

The Nexus between The Rule of Law and Development

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Abstract

While considering the different factors that may influence the development of a country, the foremost considered are those that are of a real nature, such as natural resources, access to clean water, energy and geographical position. Sometimes governments, policy makers, politicians and scholars neglect immaterial factors that have a relevant impact anyway: one of them is the actual effectiveness of the rule of law.

This article will focus on the relevance of the rule of law on the development given by the international organizations that promote the development. For sake of clarity, the analysis will not consider opinions given by scholars.

Keywords

Developing countries, development, rule of law

1. Introduction: the Rule of Law

Normally, developing countries are identified by means of indicators such as the Pro-capita GDP (Gross Domestic Product) or the HDI (Human Development Index). Where the first is a concrete measure given by the gross domestic production divided by the number of population, the second one counts also data

referred to life expectancy at birth and their education.

After all, the fact that GDP (or the Gross National Product, that includes also the net revenues produced by the migrants abroad and then transferred to their home countries) was not a sufficient indicator for measuring the prosperity of a nation, was a clear concept yet before the introduction of the HDI: it is sufficient to recall the famous speech of Robert F. Kennedy

in 1968 at the Kansas University¹.

It is also sufficient to think of countries such as Mexico, with its thousands of killed people every year², to understand how much other factors need to be contemplated in order to consider the development of a country.

Considering the above, for those who study the factors influencing the development of countries, one of the first thoughts goes to the rule of law.

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The rule of law is defined by the Encyclopedia Britannica as “the mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a non-arbitrary form of government, and more generally prevents the arbitrary use of power”³.

In order to better understand the concept, it is worth noting that – according to the United Nations Organization – “the rule of law is 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 measures to ensure adherence to the principles of supremacy of the 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”.

Commonly, the rule of law is believed to lay on four pillars. They are the following:

- a. The law applies to everyone;
- b. The laws are not secret or arbitrary;
- c. The laws are enforced fairly; and
- d. The justice system is fair.

It is clear that the rule of law substantially is a mean to ensure social life between citizens, ensuring protection of rights through clear rules and actual enforcement.

An observer may clearly understand that the rule of law is the essential background to allow the development of a prosperity and, somehow, it is influenced from the underlying circumstances as in a sort of sympathetic relation where each party is stronger as the others become stronger.

2. The Rule of Law and Development

In the chart of the United Nations Organization, the Preamble describes four areas that are the pillars of the United Nations:

- Peace and Security.
- Human Rights.
- The Rule of Law.
- Development.

In accordance with the UN, these four pillars are all inter-

connected. “You cannot fully achieve one without achieving all of them”. This statement is very meaningful because it immediately links the rule of law with the development and vice versa.

The strict link between the rule of law and the development is also highlighted by the UN Declaration of the High-level Meeting on the Rule of Law, where Member States noted “that the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law”. This declaration was given in the year 2012⁴.

This declaration stands a milestone in respect of the goals (well known as Sustainable Development Goals) set out in 2015 by the United Nations Organization with reference to the rule of law, since the Millennium Goals did not comprise the rule of law.

By the above-mentioned declaration, the relevance of the rule of law is highlighted and the rule of law has become one of the targets through which one of the Sustainable Development Goals which goes under the title “peace, justice and strong institutions” (16) may be achieved. This SDG no. 16 has the following mission statement “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.

This mission should be achieved through different targets⁵.

Among them, for our purposes, Target 16.3 rises, which reads: “Promote the rule of law at the national and international levels and ensure equal access to justice for all”.

It is worth noting that the United Nations indicators for assessment of the achievement of the target are the following:

- *Indicator 16.3.1*: Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms;

- *Indicator 16.3.2*: Un-sentenced detainees as a proportion of overall prison population;
- *Indicator 16.3.3*: Proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, differed by type of mechanism.

The first indicator is a basic element to understand how and to which extent the law is applied and enforced. The notification of violence indeed is reported to authorities if the victims of the violence may rely on the action of the state to punish those who used the violence.

The second indicator shows how the justice is actually applied and how the citizens may be subject to the arbitrary exercise of power; while the third one is self-explanatory.

The collection of data on the above helps the nations and those organizations that support the development to identify gaps and define the course of action.

Reading the single targets that compose the 16th Goal and the indicators related to the rule of law, makes it easy to

note that many of the targets are strictly correlated with the one of our interest: at least 16.1, 16.4 and 16.5 and, more generally, all of them.

The relevance of the rule of law is also recognized by the European Union by setting up the European Rule of Law Mechanism that “provides a process for an annual dialogue between the Commission, the Council and the European Parliament together with Member States as well as national parliaments, civil society and other stakeholders on the rule of law”.

In this regard, it is meaningful to highlight the pillars on which are based the annual reports on the rule of law. These indicators show how many aspects are relevant in order to verify whether the rule of law is effective or not.

They are the following: the justice system, the anti-corruption framework, media pluralism and other institutional issues related to checks and balances.

How international cooperation may foster the rule of law in developing countries

Since the rule of law is a key feature for achieving the development, many are the organi-

zations that operate at a global or a regional level in order to assist the developing countries in achieving a real rule of law.

Among them, a relevant role is carried out by IDLO and UNDP.

The first, is an intergovernmental organism. Its acronym stands for International Development Law Organization.

From its website, IDLO gives this description of itself:

“IDLO is the only global intergovernmental organization exclusively devoted to promoting the rule of law to advance peace and sustainable development”.

It is worth noting what the rule of law means for this Institution. “The rule of law is a cultural and daily practice. It is inseparable from equality, from access to justice and education, from access to health and the protection of the most vulnerable. It is crucial for the viability of communities and nations, and for the environment that sustains them”. Considering the title of the journal where this article is published, it is lightening the nexus between the rule of law and the access to health and protection of the most vulnerable.

At an international level, there is also the UNDP that

supports the real effectiveness of the rule of law.

The United Nations Development Programme is an international organization established in 1966, upon a resolution of the General Assembly of the United Nations approved in 1965.

One of the purposes of the UNDP is to strengthen the pillars on which the United Nations are based, including the rule of law. Among other tasks, the UNDP is the organism in charge for the reporting on the status of implementation of the 16.3 target (i.e. the promotion of the rule of law and ensuring equal access to justice) pursuant to the Sustainable Development Goals.

Other organizations, like the Commonwealth of Nations, promote the same values among their members. It is very interesting to examine the declaration of this Institution about the rule of law and the extension that it could have.

“The Commonwealth promotes the rule of law by providing support to member countries through knowledge and expertise sharing programmes, leading on work in law and development, implementing the Cyber Declaration and promoting democracy”.

In this regard, it is worth noting the link expressed between the rule of law and development. Furthermore, it is meaningful the mentioning of the Cyber Declaration, highlighting how much the cyber space is getting relevance in order to ensure social and economic development.

3. Conclusions

Despite many declarations of principle on the relevance of the protection of human rights, the observance of the law and its non-discriminatory application, the substantial role that a well-functioning justice system has in ensuring the development, the actual attention of the policy makers is often leaded by other aspects and priorities, so that many of the efforts towards development often produce very limited impacts.

This is an issue not only for the developing countries, where the capacity to give growth to the economy and the wellness are affected by the absence of clear rules and applications, but is also an issue for the countries that have achieved higher levels of development⁶.

Indeed, it is worth noting that also in the so-called

developed countries, the succession of different wings governments in short periods causes the abrogation, in a direct or indirect manner, of the measures taken by the former government.

These changes in laws and regulations create uncertainty on the actual application of the laws and on how they will be applied in the future: these facts compromise the actual observance and compliance of the laws by the citizens, with adverse effects on the development of the country.

It is easy to note that the uncertainty on the actual application of a law has a

double negative effect: on one hand, it frustrates those who observed the law, by paying a tax or complying with a duty, and then discover that who did not comply is not punished, and, on the other hand, it may constitute a brake in the observance of the law for those who hope in a possible change of it in a short period.

A fair administration of justice, a proper length of the legal proceedings and their predictability are other factors that are of relevance for the rule of law: all these factors could affect the level of development of a country and, also in this case, it is

sad noting that many countries – among those that are considered developed – lack of an efficient management of justice that causes loss of chances, benefits those who act in bad faith and, last but not least, leaves room to abuses and corruption.

Considering all of the above, it appears clear the reason why the rule of law is one of the targets established by the declaration of the United Nations Assembly of 2015 to achieve a sustainable development: the underlying nexus between the rule of law and development.

Notes

1. “Even if we act to erase material poverty, there is another greater task, it is to confront the poverty of satisfaction – purpose and dignity – that afflicts us all.

Too much and for too long, we seemed to have surrendered personal excellence and community values in the mere accumulation of material things. Our Gross National Product, now, is over \$800 billion dollars a year, but that Gross National Product – if we judge the United States of America by that – that Gross National Product counts air pollution and cigarette advertising, and ambulances to clear our highways of carnage. It counts special locks for our doors and the jails for the people who break them. It counts the destruction of the redwood and the loss of our natural wonder in chaotic sprawl. It counts napalm and counts nuclear warheads and armored cars for the police to fight the riots in our cities. It counts Whitman’s rifle and Speck’s knife, and the television programs, which glorify violence in order to sell toys to our children.

Yet the gross national product does not allow for the health of our children, the quality of their education or the

joy of their play. It does not include the beauty of our poetry or the strength of our marriages, the intelligence of our public debate or the integrity of our public officials. It measures neither our wit nor our courage, neither our wisdom nor our learning, neither our compassion nor our devotion to our country, it measures everything in short, except that which makes life worthwhile. And it can tell us everything about America except why we are proud that we are Americans.

If this is true here at home, so it is true elsewhere in world”.

2. In 2021, 33,308 homicides have been registered with a murder rate of 3.6 every 100,000 habitants (Reuters sourcen21 January 2021).

3. The Law Dictionary, powered by Black’s Law Dictionary, second edition, summarizes this concept in a sentence: “nobody is above the law”.

4. The High-level Meeting of the 67th Session of the General Assembly on the Rule of Law at the National

and International Levels took place at the United Nations Headquarters in New York on 24 September 2012.

5. 16.1. Significantly, reduce all forms of violence and related death rates everywhere; 16.2. End abuse, exploitation, trafficking and all forms of violence against and torture of children; 16.3. Promote the rule of law at the national and international levels and ensure equal access to justice for all; 16.4. By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime; 16.5. Substantially reduce corruption and bribery in all their forms; 16.6. Develop effective, accountable and transparent institutions at all levels; 16.7. Ensure responsive, inclusive, participatory and representative decision-making at all levels; 16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance; 16.9 By 2030, provide legal identity for all, including birth registration; 16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements; 16.A Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent

violence and combat terrorism and crime; 16.B Promote and enforce non-discriminatory laws and policies for sustainable development.

6. This consideration is confirmed by the fact that the European Union monitors the effectiveness of the Rule of Law in its Member States that are all developed countries.

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