

CHAPTER 5

How can Research Universities Contribute to Fostering Sustainable Societies in Developing Countries?

Anne-Marie Leroy

INTRODUCTORY REMARKS

Although law is hardly a science, rather an intellectual discipline, it is at the heart of many of the issues discussed in this Colloquium: it shapes the functioning of democracy; it regulates markets; contributes to protecting the environment, to fighting corruption and crime; it avoids or solves conflicts, translates the ethical values of society into concrete rules, and sanctions violations. Yet, it does not lend itself to a one-size-fits-all approach and must be tailored, not just to fit the specific values of a society even for the values that mankind regards as universal, but also the very capacity of a country to implement it, and that capacity varies widely.

I have structured my presentation into three key themes. I will start by considering what I perceive as the key dimensions of the multifaceted challenge of achieving “societal” and “global” sustainability. In doing so, I will pay particular attention to the place of the law in the process, and emphasize that we need to look beyond the pure mechanics of the law in order to forge a more creative approach in the service of development. Second, I will dwell on the theme of the role of research and universities in helping the development community. I will highlight a number of challenges pertaining to law and development where universities can play a critical role in helping to generate innovative solutions. The third and last theme will focus on possible avenues

of collaboration between the World Bank and research universities. Here, I will show how a new initiative we are trying to launch at the World Bank called the *Global Forum on Law, Justice and Development*, which relies on advances in information and communication technologies, may provide an adequate platform for knowledge sharing, exchange and collaboration in order to better tackle development challenges.

THE MULTIFACETED CHALLENGE OF ACHIEVING SOCIETAL AND GLOBAL SUSTAINABILITY

Understanding the Problem

The theme of global sustainability with the multiplicity of disciplines and interventions it implies is one that we, at the World Bank, identify with and strive towards in our work. In addition to our vantage point as a global development institution focused on the big picture in terms of global challenges, many of our interventions are country and, often, sector specific. This means that we often deal directly with communities and beneficiaries of World Bank financing. As such, I think it is safe to say that we have accumulated a wealth of experience in working for instance with rural communities and with other development partners. In short, we have had a very direct and hands-on engagement in forging “sustainable societies” and in contributing towards “global sustainability”.

What then do we mean by a “sustainable society” and what do we understand by “global sustainability”? At this point, I should perhaps point out that I view “global sustainability” as being the end point along the continuum from “environmental sustainability” to “sustainable development” to a “sustainable society” and ultimately, “global sustainability”. In the simplest sense, the common strand that runs through them is that goal of wanting to meet the needs of the present, without compromising the ability of those who come after us to meet theirs.

In one sense, therefore, “global sustainability” entails the involvement of various stakeholders in ensuring that the world is a cleaner, healthier and safer place to live in. As an interdisciplinary and multidisciplinary concept, “global sustainability” involves, inter alia, the promotion of economic progress whilst strengthening environmental stewardship and social responsibility of all stakeholders. In another sense, global sustainability encompasses the concept of a “sustainable society” in which the rule of law, fairness and equity are given greater primacy. This view of a sustainable society is in accord with Nobel Laureate Amartya Sen’s (1999) thesis on “development as freedom” where he postulates that all individuals are endowed with a certain set of capabilities,

and that it is a matter of realizing those capabilities that will permit an individual to escape from poverty and their state of “un-freedom”.

In essence, a sustainable society is one that continues to thrive overtime, developing progressive social cohesion through sustained human and social capital, and offering a high quality of life to its citizens without harming, destroying or depleting the various resources in the internal and external environments.

It is common knowledge now that unsustainable patterns of production, consumption and population growth are challenging the resilience of the planet to support human activity. More than ever before, we live the reality of those stresses. The spectre of global poverty still haunts us. Nearly a billion people are still hungry. Many more are excluded from the mainstream economy and the chance to earn a decent living. A large cross-section of others have only limited access to basic services and live in a state of heightened vulnerability. This exclusion and vulnerability may be attributed to different causes, including conflicts, poor governance and corruption, discrimination, disease, vagaries of the weather, poor or lack of infrastructure, poor economic management, weak property rights regimes and inattention to the rule of law.

In a speech marking his first 100 days in office back in 2007, the World Bank President, Robert Zoellick, eloquently captured these concerns in a manner that still rings true today, perhaps with even greater urgency. In his speech, President Zoellick acknowledged the incredible opportunity that globalization has offered, but asked us to re-envision an “inclusive and sustainable globalization”. By this he meant that we must leverage the opportunities that increased global interconnectedness offers, to overcome poverty, enhance growth with care for the environment and create individual opportunity and hope. In working towards this vision of an “inclusive and sustainable globalization”, President Zoellick identified a number of strategic themes, one of which I would like to pay particular attention to here. That is the theme of fostering “global knowledge and learning” within the context of the World Bank’s mandate and taking into account its unique and inter-disciplinary “brain trust”, varied experience throughout the world, and, very importantly, meaningful partnerships and networks.

A threshold question that I would therefore like to pose, and reflect upon paraphrased from the World Bank’s *World Development Report 2011* (2011) is: how do we find ourselves in this situation in the modern world, with all the tools we have at our disposal, with all the technological and human advancement? How does an ancient problem like piracy continue to be a problem to global commerce off the coast of Somalia? How does violence persist in Afghanistan? How do the threats of drug and human trafficking continue to be a major source of national instability in the Americas and elsewhere? And who could have imagined social upheaval at the scale we are witnessing in the

Arab world? More than anything else, any answer should demonstrate that short-term solutions will not work. As the *World Development Report 2011* notes, what is needed are solutions that generate the institutions capable of providing people with a stake in security, in justice and economic prospects. In sum, what is needed is “societal sustainability”, and I dare say, “global sustainability” in its multifaceted nature.

Law as a Tool to Respond to the Challenge of Building Societal and Global Sustainability

Now, what then would one say is the place of the law in the effort to meet the challenge of “global sustainability”? At its core, the theme of “global sustainability” implies a sense of equity. It implies a levelling of the playing field. It also implies broad-based longer-term prosperity and increased opportunities for the most vulnerable be they indigenous peoples, women in developing countries, the rural poor particularly in Africa, or children. Clearly therefore, inherent in the theme of “global sustainability” is a prominent role for the mediating power of the law.

Law must be grounded in the societal context in which it applies: The law cannot, and does not, exist in a vacuum. It derives from the overall values of society. Indeed this is the philosophical basis of legal legitimacy. Nevertheless, without delving too deeply into jurisprudential abstractions, we must acknowledge that different legal traditions have different interpretations of the role of law in society. But the law, with its venerated traditions, proposes at least one set of answers to fundamental societal sustainability questions, such as on distributive justice and by distributive justice here what is meant are those normative principles designed to guide the allocation of the benefits and burdens of economic activity. From my standpoint, in debating how to best approach distributive justice, theorists often forget the realities and enormous complexities of translating abstract theories into working statutes and legitimate legal principles. Knowing more about the law, and the social context in which it operates, would clearly be helpful to understanding peoples’ real commitments to distributive justice and thereby craft policies that have a chance of being implementable.

Lawyers must work differently, not shy away from asking the difficult questions and help find answers to them: Given the natural grounding of the law in social values and social experiences, we must move away from the perception of the law as just a set of pedantic rules that are best left to lawyers. We must learn to appreciate the law in its proper socio-economic context, and allow it to become a key and meaningful element in the development imperative. That, in my view, is the only way through which we can achieve “sustainable societies”. It is the only way we can do justice to the intrinsic equity implied in the concept of global sustainability.

Not too long ago, President Zoellick (2010) threw a major challenge to the economics profession, in an important speech at Georgetown University. In his view, “...economics, and in particular development economics, must broaden the scope of the questions it asks thereby also becoming more relevant to today’s challenges. It must help policymakers facing complex, multi-faceted problems.” I think the law can and must be put through the same test. That means it must help broaden the boundaries of social enquiry, and it must be responsive to the limitations, capacities, values and priorities of each society.

I do know, from my own experience and that of my colleagues, that in order for legal research to play its rightful role in development, lawyers must be more pragmatic, without necessarily sacrificing their role as the custodians of process in their respective professional environments. They must be willing to look beyond the pure mechanics of the law and its interpretation and forge a more creative approach in the service of development.

Moving past old assumptions: In the past, there have been approaches and assumptions made that stood in the way of meaningful and lasting solutions to development challenges. Some of these, such as the over-emphasis on cookie-cutter solutions, which are often easier to develop, have proven ineffective and have been discredited. As a “global society” therefore, the World Bank also has to face down the power of such assumptions and the challenges they pose, which also include understanding how developing countries can better foster the development of sound laws and effective institutions to reflect the needs of their societies.

Different contexts require different emphasis. It is against this background that the development of legal tools that are suitable to a particular society or community should take into account the specific socio-economic and political context and the purposes for which they are developed. A contingency and holistic approach should be favoured over a one-size-fits-all prototype. We at the World Bank are certainly fully cognizant of the pitfalls of assuming that one size fits all. To be candid, that is something we were heavily criticized for in the past. But our experience thus far is that the potential for longer-term impact and real success is much more enhanced when solutions are tailor-made and reflective of the particularities of the societies which they aim to improve.

To illustrate, the recent events in the Middle East have shown us that societies in that part of the world demand and believe as strongly as others in justice, as well as laws that are fair, predictable and transparent. This evidence is in accord with the idea of the rule of law to which I will turn later. Here, suffice it to say, a related argument why the transplant of foreign or international legal models to developing countries has sometimes failed is that there is inadequate attention given to the issue of legal cultural diversity. As Louise Arbour, the former U.N. High Commissioner for Human Rights and former

Supreme Court Judge in Canada, observes: “[t]he resistance to the exportation of ‘Western values’ might be no more than the rejection of a foreign way of expressing a particular norm, rather than a rejection of the norm itself.”

Criticality of respect by all for the rule of law: Another challenge is how to promote adherence by international global actors to the rule of law at the international level within a globalized world. Clearly, the last two decades or so have seen a major affront to the Westphalian system. The concept of Westphalian sovereignty, holding sacred the sanctity of nation-state sovereignty, based on two fundamental principles, territoriality and the exclusion of external actors from domestic authority structures, has suffered an affront from globalization. The Westphalian system is being challenged by the increasing growth of international global standards in areas such as economic regulation and trade. In addition, various regional integration groups and public international bodies, such as the European Union and the World Trade Organization, respectively, are promulgating regional and international standards that superimpose and prevail over national standards. But how does this all relate to, or fit into, the concept of the rule of law?

It is not uncommon to find international or regional norms being contested as unconstitutional or offending the rule of law in a Member State of a concerned regional integration scheme. While legal rules alone may be straightforward in determining the order of precedence and/or legal validity between regional and national laws, the legitimacy of such rules goes beyond mere legality. The United Nations has defined the concept of the rule of law as: “...a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

But, we know that discussions on what the “rule of law” means are marked by disagreements and that its meaning, key elements, requirements, benefits and limitations all vary between different nations and legal traditions.

So, while an action may be deemed legal in one sense, it may be offensive to the rule of law in another sense. For example, the enactment of laws that have retroactive effect or laws that discriminate against certain minorities could offend the rule of law, albeit these laws seeming somewhat valid under the law of the enacting State. It is such issues that legal scholars need to explore further in order to help shape the discourse of a constitutionally globalized world. Together with the legal scholars, we should all be moving away from a reactive, descriptive approach to a more proactive approach in devel-

oping legal tools to fight poverty. And through scientific inquiry and research, the academic community can help identify proactively critical legal problems, as well as fill the gaps where there are lacunas in the law, without having to wait until the legislature enacts a new law or the judiciary passes a new judgment.

THE ROLE OF RESEARCH UNIVERSITIES IN HELPING TO ADDRESS DEVELOPMENT CHALLENGES AND FORGING SUSTAINABLE SOCIETIES

In discussing the role of research universities towards fostering global sustainability, there are three issues I would like to focus on. The first is related to the undeniable potential for creating synergies between the development community and research universities in finding innovative solutions to the development challenge. Second, I would like to zero in on some of the challenges that the World Bank has faced in its development interventions, that I offer as avenues for potential collaboration in the search for answers, albeit, from a legal perspective. And third, I will highlight the role of partnerships and knowledge networks in the development process as a vehicle for responding to the said challenges.

Universities and Sustainable Societies: Creating Synergies to Find Innovative Solutions

There are several areas of development where our cooperating partners can provide effective leadership. These areas include examining, from a rule of law perspective, some of the challenges faced by a global organization such as the World Bank in contributing to the development of sustainable societies. It would be beneficial to the international community if we can all draw on each other's strengths as cooperating partners. Such synergies could help, for example, to inform us how the World Bank can assist some of its Member States to develop effective and sound legal systems when faced with weak or low institutional capacity pertaining to rule-making, compliance and enforcement.

Challenges Faced by the World Bank as a “Global Society”

While the World Bank has its own experts and specialists, it is always helpful to draw synergies with external partners in order to develop more concrete solutions to a number of these problems. As such, we in the Legal Vice-Presidency of the World Bank seek contributions from partnering institutions on how we can make our interventions more effective on both conceptual and methodological, as well as substantive issues and questions.

Conceptual and methodological issues: Together, we must find ways of developing viable methods of analysing the law through different lenses to determine its adequacy and effectiveness, taking into account the political, economic, social and cultural contexts in which it operates. In addition, our experience is that it is often worthwhile to critically examine the impact of legal reform initiatives and how they correlate with the objectives and needs of end-users of the law. In developing legal reform proposals, we must avoid an overly theoretical approach, which ignores political constraints and does not often translate well into implementable legislative proposals. We should always carefully look into developing legal tools and solutions that take on board implications on both the internal and external environments, the issues of legitimacy and sustainability of the law, the role of other stakeholders in adopting or using these legal tools, the available dispute resolution mechanisms, the amendment procedures, the compatibility of the legal tools with general principles of law and societal values, and the flexibility in implementing new or revised laws. The process of developing such legal tools requires broad participation of different stakeholders in order to retain legitimacy and acceptability.

We also invite academic input in helping development practitioners to develop effective tools for measuring the rule of law and its development effectiveness. A particularly urgent area is, for example, how to develop useful and impartial indicators to measure the development effectiveness of *justice* and good governance.

My call is here for legal research to move away from two frequent weaknesses in the papers it publishes: (i) a mere description of existing legal framework and of innovations made by practitioners (indeed law must be the only discipline where innovation comes more often from practice than from research); and (ii) an advocacy for drastic reforms that ignores the social and political realities in which any legal action must be founded, if it is to pass into actual implementation. Instead, my call is for research to be anchored in the day today, concrete issues that we face in developing countries.

Substantive issues: Some of the substantive questions we grapple with include the following:

- How do we help build legitimate and effective legal and judicial institutions in post-conflict and fragile situations, considering the low institutional capacity, infrastructural and other limitations? In these often difficult circumstances, how do we focus attention on the criminal justice sector and balance due process issues, citizen rights and security concerns?
- With regard to environmental challenges, how do we design appropriate legal frameworks to deal with environmental crimes such as illegal exploitation of marine resources, wildlife poaching, deforestation,

- pollution and so on? What kind of regulatory frameworks should be put in place in order to ensure that carbon finance realizes the twin objectives of reducing Green-House Gas emissions and providing a stream of income to communities and businesses involved?
- How can we design legal and policy responses to the development challenge that are better adapted to the economic, social and cultural contexts of developing countries? And how do we take account of the legal pluralism that prevails in many of these societies, whereby customary law has almost as much influence as formal legal systems?
 - How do we harness international law in order to provide answers to situations where new States are emerging (for example South Sudan) and the so-called “failed States” (such as Somalia) become fertile ground for regional instability? How can we develop a better understanding of the interrelationship between human rights, as well as international human rights law and development?
 - How do we respond to the global financial crisis through domestic and international legal and regulatory reforms? How can we develop sustainable systems of financial sector regulation in middle-income countries in the aftermath of the recent financial crisis?
 - How can we ensure that land and property rights systems (including intellectual property rights) provide adequate protections for the most vulnerable and do not hinder meaningful economic development? How do we ensure that the increasingly common large-scale international investments in land, particularly in food insecure countries, do not exacerbate the precarious situation in these countries and undermine their long-term ability to provide for and feed themselves, and on the contrary help improve agricultural productivity and the diffusion of more efficient techniques?
 - How can the law contribute to enhance transparency, citizenship involvement and accountability? How can we help civil society to play a meaningful and constructive role in this process? In short, how do we help build a better informed citizenry?
 - How do we fight corruption in the judicial system, which undermines all legal frameworks and can annihilate reform efforts?
 - How can we help women effectively access equality of rights and opportunities?

In addressing these kinds of questions, we are inviting all our cooperating partners, including legal scholars and the academic community, to work collaboratively with the World Bank.

CREATIVITY AND PARTNERSHIPS AS KEY TOOLS IN THE DEVELOPMENT PROCESS

The World Bank has the experience of partnering successfully with many different institutions and agencies in the delivery of development programs. For example, different donor agencies and institutions have partnered up with the World Bank for the latter to administer trust funds provided by these donors. Also, the World Bank is partnering up with different co-financiers on some of its lending programs. That different situations require different emphases explains why the World Bank continues to adapt to the changing business environment. We are learning from others in as much as we are also sharing with them our own experiences. For example, there are lessons to be learned from pioneering initiatives such as the “Scholarship in Action” approach at Syracuse University (2011) which emphasizes cross-disciplinary community outreach and collaboration with stakeholders beyond the University community. One could also mention the “Law in Context” (2011) approach pursued by institutions such as the University of Warwick, the University of Wisconsin and the University of Baltimore, through which legal education emphasizes the context, realities and the need to find solutions to social problems. Similarly, other leading initiatives, such as the Global Administrative Law Project (2011) spearheaded by New York University Law School, have helped to shape the debate on how to approach and better address issues related to global legal governance.

Many of our cooperating partners from academia and think-tank institutions continue to provide intellectual leadership in developing new concepts and theories based on a deep understanding of the challenges in the real world, including developing theoretical tools and frameworks for better understanding of complex reality. As such, the World Bank is keen on involving research universities and think-tank institutions to find solutions to real world challenges. We need their input and participation to find lasting solutions to some of the world’s most pressing problems.

GOING FORWARD: POSSIBLE AVENUES FOR COLLABORATION

Going forward, in order to build sustainable societies, legal scholars and the academic community should be participating more actively in the identification of cutting-edge legal and justice challenges at the country, regional and global levels, respectively, focusing their research at developing creative solutions through inter- and multi-disciplinary approaches. And since we know that one size does not fit all, our joint research efforts should focus more on developing legal tools that support optimal customization of legal solutions,

while, of course, not neglecting the important role played by international best practices. We at the World Bank are eager to forge strategic partnerships and alliances with various stakeholders, including those from the practitioner world, in order to address all these areas. After all, our work at the World Bank involves significantly “development in practice”.

Therefore, the inclusion of development practitioners, governmental and private sector institutions is unavoidable for us as much as is working with practitioners to help develop customized practical solutions to real world challenges. Ideally, the overall goal of these partnerships should include shaping the development policy agenda with other institutions in anticipation of future challenges, as well as to help educate the next generation in matters pertaining to global sustainability and sustainable societies.

We are actively pursuing knowledge and learning partnerships. In 2010, for example, the Legal Vice Presidency of the World Bank hosted a major international conference during the *Law, Justice and Development Week* in close collaboration with a number of Universities and International Financial Institutions from around the world. A number of these key partnering institutions and persons attended to share their experiences and knowledge on many of the issues highlighted above. We hope to convene a similar forum this year in close collaboration with all World Bank institutions, as well as outside partners. We also hope that we can do it on an annual basis going forward. We remain open to new ideas and initiatives that can better inform our global fight against poverty. And, internally, within the World Bank, our lawyers are also playing a significant role in developing and promoting the enforcement of governance structures and frameworks that can help to promote the rule of law and transparency in our work. In general, the fidelity of the World Bank to the rule of law and transparency remains unshaken.

That said, a major challenge facing the World Bank in the field of global sustainability and sustainable societies lies in the fact that many members of the public expect the institution to take leadership in almost all areas of human and social endeavour. But we can only do so much within the context of the resources available and in accordance with our mandate. However, through strategic partnerships and related alliances, the World Bank can make a much stronger and more effective contribution to promoting global sustainability and sustainable societies.

We are continually looking at ways in which we can better combat and prevent poverty in the world. To this end, we have not only enhanced the degree of transparency in our work at the World Bank through the adoption of the new *World Bank Policy on Access to Information*, but are also stepping forward to invite cooperating partners to work with us in developing useful legal tools to fight and prevent poverty. I am therefore extending an invitation to all of you, institutions and specifically their law schools, to consider partnering with the

World Bank through a major initiative spearheaded by the World Bank's Legal Vice-Presidency, namely, the *Global Forum on Law, Justice and Development*.

The *Global Forum on Law, Justice and Development* is both a South-South and North-South collaboration on law, justice and development issues. It is a Platform for knowledge exchange and sharing through access, exchange and dissemination of knowledge products, both raw data and value-added knowledge. Indeed, the *Forum* will contribute to:

- generating innovative and customized legal solutions to development and scaling-up of any successful solutions;
- better integrating law and justice considerations in the development process to increase development effectiveness;
- better sharing of legal solutions to development challenges among development practitioners around the world; and
- better collaboration with academic and research institutions to help solve legal development challenges. It also encourages communication and exchange of knowledge among partners and stakeholders.

The Forum is not a new institution. It will be a network of hundreds of already existing networks of law practitioners and law schools, fostering innovation, dissemination and multi-disciplinary cross-fertilization. It will use a web portal: a portal of portals, a repository of knowledge and database of databases, a networking tool and will host sub-portals for communities of practice. It will also host online training activities.

In closing...

There is no doubt that forging societal and global sustainability, and realizing the development imperative is a major challenge that can be overcome only through synergizing our efforts. In addition, the legal community, in particular, needs to step up to the challenge of re-invigorating legal responses aimed at building sustainable societies as I mentioned earlier. In forging this re-envisioned paradigm of law as a critical instrumentality of development, legal knowledge and solutions must build upon past successes and studiously avoid mistakes of the past. Legal research and practice should therefore identify and make full use of the law's potential for innovation in the development process and in empowering otherwise marginalized groups and thereby enabling them to be a core part of development interventions. Needless to say, Universities as engines for human resource generation and as they push the frontiers of knowledge creation and dissemination have a central role to play in this re-envisioned paradigm.

Our hope is that the proposed *Global Forum* will help to fill a gap in development practice. It will also provide several benefits to World Bank Member

States as well as to other cooperating partners through the creation and sharing of innovative knowledge and the partnering with a wide range of stakeholders. Through such joint efforts, we can draw greater synergies and strengths to overcome the challenges that we face today. Everyone here has a vital role to play. We cannot minimize or overlook the role of any stakeholder. We are all bound by the same destiny: to ensure that the world we live in now and the world we handover to posterity is a more just, fair, equitable and sustainable one.

A world free of poverty.

REFERENCES

- Law in context (2011). See University of Warwick, www.warwick.ac.uk/fac/soc/law/lawinthecommunity; University of Wisconsin Law School, www.law.wis.edu/ils; and University of Baltimore, www.ubalt.edu/law.
- New York University Law School Global Administrative Law Project (2011). See www.iilj.org/GAL/GALworkingdefinition.asp.
- Sen, Amartya (1999). *Development as Freedom*, Oxford University Press.
- Syracuse University Vision (2011). See www.syr.edu/about/vision.html.
- The World Bank (2011). *World Development Report 2011: Conflict, Security and Development*, Washington DC.
- United Nations (2004). *Report of the Secretary General: The rule of law and transitional justice in conflict and post-conflict societies*.
- Zoellick, R. B. (2010). *Democratizing Development Economics*, a paper presented at Georgetown University, Washington DC, 29 September.