

**HUMAN RIGHTS AND POVERTY REDUCTION IN GHANA:
A RIGHTS BASED APPROACH**

**SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS OF
THE LLM DEGREE IN INTERNATIONAL HUMAN RIGHTS AND
HUMANITARIAN LAW**

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DECLARATION

I, GODWIN ADAGEWINE, do hereby declare that the work presented in this dissertation is original and that it has never been presented for the award of a degree at any other University or Institution. Works of other people relied on in this dissertation have been duly acknowledged. I therefore declare this work to be my original work.

Signed 

Godwin Adagewine

Dated..... 

Signed 

Supervisor: Professor Kofi Quashigah

Dated 



DEDICATION

I dedicate this dissertation to God for his divine guidance and protection through out the course of the study. I also dedicate it to my family and all those whose assistance in adverse ways has enabled me to accomplish this study.

ACKNOWLEDGEMENTS

I acknowledge the enormous contribution that the lectures and staff of the Faculty of Law, University of Ghana, Legon, have made that have enabled me to carry out this study. To them, I hereby express my deep felt gratitude.

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LIST OF ABBREVIATIONS

CAB: Checks and Balances

CIBA: Council of indigenous Business Association

DPSP: Directive Principles of State Policy

ERP: Economic Recovery Programme

GLSS: Ghana Living Standard Survey

GPRS: Ghana Poverty Reduction Strategy

HC: High Court

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic Social and Cultural Rights

JSC: Justice of the Supreme Court

OHCHR: Office of the High Commission for Human Rights

PAMSCAD: Programme of Action to Mitigate the Social Cost of Adjustment

RBA: Right Based Approach

SC: Supreme Court

S P: Separation of Powers

UNDP: United Nations Development Programme

UDHR: Universal Declaration of Human Rights

UNICEF: United Nation International Children Fund

WDR: World Development Report

LIST OF STATUTES

The Constitution of the Republic of Ghana, 1992

The Labour Act, 2003 (Act 651)

The Legal Aid Scheme Act, 1997 (Act 542)

The Persons with Disability Act, 2005 (Act 715)

LIST OF CASES

Awuni & 13 others vs. West Africa Examination Council (WAEC) [2003-2004] SCGLR, 471

Ghana Lotto Operators Association vs. National Lottery Authority [2007-8] SCGLR

New Patriotic Party vs. Attorney –General (CIBACASE) [1996-97] SCGLR, 729

New Patriotic Party vs. Attorney-General (31st December case) [1993-1994] 2GLR, 459

ABSTRACT

The study examined how legal rules can be used to enforce human rights and constitutional principles in order to facilitate poverty reduction in Ghana. It also examined how human rights and poverty relate and the relevance of that relation to poverty reduction. In addition, the study examined the concepts of human rights and poverty as well as the rights based approach to poverty reduction. It is argued in the study that the objects of human rights are required to reduce poverty.

The methodology used in the study was library based. It took the form of a review of relevant literature on poverty, human rights and the rights based approach to poverty reduction. It also took the form of a discussion of relevant provisions of the 1992 Constitution of Ghana and other legislation. The methodology also took the form of a discussion of selected cases decided by the Supreme Court of Ghana.

The conclusion from the study is that there is a link between poverty and human rights. It has also been established that the legal enforcement of human rights and rights based principles can facilitate poverty reduction. The challenge, however, for the poor is the economic constraints they face that make it difficult for them to utilize avenues that exist for the vindication of their rights. It is therefore suggested that institutions like the Legal Aid Board and the Commission on Human Rights and Administrative Justice should be sufficiently resourced as well as their mandate also ought to be amplified so as to enable them assist the poor and vulnerable in society assert their legal rights under the law.



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CHAPTER ONE

BACKGROUND TO THE STUDY

1.0. Background

Since independence successive governments of Ghana have implemented various policies aimed at improving the living conditions of the people. This notwithstanding there is still evidence of poverty among a significant segment of the population, especially the rural population and the population of the three northern regions of Ghana. The dominant developmental philosophy which has underpinned Ghana's development policy is one that sees the achievement of high rate of economic growth, instead of poverty reduction, as a primary objective of development.¹ The underlying argument of this philosophy is that economic growth has a critical role to play in poverty reduction.² Accordingly, if national policies speed up economic growth, this will facilitate rapid poverty reduction through a trickle down effect.³ Achieving high rate of economic growth has therefore been a primary objective of development policies in Ghana until in the 1990s.

There is, however, a respectable body of informed opinion in the literature that economic growth does not necessarily trickle down to the poor so as to reduce their poverty unless there is a deliberate and a conscious intervention by the state to integrate the poor into the growth process and to provide them with social safety nets to enable them cope with threats to their well –being. According to this view, a development policy that combines principles of economic efficiency as well as principles of equity and social justice is much more likely to have a fair distributive structure that enables growth to take place while

¹ Tsikata, G. K, "Economic Growth in Ghana: Some Stylized Facts," *Legon Economic Studies*, Department Of Economics, University Of Ghana, Legon (No. 9601).

² Narayan, D. Pritchett, L. & Kapoor, S. *Moving out of Poverty: Success from the Bottom* (a publication of the World Bank, 2009).

³ Ibid.

taking care of the needs of the poor than the trickle down philosophy.⁴ Oduro has argued that even though the Ghanaian economy experienced some growth in the 1990s, this did not trickle down to the three poorest regions of Ghana. Poverty in these regions rather worsened over the period.⁵

The decline of the Ghanaian economy in the 1970s compelled the government to implement an Economic Recovery Programme (ERP) in 1983⁶ with the view to removing constraints to the growth of the economy in order to enable it regain its growth to support the country's development efforts and improve the living conditions of the people.⁷ Economic growth was therefore the primary objective of the ERP. Poverty reduction and other development based issues were presumed to logically follow up once the country attained high economic growth.⁸ The belief was that higher productivity and greater efficiency would restore growth to the economy thereby laying the foundation for eliminating poverty in the country.⁹ Poverty reduction was therefore not given immediate consideration.¹⁰ However, a study by UNICEF into the impact of the ERP on vulnerable groups in the country revealed that these groups were adversely affected by the reforms.

⁴See ul Haq, M, *The Poverty Curtain: Choices for the Third World* (New York: Columbia Press, 1976). See also Oduro, A., "Reducing the extent and depth of poverty in Ghana," in ISSER Millennium Seminar Series, *Ghana in the 21st Century*, No.5, 2001, p.7. The author argues that though economic growth is important, its positive impact on poverty reduction is not guaranteed unless the growth creates an increase in demand for the assets of the poor which is primarily land and unskilled labour. The author also argued that reducing income inequality is critical to the success of poverty reduction.

⁵ Ibid., p.10

⁶ See Atuguba, R. and Ahadzie, W. K., "Making Human Progress: Poverty, Development, Rights – Ghana Country Study," Paper Prepared for the International Council on Human Rights Policy, Geneva, 2005.

⁷ Tsikata, op cit.

⁸ Ibid.

⁹ Hutcful, E, *Ghana's Adjustment Experience: The Paradox Of Reform* (Accra: Woeli publishing services, 2002)

¹⁰ Aryeetey, E & Goldstein, M., "Social – Economic Development: the evolution of social policy," in Aryeetey E, Harrigan, J. & Nissanke, M. (eds.), *Economic Reforms in Ghana: The Miracle & the Mirage* (Accra: Woeli Publishing, 2000), p.285. The authors indicate that the policy of the government under the ERP was that continuous growth would eventually lead to a more equitable distribution. For this reason, the government did not make any special efforts to reach the poor. According to the authors, the design of the ERP was left entirely in the hands of technocrats interacting with the World Bank & the International Monetary Fund (IMF). There was therefore no channel for the expressing views on the inclusion of social programmes in the ERP. In Brief, there was no local ownership of and broad based participation to the content of the ERP.

Following this finding, the government reluctantly accepted to implement a short term poverty programme known as the Programme of Action to Mitigate the Social cost of Adjustment and Development (PAMSCAD) with the view to cushioning the poor against the hardship created by the ERP in the short term.¹¹ PAMSCAD required the government to provide critical social services and programmes for the poor and vulnerable to enable them cope with the short term hardships they faced. The government of Ghana was reluctant to implement the programme because it did not have the resources to fund it. The government also feared that implementing the programme would divert both financial and institutional resources away from ongoing economically and socially productive projects.¹² Furthermore, the government was apprehensive of any poverty focussed programme that would create distortions to the direction and larger objectives of the ERP.¹³ It is clear therefore that the focus of the ERP was the achievement of high growth rate and not poverty reduction. It has, however, been argued that while resumption of growth can be a solution to the problem of poverty in a situation of economic decline, this can be combined with the provision of basic social services to the poor as well as the implementation of policies that increase their participation in mainstream economic activities.¹⁴

In the view of Tsikata,¹⁵ the ERP succeeded in promoting growth but poverty and unemployment increased. Education, health care and nutrition also deteriorated. Relying on the first round of the Ghana Living Standard Survey (GLSS) conducted in 1988,

¹¹ Hutcful, op. cit. P.117. See also Ahwoi Kwamena, *Local Government and Decentralisation in Ghana* (Accra: Unimax Macmillan, 2010) p.123 wherein the learned author states that the PAMSCAD was a 23 – project, US 90 million dollar supported development intervention designed to mitigate the hardships suffered especially by rural communities and vulnerable and marginalised groups resulting from the Economic Recovery Programme and the Structural Adjustment Programme of the early and mid 1980s. The PAMSCAD was initiated in 1989.

¹² Ibid.

¹³ Ibid.

¹⁴ Perkins, D.H. et al, *Economics of Development*, 5th ed. (New York: Norton & Company Incorporated, 2001)

¹⁵ Tsikata, op cit.

Huteful¹⁶ notes that the modest economic growth recorded by the ERP did not generate the expected income to improve consumption. Consequently several years into the ERP there was evidence of pervasive poverty and malnutrition among women and children in Ghana. Writing in 1992 and relying on a World Bank study conducted in 1991, Sarris¹⁷ noted that though the Ghanaian economy grew at a healthy rate since 1984, poverty in Ghana was still massive, with the savannah regions in the North of the country being worst off.

On the basis of the above views, it is submitted that the economic growth recorded by the ERP did not impact positively on the living conditions of the mass of the people. This was because the reforms excluded the poor, who were considered unproductive and economically inefficient from participating in mainstream economic activities. This made it impossible for them to earn any meaningful income and livelihood. High income groups as well as those that had expertise and skills relevant to the objectives of the ERP had the opportunity to participate in economic activities during the course of the ERP and were therefore well positioned to benefit from whatever gains the reforms recorded. It has been noted¹⁸ that poverty in Ghana is endemic in the rural areas but no community development programmes were designed under the ERP to improve the conditions of people living in the rural communities. This did not help in the reduction of poverty in those communities. According to Apt, economic policies that in the past focussed on robust economic growth undermined social justice and poverty reduction.¹⁹

¹⁶ Huteful, op. cit.

¹⁷ Sarris, A, H, "Options for Public Intervention to Enhance Food Security in Ghana," (monograph), Cornell Food and Nutrition Programme.

¹⁸ Apt, N. A., "Rural Poverty: Are there any exits," Ghana Academy of Arts and Sciences, 2002. See also Oduro, op.cit. p. 3. The author states that the poor in Ghana are largely in the rural areas.

¹⁹ Apt, Op cit.

Mahbub ul Haq had argued in the 1970s that, in order to reduce poverty, development goals should be expressed in terms of the progressive reduction and eventual elimination of malnutrition, disease, illiteracy, squalor, unemployment and inequalities. Such a development goal requires the integration of more production (economic growth) and better distribution (social justice). The critical question for policy makers should not be how much and how fast to produce but what to produce and how to distribute it. This requires investment in such social services as education and health care so as to increase the productivity of the poor and thereby enable them to be integrated into mainstream economic activities.

Narayan et al argue that though economic growth has a positive role to play in poverty reduction, poverty reduction is much more than growth in the national economy.²⁰ The extent to which growth provides opportunities for individuals to improve their income through new jobs and business initiatives varies greatly depending on the sources of growth as well as how economic opportunities are either facilitated or limited by policy.²¹ If a policy seeks to produce goods that the poor do not need, it is not likely that growth can lead to poverty reduction. The growth process itself must create space for the poor to participate in the economy and benefit from it. The relevance of economic growth to freedom from servitude, it has been stated, is not that economic wealth increases happiness but that it increases a range of choices.²² However the availability of choices does not mean every body is capable of exercising them. Thus, growth per se cannot guarantee human well - being unless people are able to utilise the opportunities, which growth generates. Investing in education and health as well as the protection of a range of liberties

²⁰ Narayan et al, op.cit., p.186

²¹ Ibid.

²² Lewis, W, A, *is economic growth desirable?* In *The Theory of Economic Growth* (London: Allen & Unwin, 1963), p.420. Cited and discussed in Todaro et al, p.21.

creates the general conditions that enable individuals to avail themselves of existing economic and social opportunities to improve their living conditions.

The weak poverty outcomes of major development policies in the recent past have led to a rethinking of framework.²³ This new thinking shifts the focus of development policy from the narrow perspective of macro economic stability to more encompassing and comprehensive approaches that include the realisation of human rights, especially socio – economic rights, equality, equity and social justice. In this respect, it has been argued that conventional approaches to poverty reduction that rely on increasing economic growth along with safety nets as well as investments in human capital for future generations will fail to reduce poverty unless measures are instituted to deal with local conditions that shape economic opportunities available within communities.²⁴ In this wise state intervention in the form of the construction of infrastructure; connecting producers to new markets; facilitating more and better credit and ensuring a favourable climate for small scale businesses can go far to enable poor people use their assets to move out of poverty.²⁵ This suggestion imposes a responsibility on the state to take active steps to create conditions that enable poor people to build their capacities to move out of poverty. Darrow²⁶ argues that the type of economic growth that has the capacity to reduce poverty is the one that is sustainable; that brings lasting employment and poverty reduction; one that promotes greater equity through greater equality of opportunity and one that respects freedom as well as militate against marginalisation.

²³ Apt, op.cit.

²⁴ Narayan, p.182

²⁵ Ibid.

²⁶ Darrow, M, *Between Light and Shadow* (Oxford: Hart Publishing, 2003), p. 178



One of the basic arguments in this study is that respecting, protecting and fulfilling all fundamental rights²⁷ and freedoms of individuals can facilitate the reduction of poverty in a sustainable manner. The realisation of human rights creates the environment that enables the individual to take personal responsibility for the satisfaction of his basic needs and the fulfilment of other social goals. For those who, due to no fault of theirs are unable to fend for themselves, the rights based approach makes it imperative for the state to directly provide for them.²⁸ While civil and political rights protect the liberty of the individual and guarantee him some space for autonomy in determining what he values and how to pursue and achieve it thereby improving his living conditions; economic and social rights impose obligations on the state to develop and distribute state resources in a manner that assures equal access to those resources by all sections of the society. It is clear that the rights framework for development can facilitate poverty reduction. In deed the argument, canvassed in this study, that seeks to link the realisation of human rights to poverty reduction is that human rights impose obligations on states for the benefit of their citizens in particular and all other persons under their jurisdiction in general. Discharging these obligations is the same as taking measures to reduce poverty. On the basis of this, it is then argued that the realisation of all human rights is not only relevant but indispensable to sustainable poverty reduction.

Some commentators²⁹, however, doubt the capacity of the state to discharge the huge developmental duty that the new approach to development imposes on it as a primary duty bearer. According to this view, given that structural adjustment ‘dismantled and disabled’

²⁷ All human rights refer to civil and political as well as economic, social and cultural rights. The point is that both categories of rights are relevant to the reduction of poverty. No one category takes precedence over the other.

²⁸ See also Article 36(1) that imposes an obligation on the state to provide public assistance to the needy.

²⁹ Atuguba, *op. cit.*, p.11. See in particular Tsikata, D., “The Rights – Based Approach to Development: Potential for Change or More of the same?” Paper delivered at the Institute of Economic Affairs, Accra, 2005.

the state machinery, the role that the new developmental philosophy requires of the state is unrealistic.³⁰ Be that as it may, the truth is that the state has a mandatory role to play in creating the political, economic and social conditions that enable individuals to exercise their basic freedoms as autonomous and voluntary agents in fulfilling their goals in life.³¹ This role essentially entails respecting, protecting and fulfilling the rights and freedoms that individuals are entitled to. Chapter five of the 1992 Constitution of Ghana creates and imposes binding legal obligations on the state to respect and uphold the fundamental human rights and freedoms of individuals freedoms provided for in that chapter. In addition, the chapter expressly states that the provisions of chapter five are enforceable by the courts in Ghana. Consequently, a failure by any organ or agency of the state to respect and uphold the rights and freedoms contained in chapter five can be legally enforced in a court of law. It can thus be said that the realisation of the rights and freedoms of individuals is not a matter of discretion for the state but a matter of constitutional obligation. In respect of those obligations which simply require the state not to interfere with the enjoyment by individuals of their rights and freedoms, the case can be made that compliance may not be a problem. However, the realisation of those obligations, which require the state to expend resources, can understandably pose practical challenge to the state as the realisation of those obligations will be subject to the availability of resources. it is in this latter respect that, perhaps, one may have to agree with those commentators who doubt the capacity of the state to discharge those obligations that can realistically lead to the reduction of poverty. So therefore, it can be said that insufficient resources undermines the capacity of the state to discharge its poverty reduction mandate.

³⁰ Ibid.

³¹ See Articles 35, 36 and 37 which respectively deal with the political, economic and social objectives of the Constitution. These provisions impose positive legal obligations on the state to play an active role creating and maintaining conditions that are conducive to political and civic participation, economic development as well as social advancement of individuals, groups, communities and the society as a whole.

The emphasis in the literature on equity and social justice as critical elements in the fight against poverty suggests that the problem of poverty is not simply about lack of resources but lack of equitable distribution of resources and opportunities.³² It also implies that the realisation of economic, social and cultural rights is critical to poverty reduction. This is so because these rights emphasise social justice in the distribution of resources and opportunities. In deed it has been argued, correctly, that the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the only human rights instrument that addresses the issue of social rights.³³ The realisation of economic social and cultural rights is therefore important in addressing the economic, social and cultural aspects of poverty. In 2001 the government of Ghana introduced the Ghana Poverty Reduction Strategy (GPRS) that sought to achieve macro economic stability, as a basis for economic growth, while incorporating various measures to reduce poverty. The GPRS represents a shift from previous development approaches in Ghana. This shift reflects current approaches to development that combines economic growth with poverty reduction as objectives of development policy.³⁴

The underlying theory of the instant study is that rights - based principles like accountability, participation, inclusion, transparency and non-discrimination and equality create an appropriate framework for the effective enforcement of the obligations of the

³² Blitz, D., *Poverty and Fundamental Rights: the Justification and Enforcement of Socio- Economic Rights* (Oxford: Oxford University Press, 2007) p.1. The author notes that, the world's richest 500 individuals have a combined income greater than the poorest 416 million and that of the world's population, 11.6% are responsible for 60% of the private consumption expenditure in the world. See also Pogge, T. "World Poverty and Human rights," *Ethics & International Affairs* 19, No.2 (2005), p.1: Though constituting 44% of the world's population, the 2,735 million people the World Bank counts as poor consume only 1.3% of the global product and would need just 1% more to escape poverty. The high income countries with 955 million citizens have about 81% of the global product. These observations attest to the claim that the world has sufficient resources to ensure that current levels of poverty are significantly reduced.

³³ De Feyter, K. & Isa, F. G.,(eds.) *Privatisation and Human Rights in the Age of Globalisation* (Oxford: Hart Publishing, 2005), p.152

³⁴ Government of Ghana, *Strengthening Efforts for the Eradication of Poverty and Hunger: Country Review Report*; The Annual Ministerial Review, Geneva, Switzerland, 2007.

state and other duty bearers to promote meaningful poverty reduction in Ghana. This theory is based on the fact that the state has a role to play in reducing poverty in the country. Another aspect of the theory is that the rights – based approach can be an effective poverty reduction strategy if the poor themselves are able to utilise the avenues under the legal system to enforce the obligations of duty bearers. Chapter five of the 1992 Constitution guarantees a range of liberties and some economic and social rights of the individual and makes them directly enforceable by the High Court. Chapter six contains a wide range of political, economic, social and cultural objectives and imposes legal obligations on the state to take positive steps to realise them. It can thus be said that the Constitution establishes a rights - based framework for development in Ghana. The provisions of these two chapters embody principles of social justice and equity the realisation of which will create a free and just society.³⁵ The view that the 1992 Constitution creates a Rights - Based framework for development finds support from a number of Ghanaian commentators.³⁶ The point however is that, these values remain mere constitutional prescriptions unless action is taken to have them enforced. For this reason, there is the need to identify avenues in the legal system that can be utilised to enforce these principles so as to ensure their realisation.

The study, therefore, explores the extent to which the law can be used to facilitate poverty reduction in Ghana through the enforcement of human rights and the Directive Principles of State Policy (DPSP). These principles are the political, economic, social, cultural and educational objectives of the 1992 Constitution and embody civil and political rights, and economic, social and cultural rights. This study argues that the enjoyment of all human

³⁵ See Article 34(1)

³⁶ Atuguba, R, "Ghana Developing Through Law", in IEA Policy Analysis, August, 2005. p.7; Bah, S.K.D., "On Law and Liberty In Contemporary in Ghana," Ghana Academy of Arts and Sciences, 2008; Asante, S.K.B, "Reflections on the Constitution, Law and Development," Ghana Academy of Arts and Sciences, 2002

rights is critical to poverty reduction and that the legal enforcement of the DPSP is relevant to the realisation and enjoyment of rights in a manner that leads to poverty reduction.

There is now world wide agreement on poverty reduction as an overriding goal of development policy.³⁷ It has also been argued that the relevance of public policy lies in the extent to which it places human rights at its centre. This view holds that when citizens enjoy human rights their degree of innovation necessarily increases. It is for this reason that development policy must aim at expanding the frontiers of human rights rather than merely raising the levels of gross domestic product.³⁸ Expanding the frontiers of human rights entails pursuing development in a rights – based manner. The design of development policy must, therefore, emphasise the responsibilities of duty bearers to discharge their duties so as to realise the rights to which citizens are entitled.

Historically, human rights have been used to challenge both the political legitimacy of social institutions and the moral appropriateness of their distributive functions. These challenges produced social reforms that improved the living conditions of previously despised and disadvantaged groups.³⁹ According to Mario Gomez, human rights are inherently empowering; provide mobilisation points for action and programme; provide standard for evaluating government actions and provide transformative dimensions. These attributes of the rights – based framework make it particularly effective as a tool for poverty reduction.

³⁷ Laderchi, C, R, & Steward, F, “Does the definition of Poverty Matter? Comparing four approaches,” in United Nations Development Programme, *Poverty in Focus*, International Poverty Centre, 2006, p.10

³⁸ Muchena, D, “The Place of economic and social rights and development discourse,”

[_May, 2009/ 2 _4_econom](#) (accessed on 24/11/09)

³⁹ Donnelly, op. cit, p.60.

In the light of the above, it can be said that human rights can be an effective tool for influencing the content of poverty reduction measures and the enforcement of laws in ways that facilitate poverty reduction. In order to justify the use of the rights based approach to poverty reduction, a link between poverty and human rights needs to be established. One objective of this study is to establish that link. This in turn requires, in the first place, a clarification of what poverty and human rights each means. The examination of these concepts is also an objective of this study. Furthermore, an examination of the role that law can play in facilitating poverty reduction is an objective of the study. The significance of this study is that it brings a new but useful dimension to the poverty reduction discourse in Ghana. By looking at the role of human rights and the law in poverty reduction, the study brings a multi disciplinary approach to the discourse of poverty reduction in Ghana.

1.1. Problem Statement

Poverty is one of the most important developmental problems that Ghana is currently grappling with. Poverty reduction has, therefore, become an important objective of developmental policy in Ghana. The realisation of human rights and the incorporation of human rights principles like accountability, inclusion, participation, equality and non discrimination as well as transparency in development policies are acknowledged in the development literature as critical to sustainable and meaningful poverty reduction. Mere prescriptions alone cannot result in poverty reduction. This study therefore explores the avenues that exist under the Constitution for the enforcement of human rights in Ghana and constitutional principles that are relevant to poverty reduction.

1.2.The Research Questions

The research question for this study is: What legal avenues exist for the application of the rights - based principles in a manner that would facilitate poverty reduction in Ghana? The second question is how do human rights and the enjoyment of human rights lead to the reduction of poverty in Ghana?

1.3. Objectives of the Study

The objectives of this study are:

- (a) To examine the concept of human rights;
- (b) To examine the concept of poverty;
- (c) To examine the linkage between human rights and poverty;
- (d) To examine the justiciability of the Directive Principles of State Policy (DPSP);
- (e) To identify and examine the legal avenues for the enforcement of human rights and constitutional principles so as to facilitate poverty reduction in Ghana and the extent to which they are workable, and
- (f) To draw conclusions on the above mentioned objectives.

1.4. Significance of the Study

This study is significant because it generates information on how the law can be used to influence poverty reduction in Ghana. This information shall prove useful to policy makers, human rights advocates and students of development studies, the judiciary, the poor and the marginalised in society.

1.5. Methodology

The method employed in this study is a descriptive and philosophical analysis of the concepts of human rights, poverty; the rights based approach to poverty reduction as well as an examination of the justiciability of the DPSP. This will be done by way of a review of selected literature that discusses those concepts. The study will also analyse relevant provisions enshrined in such international human rights instruments as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as relevant provisions enshrined in chapters five and six of the 1992 Constitution of Ghana with the view to establishing the link between poverty and human rights. In the light of the above, the study relied on relevant books, articles and internet sources. The study also relied on cases decided by the Supreme Court of Ghana that have relevance to human rights and poverty reduction.

1.6. Chapter Overview

The study is made up of five chapters. Chapter one is the introduction. It provides the background for the study, its significance and justification. Chapter two reviews the literature on the rights based approach and the justiciability of the Directive Principles of State Policy in Ghana. Chapter three examines the nature and dimension of the concept of poverty. Chapter four examines human rights and the linkage between poverty and human rights and how the legal enforcement of human rights and constitutional principles can facilitate poverty reduction. Chapter five contains the conclusion and recommendations.



CHAPTER TWO

HUMAN RIGHTS AND ITS RELATION TO POVERTY REDUCTION

2.0 Introduction

The task in this chapter is to examine the idea of human rights and then to indicate the relationship between human rights and poverty reduction. It is argued in this chapter that the objects of human rights, among others, are the same things that are required in order for individuals to avoid being poor. Therefore the realisation of human rights is an important ingredient of poverty reduction. Furthermore, it is argued that the justiciability of the Directive Principles of State policy is critical to creating the general conditions that would enable individuals to enjoy their rights.

2.1 The Idea Of Human Rights: What Is It?

(a) The 'rights' in human rights

Human Rights are rights that one has because one is human.⁴⁰ This way of defining 'human rights' assumes that the reader knows what the 'rights' are. The definition therefore begs the question as to what in the first instance is a 'right'. This question needs to be answered before one can logically proceed to qualify it with 'human'. 'Rights' have both moral and political undertones.⁴¹ In the moral sense 'rights' conveys the idea of the right thing to do. In the political sense, 'rights' convey the idea of entitlement, which means a claim to something. In the view of Donnelly, 'rights' are linked to obligations⁴². Claims of right, in the moral sense focus on *a standard of conduct* that must be followed, and draw attention to a duty bearer's

⁴⁰ Donnelly, J. *Universal Human Rights: In Theory & Practice*, 2nd Ed (New York: Cornell University Press, 2003), P.7

⁴¹ Ibid.

⁴² In this context, an obligation is a duty that a person must carry out, failing which sanctions will apply.

obligation under that standard.⁴³ In this sense ‘rights’ refer to a state of affairs to be realised.⁴⁴ Rights in this sense are referred to as objective rights. On the other hand; claims of right in the political sense focus on *a right holder* and draw a duty bearer’s attention to the right holder’s special title to enjoy his right.⁴⁵ In this sense ‘rights’ entitle a person to demand that another person conducts himself in a certain way that enables the one making the demand to enjoy the things he demands. ‘Rights’ in this sense can be referred to as subjective rights.⁴⁶

Rights, according to Donnelly, create a class of rights holders and duty bearers who relate with respect to objects of rights. Where a person is entitled (right holder) to an item (object of the right), there is another person (duty bearer) who stands under a correlative obligation to the right holder in respect of the item in question. Consequently, in appropriate circumstances the right holder can make a claim on the duty bearer to discharge the obligations in question to the right holder to enable him have the object of his right.⁴⁷ The relationship between a right holder and a duty bearer, according to Donnelly, should be under the active control of the right holder. Thus, rather than being a passive beneficiary of the duty bearer’s obligations, the right holder is supposed to be actively in charge of the relationship. Ideally, he can assert his right if he so desires and should the duty bearer fail to discharge his obligations; the right holder may seek remedies against him or may choose to excuse him. In the words of Donnelly, therefore, ‘rights empower, not just benefit those who hold them’.⁴⁸

⁴³ Ibid; Chapter six which contains the directive principles of state policy can be said to be objective rights.

⁴⁴ Ibid. later in the study, it is argued that the state of affairs that must be realised are the general conditions that enable members of a society to live lives that are consistent with their humanity. General conditions that enable individuals to do and to experience the things that they value doing or being.

⁴⁵ Ibid.

⁴⁶ Ibid. It can be said that chapter five which deal with the fundamental human rights and freedoms contain subjective rights.

⁴⁷ Ibid.

⁴⁸ Ibid.

Donnelly's exposition of rights leaves certain questions unanswered. In the first instance, Donnelly defines human rights as rights a person holds simply because he is a human being. This definition simply means that once a person is human then automatically he is entitled to human rights. The question, however, is why should merely being human beings entitle a person to a right?

In spite of this short coming, it is significant to state that, the claim that rights empower their holders is the essence of the rights - based approach. It emphasises obligations rather than charity. This approach ensures that there is accountability and transparency in the management of national resources. It shifts the balance of power away from policy makers to the citizenry and puts the citizenry in control of the way in which national resources should be utilised.

The foregoing analysis indicates that 'rights' have political and moral connotations. The moral connotation depicts an objective standard to be followed while the political connotation depicts the idea of personal entitlement to something in a way that obliges another person to respect that entitlement. The moral connotation entitles the individual to demand from the state the implementation of policies that create the conditions which enable the individual to pursue his interests.

(b) The 'Human' In Human Rights

'Rights' are described as human rights because they are things to which people are entitled on account of their humanity. According to Shestack, to speak of 'human' rights requires a

conception of what rights one possesses by virtue of being human.⁴⁹ This conception of human rights, very much the same as that of Donnelly, would seem to suggest that rights are human rights, if to possess them one only need to be a human being.⁵⁰ In this context human rights, according to Shestack, are not to be understood in the self – evident sense that those who have them are human⁵¹ but rather in the sense that in order to have them, one needs to be human.⁵² It is for this reason that human rights are described as inherent and inalienable. Why should being human entitle a person to human rights? This question is examined below.

(i) Human Nature

A distinction is made between material and moral aspects of human nature. The former, also known as the scientific approach to human nature, entails an empirical investigation into the psychobiological make up of human beings. The latter on the other hand, focuses on a human being as a moral agent. In other words it views the human being as capable of reflective action and subject to the constraint of morality.⁵³ These two perspectives, it is submitted, are complementary aspects of human nature.

A material perspective of human nature requires an examination of human nature from the point of view of scientifically established human needs such as food, clothing, housing and medical care. The point that underpins this approach is the fact that human beings require such resources as food, clothing, housing and medical care to exist and survive. Without these resources there will not be human life. In their right quantity and quality, these resources guarantee human existence and well – being. This view is shared by a number of

⁴⁹ Shestack, J. “The Philosophical Foundations Of Human Rights”, in Symonides, J. (ed.), *Human Rights: Concepts And Standards*, (London: Ashgate, 2000), P.33

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Donnelly, op. cit., p. 21

commentators. For instance, Todaro et al have argued that all human beings have certain basic needs without which life would be impossible.⁵⁴ Examples of these life sustaining basic human needs, according to the authors, are food, shelter, health and protection.⁵⁵ Similarly Blitz,⁵⁶ has said that food, shelter and good health are necessary for maintaining a human being's survival. The ability to maintain one's existence can therefore be identified as an important interest of human beings.⁵⁷ It can therefore be argued that, by being a human being a person is entitled to food, clothing, housing and medical care because they guarantee his physical survival and well – being. In addition, it can be said that human beings are entitled to the conditions (objective rights) that enable them have secure access to the resources (subjective rights) mentioned above.

It is to be noted, however, that the scientific approach to the analysis of human nature is inadequate because it fails to take into account those aspects of human nature which cannot be determined through the scientific process. There is a moral aspect of human nature that is said to form the basis for human rights. On this it is said:

The human nature that is the source of human rights rests on a moral account of human possibility. It indicates what human beings might become rather than what they have been, or even what they 'are' in some scientifically determinable sense. Human rights rest on an account of a life of dignity to which human beings are 'by nature' suited and the kind of person worthy or and entitled to such a life'⁵⁸

⁵⁴ Todaro et al, op. cit., p.20

⁵⁵ Ibid.

⁵⁶ Blitz, op. cit.

⁵⁷ Ibid.

⁵⁸ ibid., P.22

Kraud has similarly underscored the centrality of dignity as an aspect of human nature. In his view, dignity illustrates the equality of respect a person is entitled to as a member of a human community and that one of the things that makes human life go well is the recognition received by that person who lives it that he is fully human. In the words of Kraud, the denial of dignity affirms the victim's membership of a subhuman realm rather than a human a community. Todaro et al share similar views. According to them, a second universal component of the good life is self – esteem. They argue that all peoples and societies seek some basic form of self – esteem.⁵⁹ Without dignity a person's life is not human enough. It is equally true that without the material aspect of human nature, there will be no human life. In this regard Eide⁶⁰ has argued that it is both a moral and legal obligation under international human rights law to ensure that all human beings enjoy adequate food, housing and social services necessary for health, dignity and social participation. To achieve this objective, Eide suggests that social and economic policies should be so designed as to address the needs of the poor.⁶¹

From the foregoing, human rights can be said to refer to the goods, services, facilities, opportunities, conditions and treatment which human beings require in order to live dignified lives that befit their humanity. It is submitted that the things that are described as human rights are the very things that individuals require to satisfy their needs and pursue other goals in life, and that the lack of these things result in the condition described as poverty. The link between poverty and human rights is thus obvious.

⁵⁹ Todaro, op.cit., p.21

⁶⁰ Eide, A. (ed), "Economic and Social Rights," in Symonides, J., *Human Rights Concepts and Standards* (England: Dartmouth, 2000), p.160

⁶¹ Ibid. p.160.

2.2 . The legal perspective of human rights

The legal perspective of human rights looks at the list of rights that are incorporated into international and domestic legal texts for the purpose of securing their protection. These texts when ratified by governments impose legal obligations them (governments) to respect, protect and fulfil the rights in question for the benefit of their citizens. According to Fernando Doz Costa, human rights in the legal sense refers to a set of internationally legally binding norms based on international treaties as well as agreed and or/authorised interpretations of those instruments. This definition while useful is narrow as it fails to take into account human rights that are incorporated into municipal constitutions, statutes or subsidiary legislation. It is submitted that human rights in the legal sense includes those rights which a country has incorporated into its domestic legal system.

2.3 . International bill of rights

The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR)⁶² and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶³ are the key legal instruments that establish the International Bill of Rights and present a summary of the minimum social and political guarantees internationally recognised as necessary for a life of dignity in the world. These texts contain rights that enable individuals to exercise their liberty and autonomy of action in the pursuit of their survival and other goals. Examples of such rights are freedom of speech, expression and conscience, freedom of association, freedom of movement, freedom from forced labour and servitude, the right to participate in public life by voting or standing for elections. These are the rights provided for in the ICCPR. In addition to these rights are rights that enable individuals to participate in the economic, social and cultural activities in society. Examples

⁶² Was adopted in 1966 and came into force in 1976

⁶³ Was adopted in 1966 and came into force in 1976

of these rights are the right to work, the right to join and form trade union, the right to education and health. These are the rights that are provided for in the ICESCR.

2.4 . Human rights and the 1992 Constitution

Ghana has signed⁶⁴ and ratified⁶⁵ both the ICCPR and the ICESCR.⁶⁶ The effect of this is that those human rights instruments are binding⁶⁷ on Ghana. Consequently Ghana is obliged to take steps to realise the rights contained in these instruments by respecting, protecting, promoting and fulfilling them. The UDHR, unlike the ICCPR and the ICESCR, is not an international covenant. It, therefore, has no international contractual or treaty binding effect on Ghana. However, it is trite international human rights law, that the UDHR has attained the status of an international human rights customary norm that has evolved into a *jus cogens*⁶⁸ and is for that reason binding on Ghana.

The ICCPR and the ICESCR were adopted and subsequently came into force before the coming into being of the 1992 Constitution. However, these two instruments were signed and ratified by Ghana in 2000. It can therefore be said at the time the 1992 Constitution

⁶⁴ Article 75 (1) of the 1992 Constitution confers on the president the power to execute international treaties in the name of the country. That provision states that the president may execute or cause to be executed treaties, agreements or conventions in the name of Ghana.

⁶⁵ According to Article 75(2) of the 1992 Constitution, a treaty, agreement or convention executed by or under the authority of the president shall be subject to ratification by an Act of Parliament or a resolution of Parliament supported by the votes of more than one – half of all the members of Parliament.

⁶⁶ See Appiagyei – Atua, K. “Ghana at 50: The place of International Human Rights Norms in the Courts,” in Bonsu, J.A.N.M et al (eds.), *Ghana Law Since Independence: History, Develeopment and Prospects* (Faculty of Law, University of Ghana publication, 2007), p.185. The learned author states that Ghana signed and ratified the ICCPR and the ICESCR on 7th September, 2000.

⁶⁷ There are two levels or types of ‘binding’ in respect of the signing and ratification of international human rights instruments namely binding at the national level and binding at the international level. If ratified, the instrument binds the ratifying state party at the international level but if the instrument is incorporated into domestic legislation, it becomes binding on the incorporating state party. No Act of Parliament has been passed by the Parliament of Ghana ratifying these instruments. However chapter five of the 1992 Constitution contains rights which are provided for in the ICCPR and the ICESCR. The provisions of chapter five are enforceable. It can thus be said that in some sense, the Constitution of Ghana, which is a domestic law incorporates rights provided for in ICCPR and ICESCR and by such incorporation imposes legal obligations on the state to realise the rights guaranteed in chapter five.

⁶⁸ Ibid. p.181& 187, foot note 57

was being enacted, the ICCPR and the ICESCR were already in existence. This notwithstanding, Chapter five of the 1992 Constitution contains elaborate provisions on human rights and freedoms that are consistent with the provisions of the ICCPR and the ICESCR. The rights contained in chapter five comprise civil and political rights and some economic, social and cultural rights.⁶⁹ Chapter five illustrates what can be called a Ghanaian ‘bill of rights’, which combines the rights contained in the ICCPR and some of the rights contained in the ICESCR.⁷⁰ The combination of the two types of rights in the same chapter allows one to argue that the Ghanaian ‘bill of rights’ does not make any distinction between civil and economic, economic, social and cultural rights on the other hand so far as the constitutional guarantee and protection of human rights and freedoms are concerned. This provides the legal basis for the realisation of all human rights. One commentator has stated that, having regard to the fact that chapter five of the 1992 Constitution contains the rights provided for under the international bill of rights, it can be said that the international bill of rights has been directly incorporated into the laws of Ghana.⁷¹

It is also important to note that the DPSP are relevant to the consideration of the protection of fundamental human rights and freedoms in Ghana.⁷² These principles contain the philosophical and ideological underpinnings of the Constitution as a whole and complement the provisions of chapter five on fundamental human rights and freedoms.⁷³

⁶⁹ Adjetey, P. A. “Economic and Social Rights and their Relationship with political and civil Rights,” (1993 – 95) 19 RGL VOL. XIX, P.188. The learned author states that articles 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 23 constitute civil and political rights while Articles 22, 24, 25, 26, 27, 28, and 29 constitute economic, social and cultural rights.

⁷⁰ Bah, op. cit., p.11; see also Asante, op. cit., p.38

⁷¹ Ibid.p.187

⁷² Adjetey, op.cit., p.189

⁷³ Ibid.



The realisation of these DPSP creates the general conditions that enable individuals to enjoy and exercise their respective individual rights guaranteed under the Constitution.

It is clear from the discussion above that the Ghana Constitution has a bill of rights which comprises civil and political rights as well as some economic, social and cultural rights. It is, however, not all economic, social and cultural rights that have been specifically incorporated into the bill of rights. For instance the right to work has not been specifically incorporated into the bill of rights⁷⁴. The right to health has also not been incorporated into the bill of rights. However, if one accepts the view that the DPSP provide the philosophical underpinnings of the Constitution and complement the provisions making up the bill of rights, then it goes without saying that the non incorporation of some economic and social rights in the bill of rights is inconsequential. In addition, the fact that Ghana has ratified both the ICCPR and the ICESCR means that all rights incorporated in those instruments are binding on Ghana, at least at the international level.⁷⁵ Furthermore, Article 33 (5) provides that rights specifically mentioned in chapter five do not exclude others not specifically mentioned therein which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man. It can be argued that even though the right to work and the right to health are not specifically mentioned in chapter five, these two rights can yet be recognised as part of the rights contained in the bill of rights of Ghana since they are rights that can be said to be intended to secure the freedom and dignity of man.

⁷⁴ Quashigah, *op.cit.*, p.37 wherein the learned author stated that the right to work is not categorically guaranteed in chapter five.

⁷⁵ Having ratified these instruments, Ghana is subject to the various levels of obligations that state parties assume under international human rights law when they ratify human rights instruments. These obligations are the obligation to respect, promote, protect and to fulfil the rights contained in the ratified instruments. In the case of Ghana, therefore, having ratified the ICCPR and the ICESCR, Ghana thereby assumes the obligation to respect, promote, protect and fulfil the rights contained therein.

2.5. Article 33(5) and the expansion of the contours of human rights in Ghana

As already indicated, chapter five provides a list of rights and freedoms that are enforceable by the courts in Ghana. Such enforcement, it is submitted, ensures that individuals actually enjoy the rights and freedoms guaranteed under the Constitution. If one limits him or her self to the provisions of chapter five, the conclusion one is likely to draw about the mandate of the High Court and the Commission on Human Rights and Administrative Justice (CHRAJ) regarding the protection and promotion of human rights and freedom will be limited to the rights specifically provided for in chapter five.

Article 33(5) of the 1992 Constitution makes it clear that the protective and promotional mandate of human rights institutions in Ghana such as the High Court and CHRAJ extends to include rights not specifically provided for in chapter five but which are inherent in a democracy and intended to secure the freedom and dignity of man. Commenting on the significance of Article 33(5) for rights protection and promotion institutions such as the judiciary and the CHRAJ, Quashigah⁷⁶ argues that Article 33(5) requires the judiciary and the CHRAJ to adopt interpretive attitudes that will bring the rights guaranteed in chapter five in line with the conception of those rights in the international community. The necessity for such creativity and innovation in the interpretation of human rights issues derives from the fact that by virtue of Article 33(5), individuals' rights in Ghana extend beyond those contained in chapter five to cover rights inherent in or accepted in democratic societies.⁷⁷ In the view of Appiagyei – Atua⁷⁸, Article 33(5) provides a broad resort to other international human rights norms by the courts and other government agencies. In support of this point, the learned author cites the Supreme Court case of *New*

⁷⁶ Quashigah, E.K., *Trends in the Promotion and Protection of Human Rights under the 1992 Constitution*, in Bofo – Arthur (ed), *Ghana: One Decade of the Liberal State* (Accra: EPP Book Services, 2007) p.25

⁷⁷ Ibid.

⁷⁸ Appiagyei – Atua, op.cit., p.195

Patriotic Party vrs. The Attorney General (the CIBA case) in which His Lordship Justice Atuguba stated that the principles of international instruments relating to fundamental human rights are enforceable to the extent that they fit into the provisions set out in Article 33(5).⁷⁹

It can be concluded that the Ghanaian Constitution creates a rights – based framework for development. This is because not only does the Constitution recognise and guarantee a range of civil, political, economic and social rights; it also imposes legally enforceable obligations on the Executive, Parliament, the Judiciary, all organs of government and agencies and all natural and legal persons to respect and uphold the rights in question.⁸⁰ In addition, the DPSP are to guide all persons involved in implementing and undertaking public policies for the purpose of creating a just and free society.⁸¹ While the provisions of chapter five of the 1992 Constitution guarantee and protect the liberty and autonomy of the individual, the DPSP impose obligations on the state to positively take steps to create the general conditions that enable individuals to exercise the freedoms guaranteed in chapter five.

2.6. Linking Human Rights from the Legal Perspective to Poverty

The link between poverty and human rights from the legal perspective is analysed from two perspectives namely, from an intrinsic and an instrumental perspectives. From the intrinsic perspective, the point sought to be canvassed is that a condition of poverty is the same as the absence of some type of human rights. This way poverty is characterised as the absence of

⁷⁹ Ibid., p.159

⁸⁰ Article 12

⁸¹ Article 34(1)

human rights. From the instrumental perspective the argument is that the non - enjoyment⁸² of particular rights can prevent a person from moving out of poverty or push him into poverty. Thus, the argument is made that there are rights whose absence is characterised as poverty (intrinsic sense). When the individual enjoys these rights he experiences well – being in the sense of being or doing what he values being or doing. On the other hand there are rights the absence of which deprives the individual of the general conditions (instrumental sense) necessary for the individual to meet his basic needs and to pursue a variety of other purposes. When the individual enjoys these rights he is in a position to be or to do the things he values doing or being.

2.7. The right to adequate standard of living

This right is contained in the UDHR⁸³ and the ICESCR⁸⁴. The UDHR⁸⁵ recognises the right of every one 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. It also recognises the right of every one to necessary social services; security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. The ICESCR⁸⁶ incorporates the provisions of Article 25 (1) of the UDHR. In addition, the ICESCR recognises the right of every one to the continuous improvement of living conditions and the right of every one to be free from hunger⁸⁷.

⁸² It can be argued that, the non – enjoyment of particular human rights as a result of a voluntary choice by a person acting as a voluntary agent engaged in rational decision making, will count as well-being in the sense of the person in question doing (choosing not to enjoy the human rights in question) what he values doing or being.

⁸³ Article 25

⁸⁴ Article 11

⁸⁵ UDHR, Article 25(1)

⁸⁶ ICESCR, Article 11 (1)

⁸⁷ Ibid., clause(2)

It can be seen that the elements that make up the right to adequate standard of living are the resources identified and discussed in chapter three as necessary for guaranteeing an individual's physiological well – being as well as providing him with the general capability to fulfil other goals. In chapter three of this study it is also established that the non availability of these resources in their right quantity and quality, in relation to an individual, not only threatens his physical well – being but also deprives him of the capability to fulfil other goals in life. It is obvious then that there is a direct link between poverty as defined in this study and the non enjoyment of the legal right to adequate standard of living as contained in both the UDHR and the ICESCR.

2.8. Work related rights

The UDHR recognises a person's right to work; free choice of employment; just and favourable conditions of work and protection against unemployment. It also recognises the right to equal pay for equal work; just and favourable remuneration for an existence worthy of human dignity. The ICESCR incorporates the same rights including the right to safe and healthy working conditions; rest, leisure and reasonable limitation of working hours and periodic holidays with pay.

Employment is one way by which a person participates in economic activities of society. From such participation individuals earn income and their livelihood. The various resources which every individual requires to survive and pursue his goals in life are acquired with income. Employment is therefore a critical means for individuals' livelihood, the denial of which creates poverty. Employment is also the means by which individuals contribute to the development of the society. When freely chosen it is a source of personal fulfilment to the individual, which is an end in itself. A person who is capable,

ready and willing to work but not working not because of a voluntary choice but because of lack of opportunity to work is deprived of the means of livelihood as well as the opportunity to participate in the economic life of society. Though work is the means of livelihood and income for the individual, it does not mean that work under any condition is desirable. The conditions under which a person works must promote his dignity as a human being. Thus, the right to safe and healthy working conditions is a means for promoting a dignified working environment for the individual. The freedom to choose the type of work an individual values is also crucial to his dignity. Thus, the enjoyment of the right to work and related rights guaranteed under international human rights law corresponds to a state of well – being. On the other hand, the non - enjoyment of these rights constitutes a state of deprivation that counts as poverty.

2.9. The right to freedom of opinion, expression and information

As indicated, the UDHR and the ICCPR both recognise the right of every one to freedom of opinion and expression. This right includes the freedom to seek, receive and impart information and ideas. A similar right which the two instruments recognise is the right to freedom of thought and conscience. Freedom of expression, opinion and information is a critical capability that individuals require to communicate their views on policies that affect them for the purpose of contributing to the way in which they are governed. In chapter three, the point is made that political participation has an instrumental role in poverty reduction. It enables individuals to contribute to decision making on the way in which resources should be allocated. It is by means of free speech, expression and information that citizens are able to hold their rulers accountable in respect of policies they implement. Denial of the freedom of expression therefore deprive a person of a critical capability for working his way out of poverty or ensuring that he does not fall into it.

Free expression of opinions has been identified as critical to governmental accountability to the poor. According to this view information dissemination facilitates public scrutiny and debate of government policies leading to the correction of errors and helping to precipitate a more effective public policy.⁸⁸ It has also been observed that the lack of information can result in inefficient resource allocation and corruption. Freedom of information and free expression can go a long way to preventing these ills and there by facilitating poverty reduction.

2.10. The right to participate in public life

Related the above right is the right to participate in public life and the right to equal access to public facilities. The UDHR and the ICCPR recognise and guarantee the right of every one to take part in the government of his country, directly or indirectly through chosen representatives and the right to equal access to public service in his country. Political participation enables individuals to contribute to the decision making process on the way society's resources should be utilised. One of the suggestions in the literature on poverty common to contemporary commentators on the subject is that public policy should focus on the needs of the poor.⁸⁹ Participation by the poor in decision making regarding what policy to pursue and the resources to be allocated for the purpose is often identified as a critical way for the poor to influence the content and form of public policy. The claim is also made that participation by the poor in policy making helps prevent the elites and powerful social groups capturing the policy making space for the advancement of their own interest while ignoring the needs of the poor.⁹⁰ The point is then made that when the

⁸⁸ McKay, A. and Vizard, P., "Human Rights and Poverty Reduction, Rights and economic growth: Inevitable conflict or common ground?" available at www.odi.org.uk/rights, p.10

⁸⁹ Ibid.

⁹⁰ Ibid.

poor participate in decision making, the likelihood of their getting out of poverty is high. Access to public facilities such as education, health care, security and justice enable the individual provides the individual with the general conditions which he requires to meet his basic needs and participate in the life of his community. This then leads to the individual experiencing well – being while denial of such services to a person leaves him without the basic capability to live a life of value.

When a person votes, he makes a decision on the way the affairs of the society should be managed so as to create the kind of society he values. In that sense the act of voting becomes an activity of value to the voter. Poverty has been defined⁹¹ as deprivation of the capability to do the things that a person values. In this wise, if the right to vote is not enjoyed then the individual is deprived of a valuable capability. When a person puts himself up himself to be voted for, he is engaged in an act he values and that by itself gives him some fulfilment. Depriving him of that opportunity therefore deprives him of a valuable capability. Access to public services is a capability, the exercise of which enables the individual to be and to do the things he values.

2.11. The right to equality before the law and equal protection of the law

The UDHR and the ICCPR both recognise the right of every citizen to equality before the law and equal protection of the law. According to Rawls,⁹² one basic function of the basic structure of society is to allocate rights and duties and to distribute the benefits and burdens of society. Viewing society as a cooperative venture for mutual advantage, it is imperative that in its distributive function, the law guarantees equal opportunity to every one in the society. Equality before the law and equal protection of the law in essence

⁹¹ Sen, A., *Development as Freedom* (Oxford: Oxford University Press, 1999), p.115. Also see chapter three of this study on the nature and dimension of poverty.

⁹² Rawls, J., *A Theory of Justice*

guarantees equal opportunity to every one in accessing the resources and facilities in the society for the purpose of meeting their basic needs and to further other goals. Denial of that right is denial of a critical capability to be and to do the things that are of value to the individual.

The analysis above establish that the things that are required to ensure that human beings live in dignity are the things that have been enshrined as rights under the various international human rights instruments outlined above. It can be seen that there is a critical link between poverty and human rights. This link clearly shows that the enjoyment of human rights can facilitate poverty reduction.

The discussions above indicate that there is a link between human rights and poverty. The enjoyment of human rights reduces or eliminates poverty. It can thus be concluded that the fulfilment by duty bearers of their human rights obligations can facilitate the reduction of poverty. It is argued in this study that the justiciability of human rights obligations is critical to the realisation of human rights in a manner that facilitates poverty reduction. The discussion that follows therefore looks at the justiciability of the human rights provisions in chapter five and the DPSP in chapter six of the 1992 Constitution.

2.12. Justiciability of human rights and directive principles of state policy, and poverty reduction in Ghana

A thesis of this study is that the legal enforcement of the rights and freedoms guaranteed in chapter five of the 1992 Constitution and envisaged by Article 33 (5) of the Constitution ensures that and enables individuals to enjoy those rights. It is also argued in this study

that the enjoyment by individuals of these rights will improve their living conditions in ways that cause poverty to disappear.

The justiciability of the fundamental human rights and freedoms provided guaranteed in chapter five of the Constitution is not in doubt.⁹³ The DPSP provided for in chapter six are relevant to the enjoyment of the fundamental rights and freedoms guaranteed in chapter five. If realised, the DPSP will create the general conditions that enable individuals to personally or in free and voluntary association with others enjoy and exercise their rights and freedoms in ways valued by them. In this respect, the justiciability of the DPSP is crucial. Unlike the provisions of chapter five whose justiciability is settled, the justiciability of the DPSP has evoked some debate, judicially and extra judicially. The trend in academic commentary on the justiciability of DPSP suggests that these principles are not justiciable by themselves but can be justiciable only if they can be linked to specifically enforceable provisions of the Constitution such as the provisions of chapter five.⁹⁴The judicial debate does not, however, show any unanimity on the subject.

It has been argued that the justiciability of the DPSP 'carries with it a higher risk of conflict and friction between the judiciary and the executive'.⁹⁵ The issue here is whether the judiciary is prepared to exercise an oversight responsibility to ensure the implementation of these provisions by the Executive.⁹⁶ It has also been argued that though the DPSP impose constitutional obligations on the state and can therefore be interpreted by the courts, the problem is how the courts can enforce their decisions without invading the

⁹³ Article 21 (1)

⁹⁴ Quashigah, E. K., *op. cit.*, p.33

⁹⁵ Bah, *op. cit.*, P.82

⁹⁶ *Ibid.*

territory of the Executive or Parliament.⁹⁷ This view argues that consequential orders made by the courts to give effect to their declarations are likely to lead the courts to second guess the functions of the Executive or Parliament.

It is submitted that the above views give such deference to the Executive and Parliament in a manner that put the realisation of the DPSP at serious risk. Much of the DPSP is made up of economic, social and cultural rights. These rights have direct relevance to the economic and social well – being of the people. It is, therefore, submitted that the justiciability of the DPSP will expand the scope of economic and social rights in Ghana and make their enjoyment a reality for the poor. The mere fear of perceived conflict between the judiciary and the Executive or Parliament should not be a reason to backtrack on the justiciability of DPSP. Rather efforts should be directed at exploring innovative and creative ways for enforcing these principles.

Judicial enforcement of DPSP entails reviewing decisions already taken by either the Executive or Parliament. The objective of such review is to ensure that the decisions or actions in question promote or give effect to the objectives of the DPSP. As guides to public policy, DPSP play a crucial role in the political, economic as well as the social governance of the country. They determine the content and direction of public policy. As correctly noted by Adjetey, DPSP are the philosophical and ideological foundation of the 1992 Constitution.⁹⁸ It is submitted therefore that the vision of a just and free society which the realisation of DPSP is intended to establish risks being jeopardised if these are construed as not justiciable simply because of the fear of a conflict between the judiciary

⁹⁷ Asante, *op. cit.*, P. 53

⁹⁸ See also the preamble to the 1992 Constitution. The Constitution is to secure for generations of the Ghanaian society the blessing of liberty, equality of opportunity and prosperity; the rule of law, the protection and preservation of fundamental human rights and freedoms, probity, accountability and freedom.



and those organs of state whose actions the judiciary may review for the purpose of ensuring compliance with the DPSP.

The declarations and consequential orders which the judiciary may make in relation to a review of a policy can have ramifications for the allocation of resources by the Executive. For instance the judiciary may review the Executive's allocation of resources in its budget and declare that the allocation does not give effect to a particular DPSP. The judiciary may then proceed to order the Executive to re – allocate the resources in a manner that give effect to the relevant DPSP. Another example is the situation in which the judiciary declares that a specified item of expenditure not included in the Executive's budget ought to be included. It may then proceed to order the inclusion in the budget of the said item. Both situations may seem to create a basis for a conflict between the judiciary and the executive as to who has the authority to determine the allocation of resources. Perhaps this is the kind of conflict that commentators have in mind when they caution against the justiciability of DPSP.

The response to this concern is in two ways. In the first instance, it can be said that the perceived conflict, as a matter of fact, is not really between the Judiciary and the Executive. It is between the Executive and sections of the public. The Judiciary only comes in as an arbiter. It resolves the dispute that has arisen about the law. This is how the matter should be looked at. Article 2 (1) of the 1992 Constitution states that a person who alleges that an act or an omission contravenes or is inconsistent with the Constitution may bring an action to the Supreme Court for a declaration to that effect. When reviewing an act of the Executive, what the Judiciary does is simply resolving a dispute that has arisen between the Executive and the person who has made the allegation.

Secondly, the Constitution provides for separation of powers (SOP). In this respect the determination of the general policy of government is vested in the cabinet and the president.⁹⁹ Thus, it is the prerogative of the president and his cabinet to determine the kind of policy to formulate and implement for the governance of the country. However in exercising this prerogative, the president and his cabinet are to be guided by the DPSP.¹⁰⁰ The Constitution also provides for checks and balances. Under this principle the judiciary, particularly the Supreme Court, has authority to determine the extent to which a policy formulated by the Executive promotes the objectives of the DPSP. It is submitted that the Executive has a duty to respect the constitutionally assigned role of the Judiciary as the final arbiter on disputes that arise about the law and the values that underpin the country's political, economic and social governance. Those who exercise powers of government under the Constitution are required to exercise such powers for the welfare of the people and to do so within the limits of the Constitution.¹⁰¹ The constitutional role of the judiciary is to ensure that this is done. Thus, when the judiciary interprets the DPSP, which are part of the Constitution, it is simply discharging its constitutional responsibility.

Blitz¹⁰² has argued that where a court finds that provisions made in a budget by the Executive for the allocation of resources do not sufficiently provide for the priorities the government is required to realise under a Constitution, the court has several options regarding the remedy it can make. According to the learned author, where the court feels unable to make decisions regarding the allocation of resources as a result of lack of

⁹⁹ Article 76(2)

¹⁰⁰ Article 34(1)

¹⁰¹ Article 1(1) states that the sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised in the manner and within the limits laid down in the Constitution.

¹⁰² Blitz, *op. cit.*, p.131 - 132

expertise, the court can send the policy back to the executive for application of resources that meet the constitutional priorities in question. The court may also pronounce upon a clear mis- allocation of resources and give the order that the mis- allocation be remedied.

On whether or not the judiciary has competence to allocate resources, it can be said, based on the above that, the relevant question is not whether or not the Judiciary has competence to allocate resources; but whether it has competence to evaluate the allocation of resources against constitutional and human rights standards such as the DPSP. Thus, properly formulated, the answer becomes obvious. The Judiciary has expertise and competence to evaluate the allocation of resources against the application of human rights and constitutional standards. Blitz observes that the judiciary has a variety of remedies that allows it to draw on the expertise of other bodies of government where it becomes necessary. In relation to Ghana for instance, Article 2 of the 1992 Constitution which deals with the enforcement of the Constitution and Article 33 which deals with the protection of fundamental human rights, give wide powers to the Supreme and High Courts respectively to make such orders and give such directions they consider appropriate in order to give or to enable effect to be given to declarations they may make as well as for the purpose of securing the enforcement or enforcing fundamental human rights and freedoms. These wide powers create the framework that enables the Courts to make creative and imaginative as well as responsible orders which are effective and appropriate to ensure the realisation of the ideals of the Constitution.

From the foregoing, it is submitted that the judiciary has the constitutional legitimacy and the professional competence to enforce DPSP in terms of reviewing actions of the Executive and legislation of Parliament for the purpose of evaluating their compliance

with the constitutional principles which the DPSP embody. It is submitted that the position of Blitz on the judicial enforcement of DPSP is a progressive position. It is a position that promotes the realisation and development of economic and social rights, the enjoyment and exercise of which are crucial to the reduction of poverty. It is also a position that is more in tune with contemporary development discourse that sees the realisation of economic and social rights as critical to poverty reduction.

Even though some commentators hold the view that DPSP are not justiciable, they nonetheless acknowledge that there are situations in which DPSP are justiciable. One such situation is where a DPSP is elaborated and embodied in a particular piece of legislation that itself is justiciable.¹⁰³ It is also said that some of the DPSP reflect existing law and to that extent are justiciable.¹⁰⁴ Those DPSP that are not justiciable are nonetheless required to be taken into account by the courts in interpreting any provision of the Constitution or any other law that comes before the courts for interpretation and enforcement.¹⁰⁵ This approach, it is submitted, makes the justiciability of DPSP the exception rather than the rule. The rule should be that DPSP are justiciable, subject to certain situations that may legitimately justify their non justiciability.

On the relationship between the enforcement of DPSP in Ghana and the realisation of socio – economic rights, it has been stated that in appropriate circumstances, the DPSP may be the very basis or may give impetus to the enforcement of these rights.¹⁰⁶ Another academic whose valuable contribution to the discussion of the justiciability of the DPSP is

¹⁰³ Bah, *op. cit.*, p.83

¹⁰⁴ *Ibid.* see also Asante, p.53

¹⁰⁵ *Ibid.*, also see Article 34 (1)

¹⁰⁶ Premo, J.K.M. "The Role of Judicial Enforcement of ECOSOC Rights in National Development: The case of Ghana," a paper delivered at a conference of the African Society of International and Comparative Law, 1999, p.65

worth noting is Quashigah.¹⁰⁷ The learned author after analysing a number of cases decided by the Supreme Court draws the conclusion that, DPSP can be enforced through the fundamental human rights and freedoms provisions in the Constitution:¹⁰⁸

‘The interpretation put on the directive principles of state policy by the Supreme Court of Ghana has therefore paved the way for an interpretation that would make the philosophy enshrined in Chapter 6 become a meaningful concept that is of relevance to the people’

The usefulness of the contribution by the learned author lies in the fact it clarifies the legal position on the justiciability of DPSP. However there has since been a Supreme Court decision¹⁰⁹ in relation to the justiciability of DPSP in Ghana that is more progressive than those cases on which the learned author bases his analysis and conclusion. The current judicial position is that DPSP are justiciable but that there may be situations in which it may be legitimate to hold that a particular DPSP is not justiciable. The difference between the two positions is that the earlier position sought to justify the justiciability of DPSP by linking them to the fundamental rights and freedoms provisions of the Constitution or any other expressly enforceable provision of the Constitution.¹¹⁰ The current position however holds that DPSP are by themselves justiciable independent of any other provision.¹¹¹

¹⁰⁷ Quashigah, K., “The evolution of the Constitution of Ghana: The jurisprudence of the court,” in *Ghana Law Since Independence: History, Development and Prospects*, (Accra: Black Mask, 2007), P.119

¹⁰⁸ Ibid.,P.135

¹⁰⁹ *Ghana Lotto Operators Association vrs. National Lottery Authority* [2007 – 2007] SCGL1088. The Supreme Court in this case held that provisions of chapter six must be enforced except in situations in which it can be demonstrated that a particular provision does not lend itself to legal enforcement. This way, the court argued, would deepen democracy and ensure the protection of the liberty of the individual. There is therefore a rebuttable presumption in favour of the justiciability of the provisions of chapter six. This approach is more progressive than the case by case approach adopted by the Supreme Court in the *Ciba case*.

¹¹⁰ See the *Ciba Case*

¹¹¹ See the *National Lottery Authority case*

The Rt Hon. Peter Ala Adjetey¹¹² has had occasion to comment on the DPSP. According to the learned author, it is important that when considering matters of fundamental human rights and freedoms, account is taken of the DPSP. The DPSP, according to him, guide the President, Parliamentarians, the Council of State, the Judiciary, the Cabinet, political parties and all other persons and bodies in applying or interpreting the Constitution or any other law as well as in implementation and undertaking policies for establishing a just and free society. In his view, the DPSP contain the philosophical and ideological underpinnings of the Constitution as a whole and for that reason complement the fundamental human rights and freedoms contained in chapter five.

It has to be noted that while it is important to explain the nature, functions and purpose of the DPSP, this is not sufficient and does not have much relevance to the mass of the people suffering from poverty and other forms of deprivation. The critical issue for them is how they can practically and meaningfully benefit from these provisions in a way that improve their living conditions. The justiciability of these principles is critical to improved living conditions for the mass of the people. The learned author, however, fails to indicate whether or not the DPSP are justiciable.

Another contribution worth considering is by Bimpong – Buta.¹¹³ Referring to Article 35(4)¹¹⁴, one of the provisions on the political objectives of the Constitution, Bimpong - Buta argues that it is merely academic to argue that such a provision is not justiciable. The learned author argues that Article 35(4) and the provision in Article 41 (1) (b)¹¹⁵ are not

¹¹² Adjetey, p.189

¹¹³ Buta, S.Y.B., *The Role of the Supreme Court in the Development of Constitutional Law in Ghana* (Accra: Black Mask, 2007)

¹¹⁴ That provision states that the state shall cultivate among all Ghanaians respect for fundamental human rights and freedoms and the dignity of the human person.

¹¹⁵ Article imposes a duty on every citizen to uphold and defend the Constitution and the law

only to be respected by the Executive, Parliament, the Judiciary and all natural and legal persons but shall also be enforceable by the courts. It is to be noted that the learned author arrives at his conclusion on the justiciability of Articles 35(4) and 41 (1) (b) by linking them to Article 12(1) which is a provision in chapter five. This approach is in line with the reasoning of the Supreme Court, especially in the views of Bamford – Addo, JSC. That view states, *inter alia*, that a provision in chapter six is enforceable if it forms part of the provisions in chapter five.

Bimpong – Buta’s position does not promote the expansion of the scope and the deepening of the content of economic and social rights in Ghana. It is a position that seems to give primacy to civil and political rights which are provided for in chapter five. This approach flies in the face of the rights based approach to development which sees the two classes of rights as interrelated, indivisible and interdependent.

Apart from the scholarly and extra judicial commentaries discussed above on the justiciability of the DPSP, the judiciary has had its share of debate on the matter. This debate is reflected in the views of judges as well as decisions of the Supreme Court. In *New Patriotic Party vs. Attorney General*¹¹⁶ (CIBA CASE), Bamford – Addo JSC, as she then was, stated the circumstances in which the DPSP are justiciable. According to her Lordship, of and by themselves, the DPSP are not justiciable. They become justiciable if they are read in conjunction with other enforceable provisions of the Constitution. In addition, if any of them can be interpreted to mean the creation of a legal right, it will be justiciable.

¹¹⁶ [1996 97]SCGLR 279



With due respect to Her Lordship, this position is unsatisfactory. It is a position that subordinates the provisions of the DPSP to other provisions of the Constitution without any legal basis. Given the fact the DPSP contain in a large measure economic, social and cultural rights, Her Lordship's position does not encourage and promote the expansion of the scope of enforcement of these rights which are critical to the reduction of poverty.¹¹⁷

In *Ghana Lotto Operators Association vs. National Lottery Authority*¹¹⁸ the Supreme Court, after reviewing existing authorities stated in the head notes thus:¹¹⁹

'A presumption of justiciability in respect of chapter 6 of the 1992 constitution... would strengthen the legal status of Economic, Social and Cultural Rights in the Ghanaian jurisdiction. There may be particular provisions in chapter 6 which do not lend themselves to enforcement by a court. The very nature of such a provision would rebut the presumption of justiciability in relation to it. In the absence of a demonstration that a particular provision does not lend itself to the enforcement by courts, however, the enforcement by the court of the obligations imposed in chapter six should be insisted upon and would be a way of deepening the country's democracy and the liberty under the law it entails,'

¹¹⁷See Gomez, M., "Social, Economic Rights and Human Rights Commissions," *Human Rights Quarterly* [1995] Vol.17 No. 1. P.161. The author argues that the ideological conflict between the East and West during the cold war era affected the development of socio- economic rights. According to him, in the past economic rights were seen as requiring a strong state and forceful state action. They were thus championed by the former Soviet Union and Eastern European countries. Western countries on the other hand did not even recognise economic rights as rights.

¹¹⁸ [2007 -2008] SCGL1088

¹¹⁹ Ibid., P.1092

In a sense, it may be said that the previous legal position that denied independent justiciability to the DPSP has now been replaced by a more progressive position that grants independent justiciability to those principles subject, of course, to special circumstances. This decision represents a progressive move in the jurisprudence of socio-economic rights in Ghana. To the extent that this decision concedes that there may be circumstances in which a court of law may not enforce a DPSP, renders it similar to the decision in the *CIBA CASE*. Nevertheless it is an improved position over the former.

One major shortcoming that is common to all the commentators mentioned in the foregoing review of the literature is the failure to indicate the manner in which the justiciability or otherwise of the DPSP can facilitate poverty reduction in Ghana. Quashigah came close to providing a link between the welfare of the people and the justiciability of the DPSP when he states that:¹²⁰

‘...has therefore paved the way for an interpretation that would make the philosophy enshrined in Chapter 6 become a meaningful concept that is of relevance to the people’

The learned author talks about the interpretation in question being relevant to the people. It is submitted that one way in which the interpretation in question may be relevant to the people is when it provides them with the means for vindicating their rights to ensure that government policies create the conditions that enable them satisfy their basic needs and to pursue other goals in life.

¹²⁰ Quashigah, op.cit.

It is the argument in this study that the justiciability of the DPSP will ensure that the state adopt and implements policies that expand the economic, social, cultural and political opportunities, the access to which can substantially reduce poverty in the country. The reduction and elimination of poverty, it is submitted, is one relevant process that creates a free and just society, which is the ultimate goal of the DPSP.

CHAPTER THREE

NATURE AND DIMENSIONS OF POVERTY

3.0. Introduction

Poverty has generally been discussed from an income, resources and capability perspectives as well as from the perspective of social exclusion. There have also been human rights and human development perspectives of poverty analysis. The purpose of this chapter is to discuss these perspectives with the view to clarifying the concept of poverty which each perspective seeks to canvass. This will then form the basis for examining the ways in which poverty can be linked to human rights so as to justify the adoption of the RBA to poverty reduction.

3.1. Poverty as deprivation of well – being

In the 2000 World Development Report (WDR) the World Bank defined poverty as pronounced deprivation in well being. Defining poverty as ‘pronounced deprivation in well – being’ creates confusion in the mind of the reader as to what exactly poverty is. In the first place, ‘pronounced’ which is used to qualify ‘deprivation in well – being’ creates the impression that there is poverty when a state of pronounced deprivation in well – being exists. By implication, a state of deprivation, which is not ‘pronounced’, does not count as poverty. This, however, begs the question as to what ‘pronounced deprivation in well – being’ is. It is obvious that ‘pronounced’ is intended to describe a certain degree or intensity of deprivation in well – being. It is however unclear what state of affairs is intended by the World Bank as a state of pronounced deprivation in well – being. One is therefore unable to perceive the degree of deprivation which ‘pronounced’ has been used to express. The use of ‘pronounced’ has thus created vagueness rather than clarity in the definition of poverty. In defining poverty in terms of deprivation in well- being, it is important to note that human

well – being has multiple perspectives. It is thus useful to clarify the particular perspective from which one is analysing well – being.

3.2. Command over resources, well - being and poverty

According to Haughton et al, one approach to analysing well – being is to see it in terms of ‘the command over commodities in general’¹²¹. From this perspective, people are better off if they have greater command over resources¹²². In the view of the authors the focus is on whether households or individuals have ‘enough resources’ to meet their needs.¹²³ A similar view is held by the Office of the High Commissioner for Human Rights (OHCHR).¹²⁴ According to this view, the concept of poverty has acquired a specific connotation that ties it closely with lack of command over economic resources. John Rawls¹²⁵ has held that possession or enjoyment of primary goods is the basis of a person’s well – being.¹²⁶ Examples of primary goods are liberties, rights, opportunities, health, income and wealth.¹²⁷

The above approach to the analysis of well – being creates the impression that resources are required for their own sake. In this sense the idea is that resources are of intrinsic value. This idea is, however, incorrect. Resources such as food, water, medical care, clothing and shelter are required to satisfy specified purposes. Food satisfies hunger and therefore prevents a person from being hungry or from starving. Water satisfies thirst and thus prevents a person from being thirsty. Clothing keep a person warm and protects him against cold. It also

¹²¹ Haughton, J & Khandker, S. R. (2009), *Handbook on Poverty + Inequality*, (The World Bank, 2009), p. 2 – 3.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ OHCHR, “Human Rights and Poverty Reduction, a Conceptual Framework “(New York and Geneva, 2004), p.5

¹²⁵ Rawls, op. cit., p.62

¹²⁶ Ibid.

¹²⁷ Ibid.

protects him against nakedness. Shelter protects a person against the vagaries of the weather. Medical care keeps a person healthy and prevents him from falling ill and eventually dying.

The lack of food, water, housing, clothing, health care and physical security in their right quantity and quality therefore create conditions that threaten the physical survival of individuals as well as the quality of that survival. It is clear from this illustration that the resources named above directly satisfy those needs of the individual that guarantee his physical survival as well as the quality of that survival. This may be referred to as physiological well – being. Physiological well – being in this context therefore comprises two ideas namely, physical survival and a qualitative physical survival. Physical survival refers to the situation in which an individual is alive simply because there is life in him. However a person may be alive even though his life is characterised by such conditions as malnutrition, proprietary and physical insecurity, illness, illiteracy, ignorance and hunger. These conditions threaten the maintenance of life. They prevent the individual from pursuing and performing other goals they value.¹²⁸ On the other hand, qualitative physical survival refers to the situation in which in addition to being physically alive, the individual enjoys good health, nutrition, safety and security, portable drinking water, comfortable housing and good sanitary conditions. With good health, security and education the individual is in a position to pursue other goals.

Even though resources play a crucial role in determining a person's well – being, the mere possession of resources does not determine how well a person is. The extent to which a

¹²⁸ Blitz, op.cit., p.40

person is able to utilise the resources available to him to meet his needs and fulfil other goals in life determines how well he may be. According to Amartya Sen:¹²⁹

'We use income and commodities as the material basis of our well being. But what use we can respectively make of a given bundle of commodities ... depends crucially on a number of contingent circumstances, both personal and social'

Such factors as disability, illness, age and gender determine the quantity of resources a person may require in order to experience well – being from the use of these resources. Apart from these personal peculiarities, other factors that determine a person's capability to derive value from a given set of resources have to do with environmental and social factors. By implication therefore, the same quantity of resources may provide different experience of well – being to different people depending on their respective circumstances. It is submitted therefore that the ability or capability of a person to utilise a given quantity of resources in a way that makes him experience well - being is a more critical factor than the mere possession of the resources. Blitz underscores this point when he states that:¹³⁰

'we are not simply interested in whether a being is provided with a certain amount of food for its own sake, but about whether such food provides a being with the general capabilities necessary to enable them to fulfil a diverse range of purposes'

¹²⁹ Sen, op.cit. p.70.

¹³⁰ Blitz, op. cit., p.43.



3.3. Income, well - being and Poverty

As indicated above, the consumption or utilisation of the resources mentioned above in their right quantity and quality guarantees a person's physical well – being. The point, however, is that in reality those resources are acquired with income. Haughton et al state that conventionally, poverty is measured by comparing the income of individuals with some defined threshold below which the individuals are considered poor. This way of linking income to poverty and well – being focuses on income itself. This creates the impression that mere possession of income above the minimum threshold is evidence of well – being. However income has no intrinsic value but rather instrumental value. Income is used to acquire things individuals need in order to survive and to pursue other goals in life. For example income is used to acquire such necessities of life as food, shelter and clothing. According to Sen, the view that poverty is simply the shortage of income is fairly well established in the literature on the subject.¹³¹ In his view, income has enormous influence on what people can or cannot do.¹³² Sen observes that inadequate income is often the major cause of the deprivations normally associated with poverty as well as the famine and starvation that people face in life.¹³³

From the above it can be said that the relevance of income to well – being and poverty lies in the fact that it provides individuals with the means to acquire the things they require to fulfil their life goals. Sen has, however, noted that the use of income to generate well – being in terms of the ability to do valuable things or experience valuable being is subject to certain variations which determine what a given level of income enables a person to achieve.

¹³¹ Sen, op. cit., p.72

¹³² Ibid.

¹³³ Ibid.

3.4. Basic capabilities, well -being and poverty

Sen has argued that, the appropriate measure of well - being are the substantive freedoms that a person enjoys to choose a life he has reason to value¹³⁴. In the view of Sen, the mere possession of resources does not determine a person's well – being but the person's capability to convert the resources available to him into his ability to pursue his ends.¹³⁵ Thus, in Sen's view, well -being should be analysed in terms of the real ends for which a person lives and his capability to achieve those ends (functionings and capabilities). In Sen's analysis, human functionings reflect the things that a person may value being or doing.¹³⁶ Examples of functionings in terms of valued being are freedom from preventable illness and being adequately nourished. An example of things that a person may value doing is participating in community life. Functionings therefore constitute the set of valued things that a person will want to be or do. They constitute the individual's ends in life.

Capability, according to Sen, refers to the alternative combination of functionings that a person is able to achieve.¹³⁷ If functionings refer to a persons purposes or ends in life, then the expression 'alternative combination of functionings' can be explained to mean the different courses that a person's life can take. In that sense, capability can be understood to mean the ability to choose from the different courses that a person's life may take. Thus, well being from the capability perspective has to do with the ability of a person to make valuable choices in terms of what he wants to be or do.

In the light of the foregoing, Sen suggests that poverty can properly be defined in terms of the deprivation of basic capabilities and not in terms of low income or inadequate

¹³⁴ Sen, op. cit.,p.74

¹³⁵ Ibid.

¹³⁶ Sen, op.cit.,p.75

¹³⁷ Ibid.

resources.¹³⁸ Basic capabilities, according to Sen, refer to a person's freedom to be and to do the things he values being and values doing.¹³⁹ These freedoms, as already indicated, include being well fed, being free from preventable diseases, being free to participate in the life of the community and the personal state of self – respect.¹⁴⁰

The capability approach to poverty analysis does not deny the instrumental relevance of the income approach or resources approach. Rather the capability approach challenges the primary focus on low income per se as poverty while ignoring the basic freedoms which low income deprives the individual of. Sen argues that by placing primary focus on income, attention is given to the means rather than the ends. The point thus has to do with which one to place emphasis on, the means or the ends. If the focus, in the analysis of poverty and well-being, is the individual's real opportunity to pursue his well-being, then account ought to be taken not only of the income or resources available to him, but the factors that govern the individual's ability to convert the resources and income that he has into fulfilling his life goals. In this wise Sen argues that, attention has to shift from the means (income and resources) to the ends (being what one values being and doing the things one values doing) and the freedom to be able to achieve these ends. It can thus be said that the capability approach enhances, in a more meaningful and critical way, the understanding of the nature and causes of poverty and deprivation.¹⁴¹

Sen's capability approach can be criticised as incomplete as it does not provide guidance as to which capabilities and functionings can be said to be valuable to a person.¹⁴² It has been

¹³⁸ Sen, op.cit.,p.87

¹³⁹ Ibid. p.75

¹⁴⁰ Ibid.

¹⁴¹ Sen, op.cit.,p.90

¹⁴² Blitz, op.cit., p.11

observed that¹⁴³ all states of being or doing do not enhance people's lives. While some functionings have minor impacts on people's lives other functionings have negative value and therefore detract from people's ability to live well. On the basis of these observations, it is argued¹⁴⁴ that there is the need for a basis on which to judge which capabilities are important and whether there are different degrees of importance among capabilities. This criticism notwithstanding, the capability approach can be said to have the advantage of broadening the perspective from which poverty and well – being can be analysed. By focusing on the freedom of individuals to pursue the life they value, Sen lays the foundation for linking poverty to human rights which also seek to promote individual freedom.

3.5. Social accomplishment, well – being and poverty

In addition to the goal of a healthy survival, individuals have other goals in life. Individuals have personal goals which they value and seek to achieve. For example some individuals desire to become presidents, ministers of state, medical doctors, lawyers, engineers, accountants, footballers, boxers, entrepreneurs, among others. The achievement of these personal goals provides the individual with a feeling of personal accomplishment and glory. This experience, it is submitted, is an aspect of well- being. Once a person is alive and capable of minimal functioning, he is capable of realising at least some other purposes.¹⁴⁵ This suggests that physiological well – being may not be the only goal a person has in life. It has, however, been argued that some individuals may actually decide to adopt purposes that are self – denying and therefore only require what is necessary for a very minimal level of survival.¹⁴⁶

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Blitz, op. cit., p.41

¹⁴⁶ Ibid.

The question is what level of living conditions must a person find himself in for it to be said that he is poor? Blitz answers thus:¹⁴⁷

‘Setting this standard so low is, however, problematic. It only identifies what is of particular importance to those with purposes that require minimal resources to realise them. It thus fails to identify general conditions necessary for the realization of a diversity of purposes. Yet it is that set of objective conditions we must identify if we are to find a common interest between a set of diverse beings. The reason for this is that beings differ and, as a result, their purposes differ. To identify a shared interest that is of particular importance to the full range of beings, it must be an interest in having access to general conditions that are necessary for the realization of a diversity of purposes, rather than merely a minimal range of purposes.

One general condition that is critical to the attainment of both the goals of survival and the pursuit of other goals is a social order in which there are opportunities for the pursuit of diversity of goals as well as the equality of access to such opportunities.¹⁴⁸ In this respect such social services like health care and education are particularly relevant. Mental and physical health guarantee healthy lives for individuals while education equips individuals with the requisite knowledge, expertise and skill that enable them to take advantage of available opportunities to pursue their personal goals. When these opportunities as well as the freedom

¹⁴⁷ Ibid.

¹⁴⁸ See Narayan et al, op.cit. At page 30, the authors state that belief in one self can take people far but it cannot make up for lack of economic opportunities and blocked opportunities in the community. At page 181, the point is made to the effect that various forms of inequalities create unequal access to markets and opportunities. According to the authors, poor people ask for a level playing field where they would have equal opportunities to use their assets and initiative to get ahead.

to utilise them are lacking in relation to an individual or group of individuals, the situation is one of deprivation of opportunities for personal fulfilment. Such deprivation robs the individual of his freedom to lead the life he values or desires. It is clear then that the general capability to lead a life one values determines the poverty threshold.

In view of the above, a person who experiences physiological well – being but deprived of opportunities for personal fulfilment does not enjoy complete well – being if his goal in life extends to other goals than mere survival. His sense of purpose and worth in society is impaired by his inability to pursue and achieve those goals that he values. In view of this, the provision of food, clothing, shelter and medical care to a person will only guarantee his physiological well – being. This level of provisioning can be classified as first level threshold of well – being. Such a threshold cannot, in the views of Blitz, constitute an appropriate threshold in a society with human beings who have diverse purposes in life. Thus, in addition to these provisions, there should be the protection of individual liberty. Liberty is essential for the individual to think and act and take control of his own life in ways that he values.

3.6. Cultural participation and human well – being

The set of activities that define cultural life differs from society to society. Funerals, marriage ceremonies, child naming, festivals and other festivities characterise the cultural life of a society. Participation in these activities, by itself, is an end. It is socially fulfilling to the participant as it expresses his sense of identity and belonging. Such activities also serve to strengthen the social bond among the various segments of the society. On the hand, the inability to participate in the cultural life of society creates in the individual a feeling of social isolation and social worthlessness.



Can cultural exclusion be equated to poverty? A human being is a social animal, so the saying goes. As a result participation in cultural activities of his community fulfils that social aspect of human nature. The feeling of belonging and a sense of identify are critical social experiences which the average human being values. Thus, it can be contended that one of the purposes that a human being desires to achieve is cultural participation and integration. If deprived of it he suffers such deprivation that can qualify as cultural poverty or cultural deprivation.

Cultural poverty, in a way, is linked to income poverty. This is so if one observes that cultural activities require financial and other resource commitment. For example, giving of gifts on such occasions is a common practice. Possessing resources to meet the requirements for participating in cultural activities provides a person with the general capability to participate in the cultural life of his community. The reputation an individual enjoys from his community for being a responsible community member instils in him a sense of well - being. Such reputation enhances the individual's self – worth and esteem. On the other hand, the inability to meet these commitments is met with social disapproval. Thus, the extent to which an individual is able to participate in the cultural life of his community depends on the extent to which he is able to meet the requirements for such participation.

3.7. Economic exclusion, well – being and poverty

Economic participation is another perspective from which well – being and poverty can be analysed. The economic aspect of social life broadly deals with the production, distribution and exchange of goods and services. Manufacturers, wholesalers, retailers, farmers, service providers, employees, employers are examples of the known categories of participants in the economic arena.

Participation in economic life is one of the instrumental freedoms that Amartya Sen has identified.¹⁴⁹ According to Sen, participation in society's economic life entails availing oneself of the opportunities and the facilities to utilise economic resources for the purpose of consumption, production or exchange.¹⁵⁰ Participation in this aspect of social life is of value to the individual either as an end in itself or as a means to some other end. When freely chosen, the particular economic activity which an individual engages in, for example, employment is an end in itself, and in that regard reflects the autonomy and personal agency of the individual. The fact that individuals freely choose to do what they desire, by itself is an aspect of well being that enhances the feeling of self-worth and personal accomplishment. On the other hand, an economic activity such as employment can be a means to an end. The end in this context refers to earning of income and livelihood while the activity is the means by which the income is earned.

The analysis of employment as having both instrumental and intrinsic values accords with Amartya Sen's conception of well – being as the freedom to choose the life one has reason to value.¹⁵¹ As indicated already, income is important in ensuring human well –being. In this respect, economic participation which is a source of income is therefore of critical relevance to poverty reduction. Exclusion from economic participation therefore facilitates the creation of poverty.

¹⁴⁹ Sen, op. cit, p.38. The instrumental freedoms identified by Sen are political freedom; economic facilities; social opportunities; transparency guarantees and protective security. According to Sen, these freedoms contribute to the over all freedom people have to live the way they would like to live. They tend to contribute to a person's capability to more freely.

¹⁵⁰ Sen, op.cit., p.39

¹⁵¹ Sen, op.cit., p.74

3.8. Political participation, well – being and poverty

Political participation entails standing for election into public office; voting; contributing to decision making by attending and speaking at meetings where decisions affecting the society are taken. Participation may also take the form of being consulted on matters that affect the community in which one lives. Nominating persons for appointment into decision making bodies is another way in which political participation may be conducted. Criticising government officials and policies is another form of political participation.

Political participation in one sense is an end in itself. In another sense it is a means to an end. Political participation reflects a state of empowerment and personal agency. It indicates a situation in which the individuals involved are seen as taking charge of their own affairs by determining the way in which their affairs should be conducted. The laws that govern society and the ways in which such laws are implemented are the result of the political processes. Also important is the fact that political participation determines the allocation of resources and opportunities among various segments of the society. Those who participate in the political process are the ones who set the agenda for society. Those who do not are unable to influence the content of social policies and the general direction of such policies. The relevance of political participation to poverty analysis is that effective political participation determines the direction of resource allocation in society. It also draws attention the plight of the participant and allows him to make a case for resources to address his plight. Therefore when people are excluded from the various processes that determine the allocation of resources in the society, they are likely to be left out of the resource distribution process.

The paradox is that even though political participation is critical to poverty reduction, those who are poor and need to have their voices heard by policy makers are unable to do so

because of their poverty. This is particularly with respect to national level political participation. National level political participation in Ghana is so arranged and organised as to naturally exclude the poor. Political parties are the focal points of national level politics. These political parties do not receive mandatory state funding and sponsorship for the core and critical activities. The result is that private sources of funding and sponsorship have to be resorted to. In doing so, those who wield influence in relation to the activities of the political parties are the financiers of the parties. Naturally, the poor will have no say in this respect. Any claim of broad based participation in the activities of political parties in Ghana is obviously false. Big contractors, corporate entities and other business men and women, lawyers, doctors and academics are the real and only participants in national level politics in Ghana. The poor have naturally been sidelined and assigned very marginal roles euphemistically referred to as footsoldiring. Thus, high income earners and well educated persons are the ones' whose political influence is felt when it comes to policy formulation and implementation. Formally speaking, there is *de jure* equality of opportunity for political participation in Ghana. The reality, however, is that there is no *de facto* equality of means and capability for accessing the existing opportunity to participate politically. Consequently, the poor remain politically voiceless and marginalised. The anti – poor framework for political participation in national level politics does not seem to be the same when it comes to local level politics.

The concept of local government and decentralised has been provided for by the 1992 Constitution¹⁵² as a way of giving power to local communities to discuss and decide on matters that affect them. To ensure accountability of local government authorities, the constitution provides that as far as it is practicable, people in particular local government

¹⁵² Article 240(1). This provision states that Ghana shall have a system of local government and administration which shall, as far as practicable, be decentralised.

areas should be afforded the opportunity to participate effectively in their governance.¹⁵³ It can be said that this provision intends to create a constitutional framework for community and local ownership of governance. Such a framework if effectively operated will ensure that people and communities directly and meaningfully participate in political decision making. The election of members of the local government assemblies is on non – partisan basis. Political parties are prohibited from sponsoring or putting forth candidates for election into the assemblies. Chiefs are allowed to contest for election into district assemblies. These provisions are intended to make political participation at the local level pro – poor. Commenting on the pro – poor nature of local governance in Ghana, Ahwoi Kwamena argues that the non – partisan character of local government elections, the ‘ordinary residence’ criteria for candidacy for local government elections are examples of the anti – poverty features of the local governance system.¹⁵⁴ In practice, however, it does not appear that local communities exert meaningful influence on local level policy formulation and implementation.

3.9. Social exclusion, well - being and poverty

Social exclusion refers to deprivation of individuals on the basis of the interaction among social groups in society. According to this perspective, social exclusion arises when an individual suffers from deprivation because of his membership of a social group whose interaction with other groups causes that deprivation.¹⁵⁵ In the report of the United Nations Independent Expert on the Question of Extreme Poverty and Human Rights, social exclusion is explained to mean the process through which individuals and groups are wholly or partially

¹⁵³ Article 240(2)(e)

¹⁵⁴ Ahwoi, K., op.cit., pp.45 -55.

¹⁵⁵ Economic And Social Council, “Report Of The Independent Expert On The Question Of Human Rights And Extreme Poverty” (2005), p. 7

excluded from all participation in society within which they live.¹⁵⁶ The outcome of these exclusionary processes is either the restriction or denial of participation of individuals in the main areas of social life.

Exclusion from the economic, social and political participation renders individuals powerless and voiceless. They have no opportunity of influencing decisions on matters that affect them. Some even have no opportunity of earning a livelihood and income. Decisions are taken for them. They are simply passive members of the society. Social exclusion has similar debilitating effect as political exclusion. The excluded groups are unable to influence social policy in their favour. Their participation in economic activities is also restricted.

3.10. Poverty from a human rights perspective

The Committee on Economic, Social and Cultural Rights defines poverty to mean a human condition characterised by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.¹⁵⁷ This is a broad definition that underscores the fact that a person is not just a physiological and biological being but also a social and a political being. It also underscores the point that poverty is the deprivation of a variety of entitlements.

The human rights perspective of poverty is not altogether different from Sen's capability deprivation. The common link between the two is their common focus on freedom. However, the human rights approach is nonetheless significant because it confirms the link between poverty and human rights. The definition also attests to the fact that poverty is a

¹⁵⁶ *ibid.*

¹⁵⁷ See E/C.12/2001/10, paragraph 8. Quoted at page 6 of the Report of the independent expert on the question of human rights and extreme poverty, 2008.

multidimensional phenomenon. This point is Credence is given to this by the United Nations Development Programme (UNDP) which defines poverty as the denial of opportunities and choices most basic to human development.¹⁵⁸ These opportunities and choices are required to lead a long, healthy and creative life.¹⁵⁹ They are also required to enable the individual enjoy a decent standard of living, freedom, dignity, self – respect and the respect of others.¹⁶⁰

3.11. Vulnerability and poverty

Poverty is also seen in terms of insecurity and vulnerability. Vulnerability has been defined¹⁶¹ to mean the lack of capacity to cope with a shock or the likelihood that a shock will result in a decline in well – being. According to this view, the poorest families are those that lack the capacity to cope with stress and therefore suffer acute difficulties like sickness, physical weakness and economic impoverishment. People who are vulnerable or insecure are those who lack the income, assets and other resources that enable them meet their needs. The vulnerable, in a sense, are those who are imminently poor. Vulnerability is therefore not necessarily a condition of deprivation but a condition of imminent deprivation. The vulnerable are however so potentially deprived that, in substance it makes sense to put them in the category of deprived people.

3.12. Poverty and human dignity

Poverty may also be analysed from the perspective of human dignity. The point is that the mere satisfaction of the material needs of individuals in ways that disregard their dignity and self worth does not really make them well - off. The views of Asante on the notion of development give credence to this point. According to the learned author, development

¹⁵⁸ UNDP, “Human Development Report (HDR)”, 1997, p. 84

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Amponsah , C.O. & Anaman, K.A., “Vulnerability To Poverty: A Review with special reference to Ghana,” IEA Monograph, No 16, A Publication Of The Institute Of Economic Affairs, Ghana

carries with it not only the idea of economic betterment; but also of greater human dignity.¹⁶² Thus, human well – being is incomplete without dignity. In the view of Eide, it is a tragedy to think that what poor people need is the transfer of resources through the state to them. People prefer to take care of their own needs in ways that allow their dignity and self-respect to be respected.¹⁶³ It is clear that dignity is a critical consideration in human well – being. It represents the non – material aspect of human nature.

Another commentator whose views give credence to the centrality of dignity as an aspect of well – being is Jack Donnelly who argues that that the notion of equal respect for all persons is meaningless without personal autonomy to choose and act on one’s own ideas of the good life.¹⁶⁴ This view indicates that the freedom of individuals to pursue their own ethical world view of the good life is the practical way in which human dignity is given effect to. In its 1997 Human Development Report, the United Nations Development Programme (UNDP) stated that poverty means more than the lack of what is necessary for material well – being but includes deprivation of dignity, self esteem and the respect of others.

In a similar vein, Deeper et al have called for paradigm shift in the conception of development to emphasise human dignity and self worth. According to the authors,

Development programs and strategies must be designed and carried out in ways that uphold people’s dignity and reinforce their sense of self respect; this is true even in conflict contexts where people are

¹⁶² Asante, op.cit., p.7

¹⁶³ Eide, op. cit., p.160

¹⁶⁴ Donnelly, J., *International Human Rights* (Oxford: Westview Press, 1993), p.24

*frightened and have lost everything and in the most impoverished communities where they may be nearly starving*¹⁶⁵

A view of development that upholds dignity underscores the centrality of dignity in development. According to the authors, their study reveals that poor people can act as agents on their own and that personal agency and aspirations are important in poverty escapes.¹⁶⁶ This implies that what poor people need is the opportunity to take charge of their lives and affairs in society on equal grounds with other members in society.

Personal agency reflects the instinct of personal autonomy. In addition personal agency is inherent in the notion of personal dignity and self – worth. However because the individual lives in a society, the efficacy of his personal agency is conditioned by the major institutions of the society in which he lives. This point finds support in the views of Deepa et al:

*As important as personal agency is, it is only one sight of the equation. Strategies to boost self – efficacy cannot succeed as long as skewed opportunity structures thwart poor people’s initiatives. Economic, social, and political inequalities in their environments keep poor people down even though they dream of rising.*¹⁶⁷

One may interpret the notion of development put forth by Deepa et al¹⁶⁸ to mean that dignity is the first and the last asset that any body can have, and also very integral to any proper notion of development and for that reason human well - being. Dignity is what makes the

¹⁶⁵ Narayan et al., op. cit., p.171

¹⁶⁶ Ibid.

¹⁶⁷ Ibid., p.172

¹⁶⁸ See foot note 20

human being what he is, and without which humanity will have no meaning. Even when all else is lost, so long as the human being remains alive his dignity remains with him and becomes the only possession he can be said to have. When material possessions are acquired, owned and enjoyed by a person without dignity then that person's life cannot be said to be complete and meaningful. Therefore effective and meaningful poverty reduction can only take place if the content, form and structure of development programmes reflect the centrality of human dignity. Dignity, it is submitted, provides the driving force for personal agency.

From the foregoing it can be observed that poverty does not lend itself to a simple definition. Perkins et al¹⁶⁹ confirms this when they state that an objective definition of poverty is surprisingly hard to find. It is also clear that poverty means different things, depending on what perspective one looks at it. The inability of commentators to provide a concise and precise definition of poverty perhaps reflects the fact that poverty is not just a multi – dimensional concept but also a complex social phenomenon. In spite of the difficulties in providing a concise definition of poverty, comprehensible perspectives have been identified from which poverty can be analysed. From the discussions, it is clear that deprivation of material resources including income, deprivation of opportunities for personal fulfilment, deprivation of dignity, social exclusion, deprivation of economic, social and political participation as well as deprivation of freedoms to pursue one's valued life all bear negatively on the well – being of the individual.

For the purpose of this study, it is suggested that poverty be broadly conceptualised as comprising the various forms of deprivation that render an individual incapable of meeting his basic needs as well as pursuing his aspirations in the ways valued by him. This way of

¹⁶⁹ Perkins et al, op., cit, p.123

looking at poverty covers material deprivation, capability deprivation, opportunity deprivation, deprivation of dignity and social exclusion. This concept of poverty is being advocated in this study because it is more plausible and offers a more realistic basis for the conception, formulation and implementation of effective poverty reduction policies. It provides the basis for implementing policies that will create the general conditions that empower the individual to act for himself in ways that he chooses. Any such poverty reduction policy will be more sustainable and realistic.



CHAPTER FOUR

LEGAL AVENUES AND INSTITUTIONS FOR THE APPLICATION OF THE RIGHTS BASED APPROACH TO POVERTY REDUCTION IN GHANA

4.0. Introduction

This chapter examines legal avenues under the 1992 Constitution and other pieces of legislation in force in Ghana that can be utilised for the application of the rights based approach to poverty reduction in Ghana. The point in this chapter is that there are legal avenues that can be relied on to enforce human rights obligations and rights in Ghana. The task is therefore to identify and examine these avenues and indicate the way in which by using them poverty can be reduced.

4.1. Selected poverty reduction programmes in Ghana and the rights based approach

Research conducted by Atuguba and Ahadzie¹⁷⁰ into the application of rights – based principles to the implementation of selected poverty reduction projects in Ghana reveals that key policy makers involved in the design and implementation of these projects lack knowledge and appreciation of the principles of the rights – based approach to development. One important finding from the study was that:¹⁷¹

'...a gap exists between the opportunities offered for a more participatory development imperative and the practice of top – down policy making. That gap will undermine the right of the poor to participate in decision - making as long as it remains unbridged. Fortunately there are constitutional provisions that engender opportunities for popular participation in decision making'

¹⁷⁰ Atuguba et al, op.cit.

¹⁷¹ Ibid., P.30

The relevance of this finding to the instant study is that it establishes the fact that a constitutionally guaranteed right of popular participation in decision making has not been observed in relation to the implementation of the projects concerned. As indicated in chapter one, one of the factors that made previous poverty reduction efforts unsuccessful was exclusion of the poor from participating in the design and implementation of programmes intended to benefit them. The recurrence of such a developmental error creates a legitimate fear that the current efforts at reducing poverty may yet fail. This is the reason why efforts should be made at promoting the judicial enforcement of constitutionally guaranteed principles and values that are relevant to poverty reduction.

Having established that the right to participation is constitutionally guaranteed, and having also established that the right has not been respected, Atuguba et al failed to indicate how this violation can be legally enforced. This failure leaves a gap that requires filling. The right to popular participation is, in the words of the authors, ‘completely consistent with the rights based approach.’¹⁷² While it is important to affirm that popular participation is a rights – based value, mere affirmation does not mean much to the poor who yearn for the realisation of the right to participate and desire to know how they can assert and demand that right. It is submitted that, information on the steps to take in order to enjoy the right to popular participation is much more valuable to the poor. This information has instrumental value to the poor. It empowers them. The empowerment is the knowledge which they have of the step to take to claim the right to participate in making and implementing decisions that affect their living conditions.

¹⁷² Ibid., P.31

Another relevant finding from the study under review was that:¹⁷³

In contrast to government anti – poverty officials, civil society groups are emphatic that there is too little rights content and process in anti – poverty programmes. Specifically, they identify the lack of emphasis on Economic, Social and Cultural Rights (ESCRs) and little efforts at ending identity – based discrimination in terms of inequities in resource allocation to various parts of the country.

The lack of emphasis on the incorporation of economic, social and cultural rights in programmes aim at reducing poverty indicates a half hearted commitment by policy makers and implementers towards poverty reduction. Contemporary development discourse unequivocally recognises and acknowledges the critical role that the realisation and enjoyment of economic and social rights play in poverty reduction. This recognition is based on empirical evidence that the enjoyment of these rights is a necessary condition to poverty reduction. Therefore the extent to which any poverty reduction programme can achieve its objective depends on the extent to which it incorporates economic and social rights and the extent to which it provides for the practical realisation of these rights.

Identity – based discrimination in the allocation of resources in relation to the implementation of poverty reduction policies is a clear violation of the constitutionally guaranteed right against discrimination as well as the obligation the constitution imposes on the state to undertake the even development of all parts of the country.¹⁷⁴ Such discrimination is a sure way to creating and perpetuating poverty and the related social ills

¹⁷³ Ibid., P.15

¹⁷⁴ See Article 17 read together with Article 36(2) (d) of the 1992 Constitution.

of economic and social inequalities in the country. Discrimination in the allocation of resources is a violation of the principle of equality of opportunity which the rights – based approach upholds.

It is important to highlight the acts that violate the principles of the rights based approach. It is, however, even more important, for the poor, to indicate the avenues under the law and the steps they can take and how they can take those steps to remedy the violations in question so as to improve their living conditions.

Atuguba¹⁷⁵ discusses the key principles of a rights based approach to development¹⁷⁶ and affirms the relevance of these principles to development. In his view, a rights – based approach requires express linkage to human rights; accountability; empowerment; participation and non- discrimination and attention to vulnerable groups; the identification of the poor and the progressive realisation of human rights.¹⁷⁷ In the view of the learned author, a rights – based situation is one in which there are duty bearers and rights holders. Citizens are the right holders while governments are duty – bearers. In this situation governments are called upon by citizens (as of right and not charity) to respect, protect and fulfil the range of rights that they (citizens) possess.¹⁷⁸ Central to a rights – based approach is the right of citizens to claim from government rights to which they are entitled rather than the government treating the rights of citizens as privileges to which citizens are entitled at the mercy of the government. Banik¹⁷⁹ describes a human rights based approach as one that builds on the normative system of human rights and obligations undertaken by

¹⁷⁵ Atuguba, op.cit.

¹⁷⁶ Ibid., P.8 - 9

¹⁷⁷ Atuguba, op. cit. p.8

¹⁷⁸ Ibid.

¹⁷⁹ Banik, D., “Implementing Human Rights – Based Development: Some preliminary evidence from Malawi,” (accessed on 1/12/09)

states. Similar views are expressed by other commentators. For instance Foresti et al state that the rights based approach has its foundation in the normative framework of international human rights standards and principles.¹⁸⁰ It has also been said of the rights based approach that it is the practice of applying the norms and standards set out in international human rights law to policies and practices related to development.¹⁸¹

In relation to poverty reduction, the rights based approach uses human rights law as a framework for the achievement of poverty reduction. The essential idea underlying the adoption of a rights based approach to poverty reduction is that the policies and institutions for poverty reduction should be based on norms and values set out in international human rights law.¹⁸² These values include equality and non – discrimination; respect for human dignity; accountability of governments to citizens, participation of citizens in decision making; inclusion of all segments of society in development policies and special attention to the poor and other vulnerable groups. The rights based approach therefore provides a normative framework that not only justifies but also enables the poor and the vulnerable to rely on rights to legitimise claims for the provision of political, economic and social goods and services that enable them improve their living conditions.¹⁸³ As an approach grounded on the international human rights system, the rights based approach has the added advantage of galvanising international consensus on the content of rights and obligations. The value of this international consensus for poverty

¹⁸⁰ Foresti, M. & Ladi, E. with Griffiths, R., “Human Rights & Livelihood Approaches for Poverty Reduction: Briefing notes” <http://www.odi.org.uk/resources/download/1548.pdf>, p.2

¹⁸¹ The United Nations Development Programme (UNDP), “Operationalising Human Rights Based Approaches to Poverty Reduction: interim Pilot Project Report” (2007), http://www.un.org/News/Press/docs/2007/0707_01.htm

¹⁸² The United Nations, “Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies,” 2000, <http://www.fao.org/righttofood/kc/downloads/v1/docs/humanrightsapproach>

¹⁸³ Atuguba, op. cit., p.8



reduction is that it universalises the issue of poverty and therefore makes poverty a problem for humanity which calls for universal action to remedy.

Clearly the rights based approach comprises principles that can be relied on to require duty bearers, especially governments to adopt and implement policies that can go a long way to improving the living standards of the poor. The problem of the poor has to do with the steps they can take to ensure that the principles in question are realised in their favour. Atuguba merely enumerates the key principles of the rights based approach and affirms their importance to development. He does not indicate the steps that the poor can take under the law to realise these principles. This is the gap which this study seeks to fill.

4.2. Avenues Under The 1992 Constitution For The Enforcement Of Human Rights And Freedoms And Constitutional Principles And Rights Based Principles

It is proposed to identify and examine provisions in the Constitution that can be utilised to enforce rights and constitutional principles so as to facilitate poverty reduction in Ghana. The argument is that the invocation of these Constitutional provisions can contribute to the exercise and enjoyment of the basic rights that enable individuals to move out of poverty or pursue lives valued by them.

4.3. Article 2 and the enforcement of the Constitution

Article 2 deals with the enforcement of the Constitution. It empowers the Supreme Court (SC) to declare as unconstitutional, any enactment; any thing contained in an enactment; any thing done under the authority of an enactment; any act or omission of any person that is inconsistent with or in contravention of a provision of the Constitution.

The SC has power to make such orders and give such directions as it considers appropriate for to give effect or enable effect to be given to declarations it makes. Orders and directions which SC may make or give are binding on the persons against whom they are made or given. A failure to comply with any such order or directions constitutes a high crime. In the case of the president and the vice president, the punishment for this offence is removal from office. In the case of any other person the punishment is imprisonment for ten years without the option of a fine. In addition, the convict is barred from holding any public office for another ten years beginning with the date of the expiration of the term of imprisonment.

The essence of Article 2 is that the SC has power to review decisions of the Executive and enactments by Parliament to ensure that they give effect to or promote the principles, values and standards of the Constitution. By Article 34(1), policies formulated by the Executive and legislation enacted by Parliament must be guided by the (DPSP). Thus, the content and manner of implementation of public policies promote must be so as to promote or give effect to the DPSP. To the extent that it can be shown that the content of a policy and the manner of its implementation fail to promote or give effect to a relevant DPSP, such a policy can be challenged under Article 2 as being unconstitutional.

Article 2 can be used to get the appropriate of the state to take steps that give effect to or promote the principles and values of the Constitution. For example, Article 36 (1) requires the state to take all necessary action to ensure that the national economy is managed in a manner that maximises the rate of economic development and ensures the maximum welfare, freedom and happiness of every person in Ghana. The state is also required to take action to provide adequate means of livelihood and suitable employment and public

assistance to the needy. Clearly, the realisation of this provision will go a long way to reducing poverty.

Using rights - based approach to analyse Article 36 (1), it can be said that the state is the duty bearer. The right holders are the people of Ghana. The rights to which the citizens are entitled under the provision is a state of affairs (objective right) which is characterised by maximum rate of economic development; maximum welfare, freedom and happiness; adequate means of livelihood; suitable employment and public assistance to the needy. The obligation of the state is to take all necessary action to realise this state of affairs. It is clear that the obligation imposed on the state is a positive one that requires the state to take action. The SC in *Ghana Lotto Operators Association vs. National Lottery Authority* has held that the economic objectives laid out in Article 36 of the Constitution are legally binding. Consequently, any government measure that is at odds with any of the objectives set out in that Article can be struck out by the SC as unconstitutional. It is therefore submitted that there is now a legal basis to challenge measures of the government that undermine the realisation of the provisions of Article 36, which forms part of the DPSP. Fulfilment of the obligations imposed by Article 36 will expand the scope of economic opportunities in the country for individuals to avail themselves of. The obligation to provide public assistance for the needy ensures that the vulnerable in society who are unable to cater for themselves are directly assisted by the state. The realisation of this obligation will thus go a long way to facilitate poverty reduction in Ghana.

Article 2 can also be employed to prevent misuse of scarce resources by the state. This can be done by a declaration that a particular item of expenditure on which public funds are to be expended is unconstitutional and for that reason no public fund should be expended on

it. The relevance of this to poverty reduction is that it ensures that scarce resources are not wasted on items that do not promote the principles and values of the Constitution. The resources that are saved can then be applied to execute programmes that enhance the welfare of the public. Many a time, the excuse governments give for not fulfilling economic and social rights is lack of resources; yet they seem to have sufficient resources to execute programmes that have no apparent relevance to the welfare of the people. In *New Patriotic Party vs. Attorney – General* (31st December case)¹⁸⁴ the SC declared the celebration of 31st December as a public holiday unconstitutional because it offended against the spirit of the Constitution. The court went on to restrain the government from using public funds to finance the celebration. The court held that it was proper for a citizen to rely on Article 41(b) of the Constitution, which forms part of the DPSP, to prevent the government from wasting public funds.

Article 37 (2) requires the state to enact laws to guarantee the right of individuals to effective participation in development processes including the right of people to form their own organisations free from state interference. The right to participate in development is one of the principles of the rights based approach. Article 2 can be used to enforce this right. Where government fails to fulfil this obligation, that failure can be enforced under Article 2. The difficulty, however, has to do with the fact that, the provision does not set a time limit within which such laws should be passed. This notwithstanding, it can be said that the state has a duty to fulfil this obligation within a reasonable time. What constitute a reasonable time is determined by the court.

¹⁸⁴ [1993 -1994]2 GLR 35

Article 2 can also be used to enforce the provisions of Article 38 which requires the state to make educational facilities available to all citizens. In particular, Article 38 (2) requires the government, within two years after Parliament first meets to draw up a programme for implementation within the following ten years for the provision of free, compulsory and universal basic education. It is important to note that the obligation is to draw up a programme. The funding of the said programme, however, depends on the availability of resources. It is the executive that has charge of the resources of the state. Thus, it is the executive that determines whether or not resources are available to fund a free educational programme.

4.4. Article 23 and Administrative Justice

Article 23 deals with administrative justice. The provision applies to administrative bodies and administrative officials. Article 23 requires bodies and officials to act fairly, reasonably and to comply with the requirements imposed on them by law. In addition, persons aggrieved by the acts and decisions of these bodies and officials are entitled to seek redress before the law courts. Fairness, reasonableness and compliance with the requirements of the law are values of a rights based approach. It can therefore be said that Article 23 provides the legal basis for the judicial enforcement of these values.

Applying rights - based approach to the analysis of Article 23, it can be said that the duty bearers are administrative bodies and officials. The right holders are persons who transact business with these bodies. Examples of the category of people who may be right holders in this context are people who apply to administrative bodies and officials for such public services as licences to engage in economic activities; the disbursement of credit and other funds; supply of farm inputs, among others. Other examples of rights holders in relation to

administrative bodies and officials can be people whose existing legal rights and interests are adversely affected by the decisions and actions of administrative bodies and officials. The object of the rights in question is fairness, reasonableness and compliance with the requirements of law imposed on the administrative bodies and officials in the performance of their functions. A case in which the Supreme Court has had occasion to underscore the need for administrative bodies to act fairly and reasonably in discharging their duties is *Awuni and 13 others vs. the West African Examinations Council (WAEC)*.¹⁸⁵

In the above case, *WAEC* cancelled the examination results of thirteen students on the basis that investigations conducted by it disclosed various examination malpractices committed by the students. *WAEC* also banned the students from writing any examination conducted by it for a period of three years. *WAEC* neither invited the students to assist it in its investigations nor gave them the opportunity to explain their conduct before meting out the sanctions against them. The Supreme Court held that *WAEC* failed to act reasonably and fairly by not giving opportunity to the students to be heard before being punished.

It is clear that administrative justice facilitates the enjoyment of basic rights like education. Education is critical to a person's efforts to acquire the capability that enables him to satisfy his basic needs and to pursue other goals in life. On the other hand lack of access to education is one of the deprivations that cause a person to fall into poverty. The legal protection and enforcement of the right to education can therefore facilitate the development of a key capability that enhances a person's ability to satisfy his needs and other goals in life. The above case illustrates how unreasonable and unfair conduct by

¹⁸⁵ [2003 – 2004] ISCLR 471

administrative bodies (administrative injustice) can interfere with a person's efforts to enjoy such key social services as education.

The grant of licence is one act that bears on the efforts by individuals to earn an income and a livelihood. Indeed it can be said to be a tool for the distribution of economic opportunities. Licences are required to permit individuals to enter into a number of economic sectors. Generally, the power to grant licence in Ghana is vested in administrative bodies and officials. This power includes the power to vary and to revoke the licence. Administrative bodies and officials also apply sanctions pursuant to the authority to the conferred on them to implement the general laws of the country. In all of these, compliance with the requirements to act fairly, reasonably and to comply with the requirements of law is critical. Recourse to the law courts to seek redress of grievances arising from the conduct of administrative bodies and officials in these respects offers opportunity for holding these bodies and officials accountable.

4.5. Article 296 and discretionary powers

Article 296 deals with discretionary powers. According to that Article, person vested with discretionary power is impliedly subject to the duty to be fair and candid.¹⁸⁶ Such a person is also under a duty not to act in an arbitrary manner or capricious manner; or be bias either by resentment, prejudice or personal dislike and shall act in accordance with due process of law.¹⁸⁷ Furthermore, where the public officer in question is not being a judicial officer or a judge, he or she is required to publish regulations governing the exercise of the discretionary power.¹⁸⁸

¹⁸⁶ Article 296 (a)

¹⁸⁷ Ibid., paragraph (b)

¹⁸⁸ Ibid., paragraph (c)

Article 296 seeks to check the possible abuse by public officers of powers of discretion which the law may confer on them. The expected benefits from Article 296 are transparency, accountability, non-discrimination and equality as well as fairness in the exercise of discretionary powers by public officers. It can be argued that, the legal control of the exercise of discretionary powers by public officials can facilitate the reduction of poverty which results from the abuse of discretionary powers by public officers. Administrative bodies and officials are mandated by law to administer a wide range of services; distribute goods and regulate opportunities that can facilitate poverty reduction. For the purpose of enabling public officers mandated to carry out these functions, the law confers on powers of discretion to act as and when they deem fit. Such powers are subject to abuse. It is this likelihood of abuse that Article 296 seeks to check. It is submitted, therefore, that Article 296 is a provision that the poor can rely on to ensure that there is accountability, transparency, non-discrimination and equality in the implementation of poverty reduction policies.

PROTECTION AND PROMOTION OF HUMAN RIGHTS IN GHANA

4.6. Protection of Human Rights by the High Court

Article 12(1) of the 1992 Constitution states, *inter alia*, that the rights enshrined in chapter five are to be enforceable by the courts. Article 33(1) then provides for the protection of the fundamental freedoms and rights of individuals and states that, any individual whose rights have been or are being or are likely to be violated can apply to the High Court (HC) for redress. In *Edusei vrs. Attorney – General*,¹⁸⁹ the Supreme held that, the HC and not the Supreme Court has original jurisdiction in the judicial enforcement of the fundamental

¹⁸⁹ (1996 – 97) SCGLR 1

human rights and freedoms guaranteed under the Constitution.¹⁹⁰The HC is then empowered¹⁹¹ to issue such directions or make such orders or writs which it considers appropriate for the purpose of securing the enforcement or enforcing the rights to which the person concerned is entitled. The power conferred on the HC are wide enough to enable it effectively protect the rights and freedoms of individuals.¹⁹² It has to be noted that the rights which Article 33 empowers the HC to enforce are not limited to those guaranteed in chapter five extend to cover those envisaged by Article 33 (5).

The enjoyment of the rights to be enforced by the HC has instrumental relevance to poverty reduction in the sense that they guarantee the individual's freedom to pursue his basic needs and to fulfil other goals valued by him. The realisation of these rights ensures, inter alia, that individuals are treated equally before the law¹⁹³ and are not discriminated¹⁹⁴ against in the allocation of economic resources, facilities and opportunities including the disbursement of such critical inputs as farm inputs, credit and poverty reduction funds. These facilities, opportunities and resources are critical to poverty reduction. An important quality of a credible poverty reduction programme is that it should be fairly implemented and administered. In this wise, the values of equality and non – discrimination are indispensable.

¹⁹⁰ Quashigah, E.K., op.cit., p.25

¹⁹¹ Article 33 (2) states that a person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

¹⁹² Article 33 (2) empowers the HC to issue directions, orders or writs including the writs and orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto and such orders as the court may consider appropriate for the purpose of enforcing the rights in question.

¹⁹³ Article 17(1) states that all persons shall be equal before the law

¹⁹⁴ Article 17 (1) states that all persons shall be equal before the law

Protection And Promotion Of Human Rights By The Commission On Human Rights And Administrative Justice (CHRAJ)

4.7. Establishment of CHRAJ

The 1992 Constitution¹⁹⁵ provides for the establishment, by an Act of Parliament, of a Commission on Human Rights and Administrative Justice (CHRAJ). The Constitution¹⁹⁶ requires Parliament to enact a law, within six months after the first meeting of Parliament after the coming into being of the 1992 Constitution, establishing the Commission. In accordance with this constitutional requirement, Parliament enacted the Commission on Human and Administrative Justice Act, 1993.¹⁹⁷ The fact that the Constitution specifies a time limit within which the Commission should be established and the fact that the time specified is six months after the first meeting of Parliament indicates a sense of urgency which the framers of the Constitution attached to the functions which the Commission was envisaged to perform. The urgency attached to the establishment of the Commission on Human Rights and Administrative Justice indicates the importance attached to the promotion and protection of fundamental human rights and freedoms in Ghana.

4.8. Mandate of CHRAJ

Article 218 of the Constitution and section 7 of Act 456 specify the mandate of CHRAJ. Under these provisions, the mandate of CHRAJ is, *inter alia*, to investigate violations of human rights and freedoms by private individuals and organisations as well as violations by public officers and institutions and to take steps including legal action to remedy or correct such violations. This aspect of CHRAJ's mandate can be described as a human rights protection mandate. In addition, CHRAJ has the mandate to educate the general

¹⁹⁵ Article 216

¹⁹⁶ *Ibid.*

¹⁹⁷ Act 465. The Act was assented to by the president on 6th July, 1993.

public on matters of human rights and administrative justice. This mandate can be described as a human rights promotion mandate. These two mandates of the CHRAJ are critical to the realisation of human rights. The protection mandate enables CHRAJ to take measures to prevent violations of human rights and to deal with individuals, and public officials and entities that violate the rights of individuals. The promotional mandate enables CHRAJ to empower individuals with information about their rights and the ways in which those rights can be asserted and protected. Both types of mandate, if carried out effectively will ensure that there is respect for people's rights. When individuals know their rights and how to assert those rights, they feel empowered and can then demand accountability from the state and its organs and agencies. Accountability will, in turn, ensure that state agencies and organs formulate and implement measures that address the needs of the people. This will in a long way result in the reduction of poverty.

4.9. Challenges faced by CHRAJ

One short coming with the mandate of CHRAJ is that under both the constitution and Act 456,¹⁹⁸ the Commission lacks authority to investigate a matter which is before a court or a judicial tribunal; a matter involving the relations or dealings between the government of Ghana and any other government or an international organisation, and a matter relating to the exercise of the prerogative of mercy by the president. Another short coming is that, CHRAJ as a body does not have enforcement powers. The result is that measures recommended by CHRAJ against perpetrators of rights violations can be ignored by such persons and entities. Apparently, to deal with this short coming, the constitution empowers the commission to take legal action in a court of law to deal with violations of human rights and freedoms, which may have been established by the Commission. Even so, the

¹⁹⁸ See Article 219 (2) and section 8(2).



fact that the Commission itself lacks powers of enforcement but has to rely on the court is itself a weakness. Other problems facing the Commission have to do with resource constraints. The lack of sufficient resources makes it difficult for the Commission to secure the services of qualified personnel. Consequently, the Commission is under staff and this hampers its work.

OTHER LEGISLATION

4.10. The Labour Act, 2003¹⁹⁹

Apart from the avenues under the Constitution, other pieces of legislation also provide protection for individuals in respect of matters that relate to their livelihood. These pieces of legislation can thus be relied on by individuals to assert rights conferred on them by law, the enjoyment of which rights can go a long way to facilitate the reduction of poverty. One such legislation is the Labour Act, 2003.

The right of workers to form or join trade unions of their choice for the promotion and protection of their economic and social interests is protected by the Labour Act.²⁰⁰ Other important rights are also protected by the Act. The right to negotiate through collective agreement,²⁰¹ the freedom from forced labour;²⁰² the right to equal pay for equal work;²⁰³ freedom from unfair termination of contract of employment²⁰⁴ are examples of the provisions of the Labour Act that are relevant to poverty reduction in the sense that they protect rights of workers to dignified conditions of work and security of employment. It can therefore be said that workers, as a category of persons, are rights holders while their employers are duty bearers in respect of matters that relate to good working conditions for workers.

¹⁹⁹ Act 651

²⁰⁰ Section 79(1)

²⁰¹ Section 96

²⁰² Section 116

²⁰³ Section 68

²⁰⁴ Section 62

Another important feature of the Labour Act is the special provisions it makes for vulnerable groups like pregnant women,²⁰⁵ young persons²⁰⁶ and persons with disability.²⁰⁷

4.11. The Persons with Disability Act, 2006²⁰⁸

The Act protects the right of persons with disability to participate in social, political, economic, creative or creational activities.²⁰⁹ This right enables persons with disability to participate in political, economic and social activities in society as of right. The denial of this right can be legally enforced under the Act as well as under the provisions of Article 33 of the Constitution.

Non – discrimination and the right to equality of treatment of persons with disability is protected under the Act. So is the right not to be exploited or subjected to abusive and degrading treatment.²¹⁰

Access to public places and public services is also protected under the Act. In this respect the Act requires owners or occupiers of public places to provide appropriate facilities that make such places accessible to and available to persons with disability.²¹¹ Persons who provide services to the public are required to put in place the necessary facilities that make the service accessible and available to persons with disability.²¹²

²⁰⁵ Sections 55, 56 & 57

²⁰⁶ Sections 58, 59 & 60

²⁰⁷ Section 45 to 54

²⁰⁸ Act 715

²⁰⁹ Section 1

²¹⁰ Section 4(1) &(2)

²¹¹ Section 6

²¹² Section 7

The Act obliges the government to enact Regulations to provide for the grant of annual tax rebate of the taxable income of employers in respect of each person with disability employed.²¹³ For those persons with disability who are engaged in business, the Act obliges the government to grant special incentives to persons with disability engaged in business and also to business organisations that employ persons with disability.²¹⁴

The Act makes provisions for the facilitation of the education of persons with disability. Parents are obliged to unroll their disabled persons in school.²¹⁵ Failure to discharge this obligation constitutes a criminal offence the punishment for which is the payment of a fine or imprisonment.²¹⁶ The minister of education is also required enact Legislative Instruments to designate schools and training institutions in each region which will provide the necessary facilities and equipment to enable persons with disability to fully benefit from the school and institute.²¹⁷

The Act has a number of provisions that provide for the health needs of persons with disability. The ministry of health is required, when formulating health policies, to provide for free general and specialist medical care, rehabilitative operation treatment and appropriate assistive devices for persons with total disability.²¹⁸

From the outline of selected provisions of the Persons with Disability Act, 2006, it can be seen that attempt has been made by the state, through legislation, to protect the right of persons with disability as a category of vulnerable groups in society to demand rights they

²¹³ Section 10 (1)

²¹⁴ Section 10(2)

²¹⁵ Section 16(1)

²¹⁶ Section 16(2)

²¹⁷ Section 17

²¹⁸ Section 31

are entitled to. The relevance of this Act to poverty reduction is that it protects basic freedoms of persons with disability that will enable them pursue lives of their choice without hindrance. In this respect, it can be said that Act 715 is an illustration of a practical application of the rights based approach to poverty reduction.

4. 12. The children's Act, 1998²¹⁹

This Act was enacted to variously deal with the rights of children. A child is defined in the Act to mean a person below eighteen (18) years old.²²⁰ According to the Act, the best interest of the in any matter or proceeding involving a child the overriding principle should be the best interest of the child.²²¹ In addition, children are protected against discrimination on grounds of gender, race, age, religion, ethnic origin, rural or urban background or any other status.²²² A range of other rights are protected under the Act.

The relevance of this Act to poverty reduction is that it provides enforceable legal protection for the rights of children as a class of vulnerable people who need special protection. This protection is necessary to ensure the sound and healthy development of the child. This will ultimately quip the child with the capability to do the things he or she values doing or live the life he or she values living.

4.13. Can the poor avail themselves of the avenues and the services of rights protection institutions?

The actual steps involved in invoking the jurisdiction of the courts and the CHRAJ for the enforcement of one's rights are such that the poor can hardly utilise them because of

²¹⁹ Act 560

²²⁰ Ibid., Section 1

²²¹ Ibid., section 2(1) and (2)

²²² Ibid., section 3

the financial and other resource implications inherent in such steps and processes. Generally, the method of rights vindication through the courts is litigation. Litigation as currently conducted in Ghana necessarily requires legal representation and other forms of legal resources such as legal advice. Legal representation and advice in Ghana are generally provided by the private sector where efficiency and profit are the values that inspire and underpin individuals' actions. The poor, who are economically constrained, can hardly afford legal services provided by the private sector. There is then the need for state intervention to meet the yearning needs of the poor.

Mindful of this need, the framers of the 1992 Constitution enshrined in the Constitution Article 294 for the establishment of a Legal Aid Scheme to provide legal services to indigents. Article 294 mandates Parliament to enact a law that regulates the grant of legal aid in Ghana.²²³ It can thus be said that the state has taken a step to cater for the needs of the poor who may require legal services.

The Legal Aid Boards established throughout the country, however, lack basic facilities like stationery to operate. The supply of lawyers and paralegal staff to these boards is inadequate because of the unwillingness of lawyers to do legal aid. This unwillingness derives from the poor remuneration and working conditions associated with state run legal aid schemes. Thus, though the legal protection and enforcement of rights can facilitate poverty reduction, the poor who really stand to benefit from this are generally incapable of making use of the facilities that enable them enforce their rights. The rules, procedures and practices of the courts make it difficult for the poor to conduct their own cases. The police

²²³ In fulfillment of this constitutional requirement, the Legal Aid Scheme Act, 1997 (Act 542) was enacted to provide for the provision of legal aid to individuals who require legal services but lack the means to procure such services. According to section 2(2) a person is entitled to legal aid if, *inter alia*, that person earns the Government minimum wage or less.

service which is also a critical institution of the law is generally known to be anti – poor. In the light of this, it is not very likely that the poor can effectively take advantage of the various legal avenues to protect their rights. Because the staff and personnel of the Legal Aid Boards are poorly remunerated, they seek to augment their meagre income by charging some fees for services they provide to clients who approach them for aid. Indeed, some of these ‘illegal’ fees are used to procure and service critical facilities needed to execute their duties. In reality therefore, the legal aid which these staff are mandated by law to provide is in fact not being provided because the law has not made provisions for sufficient funding of the activities that produce the legal aid. One may not, therefore, be uncharitable in drawing the conclusion that in the light of the reality faced by the Legal Aid Scheme, the idea of Legal Aid in Ghana is more of a mirage than a reality.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0. Conclusion

It has been established that poverty is a multidimensional phenomenon that comprises various forms of deprivation that not only render a person incapable of meeting his survival needs but also render him incapable of pursuing other goals in life. From this perspective, poverty is not simply about lack of income and resources but the lack of the general and basic capabilities that enable a person to pursue diverse goals of value to him.

It has also been established that human rights are the things that a person requires in order to survive and to maintain a life of dignity. The things that a person requires in order to avoid poverty are the same things that constitute human rights and have been incorporated into both international human rights instruments and the 1992 Constitution of Ghana. There is therefore a link between poverty reduction and the enjoyment of human rights in the sense that the enjoyment of human rights leads to the disappearance of poverty.

Furthermore, it has been shown that the rights based approach creates a framework in which rights holders are empowered to require duty bearers to discharge their duties for the benefits of the rights holders. The key principles of the rights based approach Accountability, transparency, inclusion and non discrimination as well as equality before the law are the key principles underlying the rights based approach. The study has also established that there are a number of legal avenues through which principles of the rights based approach can enforced in a manner that facilitates poverty reduction. In addition it has been established that the justiciability of the Directive Principles of State Policy can expand economic and social opportunities which are critical to poverty reduction. The



whole point of the discussion in chapter four has been to show how the state, through law, has attempted to confer rights on individuals, the realisation of which enables them meet their needs and fulfil other objectives.

However the mere fact that rights and constitutional principles are justiciable does not guarantee poverty reduction unless the poor are able to utilise the legal avenues available in the legal system to enforce those rights and principles. Given the fact that the utilisation of these legal avenues requires resources and other expertise which the poor lack, it is unlikely that the mere fact that avenues exist for the enforcement of human rights and constitutional principles will benefit the poor.

5.1. Recommendations

In the light of the foregoing, it is obvious that the Legal Aid Board and the Commission on Human Rights and Administrative Justice are critical institutions which the poor can utilise to assert their rights so as to improve their living conditions. It is, therefore, recommended that allocating financial and other material resources including technical assistance to them timely and in sufficient quantities can go a long way to enabling them overcome the constraints they currently face in resource wise. It is also suggested that to ensure steady and reliable flow of resources to these institutions, the arrangement relating to the District Assemblies Common Fund where by a specified percentage of total national revenue is deducted annually and allocated to the various local government authorities be replicated in relation to the funding of the Legal Aid Board and the Commission on Human Rights and Administrative Justice. An alternative suggestion is to impose an additional tax similar to the Value Added Tax. Though additional taxation may cause protests from the general public, extensive public education on the critical role these

institutions play and the need to sufficiently resource and equip them to play that role may help tame any hostile reaction from the public to the imposition of an additional tax.

In addition to the resourcing the institutions in question, it is also suggested that that their respective mandate be amplified. In the particular case of the Commission on Human Rights and Administrative Justice, it is suggested that its mandate be reviewed to give it powers of direct enforcement of its orders and recommendations. In relation to the prohibition imposed on it from investigating matters before a court of law and a judicial tribunal, it is recommended that, that prohibition be reviewed to state that if the issues are different then the Commission should not be precluded from investigating the matter. Furthermore, the orientation of the staff and employees of these institutions need to oriented on matters of human rights so that the approach they adopt towards their respective duties will reflect the mandate and nature of the tasks which the institutions have been set up to carry out. This will therefore require mandatory periodic training and retraining on changing issues of human rights in order to keep the staff abreast with contemporary and changing trends in that field.

There is also the need for a comprehensive review of the legal processes by which people litigate human rights and other rights violations so as to make those processes pro - poor. The improvement in the remuneration and other working conditions of the staff and employees of these institutions is critical to securing their commitment to the cause of the institutions. It is therefore recommended that special packages of incentives be designed for lawyers and paralegals who work with these institutions. This will not only attract personnel to the institutions but can also retain them.

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