A call for Jamaica to support the inclusion of Access to Justice and the Rule of Law on the post-2015 UN's development agenda and as a goal.

The rule of law is the linchpin to eradicate corruption, crime, inequality, and poverty, some of the main problems plaguing developing countries globally, such as Jamaica. Thirteen years ago the United Nation's Millennium Development Goals (MDGs) set out to eliminate extreme poverty. This effort has led to significant progress, albeit much is left to be done. Since the time set to achieve the MDGs will expire in 2015, it is opportune time to rethink this development agenda. The global move to chart the course in writing the rules of the post-2015 game has already started and is mounting much attention. It is a chance to correct wrongs and fill gaps. Specifically, this is an opportunity to add our voice, as Jamaicans and members of Caricom, to the cause for the inclusion of a goal for justice, inclusive of the Rule of Law. The United Nations' Secretary-General, His Excellency Ban Ki-moon has already pledged to entertain public views worldwide from non-governmental organizations (NGO), groups and thinkers, before commencing intergovernmental negotiations.

According to the United Nations Development Programme (UNDP), about four billion people are excluded from the rule of law and are thereby living without the protections of the law. They live without access to their rights and are vulnerable to exploitation and violence. Corruption is perceived as rampant globally, including in Jamaica, according to the most recent Transparency International Corruption Perception Index. It can be said that the MDGs tend to exclude the poorest, vulnerable and most marginalised, which is unfortunate. It is therefore hoped that the new post-2015 development goals will, among others, protect and empower them, while promoting and fostering democracy, freedoms and economic growth. Justice and the Rule of Law, as one of the clear new post-2015 development agenda and goal, could be a medium to channel such development, inclusion and access to justice.
The initial Millennium Declaration included consensus on the need to take steps to "promote democracy and strengthen the rule of law, as well as respect for all internationally recognised human rights and fundamental freedoms". Unfortunately, that agenda did not materialise to be included in the MDGs, on the basis that progress in the rule of law, human rights, and democracy was not properly measurable. However, with the advent and improvement of international indices that measure and highlight levels of rule of law worldwide, and the creation of the indicators used to measure same accordingly, such as the World Justice Project Rule of Law Index, such an excuse to exclude justice and rule of law from the UN development agenda, and as a goal, is now untenable, especially where the benefits of promotion and adherence to the rule of law are overwhelming as a source of economic, social and legal development.

Rationale: A just society

Promoting and adhering to the rule of law should result in a more just society, the building of a culture of rights and development. Justice is one of the developmental goals in the National Strategic Development Plan, Vision 2030 Jamaica. Likewise, adherence to the rule of law is one of the national commitments in the recent Social Partnership Agreement of Jamaica. The rule of law is a principle that is frequently spoken about and is quintessential to development, yet, ironically, little is known about it. It has generally been accepted as a principle of governance, whereby no one is above the law, which is accessible and equally applicable to all, inclusive of the state.

Tom Bingham, Britain's former senior law lord, extensively described the rule of law. He echoes senior rule of law and development expert Professor William T Loris's sentiments in noting that the rule of law is not an arid legal doctrine, but the foundation of a fair and just society, a guarantee of responsible government and an important contributor to economic growth. Like the authors of the World Justice Project Rule of Law Index, I am of the opinion that the rule of law comprises: i) states’ accountability for and presence of clear and publiced laws; ii) accessible, fair and effective process of law; and iii) timely justice by a competent and independent tribunal. There is a global move for laws to be in keeping with the universally accepted human rights, norms and standards. The rule of law in its international legal order or context, as defined by the Secretary-General of the UN, also supports this move.

For the UN, the rule of law, "...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." Likewise, Scott J Shapiro sees the rule of law and its legality as valuable, in that it enables members of the community to predict official activities and to plan their lives effectively. It also constrains behaviour and thereby protects citizens from arbitrary and discriminatory actions by officials. Likewise, legal systems have to balance the needs for guidance, predictability and constraints, versus benefits of flexibility, spontaneity and discretion. While legal systems must heed the rule of law, they should have views about how the rule of law itself is best heeded.

The rule of law in Commonwealth Caribbean jurisprudence

The recent Caribbean Court of Justice (CCJ) decision, Shanique Myrie v The State of Barbados and the State of Jamaica [2013] CCJ 3 (OJ), is seminal in the development of regional jurisprudence. Inter alia, it reinforces the primacy of the rule of law and its central principles of order and security, legitimacy, checks and balances, fairness, and effective application, which include consistency, predictability and procedural and legal transparency, in regionalism and Caricom law. The fact is, as we develop as a region, we will chart a new course, which may require that in the absence of precedents, the independent judiciary may have to resort directly to principles of the rule of law. In the CCJ’s own words, "further, if domestic incorporation were a condition precedent to the creation of Community rights... This would be untenable as it would destroy the uniformity, certainty and predictability of Community law."[Para. 53].

Likewise, a great part of embracing the rule of law is to ensure that the law-making processes are endogenous, or reside in the hands of locals or Caricom nationals, and not in our former colonisers. Thus, perhaps we have matured enough as a region, for Jamaica and others, to embrace the CCJ, an indigenous regional court of last resort, in its appellate jurisdiction. To allay fears, comparative legal studies of international and regional courts and their organisational structure, systems and operation, reflect that the CCJ has enviable, built-in checks and balances to ensure rule of law observance in its adjudication.

A source of cross-sectoral development
The rule of law is a major source of sustainable economic development. It guarantees accountability, predictability and transparency in governance. Thus, adherence to these principles protects business confidence, attracts investments and ensures respect for and enforcement of property rights and freedoms. The World Development Report 1997, The State in a Changing World, outlined their findings that unpredictability and inconsistent changes in law and policy affect negatively on the feeling of security of investment, property and environment. The lack of credibility also reduces investments, growth and the return on development projects. The report also illustrated that, "investment suffers because entrepreneurs choose not to commit resources in highly uncertain and volatile environments… in a low-credibility environment, growth suffers… the credibility of rules affect not only the business environment, but also the environment for implementation of development projects". Likewise, governments' credibility can undermine private investment, as private investors are more inclined to invest in countries where there are sound, rational rules of the game.

Recently, Professor Tommy Koh, ambassador-at-large in Singapore's Ministry of Foreign Affairs, in applying the Singapore development model, highlighted that a strong rule of law, zero tolerance for corruption, human capacity development and a business-friendly economy, are crucial strategies to achieve economic growth and sustainable development in Jamaica. While I do not embrace the one-size-fit-all approach, I concur with Professor Koh's strategies. I further advocate, however, for endogenous development of the law, its processes and reform, which are more effective when demanded locally, law being viewed as a cognitive institution. The demand of citizens for performance from their "duty-bearers" in government drives effectiveness and accountability. It follows also that policymakers prioritise and invest in human capacity development. Rule of law development expertise should be encouraged and utilised at all instances, while reliance on external experts should gradually fade. This is especially necessary in light of the current IMF deal and the conditional reforms it facilitates.

This is Part One of this paper. See next Tuesday's Observer for Part Two.

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