts poverty on the agenda of the post-conflict/transitional political debate.[70] Recent findings from empirical research conducted in Cambodia seem to support the latter view.[71]

45.3.5 Poverty as a (Neglected) Concern in So-Called 'Post-Conflict'[72] Measures

At the end of a conflict or in a transition towards a less violent situation, the affected state's authorities and/or external actors often take a range of measures with the aim to stabilize a fragile situation, to avoid the recurrence of conflict or to exit the alleged 'conflict trap'.[73] Decision-makers often hope to strengthen economic growth and to generate private investment through infrastructure development, foreign aid, trade liberalization, debt relief, currency stabilization or measures oriented towards influencing the affected state's fiscal policies. If all goes well, poverty can successfully be reduced by such measures.[74] But poverty reduction or a reduction of inequality does not follow automatically from such 'post-conflict' interventions.[75] There are at least two possible problems: First, much depends on the specific context and the concrete approaches taken by external and domestic actors. The economic well-being and capacity of the host state to reduce poverty does not increase immediately by macroeconomic policies in a (so-called) post-conflict environment. Second, when foreign investment does arrive, the effects are not automatically positive for everyone—there can be winners and losers within the affected state.[76] The effects of attempts to

[70] For an overview of this debate and references, see Schmid and Nolan 2014, p. 368ff.

[71] Destrooper 2018.

[72] The term 'post-conflict' has different meanings to different people and initiatives are sometimes framed in an overly optimistic post-conflict language although a country may still find itself in a situation of ongoing armed conflict or widespread violence. Afghanistan is a case in point: According to Daria Davitti, most of the initiatives to attract foreign investment to Afghanistan were and are couched in post conflict language despite the ongoing armed conflicts on its territory. Davitti 2019, p. 12. For the legal qualification of the situation, see RULAC Afghanistan (15 September 2021). http://www.rulac.org/browse/countries/afghanistan. Accessed 14 February 2022.

[73] Collier et al. 2003, chapters 5 and 6.

[74] Mercurio 2013, p. 67 'trade liberalization is a necessary step toward poverty reduction [but] it is not a sufficient step'.

[75] See notably the work of Langer et al. 2014.

[76] While the pie may increase, e.g. after opening a country to free trade, the distribution of the pie may be unequal within a society.

attract foreign investment can even be detrimental for security. According to Daria Davitti's literature review, 'if left unchecked, investment risks exacerbating volatile contexts (…) and entrenching power structures and systems which enable violence and perpetuate inequality'.[77] Moreover, she considers that such 'post-conflict' initiatives come '[a]t a time when both home and host countries are often ready to trade off human rights protections in the attempt to establish a legal and regulatory framework capable of signaling to foreign investors that the host country is ready to grant priority to investment protection'.[78] This can impede the respect, protection and realization of human rights, including the right to an adequate standard of living and thus harm the achievement (or even just recognition) of poverty-reduction objectives. If no attention is paid to the distributive effects of macroeconomic policies and their possible compensation, inequalities can be exacerbated, and grievances nurtured. On the other hand, empirical research indicates that redistributive social policies, in particular spending for health, social security and education, 'contributes to sustaining peace because the provision of social services reduces grievances by offsetting the effects of poverty and inequality in society' and can 'co-opt the political opposition and decrease the incentives for organizing a rebellion'.[79] Several studies indicate that social welfare spending and notably the provision of health-care and educational opportunities are prone to contribute to sustaining peace by reducing vulnerabilities.[80] According to Barbara Walter's findings from an analysis of all civil wars ending between 1945 and 1996, 'a higher quality of life and greater access to political participation' reduce the likelihood of renewed conflict.[81]

Another challenge of post-conflict measures is the fact that international donors sometimes 'channel their resources to disarmament, demobilisation, and reintegration (DDR) programmes aimed at ex-combatants' in the hope 'to appease warring factions'.[82] As Toni Addison, Kathryn Bach and Tim Braunholtz-Speight write, there is—here too—no automatic relationship between the end of an armed conflict and a specific impact on poverty. Rather, 'wartime politics' and other political considerations impact the poverty reduction agenda.[83] Sometimes, there is a peace agreement or a transitional arrangement that puts poverty reduction on the post-conflict agenda,[84] resulting in an influx of foreign aid and/or marginalized groups getting a seat at the negotiation table. Such changes can provide windows of opportunity for the reduction of poverty—but they are fragile and success is far from certain.[85]

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[77] Davitti 2019, p. 22.

[78] Ibid.

[79] Taydas and Peksen 2012, p. 273.

[80] For an excellent overview of existing research, see Marks 2016. See also Addison et al. 2013, p. 177.

[81] Walter 2004, p. 371.

[82] Addison et al. 2013, p. 168.

[83] Ibid., p. 169.

[84] E.g. the Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal, 22 November 2006.

[85] Addison et al. 2013, pp. 169–171.

Particular challenges arise when humanitarian assistance winds down and international attention fades. Ideally, the poor will 'see their situation improve when labour demand increases'.[86] But those injured during the war or marked by illness, old age, particularly women, young children, the elderly and those with disabilities are particularly vulnerable.

As Pablo de Greiff, the former UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence emphasized, civic and social trust are commonly assumed to be crucial for economic growth. According to him, development actors should, therefore, not exclusively be concerned with macroeconomic indicators but should take a holistic and human-rights-sensitive approach because 'massive human rights violations lead to diminished agency', which in all likelihood is highly detrimental to development.[87] Justice and development concerns are thus often considered mutually reinforcing. However, the mere allusion to the discourse of human rights will not yield positive outcomes from a human rights perspective.[88] Rather, the literature suggests that post-conflict situations, or anything resembling a transition out of armed conflict, are times during which there are opportunities to (re)negotiate the social contract in a society.[89] And this is ideally done in a way that helps assure that all members of society feel they are citizens with individual rights and not simply victims or second- or third-class members of a community. Paying attention to the situation of all members of a society is a matter of justice,[90] but it is also a matter of 'sustaining peace'.[91]

In this section, we considered how poverty and conflict relate to each other. The next section shows that international lawyers have at their disposal a number of international law instruments addressing poverty.

45.4 The International Legal and Policy Framework

What does international law have to say about poverty? Let us consider the extent to which poverty is a concern of international law. The preamble of the UN Charter expresses the objectives of the founding states 'to promote social progress and better standards of life in larger freedom'.[92] Article 1 of the Charter stipulates that the

[86] Ibid., p. 171.

[87] de Greiff, Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence (23 August 2013) A/68/345, paras 20ff.

[88] Alston 2002.

[89] de Greiff 2006, p. 465.

[90] Addison et al. 2013, p. 173.

[91] Review of the United Nations Peacebuilding Architecture (12 May 2016) A/RES/70/262, notably preambular paras 8f. See also (11 July 2017) A/HRC/35/19. The adoption of these two resolutions was prepared by Report of the Advisory Group of Experts on the Review of the Peacebuilding Architecture, Challenge of Sustaining Peace (30 June 2015) A/69/968–S/2015/490.

[92] Charter of the United Nations, 1 UNTS XVI, 26 June 1945 (entered into force 24 October 1945), preamble.

objectives of the United Nations are, inter alia, the maintenance of international peace and security and the employment of 'international machinery for the promotion of the economic and social advancement of all peoples'.[93] In a holistic view, and in line with Kofi Annan's approach to the interrelatedness of peace, security, freedom from fear and want, poverty is thus a core concern of the UN, including the Security Council. Indeed, the Security Council recognizes that massive deprivations can constitute a threat to international peace and security and thus warrant action under Chapter VII of the UN Charter.[94]

In addition to the link between poverty and the objectives of the UN, numerous international treaties address poverty, making it an international law issue. As Krista Nadakavukaren Schefer appropriately summarizes, there is no explicit 'right to be free from poverty' but the right to adequate food and water, the right to health, the right to adequate housing and the right to education 'can be particularly potent claims for relief' from poverty.[95] The International Covenant of Economic, Social and Cultural Rights includes the right to freedom from hunger and the right to an adequate standard of living.[96] Additionally, the treaties of the International Labour Organization protect against economic exploitation. The Convention of the Rights of the Child contains explicit obligations for states to 'assist parents and others responsible for the child to implement [the right to a standard of living adequate for the child's development].[97] In the preamble of the Convention on the Rights of People with Disabilities, states affirm that the recognition of rights of people with disabilities will contribute to eradicate poverty[98] and that, conversely, poverty has a negative impact on persons with disabilities.[99]

Other treaties at the international or regional level do not specifically mention poverty-related concepts but protect non-discrimination, procedural rights or the right to a home, privacy and family life. These protections have important repercussions for obligations in the realm of poverty.[100] It is also important to mention international law protections for human rights defenders because those fighting poverty are sometimes threatened, oppressed and otherwise victimized.[101] The struggle over social rights

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[93] Ibid., article 1.

[94] See, e.g. S/RES/2417 (24 May 2018), para 4, recognizing that the unlawful denial of humanitarian access can be a threat to international peace or security. For the earliest example, see Somalia (3 December 1992) S/RES/794, notably third preambular paragraph.

[95] Nadakavukaren Schefer 2013, p. 8f.

[96] International Covenant on Economic, Social and Cultural Rights, GA Res. 2200a (XXI), 16 December 1966 (entered into force 3 January 1976), article 11.

[97] Convention on the Rights of the Child, GA Res. 44/25 (1989), 20 November 1989 (entered into force 2 September 1990), article 27.

[98] International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, GA Res. 61/106 (2006), preambular para m.

[99] Ibid, preambular para t.

[100] For a useful overview of how socio-economic rights, including poverty-related concerns, can be addressed in various legal fora, see Langford 2008.

[101] See, for instance, A/HRC/30/38/Add.5, para 54.

and the targeting of those raising 'fears about dearth' was already documented for the French revolution.[102]

Outside international human rights law, other sub-branches of international law address some issues related to poverty. International humanitarian law, applicable in armed conflicts, prohibits starvation as a method of war and prescribes that relief operations and assistance may not be targeted and furthermore consent to humanitarian relief must not be arbitrarily denied.[103] As mentioned in the previous section, the infliction of poverty can be covered by substantive definitions of international criminal law.[104] Poverty is also the subject of bilateral and multilateral treaties in which states, for instance, agree to cooperate on matters of poverty reduction.[105]

There are also relevant international law documents, which are not binding as treaties. Most notably, the Universal Declaration of Human Rights emphasizes the importance of civil, cultural, economic, political and social rights and affirms the idea of a world in which individuals are free from fear and from want.[106] The UN General Assembly has adopted a considerable number of resolutions, which deal explicitly with poverty.[107] The UN Human Rights Council has mandated a Special Rapporteur on human rights and extreme poverty[108] and regularly adopts resolutions concerning poverty.[109] In 1986, the General Assembly adopted the Declaration on the Right to Development[110] and proclaimed, in 2007, the second UN Decade for the Eradication of Poverty (2008–2017), which included the Millennium Development Goals.[111] In December 2012, the General Assembly took note, with appreciation, of the guiding principles on extreme poverty and human rights adopted by the Human Rights Council in its resolution 21/11 as a tool for states to reduce and eradicate poverty.[112] The General Assembly subsequently adopted the 2030 Agenda for Sustainable Development in 2015 with the aim to 'end poverty in all its forms and dimensions by 2030'.[113] A number of international legal sources and documents thus deal with poverty. But is international law adequate or sufficient to address

[102] Walton 2011, p. 169.

[103] ICRC Customary International Humanitarian Law, Rule 55. https://ihl-databases.icrc.org/customary-ihl. Accessed 14 May 2020.

[104] See above, Sect. 45.3.3.

[105] E.g. Additional Protocol to the Framework-Agreement on Cooperation between France and Brazil Concerning Decentralized Cooperation (Saint-Georges-De-L'oyapock, 12 February 2008), 2883 UNTS 121, p. 121.

[106] Universal Declaration of Human Rights, GA Res. 217a (III), A/810 at 71, 10 December 1948, preamble and in relation to poverty, see notably article 25.

[107] See the further references in the preambular paragraphs of, e.g., Human Rights and Extreme Poverty (6 February 2015) A/RES/69/183. Implementation of the Third United Nations Decade for the Eradication of Poverty (2018–2027) (22 January 2019) A/RES/73/246.

[108] The current mandate was renewed in 2020: (23 July 2020) A/HRC/44/13.

[109] See the references in ibid.

[110] Declaration on the Right to Development (4 December 1986) A/RES/41/128.

[111] United Nations Millennium Declaration (18 September 2000) A/RES/55/2.

[112] Human Rights and Extreme Poverty (6 February 2015) A/RES/69/183.

[113] The 2030 Agenda for Sustainable Development (21 October 2015) A/RES/70/1, para 24.

poverty and sustain peace or does international law itself contribute to poverty and insecurity? Some critical concluding remarks are in order.

45.5 Concluding Thoughts on the Role of International Law in Addressing the Relationship between Poverty and Conflict

In this chapter, we have considered the five main groups of relationships between poverty and conflict. We also noted that a variety of international law sources and documents have something to say about poverty. Yet, what is missing is the more controversial question about whether international law as such contributes to poverty, instability and conflict. It would be beyond the scope of this chapter to conclusively answer this question, but the chapter would be incomplete without at an attempt at an outline of the debate. Let us begin with the optimistic narrative. An optimist could say that international law has brought progress to humanity by outlawing the use of force between states and by setting up a rules-based system of dispute resolution, cooperation and collaboration in all sorts of domains of human activity. Hence, optimists could argue that international law helps reduce poverty by reducing inter-state conflicts and instability. But there are more pessimistic voices. In 2018, John Linarelli, Margot Salomon and Muthucumaraswamy Sornarajh published a book entitled 'the misery of international law' in which they claim that international law is part of the problem of poverty. They argue that international law furthers 'an allocation of advantages based on the power of the actors who control the making of the law' and who are able to set up a global capitalist architecture 'in a way that serves the powerful, creates instability, and produces insecurity particularly for those least able to bear financial (systemic) risk'.[114] According to these authors, international law substantially contributes to maintaining poverty that might in turn lead to conflicts and insecurity. Previously, Thomas Pogge argued that the affluent members of developed countries impose a burdensome global order on the world's poor and that this order is made up by the international legal framework of states and their role in global institutions.[115] In his view, at least some important parts of international law harm the poor and the normative order benefits the interests of rich members of developed countries. Pogge elaborated on the role of international law and responded firstly to those who deny that the design of the global institutional order worsens severe poverty, secondly to those who believe poverty would be even more widespread without the institutional order and finally to those who believe that international law is just not as good as it could be.[116]

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[114] Linarelli et al. 2018, p. 272.

[115] Pogge 2008, p. 122.

[116] Pogge 2010, 419ff. The following review essay provides a useful starting point to appreciate Pogge's position and to review the important criticisms that have been made: Sonderholm 2012.

Between a very optimistic outlook and the pessimistic conclusions reached by authors such as Pogge, Linarelli, Salomon and Sornarajh, one can consider that both views are complementary. It seems reasonable to believe that international law has a stabilizing effect on international relations, but this does not negate the important critique that international law is itself very problematically entrenched with the self-interests of the powerful.[117]

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[117] I would, however, emphasize that human rights law does not inherently fetishize growth (Linarelli et al. 2018, pp. 272–3). Rather, as the authors themselves write, socio-economic rights are sidelined and misappropriated (pp. 233, 240). See in this regard Alston 2015.

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