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on extreme poverty and human rights***Access to justice and the fight against poverty*****Introduction**

First, I would like to lay out some facts about global poverty. Despite some progress, global poverty rates are still unacceptably high, with more than 1 billion people worldwide still affected by extreme poverty. Moreover, progress on poverty reduction has been very uneven across and within regions and countries. Nearly 50% of people in sub-Saharan Africa are living in extreme poverty. Many of those who have not been reached by initiatives such as the Millennium Development Goals are 'the poorest of the poor', suffering from profound marginalisation and social exclusion.

Meanwhile, inequality is a significant problem both on a global scale and within countries. Globally, the richest population quintile gets 83% of global income with just one percent for those in the poorest quintile. Statistics clearly show that inequality has risen in recent years within wealthy, middle-income and developing countries in nearly every region of the world.

Unfortunately, the onset of the global economic and financial crises has exacerbated deprivations and resulted in poverty and inequality becoming not only more widespread, but more deeply entrenched.

This high level of poverty and income inequality means that millions of people around the world are excluded from participating fully in society and are further excluded from access to basic social services, including access to justice.

Lack of access to justice is a major reason why people fall into and remain in extreme poverty, and therefore access to justice is not only a human right in itself but also an essential tool to tackle poverty and inequality.

The exclusion of people living in poverty from the protection provided by the law not only exposes them to abuses, violence, intimidation, corruption and unfair deprivation of their liberty, but it has also enormous impact on their and their families' livelihoods and perpetuates poverty. It impedes the poor from taking the opportunity to improve their situation and that of their children.

Too often, policy-makers and the public think of poverty as simply a lack of income. In reality, it is a multidimensional phenomenon encompassing a chronic lack of resources, capabilities, choices, security and power, all building on each other in a vicious cycle.

Therefore, fighting poverty not only requires improving income levels and access to housing, food, education, health services and water and sanitation, but also that persons

living in poverty have the resources and capabilities to enjoy the whole spectrum of human rights. Access to justice plays a crucial role in all parts of this equation.

Without equal access to justice, persons living in poverty are unable to claim their rights, or challenge crimes, abuses or violations committed against them, trapping them in a cycle of impunity, deprivation and exclusion.

It has been calculated that every year, one in every eight people on earth runs into a serious conflict that is hard to avoid: at home, at work, regarding land, about essential assets they bought, or with local authorities. Although many of these problems could be addressed and solved with decent access to justice, about half these people do not succeed in obtaining a fair, workable solution. Many (if not the majority) of these people who are left without remedy or recourse are people living in poverty, and the conflict and lack of solution will often evolve into a threat to their livelihood.

Moreover, the relationship between poverty and obstructed access to justice is a vicious circle: the inability of the poor to pursue justice remedies through existing systems increases their vulnerability to poverty and violations of their rights, while their increased vulnerability and exclusion further hampers their ability to use justice systems.

Persons living in poverty face obstacles in each of the steps that they must take to seek redress through the justice system. These multiple and varied obstacles, ranging from lack of information to geographical distance from courthouses, from court fees to social taboos or oppressive hierarchies of dependence, make it unlikely or impossible that they will be able to seek justice, long before they get anywhere near a court. In many cases, this then dashes their chances and hopes of escaping poverty.

For example, persons living in poverty are often denied even the prospect to seek justice or to have access to any public service from the time of their birth, because they are not officially registered and therefore do not legally exist. Of course lack of financial resources is a huge constraint, because it puts legal assistance out of reach, or makes court fees or even just transportation to the court a huge financial burden.

The odds are strongly stacked against people living in poverty being able to defend their rights or successfully pursue justice, when they have to overcome a multitude of barriers to do so.

The multitude of obstacles that people living in poverty face in accessing justice create a system in which those who are better off in society have access to justice while the poorest segments are left without recourse. This undermines the very idea of equality before the law and impartial justice. Moreover, it exacerbates and perpetuates social, economic and political inequality.

Allow me give to you some examples, taken from stories that I hear when I meet persons living in poverty in different countries, of how lack of access to justice and poverty coincide and feed off each other. In particular in Sub-Saharan African countries, I have seen how if a rural subsistence farmer gets into a dispute over her small landholding with her deceased husband's family, she is unlikely to have *de facto* access to judicial remedies to resolve it. First of all, discriminatory laws or customary traditions in that country may ban her from inheriting the property. Even if she can legally own the land, she may not have proper documentation that proves her ownership. If she is fortunate enough to have legal information and external support to take the case to court, she will still need sufficient funds to travel to the nearest court house, often far from where she lives, and find someone to look after her land and children while she is gone. But if she gets to the court, she would find that the filing fee amounts to more than she would generally spend in months, and the court requires official identity papers

to register the complaint, that she may well lack. Thus, without control over her rightful property, her and her children's livelihood is jeopardized.

This is not just a problem in the developing world. In industrialised countries, I have seen how undocumented migrants working for below the minimum wage, cannot access justice to denounce their employers in cases of unsafe working conditions. They cannot make a complaint to the police because they fear deportation, and besides, they need the job to survive – without papers, their options for employment are limited.

Unfortunately, examples like these occur daily, around the world. They show how diverse, numerous and complex obstacles prevent the poor from accessing justice and seeking remedy for the abuses, crimes and human rights violations they are faced with, creating a vicious circle of poverty and impunity.

Those living in poverty are not only confronted with a complex set of obstacles that impede them accessing justice on an equal basis with the rest of the population and therefore overcoming their poverty, but they also encounter considerable obstacles manoeuvring within or exiting the justice system - with direct and devastating economic and social consequences.

The main problems for the poor in manoeuvring the justice system do not come only from the fact that in most countries judicial procedures rely on literacy, paperwork and fluency in the official language but on laws or systems that do not recognise or prioritise the abuses suffered by the poor.

In many countries, there is an overreliance on detention and incarceration that disproportionately impacts on the poorest. Due to several factors, including the fact that law enforcement officials often use "poverty", "homelessness" or "disadvantage" as an indicator of criminality, disproportionate numbers of persons living in poverty are arrested, detained and imprisoned.

Detention and incarceration, even for minor non-violent offences or pre-trial without charge, represents a serious threat to the financial stability of the detainee's whole family, and serves to perpetuate the cycle of poverty. In Mexico, an independent study estimated the amount of income lost as a result of detention by pretrial detainees who were employed at the time of arrest, as 1.3 billion pesos (or about \$100 million) in 2006.

Detention, even when a conviction never occurs, often results in a substantial loss of income, not only through the temporary loss of wages but also loss of employment or livelihood altogether, particularly where individuals work in the informal sector. Self-employed people who are detained are at risk of bankruptcy, through theft of their property, lost of assets, missing sowing or harvesting season, or losing their trading space at the local market.

Those who are affected by pretrial detention are often the primary breadwinner for their family, in the prime of their working lives, supporting a number of dependants. A study by the Open Society Justice Initiative and partners in Sierra Leone found that for every four detainees in pretrial detention, they were five families who no longer had the support of a breadwinner.

In addition to the loss of income, being detained often implies a considerable *expenditure* from the family, who are forced to utilise their limited income or sell assets to pay for bail, legal assistance, bribes, food for the detainee or travel costs to visit them. In Sierra Leone, these expenses added up to about eight months' worth of the median earnings of detainees. As a result, families may be evicted from their homes.

Even when the detainee is finally released, often after months or years of detention without charge, not only have assets, income, resources and livelihood been depleted but also the imposition of a criminal record or the stigma of detention creates an obstacle to finding employment or accessing financial resources. This obstacle can make it difficult or impossible for the individual to resume informal economic activity or even engage in subsistence farming.

Detention and incarceration can also have serious health implications for the poorest and most vulnerable, who are likely to be subject to the worst treatment and conditions, including overcrowded cells, inadequate hygiene facilities, rampant disease transmission, and inadequate health care. This again may impact on their ability to sustain livelihood activities once they are released. Furthermore, children's education is also often disrupted when their parents are detained, making the transmission of poverty to the next generation more likely.

Those who are poor and vulnerable are therefore likely to leave detention profoundly financially, physically and personally disadvantaged. Throughout all this, they are often unable to access legal advice or assistance or rely on a fair and efficient due process. This raises real questions about whether justice systems that rely so heavily on deprivation of liberty are producing real justice for people living in poverty, when sentencing and detention practices impact so negatively and disproportionately on them.

#### *Improving access to justice for poverty reduction*

Effective access to justice is therefore not only a human right in itself but also an essential tool for reducing poverty and inequality and fostering social inclusion. Equal access to justice can serve to protect and improve the income and livelihoods of people living in poverty but moreover it can promote their capabilities, choices, security and power.

Access to justice can play an important role both in *protecting* the rights of people living in poverty and in *fulfilling* those rights. It can serve to protect the personal security of people living in poverty, as well as their other rights and entitlements. For example, it can protect them from sexual or economic exploitation, to which they are often vulnerable due to their marginalization and lack of power. Effective access to justice can also protect the livelihoods, income and assets of people living in poverty by preventing or remedying their exploitation by powerful public or private actors: for instance enforcing their labour rights against unscrupulous employers or their land rights against aggressive developers.

Accessible justice systems can be tools to overcome deprivation, for example by enforcing access to basic public services for all and developing jurisprudence on economic and social rights. Violence and conflict can be reduced through the provision of fair, effective channels for peaceful dispute resolution. Finally, better access to justice enhances accountability and reduces impunity, ensuring that public and private institutions, including public service providers, are accountable to the population they serve.

#### **How can the issue of access to justice be integrated into the post 2015 indicators?**

Because of this close link between access to justice and poverty reduction, I have been arguing (alongside ASF and others) that the post-2015 development agenda currently being formulated to replace the Millennium Development Goals, should encourage governments to improve access to justice for people living in poverty, and monitor government progress in removing existing obstacles.

I believe that the post-2015 development agenda should incorporate **a stand-alone goal** on access to justice, to ensure that it is treated as a vital feature of human-centered social and economic development.

A stand-alone goal on access to justice is necessary because the international community cannot meaningfully tackle poverty in a context where there exists a two-tier rule of law: a secure reality for the privileged and only a rhetorical aspiration for the poorest and most disadvantaged. In addition, a specific goal on access to justice would not only be in the interests of tackling poverty and inequality, but it would also contribute to the fulfillment of many other targets and goals.

The goal should include legal, policy and institutional guarantees for equal access to justice, and for special measures to tackle deficits. The overarching focus of the targets would be ensuring universal access to primary justice services, supported by indicators to help track progress toward those targets. For example, given the profound effects of lack of civil legal identity, one target should be halving (or further reducing) the number of people who have no legal identity, with indicators including the number of individuals who lack a basic legal identity document and the percentage of newborns registered at birth.

Other relevant targets and indicators should focus on access to legal aid; access to reliable, affordable legal information; access to land registration; court fee waivers for those that cannot afford them; For example, it would be enormously beneficial if the international community agreed to double, over the next decade, the number of people who enjoy access to legal advice at low or no cost.

The goal should also include targets on the physical accessibility of the justice system, for example the distance that people living in rural communities must travel to reach a police station or court. Special attention must be paid to women and groups that are particularly excluded such as indigenous peoples, older persons, migrants and stateless persons. For example, with regard to women's access to justice, targets could include the criminalisation of all forms of gender-based violence and accessible means for victims to seek redress and protection.

## **Conclusion**

Ultimately, ensuring meaningful access to justice for persons living in poverty does not depend only on legal tools or access to legal services, lawyers and courts, but also requires a more holistic approach that takes into account broader structural, social and economic factors. To improve access to justice and reduce poverty, States must tackle all these obstacles in a holistic manner, creating the conditions to enable those who are socially or economically disadvantaged to enjoy a real opportunity for justice or the benefits of due process of law in an equal manner.

The mere existence of the barriers in accessing justice and the massive economic and social impact for people living in poverty to manoeuvre within the justice system that I have highlighted above constitutes a major threat to the principles of equality and non-discrimination, one of the fundamental pillars of international human rights law. If the post 2015 development agenda does not tackle impediments to access to justice by the poorest head on, hundreds of millions of people around the world will continue to be excluded from participating fully in society and enjoying their rights and accessing basic social services, including justice mechanisms. If this is not changed as a matter of priority, existing levels of inequality in terms of power, resources and capabilities will be reinforced or even exacerbated.

Ironically, there is increasing consensus that not only does inequality have negative consequences in terms of social cohesion, but also that it is harmful to economic growth and thus hampers poverty reduction.

Improving access to justice is not just a technical matter for Ministries of Justice, but rather a matter of broader socio-economic justice. Eradicating extreme poverty requires tackling the multi-dimensional nature of poverty and extreme poverty, not just income levels – including by improving access to basic goods and services such as housing, food, education, health services and water and sanitation. Access to justice is essential in all parts of this equation, as a fundamental human right in itself and also an essential tool for the protection and promotion of all other civil, cultural, economic political and social rights.

Thus, any government that is truly serious about poverty reduction must dedicate significant efforts and resources towards ensuring that people living in poverty can have easy, affordable and equal access to justice.