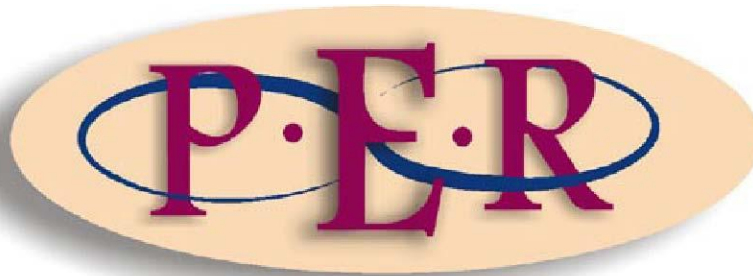


Author: O Soyaju

**MAKING A CASE FOR A DEVELOPMENT-DRIVEN
APPROACH TO LAW AS A LINCHPIN FOR THE POST-
2015 DEVELOPMENT AGENDA**

ISSN 1727-3781



2015 VOLUME 18 No 2

<http://dx.doi.org/10.4314/pelj.v18i2.10>

MAKING A CASE FOR A DEVELOPMENT-DRIVEN APPROACH TO LAW AS A LINCHPIN FOR THE POST-2015 DEVELOPMENT AGENDA

O Soyaju*

1 Introduction

The Millennium Development Goals (MDGs) are "the world's time-bound and quantified targets for addressing extreme poverty in its many dimensions - incomes, poverty, hunger, disease, lack of adequate shelter, and exclusion - while promoting gender equality, education, and environmental sustainability".¹ The formulation of the goals was a multilateral response to the development challenges confronting the developing world with the objective of reducing global poverty and other sources of human deprivation like hunger, universal primary education, gender inequality and the need for the empowerment of women, child mortality, maternal health, combating HIV/AIDS, bringing about enduring environmental sustainability, and developing global partnerships for development.

However, with the deadline for meeting the quantified targets in plain sight, the prospect of realising all the set goals by this date is diminishing. There are also reasonable concerns that even if these set goals are met, there have emerged new challenges with the potential of reversing whatever progress has been made under the current development framework.

For example, governance failure, among other flaws, has been identified as one of the major reasons for the widespread shortfalls of some of these developing regions in attaining the indicative parameters for the MDGs. And of all the indicative parameters of governance failure, not upholding the rule of law and a lack of honesty and transparency in government functions seem to be the most critical. "Upholding the rule of law" requires credible institutions to hold government accountable, and

* Olufemi Soyaju. LLD (UP) MILD (University of Lagos) LLM (Lagos State University) BL; Post-Doctoral Fellow and Academic Coordinator, LLM (International Trade and Investment Law in Africa), International Development Law Unit, Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa. Email: femi.soyaju@up.ac.za.

¹ UNDP *Investing in Development* 1.

unfortunately, these "credible institutions" are unavailable in the countries in most of these regions.

The thesis in this article is that law has an inherent development function and can play a significant role in driving the proposed post-2015 development agenda. Hence, a development-driven approach to law should be at the heart of the proposed post-2015 development agenda.

A development-driven approach to law denotes approaching development from the legal perspective, using the legal rules and institutions in a legal system to guide and support the development process, to ensure that development policy, goals and objectives are implemented successfully.

In support of the thesis of the paper, the overarching questions which this paper will seek to answer are: how important is law in driving the proposed 2015 development agenda? If it is important, why, and in what respects? It is important to note from the outset that "law" in this context includes both the formal and informal legal rules and institutions.

In pursuit of this agenda, this paper is structured as follows: Section 1 sets the stage with an introduction to the discussion; Section 2 contextualises the problem which this paper seeks to address; Section 3 examines the MDGs as a linchpin for global development, their nature and the relative regional performance score-card; Section 4 discusses the imperative for the post-2015 development agenda; Section 5 interrogates the law and development as a socio-legal theory and the intrinsic relationship between legal rules and institutions and development; Section 6 takes a look at the development-driven approach to law and makes a case for its adoption as a linchpin for the post-2015 development agenda; Section 7 examines corruption as an indicative parameter of governance failure; and Section 8 makes concluding remarks.

2 Research problem

As stated earlier, with the target date set for reaching the MDGs in plain sight, it is obvious that the attainment of all the set goals is no longer realistic. In the face of many supervening events like the increase in conflict, insurgencies and terrorism in the developing regions of the world, the global economic crises and the menace of climate change, the prospect of realising all the set goals by the target date has disappeared. For example, much of the progress made on poverty and hunger has occurred in a few large middle-income countries.

Putting this grim reality into perspective, Amina Mohammed, the UN Special Adviser on Post-2015 Development Planning, states that:

More than 1 billion people still live in extreme poverty. Far too many people continue to face serious deprivations of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, and education, with progress hampered by deep inequalities linked to income, gender, ethnicity, disability, location and age. The global economic downturn and increasing conflicts of recent years have worsened poverty and inequality, while climate change threatens to reverse achievements, and undermine future gains.²

Again, as put by Amina Mohammed:

Major new challenges have emerged, while existing ones have been exacerbated since the year 2000. Inequality has deepened. Environmental degradation has increased. People across the world are demanding more responsive governments and better governance and rights at all levels. Migration challenges have grown, and young people in many countries face poor prospects for decent jobs or livelihoods. Conflicts and instability have halted or reversed progress in many countries. Our future challenges are becoming more than ever cross-regional, intergenerational and transformative.³

Similarly, in the report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, the Panel notes that:⁴

We considered the massive changes in the world since the year 2000 and the changes that are likely to unfold by 2030. There are a billion more people today, with world

² Mohammed 2013 <http://goo.gl/TBJZjj>.

³ Mohammed 2013 <http://goo.gl/TBJZjj>.

⁴ UN High-level Panel *New Global Partnership* – see "Executive Summary". The report sets out a universal agenda to eradicate extreme poverty from the face of the earth by 2030 and deliver on the promise of sustainable development, and calls upon the world to rally around a new global partnership that offers hope and a role to every person in the world.

population at seven billion, and another billion expected by 2030. More than half of us now live in cities. Private investment in developing countries now dwarfs aid flows. The number of mobile phone subscriptions has risen from fewer than one billion to more than six billion. Thanks to the internet, seeking business or information on the other side of the world is now routine for many. Yet inequality remains and opportunity is not open to all. The 1.2 billion poorest people account for only 1 per cent of world consumption while the billion richest consume 72 per cent.

It is on the back of this that there is on-going initiative for a new development framework that would take forward the spirit of the Millennium Declaration and the best of the MDGs, with a focus on pressing global issues like poverty, hunger, water, sanitation, education and healthcare.

3 MDGs as a linchpin for global development

The adoption of the MDGs as a development strategy was partly a response to the failure of the strong economic growth of the late 1990s to address the needs of the billions of people caught in the web of extreme poverty. It was the Millennium Summit of September 2000 which provided a forum for the then 189 member states of the United Nations to re-affirm their commitment to multilaterally work towards a world in which eliminating poverty and sustaining development would have the highest priority. This affirmation was embodied in what is now globally referred to as the UN Millennium Declaration (MD).

The declaration, which embodies eight goals, is grounded on the six core values of equality, freedom, respect for nature, shared responsibility, solidarity and tolerance, which values are supported by eighteen targets benchmarked against forty-eight indicators.⁵

According to the Global Monitoring Report 2013,⁶ "the goals encompass and promote a universal standard of being free from grinding poverty, being educated and healthy, and having ready access to clean water and sanitation". They also provide "powerful benchmarks for measuring global progress in key development outcomes, calling attention to the enormous challenges in low-income countries. The goals have likely

⁵ Twining *General Jurisprudence* 34.

⁶ IMF and World Bank 2013 <http://goo.gl/gBxFlw> (hereafter *Global Monitoring Report 2013*) xi.

contributed to the progress, galvanising governments, donors, civil society, private agencies, and the media to support human development".⁷

These Goals are also about basic human rights like "the rights of each person on the planet to health, education, shelter, and security as pledged in the Universal Declaration on Human Rights (UDHR) and the United Nations' Millennium Declaration".⁸

As succinctly put by a report to the UN Secretary-General,⁹ the projection at the time of the conception of these ambitious goals was that if the Goals were achieved by 2015:

More than 500 million people will be lifted out of the web of extreme poverty. More than 300 million will no longer suffer from hunger. There will also be dramatic progress in child health. Rather than die before reaching their fifth birthdays, 30 million children will be saved. So will the lives of more than 2 million mothers.

Besides the projections above, it was also envisaged that achieving the goals would address the needs of "350 million ... people [who] are without safe drinking water and 650 million ... people" who "live without the benefits of basic sanitation, allowing them to lead healthier and more dignified lives" and also, "hundreds of millions more women and girls" would "go to school, access economic and political opportunity, and have greater security and safety".¹⁰

These goals are mutually reinforcing and inter-twined. As put by Ramesh Thakur,¹¹ the eradication of extreme poverty would translate into the reduction of infant mortality, the improvement of maternal health, and ensuring the sustainability of the environment. In the same vein, the attainment of universal primary education, the combating of endemic diseases and empowering women would ultimately aid in the effort to eradicate the grinding global poverty.

⁷ IMF and World Bank 2010 <https://goo.gl/kGA85s> (hereafter *Global Monitoring Report 2010*) 1.

⁸ UNDP *Investing in Development* 1.

⁹ UNDP *Investing in Development* 1.

¹⁰ UNDP *Investing in Development* 1.

¹¹ Thakur "From the Millennium to Global Development Goals" 70.

The next two sub-sections examine why the goals are important and the performance score card of the regions regarding the attainment of these lofty goals.

3.1 Why are the goals important?

Broadly speaking, these goals are important in several ways. First, on the international political level, the goals are the fulcrum on which development policy is hinged for the billions caught in the web of extreme poverty. As a development policy, they establish "a landmark framework for global development partnership in which the developed and developing countries agreed to take joint actions" towards the reduction of extreme poverty. Second, these goals represent "capital inputs - the means to a productive life, to economic growth, and to further development," though they are ends in themselves.¹²

As pointed out in the report to the UN Secretary-General, a "healthier worker is a more productive worker. A better educated worker is a more productive worker. Improved water and sanitation infrastructure raises output per capita through various channels, such as reduced illness. So many of these goals are part of capital accumulation, defined broadly, as well as desirable objectives in their own right".¹³

Third, for every member of humanity "these goals are a linchpin to the quest for a more secure and peaceful world". As plausibly posited in the same report, the "poor and hungry societies are much more likely than high-income societies to fall into conflict over scarce vital resources, such as watering holes and arable land - and over scarce natural resources, such as oil, diamonds, and timber."¹⁴ Therefore, there is a strong link between poverty reduction and global security.

The report contends further that:

Poverty increases the risks of conflict through multiple paths. Poor countries are more likely to have weak governments, making it easier for would-be rebels to grab land and vital resources. Resource scarcity can provoke population migrations and displacements that result in conflicts between social groups, as in Darfur, Sudan, in

¹² UNDP *Investing in Development* 4.

¹³ UNDP *Investing in Development* 4.

¹⁴ UNDP *Investing in Development* 6.

the wake of diminishing rainfall. Without productive alternatives, young people may turn to violence for material gain, or feel a sense of hopelessness, despair, and rage. Poor farmers who lack basic infrastructure and access to agricultural markets may turn in desperation to narcotics production and trade, such as growing poppy in Afghanistan or coca in the Andes. Many slums are controlled by gangs of drug traffickers and traders, who create a vicious cycle of insecurity and poverty. The lack of economically viable options other than criminal activity creates the seedbed of instability-and increases the potential for violence.¹⁵

3.2 Performance score card

As things stand now and with the target date set for reaching the MDGs in plain sight, it is obvious that the attainment of these lofty goals is no longer feasible. Nevertheless, progress has been made and the progress is "diverse across goals and regions".¹⁶

Putting the progress made across goals and regions in perspective, the Global Monitoring Report 2013 states that:

Global estimates indicate that targets such as the reduction of extreme poverty (MDG1.a), gender equality in primary education (MDG 3.a), access to safe drinking water (MDG 7.c), and improved lives for at least 100 million slum dwellers (MDG 7.d) have been reached. The proportion of people whose income is less than \$1.25 a day fell from 43.1 percent in 1990 to below 20.6 percent in 2010, leaving 1.2 billion people in extreme poverty. Gender equality in primary school enrolments was also achieved in 2010. Similarly, the goal of halving the proportion of people without sustainable access to safe drinking water has already been reached. At the same time, progress on the remaining MDGs has been lagging, especially for education and health-related MDGs. Global targets for infant, under-five, and maternal mortality (MDGs 4.a and 5.a), and to a lesser extent, access to basic sanitation (MDG 7.c) are significantly behind, and progress needs to be greatly accelerated if all of the goals are to be achieved by 2015. The goal for primary school completion should have been within sight by 2011, but only half the progress needed has been made.¹⁷

Using SSA as an example, the region is lagging furthest behind and seems to be off-track in meeting these goals. While other regions of the world have made significant progress in achieving many of the goals, there is a widespread shortfall for most of the MDGs in SSA countries.¹⁸ As pointed out in the Global Monitoring Report 2013, "SSA has achieved more than 40 percent of the progress required to reach, by 2015,

¹⁵ UNDP *Investing in Development* 6, 8.

¹⁶ *Global Monitoring Report 2013* 22.

¹⁷ *Global Monitoring Report 2013* 22.

¹⁸ *Global Monitoring Report 2013* 24.

the targets for gender parity, child mortality, maternal mortality, and access to safe water".¹⁹

Then, why is SSA the least developed of all the regions?

According to the UN Report, the region has become the epicenter of all kinds of development-related crises like "food insecurity, a rise of extreme poverty, stunningly high child and maternal mortality, and large numbers of people living in slums", coupled with the pernicious impact of climate change, all of which translate into widespread shortfalls in all the indicative parameters for the MDGs.²⁰ For example, while the proportion of undernourished people is falling slowly in most regions of the world, the over-all proportions remain high with little change in countries in SSA.²¹

4 Imperatives for the post-2015 development agenda

One of the key negotiated outcomes of the United Nations Conference on Sustainable Development (Rio+20) which took place in Rio de Janeiro, Brazil in June 2012, was the decision of the Member States to launch a process to develop a set of Sustainable Development Goals (SDGs), which will build upon the MDGs and converge with the post-2015 development agenda.

The UN Secretary-General's report on accelerating progress toward the MDGs and the issues for advancing the UN development agenda beyond 2015²² contends that "the post-2015 development framework is likely to have the best development impact if it emerges from an inclusive, open and transparent process with multiple stakeholder participation".

¹⁹ *Global Monitoring Report 2013* 24.

²⁰ UNDP *Investing in Development* 9.

²¹ UNDP *Investing in Development* 9.

²² UN (2011) Annual Report of the UN Secretary-General, paragraph 68_A66/126 (http://www.un.org/en/development/desa/policy/publications/general_assembly/a_66_126.pdf).

In the Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda,²³ the Panel reviewed the MDGs and concluded that:²⁴

The 13 years since the millennium have seen the fastest reduction in poverty in human history: there are half a billion fewer people living below an international poverty line of \$1.25 a day. Child death rates have fallen by more than 30%, with about three million children's lives saved each year compared to 2000. Deaths from malaria have fallen by one quarter. This unprecedented progress has been driven by a combination of economic growth, better policies, and the global commitment to the MDGs, which set out an inspirational rallying cry for the whole world.

On the back of this remarkable progress, the Panel argues that "it would be a mistake to simply tear down the MDGs and start from scratch." Hence the call for a new global partnership to eradicate poverty and transform economies through sustainable development.

The Panel further recommends that "to fulfil our vision of promoting sustainable development, we must go beyond the MDGs" and "a new development agenda should carry forward the spirit of the Millennium Declaration and the best of the MDGs, with a practical focus on things like poverty, hunger, water, sanitation, education and healthcare".²⁵

As argued in the report of the Panel, the goals did not address the plight of the poorest and most excluded people; the impact of conflict and violence on development; the imperatives of developing good governance and institutions that guarantee the rule of law, free speech and open and accountable government; and the need for inclusive growth to provide jobs.²⁶

Continuing, the High-Level Panel contends that the "the MDGs fell short by not integrating the economic, social, and environmental aspects of sustainable development as envisaged in the Millennium Declaration," and accordingly "[t]he

²³ This is a report which sets out a universal agenda to eradicate extreme poverty from the face of the earth by 2030, and deliver on the promise of sustainable development. The report calls upon the world to rally around a new global partnership that offers hope and a role to every person in the world.

²⁴ UN High-level Panel *New Global Partnership* - see "Executive Summary".

²⁵ UN High-level Panel *New Global Partnership* - see "Executive Summary".

²⁶ UN High-level Panel *New Global Partnership* - see "Executive Summary".

result was that environment and development were never properly brought together. People were working hard – but often separately – on interlinked problems".²⁷

As a way forward, beginning with the present development framework the Panel came up with questions like: "what to keep, what to amend and what to add" to the current MDGs, and after wide and varied global consultations with all stakeholders, the Panel recommended a new development framework that "needs to be driven by five big, transformative shifts: leave no one behind; put sustainable development at the core; transform economies for jobs and inclusive growth; build peace and effective, open and accountable institutions for all; and forge a new global partnerships".²⁸

This author agrees with the recommendations and conclusions of the High-Level Panel of Eminent Persons regarding the need to advance the development agenda beyond 2015. However, this writer argues that law has a critical role to play, should be at the heart of the architecture of the post-2015 development agenda, and that law can be a transformative force in the realisation of the post-2015 development goals.

Having said that, and bearing in mind the words of Seidman *et al*"... research without a theory apes the rat in the maze",²⁹ the focus in the next segment will be to interrogate law and development as a socio-legal theory.

5 Law and development as a theory

Law and development is a social theory of law which has as its core the idea of legal liberalism.³⁰ It views law as a means of social engineering and as a veritable tool for the attainment of development aspirations and objectives. The theory explores the interface between law and development or social change in a given society and the development functions of law, and argues that laws and legal institutions can play an independent instrumental role in achieving development or bringing about a social change.

²⁷ UN High-level Panel *New Global Partnership* – see - see "Executive Summary".

²⁸ UN High-level Panel *New Global Partnership*.

²⁹ Seidmann and Seidmann *State and Law* 354.

³⁰ Simon 2004 *Wm & Mary L Rev* 127.

Commenting on the evolutionary trend of legal liberalism, Lawan³¹ remarked that legal liberalism "came in three phases: the Law and Development Movement (LDM) of the 1970s, the legal reforms under the Structural Adjustment Programme (SAP) of the 1980s, and the World Bank's rule of law project, which started in 1990". According to him, "the last phase was introduced as one of the four elements of good governance which the World Bank identified as relevant for development. The other three elements are public sector management, accountability and transparency and information".³²

Law and development started as a specialised academic study in the United States primarily concerning the relationship between the legal systems and development, that is, the social, economic and political changes taking place in the developing countries.³³

Relying on modernisation theory,³⁴ the Law and Development Movement emerged and gained acceptance in the United States in the 1960s. The law and development theorists "adopted the notion that evolutionary progress [in the Third World] would ultimately result in legal ideals and institutions similar to those in the West".³⁵ They argued that the diffusion of Western law to the Third World would aid its modernisation and that modern law was the "functional prerequisite of an industrial economy".³⁶ The chief exponents of this school of thought, Trubek³⁷ and Galanter,³⁸ contributed significantly to the knowledge of law and development through literature and proved, though theoretically, that law is essential to economic development in as much "as it provides the necessary support for the functioning of a market system".³⁹ According to their thesis, they made a prediction that when rules that are universal in

³¹ Lawan 2009 <http://goo.gl/G3gUFX>.

³² Lawan 2009 <http://goo.gl/G3gUFX>.

³³ Zagaris 1988 *U Miami Inter-Am L Rev* 551.

³⁴ Modernisation theorists contended that a society's underdevelopment was both caused by and reflected in its traditional (as opposed to its modern) economic, political, social and cultural characteristics or structures; and that in order to develop, underdeveloped societies would have to undergo the same process of transition from traditionalism to modernity previously experienced by more developed societies.

³⁵ Zagaris 1988 *U Miami Inter-Am L Rev* 551.

³⁶ Trubek 1972 *Yale LJ* 44.

³⁷ Trubek 1972 *Yale LJ* 44.

³⁸ Galanter "Modernization of Law" 156.

³⁹ Galanter "Modernization of Law" 156.

nature are uniformly applied, they would give birth to predictability and make room for planning. They gave examples: contract law would secure expectation; property law would protect assets, and in theory would assist political development by providing the support required for a politically democratic state. Besides, government would be able to achieve its vision through law and the rule of law would prevent arbitrariness and oppression on the part of the government.⁴⁰

Just like the fate of modernisation theory, the law and development movement was short-lived, in that it was contradicted by events in the developing countries during that period in which it held sway. By the mid-1970s it was obvious that the theory was sterile, in that law was not achieving its intended objectives and had failed to function as it was anticipated in the theory. The two leading figures in the Movement, Trubek and Galanter, signalled the death of this movement in their article published in 1974.⁴¹ According to the duo, the movement failed because it was said to be an "ethnocentric and naïve" school of thought.⁴²

Their judgment of its failure was based on the observation that the theory contrasted sharply with the realities in developing countries, such as their typically having authoritarian governments, and the size of the disparities between the wealthy and the extremely poor, where it seemed as if laws were made to serve the interests of the economic elite and that the courts were weak and irrelevant. Another reason for the failure of the theory was that once law as an instrument of development or social change fell into the hands of an authoritarian and weak government, it was used to set and achieve goals supported by that government.⁴³

The decline of this school of thought could be traced to the American experiences with the civil rights movement and the Vietnam War. The experiences, most likely, must have led to an awareness of the gaps between the ideals of America and the reality of her legal system.⁴⁴

⁴⁰ Galanter "Modernization of Law" 156.

⁴¹ Trubek and Galanter 1974 *Wis L Rev* 1075-1076.

⁴² Scheepers *Practical Guide to Law and Development* 10.

⁴³ Scheepers *Practical Guide to Law and Development* 10.

⁴⁴ Davis and Trebilcock "What Role Do Legal Institutions Play in Development?" 14.

In the words of Scheepers, the criticism of the Law and Development Movement brought to the fore five issues of utmost importance to ensure "an effective role for law in the development process in developing countries". First, there is a need for empirical knowledge about developing countries. Second, there is the realisation that the picture of legal liberalism in the United States will be at variance with the reality in the developing world. Third, there are doubts about the universality of the experiences of developed countries. Fourth, there also exists scepticism with regard to the policy objective of the advanced countries, and lastly, there is an acceptance that instrumentalism is merely an aspect "of law, "not the essence of the rule of law".⁴⁵

Law and development has been the subject of intense legal study and research for over three decades. There are, however, wide and varied perspectives on development that offer insights into the relationship between law and development. These perspectives have had a considerable influence on the thinking about development in general and about the symbiotic association between law and development. These ever-evolving perspectives include: the modernisation theory, the central thesis of which was that the process of development can be fast-tracked by "transplanting legal institutions from developed Western countries to less developed countries";⁴⁶ dependency theory, which has had much influence on the law and development theory, and where the underlying argument is that the causes of underdevelopment lie in the history and structure of global capitalism; the economic perspective, which supports economic theories of development that focus primarily on policies that seek to promote aggregated economic growth rates; the welfarist perspective, which challenges the premise of many economic theories of development that conventional measures of economic growth capture all of the important aspects of human well-being; feminism, which emphasises policies that facilitate the integration of women into the economic system and combats gender-based discrimination in the productive sphere, the promotion of self-empowerment and the enhancement of the well-being of women in both public and private spheres; and the sustainable development perspective, that emphasises the causal link between

⁴⁵ Tamanaha 1995 *AJIL* 470-486.

⁴⁶ See Trubek and Galanter 1974 *Wis L Rev* 1075-1076.

environmental quality and human well-being, in terms of both the present and the future generations.

The perspectives discussed above underscore the instrumentalist assumption that underpins the law and development movement's view about the interface between law and development and sees law as a force which could be used to alter and influence human behaviour to achieve development.

Going forward in the discussion, the next segment examines the interface between law and development.

5.1 *The interface between law and development*

Based on law and development theory, it is clear that law has an inherent development function, and that in every society laws are needed to ensure the institutional changes needed to implement more effective development strategies.

In every society, primitive or civilised, there must be a body of rules which members of that society must regard as the standard of behaviour without which there may be anarchy or a state of anomie. This body of rules called "law" is aimed at the social arrangement of human existence. Without law, society becomes the devil's workshop, where the logic of the criminal reigns.

Therefore law is generally multi-functional in a contemporary society in that it regulates, creates order, determines outcomes, prescribes penalties, and outlaws certain acts or actions. It could be used as a tool of administration, control, crime prevention, rehabilitation and justice, and for collecting revenue and taxes,⁴⁷ all of which are outcomes of the development process.

Seidman *et al* define a law as "a normative rule promulgated by the state and ultimately implemented by state officials" which "may take many forms: a statute, a

⁴⁷ Scheepers *Practical Guide to Law and Development* 118.

local ordinance, subsidiary legislation, a ministerial rule, an administrative regulation, a military junta's decree".⁴⁸

On the other hand, just like "law", there is no universally accepted precise definition of "development". The word "development" is shifty and has been shifting over time.

The preamble to the United Nations' General Assembly's *Declaration on the Right to Development*⁴⁹ underscores wider, all-embracing components of the term "development" by defining it as:

... a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and all individuals on the basis of active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

In a response "to a tendency to confine or reduce the idea of poverty to low income in the case of individuals and low GDP in the case of countries", Amartya Sen came up with a formulation about development and posits that:

Development requires the removal of major sources of un-freedom: poverty as well as tyranny, poor economic opportunities as well as systemic social deprivation, neglect of public facilities as well as intolerance or the over-activity of repressive states.⁵⁰

Amartya Sen further explains development "as a process of expanding the real freedoms that people enjoy," and according to him, the focus "on human freedoms contrasts with narrower views of development, such as identifying development with the growth of gross national product, or with the rise in personal incomes, or with industrialization, or with technological advance, or with social modernization".⁵¹

Theo Scheepers also defines "development" and argues that:

Development is a people-centred process of change depending for its ultimate success on the capacity of people to manage the process through a variety of critical steps and phases within the limits of an institutional and value framework that will

⁴⁸ Seidmann *et al Africa's Challenge* 6.

⁴⁹ *United Nations Declaration on the Right to Development* (1986), United Nations General Assembly Resolution 41/128 of 4 December 1986.

⁵⁰ Sen *Development as Freedom* 3.

⁵¹ Sen *Development as Freedom* 3.

guarantee meaningful and lasting improvement of quality of life for all in a peaceful, stable and well-governed environment.⁵²

Leading the pack of those who see the relationship between law and development in a positive light, Hernando de Soto⁵³ forcefully argues that "The legal system may be the main explanation of the difference in development that exists between industrialised countries and those that are not industrialized".

Commenting on the relationship between law and development, Scheepers contends that law may either promote or restrict development. This depends on its aims and objectives as well as the manner in which legal rules are implemented.⁵⁴

On the topic of the institutional thesis, Trebilcock *et al* argue that the major preoccupation of law as a discipline is the "process and institutions by which laws and related policies are enacted, implemented and enforced".⁵⁵ According to these writers, "empirical research between ... a country's institutions and development outcomes" suggests that "improvements in the rule of law are likely to have dramatic impacts on development outcomes".⁵⁶

Similarly, Davis *et al* argue that though there is a paucity of conclusive proof "reforms in particular substantive areas of law such as property law, contract law and human rights law have been effective in furthering development". Nevertheless there is "evidence that enhancing the quality of institutions that enact, administer and enforce laws can have positive and significant effects".⁵⁷

In the same vein, Ulen⁵⁸ commenting in support of the link "between legal institutions and modern growth," points out that:

The broadest view holds that law is vital to national growth to the extent that it creates incentives for people to behave in a growth-enhancing manner. This means ... harnessing individual self-interest to serve the public good, inducing people to "do

⁵² Scheepers *Practical Guide to Law and Development* 8.

⁵³ De Soto *The Other Path* 185.

⁵⁴ De Soto *The Other Path* 185.

⁵⁵ Trebilcock and Predo *What Makes Poor Countries Poor?* 1.

⁵⁶ Trebilcock and Predo *What Makes Poor Countries Poor?* 1.

⁵⁷ Davis and Tebilcock 2001 *Third World Quarterly* 21.

⁵⁸ Ulen "Role of Law in Economic Growth and Development" 202.

good by doing well". Thus, a business organisation must have the appropriate incentives to produce and market so as to make a profit, but in doing so, must respect the interests of their customers and employees in not being harmed unreasonably by the products they are purchasing or producing. And the production process must not result in unwanted and uncompensated pollution of the air or water. Those seeking to make agreements that will bind them for a period of time must have confidence that those agreements will be kept or, if broken, result in adequate compensation. Those artists and inventors who seek to create new expressive works or new, useful, and non-obvious inventions ... should have reasonable expectations of being able to enjoy the economic benefits of their expressive and creative activities. Property owners should have reasonable security in their assets and know themselves to be free from unreasonable interference in the enjoyment and employment of those assets from other individuals, organizations, and the government.

In "large-scale aggregated studies" conducted to examine "the relationship between law, administration and development, essentially by examining the impact of factors such as the quality of the bureaucracy, level of corruption, likelihood of government repudiation of contracts, risk of government expropriation, and overall maintenance of the rule of law on economic development", it was established" that "these factors significantly influence levels of income and rates of growth and investment".⁵⁹ And one other compelling "finding is that "common law countries have experienced faster economic growth than civil law countries in recent decades".⁶⁰

Arguing in favour of the finding, Davis *et al* state that "The fact that the quality of bureaucracy and levels of corruption are significant determinants of growth rates suggests that as a general matter the way in which law is administered is important". This claim has also been reinforced by the finding that predictability on the part of the judiciary is positively correlated with growth and investment.⁶¹

One other strand of thought on economic growth is the one that finds the academic interest in institutions to be a critical determinant of national growth and development. Leading the vanguard is Douglas North, who is renowned for his long association with the "new economics," which postulates, *inter alia*, "that the legally and otherwise-determined rules that govern economic activity have a profound influence on the

⁵⁹ Davis and Tebilcock 2001 *Third World Quarterly* 26.

⁶⁰ Davis and Tebilcock 2001 *Third World Quarterly* 26.

⁶¹ Davis and Tebilcock 2001 *Third World Quarterly* 26.

ability of an economy to prosper".⁶² Citing an example, Ulen posits that "the mechanisms by which a society encourages and rewards risk-taking will have a deep effect on investments that might be necessary for growth. If a society discourages economic risk-taking or does not have appropriate safety nets to catch those who take risks and fail, then that society may not have sufficient investment in entrepreneurial activity".⁶³

Lastly, another compelling strand of scholarship in relation to the institutional thesis is the argument of the Acemoglu, Robinson, and Johnson. Acemoglu *et al*/through their writings argue "that there is persuasive theoretical and empirical evidence that those nations that have strong legal and social institutions have prospered and that those nations that do not have strong and stable institutions have not prospered".⁶⁴

Going forward, the research agenda in the next section is to provide an answer to the question: what then is a "development-driven approach to law"?

6 A development-driven approach to law

A development-driven approach to law denotes approaching development from the legal perspective, using the legal rules and institutions in a legal system to guide and support the development process to ensure that development policy, goals and objectives are implemented successfully.

In a way, all laws impact on the development of a country and its people in one way or another. In most cases, most laws will affect development individually; only a few laws are deliberately targeted at achieving specific development goals and objectives. Such laws are referred to as laws that have a development function or development-driven. These laws provide the legal framework within which development within a particular country is driven, and these are generally called "development law"⁶⁵ or "development-driven law".

⁶² North *Understanding the Process of Economic Change* 185.

⁶³ Ulen "Role of Law in Economic Growth and Development" 185.

⁶⁴ Ulen "Role of Law in Economic Growth and Development" 202.

⁶⁵ Ulen "Role of Law in Economic Growth and Development" 18.

Exploring the law as an instrument of social change in a book, scholars are unanimous as to its facilitative role and explain that development implies social change, which in turn implies institutional change. They submit that "to bring about social change, government has no other instrument than the law, broadly conceived" and "to transform an institution that perpetuates a social problem a government can only use law".⁶⁶ Two reasons for this are: first, with the complexity of present society it is imperative for the government to "promulgate and effectively implement rules that ... prescribe and contribute to shaping the relevant social actors' behaviours in desirable ways"; second, with the recognition of the doctrine of *ultra vires* as an integral part of the rule of law, "a government official has no power except what the law permits".⁶⁷

Development-driven law is based on development policy; development policy comes into existence through a policy-making process. This process starts when political leaders decide to respond to the needs, problems, ideals and aspirations of the citizens of a particular country. These issues and problems are identified by way of research inquiries and a consultation process in response to which a general discussion document is drafted.⁶⁸

Policy becomes law; and in order to make laws effective, people become involved in the implementation process, and the implementation of law and policy always depends for its validity and successful implementation on being constantly in congruence with what the people need.⁶⁹ However, policy, no matter how well-researched and drafted, cannot bring about development alone. Policies and laws will bring about the desired change only when they have been implemented effectively.⁷⁰

The problem, however, with many developing countries is that quite a number of laws that are part of their legal systems are not specifically targeted at facilitating or promoting development.

⁶⁶ Seidmann *et al Africa's Challenge* 20.

⁶⁷ Seidmann *et al Africa's Challenge* 20.

⁶⁸ Scheepers *Practical Guide to Law and Development* 18.

⁶⁹ Scheepers *Practical Guide to Law and Development* 18.

⁷⁰ Scheepers *Practical Guide to Law and Development* 18.

6.1 *The imperative for a development-driven approach to law to be at the heart of the post-2015 development agenda*

As mentioned earlier in this paper, law may either promote or restrict development. This depends on its aims and objectives as well as the manner in which legal rules are implemented.

Official policy is translated into written laws and policy becomes law through a law-making process. Development policies become development-driven laws through a similar channel or process. Typical development-driven laws include the laws that protect the vulnerable in society like women, children, the disabled, minority groups, the racially disadvantaged and the down-trodden or the "poorest of the poor".⁷¹ For example, the law provides the platform by which governments regulate and ensure the provision of public services to the public and offer protection of rights for all citizens alike.

From the above it may be seen that laws are critical in ensuring the institutional changes needed to implement more effective development strategies. Besides the enactment of appropriate laws, there is a need for availability of a well-functioning court system. Reasonably, a country with a well-functioning court system will be able to attract investment into the economy. Related to this is the capacity to enforce contracts. Where enforceability is a problem, this raises the risk of capital loss and hinders the flow of capital for economic development.⁷²

In underscoring the importance of legal rules and institutions in the development process, scholars have identified governance failure as one of the reasons for the widespread shortfall from most of the MDGs in low-income countries.

According to the report of the UN Secretary-General:

Economic development stalls when governments do not uphold the rule of law, pursue sound economic policy, make appropriate public investments, manage a

⁷¹ Scheepers *Practical Guide to Law and Development* 18.

⁷² Scheepers *Practical Guide to Law and Development* 18.

public administration, protect basic human rights, and support civil society organizations-including those representing poor people-in national decision making.⁷³

In other words, the following have been identified as the indicative parameters of governance failure in low-income countries of the world: not upholding the rule of law; a lack of the pursuit of sound economic policy; inappropriate public investment; bad management of public administration; a lack of protection of basic human rights; and a lack of support for civil society organisations.⁷⁴

As plausibly argued, political and social rights would "ensure equality before the law and fairness in the society across groups". By this, the vulnerable groups in the society would "be assured freedom from violence and from legal, economic, and social discrimination".⁷⁵

The pursuit of sound economic policies entails "a natural balance of responsibilities between the private sector and the public sector to secure sustained and widespread economic progress".⁷⁶ As the private sector remains the engine of growth in production, "the public sector establishes the framework and enabling environment for growth by setting sound macro-economic policies and providing such public goods as infrastructure, public health and education, and support for science and technology".⁷⁷

In the area of appropriate public investments, there is a need for heavy public sector investment in critical sectors of the economy, economic and social infrastructure in particular. Importantly, too, it must be noted that this public spending is the main driver of a private sector-driven market economy. The management of public administration needs to be efficient and transparent and driven by "administrators who are qualified, motivated, and adequately paid". In many of the low-income countries, especially in SSA, because of lack of adequate resources to incentivise the public sector, these countries suffer "from large-scale inefficiencies" and wastages.⁷⁸

⁷³ Scheepers *Practical Guide to Law and Development* 15-16.

⁷⁴ Scheepers *Practical Guide to Law and Development* 16.

⁷⁵ Scheepers *Practical Guide to Law and Development* 16.

⁷⁶ Scheepers *Practical Guide to Law and Development* 18.

⁷⁷ Scheepers *Practical Guide to Law and Development* 18.

⁷⁸ Scheepers *Practical Guide to Law and Development* 18.

Also critical to effective governance is virile civil society engagement and participation. Civil society participation ensures good governance, accountability and efficient development-driven public investments, which are products of well-informed decisions taken in the best interest of the generality of the citizens or the governed. In other words, "a vibrant civil society plays the role of watchdogs for the development and implementation of government policies".⁷⁹

The rule of law entails "security of private property and tenure rights, safety from violence and physical abuse, honesty and transparency in government functions, and predictability of government's behaviour according to law".⁸⁰ However, many of these countries have failed to achieve these minimum standards, more often than not because "upholding the rule of law requires institutions for government accountability', and unfortunately, "these institutions are missing".⁸¹

Under the failure of governance, a lack of honesty and transparency in government functions or corruption seems to be one of the greatest reasons for the wide-spread shortfall from most of the MDGs in most low-income countries.

This takes the discussion in the next section to the issue of corruption as an indicative parameter of governance failure in low-income countries, using SSA as an example.

7 Corruption as an indicative parameter of governance failure in SSA

Corruption as a notion is generally surrounded by a great deal of confusion. Many definitions have been formulated over the years and none of them seems to have captured all the ingredients.⁸² However, Transparency International (hereafter TI)⁸³ defines corruption as "the abuse of entrusted power for private gain". Boersma pointed out that this definition "entails three elements: an abuse of power; a power that is entrusted; and a private benefit".⁸⁴ The World Bank too, an international financial

⁷⁹ Scheepers *Practical Guide to Law and Development* 18.

⁸⁰ Scheepers *Practical Guide to Law and Development* 18.

⁸¹ Scheepers *Practical Guide to Law and Development* 18.

⁸² Boersma *Corruption* 25.

⁸³ Transparency International is the main non-governmental organisation working in the field of anti-corruption.

⁸⁴ Boersma *Corruption* 25.

institution which has lately been in the vanguard of the anti-corruption crusade, characterises "corruption" as "the abuse of public office for private gain".⁸⁵

Though the two definitions contain the same three elements, there is a divergence between them in that "the World Bank's definition only covers corruption in the public sector" and "not corruption in the private sector". This dichotomy presupposes that there are two major types of corruption - public and private sector corruption. While public sector corruption happens in the public sector of a country, the private sector corruption happens "within and between non-State actors, such as corporations, non-governmental organizations and other private institutions".⁸⁶

For the purposes of this paper however, the word "corruption" denotes the "abuse of public office for private gains".

Corruption manifests in a wide variety of forms such as bribery, embezzlement, trading in influence, the abuse of functions, and illicit enrichment.⁸⁷

Its virulence also manifests in various ways and is more felt in the developing world especially SSA "because it undermines economic growth, discourages foreign investment and reduces the resources available for infrastructure, public services and anti-poverty programmes".⁸⁸ Besides, it also undermines democratic institutions in that it weakens "legitimacy and accountability of governments" in power.⁸⁹

⁸⁵ Boersma *Corruption* 25.

⁸⁶ Boersma *Corruption* 25.

⁸⁷ See aa 15, 16, 18, 19 and 20 of *United Nations Convention against Corruption* (2003) (hereafter UNCAC). Also see a 4(1)(f) of the *African Union Convention on Preventing and Combating Corruption* (2003) and a 3(1)(f) of the *SADC Protocol against Corruption* (2001). As noted by Boersma, the phrase "abuse of functions" is a catch-phrase for other forms of conducts "that cannot be qualified as either bribery, embezzlement or trading in influence". He then classifies patronage and nepotism as manifestations of "abuse of functions". As argued by him, though such "practices are not included in the anti-corruption treaty ... they are generally regarded as types of corruption". The Oxford Dictionaries <http://www.oxforddictionaries.com/definition/english/patronage> defines "patronage" as "the power or right to control appointments to public office or the right to privileges". According to Boersma, in the modern use it connotes the abuse of this power by the appointing to office of political allies (Boersma *Corruption* 25). Nepotism, on the other hand, though not made mentioned of in any international and regional legal frameworks, is defined in the Oxford English Dictionary as "the showing of special favour or unfair preference to a relative in conferring a position, job, privilege, etc".

⁸⁸ Robinson *Corruption and Development* 2.

⁸⁹ Robinson *Corruption and Development* 2.

Also, Robinson points out that corruption "also reduce[s] the effectiveness of aid-funded development projects and weaken[s] public support for development assistance in donor countries".⁹⁰ He then concludes that corruption "is inimical to sustainable development, poverty reduction and good governance" and that it "not only affects poor people most directly, through the misallocation of public resources (including those derived from foreign aid) and routine exactions on the part of corrupt local officials, but it also keeps poor countries from becoming richer".⁹¹

Commenting on the poverty-outcomes of corruption in Africa, TI indicates that corruption is one of the factors perpetuating poverty, and that about 80% of Africans live on less than US\$ 2 a day.⁹²

On his part, Kututwa⁹³ writes that:

Corruption erodes the ability of a state to provide social services to its citizenry. The state's failure in this regard threatens human security because individuals' choices become limited. Much of the poverty in Africa can be traced to poor governance. Poor governance itself is caused by, among other things, corruption coupled with bad policies formulated and implemented by governments. Poverty in turn leads to instability and instability increases the insecurity of persons at the individual and national levels. Human security can only be achieved where public participation and accountability by the government to the citizenry are held as paramount and reinforced through building transparent and accountable systems.

Based on the foregoing, it may be concluded that corruption affects development in many ways.

First, it distorts public spending. As noted by Heymans and Lipietz,⁹⁴ "Distortions arise in three ways: from shaping the official priorities of government, by deflecting allocated resources away from their original purpose, and by undermining the tax base of government".⁹⁵ As they rightly argue, "Priorities are distorted and public resources deflected in corrupt regimes, because allocations go where corrupt officials and politicians personally gain the most" and "Corrupt officials also deflect funds that have

⁹⁰ Robinson *Corruption and Development 2*.

⁹¹ Robinson *Corruption and Development 2*.

⁹² Robinson *Corruption and Development 2*.

⁹³ Kututwa *African Anti-corruption Commitments* 2005.

⁹⁴ Heymans and Lipietz *Corruption and Development*.

⁹⁵ Heymans and Lipietz *Corruption and Development*.

been earmarked specifically for developmental goals away from their original purpose".⁹⁶

Second, it also undermines efficiency. "Time and money wasted through corrupt activities come at the expense of productive activities. This impacts both on public administration and private enterprise".⁹⁷

Third, corruption also discourages investment and growth. As explained by Heymans and Lipietz, "While some investors might well conduct their business through bribes, the overall implication of notoriously corrupt environments is that many potential investors avoid them. Incidents of corruption deter investment because higher bribes imply declining profitability on productive investments relative to rent-seeking investments, thus tending to crowd out the former".⁹⁸

Fourth, corruption undermines the quality of governance. It diminishes "governance, public trust in the state's credibility and the ethics of government and society".⁹⁹

Besides, one other area in which the menace of corruption also manifests is the area of the huge funds being illicitly taken out of the African continent, especially out of SSA. SSA as a region is going through a huge "financial haemorrhage". According to former president Thabo Mbeki, who is the head of the UN High Level Panel on Illicit Financial Flows from Africa, the continent of Africa, SSA in particular, "is presently losing at least \$50 billion every year through illicit fund flows".¹⁰⁰

Having examined corruption and its virulent effects, this paper moves on in the next segment to gauge the effects of corruption on the realisation of the MDGs.

7.1 The effects of corruption on MDGs

Corruption as an outcome of poor governance has been identified as a major impediment hindering the attainment of the current development goals. "Corruption

⁹⁶ Heymans and Lipietz *Corruption and Development* 14-15.

⁹⁷ Heymans and Lipietz *Corruption and Development* 17.

⁹⁸ Heymans and Lipietz *Corruption and Development* 18.

⁹⁹ Heymans and Lipietz *Corruption and Development* 19.

¹⁰⁰ Anon 2013 <http://goo.gl/2PTsbE>.

distorts the development process and overall actualization of the development agenda".¹⁰¹

In a report commenting on the negative impact of corruption on the attainment of MDGs,¹⁰² TI contends that "there is clear evidence that corruption has proven to be a major obstacle for countries and regions to reach the MDGs by 2015 as pledged". The report goes on to argue that "The costs of corruption can be explicit, implicit and hidden. Decision-makers must recognise these problems and find solutions that integrate the MDGs and anti-corruption agendas" and that "such measures need to be systematically built into development initiatives".¹⁰³

More directly, the report avers that:

There is ample evidence of the value of designing MDG action plans that adequately integrate governance and anti-corruption mechanisms. New analysis by TI demonstrates a strong and positive correlation between increased transparency, accountability and integrity and better MDG outcomes on education, health and water in more than 48 countries. In practice, country-level work shows how anti-corruption approaches have an MDG payoff: examples are drawn from Ghana and Liberia, among others.¹⁰⁴

For example, research "from across 50 countries shows that there is a clear, positive correlation between increased corruption and the reduced quality and quantity of education in a country".¹⁰⁵

The TI states that the "global Corruption Barometer confirms that corruption hits the poor people hardest - with devastating consequences".¹⁰⁶ Corroborating this view in another report, the TI argues that "When corruption plagues education, health or access to water, it is the poor who suffer the most. Poor families, when compared to other income groups, are especially burdened by demands for petty bribes. Corruption is turned into a regressive tax on needy households that sabotages attempts to

¹⁰¹ See http://www.transparency.org/topic/detail/poverty_and_development_

¹⁰² Transparency International *Anti-Corruption Catalyst*.

¹⁰³ Transparency International *Anti-Corruption Catalyst*.

¹⁰⁴ Transparency International *Anti-Corruption Catalyst*.

¹⁰⁵ Transparency International *Anti-Corruption Catalyst 2*.

¹⁰⁶ See http://www.transparency.org/topic/detail/poverty_and_development_

eradicate poverty as part of meeting the MDGs".¹⁰⁷ According to the report, "Corruption exacts a high cost on development" and "Abuses in one sector do not spare the others from collateral damage".¹⁰⁸

The report also suggests that "While statistical and empirical evidence reveals corruption's high price in development, other findings show that preventing the problem has a clear 'MDG payoff'. Data analysis and country examples provide the proof that transparency, accountability and integrity produce positive changes that promote MDG achievement".¹⁰⁹

Similarly, the UN Global Compact¹¹⁰ is of the opinion that corruption is one of the greatest challenges to the realisation of global development as it impedes "sustainable development with a disproportionate impact on poor countries and is corrosive on the very fabric of society".¹¹¹ Continuing, the same organisation contends that "the impact on the private sector is also considerable - it impedes economic growth, distorts competition and represents serious legal and reputational risks", and that "corruption is also very costly for business, with the extra financial burden estimated to add 10% or more to the costs of doing business in many parts of the world".¹¹²

As rightly pointed out by Ramesh Thakur,¹¹³ corruption is more of a governance issue. According to him, corruption is a failure of institutions and stewardship in public life, a lack of capacity to manage social, economic and political affairs by the rules of the game and with the help of effective checks and balances. In eradicating high levels of corruption, the appropriate policy would be to criminalise corruption and impose adequate penalties through the instrument of appropriate laws. Going further, the

¹⁰⁷ Transparency International *Anti-Corruption Catalyst* 4.

¹⁰⁸ Transparency International *Anti-Corruption Catalyst* 2.

¹⁰⁹ Transparency International *Anti-Corruption Catalyst* 5.

¹¹⁰ The United Nations Global Compact is a platform for business and non-business entities to proactively network and engage in areas of human rights, labour, environment, anti-corruption and contributing to UN goals in order to achieve the common objectives of building a sustainable and inclusive global economy. UN Global Compact 2015 <https://goo.gl/EczxZd>.

¹¹¹ UN Global Compact 2015 <https://goo.gl/ohsNkg>.

¹¹² See http://www.transparency.org/topic/detail/poverty_and_development_

¹¹³ Thakur "From the Millennium to Global Development Goals" 70.

institutional framework to address this insidious evil should include a well-resourced, well paid and well trained police force, civil service and judiciary.¹¹⁴

8 Concluding remarks

The core thesis of this paper is that with the deadline in plain sight, the prospect of realizing all the MDGs by the target date is very slim. The progress made so far under the current development framework has been examined and the reasons why most of the developing regions of the world are off track in achieving the targets set under the eight development goals have been unpacked. However, as pointed out earlier on in the paper, there are concerns that even if the current set goals under the MDGs framework are met, there has been an emergence of new challenges which have the potential of reversing whatever progress has been made under the current development framework. This underscores the imperative need for the post-2015 development agenda and the need to adopt a development-driven approach to law in that agenda. Law can play a significant role in the global development process and become a linchpin for the post- 2015 development agenda.

In conclusion, though it may be argued that the rule of law is not the only requirement for the attainment of the time-bound development goals, to drive the post-2015 development agenda for optimal results a development-driven approach to law is very critical. As Twining rightly argues, "In this cause law has a largely unobtrusive, but significant role to play".¹¹⁵ Steps should be taken to encourage the emergence of the legal institutions that will promote development in most of the developing world, especially the countries of SSA, where such pro-development or development-driven institutions do not exist.

¹¹⁴ Thakur "From the Millennium to Global Development Goals" 70.

¹¹⁵ Twining *General Jurisprudence* 34.

BIBLIOGRAPHY**Literature**

Boersma *Corruption*

Boersma M *Corruption: A Violation of Human Rights and a Crime Under International Law?* (Intersentia Antwerp 2012)

Davis and Trebilcock "What Role Do Legal Institutions Play in Development?"

Davis K and Trebilcock MJ "What Role Do Legal Institutions Play in Development?" Draft prepared for the International Monetary Fund's *Conference on Second Generation Reforms* (8-9 November 1999)

Davis and Tebilcock 2001 *Third World Quarterly*

Davis K and Tebilcock MJ "Legal Reforms and Development" 2001 *Third World Quarterly* 21-36

De Soto *The Other Path*

De Soto H *The Other Path: The Invisible Revolution in the Third World* (Basic Books New York 1989)

Galanter "Modernization of Law"

Galanter M "The Modernization of Law" in Weiner M (ed) *Modernization: The Dynamics of Growth* (Basic Books New York 1966) 153-165

Heymans and Lipietz *Corruption and Development*

Heymans C and Lipietz B *Corruption and Development: Some Perspectives* (Institute for Security Studies Pretoria 1999)

Kututwa *African Anti-corruption Commitments*

Kututwa N *African Anti-corruption Commitments: A Review of Eight NEPAD Countries* (African Human Security Initiative Pretoria 2005)

North *Understanding the Process of Economic Change*

North DC *Understanding the Process of Economic Change* (Princeton University Press New Jersey 2005)

Robinson *Corruption and Development*

Robinson M *Corruption and Development* (Frank Cass New York 1998)

Scheepers *Practical Guide to Law and Development*

Scheepers T *A Practical Guide to Law and Development: An Introduction to the Law Applicable to Development and the Development Management Process in South Africa* (Juta Kenwyn 2000)

Seidmann and Seidmann *State and Law*

Seidmann A and Seidmann R *State and Law in the Development Process* (Macmillan London 1994)

Seidmann *et al Africa's Challenge*

Seidmann A *et al* (eds) *Africa's Challenge: Using Law for Good Governance and Development* (New Jersey Africa World Press 2007)

Sen *Development as Freedom*

Sen A *Development as Freedom* (Oxford University Press Oxford 1999)

Simon 2004 *Wm & Mary L Rev*

Simon W "Solving Problems Versus Claiming Rights: The Pragmatic Challenge to Legal Liberalism" 2004 *Wm & Mary L Rev* 127-212

Tamanaha 1995 *AJIL*

Tamanaha B "The Lessons of Law and Development Studies" 1995 *AJIL* 470-486

Thakur "From the Millennium to Global Development Goals"

Thakur R "From the Millennium to Global Development Goals" in Wilkinson R and Hulme D (ed) *The Millennium Development Goals and Beyond: Global Development After 2015* (Routledge London 2012) 54-83

Transparency International *Anti-Corruption Catalyst*

Transparency International *The Anti-Corruption Catalyst: Realising the MDGs by 2015* 2nd ed (Transparency International Berlin 2010)

Trebilcock and Predo *What Makes Poor Countries Poor?*

Trebilcock M and Predo M *What Makes Poor Countries Poor? Institutional Determinants of Development* (Edward Elgar Cheltenham 2011)

Trubek 1972 *Yale LJ*

Trubek DM "Towards a Social Theory of Law: An Essay on the Study of Law and Development" 1972 *Yale LJ* 1-50

Trubek and Galanter 1974 *Wis L Rev*

Trubek DM and Galanter M "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies" 1974 *Wis L Rev* 1062-1104

Twining *General Jurisprudence*

Twining W *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press Cambridge 2009)

Ulen "Role of Law in Economic Growth and Development"

Ulen TS "The Role of Law in Economic Growth and Development" in Smits J and Faure M (eds) *Does Law Matter? On Law and Economic Growth* (Intersentia Cambridge 2011) 179-220

UN High-level Panel *New Global Partnership*

United Nations High-level Panel of Eminent Persons on the Post-2015 Development Agenda *A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development* (United Nations New York 2013)

UNDP *Investing in Development*

United Nations Development Programme *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (Earthscan London 2005)

Zagaris 1988 *U Miami Inter-Am L Rev*

Zagaris B "Law and Development or Comparative Law and Social Change: The Application of Old Concepts in the Commonwealth Caribbean" 1988 *U Miami Inter-Am L Rev* 549-593

International law instruments

African Union Convention on Preventing and Combating Corruption (2003)

SADC Protocol against Corruption (2001)

United Nations Convention against Corruption (2003)

United Nations Declaration on the Right to Development (1986)

United Nations Millennium Declaration (2000)

Universal Declaration on Human Rights (1948)

Internet sources

Anon 2013 <http://goo.gl/2PTsbE>

Anon 2013 "Jonathan, Mbeki Seek Check Against Illicit Fund Flows from Africa"
The Guardian, Nigeria (20 May 2013) <http://goo.gl/2PTsbE> accessed 21 June 2015

IMF and World Bank 2010 <https://goo.gl/kGA85s>

International Monetary Fund and World Bank 2010 *Global Monitoring Report 2010: The MDGs After the Crisis* <https://goo.gl/kGA85s> accessed 21 June 2015

IMF and World Bank 2013 <http://goo.gl/gBxFlw>

International Monetary Fund and World Bank 2013 *Global Monitoring Report 2013: Rural-Urban Dynamics and the Millennium Development Goals* <http://goo.gl/gBxFlw> accessed 21 June 2015

Lawan 2009 <http://goo.gl/G3gUFX>

Lawan M "Liberal Legalism and the Challenge of Development in Nigeria" 2009
LGD 1-20 <http://goo.gl/G3gUFX> accessed 21 June 2015

Mohammed 2013 <http://goo.gl/TBJZjj>

Mohammed A 2013 *Leaving No One Behind: Towards a Post-2015 Development Agenda* <http://goo.gl/TBJZjj> accessed 21 June 2015

Oxford Dictionaries

Oxford Dictionaries <http://www.oxforddictionaries.com/definition/english/patronage> assessed on 16 July 2015

UN Global Compact 2015 <https://goo.gl/EczxZd>

United Nations Global Compact 2015 *How to Participate* <https://goo.gl/EczxZd> accessed 21 June 2015

UN Global Compact 2015 <https://goo.gl/ohsNkg>

United Nations Global Compact 2015 *Sign the Anti-corruption Call to Action* <https://goo.gl/ohsNkg> accessed 21 June 2015

LIST OF ABBREVIATIONS

AJIL	American Journal of International Law
IMF	International Monetary Fund
LDM	Law and Development Movement
LGD	Law, Social Justice and Global Development
MD	Millennium Declaration
MDGs	Millennium Development Goals
SADC	Southern African Development Community
SAP	Structural Adjustment Programme
SSA	Sub-Saharan Africa
TI	Transparency International
U Miami Inter-Am L Rev	University of Miami Inter-American Law Review
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
Wis L Rev	Wisconsin Law Review

Wm & Mary L Rev
Yale LJ

William and Mary Law Review
Yale Law Journal

MAKING A CASE FOR A DEVELOPMENT-DRIVEN APPROACH TO LAW AS A LINCHPIN FOR THE POST-2015 DEVELOPMENT AGENDA

O Soyaju*

SUMMARY

The Millennium Development Goals (MDGs) are milestones on a long road to global development. They were adopted by consensus in 2000 as a policy framework to guide the global development process, ending poverty as the overarching goal. Time-bound, with quantified targets for addressing extreme poverty in its many dimensions, the goals have successfully drawn the attention of the world to the virulence of grinding poverty in low-income countries. However, with the deadline in plain sight it has become clear that many of the quantified targets set out in the Millennium Declaration (MD) in the year 2000 are no longer realistic. Recent reviews of the progress so far in achieving these goals suggest a marked discrepancy in outcomes across the regions. Besides, there are concerns that even if these set goals are met, new challenges have emerged with the potential of reversing whatever progress that has been made under the current development framework. For example, sub-Saharan Africa (SSA) as a region seems to be off-track in meeting these goals. While other regions of the world have made significant progress in achieving many of the goals, there is a widespread shortfall in the achievement of most of the MDGs in SSA countries. It is against this backdrop that there is an on-going process of articulating a new development agenda to consolidate and build on the successes of this current development framework, address new, pressing global concerns, and confront the shortfalls and gaps in the outcomes of the MDG framework. This paper argues that law has an inherent development function and can play a significant role in driving the proposed post-2015 development agenda. The paper therefore seeks to make a case for the adoption of a development-driven approach to law as a linchpin for the post-2015 development agenda.

* Olufemi Soyaju. LL.D (UP) MILD (University of Lagos) LL.M (Lagos State University) BL; Post-Doctoral Fellow and Academic Coordinator, LL.M (International Trade and Investment Law in Africa), International Development Law Unit, Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa. Email: femi.soyaju@up.ac.za.

KEYWORDS: Law, development, development-driven law, development law, development goals, development strategy, Millennium Development Goals, Millennium Declaration, Post-2015 development agenda, MDGs.