The United Nations Declaration of Human Rights — Forty Years On

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In this paper which was delivered at a Trócaire seminar on Human Rights in March 1988, to mark the fortieth anniversary of the UN Declaration of Human Rights, Niall MacDermot, Secretary General of the International Commission of Jurists, criticises Ireland's failure to ratify the UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. He argues that lawyers and NGOs have a vital role to play in monitoring human rights and correcting abuses.

On 10 December 1988 people in all parts of the world will be celebrating the fortieth anniversary of the adoption by the United Nations of the Universal Declaration of Human Rights. It is an historic date, and the Declaration is an historic document.

The Charter of the United Nations had already declared that one of its purposes was to promote and encourage respect for human rights and fundamental freedom. But these rights and freedoms had not been defined, still less were there any international legal instruments to proclaim them and establish machinery for their enforcement.

When I read law at Oxford before the war, there was no mention of human rights, still less any suggestion that there was a body of human rights recognised in international law. The Rights of Man, *les Droits de l'Homme*, had been proclaimed during the French Revolution, the founding fathers of the USA had made an impressive declaration of rights, and England had contributed Magna Carta and the Bill of Rights in earlier centuries. Fine as these documents were, and recognising that they had considerable influence beyond their countries of origin, there still was no document of universal application.

The Universal Declaration of Human Rights

In 1948 there were only 50 odd countries in the UN. The great empires still existed and there was only a handful of independent

states in Africa and Asia. Justifiable criticisms have been directed at the Universal Declaration, saying that it reflects too much the thinking of western civilisations. Nevertheless, none of the new countries has rejected the Declaration, and very many developing countries have formally adopted the Declaration. Several states have even written it into their constitutions.

It states that all human beings are born free and equal in dignity and rights. That is a somewhat dubious proposition if intended as a statement of fact, rather than an aspiration. More importantly, the Declaration goes on to say that everyone is entitled to all the rights and freedoms in the Declaration without distinction of any kind.

In shortened form, the rights are as follows:

> The rights to life, liberty and security of person, recognition as a person before the law, protection against discrimination, an effective remedy against violations, an independent and impartial tribunal in civil or criminal matters, the presumption of innocence if accused of a crime, privacy, freedom of movement, asylum from persecution, a nationality and to change one's nationality, to marry with equal rights and found a family, own property, seek receive and impart information and ideas regardless of frontiers, to take part, directly or indirectly, in the government of one's country, and the right to free elections by universal suffrage and secret voting.

The freedoms are of two kinds — freedoms from and freedoms to.

> The freedoms from slavery, torture or cruel, inhuman or degrading treatment or punishment, arbitrary arrest, detention or exile, retroactive legislation, or attacks on one's honour or reputation.
>
> The freedoms of are freedom of thought, conscience and religion; opinion and expression, assembly and association. These three are perhaps the most fundamental of the civil and political rights.

There then follows a very detailed list of economic, social and cultural rights. These are the rights to social security, to the economic, social and cultural rights indispensable for a person's dignity and free development; the right to work, with free choice of employment, protection against unemployment, equal pay, just remuneration for one's family; the right to form and join trade unions; to rest and leisure with reasonable working hours and paid holidays, to a standard of living adequate for health and well-being, including adequate food, clothing, housing, medical care and social services and security in unemployment, sickness, disability, widowhood, old age or other circumstances beyond control; care and

assistance for motherhood and childhood; the right to education (which is elaborated and includes the right of parents to choose their children's education); to participate in the cultural life of the community, to enjoy the arts and share in scientific advancement, the right to copyright; and finally to a social or international order in which the rights and freedoms in the Declaration can be fully realised.

I have summarised all these rights for two reasons:

First, to show their astonishing scope, including a detailed list of economic, social and cultural rights; and

Second, to make clear that in spite of their universal declaration, these rights are far from being universally achieved. Indeed, there is no country that can claim to implement them all. If anyone doubts this, let me ask what country can boast real equality for women, in practice as well as in law? When the US was considering some years ago ratification of the covenants on civil and political rights and economic, social and cultural rights, the Attorney-General advised that over 90 amendments would have to be made in the laws and constitutions of the various States in the federation in order to comply with the provisions of the covenants. The US has still not ratified them.

In the 40 years since its adoption, the Universal Declaration has served as the basis for an astonishing and vast body of international law, spelling out these principles in treaties, conventions, covenants, declarations, and other international instruments of varying legal effect. Before the Second World War none of this existed, other than a few exceptions in the field of trade union and labour rights, minority rights and refugee law. Most of these new international instruments are United Nations documents, but there are also many others emanating from two regional bodies, the Council of Europe and the Organisation of American States. We will soon see the same process at work in Africa now that the African Charter of Human and People's Rights has come into force.

The initiative for this flowering of human rights instruments has come almost entirely from non-governmental organisations (NGOs). Indeed, this is true of the Universal Declaration itself, in particular from organisations determined to see that the holocaust and other atrocities in World War II will never be repeated. It is not only lawyers' organisations that have been engaged in this work. Organisations of all kinds, churches and church based organisations, trade unions, women's organisations, organisations concerned with the protection of minorities, indigenous peoples, refugees, disabled persons, psychiatric patients and many others have been involved and played their part. They have pressed their governments to

introduce and support instruments that will spell out binding obligations and, in many cases, to introduce procedures for monitoring the record of states in fulfilling their obligations under these legal instruments.

Perhaps the two most important are the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. These documents elaborate and define more precisely the rights and freedoms in the Universal Declaration and impose binding legal obligations on the countries who ratify them, as over 80 countries have now done.

I am not an academic, so will not inflict upon you a description of these Covenants or the legal instruments. My knowledge of this subject, such as it is, has all been acquired in working for a lawyers' organisation to promote and protect human rights under the rule of law.

When the Universal Declaration was adopted it was made clear by a number of States that while they accepted the principles as such, they did not regard the Declaration as imposing any binding legal obligations upon them. Since that time a growing body of international lawyers takes the view that this situation has changed and that the Declaration is now a binding legal instrument. This is based mainly on the universal acceptance of the principles.

The Declaration is very general and does not spell out any necessary limitations on these rights or the circumstances in which some of them may be temporarily suspended.

Human Rights Covenants

Consequently, the main work of the UN Commission on Human Rights after the proclamation of the Declaration was to draw up the two international Covenants which clearly did impose legal obligations on the States Parties. It was a lengthy process, but revolutionary in its effect. Virtually the whole body of principles in the Universal Declaration have now become binding obligations in international law for those states that ratified the Covenants, as about half the states in the world have now done. Some international lawyers, particularly in the US have questioned whether the Covenant on Economic, Social and Cultural Rights does really impose any enforceable obligations in law. They regard them as being merely a list of aspirations which states can implement as and when they please. The International Commission of Jurists does not accept that, and two years ago convened a meeting of distinguished international lawyers in Holland and drew up the Limburg Principles, spelling out the legal obligations imposed on a government that ratifies this covenant. The principles were submitted

by the Dutch government to the UN General Assembly and they have received widespread support.

The process of human rights law-making did not stop there. There has been and continues to be a hive of activity in drafting and agreeing new conventions, many of them creating new organs of control. Recently a government in Africa asked for a copy of the international human rights instruments. They received over 300 pages of texts. There are, for example, special UN conventions against torture, slavery, racial discrimination and discrimination against women, rules or codes of conduct for the treatment of prisoners, for law enforcement officials, principles of medical ethics in the protection of prisoners and detainees, conventions relating to refugees and a large body of conventions worked out in the International Labour Office concerning conditions of labour, trade unions, immigrant workers and other labour matters.

Virtually all of these documents elaborate in greater detail the rights proclaimed in the Universal Declaration, and many of them establish a system of reports by States Parties which are examined by a committee of independent experts, who question representatives about their reports and then make a public report to the UN General Assembly.

Other legal instruments are Declarations of the General Assembly or the Economic and Social Council of the UN (known as the ECOSOC) on particular subjects. They carry weight as legal texts, setting out guidelines, but not having the same obligatory effect as conventions and other treaty documents.

Let me illustrate how one of these came into existence. You will remember that there is a provision in Article 10 of the Universal Declaration that everyone is entitled to a fair trial by an independent and impartial tribunal in the determination of rights and duties. All governments claim that their judges are completely independent. Unfortunately, in all too many countries it is widely recognised their judges are nothing of the sort, being influenced by corruption or pressures from the government. There are many ways in which subtle but effective pressures can be brought to bear on them.

Ten years ago, with a view to trying to improve this situation our organisation established in Geneva a Centre for the Independence of Judges and Lawyers. This Centre persuaded the Sub-Commission of the UN Human Rights Commission to make a study of this subject. We then held two international seminars with judges and lawyers from all over the world to draw up a set of principles for protecting the independence of judges and submitted them to the Sub-Commission, where the Rapporteur embodied them in an annexe to his report. The next stage was a conference convened in Montreal by the Chief Justice of Quebec, with a wider representation of judges

and lawyers, at which our documents were the main working papers. This conference produced a more detailed and authoritative draft, which was in turn submitted to the UN Committee on Crime Prevention in Vienna. They produced a draft which was submitted to the next five yearly UN Congress on Crime Prevention and Control in Milan, attended by most of the countries in the world. The Secretary of our Centre and a representative of the Canadian government worked hard in lobbying delegations and negotiating amendments to the text to make it acceptable.

The result of all this was that the Congress approved unanimously a declaration of 16 principles on the Independence of the Judiciary, containing in general terms nearly all the basic safeguards and protections proposed in the earlier documents. This text was then submitted to the UN General Assembly where it received unanimous approval. In this way it became the first and only international instrument making clear what is meant by the independence of judges and what procedures and conditions of work are required to make it a reality. This document is now a most valuable tool, enabling lawyers and others at both the international and national levels to bring pressure upon governments to alter their procedures so as to comply with the principles which they have approved in the General Assembly.

I give you this example, not just out of pride at one of our successes, but to illustrate how NGOs in this field can contribute to the slow but vitally important task of 'standard-setting' as it is called in the UN.

The same process goes on at the regional level in the Council of Europe, the Organisation of American States and now the Organisation of African States.

You may ask what is the use of all these documents if the rights in the Universal Declaration are being abused throughout the world. The answer is that this body of international law can be an effective tool for persuading governments to introduce reforms. Let me give you some examples.

Japan: rights of psychiatric patients

Some years ago a Japanese lawyer called Totsuka, married to a psychiatrist, asked if we could help him and some colleagues to persuade the Japanese government to amend its Mental Health Law. Before the war, the law was that families were responsible for looking after psychiatric patients. It was, and to a large extent still is, a common fallacy that mental illness is hereditary. The result was that the families hid away, even chained up in the basement, their mentally ill, for if it became known that they had a mentally ill mem-

ber of their family their sons and daughters could never get married. After World War II, the government passed a law permitting any doctor, not necessarily with any knowledge of psychiatry, to establish a mental hospital with a large continuing government grant. It only required two such doctors to say that a person required treatment in a mental hospital, and the consent of the family, for that person to be locked up indefinitely as an involuntary patient. There was no right of appeal to a court or tribunal, and no access to a lawyer. The average time spent in hospital was 8 years. With modern psychiatry a patient should not, normally, require more than a few months treatment. As a result of this law, private mental hospitals became a remarkable growth industry. Last year there were 330,000 involuntary psychiatric patients in Japan. With modern treatment these should not have been more than 50,000.

A group of Japanese lawyers and psychiatrists tried to get the law changed. The Opposition supported them but the vested interests of the private hospitals, the families of the mentally ill, and the drug industry were so strong that the government would not move. So Totsuka asked us to raise the matter at the international level. We published an article describing some shocking cases. In one large hospital there were over 200 unexplained deaths. We then raised the matter at the UN Sub-Commission on Human Rights. We wrote to the Japanese Prime Minister and the Minister of Health, but there was no response. We then approached the Foreign Ministry and pointed out that this system was a violation of the Covenant on Civil and Political Rights to which Japan is a party. Article 9 of the Covenant says: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court (to) decide . . . on the lawfulness of his detention . . ." The Foreign Ministry in Japan, as in other countries, is very concerned about the image and reputation of its country abroad. The result was that they brought pressure to bear on the Ministry of Health, who eventually gave way and the government agreed to reform the law.

We sent a high powered mission of leading psychiatrists and a judge of a mental health Appeal Court in the United States to Japan to examine the running of Japanese mental hospitals. They made a report with a large number of detailed recommendations. Last year the government amended the previous law and met quite a number of these recommendations. The government accepts that more may need to be done and says it will review the present law in five years time. We are sending another mission to Japan to see the impact of the new law on mental hospitals in Japan.

This is perhaps an exceptional success, but it does illustrate how international conventions and other legal instruments can be a very useful tool. As you may know, most governments, when attacked for

their human rights violations, protest that this is an interference in their internal affairs. They quote Article 2, paragraph 7 of the Charter which says that the Charter does not authorise the UN to interfere in matters which are essentially within the domestic jurisdiction of any state.

Greece: torture of lawyers

Our answer can be illustrated by another episode. Under the dictatorship of the Colonels in Greece in the 1970s we received reports that six lawyers had been arrested and were being tortured. We sent a mission of distinguished lawyers from the US and Canada to enquire into this matter and try to secure their release. The government refused to see them, but they were convinced that the reports were well-founded. Before leaving Greece they held a press conference, followed by another in New York on their return, which resulted in front page press reports. Six weeks later the lawyers were released. A year or two afterwards I was in the US State Department and asked whether they thought our mission had been helpful. Their answer was very positive. They explained that they were able to say to the Greek government: "We do not want to interfere in your internal affairs, but when your activities provoke such a reaction from distinguished lawyers, it becomes an internal affair for us and affects our relations with you". We have no doubt that it was US government pressure that led to the release of the lawyers.

Argentina: disappearances

We had a similar experience later concerning the massive disappearances in Argentina under the dictatorship, the so-called "dirty war". Numerous NGOs reported on them in detail, but the government dismissed the reports as communist inspired propaganda. However, as a result of these reports the Inter-American Commission on Human Rights sent a mission to Argentina, which came to the same conclusions and published a strong and well-documented report condemning the disappearances. In response to this inter-governmental pressure the government eventually gave way and at first reduced, and then ceased, the practice.

These cases illustrate the fact that the work of NGOs is often at its most effective when it leads to intergovernmental pressure or action.

Another result of this massive body of human rights instruments is its side-effects. Largely as a result of the "Carter policy" in the US, linking human rights performance with development aid (which in fact was started by Congress before Carter became President), all governments have been obliged to take human rights into account in their foreign policy. Many have special sections in their foreign

ministries, staffed with people well versed in human rights. In some countries they have interdepartmental committees to coordinate policies and ensure that new legislation or policies do not violate human rights obligations. No government is monolithic. Bad as the record may be in some countries, there will be those who are quietly pressing for more respect for human rights, and they make use of the international documents in doing so.

Human rights law has become a whole new branch of international law. There are specialist professors and faculties have courses in international human rights law. The number of human rights NGOs, and their expertise has greatly increased, at both universal and regional levels. Their role has been widely recognised and they now are able to take a much greater part in the work of the UN and other intergovernmental bodies. In short, human rights have become an important political issue which governments and parliamentarians cannot ignore.

For most people in the West the words "human rights violations" suggest abuse of civil and political rights — arbitrary arrests and detentions, political prisoners, torture of suspects, police or soldiers beating or throwing tear gas or even firing at students and other demonstrators, military dictatorships, one party states, apartheid and other forms of discrimination, press censorship, etc. This is understandable. Such things shock the conscience of mankind, and we see them daily in our newspapers or on television.

The developing world

But for people from the developing world, especially the rural poor who make up the majority in Asia, Africa and Latin America, the principal violations of their rights are lack of food, housing, health and hygiene, education, employment, and an adequate standard of living. When these reach crisis proportions due to some natural disaster, we are reminded by the media of their plight. But the thousands who die every day from the want of their economic, social and cultural rights cease to be news. It is organisations like Trocaire that remember them and work for their relief.

Until recently, there were very few international lawyers seriously interested in economic, social and cultural rights. Many dismiss the Covenant on Economic, Social and Cultural Rights and other legal texts as being 'soft law'. This is because, with some exceptions, they do not confer individual rights which are enforceable in a court of law. Consequently these lawyers think they are merely high sounding goals, and that it is for governments to decide to what extent they will promote these rights. I have already mentioned the Limburg Principles which refute this argument.

In the field of civil and political rights there are international judicial bodies like the European and Latin American Courts of Human Rights and there are UN monitoring committees of independent experts dealing with complaints and gradually building up a substantial body of case law, 'jurisprudence' as the French call it.

It is only recently that a serious procedure has existed in the UN for monitoring and discussing with governments their performance in carrying out their obligations in the field of economic, social and cultural rights. The Convention on these rights provides for States Parties to prepare reports on the measures they have adopted and the progress made in achieving observance of the rights. These reports are examined by a committee of the UN Economic and Social Council.

For several years this committee, was composed of national representatives, supposedly expert in this field. In practice they were virtually all diplomats from the missions in New York with no expertise. The result was virtually nil, due to ignorance and the reluctance of diplomats to criticise each other unless they have some political reason for doing so. Two years ago a new committee was set up of persons with real expertise. As they serve in their individual capacities, they speak much more frankly.

Like all such bodies in the UN they tend to work on the basis of consensus. Last year they made little progress as they were obstructed by a Soviet delegate who was a relic of the Brezhnev era and had never heard of *glasnost* and *perestroika*. Fortunately, news of this reached Moscow and he was persuaded to resign. At this year's meeting a lot of progress was made in devising procedures which will make their work meaningful.

The obligations on governments under this Covenant on Economic and Social Rights do not fall only on the developing countries. Article 2 of the Convention says that each State Party undertakes '*individually and through international assistance and cooperation*, to take steps especially economic and technical, *to the maximum of its available resources*, with a view to achieving progressively the full realisation of the rights'. This article recalls Article 55 of the UN Charter which says that 'with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations . . . the United Nations shall promote

- higher standards of living, full employment and conditions of economic, social progress and development; [and]
- solutions of international economic, social, health and related problems and international cultural and educational cooperation. . .'

The UN and its specialised agencies have no existence apart from their member states, so these obligations fall upon each of the so-called developed countries to cooperate 'to the maximum of its available resources' in helping peoples in the developing countries to achieve their economic, social and cultural rights.

It is to be hoped that the new ECOSOC Committee will bring pressure to bear on the developed countries to increase their contributions 'to the maximum of their available resources'.

The specialised agencies have an extremely important role in securing achievement of economic, social and cultural rights, in particular the ILO, WHO, UNESCO, UNICEF, FAO and, though not strictly a specialised agency, the UNDP. The ILO is outstanding for its detailed and numerous conventions and for the procedures it has developed for examining complaints and pressuring governments for better performance in the labour field. This is largely due to its tripartite structure, one third being non-governmental trade union representatives. UNESCO has a Committee which can receive and examine complaints against governments, but its record is not very impressive. The other agencies have no such procedures. Indeed, the very term human rights is anathema to the WHO, for fear that it will arouse the hostility of those Third World nations which sometimes regard human rights as a stick for the Western powers to beat them. This is a pity, as cooperation between the new ECOSOC Committee and the specialised agencies is of primary importance.

Ireland's role

Small countries have an important role in the field of human rights. Obviously the super-powers have greater influence because they have greater political and economic power. But for medium to small states, I do not think their size matters greatly. What matters is their commitment to human rights and the quality of their diplomatic and other representatives. Ireland has recently had to cede its place on the UN Commission on Human Rights, but for several years it had in Ambassador Hayes a very fine spokesman who carried a lot of weight in the Commission.

It is a great advantage to be, or to be regarded as, a neutral country. I may say that when I visit Third World countries and say that I am Irish, the welcome is much warmer. Dick Crossman told me once that he asked Nasser what books had influenced him most. He said the Life of Kamal Attaturk and Irish history. Ireland has contributed its fair share to peace-keeping forces, and Irish people have made their impact on the international scene. I think of Sean MacBride and Conor Cruise O'Brien.

However, any government which wants to play an active role in the

promotion of human rights should first manifest its commitment by ratifying the two International Covenants. I feel a sense of shame that Ireland has not yet done so. The reason, I am told, is that some legislation, in particular against racial discrimination, is needed for Ireland to comply with the terms of the covenant. I hope that this Trocaire conference will call upon the government to take the necessary action to ratify the two Covenants and the European Convention against Torture.

An important and lasting contribution to human rights is the work Trocaire is undertaking as an agency for world development. The International Commission of Jurists is unusual among non-governmental human rights organisations in attaching importance to economic, social and cultural rights. As far back as 1959, at its first Third World Congress, held in New Delhi, it proclaimed the dynamic concept of the rule of law, in which it stated that lawyers, in addition to promoting and defending civil and political rights, should use their skills and knowledge to help the disadvantaged to secure their economic and social rights.

Inspired by the work of some human rights activists in the Indian Sub-Continent and in South-East Asia, we have held international seminars in Africa, Asia and Latin America on the subject of 'Legal Services for the Rural Poor'. We realised that human rights, and particularly the legal aspect of human rights were entirely unknown to the rural poor, who, as I have said, constitute the majority of the Third World's population. Often illiterate, they know nothing of lawyers or the law, still less of the concept of human rights. If they have any experience of the law it is probably as an instrument of oppression. Equally, lawyers tend to know very little about the problems of the rural poor, and the way they are oppressed and cheated out of their land and other rights. So what we have been trying to do is to interest lawyers, and the faculties of law in the universities, to study these problems and to bring legal assistance to people at village level. This is not ordinary legal aid, which is mainly limited to providing lawyers to defend the poor when charged with serious criminal offences.

When rich people consult a lawyer, what they want is to be informed about rights and obligations, to be told how to claim those rights and, where necessary, to have the lawyer negotiate on their behalf. As a last resort, and only when there is no other solution, they want the lawyer to take proceedings before a court. It is these services that the poor lack and that lawyers should find ways to provide.

What we urge them to do, is to train students, newly qualified lawyers and social workers to work in rural areas. Some call them para-legals for they need not necessarily be lawyers. Sometimes

development workers take on this task part-time. They must, of course, be trained in the relevant law such as land law, family and divorce law, and inheritance law. There are two rights in particular which are a *sine qua non* of any self-reliant development, that is development by the people in solving their own problems with the minimum of assistance from outside. The two rights are freedom of expression and freedom of association. Without these there will be no fundamental change in their situation and no true development.

The para-legals must first find out what the problems are, explain the position in law, and then encourage the people to work together in a spirit of self-reliant development to assert their rights, if necessary with the help of a lawyer in the town. We urge these para-legals, to work when they can, with grassroots development organisations like Trocaire. They will obviously have more chance of success if they have the help of people working for development in the rural areas who have the confidence of the local people, and can help to overcome the suspicions and cultural differences which so often result in distrust of lawyers from urban areas.

Recently we had a seminar in Jakarta of lawyers and others who have been doing this work for several years in South-East Asia. This was the first time they had met together to share their experiences, identify the obstacles to their work, and devise ways to overcome these obstacles. It transpired that what they need most is support from the law faculties, so as to train and recruit more young lawyers for this work, and from the Bar Associations to get the support, where needed, of senior lawyers.

Perhaps the leading theorist of this work is an Indian lawyer, Clarence Dias, who works world-wide from the New York office of the International Center for Law in Development. We have published an article of his in our current *Review*, expounding what he calls the "empowerment" of the rural poor. Let me end by quoting from this article:

> "Human rights can play a significant role in the empowerment of the impoverished. The oppressed can become more self-reliant through an understanding of their rights and indeed the right to organise and rights of association are vital to impoverished groups seeking to mobilise and organise themselves and thus develop countervailing power. Moreover, such impoverished groups become more empowered as they develop their capacities to assert rights through collective action. An awareness of rights helps diminish dependency and builds up confident self-reliance when 'have nots' appreciate that they are entitled to resources as a matter of entitlement and not just benign charity. Moreover, rights safeguarding the dignity of the human being are of

considerable psychological importance in the struggle to break out of the culture of dependency and to establish self-esteem and a sense of self-worth.

Human rights can also play a significant role in securing the accountability of those who wield power and control resources essential to the satisfaction of basic human needs. Rights of access to information, rights to a public hearing and freedom of speech and of the press are crucial in checking governmental lawlessness and abuse of discretion or powers by bureaucratic and government officials.

Human rights are also important as a means for securing participation. Perhaps, more importantly, human rights represent a vital expression of values." (International Commission of Jurists, *The Review*, No. 39, December 1987, pp. 38-9)

This says it all very clearly showing how lawyers can contribute to development by cooperating with organisations like Trocaire.