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# Freedom from Poverty as a Human Right

Volume 3



## Economic Perspectives

Edited by Bård A. Andreassen,  
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Freedom from Poverty as a Human Right  
*Economic Perspectives*

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## Foreword

The present publication is a selection of papers commissioned as part of a UNESCO project on poverty and human rights launched in 2002.\* The project focuses on conceptual analyses of poverty understood as a human rights issue.

The first phase of the project aimed to understand poverty and clarify its relationship to human rights and corresponding duties from the perspective of a philosophical analysis. Scholars within and beyond the philosophical community were invited to analyse the key concepts pertaining to poverty and human rights. One of the main challenges here was – and remains – to investigate how UNESCO could stimulate the commitment of the world community by addressing the moral obligation to take action to eradicate poverty and to contribute to the full realization of the fundamental basic rights of all peoples without discrimination.

In this context, UNESCO has published the collection *Freedom from Poverty as a Human Right*, composed of four volumes, each addressing the issue within a particular scope. A philosophical approach was developed in *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor*, edited by Thomas Pogge; a legal approach was taken in *Freedom from Poverty as a Human Right: Law's Duty to the Poor*, edited by Geraldine Van Bueren; a political science perspective was elaborated in *Freedom from Poverty as a Human Right: Theory and Politics*, edited by Thomas Pogge; and the economics point of view was developed in *Freedom from Poverty as a Human Right: Economic Perspectives*, edited by Arjun Sengupta, Stephen Marks and Bård Andreassen.

The objective of this volume is to contribute to an analysis of the relations between poverty eradication and human rights. It attempts to answer the question of how poverty, defined as a human rights violation, can be addressed from an economics approach, namely taking into consideration economic structures, processes and policies. This volume gathers the contributions of leading economists and social scientists who apply their particular modes of analysis to the question, while linking it to the issue of individual and collective responsibilities in the field of human rights. As the concern for the fulfilment and respect of human rights has become central on the international public scene – namely in multilateral fora, development institutions, academia, the media, and so on – leading economists and social scientists can contribute significantly to a reflection on this issue.

Moreover, there is an apparent need to explore the interfaces of economic choices and priorities on the one hand, and promotion and protection of normative standards on the other.

A given goal does not have a unique economic path. Economic theories can therefore help address poverty as a human rights violation and facilitate the search for long-term solutions.

\* Project originally entitled: 'Ethical and Human Rights Dimensions of Poverty: Towards a New Paradigm in the Fight against Poverty'.

To be effective, the right *not* to be poor must become a part of a moral consensus within society, which means that rights have to become inherent to our societies and that we accept that responsibility concerns us all. One of the crucial questions here concerns the source of the moral judgment regarding poverty, particularly global poverty, and how to deal with the latter worldwide: what kind of actions should be pursued? By whom? Which actors should be involved and how? To what level of responsibility? Are aid and debt parts of these actions? Should one go beyond them?

We also have to look deeply at the reshaping of many legal systems around the developing world, in particular under the social pressure of civil society actors. The role and actions of the latter must also be studied and evaluated since it is fundamental to know how and to what extent they help to foster the efficiency of the legal structures in favour of the poorest, bringing them 'into the light' and allowing them to be treated and to live as citizens rather than as 'stigmatized' persons.

Constitutional rights are of utmost importance, but struggling with efficacy against poverty also means planning in order to schedule and implement reforms. Here it is a matter of changing mentalities and behaviours. Democracy can never be understood as an everlasting good, nor taken for granted. One has always to fight to keep it alive and efficient for each and every citizen, regardless of colour, belief or economic status. Given that each citizen is above all a human being, he or she has to be treated and considered as such by all institutional, state, judicial and economic structures.

Global justice is precisely an issue in political philosophy that stems from the fact that the world is not a fair one for all. Billions of people are extremely poor, while a few are tremendously rich; the former often lack the protection of the law, while the latter are sometimes above the law. Many people still live under hard regimes. Many are exposed to extreme violence, disease and starvation. Many die prematurely. How should we understand and respond to these facts? What do the inhabitants of the world owe one another? What institutions and what ethical standards should we recognize and apply worldwide? What could be the foundations for a sustainable respect of socioeconomic rights? Who should be accountable for it?

Three related questions, concerning the extent of justice, justice in the distribution of wealth, and the institutions accountable for justice, are central to the discussion on global justice.

Today, 3 billion people are living below the poverty line established by the World Bank at US\$2 a day. Can we be satisfied when faced with this data? Is this allocation a fair one? Do the wealthy have a duty to assist the poor, and is aid purely an issue of charity, not morally required? What institutions would be most relevant to realize the ideal of global justice?

The international community has set, as a priority for the millennium, the Millennium Development Goals (MDGs), the first of which is to 'eradicate extreme poverty and hunger'. The quantitative target, by which success in poverty eradication will be measured, is to reduce by half, by 2015, the proportion of people living in extreme poverty.

But this approach does not exhaust the issue. For one thing, the intended target will not easily be reached. And even if it were successfully achieved, the basic question would still remain untouched: can persistent poverty be tolerated at all?

The problem has to be tackled from another angle. As long as we consider poverty as a quantitative, natural deficit to be made up, the political will to reduce it will not be energized. Poverty will only cease when it is recognized as a violation of human rights and, as such, abolished.

Of the five families of human rights – civil, political, cultural, economic and social – proclaimed by the Universal Declaration of Human Rights, poverty violates the fifth, always; the fourth, generally; often the third; sometimes the second; and even the first. As was recognized at the World Conference on Human Rights held in Vienna in 1993, there is an organic link between poverty and the violation of human rights.

Because when we talk about poverty we talk about lack of access, lack of resources, deprivation of capabilities and lack of power for some, in societies where others do have access, resources, capabilities and power. We are therefore talking about inequalities. Inequality is a human rights issue.

When we talk about poverty, we do not talk about groups or classes in society. We talk about masses, about figures, about people who are voiceless and hence invisible, in other words people who are denied their individual dignity. Now the preamble of the Universal Declaration of Human Rights starts by recognizing that dignity is inherent to all members of the human family. When you take that away you exclude those people from the human family; here again we are talking about human rights.

The preamble further states that the highest aspiration of humankind is the attainment of a world free from terror and misery. That aspiration is blatantly defiled by the persistence of poverty. Here again we are talking of human rights.

The issue for me therefore is not poverty. The issue is human rights – all human rights, political and social. It is about achieving universality in the regime of implementation so that no one is excluded (Art. 7 of the Universal Declaration of Human Rights). It is about monitoring and combating violations so that everyone can obtain protection and redress under a regime of law (Art. 8). It is about exercising reason and conscience and acting towards one another in a spirit of brotherhood (Art. 1). It is about creating a social and international order that makes possible the enjoyment of all the rights contained in the Declaration (Art. 28). It is about effective implementation of Art. 30, which stipulates that nothing in the Declaration can be interpreted as giving a right to anyone to take an action aimed at the destruction of the rights and freedoms contained in the Declaration. Such violations must be abolished; poverty therefore must stop. The claim sounds naïve, and may even bring a smile to many lips.

Condescension would be misguided, however, as well as inappropriate. There is nothing to smile at in distress, misery, dereliction and death, which march in grim parade with poverty. We should, indeed, be ashamed. But the issue is also substantive: the abolition of poverty is the only fulcrum that offers the leverage to defeat poverty.

Leverage, in this case, comes from investments, national and international reforms, and policies to remedy the deficiencies of all kinds that are the backdrop to poverty. Fortunately, humanity now has the means to answer the challenge: never have we been so rich, so technically competent and so well informed. But in the absence of a fulcrum these forces cannot act as effectively as they might, and without this fulcrum political will cannot be galvanized to organize redistribution on a global scale.

If, however, poverty were declared to be abolished, as it should with regard to its status as a massive, systematic and continuous violation of human rights, its persistence would no longer be a regrettable feature of the nature of things. It would become a denial of justice. The burden of proof would shift. The poor, once they have been recognized as the injured party, would acquire a right to reparation for which governments, the international community and, ultimately, each citizen would be jointly liable. A strong interest would thus be established in eliminating, as a matter of urgency, the grounds of liability, which might be expected to unleash much stronger forces than those that compassion, charity, or even concern for one's own security, are likely to mobilize for the benefit of others.

The violations of human rights here are the policies, legislations and actions (or lack thereof) that constitute breaches of the state's obligations encapsulated in the international human rights treaties it has ratified. I am speaking here of any policy, legislation or public action (national or international) that plunges whole categories of people into situations of poverty, maintains them in that state or prevents them from overcoming that condition.

By endowing the poor with the rights they are entitled to, the abolition of poverty would obviously not cause poverty to disappear overnight. It would, however, create the conditions for the cause of poverty to be enshrined as the highest of priorities and as the common interest of all – not just as a secondary concern for the enlightened or merely charitable. No more than the abolition of slavery caused the crime to vanish or the abolition of political apartheid ended racism and discrimination, no more than the abolition of domestic violence or genocide have eliminated such violations of the human conscience, will the legal abolition of poverty make poverty disappear. But it will place poverty in the conscience of humankind at the same level as those past injustices, the present survival of which challenges, shocks, and calls us to action.

The principle of justice thus implemented and the force of law mobilized in its service are of enormous power. This, after all, is how slavery, colonialism and apartheid were ended. But while there has been an active struggle against colonialism and apartheid, poverty dehumanizes half the planet to a chorus of utter indifference. It is, undoubtedly, the most acute moral question of the new century to understand how such massive and systematic violations, day in, day out, do not trouble the conscience of the good people who look down upon them. While equality of rights is proclaimed, growing inequalities in the distribution of goods persist and are entrenched by unjust economic and social policies at national and global levels.



To deal with poverty as a violation of human rights means going beyond the idea of international justice – which is concerned with relations between states and nations – towards the creation of global justice and global development, which applies to relations between human beings living in a global society and enjoying absolute and inalienable rights – such as the right to life – that are guaranteed by the international community. Such rights do not belong to the citizens of states but, universally, to human beings as such, for whom they are the necessary condition of life on the planet. The principle of global justice thus establishes the conditions for a fairer distribution of the planet's resources between its inhabitants in the light of certain absolute rights, thus making global development possible.

What we must note is that today nearly 3 billion people receive only about 1.2 per cent of world income, while 1 billion people in the rich countries receive 80 per cent. An annual income transfer of 1 per cent from one group to the other would suffice to eliminate extreme poverty. Yet in fact, the transfer continues to operate in the opposite direction, despite efforts towards debt reduction and development aid.

At the end of the day, there is a simple choice. Not between a 'pragmatic' approach, based on aid granted by the rich to the poor, and the alternative sketched here. The real choice is between the abolition of poverty and the only other way for the poor to obtain rights, which is for them to take them by force. Needless to say, the latter solution usually causes misery for all: social strife, rampant crime, fundamentalism, mass uncontrolled migration, smuggling and trafficking are the only things to flourish. But what moral basis do we have to demand moral behaviour from people to whom we deny any opportunity to live a healthy life? What rights have we to demand that they respect our rights? The sombre option will become increasingly probable if nothing is done – or too little, as tends to be the case with pragmatism, however deserving.

And what are the *threats* of this sombre perspective? We are all familiar with them: security states established to control migrations and migrants, with those controls eventually extended to citizens; security laws to confront 'terrorists' that eventually curtail the freedoms of all; mounting xenophobia, political alignment with blood, race and religion, which eventually undermine democracy; and 'preventive' wars to grab and control natural resources, leading to chaos, lawlessness and insecurity for all. Such a global world is obviously undesirable for the majority of the world population.

The options thus come down to a single choice, which is the only one compatible with the categorical imperative to respect human rights: to abolish poverty in order to eradicate it and to draw from this principle all the consequences that free acceptance of it implies. The proclaimed abolition must, first, create rights and obligations, and thereby mobilize the true forces that can correct the state of a world plagued by poverty and injustice. By simply setting an effective and binding priority, abolition changes the ground rules and contributes to the creation of a new world. Such is the price to pay to give globalization a human face; such is also the greatest opportunity for global development that we can hope to grasp.

Ultimately, the way is to mobilize public opinion and the global citizenry for a universal human rights regime that is within our reach. Its emergence has been lengthy – very lengthy. From the Universal Declaration of Human Rights to the Rome Conference that established the International Criminal Court, the emergence of universal justice has been defiled by acts of barbarity that have grossly infringed human dignity. Now, however, the legal instruments are there, and, step by step, experiments and initiatives give hope. It remains to energize political will through unceasing mobilization, true thinking, the contributions of experts and support for the victims.

What promises does such global justice bear? Let me quote Nobel Laureate Jose Saramago: ‘Were such justice to exist, there would no longer be a single human being dying of hunger or of diseases that are curable for some but not for others. Were such justice to exist, life would no longer be, for half of humanity, the dreadful sentence it has hitherto been. And for such justice, we already have a practical code that has been laid down sixty years ago in the Universal Declaration of Human Rights, a declaration that might profitably replace, as far as rightness of principles and clarity of objectives are concerned, the manifestos of all the political parties of the world.’

Indeed, all too often we care only for victims of our own creed, of our own political persuasion. All too often we tend to explain away violations visited on the other side. The challenge for the Human Rights movement at this historical juncture and as we celebrate the sixtieth anniversary of the Universal Declaration of Human Rights, is clearly to stand up against the dehumanization of the other.

From its side, UNESCO does not want merely to inject a human rights approach into poverty eradication strategies, but, conversely, to bring poverty into the realm of human rights. The advantage of defining poverty as a human rights issue means that the response to such questions is political will and the mobilization of public opinion to galvanize it.

Another relevant aim for UNESCO is to make sure that the poor are really seen as victims, and not as ignorant people who do not know their rights, and who would, above all, have to be educated. In this case, the response to poverty is education. But the poor lack capacity, so empowerment is a paramount answer. They know perfectly well that when police officers are beating them, their rights are being violated. They know that they should not be in prison without unbiased judgment. People know intuitively when their rights are being violated.

In this regard, it suffices to read the reports of the World Bank,\*\* where we can see clearly that the poor themselves have identified the reasons for the continuous state of inequality: lack of participation, their treatment by the police, etc. The issue is not so much one of telling them about their rights.

Another goal is to identify the perpetrators. If we say that a right has been violated, that there is a victim, then there is somebody who has violated that right. And there we need to go beyond governments and try to identify those individuals who have taken the decision. ‘Who took the decision in my country to introduce

\*\* Narayan, D. 2000. *Voices of the Poor*. Washintown, DC, World Bank.

school fees in primary education that I cannot afford to pay?’ Those who signed the decrees introducing school fees in primary education, and therefore excluded poor people from primary education, are perpetrators of a human rights violation.

Finally, we must succeed in unifying the different actors. UNESCO cannot work directly at the community level, but it has to work with governments, NGOs, and the academic community. UNESCO does not work in villages; NGOs are better placed to work there. These are the key stakeholders that can develop campaigns that will change the approach to poverty.

There is an imperative work of awareness-raising on the reality of poverty, which one often does not know as well as one thinks. It is necessary to think ‘outside the box’, e.g. to understand that although the persistence of poverty does depend on local factors, it is also linked to the history of inequality among nations (slavery, colonialism, forced work, apartheid, etc.). Poverty and inequality are correlated, and current injustices reflect past injustices. We have to remember that we have a moral responsibility and a legal obligation regarding poverty and the poor.

Several statements have been encouraging in this very endeavour. I would like to mention a recent Note by the United Nations Department of Economic and Social Affairs (UNDESA) on the International Day for the Eradication of Poverty and the sixtieth anniversary of the Universal Declaration of Human Rights, where it is explicitly mentioned that ‘the international community has acknowledged that poverty is a violation of human rights and that promoting human rights can reduce poverty.’\*\*\* It is also worth recalling the Report of the Secretary-General of the United Nations on the Eradication of Poverty, in which it was said: ‘The fact that poverty persists in many parts of the world points not only to an inequitable distribution of economic, social and political opportunities, but also to a violation of human rights.’\*\*\*\*

Let us hope that these statements will be closely followed by concrete actions.

We must never fail to remember, as pointed out during the celebrations of the sixtieth anniversary of the Universal Declaration of Human Rights, that poverty is never just a matter of being deprived of food. It is much more than this and fully implies all human rights, as well as global ethical governance.

Pierre Sané

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\*\*\* <http://www.un.org/esa/socdev/social/intldays/IntlDay/2008intlday.html>

\*\*\*\* Observance of the International Day for the Eradication of Poverty. Report of the Secretary-General, 5 September 2006 (A/61/308).

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## Table of Contents

<i>Foreword</i>	v
<i>List of Contributors</i>	xiv
<i>List of Abbreviations</i>	xix
<i>Introduction</i>	1
<i>Bård A. Andreassen, Stephen P. Marks and Arjun Sengupta</i>	
<b>Economic Perspectives on the Relationship between Human Rights and the Structures of Poverty</b>	11
1. Attacking Poverty: What is the Value Added of a Human Rights Approach? <i>Ravi Kanbur</i>	13
2. Economics and Human Rights Perspectives on Poverty Reduction <i>Stephen P. Marks and Ajay Mahal</i>	19
3. Economic Globalization and the Human Rights of Poor People in Rural Areas <i>Asbjørn Eide and Wenche Barth Eide</i>	55
4. The Human Rights Approach to Poverty Reduction <i>Siddiqur R. Osmani</i>	85
5. Informality, Poverty and Gender: An Economic Rights Approach <i>Martha Alter Chen</i>	105

<b>Economic Perspectives on a Sectoral Approach to Poverty and Human Rights</b>	131
6. Agricultural Production Collectivities and Freedom from Poverty: The Case for a Group Approach <i>Bina Agarwal</i>	133
7. Realizing the Human Right to Health in Low-Income Countries <i>Lisa E. Sachs and Jeffrey D. Sachs</i>	169
8. The Right to Work and the Reduction of Poverty: An Economist's View <i>Gerry Rodgers</i>	195
9. Social Security and Children: <i>Malcolm Langford</i>	211
10. Hunger and Human Rights: The Appealing Rhetoric versus Dreary Reality <i>Dan Banik</i>	237
<b>Economic Perspectives on Poverty and Human Rights in the Global Economy</b>	261
11. Trade Liberalization, Reduction of Poverty and Human Rights <i>Guiguo Wang</i>	263
12. Human Rights and Extreme Poverty: An Economist's Perspective <i>Arjun Sengupta</i>	293
13. Why Should Human Rights Issues be Addressed by the World Bank? <i>Desmond McNeill and Luis Sanchez</i>	319
<b><i>Index</i></b>	337

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## List of Abbreviations

AGRA	Alliance for a Green Revolution in Africa
AKST	Agricultural knowledge, science and technology
CESCR	Committee on Economic, Social and Cultural Rights
CFA	Comprehensive Framework for Action on the Global Food Security Crisis
CLEP	Commission on the Legal Empowerment of the Poor
CMP	Common Minimum Programme (India)
CRC	Convention on the Rights of the Child
CROP	Consortium of Research on Poverty
CSO	Civil society organization
DFID	Department for International Development (UK)
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EC	European Commission
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FIAN	FoodFirst Information and Action Network
FIVIMS	Food Insecurity and Vulnerability Information Mapping System
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GSP	Generalized System of Preference
IAASTD	International Assessment of Agricultural Science, Knowledge and Technology
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ICLS	International Conference of Labour Statisticians
ILC	International Labour Conference
ILO	International Labour Organization
IMF	International Monetary Fund
LDC	Least-Developed Countries
MDG	Millennium Development Goal
MFN	Most favoured nation
MSF	Médecins Sans Frontières
NGO	Non-governmental organization
NIEO	New International Economic Order
NREGA	National Rural Employment Guarantee Act (India)
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development

OTDS	Overall Trade-Distorting Domestic Support
PPP	Purchasing Power Parity
PRSP	Poverty Reduction Strategy Paper
SCM	Subsidies and Countervailing Measures
SHG	Self-help group
Sida	Swedish International Development Agency
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
TNC	Transnational corporation
TRIPS	Trade Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNICEF	United Nations Children's Fund
UNITAID	International Drug Purchase Facility
WFS	World Food Summit
WHO	World Health Organization
WID	Women in Development
WIEGO	Women in Informal Employment: Globalizing and Organizing
WTO	World Trade Organization

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# Introduction

*Bård A. Andreassen, Stephen P. Marks and Arjun Sengupta*

This book brings together leading economists and social scientists familiar with the relationship between poverty and economic structures, processes and policies, to apply their particular modes of analysis to the impact of this relationship on individual and collective responsibilities of states in the field of human rights. It provides diverse insights from economists' analyses, relevant to exploring the claim that poverty is a violation of human rights, and complements volumes on similar themes from the perspectives of philosophy, political science and law also prepared under the auspices of UNESCO.

The difficult dialogue between economists and human rights specialists has evolved from mutual ignorance to curiosity – sometimes disdainful, sometimes respectful – and, occasionally, to a sense of working with mutually-reinforcing paradigms. The topic of global poverty has facilitated this dialogue insofar as economists have had to acknowledge the moral imperative of altering the intolerable reality of over one billion people going to bed hungry, and human rights specialists have had to realize that no progress can be made in realizing the human rights of poor people unless economic conditions are altered through effective policy based on sound economic evidence and the generating of pro-poor growth.

Moral implications of economic processes and policies have been of concern to economists since Adam Smith.<sup>1</sup> Economic policies respond to implicit or explicit (often competing) assumptions of what is good for society, usually expressed in terms of income and growth, extended to human development indicators. Human rights norms, as established in national and international law, are standards of what societies regard not only as good but also essential for human well-being. In some cases, these norms are derived from the cultural and legal traditions of a given society; in other instances, the realization of human rights requires significant legal, social, economic and political reforms, drawing upon and influencing evolving international human rights standards. These processes may be of interest to some economists but have not been generally regarded as central to economic perspectives on policies for the eradication of poverty.

With the increased attention to human rights in the international development discourse – in multilateral fora, in development bodies, in universities and among the public at large – it is essential to bring leading economists and social scientists

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1. In his pioneering Royer lectures of 1986, Amartya Sen (1987: 3) traces the ethics-related tradition in economics at least to Aristotle. Regarding Smith, he attributes much of the distancing of economics from ethics in modern economics to the neglect of Smith's writing on the role of ethical considerations in human behaviour (Sen, 1987: 28).

into the debate about poverty and the relationships between economic institutions, policies and processes, on the one hand, and the capacity of states to deal with them in terms of human rights obligations on the other. Still, this is unfamiliar terrain for most economists.

Is the claim that poverty is a violation of human rights meaningful or significant from an economic perspective? The proposition that ‘poverty is a violation of human rights’ is not new but it is quite unusual to both economists and human rights specialists. In his message on Human Rights Day 2002, the then Director-General of UNESCO, Koïchiro Matsuura, said that ‘extreme poverty constitutes a denial of human rights and a flagrant violation of human rights... The fact that almost one-third of the world’s population lives in conditions of poverty is incompatible with the United Nations Charter, in which the states proclaimed their common determination to promote social progress and better standards of life in the ambit of broader freedom. The eradication of poverty is the clear priority on the international agenda, thereby confirming that freedom from want should be guaranteed for all.’<sup>2</sup>

Nine years earlier, in 1993, the World Conference on Human Rights stated, in its Vienna Declaration, ‘The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community.’ It further affirmed ‘that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for states to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.’<sup>3</sup>

These pronouncements at first glance may suggest that there is a consensus around the proposition that poverty constitutes *ipso facto* a ‘violation of human rights’. However, neither the Vienna Declaration just quoted nor the UN Commission on Human Rights has claimed that poverty is a violation of human rights, but rather, in the words of the Commission (the predecessor of the Human Rights Council) in 2004, that ‘Extreme poverty and exclusion from society constitute a violation of human dignity and that urgent national and international action is therefore required to eliminate them.’<sup>4</sup> A decent standard of living and human dignity are the ultimate objectives of and essential to welfare from the human rights perspective. Human rights are instrumental to achieving these objectives. Thus, the claim that ‘poverty is a violation of human rights’ is

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2. Message by Director-General of UNESCO on Human Rights Day, UNESCO Media Services, 10 December 2002.

3. Vienna Declaration and Programme of Action, para. 14.

4. Commission on Human Rights Resolution, 2004/23. Human rights and extreme poverty, 16 April 2004, para. 1(a).

shorthand for a more complex proposition that all situations involving poverty, especially in its extreme forms, are associated with human rights deprivation and that the moral and legal imperative to respect human rights should apply to measures to eliminate extreme poverty based on a human rights approach to development. Understanding the deeper implications of this proposition for theory and practice requires the contributions of the wide range of disciplines UNESCO has marshalled within its Cross-Cutting Project on Poverty.<sup>5</sup>

This book provides a contribution to this multi-disciplinary reflection by focusing on economic perspectives. What do we mean by 'economic perspectives'? Each of the authors contributing to this volume brings to the task a perspective that either assumes or distinguishes itself from the predominant perspective, often referred to as 'orthodox', 'mainstream', 'neo-liberal', or 'neo-classical' economics. It focuses on the study of the production, distribution and consumption of goods and services, assuming the scarcity of resources, the efficiency of markets, and the value people place on consumption and on growth in gross domestic product. There is a bewildering number of economic theories and schools. One source surveys 500 economists and enumerates 9 pre-classical, 12 classical, 8 Anglo-American neoclassical, 8 continental neoclassical, 10 heterodox, 7 Keynesian, and 7 thematic schools of economic thought.<sup>6</sup> The 'economic perspectives' represented in this book in no way attempt to cover these theoretical models and schools; they are a sampling of contemporary efforts to grapple with poverty using diverse tools of economic analysis and frequently invoking contested models. Recent attempts to address the relationship between human rights theory and the economics of poverty reduction often draw on the writing of Amartya Sen, who occupies a preeminent place not only in economic theory (see, in particular, Sen (1993) and Sen (1999)) but also in human rights scholarship (Sen, 1998; 2004; 2005). Several contributors to this volume endeavour to establish these relationships empirically in specific situations and contexts.

The overarching theme of this book is the confrontation of the analytical and material understanding of poverty offered by economic perspectives, on the one hand, and the normative and institutional approach of human rights to the issue, on the other. Classical economic theory has underscored the benefits of production under comparative advantages in a market economy. Whatever the economic rationale, the exchange of goods and services, whether within the domestic market or across borders, has dramatic impacts on the general level of welfare of people with no control over economic decision-making. When this process results in deterioration of the well-being of those who do not gain from such economic transactions, the outcome – typically in the form of impoverishment – may be in conflict with normative propositions we call human rights and define through moral reasoning, legislation and judicial interpretation. Such norms

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5. See foreword by Pierre Sané for a discussion of the project.

6. The New School University provides a website on the history of economic thought, which includes an enumeration of schools of thought, at <http://homepage.newschool.edu/het//thought.htm>

may challenge the legitimacy of economically 'rational' modes of production, distribution and consumption where market forces generate results at variance with values recognized as fundamental to society, such as the right to an adequate standard of living or the right to a core minimum of satisfaction of economic, social and cultural rights.

This confrontation generates a bias at a superficial level against economics as tending to accept poverty as an unintended externality of a process with winners and losers and in favour of human rights as tending to favour intervention on behalf of the poor. However, for most of the authors in this volume, many economic perspectives are currently or potentially congruent with human rights standards in dealing with poverty. Modern human rights doctrine makes normative claims on economic processes and exchanges by assessing the acceptable and unacceptable impact of all sorts of macro- and micro-economic processes over which the state can exercise its authority. Human rights cannot, however, resolve the divide among economists regarding the salutary or deleterious impact of government intervention in economic processes. These claims have a direct bearing on whether poverty is treated descriptively or prescriptively. As the contributions to this book bring out, economic choices and priorities have been increasingly affected by a prescriptive approach, drawing on the promotion and protection of normative standards specifically relating to poverty.

Economic theories have much to say about poverty. The insights on poverty of development economists have, to a large extent, been incorporated into human rights thinking on the subject. This enrichment of human rights theory is hampered by diverging theories of economic development. For example, some economists argue that it is possible to eradicate world poverty through massive but affordable transfers of funds from the income-rich countries to poor countries (see Sachs, 2005; Millennium Project, 2005), while others contend that aid does more harm than good (see, for example, Moyo, 2009; Easterly, 2006; Collier, 2007). For most of the contributors to this volume, the only sustainable economic models build in elements to prevent a return to the pathologies of poverty. Such models are conducive to both growth and human rights if, and only if, they provide for equitable distribution and a reduction of disparities, even if it means postponing short-term economic gains.

Liberalization of trade is supposed to relax resource constraints in poor countries by giving them access to markets. However, reducing or abandoning trade barriers does not always produce that result unless non-trade barriers to markets are lifted, the productive capacities in poor countries benefit from transfer of technology, and redistribution in the domestic economy helps establish a robust welfare economic structure in which income from trade is not concentrated in the hands of a few entrepreneurs and government officials. To posit that the only thing lacking in poverty reduction strategies is 'political will' can easily overlook the complex nature of designing appropriate programmes that are technically feasible, at a minimal cost to the non-poor population.

The essays published in this volume are grouped around three themes: conceptual, sectoral, and global. In Part I, some general theoretical foundations



are set out regarding the relationship between human rights and the structures of poverty. In the opening essay 'Attacking Poverty: What is the Value Added of a Human Rights Approach?' Ravi Kanbur asks if considering poverty as a human rights violation may really help to reduce poverty. He notes that there is still much debate in the development discourse, both about the best methods of reducing poverty and even about how to define the concept itself. Based, however, on a rational choice argument, he sees an important advantage of integrating poverty in the human rights agenda because, by making poverty a legal issue, the costs and benefits of implementing policies that reduce poverty tilt in favour of reducing poverty. Applying conventions that countries have ratified and are legally obliged to uphold will enhance governments' attempts to avoid peer pressure and international shaming and may help shift policies towards poverty reduction. Evidence favours the effectiveness of international norm-setting for economic policies.

Stephen P. Marks and Ajay Mahal then seek to identify the conceptual and analytical compatibilities between human rights and economic approaches. Their chapter on 'Economics and Human Rights Perspectives on Poverty Reduction' contrasts the way economics and human rights define poverty, and compares the different approaches that the human rights and economics experts take to addressing the challenge of promoting development and reducing poverty. Their comparative analysis includes a discussion of the two approaches towards issues of property rights, resource allocation and use of indicators in the pursuit of development goals. They conclude with some elements of a common conceptual framework for both economics and human rights to address issues of poverty.

The third chapter, by Asbjørn Eide and Wenche Barth Eide, places the topic of the book in the context of the current severe financial crisis, which has shaken the foundations of international financial markets and increased world poverty. The chapter argues that development economics should broaden its scope and complement the predominant focus on poverty reduction with the identification of policies and measures against poverty production or impoverishment. Poverty, however, should be defined by a set of factors, and not in isolation as influential development agencies still tend to do on the basis of monetary income. Poverty entails deprivations along a series of factors such as food insecurity, malnutrition and ill-health, decreased personal security, and deculturalization. The authors argue that, in spite of rising urban poverty, the overwhelming number of poor live in rural parts of developing countries. The modern human rights project represents a vision of globalization where 'the right not to be poor' is fulfilled through the implementation of the human right to an adequate standard of living. This vision must be restored and permeate current global policies. In order to achieve effective policies that reduce existing poverty and prevent the emergence of new forms, the authors call for a 'New Deal' (modeled on Franklin Delano Roosevelt's policy in the 1930s) that defines state obligations to address not only poverty but also climate change, and a broad range of human rights. This global New Deal builds on revulsion towards unregulated neo-liberal forms of economic globalization and promotes inclusive forms of global governance in tune with human rights standards and practices.

Siddiqui R. Osmani's chapter 'The Human Rights Approach to Poverty Reduction' addresses two questions: Why should a human rights approach be adopted in matters related to poverty and what does an application of this approach mean in operational and practical terms? Osmani distinguishes between intrinsic and instrumental reasons for adopting a human rights approach and argues that there is a strong case for adopting the human rights approach to poverty reduction. Poverty entails the denial of a range of human rights, and a struggle against poverty is equivalent to a struggle to achieve these rights. The denial of human rights, moreover, strengthens the forces and interests that cause and perpetuate poverty, and applying a human rights approach to poverty reduction would help to overcome these forces.

In the final chapter of this section, on 'Informality, Poverty and Gender: An Economic Rights Approach', Martha Chen analyses the large number of poor people working in the informal sector. Half of the over one billion people living on less than one dollar a day are working in this sector. They lack basic labour rights as well as business rights for informal self-employment, and rights to social protection, organization and representation. Without protecting these rights, the working poor have little chance of working their way out of poverty. Chen argues that voice and visibility of the poor are essential for pro-poor policies and legal reforms that can help them move out of poverty, including legal empowerment to secure property, labour and business interests.

Part II addresses economic perspectives through a sectoral approach to poverty and human rights in five chapters. Bina Agarwal in her chapter on 'Agricultural Production Collectivities and Freedom from Poverty: The case for a Group Approach' argues that a group approach to reducing poverty and social disadvantage can be more effective than individual-oriented approaches. Based on data from India, she offers a detailed study of production collectives among women in agriculture. Such collectives can play an essential role in reviving agricultural growth. She contends that they should comprise central elements of a rights-based approach to development. Throughout history, however, agricultural production collectives have not always been successful, to say the least. Agarwal draws a number of lessons on factors conducive to successful poverty reduction through agricultural production collectives.

Moving to the topic of public health, Jeffrey Sachs and Lisa Sachs devote a chapter to realizing the human right to health in low-income countries. They demonstrate how an economic perspective on realizing the right to health can complement a human rights analysis and stress the seriousness of the poverty trap for health, namely, that lack of adequate economic development and financial resources exaggerate and retain the poverty-related burdens of poor health, low literacy and depletion of resources. These burdens in turn decrease productivity, earning ability and economic investment. Adding to this vicious circle, unhealthy people are increasingly burdened by low economic productivity and income generation, which at the national level also reduces tax revenue that could help tackle the structural causes of severe poverty. The authors suggest that an economic perspective of realizing the right to health in poor countries can be helpful to

the international legal obligations of states, by identifying the most cost-effective investments for improving health systems, for filling the financial gap between domestic and resources and external support, and to develop benchmarks and monitoring progress.

In his essay 'The Right to Work and the Reduction of Poverty: An Economist's View', Gerry Rodgers argues that, from an economic perspective, work has a dual role. For the individual, it is a source of identity and income. For an enterprise or the national economy, it is a factor of production. While the human rights discourse is concerned with the former role, an economic analysis of the right to work also has to take the second role into account. However, economists and lawyers tend to differ on which is more important than the other. The economist would argue that progress in access to work and improvement in quality of work should be assessed alongside improvement in productivity and production, irrespective of political or social environment. On the other hand, from a human rights perspective the right to work and access to income are components of a human right. In moderating these positions, Rodgers argues that the value of the right to work depends on the state's commitment to providing mechanisms and implementing economic policies for its realization. From a human rights perspective, a state party to a treaty guaranteeing the right to work has accepted a commitment to economic policies that deliver high levels of demand for labour. He also argues that the notion of a right to work may add political pressure on governments to formulate and implement such policies. If such policies are legislated, people are given power to demand that the authorities facilitate conditions for the provision of employment.

Malcolm Langford in 'Social Security and Children: Testing the Boundaries of Human Rights and Economics' tests these boundaries by using social security for the child as an empirical entry point. He refers to a 'unitarian approach', which argues that human rights and economics are complementary fields, yet with different epistemological foundations. While human rights provides normative standards, economics offers tools for choice-making among different avenues or approaches to accommodate these standards, and to assess trade-offs between policy alternatives. However welcome this approach may be, he questions whether the unitary approach stands the test of practical evidence. Using child social grants as a case of social security, Langford points out that the policy choices around the model of grant-making for child benefits differ significantly among those who value a universal scheme, such as the International Labour Organization, and those who favour or insist on targeting and imposition of conditionalities, such as the World Bank. The choice of grant-making model has human rights implications as well as economic justifications. Langford asks which concern should prevail and how to resolve the inherent conflict in the alternative models. He concludes that when a human rights position gives scope for different choices, economic rationality should prevail. On the contrary, when the economic benefits of one model over the other are ambiguous or empirically weak or contested, the human rights claim to universality should prevail.

The final chapter from a sectoral perspective is 'Hunger and Human Rights: The Appealing Rhetoric versus Dreary Reality' by Dan Banik. Starting with the

extremely negative impacts on economic productivities of poor nutrition and hunger, he explores the advantages of applying a human rights-based approach to development in combating extreme poverty and hunger and critically examines whether and to what extent such an approach can help to reduce hunger. Believing that 'the international right to food discourse has been excessively focused on the process of formulating and ratifying human rights instruments on the topic', Banik concludes that, while a human rights-based approach to malnutrition and hunger shifts the focus from charity to empowerment of the poor, it is not always taken seriously by relevant actors unless the poor are empowered through various mobilization and judicial strategies to bring effective pressure to bear on governments.

Part III focuses on the global economy, including trade, poverty eradication programmes and lending institutions. In his chapter 'Trade Liberalization, Reduction of Poverty and Human Rights', Guiguo Wang argues that a more just international trade system is required for poverty reduction. However, for developing countries to share the fruits of development and enjoy freedom from poverty, they need the capacity and competence to enter the markets of the developed world. While tariffs on industrial products have been reduced significantly, the tariffs on products from developing countries remain comparatively high, and make these countries unable to benefit from a general reduction in tariffs. He argues that even if trade liberalization is the aim of the international trading system, its *ultimate* goal must be to facilitate the raising of standards of living, in particular for those living in developing countries.

Arjun Sengupta, in his paper on 'Human Rights and Extreme Poverty: An Economist's Perspective', builds upon his four reports to the Human Rights Commission as Independent Expert on the question of human rights and extreme poverty, and brings out the significance of looking at extreme poverty in a human rights perspective and its value addition to programmes of poverty eradication. He provides a working definition of extreme poverty as a union or intersection of severe forms of income poverty, human development poverty and social exclusion, each form being the object of empirical estimates and specific policies. Then he combines these policies into poverty eradication programmes in terms of national actions and international cooperation consistent with human rights standards. Finally, he examines some of the poverty reduction programmes in different developed and developing countries from the perspective of a human rights approach.

In their chapter 'Why Should Human Rights Issues be Addressed by the World Bank?' Desmond McNeill and Luis Sanchez take as their point of departure the intrinsic argument that human rights should be a concern for development and poverty reduction because of our common humanity. For an institution like the World Bank, there are convincing *instrumental* reasons, based on an economic rationale, why human rights should be central to development, namely, that human rights-based policies are effective in designing and promoting poverty reduction and development. These authors examine an empirically-based argument that the promotion of human rights is instrumentally useful to reduce uncertainty

and human insecurity and has positive impacts on economic development and human well-being. By exploring examples of women's rights, human capital formation, governance, democracy and the rule of law, they argue that a human rights approach to poverty is consistent with the two pillars of the World Bank's policies, namely, improving the investment climate and empowerment, and should be embraced by the Bank. They point out that a positive correlation has been statistically established between high levels of security and economic innovation and growth, although this relationship has just been established for countries in the upper two-thirds in terms of income level in the world. The authors assume, however, that if this positive correlation has not been established for the lowest third, there are convincing reasons to assume that this relationship may also apply to the poorest countries and that the positive effects of human rights protection may become clearer when the countries move up the income scale. Another added economic value of the state respecting and implementing human rights is to reinforce citizens' responsibility to pay taxes and uphold the law, thus contributing to a society favourable to economic activity.

As already noted, these reflexions across the spectrum of structures of poverty, critical sectors of the economy and global economic forces raise conceptual overlaps and tensions, as well as operational interfaces between human rights and economics. The obvious conclusion is that much can be gained on behalf of the poor by engaging with economists in a political dialogue on pro-poor growth, with a greater focus on governance and capacity of state institutions. Human rights perspectives reinforce the interest economists already have in promoting equity, empowerment, engagement, and voice of the poor and excluded. The essential message of this survey of selected economic perspectives is that, even in time of global financial crisis, 'growth at any cost' must be replaced with growth strategies that prioritize poverty elimination as a human right. The economic perspectives bring out the instrumental value of human rights in favour of policies of poverty reduction or alleviation. Economic evidence for the instrumental utility of human rights complements the teleological approach of human rights analysis. People who live in poverty by definition lack the capability to become effective and free economic agents. By providing the means of overcoming barriers to capability, human rights represent a robust normative framework for fighting poverty and helping people to become agents of their own welfare and destiny, and one that is enriched by economic perspectives.

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Part I

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Economic  
Perspectives on the  
Relationship between  
Human Rights and  
the Structures of  
Poverty

# 1

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## Attacking Poverty: What is the Value Added of a Human Rights Approach?

*Ravi Kanbur*<sup>7</sup>

In two interesting papers on human rights and extreme poverty,<sup>8</sup> Arjun Sengupta develops an argument for viewing extreme poverty as a violation of human rights. His discussion contributes to the broader discourse on whether and how economic and social rights can be integrated into the human rights agenda, and what benefits such integration might bring.

In this chapter I would like to approach the question posed in the title, and in the literature, from a purely consequentialist perspective. In other words, would treating extreme poverty as a violation of human rights actually lead to a reduction in poverty, or at least lead to the conditions which would in turn lead to a reduction in poverty? This is not to minimize or deny the importance of deontological arguments and intuitions in the great debates on human rights, and the relevance of criteria other than simple outcomes for evaluating policy proposals.<sup>9</sup> Rather, I think the consequentialist strand of argument exposes a number of issues that any discussion of poverty and human rights will have to take into account. At any rate, it is a route worth exploring, and one that is indeed explored in the debate.

In the discourse on poverty eradication, it is often argued that ‘we know what to do – what is lacking is political will’. It is to the latter dimension that the rights-based approach is meant to contribute. This point is made strongly by Sengupta:

It would be difficult to argue that poverty alleviation programs have not worked because appropriate programmes cannot be designed or are not technically feasible.[...]The only reason why such programmes have not been adopted is that countries have shown no political will to adopt them or have

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7. T.H. Lee Professor of World Affairs, International Professor of Applied Economics and Management and Professor of Economics, Cornell University. These notes were prepared for an expert seminar on human rights and poverty, organized by the United Nations Commission on Human Rights, Geneva, 23–24 February, 2007. They give the flavour of a longer paper on this topic that I am in the process of completing.
  8. UN Commission on Human Rights, E/CN.4/2006/43, March 2, 2006; and E/CN.4/2005/49, 11 February, 2005.
  9. See, for example, Sen (2004).



not accepted their 'obligations' that would follow from their legal recognition of the relevant human rights.<sup>10</sup>

While I agree in essence that the most important missing element is 'political will', it is important to appreciate the level of debate subsisting in the development discourse over the best (or only) methods for poverty reduction. In my paper 'Economic policy, distribution and poverty: the nature of disagreements' (2001), I set out to try and understand the sometimes virulent disagreements among people who all claim to have the interests of the poor at heart. I highlighted the competing perspectives that still remain unresolved and the subject of lively debate. Even when a shared perspective exists, there are many narrowly technical aspects of empirical assessment that remain subjects of dispute and disagreement.<sup>11</sup> Sometimes, even the basic facts are in dispute.<sup>12</sup>

Having made this point about uncertainties in development strategy and the evaluation of specific interventions, I will turn to my main focus – the difficulty of achieving change even when there is professional agreement that a move in a particular direction will reduce poverty. It is common practice to say that this is because the political interests of the rich, who control the policy processes, do not permit changes that benefit the poor but hurt the rich. Before addressing this point, however, I need to make another point. The dirty little secret of policy reform and development interventions is that, for many instruments – and certainly for those that operate at a high level of aggregation (like macroeconomic policy or broad budgetary instruments) – there is not only conflict between rich and poor, but *among* the poor themselves. Thus, for example, while devaluation benefits the poor in the exporting and import-competing sectors, it hurts the poor in the non-tradable sector. Despite the fact that overall poverty may fall (because the incidence of poverty is higher in the export sector, say), this fall is a weighted sum of an increase and a decrease, and it is cold comfort to those whose poverty has actually gone up.<sup>13</sup> There are a multitude of such examples. It is not at all clear how the rights-based approach to poverty reduction would deal with such cases. If the operation of an instrument raises poverty for some but decreases it for others, should it be applied, or not? I leave this as an important issue for future debate and discourse.

Finally, we come to the argument that states that in situations where the operation of instruments, interventions and policies to reduce poverty is opposed by the rich on the grounds that it would make them worse off, the adoption of (extreme) poverty as a denial or violation of a human right would somehow help to overcome this resistance. This forms the consequentialist argument for

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10. UN Commission on Human Rights, E/CN.4/2006/43, 2 March, 2006, p. 14.

11. Examples are the impact of lower tariffs on growth, the effects of aid on growth and poverty, the effects of water privatization on the poor, the extent to which health and education should be privatized, and so on.

12. For example, how much poverty has changed in India, or in the world.

13. These points are developed further in my paper, 'Pareto's revenge' (2005).

integration of poverty into the human rights agenda. How is this supposed to work? Presumably there are two channels. Firstly, integration should increase the cost to the rich and powerful of resisting the interventions that reduce poverty. Secondly, integration should make the rich and powerful want poverty reduction more, or want the presence of poverty less. In economic terms, while the second works through a change in preferences of the rich, the first works through a change in their opportunity sets. Let us take each of these channels in turn.

Let us begin by taking a polity as homogeneous, or at least to have resolved its internal conflicts as it decides to sign an international convention and then give that convention a legal form. Since, presumably, the polity can do what is required in the convention without having signed it, then why sign the convention? The benefits may be financial or other assistance associated with signing of the convention. But, perhaps equally important, is the benefit of not being a country that has not signed a convention that others have signed – the peer group effect. If this were all, then every country would sign. But there is more. While there is indeed a cost to not signing because of peer pressure, the cost of signing but not implementing when others are doing so is also present, and possibly higher – again because of peer group pressure. From this view of the calculus of a polity committing itself to an international convention, there is clearly a value added to poverty reduction of having a convention for countries to sign and implement. That value added is increased the greater the importance of peer group effects, and the stronger and more aggressive the monitoring and ‘naming and shaming’ provisions among those who have signed the convention. The latter provisions may deter some from signing for any given strength of peer group influences, but among those who sign, they will encourage greater compliance.

Nancy Chau and I have tested the above conceptual argument against actual data for the adoption of ILO Conventions (Kanbur and Chau 2002). It is sometimes argued that these conventions have ‘no teeth’, and that the whole mechanism is a waste of time and resources. Applying the above model of rational choice to adopting or not adopting a convention, we argued that if there were really no genuine costs and benefits to adopting (‘no teeth’), then the *pattern of adoption* should be random, not systematically related to factors that might reasonably be thought to explain such costs and benefits. Using appropriate time series analysis, and attempting to characterize the probability of adopting<sup>14</sup> at a particular time, conditional on not having adopted up to that time, we find that these estimated probabilities are not at all random. Most importantly, the probability of a country adopting a convention depends crucially upon how many other countries in its peer group, variously defined, have also adopted that convention. We also argue, on the basis of evidence for a smaller number of countries, that adoption actually increases the costs of non-compliance. We interpret this as evidence in favour of

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14. Note that there is a difference between signing a convention and adopting one – the latter is a stronger provision, requiring the incorporation of the convention into the legal framework of the country. In what follows, however, we will use the two terms interchangeably.

the effectiveness of the general method of establishing international norms and standards and campaigns to get countries to sign them.

So much for a model of the polity as a unified entity. But, of course, we need to unpack this, and look at processes within a country and how integration of poverty into the human rights agenda would play out in this context. A closely-related question that might help us along is the following: what is the value added of a country passing a law on some aspect of poverty reduction, as opposed to simply having poverty reduction schemes? A specific case in point is India's National Rural Employment Guarantee Act (NREGA) of 2005. The elections of 2004 brought to power a coalition, the leading party of which (the Congress party) won a sharp increase in its seats by pitting the slogan 'The Common Man' against the Bharatiya Janata Party's slogan, 'India Shining'. The Congress-led ruling coalition that emerged developed a Common Minimum Programme (CMP) as the policy basis of the coalition, and the NREGA, which formed part of the Congress platform, was an important plank of the CMP.

The specific details of the NREGA have been discussed by myself, Arnab Basu and Nancy Chau in two papers (Basu, Chau and Kanbur, 2006a, 2006b). The key question for the discussion in this chapter is, why pass a law? India has had employment guarantee *schemes* for a long time. Passing a law makes the proposed intervention 'justiciable'. No government likes to be taken to the Supreme Court, and it is this cost that is being used as the key element of the 'commitment technology'. Notice, however, that in this case the passage of the law, while important in ensuring the implementation of the CMP, is a *reflection* of the balance of power in favour of poverty reduction. It is not a *cause* of the shift in power between those who would support and those who would oppose employment interventions of this type as a poverty reduction device. The insight here is that the possibility of signing a law, of adopting a convention, offers a commitment device to implement a shift in balance of power in the polity in favour of poverty reduction schemes, even if the law or convention is not itself the cause of the shift in power.

Finally, let us turn to the argument that integration of poverty into the human rights agenda should make the rich and powerful want poverty reduction more, or want the presence of poverty less. In other words, integration might induce a change in preferences. We have already touched upon preferences indirectly, when we argued earlier that the presence of a convention, unsigned by a polity, might induce peer pressure. But might the presence of the convention in and of itself change preferences? There may be an argument to be made here in terms of how the convention might bring forward the better angels in those among the rich and powerful previously opposed to poverty reduction because of self-interest. The process itself reveals realities of poverty that might shock some into changing their views. I feel this is perhaps a weak reed to lean the whole argument on. Rather, I would argue as follows, taking a lead from the discussion of the NREGA above, transposed to the global human rights context. The process of integration of poverty into the human rights agenda, if it succeeds, will alter the costs and benefits of implementing interventions that reduce poverty. This will happen not only because of peer pressure, but because the signing of the convention will

reflect the shift in the balance of power that brought it about. However, to the extent that there are those whose preferences on particular issues are determined by how many others they perceive to think in a particular way, every signing of a convention, or every passage of a law, provides a signal, however weak, that the balance of opinion is shifting. This could lead the waverers at the margin to shift, strengthening the movement for poverty reduction even further.

The above sheaf of consequentialist argument does establish, in my view, the case for advancing the integration of extreme poverty into the human rights agenda. While the debate has focused on this issue (and the deontological arguments), to my mind the difficult (or equally difficult) issues are those that this literature seems to take for granted, as reflected somewhat in Arjun Sengupta's papers. First, do we really know what sorts of policies and interventions work for poverty reduction? Are there no more technical/professional disagreements? Second, can we talk of 'extreme poverty' in an aggregated fashion, thereby sidestepping the difficult issues of what happens, as is the case in almost every intervention of significant scale, when some poor are made worse off as the price of making others better off? Whose human rights count then?

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# Economics and Human Rights Perspectives on Poverty Reduction

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The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the world is ruled by little else.

Keynes

## 2.1. INTRODUCTION

Poverty prevention and reduction – whether phrased in the form of Millennium Development Goals (MDGs) or discussed as key objectives in Poverty Reduction Strategy Papers (PRSPs) – are at the top of the global development agenda. The perspectives of economics and human rights have much to contribute to these goals and indeed provide both tools for analysis and policy prescriptions for combating poverty. Yet each perspective is the privileged domain of scholars, officials and practitioners trained primarily either in the economic sciences or in law and political science and, consequently, each is at times resistant to the concepts and language of the other perspective. For instance, is the claim of some in human rights that poverty is a ‘violation’ of human rights even meaningful for an economist? Or can a human rights specialist grasp economists’ definition of poverty and their policy prescriptions? A more important question is whether there are areas of agreement between the two approaches in the context of poverty reduction, and if so, what they might be. A related issue is whether a conceptual framework can be identified that can help to integrate economics and human rights perspectives into the pursuit of poverty reduction.

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This chapter explores these questions and seeks to determine whether economic and human rights perspectives on poverty are compatible or competing in their explanatory and prescriptive functions. There is more than a theoretical interest in studying whether there is any congruity in promoting human rights principles on the one hand and the theoretical analyses and policy conclusions of economists on the other. Answering these questions should have an impact on defining and addressing core problems associated with ending poverty and choosing between alternative social arrangements.

Two recent trends enhance the relevance of the above questions. First, governments, development agencies and other stakeholders have made international commitments to link human rights to poverty reduction and to development more generally. Secondly, human rights specialists have been introducing quantitative and qualitative indicators to measure progress, including with respect to poverty, and emphasizing the need to take into account resource limitations in achieving human rights goals. These considerations, discussed in more detail below, form the backdrop for the present inquiry into the relative insights and potential convergence of the perspective of economics and human rights on poverty.

### 2.1.1. Stakeholders' Interest in Human Rights for Development

Issues commonly understood as being in the realm of human rights are increasingly being raised by the key players in the context of development policy, including among the economists who manage, advise or assess institutions responsible for poverty reduction.<sup>16</sup> In recent decades, conclaves of international donors, negotiations between donors and recipients of aid, policy setting by multilateral agencies, and meetings among various stakeholders within individual developing countries themselves, have resulted in explicit commitments to human rights in poverty reduction strategies.

This influence of human rights has been particularly noticeable in policy statements of donor countries. A study by the Organisation for Economic Co-operation and Development (OECD) on the approaches of its Member states concluded that 'human rights offer a coherent normative framework which can guide development assistance' (OECD 2006: 58); in February 2007, the OECD adopted its *DAC Action-Oriented Policy Paper on Human Rights and Development*; and in August 2009, the Overseas Development Institute (ODI) issued a study supported by the OECD based on interviews with 30 economists and experts from development agencies and academia on the relationship between human rights and pro-poor growth, the study's purpose having been 'to identify synergies, complementarities and points of connection as well as latent tensions or contradictions' (Foresti and Sharma et al. 2009: 3).

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16. See the discussion in Section 2.2.5 below.

Several governments have adopted human rights-based approaches to development (see Frankovits and Earle 2001; Piron and O'Neil 2005). The major European and Canadian funding agencies have conducted extensive analyses and drafted elaborate policy papers incorporating a human rights approach – most notably, the UK's Department for International Development (DFID) and the Swedish International Development Agency (Sida). Major development NGOs, such as Oxfam, CARE, Save the Children and Médecins sans frontières (MSF) have similarly embraced a human rights framework for their operations (see Nelson and Dorsay 2003; Sano 2000).

All of this activity has enhanced the utility of deepening the dialogue between economic and human rights perspectives on poverty.

### 2.1.2. Structure of this Chapter

The primary purpose of this chapter is to explore the compatibility of perspectives of economics and human rights concerning development policy and practice aimed at poverty prevention, alleviation, reduction and elimination.<sup>17</sup> The remainder of this chapter is organized as follows: Section 2.2 explores the conceptual linkages and tensions between human rights and economics mainly from a theoretical perspective, beginning with the various ways of defining poverty and then comparing the human rights and economic approaches to development and poverty reduction. Section 2.3 explores the relationship between the *goals* of the human rights and economic perspectives and the *instrumental role* of human rights norms and principles in achieving economic goals of efficiency and equity; this section also focuses on the design of outcome, input and process *indicators* of achievement that integrate both human rights and economic approaches in order to address poverty. Finally, Section 2.4 seeks to identify elements of a common conceptual framework for both economics and human rights to address issues of poverty.

## 2.2. THEORETICAL AND CONCEPTUAL DIFFERENCES BETWEEN HUMAN RIGHTS AND ECONOMIC PERSPECTIVES

Economics and human rights use different vocabularies based on core concepts and methods of the prevailing disciplines. The conceptual bridges between the two can be built only by clarifying the overlap in concepts and suggesting approaches that people using both perspectives regard as useful. Thus, economists might take account

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17. Each of these four terms reflects the ambition of the programme; *prevention* refers to effective development as preventive of future poverty; *alleviation*, to emergency relief of a population's critical deprivations; *reduction*, to the realistic and limited aim of most poverty programmes; and *elimination*, to the activist agenda based on the morally superior objective of ending poverty.

of the ways in which people working in human rights deal with resource distribution, institutions and other features familiar to both. Similarly, economists' approaches to social welfare, equity, and the role of self-interested behaviour and of incentives in the design and the impact of policy interventions can have meaning for work in human rights. The trend towards the introduction of human rights in development has built on that rather basic enunciation of principle and required human rights specialists in the international civil service, government bureaucracies and civil society organizations to acquire a deeper understanding of the development process and the perspective of economics in setting policy to achieve development goals. In parallel to this in the human rights field, specialists have made strides towards incorporating in their work key elements of economic thinking, particularly those relating to resource constraints and efficiency of resource use.

To build these conceptual bridges, it is useful to begin with a definition of poverty. While framing such a definition is (understandably) a task primarily for economists, the human rights perspective also can shed light on the concept.

### **2.2.1. Defining Poverty in Economic Terms**

Economists define poverty in its extreme form as the inability of households to meet basic survival needs (food, health, safe drinking water, rudimentary shelter, essential clothes and basic education). 'Absolute ability' is usually interpreted as purchasing power that is adequate for an individual to obtain his or her basic survival needs. Thus, according to one definition used by the World Bank, individuals are poor if they have an income of less than US\$1.25 per day, after purchasing power adjustments. By this definition, the number of people living in poverty worldwide declined from 1.90 billion people in 1981 (51.8 per cent of the world population) to 1.38 billion in 2005 (25.2 per cent) (Chen and Ravallion 2008: 41–43). Regional differences are considerable, with a large proportion of the world's poor being concentrated in sub-Saharan Africa and South Asia. One scholar writing for the UNDP's International Poverty Centre (IPC) considers that 'the new international poverty line is too low to cover the cost of purchasing basic necessities', questions the use of purchasing power parity and proposes 'careful coordination of household surveys and poverty line construction across countries' (Reddy 2008; see Ravallion 2008). Of course, poverty can also be defined in relative terms – for instance, an individual can be taken to be poor if his or her income lies below 40 per cent of the median income per capita in a country. This way of defining poverty is common in developed countries.

While calculating the number of people living on extremely low income is a convenient way of identifying poverty, it is widely acknowledged that poverty is a broader concept and involves more than not having enough income. As the economist Amartya Sen (2009: 254) has put it, the 'identification of poverty with low income is well established, but there is, by now, quite a substantial literature on its inadequacies.' He notes four types of contingencies that determine variations in the impact of (low) income and that cause us to appreciate that poverty is



more than just low income: individual physical characteristics, environmental conditions, social conditions and behavioural expectations within the community (pp. 255–56). These characteristics vary by individual, family and society such that a given level of income may result in one person living in poverty in terms of their capability to lead a life they value, compared to another with the same income but whose functionings (the term used by Sen for what you actually do) provide a higher level of happiness or well-being. In sum, ‘real poverty (in terms of capability deprivation) can easily be much more intense than we can deduce from income data’ (p. 256). Efforts to capture this broader notion of poverty include the UNDP’s Human Poverty Index, a composite index that combines information on deprivations in life expectancy, education and a host of indicators of an ‘adequate standard of living’.

Economists and human rights specialists can agree that poverty is more than a lack of income, which is *instrumentally* a cause of poverty. Beyond that agreement, however, each perspective highlights different consequences, as the definition of poverty in human rights terms demonstrates.

### 2.2.2. Defining Poverty in Human Rights Terms

UN human rights bodies, in particular the Committee on Economic, Social and Cultural Rights (CESCR), agree in their critique of an income-driven definition of poverty. In its statement on poverty, the CESCR (2001: para. 8) has endorsed a ‘multi-dimensional understanding of poverty, which reflects the indivisible and interdependent nature of all human rights’ and defined poverty ‘as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living’.

The CESCR’s choice of terms reveals the essential difference in the frame of reference of economics and human rights regarding poverty. While much economic analysis is concerned with clarifying an income scale according to which the phenomenon of poverty can be measured, a human rights perspective defines poverty as arising whenever a combination of attributes that an individual possesses falls short of a normative standard of the human right to ‘an adequate standard of living’. Indeed, the Universal Declaration of Human Rights (UN 1948: art. 25) reaffirms

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The component rights are enumerated in the International Covenant on Economic, Social and Cultural Rights (ICESCR; OHCHR 1976b) and myriad other global

and regional human rights instruments. The affirmation in those instruments that all human beings have a right to a good called 'adequate standard of living' can cause economists to consider (wrongly) that human rights standards posit an unattainable set of goals, blindly pursuing absolute ideals with no regard for a central feature of economic analysis, namely the scarcity of resources. One part of this claim is a misunderstanding that can be readily cleared up: a closer examination of the human rights literature on poverty reveals the crucial importance of resource constraints, and this is underscored by the core obligations specified in Article 2 of the Covenant ('to the maximum of its available resources, with a view to achieving progressively the full realization of the rights') and the CESCR's various General Comments.

However, there is an important point of distinction, also hinted at by the affirmation of the World Conference on Human Rights that 'extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes' (UN 1993). A similar point was made in the late 1940s by a UNESCO committee on the Philosophical Principles of the Rights of Man that was charged with reflecting on an eventual declaration of human rights; it stated that 'one group of rights is essentially connected with the provision of means of subsistence, through [one's] own efforts or, where they are insufficient, through the resources of society' (UNESCO 1948: 11; 1949). This emphasis on obligations corresponding to a rights violation – though limited to the specific obligations states have accepted with respect to the rights that are typically unrealized under conditions of poverty – suggests an understanding of poverty that is different from that of economists. Economists are focused on measuring deprivation in terms of income and socioeconomic conditions that influence poverty (and policy implications that *could be* used to address them). However, the human rights perspective is concerned with attributing responsibility for non-fulfilment of obligations – to be precise, there is a strong, explicit emphasis on specific rights and the corresponding responsibilities of 'duty-bearers' and mechanisms to hold the latter accountable.

How do 'obligations' help to differentiate economists' and human rights specialists' approaches to poverty? Consider entities outside the government, such as NGOs, business enterprises and individuals. The economics literature, especially in policy documents on development, has tended to downplay accountability of this group with regard to key social goals, such as poverty reduction. Similarly, the OECD and the UN have failed to develop codes of conduct for transnational corporations and current resistance to the draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights as examples of reluctance on the part of many economists to support restrictions on the private sector (UN 2003).<sup>18</sup> The human rights perspective attaches importance to the obligations of states to 'protect' human rights, which

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18. The norms were not adopted by the Commission on Human Rights (UNCHR) and contained 'exaggerated legal claims and conceptual ambiguities', according to the Special Representative on the issue, who was appointed in 2005 (see UN 2006: para. 59). His 2008 report outlined the

means the obligation to ensure that private parties, including corporations, do not act in ways that result in deprivation of human rights. This distinction is significant not because economists are unaware of private sector failures and legal remedies but because of the much stronger emphasis, in the human rights scheme of things, on obligations backed up by legal power.

Then there is the accountability at the level of government. Here formal economic analysis, by focusing on social welfare functions (or normative principles for ranking alternative social arrangements) and optimal policies of government, continuously highlights the ‘responsibility’ of government to intervene in ways consistent with social goals, such as poverty reduction. In economic models of democratic societies, accountability, as Donald Wittman (1989) has articulated it, takes the form of competition for positions, regular elections and the like. But again, duty-bearers and accountability mechanisms are not articulated as explicitly as they are in international human rights regimes.

### 2.2.3. Distinctions between Human Rights Norms and Principles and between Claims and Duties

Another distinction of relevance to human rights and economic perspectives is that between human rights ‘norms’ and ‘principles’. We define ‘human rights principles’ as the requirements that policies, programmes and monitoring ensure equity, participation, non-discrimination, accountability and transparency. This distinction was prominent at the Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform in 2003 in Stamford, Connecticut, which adopted the statement on ‘The human rights-based approach to development cooperation: towards a common understanding among UN agencies’, subsequently endorsed by the UN Development Group (UNDG 2003; see also UNICEF 2004: Annex B). This statement uses an overlapping but broader definition of human rights principles. Given the central importance of human rights principles for the analysis of common features of economics and human rights, it is useful to reproduce here the definitions laid out in the statement (UNDG 2003: 18):

Among these human rights principles are: universality and inalienability; indivisibility; inter-dependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law. These principles are explained below.

- *Universality and inalienability*: Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her. As stated in Article 1 of the

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three core principles of a state’s duty to protect, the corporate responsibility to respect, and the need for more effective access to remedies (see UN 2008).

UDHR [Universal Declaration of Human Rights], 'All human beings are born free and equal in dignity and rights'.

- *Indivisibility*: Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.
- *Inter-dependence and inter-relatedness*. The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to information.
- *Equality and non-discrimination*: All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.
- *Participation and inclusion*: Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.
- *Accountability and rule of law*: states and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

Although 'standards', 'norms' and 'principles' are often used interchangeably in the human rights literature, we consider human rights principles to be those constraints that make the process of policy formulation, implementation and monitoring conformity to human rights norms. The simplest way of putting it is that human rights principles relate to process and norms to goals or outcomes. So, for instance, the abolition of torture for all but members of the political opposition or a highly paternalistic and non-participatory approach to children's rights might advance human rights norms, but they would be contrary to human rights principles. Norms are both philosophically grounded statements of the rights individuals have as human beings – and several philosophical perspectives and theories of justice may be invoked to justify them – and legally grounded propositions based on national constitutions and international treaties or other procedures through which human rights are reaffirmed or proclaimed. The philosophical approach extends the idea that human beings are rights-holders to the concomitant obligations of duty-holders. Thus, human rights are valid claims rights-holders may make on duty-holders.

Norms and principles are also relied upon by economic approaches to development, though with less clarity and less forceful legal backing. Below, we shall discuss economists' use of social welfare functions as devices for ranking social outcomes, and thus for setting social goals. Less said in these approaches about the path one ought to take to achieve that goal, even though most economists would agree that wastage of resources (inefficiency) should be limited in the process of achieving that goal. A related view to which economists would subscribe is that, in the process of achieving social goals, policy actions should be designed to take account of the self-interested behaviour of individual agents in the least resource-costly way. An important step in this directions consists in formulating well-defined property rights, to which we now turn.

#### **2.2.4. The Right to Property at the Intersection of Economics and Human Rights**

For most economists property is foundational, and if human rights are understood as the protection by law of the institution of property, then human rights serve the economy in an important way. For economists identified more with perspectives critical of capitalism and/or its excesses, the priority placed on protecting property may favour exploitation of the weak and discrimination based on property or social status, with resulting negative consequences for human rights. Another approach is to see the protection of property rights, in the form of issuing titles and deeds to the poor, as a significant means of poverty alleviation, and this is a view with which mainstream economists are generally comfortable, in keeping with the 'second welfare theorem of economics'. How do these economic views on property relate to a human rights perspective?

In the natural law tradition, property ranks with life and liberty as an inalienable right. John Locke ([1690] 1991: 329) maintained that it was in fact the very source of government: 'Government has no other end but the preservation of property'. Jean-Jacques Rousseau ([1755] 1973: 151) even said that 'the right of property is the most sacred of all the rights of citizenship, and even more important in some respects than liberty itself'. He justifies this claim by saying, 'either because it more nearly affects the preservation of life, or because, property being more easily usurped and more difficult to defend than life, the law ought to pay a greater attention to what is most easily taken away; or finally, because property is the true foundation of civil society, and the real guarantee of the undertaking of citizens'. However, he immediately acknowledges that 'it is no less certain that the maintenance of the state and the government involves costs and outgoings; and as every one who agrees to the end must acquiesce in the means, it follows that the members of a society ought to contribute from their property to its support'. Moving from natural law and social contract to utilitarian perspectives, Adam Smith (1896: 291) stated, 'Till there be property there can be no government, the very end of which is to secure wealth and to defend the rich from the poor'. In assessing utilitarianism and the economic analysis of the

law, J. W. Harris (2004: 46) noted, ‘From the days of Adam Smith (1723–1790) to the present, advocates of free-market economics have maintained that a society’s wealth will be augmented most effectively if resources are privately owned and owners are free to trade them as they choose’. He goes on to explain that where transaction costs are eliminated, ‘every [property] right would end up vested in the person who values it most – value being determined by each party’s willingness to pay. Where transaction costs frustrate such re-allocations, the law should impose the “efficient” solution’.

It is highly relevant to our inquiry into a potential common framework of human rights and economics to note that such a common framework may be found in 18th-century political philosophy. Even at that time there was tension between the idea that it is the sacred duty of the state to protect individual property to the full and the idea of social justice. The rationale for protecting private property is its instrumental value for economic efficiency, and that rationale may be consistent with one understanding of social justice. However, another understanding of social justice is that a degree of state intervention and redistribution is necessary for social stability. Support for the former view, which relies on Smith, can be found later in the neoclassical economics tradition (e.g. Friedman 1982) and in the libertarian tradition, represented by the likes of Robert Nozick (1974) and F. A. Hayek (1948, 1979, 1988). The redistributive approach to property builds on Rousseau and embraces a wide range of positions from Marx and Marxist economists to Barrington Moore (1972) and social democratic economists, proponents of dependency theory, as well as many anti-globalization writers (e.g. Germain 2000; Stiglitz 2003; Cohen 2004). The emergence of a wide range of perspectives on the role of property in economics has less of a direct link with human rights theory today than it did in the 18th and 19th centuries.

The relationship nevertheless ought to be clear. First, we note that the right to property is a human right. The Universal Declaration of Human Rights reaffirms: ‘1) Everyone has the right to own property alone as well as in association with others. 2) No one shall be arbitrarily deprived of his property’ (UN 1948: art. 17). That this right was not included in the ICESCR or the International Covenant on Civil and Political Rights (ICCPR; OHCHR 1976a) has not diminished its acknowledgement as a human right, though the UN’s reporting and complaint procedures do not provide a monitoring mechanism for this right. By contrast, the European Court of Human Rights receives numerous complaints relating to Protocol 1 of the European Convention, which provides for the right to property (Schutte 2004).

Secondly, human rights obligations (that go beyond a narrow focus on property) have an impact on property rights in economic policy. For instance, very low and non-progressive taxes (as libertarians typically propose) and economic activity left sufficiently unregulated so as to promote transactions in property and private profits will likely result in increased disparities (inequality, poverty and social exclusion) and deprivations of human rights. However, only the most radical libertarians would exclude government intervention to protect the vulnerable. The protection of property does not exclude government policy

favourable to human rights. In fact, in addition to the expected correlation between protection of property and GDP per capita, it is also true that the countries that rank highest in the International Property Rights Index (IPRI) also have strong welfare policies (Horst 2007).<sup>19</sup> The analysis also shows a correlation between poverty and low protection of property rights. This correlation lends support to Hernando de Soto's (2000: 227) contention in *The Mystery of Capital* that 'what the poor are missing are the legally integrated property systems that can convert their work and savings into capital'.

Further work based on de Soto's proposition has placed the right to property precisely at the intersection of economics and human rights as they relate to poverty reduction. Drawing upon de Soto's work, Canada, Denmark, Egypt, Finland, Guatemala, Iceland, Sweden, Tanzania and the UK, in cooperation with the UNDP and the UN Economic Commission for Europe, launched an effort in September 2005 resulting in the founding of the Commission on Legal Empowerment of the Poor (CLEP), co-chaired by de Soto and former US Secretary of state Madeleine Albright, with 28 members. Three members were fully identified with human rights: Shirin Ebadi (Nobel Laureate), Mary Robinson (former High Commissioner for Human Rights) and Arjun Sengupta (Chairman of the National Commission for Enterprises in the Unorganized Sector of India and former UN Independent Expert on Extreme Poverty and Human Rights). The others were mainly very high-level former heads of state and finance ministers of government.

In reviewing CLEP's work, the UN Secretary-General attached importance to the emerging approach to legal empowerment of the poor as a major means of dealing with poverty in light of national and regional experiences and the role of various organizations in the UN system in fostering empowerment of the poor. Significant for our purposes is that the Secretary-General noted both economic and human rights elements of this anti-poverty strategy. From an economic perspective, he said (UN 2009: para. 74):

Legal empowerment of the poor should also focus on removing unnecessary barriers to formal markets and institutions, increasing opportunities for business linkages and market access, increasing benefits and protections for all working in the informal economy, strengthening the organization and representation of informal entrepreneurs, and providing equal access for micro-entrepreneurs to protection, services and utilities.

And from the human rights perspective, he noted (para. 68):

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19. The International Property Rights Index (IPRI) is 'the first international comparative study that measures the significance of both physical and intellectual property rights and their protection for economic well-being', according to the IPRI website. The 2007 study notes the 'the correlation between the IPRI rating and GDP per capita amounts to a value of eighty-nine percent' (Horst 2007: 31).

Legal empowerment of the poor is both a development strategy and a development objective. While its priorities should be set by the poor and for the poor, they should also be guided by human rights principles of equality and non-discrimination, participation and accountability. Development should aim at enhancing the capacities of rights-holders to know and claim their rights.

This example shows that the legal protection of property not only constitutes a principle of the liberal political tradition and a human right of the highest importance to free-market-oriented economists but also is a strategy for reducing poverty for tens of millions of poor people without legal rights to their property. We conclude this section with a consideration of mainstream economic thinking about development and poverty and how to deepen the conceptual linkage between the enjoyment of human rights and the expansion of choices.

### **2.2.5. Resistance in Mainstream Economic Thinking to Normative Approaches to Poverty**

It is hazardous to generalize about economists or even 'mainstream' economists given the wide array of positions economists hold in the continuum between normative and technical ('engineering') approaches, or concerning the relative importance of free markets and government intervention. In the field of development, there is a wide gap between economists who advise central banks and ministries of finance (and tend to be of the 'engineering' variety and value growth in GDP and trade and current account balances as ends in themselves) and economists in multilateral development institutions and ministries of development cooperation who focus more on ethical concerns, human capital and the components of 'human' and 'sustainable' development. Indeed, economists have long noted the link between development and specific elements of concern to human rights advocates, such as economic inequality, education and health (Srinivasan 1994; Sen 2004).

If one were to select the trend in economic thinking about development and poverty that promises the greatest chances for a shared perspective with human rights, it would be the explicit application of a concept of freedom and expanding choices in the context of economic development in the language of the capabilities approach and human development. For example, the UNDP (2001: 9) – echoing the ideas of Amartya Sen – has stated that

human development shares a common vision with human rights. The goal is human freedom. And in pursuing capabilities and realizing rights, this freedom is vital. People must be free to exercise their choices and to participate in decision-making that affects their lives. Human development and human rights are mutually reinforcing, helping to secure the well-being and dignity of all people, building self-respect and the respect of others.



The theoretical linkage of human rights or freedom with economic issues is not the only way in which a sub-group of economists has become engaged in reflection of relevance to human rights. Recently, economic research has begun explicitly to highlight notions of minimum standards, transparency, participation and the like in the context of development policy. Thus, in the economics literature on international trade there has been much discussion about appropriate mechanisms to promote labour standards, including reducing or eliminating child labour in developing countries (e.g. Edmonds and Pavcnik 2006; Maskus 1997). Another prominent example of the integration of rights and economic analysis is work by Bina Agarwal (1994), who attributed women's inferior position in South Asia to a lack of land rights. Other research has focused on matters of 'process'. Thus, Roberto Rigobon and Dani Rodrik (2005) show a significant correlation of economic performance with democracy and rule of law. In their classic paper on corruption, Andrei Shleifer and Robert Vishny (1993) point out how a lack of free entry in the provision of public services (e.g. democracy) can increase social wastage. Furthermore, they show how, when combined with a lack of transparency and insufficient accountability, corrupt government officials may distort economic and service delivery outcomes even more.

Outside of mainstream economics but involving some development economists is another trend, the development ethics movement, which recognizes that human rights can provide principles and goals for development. For some time, concepts relevant to human rights have been operative in the work of economists who emphasize the 'ethics' approach to economics, as opposed to those who apply the 'engineering' approach, or 'positive economics'. This was the theme of Amartya Sen's Royer Lectures in 1986 (Sen 1987). The International Development Ethics Association (IDEA) defines its members as 'a cross-cultural group of philosophers, social scientists, and practitioners who apply ethical reflection to global development goals and strategies and to North/South relations.' They advocate a normative approach to development-based theories 'that appeal to social justice, human rights, basic needs, and theological understandings of the human condition.' At their Second International Conference on Ethics and Development, held in Mérida, Yucatan, Mexico, IDEA members adopted the *Mérida Declaration of 7 July 1989*, enumerating among their guiding ethical principles 'the absolute respect for the dignity of the human person, regardless of gender, ethnic group, social class, religion, age or nationality' (IDEA 1989).

Economists and economic decision-makers are beginning to invoke human rights concepts often without the human rights vocabulary. Jeffrey Sachs (2005), in concluding *The End of Poverty*, embraced the language of eliminating poverty, proposing to end extreme poverty by 2025 through a nine-step programme that he places in the historical trajectory of the ending of slavery, colonialism, segregation and apartheid – all human rights movements, although he does not identify them as such. Nor does he explicitly make the link between the human rights causes of the past and the cause of poverty elimination today, reflecting a common reluctance among economists who address moral dimensions, such

as Benjamin M. Friedman (2005), William Westerly (2006) and Partha Dasgupta (1993), to use human rights language.

Notwithstanding these developments towards a common ground, there are many points of tension between mainstream economic thinking and human rights-centred approaches when it comes to defining development goals or implementing development policy or poverty reduction strategies. First, the bulk of published economic analyses focuses on economic growth – defined as the rate of growth of real Gross Domestic Product (GDP), or GDP per capita – highlighting it as a major economic policy goal, though usually in conjunction with reduced income inequality, or income poverty indices. This preference for growth among academic economists is also the central concern of leading economic decision-makers. For example, the Group of Twenty (G-20) Finance Ministers and Central Bank Governors<sup>20</sup> adopted the *G-20 Accord for Sustained Growth* (G-20 2004) in Berlin on 21 November 2004, which establishes guidelines for economic growth and development, both nationally and globally. Neither the Accord nor the *G-20 Statement on Global Development Issues* (G-20 2005), adopted at the 2005 meeting in Xianghe, Hebei Province, China, on 15–16 October, mentions ‘human rights’ or ‘human development’, and ‘good governance’ is mentioned only in relation to sound economic policies and accountability. The G-20 Accord notes, albeit as a kind of afterthought in the final paragraph: ‘Mobilising all productive forces of a society requires empowering individuals and enhancing economic participation. Equal economic opportunities allow people to better provide for themselves and their families, thus helping to reduce poverty and social tensions’ (G-20 2004).

A human rights approach would consider growth not as a goal but rather as a means to achieve social objectives redefined as rights relating to health, education, cultural and political freedom and the like.<sup>21</sup> To be sure, higher levels of income and reductions in income poverty may be accompanied by greater realization of these rights, but then again they may not, as ought to be clear from the examples of Singapore, Malaysia, Republic of Korea, China and India, among others, in recent economic memory (Hewlett 1979). The 18th- and 19th-century horror stories of the economic exploitation of labour in now-industrialized countries offer examples of this lack of equivalence from more distant historical perspective (Marcus 1974).

Of course, at the normative level, rankings of social arrangements in economic analysis are likely to be more nuanced and consequently the goals of a human rights-centred approach and the economic approach are likely to be less divergent (Sen 1970). Yet here at issue is how well human rights principles can be

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20. The inaugural meeting was held in Berlin on 15–16 December 1999. The members of the G-20 are the finance ministers and central bank governors of 19 countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, the Russian Federation, Saudi Arabia, South Africa, Republic of Korea, Turkey, the UK and the US. The EU is also a member and senior officials of the IMF and the World Bank participate in G-20 meetings on an *ex-officio* basis.

21. The emphasis on growth as a means is prominent in the work of the Overseas Development Institute (ODI) on pro-poor growth; see Foresti and Sharma et al. (2009).

integrated with rankings of social arrangements based on utilitarian and Rawlsian principles that are favoured by economists. In particular, one might imagine that, whereas economic analysis and policy interventions fundamentally concern making choices among alternatives in a world of limited resources, the language of human rights (and associated obligations towards bearers of rights) appears less forgiving about choices and options. Economists tend to use rights language when it enhances, rather than limits, choices.

Indeed, the appeal of John Rawls's work to economists is probably due in part to his use of the fiction of a 'rational' person making choices. His influential *A Theory of Justice* (Rawls 1971) posits such a person choosing, behind a 'veil of ignorance', the fairest social arrangement in assigning rights and duties and distributing advantages in society and hypothesizes that such a free and rational person would choose, first, a principle of equal enjoyment of basic liberties (civil and political rights in human rights language, which Rawls does not use) and, secondly, equality of opportunity to occupy offices and positions under a social arrangement that provides the greatest benefit to the least-advantaged members of society (Rawls 1971, 1993). For the economist, such an analysis is reminiscent of Pareto optimality, according to which a policy change is to be preferred if at least one individual enjoys a higher realization of utility (or rights) and all other individuals enjoy at least the level of utility (or rights) that they previously enjoyed.

Such hypothetical and ahistorical reasoning is not unlike models that are developed in economics, and so it is not surprising that the economics literature draws on Rawls and uses rights language without reference to the human rights that, in historical fact and unlike abstract theories of justice, have been agreed upon. There is certainly value in economic models that abstract from complexities in order to isolate choices before extrapolating to social arrangements without considering the messier arrangements that actually exist. This tactic of Rawls's and other rights theorists' is appealing to economists, but it often pays no heed to the actual human rights that have been defined through historical social processes. When Rawls alludes to human rights almost 30 years after he first published *A Theory of Justice*, he does so in a somewhat idiosyncratic way. In *The Law of Peoples*, he explains that human rights 'set a necessary, though not sufficient, standard for the decency of domestic political and social institutions' (Rawls 1999: 80), but only Articles 3–8 of the *Universal Declaration* (UN 1948) – those relating to civil and political rights – contain 'human rights proper'; while economic, social and cultural rights, which 'presuppose specific kinds of institutions', presumably are not 'human rights proper' (Rawls 1999: 80 n. 23). Elsewhere, he enumerates human rights as the rights to life (including 'the means of subsistence'), liberty and 'formal equality as expressed by the rules of natural justice' (p. 65). This interpretation is quite remote from actually existing human rights in the international human rights system.

Secondly, as a practical matter, even where the importance of goals *other* than that of economic growth is recognized in policy work, a debate has arisen about whether, for instance, achievements in civil and political rights ought to precede,

accompany or follow economic growth. The holistic human rights approach was challenged, among others, in the so-called 'Asian values' debate, wherein the former Singapore Prime Minister Lee Yuan Kew suggested that adherence to Asian values, which accorded less weight to individual rights compared to discipline and order, was a key factor in the high rates of economic growth achieved by the East Asian tiger economies (Zakaria 1994). Existing economic literature has come down on both sides of this issue. Some scholarly articles, both theoretical and empirical, suggest that giving priority to political rights, for instance, can contribute positively to economic growth (Kaufmann 2006). Others suggest that economic growth will more likely pave the way for institutional, including political, development – and that prioritizing political freedom may not be the best strategy for developing countries wishing to promote economic growth (Glaeser et al. 2004). There seems to be little doubt that political freedoms are positively related to economic growth (Friedman 2005: 313–20). The more interesting question is how adherence to human rights principles can instrumentally contribute to the effectiveness of economic policy interventions, including those aimed at growth and efficiency.

Thirdly, even if human rights-centred goals and strategies could theoretically be integrated with economic approaches in order to foster development (appropriately defined), how can such integration be defined and its progress followed in a manner that is measurable? Economic analysis is characterized by an array of sophisticated and compact quantitative indicators that measure policy interventions and assess their effectiveness, including indicators of poverty, inequality, macroeconomic growth and budgetary performance. By contrast, human rights indicators have a more recent pedigree and have tended to be more qualitative than quantitative in nature. Recent efforts to capture simultaneously human rights and economic elements of development goals and strategies have led to lists with very large numbers of potential indicators. While concern has been raised about the practicability of implementing such lists, concern that sometimes is expressed in the form of a call for country-specific lists based on ability to collect and analyse data, there has been limited discussion of conceptual principles that can lead to the efficient 'presentation' of such information in the form of indices and the like.

### **2.3. ECONOMICS AND HUMAN RIGHTS PERSPECTIVES ON GOALS OF AND INSTRUMENTS FOR POVERTY REDUCTION**

It is widely acknowledged in human rights thinking that certain normative claims are posited as human rights precisely because they contribute to respect for human dignity and the full development of human potential and therefore have intrinsic value. From the economics perspective, their value may be perceived more as instrumental insofar as they can contribute to the promotion of efficient markets and social welfare (overcoming market and government failure). Another way of looking

at the instrumental value of human rights is that they help to establish markers to limit the harm to well-being that may result from unfettered market forces.

The intrinsic value of human rights also establishes a presumption of inviolability. From an economic perspective, such a notion that human rights are absolute naturally implies that respecting them means rejecting the notion of tradeoffs, which is often fundamental to economic analysis, given resource constraints. For an economist, it makes no sense to claim that all people are entitled to all good things, which the concepts of inviolability and inalienability seem to suggest. From the human rights perspective, however, rights are not absolute, except for a few that are deemed 'non-derogable' even in times of national emergency, such as freedom from torture. Others – those most relevant to development and poverty reduction – are subject to limitations under predetermined circumstances that acknowledge the resource and other constraints that preclude the same level of protection in all circumstances. They remain in all circumstances a 'standard of achievement', but some are to be progressively realized in accordance with available resources and others are subject to restrictions for valid purposes of national security, public health and other imperatives. Furthermore, even though hierarchies and tradeoffs of human rights are avoided in human rights thinking, individuals attach more importance to certain rights than to others, depending on their circumstances and preferences, and therefore they do rank them. The concept of the equal importance of human rights means that accountability mechanisms should be available to respond to those individual preferences rather than that the state is required to guarantee maximum protection of every right at the same time. In this sense, inviolability is compatible with the economist's concern with scarcity of resources and individual choice.

The obligation to realize the relevant human rights for all has implications for market and government failure, which are major concerns for economists. The promotion and protection of human rights (through awareness-raising, institution-building, monitoring and investigation, political pressure, and judicial and other remedies) provides tools for achieving desired social arrangements in order to overcome these failures. In sum, human rights establishes norms, and economic analysis can be used to show how norms can be achieved efficiently; economic analysis clarifies desirable social arrangements, and human rights uses accountability procedures to further those social arrangements along with traditional market-based arrangements favoured by economists.

### **2.3.1. Guiding Policy with Principles of Economics and Human Rights**

Human rights and economics share a number of principles that should guide policy, but they interpret them differently. We shall examine five areas: utility, good governance, accountability, non-discrimination and participation.

The objective of maximizing social welfare and the protection of human rights both seek to maximize well-being. The notion of *utility* as used in economic

analysis to rank social arrangements does not refer to the instrumentalization of human beings – as some in the human rights field might fear from the word ‘utility’ – but rather to the maximization of their (self-perceived) well-being. For many economists, utility or well-being may refer to individual satisfaction through consumption of goods and services, but some have sought to go beyond utility, as traditionally defined, and to embrace a holistic notion of human capability. In this sense, economic objectives can be thought to be compatible with the ultimate objectives of human rights. The distinction some economists make between capability sets and functionings overlaps in many ways with the distinction in human rights theory between guaranteed rights or entitlements (positive law enumerating substantive rights) and the exercise or enjoyment of those rights (practice and empirical evidence of the rights people actually enjoy). Although the adherents of the capabilities approach tend to eschew listing capabilities as a finite and established enumeration, most capabilities are reflected in positive human rights law, which does enumerate rights.

Economic and human rights approaches come closest to a common understanding with respect to the principle of *good governance*, though for different reasons. The abiding concern with good governance, in economics and in institutions responsible for financing development, is based on the evidence that economic performance and market efficiency are considerably enhanced when accountability and transparency are required of government and private agents and corrupt practices are eliminated. From the human rights perspective, not only are access to fair process, respect for the rule of law and equality before the law defined as human rights, but the human rights field also has centuries of experience with establishing justice systems, ensuring equality before the law and removing arbitrary practices. This framework and this experience are invaluable for overcoming government failure – specifically, the duty of the state to ensure the fair administration of justice, to guarantee equal access to public office, to provide recourse for individuals and groups who have been deprived, to eliminate arbitrary treatment of citizens by state agents, and to provide for a professional and independent judiciary. Human rights thus are the natural ally of economists in the struggle for good governance.

From the human rights perspective, *accountability* is more than a means of ensuring good governance; it is the essential consequence of the linking of rights and duties. Accordingly, a human rights system is based on the principle that duty-bearers, particularly government, should be held accountable and be subject to the machinery for monitoring and providing effective remedies in case of violation. Economics is less directly concerned with government accountability and places greater stress on mechanisms (which may, of course, include accountability) that help to achieve social outcomes that lead to high social welfare. While economists are good at defining and ranking such alternative social arrangements, human rights serves a complementary function by holding government and private agents – including donor countries, development banks and other international agencies, and business entities – accountable for human rights and may in this way contribute to reversing failed development strategies. Invoking human rights in

the context of development should normally function in a cooperative mode, with the adversarial role (e.g. accusing governments and other entities of human rights violations) being the exception. The misperception that human rights always operate in the accusatory mode explains in part the suspicion with which it is viewed by some development practitioners and economists.

*Non-discrimination* is a principle that applies to all human rights in the sense that no one can be deprived of a human right on the basis of race, sex, language, national origin, or political or other status. It should not be confused with the principle of non-discrimination as used in economics to refer, for example, to equal treatment for imported products regardless of their national origin or to equal access of individuals to production and consumption opportunities, or to pricing practices. The principle is thus important in both fields, but for different reasons. Two additional remarks may be made with regard to the use of non-discrimination in human rights. The first is that concern with non-discrimination requires the disaggregation of outcome indicators by socioeconomic and demographic groups, geographical region and other categorizations needed to identify patterns of discrimination. The second is the special significance of non-discrimination with respect to children and child poverty. From the human rights perspective, children should enjoy the same rights as adults except where their exclusion from such enjoyment is fully justified by the level of the child's development (such as a minimum age for voting, marriage, death penalty, military service, employment or criminal responsibility). The role of parents and guardians, as well as that of the government, in realizing children's rights is analysed in the economics literature in terms of the concept of principal-agent relationships and the related problems of moral hazard and adverse selection. Both approaches seek to address the child-guardian relationship, albeit by seemingly different means – one by defining child rights relative to adults; the other by using mechanisms such as setting outcome thresholds linked to rewards or punishment. Closer observation suggests that the two approaches are extremely similar; after all, to track violations of rights, one has to define a threshold beyond which a violation occurs, and the idea of punishment to ensure compliance is similar to economic ideas on the subject.

*Participation* is another principle that has emerged as a priority policy for both human rights and development economics. Development agencies have devised elaborate programmes to increase local 'ownership', 'stakeholder participation', decentralization and community-based decision-making. Although the practice does not always match the rhetoric, this commitment to participation is an expression of a core principle of human rights in development, a principle that is reflected, *inter alia*, in the right to development as it is understood from the human rights perspective. The advantages of community-based and -driven development, empowerment, local ownership and genuine participation are well-known in the human rights field, and strategies using knowledge of human rights and claims based on them by the affected population may be critical to the success of community-based development and poverty reduction.

Interestingly, economists would also argue in favour of participation as a mechanism by which individual preferences are revealed and aggregated to achieve

social goals. Indeed, one could argue that the absence of participation (e.g. as voters or stakeholders in policy processes) may lead to some citizens' preferences not being taken into account in policy decisions, which could then result in inefficient and possibly unjust outcomes. In this sense, economists would certainly support human rights efforts to promote participation. Where the two disciplines differ is in their understanding of 'participation' – and the challenges involved in participating. For instance, economists (and political scientists) emphasize that individuals' self-interested behaviour may result in 'strategic responses' on their part in a way that does not accurately reveal their preferences. In this case, participation may not yield the most socially desirable outcomes. Even if this were not the case, or if we were to take it as a given that participation – whatever its form – is desired for its own sake, it is not always the case that a decision will even be made, as Arrow's Impossibility Theorem famously points out (Arrow 1963).

### 2.3.2. Macroeconomic Outcomes, Human Rights and Resource Allocation in the Pursuit of Poverty Reduction

The human rights literature has also emphasized elements that economists can readily appreciate. Several scholars have wrestled with issues of resource constraints in the context of the perceived absolute nature of human rights (Normand 2000; Sengupta 2002). Standard in the human rights literature is the idea – based on Article 2 of the ICESCR – that states have the obligation 'to take steps, individually and through international assistance and co-operation, especially economic and technical, *to the maximum of its available resources*, with a view to achieving progressively the full realization of the rights recognized in the present Covenant' (italics ours). This concept of the 'progressive realization' of rights is a clear acknowledgement of the fundamental concern with resource constraints, as is the option – provided in the same article – for developing countries not to provide economic rights to non-nationals. Related to the issue of resource constraints, the CESCR (1990: para. 9) developed the concept of 'minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights'.

Human rights experts have also become more explicit in including the realization of human rights as an integral element of the process of achieving key 'economic' goals such as poverty reduction (Hunt, Nowak and Osmani 2004). Building on these ideas, some policy experts and multilateral agencies have explored ways in which elements of human rights can be integrated into planning for economic development, with poverty reduction as a key goal. Typically, this has involved describing how such integration is to be carried out in practice (UNDP 2003). It has also led to research on the construction of indicators that could help countries to navigate a route guided by the human rights approach to development (Malhotra 2006; OHCHR 2006, 2008b). However, important in all of this are adequate resources to carry out any relevant obligations, especially when the onus for doing so is on governments.



The magnitude of resources available for poverty reduction in a given country expands or contracts according to the national income, development assistance, and changes in the overall size of the national budget, the extent of the budget deficit and foreign debt. The goals of poverty reduction are also dependent on events in international trade, financial markets, the flow of foreign capital, interest rates and foreign exchange rates, which in turn influence income, price and employment levels in the economy. Macroeconomic developments underlying these variables have major impacts on a country's capacity to reduce poverty and respect human rights. Reduction in government spending and budget deficits, undertaken as part of adjustment programmes and to attract foreign investment, can adversely influence short-term income and employment levels, and may reduce expenditures on anti-poverty and insurance programmes, such as health insurance and social security. A consequence of such adverse influence is that the level of realization of economic, social and cultural rights may decline. Hence, the question arises as to whether financial market liberalization, trade liberalization, privatization, tight monetary policies and structural adjustment measures – all with a view to economic stabilization, reducing debt and attracting investment – are incompatible with respect for economic, social and cultural rights insofar as the former can be achieved only at the expense of the latter.

Fortunately, it is not an either/or choice between opening markets and people's livelihoods. Where the country concerned and its development and trade partners respect its human rights obligations as established in its national constitution and in international human rights treaties, liberalization policies have to be tempered by appropriate and adequate interventions in the form of social safety nets, restrictions on international capital flows, and limits on the cost of borrowing for the poorest groups or micro-credit schemes.

Even before 2000, most development institutions – multilateral and bilateral – made poverty reduction a priority. The Millennium Declaration (UN 2000) and the MDGs raised to the highest political level the commitment to halve extreme poverty by 2015 and defined time-bound targets for seven other goals, ranging from halting the spread of HIV/AIDS and providing universal primary education, to empowering women, reducing infant and maternal mortality and ensuring environmental sustainability (UN 2006a). The MDGs have become part of the poverty reduction strategy process and are incorporated into most PRSPs, which each country drafts to define its social and economic objectives, policies and action plans to reduce poverty. A trend emerged in the early 2000s to include human rights in these strategy papers, such as those by Rwanda, Bolivia, Cambodia, Cameroon, Uganda, Tanzania and Viet Nam (Pereira Leite 2001). However, inserting human rights language into a PRSP is less important than greater participation by the poor and the marginalized and control over the definition of economic priorities by the reporting countries (Stewart and Wang 2005). Such an approach to macroeconomic policy is one method by which a poverty reduction strategy consistent with both human rights norms and principles and the macroeconomics framework can be developed. An extremely underdeveloped field, and one for which further research is recommended, is the elaboration and application of

content and process indicators and guidelines for such macroeconomic policies from a human rights perspective. The High Commissioner for Human Rights has drawn attention to the relationship between the MDGs and human rights by disseminating to governments charts on the intersection of human rights and the MDGs and has published *Claiming the MDGs: A Human Rights Approach*, which is an exhaustive analysis of how human rights can contribute to the achievement of the MDGs (OHCHR 2008a). In addition, the UNDP has published a primer called *Human Rights and the Millennium Development Goals: Making the Link* (UNDP 2007).

The tension between macroeconomic goals and human rights cannot be resolved, however, by a general commitment to moderating certain policies. Rather, it requires a partnership along the lines envisaged in MDG 8, which concerns global partnerships. This goal specifically sets targets to be achieved by 2015 in the following areas: an open trading and financial system; special needs of the least-developed countries (in terms of tariff- and quota-free access for their exports, enhanced debt relief, cancellation of official bilateral debt, etc.); special needs of landlocked and small island developing states; sustainable debt; decent and productive work for youth; access to affordable essential drugs; and access to new technologies. A study by the Poverty Group of the UNDP's Bureau for Development Policy examined progress on MDG 8 with respect to aid (commitments in the *Monterrey Consensus* [UN 2002]), trade (the WTO Doha 'development' round) and debt relief (the HIPC Initiative [see IDA/IMF 2009]). The authors stressed the importance of these three areas as determining, 'to a large extent, the successful achievement of the first seven MDGs by 2015 in most if not all developing countries' (Vandemoortele, Malhotra and Lim 2003: 2). Their conclusion (pp. 14–15) sums up the challenge of integrating human rights and human development principles into poverty reduction strategies and the MDGs:

If the world is to attain the MDGs, an important condition will be that aid, trade and debt relief are driven by human development concerns... However, progress thus far has been extremely slow. The blame for the unsatisfactory advance can be attributed to several causes – both domestic and international – but it cannot be denied that slow action on key initiatives in the areas of aid, trade and debt will seriously reduce the likelihood of achieving the MDGs by 2015. Continued inaction in these crucial areas of MDG 8 which impact on the possibility of achieving the other seven MDGs for most developing countries also casts doubt on the seriousness with which developed nations are addressing the global partnership embodied in MDG 8 and its inherent notion of mutual accountability and joint responsibility.

The partnerships to which MDG 8 refers are critical to the availability of resources for poverty reduction and are based on the concept of mutual responsibility and accountability, which lies at the heart of MDG 8. It is not only the commitments made in Monterrey, Doha and Washington regarding aid, trade and debt relief that matter; developed and developing countries have assumed obligations to realize

human rights, individually and through international assistance and cooperation. As noted earlier, the concepts of 'progressive realization', 'maximum of available resources' and 'minimum core obligation' specify the scope of obligations to ensure the satisfaction of human rights in the context of poverty reduction.

### 2.3.3. Indicators and Other Tools for Measuring Compliance

Those entrusted with monitoring human rights have been borrowing from indicators used in economic and social development and have found it useful to group indicators into the categories of institutional ('structural'), process and outcome indicators (OHCHR 2008b). In explaining its approach, the OHCHR (para. 17) noted:

In opting for the use of structural, process and outcome indicators in the conceptual framework adopted for this work, the primary objective has been to consistently and comprehensively translate the narrative on human rights standards with the help of indicators that can reflect the commitment–effort–results aspect of the realization of human rights through available quantifiable information.

Economic indicators and benchmarks, such as those developed for the MDGs, frequently miss critical information for assessing human rights compliance. However, many indicators used in economic analysis are directly relevant to assessing human rights, such as data on access to health care and education disaggregated by gender and ethnicity, which may reveal discrimination patterns that are relevant to human rights. The selection of indicators from potentially hundreds that are available for each issue to assess human rights (such as the right to health) differs from the selection of indicators for the assessment of development goals (such as life expectancy).

In human rights, compliance with norms is monitored by means of highly developed qualitative assessments of structures and institutions and quantitative indicators of many civil and political rights, but less so for economic, social and cultural rights and the right to development. Considerable efforts are underway to fill these gaps through the guidelines and general comments of the treaty bodies, comprehensive overviews, such as the OHCHR's *Draft Guidelines* (Hunt, Nowak and Osmani 2002, 2003) and its *Claiming the MDGs* (OHCHR 2008a) and the work of the Inter-American Commission on Human Rights (IACHR 2008), as well as independent research projects.<sup>22</sup> On the other hand, statistics are available for all aspects of economic performance and social development and are widely used in planning and monitoring, with little concern for human rights implications.

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22. Such as the Nordic Network Seminar in Human Rights Research, Turku, Finland on 10–13 March 2005, and the Indicators, Benchmarks, Scoping Assessment (IBSA) Project of FIAN and the University of Mannheim.

National and international statistics offices use highly sophisticated methods to measure performance based on economic criteria that do not lend themselves well to measuring human rights. The gap between the matters of concern to human rights and the indicators and benchmarks used in PRSPs and the MDGs can be filled by introducing the emerging human rights-relevant indicators. The considerable experience of economics with quantitative and qualitative measures can assist current efforts on the part of development and human rights institutions to integrate human rights into development.

A particularly powerful tool for monitoring states' compliance with their commitments to realize economic, social and cultural rights is budget analysis. Integrating a rights perspective into budget analysis and using such analysis as a tool for human rights work benefits from the combined persuasive value of the financial analytic rigour of budget analysis and the moral and legal weight of human rights standards (Shultz 2002: 9).

#### **2.4. CONCLUSION: TOWARDS A COMMON CONCEPTUAL FRAMEWORK OF POVERTY FROM ECONOMICS AND HUMAN RIGHTS PERSPECTIVES**

It is illusory to seek a 'common conceptual framework' for human rights and economics and to 'harmonize' the perspectives of these two fields – if by that is meant shifting the core concepts of mainstream thinking in each field towards the adoption of the concepts of the other or the invention of an entirely new set of concepts acceptable to both. What appears possible is a common vocabulary and a clarification of core concepts of each in ways that are meaningful to and indeed embraced by the other. Efforts by specialists in both fields over the past two decades to apply their best conceptual tools to development planning and poverty reduction have revealed several elements of the theory and practice that are consistent with an emerging set of shared perspectives of economics and human rights on these issues.<sup>23</sup> This emerging set of shared perspectives is the starting point for a common conceptual framework.

In developing a common conceptual framework, one should first ask to whom it is addressed. Of course, those economists who still hold the view that the objective of development is growth and market efficiency or who eschew normative issues in what they see as an engineering role for economists will not take seriously any attempt at a common conceptual framework with human rights or will find little of use in such a framework. Economists who place an absolute value on the free market and look with suspicion on any government intervention will not be interested in this effort. Similarly those in human rights who consider only civil and political rights to be properly human rights and the promotion of

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23. A noteworthy study that brings out complementarities between economic and human rights approaches to development is Seymour and Pincus (2008).

economic, social and cultural well-being to be a useful agenda for government policy but not for human rights will regard any attempt at a common conceptual framework with economists working for poverty reduction as an unwelcome dilution of the programme for the promotion and protection of the rights of the individual against tyranny and oppression. There may well be a common conceptual framework among the most free-enterprise-oriented economists and the most libertarian of rights theorists in their mutual emphasis on individual freedom and sanctity of property.<sup>24</sup>

The common conceptual framework that is most consistent with human development and the capabilities approach is one that embraces human rights and development as most 21st-century scholars and practitioners understand them. Specifically, it is relevant to those economists who acknowledge the ethical dimension of their profession and see growth and efficiency as means towards socially useful ends (with a positive role for government), rather than as ends in themselves (with government's role kept to a strict minimum). In the context of development, these ends correspond to concepts of fulfilment, well-being and freedom familiar in human rights discourse. It is also addressed to those who adhere to a holistic approach to human rights, having in mind a social and international order in which all human rights can be fully realized, and who see the advantage to be gained by appropriate use of incentives, resources allocation, indicators, budgetary assessment and other tools of economics that can complement the statutory, judicial and regulatory tools more familiar to the legal process of implementing human rights norms. By way of conclusion, we offer in the box below a brief summary, in the form of succinct propositions, of this effort at constructive dialogue towards such a framework. But it is only a beginning.

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### **Box 1. Propositions for a common conceptual framework for economics and human rights in dealing with poverty**

#### *A. Mean and ends*

1. Growth, market efficiency and economic performance are means towards socially useful outcomes and can be reconciled with human rights when they are clearly acknowledged as means that must be directed towards the end of an adequate standard of living for all in a setting of individual freedom, which is a recognized human right. More generally, this social utility can be defined or refined by reference to the full range of human rights. In this sense, economics has an instrumental role for human rights.
2. To the extent that the concept of utility or social welfare in economics is understood as the fulfilment of human potential, it can be shorthand for a common understanding in economics and human rights of well-being and not merely a notion of self-perceived happiness by a non-existent rational person. In a common conceptual framework, the abstract concept

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24. The argument that pro-growth policies based on economic freedom empower the poor is made by World Bank senior economist Jean-Pierre Chauffour (2009).

of utility can be made concrete by drawing on the actual historical process of elaborating human rights standards and its results in the form of internationally recognized and defined human rights.

3. Human rights norms, which define specific goals afforded legal protection by the state, enhance individual utilities. This gives them intrinsic value to society. Thus, human rights improve the prospects of the economy to succeed and can be interpreted as having an instrumental role for economics.

### ***B. Capabilities and a holistic approach***

4. If the underlying utility in economics and the ultimate goals of human rights are explained in terms of capabilities, and thus related to expanding choices and freedom, then the finalities of economics and human rights may be perceived as similar. Enhancing the freedom of individuals to make choices to lead lives they consider worth living is a shared conceptual framework for economics and human rights, notwithstanding the different vocabularies used for this concept in both fields. The best chance for a common vocabulary is to be found in human development and the capabilities approach.
5. Because the capabilities approach distinguishes between capabilities and functionings, it is useful for a common conceptual framework to relate that distinction to the one made in human rights between having and realizing a right. Thus, a human right may be 'guaranteed' by a provision of law and be theoretically available, but the 'exercise' of the right, through acts actually undertaken or status reached on the basis of the right with the protection of law and institutions, is more significant in assessing human rights performance. The difference lies in the role of law, since capabilities are pre-legal, although law is a necessary tool of both economics and human rights. Human rights protection mechanisms bridge capabilities and functionings by removing barriers to the latter.
6. While it has been argued that there should be no attempt to produce a finite list of capabilities, the common conceptual framework includes the acknowledgement that human rights relies on lists, namely, those authoritatively recognized in international human rights texts and national constitutions. While a list evolves through new standard-setting instruments and authoritative interpretations, its value, unlike capabilities, lies in its determinacy.
7. A common conceptual framework requires that the misperception that human rights are primarily or exclusively political and civil be overcome. Economists tend to regard human rights as relevant to their concerns if they are aware that most in the human rights community include economic, social and cultural rights and regard human rights holistically, in much the same way as policies of sustainable development consider development holistically. The awareness of the interrelatedness of social, economic, financial, cultural, political and legal dimensions is common to development and human rights thinking and forms part of the common conceptual framework.

***C. Methods and principles***

8. Methodologically, the tactic of human rights to use theory and public reasoning to define norms and then provide the tools of public policy and legal process to ensure conformity with the norms is complementary to the tactic of economics to use theory and empirical analysis to inform public policy and economic decision-making through prediction of outcomes and explication of options. The common conceptual framework should not claim to alter these core functions but rather to enhance their mutually reinforcing character.
9. The principles that guide the process of realizing human rights – accountability, rule of law, transparency, equity, participation, equality and non-discrimination – overlap with principles of empowerment, equity, welfare, participation and inclusion used by economists in assessing sustainability and pro-poor approaches to development and poverty reduction. This overlap in principles governing the process of poverty reduction further enhances the mutually reinforcing character of economics and human rights.
10. The additional human rights principles of universality, interrelatedness, interdependence and indivisibility, well known to all who work in human rights, are relevant to economists in that government policies of poverty reduction may be assessed by a common set of standards to be found in human rights instruments and their interpretations. Thus, the normative focus of policy in these areas need not be based on a selective theoretical framework or theory of justice but rather on the universally accepted standards of human rights.
11. The principle of non-retrogression is more complex than the other principles, and a common conceptual framework involves re-examining the theoretical possibility of lowering the protection of one right to achieve a higher standard of protection of one or more other rights in light of empirical evidence of the relation, if any, between the retrogressive measure and enhanced rights protection. Given that in human rights the measure must be deliberately retrogressive (e.g. rescinding a law banning child labour) to be contrary to the principle, and that limitations and derogations are permitted if circumstances require, there is not likely to be a conflict between an economic approach accepting tradeoffs and a human rights approach of non-retrogression.

***D. Resource allocation***

12. The emphasis of human rights on the equal worth of each person and the elimination of repression and oppression is compatible with economic theories of efficiency in the sense that the functional equivalent of Pareto improvement can be achieved by a movement from one allocation to another that can make at least one individual better off, without making any other individual worse off compared to the outcome of alternative allocations.

13. Human rights shift the focus away from income and towards social, cultural and political factors (including discrimination based on religion, gender, race, ethnicity, language and caste) that affect the achievement of the economic goals of equity and poverty reduction and may help in the development of redistributive mechanisms at lower economic cost.
14. The second welfare theorem – that markets can achieve equitable utility outcomes provided that the initial distribution of individuals' endowments is rearranged – is supported by the human rights concept of maximizing available resources and achieving an adequate standard of living for all.
15. The economic concept of introducing equity into the 'efficient allocation of utility' between individuals is compatible with the human rights concept of equal enjoyment of rights, including measures to ensure that no one fails to enjoy the minimum core realization of each right, consistent with the obligations of states to respect, protect and fulfil all human rights.

#### ***E. Governance and democracy***

16. Human rights principles – of good governance based on the rule of law, transparency and accountability; participation through empowerment of communities and maximizing children's self-determination; and non-discrimination in the enjoyment of all human rights – are shared principles, although they are defined and justified in different ways.
17. Human rights include norms of political participation and liberties necessary for the functioning of democratic institutions, and the constraints placed on states by virtue of their obligations in this respect strongly reinforce the policy priority of international financial institutions, which attach importance to anti-corruption and democracy as part of poverty reduction strategies. The common concern with anti-corruption and democratic promotion in the context of poverty reduction is part of the common conceptual framework of economics and human rights.

#### ***F. Social arrangements and incentives***

18. Economists' concern with the problems of 'moral hazard' and 'adverse selection' may be addressed by an effective system of negative and positive incentives, which fit in the human rights approach insofar as it highlights the concern about the potentially divergent interests of the principal and its agents and the duty to give priority to the former.
19. The human right, affirmed in Article 28 of the *Universal Declaration of Human Rights* (UN 1948), 'to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized' has implications from the perspective of economics for identifying preferred social arrangements. In this regard, a common conceptual framework includes reflection on the structural impediments to realizing human rights, most of which concern trade, debt, lending policies, commodity pricing, subsidies, investment and the actions of multinational enterprises.



### **G. Measurement of performance**

20. Extensive work on indicators by economists and the data collected by the principal international financial and development institutions provide considerable information that is of use in assessing related human rights, but they frequently miss information that is critical for assessing human rights compliance.
  21. The common conceptual framework includes the recognition that many indicators used in economic analysis may be useful as outcome indicators for human rights, such as those that reveal discrimination patterns or level of achievement in social sectors, while others need to be developed specifically to capture laws and institutions (structural indicators) and compliance with human rights principles (process indicators).
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The foregoing propositions, distilled from this chapter, are meant to do no more than illustrate the potential for a common conceptual framework for economics and human rights with respect to poverty reduction. They reflect the concepts that emerge when specialists in one field are called upon to interact with those of the other. When an open dialogue does take place, the most promising feature of this emerging framework is the mutually reinforcing nature of the two fields.

Economics and human rights appear to diverge if one takes a simplistic view that economics focuses on efficiency of markets and economic growth, while ignoring norms. Accordingly, child labour and sexual exploitation of women and girls would be seen as potentially consistent with market efficiency and productivity. The simplistic view of human rights would see them as naively focusing on absolute norms, while disregarding social and economic realities, particularly scarcity of resources and market mechanisms. A more accurate understanding of the economic perspective on child labour and sexual exploitation is that longer-term costs of denying education and health to children and rights of women alter the calculation of market efficiency and productivity, and that equity and other social goals are part of economic policy. Similarly, the absolutist understanding of human rights deontology is tempered by an awareness of resource constraints and the need for incentives that will influence economic behaviour in ways that are consistent with obligations of both conduct and result. If economic and human rights thinking are seen as mutually reinforcing perspectives, an integrated application of both has the advantage of clarifying social goals, enhancing tools of monitoring and evaluation, and identifying effective implementation policies. In the example given, both economic and human rights analysis would reach similar conclusions about the need to eliminate child labour and sexual exploitation, as well as regarding the policies conducive to doing so.

Without finding a common language and practice through joint efforts, such as this book, and more importantly through efforts by practitioners in country, the economic and human rights aspirations of development will continue to advance like 'ships passing in the night' (see Alston 2005). The elements of a common conceptual framework suggested here are a beginning. The dialogue has just

begun in earnest<sup>25</sup> and should be continued at the country level, where it can make a difference in people's lives. After all, the goal of helping people to reach their full potential, unburdened by poverty and repression, is a goal incontestably shared by economics and human rights.

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25. For other examples of significant efforts to find a common language between economics and human rights, see Seymour and Pincus (2008); Foresti and Sharma et al. (2009); and Alston and Robinson (2005).

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## Economic Globalization and the Human Rights of Poor People in Rural Areas

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### 3.1. RURAL POVERTY, ECONOMIC GLOBALIZATION AND HUMAN RIGHTS

This chapter addresses poverty in the light of the contemporary process of economic globalization and the economic downturn caused by it. It argues that the one-dimensional and neo-classical form of economic globalization seen over the past three decades (from around 1980) has aggravated world poverty. A revitalization of principles underlying the initial United Nations conception of global cooperation around human rights is therefore urgently needed.

This chapter also argues that the kind of economic globalization that has dominated investments, trade and economic policies has significantly weakened the commitment and ability of states and the international community to realize human rights for all.

Many development economists, while recognizing the desirability of *poverty reduction*, fail to show concern for the prevention of and protection against *impoverization* or *poverty production*.<sup>26</sup> Impoverization or poverty production frequently and extensively occur through unbalanced and often predatory 'development', where some get rich while others get poorer. Poverty cannot be expressed in terms of monetary income alone, but should take into account other factors such as food insecurity, malnutrition and ill-health, decreased personal security through loss of community network, deprivation of conditions for resilience in face of difficulties, and cultural disorientation arising from deculturalization. A person can get a higher cash income and yet become poorer. To use a dollar a day as a measure of poverty and its opposite is almost meaningless.

The initial UN vision of cooperative globalization was quite different and more multidimensional than current forms of economic globalization. Early UN conceptions envisaged an active public sector for protective and redistributive

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26. The term 'poverty production' has been introduced by Else Øyen in the context of the work of the Consortium of Research on Poverty (CROP). See Else Øyen (2004).

purposes to complement market operations, also evidenced in the broad conception of human rights underlying the Universal Declaration on Human Rights. This chapter therefore seeks to elucidate the contrast between the UN vision and the current pattern of one-dimensional *economic* globalization, and to explore ways in which the original vision, properly adapted to contemporary circumstances, can be revived and implemented.

A special emphasis is given to rural poverty in developing countries, and especially to the one billion people who today suffer from hunger and malnutrition in various forms – perhaps the most unacceptable manifestation of the failures of economic globalization as it has evolved. Half of this bottom billion live in smallholder farming households while two-tenths are landless and one-tenth are pastoralists, fisher folk and forest users.<sup>27</sup> The remaining two-tenths are found in urban slums. All suffered during the preceding decades of rampant speculation while those on the top of the pyramid built enormous fortunes. The suffering of the bottom billion has moreover increased with the onslaught of the global financial crisis. Inadequate attention by states to sound and socially sensitive agricultural development processes has aggravated the poverty of rural people and contributed to their excessive migration to urban areas. There, they mostly end up in different but equally serious forms of poverty, with reduced personal security and weak predictability for their livelihood and access to adequate food.

The task of expanding opportunities for the vast numbers of smallholders, landless workers, artisanal fisher folk and others who make their living in rural areas, has mostly been neglected both by governments<sup>28</sup> and the international community. The extensive poverty in sprawling urban slums and the desperate efforts to migrate to Europe and North America will only increase unless a consistent effort is made to improve conditions in rural areas.

The main focus of this chapter is poverty and human rights in the rural parts of developing countries, where the overwhelming majority of the poor are living. Following this introduction, Section 3.2 presents the initial UN vision of globalization through egalitarian cooperation based on human rights, the efforts by way of the New International Economic Order project in the 1960s and 1970s to create a more just international order, its collapse in the face of neoliberal market forces from 1980 onwards, and the resulting crisis of enormous inequality and widespread hunger. Section 3.3 explores the possibility of generating some form of human rights-based world food governance as part of the restoration of the original UN vision. It describes current strategies for agricultural development and considers some of these from the perspective of the human right to an adequate standard of living (the right not to be poor). The prospects of global and regional cooperation for rural development are

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27. Report of the Special Rapporteur on the Right to Food, 2008, A/63/278 para. 8, quoting UNDP, 2005.

28. Rural populations in developing countries often have very limited influence on domestic policies because of low levels of education, bad health and extensive mortality due to the lack of rural health services, lack of communication capacity and organizational opportunities.

briefly examined, before some concluding observations and prospective possibilities are set out in Section 3.4.

### **3.2. THE UN VISION OF GLOBALIZATION AND ITS MISDIRECTION BY NEO-LIBERAL MARKET FORCES**

#### **3.2.1. The Initial UN Vision: Globalization through Interstate Cooperation, Expanding Freedom through Development**

The proclamation of the Universal Declaration of Human Rights by the United Nations General Assembly in 1948 was part of the globalizing vision underlying the United Nations Charter, a vision formed during the Second World War. The initial inspiration was the ‘Four Freedoms Speech’ of President Roosevelt to the US Congress in January 1941, envisaging a new world order to be promoted when the Second World War had come to an end. It was to ensure four basic freedoms for everyone – freedom of speech, freedom of faith, freedom from want and freedom from fear – *everywhere in the world*. It was a vision of future global multilateral cooperation for common security and common wealth, intended to replace unilateral self-assertion and power games.

Among the purposes set out in the UN Charter was promotion of international cooperation in solving problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.<sup>29</sup> The guiding principles of that cooperation were spelled out in 1948 with the adoption of the Universal Declaration of Human Rights (UDHR), which contained the broad package of human rights required for the comprehensive promotion of freedom: civil, political, economic, social and cultural rights were brought together in a comprehensive and interrelated normative system of rights.

Those in extreme poverty are blocked from enjoying most human rights, including the right not to live in poverty. The Universal Declaration of Human Rights proclaimed in its Article 25 that everyone has a right to a standard of living ‘adequate for himself and his family’, and in its Article 28 declared that everyone has a right to a social and international order in which the rights listed in the UDHR can be realized. UN Charter Articles 55 and 56 set out the responsibility shared by all states and the international community to cooperate in creating the conditions to make this possible.

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29. UN Charter Article 1.3.

### 3.2.2. Global Inequality and the Quest for a New International Economic Order (NIEO)

The UN Charter envisaged a process of cooperative development through the interlinking of national and international efforts. The growing recognition of global structural inequality gave rise to a demand for profound change in global relations. Using the UN Charter's principles of sovereign equality and the proclaimed purpose of international cooperation for the solution of economic, social and humanitarian problems, Governments of the South called for a 'New International Economic Order' (NIEO), intended to be more egalitarian in nature than the one prevailing. In 1974 the UN General Assembly adopted the Declaration and Programme of Action of the New International Economic Order,<sup>30</sup> followed in December 1974 by General Assembly approval of the Charter of Economic Rights and Duties of states.<sup>31</sup> The NIEO Declaration envisaged substantial changes in the international system, to allow developing countries significant opportunities to improve their economies in order to escape poverty (Jolly, Emmerij, Ghai and Lapeyre 2004). But in the late 1970s this effort was broken by the onslaught of a neo-liberal backlash.

### 3.2.3. Breakdown and One-Dimensional Economic Globalization, Neo-Liberal Style

The re-emergence around 1980 of 'laissez-faire ideologies' after decades of socially conscious policies stemmed from internal factors in the US and the UK. These ideologies spread outwards because they coincided with the debt crisis which effectively paralyzed the movement for a new international economic order and marginalized its theoreticians. This gave the Bretton Woods institutions an entirely different role than originally envisaged, with unprecedented power to prescribe and implement economic and monetarist policies for developing countries. Governmental decision-making concerning social issues related to regulation, taxation, public spending and social security arrangements were closely watched, particularly by the IMF. The links between the US Treasury and the international financial institutions during the Reagan/Thatcher era led to the emergence of the 'Washington Consensus',<sup>32</sup> requiring developing countries to privatize public enterprises, deregulate their economies, liberalize trade and industry, avoid or reduce taxation of corporations, adopt monetarist measures to keep inflation in check, maintain strict control of labour, reduce public expenditure (particularly

30. UN General Assembly Resolution 3201 (S-VI) (1974) <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/071/94/IMG/NR007194.pdf?OpenElement>

31. UN General Assembly Resolution 3281 (XXIX) (12 December, 1974), [www.un.org/documents/ga/res/30/ares30.htm](http://www.un.org/documents/ga/res/30/ares30.htm)

32. Regarding the Washington Consensus, see <http://www.cid.harvard.edu/cidtrade/issues/washington.html>

social spending), downsize government activities, open up to unregulated international trade, and remove controls on global financial flows (Steger 2003).

The persistent demands for these structural adjustments had crippling effects on many poorer countries. They served mainly to pressure or encourage developing states to adapt to the expanding global market for direct private investments and unregulated ('free') trade. The harmful effects on the economic and social rights of poor people have been extensively documented. Increased fees for social programmes in areas such as health, education, income support and housing is one illustration. Pressure to keep workers' wages low is another; water privatization and full-cost water pricing is a third (Abouharb and Cingranelli 2007).

The WTO of the 1990s further reduced the space of developing states to protect economic and social rights. While the export sector of some developing states such as Brazil, Argentina and China clearly benefited from this increasingly liberalized trade, other sectors did not. Many groups inside developing countries, particularly in rural areas, were hard hit by trade expansion while others amassed wealth. This was aggravated by the insistence of the Bretton Woods institutions that developing states should not burden their public budget with social assistance to those who were negatively affected by liberalized trade.

What sustained this process for so long in spite of increasingly negative consequences was the claim, widely propagated in dominant political circles, that the abolition of restrictions on capital movements at national and international levels would create a stable and efficient financial system. It was even argued that it would benefit developing countries in particular. Experience has shown the opposite to be true. In the agricultural arena, developing world farmers have become highly dependent on a small number of very powerful transnational corporations. As shown in the Fairtrade Foundation report of February 2009, the ten leading food retailers now control around a quarter of the US\$3.5 trillion world food market, and three companies (Archer Daniels Midland, Cargill and Bunge) control 90 per cent of the world's grain trade, while the top ten seed companies control almost half of the 21 billion global commercial grain market. Half of the world's coffee beans are purchased by five companies – all making it very difficult for unorganized smallholder farmers to negotiate a good price when selling their crops (Fairtrade 2009: 9). As pointed out by the United Nations Conference on Trade and Development (UNCTAD), the concentration of buyer power in the hands of a small number of food processors, commodity traders and supermarkets has adversely affected the viability of small-scale farming (UNCTAD 2008: 9).

Among the most ominous developments of neo-liberal globalization are the associated phenomena of intensifying agrofuel production<sup>33</sup> and 'land grabbing' – the purchase of large pieces of land in developing countries by external or internal investors or outside states. Extensive production of agrofuel implies a growing risk that land in developing countries is used to feed the vehicles of the urban rich to

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33. What is meant by 'agrofuel' here is liquid biofuel for transport, intended to replace in whole or in part the use of petrol. Agrofuel is used here to distinguish it from other forms or uses of biofuel.

the detriment of the rural poor. This is particularly threatening when large tracts of land are sold by governments to outside states or investors, either for agrofuel or for food supplies to richer countries. Extensive evictions and food price increases are the likely results, a process which is already rapidly expanding.

The most notorious recent case centred on Madagascar, where the then President negotiated a deal that included half the country's arable land to be sold to the Daewoo Corporation in South Korea. The president was ousted in March 2009 and the deal was fortunately cancelled by the incoming president (Burgis and Blas 2009). However, the case should serve as an awakening call of the dangers of land deals that entirely neglect the rights of those who have traditionally used the land. Purchases of large tracts of land have been made by China in several countries including Indonesia and the Philippines. The United Arab Emirates has bought large pieces of land in Pakistan and Sudan.<sup>34</sup> These investment agreements may become a serious obstacle for subsequent governments seeking to protect and ensure the livelihood of local people living on the territory that has been ceded.<sup>35</sup>

The problem is aggravated by the lack of legal protection for traditional land users, a problem whose roots can be traced back to the colonial period. In many places the land is held to be formally owned by the government, not by those who cultivate the land. The rights of users are uncertain and often not respected. The rights of pastoralists are particularly neglected in spite of the fact that drylands constitute nearly half of the land of sub-Saharan Africa (de Schutter 2009).<sup>36</sup> These and related uncertainties make the trend towards large-scale land acquisitions and leases highly threatening for the human rights of traditional land users in Africa and in certain other developing countries, such as Indonesia.

### **3.2.4. Globalization's Failure: The Accumulation of Enormous Wealth Against a Backdrop of Rampant Hunger and Malnutrition**

Perhaps the most depressing manifestation of neo-liberal processes of economic globalization is the growing global and national inequality including massive hunger and malnutrition in various forms. These contribute to child and other premature deaths and acute or chronic and disabling diseases that seriously affect human and social development. Around one billion people in the world do not have enough to eat (FAO 2008), little or no access to primary healthcare, and often live under dangerous unsanitary conditions, all contributing to manifest hunger, malnutrition and ill-health.

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34. On this point see Evans (2009: 46).

35. On the human rights problems flowing from bilateral investment treaties, see Peterson (2009).

36. Olivier De Schutter, Special Rapporteur on the right to food, 'Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge', 11 June 2009. Found on <http://www.srfood.org/images/stories/pdf/otherdocuments/22-srftlarge-scalelandacquisitions-hrprinciples-9.6.09-2.pdf>, accessed 27.08.2009.

The very modest goal set by the World Food Summit in 1996 to halve the number of hungry people in the world by 2015 will certainly not be reached with present globalization policies. Progress was already seriously faltering when the global economy as a whole was expanding, and it is even more remote now amid the ongoing financial crisis. Economic globalization has *not* helped.<sup>37</sup> India, for example, is home to nearly a quarter of the world's bottom billion of seriously hungry and malnourished people, in spite of its thorough integration into the globalization process and its staggering growth in GDP. Thirteen out of seventeen Indian states have been shown to have alarming levels of hunger, with scores for one of them, Madhya Pradesh, warranting the label 'extremely alarming' comparable to Ethiopia and Chad (Menon, Deolalikar and Bhaskar 2008).

Hunger and malnutrition will not go away unless there are policies in place to implement measures to protect vulnerable groups against evictions or exploitation, and ensure a reasonable redistribution of the income generated from economic growth. It is in this respect that a globalizing country like India fails. As Amartya Sen has been reported to lament (Sengupta 2009), eradication of hunger has not been given sufficient attention as a political priority in India. In line with classical Adam Smith philosophy, self-interest has been promoted to the highest good and enormous wealth has been accumulated, while the quarter of the world's hungry population found there are still blocked from the benefits.

India, of course, is not alone in demonstrating that economic globalization, neo-liberal style, is no guarantee for the prevention and elimination of hunger and other forms of extreme poverty or lack of economic and social entitlements – anywhere. On the contrary, such globalization both increases the income gaps that facilitate land grabbing and speculation, and perpetuates non-attention to social services.

### **3.3. TOWARDS WORLD FOOD GOVERNANCE AS PART OF THE TASK TO RESTORE THE UNITED NATIONS VISION**

#### **3.3.1. The Legacy of Economic Globalization: A Divided World?**

The initial UN vision has been replaced by a mostly unregulated, market-driven globalization resulting in increasing social cleavage between the rich and the poor. Poverty has made stark hunger a reality for nearly a billion people, while global wealth had reached unprecedented levels until the financial crisis erupted in 2008. The financial crisis has had only minor consequences for the rich while it has been devastating for many who were already on the brink of poverty when it erupted.

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37. Some, such as Paul Collier, the former Chief of Economic Research at the World Bank, have argued that the bottom billion, the most hungry people, are those living in countries that have not been drawn into economic globalization (Collier, 2007). India is the clearest proof that he is wrong on this point.

There now exists a predominantly *urban* 'Global North' that over the last two to three decades expanded to include economic elites in places such as Shanghai, Mumbai and Seoul, in addition to the traditional seats of dominant economic power in Wall Street New York, the City of London, and similar places in Frankfurt and Tokyo, and in a range of other prosperous cities around the world. Facing the Global North is a predominantly *rural* 'Global South',<sup>38</sup> that exists mostly in developing countries and to a lesser extent in 'countries of transition', with associated urban slums that expand or contract in line with global financial speculations and regressions. The dividing line between the rich and the poor now goes *through* countries, not (only) between them.

In 1986, the General Assembly made a renewed effort to restore the original UN vision for a more just world, by adopting the Declaration on the Right to Development,<sup>39</sup> built on Article 28 of the UDHR as adopted in 1948. Development, by the 1986 Declaration, was defined as an economic, social, cultural and political process aiming at constant improvement in the well-being of the population as a whole and of each individual, on the basis of the individual's active, free and meaningful participation in development and in the fair distribution of its benefits. To promote a social order which assures everyone's enjoyment of all human rights and freedoms, the Declaration on the Right to Development provides in Article 8(1) that states shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. It provides in Article 3(3) that states have the duty to cooperate with each other in ensuring development and eliminating obstacles to development.

The Declaration has been useful in challenging the basic concept of development as used by development economists, by emphasizing its normative content: development should not be about aggregate increase of wealth but about the realization for all of their right to a life of dignity. The Declaration has induced efforts to elaborate human rights-based development indicators and to clarify states' extraterritorial or transnational obligations in the field of economic and social rights. The Independent Expert on the Right to Development proposed in 2004 a 'Development Compact' to facilitate the realization of all human rights for all at the national level of all states, where outside states would ensure that sufficient resources are available to implement human rights-based national development programmes.<sup>40</sup> This proposal has gradually blended with the evolution of development partnership arrangements, initially called for under Millennium Development Goal No. 8.<sup>41</sup> Efforts are at present ongoing to ensure that these

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38. The distinction between 'the Global North' and 'the Global South' has been used and elaborated by the Ethiopian scholar Tewolde Berhan Gebre Egziabher in a paper to be published in the 4th report of FAO Panel of Eminent Experts in Food and Agriculture (forthcoming).

39. General Assembly resolution 41/128.

40. The main content of the proposed development compact is set out in the 6th report of the Independent Expert on the Right to Development, submitted by Arjun Sengupta in 2004, UN doc. E/CN.4/2004/WG.18/2, paragraphs 36-38.

41. Goal 8: Develop a global partnership for development.



partnerships place human rights at the centre of development programmes and that effective monitoring is established with regard to the implementation of the right to development, understood in this double sense of a thorough national human rights-based approach to development, and of a shared assistance for this purpose by the international community.<sup>42</sup>

One weakness in the use of the Declaration on the Right to Development by many governments is a focus on inter-state cooperation, with less attention paid to their obligations to their own population, in particular to rural smallholders, landless workers and artisanal fisher folk. As noted above, these groups are often unable to influence their governments, even where formal democracy rules are obeyed.

Some years ago, the former UN Sub-Commission on Promotion and Protection of Human Rights prepared a draft set of guiding principles entitled 'Extreme poverty and human rights: the rights of the poor'.<sup>43</sup> These are at present subject to consultations among governments. If these principles are effectively coupled with the Declaration on the Right to Development this could help greatly to redirect much of the UN work on poverty prevention and reduction. The challenge is to restore the original vision of a human rights-based development where states recognize their responsibility and accountability and their duty to ensure adequate regulation in order to prevent poverty production and to ensure a reasonable redistribution of the benefits of technological and scientific advancements. Such a vision must also take fully into account the responsibility towards future generations by avoiding excessive global warming and other environmental damage.

These are tasks of a tall order. The following section focuses on the most important among them: the task to ensure responsible rural development in the Global South, respecting and improving the rights and opportunities for those who try to make their livelihood and strive towards food security and freedom from hunger through agriculture and/or various off-farm activities.

### **3.3.2. Strategizing for Agricultural and Rural Development: Choosing Among Models**

The scope of poverty of much of the rural people in developing countries is intolerable. Its prevention and reduction should be a top priority from a global human rights perspective. No single model exists, however, to restore the human rights of these people to a life of dignity. Several options could be examined. From a human rights perspective, the choice of development paradigms in agriculture

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42. The most recent information on the focus on global development partnerships from a human rights perspective is contained in 'Report of the Secretary-General on the right to development', UN Doc. A/63/340 of 2 September 2008.

43. UN Doc. A/HRC/2/2, 2005.

should be guided by prevention of further impoverization while ensuring global, national and household food security and nutritional health and wellbeing.

Basically, the models being practised and/or debated are variations of two main competing extreme poles: small-scale agriculture for subsistence and some cash cropping, and intensive high-technological agricultural production for commercial marketing. Many intermediate approaches exist, as well as combinations of both or all types at the transnational, national and sub-national/community level.

### *Small-Scale Traditional Eco-Culture*

This form of production is partly for subsistence, partly production for cash. It uses mainly organic fertilizers and control weeds through manual work rather than the use of inorganic pesticides. Part of the produce will be consumed by the peasant's family; other parts will be sold on the local market. The vendor at the market will often be the woman farmer or members of her family. One benefit is its low greenhouse gas emission; another is its better protection of biodiversity since each peasant will grow a number of different crops, mostly those that are traditional in the area. The peasant will not be dependent on expensive input costs such as purchased fertilizers, pesticides and seeds, and will therefore be less affected by volatile prices and markets.

One major problem with small-scale traditional eco-culture is its low productivity. Production may be both inefficient and fragile as it is easily subject to risks during climatic changes, or to illness and death of farm family members (often the result of HIV and AIDS). Income would remain limited but could be above the poverty line in terms of satisfaction of basic needs, including food and housing, provided the health of the farming family can be maintained. One problem, however, is that the very modest cash income makes it difficult for such farmers to finance other needs, including the educational needs of children, which have a number of associated costs.

Many aspects of such production could nevertheless be much improved while still maintaining the benefits through better management and utilization of local resources (including better use of bioenergy for fuel, lighting and cooking), and through building on and expanding cooperative arrangements.

### *Intensive High-Technology Agriculture*

This paradigm implies monocultural production for sale on national and international markets. Monoculture endangers biodiversity. Production uses artificial fertilizers, pesticides and, increasingly, commercially bought seeds that are often patented or restricted due to plant breeders' rights. It mostly requires economy of scale to be profitable, which motivates efforts to obtain larger pieces of land and to evict previous users of that land. Where production is labour-intensive it is often associated with exploitative use of landless, rural workers and seasonal labour. The attraction of land for absentee investors has increased in recent

years due to the emergence of an international market for agrofuel. This kind of agriculture would create more wealth in terms of cash income, but such wealth would be extremely unevenly distributed, leading to further impoverishment by those evicted and transforming others from autonomous smallholders to poorly-paid agricultural workers utterly dependent on the whims of large-scale landowners or plantations.

Current policy discourse reflects different models; we shall consider some selected leading institutional recommendations made in recent years.

### *World Bank/World Development Report*

The scope and substantive impact of the World Bank's lending policy and advice on developing countries' policies warrants an examination of the Bank's recent policy considerations: particularly relevant for our purpose is the *World Development Report* (WDR) for 2008 which, for the first time in twenty-five years, focuses on 'Agriculture for Development' (World Bank 2008). It approaches agriculture 'as an engine for growth and food security', pointing to cross-country econometric estimates that overall GDP growth originating in agriculture is at least twice as effective in benefiting the poorest half of a country's population as that in nonagricultural sectors.

More specifically, in agriculture-based economies, such as countries in sub-Saharan Africa, agriculture is seen as critical to overall growth, poverty reduction and food security. In Latin America and the Caribbean, where agriculture overall contributes less to national growth, growth in agriculture is nevertheless reported to be on average twice as effective in reducing poverty as growth outside agriculture. The transforming countries of Asia and the Middle East and North Africa present 'an unprecedented challenge' to reducing massive poverty and confronting widening rural-urban income disparities. In spite of Asia's fast growing economies, there remain over 770 million people living on less than US\$1 per day, 80 per cent of them in rural areas. Here, the top priority should be the generation of rural jobs through diversification into labour-intensive high value agriculture linked to a dynamic rural non-farm sector in secondary towns.

The Report further sees the political economy as changing in favour of agricultural and rural development, and emphasizes the need to use the new political space created by democratization and decentralization to exercise political voice, and that smallholders and the rural poor need to form more effective organizations (p. 265). It thus appears that the *World Development Report 2008* does give a priority to the improvement of the conditions of smallholders in developing countries that are still predominantly agricultural, an approach that many would endorse.<sup>44</sup>

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44. Surprisingly, the subsequent *World Development Report 2009* takes a completely different approach, recommending rapid urbanization and increased density of the sites of economic development. Its underlying paradigm appears overall to be very high-flung and artificial and is therefore not commented on here.

*International Assessment of Agricultural Science, Knowledge and Technology for Development (IAASTD)*

On 15 April 2008, some months after the release of the WDR 2008, the findings of another major project initiated by the World Bank and FAO were presented: the *International Assessment of Agricultural Science, Knowledge and Technology for Development* (IAASTD). A multi-stakeholder group of UN organizations, representatives of governments, civil society, private sector and scientific institutions selected more than 400 scientists in different fields and from many parts of the world for this global assessment of the available evidence on the role of agricultural knowledge, science and technology (AKST).<sup>45</sup>

The IAASTD encompasses one global and five sub-global assessments, with a multi-thematic focus and a historical perspective that looks both backwards and presents prospects leading up to 2050. Recognizing the multi-functional role of agriculture – economic, social and environmental – each ‘role cluster’ presents a range of challenges ahead. IAASTD deals with many of these and their interfaces. IAASTD’s overall message is that modern agriculture has brought significant increases in food production, but benefits have been spread unevenly with an increasingly intolerable price paid by small-scale farmers, workers, rural communities and the environment. Thus, the way the world grows its food will have to change radically to better serve the poor and hungry if the world is to cope with a growing population and climate change while avoiding social breakdown and environmental collapse.

A list of twenty-one key findings is provided in a ‘Global Summary for Decision-makers of the Global Report’. These include a warning that emphasis on increasing yields and productivity has in some cases had negative consequences on environmental sustainability. When associated with poor socioeconomic conditions a vicious cycle is created in which poor smallholder farmers may have to deforest and use new and often marginal lands, increasing deforestation and overall degradation.

The increase and strengthening of AKST towards agro-ecological sciences will contribute to addressing environmental issues and a range of persistent socioeconomic inequities while maintaining and increasing productivity. Strengthening and redirection of AKST to include gender issues is necessary to help achieve this. Forging public and private partnerships, increased public

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45. The final IAASTD report was considered in connection with a *Countdown to 2015* meeting in Johannesburg in April 2008, endorsed by representatives of more than sixty governments, all UN agencies including the World Bank, and around fifty NGOs. It was strongly welcomed by a large number of governments and NGOs for its calls for immediate radical changes in international agriculture, while not all were on the same wavelength, notably the United States, Canada, Australia and the United Kingdom. The US in particular claimed that the report was ‘unbalanced’. Resistance came also from some others: one major private sector stakeholder, Syngenta, resigned from the IAASTD project before the launch of the report when conclusions tended to go against its interests. The significance of this for the rare referencing to IAASTD in other current initiatives and documents may be contemplated.

research and extension investment help realize existing opportunities in small-scale agricultural systems, including innovation and entrepreneurship which explicitly target resource-poor farmers and rural labourers.

Opening national agricultural markets to international competition can offer *economic* benefits, but can lead to a long-term increase in poverty production, food insecurity and environmental harm, unless basic national institutions and infrastructures are in place. Intensive export-oriented agriculture, while providing some benefits, has also had adverse consequences such as soil nutrient losses, unsustainable soil or water management and exploitative labour conditions.

More and better-targeted AKST investments, public and private, can facilitate the choice of relevant approaches to adoption and implementation of agricultural innovation. When private funding complements public sector funds, the establishment and enforcement of codes of conduct by universities and research institutes can help avoid conflicts of interest and maintain focus on sustainability and development in AKST.

While the IAASTD was hailed by a number of governments and many otherwise very critical NGOs, there has been a surprising silence surrounding it. References to its findings are notably absent from several of the initiatives taken in the wake of the early 2008 food price crisis, which was followed by the global financial crisis.

### *Alliance for a Green Revolution in Africa (AGRA)*

This African-led partnership, with offices in Nairobi and Accra, was set up to help small-scale farmers and their families across the African continent lift themselves out of poverty and hunger. AGRA programmes are said to develop practical solutions to significantly boost farm productivity and incomes for the poor while safeguarding the environment. AGRA advocates policies that support its work across all key aspects of the African agricultural 'value chain' – from seeds, soil health and water to markets and agricultural education.

Chaired by former UN Secretary-General Kofi Annan, AGRA received initial support from the Rockefeller Foundation and the Bill & Melinda Gates Foundation. A major aim of AGRA is to revitalize small-scale farming across Africa, acknowledging that 'through dramatic improvements to agriculture, prosperity can replace poverty' and that 'in most modern economies, no lasting success has been achieved without first building a strong agricultural foundation'.

AGRA seeks to end the poverty and hunger of hundreds of millions of Africans, with a clear focus on improving the lives of small-scale farmers, by way of an agricultural revolution which must rely on

uniquely African solutions to uniquely African problems: solutions that improve the productivity, biodiversity, and nutritional quality of food crops; that practice sound agro-ecosystem management across dramatically different environments; that support mixed crop-livestock farming

systems; and that consistently promote equity. It must be pro-poor and pro-environment.

Its home page elaborates on AGRA's evolving priorities since its establishment in 2006: from focus on more productive and resilient varieties of African crops, through support to agricultural education and monitoring and evaluation, improved soil health and water management, to off-farm systems and markets including crop storage, market information and transport systems, while promoting policies that promote rural development and environmental sustainability and address trade and tariffs.

AGRA's intentions are persuasive and promising for the future of African smallholders. But whether AGRA will be able to deliver what it promises is a question that needs further research and monitoring, through the collection of experience, assessment and analysis, along the lines of the IAASTD project. The lack of reference to IAASTD and its findings gives cause for concern that the search for the best approach to prevent and reduce rural poverty is not necessarily motivating those making profit towards more conventional green revolution methods, even if these are said to be adapted to African conditions, and even if AGRA has promised to avoid the failures of the Asian Green Revolution in the 1960s and 1970s.

### *Comprehensive Framework for Action on the Global Food Security Crisis*

In April 2008 UN Secretary-General Ban Ki-moon established a high-powered task force under his leadership to coordinate the efforts of the United Nations system in addressing the global crisis arising from the surge in food prices. The task force brought together the heads of UN agencies, funds and programmes and the Bretton Woods institutions, as well as experts within the UN and leading authorities from the international community. It prepared a 'Comprehensive Framework for Action on the Global Food Security Crisis' (CFA),<sup>46</sup> built upon two different, but complementary priorities for action. One set focuses on meeting the *immediate needs of vulnerable populations*, the second set on *building longer-term resilience and contributing to global food and nutrition security*, each set listing a range of outcomes and actions to achieve these objectives.

The CFA also proposes the strengthening of coordination and information systems, comprehensive assessments and monitoring hereunder of special health and nutrition assessments, the undertaking of impact analyses, analysis of policy options and programmatic approaches, and the review of contingency plans and early warning systems. It underlines that these actions are 'neither exhaustive nor exclusive [but ...] intended to guide assessments and strategies developed at the country level and support international coordination efforts'. The framework encourages leadership and partnership as well as coordination at all levels including

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46. Latest version published July 2008, see <http://www.un.org/issues/food/taskforce/cfa.shtml>

the global, as many factors underlying the food crisis are global in nature and require actions across country and regional borders (Executive Summary, paras. 6/7 and 9/10).

The financial cost estimates for food assistance, social protection, agricultural development, budget and balance of payment support are estimated at US\$ 25–40 billion per annum to maintain progress towards achievement of Millennium Development Goal 1 (Para. 11). This necessitates an immediate scaling up of public spending and private investments (Para 12). Developing countries are called on to allocate additional budgetary resources for social protection systems and to increase the share of agriculture in their public expenditure, while donor countries are urged to double ODA for food assistance, other types of nutritional support and safety net programmes, and to increase the percentage of ODA to be invested in food and agricultural development from the current 3 per cent to 10 per cent within five years (and beyond if needed) – to reverse the historic underinvestment in agriculture.

CFA is presented as a framework for action, but it is not clear who should decide and prioritize action. Some skepticism is justified when reading, as one example, the underlying paradigm regarding participation. In the final section on Achieving CFA Outcomes, a sub-section on Partnership at Country Level lists among other things, *Promote effective public communications*:

This will ensure that the partnership's analysis, strategy and actions are understood by the wider public, in particular those whom the actions are intended to assist. Programme effectiveness will require strong vigilance from civil society groups to ensure that the assistance reaches the intended people in the quantities and qualities intended (p. 30).

While well-meant, this reflects outsiders' view on effectiveness towards *target groups* in predetermined strategies, rather than inviting *participants* into their formulation.

A FIAN Position Paper on CFA in September 2008 (FIAN 2008), sent to the President of the 63rd UN General Assembly, pointed out that while CFA repeatedly mentions that adequate food is an internationally recognized human right, it fails to draw the necessary conclusions; furthermore that instead of recognizing demonstrations by hungry people as a legitimate means to claim the right to food, the CFA tends to conflate social movements with criminal groups as 'ready to harness popular frustrations into a challenge against the state and its authority'.

### *G8 Summit Statement on Food Security, July 2009*

The CFA was subject to discussions in the General Assembly, at the G20 Summit in April 2009 in London, the G8 Summit in l'Aquila in July 2009, and the G20's Summit in Pittsburgh in late September. The G8 leaders met with more than thirty other delegations from states and international organizations. They issued the 'l'Aquila' Joint Statement on Global Food Security, committing themselves to

mobilize at least US\$ 20 billion over three years through the l'Aquila Food Security Initiative in support of rural development in poor countries while promising to keep agriculture at the core of the international agenda, re-launch investments and boost aid efficiency and in-country coordination, with the involvement of all stakeholders. With new partners later joining the initiative, including a number of countries and the European Commission, private sector and philanthropic organizations, the financial commitment has risen to US\$ 22 billion. The Pittsburg Summit called on the World Bank to develop a new trust fund to support the new Food Security Initiative for low-income countries announced in l'Aquila.

Several questions remain open, however: what kind of rural development will be supported, and which kind of investments will be promoted? Will large parts of the disbursements of the funds remain in the hands of the separate donors and their use linked up to the national interests of the donors, or will at least parts of the funds be placed under the control and directions of multilateral agencies? The Pittsburg Summit clearly envisages that the multilateral parts of the funds will be in the hands of the World Bank, where the G8 retain the dominant influence due to the voting rules. The lingering question is whether at least normative guidance for its use will be given by truly global institutions, and particularly what the role will be of the future reformed Committee on Food Security.

### 3.3.3. Considering Choices for Human Rights-Based Rural Development

#### *Another Green Revolution – is the African Way a Human Rights Way?*

In practice there are and will be many intermediate forms between theoretically distinguishable and seemingly opposing alternatives for national and local agricultural and rural development. The purpose is therefore not to argue whether there are clear-cut options, but accept that there are, nevertheless, *choices* to be made as to where the main emphasis shall be placed. Depending on that emphasis, agricultural development strategies will be more or less in tune with human rights principles and practice.

The plans for a 'Green Revolution' in Africa are of particular importance. The UN Special Rapporteur on the Right to Food (SR) convened, with the support of the Luxembourg Ministry for Development Cooperation, a Multi-stakeholder Consultation in Luxembourg in December 2008. The purpose was to identify both opportunities and challenges facing current attempts to support the agricultural sector in Africa, focusing especially on the potential of AGRA in this context.<sup>47</sup> AGRA has claimed its approach is bottom-up, starting from the farmer. But critics at the consultation described AGRA as having a top-down approach to participation,

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47. De Schutter's full report of the consultation as well as his own presentation there can be accessed at <http://www.srfood.org/>



by first initiating its projects, then beginning to consult with stakeholders once strategic choices had already been made. While AGRA claimed that they were working with farmers organizations, for example, in breeding programmes, others argued that farmers' voices might be difficult to hear and that mechanisms should be set up to enable their needs and priorities to be better listened to, and which can support farmers to get organized and claim their rights. AGRA representatives agreed during the consultation to enhance the involvement of smallholder farmers and civil society organizations in the processes, a commitment which ought to be monitored by human rights NGOs, such as FIAN.

Another fundamental issue in Luxembourg concerned the very paradigm of the Green Revolution itself. Some feared that this will be based on new technologies and high-value external inputs with an over-emphasis on genetic improvement, without taking into account alternative methods of agricultural production with proven potential to increase yields. AGRA's representatives were encouraged to be guided by IAASTD's emphasis on integrated solutions rather than retaining an exclusive focus on productivity. The co-existence, complementarity or competition between 'Green Revolution' and agro-ecological farming approaches was a central point: some participants in the consultation suggested that organic and inorganic approaches need to be combined to increase farm productivity, while others pointed to key differences in the models that made complementarity hard or even impossible to attain.

### *Constructive Combinations?*

There will indeed be a need for large-scale food production to cover the needs of the urban population. Supply is unlikely to be satisfied by small-scale organic production alone, although there could be fruitful efforts to intensify the links between peri-urban and somewhat more distant farms and urban dwellers. The examples of the growing numbers of 'Farmers' Markets' in cities in industrialized countries are often referred to, which, almost ironically, try to restore linkages that existed in traditional economies but have been severed by industrial agriculture. Whether the same trend to restore – or maintain – such linkages can become economically viable at some scale in future agricultural economies remains to be seen.

Commercial larger-scale agriculture will in any case remain an important component of total production. Against this is the need to also ensure a livelihood for the rural poor. For many of them the only safe path to family food security is to produce part of it themselves and avoid expensive, unaffordable input factors. It is therefore important to protect smallholders and to assist them in maximizing their food security with other sources of income, while creating space for commercial farming when this can be done without destroying or undermining the livelihood of vulnerable parts of the rural population. In both approaches the environmental cost, including greenhouse gas emissions and energy consumption, must be factored in.

In formulating agricultural policies in developing countries, priority should be given to securing the livelihoods of people where they live. As a special case,

indigenous peoples throughout the world should be given protection for the land they have traditionally used. Care must be taken not to allow displacement except with their full consent and with the provision of alternatives to which they themselves can adhere freely based on full information. Other users of land whose rights are insecure should be provided with legally enforceable rights. This should apply not only to those who are the formal owners of the land, but also to traditional users of the same land. Any effort to block them from traditional use should be made dependent on the provision of alternatives that are equally acceptable to them.

In countries that are still primarily agricultural with a majority of people living in rural areas, the main way forward should be improving conditions for smallholders while simultaneously expanding the off-farm possibilities of employment in rural areas. Activities connected with food processing, whether by private entrepreneurs or by cooperatives, extension of communication systems both physical (roads, railways) and electronic, electrification, and expansion of rural health service institutions and educational institutions, are among the many off-farm developments that would lead to employment and more exciting and diversified opportunities in rural life. One crucial factor is the need to increase access to full primary education for girls and also secondary where possible, stimulate higher level training for women on an equal basis with men, and furthermore, ensure that they have access to employment appropriate to their education. This is important not only for their own satisfaction in life, but, as is generally agreed, is the best possible means to reduce excessive birth rates within this part of the population. This will also necessitate facilitation of women's reproductive rights including full knowledge of and access to means of family planning and spacing of pregnancies. Furthermore, support for and expansion of cultural activities and opportunities is needed to make rural life more attractive, for youth in particular.

### *Volatile Seasonal Work and Premature Out-Migration as Threats to Human Rights-Based Rural Development*

The insecure situation of rural workers who move from place to place seeking seasonal work under precarious conditions should be improved, partly through better application of labour standards and partly through other means, including land reform by redistributing large but unproductively used stretches of land. This opportunity is threatened by the increasing practice of land-grabbing by investors.

Out-migration to urban areas for those who so want, while not to be hindered, should not be promoted until the absorptive capacity of the urban areas has grown sufficiently to provide them with an acceptable opportunity of work or income in town. Rural development must go together with urban development, the two being reciprocally mutually dependent. Many migrants to urban areas transmit part of their income back to their families and thereby increase the income level, but those with low skills are deeply insecure when employment shrinks due to financial crises. Many migrants then move back to the rural place of origin but can

face serious problems when the livelihood there can no longer be sustained with the loss of the remittances.

Strategies to prevent further impoverishment and to increase the livelihood of the rural poor are therefore essential. Priority should be given to the protection of smallholders, indigenous peoples and rural workers where they are, and to the improvement of their rural livelihood to the extent possible. In contrast, expansion of land holdings for plantation-type production that lead to eviction of smallholders, indigenous peoples and other users should be strongly discouraged. Where agricultural intensification takes place, labour-intensive production should be preferred over advanced mechanization, both for purposes of employment opportunities and for environmental reasons. Lastly, the rights of workers should be ensured in line with ILO standards.

In sum, these considerations are not simply wishful thinking by idealizing theoreticians concerned with preserving both natural resources and culturally proven technologies. They echo the real voices of many civil society organizations and movements around the world that represent rural smallholders, artisanal fishers and nomads. They ask to be heard when choices are made and action taken that directly affect their lives and livelihood. A genuine human rights-based approach can bring additional leverage to their voices, through an insistence on their right to participate, be heard, and hold national leaders, politicians and planners accountable for their discriminatory policies and choices made out of self-interest – if not outright greed.

### **3.3.4. Towards Global and Regional Cooperation for Rural Development Based on Human Rights**

The primary responsibility for the implementation of human rights rests with each state and should influence their policies in all fields. This applies also to agricultural policies: each state in which hunger still persists should aim at realizing the right to food for everyone within their country, starting with the improvement of the livelihood of the rural poor. Many states cannot and some will not achieve this completely on their own. Sometimes those who try to do so are faced with conflicting requirements set by Bretton Woods institutions or with obligations under the WTO. To prevent further impoverishment and significantly reduce existing poverty, concerted cooperative development is required at the global and regional level.

In part this should be undertaken through regional development cooperation. Regional African cooperation in the agricultural arena could provide many benefits: decreasing dependence on Bretton Woods institutions, strengthened bargaining power of African states and their farmers in relation to giant food, seed and fertilizer corporations, and escape from the problem of 'landlocked countries with bad neighbors', which is one of the poverty traps pointed out by

Paul Collier (2007).<sup>48</sup> Regional African cooperation for agricultural development as envisaged by AGRA (discussed earlier) is therefore to be welcomed if the aim is made clear and the policies and measures are appropriate to that end. The aim should be improvement in the livelihoods of African smallholders and the wider rural population in African countries, and to contribute to food security for the region as a whole. Hopefully, a collective African resistance will emerge against predatory land-grabbing and excessive agrofuel production on land that should be used to produce food.

Can genuine cooperative development be achieved also at the *global* level? The financial crisis caused by neo-liberal economic globalization has at least helped to generate widespread awareness and a degree of consensus on the following points: (1) the financial crisis is the result of irresponsible speculation with harmful global consequences which demands responses at the global level; (2) excessive and highly unequal energy consumption has led to global warming with ominous threats of climate change that have to be dealt with at the global level; and (3) the entirely unregulated play of market forces must not be allowed to be repeated.

Awareness of these points gives some hope that a will to collaborate at the global level could emerge, including joint efforts to reverse global poverty production. But the obstacles should not be underestimated.

Firstly, the gap between the normative role of the United Nations and the operational direction taken by the Bretton Woods institutions needs to be closed. The UN vision of development towards a social and international order in which all human rights can be realized must be brought to bear also on the operational activities of the Bretton Woods institutions, which should be reformed to serve as functional advisors to promote the wider development policies recommended by mainstream United Nations, as originally envisaged under UN Charter Articles 57 and 63. Coordination of the UN agencies, a task entrusted by the UN Charter to ECOSOC, has not functioned. The Bretton Woods institutions have insisted on going their own way. This should be brought to an end. Under international law, the World Bank and the IMF are bound by human rights obligations (Skogly 2001), but the two institutions have extensively neglected human rights in their work. The UN Secretary-General's High-level Panel on UN System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment, chaired by three prime ministers from three continents,<sup>49</sup> was established in 2005 to recommend measures to overcome the fragmentation of the United Nations

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48. The widely-read book by Paul Collier, *The Bottom Billion* (2007), is not, in spite of its name, a reference to the bottom billion people that according to FAO statistics subsist at the lowest possible level of living conditions, meaning those who suffer from hunger and severe undernutrition. His book concerns the populations in the poorest countries (mostly African and Central Asian), overlooking that a large part of the bottom billion of hungry people live in prospering countries, with a quarter of the total of the poorest people in the world living in India, which he sees as a model country. But some of his analysis of the traps blocking the poorest countries and which need to be overcome is valid.

49. Available at <http://www.un.org/events/panel/resources/pdfs/HLP-SWC-FinalReport.pdf>. The prime ministers were Shaukat Aziz of Pakistan, Luisa Dias Diogo of Mozambique and Jens Stoltenberg of Norway.

system. In its report in 2006, entitled 'Delivering as One',<sup>50</sup> the Panel recommended as a matter of urgency that the Secretary-General, the President of the World Bank and the Executive Director of the International Monetary Fund set up a process to review, update and conclude formal agreements on their respective roles and relations at the global and country level.

### *Promises Should be Kept, not Broken*

In 1996 at the World Food Summit (WFS), heads of states and governments described as 'unacceptable' the horrible hunger situation then prevailing, with some 850 million suffering from hunger, and committed themselves to reducing the number of hungry to half its current level by 2015. Serious action was not taken; on the contrary, the number has increased by well over 100 million since 1996 and has now passed the 1 billion mark.

As a way to follow up on the 1996 commitment, WFS decided to initiate the Food Insecurity and Vulnerability Information Mapping System (FIVIMS). If implemented, this would have made it possible to know with great precision who the hungry are, where they are, why exactly they are hungry, and which obstacles they face in getting out of their hunger situation. Thereby it would, theoretically, have been possible to take action directly addressing and involving those groups, which would probably have led to significant reduction of their poverty. But it did not happen. While the FAO is trying to encourage states to collect such information it has not been very successful. Nor have the World Bank and IMF pushed states to collect and provide such information even in the context of the Poverty Reduction Strategy Papers.

Among the areas that need improved effort at the global level are the following:

***Monitoring corporate compliance with human rights, making corporations a positive force for poverty prevention and reduction.*** Large transnational corporations play an enormous role in contemporary agricultural development in several ways, both on the supply side with regard to input factors (fertilizers, pesticides, and increasingly in the supply of seeds), as well as on the demand or delivery side of agricultural products. Corporations set the price for the inputs of production and establish the price paid for the farmer's product at the farm gate. They choose what they will purchase for their retail chains, and decide the specifications of the products. Commercial farmers are heavily dependent on a small number of powerful corporations. Future cooperative global strategies for poverty prevention/reduction and development will have to involve the monitoring of transnational corporations. This should include the monitoring of corporations that invest in large-scale acquisitions of land or establish arrangements with contract farmers, with the uncertainty and corporate power over the farmer that

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50. UN Doc. A/61/583 p. 16.

this creates. Harmful cases of such investment should be exposed and prevented. Through multilateral cooperation, states should elaborate common regulations over corporations and other private actors in order to protect the right of everyone to an adequate standard of living. The international community should develop a multilateral and multi-stakeholder framework which can regulate the activities of intermediaries in the global food chain, from producer to consumer, including corporate buyers, processors and retailers, with a view to protecting the interests both of local producers and the consumers of food.<sup>51</sup>

*Adopting equitable measures to mitigate global warming and facilitate adaptation to climate change.* Cooperative, human rights-based development will require a reduction in global warming and mitigation of its impact. While the escalating consumption of greenhouse-gas emitting energy needs to be brought under control, it must allow for an equitable developmental regime which includes space for less developed countries to provide their inhabitants with the necessary amount of energy to satisfy human needs. The main reductions in energy consumption must take place in high energy-consuming societies. Agro-ecological developments are generally less energy-consuming and must be preferred to the extent compatible with the need to produce enough food for people everywhere.

*Ensuring sustainability of agricultural production.* Globally coordinated regulations should not only prohibit excessive greenhouse gas emissions, but also prevent excessive use of scarce water resources and water pollution.

Production and trade in agrofuel should be subjected to international regulation to avoid land that otherwise could have been used for food production being taken over for large-scale production of agrofuel. The search for renewable sources of energy, which should be encouraged, must not be allowed to undermine the possibilities of the rural population to feed themselves and their countrymen and women through the increased local production of food. On the other hand, measures should be adopted to facilitate constructive production of local use of biofuel – for local electricity or for improved methods of cooking and heating at the local level.

*Large-scale land acquisitions and leases.* As proposed by the Special Rapporteur on the Right to Food, a set of core principles and measures should be adopted to address the human rights issues arising from this growing trend, which could otherwise become a serious threat to the rural poor. Preferably, land

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51. A promising example of joint inter-state collaboration to control or moderate corporate behaviour is the recently established innovative 'European Network to reduce marketing pressure on children'. With seventeen European states now having joined together with both some inter- and non-governmental organizations, it illustrates an opportunity that could be expanded both to other thematic and regional areas. See <http://www.helsedirektoratet.no/marketing/about>

property should be in the hands of the tiller, not of speculators. Large-scale purchase and lease of agricultural land must be strictly controlled. The Special Rapporteur on the Right to Food has listed eleven principles that should guide such transactions. These focus on the need for full transparency, participation by those likely to be affected, the need for free and informed consent by the local population, improving legal recognition of traditional users' rights, avoiding evictions and compliance with the Guidelines on Development-based Evictions and Displacement, ensuring that revenues from investment agreements are used for the benefit of the local population, establishing farming systems which are sufficiently labour intensive on the land purchased or leased to ensure that they provide much needed and satisfactory local employment, ensuring that production on the land respects the environment, and requiring that a percentage of the food be sold at local markets. He also proposes that impact assessments be required before the completion of negotiations. Indigenous peoples must be protected in line with international law, and workers provided with protection in accordance with applicable ILO instruments (de Schutter, 2009b).<sup>52</sup>

*Reconsideration of trade issues is essential.* States should limit excessive reliance on international trade in the pursuit of food security, and build capacity to produce the food needed to meet consumption needs with an emphasis on small-scale farmers. They should maintain the necessary flexibilities and instruments, such as supply management schemes to insulate domestic markets from the volatility of prices on international markets. They should ensure, notably through transparent, independent and participatory human rights impact assessments, that their undertakings under the WTO framework are fully compatible with their obligation to respect, protect and fulfil the right to food. Priority should be given to the protection of local farmers against harmful imports, while ensuring access for the poor to affordable food.<sup>53</sup>

*Social protection systems* also need to be developed and implemented for the rural population, who have frequently been neglected in social security schemes in developing countries. In light of the limited capacity of many developing countries to fund the extension of such schemes, global cooperation for this purpose has to be considered.

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52. Olivier de Schutter, 'Large-scale land acquisitions and leases: a set of core principles and measures to address the human rights challenge'. 11 June 2009b. Available at <http://www.srfood.org/images/stories/pdf/otherdocuments/22-srftlarge-scalelandacquisitions-hrprinciples-9.6.09-2.pdf>, accessed 27.08.2009.

53. The Special Rapporteur on the Right to Food has examined in detail the consequences of liberalized international trade on hunger and poverty. A penetrating analysis of the issues can be found on his home page, <http://www.srfood.org>. Of particular usefulness is his report to the UN General Assembly in 2008, A/63/278 paragraphs 16-23, and his Report to the UN General Assembly on his Mission to the World Trade Organization, A/HRC/10/5/2.

***Agricultural research and technology.*** There is a need for global cooperation in providing publicly funded agricultural research and technology. Research should aim at improved management of existing resources while developing improved varieties of plants suitable to local conditions. Moreover, it should be publicly funded so that the new varieties can be made available as public goods, not subjected to patent restrictions.

***Better management of grain stocks through*** global cooperation may be required in order avoid speculation in food prices.

### 3.4. RETROSPECTS AND PROSPECTS

We are in the midst of a financial crisis. Sustainable economic growth and stability can only be achieved again through a 'New Deal' at a global level and must include commitments to address climate change, poverty prevention and reduction, and the broad range of human rights.

Will the reflections and the pains caused by the present financial crisis spur governments to join forces in developing a global New Deal comparable to that introduced in the United States of America by Franklin D. Roosevelt in 1933 as a response to the world-wide recession and devastating financial crisis caused by wild speculations starting at the New York Stock Exchange in 1929? A global New Deal would have to include the rural population of the world, those who suffer most from the present, dysfunctional structures of political and financial decision-making. They can become a source of wealth rather than of misery if they are given the opportunity to participate in, contribute to and benefit from the development process.

The first three decades after 1945 were the 'golden age' of Western democratic welfare states, and it was in this stage that the comprehensive system of human rights (civil, political, economic, social and cultural rights) was widely accepted. What was also tried but failed was to obtain support for the development of a *global* New Deal through structural changes envisioned in the proposed New International Economic Order. In the wake of its failure came a period of excessive deregulation, massive greed, tremendous growth in inequality and expanding hunger and poverty.

The revulsion against the unregulated neo-liberal form of economic globalization is driving a search for a more inclusive form of global governance. The environmental challenges, in particular the process of climate change, have reinforced the understanding that global cooperation is required. It can no longer be based on dominance by the global North, where there is a staggering accumulation of wealth in the hands of a few while the bottom billion – or more – in the global South live in extreme poverty. The regulations cannot be left to G1 (the USA), the G7 (the main Western states plus Japan and Australia), the G8 (the G7 plus the Russian Federation), and not even to the G20 (adding major 'third world' countries like India, China and Brazil). It will have to be by the 'G192' – by which we mean all the members of the United Nations.



Extensive structural changes will be required, of a nature rather different from the 'structural adjustments' of the heyday of Bretton Woods's institutional dominance. Much more effective state and inter-state control with the human rights responsibility of corporations will be required. Trade will have to be regulated to promote more equitable outcomes and will therefore have to go through rounds of renegotiations with better account taken of the impact on different population groups in each country. Recognition that unregulated ('free') international trade can be beneficial to some and harmful to others requires a more sophisticated regulation based on proper analysis of the impact on vulnerable groups.

The 1996 World Food Summit was path-breaking in its call for a clarification of the right to food as a guiding principle for food and agriculture policies, and for the commitment made to reduce the number of hungry to a half by 2015. Sadly, states did not follow up on their commitment to reduce world hunger, and their attention to the right to food was less than half-hearted. The second World Food Summit, held in 2002, had as its most important outcome the initiation of the process which led in 2004 to the adoption of the Voluntary Guidelines on the Right to Food.<sup>54</sup> While this was an important step, the impact has been limited because most states have so far only hesitantly and sporadically applied these guidelines.

There are signs, however, of some new energy and efforts to mobilize for government commitment to eradicate poverty, hunger and malnutrition in the midst of the financial and related crises. The present authors choose to be 'cautiously optimistic', noting in particular the increasing number and volume of voices of, or on behalf of, poor rural people around the world. With a noteworthy improvement in networking organization and coordination,<sup>55</sup> there is a hope that the NGO/CSO community may be better listened to in the future as it further watches and exerts influence on relevant international official initiatives.

Maintaining a global awareness of the urgency of these issues and influencing of governments continue in parallel from many angles. One recent example is the Córdoba-based international efforts by a group of 'elders' – experts on the right to food at some academic institutions or with a background from FAO and other international agencies, facilitated by the provincial authorities of Córdoba. On Human Rights Day, 10 December 2008, or the 60th Anniversary of the UDHR,<sup>56</sup> the group published the Córdoba Declaration on the Right to Food and the Governance of the Global Food and Agricultural System. It was circulated at the international High-Level Meeting on Food Security hosted by the Spanish Government in Madrid in January 2009. Together with earlier criticism by FIAN on the lack of reference to the right to food as a human right

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54. Full name: *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*. Available at <http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.HTM>

55. The parallel event, People's Forum on Food Sovereignty, was an important corollary to the WSFS with several mutual links.

56. The text is found on [http://www.fund-culturadepaz.org/eng/DECLARACIONES/Cordoba\\_Declaration\\_Right\\_Food\\_2008.pdf](http://www.fund-culturadepaz.org/eng/DECLARACIONES/Cordoba_Declaration_Right_Food_2008.pdf)

in the Comprehensive Framework for Action, the Córdoba Declaration may have influenced the UN Secretary-General Ban Ki-moon who stated that the Comprehensive Framework for Action should add a third track – the right to food – in addition to the established twin tracks on nutrition assistance and safety nets, while focusing on improving food production and smallholder agriculture. The ‘Córdoba group’ continues its activities with an explicit focus on the need to see a greater coordination of the work of international organizations dealing with food security and nutrition issues, as well as on ways to harness the potential of academic knowledge and support in the form of focused research and education on the eradication of hunger and malnutrition.

Strong dynamism has been brought into this field by the activities of the current UN Special Rapporteur on the Right to Food, Olivier De Shutter. He has shown a remarkable will and ability to penetrate walls of resistance to human rights approaches. He has received considerable attention by the UN Human Rights Council and elsewhere. His website<sup>57</sup> documents the ongoing activities and provides his own constructive suggestions on how to proceed with the human right to adequate food as the guiding principle.

Events in October and November 2009 in Rome also brought certain critical issues more forcefully to the fore regarding food security for human beings, not only for nations. The basis of people’s daily diet and its relations to cultural, environmental and economic/market issues were noted by many delegations, as well as the right to food as a human right.<sup>58</sup> Panels and meetings in a special ‘food week’ leading up to the World Food Day on 16 October set much of the stage for the third world food summit held on 16-18 November – entitled World Summit on Food Security (WSFS). Particularly important was the meeting in FAO’s Committee on World Food Security (CFS), now under extensive reform. At the WSFS a stronger commitment to the right to food and the recognition of governmental responsibility and accountability was noticeable. The concurrent crises – high food prices, the financial downturn caused by irresponsible and unregulated transactions, and the looming climate crises, had stirred up fear and worries notable beyond diplomatic semantics. The frequent references to human rights appeared to be motivated by a genuine search for responsible action.

The Declaration adopted by the World Summit on Food Security left many issues unanswered, however. It failed, for example, to address the problems and risks of agrofuel, the problems of ‘land-grabbing’ and the dominant role in international trade by large private corporations that siphon off most of the benefits that could be obtained by agricultural trade, and provide little benefits but often much harm for peasants and agricultural workers.

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57. <http://www.srfood.org/>

58. There also seems to be a slow but growing understanding in the agriculture-based food security circles that the nutritional implications of dietary improvements must be further enhanced by concurrent efforts in prevention and control of disease and care for particularly vulnerable groups.

Nevertheless, the impression is that the Summit and its Declaration have strengthened global cooperation for the right to food and world food security. At both national and international levels there is a stronger emphasis on accountability. Hunger in the world is not the necessary fate of humankind, but a result of policy choices that would have been different had the right to food been taken seriously both at national and international level.

Probably the most promising developments arising from the events in October and November 2009 have been the reform of the Committee on Food Security (CFS). Originally weak as a Committee of FAO alone, member states agreed, in October 2008, to embark on a wide-reaching reform. The new CFS is intended to 'fully play its vital role in the area of food security and nutrition, including international coordination'. The reforms are designed to redefine the CFS's vision and role to focus on the key challenges of eradicating hunger; expanding participation in CFS to ensure that voices of all relevant stakeholders are heard in the policy debate on food and agriculture; adapt its rules and procedures with the aim to become the central United Nations political platform dealing with food security and nutrition. This means a new CFS with broad membership and participation almost across the board of key UN bodies dealing with food security and nutrition, as well as from the NGO/CSO community. The CFS is therefore likely to become a truly representative, multilateral body.

It appears likely, however, that most of the US\$ 22 billion joint pledge for food security initiatives will be turned into a trust fund likely to be managed by the World Bank, over which the G8 have a dominant position due to the voting rights in that body. Many are therefore rightly concerned with the direction of the use of these funds. It is therefore of crucial importance that CFS be given the predominant normative and policy-making role concerning the use of these funds and in the choice of their intended beneficiaries, and in ensuring accountability for the allocation of the funds.

Monitoring of proper and constructive use of these funds will depend also on the active involvement by non-governmental organizations and agents of civil society, particularly in countries where 'structural hunger and malnutrition' is rampant. This wording in the final CFS Reform document in October 2009, that hunger and malnutrition are products of social structures, may be a signal that member states now understand that causality of hunger and malnutrition is something different from low food production, and that solutions must be found elsewhere than through mere focus on increased food production and trade.

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## The Human Rights Approach to Poverty Reduction

*Siddiqur R. Osmani*

### 4.1. INTRODUCTION

This chapter addresses two interrelated questions. First, *why* do we need to adopt the human rights approach in matters related to poverty? Second, assuming the first question is answered in a convincing enough manner and we accept that marrying human rights to poverty reduction is a good idea, precisely *how* are we to go about it? The first – the ‘why’ question – is pitched at the conceptual level; it is concerned with the rationale of bringing the human rights perspective to bear on the discourse of poverty. The second – the ‘how’ question – is more operational. In terms of practical policy-making, what does it mean to adopt the human rights approach to poverty reduction? To put it differently, what would be the essential features of a poverty reduction strategy that is based on the human rights framework? Section 4.2 addresses the first question, Section 4.3 addresses the second, and Section 4.4 offers some concluding remarks.<sup>59</sup>

### 4.2. WHY ADOPT THE HUMAN RIGHTS APPROACH TO POVERTY REDUCTION?

It is useful to begin by noting that the advantage of linking poverty reduction to human rights is not immediately obvious. Poverty signifies such a tragic condition of human existence that its eradication would appear to be an uncontroversial goal of human endeavour in any society, regardless of what other values society may or may not hold. By contrast, the human rights movement has been embroiled in political and ideological controversies from the very beginning. Despite its explicit claim to have universal relevance, the human rights discourse has often been

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59. Many of the ideas put forward in this paper were developed in the course of a collaborative work with Paul Hunt, Manfred Nowak, and the Office of the High Commissioner for Human Rights, embodied in OHCHR (2004, 2006). The author gratefully acknowledges his intellectual indebtedness to all of them.

challenged, at least in part if not in its entirety. The challenge has come sometimes on the grounds of cultural relativism but frequently out of political expediency. A prime example of politically motivated challenge was manifest in the cold war era, when the 'liberal' West tended to downplay the significance of human rights in the socioeconomic and cultural domain, the domain in which poverty primarily belongs, and praise the glory almost exclusively of civil and political rights. More recently, the opposite, but equally politically expedient, tendency has emerged in some Asian countries, whose leaders have invoked the idea of 'Asian values' to argue in effect that excessive deference to civil and political rights may be inimical to economic prosperity in general and poverty reduction in particular.

In view of this history, it is not immediately obvious what, if anything, is to be gained by linking human rights with the eminently uncontroversial goal of poverty reduction. Indeed, one might reasonably wonder whether the objective of poverty reduction might not suffer by association with a movement that has long been an arena of ideological disputes. I shall argue in this chapter that, while this apprehension is not entirely unfounded, there is nonetheless a powerful case for adopting the human rights approach to poverty reduction.

One can think of two types of reasons for linking poverty with human rights – one intrinsic and the other instrumental. The intrinsic reason consists of the claim that denial of some human rights can be seen as constitutive of poverty, in other words, to be poor by definition means to be denied certain human rights. From this perspective, the struggle against poverty is conceptually equivalent to the struggle to achieve a range of human rights. The instrumental reason consists of the claim that a poverty reduction strategy is likely to be more successful if it is grounded within the human rights framework. While the intrinsic reason locates human rights (or rather its denial) in the very conception of poverty, the instrumental reason locates it in the causal mechanisms underlying poverty. The argument is simply that denial of human rights can strengthen the forces that cause and perpetuate poverty, and therefore adoption of the human rights approach would strengthen a poverty reduction strategy by helping to overcome those forces. From this perspective, the attempt to achieve the full range of human rights, while being a worthwhile objective on its own, is also instrumentally valuable for achieving the goal of poverty reduction.

#### 4.2.1. The Intrinsic Reason

The best way to appreciate the intrinsic relevance of human rights to poverty is to use the lens of the capability approach pioneered by Amartya Sen.<sup>60</sup> As we shall see, the idea of capability has salience for both poverty and human rights and can thus provide a conceptual bridge between the two.<sup>61</sup>

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60. See, among others, Sen (1985, 1992).

61. This idea has been explored more fully in Osmani (2005a).



Capability is defined as the extent of a person's freedom to lead a valuable life, in other words, to be able to do and to be the things she or he has reason to value. Sen argues that the well-being of a person is best seen as the extent of the capability she or he enjoys. The higher the level of a person's capability, the higher the level of personal well-being. Since poverty signifies a very low level of well-being, it also signifies a very low level of capability, by definition. From this perspective, then, poverty can be defined as the failure to achieve some minimally acceptable level of capability.<sup>62</sup>

A slight refinement of this definition is made necessary by the fact that capability is a multi-dimensional concept and not all the dimensions may be equally relevant in the context of poverty. Some dimensions of capability are quite elemental – for example, to be able to lead a life free from hunger, while others could be rather refined – for example, to be able to appreciate the beauty of classical music. It makes sense to argue that while dealing with such an elemental state of human existence as poverty, one ought to focus only on the elemental dimensions of capability.

Poverty can thus be defined more precisely as the failure to achieve the minimally acceptable levels of some 'basic capabilities' – for example, the capability to be free from hunger and malnutrition, the capability to avoid premature death and avoidable morbidity, to be able to read and write at a very basic level so that one can acquire some minimal ability to interpret and deal with the world one lives in, to be able to protect oneself from the elements of nature, to be able to come out in public without shame, to be able to take part in the affairs of the community with dignity and confidence, and so on.<sup>63</sup>

Capability refers to the substantive freedom a person enjoys to lead the kind of life she or he values. Since poverty signifies the absence of basic capabilities, it also signifies the absence of a range of basic freedoms – for example, freedom from hunger, freedom from illiteracy, freedom from exposure to nature, freedom to come out in public without shame, and so on. To be poor is thus to be denied some very elementary freedoms that human beings have reason to value.

It is important to note that the idea of human rights also concerns some of these same freedoms. For example, the human right to food asserts that everyone

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62. This is not to suggest that the responsibility for the failure lies necessarily with the poor person, but that given the endowments and resources a person possesses and given the opportunities and constraints she faces in dealing with the society at large, she is unable to achieve the minimally acceptable level of capability.

63. The precise list of 'basic capabilities' is left open in Sen's approach since different societies may have different conceptions about which capabilities are to be deemed 'basic' in terms of their respective value systems. In practice, the list given in this paragraph would appear to be elemental enough to be deemed 'basic' in all known human societies. But in principle the respect for plurality of values requires that the exact list be allowed to vary. In addition, what is taken to be the 'minimally acceptable level' of a particular capability, below which a person would be considered poor, is also likely to vary from society to society depending on their value systems. For an alternative perspective, in which the list of capabilities is pre-specified on the basis of argument from the first principles (not just in the context of poverty but generally in the evaluation of the goodness of a society), see Nussbaum (2000).

has the right to be free from hunger; the right to education entails the right to be free from illiteracy; the right to adequate healthcare implies the right to be free from premature death and avoidable morbidity, and so on. Indeed, for every aspect of freedom whose absence signifies poverty from a capability perspective there is a corresponding right to that freedom from the perspective of human rights. More generally, many of the capabilities which people have reason to value have a corresponding human right attached to them. Sen has called them 'capability rights'.

It is not being claimed, however, that there exists a complete one-to-one correspondence between capability and human rights. Clearly, some capabilities have no corresponding human right – for example, the capability to appreciate the beauty of classical music or to marvel at the wonders of quantum physics! Conversely, some human rights do not refer to freedom in the sense of capabilities – for example, the right not to be discriminated against. It is, however, arguable that for every basic capability whose deficiency constitutes poverty, there is a corresponding human right for that capability. Therefore, to say that poverty consists of the failure to achieve basic capabilities is the same thing as saying that poverty consists of the failure to fulfil certain basic human rights. It is in this sense that denial of a range of human rights can be said to be constitutive of poverty. And therein lies the intrinsic reason for linking poverty with human rights.

On this argument rests the case that poverty can be seen as denial of some human rights. But this raises two questions. First, how would we identify the subset of rights whose denial constitutes poverty? Second, if only a subset of rights is deemed to be relevant in the context of poverty and, as such, if a poverty reduction strategy focuses only those rights, how would one reconcile this with the fundamental principle of indivisibility of rights, which claims that all human rights are equally valuable and that none can take precedence?

Regarding the first question, I would argue that the subset of rights whose denial constitutes poverty must have three features: (a) the right in question must refer to a right to some kind of freedom in the sense of capability, in other words, it must be in the nature of a 'capability right'; (b) the freedom in question must be in the nature of a 'basic' capability; and (c) the lack of freedom, and hence the denial of a right, must stem from a causal mechanism in which a person's lack of command over economic resources plays an important mediating role.

The justification for specifying the first two features is quite straightforward. It derives from the point made earlier that from the capability perspective poverty is defined as the absence (or deficiency) of some basic freedoms. It follows that if poverty is to be seen as the denial of human rights, only those rights that refer to certain basic freedoms would be relevant. That's why we need the first two features.

The justification for the third feature needs some elaboration. It rests on the argument that while denial of any human right denotes some kind of deprivation, not all deprivations would count as poverty. For example, the denial of the right to free speech is evidently a case of serious deprivation, but it does not by itself constitute poverty. A millionaire whose right to free speech is suppressed by an autocratic ruler can reasonably claim to have been deprived of a valuable freedom,

but that deprivation does not by definition make him a poor man.<sup>64</sup> The reason we have to make this distinction between poverty and deprivation in a more general sense is that as a social phenomenon poverty has come to acquire an irreducible economic connotation, whereby a deprivation is counted as poverty only when it is causally associated with lack of command over economic resources.<sup>65</sup> The same logic must apply when we define poverty as denial of human rights. By this logic, the subset of human rights whose denial would constitute poverty can only include such basic socioeconomic rights as the right to food, right to education, right to healthcare, right to shelter, and so on, because in each of these cases denial of right would invariably stem from a causal process in which lack of command over economic resources plays a role.

This insistence on the lack of command over resources may at first sight seem to re-instate through the backdoor the income-centred concept of poverty, which has long been discarded in much of the development literature. More importantly, this insistence might seem to involve a contradiction with the adoption of the broader capability concept of poverty, with which we started.

But neither of these apprehensions is really valid. The first point to note is that while the traditional approach to poverty focuses on personal income (a person is defined as poor if personal income falls below a certain level designated as the poverty line), here we are dealing with a more general concept of command over economic resources, which goes beyond personal income to include access to public and community resources as well. More importantly, while the traditional approach sees lack of resources as constitutive of poverty, we stress only its causal role. In our approach, it is the lack of freedoms, and hence the denial of rights to those freedoms, that constitutes poverty, but for reasons explained above we include only those denials in which lack of command over economic resources plays a causal role.<sup>66</sup>

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64. It is of course possible that under certain circumstances deprivation of the right to free speech can play a causal role in the process of creating or perpetuating poverty by limiting people's opportunity for expanding their basic capabilities – for example, by perpetuating discrimination against some groups in matters of access to education, healthcare and so on, because they are not allowed to express their grievances. We shall presently discuss such instrumental relevance of human rights for poverty. The point being made here is simply that such deprivations are not constitutive of poverty.
65. One could of course ignore this association and define poverty to denote any kind of deprivation, but this would not serve any useful purpose if the concept of poverty is to remain relevant for social policy. As Sen rightly observes, 'there are some clear associations that constrain the nature of the concept, and we are not entirely free to characterize poverty in any way we like' (Sen 1992: 111).
66. Furthermore, we do not insist that lack of command over economic resources has to play the primary or predominant role in the causal process, only that it must have some role in it. For example, when discrimination based on ethnicity or religion denies a person access to a village hospital, the resulting ill-health would be a constituent of poverty, and hence a denial of human rights, because lack of access to resources (the hospital) has played a role here in denying the person the freedom to live a healthy life. But no claim is being made about the primacy of lack of access to the hospital as a causal factor. It is indeed arguable that causal primacy in this case lies in the sociocultural practices as well as the legal and political frameworks that sustain the practice of discrimination.

Having spelt out the criteria by which we can decide which denials of human rights would constitute poverty, we can now address the second question that stems from linking human rights with poverty: how can one reconcile the choice of a subset of human rights (whose denial is said to constitute poverty) with the principle of indivisibility of rights?

The answer is two-fold. First, it is important not to lose sight of the fact that while poverty reduction must comprise an important component of social policy it is by no means the sole object of policy-making. If the denial of a right is deemed not to be constitutive of poverty, it does not mean that this particular right is being treated as less important or that effort should not be made to promote it. All it means is that promotion of such rights may fall outside the scope of the poverty reduction strategy and other policy initiatives ought to be undertaken for this purpose. Second, and more importantly, promotion of rights whose denial does not constitute poverty may still have a place in a poverty reduction strategy if it can be argued that promotion of such rights would facilitate the process of poverty reduction by helping to overcome the forces that generate and perpetuate poverty. In other words, particular human rights that may not have constitutive relevance for poverty may still have an instrumental relevance. This leads us to consider the instrumental, as distinct from intrinsic, reasons for adopting the human rights approach to poverty.

#### **4.2.2. The Instrumental Reason**

The human rights approach can strengthen the process of poverty reduction by helping to counter the forces that generate and sustain poverty. This is the essential point about the instrumental reason for adopting the human rights approach to poverty reduction. There are a number of pathways through which the human rights approach can play this instrumental role. For analytical convenience, these may be classified into two broad categories: (a) pathways of a general nature which owe their existence to the fundamental principles of the human rights framework itself, and (b) more specific pathways that emanate from the promotion of particular human rights.

Among the pathways of a more general nature, two are especially important, namely, empowerment and accountability. These two are actually two sides of the same coin – both emanate from the very concept of a right. Any right has two features. On the one hand, it invests in certain right-holders a claim to something of value; on the other, it enjoins on some duty-bearers the obligation to deliver that object of value. The claim of the right-holder and the obligation of the duty-bearer are complementary aspects of the concept of right, because without the obligation a claim would not be a claim – it would merely be a wish or a plea. The claim aspect of right leads to the notion of empowerment and the obligation aspect entails accountability; and both of these can play powerfully constructive roles in ensuring the success of a poverty reduction strategy.

At the level of principles, adopting the human rights approach to poverty reduction essentially means that the poor are acknowledged to have a set of claims – to food that is needed to enjoy freedom from hunger, to the healthcare that is needed to enjoy the freedom to live a healthy life, to the education that is needed to achieve freedom from illiteracy, and so on, and that a set of duty-bearers, principally the state, has the obligation to meet those claims. If and when the poor come to realize that they don't have to depend on the mercy of the rulers for access to food, education and healthcare, and can instead claim them as a matter of right, it can have an enormously empowering effect. The mere knowledge that they have claims on resources as a matter of right has the potential to embolden them enough to make them stand up for their rights and demand that their voices be heard and their interests be accorded priority in the process of policy-making. In the real world, both the design and outcomes of policies are influenced strongly by the interplay of competing forces that vie with each other to tilt the state machinery in their favour. The poor are almost always left out in this power game as they have minimal access to the corridors of power. The human rights approach to policy-making can alter this scenario by vesting in the poor a degree of power that derives from the existence of their claims. To the extent that this empowerment of the poor can alter the balance of power that determines the nature of policies, the likelihood that an effective poverty reduction strategy will be designed and implemented is enhanced.

The recognition that empowerment of the poor can enhance the effectiveness of poverty reduction strategies has become quite common in recent times, even within approaches that do not explicitly adopt the human rights framework. The advantage of the human rights approach, compared to alternative approaches that do not invoke human rights, is that it enhances the likelihood of empowerment of the poor by focusing attention on the notion of claims, which in turn enhances the likelihood that the strategy for poverty reduction will succeed.

The flip side of a claim is the existence of obligations on the part of duty-bearers. But an obligation can effectively exist only if the duty-bearers can be held accountable for their actions. That is why accountability is an essential feature of the human rights approach to policy-making in general and to poverty reduction in particular. Adopting the human rights approach thus makes mandatory the development of a set of institutions through which accountability of the duty-bearers can be ensured.<sup>67</sup> As in the case of empowerment, greater accountability enhances the likelihood that a strategy designed for the poor will actually benefit the poor. The contemporary history of development is full of examples where policies and programmes designed for the poor look good on paper, but in practice fail to deliver because of dereliction of duty on the part of those in charge of implementing the programmes. This chasm between what is promised and what is delivered can persist only because those who govern cannot be held accountable for their actions. Encouragingly, evidence is emerging from different

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67. The idea of accountability is discussed more fully in Section 4.3.

parts of the world showing that wherever effective accountability structures have been implemented, poor people have been served better.<sup>68</sup>

Like empowerment, the idea of accountability has also gained widespread popularity among the development community in recent times, even within approaches that do not explicitly base themselves on the human rights norms. However, as in the case of empowerment, the advantage of the human rights approach, compared to alternative approaches, is that it enhances the likelihood that effective accountability structures will be put into place, because under this approach accountability is not merely desirable but mandatory, since it is a logical consequence of the very concept of rights.

Turning now to specific pathways emanating from the promotion of particular human rights, we can once again classify these into two groups. The first group highlights the instrumental role played by the subset of rights that also have constitutive relevance for poverty according to the criteria discussed earlier. The second group comprises the instrumental role of the remaining rights, that is, those not constitutive of poverty.

For the first group of pathways, the important point to note is that the same human right may have both constitutive and instrumental relevance for poverty at the same time. As we argued earlier, the human rights to food, education, healthcare, and so on, have constitutive relevance for poverty because denial of these rights is conceptually equivalent to poverty in the sense of capability failure. At the same time, however, it is also true that each of these rights can play an instrumental role in promoting other rights whose denial constitutes poverty. For instance, it is well-known that better education, especially of women, has a salutary effect on the health of children. This means that any success in fulfilling the right to education will contribute not only directly to the reduction of poverty (because more educational capability constitutes less poverty, other things remaining the same), but also indirectly by playing an instrumental role in promoting the right to health and thereby improving the health dimension of poverty. Similarly, promotion of the right to health can play an important instrumental role in promoting other rights such as the right to education and the right not to be hungry. Good health is essential for cognitive development, without which the right to education would be hard to achieve even if children have access to educational facilities. Good health is also essential for achieving freedom from hunger because ill health prevents the body from absorbing the nutritional content of food and thereby makes it difficult to be free from hunger even if access to food is not a problem. Interactions of this kind are pervasive among all the human rights whose denial constitutes poverty.

More significantly for the purpose of the present discussion, similar interactions also exist between rights that do not have constitutive relevance for poverty and those that do. In particular, civil and political rights, most of which may not have constitutive relevance for poverty (by the criteria discussed earlier),

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68. Much of this evidence relates to local-level governance. For an overview of the evidence, see the Osmani (2002, 2008) and the references cited therein.

may nonetheless play powerful instrumental roles in reducing it. Take, for instance, the right of equal access to justice. Denial of this right will not in itself constitute poverty, but it is highly likely to have adverse consequences for many rights whose denial will. The reason is that in the absence of equal access to justice, poor people will not be able to improve the level of those capabilities whose failures stem from the injustices that prevail in society. Thus, the lack of access to justice will prevent a poor tenant from fulfilling his right to food when the landlord unduly denies him his due share of the crop. Similarly, in the absence of access to justice, a person belonging to a persecuted minority may find his right to work compromised if the ruling majority resorts to discriminatory practices with regard to employment. For such reasons, it would be reasonable to argue that ensuring the right of equal access to justice will be instrumentally valuable for poverty reduction, and should therefore form part of a poverty reduction strategy even if the denial of this right does not in itself constitute poverty.

Similar arguments can be made for various other civil and political rights, for example, the right to information, the right to free speech, the right of free association, the right to participate in public affairs, and so on. In the absence of these rights, people will not be able to claim their rights to food, education, healthcare, and so on, without fear of persecution, nor will they be able to hold duty-bearers to account. This is why promotion of the whole range of civil and political rights must form an integral part of any strategy for poverty reduction, even if the immediate focus of the strategy might be the socioeconomic rights whose denial directly constitutes poverty. The potentiality of harnessing the instrumental value of civil and political rights is one of the most important reasons why we should insist on adopting the human rights approach to poverty reduction.

### **4.3. ESSENTIAL FEATURES OF THE HUMAN RIGHTS APPROACH TO POVERTY REDUCTION**

The logic of the human rights approach suggests certain essential features that any strategy for poverty reduction must possess if it is to be founded on the ideals of human rights. Before spelling out these features, however, it is necessary to clarify a couple of points.

First, the features we are going to discuss do not in of themselves constitute a poverty reduction strategy, nor do they completely determine its nature. Any such strategy – involving detailed decisions such as how to allocate scarce resource among competing demands, what kind of policies must be put in place to ensure the desired allocation, and so on – must be based on the ground realities of a particular situation, which will vary from case to case. What we are looking for here are the commonalities – the lowest common denominator, so to speak – of all conceivable strategies that might conform to the norms of human rights. To put it another way, we are trying to identify a set of necessary conditions that a poverty reduction strategy must satisfy if it is to be based on the human rights approach.

Second, we are not claiming that the features to be identified below are all unique to the human rights approach. Some of these features can be found in alternative approaches as well. For instance, issues such as accountability and participation have become common currency in existing approaches, including those advocated by the World Bank and others, even though they do not explicitly invoke the idea of human rights. In most cases, however, these features appear in isolation, based on *ad hoc* logic; they are advocated because it is felt that they might be good for poverty reduction for some reason or other, not because they are logically required by some normative framework underlying the poverty reduction strategy. By contrast, we are trying to identify a set of interrelated features that together follow logically from a normative framework of human rights developed over time through various covenants, treaties and other relevant human rights instruments.

The most important of these features can be classified into four groups: (a) the nature of state obligation, (b) progressive realization of rights, (c) accountability mechanisms, and (d) adherence to certain fundamental principles of human rights. In the following section we examine each of these in turn.

#### 4.3.1. The Nature of State Obligation

Within the human rights framework, the obligation to meet the claim of right-holders falls on anyone in the human society at large who might be in a position to help or hinder the fulfilment of rights. Thus the duty-bearers comprise a whole range of actors including the state, non-state actors, the international community, and so on. It is, however, acknowledged in the human rights literature that the primary obligation falls on the state for the obvious reason that among all the actors it has the most power to appropriate and allocate resources and to design and execute policies that affect the lives of the people. For this reason, we focus here on the obligation of the state.

A popular way of specifying state obligation within the human rights framework is to adopt the following three-fold classification: (1) the obligation to respect, (2) the obligation to protect, and (3) the obligation to fulfil. The final obligation is further sub-divided into: (3a) the obligation to facilitate and (3b) the obligation to provide. This classification was originally proposed by Eide (1989) in the context of the right to food but has subsequently been widely adopted in the context of all kinds of rights, because the basic principles seemed to be applicable quite generally. For the purpose of illustration, however, we may still use the example of the right to food as a means of clarifying the import of each of these obligations.

‘The obligation to respect’ requires the state not to do anything that violates the human rights of its people. For instance, it has been observed that when a state is engaged in a civil war with a part of its own population, it sometimes uses state machinery to deprive its adversaries of their access to food, for example, by obstructing the passage of food aid given by the international community. The human rights approach unequivocally prohibits this kind of behaviour, regardless of the rights and wrongs of the war.



‘The obligation to protect’ goes one step further by requiring that the state not only refrain from violating the rights of the people, but also actively protect their rights from violation by third parties. For example, when a tyrannical landlord jeopardizes a tenant’s right to food by evicting him from the land, it is the obligation of the state to come to the rescue of the tenant. Even though the state itself may not be responsible for the violation of rights in this case, it can still be held responsible for the fact that the tenant has been denied his right to food if it fails to take any action to prevent the violation. State inaction in the face of violation by third parties is not permissible.

‘The obligation to fulfil’ goes even further. Even when the state has scrupulously discharged its obligations to respect and protect, many people may still find that their right to food has not been fulfilled. Given the endowments at their command and the opportunities that exist for converting those endowments into food, their entitlement to food may not be enough to avoid starvation and hunger, even though neither the state nor any third party may have actively done anything to deprive them of food. In this situation, the state has an obligation to take proactive measures that will help fulfil the people’s right to food. Precisely what steps must be taken is not specified by this principle as this will depend on particular circumstances; however, something must be done either to augment the people’s endowments or to expand the opportunities for converting the endowments into food, or a combination of the two. Depending on the personal circumstances of the people involved, the obligation to fulfil may take one of two forms. For able-bodied people who can look after themselves given the right kind of opportunities, the state has the ‘obligation to facilitate’, that is, to take steps that would enable people to meet their food requirements through their own effort. However, for those who are unable to look after themselves – for example, the old and the infirm – the state obligation is even more stringent: it must provide food directly to them.

The rationale of this three-fold obligation of the state can be found in the very concept of the ‘capability right’ which, as we noted earlier, provides the conceptual bridge between poverty and human rights. Capability, it may be recalled, is the freedom to live the kind of life a person has reason to value, and a capability right is the right to that freedom. The idea of freedom that is embodied in the concept of capability is actually a composite of two kinds of freedom that are distinguished in the philosophical literature – negative freedom and positive freedom. Negative freedom essentially means freedom from coercion. For instance, a peasant’s negative freedom is compromised when his landlord forcibly evicts him from the land. Positive freedom on the other hand refers to the ability of a person to do and be the things she or he values, even when no coercion is involved. For instance, if a person cannot avoid hunger because the wages he or she earns in a free and competitive market are too low to acquire sufficient food, then positive freedom is compromised. Clearly, both negative and positive freedoms are essential from the perspective of capability. Neither the peasant whose negative freedom has been compromised by eviction from land nor the worker whose positive freedom has been circumscribed by low wages in a free market has the capability to avoid hunger.

It follows, therefore, that the state must pay attention to both negative and positive freedoms while discharging its obligations with regard to 'capability rights' such as the right to be free from hunger. The three-fold obligation of the state may now be seen as a logical consequence of this imperative.<sup>69</sup> The obligation to respect and the obligation to protect both serve the cause of negative freedom because they are both meant to prevent coercion. The obligation to fulfil, on the other hand, serves the cause of positive freedom as it is meant to help people achieve their capability rights when they fail to do so on their own, even though no coercion may be involved.

### 4.3.2. Progressive Realization of Rights

This feature relates to the issue of how the state ought to deal with the substantial resources required to discharge its three-fold obligation while trying to reduce poverty through the human rights approach. Not all obligations would be equally demanding of resources, but some use of resources would be unavoidable.

The obligation to respect would be the least demanding of all, because this obligation simply requires the state to refrain from acting in a way that violates someone's rights. Discharging the obligation to protect would, however, involve the use of some resources because a well-functioning law-enforcement and judicial system would have to be put in place in order to protect the rights of vulnerable people from being violated by third parties, and this cannot be done without employing certain resources.

It is the obligation to fulfil that is likely to be the most resource-intensive, although even here not everything will involve significant use of resources. The best way for the state to discharge its obligation to facilitate the rights of the poor to food, education, healthcare, and so on, is to create opportunities for productive employment. To a large extent, this goal can be achieved by changing the regulatory and incentive structures that are currently stacked in favour of the rich – an act that would require more goodwill and good sense than resources. On the other hand, substantial resources would indeed be needed to support other kinds of facilitating activities such as creating infrastructure, improving the skill and technological base of production, providing subsidy where the poor cannot engage in the production process because of lack of access to the credit market, and so on. Finally, the obligation to provide directly to those who cannot provide for themselves would be inescapably resource-demanding.

Where is the state going to get these resources from? Partly through redistribution – by taking from those who have and giving to those who don't. But the scope of this mechanism is likely to be limited, especially in the context of mass poverty – and not just for the political reason that those who have are going

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69. Eide himself, however, did not draw any explicit linkage between the idea of three-fold obligation and the two types of freedom. For an early attempt to make this connection, see Osmani, 2000.

to resist any large-scale redistribution. A more serious problem is that large-scale redistribution might impair the incentives to produce so badly that total output might shrink, with the result that the government may find itself redistributing a shrinking pie, thereby making poverty reduction progressively harder. This is not to deny that the use of redistribution must form an integral part of a poverty reduction strategy, but to dispel the notion that redistribution alone can solve the problem of mass poverty.

Yet another possibility is redistribution from the rest of the world, in other words, foreign aid. Insofar as the whole of humanity has an obligation to help fulfil the rights of anyone in any corner of the world, the transfer of foreign resources should certainly play a role in the human rights approach to poverty reduction. But, as in the case of internal redistribution, international redistribution too has its limits, though for somewhat different reasons. It is reasonable to argue that for every nation-state the primary responsibility is towards the people who live within its own jurisdiction, and the question of precisely how this responsibility ought to be balanced against the obligation towards the 'other' involves deep philosophical as well as practical issues that are not easy to resolve. There is an inherent tension here and whichever way the tension is resolved it will determine the limits to international redistribution.

A third possibility is that the government can take steps to make more resources available for poverty reduction from the existing pool of resources. Two distinct aspects of the use of scarce resources are involved here. The first relates to the efficiency of resource use – the idea that it is possible to do more with the same overall resource constraints by cutting down on wastage and unproductive expenditures. The other aspect concerns the critical issue of prioritization. The human rights approach to economic policy demands that in allocating scarce resources among alternative uses priority must be accorded to the poor and the vulnerable whose economic rights are the furthest from being fulfilled. This demand can be met, for example, by reallocating resources away from activities that benefit mainly richer people towards those that benefit mainly the poor.

All these mechanisms – internal and international redistribution, more efficient use of existing resources, and reallocation of existing resources towards poverty-reducing activities – will have to form integral parts of any poverty reduction strategy. Even after all that, however, available resources may fall short of resource requirements. In that case, which is indeed the most likely scenario when a country is confronted with massive poverty, successful reduction of poverty will have to be contingent upon availability of additional resources created over time by the process of economic growth.<sup>70</sup> In other words, reduction of poverty, and

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70. It is precisely for this reason that the instrumental value of growth for the full realization of human rights has been repeatedly emphasized by Arjun Sengupta in his various writings on the right to development. See, for instance, Sengupta (2006). The point is also emphasized in Osmani (2006) in the same volume. Somewhat controversially, however, Sengupta also proceeds to include right-based growth as a constituent of the right to development, thus according growth intrinsic as well as instrumental value. For a contrarian view on this score, see Osmani (2005).

the corresponding fulfilment of rights, can only be achieved over a period of time. This is what underlies the idea of progressive realization of rights – an idea whose necessity is acknowledged in the human rights literature in recognition of the existence of resource constraint.

Progressive realization is not of course unique or special to the human rights approach. The existence of resource constraint implies that poverty will have to be reduced in a progressive manner, whatever approach one adopts. What is special about the human rights approach is the set of conditions that must be imposed on the process of progressive realization for it to conform to the logic of human rights.

The logic of adopting such a conditional approach lies in the fact that there is a potential problem with progressive realization – what economists call the problem of moral hazard. Once the necessity of progressive realization of rights is granted, it creates a potential leeway for the duty-bearer to get away with dereliction of duty. This leeway is made possible by the existence of an uncertainty that is inherent in the process of progressive realization. For example, when very little progress is being made in fulfilling rights, right-holders may not know whether this is the result of negligence and/or malfeasance on the part of the duty-bearer, or because of some exogenous constraints beyond its control. Taking advantage of this uncertainty, a state, which was actually uncaring about the rights of the people, might make a mendacious claim that it was seriously committed to the cause of human rights but was nevertheless making slow progress only because of exogenous constraints. This would make a shibboleth of the idea of progressive realization of rights. Steps must be taken to minimize the possibility of this kind of moral hazard if progressive realization is to occur in conformity with the spirit of human rights. A number of conditions must be imposed for this purpose.

First, in order to ensure that progressive realization occurs as expeditiously as possible given the constraint of available resources, the strategy for poverty reduction must contain time-bound and verifiable targets, with an explanation of why these targets are the best ones possible given the circumstances. The future performance of the state will be judged against these targets.

Second, in order to ensure that the pace of progressive realization is not unduly slowed down by setting targets that are too low, the targets and the plan of action designed to achieve them must be formulated in a participatory manner, involving the right-holders so that the latter can be confident that the targets that have been set are actually the best ones possible.

Third, appropriate monitoring and accountability mechanisms must be set up, first of all to measure the performance of the state against the pre-specified targets, and then to call for explanations if there is a shortfall in achievement. The idea of accountability is absolutely vital if the scope for moral hazard is to be squeezed out of the process of progressive realization. It is to this issue of accountability that we now turn.

### 4.3.3. Accountability Mechanisms

The idea of accountability has cropped up several times in our discussion so far. This is no surprise, as the idea is central to the discourse of human rights. Since we have already explained the rationale and role of accountability in the advancing the cause of human rights, we can be brief here.

Accountability should be a feature of good governance everywhere regardless of whether the idea of human rights is invoked or not. However, once the human rights approach is explicitly adopted as the normative basis of policy-making, ensuring accountability becomes a logical imperative. Rights don't mean anything unless there exists a corresponding obligation, and obligation doesn't mean anything unless the duty-bearer can be held accountable; hence the fundamental importance of accountability in the human rights framework. Accountability is particularly indispensable in the context of the progressive realization of rights, because without it the moral hazard inherent in the process of progressive realization could render the whole idea of human rights approach to poverty reduction no more than a charade.

Setting up appropriate accountability mechanisms thus turns out to be an essential feature of the human rights approach to policy-making. These mechanisms could be formal or informal, judicial as well as non-judicial. The details of the mechanisms could vary from country to country depending on history, traditions and culture. I would like to highlight a couple of general points here.

First, there exists a point of view that suggests that accountability cannot really be ensured unless the commitments made by the state are rendered justiciable so that redress can be obtained through a court of law in case of failed commitments. The underlying idea behind this suggestion is that sanctions against abdication of duty must have real force in order to be effective and thus must be legal and judicial. One could, however, argue that while legal sanctions would indeed have the desired bite, other less formal and non-judicial mechanisms may not be entirely without force. Sometimes, simple mechanisms that do no more than name and shame those who have failed to perform their duty may be enough. For example, experience from countries as diverse as India and Uganda show that when leaders of a village government are required to display detailed breakdowns of spending given for local community development before the general public and answer questions in an open meeting, this can be a very effective deterrent against misuse of resources and negligence of duty. The general point is that there could be a whole spectrum of mechanisms with varying degrees of sanction attached to them. The legal sanction lies at one end of the spectrum and there is no reason why mechanisms with other forms of sanction – such as social opprobrium – should not be tried.<sup>71</sup>

The second general point is that while accountability is the most important feature of the human rights approach, it is also perhaps the most difficult to

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71. For a forceful exposition of the idea that even without justiciability human rights can be both conceptually meaningful and practically useful, see Sen (2004).

implement. This is for the simple reason that by agreeing to set up accountability mechanisms the duty-bearers expose themselves to kinds of public scrutiny and sanctions that can hardly be pleasant. It is, therefore, most unlikely that the powers that be would readily agree to set up these mechanisms; if anything, they are almost certainly going to resist. Only sustained pressure – both internal and external – can eventually create a countervailing force that might be strong enough to make the duty-bearers yield. A strong social movement in support of the implementation of human rights in all its ramifications is, therefore, a necessary prerequisite for the success of the human rights approach to poverty reduction.

#### **4.3.4. Adherence to Certain Fundamental Principles of Human Rights**

We shall finally touch upon four basic principles which a human rights approach to poverty reduction must adhere to. These are: (a) the principle of participation, (b) the principle of non-discrimination, (c) the principle of indivisibility of rights, and (d) the principle of non-retrogression of rights.

The principle of participation is important in the human rights approach for both intrinsic and instrumental reasons. The intrinsic importance derives from the fact that the right to participate in public affairs is explicitly recognized as one of the human rights that every individual is entitled to. It is also instrumentally important in the context of poverty reduction because experience shows that effective participation by potential beneficiaries in all stages of the policy process – design, implementation and monitoring – can enhance both the efficiency and equity of outcomes.

As in the case of accountability, however, ensuring effective participation of the poor is by no means a simple task. A recent review of international experience shows that the effectiveness of participation depends on the success in closing three critical gaps – the incentive gap, the capacity gap and the power gap.<sup>72</sup> Poor people often do not have either the incentive or the capacity or the power to engage effectively in a participatory enterprise involving also the more privileged sections of the society. It is only through a sustained process of social mobilization, involving at times adversarial engagement with the powers that be, that these gaps might be closed.

The principle of non-discrimination lies at the very foundations of the idea of human rights. Its rationale derives from the premise that the quintessential humanity that creates the entitlement to human rights is the same for every human being regardless of race, religion, colour, gender, or any other attribute. The policies of the state must not, therefore, be discriminatory on any ground. For example, in pursuing a poverty reduction strategy under the human rights

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72. For an elaboration of this three-gap approach to effective participation, see Osmani (2008).

approach, the state is not allowed to favour the poor of one ethnic group relative to another, or to favour one gender over another.

This does not mean, however, that every single policy adopted by the government must have exactly the same and equal effect on every individual. Such a demand would be absurd to make and impossible to meet. Most economic policies that might be desirable on balance will have both winners and losers. For instance, the policy of removing rampant protectionism in poor labour-abundant countries will be efficient and will also tend to help poor workers by encouraging the development of labour-intensive activities in which such countries will have a comparative advantage. But at the same time some poor workers that had earlier been engaged in protected inefficient industries would face loss of jobs. A neutral effect on all poor people will be impossible to achieve. Moreover, economic policies have both direct and indirect effects (called general equilibrium effects), and the latter may often be hard to predict and even harder to control. So even if the direct effects were neutral it would be impossible to ensure the same for the indirect effects. The demand of non-discrimination in this situation can only mean that the totality of government policies taken together should not systematically discriminate any particular group(s) of the population.

The principles of indivisibility and non-retrogression of rights become relevant when policymakers are confronted with the task of prioritizing the use of scarce resources. In formulating a poverty reduction strategy, the government will have to decide how to allocate resources to different sectors such as food, healthcare and education. The principle of indivisibility of rights demands that in making this allocation the government should not try to advance any particular right (say, the right to education) at the expense of any others (say, the right to healthcare) because all rights are equally valuable. This idea is sometimes expressed by the statement that there can be no trade-off among rights. This statement is somewhat misleading, however. While no right can be ignored, it may make perfect sense to give more weight to some rights than to others in particular circumstances. For instance, if education has been badly ignored in the past compared to healthcare, it would be entirely sensible to devote more resources to education in any future programme for poverty reduction. Such trade-offs at the margin would be inescapable in any exercise in resource allocation. What must be guarded against, however, is that no right goes backward, in other words, the level of achievement must not fall in absolute terms. This is the demand of the principle of non-retrogression of rights. The same principle applies to the allocation of resources among different sub-groups of the poor. While it may be desirable to allocate more resources to those among the poor who have historically been neglected the most, care must be taken to ensure that others among the poor do not suffer an absolute decline in the level of rights enjoyed.<sup>73</sup>

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73. As in the case of non-discrimination, this principle applies to the totality of governments' policies and programmes rather than to any one of them in isolation.

#### 4.4. CONCLUDING REMARKS

In this chapter we have examined the rationale of adopting the human rights approach to poverty reduction, focusing on both intrinsic and instrumental aspects of the rationale. We have also spelt out some essential features that any poverty reduction strategy based on the human rights approach must possess. These features have been derived from first principles, that is, as a logical consequence of adopting the human rights approach. It is interesting to note that some of the features we have thus derived – accountability, participation, time-bound targets for progressive realization, and so on – also figure prominently in some of the existing approaches and are also observed in practice in varying degrees, even though the idea of human rights is not explicitly invoked in these cases. This raises the question, often asked, of what is the value-added of adopting the human rights approach to poverty reduction in particular and to policy-making in general?

The answer can be given in three parts. First, while some of the ideas such as accountability and participation can be justified without reference to human rights, there is a difference in the force of justification. The justification in alternative approaches lies in the argument that these features are useful for effective poverty reduction. In the human rights approach, by contrast, they are not only useful but also logically necessary. It is this logical necessity that makes their case stronger and thus enhances the likelihood that these ideas will be put into practice once the human rights approach is consciously adopted. Second, when some of the features of the human rights approach appear in other approaches, they tend to do so in a piecemeal manner; by contrast, only the human rights approach can ensure that the whole range of these features will be accorded due importance because they all follow equally logically from a common normative framework. Third, the human rights approach demands in a way no other approach does that even though poverty reduction may be concerned directly with economic freedoms such as freedom from hunger, illiteracy, and so on, a strategy for achieving these freedoms must be supported by a broader agenda in which civil and political freedoms are also advanced. The adoption of this broader approach would not only result in the enjoyment of more civil and political freedoms, which are valuable in their own right, but also in more effective poverty reduction, because of the instrumental value of civil-political freedoms in reducing poverty.

We should conclude, however, with a cautionary note. While the human rights approach is both intrinsically and instrumentally valuable for poverty reduction, no one should be under the illusion that implementing this approach is going to be an easy task. Our discussion of the features of the human rights approach clearly demonstrates that poverty reduction cannot be a pure technocratic exercise. Essential features such as accountability and participation have an immensely disruptive implication for the status quo in the political and social arena, as their adoption, in any meaningful way, would invariably alter existing power structures. It would be naïve to expect the powers that be to readily concede to diluting, let alone relinquishing, their entrenched power. Only a sustained social movement, drawing widespread support from both within and outside the country, can



generate the countervailing power that would render the human rights approach to poverty reduction a politically feasible enterprise.

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## Informality, Poverty and Gender: An Economic Rights Approach

*Martha Alter Chen*

The opposite of poverty is not wealth – it is justice. [T]he objective[...] is to create a more just society, not necessarily a wealthier one. And the great question is, how do we do this?

(Leonardo Boff / Franciscan Theologian, Brazil)

### 5.1. INTRODUCTION

The persistence of poverty worldwide is a major challenge for the twenty-first century. More than 1 billion people struggle to survive on less than US\$1 a day (UN, 2005). Of these, roughly half – 550 million – are working (ILO, 2005). By definition, these working poor cannot work their way out of extreme poverty. They simply do not earn enough to feed themselves and their families, much less to deal with the economic risks and uncertainties they face. The majority earn their livelihood in the informal economy where average earnings are low and economic risks are high, especially among own account operators, casual day labourers and industrial outworkers. Rough estimates suggest that half of the working poor in the informal economy are self-employed; the other half are wage employed working for households, informal enterprises or formal enterprises.

Poverty reduction is not possible without addressing the root causes of the low level of incomes and the high level of risks faced by the working poor in the informal economy. The root causes are not simply lack of productive resources and economic opportunities, as the people in question are working. What the working poor lack, more fundamentally, are economic rights, including: labour rights for informal wage workers and business rights for informal self-employed workers, as well as property rights, the right to social protection, and the right to organization and representation for both groups.

Despite their numbers and economic contributions, we know relatively little about the working poor in the informal economy. Although there is an official international definition of the informal economy and various national efforts are being undertaken to improve labour force statistics, economic analysts continue to

debate the definition, and labour force statistics in most countries do not include all categories of informal work. Although there has been a recent resurgence of interest in the informal economy, there remain a lot of misconceptions about its causes, composition and consequences. Although various observers over the years have proposed policy prescriptions in response to informality, few observers have framed their prescriptions in terms of economic rights. And those that have framed their prescriptions in terms of rights have focused on one or another economic right – notably, property rights or labour rights – without considering the full set of economic rights that the working poor need in order to work their way out of poverty.

This chapter seeks to address the gaps outlined above. Section 5.2 presents the official international definition of informal employment and recent national data on informal employment so defined, including its links with poverty and gender inequality. Section 5.3 proposes an integrated set of economic rights in support of the working poor in the informal economy. The concluding Section 5.4 argues that institutions – both the rules and the rule-setting institutions – need to be reformed to match the realities of informal employment and, thereby, to address the economic disadvantages, risks and uncertainties faced by the working poor in the informal economy.

## 5.2. INFORMALITY, POVERTY AND GENDER

### 5.2.1. The Informal Economy

#### *Historical debates*

Since its ‘discovery’ in the early 1970s, the informal economy and its role in economic development have been hotly debated. Some observers view the informal economy in positive terms, as a ‘pool’ of entrepreneurial talent or a ‘cushion’ during economic crises. Others see the informal economy as a source of livelihood for the working poor. Still others view it more problematically, arguing that informal entrepreneurs deliberately avoid registration and taxation.

Underlying these varying perspectives are three dominant schools of thought on the informal economy. The most well-known school, popularized by Hernando de Soto (de Soto 1989) and recently promoted by William Maloney among others (Maloney 2004; Perry et al 2007), views the informal sector as comprised of ‘plucky’ micro-entrepreneurs who choose to operate informally in order to avoid the costs, time and effort of formal registration. The most influential alternative school, popularized by Manuel Castells, Caroline Moser and Alexandro Portes (among others) in the late 1970s and 1980s, viewed the informal economy in broader and more structural terms as comprised of subordinated economic units and workers that serve to reduce the input and labour costs of large capitalist firms and, thereby, increase their competitiveness (Moser 1978; Castells and Portes 1989). The third school of thought, popularized by the ILO in the 1970s and now championed by organizations working with the poor, views the informal sector

as comprised of marginal activities – distinct from and not related to the formal sector – that provide income for the poor and a safety net in times of crisis (ILO 1972; Sethuraman 1976; Tokman 1978).<sup>74</sup>

Although interest in the informal economy has waxed and waned since its ‘discovery’ in 1972, it has continued to prove useful as a concept to many policy-makers, activists and researchers. This is because the reality it seeks to capture – the large share of the global workforce that remains outside the world of full-time, stable and protected employment – is so significant. At present, there is renewed interest in the informal economy worldwide. This renewal of interest stems from the fact that, contrary to the predictions of many economists, the informal sector has not only grown worldwide but also emerged in new guises and in unexpected places. It now represents a very significant but largely overlooked share of the global economy and workforce.

### *New Term and Expanded Definition*

Given its resilience and dynamic nature, the informal economy today has forced some fundamental rethinking of the concept. In recent years, the International Labour Office, the International Expert Group on Informal Sector Statistics (called the Delhi Group), and the global network WIEGO,<sup>75</sup> have worked together to broaden the earlier concept and statistical definition of the ‘informal sector’ to incorporate certain types of ‘informal employment’ that had previously been excluded. We sought to include the whole of informality, as it is manifested in industrialized, transition and developing economies and the real-world dynamics in labour markets today, particularly the employment arrangements of the working poor.

Broadly defined, the informal economy includes the *self-employed in informal enterprises* (i.e. small and unregulated) as well as the *wage employed in informal jobs* (i.e. unregulated and unprotected) in both urban and rural areas (ILO 2002; Chen et al 2005).<sup>76</sup> So defined, informal labour markets encompass *rural self-employment*, both agricultural and non-agricultural; *urban self-employment* in manufacturing, trade and services; and various forms of *informal wage employment* (including day labourers in construction and agriculture, industrial outworkers and more).

This expanded definition was endorsed by the International Labour Conference (ILC) in 2002 and the International Conference of Labour Statisticians (ICLS) in 2003. A decade earlier, in 1993, the ICLS had adopted the international

74. A recent World Bank publication characterizes the causal theories of the first and third school as Exit and Exclusion, respectively, but fails to mention the causal theory of the second school of thought, which could be characterized as Exploitation (Perry et al 2007).

75. The global research-policy network Women in Informal Employment: Globalizing and Organizing (WIEGO) seeks to increase the visibility and voice of the working poor, especially women, in the informal economy through better statistics and research on informal employment, more and stronger organizations of informal workers, and policy dialogues to promote more inclusive policies and institutions.

76. At present, the ILO Statistics Bureau, the Delhi Group and the WIEGO network are jointly preparing a manual on surveys to measure informal employment both inside and outside the informal sector.

statistical definition of the ‘informal sector’ to refer to employment and production that takes place in small and/or unregistered enterprises. In 2003, the ICLS broadened the definition to include certain types of informal wage employment outside the informal sector: statisticians refer to this larger concept as ‘informal employment’. In this chapter, the terms ‘informal economy’ and ‘informal employment’ are used for this broader concept and the term ‘informal sector’ is used for the narrower concept.

### *A Statistical Picture*

What follows is a summary of findings on the size and composition of the informal economy in twenty-five developing countries (ILO 2002): official national data were used to estimate informal employment in each of the countries.<sup>77</sup> Findings on labour force segmentation and average earnings are based on two recent reviews of available data (Chen et al 2004, 2005).

Informal employment broadly defined comprises one-half to three-quarters of *non-agricultural* employment in developing countries: specifically, 47 per cent in the Middle East and North Africa, 51 per cent in Latin America, 71 per cent in Asia and 72 per cent in sub-Saharan Africa. If South Africa is excluded, the share of informal employment in non-agricultural employment rises to 78 per cent in sub-Saharan Africa; and if comparable data were available for additional countries in South Asia, other than India, the regional average for Asia would likely be much higher.

Some countries include informal employment in *agriculture* in their estimates. This significantly increases the proportion of informal employment: from 83 per cent of *non-agricultural* employment to 93 per cent of *total* employment in India, from 55 to 62 per cent in Mexico, and from 28 to 34 per cent in South Africa.

**Composition:** For purposes of analysis and policy-making it is useful to disaggregate informal employment into more homogeneous sub-sectors according to status of employment, as follows:<sup>78</sup>

*Informal self-employment* including:

- employers: owner operators who hire others;
- own account workers: owner operators of single-person units or family businesses/farms who do not hire others;
- unpaid contributing family workers: family members who work in family businesses or farms without pay; and
- members of informal producers’ cooperatives (where these exist).

77. The authors of ILO (2002), Martha Chen and Joann Vanek, further analysed a set of official national data compiled and analysed by Jacques Charmes.

78. ‘Employment status’ is a conceptual framework used by labour statisticians to delineate two key aspects of labour contractual arrangements: the *allocation of authority* over the work process and the outcome of the work done; and the *allocation of economic risks* involved (ILO 2002).

**Informal wage employment:** employees without formal contracts or social protection employed by formal or informal enterprises or by households. Depending on the scope of labour regulations and the extent to which they are enforced and complied with, informal employment relations can exist in almost any type of wage employment. However, certain types of wage work are more likely than others to be informal (i.e. lack protection). These include:

- informal employees: unprotected employees with a known employer (either an informal enterprise, a formal enterprise, or a household);
- temporary or part-time workers: who are contracted directly or through a contract agency;
- contract workers: who supply services under a contract negotiated either directly negotiated or through a contract agency;
- casual or day labourers: wage workers with no fixed employer who sell their labour on a daily or seasonal basis;
- paid domestic workers: for households;
- unregistered or undeclared workers (often undocumented migrants), and
- industrial outworkers: sub-contracted workers who produce for a piece-rate from their homes (also called homeworkers) or small workshops.

In all developing regions, self-employment comprises a greater share of informal employment (outside of agriculture) than wage employment: specifically, self-employment represents 70 per cent of informal non-agricultural employment in sub-Saharan Africa, 62 per cent in North Africa, 60 per cent in Latin America and 59 per cent in Asia. Excluding South Africa, where black-owned businesses were prohibited during the apartheid era and have only recently begun to re-emerge and be recognized, the share of self-employment in informal employment increases to 81 per cent in sub-Saharan Africa.

Self-employment represents nearly one-third of *total non-agricultural* employment worldwide. It is less important in developed countries (12 per cent of total non-agricultural employment) than in developing countries where it comprises as much as 53 per cent of non-agricultural employment in sub-Saharan Africa, 44 per cent in Latin America, 32 per cent in Asia and 31 per cent in North Africa. If informality in agricultural employment were included, the share of self-employment would be higher still.

Informal *wage* employment is also significant in the developing world: comprising 30 to 40 per cent of informal employment (outside of agriculture), informal wage employment is comprised of employees of informal enterprises as well as various types of informal wage workers who work for formal enterprises, households or no fixed employer. These include casual day labourers, domestic workers, industrial outworkers, undeclared workers and part-time or temporary workers without secure contracts or social protection.

Home-based workers and street vendors are two of the largest sub-groups of the informal workforce, with home-based workers the more numerous but street vendors the more visible of the two. Together they represent 10–25 per cent of

the non-agricultural workforce in developing countries and over 5 per cent of the total workforce in developed countries.

**Segmentation:** While average earnings are higher in formal jobs than in informal employment, there is also a hierarchy of earnings within informal employment. In Tunisia, for example, informal employers earn four times the minimum wage and over two times (2.2) the formal wage. Their employees earn roughly the minimum wage, while industrial outworkers – mostly women homeworkers – earn less than one-third (30 per cent) of the minimum wage. In Columbia and India, informal employers earn four to five times the minimum wage, while own account operators earn only 1.5 times the minimum wage (analysis of national data by Jacques Charmes, cited in Chen et al 2004).

In brief, within informal labour markets, the differences in average earnings across the different employment statuses outlined above are remarkably similar across countries where data are available. Research findings suggest that it is difficult to move up these segments due to structural barriers (state, market and social) and/or cumulative disadvantage.<sup>79</sup> Many workers, especially women, appear to be trapped in the lower-earning and more risky segments.

## 5.2.2. Gendered Patterns

### *Informalization of Labour Markets by Sex*

The last two decades have seen a marked increase in women's labour force participation, most significantly in the Americas and Western Europe and more modestly in sub-Saharan Africa, Southeast Asia and East Asia (UNRISD 2005; Heintz 2005). Only in two regions – Eastern Europe and South Asia – has the women's labour force participation rate actually fallen. The marked increase in women's labour force participation worldwide has given rise to the notion of the 'feminization of the labour force'. But this notion has been defined and used in two distinct ways: first, to refer to the situation in which the ratio of women's labour force participation rate to men's labour force participation rate increases over time; second, to refer to a situation in which the structure of the labour force itself is 'feminized', that is, when jobs take on features associated with women's work such as low pay, drudgery, uncertainty and precariousness (Heintz 2005).

Whether or not there is a causal link between the increase in women's labour force participation and the growing precariousness or informality of work is not clear – and has been hotly debated. Is there a link between the expansion

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79. To statistically test whether there are structural barriers to mobility across the different segments will require panel data on informal employment as well as key variables – such as education or assets. The WIEGO network is looking for countries with the panel data that would allow us to test whether the apparent segmentation is, indeed, structural.

of women's labour force participation and the informalization of labour markets over the past two decades, or do they represent parallel but distinct processes? The pervasive segmentation of labour markets by gender, which we will discuss below, suggests that women's labour did not simply substitute for men's labour. Rather, there has been some parallel process at work creating low-paid and poor quality informal employment opportunities for (primarily) women (Heintz 2005).

Estimates of changes over time in the degree of informalization within the female and male labour force are not available. However, a recent analysis of trends in the Tunisian labour market, with a special focus on informal employment, suggests the kind of analysis required and the trends that might be found elsewhere. Between 1975 and 1997, informal employment in Tunisia grew at a very fast rate. During the economic slump of the 1980s, the share of informal employment increased, accounting for almost 40 per cent of non-agricultural employment by 1989. This trend confirmed the conventional notion that the informal economy is counter-cyclical, expanding during economic down-turns and shrinking during economic growth. However, during the rapid economic growth and trade liberalization of the 1990s, the share of informal employment grew even faster, accounting for over 47 per cent of non-agricultural employment by 1997. In brief, while informal employment grew at an annual rate of over 5 per cent in the late 1970s and 1980s, it grew at an annual rate of 7.5 per cent between 1989 and 1997 (Charmes and Lakehal 2006).

How can this apparent contradiction be explained? During the late 1970s and 1980s, it was largely informal employment *inside* the informal sector that grew. While during the economic growth of the 1990s, it was largely informal employment *outside* the informal sector that grew: notably, informalized and sub-contracted labour for larger enterprises, most of it undeclared. By 1997, less than half of the informal workforce (46 per cent) was employed in small informal enterprises (i.e. the informal sector), while over half (54 per cent) was employed as *undeclared informal workers* for both formal and informal enterprises, most of whom were women outworkers contracted by export-oriented firms. In brief, the evidence from Tunisia suggests that while employment *inside* the informal sector may be counter-cyclical, informal employment *outside* the informal sector may be pro-cyclical (Charmes and Lakehal 2006).

The Tunisian example confirms what an earlier cross-country analysis (Heintz and Pollin 2003) suggests: namely, that certain forms of informal employment – notably, sub-contracted work linked to the global production system – expand during periods of economic growth, especially when growth is driven by trade and financial liberalization. In this regard, it is important to note that women workers tend to be overrepresented in global production systems, at least in the early stages of trade liberalization when a premium is placed on export-oriented light manufacturing and low-skilled (and low-paid) workers (Chen et al 2005).



### *Informal Employment by Sex*

Informal employment is generally a larger source of employment for women than for men in the developing world. Other than in the Middle East and North Africa, where 42 per cent of women workers (and 48 per cent of male workers) are informally employed, 60 per cent or more of women non-agricultural workers in the developing world are informally employed. Among non-agricultural workers, in sub-Saharan Africa, 84 per cent of women workers are informally employed compared to 63 per cent of men workers; in Latin America, 58 per cent of women workers compared to 48 per cent of men; and in Asia, 73 per cent of women workers compared to 70 per cent of men workers.

### *Segmentation of Informal Employment by Sex*

Available evidence from several developing countries suggests that, as a general rule, relatively high shares of informal employers are men and relatively high shares of industrial outworkers are women. In India, for example, 6 per cent of informal employers, 19 per cent of own account operators, 16 per cent of informal wage workers, and 59 per cent of industrial outworkers are women.<sup>80</sup>

In brief, men tend to be over-represented in the top segments of the informal economy; women tend to be over-represented in the bottom segment; and the relative shares of men and women in the intermediate segments vary across sectors and countries. Available evidence also suggests that there are significant gaps in earnings within the informal economy: informal employers have the highest earnings on average; followed by their employees and informal employees of formal firms; then own account operators, casual wage workers, and industrial outworkers. These two stylized facts are depicted graphically in Figure 5.1.

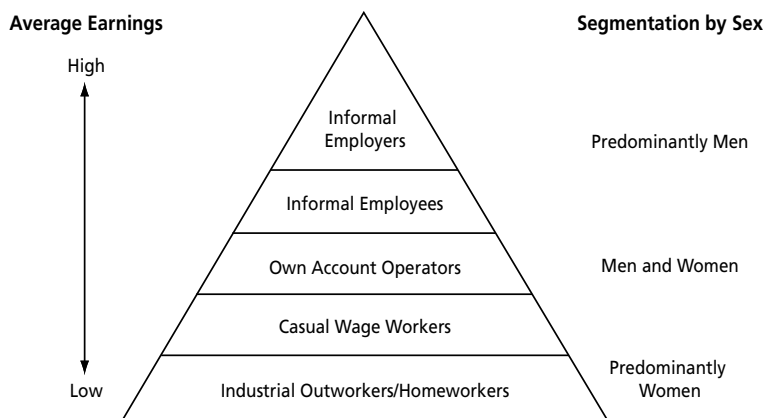
The available data on poverty risk – that is, the likelihood that a worker from a given segment of the labour force is from a poor household – indicate a similar hierarchy. Workers in the formal economy, particularly in public sector formal jobs, are less likely than workers in the informal economy to be from a poor household. Within the informal economy, informal employees are more likely than their employers to be from poor households, own account operators are more likely than informal employees to be from poor households, and so forth down the segmentation pyramid illustrated above (Chen et al 2005).

However, analysing the poverty risk of workers, as opposed to their average earnings, is complicated by whether or not a worker is the sole earner, the primary bread winner or a supplemental earner in her household. For example, because their earnings are so low, women industrial outworkers are likely to be supplemental earners in households with male earners. Whether or not an industrial outworker is from a poor households depends on whether the earnings

80. These figures were computed by Jeemol Unni using the individual records of the Employment and Unemployment Survey, 1999–2000, 55th Round of the National Sample Survey Organization, New Delhi.

of the whole household, including her earnings, fall below or above the poverty threshold. If she is the sole or primary breadwinner, the household of a women industrial outworker is very likely to be poor (Chen et al 2005).

**Figure 5.1. Segmentation of informal employment by average earnings and sex**



Note: The informal economy may also be segmented by race, ethnicity, caste or religion.

Source: Chen et al 2005.

An additional fact, not captured in Figure 5.1, is the existence of gender segmentation and earning gaps *within* these broad employment status categories. Women tend to work in different types of activities, associated with different levels of earning, than men – with the result that they typically earn less even within specific segments of the informal economy. Some of this difference can be explained by the fact that men tend to have *more human capital* due to educational discrimination against girls, especially in certain societies (e.g. north India and Pakistan). This difference can also be explained by the fact that men tend to have *better tools* of the trade, operate from *better work sites/spaces* and have *greater access to productive assets and financial capital*. In addition, or as a result, men often *produce or sell a higher volume or a different range* of goods and services. For instance, among street vendors in many countries, men are more likely to sell non-perishables while women are more likely to sell perishable goods (such as fruits and vegetables). In addition, men are more likely to sell from push-carts or bicycles while women are more likely to sell from baskets or, simply, from a cloth spread on the ground.

In sum, there is a significant range of average earnings and poverty risk across the informal economy in terms of employment status, with a small entrepreneurial class (comprised of most informal employers and a few own account operators) and a large working class (comprised of most informal employees, most own account operators, all casual workers, and all industrial outworkers). There is also

gender segmentation within informal labour markets resulting in a gender gap in average earnings with women overrepresented in the lowest-paid segments and earning less on average than men in most segments.<sup>81</sup>

### *Causes and Consequences of Informality*

Given the size and heterogeneity of informal employment, what is needed is an integrated conceptual framework that incorporates the causes and consequences of all forms of informality, not just one form or another. Each of the various schools of thought on informality, outlined earlier, is valid, but only for one or another 'slice of the informal pie'.

**Causes:** There are different causal theories as to what gives rise to informality. Many economists subscribe to the notion that informal entrepreneurs choose – or volunteer – to work informally (Maloney 2004). Yet many economists also recognize that informal employment tends to expand during economic crises or downturns, suggesting that necessity – in addition to choice – drives informality. And that many informal workers and operators are simply excluded from state-based regulations and protections. Other observers point out that informalization of employment relations often reflects the choice – or preference – of employers, not their employees. Each of these theories is valid for some – but not all – parts of the informal economy.

Paraphrasing the title of a recent World Bank publication on informality, which focused on two causal explanations characterized as Exit and Exclusion, what follows is an integrated set of causal explanations that captures most forms of informality: the Four E's:

**Exit:** Some of the self-employed choose – or volunteer – to work informally in order to avoid registration and taxation, while others do not choose to work informally but do so out of necessity or tradition. That is, there are two kinds of Exit: by choice or by necessity.

**Entry:** Many of the self-employed would welcome efforts to reduce barriers to registration and related transaction costs especially if they were to receive the benefits of formalizing, such as written and enforceable commercial contracts as well as access to financial resources, market information and government incentives. In other words, for many informal operators, the barriers to Entry are formidable and the benefits of Entry are not guaranteed.

**Exclusion:** Many state-based regulations and protections do not apply or have not been extended to informal wage workers or self-employed. This may be due

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81. For a detailed analysis of available statistics on the gender segmentation of the informal economy and the linkages between working in the informal economy, being a woman or man, and being poor, see Chen et al (2004; 2005).

to neglect, biases or simply ignorance on the part of those who make policies and set rules.

**Exploitation:** In many contexts, employers choose to retain a small core regular workforce and hire other workers on an informal basis; avoid payroll taxes and employer-contributions to social security or pensions; and/or avoid other obligations as employers. In such cases, the employers (not the workers) are avoiding regulation and taxation. Similarly, some large enterprises choose to contract smaller enterprises to provide goods and services without entering written contracts or sharing risks.

**Consequences:** The poverty and other outcomes of work are a function not only of the level of earnings but also of the period over which earnings are sustained, the volatility of these earnings, and the arrangements through which they are achieved, including related costs and benefits. Three dimensions of work are instrumental in determining the social outcomes of work: place of work, production system and employment status. Each place of work is associated with specific risks and, thus, different degrees of security or insecurity. Micro-entrepreneurs and wage workers tend to lose market knowledge and bargaining power as they move from domestic markets to export markets or global systems of production. And each employment status, as outlined below, is associated with different degrees of autonomy and risk for those who work in them.<sup>82</sup>

While informal work does offer positive opportunities and benefits, such as flexibility of work hours and convenience of work location, the costs are often quite high. Some of these are direct 'out-of-pocket' expenses needed to run an informal business or otherwise work informally; others are indirect, reflecting the more general conditions under which the working poor live and work. Some of these can be rather high over the long term, such as when a worker has to sacrifice access to health and education (or training) for herself or family members. Also, there are psychological and emotional costs – in terms of a worker's self-esteem and dignity – associated with many forms of informal work.<sup>83</sup>

In brief, the benefits of informal employment are often not sufficient and the costs are often too high for those who work informally to achieve an adequate standard of living over their working lives. In general, only *informal employers* who hire others earn enough to predictably rise above the poverty threshold.

### 5.2.3. Developed Countries

In North American, European Union and other OECD countries, available evidence suggests that the workforce has become flexibilized or informalized. In

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82. See Chapter 4 of Chen et al (2005) for more details.

83. See Chapter 4 of Chen et al (2005) for a typology of the costs of working informally and a set of examples illustrating the typology.

these regions, statisticians and researchers use the concept 'non-standard' work for the forms of work that are flexible or informalized. The term 'non-standard work' as commonly used includes: (a) jobs that entail an employment arrangement that diverges from regular, year-round, full-time employment with a single employer; and (b) self-employment with or without employees (Carré and Herranz 2002). The common categories of non-standard wage work are temporary work, fixed-term work and part-time work. Increasingly, inter-firm sub-contracted work in the service sector (such as janitorial services and home care) and in the manufacturing sector (such as garment making and electronic assembly) is also included.

Although not all part-time workers and temporary workers are informally employed, in the sense of being unprotected, many receive few (if any) employment-based benefits or protection.<sup>84</sup> Comparable data on other categories of employment that are even more likely to be informal in nature – namely, contract work, industrial outwork and casual day labour – are not readily available in developed countries. What follows is a brief summary of trends in three categories of non-standard work – part-time work, temporary work and self-employment – in Europe, including differences by sex (Carré and Herranz 2002; Carré 2006).

**Part-time work:** Since the early 1970s, there has been a marked growth in the proportion of part-time workers in total employment. By 1998, part-time workers accounted for 16 per cent of total employment in European Union (EU) countries and 14 per cent of total employment in Organisation for Economic Co-operation and Development (OECD) countries.

In virtually all EU and OECD countries, the incidence of part-time work is much higher among women than men: in some countries it is twice as high. By 1998, women represented 82 per cent of all part-time workers in EU countries. Furthermore, rates of part-time work are high for women, but not men, in their prime working years.

**Temporary employment:** For the EU as a whole, and in a majority of EU nations, the share of workers in temporary employment, including both direct hire and agency hire, increased from the mid-1980s to the late 1990s. By 1998, temporary employment accounted for around 10 per cent of total employment in EU countries.

Temporary employment, like part-time work, is primarily a female phenomenon, although there is wide variation among EU countries. In all countries except Austria, the incidence of temporary employment among female workers is higher than among all workers. And, like part-time work, temporary employment is concentrated in the service-producing industries. Interestingly,

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84. It should be noted that whether part-time work is informal (i.e. unprotected) varies across and within countries. In the Nordic countries, part-time work is often long-term with social protection. In the US, however, part-time workers are offered very few benefits: in the mid-1990s, less than 20 per cent of regular part-time workers had employer-sponsored health insurance or pensions (Burchell et al 1999).

in regard to temporary agency employment, women account for the majority of agency temps in countries where such employment concentrates in services, while men account for the majority of agency temps in countries where such employment concentrates in manufacturing and construction: that is, 'the gender composition of employment mirrors that of the sectors in which temporary agency assignments take place' (Carré 2006: 13).

**Self-employment:** Self-employment, including both employers and own account workers, has increased in many OECD countries over the past twenty-five years.<sup>85</sup> Indeed, outside of agriculture, self-employment has grown at a faster rate than total employment in fourteen (out of twenty-four) OECD countries where data were available. Also, as self-employment has been growing, so has the share of own account self-employment within total self-employment. As a result, in OECD countries today, more self-employed persons are own account workers, rather than employers.

In 1997, women comprised one in three self-employed persons in OECD countries and this proportion is growing. For EU countries as a whole, the incidence of own account work is greater for men (11 per cent) than for women (7 per cent). But, in some countries, a higher proportion of women than men are own-account workers. Age is a factor in own account work: with workers aged 45 and above more likely than younger workers to be working on their own account (Carré 2006).

### 5.3. ECONOMIC RIGHTS AND INFORMALITY

Given its sheer size and the fact that most of the working poor are engaged in it, the informal economy is the key arena in which the economic rights of the poor – or the lack thereof – are manifested. The fact that informal entrepreneurs need secure property rights and appropriate business rights has been effectively documented and popularized by Hernando de Soto, the well-known Peruvian economist (de Soto 1989; 2000). More recently, as outlined above, the ILO, the Delhi Group and the WIEGO network have called for a broader understanding of the informal economy that includes informal wage workers as well as informal entrepreneurs and, thereby, requires a broader economic rights framework. According to this broader understanding of informal employment, the working poor in the informal economy need labour rights as well as property and business rights.

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85. Statisticians distinguish three main sub-categories of self-employment: (1) 'employers', the self-employed who hire others; (2) 'own account workers', who do not hire others; and (3) 'unpaid contributing family workers'. However, many statistical analyses, such as those by the OECD reported by Carré, exclude unpaid family members because they are considered 'assistants', not 'entrepreneurs'. Since the majority of unpaid family workers in most contexts are women, this exclusion understates the real level of women's labour force participation and entrepreneurship (Carré 2006).

Reflecting this broader understanding, the Commission on the Legal Empowerment of the Poor (CLEP) co-chaired by Madeleine Albright and Hernando de Soto, whose final report will be released in early 2008, has adopted a framework for legal empowerment of the poor that calls for three types of economic rights for the poor – property, labour and business – as well as the rights of the poor as citizens to justice under the law.<sup>86</sup> I have served on two of the Working Groups – labour rights and business rights – of the Commission. What follows draws on several notes written by myself for the Commission based on the knowledge and experience of the WIEGO network I coordinate. I will elaborate on the set of economic rights that the working poor in the informal economy need in order to work their way out of poverty, and propose an empowerment process that would help secure and guarantee these rights for the working poor.

### 5.3.1. Package of Rights

#### *Labour Rights*

For informal wage workers, their labour – their human capital – is often their *only* asset. For many of the self-employed, their labour is their *main* asset. As noted above, many of the self-employed do not hire workers but work on their own account: as single person operators or heads of family firms or farms. Also, some of the self-employed are involved in disguised wage relationships in that they do not invest their own capital or control their labour. In sum, most of the poor who are self-employed invest as much (or more) of their own labour as their own capital in their enterprises. Labour rights represent, therefore, a key pathway to helping the poor work their way out of poverty. Providing labour rights to those whose main asset is their labour should be recognized as a central pillar of a just society and a central strategy for reducing poverty and inequality.

To begin with, the core labour rights contained in the Declaration of Principles and Rights at Work adopted by the ILO in June 1998 should be extended to all workers, including those who work informally. These include freedom of association and collective bargaining, no forced labour, and no discrimination on the basis of sex, race or creed. These constitute basic human rights applied to labour relations. In addition, labour rights for informal *wage* workers should include three basic rights related to their working conditions: minimum wage, stipulated hours of work and paid overtime, and insurance against health hazards or accidents at work (Tokman 2007).

Most neo-classical economists see labour rights and regulations as creating distortions in labour markets leading to increased benefits for a few workers but increased unemployment for others. Labour regulations are thought to have

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86. Please refer to the website of the Commission for more details: <http://www.undp.org/legalempowerment/>

contradictory outcomes because they place an undue burden on employers, who then shed workers to offset the cost of compliance. But the evidence on this assumed impact of labour regulations is mixed or ambiguous. A well-known set of studies in the US found that increases in the minimum wage led to increases in pay, but not loss of jobs, providing a powerful challenge to the conventional view that higher minimum wages reduce jobs (Card and Krueger 1995). In developing countries, studies have shown that minimum wages can help reduce poverty by increasing earnings and not reducing jobs, especially if the minimum wage is set through collective bargaining (Lustig and McLeod 1997; Saget 2001). Also, a recent World Bank study in seventy-five developed and developing countries found that the impact of regulations is mixed and that the negative effects are mitigated as the overall institutional framework improves (Loayza et al 2005). Furthermore, a recent World Bank Investment Climate Survey, covering 26,000 firms in fifty-three countries, found that firm owners often do not consider labour regulations as burdensome as other types of regulations. In fact, labour regulations were cited by only 16 per cent of the firm owners and came in only eleventh in the overall ranking of obstacles to business (World Bank 2005).<sup>87</sup>

Whatever the evidence suggests, the underlying economic model used to assess the impact of labour regulations does not 'match' the reality of labour markets in developing countries. The standard model assumes that labour markets are comprised of only the wage-employed and the unemployed, leaving out the self-employed and the under-employed. It also assumes that all wage-employed persons are formally employed. The reality in developing countries is quite different: relatively little open unemployment, relatively few formal wage workers, and a significant amount of self-employment and informal wage employment. No amount of over-regulation in a very small formal labour market can account for the very large informal economy in most developing countries – other processes and factors are clearly at work. Therefore, the model needs to be reframed to fit the developing country context where the informal economy is large and diverse and under-employment is more significant than unemployment.

One other general point on labour regulations. It is widely assumed that labour rights and the informal economy are somehow a contradiction in terms. This is because the informal economy is still widely assumed to consist only of informal entrepreneurs who choose to avoid labour regulations as well as other regulations. The broader concept of the informal economy, used in this chapter, includes informal wage workers who work for households (domestic workers) and for formal firms (either as informal employees, contract workers of various kinds, or sub-contracted industrial outworkers). Also, as has been pointed out, many informal operators do not hire others. So the perceived contradiction between the informal economy and labour regulations does not always pertain: often it is formal firms that are avoiding labour regulations, while informal operators do

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87. The top ten most frequently reported obstacles to business operation were: policy uncertainty, macro instability, tax rates, corruption, cost and access to finance, crime, regulation and tax administration, skills, court and legal systems, and cost and access to electricity (World Bank, 2005).



not hire labourers. Finally, many informal employers earn significantly above the minimum wage and can afford to hire their workers under more favourable conditions.

In sum, the real question is not whether labour regulations create unemployment or under-employment but how they can be better framed and used to promote productive and decent employment for the working poor. Although some labour regulations can have contradictory outcomes for the poor – in the form of either lost employment opportunities or lost employment benefits – there is the potential for *good* labour regulations that protect workers without diminishing opportunities for workers.

### *Business Rights*

Extending business or commercial rights to small informal businesses run by poor individuals or households should also be seen as a central pillar of a just society and a central strategy for reducing poverty and inequality. However, neo-liberal economic policies and free market forces not only privilege capital over labour, but also large firms over small firms. Business rights for informal entrepreneurs, as well as own account operators, should be seen as an essential part of a package of economic rights for the working poor in the informal economy that also includes property rights, labour rights, the right to social protection, and the right to be organized and represented in policy-making and rule-setting institutions and processes. Roughly half of the working poor are self-employed and the poorest among them tend to be own account operators – both single person operators and those who work in family businesses or on family farms. In fact, among the informal self-employed, those who hire others are often not poor (Chen et al 2004; 2005).

The range of rights needed by businesses to flourish include:

- ***basic business rights***: the right to work, including the right to vend; the right to a work space (including public land and private residences) and related basic infrastructure (shelter, electricity, water, sanitation);
- ***intermediate business rights***: the right to government incentives and support (including procurement, tax holidays, export licensing, export promotion), and the right to public infrastructure (transport and communication);
- ***advanced business rights***: legal rules related to limited liability, default, raising capital, and transferring the value of the business.<sup>88</sup>

Most of the working poor who are self-employed need basic and intermediate business rights. Few would worry about advanced business rights unless and until their basic and intermediate business rights are taken care of. In return for enjoying business rights, they would need – and might well be willing – to comply

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88. The Instituto Libertad y Democracia in Peru, founded and directed by Hernando de Soto, focuses a good deal of its attention on developing legal tools to ensure that small businesses enjoy these advanced business rights.

with regulations. Take, for instance, street vendors – the most numerous and ubiquitous of informal entrepreneurs in the urban informal economy. All street vendors need basic and intermediate business rights and the benefits that come with them. In return for being granted these rights, they should be expected to comply with different regulations depending on what they sell, as follows:

- those who sell fruit and vegetables: need to comply with zoning regulations (provided these are appropriate, not burdensome or exclusionary);
- those who sell cooked food: need to comply with public health and safety as well as zoning regulations (again, if appropriate);
- those who sell small domestically-produced manufactured goods: need to be regulated to ensure that the goods they sell are not pirated;
- those who sell more valuable imported manufactured goods: need to be regulated to ensure that the goods they sell are not smuggled or pirated.

### *Property Rights*

The working poor need to be able to acquire property on fair terms, without being excluded by social or legal norms. They also need to be able to protect their property from expropriation without compensation. In the process of acquiring and protecting their assets, the poor need to be able to settle competing property claims. Also, they need to be able to use their assets as collateral to leverage access to credit and other resources, including basic infrastructure services for their homes which are also often their workplace (especially for women).

Property rights so defined should not be limited to private property. A comprehensive system of property rights for the working poor should also include access to and use of public resources, including public land or space in urban areas and public forests, pastures, and waterways in rural areas.

Estimates suggest that half or more of the urban workforce in developing countries operate informally, outside the reach of government regulation or protection. Of this vast urban informal workforce, probably half are street vendors or street workers of other kinds: barbers, beauticians, shoe shiners, cobblers, head loaders, jitney drivers and more. The urban informal workforce should have the right to work in central urban areas. Otherwise, in today's vast sprawling cities, small islands of formal firms and factories will remain surrounded by a vast sea of informal operators trying to earn a living.

In some societies, fewer women than men work on the streets. But in all societies, reflecting a common gender division of labour, the vast majority of those who work from their homes are women. Those who work from their homes need the right to work from home, to own their home-workplace, and the right to basic infrastructure in their homes: all of these rights would make their work more productive.

### *Social Protection*

Both informal wage workers and informal self-employed should have the right to social protection coverage to cover the common core contingencies of illness, disability, old age and death. There is an ongoing debate as to whether social protection should remain linked to or be de-linked from the employment relationship. As in many such debates, the choice should not be framed as an 'either-or'. If social protection remains completely linked to the employment relationship, many wage workers (those in disguised, ambiguous or triangular employment relations) and most self-employed (both dependent and independent) would not get protection. But if social protection is completely de-linked from the employment relationship, many informal workers and operators would not be able to afford purely privatized protection systems and would not be guaranteed state-based protections. Also, employers and the owners of large businesses would not be contributing their fair share. Furthermore, universal schemes either provide a very bare minimum of protection or become unaffordable over time. What is needed is a judicious and context-specific mix of social protection schemes that draw variously on employer, employee, self-employed and state contributions. Ideally, what is needed is the proverbial patchwork quilt of different schemes funded in different ways but with a wide border of universal health insurance and old age pensions.

### **5.3.2. Enabling Conditions**

To ensure that this set of rights is properly designed and enforced requires two enabling pre-conditions: namely, the *Visibility* and *Voice* of the working poor in the legal reform process.

#### *Visibility*

The working poor need visibility under the law, in policy formulation, and in the economic models that are used to inform policy choices.

**Legal Identity:** The working poor in the informal economy need an identity as economic agents – not just as citizens or property holders – in order to gain access to markets, gain access to public goods and services, negotiate fair employment or commercial contracts, and protect themselves against unfair treatment or terms of doing business. Ideally, they would want full legal recognition and protection as informal wage workers and informal entrepreneurs – as guaranteed to formal workers and formal enterprises. But short of full legal recognition and protection, they would also welcome a semi-legal identity. This can be achieved by issuing them with ID cards that indicate their occupation and their membership in or affiliation with any organizations. For instance, micro-finance institutions (MFIs) could issue ID cards to their clients indicating their occupation and their

affiliation to the MFI. Better still, if the working poor are organized into their own membership-based organizations, those organizations could issue them with ID cards and, in other ways, promote their legal recognition and protection.

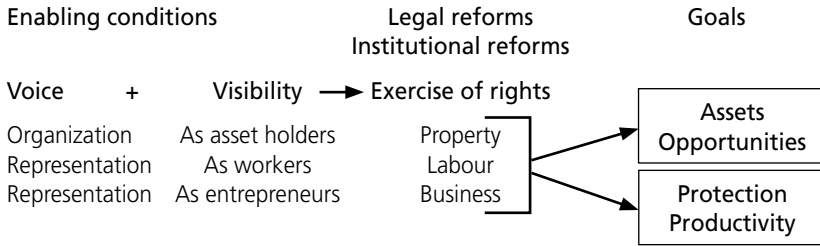
***Policy Recognition:*** In addition to legal identity, the working poor in the informal economy need to be recognized by policy-makers for their contribution to the economy. This will require that the working poor, especially women, are fully visible in labour force statistics and other data used in formulating policies. More countries need to collect statistics on informal employment, broadly defined, and countries that already do so need to improve the quality of the statistics that they collect. In addition, in order to undertake an analysis of the links between employment and poverty, attention needs to be given in national data collection to linking labour force and income/expenditure surveys. Additional analyses such as those presented in this chapter need to be undertaken and the results of these analyses need to be fully integrated into economic planning and policy-making.

***Integration in Economic Models:*** Additionally, all forms of informal employment need to be integrated into economic models of labour markets. Existing economic models of labour markets focus on the supply and demand of wage labour. These models tend to exclude the self-employed and to conflate the various types of waged workers (formal salaried workers in both private and public enterprises, employees of informal enterprises, contracted or sub-contracted workers of various kinds, domestic workers and casual day labourers). They also fail to estimate or account for the extent of *underemployment*, including among the self-employed, which often more accurately captures the employment problem in developing countries than does unemployment. In sum, conventional economic models need to be re-tooled to reflect the complex reality of labour markets today.

### *Voice*

The right to organize and be represented – one of the core labour rights – is critical to ensuring the economic rights of the working poor. To ensure that the rights are appropriately framed and properly enforced, the working poor, especially women, in the informal economy need a representative voice in the processes and institutions that determine economic policies and formulate the ‘rules of the (economic) game’. This requires building organizations of informal workers and extending membership in existing trade unions, cooperatives, and other worker organizations to informal workers. This also requires making rule-setting and policy-making institutions more inclusive and ensuring that representatives of the working poor have ‘a seat at the’.

If these enabling conditions are in place, then the process of legal and institutional reforms will generate the desired outcomes. This process can be depicted graphically as follows:

**Figure 5.2. Legal empowerment of the working poor**

*Voice* and *Visibility* are the key enabling conditions through which the poor can engage in legal and institutional reforms and, thereby, exercise economic rights. To increase the voice and visibility of the working poor requires building membership-based organizations of the poor and promoting inclusive policy-making and rule-setting institutions that include representatives of the poor. In this enabling process, the poor need voice and visibility in each of their economic identities – as *Asset Holders*, as *Workers* and as *Entrepreneurs*.

In sum, reducing poverty will require extending the following economic rights to the working poor in the informal economy: labour rights for informal wage workers and business rights for informal enterprises, as well as property rights, the right to social protection, and the right to organize and have representation for both groups. Furthermore, extending these rights to the working poor will require that they have legal identity, are recognized and valued by policy-makers, are counted and valued in national statistics, are integrated into economic models used by policy-makers, and are represented in the policy-making and rule-setting institutions and processes.

In conclusion, it is important to note that women, compared to men, are less likely to enjoy property, labour or business rights and have visibility and voice. This is because social norms often restrict the rights of women to inherit or exercise use rights to land and other property. Social norms often restrict the mobility of women and place competing demands on their time with the result that women are far more likely than men to work from home. Those who work from home are less likely than those who work outside the home to know their rights or to have access to markets, opportunities for skills training or collective bargaining mechanisms. This is also because women are over-represented in the low-return and high-risk segments of the labour force. Also, compared to men, women's work and economic contributions are less likely to be visible in official statistics and policies. Furthermore, compared to men, women are less likely to know their rights, be organized, or have a voice in policy-making or rule-setting institutions. To reduce gender inequality, in addition to poverty, the economic rights agenda outlined requires a targeted focus on the economic activities, risks and needs of working poor women in the informal economy, and a sustained commitment to increasing their visibility and voice under the law and in policy-making or rule-setting.

#### 5.4. THE WAY FORWARD

For much of the twentieth century, economic development was predicated on the model of state-based social and economic security as embodied in the welfare state, the goal of full employment, and related protective regulations and institutions. However, these forms of state-based social and economic security were never fully developed outside of Europe and North America. Moreover, by the 1980s, a new economic model began to take shape: one that is centred on fiscal austerity, tight monetary policy focused on maintaining very low inflation rates, free markets and the ‘rollback’ of the state. Under this model, there are three main policy prescriptions for economic development and growth: trade and financial liberalization, market deregulation and privatization.

Unless properly managed, these policy prescriptions can have contradictory outcomes in terms of employment and poverty. Without an explicit focus on increasing the demand for labour, economic growth will not generate as many jobs as needed. Moreover, without an explicit focus on the quality of employment, the jobs that are created may not be regulated or protected. Recent economic growth has been associated with flexible labour markets, outsourcing of production, and growth of temporary and part-time jobs. The United States is no exception (see Box 1).

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#### **Box 2. New employment relationship in the United States**

Over the past two decades or so, there has been a significant change in the employment relationship for many once-regular employees in the United States. The main change is from long-term firm-worker attachment towards short-term employment relationships. Between 1983 and 2002, for all men over 20, there have been dramatic declines in *job tenure* and in the numbers who had been with their *current employer for 10 years or more*. These declines were particularly significant for men in the age groups over 45, precisely the group who were the beneficiaries of the old long-term employment relationship. Because women were not generally part of the long-term employment system, they have not experienced such marked declines and have even seen a modest rise in some age groups. However, the overall percentage of women working for ten years or more for the same employer is significantly lower than men in every age-group.

There are several common defining features of the new employment relationship. First, employers promise their employees employability, not job security. More specifically, they promise learning opportunities, not long-term employment. Second, they promise networking opportunities (with customers, suppliers, and even competitors), not promotion opportunities. Thirdly, they do not keep employees on the payroll when the demand for their products or services decreases. Rather, much of the risk faced by the firm is placed squarely on the employee. In addition to job insecurity, there is greater wage uncertainty and inequality. Under the old employment relationship, wages were set by internal firm-related factors such as seniority and longevity. Now they are pegged to

individual performance and are responsive to market fluctuations. Thirdly, older employees face the risk of having their labour market skills becoming obsolete and having to compete with younger newly-trained employees, as jobs are continuously being redesigned to provide greater flexibility. Fourth, the new employment relationship involves the dissolution of unemployment compensation, workplace accident insurance, health insurance, old-age pensions, and social welfare benefits: as the eligibility requirements and overall design of these systems are premised on the old employment relationship, notably job longevity. In regard to old-age pensions, most employers have shifted from defined benefit plans to defined contribution plans, passing on the risk of the market and bad investment decisions to their employees. And, in regard to health insurance, there has been a marked shift from large risk pools with standard benefits to small risk pools with ultra-flexible benefits.

The new employment relationship has many implications for labour and employment regulation. The prevailing labour law regime in the United States, which provides legal support for collective bargaining, mandates minimum terms of employment, and prohibits employment discrimination, is premised on the industrial-era employment relationship. The new employment relationship renders many features of the existing labour regulation obsolete. The new employment relationship, in the absence of new more-appropriate regulation, has serious implications for worker security, including: use of intellectual property law by employers to stop ex-employees from sharing knowledge with their new employers; new forms of discrimination (e.g. ostracism and subtle forms of harassment of newcomers by cliques, patronage networks, buddy systems) that require different remedies; and the undermining of unionization due both to resistance by employers and the inability of unions to adapt to the new boundary-less jobs and workplaces. These and other risks associated with the new work practices have contributed to rising pay gaps and income inequality.

*Source: Stone, 2006.*

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By the turn of the twenty-first century, given the increase in inequality and informalization in so many countries during the 1990s, the neo-liberal economic model began to be questioned and discredited. Today, there is a growing call for a return to the social compact of the mid-twentieth century. However, it is important to recognize that there is a mismatch between economic realities today and the models of protection underlying the social compact of the 1950s and 1960s. The mismatch has to do not only with the decline of the welfare state and the expansion of the market, but also with the informalization of employment. What, then, is the nature of the mismatch? What can be done to make sure that institutional protections match today's employment realities?

### **5.4.1. Labour Law**

Historically, around the world, the ‘employment relationship’ has represented the cornerstone – the central legal concept – around which labour law and collective bargaining agreements have sought to recognize and protect the rights of workers. Whatever its precise definition in different national contexts, it has represented ‘a universal notion which creates a link between a person, called the employee (frequently referred to as ‘the worker’) with another person, called the employer to whom she or he provides labour or services under certain conditions in return for remuneration’ (ILO 2003).

The concept of the employment relationship has always excluded those workers who are self-employed. Increasingly, some categories of dependent workers have found themselves to be, in effect, without labour protection because their employment relationship is disguised, ambiguous or not clearly defined (ILO 2003). The net result is that a large and increasing share of workers worldwide is not protected under labour law or collective bargaining agreements.

In her analysis of the risks associated with the new employment relationship in the United States (see Box 1), Katherine Stone proposes several types of legal reforms, including: benefit portability and broader safety nets, new anti-discrimination strategies, the legal right to organize across employer units, and broader notions of bargaining units. She also calls for labour organizations that operate across industries and across firms in local or regional geographic areas (Stone 2006).

### **5.4.2. Commercial Law**

Conventional understanding of the nature and behaviour of firms does not reflect the reality of how many family businesses and own-account operations behave. For instance, not all own-account operators carry out independently all of the functions associated with firms. Many of them depend on others for some of these functions: for example, many buy raw materials on credit from a single supplier; others sell goods they produce to an intermediary; still others sell on commission goods they are supplied by larger businesses.

Formal commercial contracts governed by contractual law stipulate who controls what and who bears what risks. But under the implicit contracts governing most informal commercial contracts, it is not clear who controls what and who bears what risks. This uncertainty is compounded when an own-account operator is not fully independent. The scope of commercial law needs to be widened to cover the range of informal commercial transactions,

Legal reforms are also needed to address the risks associated with self-employment, including: enforceable contracts, broader safety nets, the right to organize and be represented in business associations, and broader notions of collective bargaining (when there is no employer per se). If they decide to organize the working poor who are self-employed, labour organizations will need to operate not only across industries or firms but across employment status, looking for the



common needs and concerns between the working poor who are self-employed and the working poor who are wage employed.

### **5.4.3. Social Protection Systems**

In most countries in the world, social protection is linked to employee status. This means that whoever is not considered to be an employee very often lacks any social protection. As noted earlier, most of those who work in the informal economy would be greatly helped by forms of social and legal protection that are less exclusively linked to employee-status. But the solution is not to make everybody into an employee, which is neither feasible nor desirable. The solution is also not to completely de-link social protection from employment, which would allow employers and the owners of capital to avoid contributing to the welfare of their workers or contractors. Rather, as noted earlier, a mix of solutions – universal, private and employment-based schemes – are needed to extend social protection to all types of workers.

### **5.4.4. Organizing Models and Collective Bargaining Agreements**

Organizing the informal workforce will require new and innovative strategies that take into account the fact that the place of work and employment status of most informal workers are so-called ‘atypical’ or ‘non-standard’. However, there are a growing number of successful efforts in organizing informal workers: from street vendors, to home-based producers, to waste collectors, to day labourers in construction and agriculture, to forest gatherers and fishing communities (see Chapter 6 of Chen et al 2005 and the WIEGO website for more details).

Similarly, collective bargaining institutions will need to be modified to match the situation of informal workers. In the case of formal wage workers, collective bargaining agreements are set up to manage through bargaining the relationship between management and workers. In the case of informal wage workers, the bargaining partner is often not an employer and collective bargaining is often informal. As a starting point, what is needed is to recognize and legitimize the existing forms of collective bargaining between different groups of informal workers and their respective bargaining partners: for example, between street vendors and the police or other municipal authorities. Over time, some of these can be formalized or codified into dispute-resolution procedures with agreements in writing signed by all parties involved. Eventually, to ensure sustainability, certain agreements should be converted into statutory regulations (Horn 2006).

Clearly, the mismatch between the employment realities of today and the models of social and economic protection of yesterday is quite deep and wide. What are needed are new models of labour rights and social protection that match the reality of work today. Most fundamentally, to ensure that the new models of social and economic protection match employment realities, the working poor need to be represented – to have their voices heard – in the legal and institutional reform process itself.

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Part II

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Economic Perspectives  
on a Sectoral  
Approach to Poverty  
and Human Rights

# 6

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## Agricultural Production Collectivities and Freedom from Poverty: The Case for a Group Approach

*Bina Agarwal*<sup>89</sup>

### 6.1. INTRODUCTION

Grassroots action across the globe demonstrates that collectivities of the poor can improve their well-being in ways that individual approaches usually cannot: it can enhance their income, their self-respect, their ability to challenge structural inequalities and oppressive social norms, and their bargaining power in markets, at home and with the state. The process of empowerment is especially important – one that recognizes the poor as agents rather than simply as welfare recipients – and is more likely to bring long-lasting gains. Globally, rural areas contain 2.1 billion people living on less than US\$ 2 a day (and 880 million living on less than US\$ 1 a day). Most of them are involved in agriculture (World Bank 2008). The majority are small and marginal farmers, many are landless agricultural labourers, and in recent decades an increasing proportion are women. An estimated 70 per cent of those living in absolute poverty globally are women, and the number of rural women living in absolute poverty is assessed to have risen by 50 per cent over the last two decades, relative to 30 per cent for rural men (figures cited on the UNIFEM website, 2008).

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89. I have presented aspects of this paper in several forums including as part of the B.N. Ganguli Memorial lecture, Centre for the Study of Developing Societies, Delhi, 2008 and the workshop on 'Poverty and Human Rights', Carr Center for Human Rights, Kennedy School of Government, Harvard University, 2008. I thank the participants of these events, as well as Amrita Chhachhi, Ashwani Saith, and several colleagues working on agrarian change in the Netherlands and the UK, for their useful suggestions. I am also most grateful to P.V. Satheesh, Suresh Kumar, Rachel Sabates-Wheeler, Ruerd Ruben and Malcolm Childress for providing me with unpublished information from their ongoing work. Responsibility for the end product, however, is mine alone.

In most developing regions there has also been a highly gendered agrarian transition, as men in notably larger numbers than women have moved to non-farm jobs. In India, for instance, agriculture contains 57 per cent of the population but contributes only 18 per cent of the Gross Domestic Product. Agricultural growth rates are low and the agrarian transition has been slow and clearly gendered. As men move out of agriculture, those left behind on farms are increasingly women, leading to a feminization of agriculture. In 2004-5, 49 per cent of male workers but 65 per cent of all women workers and 83 per cent of rural female workers were still in agriculture (NSSO 2004-05), and their percentage is rising. An estimated 35 per cent of households are *de facto* female-headed from widowhood, marital breakdown, or male outmigration (GOI 1988),<sup>90</sup> and overall 38.9 per cent of all agricultural workers are women (NSSO 2004-05). Many are uneducated and possess few skills beyond farming. The demographic profile of the Indian farmer today is thus a far cry from the young, articulate, new-technology-seeking profile popularized in the 1970s Krishi Darshan TV programme. Farm size is also falling: 70 per cent operated less than 1 ha in 2003 compared with 56 per cent in 1982 (GOI 2008), and landlessness is growing (Rawal 2008). Women constitute most of the landless, typically owning no land themselves, even when born or married into landed households (Agarwal 1994, 2003). Indeed, given intra-household inequalities in resource distribution, there are poor women in non-poor households whose work contributions (as unpaid family workers) are usually invisible, and who remain atomized and isolated as workers.

Also, although there is a now a growing recognition that for higher agricultural growth we need substantial investment in rural infrastructure, crop research and improved farming practices, there remains rather little recognition of the demographic shift toward female farmers. There is also not enough engagement with the question: will small and increasingly female farmers be able to take advantage of this infusion of infrastructural investment, and overcome constraints of scale and access bias?

In this paper, which could be characterized as a policy think piece, I argue that for alleviating rural poverty, and especially poverty among women, as well as for energizing agricultural growth, we need a new institutional approach – *a group approach* – to rural development. Such an approach could prove to be much more effective than individual-oriented approaches in tackling deprivation among agrarian populations and enhancing their productive potential, especially in resource-scarce circumstances. In other words, we need to explore a wider range of institutional arrangements for farming than simply single family cultivation, which is the norm and is often assumed to be a more efficient form of enterprise than a collectivity. I use the term ‘collectivity’ rather than

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90. These estimates are dated, but indicative. We would expect rural female-headedness to grow with time, with decreasing marital stability and kinship support, and increasing male outmigration.

‘collectives’ or ‘cooperatives’ to encompass all forms of joint farm enterprises, and to transcend the particularity associated with these earlier terms.

The form that an agricultural collectivity takes could vary, as could the level of collective endeavour, ranging from simply joint investment in capital inputs to joint production. I outline the potential gains from agricultural collectivities, especially joint farming, and examine their prospects for enabling the rural poor, especially women, to become agents of their own empowerment.<sup>91</sup> I argue, however, that the structure of such collectivities would need to be rather different from the early historical experiences of collective farming in socialist and other contexts. In particular, the new collectivities would need to contain significant elements of a human rights-based approach to development, especially equity, accountability, participation and the empowerment of vulnerable groups.<sup>92</sup>

To demonstrate that such collectivities are not simply a theoretical construct but have a basis in contemporary reality, I focus on two types of examples. One relates to countries that undertook farm collectivization and subsequently de-collectivized, but where, despite the option of individual family farming after decollectivization, many households chose to form new production cooperatives. The other relates to women’s group farming in south India. Although yet other types of production collectivities also exist, such as those formed around fish production or community forestry, group farming is of particular interest since it relates to a major resource – agricultural land – and there are vast numbers dependent on it for a livelihood. Access to land and the ability to cultivate it productively can also prove key to realizing the right to food, which is becoming increasingly difficult to fulfil with rising food prices and grossly unequal access.

Since group farming has a long and largely unsuccessful history, I first briefly spell out the central features that are seen to underlie the failure of earlier efforts on many counts. I then outline the very different characteristics that agricultural collectivities are likely to need for success. I follow this with examples of successful agricultural production collectivities, both from outside South Asia and within it, which embody some or all of these principles. Finally I examine how the success, especially of women’s group farming in India, could be replicated and its geographic coverage and impact enhanced. The illustrative examples are drawn from specific regions, but a group approach to agricultural investment and production would have wider geographic relevance.

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91. In this paper, ‘poor’ implies income poverty, which often overlaps with asset poverty (especially landlessness). Although there are likely to be poor and assetless women in non-poor households, given intrahousehold inequalities, poor women, as referred to here, are both poor themselves and come from poor households.

92. These four elements are especially emphasized in human rights approaches to development (see e.g. Marks 2003: 6).

It needs mention, however, that this paper is not cast in a generalized land reform framework on which there has been considerable conceptual and policy debate in recent years.<sup>93</sup> Rather, my primary focus is on the potential of a group approach in empowering poor farming households, both economically and socially, whatever the source of their land – inheritance, markets, or state transfers. State transfers of land to the poor, for instance, can occur not only under redistributive land reform, but also in other contexts, such as for resettling families displaced by large dams or natural disasters (e.g. a tsunami). A group approach can, however, also enhance the ability of the poor to gain access to land through the market (as elaborated further below).

## 6.2. LESSONS FROM HISTORY

### 6.2.1. Top-Down Collectivities

Historically, agricultural collectivities were mainly of two types: production collectivities, involving some form of joint cultivation; and service collectivities, for credit, inputs, or marketing. Production cooperatives largely failed, especially in the early period (although the subsequent story is more complex), while service cooperatives were relatively successful.

Joint cultivation was linked mainly to socialist collectivization, such as in the USSR, Eastern Europe, China and North Viet Nam, but during the 1960s and 1970s there were also significant efforts in some non-socialist countries, such as Ecuador and Nicaragua in Latin America, Ethiopia and Tanzania (the Ujaama policy) in Africa, Israel (the kibbutz) in the Middle East, and on a minor scale in India. A comprehensive assessment of these early experiences – in all their range, complexity and geographic variability – requires specialized scholarly research, which is outside the purview of this paper. However, a focus on some key features that are recognized to have contributed to their failure, outlined here in broad brushstrokes, is meant to provide a background to the current discussion,<sup>94</sup> and to demarcate those early top-down approaches from the bottom-up group approach I am proposing.

Socialist collectivization was characterized by five features that had especially negative outcomes: coercive pooling of small peasant farms; compulsory requisitioning of produce; vast sizes of production enterprises; farmers' lack of voice in management decisions; and hidden as well as explicit forms of socioeconomic inequality, including gender inequality.<sup>95</sup> In other words, they violated all the

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93. See e.g. the World Bank's approach to market-led agrarian reform as enunciated by Deninger and Binswanger (1999) and Deininger (1999) and its critique (Borras 2003). See also Griffin et al (2002) on redistributive land reform and the critique of their approach by Byres (2004) and others in the *Journal of Agrarian Change* 2004, 4(1-2).

94. See Agarwal (2008) for more details.

95. See especially Robinson (1967) and Nove (1969) for the USSR; Lin (1990) and Putterman (1997) for China; Swain (1985, 1992) for Hungary; and Goyal (1966) for an overview of several countries.



principles of a human rights approach mentioned above. In most part, the effects of the massive forced collectivization on productivity and human welfare in the early period proved highly adverse.<sup>96</sup> In the USSR and China they were associated with famines and the deaths of millions of people and animals. Some countries in Eastern Europe, such as Hungary, escaped this fate by shifting course fairly soon after launching collectivization by abolishing compulsory deliveries, allowing households to keep small individual plots, and initiating farmer-support measures (Swain 1985, 1992; Berend 1990). Elsewhere, as in North Viet Nam, persuasion soon gave way to coercion as pressure for rapid collectivization increased, and production and living conditions deteriorated (Kerkvliet 2003). Lin (1990) demonstrates the critical importance of voluntariness – the ability to exit the collective – in determining the impact on productivity in China, and attributes the collapse of Chinese agricultural production during 1959-61 to ‘the deprivation of the right to withdraw from the collective in the fall of 1958’ (Lin 1990: 2229).<sup>97</sup>

Outside state socialism, the promotion of joint farming was different from that in socialist countries in some significant respects, but similar in others. Many of these initiatives in the 1960s and 1970s were propelled by pro-small-peasant land reform (Ghose 1983), but influenced by socialist assumptions of large farm efficiency. Broadly, joint cultivation was promoted either by pooling small farms into large cooperatives as in Ethiopia and Tanzania, or by constituting cooperatives on state-controlled land (including that confiscated from large owners), as in Nicaragua, Ecuador and Israel. In some countries both forms were promoted.

Although usually initiated under the principle of voluntariness, the process often became coercive under government pressure for speedy implementation.<sup>98</sup> Also, common to all these initiatives were the very large sized farms and top-down management.<sup>99</sup> In Ethiopia, for instance, in the mid-1970s, some 20,000 peasant associations with 5 million members were created within a year, with each collective cultivating 800 ha on average (Alula and Kiros 1983). In parts of Ecuador, each farm was around 10,000 ha (Borda 1971). Such large farms made farmer participation in planning and management virtually impossible. Women, in any case, were rarely involved in decision-making on state farms (Deere and Leon 2001). And the productivity and welfare outcomes of the collectivities were mixed and regionally variable: there were gains in some regions but not in others, and the overall impact on poverty was limited.<sup>100</sup>

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96. See Robinson (1967) and Nove (1969) for the USSR; Lin (1990) and Putterman (1997) for China. Deininger (1993) also shows that productivity was much lower under forced collectivization in China (1959-6) and North Viet Nam (1958-71) than in subsequently decollectivized farms. See also Hanstad (1998) on the former Soviet republics.

97. Lin notes that it took 23 years, minus the World War II years, for productivity to reach the pre-World War I level.

98. See e.g. Alula and Kiros (1983) for Ethiopia; Ibhawoh and Dibua (2003) and Scott (1999) for Tanzania; and Carlos (1988) for Nicaragua.

99. See e.g. Alula and Kiros (1983) for Ethiopia; Scott (1999) for Tanzania; Borda (1971) for Ecuador; and Mort and Brenner (2003) and Gavron (2000) for Israel.

100. These effects deserve in-depth probing, which is not possible here, but some early assessments are illustrative. Some regions in Latin America, for instance, showed production increases with

The production cooperatives also performed service functions, such as joint procurement of inputs and marketing, but solely service collectivities did not involve joint cultivation. Established during the 1950s-60s in many countries, service cooperatives were successful in greater extent than production cooperatives (Deininger 1993; Inayatullah 1972). But class, gender and other social differences were largely ignored in their formation, leaving them dominated by men and the better-off. For women, both social structure and an inbuilt gender bias proved exclusionary. Membership was limited to one person per household. This was typically the male household head, even though women's farm work was vital in all regions, as was their involvement in marketing in many regions (UNRISD 1975).

Both production and service collectivities proved more beneficial to communities where socioeconomic inequalities were low, solidarity and social affinity among the participating farmers were high, the units were not large in scale, and there was effective democratic authority and a willingness to remove non-performers (Inayatullah 1972).<sup>101</sup> These elements can prove critical for successful cooperation, as demonstrated by recent experience of production collectivities in the transition economies and India (detailed further below).

India's experiments with cooperatives (strongly influenced by China) in the 1950s-60s provide similar lessons. Cooperatives were seen as a major instrument of rural economic development, which appealed to both socialists and Gandhians (Frankel 1978). However, early attempts to promote joint farming encountered strong resistance from large landowners supporting the ruling Congress party, and most state governments shelved the idea, barring a few pilot experiments. Goyal (1966: 122) found only 111 joint farms in six Punjab districts in 1958.<sup>102</sup> Solely service cooperatives were geographically more widespread but mainly benefited large and medium farmers (Frankel 1978: 196). In time, other types of service cooperatives emerged, which did benefit the small producer, such as Anand, the highly successful milk cooperative in Gujarat, and the sugar cooperatives of Maharashtra.<sup>103</sup> Although these are often called 'producer' cooperatives, in fact they undertook no joint production, but simply joint marketing of individual producers' goods.

In most of these collectivities, the family was the participating unit. Hence, although the gender effects of collectivization are little discussed in the literature,

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improved technology (Borda 1971), but in others the incomes of the landless declined (Peek 1983). Similarly, Alula and Kiros (1983) report an increase in food consumption and incomes in Ethiopia, but assessments for Tanzania point more to non-economic than economic gains (Ibhawoh and Dbua 2003). See also UNRISD (1975) for a summary of the results from studies that UNRISD sponsored in the late 1960s, to examine the performance of cooperatives in Asia, Latin America and Africa. These are especially revealing of the early emerging effects.

101. See also Borda (1971) and Ruben and Lerman (2005) on the importance of social affinities in the early stages of collectivization in Latin America. Borda especially highlights local, family and ritual ties.
102. Projecting from these six districts, he estimates that Punjab as a whole had 198 joint cooperative farming societies – 44 per cent of all cooperative societies in the state.
103. See Somjee and Somjee (1978) and Mascarenhas (1988) on Anand, and Baviskar (1980) on the sugar cooperatives.

it can be surmised that in collectives formed within non-socialist regimes – with some exceptions, such as the kibbutz – women remained largely embedded in traditional roles and positions of disempowerment.<sup>104</sup> Where they became direct members in producer cooperatives, it was on unequal terms.<sup>105</sup> Even within socialist regimes, women got an unequal deal. In the Soviet Union's collective farms, women were concentrated in manual jobs that were designated less skilled and received lower remuneration. Only 0.8 per cent of tractor drivers and 1.4 per cent of machine handlers were women, and 85 per cent of women employees relative to 66 per cent of men in collectivized farms performed tasks termed as unskilled (Swain 1985: 99). In China, in 1973, the gender differential in average work points was 2.5 (Swain 1985: 98-99). In Viet Nam, again, women received harder tasks and fewer work points than men (Kerkvliet 2005: 91). In India, except in women-headed households, men represented the family; and production cooperatives were constituted by family units, as was membership in service cooperatives. This needs emphasis, since the successful cases of group farming in India, described further below, break this pattern and are constituted of women alone.

In overview then, the early historical experience of collective farming within the socialist context, characterized by coercive formation, large-sized units, compulsory grain requisitioning and top-down decision-making, was marked by strong disincentives for the farmers and brought few of the expected gains in productivity and human welfare. Collectivities in non-socialist regimes, although somewhat more voluntary, were yet not free from coercion, had large production units, top-down management and little adaptation to local conditions. And gender inequality was inbuilt in both the socialist and non-socialist contexts.

Notably, however, in countries where the initial large collectives were subsequently downsized and peasants were allowed to leave them, a large number survived. In Central Asia, Eastern Europe and parts of Latin America, when de-collectivization was initiated, many farming families, for varied reasons, continued to work together in reformed collective institutional arrangements, or formed new bottom-up groups for joint cultivation on the restituted land (see Section 6.4 below). This suggests that it was the particular features of early socialist collectivization that contributed to the adverse effects, rather than the infeasibility of cooperative production or collective action per se. The early failures, however, continue to be barriers to policy rethinking on collective approaches to farming.

### **6.2.2. Conceptualizing Bottom-Up Collectivities**

A successful framework for small farmer agriculture, which would also fulfil the tenets of a human rights approach to development, requires a substantially

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104. In Latin America, even in service cooperatives, as noted, the members were typically men. See also Deere and Leon (2001).

105. See Deere and Leon (2001) on male bias in the membership of production cooperatives in Latin America. In Nicaragua, women formed only 11 per cent of the members in the 1980s.

different kind of production collectivity than these early historical examples. In particular, from the lessons learnt we can suggest that collectivities should be framed around at least six principles:

- voluntariness;
- small size, constituted of, say, groups of 10-12 or 15-20 farmers;
- socioeconomic homogeneity or marked social affinities among members;
- participatory decision-making in production, management and distribution;
- checks and penalties for containing free riding and ensuring accountability;
- group control over the returns and a fair distribution of the benefits, as decided transparently by the members.

As discussed below, the successful cases of agricultural production collectivities today have most or all of these features.

### 6.3. POTENTIAL GAINS FROM BOTTOM-UP COLLECTIVITIES

Collective farm activity could range from simply joint investment in lumpy (physically indivisible) inputs such as agricultural machinery, to land pooling and joint cultivation by small owners, or even joint land acquisition by purchase or lease. Especially where small and marginal farmers predominate, there could be gains in productivity as well as bargaining power in acting jointly rather than individually. This is likely to be even more the case with women farmers. In India, for instance, although farmers are increasingly female, few women have direct access to agricultural land. Families transfer land mostly to male heirs; the state transfers land largely to male household heads; and markets favour men over women, since they have more financial resources (Agarwal 1994, 2003). Women farmers also face male bias in extension and credit access, and social restrictions on their mobility and interactions in the marketplace for input procurement and product sale (Agarwal 1994, 2003).<sup>106</sup> Rather few women are themselves members of service cooperatives. It is well-recognized by policy-makers in developing countries that agriculture needs to provide both higher output and viable livelihoods. But the substantial recent focus on infrastructure (irrigation, roads, etc.), research and extension in countries such as India (see e.g. the 11th Five Year Plan: GOI 2008) begs the question: by what institutional arrangement will it be ensured that small, marginal and increasingly female farmers have access to the infrastructure? A bottom-up, more collective approach to farming could address these concerns.

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106. See also IFPRI (2001) for Africa.

At the least, a group approach could help small and marginal farmers to undertake lumpy investments by pooling financial resources. It is not economically viable for farmers operating one or two hectares, especially if fragmented, to invest in tubewells or machinery such as tractors, or even keep a pair of bullocks. An active rental market can help with tractors and bullocks, but water leasing requires other essentials, such as negotiating a passage for water channels and managing water flows, all of which are more difficult (if at all possible) to undertake through rental arrangements. Here joint investment by small farmers with contiguous plots could provide a solution. Groups can also undertake rain water harvesting or soil conservation more economically than individuals.

In addition, for the landless, a group approach can increase market access to land. By pooling financial resources and negotiating jointly, groups can prove much more effective than individuals for purchasing or leasing in land. Again this would especially benefit women, who typically lack the funds to operate effectively in land markets. This process could be furthered with state-subsidized credit for land purchase or leasing in by groups.

Group farming by pooling-owned or jointly-leased land, however, involves a much higher level of cooperation than simply joint investment in inputs, and would be more difficult to achieve. But it can also bring greater productivity gains and social empowerment as compared with individual production units, for several reasons. First, it can help spread the risk of farming among a larger number and increase production opportunities. Cultivating as a group, farmers would be better placed to experiment with higher value, more risk-prone crops with larger payoffs. It would also enlarge choices for crop diversification, since a collective pool of land is more likely to have soil variety.

Second, land pooling can increase the cultivable area, since boundaries and bunding between fields become redundant and the saved area could be cultivated (see also Ganguli 1953). By enabling consolidation, fragmentation would also be reduced.

Third, joint cultivation allows labour-sharing and easy substitution for a member who is temporarily unable to work due to illness or other exigency. This can especially benefit marginal farmers, who would also gain from labour pooling for peak season needs, for which they may normally be dependent mainly on family labour. In general, too, there would be less conflict/competition between farmers for obtaining extra labour during peak needs. Traditionally, labour exchange systems served these needs to some extent, but such arrangements have declined over time and cannot commonly be found, except among women in certain regions (Agarwal 2000). Also, a collectivity would bring together a greater diversity of skills, talents and knowledge than found in one person or family. Skill pooling can bring higher returns. For women farmers, a group can bring into the fold women with leadership qualities or scarce managerial skills.

Fourth, a group would be better placed to enter into non-exploitative contract farming arrangements. It is now increasingly common for companies requiring an assured supply of agricultural raw materials, or running food processing and retailing chains, to enter into contracts with farmers. Typically,

these arrangements are with individuals rather than with farmers' groups. Evidence from Latin America and India shows that such arrangements seldom benefit small and marginal farmers, except in the rare cases where the contracts are with *a group* of farmers and there are protective laws in place.<sup>107</sup> Companies usually contract larger farmers (Singh 2000).<sup>108</sup> Small farmers, where involved, face exploitative terms: prices are often low, capital and input transfers rare, and farmers risk crop rejection on grounds of uneven quality. Women in farm households often lose out since their workload increases under contract farming, while men control the cash generated (Collins 1993). Intra-family tensions have also increased in some countries (Bulow and Sorensen 1993, cited in Kumar 2006). And nutrition can suffer when the land is diverted from food to commercial crops, but the money generated is not spent on food.

In India, the rare examples of benefits flowing to small and marginal farmers relate to cases where the farmers have entered into collective contracts. In the Punjab, for instance, the Mahindra Shubhlabh Services Ltd. followed a consortium approach, with contractual safeguards for risk protection for maize farming. In South India, the United Planter's Association signed contracts with women's self-help groups (SHGs) for tea cultivation, with some companies buying 90 per cent of their tea from SHGs (Singh 2000). Basically, unless the small and marginal are organized into groups or cooperatives, their bargaining power with companies remains weak. A group could negotiate better terms, afford legal aid to ensure non-exploitative terms, and obtain crop insurance, which in India is highly state-subsidized, inefficient and unequally distributed (Ghosh and Yadav 2008). Contracts given to women's groups could also ensure that both men and women gain.

Fifth, a farmers' collectivity would be more socially empowered than individuals. It can improve the clout of farmers with government agencies, and subsequently their access to formal credit, inputs and information (see also Baverman et al 1991). In this sense, too, the collective can serve as a bargaining unit. Also, cooperative risk-pooling via joint liability for default can enhance the borrower's credit worthiness (Deininger 1993). Moreover, relationships developed while working together can come in handy during illness or personal misfortune. Such potential non-economic payoffs could propel cooperation, even when the economic payoffs are not large.

Sixth, groups would be better placed than individuals to deal with short-term shocks, such as rising food prices and long-term disasters due to climate change. The rural poor are net buyers and not net sellers of foodgrains. The recent rise in foodgrain prices is estimated to have added millions more to the numbers of the poor globally.<sup>109</sup> As a group, the poor would be better protected

107. For Mexico, see especially Runsten and Key (1996); and for India, see Singh (2000) and Kumar (2006).

108. See also Warning, Key and Soo Hoo (n.d., c. 2000) for case studies on Mexico and Senegal on why small farmers get excluded.

109. Assessments differ, but Ivanic and Martin's (2008) figures are illustrative. They assess that 105 million people have been added to the world's poor in low income countries (out of a low income population of 2.3 billion), due to rising food prices since 2005.

both as producers and as consumers. As producers, they would have better prospects of moving from being deficit to surplus farmers (and so gaining from the price rise) through improved access to infrastructure and technology, and greater ability to take advantage of higher value crops or contract farming arrangements. As consumers, they would be better able to undertake income smoothing.

These benefits of land pooling, joint investment and collective cultivation need not be confined to those who already own land, but could extend to the landless leasing in land. Moreover, all these advantages would be compounded if the collectivities were formed of women farmers, given the constraints they face in operating individually, such as their lack of control over land and major assets, resource and financial limitations in input purchase and capital investment, social restrictions on mobility and public interaction, and greater vulnerability to market swings or climatic shifts. Intergenerational benefits can also accrue in that daughters of successful women farmers would be better placed to move out of agriculture to skilled non-farm jobs, propelling a more gender-balanced agrarian transition.

The groups would, however, need to overcome the classic problem of free riding, such as work shirking in group cultivation.<sup>110</sup> Here, small group size and socioeconomic homogeneity would help, since small groups, constituted of people who know each other, can enforce penalties for shirkers through weekly meetings, management committees, or other methods, and also exert moral pressure for compliance.

Can this potential inherent in agricultural production collectivities be realized in practice? I believe so. There are diverse examples of farmers successfully cooperating, ranging from jointly investing in lumpy inputs such as irrigation technology or farm machinery, to pooling owned, purchased or leased-in land for joint cultivation.

#### **6.4. GROUP FARMING: GROUND EXAMPLES**

There are two types of examples of group farming that particularly warrant our attention. The first type relates to countries in Central Asia, Eastern Europe and Latin America that undertook large-scale collectivization during the 1950s to 1970s, but de-collectivized in the 1980s and 1990s, enabling farmers to revert to individual family farming. Many, however, chose to form new group enterprises on the restituted land, or continue in much downsized and transformed former collectives. The second type of example, drawn from India, has several distinct features, the most important being that the groups are constituted only of

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110. See Olsen (1965) on free riding. Since then, economists have recognized that many factors can contain free riding, including norms of trust and reciprocity within societies, and peer pressure and vigilance within small groups.

women rather than of entire households pooling land and resources. Both types of examples, however, demonstrate the potential of farmers voluntarily working together in agricultural production collectivities for the output and security gains they bring, and the resource constraints they help overcome, apart from non-economic benefits.

#### 6.4.1. Reconstituted Collectivities in Transition Economies

The de-collectivization of former collectivized agriculture did not lead straightforwardly to individual family farming, as advocates of private enterprise or sceptics of collective action might have expected. In fact, as recent studies on Kyrgyzstan in Central Asia, Romania and East Germany in Eastern Europe, and Nicaragua in Latin America show, many households constituted new collective enterprises, or returned to some form of prior collective enterprise, or stayed on in a smaller reformed collective. In Romania, for example, by 1993, 43 per cent of the de-collectivized agricultural land had returned to cooperative forms of production on a voluntary basis (Sabates-Wheeler 2002: 1737). In the Kyrgyz Republic, family cooperatives constituted 63.6 per cent of all farm enterprises in 1997 (Sabates-Wheeler and Childress 2004: 6); and in East Germany in the mid-1990s, family partnerships covered 22 per cent of the total cultivated area (Mathijs and Swinnen 2001: 102). Clearly, many households saw advantages in group production over individual farming.

This is further borne out by the analysis based on primary data that these studies provide, and which demonstrates that small family cooperatives can prove more efficient than individual family farms in given contexts. The broad features of these cooperatives are summarized in Table 6.1. In all four countries, substantial numbers of family-based cooperatives coexist with individual family farms, as well as other types of collective farms, such as reformed large state farms. These family cooperatives differ a great deal in the number of families constituting them and in their pooled farm size. In Kyrgyzstan, for instance, some are constituted of as few as two, and others of as many as 48 families, the typical group ranging from four to 15 families, often related by blood (Sabates-Wheeler 2004, 2006). Groups larger than 13 families, however, face problems of cooperation (Malcolm Childress, personal communication 2009). In Romania, similarly, Sabates-Wheeler (2002, 2006) found that family cooperatives are made up of anything between three and 20 households; and these are usually friends, relatives or neighbours who have come together to farm collectively. In East Germany, again, each family cooperative is constituted of a few families who know each other (Mathijs and Swinnen 2001). The mean area cultivated by these family cooperatives varies from 16 ha in Kyrgyzstan to 41 ha in Romania, while in Nicaragua and East Germany, where families often cooperate not only for cultivation but also over livestock, the average farm is larger, from 420 to 450 ha respectively. In Nicaragua, most cooperatives have individually managed home plots for food, and collectively grow additional crops for food or cash, while cattle are individually owned but



pastures are collectively owned and managed (personal communication, Rued Ruben, October 2009). The objectives of forming groups also vary from primarily fulfilling basic needs and alleviating poverty, as in Kyrgyzstan, to enhancing both subsistence and profits, as in Romania (Sabates-Wheeler 2006).

Notably, in all four countries, family cooperatives are found to be more efficient economically, or to have performed better on other counts, than individual family farms. In Kyrgyzstan, Sabates-Wheeler and Childress (2004: 13) found that total factor productivity was significantly higher and the total annual income from crop production was 1.8 times more in the family cooperatives relative to individual family farms. In Romania, family cooperatives compared with individual family farms had substantially higher crop yields of wheat, maize and sunflower, consistently higher labour productivity across the entire farm size range, and higher land productivity up to about 6.5 hectares, after which individual family farms did better (Sabates-Wheeler 2002). In East Germany, Mathijs and Swinnen (2001: 106) establish that family cooperatives are 'the most efficient organizational form, combining high levels of pure technical efficiency due to good labour governance with low employment, often relatives, and full economies of scale by operating on larger farms than average family farms'. In other words, the family cooperatives produce much greater output with given inputs of land, labour and capital. In Nicaragua, households belonging to earlier collectivized farms that chose to remain together in smaller groups after de-collectivization were found to have a higher standard of living than those that moved to individual family farming, although overall incomes were not significantly different between the two types of farms (Ruben and Lerman 2005).

Among the important reasons for forming or remaining in collectives were: better and more secure access to land and/or machinery, shared production risk in the absence of agricultural insurance, advantages of labour and skill pooling, economies of scale, and better access to cooperative services and credit (see also Table 6.1). In Nicaragua, farmers also said they enjoyed working together. Many of the family groups would not have had secure access to land or adequate labour, machinery, skills or credit, or been able to enjoy scale economies if they had gone it alone. Working together helped build social capital as well. Close social ties (such as relatives, friends, or neighbours), and/or long experience of working together has helped sustain cooperation and reduce free riding, although, as Childress found, in subsistence contexts it helps to keep the number of cooperating families small (personal communication, Malcolm Childress, June 2009). All the studies emphasize the need to consider a range of institutional forms of farming, depending on the local context, with group farming having particular advantages in situations of resource scarcity and uncertainty.

These examples satisfy several of the conditions mentioned above as likely to make for successful cooperation. They are all based on voluntariness. All of them have chosen groups over individual family forms. The farm area is small under largely subsistence agriculture, as in Kyrgyzstan and Romania, and of medium size where more commercial and livestock farming is involved, as in East Germany and Nicaragua. And the groups are socially cohesive – the cooperating households

**Table 6.1 Performance of family cooperatives vs. individual family farms:  
Examples from Central Asia, Eastern Europe and Latin America**

Features	Central Asia (Kyrgyz Republic)	Eastern Europe (Romania)	Eastern Europe (East Germany)	Latin America (Nicaragua)
Study author	Sabates-Wheeler and Childress (2004)	Sabates-Wheeler (2002, 2005)	Mathijs and Swinnen (2001)	Ruben and Lerman (2005)
Year of data	2000-2002	1998-2000	1991-1992 and 1994-1995 (panel data)	2000
Sample	463 farms	259 farm enterprises	1167 farming enterprises	476 farms
Type of farms	Family cooperatives (FC) Individual family farms (IF)	Family cooperatives (FC) Individual family farms (IF) Legal associations (LA)	Family cooperatives (partnerships of a few families owning land) (FC)  Individual family farms (IF)  Reformed large state farms or shareholder companies	Former collectivized, now smaller collective farms (FC)  Former collectivized now individual family (IF (c) )  Never collectivized, individual family (IF)
Farm and group size	Average size of FC = 16.2 ha, 12-13 workers	Average size of FC = 41.2 ha, 3-20 members (usually friends, relatives)	Average size of FC: 449 ha (crops 534 ha, livestock 250 ha)	Average size of FC = 420 ha <sup>b</sup> 25-40 members in basic grain production <sup>b</sup>
Decision- making	Consensual, especially in small groups <sup>a</sup>	Consensual	No information	By an assembly and elected board <sup>b</sup>

Features	Central Asia (Kyrgyz Republic)	Eastern Europe (Romania)	Eastern Europe (East Germany)	Latin America (Nicaragua)
Economic impact of FCs relative to other types of farms	FC output 1.8 times greater than IF FC total factor productivity was significantly higher than IF	FC has higher individual crop yields for wheat, maize and sunflower than IF or LA FC has higher labour productivity than IF FC has higher land productivity than IF up to a certain farm size	FC had the most efficient organizational form in terms of overall technical efficiency during transition (maximum output for given input of land, labour and capital)	Income not different among the three types of farms FC better than IF in terms of standard of living
Advantages of FCs	Land access Labour pooling Labour specialization Risk pooling  Asset pooling a key incentive for group formation	FC helps overcome resource constraints faced by individual families  <i>As stated by farmers</i> Better access to farm machinery (72 per cent) Help in farming own land (72 per cent) Scale advantages (20 per cent) Better credit access (39 per cent)	Good labour governance and full economies of scale by operating larger farm sizes than the average IF	<i>As stated by farmers</i> Land access (43 per cent) Cooperative service access (21 per cent) Credit access (19 per cent) Enjoy working together (12 per cent)

a Personal communication Sabates-Wheeler, 2009; b Personal communication Ruerd Ruben.

forming groups have close social ties. Additional favourable features include a fair distribution of work and benefits among the cooperating households, and participative decision-making. This is documented for some countries and can be inferred for the others, since the groups are unlikely to survive under unfair work-sharing and distributional arrangements. In Romania and Kyrgyzstan, for instance, the harvest of staple crops and the returns from collectively marketed cash crops are shared equitably, and decision-making is consensual. In Nicaragua, too, farmers can participate in decision-making, although in more formal and indirect ways: decisions are made in regularly-held assemblies, where all members can vote, but the board (annually elected) has substantial influence (personal communication, Rued Ruben, October 2009).

Unfortunately, we know rather little from these studies about the impact on gender relations. Sabates-Wheeler (2006: 21) mentions an all-woman production cooperative in Kyrgyzstan in passing, and possibly many of the cooperative members in the mixed-gender groups are de-facto women household heads, given that in these countries (with the exception of Nicaragua) women still have a substantial presence as agricultural workers: in 2006 they constituted 35 per cent of the total agricultural labour force in Kyrgyzstan, 45 per cent in Romania, 37 per cent in Germany as a whole, and 10 per cent in Nicaragua (FAO statistics 2006). More research on the gendered implications of family cooperatives and other forms of production collectivities operating today would be revealing. Deere and Leon (2001: 96-97), for instance, mention that in the 1990s, a thousand women in Nicaragua formed production collectives when there was a growing demand for land by women. It would be useful to know how well these are functioning.

#### 6.4.2. Bottom-Up Collectivities in South Asia

The second type of notable agricultural production collectivities are located in India. They are distinct from the family cooperatives of the transition economies in that they are constituted entirely of women, even where the women's families are cultivating small areas of land.

Although examples of Indian farmers jointly investing in irrigation wells can be found both historically (Punjab's *sanjh* system goes back to the early twentieth century: Goyal 1966, Darling 1947), and in the contemporary period (I found many male farmers collectively investing in tubewells in Alwar district, Rajasthan), group *cultivation* involves a much higher scale of cooperation. The successful examples of this almost all involve poor women farmers, supported by local NGOs and state schemes. Here, the age-old assumption that farms are to be cultivated only on a family basis was abandoned to encourage and support joint farming by groups of women. The earliest and best-known initiative comes from Andhra Pradesh. With the support of the Deccan Development Society (DDS), which works in Medak district (a drought-prone tract), poor, low-caste women have been leasing in or purchasing land in groups through various government credit schemes, and cultivating the land collectively. There is as yet no systematic

quantitative study of DDS's farming groups; hence the discussion here is based on an update of my earlier fieldwork and writings (in much abbreviated form).<sup>111</sup> The insights this initiative provides, however, are of central relevance for any future effort to promote group farming in India.

The central plank of DDS's approach is to ensure food security in an environmentally friendly way, through organic farming and multiple cropping. The group leasing programme was initiated in 1989. In 2008 it involved 144 women organized into groups (sangams) of 5 to 15 across 26 villages, cultivating a total of 211 acres (= 85 ha).<sup>112</sup> About 25 per cent of the rent is paid by sangam members, and the rest is covered by interest-free loans from DDS, which the groups then repay in instalments. Very poor women who lack cash can repay their share through labour. All tasks are shared, except ploughing, for which they hire tractor services. After paying the rent and other costs, as well as the DDS loan, and keeping aside grain for seed, the harvest of each crop is shared equally among the members. Some groups lease land from more than one landlord. Typically, when the lease of say three-five years ends, the group negotiates a new one. Sometimes at this point the members reconfigure into new groups. The state government has also allowed women's groups to use loan money from other anti-poverty schemes for land leasing.

A related innovation has been group farming on land purchased by groups of women. This draws on a state government scheme that provides subsidized credit to groups of landless, dalit women to collectively buy agricultural land. Half the money is a grant and half a loan repayable within 20 years. Catalysed by DDS, women form a group and apply for the loan after identifying the land they want to buy. The purchased land is divided equally among the group members and registered in individual names. In 2008, 25 women's groups constituted of 436 women were cultivating 555 acres (= 224 ha) of purchased land in 21 villages, each woman owning one acre (sometimes less) but farming it jointly in groups consisting of between 10 and 20 women. None of these women could have purchased such land or cultivated it as productively on an individual basis.<sup>113</sup> Most of the sangam women are dalits, while the farmers from whom they lease or purchase land are predominantly upper-caste men, with a small proportion being Muslims or lower castes. The sangam women are seen as reliable tenants. Hence, despite caste hierarchy, many landlords now approach them when leasing out their land, in contrast to the initial period when it was women who approached the landlords

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111. See especially Agarwal (2003). Additional information was obtained from DDS in October 2009. The discussion in Agarwal (2003) is based on Satheesh (1997a, 1997b); Hall (1999), who undertook her research in close interaction with me; Menon (1996); and DDS (1994-95). I also draw on my discussions with P.V. Satheesh, Rukmini Rao, and many women's sangams and key women informants during several field visits to DDS between 1998 and 2004. Recent figures were provided by Suresh Kumar of DDS.

112. One acre = 0.40468 hectares.

113. Even many landless male farmers in this district who received an acre each under the government's land reform programme could not cultivate it effectively on their own, and were later helped by the women's committees (see further below).

for a lease. The landlords benefit, since their underused land is cultivated and the women gain a livelihood.

Usually, leasing precedes purchase. This helps women judge the land's quality and potential productivity, assess how well they can function as a group, and in some cases even save enough from good harvests to buy land. The lease groups typically consist of a mix of landless women and women whose households own one or two acres. Such a mix is encouraged by DDS in order to include in each group some women with farm management skills. As a lease group, the women can also hone their farming skills and ability to function as a group, build trust and solidarity, and tackle conflicts and free riding before venturing into purchase. Defaulters can be evicted. On both leased in and purchased land, women practice organic farming and multi-cropping. Some grow up to 24 crop varieties a year (the seeds of which they preserve), thus reducing the risk of crop failure and providing a balanced subsistence diet. On field boundaries they plant crops that cattle do not eat, thus using the land productively while also creating a 'crop fence'. As noted, each crop grown is typically divided into equal portions among the sangam women.

Unfortunately, there is no systematic data for the DDS groups, of the kind discussed above for the transition economies, to help us compare production gains on group-managed farms with those on individually-managed ones. Such research is clearly needed. Nevertheless, Tables 6.2a and 6.2b provide an illustrative comparison between farming enterprises which, according to DDS, are fairly typical. Table 6.2a relates to a DDS lease group in Pastapur village, where 13 women cultivate 9 acres, and Table 6.2b relates to a two-acre farm from the same village, which is cultivated on a family basis. The information was obtained by DDS from two women members in the case of the lease group (Table 6.2a) and from the woman managing the land with her family in the case of the individual family farm (Table 6.2b).<sup>114</sup> After deducting paid out and imputed expenses, the net returns per acre cultivated are 20 per cent higher in the lease group. These returns provide women and their families with subsistence for about four-five months of the year (personal communication, P.V. Satheesh, October 2009). For the remaining months, they depend partly on produce from their own land if they have any, and partly on wage work. There are also other productivity benefits from group farming, which these figures do not capture. Weeding, for instance, is a critical peak operation, and timeliness is important for yields. Timely completion of weeding is easier under group management than in individually cultivated farms, which have to compete with others for hiring labour in the peak period.

Group farming has not only helped the women realize many of the earlier-noted potential benefits of joint cultivation; it has enhanced their capabilities. The sangam women have learnt to survey and measure land, hire tractors, travel to town to meet government officials, buy inputs, and market the produce. Collective cultivation allows them flexibility in labour time, cost-sharing, and the pooling of their differential skills in farming, accounting, and public dealing.

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114. I am grateful to Mr. Suresh Kumar from DDS for obtaining this information for me.

**Table 6.2a Women's land lease group, Pastapur village**  
**Expenses and returns: June 2008 to March 2009**  
**(Group of 13 women cultivating 9 acres)**

	EXPENDITURES (Rs.) <sup>a</sup>		
	Monsoon crop	Winter Crop	Annual
Ploughing payment	6,300	6,000	
Manure cost and labour	6,840	-	
Seed cost and sowing labour <sup>b</sup>	780	3,415	
Weeding labour <sup>b</sup>	3,250	4,850	
All operating costs	17,170	14,265	31,435
Lease paid <sup>c</sup>			10,500
Total annual expenditure			41,935
	RETURNS (Rs.) (value of crop produced)		
Green gram	12,250		
Black gram	10,600		
Sorghum		35,000	
Straw		8,750	
Bengal gram		22,800	
Sunflower		3,540	
Linseed		1,125	
Lentils		375	
Wheat		1,200	
Sirisenaga		1,000	
Mustard		625	
Total annual income	22,850	74,415	97,265
Net profit for 9 acres			55,330
Profit per acre			6,147

a Indian Rupee = US\$ 47.5 at current each rates

b Imputed cost of seed and women's labour. Women preserve the seeds and none of the seeds are actually purchased.

c Annual instalment on the lease that the group pays to DDS

Source: Collected for the author by DDS, 2009.

**Table 6.2b Single family owner cultivator in two-acre farm, Pastapur village**  
**Expenses and returns: June 2008 to March 2009**

	EXPENDITURES (Rs.)		
	Monsoon crop	Winter crop	Annual
Ploughing payment	1,350	1550	
Manure cost and labour	900		
Seed cost and sowing labour <sup>a</sup>	1,410	1450	
Weeding labour <sup>a</sup>	2,750	630	
All operating costs	6,410	3,630	10,040
	RETURNS (Rs.) (value of crop produced)		
Maize	9,350		
Sorghum		4,000	
Straw		2,500	
Sunflower		1,000	
Bengal gram		3,450	
<b>Total Income</b>	<b>9,350</b>	<b>10,950</b>	<b>20,300</b>
<b>Net profit for 2 acres</b>			<b>10,260</b>
<b>Profit per acre</b>			<b>5,130</b>

a Imputed cost of family labour plus cost of hired labour.

Source: Collected for the author by DDS, 2009.

One of the Sangam women in Pastapur village (cited in Hall 1999) summarized the perceived benefits succinctly:

Women can share the profit and the responsibility. In individual cultivation, different women have different levels of agricultural knowledge and resources for inputs. [Hence] in collective cultivation they may make unequal contributions. Those with less can compensate the others through taking a reduced share of the harvest, or by repaying them in installments. Different levels of contribution are fine, because the women all know what each others' resources are. Knowledge of each others' family needs also leads to tolerance of women not appearing for work in the fields – to some extent. The levels of sharing are agreed on and fixed before the season: each women should get an equal share unless her contribution falls below that of the other women. There are no disputes about shares: all the women are involved in dividing the crop, so none can be accused of taking more than her fair share.

Standard collective action problems are solved by peer pressure. Work-shirkers are penalized in the groups' weekly meetings, some of which I have sat in on. The fact



that the women in each sangam are from the same village and are codependent in other ways creates pressure against default. As one group told me: 'We supervise and see if anyone is slackening intentionally or due to compulsion [...]. If a woman is ill she can send other family members to substitute. But if a young woman does not turn up she has to send two persons the next day or give two persons' wages'. Sometimes groups do break up, but usually reconstitute into new, more cohesive ones and restart joint cultivation. The voluntary nature of group formation allows this realignment which is central to institutional success. Moreover, having worked together, they see the advantages of collective farming and build what has been termed a habit of cooperation.<sup>115</sup>

Potential conflicts of interest, such as those arising if the sangam woman's family owns land and needs her labour, are reported by the women to be minimal in practice, since individual time input into the group's land is not excessive and many women, in any case, belong to landless families. Krishnapur's sangam, for instance, told me: 'We all know that the [sangam] land will yield well. Men know this too. Also the number of days that anyone has to put in on the communal land is not excessive, since the whole sangam works together. After that the women can work on their family land. So there is no serious conflict.'

Another complexity can arise when individual cultivation becomes more profitable, say if the family can now afford irrigation. Assured irrigation reduces cultivation risk and enhances profits, while in dryland farming risk-sharing is an important incentive for group cultivation. Potentially, groups cultivating purchased land are more prone to splitting, since women have an exit option. In practice, such splits among DDS groups are not common. Where they have occurred, some have formed new units, others have settled for reduced jointness by continuing with labour exchange and/or investing collectively in irrigation and marketing, while cultivating separately.

Other gains that women report from group farming are improvement in family diets, health care and children's education; greater respect in the community; and better spousal relations. Women now bargain for higher wages when they need supplementary work, since they have a livelihood choice. Bonded labour and caste indignities are also reported to have declined. As Ratnamma, a sangam woman (cited in Hall 1999), noted: 'They [the high caste people] used to call us by the caste name which was very derogatory. Now they put the respectful suffix – amma – and seat us on an equal basis [in public gatherings]. It is only because we have an organisation that they [the landlords] [...] are scared to cross us.' Women also say that local government officials give them priority over individual men. Within the home, women report a decline in domestic violence and greater control over their own earnings. Some husbands have returned to their wives after the latter purchased land, and most women mention that their spouses listen to them more now than before. In general, men's perception about women's capabilities improved after women began to farm collectively.

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115. See Seabright (1997) on how cooperation can be habit-forming.

A community food security programme has been another positive outcome. In many villages in the region, with support from the Ministry of Rural Development, DDS initiated a programme to bring fallow land under cultivation, by extending loans to small and marginal male farmers through women's committees, which manage the programme. In many cases, the men had received the land under land reform but could not cultivate it without infrastructural support. Under the scheme, each participating farmer can enter two acres and get a loan in instalments over three years. In return, over five years, the farmer gives a specified amount of the grain he harvests to a community grain fund managed by the women. The women's committees (each usually consisting of five women overseeing 20 acres) ensure that the farmers use the loans for cultivation, supervise the operations, encourage the use of organic manure and mixed cropping, and collect the harvest share for the fund. They also identify and rank the poor, from the most needy upwards. The poorest are eligible for the most grain, which is sold to them at a nominal price.

As a result of this venture, a large amount of fallow or underused land is now being cultivated. By DDS's estimates, today 2,580 families across these 51 villages are cultivating 3,550 acres and in 2008-09 produced 1.4 million kg of extra grain. Mainly sorghum is intercropped with red gram and occasionally with maize. In addition, along with other local NGOs, DDS has in recent years extended this alternative public distribution system to another 67 villages, covering 2,884 families and 2,983 acres of land, and producing an additional 1.2 million kg of mixed grain per year.<sup>116</sup> The extra grain contributes to several million additional meals. The land also provides fodder for animals. Women's sangams constitute the centre points of these enterprises.

Some important ingredients of these collectivities, such as a gender-progressive NGO, a group approach, and a focus on landless women, can be found in many other grassroots initiatives. But the focus on land, linked with group farming, is rare in contrast to the usually less-effective income-generating work promoted under many government schemes for the poor. Also, these collectivities allow women to access land through the market without depending on male-biased family inheritance systems. And pooling land for cultivation helps overcome problems of small size and fragmentation. The fact that these groups are all constituted of women is important in that it gives women independent access to assets, control over income, self-confidence, and social support from group members, which they would not easily gain in family-based cooperative farming.

These initiatives have all the ingredients mentioned earlier as being conducive to collective functioning: they are voluntary in nature, are socioeconomically homogenous (in terms of class and gender), are constituted of people who know each other, are small-sized in both membership and production units, participatory in decision-making (with mechanisms instituted for dealing with

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116. Figures provided by Suresh Kumar, DDS, October 2009. The average annual yield for grain was reported to be at least 400 kg per acre.

free riding), and in control of the produce which is shared equitably. Gender equity is not an issue since these are all-women groups. Hence, in initiation, size, functioning and composition, they are unlike both the socialist collectivization and the non-socialist joint farming cooperatives described earlier.

In this context, it is also worth considering another type of collective arrangement first suggested by Agarwal (1994) but as yet not tested. This alternative would require the government to give poor rural women *group rights* over the land it distributes under various schemes. Effectively, the women would be stakeholders in a kind of land trust. Each woman in the group would have rights of use but not of alienation. The daughters and daughters-in-law of such households living in the village would share these use rights. Daughters marrying outside the village would lose such rights but could re-establish them by rejoining the production efforts should they return following divorce or widowhood. In other words, land access would be linked formally with residence and working on the land. If such a scheme were initiated simultaneously in a group of villages within which there are intermarriages, and which constitute what could be termed 'a marriage circle', then daughters leaving the village to marry would gain rights in their marital village and so obtain livelihood security there as well. This would be more workable in regions where marriages tend to form between persons within relatively short distances, as in south India (Agarwal 1994). This form of collectivity could give economic security to poor women, whatever their marital status, encourage long-term investment in the land, and bypass problems of the land reverting to male hands via inheritance.<sup>117</sup> Some NGOs have been receptive to the idea of creating such a land trust for women on an experimental basis.

Although the above examples of women's group farming relate to women who initially owned no land themselves but subsequently acquired some,<sup>118</sup> many aspects of their functioning could be applied to cases where women are prior owners of some land through inheritance, purchase, or state transfer, which they can then pool and jointly cultivate. In fact, the women who purchased land via subsidized credit are effectively owners pooling their land. Hence group farming could benefit not only landless women but also women, who own or have customary rights over small plots. The formation of groups need neither be limited to women. As noted above for Kyrgyzstan and Romania, agricultural collectivities could also be constituted of male farmers pooling land and cultivating with family labour, given that most landowning rural households in India own less than one hectare. Indeed, Patnaik (2003) describes how some landless beneficiaries of the land reform programme undertaken in West Bengal in the 1970s are now pooling their land to grow vegetables and fruit for local urban markets. This has raised and stabilized their income, and freed them from daily salaried work. Some others

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117. Although women, if they own land, can legally bequeath it to anyone, there is social pressure to bequeath it to sons. Women themselves are often reluctant to bequeath land to daughters since they leave their birth village on marriage.

118. In some cases, however, the *households* to which the women belonged owned small plots of land.

are engaged in cooperative aquaculture. Here, as in the DDS case, two factors were especially important catalysts – support from local bodies (in this case local government) and easy credit.

It is possible of course that farmers may be more open to land pooling where they are initially landless and receive land from the state or acquire it jointly than where they have been longstanding owners, habituated to individual cultivation. But even among the latter, rising food prices, new production opportunities opened up by higher value crops or contract farming, or an ecological crisis arising from climate change and requiring mitigation/adaptation could create conditions where collective approaches become attractive. Where families pool land under predominantly male management, however, although the potential productivity gains can be realized, the gender-equity effects would be limited, in contrast to women-only farming groups. Women in families pooling land, for instance, are likely to continue as unpaid family labour and gain few of the empowerment benefits that women pooling land with other women are noted to bring.

The agricultural production collectivities I have described represent institutional innovations within a market economy and have not been part of any larger land reform programme. They would, however, overcome many of the difficulties marginal farmers tend to face after land reform, if the land transfer is not accompanied by institutional support for credit, inputs, etc. The bottom-up collectivities also fulfil the human rights criterion mentioned earlier: all the women's farming groups are constituted of poor women, contribute to livelihood enhancement and empowerment, and are participative and voluntary in nature. They use inputs from NGOs and the state, but are state-supported and not state-controlled. Although more quantitative research is clearly needed, the existing evidence is a strong pointer that group farming can, in particular conditions, prove successful in providing decent livelihoods and dignity, especially for the most disadvantaged – namely poor, low-caste women. Their children would also then have greater possibilities of being able to choose other livelihood options, say, in the services or manufacturing sectors. The downside, however, is that group farming requires intensive NGO support at the start and is still geographically confined. Below I outline how this limitation could be overcome.

## 6.5. IS SUCCESS LINKED TO GENDER AND ECOLOGY?

The examples of group farming we have considered cover both voluntary male cooperation on a family basis in the transition economies and cooperation among all-woman groups in India. This suggests that under conducive conditions, group farming is possible for both men and women. At the same time, for several reasons, women's production collectivities may work better than men's. Rural women are much more resource constrained than men and therefore have more to gain economically from joint ventures. They share similar constraints set by gendered social norms. They are also much more dependent on one another because they have fewer livelihood alternatives and hence exit options than do men. This

interdependence for everyday survival raises the overall cost of social sanctions if cooperation fails, making women less likely than men to free-ride. For similar reasons, women might be more compelled than men to resolve conflicts faster and to sustain collective action better (Agarwal 2000). Women in one sangam told me, for instance:

Men get angry easily and walk away. They say: Why should we sit here? If we get up and leave, the problem too will go away. Women reflect more. They say: even if I am fighting with her now, I have to go together with her for weeding or water, or if I don't have flour in the house, I will have to borrow from her. This is always at the back of our minds.

Recent research on groups of varying gender composition managing natural resources in developing countries also indicates that predominantly women's groups tend to display more solidarity among members and are better at conflict resolution than predominantly men's groups (Westerman et al 2005). Moreover, in many areas, especially in South Asia, women's labour exchange systems survive, while men's have been disappearing (Agarwal 2000). And women's social networks of marriage alliances and everyday forms of sharing are often different from men's. These networks, too, provide one of the foundations for women's solidarity and hence a basis for cooperation among them.

Ground experience also indicates that women tend to be more cooperative than men. DDS, when first established in 1983, for instance, worked only with male farmers until, as P.V. Satheesh (Director of DDS) reports, the village women challenged this exclusivity and asked: 'Why don't you work with women?' This led the organization to promote both men's and women's groups, initially as credit-and-thrift groups. When problems of corruption and non-cooperation undermined the men's groups, DDS shifted almost entirely to all-woman sangams. The Grameen Bank in Bangladesh similarly began with men's savings groups and then moved almost entirely to women's groups.<sup>119</sup> Self-help groups in India (discussed below) are again predominantly constituted of women. All this does suggest that gender could be an enabling factor (though not the only factor) in successful group functioning in particular contexts, stemming from the relative specificity and vulnerability of women's socioeconomic position.

Another factor that is likely to impinge on the potential to form successful farming collectivities is the extent of ecological vulnerability. Group cultivation may be more successful at two ends of the spectrum: one, in ecologically vulnerable areas where there is subsistence rainfed farming and a higher risk of crop failure with associated greater payoffs from cooperation; and two, in areas where irrigated farming and high value crop cultivation are possible, but small size and individual high risk are constraints. The case studies on the transition economies further

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119. Notwithstanding the contested nature of gains by women in the Grameen Bank groups, it is well accepted that women typically cooperate well within the groups.

suggest that resource imbalances (e.g. having labour but inadequate land, or vice versa) and other resource constraints under market imperfections are likely to encourage cooperation, in addition to past experiences of successful cooperation.

Emerging financial or ecological crises could also create conditions conducive to farmer cooperation. Steps to adapt to or mitigate climate change, for instance, require the local implementation of projects such as soil improvement, rainwater harvesting, tree planting and crop diversification – all of which are more viable as group projects.

Regionally, the availability of land for groups to lease in or buy is likely to be greater where larger numbers have moved out of agriculture, reducing population pressure on cultivable land. For instance, although there are no comprehensive figures, emerging field studies in parts of Andhra Pradesh suggest that more land is now available for leasing in from large farmers whose sons are no longer willing to farm.<sup>120</sup> Of course, the growing demand for land for non-agricultural purposes could well change this picture. Variations in local economic and political power balances are also likely to impinge on the ability of poor farmers' groups, and especially of women's farming groups, to navigate land, input and credit markets.

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Essentially, group farming could prove to be an effective institutional form that, in particular contexts, could help alleviate poverty for women and their families, increase productivity and food security, enhance social status among socially-oppressed groups, and empower women economically and socially. But is this replicable?

In India, with the exception of Andhra Pradesh, there have been small-scale experiments of women's group farming undertaken by NGOs in Gujarat and Kerala.<sup>121</sup> In addition, a few years ago, a UNDP-GOI (Government of India) project sought to involve 50,000 women across 1,357 villages in three states (Andhra Pradesh, Uttar Pradesh and Orissa) to farm collectively in small groups. The early evaluations were positive and encouraging (see Burra 2004; GOI-UNDP 2004-05). There are also examples of women's groups undertaking pisciculture collectively.

In Bangladesh, similarly, the Bangladesh Rural Advancement Committee (BRAC), a major NGO, helps women lease in and cultivate land collectively, despite opposition from orthodox village communities. Its early efforts date back to the 1970s (Chen 1983), but in the late 1990s, somewhat more controversially, BRAC itself reported purchasing about 300 acres of land in north Bengal (investing about

120. Personal communication in 2008 by Carolyn Elliott (Professor emeritus, political science, University of Vermont) based on her recent fieldwork in Andhra Pradesh.

121. In Gujarat, the NGO Anandi has tried to promote group farming by women on leased in land; and another NGO, Mahiti, has catalysed a women's collective on leased in and reclaimed uncultivable wasteland to plant animal fodder (personal communication, Sejal Dave, Mahiti, 2008). In Kerala women's groups are leasing in land for vegetable cultivation (Tharakan 1997).

taka 400 million) and leasing it to 1,500 women organized in groups, in addition to organizing 20,000 women in groups to lease in land from private owners. The women repaid the lease amount from their returns.<sup>122</sup> In another striking example, landless women formed cooperative groups with support from the NGO Proshika to acquire minor irrigation equipment and sell water to male farmers who, to take advantage of the service, pooled their plots (Wood and Palmer-Jones 1991).

There are also examples from Africa of emerging collective approaches to rural livelihoods through asset pooling, such as livestock herders reconsolidating their herds in Kenya.<sup>123</sup> Indeed, in sub-Saharan Africa, where communal systems of land ownership are still widespread, the possibility of women farming collectively warrants exploration, although some of the problems women face in getting fair access to land within these systems will need to be overcome (see, e.g. Whitehead and Tsikata 2003). Recent demands by women's groups, in countries such as Tanzania, are for joint titles with spouses, rather than for communal ownership by women (Tsikata 2003). There could, however, be unexplored possibilities within existing communal systems of customary tenure in the region for the bottom-up formation of women's collectives, in the interests of both women's empowerment and livelihood enhancement.

## 6.6. ENHANCING GEOGRAPHIC AND STRATEGIC REACH

Can successful collectivities, such as those catalysed by DDS in India, or by large NGOs elsewhere in South Asia, be replicated more widely across regions and enhanced in scale strategically? By strategic scaling-up I do not mean enlarging group size (small size, as noted, is more conducive to successful functioning); rather, I mean creating strategic linkages between groups. Drawing on India for illustration, I believe a substantial potential for replication and enhanced reach lies in encouraging group farming by village self-help groups (SHGs).

There are over 2.2 million SHGs in India, predominantly constituted of women.<sup>124</sup> Typically, SHGs are economically homogenous consisting of 10-12 self-selected women who pool their savings and rotate lending within the group. One village can have several SHGs. Groups that have a proven record of working together for about six months are eligible for a bank loan as a proportion of their group savings deposit. Loans, if taken, go to the whole group, which then decides its use. Many SHGs, especially those catalysed by NGOs have, however, graduated beyond loan disbursements and become advocacy groups, putting pressure on village councils to complete long-standing projects for village improvement (EDA

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122. Communication by Md. Aminul Islam, Director BRAC (CPD 2000).

123. Communication by a participant at the workshop on 'Poverty and Human Rights', Kennedy School of Government, Harvard University, October 2008, where I presented aspects of this paper.

124. See EDA (2006), Tankha (2002), Nair (2005), APMAS (2007), NCAER (2008) and Deininger and Liu (2009), among others.

2006).<sup>125</sup> Although most SHGs begin as savings and credit groups, they differ from micro-credit groups in important ways (Ramesh 2007; Harper 2002). The latter are formed basically around credit,<sup>126</sup> can involve women with no proven record of working together, loans go to individual women, and there is usually little focus on social advocacy.

Until the early 2000s, two-thirds of the SHGs were being promoted by NGOs, although they are now also being catalysed by state governments and banks. Many NGOs formed SHGs around savings and credit as an entry point for empowering women. For instance, since the early 1980s, MYRADA in south India has catalysed 'self-help affinity groups' based on the idea that there will be mutual trust if members have common social or geographic origins, have the same livelihood source, share gender bonds, or some combination of these.<sup>127</sup> These 'affinities' enhance solidarity and discourage free-riding.

Recent surveys show that a fair percentage of SHGs are formed of poor and socially disadvantaged women. Half the SHG women in EDA's (2006) survey were below the poverty line, and 55 per cent belonged to the lowest castes or tribes. An all-India survey of 2,750 SHGs in three states similarly found that in 41 per cent of the SHGs the majority of members were from scheduled caste or tribal households, and in 42 per cent the majority were from landless families (Nirantar 2007). In NCAER's (2008) study of 961 SHGs (of various gender compositions) in six states, 60 per cent of the members were below the poverty line. Deininger and Liu (2009), based on an analysis of two rounds of panel data for 2,400 household in Andhra Pradesh, find that households (including the poorest) that had been SHG members for two-and-a-half to three years gained in consumption, nutritional intake and asset accumulation.

At the same time, most SHGs, with rare exceptions, take loans for family-based micro-enterprises (NCAER 2008), the benefits of which may not flow to women. Here, involving SHG women in group production, especially joint farming, could enlarge the economic scope of these institutions. The typical 10-14-person SHG is the right size to successfully take up group farming, based on leased or purchased land, or the pooling of small family plots. They also have financial resources and links with banks. Some are already involved in group enterprises such as community forestry, sericulture, and pisciculture. And some large companies, as noted earlier, have contracted women's SHGs to supply products such as tea. There are also occasional cases of SHGs initiating group farming on leased in land.<sup>128</sup> Graduating toward group farming would thus be possible for many SHGs if land were available and if they received subsidized credit and infrastructural support. This would help expand the scale and geographic reach of women's group

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125. Some 30 per cent of SHGs surveyed by EDA (2006) had been involved in such advocacy. Many groups have also reached out to the very poor (NCAER 2008).

126. They are typically structured on Bangladesh's Grameen Bank model.

127. Established in 1968, MYRADA works with poor communities in South India and increasingly focuses on women-only groups (Fernandez 2005). It is notable that the groups from Central Asia and Latin America are also often formed among close relatives or friends.

128. The Gujarat NGO, Anandi, for instance, has attempted this.



farming and, in turn, move SHGs out of the narrow confines of savings-credit and individual or family-based micro-enterprises toward economically stronger and socially empowering group enterprises.

Their impact could, however, be even greater if they were part of an SHG federation (a network of individual SHGs). Typically, SHG federations have been promoted by NGOs, and today there are an estimated 69,000 – 89 per cent in southern India, constituted variously at the village, panchayat or district level, with one federation (in Andhra Pradesh) at the state level (APMAS 2007). Some federations link 10-40 SHGs, others a few thousand. A typical SHG federation is multi-tiered. Federations provide SHGs with bargaining power vis-à-vis the government and the market, as well as the capacity to be sustainable over time.<sup>129</sup>

Although it may be too early to speak of federations of women farmers' groups, since the numbers of such groups need to increase and spread, if SHGs were to take up group farming on a notable scale, their existing networks could serve as a basis for forming federations of women's farming groups as well. Given the regional concentration of SHGs, however, it would prove useful to first concentrate on parts of south India, especially Andhra Pradesh, to test how well SHGs are able to take up group farming before expanding it to other regions; although there could be some NGOs with strong rural women's networks in other states that may be interested in trying this out on a pilot basis.

## 6.7. IN CONCLUSION

The poor, especially in market economies, need the strength that collectivities offer to create more economic, social and political space for themselves, enhance their socioeconomic well-being and voice, and as protection against free market individualism. It is argued here that a group approach to farming, especially in the form of bottom-up agricultural production collectivities, offers substantial scope for poverty alleviation and empowering the poor, as well as enhancing agricultural productivity. To realize this potential, however, the groups would need to be voluntary in nature, small in size, participative in decision-making, and equitable in work sharing and benefit distribution. There are many notable examples of such collectivities to be found in varied contexts, such as in the transition economies and in India. All of them bear witness to the possibility of successful cooperation under given conditions. And although the gender impact of the family cooperatives in the transition economies are uncertain, the Indian examples of women-only group farming offer considerable potential to benefit women.

The ideological impact of the highly adverse welfare effects of early socialist collectivization, however, has created a policy blind spot in relation to the varied ground reality in which collectivities continue to flourish in many contexts and

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129. On federations of SHGs, see especially APMAS (2007), Tankha (2002), Nair (2005), and EDA (2006).

countries. This remains a particularly serious barrier to shifting policy toward promoting agricultural production collectivities in developing countries such as India. This barrier needs to be overcome by wider dissemination of information on existing collective ventures in policy circles;<sup>130</sup> more research on the conditions under which they emerge and are sustained; and greater experimentation with collective enterprises on the ground, especially by grassroots organizations. Such experimentation would also help reveal how local-level structural inequalities of class/caste/gender might play out and be overcome.

In anticipation, we might also address a question that sceptics might pose: why would we expect agricultural production collectivities to succeed today when most did not historically? One part of the answer lies in the lessons already learnt about the features that are conducive to forming successful collectivities, in particular the principles of voluntariness, group homogeneity or affinity, small size, participatory decision-making, peer-implemented sanctions for work shirking and other forms of free-riding, and equitable benefit sharing. A second part of the answer, at least for South Asia, lies in the mushrooming of civil society groups, especially since the late 1970s. While not all groups are motivated by a desire for social transformation, many are. A third part of the answer lies in the prior existence of a wide range of collectivities, especially women's self-help groups. Although most have not tried joint production, some have, and many others have the potential to do so. These can constitute three major pillars, which did not exist in the earlier period, on which new agricultural production collectivities could be built.

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130. Two chapters in India's Eleventh Five Year Plan include my recommendations for promoting group farming, especially for women, and strengthening women's land rights (see GOI 2008, Chapter 1, Vol. III on 'Agriculture'; and Chapter 6, Vol. II on 'Towards Women's Agency and Child Rights'). Whether these recommendations will be implemented remains to be seen.

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# Realizing the Human Right to Health in Low-Income Countries

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## 7.1. INTRODUCTION

The right to health has been repeatedly recognized as one of the core human rights. Good health is so essential for human functioning, human dignity and economic well-being and development that the achievement of good health is among the highest goals of international and national policies, and one of the highest commitments assumed by member states within the United Nations and its various bodies. It is noteworthy but not surprising that health objectives constitute no less than three of the eight Millennium Development Goals (MDGs) adopted by the UN system on the basis of the commitments made at the Millennium Summit in the year 2000 (Goal 4 on child survival, Goal 5 on maternal health, and Goal 6 on disease control), and are deeply implicated in all the others (Goal 1 on poverty and hunger, Goal 2 on education, Goal 3 on gender equality, Goal 7 on environmental sustainability, and Goal 8 on global partnership).

Yet, as with many human rights, the right to health has certainly not been universally achieved or respected. By any reasonable standard, the right to health eludes hundreds of millions and perhaps billions of people, mainly in poor countries, but also large numbers in middle-income and even rich countries (notably the United States, which has the worst health outcomes and least assured access to health services among the high-income countries). One compelling measure of the failure to secure the right to health is life expectancy in the poorest countries, and especially in sub-Saharan Africa. While high-income countries have a life expectancy at birth of 79.2 years, low-income countries have a global average of sixty years, and the forty-nine least-developed countries have a life expectancy of just 54.5 years. In sub-Saharan Africa, life expectancy is a

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shockingly low 49.6 years. The same discrepancies exist on other broad measures, such as infant mortality and mortality of children under age 5.<sup>132</sup>

There are several factors that account for the gross disparities in health outcomes. From an epidemiological point of view, the excess disease burdens in low-income settings relate mainly to the high-burden of disease associated with three main conditions: infectious diseases (such as AIDS, TB and malaria), nutritional deficiencies, and maternal and perinatal conditions (Mathers, Lopez and Murray 2006). In turn, the challenges of rampant infection, chronic malnutrition, and unsafe childbirth relate to several underlying factors, including:

- low dietary intake and widespread micronutrient deficiencies (iron, zinc, Vitamin A, Vitamin D);
- unsafe drinking water leading to water-borne diseases;
- chronic, unchecked infections (e.g. worms);
- unsafe living conditions (e.g. indoor air pollution, frequent contact with disease vectors such as mosquitoes and mites);
- lack of awareness of health-seeking behaviour;
- lack of access to health facilities for prevention and treatment, either because of distance or cost of services.

These conditions in turn depend on many socioeconomic, political and environmental factors, including: the levels of income of households, the community and the nation; the policies and expenditures of government at all levels; the education, incomes and behaviour patterns of individual households; the ecological conditions which affect the transmission of diseases (such as worms and malaria) and access to safe water; the vulnerability to natural hazards, such as droughts, floods and extreme storms; the productivity of local agriculture; and the transport costs and trade policies regarding foodstuffs and other critical inputs for health.

### 7.1.1. The Poverty-Disease Trap

Economists have begun to realize the centrality of health to economic well-being, tracing the linkages from improved health outcomes to economic growth and development, and also working with epidemiologists to identify the most effective ways to invest in improved health. The report of the Commission on Macroeconomics and Health of the World Health Organization, chaired in 2000–2001 by one of us (Jeffrey), took up precisely that dual challenge. The Commission's report, *Macroeconomics and Health: Investing in Health for Economic Development* (WHO 2001), building on several working group studies, found that improved health powerfully raised living standards of the population and promoted economic growth through several channels, including the accumulation of human

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132. Data are from UNDP (2005: 232, Table 1).

capital (education, skills and physical health over the life-cycle) and a faster demographic transition to lower fertility rates, resulting in greater increases in output per capita.

Importantly, however, the reverse is also true: the main overarching risk factor for poor health is poverty, a fact proved in a multitude of ways, including comparisons across societies and across socioeconomic groups within societies. Poverty impinges on health at all levels – household, local community and national. Poor households lack the means and often the know-how to ensure adequate nutrition, a safe household environment, knowledge of health-seeking behaviours, and access to costly health interventions. Poor communities lack basic infrastructure (safe water and sanitation, health clinics, trained personnel), and the means to ensure access to health interventions. Poor nations are unable to fund health systems at all levels, and to manage the flow of information (e.g. disease surveillance) and public response (e.g. epidemic control) needed for overall public health. Of course, poverty is not the only risk factor for poor population health. Even wealthy communities may end up with poor health outcomes for a variety of reasons: under-investment in public goods, such as epidemic disease control; under-provision of services for the poor or for socially excluded groups (by ethnicity, gender, language, race, religion, or other dimensions); or environmental factors (pollution, climate change) with adverse public-health consequences.

The poverty-disease nexus has now been appropriately recognized by economists as a *poverty trap*: economic development and ample financial resources are required to alleviate the poverty-related burdens of poor health, low literacy and resource depletion, yet economic development is precluded by precisely these poverty-related burdens, which decrease productivity, earning ability and economic investments. (The poverty trap operates not only through a vicious circle of poverty and disease, but also a vicious circle of poverty and weak governance, inadequate infrastructure and excessive population growth.) As already noted, poor people lack access to the basic necessities for health, including sanitation, clean drinking water, adequate nutrition, health services, reproductive services, and other fundamental health needs, and are more vulnerable to diseases in part because of the disproportionate geographic burden of infectious diseases in tropical countries. Yet unhealthy people, in turn, are burdened by low economic productivity – chronic physical ailments, absenteeism, under-schooling (e.g. disease-related dropouts), and long-term disabilities, both cognitive and physical – which prevent them from generating the income and public tax revenues to tackle the underlying causes of poor health.

The implications of a poverty-disease trap (and of poverty traps more generally) are profound. They suggest that poor countries on their own are unable to honour the human right to health. Improved health requires increased public outlays and infrastructure that are beyond the financial means of poor countries. Yet without improved health, economic progress itself is put at jeopardy. *The only way to break the vicious circle of poverty and poor health may be to intervene from the outside, for example, through development aid directed at improving the health of the low-income population.* Of course, international development aid is probably

best directed not only at ameliorating poor health per se, but at ending all aspects of the poverty trap: ill health, poor infrastructure, illiteracy, poor governance and environmental vulnerability.

The Commission on Macroeconomics and Health put a price tag on that international help. The Commission found that a rudimentary healthcare system in a low-income country would require around US\$34 per person per year as of 2007 and US\$38 per capita as of 2015 (both expressed in 2002 prices) (WHO 2001). Poor countries might be able to muster only around US\$15–20 per person per year, requiring international assistance to make up the difference. The sum of the ‘financing gaps’ requiring donor aid was found to be on the order of 0.1 per cent of rich-world annual income, roughly US\$35 billion per year in today’s dollars.

The calculations of the Commission have since been repeated in two international studies, the UN Millennium Project (2005) and the Taskforce on Innovative International Financing for Health Systems (2009), with very similar conclusions. In the recent Taskforce report, for example, the estimated total costs of healthcare in the low-income countries come to US\$76 billion (Taskforce on Innovative Financing for Health Systems 2009: 11), or US\$48 per capita expressed in 2005 prices. The US\$38 per capita estimated by the Commission in 2002 prices is almost identical to the US\$48 per capita estimated by the Task Force when the former is converted to 2005 prices. In the Millennium Project estimates, per capita needs in 2015 are estimated as US\$34 in Ghana and US\$48 in Tanzania, expressed in 2003 (UN Millennium Project 2005: 244, Table 17.1). These translate to approximately US\$39 and US\$55 when converted to 2005 prices.

The estimates of the three studies therefore coincide at around US\$50 per person per year in 2005 prices, a level that is often far beyond the financing means of low-income governments. International transfers on the order of 0.1 per cent of rich-world GNP are needed to close the financing gap. Realizing the right to health, therefore, requires a system of financial transfers to make possible the achievement of those rights and proper management systems to ensure the international resources reliably and accountably reach those in need. Human rights, economic development and public management merge at this point, requiring a new and effective form of cooperation among human rights advocates, public health specialists, public health economists and public-sector managers.

### **7.1.2. Global Cooperation to Realize the Human Right to Health**

The two-way nexus between poverty and health has been widely recognized by United Nations bodies, intergovernmental organizations, governments and academics, and a price tag has been put on the needed assistance. Yet despite the broad understanding of the vicious cycle of poverty and disease – and the means to break that cycle – the international community has mustered only a laggard and insufficient response to the poverty-disease trap. We thus find ourselves in a dangerous and unjustifiable predicament: the countries that bear the disproportionate burden of disease have the least capacity to do anything about it,

yet the countries with sufficient means have been derelict in making available the necessary resources to improve health outside their own countries (Gostin 2007: 333-4). Ironically, in addition to neglecting their commitments to alleviate poverty and disease in developing countries, rich countries are also putting themselves at risk, as many infectious diseases do not respect country borders and can easily spread even to other continents (Gostin 2007: 333). For this reason, one scholar wisely noted that 'safeguarding the world's population requires cooperation and global governance' (Gostin 2007: 333).

Some recent and important steps have been taken to promote global cooperation on issues of health and poverty. We have noted that the Millennium Development Goals are heavily oriented towards improved health. Several specific international initiatives, either directly related to the MDGs or occurring in parallel with them, aim at the scaling-up of investments in public health. These include:

- the Global Fund to Fight AIDS, TB, and Malaria (2002) to expand prevention and treatment of the three pandemic diseases;
- the Global Alliance for Vaccines and Immunizations (2000) to expand the range of immunizations available in the poorest countries;
- UNITAID to provide voluntary funding of global health initiatives;
- the Millennium Villages Initiative to demonstrate effective health systems in low-income settings;
- the Global Network on Neglected Tropical Diseases (2008) to scale up the fight against several parasitic diseases;
- the Taskforce on Innovative International Financing for Health Systems (2009: 11) to find new revenue streams to support health systems.

There has also been progress in actual flows of Official Development Assistance (ODA) for Health. Aid rose from around US\$3 billion per year during the 1990s (in 2003) to around US\$9.5 billion per year as of 2007, according to calculations by the OECD.<sup>133</sup> Yet the needs in the year 2007 to achieve the MDGs in health were around US\$35–40 billion. Thus, actual ODA flows for health as of 2009 are probably around one-quarter to one-third of that needed. There has been a huge improvement since 2000, when aid flows were roughly one-tenth of need, but there remains an enormous shortfall.

## 7.2. THE RIGHT TO HEALTH UNDER INTERNATIONAL LAW

In addition to the economic imperative to invest in the right to health (and the moral imperative to prevent unnecessary disease and deaths), there is also a *legal imperative* grounded in binding international legal instruments, wherein states have undertaken to realize specific human rights through 'international assistance and cooperation' (Ferraz and Mesquita 2006). The universal right to health was one

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133. Personal correspondence on file with the authors.

of the fundamental human rights envisioned by the nascent intergovernmental organizations in the mid-twentieth century and has been embodied in numerous intergovernmental treaties, declarations and resolutions. Indeed, in addition to the MDGs, every country in the world is party to at least one international convention or treaty that includes the affirmation of health rights and imposes obligations relevant to achieving the right to health (Kuszler 2007).

The right to health has also been assumed in judicial interpretations of other human rights; for instance, many international and domestic courts have held or implied that the most basic of all rights – the right to life<sup>134</sup> – includes the right to live with human dignity, and that the right to live with dignity includes the right to health. The right to health has been established in several international agreements including the World Health Organization Constitution,<sup>135</sup> the Universal Declaration of Human Rights,<sup>136</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>137</sup> It has also been affirmed in a number of international commitments and declarations, several other binding treaties – including the Convention on the Rights of the Child,<sup>138</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>139</sup> and the Convention on the Elimination of All Forms of Discrimination against Women<sup>140</sup> – and in several regional human rights instruments.

### 7.2.1. The World Health Organization

At the formation of the United Nations in 1945, one of the first intergovernmental organizations envisioned to supplement the mandate and authority of the United Nations was a global health organization. Less than three years after the United

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134. The right to life underlies all human rights treaties and declarations. The right to life is clearly stated in Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR): '[The right to life] shall be protected by law. No one shall be arbitrarily deprived of his life.' International Covenant on Civil and Political Rights, G.A.Res. 2200, UN GAOR, Supp. No. 16, at 52, UN Doc. A/6316 (1966), 999 UNTS 171, 174 (entered into force 23 March, 1976) [hereinafter ICCPR] The Human Rights Committee of the United Nations, which monitors implementation of the ICCPR, has stated that the right to life not only prohibits the State from directly causing death but also imposes positive obligations on the State to *protect* life, including obligations to reduce infant mortality, increase life expectancy, and eradicate epidemics. *The Right to Life*, UN GAOR Human rights Comm., 37th Sess., Supp. No. 40, at Gen. Comment No. 6, para. 5, UN Doc. A/37/40 (1982).
135. Constitution of the World Health Organization, opened for signatures 22 July, 1946, 62 Stat. 6279, 14 UNTS 185. [hereinafter WHO Constitution].
136. *Universal Declaration of Human Rights*, G.A.Res. 217A, UN GAOR, 3d Sess., art. 25(1), UN Doc A/810 (1948) [hereinafter UDHR].
137. International Covenant on Economic, Social and Cultural Rights, G.A.Res. 2200 (XXI), UN Doc. A/6316 (1966), art. 12, 993 UNTS 3 (entered into force 3 January, 1976) [hereinafter ICESCR].
138. Convention on the Rights of the Child of 1989, 20 November, 1989, art. 24, G.A. Res. 44/25, UN GAOR, 44th Sess., Supp. No. 49, UN Doc A/44/49 (1989) (entered into force 4 January, 1969).
139. International Convention on the Elimination of All Forms of Racial Discrimination, 21 December, 1965, art. 5(d)(vii), G.A.Res. 2106 (XX), UN GAOR, 20th Sess., Supp. No. 14, at 47, UN Doc. A/6014 (1965), 660 UNTS 195, 222 (entered into force 4 January, 1969).
140. Convention on the Elimination of All Forms of Discrimination Against Women, 18 December, 1979, art. 12, G.A.Res. 34/180, UN GAOR, 34th Sess., Supp. No. 46, UN Doc. A/34/36 (1980) (entered into force 3 September, 1981).

Nations charter came into force, the World Health Organization (WHO) was formed, and its constitution came into force on 7 April, 1948. According to the WHO constitution, 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition',<sup>141</sup> and the mission of WHO is 'the attainment by all peoples of the highest possible level of health'.<sup>142</sup> WHO has the power to adopt conventions (Art. 19), promulgate binding regulations (Art. 21), make recommendations (Art. 23), and monitor the national health legislation (Art. 63) of its member states.

The first two of these powers are quite important: the WHO, by a two-thirds vote, can adopt *binding* conventions or regulations, which member states are affirmatively required to submit to their national legislative bodies for ratification, and to notify the Director-General of the action the state has taken within eighteen months. If the national legislature does not ratify an adopted convention, the state must report its reasons to the Director-General (Art. 20). Similarly, all adopted regulations are binding on member states unless the state specifically rejects the regulation (Art. 22). In general, all members of the WHO have an obligation to adopt measures and legislation that are consistent with the stated goals and declarations of the WHO and not to adopt any measures that directly contravene any of these goals. Despite its extraordinary legislative powers, the WHO has been reluctant to create binding norms that could help achieve international cooperation on the universal right to health; by the turn of the twenty-first century, the WHO still had not adopted a single treaty, and the two regulations it had adopted (on disease classification and epidemic control) 'were largely historical, were limited in scope, and lacked real-world impact' (Gostin 2007: 377-78). The first convention adopted by the WHO was the Framework Convention on Tobacco Control in 2003, which aims to protect present and future generations from 'the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke' (Art. 3). This instrument also has implications for poverty and human rights (see Dresler and Marks 2006: 619, 633).

### 7.2.2. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR), adopted in 1948, reaffirms the 'right to health' in the context of the right to an adequate standard of living:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in

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141. WHO Constitution, note 16, preamble.

142. WHO Constitution, note 16, preamble.

the event of [...] sickness [...] or other lack of livelihood in circumstances beyond his control. (Article 25(1))

The UDHR is not a treaty and therefore is not legally binding on the member states of the UN. However, unlike subsequent non-binding declarations and General Assembly resolutions, the UDHR ‘enjoys a more elevated status, largely because of its foundational role and universal acceptance’ (Kuszler 2007), and it can be used ‘as an interpretative instrument and can give rise to customary law’ (Ferraz and Mesquita 2006).

### 7.2.3. The International Convention on Economic, Social and Cultural Rights (ICESCR)

The rights that were first enumerated in the Universal Declaration on Human Rights were subsequently fleshed-out and given legal weight in two other human rights documents that, together with the UDHR, form the International Bill of Human Rights: the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR). Unlike the UDHR, these Covenants are legally binding on party states that sign and ratify them, although states are allowed to demur from specific articles of the covenants through reservations, thereby restricting their obligations under the treaty (Kuszler 2007). The core provision on the international right to health is Article 12 of the ICESCR, which recognizes

the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. [Steps required] include those necessary for [...] the prevention, treatment and control of epidemic, endemic, occupational and other diseases [and ... t]he creation of conditions which would assure to all medical service and medical attention in the event of sickness.<sup>143</sup>

Importantly, the right to health and all other economic, social and cultural rights in the ICESCR are subject to the limitation that they are to be achieved progressively, subject to the availability of resources:

Each State Party to the present Covenant undertakes *to take steps*, individually and through international assistance and cooperation, especially economic and technical, *to the maximum of its available resources*, with a view to *achieving progressively* the full realization of the rights recognized

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143. ICESCR, art. 12(2)(c) and (d).



in the present Covenant by appropriate means, including particularly the adoption of legislative measures. (emphasis added)<sup>144</sup>

As noted in other chapters to this publication, the italicized words reflect the acknowledgement in a legal instrument of the pragmatic approach favoured by economists based on the fundamental reality of scarcity of resources.

The formal content and scope of the right to health has been further clarified through a series of UN documents, especially General Comments issued by the Committee on Economic, Social and Cultural Rights (CESCR). The CESCR is responsible for the promotion, interpretation and implementation of the ICESCR, and from time to time issues General Comments or General Recommendations which attempt to clarify the scope of the rights and obligations of the State Parties with respect to the various articles and provisions of the ICESCR. These General Comments are not binding on the parties, but they nevertheless are ‘recognised as having significant legal weight and offering jurisprudential insights into the rights enumerated in the ICESCR’ (Ferraz and Mesquita 2006).<sup>145</sup> In May 2000, the CESCR adopted General Comment No. 14 on the ‘Right to the Highest Attainable Standard of Health’.<sup>146</sup> The Comment specified that while the right to health certainly includes the right to equal and timely access to health services, it also requires states parties to ensure the underlying determinants of health, including safe drinking water, essential medicines, essential food, basic shelter and sanitation. Furthermore, the Comment recognized that universal access to essential medicines is a core, non-derogable duty of all member states, as is preventing, treating and controlling epidemic and endemic diseases.<sup>146</sup>

Article 15(1)(b) of the ICESCR also states that everyone has the right ‘to enjoy the benefits of scientific progress and its applications’.<sup>147</sup> This right is significant in light of the disproportionate disease burden in developing countries, the immense disparities in access to essential medicines across the globe, and the inequitable number of medicines designed for developing-country health needs. In 2001, the CESCR adopted a General Statement on ‘Human Rights and Intellectual Property’ which makes clear that the right to enjoy the benefits of scientific progress – which include medication – must be respected in the realm of international trade, and any intellectual property regime must include provisions for protecting public health.<sup>148</sup> The same year, the Commission on Human Rights adopted a resolution on access to medicines in the context of pandemics such as

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144. ICESCR, art. 2(1).

145. Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4 (11 August, 2000).

146. Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4 (11 August, 2000), at para. 43(d) and 44(c). On access to medicines as a component of the right to health, see Marks (2009).

147. ICESCR, art. 15.

148. *Human Rights and Intellectual Property*, UN Comm. On Econ., Soc. & Cultural Rts., 27th Sess., para. 2, UN Doc. E/C.12/2001/15 (2001).

HIV and AIDS; the resolution reaffirms that access to essential medicines in this context is a fundamental element of the right to health.<sup>149</sup>

#### 7.2.4. Declarations, Resolutions and Commitments

Several non-binding WHO and UN General Assembly resolutions and international agreements have reaffirmed the international commitment to the right to the health. A seminal declaration, the Alma-Ata Declaration, was adopted in 1978, at the International Conference on Primary Health Care in Alma-Ata, Kazakhstan, convened by the WHO and the United Nations Children's Fund (UNICEF). The centrality of primary healthcare to the poverty-disease trap discussed above is evident in the Alma Ata Declaration, which provides the normative basis for this economic imperative. In the Declaration, WHO and UNICEF member countries reaffirmed that health is a 'fundamental human right' and called for all countries to 'cooperate in a spirit of partnership and service to ensure primary health care for all people since the attainment of health by people in any one country directly concerns and benefits every other country'.<sup>150</sup> The Alma-Ata Declaration identified primary healthcare as the key to the attainment of the agreed-upon goal of Health for All by 2000. The UN General Assembly subsequently endorsed the Alma-Ata Declaration on 29 November, 1979, calling on every UN body to support the WHO's efforts to achieve Health for All by 2000 (Lawson, Bertucci and Wiseberg 1996: 657).

While the goal of Health for All by 2000 was continuously reaffirmed in declarations, resolutions and conferences, the international community came up painfully short of that goal. Nevertheless, as noted at the beginning of this chapter, health was placed back at the centre of the global development agenda in the MDGs, which translate into measurable, time-bound targets the commitments of the 189 Member States of the United Nations at the United Nations Millennium Summit in September 2000. Commitments to the MDGs and to poverty alleviation have been reaffirmed and reinforced in other global forums, including the WTO's Doha Ministerial Declaration<sup>151</sup> and the Monterrey Consensus,<sup>152</sup> among others. These agreements are not legally binding on member states, but are rather aspirational

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149. Commission on Human Rights resolution 2001/33: Access to medication in the context of pandemics such as HIV/AIDS, E/CN.4.RES.2001.33 (adopted 20 April, 2001). United Nations resolutions further elaborate on the human rights guaranteed in the International Bill, as well as on the concomitant obligations of states, but are not legally binding.
  150. Declaration of Alma-Ata. International Conference on Primary Health Care, Alma-Ata, USSR, 6–12 September, 1978. Available at [http://www.who.int/hpr/NPH/docs/declaration\\_almaata.pdf](http://www.who.int/hpr/NPH/docs/declaration_almaata.pdf).
  151. WTO, Doha WTO Ministerial 2001, Ministerial Declaration adopted on 14 November 2001, [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm).
  152. The Monterrey Consensus came out of the March 2002 International Conference on Financing for Development in Monterrey, Mexico. See UN Dep't of Economic and Social Affairs, Follow-Up Process to the International Conference on Financing for Development, <http://www.un.org/esa/ffd> (last visited 25 April, 2006).

declarations of agreed-upon international goals (Kuszler 2007). However, most of the commitments to achieving the right to health in these agreements are embodied in the binding treaties above. Furthermore, international commitments do carry some authority as they are negotiated in good faith by world leaders with the expectation that other governments will honour their commitments to the extent possible; there are myriad non-legal reasons why governments ought to honour the commitments they make to each other.

In September 2002, recognizing that the right to health was still woefully under-realized despite the binding treaties and other international agreements, the UN Commission on Human Rights appointed a Special Rapporteur on the right to health, Paul Hunt. Hunt served from 2002 until 2008, when Anand Grover, an Indian attorney known for his legislative drafting and litigation in the HIV and AIDS field,<sup>153</sup> was appointed to continue the mandate. According to the Special Rapporteur's mandate, Hunt worked with countries, intergovernmental organizations, civil society and the private sector, to report on the status of the right to health and to make recommendations for appropriate measures to promote and protect the right to health worldwide. Hunt's work focused especially on two areas – poverty and the right to health, and stigma and discrimination and the right to health – yet his research included issues of the right to health dimensions of HIV and AIDS, maternal mortality, access to medicines, neglected diseases, mental health, the Millennium Development Goals, the World Trade Organization, poverty reduction strategies, indicators, sexual and reproductive health rights, health professionals, maternal mortality and access to medicines. The reports that Hunt wrote as Special Rapporteur are useful for understanding the status of the right to health in various parts of the world, the responsibilities of various parties and governments for realizing the right to health, and ways to operationalize treaty and other commitments. Throughout his work, he has emphasized that the right to health is 'a right to an effective and integrated health system, encompassing health care and the underlying determinants of health, which is responsive to national and local priorities, and accessible to all.'<sup>154</sup> He was particularly attentive to the request of the Commission on Human Rights that he 'pay particular attention to the linkages between poverty reduction strategies and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' and conducted country studies in Niger and Uganda on this theme.<sup>155</sup>

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153. 'The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health: Mr. Anand Grover', Office of the United Nations High Commissioner for Human Rights. Available at: <http://www2.ohchr.org/english/issues/health/right/SRBio.htm>

154. E/CN.4/2006/48, para. 4.

155. Commission on Human Rights resolution 2003/28. See *Reports of the Special Rapporteur, Paul Hunt*, UN doc E/CN.4/2004/49 16 February 2004, paras 57–75; A/HRC/4/28 17 January 2007, para. 20.

### 7.3. RESPONSIBILITIES OF DONOR NATIONS TO SUPPORT HEALTH IN LOW-INCOME COUNTRIES

Despite the universal recognition of the right to health as a basic human right, international law is ill-equipped to protect and promote this right adequately, especially in the developing world where the need is greatest. Traditional international human rights law is 'state-centric,' meaning that states have the primary obligation to protect and promote the human rights of the citizens within their jurisdiction. By far, most of what has been written about the 'progressive realization' of the right to health has taken the basic view that governments have the obligation to realize the right to health of their own citizens – and that in developing countries, where governments do not have the resources to achieve the universal right to health as envisioned in United Nations agreements, the right to health should be 'progressively' achieved, according to available resources. This means that citizens of developing countries have different 'highest attainable standards' of health than citizens of rich countries (Alexander 2001: 13).

This state-centric approach, however, overlooks two critical points from an economic perspective. First, as already discussed, poor countries are marred in health crises precisely because they do not have the resources to improve all aspects of a health system, including clean drinking water, trained medical personnel, essential medicines and equipment, health education, and other basic health fundamentals. Moreover, a healthy population is a key component of economic development. When countries are trapped in an extreme poverty trap, it is illogical and impractical to insist that poor populations await the 'progressive realization' of their right to health, subject to the available resources of their government. Second, the focus on the right to health obligations of poor countries to their own populations overlooks the legally binding obligations of third-party states to assist with the realization of the right to health in resource-poor countries. The latter point is the focus of this section.

Again, from an economic perspective, a transfer of just 0.1 per cent of rich-world annual income would close the financing gap for realizing the right to health in poor countries. It is a question of helping poor countries to reduce their resource constraints to allow them to meet the health needs of their populations. But importantly, the economics of financial transfers to realize the right to health is again backed by international law. The overarching obligation of all UN member states to cooperate for the achievement of human rights is articulated in the UN charter. Specifically, the charter states that the purposes of the UN are to 'achieve *international co-operation* in solving international problems of an economic, social, cultural or humanitarian character'.<sup>156</sup> Furthermore, Articles 55 and 56 call for UN member states to take '[j]oint and separate action in co-ordination with the organisation' to achieve the purposes of the United Nations, which include 'higher standards of living, full employment, and conditions of economic and

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156. UN Charter art. 1, para. 3 (emphasis added).

social progress and development’ and ‘solutions of international economic, social, health and related problems’. According to Article 103 of the United Nations charter, the obligations under the charter prevail over any other international obligation or treaty.

With respect specifically to the right to health, the legally binding obligation of developed states that are parties to the ICESCR is articulated in Article 2(1) of the ICESCR, according to which

Each State Party to the present Covenant undertakes to take steps, individually and *through international assistance and co-operation, especially economic and technical*, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.<sup>157</sup> (emphasis added)

The ICESCR also refers to international assistance and cooperation for the full realization of the rights in the treaty in Articles 1, 11, 15, 22, and 23. General Comment 3 to the Covenant, on the nature of States Parties’ obligations, clarifies that

in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all states. It is particularly incumbent upon those states which are in a position to assist others in this regard.<sup>158</sup>

The ICESCR is binding on all states that have ratified the treaty; importantly, however, according to the Vienna Convention on the Law of Treaties, the states that are *signatories* but not parties to the ICESCR are obligated ‘to refrain from acts that would contravene the object and purpose’ of the treaty until or unless the state makes it clear that it does not intend to become a party to the treaty.<sup>159</sup> Similarly, states that are neither parties nor signatories to the ICESCR still assume ‘general obligations not to contravene UN resolutions in this regard, as members of the United Nations’ (Yamin 2003). The United States has signed but not ratified the ICESCR; therefore, according to the Vienna Convention, the United States has an obligation not to contravene the object of the ICESCR, which includes the full realization of the right to health in all countries. Therefore, at least one scholar has commented that it would be

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157. ICESCR, Art. 2(1) (emphasis added).

158. Committee on Economic, Social and Cultural Rights, *General Comment 3: The Nature of States Parties Obligations* (Art. 2, para. 1), *Committee on Economic, Social and Cultural Rights, 5th Sess. (1990)*, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies at 18*, U.N. Doc. HRI/GEN/1/Rev.5 (2001), at para. 14.

159. Vienna Convention on the Law of Treaties, 23 May, 1969, 1155 U.N.T.S. 331, Art. 18.

reasonable to affirm that the efforts of the US government [...] to deliberately block intellectual property reform in Thailand, Brazil, and South Africa [preventing these governments from providing affordable life-saving medicines to their populations] constituted violations of the [US] government's general obligation not to contravene the object and purpose of the treaty. (Yamin 2003)

Several UN resolutions and declarations have affirmed the member states' commitment to international assistance, including in relation to access to medicines. The Millennium Declaration, adopted by the General Assembly in 2000, recognized 'a collective responsibility to uphold the principles of human dignity, equality and equity at the global level'.<sup>160</sup> Developed countries agreed to undertake concrete actions such as the adoption of fair trade rules, a debt relief programme for heavily indebted poor countries, and increased development assistance to poor countries committed to poverty reduction. The eighth Millennium Development Goal is the establishment of a global partnership for development to facilitate this global cooperation. The obligations under target 8E of this goal ('In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries') have been analysed, among others, by the UN's MDG Gap Task Force (UN 2009: 49-62), and by the High Level Task Force on the Right to Development.<sup>161</sup> It is important to emphasize, however, that the language of the UN Charter and the specific language of the ICESCR, including the interpretive comments of the CESCR, make clear that, in addition to the commitments made in such declarations as the Millennium Declaration, developed countries have a *legally binding* obligation to assist and cooperate with the realization of the right to health in impoverished countries.

Nevertheless, despite the fact that legally binding third-party state obligations exist, the opaqueness of those obligations and the lack of specific measures that states should take to fulfil their legal obligations under the ICESCR and political commitment under the MDGs, have rendered these obligations unenforceable and irrelevant in practice. In order for these obligations to carry legal weight, it is essential that these obligations be clarified and elaborated, so that the specific obligations of third-party states are clear, practical and quantifiable.

The General Comments have taken some steps to articulate the meaning of third-party state obligations. According to the Comments, the CESCR envisions that third-party states have the same tripartite responsibilities as those of state governments to their own citizens: to respect, to protect and to fulfil all economic and social rights referred to in the ICESCR. The third-party state obligation to respect human rights in other countries and 'to refrain from interfering with the realization of economic, social and cultural rights in other countries' is the least contentious aspect of the third-party state obligations, and is generally understood to be the 'minimum obligation' (Vandenhoele 2005). For instance, General

160. A/RES/55/2, Para 2.

161. *Report of the high-level task force on the implementation of the right to development on its fifth session (Geneva, 1-9 April 2009)*, UN doc. A/HRC/12/WG.2/TF/2, 27 April 2009, paras. 26-34.

Comment 14 on the Right to Health states that all state parties must ‘respect the enjoyment of the right to health in other countries’.<sup>162</sup>

However, the General Comments clearly indicate that the ICESCR envisions the obligations of third-party states going beyond the minimum of ‘respecting’ the rights in other countries. General Comment 14 states that state parties must also ‘prevent third parties from violating the right [to health] in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law’.<sup>163</sup> The third-party state obligation to protect the realization of human rights in all countries from the interference of third parties under its control has not yet been conceptualized or enforced in practice, yet much has been written about the importance of this obligation to ‘protect’. For instance, with respect to access to medicines, many have argued that states party to the ICESCR have a binding obligation to regulate the activity of pharmaceutical companies that are incorporated within their state; accordingly, states would violate the right to health under the ICESCR ‘by failing to influence pharmaceutical corporations’ actions that restrict access to HIV/AIDS drugs in developing countries’ (Alexander 2001).

In a report on the international health worker skills drain, the former Special Rapporteur on the Right to Health, Paul Hunt, stated that in accordance with the obligation to protect the right to health in third-countries, states have an obligation to ‘regulate private recruitment agencies that operate internationally with a view to ensuring that they do not recruit in a manner that reduces a developing country’s capacity to fulfil the right to health obligations that it owes to those within its jurisdiction’.<sup>164</sup> He carried the concept of the obligation to protect further by drafting and submitting to the General Assembly a set of ‘Human Rights Guidelines for Pharmaceutical Companies in Relation to Access to Medicines’.<sup>165</sup> The obligation to protect the realization of human rights also requires third-party states that are concluding international or regional agreements on any issue to ensure that these instruments do not adversely impact the realization of the right to health in other countries, and states that are members of international organizations, such as the World Bank, the WTO and the IMF, are obligated to influence the lending policies, credit agreements and other international policies of these institutions so that they are consistent with the objectives of the ICESCR.<sup>166</sup>

The final obligation – to fulfil – is the most difficult of all the obligations to conceptualize and to make operational. As one scholar noted, ‘any suggestion of a *legal* obligation to provide development aid [...] has invariably been met by hesitation or rejection from even the most generous donor countries’ (Vandenhole

162. CESCR, *General Comment 14*, para. 39.

163. CESCR, *General Comment 14*, para. 39.

164. A/60/348, para. 61.

165. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN doc. A/63/26311, August 2008.

166. CESCR, *General Comment 14*, para. 39; Committee on Economic, Social and Cultural Rights, GC No. 15, *The right to water (arts. 11 and 12)*, UN Doc. E/C.12/2002/11 20 January 2003, para. 36.

2005). Nevertheless, the General Comments clearly envision aid – both financial and technical – to be an obligation of countries with available resources for the realization of rights in poor countries. General Comment 14 states that '[d]epending on the availability of resources, states should facilitate access to essential health facilities, goods and services in other countries, wherever possible and provide the necessary aid when required'.<sup>167</sup> In addition to General Comment 14, other General Comments to the ICESCR have enumerated specific obligations of third-party states to assist with the realization of rights in developing countries, including the right to adequate housing,<sup>168</sup> the right education,<sup>169</sup> the right to food<sup>170</sup> and the right to water.<sup>171</sup> As the same scholar noted, despite the existence of these third-party extraterritorial obligations to assist with the realization of human rights in other countries, the obligations 'to protect' and 'to fulfil' are 'still part of the law "under construction", that is the law as it ought to be' (Vandenhole 2005).

The emphasis here on the obligations of developed countries is not intended to minimize the role that governments of poor countries have in the realization of the right to health and other basic human rights in their own countries. The obligations of third-party states are complementary to domestic state obligations (Vandenhole 2005).<sup>172</sup> Poor governance, discrimination, corruption and warped ideology are unfortunate realities and impediments to the right to health in many countries, developing and developed alike. Efforts to improve governance, accountability, equitable distribution and access systems and social justice are necessary – but not sufficient – to achieving the universal right to health. The point stressed here is that poverty remains the most critical obstacle to the realization of the right to health in developing countries, and the myriad UN treaties, declarations, resolutions and other international agreements that envisage a universal right to health require a renewed focus on and analysis of the obligations of third-party states (and other

167. CESCR, *General Comment 14*, para. 39.

168. CESCR, *General Comment 4, The right to adequate housing (Art. 11 (1) of the Covenant)*, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 at 53 (1994), para. 19.

169. CESCR, *The right to education (Art.13)*, UN Doc. E/C.12/1999/10, 12 August, 1999.

170. CESCR, *The right to adequate food (Art.11): 12/05/99*, CESCR, *General comment 12. (General Comments)* UN Doc. E/C.12/1999/5, 12 May 1999.

171. CESCR, *General Comment 15*.

172. Although this chapter does not discuss the specific obligations of non-state parties, the role of non-state actors in assisting or restricting the realization of the right to health in developing countries should not be understated. The crucial role and responsibilities of international organizations, such as the World Bank and the IMF, and the business sector, specifically the pharmaceutical industry, in the promotion and protection of the right to health has increasingly been discussed by governments, civil society and scholars. General Comment 14 also emphasizes that the private business sector has responsibilities regarding the realization of the right to health, and there are increasingly examples of domestic legal systems where legislation has been used to challenge pharmaceutical companies' restrictive policies, often based on competition, marketing or patent laws. Therefore, although the specific obligations and responsibilities of pharmaceutical companies and other international organizations are not addressed in this chapter, it should be recognized that these companies and organizations are uniquely positioned to address the right to health and to essential medicines.



organs of society) toward developing countries and the billion people worldwide without even the most basic health assurances for survival.

State failures regarding good governance raise notoriously difficult issues for outside donors, including in their support for health. A recent analysis put the vexing issues this way:

as with many human rights there are important issues which are still less clear and require further discussion. For example, what, if anything, would be the obligation of a donor if a recipient state lacked will and failed to give effect to the right to health of a particular population group, such as women or an indigenous population? [...] If a donor withdraws or reduces its development assistance including in the area of health because a recipient state has failed to meet certain legitimate conditions (e.g. minimise corruption), would this be contrary to that donor's obligations under ICESCR? Another question is if a donor gives its aid through direct budget support, but national policies which it is supporting do not contribute to (or violate) the right to health, what implications does this have for IAC [international assistance and cooperation]? [...] These are complex policy issues which demand further attention and discussion. (Ferraz and Mesquita 2006)

While these questions are important, we should not lose sight of the most basic and important point we are making about the intersection of human rights and economic perspectives on poverty and the right to health. Many governments of poor countries around the world are attempting with seriousness and professionalism to improve public health, but are held back by the deficiencies of their own resources. Bad governance may be a critical barrier in some contexts, but it is certainly not the universal barrier to improved health in poor countries that is sometimes presumed.

#### **7.4. ACHIEVING THE RIGHT TO HEALTH WITHIN THE HUMAN RIGHTS FRAMEWORK**

The important question, therefore, is how to make operational the existing legal obligations of developed countries to assist impoverished countries with the realization of the right to health, and importantly, how to coordinate the efforts of domestic governments, donor governments, and non-state actors in the realization of the right to health. As one commentator has noted, "The most glaring problem, widely debated by scholars, is whether international legal instruments and global institutions can effectively govern the diverse state and non-state actors that influence health outcomes. (Gostin 2007: 335)" While this remains an incredibly complex – yet urgent – problem, below we outline some of possible steps that the international community can take to help achieve the right to health globally, which is instrumental to the poverty reduction agenda.

### 7.4.1. Identify the Core Aspects of the Right to Health

As with most of the economic, social and cultural rights in the ICESCR and the Universal Declaration of Human Rights, the right to health has not been well-defined and the specific obligations of governments and other actors have not been enumerated. A crucial first step to make operational the right to health and make the right meaningful for individuals in developing countries is to articulate the core elements of the right to health. Identifying the core elements of the right to health is integral for assessing the needs in each country, monitoring the progress of governments in the realization of the right to health, and identifying areas for developed countries to ‘cooperate and assist’. In General Comment 14, the CESCR identified the core obligations of the right to health to include:

- a) to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- b) to ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- c) to ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- d) to provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
- e) to ensure equitable distribution of all health facilities, goods and services;
- f) to adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population.<sup>173</sup>

Others, including the UN Economic and Social Council, have extended this list of core obligations to also include providing health education, immunizations and pest control (Gostin 2007: 367). Once there is international agreement on the core elements of the right to health, government programmes can be redesigned to prioritize these core elements, and international assistance can be targeted initially at realizing these core needs in each country. The CESCR stated that ‘[when grouped together, the core obligations establish an international minimum threshold that all developmental policies should be designed to respect’,<sup>174</sup> and that ‘it is particularly incumbent on states parties and other actors in a position to assist, to provide “international assistance and cooperation, especially economic and technical” which enable developing countries to fulfil their core and other obligations’.<sup>175</sup>

173. CESCR, General Comment No. 14, para. 43.

174. CESCR, Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights, para 17.

175. CESCR, General Comment 14, para. 45.

#### **7.4.2. Establish Benchmarks and Criteria to Assess the Realization of the Right to Health**

According to the ICESCR, the right to health is to be ‘progressively realized’ to the maximum of available resources; there are no benchmarks to assess when governments lag substantially despite available resources or when governments have fulfilled their health obligations. As one scholar noted, ‘through the linkages between the “available resources” standard and “achieving progressively” provision, the universality of human rights loses its rigidity in the context of health’ (Meier 2007: 549). Benchmarks and evaluation criteria are instrumental to encourage all governments to meet their obligations and to assess which countries need assistance and in which areas. The CESCR actually identifies as part of a government’s core obligation, the obligation to create a strategy and plan of action for the realization of the right to health that includes ‘methods, such as right to health indicators and benchmarks, by which progress can be closely monitored.’<sup>176</sup> The international community, with leadership from the CESCR and the Special Rapporteur for the Right to Health, should agree on specified benchmarks for the realization of the right to health, especially in developing countries. The benchmarks should include the core elements of the right to health as well as a method for countries to quantify specific targets and indicators for assessing progress and needs in each country.

The MDGs provide a sound practical benchmark as they are internationally agreed and achievable through the application of best practices backed by the needed financing. The MDGs call for a reduction by two-thirds of the under-5 mortality rate by the year 2015 compared with a 1990 baseline (MDG 4), a reduction of three-quarters of maternal mortality by 2015 compared with a 1990 baseline (MDG 5), and a significant control of major killer diseases such as AIDS and malaria (MDG 6). Expert groups for each disease have translated MDG 6 into specific coverage targets for key interventions, and those targets have been endorsed in various official processes (e.g. in some cases by the WHO, the UN General Assembly, and/or the UN Secretary General). In the case of malaria, for example, the Roll Back Malaria Partnership has adopted the goal of universal coverage of basic malaria interventions by the end of 2010. In the case of AIDS, the General Assembly has endorsed the goal of universal access to anti-retroviral medicines by 2010.

#### **7.4.3. Identify Necessary and Effective Interventions and Ensure Available Funds**

Once there are agreed-upon obligations for the right to health and established benchmarks to assess country progress and needs, developed and developing

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176. CESCR, General Comment No. 14, para. 43.

countries should collectively identify specific necessary and effective interventions to help realize the right to health in developing countries and commit the necessary resources. Most of the important interventions to support the basic obligations of developing country governments are low-cost interventions that nevertheless are not within reach of most developing countries. The 2001 report of the Commission on Macroeconomics and Health (CMH) stressed that '[e]ven if poor countries allocated more domestic resources to health, such measures would still not resolve the basic problem: poor countries lack the needed financial resources to meet the most basic health needs of their populations'. As one scholar noted, since developing countries do not have the necessary resources for the core obligations recommended by the CESR, the core obligations 'are seen as fervent aspirations waiting for sufficient economic investment to bring them into reality' (Kuszler 2007).

In addition to commitments to fund necessary interventions in developing countries for the provision of health services and basic amenities and capabilities related to the right to health, developed countries also must commit to increasing the research and development of large pharmaceutical companies and biomedical research firms to address more of the urgent needs of developing countries. Currently, the so-called 'neglected' diseases that cause millions of unnecessary deaths each year in developing countries are under-funded for biomedical research; in fact, only 1 per cent of medicines created in the last twenty-five years address 'diseases of poverty' that claim millions of lives in the developing world (Gostin 2007: 369).

#### **7.4.4. Improve Systems of Accountability, Monitoring and Compliance**

As two scholars recently wrote, 'unless supported by a system of accountability, human rights can become no more than window-dressing' (Ferraz and Mesquita 2006). The right to health is an international legal right after all; in order for the right to 'mean anything at all', it requires some form of regulation and monitoring to assure implementation and enforcement (Kinney 2001: 1471). While health policies are often assessed and monitored, health policies and health interventions are very rarely considered within the right-to-health framework, so domestic and third-party governments are rarely held accountable for their policies and decisions as they relate to the legal right to health (Ferraz and Mesquita 2006). Importantly, it was only in September 2009 that the ICESCR was supplemented by a complaint process by which individuals or groups can allege a violation of their rights under the ICESCR and seek redress or enforcement of their rights. Once it has been ratified by ten countries, the Optional Protocol to the ICESCR<sup>177</sup> will enter

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177. The Optional Protocol was adopted by the General Assembly in its resolution A/RES/63/117 on 10 December 2008, and opened for signature on 29 September 2009.

into force and enable the CESCR to investigate claimed violations. Furthermore, as the only one of the six major human rights treaty bodies that was not created by its respective treaty, it is comparatively under-resourced (Narula 2006).

Monitoring compliance with ICESCR obligations is critical for the full realization of the right to health and for the necessary levels of international cooperation and assistance that are required to realize the right to health in all parts of the world. First and foremost, in order for developed countries to be held accountable for their obligations under the ICESCR, there needs to be a clear articulation of the extraterritorial obligations of states (as well as clarity on the obligations of non-state actors, including multinational corporations and international financial institutions) (Narula 2006). With an improved and emboldened mandate, the CESCR can assume the responsibility and capacity to hold countries accountable for their obligations to provide international assistance and cooperation, with assistance from the Special Rapporteur on the right to health (Ferraz and Mesquita 2006). The CESCR, for instance, makes Concluding Observations on the state party reports of Party States to the ICESCR, and has at times commented and made recommendations to increase development assistance. Furthermore, civil society organizations can submit 'shadow reports' along with Party States' reports, providing additional commentary on the states' compliance with its obligations; the CESCR has often incorporated information from these civil society reports in the CESCR's recommendations (Ferraz and Mesquita 2006). The mandate of the CESCR could be clarified and expanded to include not only collecting these reports and making specific recommendations, but also assessing and benchmarking the compliance of developed countries with respect to their international assistance obligations, and the CESCR could issue a public report on the status of the countries' compliance. The Special Rapporteur could make similar evaluations and presentations to the United Nations and to member states on the status of compliance with the obligation to cooperate and assist with the realization of the right to health.

#### **7.4.5. A Global Convention on Health**

One scholar (Gostin 2007: 335) has recently recommended a new framework Convention on Global Health (FCGH) that would 'commit states to a set of targets, both economic and logistic, and [...] stimulate creative public/private partnerships and actively engage civil society stakeholders.' He proposes that the Convention could

set achievable goals for global health spending as a proportion of GNP; define areas of cost effective investment to meet basic survival needs; build sustainable health systems, including trained health care professionals, surveillance, and laboratories; and create incentives and systems for scientific innovation for affordable vaccines and essential medicines. (Gostin 2007: 335)

Such a Convention could also be useful in that it could include states that have not ratified the ICESCR or other treaties that have incorporated right-to-health obligations or countries that have ratified those treaties but limited their commitment with extensive reservations. Furthermore, an institution could be established to oversee this Convention (possibly in addition to other Conventions that address issues of extreme poverty or other social, economic and cultural rights) that could monitor standards, implementation, compliance, and progress, and oversee a finance mechanism for fulfilling the purposes of the Convention (Gostin 2007).

### **7.5. OUTLINES OF AN INTERNATIONAL FINANCIAL PROGRAMME TO SUPPORT HEALTH FOR ALL**

One of us (Jeffrey Sachs) has been deeply involved in three distinct efforts to measure the international financing needed to achieve health for all: the aforementioned Commission on Macroeconomics and Health, which focused on the financing of primary healthcare delivery in low-income settings; the aforementioned United Nations Millennium Project, which identified an integrated programme of investments (in agriculture, health, education and infrastructure) designed to enable low-income countries to achieve the Millennium Development Goals; and the UN Secretary General's MDG Africa Steering Group, which specifically addressed the achievement of the MDGs in Africa. All three of these projects identified the needs for international donor financing of the health sector, while the latter two projects also examined the needs for donor financing beyond the health sector.

The Commission on Macroeconomics and Health identified donor needs of US\$ 27 billion per year as of 2007, expressed in constant 2002 US\$ (WHO Commission on Macroeconomics and Health 2001: 20). Updated to 2007, this would come to US\$ 38 billion. The UN Millennium Project identified total donor needs for all MDGs at US\$135 billion for 2006, expressed in constant 2003 US\$ (UN Millennium Project 2005: 57) of which health constituted around US\$ 30 billion (in 2003 US\$). Updated to US\$ 2007, that would come to around US\$ 37 billion, very close to the estimate of the Commission on Macroeconomics and Health. According to the MDG Africa Steering Group, Africa's health-sector needs come to around US\$28 billion as of 2010 (in 2007 US\$) (Africa Steering Group 2008: 30-32, Table 2), and Africa's total donor needs to achieve the MDGs come to around US\$ 72 billion per year as of 2010 (in 2007 US\$).

In order to assess the economic feasibility of realizing the right to health and thereby fulfilling the obligations discussed in the previous section, it should be stressed that, given the combined income of the donor countries of around US\$ 35 trillion as of 2007, the required donor aid for health worldwide is estimated to be around 0.1 per cent of the combined donor Gross National Product (GNP), easily accommodated within the long-standing target of 0.7 per cent of GNP in total donor aid. In fact, donor aid is currently around US\$ 10 billion per year, or

roughly one-third of what is needed. The good news, however, is that the trajectory is decidedly upward, with aid for health having risen from around US\$ 3 billion per year at the start of the decade.

Finance is merely an enabler, of course, to be combined with on-the-ground systems for delivery, monitoring and evaluation. Several such systems are being put in place, mainly as the result of recent progress in scaling up programmes to fight AIDS, TB, malaria, and other communicable diseases. The Global Fund to Fight AIDS, TB and Malaria, and the Global Alliance for Vaccines and Immunization are two multilateral donor funds established early in the decade to finance the rollout of disease control efforts, and the results have been enormously exciting and positive. In view of these successes, and the calculations of overall financial requirements, we propose ten international actions of highest priority that are feasible from an economic perspectives and conform to the obligations of the right to health from a human rights perspective:

1. Rich countries should devote 0.1 per cent of GNP (US\$ 35 billion per year as of 2007) to health assistance for poor countries.
2. Roughly half of that should be channelled through the Global Fund to Fight AIDS, TB and Malaria, which has proven itself to be a highly effective institution for the scaling up of control of the three targeted diseases.
3. Low-income countries should fulfil the so-called Abuja Commitment to allocate at least 15 per cent of *domestic* revenues to the health sector. Total spending (domestic and external funding) should be greater than US\$ 50 per person per year (in US\$ 2007) in order to ensure basic health services.
4. The world should adopt a plan for comprehensive malaria control by 2010, with an end of malaria mortality by 2012 (estimated cost is around US\$ 3 billion per year). (Teklehaimonot, McCord and Sachs 2007)
5. The world's nations should fulfil the commitment of the UN General Assembly to universal access to anti-retrovirals for HIV/AIDS by 2010.<sup>178</sup>
6. The world should fulfil the Global Plan to Stop TB, including closing the identified financing gap of US\$ 3 billion per year.<sup>179</sup>
7. The world should fulfil the funding for the commitment to universal access to Sexual and Reproductive Health Services, including emergency obstetrical care and contraception, by the year 2015.<sup>180</sup>
8. The Global Fund should establish a financing window for seven neglected tropical diseases which can be controlled by mass chemotherapy: hookworm, ascariasis, trichuriasis, onchocerciasis, schistosomiasis, lymphatic filariasis and trachoma. (Molyneux et al 2009)
9. The Global Fund should establish a window for health systems, including mass training of community health workers.

178. Resolution 60/262 of the UN General Assembly, 15 June 2006.

179. Global Plan to Stop TB, 2006-2015, by the Stop TB Partnership, World Health Organization, 2006.

180. Adopted at the International Conference on Population and Development, Cairo, 1994.

10. The world should introduce primary healthcare (mass prevention and treatment) of non-communicable diseases, including: oral health, eye care, mental health, cardiovascular disease and metabolic disorders, including measures on lifestyle (smoking, trans-fats, urban design for a healthy environment), surveillance and clinical care.

Of course, these ten recommendations focus solely on the health sector itself, and so must be complemented by similar actions in other sectors which impact primary health, such as agriculture, infrastructure, environment, women's rights and education.

## 7.6. CONCLUSION

As the former Special Rapporteur on the Right to Health, Paul Hunt, said, 'Confronted with such a complex and colossal challenge as global poverty, it is extremely important that development practitioners use all the tools available in their workshop, including the national and international human rights commitments of developing and developed states' (Hunt 2006). The international commitments exist; the problem lies 'with weaknesses in implementation, enforcement, and a lack of universal ratification' (Narula 2006). Yet global cooperation and assistance – in line with existing commitments and obligations – are absolutely necessary to solve the global health crisis and to realize the right to health that has been affirmed by all nations for many years. It is unacceptable that the 'available resources' standard of the ICESCR has resulted in substantially different standards of the right to health between developing and developed countries. It is imperative that the global community cooperate to 'close the gap between developing and developed countries' highest attainable standards' (Alexander 2001: 13).

An economic perspective on realizing the right to health can be useful in this context, complementing the existent international obligations by identifying the most cost-effective investments for improving health systems, quantifying the financing gap to realize the right to health in poor countries, and creating benchmarks for measuring success and monitoring progress. For instance, the Millennium Development Goals offer a practical framework for benchmarking the global effort, and for identifying the necessary cost-sharing among the high-income and low-income countries. Several costing exercises have demonstrated the feasibility of estimating the financing needed to provide basic health services and to achieve the health MDGs. They show that donors should be providing roughly 0.1 per cent of their national incomes for health, but are currently providing only around one-third of that level. Health outcomes have been improving in recent years, as shown for example by UNICEF's data on declining child mortality, but progress is far too slow to achieve the MDGs. Efforts must be scaled up. The means for success exist. International human rights commitments call on us to make the effort. The needs are urgent, and the MDG target date of 2015 is fast approaching.



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## The Right to Work and the Reduction of Poverty: An Economist's View

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Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (Universal Declaration of Human Rights, Article 23(1))

The right to work should not be understood as an absolute and unconditional right to obtain employment (UN Economic and Social Council, Committee on Economic, Social and Cultural Rights, *The right to work: General Comment No. 18*, adopted 24 November 2005, E/C.12/GC/18)

When a man begs for work he asks not for work but for wages (Attributed to Bishop Whately by Karl Polanyi, *The Great Transformation*, Boston, Beacon Press, 1957 (1944), p. 177)

### 8.1. INTRODUCTION

The right to work is distinctive for several reasons. First, it is both an end in itself, and a means to other ends. Work may and should have intrinsic value for those who perform it, but it is also the means by which other rights – to an adequate standard of living, to a dignified existence – are realized for the majority of people.

Second, the right to work does not stand on its own, but involves other rights – notably, in the words of the Universal Declaration of Human Rights, ‘just and favourable conditions of work ... [and] remuneration’, ‘rest and leisure, including reasonable limitation of working hours’, ‘social protection’, and ‘the right to form and join trade unions’.

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181. I am grateful to Stephen Marks, Claire La Hovary, Janine Rodgers and Lee Swepston for their comments.

Third, work itself is not necessarily desired. 'I think that there is far too much work done in the world, that immense harm is caused by the belief that work is virtuous, and that what needs to be preached in modern industrial countries is quite different from what has always has been preached' (Russell 1935). Bertrand Russell, the author of these lines, thought that 'four hours work a day should entitle a man to the necessities and elementary comforts of life, and [...] the rest of his time should be his to use as he might see fit'. There is a compulsion to work because people need the product of their labour in order to live, but much work is experienced as unpleasant drudgery.

A right to work is thus a paradox, because work is, for most people, an unavoidable part of life. In some circumstances, the right not to work is as valid as the right to work (e.g. maternity, retirement), and the conditions under which work is performed are as important as the work itself. It is not surprising that writings on work since the early days of capitalist development have been ambiguous about the meaning and content of this right.<sup>182</sup>

Echoes of this ambiguity can be found in the debates and discussions leading to the adoption of the Universal Declaration, in which a political divorce emerged between West and East. As Eleanor Roosevelt put it in a speech in 1948,

The Soviet Union insists that this [the right to work] is a basic right which it alone can guarantee because it alone provides full employment by the government. But the right to work in the Soviet Union means the assignment of workers to whatever task is given to them by the government [...] We in the United States have come to realize [the right to work] means freedom to choose one's job, to work or not to work as one desires. (Glendon 2001: 138)

So two different conceptions of this right emerged, derived from two different conceptions of society. In one, the right to work was absolute, and the state was therefore obliged to provide employment for all, but it was combined with a duty to work; this duality was explicit in, for example, the Constitution of the USSR. In the other, the right to work was expressed in terms of the freedom to choose of the individual, but within a wider market economy that provided no guarantees that the choices would be realized in practice.

This schizophrenia explains in large measure why the International Labour Organization, the obvious international body to take the notion of the right to work forward in the post-war period, did not do so. The issue was indeed present in ILO debates in the 1950s and 1960s, but it remained a political bone of contention, a sideshow of the cold war in which the realization of the right to work through the achievement of full employment in socialist economies was presented by the Soviet bloc as proof of the superiority of their economic system. This vision was of course rejected by the West, and ILO work on human rights instead focused on freedoms in work – freedom of association and collective bargaining, freedom

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182. See for instance the review in *Standing* (2002: 247-55).

from forced labour and from discrimination – rather than on the right to work as such. The ILO's main employment convention, no. 122, 1964, merely has a preambular reference to the Universal Declaration's enunciation of the right to work, and expresses the goal as 'full, productive and freely chosen employment', not as a right but as the result of an active policy that should aim at ensuring that 'there is work for all who are available for and seeking work'. And while the notion of the right to work has occasionally found its way into ILO texts – for instance, the ILO Declaration on Equality of Opportunity and Treatment for Women Workers, 1975, states that 'All measures shall be taken to guarantee women's right to work as the inalienable right of every human being'<sup>183</sup> – in most cases the use of this language was rejected by the West. In practice, the ILO has taken the route of promoting the creation of employment opportunities rather than attempting to establish a universal right to work, even after the end of the cold war.

The idea of the right to work was nevertheless incorporated into the International Covenant on Economic, Social and Cultural Rights, adopted in 1966 and now ratified by the great majority of the world's countries. It has therefore become an important element of the international human rights agenda.

## 8.2. RIGHTS, ECONOMISTS AND LAWYERS

Of course, the interpretation of the right to work is not only political. It also reflects the perspectives and assumptions of different disciplines. On this, economists and jurists are far apart, and there are also many different economic approaches.

The classical economists of the nineteenth century explicitly incorporated normative ideas in their theoretical frameworks, notably through their analysis of the labour process and their concern with distribution as well as with production (Dobb 1973), but these issues do not readily connect with the notion of rights in the modern sense. It can be argued that the labour theory of value, as developed and interpreted by Ricardo, Marx, Mill and others, is compatible with the later notion of a right to work, because under capitalism labour was in principle free (in contrast to the labour obligations in a feudal system). But the notion is somewhat alien in this context, since workers were dependent in a capitalist economy on the sale of their labour power for a wage, and that wage in turn was determined in the long run by the need for subsistence, broadly defined (i.e. for Marx including an 'historical and moral element'). The right to work and the obligation to work in order to live were in reality two sides of the same coin.

With the development of utilitarian theories of value, and more generally in the conventional frameworks of neoclassical economic analysis, the right to work became if anything even less meaningful. There was always a wage that would clear the labour market, so in some sense the right to work always existed.

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183. It remains a historical curiosity that the ILO has declared the right to work for women but not for men. One factor may have been that the ILO bureau responsible for 'women workers' questions', was usually headed by an official from the Soviet Union during this period.

If the worker elected not to work at a particular wage, that was his or her choice, but it could not be said that the right to work had been denied. Of course, more sophisticated neoclassical models admit the existence of imperfect markets, a mismatch of capabilities and other factors that might lead to unemployment. But the underlying premise is always that the resolution of such imperfections is possible through investment in skills, strengthening market institutions, reducing labour market protections or improving information flows. Nor does the neoclassical apparatus of welfare economics lend itself readily to a rights-based approach. As Harvey (2002) points out, conventional welfare economics abstracts from fairness and rights-based claims defined at a societal level, relying instead on the revealed preferences of individuals.

There are, however, other streams of economic thinking that connect better with the rights agenda, and in particular those that belong to what can broadly be called institutional economics. Institutionalists acknowledge the importance of social norms in economic behaviour, and so offer a framework in which rights in the labour market can be taken into account, for instance as mechanisms that legitimize particular labour market outcomes or work practices, create trust as a basis for exchange, reduce transaction costs, or determine the range of socially acceptable behaviours. Writers such as Commons saw social legislation as an institution that could canalize conflicting social interests, and thus stabilize economic relationships. The ‘new institutionalists’ formalize this in terms of the persistence of those institutions that promote economic efficiency by reducing transaction costs.<sup>184</sup> The macro frameworks of the French ‘École de la régulation’ look for rules and mechanisms that underpin a particular pattern of control and distribution, in which the economic mechanisms have to be set in their political and social environment (Boyer 1990). Within such frameworks, respect for rights that have social sanction may contribute to the functioning of economic institutions – enterprise, markets – and may be an important determinant of economic stability. Such ideas have been pursued in the writings of authors such as Robert Solow and Richard Freeman.<sup>185</sup>

Most of these writers do not explicitly consider rights as such. Amartya Sen, on the other hand, investigates the relationships between rights and economic goals and outcomes in a series of writings. In his book *Development as Freedom*, Sen examines the validity of a rights-based approach to development in some depth. He considers and rejects three possible critiques of rights-based arguments:

1. The argument that rights are not innate, but must derive from some authority or legislation (legitimacy). Sen rejects this argument on the grounds that rights should be seen as ethical claims, and distinguished from legislated entitlements.
2. The argument that rights exist only where there is a corresponding duty on the part of some agent to ensure their realization (coherence). On this, Sen

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184. See for instance Nabli and Nugent (1989).

185. See for instance Solow (1990); and various publications by Richard Freeman (<http://www.nber.org/~freeman/>).

considers that rights can exist (in the sense of unfulfilled claims) even if no-one has the responsibility to realize them.

3. The argument that rights are not universal but vary from one society to another (cultural). This Sen denies, arguing that basic freedoms and their formulations in terms of rights are indeed universal.

But despite Sen's rebuttals, all three of these critiques pose problems for the right to work. The first critique draws attention to the lack of a precise definition of the right to work outside a particular legislative environment. The second highlights the problem of agency and responsibility, to which we return below – a right to work in the absence of an agent to provide this work is not very compelling. And the third abstracts from cultural and social differences that are important for those concerned. Work plays different roles in different societies.

Sen's own approach gives precedence to the notion of freedoms over that of rights: indeed, rights are best seen as formulations of freedoms. These freedoms should be understood in terms of an individual's capabilities and entitlements, which Sen defines as the set of functionings (or desired activities) that are feasible for that individual. Capability has many sources, both social and economic, among them ownership and command over commodities. The right to work might be considered as a freedom, in Sen's sense, in that its realization should assure this command over commodities. In this role the right (freedom) to work is a means (instrumental) rather than an end (constitutive). However, insofar as the right to work also extends to the nature and content of that work, it can equally be considered to be constitutive, an activity that is desired in its own right. This can be seen in the ILO's approach to rights *at work*, goals in their own right, many of which are regularly expressed as freedoms, both negative (freedom from discrimination, from child labour or from forced labour) and positive (freedom of association).

These different approaches have in common the tendency for economists to consider costs, benefits and trade-offs among competing ends, and construct policies that are adapted to the balance of these different factors. Lawyers, on the other hand, tend to work with an established framework of rights and rules, to which economic considerations must be subordinate. With respect to the right to work, even if we confine ourselves to those economic approaches in which rights may be addressed along with other social institutions, there are bound to be contradictions between these visions. Work is so deeply embedded in the production system, of which it is of course the basic factor, that any declaration of a right to work that does not consider the implications for production or the resources required is liable to remain a dead letter. On the other hand, market forces pay scant regard to human rights, and purely market-driven economic processes generally result in inequality and exclusion. Economic mechanisms alone rarely suffice to realize universal rights of any sort.

The different perspectives of lawyers and economists can readily be illustrated in the work of the International Labour Organization, where they have often led to inconsistencies and tensions. The ILO's main international instrument

is the system of international labour standards, legal instruments covering a wide variety of labour issues. International labour conventions, which set standards in these domains, are open for voluntary ratification by states and subsequent supervision by the Organization. On the other hand, many of the ILO's concerns, and particularly objectives such as social security, employment and poverty reduction, need to be addressed through a variety of economic and social policy measures, most of which require substantial resources. There has, naturally, been a tendency for the departments concerned with standards to be staffed by lawyers, the departments concerned with employment and related policies to be staffed by economists and other social scientists, and they operate within different paradigms. The use of 'rights language' tends to follow a similar divide.

In the ILO's history, there have been swings between these two means of pursuing the ILO's goals. In the ILO's first decade, the 1920s, there was considerable stress on international labour standards; but in the 1930s the Great Depression shifted attention away from standards towards economic policies. In the post-war period there was a resurgence of interest in international labour legislation, along with the concern for universal human rights. But the process of decolonization and the shift of attention towards development goals again shifted the agenda towards a wider range of policy instruments.

These different perspectives have often given rise to internal conflicts. For example, in the 1960s, sharp differences arose between legal and economic lobbies within the ILO as to whether forced and compulsory labour could be used for development purposes.<sup>186</sup> Those who adopted an economic perspective argued that economic development was a precondition for the realization of rights such as freedom from forced labour, that there should be no impediments to the use of all available resources for development, and that a wide-ranging programme to support this process was required, in which standards should not be a constraint; those defending the labour standards approach argued that standards such as freedom from forced labour were the essential foundation for development, and they must be respected from the start. In practice, both approaches were pursued in parallel in the ILO's work, but the ILO's main contribution to development policies in the 1970s came from the creation and rapid expansion of the World Employment Programme, which addressed a wide range of economic, social and political issues, but made little use of rights language and legal instruments. Among the arguments that were put forward for this approach, a powerful one concerned the need to develop policies for the newly identified 'informal sector', where labour regulation was ineffective, and rights theoretical. There was no interest at all in a putative right to work.

In ignoring the issue of the right to work in its development policies in the 1970s the ILO was very much in line with development thinking at the time. In practice, mainstream development policy aimed to overcome constraints on social and economic progress by building up social and physical infrastructure, capital

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186. For details see Maul (forthcoming).



and institutions. Rights were regarded as abstract concepts in the absence of the social and economic means to realize them. And this was particularly true of the right to work, which clearly depended on economic factors. There was no point in expressing a right to work without the means for its realization; it was rather to be expressed as a development goal, to which a number of different policies could contribute.

Since the 1970s, however, rights-based language has become more widespread in development discourse, perhaps at least in part as a reaction to the extreme economic policies that dominated the international economy in the 1980s and 1990s. As Amartya Sen put it, 'the *rhetoric* of human rights is much more widely accepted today – indeed much more frequently invoked – than it has ever been in the past' (Sen 1999: 227). So the possible contribution to development strategy of the notion of the right to work merits further consideration.

### 8.3. THE CONTENT OF A RIGHT TO WORK

#### 8.3.1. What Might be the Content of a Right to Work?

First it is necessary to consider the meaning of the word 'work'. In its broadest sense, it encompasses all socially valued activities, from wage employment to childcare, from gainful self-employment to domestic chores. And work can be done under an enormous variety of social statuses and relationships, ranging from a formal employment contract to an individual drive for self-realization. This makes the right to work a very amorphous and all-embracing concept. The right to wash the dishes or clean the house does not really merit a place in the Universal Declaration of Human Rights, although there are important associated questions of recognition or entitlement.

An alternative is to consider the right to work as referring essentially to gainful employment – this is the sense of the quotation attributed to Bishop Whately above. Definitions, even of employment, vary, but employment is generally interpreted as referring to economic activity, embracing both waged work and own account work, not including unpaid work in the domestic and voluntary spheres. Interpreting the right to work as a right to employment makes the notion more practical and meaningful, and probably closer to popular understanding. A right to work could then be understood as a right to waged employment, or to the resources and markets opportunities required for self-employment.

The second point, perhaps more important still, is that an unqualified right to work makes little sense. A right to work is not meaningful if it refers to work in unhealthy or exploitative conditions, for less than subsistence wages, at ages that are inconsistent with education or retirement, on precarious or insecure terms. There must be some measure of the acceptability of work. The Universal Declaration recognizes this, and sets conditions on work, as noted above. The International Covenant on Economic, Social and Cultural Rights (ICESCR) specifies in Article 6 fair wages and equal remuneration for work of equal value,

safe and healthy working conditions, equal opportunity for promotion to an appropriate higher level, rest and the limitation of working hours.

But this raises difficult issues. How can one possibly set conditions that are universally valid? Wages and working conditions vary with productivity; indeed the fundamental logic of economic development is precisely to improve standards of work and life through rising productivity. And so with economic development comes the possibility of higher wages, shorter hours, better working conditions, less drudgery. It follows that the substantive content of the right to work cannot be uniform across economic differences.

The conventional way to bypass this issue is to consider that all societies should set minimum standards for wages and conditions of work, but that the level of these standards will differ according to the resources and possibilities of the societies concerned. Then the right to work (or employment) is a right to work or employment that meets those minimum standards. This, though, runs the risk of circular reasoning – if the content of the right is determined by the possibilities, then the notion of a right adds little of value. We are better off with the notion of employment as a development goal.

Another route is offered by the ILO's decent work agenda. Instead of the right to work we may consider the right to decent work. Decent work, as formulated by the ILO, brings together basic rights and freedoms at work, access to employment, social protection and social dialogue between representatives of workers and employers.<sup>187</sup> This goes beyond minimum standards to incorporate aspirations for security and safe working conditions, dignity at work, representation and negotiation, and equality of treatment. As a statement of the goal it is appealing, and perhaps more appealing than the alternatives above. It was also endorsed by the Committee on Economic, Social and Cultural Rights, which, commenting on Article 6 of the ICESCR, stated that 'Work as specified in Article 6 of the Covenant must be *decent work*' (italics in original).<sup>188</sup> A right to decent work could then be seen as a central focus of development policy, valid in itself while at the same time contributing to many other development goals.

But while the rhetoric may be appealing, this formulation does not avoid the conceptual problems raised above. The concrete specification of the goal of decent work depends on the level of development, so that the 'right to decent work' in Western Europe will look quite different from the same right in Africa or Asia. There may be common underlying principles, but the acceptable level of safety, income or leisure, to take three examples, depend on economic and social context. The main advantage of going down this route is that in principle it offers a coherent and constant overall framework, from which may be derived the substantive content of the right in any particular circumstance.

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187. ILO, *Report of the Director General: Decent Work*, 87th Session of the International Labour Conference, Geneva, Geneva, June 1999. Available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>.

188. Committee on Economic, Social and Cultural Rights, *The Right to Work, General Comment no. 18*, adopted 24 November 2005, UN doc. E/C.12/GC/18, New York: United Nations, para. 7.

Beyond these issues of the quality of work there are other complicating factors too. An important one concerns skill and occupation. Work is not homogenous, and most people seek work in which they are able to apply their skills and capabilities. Should this too be considered a right? If I am qualified as a skilled worker, and am offered employment as an unskilled labourer, has my right to work been realized? Most (skilled) workers would think not. More generally, as a part of the right to work we may wish to consider other aspirations that should be realized through work, such as creativity, self-fulfilment and social inclusion. But the risk then is to make the concept unworkable in practice.

So the right to work faces severe conceptual problems, if one attempts to give it real content. To capture the diversity of goals and of situations requires a framework that is so broad as to be unusable. The notion of a right to decent work is promising, but does not solve all the problems by any means, and one of the difficulties faced in applying the decent work agenda lies precisely in the difficulty of giving it unambiguous and concrete content. A more limited right to employment might be more viable. But one can equally argue that work and employment are better considered as broad development goals, rather than as rights.

Another approach, which is perhaps less satisfying, but more practical, is to consider the right to work in a purely instrumental sense. As noted above, most people work because they are remunerated, not because of the value to them of undertaking the work itself; indeed, much work is drudgery. The relevant right is then the right to the product of labour, that is, to the incomes and entitlements that it generates; and to that right corresponds an obligation to work. The right to work is then a pseudo-right, in reality the reflection of a particular stage of social and economic development in which all who can do so contribute their labour, and in return are entitled to a share of the product of their work. It is a means, a mechanism, an investment that delivers a return, both for the individual and for the collectivity.

Expressed in this way it nevertheless raises a series of further questions. If the right to work is a proxy for the right to an income, what should be the relationship between income and work? Should income be determined by the productivity of work, should it rather reflect some social goal (a living wage, an adequate income), should it be determined in the market, should there be a minimum? Socialist societies have struggled with these issues. And work is not the only source of income: in all societies there are rentiers who do not work, some who are unable to work and live from public or private transfers, some who are too young or too old, so work cannot be the only criterion. There are fundamental questions about the pattern of inequality in returns to work, between sexes, ages and social groups; and about the fact that some people are inclined or able to work more than others. In practice, the right to income from work cannot be divorced from more general consideration of how income should be divided and distributed. But despite these complexities, a focus on income offers one direct link between the right to work and the reduction of poverty, a question to which we now turn.

## 8.4. THE CONNECTION WITH POVERTY

The standard criterion for identifying poverty is low income. As noted above, the right to work can be considered as a proxy for a right to income, and this gives us a first aspect of the relationship between the right to work and the reduction of poverty. But a wider set of issues is also involved. If we follow Sen's capability approach, and consider work and employment as freedoms that enhance people's ability to undertake valued activities, then employment may play additional roles in overcoming disadvantage.

We need to separate two aspects. The first is the connection between work and employment, on the one hand, and poverty, on the other. How far is poverty the consequence of deficits in work, such as a shortfall of employment or inadequate conditions of work, and – correspondingly – to what extent is employment creation a primary instrument for reducing poverty, either through the income it generates, or through the empowerment of those employed?

The second is, given the relationship between employment and poverty, how the formulation and promotion of a right to work might lead directly or indirectly to an increase in employment, improvements in the quality of work, or an increase in income from employment.

### 8.4.1. Work, Employment and Poverty

It is a banal and frequent observation that the poor cannot afford to be unemployed. However, there are a number of situations where lack of employment is an important factor in poverty:

- In many occupations, notably but not exclusively in agriculture, there are large seasonal variations in demand for labour, or otherwise precarious or unstable employment relationships.
- In some occupations, low productivity may take the form of long periods of availability for work but with little to do, as occurs with many casual workers and petty shopkeepers.
- Particular groups (defined by sex, race, sexual preference, social stigma or other factors) face discrimination in the labour market, which excludes them from some or all types of work.
- Short-term crises, whether economic, war or natural disasters, often lead to dramatic employment shortfalls.
- Among the poor, a substantial group of people seek work but cannot obtain it because of poor health, disability or physical condition, inability to move to available jobs, lack of skills and competences and other factors.

At different times and in different places, employment policy has been designed to respond to some or all of these situations as part of an effort to reduce poverty. Public works programmes have long been the response to employment shortfalls due to

short-term economic downturns, droughts and other disasters. An internationally coordinated programme of public works was advocated by the ILO, among others, in order to restore employment levels during the Great Depression in the 1930s.<sup>189</sup> In their classic and influential study of poverty in India, Dandekar and Rath (1971) argued that while the poorest 10 per cent of the population needed to be supported through income transfers and other social policies, the central policy instrument for eliminating poverty among the majority of the poor should be a programme of employment creation through public works programmes. The same basic idea has continued to underlie policy formulation in India, notably giving rise to the Maharashtra Employment Guarantee scheme and its successor, the National Rural Employment Guarantee Scheme (NREGS). The employment guarantee offered in these programmes consists mainly of employment in public works programmes of one sort or another.

A rather different argument can be built on a Keynesian foundation. Bhaduri argues that there is considerable economic slack, even in a developing country such as India, which shows up as disguised rather than open unemployment – as in low productivity self-employment. This means that action to increase aggregate demand, especially if focused on employment intensive activities, will generate growth and employment in a virtuous circle (Bhadhuri 2005). Again it is the creation of employment that is the key to reducing poverty.

The primary goal of these programmes is income generation. But some programmes, especially those which provide an employment guarantee, aim to do more: to empower poor individuals and groups by giving them the right to make demands – in this case the demand for work – that must be satisfied. It is an explicit aim of the Indian Employment Guarantee Scheme to be a first step towards a right to work, 'as an aspect of the fundamental right to live with dignity' (Drèze and Khera n/d).

On the question of discrimination, various forms of affirmative action to increase the access of deprived groups to jobs are widely practised, although there is little evidence that they increase the overall volume of employment, rather redistributing the employment that already exists.

These policy approaches, and others like them, are certainly effective up to a point. There is little doubt that programmes and policies that create employment can have a substantial impact on poverty. Even when the employment deficit as such is not large, a tighter labour market can help to raise wages and draw in additional workers.

Some provisos are necessary, however. First, direct employment creation, notably through public works programmes, clearly helps to mop up seasonal unemployment, and to compensate for loss of employment due to crisis or economic fluctuations. But such programmes often miss large segments of the population, in many places including the poorest.

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189. See Rodgers et al (2009: 175-76).

Second, most poor people are not unemployed. Many of the poor, notably women, already work far too much; employment creation programmes merely increase the pressure on them to work more. In reality, for the majority of the poor the main employment problem is one of overwork at low productivity, whether in self-employment or wage work. The issue is then not creating employment but rather raising productivity, notably in peasant agriculture or small informal enterprises, so as to raise incomes.

Third, the quality of the jobs that are created is often poor. Much of it consists of hard unskilled labour, in poor working conditions, with little development of skills. As a means of redistributing income it is rather inefficient, and its main advantage is self-selection – only those who are really in need will accept to undertake the type of work concerned. Such policies fail to take into account the fundamental questions about the quality of work discussed above.

#### **8.4.2. The Impact on Employment of the Right to Work**

The second question is how far policies to promote the right to work can in practice lead to more and/or better employment. At least three issues need to be resolved. The first is the responsibility for ensuring that the right is realized. The second is the productivity of the work that is done. And the third is dealing with the diversity of needs.

On the first issue, in practice, where attempts have been made to introduce the right to work the ultimate responsibility has fallen on the state – either because the state itself becomes the sole employer, or because it has to put in place a frame of regulation that ensures that private employers provide the necessary employment. That this was inevitable was already foreseen by de Toqueville;<sup>190</sup> and in fact the socialist economies of Central and Eastern Europe were able to deliver employment for all precisely because of the dominance of state employment. In rights-based employment schemes such as the Employment Guarantee Scheme (NREGS) in India discussed above, it is again the state that is the funder of last resort. This is a paradox in economies where employment is essentially generated in the private sector. But imposing employment targets, goals or conditions on private enterprises, whether through persuasion or through legislation, has rarely been very successful. High levels of private sector employment can certainly be achieved with the right incentives, sufficient economic growth and a high level of demand. But it is again the state that has to design and implement policies which cause enterprises to respond in such a way that the right to employment is realized.

The second question, the productivity of the work that is done, is a fundamental one. A right to work that ignores the relationship between employment and production is not sustainable. This was one of the fundamental

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190. Quoted in Standing (2002).

difficulties of the implementation of the right to work in the European socialist economies – the growing numbers of unproductive workers in state enterprises was a major contributor to their ultimate economic failure. A right to work that is merely a camouflage for redistribution may be viable in the short term – indeed, this is the logic underlying many employment-creating public works programmes. But in the long run, a right to work is about the effective organization of the production system, and has to be connected to a wider strategy of investment, of skill development, of enterprise creation and of productive growth, which can create opportunities for productive work to which the poor have access.

This is also the precondition for the creation of decent work. Where the right to work is interpreted as an employment guarantee in public works, the question of the quality of work receives little attention. Yet as we have seen above, if there is no consideration of the quality of work, the right to work may turn out to be drudgery for a person on the dole. There has to be a broader vision in which work and employment play a more positive role in people's lives. But the economic preconditions remain the same. Decent work has to be productive if it is to be viable. The key to a right to decent work therefore lies in finding ways to ensure that improvements in work contribute at the same time to economic goals, in terms of output and productivity. If so, implementing a right to decent work can be an important contribution to a strategy for employment creation. Unfortunately this does not appear to be typically the case. In practice, most economies, both industrialized and developing, are dualistic in their employment structures, with only a minority of high-productivity, decent jobs. Unless ways are found to address the challenge of improving work and employment in the informal economy, the right to decent work will remain in the sphere of good intentions.

And the third question, diversity, raises complex questions to which there are no easy answers, for needs and demands for work vary greatly. If the goal is limited to poverty reduction, however, the participatory approach adopted by the NREGS, which gives people the right to demand employment at the local level, in other words making the right to work a claimable right, and giving different groups the chance to make different demands, has shown promising results. The evidence from the initial years of implementation of the programme suggests that it has been successful in increasing the employment levels of women and of scheduled castes and tribes, and so in responding to the needs of different groups among the poorest.

## **8.5. REFLECTION AND ASSESSMENT**

The concept of the right to work, as specified in the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights, is appealing, and is quite compatible with the ILO's notion of decent work. But as soon as one digs deeper into the content of this right, many complicating factors emerge, in terms of the type of work to which this right refers, its desirability or otherwise,

how it is remunerated, how it is connected with the broader system of production and distribution, and how the right can be realized.

One of the difficulties of the notion of the right to work, as specified in these international instruments, is in fact its breadth. It encompasses a wide range of key features of the world of work, all intrinsically desirable – but not necessarily all compatible or easy to achieve simultaneously. A more limited notion, such as access to gainful employment, may be a more practical way forward.

The basic point, from an economic perspective, is that work has a dual role: as a source of identity, income and other rewards for the individual; and as a factor of production, from the point of view of the enterprise or the economy. The rights discourse is of course built on the former role; but in an economic analysis it cannot be separated from the latter. This is one of the points where the perspectives of economists and lawyers tend to diverge. From an economic perspective, progress in access to work and improvement in its quality need to be considered alongside progress in output and productivity and production – whatever the political or social environment.

Ultimately, the value of the idea of the right to work depends on the existence of mechanisms for it to be realized, and many of these lie in the economic domain – notably a state commitment to economic policies that deliver high levels of demand for labour. The notion of a right to work may add political pressure on governments to put such policies in place, and may, if it is legislated, give people the power to demand that the authorities provide employment. But the need for economic policies to satisfy this demand remains. At the same time, an economic approach alone is too limited. Realizing the right to work is also a question of empowerment and social institutions, legal frameworks and political action. Integrating these different elements calls for a more sophisticated cross-disciplinary approach; as we have seen, Sen's frame of analysis in terms of freedoms and capabilities offers one possible route forward.

As for the linkage with poverty, for the majority of the poor, while employment deficits are important, poverty is also the result of low productivity, wages and incomes in existing employment, along with shortfalls in social protection. So while employment creation is an essential element of poverty reduction strategies, it is only one element among others. That being said, the experience in India with the right to work as a basis for poverty-reducing employment programmes suggests that the rights-based approach can make a significant contribution.

The notion of the right to work can play a useful supporting role in a strategy to reduce poverty, but is unlikely to form its core. A range of mutually reinforcing policies is required to raise the pace of employment creation, improve the quality and productivity of work, and strengthen the economic and political capabilities of the poor to demand and take advantage of economic opportunity.



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## Social Security and Children: Testing the Boundaries of Human Rights and Economics

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### 9.1. INTRODUCTION

Seymour and Pincus (2008) mount the argument that human rights and economics are not two disciplines in timeless conflict. Rather they are complementary fields with different epistemological foundations. Their model posits that human rights provide the normative standards while economics provides the tools for choice-making and trade-offs within it. They do not elucidate at length on what standards are relevant but they do note that child labour, for example, is out-of-bounds, even if children might provide a cheap and efficient form of labour from a pure neoclassical ‘welfare economics’ perspective. In terms of trade-offs, they are sceptical about human rights theorists ‘using the principle of progressive realization as a “get-out-of-jail card” that excuses them from difficult choices between consumption today and investment for tomorrow’ (2008: 403). In other words, if human rights can’t provide the hard answers, economics must take over.

This unitarian approach is welcome but questions still need to be answered about the relevant boundaries between the two fields in practice. Does the ‘devil in the detail’ really permit such complementarity? This chapter takes up the case of child social grants, as one classical pillar of social security.<sup>191</sup> Such grants are currently enjoying a renaissance amongst development economists and human rights advocates but there remains significant divergence in the content of the policies proposed. The World Bank, for example, places a greater emphasis on a fixed fiscal envelope, targeting and the imposition of conditionalities (Fizbein and Schady 2009). ILO economists and human rights groups tend to call for a flexible approach to fiscal space, are cautious about targeting, and are sceptical or opposed

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191. The classical nine pillars of social security are: healthcare, sickness benefits, old age benefits, unemployment benefits, employment injury coverage, family and child support, maternity benefits, disability benefits and survivor’s benefits. See ILO Convention 102 and also CESCR (2008) General Comment No. 19.

outright to conditionalities (Cichon and Hagemeyer 2006; Bradshaw and Quirós Viquez 2008).

The question is how one resolves these apparent conflicts. Can one neatly place them in different human rights and economics baskets as Seymour and Pincus seem to suggest? In answer, this chapter first provides in Sections 9.2 and 9.3 a historical and contemporary overview of child grants from the perspective of human rights and economics. The bulk of the chapter is then devoted to the question of fiscal affordability of child grants. Section 9.4 posits a human rights/economic framework for determining affordability, while Section 9.5 examines the current economic evidence, particularly in relation to Africa and Asia. Within this discussion the common issue of universal vs targeted schemes is briefly addressed from both perspectives and the diversity of views within each is noted. The question of conditionalities is taken up briefly in the conclusion.

Section 9.6 concludes with the case that a more nuanced approach or perhaps a sliding scale in assessing the boundaries of human rights and economics is needed where there are potential or real conflicts. Where the human rights claim exhibits relativity dimensions, preference might be given to economics. On the other hand, where economic claims are ambiguous, empirically weak or strongly contested, the preference might work in the opposite direction.

## **9.2. CHILD BENEFITS – A RICH ENCLAVE**

Family or child benefits are not a novelty in social security praxis. A cocktail of demographic crises, labour and maternalist movements and recessionary shocks in the late nineteenth and early twentieth centuries helped propel the early development of social security systems in the West. Single women with children were seen as one particularly disadvantaged grouping. Between 1911 and 1919, Norway, together with forty states in the United States, introduced cash benefits to single and widowed mothers (Larsen 1995).

A half century later, the International Labour Organization adopted Social Security (Minimum Standards) Convention 102 (1952). Ratifying states must choose, at a minimum, three of the nine pillars of social security for implementation, one of which is ‘family benefits’. Families with responsibility for the maintenance of children are entitled to a benefit valued at 1.5–3 per cent of the wage of an ordinary adult male labourer. If we fast forward again, it is evident that family benefits represent a settled part of many social security systems in the West. By the early 1970s, Gauthier (2002/3) calculates that direct and indirect cash benefits for families had stabilized at 11 per cent of average earnings in twenty-two OECD countries, and gradually grew to 13 per cent by the mid-1990s. There is of course considerable variance between Western countries as regards social security benefits, including child grants. Benefit levels in Southern European countries and ‘Liberal’ countries such as the United States are significantly lower than the ‘Corporatist’ countries – the Nordics, Germany and France.

If we look East, transitional countries in the wake of the fall of the Berlin Wall experienced a rather abrupt shift from a system of universal family benefits to means-tested targeted benefits. Forster and Toth (2001) defend these new benefits on the basis that poverty would have been two-thirds higher in the Czech Republic and Hungary in the absence of these cash transfers. Marginalized groups such as the Roma have often struggled to secure these rights, while benefit levels for the unemployed and homeless have been set quite low in some countries (Langford 2008a).

If we turn to the South, the difference could not be starker. The development of social security systems in conformity with ILO Convention 102 of 1952 is minimal. Most developing countries have only established schemes for those working in the formal sector, whether private or public sector. This usually accounts for the minority of the workforce. According to the ILO, the result is that only one in five persons has access to formal social security systems (Cichon and Hagemeyer 2006). For child benefits, a 1999 survey of fifty-seven non-OECD countries revealed that only four countries recorded supporting family allowances (Roddis and Tzannatos 1999).

The kitchen cupboard of social security thus looks pretty bare after sixty years of international development thinking and practice. Townsend (2008) argues that today's developing countries have progressed more slowly in the field of social security than the United States at comparative points in economic development. By 2005, the World Bank provided only 10 per cent of loans for broadly defined social protection, of which social security is just one element (Hall 2007). Amongst bilateral donors, only Germany and the United Kingdom have provided sustained but partial support to country level programmes.

The most sustained development initiative in the area was the World Bank push for privatization of pension schemes. This was piloted in Chile in 1981 and later extended, fully or partly, to many countries in Latin America and Eastern Europe (Muller 2003). The results have not been looked on favourably by the World Bank's own evaluators or international human rights and labour committees. For example, the Chilean system has been criticized by the UN Committee on Economic, Social and Cultural Rights (2004: par. 20) for its failure to 'guarantee adequate social security for a large segment of the population who do not work in the formal economy or are unable to contribute sufficiently to the system'.<sup>192</sup> In the case of the IMF, the focus has principally been on preventing debtor governments from maintaining or increasing levels of social spending. In the current economic crisis, the IMF in a Keynesian tone has accepted that social security systems can be important economic stabilizers (IMF 2009), but its approach in practice has only partly changed (Stiglitz Commission 2009; Ekeberg 2009).

The conspicuous absence of social security in international development practice is most evident in the Millennium Development Goals, which arguably

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192. A complaints committee established under Article 24 of the ILO Constitution also found it violated many of the earlier ILO Conventions Chile had signed – ILO (1998).

represent a consensus on development priorities amongst bilateral and multilateral development agencies. Search as one might, there is no target for progress on social security. Target 1.1 calls for a reduction in income poverty by half and one might assume social security could be a useful strategy in this regard. But key guidance documents, such as UNDP's *Human Development Report 2003* barely mention the topic. When it comes to the related target of halving hunger (1.b), there is passing reference to social security in the report from the Jeffrey Sachs-led UN Millennium Project Task Force on Hunger (2005: 149–52). However, the concrete recommendations are only for the establishment of so-called 'productive safety' such as food-for-work schemes, microfinance and restoring degraded environments. More recently, the UN Office of Human Commissioner for Human Rights (2008) has called for states to consider setting national targets for social security as part of their contextualization of the MDGs.

### 9.3. CONVERGING HUMAN RIGHTS AND ECONOMIC DISCOURSES

#### 9.3.1. Human Rights

This absence of social security in development practice is difficult to square with the human rights that all states have committed themselves to in international treaties and declarations. Along with the right to equal treatment, the right to social security is the only right to be mentioned twice in the Universal Declaration of Human Rights (UDHR). The right is recognized in Article 22 while Article 25 re-emphasizes its importance in realizing the right to an adequate standard of living and health, and adds that childhood is 'entitled to special care and assistance'.

A series of subsequent international<sup>193</sup> and regional<sup>194</sup> human rights conventions provide further recognition. Article 9 of the International Convention on Economic, Social and Cultural Rights 1966 (ICESCR), ratified by 160 states, provides that 'The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance'. Article 26 of the more recent and almost universally ratified Convention on the Rights of the Child 1989 is more specific as to children's right to benefits:

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

193. See also International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 5(e)(iv); Convention on the Elimination of All Forms of Discrimination against Women, Articles 11, para. 1(e) and 14, para. 2(c).

194. See also the American Declaration of the Rights and Duties of Man, Article XVI; Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights (Protocol of San Salvador), Article 9; European Social Charter (and 1996 revised version), Articles 12, 13 and 14.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

What is interesting to note is that the international recognition of the *human* right to social security was correlated with national development of social security systems in the West. Disentangling cause and effect is difficult and one should in no way ascribe a prominent role for the legal recognition of rights. But it is notable that many of the schemes have a partial rights-based character in that they were codified in law and provide some form of remedial relief. The right to social security was included in a number of post-First World War constitutions such as Germany and Finland (1919), Iceland (1920), the Netherlands (1922) and Spain (1931), and a series of ILO treaties on social security from the 1930s began to codify obligations of states. In the post-Second World War era, the European Social Charter was adopted while national legislation and schemes were solidified in combination with administrative law remedies (Annan 1988). The rights-flavour of these developments is perhaps best seen in the reasons advanced by the US Supreme Court that finally allowed President Roosevelt's New Deal: there was '*liberty* in a social organization which requires the protection of the law against the evils which menace the health, safety, morals and welfare of the people.'<sup>195</sup>

However, part of the lack of emphasis in the development field today may lie in some of these legal instruments. The 1952 ILO Convention for instance does not place much emphasis on ensuring a minimum threshold of non-contributory benefits. Such a principle has become common to economic and social rights jurisprudence over the last two decades but has only emerged recently in the ILO context. This is not to say that the ILO did not begin to take other human rights dimensions of social security seriously in the intervening period. From the 1960s to the 1990s, the ILO focused on discrimination leading to the adoption of C118 Equality of Treatment (Social Security Convention 1962) and specific conventions on migrant workers and workers with family responsibilities.<sup>196</sup> Such developments coincided with international and national human rights jurisprudence in the West, which was mostly discrimination-focused as well as international treaties on elimination of discrimination against women and racial discrimination.<sup>197</sup>

195. US Supreme Court, *West Coast Hotel v. Parrish*, 300 US 379 (1937) (emphasis added).

196. See, for example, C143 Migrant Workers (Supplementary Provisions) Convention, 1975; C156 Workers with Family Responsibilities Convention, 1981.

197. For jurisprudence, see, for example, the decisions of the UN Human Rights Committee: *Zwaan-de Vries v. The Netherlands* (Communication No. 182/1994 (9 April, 1987); *S. W. M. Brooks v. The Netherlands*, Communication No. 172/1984 (9 Apr. 1987) *Pauger v. Austria*, Communication No. 415/1990 (1995) and *Gueye et al v. France*, Communication No. 196/1983 (3 Apr. 1989). See also *Gaygusuz v. Austria*, European Court of Human Rights, 16 Sept. 1996 and *Schuler-Zgraggen v. Switzerland* [1993] IIHRL 48 (24 June 1993), European Court of Human Rights; European Committee on Social Rights (Complaint No. 14/2003, *International Federation of Human Rights Leagues (FIDH) v. France*, Decision on the Merits); Spain (Decision of the Constitutional Court of Spain, Case No. 130/1995, (1995) 3 *Bulletin on Constitutional Case-Law* 366); Switzerland (V

The first signs of recognition of the need for a minimum threshold appeared in the 2001 General Conference of the International Labour Organization. The final resolution begins by referring to the original vision of the ILO Constitution, namely the 'extension of social security measures to provide a *basic income to all* in need of such protection and comprehensive medical care' (emphasis added). It simultaneously affirmed social security as a 'basic human right' and notes the importance of improving and extending social security coverage to all. The resolution recommends that countries with limited resources prioritize pressing needs, and that they consider ways to address those living in the informal economy. This is not to overstate the breakthrough in the ILO – much of the document is not concerned with the lack of a basic social security for all, which has led to a discussion amongst some on the possible need for a new ILO standard.

As noted, this growing emphasis on ensuring a minimum level for all coincides with developments in economic, social and cultural rights. The widespread ratification of international human rights treaties in comparison to ILO Convention 102 (forty-one ratifications) means that that human rights treaties potentially provide a path towards holding more states accountable for developing social security systems. Moreover, in the field of social security, 'it is likely that the ICESCR requires that states go beyond their incremental obligations under ILO conventions and address the excluded' (Langford 2007: 41). Ginnikin (2003: 2) has claimed more strongly that 'This situation of low coverage reflects a failure by governments, by countries and the international community to meet their obligations under Article 9 [of the ICESCR]'. A number of national courts from Switzerland<sup>198</sup> to Colombia<sup>199</sup> have indeed found that there is an obligation to provide a minimum level of social security.

In January 2008, this understanding of a minimum core obligation of all states to provide some form of basic social security was affirmed by the UN Committee on Economic, Social and Cultural Rights (2008) in General Comment No. 20. States have the immediate duty:

To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. If a state party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee recommends that the state

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*v. Einwohnergemeine X und Regierungsrat des Kantons Bern* (BGE/ATF 121 I 367, Federal Court of Switzerland, 27 Oct. 1995)). See also Supreme Court of Argentina, *Etcheverry, Roberto E. v. Omint Sociedad Anónima y Servicios*, General Attorney's brief of 17 Dec. 1999, Court decision of 13 Mar. 2001 and Constitutional Court of South Africa, *Khosa & Ors v. Minister of Social Development & Ors* 2004(6) BCLR 569 (CC).

198. *V v. Einwohnergemeine X und Regierungsrat des Kantons Bern* (BGE/ATF 121 I 367, Federal Court of Switzerland, 27 Oct. 1995).

199. T-207/95, T-254/93, T-539/94 and T-431/94. See Sepúlveda (2008) and Arango and Lemaitre (2002).

party, after a wide process of consultation, select a core group of social risks and contingencies.

This minimum-style obligation has been a stable part of the Committee's approach. In 1991, it was official derived from the general duty of states in Article 2(1) of ICESCR to 'take steps to "progressively achieve" the rights within 'maximum available resources' (UN CESCR 1991). In other words, a state must immediately meet a minimum standard and then progressively realize an adequate level over time. However, the Committee is less axiomatic than Ginnikin and remains sensitive to country situations. A state can claim it lacks sufficient resources, but it carries the burden of proof if it fails to meet the minimum.<sup>200</sup> To make this argument, the state must also demonstrate that it has sought to secure international assistance (CESCR 2008: para. 61).

### 9.3.2. Economic Interest and Emerging Models

These human rights arguments have coincided with the increase in interest in social security and/or cash transfers in development policy. There are two principal empirical reasons for this. The first is the persistence of income poverty in developing countries despite high levels of economic growth. For instance, Son and Kakwani (2006) demonstrated that over 237 spells or periods of economic growth amongst eighty developing countries, only 23 per cent of these led to pro-poor outcomes in income poverty (i.e. the average increase in income for the poorest deciles was higher than average). This suggests that redistribution, and not just growth of average income, plays a critical role in reducing poverty. This conclusion is largely buttressed by transatlantic econometric studies of North America and Europe. Brady (2005: 1) concludes that 'substantial, even dramatic, differences exist across rich Western democracies' due to the respective size of the social welfare state. Other studies have also indicated that initial high levels of income equality are important for ensuring that future growth is pro-poor (World Bank 2006).

Second, a number of Southern countries have managed to develop social security and cash transfer schemes or programmes despite assumptions that they lacked the financial capacity and administrative competence. These have included *unconditional* schemes such as South Africa's child, disability and old age grants and India's and Brazil's old-age pension system. It has also included *conditional* cash transfer programmes. Mexico's *Progresa* and Brazil's *Bolsa Familia* programmes, which condition grants to children on mothers meeting various conditions, such as school attendance and health check-ups for children, are the most well known.

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200. In order for a state party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, these minimum obligations (CESCR, 2008: 60).



India's Rural Employment Guarantee Act also provides the right to 100 days of income each year if basic employment cannot be provided by the state. Evaluations of these different policies and programmes have demonstrated that they have had a direct impact in reducing poverty with some multiplier and knock-on effects in other areas (Aguero, Carter and Woolard 2007; Medeiros, Britto and Soares 2008; Villanger 2008; Ravillion 2007).

The emerging proposals on child grants are not uniform. They can be crudely distinguished by different policy constellations amongst development economists and institutions. One school of thought is largely represented by the International Labour Organization and HelpAge International (Cichon and Hagemeyer 2006; Kulke 2007; Stefanoni 2008) although World Bank economists such as Ravillion (2007) are sympathetic to some arguments. The two organizations have called for a Global Social Security Floor on the basis of *both* human rights and economics. They prefer a fiscal space approach to affordability and often reveal a preference for universal and unconditional schemes.

The other school of thought is best represented by current World Bank policy and a range of economists associated with the Latin American schemes. In the early 2000s they moved from a principal focus on privatization to also supporting targeted means test social schemes (Bakvis 2007). This has now developed to embrace *conditional cash transfer programmes*. Fiszbein and Schady (2009) for the World Bank found that 'there is solid evidence of their positive impacts in reducing short-term poverty and increasing the use of education of health services'. In January 2009, the Bank announced increased loans to the area, which is likely to escalate with the decision by the G20 in April 2009 to provide 5 per cent of the 1 trillion G20 global stimulus to support social protection, boost trade and safeguard development in low-income countries. Much of this funding will come via the World Bank, although it is not clear how much will be allocated for grants for social protection and how much will be in the form of grants.

#### 9.4. AFFORDABILITY OF CHILD GRANTS: A HUMAN RIGHTS AND ECONOMICS TEST

We now turn to the main question in the chapter of assessing whether such social security/cash transfer schemes are affordable and under what conditions: for example, targeted or universal? Can we find a comfortable fit between human rights normative standards and the economic evidence? Can the seemingly more 'rights-friendly' approach of the ILO be justified economically or do the World Bank's recommendations provide a more realistic picture of what can and should be achieved? It should be noted from the outset that the structure of many cash transfer programmes, current and proposed, do not meet international human rights and labour rights standards since they are not established as national systems in law. For the purpose of comparison at hand, we will treat them as *potential* social security models.

The biggest conceptual barrier to the introduction of social security systems in the South has been the widespread assumption that states cannot afford them. In the human rights context, this assumption requires proof. The general test is that a state must use its 'maximum available resources' for economic, social and cultural rights, and is contained in international human rights treaties such as ICESCR and CRC and a number of constitutions in Southern countries. Interestingly, regional human rights bodies have affirmed the principle in the European Social Charter and African Charter on Human and Peoples' Rights, even though both instruments do not allow states to explicitly rely on such a defence.<sup>201</sup>

This principle is variously viewed as both an obligation of conduct and a defence for failure to meet an obligations or right. But what does the principle mean in practice? In General Comments, the UN CESCR (1991 and 2008) has emphasized that the devotion of resources to the rights must be 'adequate' and 'reasonable', and has further emphasized principles of non-discrimination, participation, avoidance of deliberative retrogressive measures and the need for general accordance with 'international human rights standards'.<sup>202</sup> The UN Committee on the Rights of the Child (2003) has set out similar principles and also emphasized the need to prioritize children.

These principles are of course quite vague and the usual response from human rights lawyers is that one needs to turn to contextualized adjudication and assessment processes. In the case of economic and social rights, this is now possible with the recent explosion of jurisprudence (Langford 2008b; Coomans 2006). However, looking to adjudicators on this *particular* principle of the use of maximum available resources is difficult since courts tend to be very cautious about making orders that impact on the allocation of resources; the doctrine of separation of powers between the judiciary and executive/legislature looms large here in judicial reasoning.

Nonetheless, courts have made orders, concerning all manner of human rights, that have had budgetary consequences, even within this cautionary framework. In Langford (2005), I argued that we can discern that adjudicators tend to be influenced by the following *contextualized* factors when assessing such cases, namely: (1) the *seriousness* of the effects of the violation; (2) *precision* of the government duty; (3) *contribution* of the government to the violation; and (4) *manageability* of the order for the government in terms of resources. Most of these cases tend to concern the allocation of resources within a particular sector. For example, when faced with an argument that a particular health treatment or service is unaffordable, courts have assessed the claim by examining its proportion of the health budget. Where the figure is minimal, courts tend to

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201. See *SERAC v. Nigeria*, African Commission on Human Rights, Case No. 155/96, Decision made at 30th Ordinary Session, Banjul, The Gambia, from 13 to 27 October 2001; Complaint No. 13/2002, *Autism-Europe v. France*, Decision on the Merits (European Committee on Social Rights).

202. CESCR, *Maximum Available Resources Statement*, para. 8.

be less sympathetic to government claims.<sup>203</sup> However, in countries which have recognized a ‘minimum core’, considerations of resource constraints are sometimes given less weight (Sepulveda 2008).

If we want to examine the affordability of a particular social right from a country or macro budget perspective, then the jurisprudence of international human rights committees is potentially more useful. For example, in its concluding observations, the CESCR has taken notice of the resources of a country in making recommendations to states on the right to social security. To a wealthy state like Canada, the UN CESCR (2006b) urged the establishment of social assistance at levels which ensure the realization of an adequate standard of living for all, and interrogated the state very closely on its existing social security schemes. For countries in transition, such as Russia, the Committee required ‘the raising of minimum pension levels’ (UN CESCR 2003: para. 50) and criticized Georgia for failing to meet the minimum (UN CESCR 2002).<sup>204</sup> In Senegal, the UN CESCR (2001) only urged the country ‘to allocate more funds for its 20/20 Initiative, designed as a basic social safety net for the disadvantaged and marginalized groups of society’, although it is arguable that it could have required much more of Senegal given ILO research (Gassmann and Behrendt 2006).

These back of the envelope ‘Geneva observations’ of a country’s available resources for the right to social security are obviously not particularly rigorous from an economics perspective. The Committee is gradually taking up Robertson’s (1994) call to develop standards and indicators to measure the extent to which resources (financial, natural, human, technological and informational) are available. But their approach is likely to be focused on the mutual setting of benchmarks that states must meet the next time they come before the Committee (Riedel 2003).

It remains an open question whether economists can really answer the question with any greater ease than human rights lawyers. The essential problem does not disappear. How does one take into account the direct and indirect polycentric consequences of different funding allocations? Finding the economically optimal *level* and *distribution* of social expenditure that meets the human rights test of maximum available resources is a challenging task. This is because the human rights *resources test* requires assessment of:

1. *the resource envelope* including current and potentially untapped resources;
2. *consideration of the effects on other human rights* if there is redistribution within the budget or prioritization of some rights over others; and
3. *negative and positive externalities that impact resource availability* in the short, medium and long-term.

203. See, *Eldridge v. British Columbia (Attorney General)* [1997] 3 S.C.R (Supreme Court of Canada); *TAC v. Ministers of Health*, 2002 (10) BCLR 1033 (CC) (South Africa).

204. *Conclusions and recommendations of CESCR: Georgia*, UN Doc E/C.12/1/Add.83 (2002), para. 17.

The first factor is particularly elastic as it could involve reallocation of existing items or new sources of income (tax, borrowings, aid, increased efficiency) while the latter makes for difficult forecasting.

To a certain degree, the issue is not new in economics. This human rights question mimics the challenge Samuelson (1954) laid out regarding public goods. He concluded that the determination of the optimal level and distribution of *private* and *public* goods was close to impossible without an 'omniscient calculating machine'. This was because the marginal utility of consumption of *public goods* could not be determined through standard competitive pricing, which could be used for private goods. There is simply no market for goods which are, by definition or social construction, *non-excludable* and/or *non-rival* (Kaul, Grunberg and Stein 1999). Samuelson dismissed the possibility of using questionnaires to discover utility preferences as people would send false signals in order to free ride. Highly deliberative democracies such as Scandinavia were considered as a possible way of capturing the utility preferences of *all* citizens but such societies remain the exception rather than the rule and consensus is partly mythical. A third possibility, foreshadowing Rawls, was the use of a Kantian categorical imperative where utopian signalling could be marshalled to set preferences. Today one might also have added human rights as an external signalling device. But given the number of human rights, which are just one subset of public goods, the complexity problem does not disappear for states with significant resource constraints.

The above does indicate that both economics and human rights communities join common cause in being somewhat distrustful of the ability of standard majoritarian democracies to determine the optimal level of distribution of public goods, whether based on utility functions or normative human rights standards. At the same time, neither has developed a fundamentally authoritative alternative to the post-factum of democratic decision-making.

Economists have though offered a number of simpler tests, including in the field of child grants, on each of the three elements of the resources test set out above. Human rights scholars have sought to give some of these tests a more human rights character (Felner 2008; Sakiko 2008). Anderson (2008) has proposed a new methodology which would allow an assessment of all three steps, although in a slightly different order, so as to determine whether a government is failing to use maximum available resources.<sup>205</sup> Such evidence can be particularly useful in the policy and democratic deliberation context, and also to a certain degree in more legal forums as the *Mahlungu* case makes clear.<sup>206</sup>

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205. He examines whether the increase in expenditure on a particular human right, holding all human rights related expenditure constant, would be affordable within current and potential resources adjusted for externalities and feedback loops.

206. *Mahlungu v Minister for Social Development* Case No 25754/05 (High Court) in South Africa. See discussion in Section 5.3.

## 9.5. REVIEWING THE EVIDENCE ON FISCAL AFFORDABILITY

### 9.5.1. Affordability of Targeted or Universal Schemes

The literature on child grants and social protection for developing countries has generally been dominated by assessing the affordability or other features of targeted as opposed to universal schemes. Such schemes usually function through some form of means-testing with the aim of ensuring that the exclusion of non-poor and the inclusion of the targeted poor is maximized (Ravillion 2007). This emphasis on targeting has been justified by many on the basis that Southern countries cannot afford universal schemes, that targeted schemes are the most effective in reducing poverty, and that many of the best practices emerging from the South have used targeting. It is also common in the literature to see references to economists being in favour of targeted schemes and human rights, or social justice advocates in favour of universal schemes, which are said to avoid the problem of stigmatization and are more attuned to the idea of universal rights. The lively debates over whether Brazil's Bolsa Familla Programme should be extended universally are but one example (Villanger 2008).

The reality however is more complex, and if we take a strict approach to the fields of economics, human rights and political science, we find both conflicting views and evidence. There are well-known but often under-mentioned theoretical economic arguments *against* targeting: administration costs are usually higher, there are high levels of under-inclusion of the poor, and work disincentives and false reporting can flourish if current beneficiaries seek to avoid going over the qualifying income threshold. These elements emerge in evaluations of some schemes. World Bank economist Ravillion (2007) found in a review of social protection programmes in thirty-five Chinese cities that the coverage of and impact on the poor was not related to the degree of targeting. Kakwani, Soares and Son (2005) found that the impact on poverty from the use of 0.5 per cent of GDP for child grants in sub-Saharan Africa had roughly the same impact on poverty regardless of whether a universal or targeted child grants scheme was used. In South Africa in January 2009, the Social Development Minister actually urged indigent parents to apply for child support grants due to the high numbers of potential beneficiaries not included on the potential indigent register, a common problem with targeting.

If we turn to human rights scholarship and jurisprudence, we can actually find support for targeting if resources are not available for broad-based schemes or it is a way to promote substantive equality (UN CESCR 1991, 2009). To political science, both universal and targeted schemes are promoted as being palatable to electorates and sustainable over the long-run. Universal scheme advocates assert that the 'non-poor' will support them as co-beneficiaries, while those in favour of targeted schemes point to the palatability of lower consumption of fiscal resources and perceived efficiency of directly addressing a social problem.

These intra-disciplinary conflicts means that if we are concerned with child grants in particularly poor countries, one needs an open mind on universal vs. targeted schemes. Moreover, it is in such countries that the arguments can move to their extremes. For instance, resources are highly limited but the conditions for targeting are the most challenging: administration is difficult and close-knit communities may be reluctant to divide themselves on income grounds. There are also policy variants in between strict universal and targeting approaches, such as geographical targeting, broad targeting or 'loosely enforced' targeting, which can be considered. Each country is obviously characterized differently in terms of the number of poor, available resources and bureaucratic efficiency. It is thus important to examine the affordability of both universal and targeted schemes.

### *Universal Schemes*

In ILO-commissioned studies, Mizunoya, Behrendt, Pal and Léger (2006) and Franziska and Behrendt (2006) respectively estimated what it would cost to provide a universal child grant in five Asian and two African countries, as part of a basic social protection package. For the Asian countries of India, Nepal, Bangladesh, Pakistan and Viet Nam, the first scenario involved a universal child grant set at US\$0.25 a day in terms of purchasing power parity (PPP) for all children 0–14 years old. This was based on 25 per cent of the US\$1 a day international poverty line. In the case of Senegal and Tanzania, the benefit was set at 35 per cent of the national food poverty line and was restricted to school-age children, with all orphans added in the Tanzanian scenario. It is questionable though whether school age children should be prioritized over infants for the African grants. Empirical results from South Africa indicate that child benefits have their greatest impact on child nutrition in the earlier years of an infant's life (Jorge, Carter and Woolard 2007).

There are two important conditions or assumptions behind these proposed benefit levels. They are not intended to take *all* children above the poverty line. Rather the intention is to move a substantial number of households *towards* or *over* the line and be *complemented* by old age and disability pensions and healthcare access as part of a basic social protection package. In the case of Senegal, the authors calculate that the introduction of the child benefit would reduce the poverty headcount from 20 to 14 per cent and the poverty gap by 37.5 per cent.

We could also get a glimpse of the reasonableness of the level of benefit through a comparison with other countries. This is commonly done with neighbours in a region (Felner 2007), but this is impossible in the case of a universal child benefits.<sup>207</sup> Universal child grants exist in about half the Western countries (Clearinghouse on International Developments in Child, Youth and Family Policies 2009). Table 9.1 compares the benefit levels in Senegal and

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207. In the case of pensions it is partly possible, as there are universal pension schemes in seven developing countries, ranging from 0.1 to 1.7 per cent of GDP (Villanger, 2008).

Norway as percentages of national poverty lines.<sup>208</sup> It shows that the proportions of the national poverty lines are roughly similar. However, the result in Norway is understated since the standard benefit in Norway is supplemented for parents that are single, live in certain regions or don't use kindergartens, and is complemented by a range of other allowances and tax breaks. Thus, in comparative terms, the proposed benefit in Senegal seems reasonable in terms of making a contribution to the realization of the right to social security. Moreover, these proportions are also consistent with the benefit levels set in many of the targeted Latin American schemes (Villanger 2008).

**Table 9.1. Modelled and actual benefits as proportion of national poverty lines**

	Senegal (Francs) Every family	Norway (Kroner) Every family
Level of benefit (per 28 days)	3,161	970
National poverty line	18,329	6,367
Proportion of gap	17.2%	15.2%

Sources: Franziska and Behrendt (2006), NAV (2009) and Norwegian Central Bureau of Statistics (SSB), 2004.

We now turn to the fiscal affordability of such proposed grants. Economists customarily use the percentage of GDP as one rule of thumb and human rights scholars and the CESCRC have embraced this measure to a certain degree (CESCRC 2006; Robertson 2004; Felner 2007; Sakiko 2008, and see discussion in Anderson 2008). One disadvantage of this approach is that it doesn't take into account possible future aid flows, which could result in substantial budgetary support in some countries.

In the two ILO studies, the cost of the benefits as a proportion of GDP was calculated by first multiplying the child benefit against the beneficiary population and adding 15 per cent for administration costs.<sup>209</sup> The proportion of GDP was calculated over a twenty-year period and the percentage for the *first year* of the scheme is set out in Table 9.2. Over a twenty-year period at moderate growth rates, these amounts would generally halve.

208. This type of threshold is usually more accurate and higher than the international poverty line, although in the case of Tanzania it is much lower.

209. Disaggregated in the Senegal and Tanzania case studies by urban and rural with slightly different benefit levels as a result.

**Table 9.2. Universal child benefits: African/Asian projections versus European countries**

Projections	Child benefit as % of GDP (2006)		Child cash benefits - % of GDP (1998)	All child and family benefits % of GDP (2006)
Tanzania	2.1	Norway	2.2	3.1
Senegal	1.2	Sweden	1.6	3.2
Nepal	2.5	Finland	1.9	3.0
Bangladesh	1.7	Germany	2.0	2.9
Pakistan	1.6	Denmark	1.5	3.9
India	0.9	Netherlands	0.8	
Viet Nam	1.0			

Sources: Franziska and Behrendt (2006), Mizunoya, Behrendt, Pal and Léger (2006), OECD (2001b), and OECD (2007).

Table 9.2 also shows the costs of the universal child benefits and all child and family allowances as a percentage of GDP in select European countries. One finds that the amounts are roughly similar except in the case of Nepal where the proportion is above the European frontier. If one includes all child and family allowances in these selected Western countries (third column), then the picture changes significantly.

Nonetheless, this suggests that for Nepal, as well as Tanzania and Bangladesh, a universal child benefit at the proposed level may not be currently affordable within *domestic recourses*. For Nepal, the total cost of the proposed overall basic social security package was actually 17 per cent of GDP due to the high healthcare costs and the authors considered this unaffordable. However, when a senior Bangladesh official was questioned on the ILO studies at a workshop in 2008, he replied that the grants were affordable and that it was only a matter of political will.

However, one is immediately struck by the inconsistencies of this ILO study with the International Poverty Centre (IPC) study by Kakwani, Soares and Son (2005). In one simulation, they tested the cost to GDP of a universal child benefit calculated respectively at 20, 30 and 40 per cent of the national poverty line – see Table 9.3. This allows some comparison with the ILO study since the proposed benefit for Senegal was 17 per cent of the national poverty line. For Tanzania it is 35 per cent of the national poverty line but 17 per cent of the international poverty line, which in this case is unusually more than the national line. What is immediately noticeable from the IPC study is that for 20 per cent of the national poverty line all the figures are considerably above the ILO results.



**Table 9.3. Universal child benefits, IPC Study**

Country	20 per cent	30 per cent	40 per cent
Burkina Faso 98	3.7	5.6	7.5
Burundi 98	8.2	12.3	16.4
Cameroon 96	3.0	4.5	6.0
Côte d'Ivoire 98	2.5	3.8	5.1
Ethiopia 00	7.6	11.4	15.2
Gambia 98	4.8	7.2	9.5
Ghana 98	5.1	7.6	10.1
Guinea 94	3.9	5.8	7.7
Kenya 97	4.3	6.5	8.7
Madagascar 01	2.6	3.9	5.2
Malawi 97	6.3	9.5	12.7
Mozambique 96	6.5	9.7	13.0
Nigeria 96	3.0	4.5	6.1
Uganda 99	4.3	6.5	8.7
Zambia 98	4.8	7.1	9.5

Source: Kakwani, Soares and Son (2005).

Franziska and Behrendt (2006) make passing reference to this inconsistency but state that Kakwani, Soares and Son (2005) are using much higher levels of benefits. This assertion is not correct as the calculations I have performed for Tanzania and Senegal show that the proposed benefits levels are not dissimilar. One possible explanation is that the ILO studies use the 2006 level of GDP, while Kakwani, Soares and Son (2005) appear to use much earlier growth figures. They are unfortunately not clear as to what year they take for the analysis or whether their adjustment to 1993 prices means that they are using 1993 GDP. Given the high levels of economic growth in Africa since 1990,<sup>210</sup> one should certainly opt for the latest GDP figures possible. This gives more credence to the ILO over the IPC results.

In the Asian paper, Mizunoya, Behrendt, Pal and Léger (2006) also examine the impact of a basic social protection package (including a child benefit) on the state's budget. If the countries maintained their current allocations to social protection (e.g. in Bangladesh this is only 6.4 per cent of the budget), then the

210. These are the growth figures per year in sub-Saharan Africa: 2002 (3.5 per cent), 2003 (4.0 per cent), 2004 (6.0 per cent), 2005 (6.2 per cent), 2006 (6.4 per cent), 2007 (6.8 per cent). The estimates for the following three years are: 2008 (5.4 per cent), 2009 (1.5 per cent) and 2010 (3.8 per cent). Figures come from the International Monetary Fund (2007; 2009).

countries could only absorb 5–10 per cent of the costs of the proposed universal basic social protection schemes. If however, 20 per cent of the total budget was used for social protection – an increasingly accepted benchmark – then the authors calculate that India, Viet Nam and Pakistan could almost finance the full amount of the benefit. Bangladesh and Nepal would only be able to finance about 40 per cent of the cost. The ILO concludes that these countries would need external support for the remainder.

However, the ILO authors fail to explain why taxation could not also be used as an option. For instance, tax as a percentage of GDP in Bangladesh in 2005 was 8.5 per cent, while in India it is 17.7 per cent (Heritage Foundation 2009). It is thus not surprising that they find that the benefit is more affordable for India than Bangladesh if the current fiscal budget is used. Thus, the ILO modeling could have added taxation as a variant model, perhaps using the highest tax share of GDP amongst the five countries. If this was 15–20 per cent, it is not necessarily excessive. In the West, taxation revenue accounts for 30 to 50 per cent of GDP. We therefore need to be careful with proposals that simply propose a large-scale use of international resources for child benefits (Townsend 2008), without appreciating that some countries are simply taxing too little. A better system would be international aid that provides: (i) start-up and smoothing finances, (ii) matching finances for the poorest countries, and (iii) incentives to increase the level of taxation to a reasonable level.

### *Targeted Schemes*

Literature on the projected affordability of targeted schemes for Africa, for example, is available, but difficult to compare. It is often produced on the basis of a block grant to poor households or with a fixed resource constraint as opposed to a child grant. What could be useful is an estimation of what a South African style means-tested child grant would cost in Africa or Asia. Hanlon (2009) is one exception, and estimates that a targeted child grant *and* pension based on the South African model would cost Mozambique 0.8 per cent of GDP.

What we can do is examine the percentage of GDP for existing targeted child grant schemes in the South and North. This is done in Table 9.4. These percentages show that the well-known targeted schemes in the South (left-hand column) are currently less costly in terms of GDP than similar means tested schemes in the North. Indeed, the costs in Africa are likely to be of the same magnitude. Similar figures are generated by Franziska and Behrendt (2006). If a benefit of 70 per cent of the food poverty line was targeted to households without able-bodied members then the cost would be respectively 0.2 and 0.8 per cent of GDP in Senegal and Tanzania respectively.

**Table 9.4. Targeted schemes as percentage of GDP**

Countries	% of GDP	Countries	% of GDP
SOUTH		NORTH	
Mexico	0.4	New Zealand	2.3
Brazil	0.8	Japan	1.2
South Africa	2.1	United States	1.1

Sources: OECD (2001b).

These results suggest that the costs of targeted schemes are not excessive. Moreover, they mostly fall below the costs of universal schemes, but not always if one compares Table 9.4 with Table 9.2. The trade-off here is that the impact on poverty may be less, particularly for those schemes which aim for very precise targeting, such as in Mexico and Zambia. For instance, in addition to the studies discussed above, in the ILO studies the universal child grant led to a 40 per cent reduction in the poverty gap in Senegal and Tanzania, but the targeted transfer led only to a 2 and 15 per cent reduction despite its promise to focus on the poorest of the poor.

### 9.5.2. Comparing Child Grants with Other Social Allocations

The next question, addressed in this sub-section, is whether child grants should be chosen when there are resource constraints that require trade-offs or choices between human rights. This may occur in the context of reallocations or more likely in how newly available funds should be used. There is a rich literature in the health sector on economic models to determine the best use of limited health funds (Stinnett and Paltiel 1996), but less has been done in the area of addressing income poverty and the comparative role of child grants. The growing evidence on the impact of child grants (both modelled and actual) could be used to enable comparisons with other type of policies through a systematic review. Ideally, one would also need to capture the multiplier effects of policies (see 4.3 below), and give them a quantitative value. For example, it is claimed that child benefits lead to increased schooling and health and a decrease in child labour.

Zapada (2007) has sought to comparatively evaluate the direct income poverty impact of child grants in comparison with a job creation programme. The impact of 350 Kenya Shilling targeted child grants to school-age children was contrasted with a job creation programme with low wages for unemployed, out-of-work seasonal workers and workers with low earnings. The study finds similar impacts on poverty headcounts, severity and depth, but that the job creation programme had a higher impact on depth and severity of urban poverty. Of course, this model rests on a number of assumptions and the author acknowledges that a job creation programme is more administratively demanding, and that the other objectives and multiplier effects would need to be taken into account for a full evaluation.

### 9.5.3. Externalities

The final question is how do the negative and positive externalities of child grants affect the resource position. This debate on the relationship between the social welfare state and economic growth has been particularly strong amongst OECD countries. Mares' (2007) review of empirical literature, measuring the relationship between social protection/taxation on the one hand with growth/employment on the other finds a 'fragile' and inconclusive relationship. According to her, 'there is considerable evidence that social programmes provide a wide range of "positive externalities" which outweigh the potential distortionary effects of higher taxes'. Similar conclusions were reached by an ILO team dispatched to answer the question (Cichon, Scholz et al 2004). In essence, the reviews indicate that it is often the *shape* not the *size* of the welfare state that influences the relationship. For instance, centralized wage fixation systems tend to moderate wage growth in the face of promised social policy improvements and, curiously, high replacement ratios for unemployment benefits can create incentives for employers to provide on-the-job training.

Evaluations of this nature in the South are difficult given that social protection systems are in their infancy in many ways and, in particular, there have been no comprehensive studies of both the positive and negative impacts of child grants. Anderson (2008: 51) does review fourteen studies on the determinants of economic growth and the role of health and education spending, and concludes that 'the negative effects on economic growth associated with financing government expenditure appear to be small, compared to the positive effects on growth of raising health and education indicators'.

One analysis of the future impact of the South African child grant reveals that the improvement in human capital (measured in increased future earnings from improved nutrition) has an economic value 60 to 130 per cent higher than the cost of the actual scheme (Aguero, Carter and Woolard 2007). Indeed, the broader impacts on education, health and child labour as well as direct-income poverty lie at the heart of the *Mahlungu v Minister for Social Development* Case No. 25754/05 (High Court) in South Africa. A South African mother with NGO support is challenging the state's resistance to extending the eligibility child grant from 15 to 18, and has relied on the government's own empirical assessments of the positive effects of the benefit.

## 9.6. CONCLUSIONS

The question posed at the beginning of this chapter was whether a model that posits that human rights provide the normative standards while economics provides the tools for choice-making and trade-offs within it can actually function in practice. In the current chapter, we discussed an issue that appears principally in the field of choice-making and trade-offs, namely fiscal allocations for child benefits in poor countries. However, once we set the normative standards and field for choice-

making, we could not identify clear and conclusive economic answers on trade-offs. The relative costs and benefits of different choices for each of the three tests for maximum available resources for child grants were not clearly borne out by existing empirical evidence.

First, the cost estimates for universal grants vary widely between studies examined, although the lower cost estimates seem more plausible. In the case of targeted schemes, the fiscal envelope is certainly smaller and thus 'available', but it seems questionable whether very tightly targeted schemes meet the test of 'maximum' resources since the impact on poverty is much lower. For the second test on alternatives, the evidence is not abundant, but does give comfort to suggestions that child grants can have at least similar impacts to other human rights friendly policies. For the third, positive externalities are more likely to weigh out the negative externalities on economic growth and thus future resource availability, at least for a basic social security package.

Obviously the research in this area will continue to grow in the coming years as social protection becomes more popular in development. This chapter has indicated some of the regression analysis that is needed. Thus economic uncertainty over the questions may narrow over time, although given the debate in the West over the externalities, it is unlikely that economic evidence will be available to resolve all the questions.

However, the human rights framework demands that states take immediate steps towards the realization of the right to social security. Therefore, where the economic evidence is open or seems more directed by ideology, it is arguable that human rights considerations should be uppermost. Many of the states surveyed seem capable of having sufficient domestic resources to *begin* providing a child grant. Thus we might argue that any decision to not take steps to provide a child grant or for most countries to set very low levels of benefits or *highly targeted* benefits would be problematic, and require strong justification on the basis of a state's human rights obligations.

Thus a nuanced approach is needed in assessing the boundaries of human rights and economics where there are potential or real conflicts. Where the human rights claim exhibits relativity dimensions, preference might be given to economics. On the other hand, where economic claims are ambiguous, empirically weak or strongly contested, the preference might work in the opposite direction. In the current example, the conclusion is somewhere in the middle.

Fiscal affordability and questions of targeting vs universal benefits are only two of the issues that loom large on the economics–human rights axis in the merging social protection movement in development. Another is the imposition of conditionalities, such as school attendance and health check-ups for children (Fizbein and Schady 2009). There are now attempts to replicate this Mexican model in places as distinct as Ethiopia and New York, United States. The World Bank has signalled that it will put increasing resources into such programmes.

In the case of conditionalities, we might find that the human rights arguments are possibly stronger than economic considerations. Emerging economic evidence indicates that unconditional schemes tend to have a similar impact on poverty,

nutrition and school attendance (Aguero, Carter and Woolard 2007). However, it is a contested field and evaluations are ongoing. One possible case to be considered is where school attendance for girls is unlikely to rise with an unconditional grant in *some* countries, such as Pakistan (Chaudhury and Parajuli 2006). However, other research from Pakistan has indicated that there was not a significant change, and that other factors such as school availability and quality are more important (Mukhtar 2007; Lyod 2007).

From the human rights side, conditionalities are seen as highly problematic since they make a basic right dependent on other behaviour, which defeats the purpose of a right. Some even label conditionalities a straight-out violation of the right to social security. Others note that placing the responsibility on women to carry out the conditionalities can be disempowering even if they receive the benefit on behalf of the child (Bradshaw and Quirós Víquez 2008). Therefore, with inconclusive economic arguments and stronger human rights concerns, one is probably more likely to come to a conclusion that human rights should prevail and conditionalities should not be used if a scheme is meant to provide a human right. That does not end the story though. The strongest arguments for conditionalities are actually political – they are easier to sell to sceptical middle classes. But whether human rights trumps *politics* is not up for discussion here.

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## Hunger and Human Rights: The Appealing Rhetoric versus Dreary Reality

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### 10.1. INTRODUCTION

Despite several decades of development, hunger and malnutrition remain among the most pressing economic and social problems facing the world today. It is claimed that over a billion people still cannot meet basic needs for energy and protein, more than 2,000 million people lack essential micronutrients, and hundreds of millions suffer from diseases caused by unsafe food or unbalanced food intake. And a couple of hundred million children under the age of five are underweight, stunted, or short for their age. Poor nutrition and hunger cause billions of dollars in economic loss, due to lower productivity and the increased disease burden. Malnutrition, for instance, reduces an individual's lifetime earnings by more than 10 per cent, and widespread malnutrition can erase 2 to 3 per cent of a nation's GDP. In South Asia, anaemia, usually due to iron-poor diets, takes an even higher economic toll. In the past few years, the prices of most agricultural food commodities have increased significantly, mainly due to widespread crop failures and below-average harvests, notably affecting the global stocks of wheat and maize. The increasing demand for biofuel production, which has drawn considerable subsidies in many developed countries, has also contributed to the rise in food prices.<sup>211</sup> And according to recent FAO estimates, the number of hungry people increased by about 50 million in 2007 as a result of high food prices.<sup>212</sup> Thus, food and nutrition insecurity remains one of the greatest global challenges today.

Corresponding to the evolvement of the discourse on food and nutrition insecurity has been the trend, in recent years, of academics, voluntary organizations, bilateral and multilateral development organizations, and others that have shown an interest in viewing poverty reduction as a matter of human rights. Indeed, there has been growing criticism of so-called 'conventional' development strategies encouraged and pursued by national and international agencies to combat extreme

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211. <http://www.fao.org/worldfoodsituation/wfs-faq/en/> (accessed 26 July 2008)

212. <http://www.fao.org/newsroom/en/news/2008/1000866/index.html>

poverty and hunger. The solution, many argue, is to adopt a human rights-based approach to development (hereafter referred to as HRBA), which enjoys several advantages over traditional development strategies. Among such advantages is the ability to ensure genuine *participation* of the poor and to improve *accountability* of policy-makers and implementers. The abolition of poverty is also increasingly being spoken of as a matter of international redistributive justice and a human rights problem. An important reflection of this was the UN Millennium Declaration (2000), where world leaders reaffirmed their commitment to do their utmost to help individuals and groups facing ‘the abject and dehumanizing conditions of extreme poverty’, and committed themselves ‘to making the right to development a reality for everyone and to freeing the entire human race from want’.

In recent years, UNICEF has pioneered HRBA-related work within the fields of children’s rights,<sup>213</sup> and UNESCO has explored the claim that extreme poverty is a violation of human rights. Bilateral donors have also embraced the HRBA, albeit with diverse intensities and perspectives, and we have witnessed the creation of specific departments or officers in DFID, Sida and NORAD, among others, promoting rights-based approaches. And while many NGOs (e.g. OXFAM, CARE, Save the Children) and critics of mainstream development theories and practices defend rights-based approaches as an alternative paradigm to address poverty directly, more conservative actors (e.g. USAID, and perhaps even the UNDP) tend to link concern for rights with agendas related to good governance and democratization – treating rights in solely instrumental terms, as means towards more effective poverty reduction strategies.<sup>214</sup> To a large extent, the same applies to the World Bank, which has generally struggled to conceptualize rights in relation to mainstream approaches and views currently in vogue, such as the recent focus on the concept of ‘empowerment’, and has (for example in the most recent World Development Report) accorded a rather limited role to human rights. Some fear that the current emphasis on anti-corruption highlighted by the Bank may lead to still more instrumentalized and narrow views of rights, with little direct relevance for the eradication of poverty.

Given the increased reference to the linkage between human rights and poverty reduction in the development discourse, this essay critically examines whether – and to what extent – a human rights-based approach can help reduce hunger. While some developmental organizations, mainly in the UN system, argue that a focus on human rights can provide a sense of urgency to global efforts aimed at combating poverty and hunger, others (mainly individual voices in the World Bank and IMF) argue that the actual impact at the national, regional and local levels is limited. And while there is a rich and growing literature on human rights-based approaches to development and poverty reduction – including the right to food – there is an urgent need to focus on how global theory can be operationalized into

213. See <http://www.unhcr.ch/development/approaches-09.html> and, in particular, *Human Rights and Poverty Reduction: A conceptual Framework*.

214. See UNDP’s Human Rights Strengthening Programme (HURIST) at <http://www.undp.org/governance/hurist.htm>, and UNESCO’s documents on mainstreaming human rights.

effective national practice. The empirical material is mainly derived from studies in India and Malawi undertaken in the period 2000-2007. Using the HRBA in relation to food and nutrition security, I argue that if the human-rights approach is to make a substantial impact on hunger and malnutrition, we must pay immediate attention to the following three sets of interrelated issues:

- First, it is important to examine how, when and why global and national policies incorporate elements of HRBA. Specifically, how the right to food can be more forcefully incorporated in the national discourse on human rights.
- Second, we need to understand better the identities of, and motivation behind, the political, economic and social actors involved in demanding/ resisting the implementation of the right to food as part of the legal and policy landscape in developing countries. How do they employ the HRBA in their actions to achieve food and nutrition security, and what reactions does this produce? We also need a better understanding of the nature and impact of legal, including judicial and administrative, activity in the areas of food and nutrition insecurity.
- Finally, we need to re-focus on the strategies available to the poor that enable them to demand political accountability and recur to the legal system to see their rights enforced.

## 10.2. THE HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT: A BRIEF OVERVIEW

While the human rights-based approach to development (or HRBA) was generally neglected until the end of the 1990s, it has, in the past few years, received a considerable amount of attention, particularly from UN agencies, international civil society organizations and donor agencies. The general agreement appears to be that the HRBA is a conceptual framework: 1) for the process of human development that is normatively based on international HR standards; and 2) operationally aimed at promoting and protecting human rights (OHCHR 2006). It is claimed that the HRBA is an important tool not only for poverty *reduction*, but also in efforts to combat poverty *production*, since it entails a comprehensive re-definition of the aims and approaches to development, such that the boundaries between human rights and development disappear. Indeed, most adherents agree that the approach ‘creates claims and not charity’ or philanthropy, and hence ‘the end of development [...] differs, and consequently the whole process of thinking about it, of defining the nature of the problem, changes as well – a new vision emerges’ (Uvin 2004: 129). As Jonsson (2003: 16) very succinctly puts it, ‘A human right represents a specific relationship between an individual who has a valid claim and another individual, group, or institution (including the state) with a duty to respect, protect, and fulfil the right.’ He goes on to argue that ‘Except for very young children, all individuals have both valid claims (rights) and duties’. Similarly, there is considerable emphasis in the HRBA of the *process* of development and the manner in which development policies are implemented. In

other words, 'the means, the processes, are different, even if many of the goals remain the same' (Uvin 2004: 129). In addition, Jonsson (2003: 20) forcefully argues that 'A human rights approach will change *what* most UN development agencies are doing; *how* they work, and particularly *why* they do their work'.

But what is really new about the HRBA, and what explains its recent popularity among many developmental agencies? In relation to traditional development theory and practice – often referred to by the human rights school as the 'basic needs approach', Jonsson (2003: 20) writes that the HRBA differs in two important ways. First, the basic-needs approach does not recognize the idea of a duty-bearer, and hence no-one has a clear-cut responsibility to meet the needs of the poor and 'rights are vulnerable to ongoing violation'. In contrast, the HRBA places emphasis on the poor having the ability to claim their rights from the duty-bearers. Importantly, the universal, inviolable and inalienable characteristics of human rights protect the poor from losing their rights if they are incapable of claiming them. In other words, 'If no one protests the denial of a right, or if an individual fails to make use of his or her right, the fulfilment of this right will be compromised, but not lost', and this is where empowerment of the community as a whole is important, in that one can extend solidarity and help another person to claim his or her rights. The HRBA consequently emphasizes the principle of equality in that community resources must be shared equally, ensuring that access to various services are enjoyed by all. By comparison, the basic-needs approach often tends to place greater emphasis on acquiring additional resources to improve the access of marginalized groups to various basic services. Thus, while conventional development approaches do not necessarily recognize 'wilful or historical marginalisation, a human rights approach aims directly at overcoming such marginalisation' by being more actively involved in the political discourse on such issues (Jonsson 2003: 20).

Second, and as has been briefly mentioned earlier, is the focus of the HRBA on the process and not simply on the outcomes of development interventions. Jonsson terms this as a difference related to 'motivation' and argues that while basic needs can often be met through 'benevolent and charitable actions', the HRBA is based on 'legal and moral obligations to carry out a duty that will permit a subject to enjoy her or his right'. And this implies that a duty-bearer must *accept* the responsibility of taking rightful action and be motivated by a desire to promote justice, features that are negated by the basic-needs approach's emphasis on charity and benevolence (Jonsson 2003: 20-21).

Human rights therefore 'contribute to human development by guaranteeing a protected space where the elite cannot monopolize development processes, policies and programmes. The human rights framework also introduces the important idea that certain actors have duties to facilitate and foster development' (OHCHR 2006). But most importantly, linking human rights to development actually forces development practitioners to confront the tough questions of their work: matters of power and politics, exclusion and discrimination, structure and policy (Uvin 2004). As Sengupta (2005: para. 23) puts it, 'if poverty is considered as a violation of human rights, it could mobilize public action which itself may

significantly contribute to the adoption of appropriate policies, especially by Governments in democratic countries'. At this stage it is important to keep in mind the distinction between 'rights-based development' and 'human rights-based development', since these terms result in some confusion when used interchangeably by various international organizations and aid agencies. Asbjørn Eide (2006: 250) observes that a rights-based approach can 'cover any kind of rights and is locally determined as a result of power relations', and can include 'established property rights irrespective of whether their origin, use or inheritance principles are "just"'. By comparison, a human rights-based approach 'builds on the international normative system of rights and the obligations undertaken by (most) states, which makes possible a growing international consensus on the content of the rights and the corresponding responsibility of the duty-holders' (Asbjørn Eide 2006: 250).

Despite the above, the human rights vocabulary in relation to development has remained primarily one of rhetorical appeal. The result is, alas, one where an excessive amount of attention on the HRBA in general is currently directed at the rhetorical level rather than on the practical implementation of development policies (Eide 2006; Hansen and Sano 2006). And as de Gaay Fortmann (2000) puts it, 'the basic weakness of human rights is that they are mainly proclaimed rather than implemented' (cited in Hansen and Sano 2006: 44). Indeed, in spite its theoretical underpinnings, the HRBA has proved difficult to operationalize in practice, and the right to food is as affected by this as many other, and related, socioeconomic rights (e.g. water and health). And although 'a human rights-based development is desirable and possible [...] doubts persist whether it is probable' (Gaay Fortmann 2000: 253). In the rest of this chapter, I will briefly discuss some challenges related to implementation of the right to food at the international level, before focusing on the challenges associated with implementing the HRBA in relation to food and nutrition security at the national and local levels. Among the various rights categorized under the umbrella of economic, social and cultural rights, 'the right to food' or 'the right to adequate food' has by far received the greatest amount of attention. This should come as no surprise given the gravity of the persisting global problem of food and nutrition insecurity. But how and to what extent can the HRBA positively influence policies related to food and nutrition security?

### **10.3. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND THE RIGHT TO FOOD**

In essence, the right to food really means that national governments should not pursue policies that will increase malnutrition and food insecurity. In addition, governments are required to maximize available resources to eradicate hunger and protect those vulnerable to food insecurity from the actions of others that may lead to a violation of the right to food. The right to food is a basic human right protected under international human rights and humanitarian law, and is recognized directly

or indirectly by virtually all countries in the world. According to Article 25.1 of the Universal Declaration of Human Rights (UDHR 1948), 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'. Subsequently, Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) provided that 'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'. The right to adequate food is also mentioned in several other articles of the ICESCR, and in the Convention on the Rights of the Child (CRC 1989) there was specific mention of state responsibility to combat disease and malnutrition (e.g. Article 24.1c and d and Article 27.3).

However, food as a basic human right received major international acceptance in November 1996, when the World Food Summit reaffirmed the right of all humans to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger. The Summit also provided the High Commissioner for Human Rights with a specific mandate to define more clearly the rights related to food and propose ways to implement and realize them.<sup>215</sup> Following this, the UN Committee on Economic, Social and Cultural Rights – in General Comment No. 12 – observed: 'The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement in ways consistent with human dignity'. Hence, states parties to the International Covenant on Economic, Social and Cultural Rights have a legally binding obligation to take steps to 'respect' (not undertake any steps that will hinder or prevent existing access to adequate food), 'protect' (ensure that no agency deprives individuals of their access to adequate food) and 'fulfil and facilitate' (proactive engagement in strengthening both access to and utilization of resources, such that the livelihoods of the poor are not threatened) the right to food. Similarly, the first of the eight Millennium Development Goals (MDGs), drafted by 189 heads of state in September 2000, emphasizes the urgency of eradicating extreme poverty and hunger by focusing on a right-based approach. In recent years, the FAO has developed a set of 'Voluntary Guidelines' on the right to food, which propose practical steps for national implementation of the right. In addition to providing practical guidance to countries in progressively implementing the right to food, the guidelines represent the very first attempt to both interpret and recommend actions related to an economic, social and cultural right. Defining 'food security' as one 'when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their

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215. Paragraph 61 of the World Food Summit Plan of Action, Objective 7.4.



dietary needs and food preferences for an active and healthy life' (FAO 2004: 5), the guidelines emphasize the following four pillars of food security: availability, stability of supply, access and utilization. At the national level, the guidelines are particularly concerned with emphasizing 'the need to enable individuals to realize the right to take part in the conduct of public affairs, the right to freedom of expression and the right to seek, receive and impart information, including in relation to decision-making about policies on realizing the right to adequate food' (FAO 2004: 6).

Despite the above, and particularly in terms of the effectiveness of the human rights discourse on food, some have recently questioned whether such an approach can really reduce and eradicate hunger, since 'inadequate food supply may be the result of complex, structural problems, outside the control of particular states and authorities' (Mowbray 2007: 546). For example, while the FAO guidelines provide many useful recommendations, they have been criticized for being excessively focused on national-level obligations, and thereby toning down the impact of the international economic system, and the negative impact that various types of economic factors and the market may have on food security (Mowbray 2007: 559). Thus, there are repeated claims from international civil society organizations and selected developing country governments that the world economic order, WTO rules, trade barriers, etc. systematically obstruct access to regional and global markets for their goods. They also point to high subsidies given to the agricultural sector in industrialized countries, which again make it difficult for poor countries to export their agricultural products to the Western world. Moreover, the role of non-state actors is not given adequate attention in the guidelines. And by emphasizing legal and technical measures for the promotion of food security, the guidelines encourage 'cosmetic changes which will not attack the underlying inequalities of power and wealth which lead to hunger' (Mowbray 2007: 560).

Some of the above concerns have also been reflected in successive reports of the Special Rapporteur on the right to food. Following a mission to the WTO in 2008, Olivier De Schutter (2008: 23) concludes that member states of the WTO must ensure that their actions under the WTO framework – 'through transparent, independent and participatory human rights impact assessments' – are 'fully compatible with their obligation to respect, protect and fulfil the right to food'. His recommendations further include limiting 'excessive reliance on international trade in the pursuit of food security', and encouraging 'national parliaments to hold regular hearings about the positions adopted by governments in trade negotiations, with the inclusion of all affected groups, including in particular farmers' organisations'.

Another perspective is that, in order to be taken seriously, the right to food 'must be seen in the wider perspective of realising this right progressively with economic development, and consistent with the standards of human rights in general' (Sengupta 2007: 107). However, Sengupta is much more sympathetic towards a focus on national-level obligations, arguing that the right to food requires context-specific policies, and hence 'any attempt by the right-to-food community,

or by any international institution, to specify policies that would be applicable across all countries would be simple-minded and can, at most, be regarded as illustrative'. Sengupta is therefore much more in favour of each country abiding by its own mechanism for formulating, implementing and monitoring food policy and subsequently taking the necessary corrective actions as and when required (Sengupta 2007: 109).

In general, I believe that the discourse on the international right to food has been excessively focused on the process of formulating and ratifying human rights instruments on the topic. Hence, a large number of UN organizations, together with international civil society actors, have focused their efforts on securing agreement and documentation on the importance of pursuing a human-right-to-food agenda. By contrast, the actual implementation on the ground has not attracted much attention among these same actors. There have, however, been some attempts at operationalization, and Nyamu-Musembi and Cornwall (2004) identify the following ways in which the HRBA as an operational tool has been used: as a set of normative tools by organizations (e.g. DFID and Sweden's Sida) in their developmental work, which emphasizes solidarity with poor and marginalized groups; as a set of instruments that help guide assessments and based on which checklists and indicators are developed that in turn are useful in assessing the quality and effectiveness of development programmes (UNICEF is a good example in this context); as a set of principles that are integrated into programming (e.g. CARE's Household Livelihood Security Approach); attempts at creating and strengthening governance issues related to accountability (e.g. the role of UNDP); and programmes aimed at helping organizations representing the poor to develop so-called advocacy skills (e.g. the work of Action Aid).

At the international level, a group of United Nations agencies have, in particular, attempted to operationalize the HRBA. Thus, in May 2003, UN agencies arrived at a Statement of Common Understanding (the Stamford Declaration), which specifically refers to the following three main principles that should guide the work of UN agencies: a) 'All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.' b) 'Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.' c) 'Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.'<sup>216</sup> While these principles have at least established a common platform for the UN, they have also been criticized for being vaguely formulated and not really being of much operational use (Alston 2005). The extent to which

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216. [http://www.undp.org/governance/docs/HR\\_Guides\\_CommonUnderstanding.pdf](http://www.undp.org/governance/docs/HR_Guides_CommonUnderstanding.pdf) (accessed 2 August 2009).

rights, and the interdependencies among them, are operationalized varies – from general statements formulated by the UN or donor agencies, to country strategies and concrete programmes for poverty reduction. Thus the interconnectedness between human rights and food, or for that matter poverty in general, is expressed in differing, interrelated, and sometimes inconsistent claims. Related to this is the fact that UN agencies tend to have very different ideas about how the right to food should be realized: while FAO, UNICEF, WFP and UNDP routinely mention the right to food, there is no attempt to adopt a unified strategy to realize this right. The importance attached to human rights in key policy documents related to development, and in particular those addressing poverty, varies significantly depending on the ideological or organizational culture of the institution: some may perceive human rights as central and of intrinsic value, others as merely instrumental means to other ends. And Uvin (2007: 603) argues that ‘The risk always exists that taking up a rights-based approach amounts to little more than making nice statements of intent regarding things that it would be nice to achieve, or duties we would like the world to assume one day, without setting out either the concrete procedures for actually achieving those rights or methods of avoiding the slow and dirty enterprise of politics.’

Not only does each UN agency have a different conception of the right, they also vary enormously in their level of commitment and the actual emphasis they place on applying the HRBA in relation to food. For example, selected individuals and departments in FAO and UNICEF may be keener to adopt an HRBA than their colleagues at WFP, who tend to focus more on short-term food relief where the HRBA appears less suited for application; or the UNDP, where several key officials openly question the added value of the approach. And even if they agree on the importance of the HRBA, the problem of coordinating UN agencies’ efforts remains a major challenge. Thus, even though individuals and agencies may subscribe to the right to food, they may not necessarily collaborate or adopt common strategies with those working on the right to health or the right to water. Indeed, it appears that although the right to food has been on the international agenda for a considerable amount of time, the increased focus on newer types of rights has created a conceptual inflation. And there are numerous voices questioning the value-added of ‘rights-proofing’ every sector of development activity.

I have also argued elsewhere (Banik 2010a) that the development agenda today continues to remain elusive, partly due to our preoccupation with sensational crises, while we forget that the poor suffer and are hungry on a daily basis, even when we do not brand such suffering as deserving of a ‘crisis’ label. In recent years, three types of crises have been on everyone’s lips: one related to the financial system, another related to food, and the third related to climate change. The strange thing, however, is that by using the term ‘crisis’, one gives the impression that things just happen without a reason, i.e. no one can be blamed, and no decision can be identified as having triggered a process that led to the crisis event. This to me is a mistake, and although I am aware that crises tend to push people into action, I believe we should actively work towards adopting a non-crisis perspective in the development agenda. It has now become a routine

performance on the world stage to react to highly visible and sensational disasters such as famines. Those that react quickly and generously stand to gain a token of goodwill that will serve them well in international relations. By contrast, events that are slow but steady (and often somewhat less visible), such as undernutrition – which is characterized by the entire (and long) process of impoverishment and which allows for considerable time to intervene – are generally swept under the carpet. A focus on a ‘crisis’ appears to awaken us from our slumber and provides us with some form of moral urgency, and even legitimacy, to propose and/or undertake changes. And such responses, although useful in the short term, can at best be described as ad hoc approaches of a fire-fighting nature. Thus the challenge of fighting poverty requires us not to separate the event (or a crisis) from the prior causes and processes. This is also where an HRBA can make a most useful contribution to changing our thinking.

In the last few years, there has also been a sharp rise throughout the world in the prices of most agricultural food commodities, caused mainly due to crop failures and below average harvests in many parts of the world. Global stocks of wheat and maize have been particularly affected. Another cause for this increase in food prices has been attributed to the growing demand for biofuel production, which has attracted considerable subsidies in many developed countries.<sup>217</sup> In addition to food, oil prices have also increased, and for the 41 poorest countries in the world, it is estimated that the combined impact will be a negative shock that will reduce the GDP in these countries by between 3 and 10 per cent.<sup>218</sup> According to recent FAO estimates, the number of hungry people increased by about 50 million in 2007 as a result of high food prices.<sup>219</sup> Some countries are, of course, more affected than others. Thus food and nutrition insecurity, which has been one of the greatest global challenges today, has been further worsened. But the rhetoric that accompanied the dramatic increase in food, oil and commodity prices, particularly in the period 2006-2008, masked the real challenges and dilemmas that governments in poor countries faced in taking steps to control the rise in prices on the one hand, and on the other, ensure that the agricultural sector benefited from these events or that the poorest of the poor continued to be able to access an adequate amount of food to survive. Suddenly, everyone was talking about how the crisis was going to affect the poor, when in reality most of those who were hardest hit were those who were already vulnerable during the so-called ‘normal’ or ‘non-crisis’ period. The point here is that – and perhaps because we may feel overwhelmed by the enormous challenges in front of us – we often tend to focus simply on the present, which in reality is a very short period during which some emergency or hastily elaborated actions are taken. Then we move on to focus on the next crisis before resolving the present one.

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217. <http://www.fao.org/worldfoodsituation/wfs-faq/en/> (accessed 26 July 2009).

218. Estimates based on World Bank figures in the Call for Proposals (FY 2010) from the Norwegian-Finnish Trust Fund on Environmentally and Socially Sustainable Development (TFESSD), [www.worldbank.org/tfessd](http://www.worldbank.org/tfessd).

219. <http://www.fao.org/newsroom/en/news/2008/1000866/index.html> (accessed 26 July 2009).

The food crisis is one that has existed for many years; typically attracting world attention when large numbers of people die (e.g. during famines), while the fact that over one billion people suffer from undernutrition on a daily basis continues to be a silent emergency. Reports emerging from Ethiopia in September 2009 highlighted the failure of the rains and the need to provide food assistance to 5 million additional individuals in addition to the 8 million already receiving such assistance. The situation appears equally serious in Somalia and parts of Eritrea, Uganda, Tanzania, Southern Sudan and the Central African Republic, with severe drought followed by a failure of staple crops such as maize and rice.<sup>220</sup> I fear that the response from the international community now and in the future will be virtually the same as in previous years. United Nations agencies, in particularly the World Food Programme, UNDP and UNICEF, together with influential organizations such as OXFAM, will appeal for funds from rich country governments to provide emergency assistance. The amounts available will perhaps prevent a large-scale loss of lives, but very little will be done to promote long-term food security (e.g. by increasing investments in agriculture) and tackle the underlying causes of vulnerability of peoples and countries in Africa to famine.<sup>221</sup> And, a year or two later, another drought will result in equally high, if not higher, numbers of people in need of food aid. The seriousness of the problem is reflected in the latest *World Development Report (WDR 2010)*, which discusses in detail world hunger and the impact of recurrent and frequent droughts and the financial crisis on food and water insecurity. As the report highlights, in order ‘To avoid encroaching into already-stressed ecosystems, societies will have to almost double the existing rate of agricultural productivity growth while minimizing the associated environmental damage’ (*WDR 2010*: 133). Tied in with this are the enormous challenges ahead related to the politics of food trade, food buffers, food distribution, and water sharing and allocation. But, as the report highlights, we can try to scale up what we currently know to be approaches that are promising for farmers and good for the environment, such as ‘zero tillage’, which, although it has been applied largely in high-income countries, is also increasingly being practised in India and Brazil.

#### 10.4. IMPLEMENTATION OF ANTI-HUNGER POLICY AT NATIONAL LOCAL LEVELS

The traditional blindness of development policy towards questions related to power, conflict, exclusion and discrimination leave development bureaucracies and experts poorly prepared to implement a rights-based approach to development and poverty reduction. Another important hindrance is the lack of common concerns between human rights activists and organizations and development practitioners

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220. ‘A Catastrophe is looming’, *The Economist*, 26 September 2009.

221. Marchione (2009) argues that during the decade 1998-2008, the right to food became ‘a casualty of the war of terror’ and cites the fact that in the period 2002-2005, assistance to developing countries for agricultural development was under USD 500 million.

at the country level (Uvin 2004). Concerns for poverty and concerns for rights violations tend to be seen as separate issues, and even though the current focus on the promotion of democracy, good governance and anti-corruption has opened up some channels to reconnect rights with development practice, it appears that there is a great risk that food security will generally take second place to other more pressing concerns of powerful players (such as terrorism). Related to this is the claim that the HRBA suffers from conceptual clarity at national and local levels, particularly at programmatic levels where anti-poverty policy is actually implemented. The main difficulty here is the lack of awareness among policy-makers regarding what human rights principles actually entail, and excuses are frequently made with reference to lack of available financial resources. For example, and according to a UNICEF official, reluctance to embrace human rights approaches is often expressed by national partners or certain religious groups based on financial resources, cultural practices and misconceptions of the term 'human rights'. There is therefore an urgent need for formal and informal dialogue and negotiations coupled with lobbying, networking and flexibility in trying to promote the HRBA, which will in turn help strengthen the conceptual clarity and understanding of the approach.<sup>222</sup>

In order to examine the usefulness of the HRBA in food and nutrition security, Sengupta (2005; 2007) suggests a focus on three interrelated features. First, it should be possible to predict and express the concrete outcomes of the approach in terms of a fundamental value that can be compared to human rights. Second, we ought to be able to establish that there exists a feasible process of realization, i.e. that a specific right can actually be delivered, and in this respect a crucial feature is the design of the process of delivery. Third, the process or design should clearly specify the responsibilities of individual stakeholders so that they can be held accountable should the right not be delivered. Following from the above, respecting, protecting and fulfilling the right to food would imply that there must be a way to assess why the right is not fulfilled, particularly if right to food is accepted by the government. At the same time it is important to understand who the actors responsible for causing food insecurity are. In other words, food insecurity may be caused by several factors, which may not be under the state's control. If a government argues, as is commonplace today, that inadequate food production was the main cause of increasing food insecurity in the country, then from an HRBA perspective this will only be a valid argument if it can be proven that there does not exist any feasible programmes to improve food security. This is also where conventional strategies of development differ from the HRBA.

Using the HRBA to actively shape and formulate food and nutrition policies implies, therefore, that policies should be able to first identify relevant agents or duty-bearers, and thereafter specify the obligations of these agents. Moreover, policies should specify *how* the duty-bearing individuals can carry out their

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222. E-mail correspondence in a UNDP-facilitated Internet debate on the linkage between human rights and the Millennium Development Goals, 5 May 2006.

obligations in relation to promoting food security. In other words, policies should specify a mechanism by which one can judge that agent X is actually carrying out his or her obligations. Finally, if a duty-bearer fails in his or her duty in relation to the right to food, then there ought to be a provision for undertaking corrective actions. This may not always entail a reprimand, but at the very least it involves changing the design of policies and programmes. But how does this all work in practice? The above discussion highlights the urgent need to focus on the whether and how the HRBA can be operationalized and implemented at national and local levels. Almost every country formally recognizes the right to food, some even accord the right prominence in their constitutions. And yet, this fundamental human right continues to be violated every day. I will argue that the majority of scholarly contributions linking human rights to food and nutrition policy focus on theoretical justifications, and even those that claim to focus on national and local implementation issues do not really tackle the challenges head on. In the following section, I will propose three sets of questions that, when taken together, provide a relatively good overview of the potential benefits and pitfalls of using the HRBA in relation to food and nutrition security. Will the applicability of an HRBA approach drastically improve the current situation? And if so, how and to what extent?

## 10.5. INCORPORATION OF A GLOBAL THEORY INTO NATIONAL PRACTICE

How has the right to food been incorporated in the national discourse on human rights? One of the biggest challenges for the supporters of HRBA is the feeling among many development practitioners that the human rights community is preoccupied with events taking place in UN headquarters and in donor capitals, where good intentions are reiterated without appreciation of the traditional practice of states to pay lip service to human rights language, include binding obligations, and their simultaneous reluctance or downright unwillingness to incorporate such provisions in national law and policy-making. Therefore, a crucial step to understanding and thereby evaluating the impact that the HRBA can have in relation to food is to understand the factors that explain the considerable gap between the international human rights discourse and instruments on the one hand, and the politics of incorporating the same discourse in national settings on the other. Malawi provides an illustrative example in this context. On any single day, around 35 per cent of the population in the country go hungry.<sup>223</sup> While the causes of poverty are numerous, four major categories that continue to produce poverty and hunger in the country include low agricultural production, low non-farm income, low education and poor health.<sup>224</sup> In addition, the growing HIV

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223. <http://www.wfp.org/countries/malawi> (accessed 12 December 2009).

224. *Situational Analysis of Poverty in Malawi* (1993).

problem has, in recent years, further aggravated the problem (ActionAid 2005: 5). Malawi drafted and put into force a constitution in 1994 which draws considerable inspiration from human rights principles. Although there is no explicit mention of a right to food, provisions in the Constitution relating to the right to life (e.g. Section 16) can be interpreted to provide for the right to food. Interestingly, Chapter IV of the Constitution is dedicated entirely to human rights. Of particular importance is Section 30, which provides for a 'right to development' whereby '[a]ll persons and peoples' can enjoy 'economic, social, cultural and political development, and women, children and the disabled in particular shall be given special consideration in the application of this right' (para. 1). Accordingly, the state is required to 'take all necessary measures', including 'equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure' (para. 2). The state is further required to 'introduce reforms aimed at eradicating social injustices and inequalities' (para. 3).<sup>225</sup> Despite such constitutional guarantees in the area of social and economic rights, low levels of economic growth combined with high levels of unemployment, frequent food shortages and recurrent natural disasters (mostly drought) have, however, slowed down the process of realization of these rights. Another problematic area concerns the numerous policies related to agriculture and food security that, according to one estimate, are 43 in number and exist in addition to hundreds of sub-projects and practices spread across the country (OECD DAC 2008: 3). Coordinating these, with an explicit focus on HRBA, is proving to be a major challenge. Take the case of the country's food and nutrition security policy (adopted in 2005), where the Ministry of Agriculture is responsible for coordinating its implementation and reports directly to the Cabinet Committee on Food and Nutrition. During the policy drafting process, the international donor community, which largely funds Malawi's national budget, insisted on compliance with FAO's Voluntary Guidelines and the ICESCR. However, in the final version, the reference to human rights principles was drastically toned down, and the reference to the ICESCR as a structural base for implementation was deleted (FIAN and Rights & Democracy 2006: 30). Rather, a greater emphasis was placed on international trade, and subsidies to small farmers were reduced and would be continued only if they did not 'have negative impacts on the market (para. 1.2.8, cited in FIAN 2006: 30).

In terms of implementation of food security programmes, and with assistance from multilateral institutions and bilateral donor agencies, the civil service in Malawi has achieved a certain degree of professionalism, particularly at the highest echelons of government, with the recruitment of several competent officers at the principal secretary level. The lack of institutional capacity required for the successful implementation of nutrition policy is, however, particularly absent at the middle and lower ranks of the civil service. The low level of salaries, absence of proper facilities (particularly in hospitals and health centres), and the

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225. Constitution of the Republic of Malawi, available at <http://www.sdn.org.mw/constitut/dtindx.html> (accessed 13 February 2009).



country's patronage-oriented political system are some of the reasons behind this predicament. As Booth et al (2006: ix) argue, politicians have undermined civil servants' capacity to formulate and implement development policy by refusing to delegate power for fear of losing their ability to 'use policies for short-term political gain or patronage'. In addition, there has been a slow but steady erosion of civil service ethics and a steady increase in corruption levels (Booth et al 2006: ix). In recent years, opposition parties in parliament have also accused the government of distributing food aid, fertilizer subsidies and funds unequally between the three major regions of Malawi – the southern region has traditionally received greater allocations than the comparatively poorer northern region (Banik 2010).

Thus, there appear to be good reasons for scepticism about the ability of states to translate international proclamations into viable and implementable policy. States tend to sign international agreements because it is best for them to do so and not lose face in an international setting. Not signing would result in uncomfortable questions that its leaders may not be willing to articulate. Moreover, not signing would result in considerable pressure from other countries, particularly donors, with potentially disastrous consequences for the amount of foreign aid earmarked for food and agricultural activities. Thus focusing our attention on national and local realities is crucial. This can be undertaken by understanding the source of the right to food (direct or indirect?) and the extent to which the government takes it seriously. Not all countries are as concerned about food security as Malawi. And if things are difficult to implement in Malawi despite an explicit political interest in the topic, then it would be natural to be sceptical about implementing such policies in settings where such interest is absent.

Despite Malawi's large-scale dependency on foreign aid, a common complaint among politicians and administrators related to their interactions with donor representatives in designing and implementing development policy. For example, some were concerned with the trend whereby donors tended to 'lecture the government on various issues without understanding properly what the government says and believes in'. As Piron (2005) argues, 'power relations between recipient governments and donor agencies are highly unequal' and characterized by 'a lack of transparency with regards to how aid agencies allocate financial resources, set priorities, and assess performance'. This is particularly true in the Malawian case. In addition, several national-level politicians in the country pointed to the fact that effective accountability mechanisms are totally absent in the international aid industry, and donors and multilateral institutions are seldom held accountable by individuals and communities in countries where they provide assistance. Moreover, there is seldom much information available to national governments regarding the measures undertaken by aid agencies to stand accountable for failed projects and negative impacts resulting from an intervention. Further, representatives of some prominent NGOs in Malawi claimed that there is no consistent commitment on the part of donors and the government to operationalize and apply an HRBA. In fact, they argued that there was hardly any interaction between the two sides on the issue of linking human rights with food, water, health, education and other aspects of development. Some of the 'new'

donors, like Taiwan (which was a close ally until January 2008), were accused of continuing to be obsessed with handouts and charitable acts, which in essence go against the principles of a human-rights approach. A senior UN official appeared to take some self-criticism when he observed that linking human rights and development in countries like Malawi has not achieved the desired results, as most donors ‘begin at the wrong end of the development aid spectrum.’ Accordingly, organizations like UNDP and UNICEF target formal duty-bearers – through financial allocations to institutions such as the Human Rights Commission, Parliament and the Ombudsman – without providing adequate support to right-holders (Banik 2010b). Consequently, there is a ‘demand failure’ in that the poor in Malawi do not have the ability to claim their rights – particularly in respect to the right to food and housing – as effectively as some of their counterparts have done in South Africa and India.

#### 10.6. POLITICAL, ECONOMIC AND SOCIAL ACTORS INVOLVED IN DEMANDING/RESISTING THE IMPLEMENTATION OF THE RIGHT TO FOOD AS PART OF THE LEGAL AND POLICY LANDSCAPE

Here, I am particularly interested in highlighting how various actors employ the HRBA in their actions to achieve food and nutrition security, and what types of reactions this produces. At the outset we also need to question who accepts a right to food. Is it only UN and civil society organizations funded by international donors, or it is also largely accepted by the national political and administrative leadership? This is further related to who pushes the right to food agenda at national and local levels, and what tactics they employ towards this end. Here, the recent and impressive right to food movement in India that has been championed by civil society organizations provides a good example. The country has, since the mid-1980s, witnessed an increasing trend of seeking judicial redress in the interest of the public on issues such as pollution control and media reports of alleged starvation deaths in various parts of the country (Banik 2007). When in early 2001 major national newspapers reported that people were dying from starvation in several parts of India, the Rajasthan branch of an NGO – People’s Union of Civil Liberties (PUCL) – submitted a writ petition to the Supreme Court in mid-April 2001, questioning whether the right to life guaranteed under Article 21 of the Indian Constitution also included the right to food.<sup>226</sup> The petition requested the Court to intervene to prevent deaths due to starvation, which were occurring despite surplus food stocks in the possession of the central and state governments. It further asked, ‘Does not the right to food which has been upheld by the apex Court, imply that the state has a duty to provide food, especially in situations of drought, to people who are drought-affected and [...]

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226. Writ Petition (civil) 196 of 2001, submitted in April 2001.

not in a position to purchase food?<sup>227</sup> In subsequent correspondence with the Court, the petitioner demanded that state governments throughout the country be directed towards radically improving the functioning of employment guarantee schemes and social security programmes. Subsequently, and in several rulings in the period September 2001–October 2002, the Supreme Court ordered 16 states, including Orissa, to identify families in distress and to provide them with immediate food assistance. In particular, the Court issued an order for improving the implementation of food and employment-related schemes like the National Mid-Day Meals Programme (NMMP) and the Swarna Jayanti Gram Swarozgar Yojana (SGRY). In October 2002, it ruled that chief secretaries (as heads of state-level civil services) were responsible for the overall implementation of the judicial orders and would be held accountable for any confirmed cases of deaths due to starvation within their respective states. In doing so, the Supreme Court firmly established that the right to food was a constituent of the right to life, and the corresponding government obligation to protect the right to food of its citizens. For the monitoring and implementation of its orders at the state level, the Court also appointed a commissioner in May 2002 (hereafter referred to as the Saxena Commission). After a detailed enquiry process – and in his third report to the Supreme Court in May 2003 – the Commissioner expressed frustration over the lack of urgency and the ‘routine violation of Supreme Court’s orders by the respondent governments’. Citing an ‘overarching lack of state commitment to the prevention of hunger and starvation,’ he went on to claim that ‘The elimination of chronic hunger does not get anything like the priority it deserves in policy planning and budget allocations’ (Saxena Commission 2003). For example, the Commissioner found that, a year after the deadline set by the Supreme Court had elapsed, several state governments had failed to provide cooked mid-day meals in primary schools and that coverage of the NMMP programme in the remaining states, including Orissa, was patchy. The same applied for employment-related schemes like the SGRY, since ‘the most deprived areas [...] often ended up getting a very small share of SGRY funds’ and governments found it ‘politically or administratively expedient to spend the funds elsewhere’ (Saxena Commission 2003). In terms of Orissa, the report concluded that the general tendency of the state government was to ‘solve problems by ignoring them’. And the report found that district administration in Orissa and Maharashtra ‘often under-reports the magnitude of severe malnutrition’. The Commissioner thus concluded that, although Supreme Court intervention on the right to food was ‘potentially effective’, the ‘initiatives have only made a small impact in the massive problem of chronic hunger’. Hence, he urged the Court to ensure that stronger accountability mechanisms were put in place for the monitoring and enforcement of its orders (Banik 2007: 82).

The general conclusion is that in order for judicial interventions to have a major impact, the actions and recommendations of the courts must be taken seriously by the political and administrative leadership. There must be

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227. ‘PUCL petitions Supreme Court on starvation deaths’, *PUCL Bulletin*, July 2001.

stricter sanctions (e.g. jail) for non-compliance. State governments in India are habitual violators of court orders; not just the controversial ones, but also orders concerning routine state offences related to discrimination against certain groups and individuals. Politicians in Orissa are no different and have simply dismissed legal and quasilegal findings, and the courts, in turn, have had neither the capacity nor the power to enforce their directives and extract accountability from those in responsible positions. In any case, the courts do not intervene on their own unless petitions are filed by concerned individuals or civil society organizations. Since the mid-1990s, such civil society activism has declined. This also points to the relative inactivity and lack of influence of NGOs in some states (e.g. Orissa and West Bengal) in the area of food and nutritional security. By comparison, there has been an increase in NGO efforts to seek judicial redress on the right to food in other Indian states. But the Indian case also shows that there are numerous shortcomings that have not adequately been addressed by the civil society-led right to food movement. These relate to lack of agreement on definitions of malnutrition, undernutrition, starvation and famine, which in turn often lead to inaction and denials by bureaucrats and politicians. Moreover, there is often a tendency to focus on sensational crises (e.g. large-scale starvation deaths) rather than attending to issues relating to chronic hunger or undernutrition that is much less visible to policy-makers.

What, then, does it mean to be a duty-bearer? The evidence from India shows that politicians and bureaucrats resort to a considerable amount of blame-game. Most power-holders do not understand the concept of a duty-bearer in the human rights senses. The general attitude remains one of providing charity to the masses in the form of handouts to gain popularity and votes before elections. And civil servants seldom make efforts to assess food-insecure regions, groups and individuals, primarily when most such regions are typically remote geographically and hence require travel in difficult terrain in order to acquire thorough and first-hand information about food and nutrition-related problems. Moreover, at least in India, undernutrition and starvation in many states (e.g. in Orissa and Madhya Pradesh) are highly correlated with indigenous groups ('tribals') who are generally the victims of socioeconomic and political discrimination, exclusion and marginalization. This is particularly relevant in the case of land-grabbing and ownership rights of customary land.

### **10.7. STRATEGIES AVAILABLE TO THE POOR TO DEMAND POLITICAL ACCOUNTABILITY AND RECUR TO THE LEGAL SYSTEM TO SEE THEIR RIGHTS ENFORCED**

The final set of issues I wish to raise relate to the means, options and resources (including information) available to the poor in order to claim their rights. And here the role of the press, political parties and social movements in strengthening such claims are important. In addition, we need to question the importance of the legal system in influencing policy design and action related to food and nutrition

security, and the typical nature of legal, including judicial, activity in the areas of food and nutrition insecurity. In the development discourse, a considerable amount of attention is directed at poverty reduction, while very few speak of inequality reduction. It is this reluctance to address the problem of inequality by both international and domestic actors that must be addressed at the earliest, particularly if we want to make substantial progress on issues of hunger. Inequality is also at the heart of explanations as to why people are denied basic rights, and we need to go beyond simply speaking of violations of rights to understanding what causes such violations in the first place. Here, power relations, particularly at village levels, nature of land and other property rights, the role of and respect accorded to women in local society, etc. are all crucial.

In terms of the politics of starvation in India, political parties and news media in addition to NGOs have been very active in raising the issue of chronic and acute food insecurity in legislative and judicial arenas at the highest levels. However, the poor themselves have also generally been active in protesting. One good example of this is the numerous protests and demonstrations of the rural population in eastern India following the aggravation of the drought towards the first half of 1997. Local protests were organized by farmers, opposition parties, interest groups (especially farmers' organizations) and local voluntary organizations, demanding the immediate launch of relief operations in areas that had not been formally classified as 'drought-hit'. Such protests included blockades of roads and railways, strikes, disruption of public services, and *gherao* (where an important official is prevented from leaving his office until a solution to a problem is found) of high-ranking district officials.

The Malawian experience in this context is very different. While much has been achieved at the national policy level in terms of a Poverty Alleviation Programme (PAP), the impact of policy implementation at the village level has been negligible and most often 'accidental' (Chisinga 2002). This is primarily due to the lack of information-sharing between national and local levels, and the weak system of communication, which leaves villages isolated from the centres of power. Large groups of rural Malawians have little or no access to newspapers, televisions and radio sets, with access to the relatively small national media largely limited to the urban centres of Lilongwe, Zomba and Blantyre. Moreover, journalists seldom undertake investigative reporting (the situation is much better, although not entirely satisfactory, in India),<sup>228</sup> relying mainly on 'telephone briefings, press conferences called by officials and similarly formal exercises' (Chirwa et al 2003: 99). Given high levels of illiteracy and a social structure, which does not generally encourage protest (there are seldom reports of food riots) unless during election years, and with the general apathy of political parties to articulate the needs and interests of the rural poor, the general ability of the rural poor in the country to express their wishes are indeed quite limited. The task of demanding political accountability and legal recourse has therefore fallen mostly on selected

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228. For further details, see Banik (2007: ch. 6).

individuals (e.g. academics and newspaper editors) and civil society organizations, often funded by Western donors. However, gaining acceptance for the justiciability of socioeconomic rights such as food has been a major problem.

Since 1994, the courts in Malawi have indeed been active and innovative in several respects – including the positive manner in which the Bill of Rights was interpreted in relation to prisoners' rights, etc. However, the major focus of the judiciary has been on civil and political rights. Judges are not only often unfamiliar with international human rights terminology and instruments, but many feel uncomfortable applying international human rights law since they have difficulty applying international provisions to suit domestic realities (Hansen 2002: 40). Interviews with several judges of the Supreme Court in 2007 revealed that most judges on the bench did not believe that economic and social rights are justiciable. Indeed, there was great reluctance to encourage litigation on such rights as food, water, health and housing. In comparison, many younger judges of the High Court of Malawi, housed adjacent to the Supreme Court building in Blantyre, had a much more progressive view on the matter. Many claimed to have tried to gain the Supreme Court's interest in development-related issues, but felt that such attempts were thwarted by 'older and more conservative' judges in the Supreme Court who were 'obsessed with consolidating political rights' and who at the same time held the view that 'the government cannot do more to reduce poverty given resource constraints.' Like in many developing countries, formal justice systems in Malawi lack legitimacy among large groups of the poor in that they are perceived to be elite-controlled, expensive, and arenas for corrupt transactions. As a result of these barriers, most people do not seek justice from formal courts. Rather, the poor seek recourse from traditional leaders, family counselors (*ankhoswe*), religious leaders and other non-state actors. And Kanyongolo (2006: 26) estimates that the country has over 20,000 so-called traditional leaders, at different levels of seniority, who administer village-level justice. However, the informal justice system is not without its share of weaknesses, which could result in potential discrimination of women and disadvantaged groups as the system may be characterized by unequal power relations, lack of accountability, decisions contrary to formal law leading to right-deprivation and human rights violations, etc. Nonetheless these informal structures often show more promise of making justice accessible to the poor than the formal systems. And yet informal systems have traditionally not received much attention in national reform processes, as traditional 'rule of law' approaches that do not adequately focus on accessibility issues have been preferred by both donors and national governments (Wojkowska 2006).

The introduction of multiparty elections in 1994 – after almost four decades of dictatorship – gave Malawians and donors alike new hope that democracy would be better able to tackle widespread inequalities in power and wealth. The past decade has, however, revealed and reaffirmed the dominant role played by a small group of elite politicians in national-level politics. Thus, and in relation to Amartya Sen's (1994, 1999) argument that political freedoms play an important instrumental role in addressing pressing economic need, Englund (2006: 6) finds that the experience with political freedom in Malawi suggests that 'the mere

allowance of arguments and disputes to take place in public is less crucial to democracy than what those arguments are *about*. The point here is that the idea of democracy and human rights introduced in Malawi in 1994 primarily caught the imagination of elite politicians, bureaucrats and journalists, together with donor representatives. The overwhelming preoccupation with political freedoms failed, however, to mobilize the large majority of rural poor, and '[f]or all the evocations of participation and empowerment in the rhetoric of freedom, the rural and urban poor had few opportunities to participate in defining what freedom, human rights, and democracy might mean in a Malawian context' (Englund 2006: 6). While a very narrowly defined system of rights – mainly related to elections and the right to vote – resulted in some political squabbles, the power-holders were successful in silencing discussions on the fulfilment of economic and social rights. And the political discourse on food security has, in recent years, primarily become one of agricultural subsidies, particularly in relation to the amount and price of fertilizers that are available to farmers.

The reliance of Malawi's economy on foreign aid has also made the country a hotbed for experimenting with the applicability of a human rights-based approach to development and poverty reduction. Chiweza (2008) argues that despite the rhetoric of rights in the 1994 Constitution, the interplay of formal and informal legal mechanisms has caused serious setbacks for the legal empowerment of women, particularly in relation to property and inheritance rights of widows who are often dispossessed of their land under the pretext of respect for traditional norms of entitlement among ethnic groups. Thus the problem is really about the positioning of Malawian women in the gap between two quite different discourses on property and inheritance – the official land policy, advocating more individualistic Western norms, on the one hand; and customary land regimes that are rooted in communal entitlements on the other. Chiweza, too, observes that legal rights alone cannot deliver empowerment unless there is a societal recognition of the validity of such rights together with a corresponding improvement in women's status in society. Similarly, White (2010) provides empirical evidence of how certain poor women are forced into having sexual intercourse with fishermen to access fish or with forest guards in order to access firewood to cook food.

## 10.8. CONCLUSION

The added value of pursuing an HRBA in relation to food is considerable and includes a change in focus, away from viewing development as charity and a specific outcome or achievement, to one where development interventions are evaluated on the process by which they empower the poor. The right-to-food movement in countries like India, Brazil and South Africa has quite impressive results to show. In this essay I have tried to focus on the typical disconnect that exists between a global theory, such as that of the HRBA and its operationalization and implementation at national and local levels in developing countries. The development agenda today has now become full of buzzwords that promise more

than they deliver, and new terms and approaches are coined and adopted by development agencies with recurrent frequency. While this can be seen as a way to address the continued rise of poverty and the lack of development in many parts of the world, such buzzwords appear to have become more a matter of rhetoric and less about operationalization on the ground. International efforts to promote a right to food appear to be mired in a language of crisis – only when the problem is substantially large enough (e.g. large numbers risk death from starvation) does the international community tend to react. It is precisely for this reason that we need to focus our attention on understanding and reacting to vulnerability to hunger by analysing how, and to what extent, an approach like the HRBA can have a positive impact on the promotion of food security in large parts of the developing world that are plagued by hunger. And while there are numerous features that can be raised and discussed in this context, I have focused on three sets of inter-related issues.

First, I have argued that we need to re-focus our attention on examining and understanding how, when and why a global theory such as the HRBA is incorporated into the national political, legislative and judicial discourse and practice. Here it is important to understand the source of the right to food and to what extent governments understand the force and importance of such rights and thereafter make serious attempts to implement them. We need to go beyond simply signing treaties and agreements in international forums to understanding the practical difficulties and challenges that governments and other champions of HRBA face on a daily basis while formulating and implementing public policy. An issue that I have not discussed here – but one that appears relevant in this context – is implementation of the right to food in fragile and conflict-prone states.

Second, we need to go beyond believing that all actors at national and local levels are convinced of the added value of a human rights approach. The reality is that while some actors support and/or actively promote the right to food, others may actively resist such attempts. Governments often have to cope with numerous and conflicting priorities, and hence may not necessarily undertake measures to remove hunger and malnutrition in accordance with their international obligations. The judiciary may also not be convinced that the right to food is justiciable and may resist attempts by civil society organizations to hold the government accountable whenever the right is violated. Moreover, organizations that actively advocate integrating human rights with development often form a small minority in many developing countries. Consequently, they may not be able to exercise much political influence. Hence, the human rights community must persuade other interest groups to join the cause. This would also entail raising these issues during elections and in public debates. Thus, an active discourse on the benefits of using an HRBA in relation to food (or alternatively in relation to extreme poverty) will be useful in order to arrive at a societal consensus that food insecurity, hunger and undernutrition are bad things that need to be avoided.

Finally, we must focus on the strategies available to the poor to demand political accountability and recur to the legal system to see their rights enforced. Here it is important to identify the sets of conditions under which public action



can be successful or unsuccessful in promoting government commitment to tackle undernutrition and starvation. This requires a closer look at the types of actions that citizens adopt to pressure their government, and the corresponding responses that such actions elicit. Western donors providing foreign aid must follow up their support for social, economic and cultural rights in international forums by not withholding financial support at programmatic levels.

The HRBA framework provides for the poor being entitled, through a participatory approach, to the most effective poverty reduction strategies available. This can be particularly problematic, as there are no indicators to assess, evaluate and test the contents of such strategies and the methods by which they are realized. What types of poverty should one be concerned with and what types of rights? Do some forms of poverty and particular rights receive greater prominence than others? Whose rights? What does it mean to be a right-holder and duty-bearer? Indeed, in several developing countries, politicians and bureaucrats argue that the HRBA has been forcibly imposed on their countries rather than being formulated on the basis of local knowledge and national discourses and processes. If public policy on food and nutrition security is to succeed, initiatives must come from within the country at local, regional and national levels.

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Part III

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Economic Perspectives  
on Poverty and  
Human Rights in the  
Global Economy

## Trade Liberalization, Reduction of Poverty and Human Rights

*Guiguo Wang*<sup>229</sup>

### 11.1. INTRODUCTION

In this highly globalized world, the economic development of every nation is dependent on other nations in the form of trade in goods and services and investment. Such economic interdependence is the most important phenomenon of today's world and constitutes the key for shaping its future, including reduction of poverty and improving human rights. Recent joint efforts by all the major nations to resolve the financial crisis is one such example of this, and the foremost economic exchange among nations is of course trade.

With an average annual growth rate of 7.7 per cent (UNCTAD 2008: 26, Table 1.2.1), global trade had reached US\$ 13,833 billion by year 2007, almost six times that of the year 1980 (UNCTAD 2008: 2, Table 1.1.1). For the same period, global GDP increased from US\$ 11,922 billion to US\$ 54,274 billion (UNCTAD 2008: 388, Table 8.1.1), and GDP per capita increased by more than twice to US\$ 8,302 in 2007 (UNCTAD 2008: 389, Table 8.1.1). However, income inequality is an undeniable fact. Available studies show that about 70 per cent of income inequality is explained by differences in incomes between countries and only 30 per cent by inequality within countries (United Nations Development Policy and Analysis Division 2006: 2). The majority of global income, as expressed by world GDP, remains in the hands of the developed countries. With 16 per cent of the world's population, developed countries as a whole generated 73 per cent of the world's nominal GDP in 2006. The difference in GDP per capita between developed countries and developing and transition economies still remains huge.<sup>230</sup> Worldwide, the number of people in developing countries living on

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230. This gap has narrowed slightly: the ratio between per capita GDP in developed and developing countries reduced from 20.4 times in 1990 to 16.1 times in 2006; however, it has widened in absolute terms, from US\$20,000 to US\$26,000 in current dollars (UNCTAD 2008: 2).

less than US\$ 1 per day fell to 980 million in 2004, down from 1.25 billion in 1990. This achievement is however unequally shared. Poverty reduction has been significant in East and South-East Asia mostly due to rapid economic growth. In contrast, poverty rates in Western Asia more than doubled between 1990 and 2005 (UNCTAD 2008: 60).<sup>231</sup>

International organizations like the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO) have endeavoured to fight against poverty. In 1999, the World Bank and the IMF introduced 'Poverty Reduction Strategies' which cover over seventy low-income countries. These countries are required to complete the Poverty Reduction Strategy Papers to describe their macroeconomic, structural and social policies and programmes to promote growth, reduce poverty and associated external financing needs to provide the basis for assistance from the World Bank and the IMF as well as debt relief.<sup>232</sup> The IMF has also established the Poverty Reduction and Growth Facility to provide a low-interest lending facility for low-income countries.<sup>233</sup>

Trade and economic growth are closely related to each other, export expansion promoting economic growth. Moreover, foreign exchange earned from exports enables countries to import advanced technology, which may in turn promote domestic productivity. The current general trend is an increase in trade liberalization in both developed and developing countries, which is reflected in a greater share of foreign trade of their respective GDPs. This tendency has been most accentuated in South, East and South-East Asia, owing to the expansion of foreign trade in the previously closed economies and to the expansion of production networks across the region (United Nations Development Policy and Analysis Division 2006: 4). Statistics prove that the more liberalized the market, the higher the proportion of trade in GDP of the country concerned. Take China as an example: after implementing the policy of domestic reform and opening to the outside world in the late 1970s, the ratios of trade to its GDP increased from 5.9 per cent in 1980 to 37.1 per cent 2007 (UNCTAD 2008: 4, Table 1.1.1; 390, Table 8.1.1).

Poverty has now become part of the question of international public goods and is a multidimensional problem with no simple solution. Nevertheless, trade should be able to play an important role in reducing poverty through the promotion of economic growth. A study shows that developing countries with higher degrees of openness in trade have been faster to catch up with the living standards in developed countries than those with less openness (Nordstrom, Ben-David and Winters 1999). The former WTO Director-General Mike Moore once pointed out that: 'although trade alone may not be enough to eradicate poverty, it is essential if poor people are to have any hope of a brighter future. For example, thirty years ago, the Republic of Korea was as poor as Ghana. Today, thanks to trade-led growth, it is as rich as Portugal.'<sup>234</sup>

231. UNCTAD (2008: 60).

232. For more, see <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPRS/0,,menuPK:384207~pagePK:149018~piPK:149093~theSitePK:384201,00.html>.

233. See <http://www.imf.org/external/np/exr/facts/prgf.htm>

234. See [http://www.wto.org/english/news\\_e/pres00\\_e/pr181\\_e.htm](http://www.wto.org/english/news_e/pres00_e/pr181_e.htm)

To reap the benefit of trade, countries must actively involve themselves in economic globalization, which is unavoidable in any event. As part of this process the domestic markets of both developing and developed countries must be liberalized, and developed countries should make their markets more accessible to products from developing countries. In this process, it is essential for developed countries to further open their markets to the goods from developing countries such as agricultural, textile and tropical products, in which developing countries have comparative advantages. Only by so doing may trade benefit and in turn promote the economic growth in poor countries (see Rodrik and Rodriguez 2001). The reality is, however, though understandable, that while pushing developing countries to open up their markets and enforce intellectual property protection, some developed countries carry out protectionism in sectors where developing countries have crucial interests like agriculture and textile. This in fact is not only a trade issue but also an issue of human rights, in particular, the well-being of the people in developing countries. Trade in agriculture is of profound significance for human rights in developing countries, many of whom depend on agriculture for their livelihood and subsistence. The heart of the issue relating to agricultural trade is subsidies by industrialized countries, which result in falling prices and job insecurity in developing countries, and eventually become a matter of survival (see the International Federation of Human Rights 2005). Yet, the solution to the issue is not simple and is largely politicized in developed countries.

The international community is fully aware of the poverty issue. To deal with poverty, at the Fourth Ministerial Conference in November 2001, WTO members agreed to launch the Doha Development Agenda. This emphasizes the special needs of developing countries, especially Least-Developed Countries (LDCs), to ensure that they benefit from the growth in world trade. The Declaration adopted at the Ministerial Conference undertook to improve the effective participation of LDCs to prevent their marginalization in world trade. It also paid special attention to the interests of developing countries and LDCs with the purpose of ensuring their share in the growth of world trade commensurate with the needs of their economic development.<sup>235</sup>

## 11.2. GLOBALIZATION AND TRADE

The WTO is the only multilateral organization dealing with trade between nations whose nature is characterized by a high degree of integration or globalization. Among the 153 members, about two-thirds are developing countries.<sup>236</sup> The practice of decision-making by consensus following the General Agreement on

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235. See the Doha Ministerial Declaration adopted on 14 November 2001, paras 2–3.

236. Although there is no official definition in the WTO context for developing countries, a country may declare itself as a developing member to invoke provisions of the WTO agreements that grant preferential treatment to developing countries, whilst such claim is subject to challenges by other members.

Tariffs and Trade (GATT 1947) remains unchanged since the creation of the WTO, in which each member, being developed or developing, has one vote at the Ministerial Conference and the General Council in case no decision is reached by consensus. In practice, however, developing members, which constitute a majority of the membership, can rarely play an important role in the WTO. Many even have difficulties understanding the complicated rules, procedures and implementation of the same, not mentioning their inability to use the mechanisms. Ultimately, whether the WTO can achieve its desired objectives and contribute to the development of the world economy depends on whether it can enable developing countries to substantially and effectively participate.

The WTO deals with the special needs of developing countries through special provisions of relevant agreements, which provide favourable treatment to developing countries. The Committee on Trade and Development was especially created to deal with technical issues, assistance and other issues relating to developing members.<sup>237</sup>

During the GATT era, the interests of developing countries were not given special attention. Before the Kennedy Round, Article 18 of the GATT 1947 was the only provision that specifically dealt with the rights of developing countries, according to which the attainment of the objectives of GATT would be facilitated by the progressive economic development of the Contracting Parties – particularly of those contracting parties the economies of which could only support low standards of living and were in early stages of development. Therefore, these countries should enjoy greater freedom than developed countries to resort to quantitative restrictions and other restraints in order to implement economic development programmes and policies designed to raise the general standard of living of their people.<sup>238</sup> In the entire history of the GATT, however, it was rare for any developing countries to resort to Article 18 for introducing import restrictions. Before 1955, under the strict interpretation of Article 18, Contracting Parties invoking the provisions not only had to demonstrate that their domestic industries were comparatively feeble, but also had to prove their need in the early stage of development. The report and review system of Article 18 itself posed particular difficulties to developing countries, which did not have advanced financial systems or lacked an understanding of the international market. Therefore, even those developing countries which had balance-of-payment problems preferred to invoke the less restrictive balance-of-payment provisions only as an exception (see Thomas 2000). Even in such circumstances, it was often the case that imminent needs in national economic development prevented developing countries from imposing restrictions on imports from developed countries.

The 1960s and 1970s saw a growth in influence of developing countries in the GATT. This was taken into account at the Kennedy Round through the addition of Part 4, consisting of Articles 36, 37 and 38 on special treatment of developing

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237. [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/dev1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm).

238. GATT, Article 18.1 and 18.2.

countries. Article 36 stated the reasons for the enactment of Part 4 and explained the necessity for promoting the economic and trade development of developing countries. Paragraph 8 of the Article declared that when developed countries negotiated with developing countries on tariff reduction or elimination of other trade restrictions, they should not expect reciprocal treatment from the latter. It also stipulated that for the purposes of satisfying the needs of trade and economic development of developing countries, Contracting Parties should consciously and purposively reduce or eliminate tariff and other trade barriers.<sup>239</sup> The effectiveness of Article 37 which dealt with substantial commitments of developed countries, such as reducing or eliminating barriers on products from developing countries, however, was substantially undermined by the provision 'to the fullest extent possible' by which the enforcement of the provision was left to the discretion of developed countries. In practice, developing countries often found it difficult to secure concessions from developed countries due to the mismatching of export and import products (Trachtman 2003).

Besides Part 4 of the GATT, the 'Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries' adopted on 28 November 1979,<sup>240</sup> commonly known as the Enabling Clause, was a measure specifically designed for developing countries. The most important effect of the decision was to provide a legal basis for the implementation of the Generalized System of Preference (GSP).<sup>241</sup>

By the time the Uruguay Round negotiations began, developing countries had gained a lot more strength in the international community. One of the preferences stated by developing countries during the Uruguay Round was longer transitional periods for implementing relevant agreements. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) allows developing countries to implement the provisions of the agreement in four years,<sup>242</sup> whilst the transitional period for least-developed countries is ten years.<sup>243</sup> The Agreement on Agriculture,<sup>244</sup> the Agreement on Application of Sanitary and Phytosanitary Measures (SPS Agreement),<sup>245</sup> the Agreement on Textiles and Clothing<sup>246</sup> and the Agreement on Customs Valuation<sup>247</sup> have similar provisions.

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239. GATT Article 36, para. 9.

240. GATT Doc. L/4903.

241. The Generalized System of Preferences refers to trade preferences given by developed countries to developing countries. Under this system, developed countries may unilaterally reduce or eliminate tariffs on processed or semi-processed goods from developing countries. With the Enabling Clause in place, GATT Contracting Parties may selectively give developing countries preferential treatment without violating the MFN obligations.

242. Under normal circumstances, the transitional arrangement of other members is one year. See Article 65.2 of the TRIPS.

243. TRIPS Agreement, Article 66.

244. Agreement on Agriculture, Article 15.

245. SPS Agreement, Article 10.

246. Agreement on Textiles and Clothing, Article 6.

247. Agreement on Customs Valuation, Article 20.



It is plausible to have provisions for differential treatment for developing countries. At the same time, it is important to make such provisions meaningful in practice, in other words, to meet the needs of developing countries. In this regard, there is still room for the WTO to take further action. For instance, with regard to the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), the special procedures for developing countries and LDCs only require other members to take into account their interests. What developing members need is capacity to participate in the dispute resolution system, despite the WTO provisions for capacity-building for developing and LDC members, which have little value in practice.

Article 15 of the Agreement on Anti-Dumping, while requiring developed countries to pay special regard to developing countries, stipulates that where implementation of anti-dumping duties affect the essential interests of developing countries, the developed members concerned should explore the possibility of a constructive remedy. Yet, there is no specific provision as to what may constitute 'essential interests' and who should determine whether anti-dumping duties will affect the essential interests of developing countries.

The Agreement on Subsidies and Countervailing Measures (SCM Agreement) also includes provisions on the special treatment of developing countries. The most important special arrangement on developing countries allows LDC members and a small number of low-income developing members to provide subsidies for the purpose of export.<sup>248</sup> Whilst this provision sounds promising at face value, most of the beneficiary developing members lack the needed funds to provide subsidies – in itself the most significant problem in the area of subsidies and countervailing duties.

The Agreement on Safeguards, another example, stipulates that no safeguard measure may be imposed by a developed member on an imported product originating from a developing member where such imported product does not exceed 3 per cent, 'provided that developing country members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned'.<sup>249</sup> In practice, for specialized products from developing countries, the 3 per cent threshold can easily render the special treatment effectively useless, in particular, when taking into account the total volume of 9 per cent from all imports from developed members. The same is true with regard to the arrangement that developing members may impose, over shorter intervals, safeguard measures on the same products from developed members:<sup>250</sup> very often, by imposing safeguard measures, the importing developing member concerned may be hurt as badly, if not more than, the exporting developed member.

Aside from the provisions on special interests of LDCs, the negotiating parties of the Uruguay Round adopted the following two decisions: 'Decision on Measures in Favour of Least-Developed Countries' and 'Decision on Measures

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248. SCM Agreement, Article 27.

249. Agreement on Safeguards, Article 9, para. 1.

250. Agreement on Safeguards, Article 9, Para 2.

Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.<sup>251</sup> The former decision, to a large extent, restated the Enabling Clause. It required all members to take measures to ensure the effective participation of LDCs in the world trade system.<sup>252</sup> Similar to the Enabling Clause, the 'Decision on Measures in Favour of Least-Developed Countries requires 'expeditious implementation of all special and differential measures taken in favour of least-developed countries'. The Decision also encourages the parties, to the greatest extent possible, to 'further improve GSP and other schemes for products of particular export interest to least-developed countries.'<sup>253</sup> In other words, despite the fact that the WTO stresses the principle of one single undertaking and that there are substantial requirements under the principle of MFN, developed countries may give GSP treatment to LDCs.

The 'Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries', to a large extent, focused on the food security of LDCs and the net food-importing developing countries. The issue of food security resulted from liberalization of trade in agriculture under the WTO. In order to safeguard the food demand of LDCs and the net food-importing developing countries, the WTO Members decided to establish an appropriate mechanism 'to ensure that the implementation of the results of the Uruguay Round on trade in agriculture does not adversely affect the availability of food aid at a level which is sufficient to continue to provide assistance in meeting the food needs of developing countries.'<sup>254</sup>

The above decisions have provided the legal basis for the continued enforcement of GSP. One of the results of the Uruguay Round is increased access by members to each other's market, which ironically has reduced the beneficial effect of the GSP enjoyed by LDCs and other developing countries. This is coupled with the non-binding nature of the provisions related to granting by developed countries of preferences to developing countries and LDCs; preferences under current GSP have become very uncertain and unstable. In addition, alternations in local content requirements under the increasingly complex rules of origin have also increased the instability of the GSP (Sutherland, Bhagwati et al 2004).

As part of the measures for implementing their Uruguay Round commitments, most developed countries amended or extended the GSP at the turn of the century. The newly amended GSP of the EC became effective on 5 March 2001,<sup>255</sup> becoming commonly known as the 'everything but arms' system. On the whole, the preferences given by the EC GSP to products originating from LDCs are the most apparent. Yet, as the beneficiaries are limited to LDCs, other developing countries cannot benefit. The increase in Customs Unions and Free Trade Areas

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251. These two decisions were adopted as ministerial decisions at the negotiating committee of the Uruguay Round on 15 December 1993.

252. See the preamble of the 'Decision on Measures in Favour of Least-Developed Countries'.

253. Preamble of the 'Decision on Measures in Favour of Least-Developed Countries', para. 2.2.

254. 'Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries', para. 3.

255. EC Regulation 416/2001, Official Journal L60, 1 March 2001.

has also eroded preference for the GSP. Another reason for the current GSP to be subject to criticism is that although preference should be given unilaterally, in reality, recipient countries are burdened with obligations unrelated to trade.<sup>256</sup>

Although there are problems relating to GSP, very few cases have been brought by developing countries in connection with preferential treatment. This is another indication that the WTO dispute resolution system needs improving so as to be user-friendly insofar as developing countries are concerned. One exception in the history of the WTO is the EC-Tariff Preferences Case.<sup>257</sup> This dispute originated from Council Regulation (EC) No. 2501/2001 (hereinafter the 'EC Regulation') passed by the EC Council on 10 December 2001. The EC Regulation contains five arrangements on tariff preference for developing countries including a general arrangement and special arrangements to combat drug production and trafficking (hereinafter 'Drug Arrangements'), which provides for more favourable tariff treatment to twelve countries listed in its Annex I.

India claimed that the EC Regulation<sup>258</sup> had violated Article 1.1 of the GATT on MFN and that the EC could not invoke the Enabling Clause 'Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries' as a defense, and thus requested the establishment of a Panel. The Panel Report, circulated on 1 December 2003, supported the claim of India and ruled that the Drug Arrangements constituted nullification and impairment of India's benefits under the GATT.<sup>259</sup> As a result, the EC appealed against the Panel's report.

The Appellate Body found the Drug Arrangements inconsistent with the Enabling Clause for the following reasons. First, the application of the Drug Arrangements was confined to twelve developing countries, yet, there were no criteria and prerequisites for selection of beneficiaries nor standards to adjust the list of beneficiaries. Second, the modification mechanism of the Drug Arrangements showed that whether or not the beneficiary's problems in combating drug production and trafficking could be resolved, the Drug Arrangements would not be modified, nor would the beneficiary status be changed. Third, the EC Regulation provided no mechanism to assess if the Drug Arrangements had met the needs of relevant developing countries. Fourth, according to the EC Regulation, when the economy of a beneficiary had reached a certain level, the EC might remove the country from Annex I either altogether, or in respect of certain product sectors;

256. 'Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries', para. 94.

257. EC - Conditions for the Granting of Tariff Preferences to Developing Countries, Report of the Appellate Body circulated on 7 April 2004 and adopted on 20 April 2004, WT/DS246/AB/R ('EC-Tariff Preference, Appellate Body Report').

258. When requesting the establishment of a Panel, India claimed that the EC Regulation violated Article 1: 1 of the GATT. Later on, India restricted its claim to the Drug Arrangements, while reserving the right to claim concerning the other two arrangements.

259. EC - Conditions for the Granting of Tariff Preferences to Developing Countries, Report of the Panel circulated on 1 December 2003 and as modified by the Appeal Body adopted on 20 April 2004, WT/DS246/DS/R ('EC-Tariff Preference, Panel Report').

the stated criteria however had no direct connection with the objectives of the Drug Arrangements.<sup>260</sup>

The ruling of the Appellate Body concerning the EC-Tariff Preference will have a profound effect upon the rights of developing countries. The WTO Agreement contains special arrangements for developing countries and in some earlier cases these special arrangements were considered as the rights of developing countries instead of exceptions to the WTO Agreement.<sup>261</sup> According to the Appellate Body's finding, the developed countries may treat the developing countries differently in dissimilar situations. The current international community is quite diversified. Even similarly situated developing countries or developing countries at the same or similar stage of economic development may have dissimilar needs. In some other cases where developing countries concerned may have similar needs, the degree of needs may differ. These uncertainties may give rise to abuses of the Enabling Clause. From this perspective, the conclusion of the Appellate Body concerning the EC-Tariff Preference may not positively contribute to the negotiations of the Doha Development Agenda, nor to the overall resolution of development issues.

Another impact of the EC-Tariff Preference lies in the requirement in respect of the Notice of Appeal. The lack of legal professionals, especially experts in common law and funding is a serious problem facing the developing Members of the WTO. Although increasing the burden of proof on the part of claiming party is consistent with the principle of judicial efficiency, this requirement may further deter developing countries in resort to the dispute settlement mechanism of the WTO.

The Report of the Appellate Body also has positive effects on developing countries. According to the Report, developed country members must satisfy the following conditions when granting preferential treatment only to some developing countries: (1) the beneficiaries must be similarly situated; (2) the preferential treatment granted and the needs of the said developing countries must have an intrinsic relationship; and (3) when granting differential treatment among developing countries, the developed countries concerned must set out criteria and conditions in relation to choosing and modifying beneficiaries. The requirement of concrete conditions and criteria will evidently increase the capacity of developing countries for foresight in their challenges to developed countries through the WTO dispute settlement mechanism.

On the whole, the Uruguay Round improved the system, providing special preferences to developing countries and LDCs, which constitutes a substantial contribution to the resolution of poverty among those countries. What is important is that through codifying the preferential arrangement, the international community is not only aware of the difficulties of developing countries and LDCs, but also demonstrated its willingness to help resolve the same. Having said this, there is still a substantial difference between the special arrangements in treaties and the needs of those countries. There is also a huge gap between the black letter

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260. EC-Tariff Preference, Appellate Body Report, paras 183–84.

261. This helps strengthen the position of developing countries in their negotiations in the Doha Development Agenda.

treaty provisions and their implementation. Such issues are not easily resolved, although both developed and developing countries have placed much hope on the Doha Round negotiations.

### 11.3. TRADE AND HEALTH

Enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being. In a world of information asymmetry, mandatory product standards are indispensable to give consumers greater health and safety protection. In particular, with increases in living standards, people raise their requirements for product safety, sanitation and environmental protection. It goes without saying that the higher the standards required of product safety and sanitation, the better the protection offered to individuals. Many countries have enacted regulations and policies with respect to product quality, which have a direct bearing on their economic and technological advancement. Whilst protection of human health may reasonably require countries concerned to impose high standards for importation of products, it is subject to abuse unless a credible international mechanism such as the WTO is in place.

The main function of the former GATT and now the WTO is the reduction of tariffs and the elimination of trade barriers. With the increasing reduction in tariffs and the elimination of other trade barriers, countries began to resort to non-traditional protectionist means, a result of which has been the abusive use of anti-dumping, countervailing and safeguard measures in the first instance and then moved to environment, food security and standards and quality for other imported products. This trend has been triggered by the fact that countries, on the one hand, have assumed international obligations to liberalize trade, but on the other hand, either out of domestic political pressure or otherwise, try not to open their market as wide or as early as should be the case. In order to satisfy both the international community and domestic necessity, politicians, with the help of trade experts, consistently invent new trade or non-trade barriers contrary to free trade, but which confusingly avoid violating their international obligations. This occurs because the regulatory non-trade barriers in place are more complicated and elusory than the equivalent straightforward trade barrier. For instance, it is very hard to challenge a nation for applying a high sanitary standard on imported products, as the higher standard is imposed by the higher living standards their people may enjoy, despite the fact that the very imposition of unnecessary standards would have an adverse effect on trade. The WTO tries to curb unhealthy developments, albeit with little success.

The current WTO regime can be traced back to the former GATT, under Article 20 of which Contracting Parties might adopt or enforce measures necessary to protect human, animal or plant life or health, only if such measures were applied in a manner that would not constitute an arbitrary or unjustified discrimination between countries, or a disguised restriction on international trade. However, due to a lack of detailed provisions and an effective dispute resolution mechanism

within the GATT, Article 20 never functioned well. The situation improved little, even after the adoption of the Agreement on Technical Barriers to Trade, commonly known as the Standards Code at the Tokyo Round.

The Agreement on Technical Barriers to Trade (TBT Agreement) and the SPS Agreement resulting from the Uruguay Round were quite different from the Standards Code. First, the TBT Agreement and the SPS Agreement work together by dealing with different aspects of trade. Second, the TBT Agreement applies to all technical regulations, standards and procedures, except for measures provided in the Agreement on Government Procurement and the SPS Agreement. Third, the fundamental presumption of the TBT and SPS Agreements is consistency with Article 20 of the GATT, whose very purpose is to regulate and harmonize the adoption of regulations, standards and measures for protecting the health and life of human, animal and plant. As such, WTO members are encouraged to adopt international standards, guidelines or recommendations,<sup>262</sup> whilst in practice their implementation must be assessed against the provisions of the GATT as well.

Under the TBT Agreement, with respect to technical regulations, members must 'ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.'<sup>263</sup> 'Unnecessary obstacles' refer to restrictions which exceed the objectives originally intended in the regulations concerned. A technical regulation is thus consistent with the TBT Agreement, unless its objective is to create actual restrictions or impediments to trade.

The EC-Sardines case<sup>264</sup> is of importance with regard to the TBT Agreement, concerned with the implementation of Article 2 thereof. The essential dispute revolved around EC Council Regulation 2136/89 ('EC Regulation'), which regulates the marketing of species of fish that must use certain names. The EC Regulation, adopted on 21 June 1989 and becoming effective on 1 January 1990, provided common marketing standards for preserved sardines. Article 2 of the EC Regulation provided that

only products meeting the following requirements may be marketed as preserved sardines: (i) they must be covered by CN Codes 1604/13/10 and ex 1604/20/50; (ii) they must be prepared exclusively from fish of the species '*Sardina pilchardus walbaum*'; (iii) they must be pre-packaged with any appropriate covering medium in a hermetically sealed container; (iv) they must be sterilized by appropriate treatment.

Preserved sardines exported from Peru were prepared from *Sardinops sagax*. Peru claimed that the EC Regulation was inconsistent with the TBT Agreement and

262. TBT Agreement, Article 2.4. SPS Agreement, Article 3.

263. TBT Agreement, Article 2.2.

264. European Communities, Trade Description of Sardines, Report of the Appellate Body, WT/DS231/AB/R (hereinafter 'EC-Sardines, Appellate Body Report').

GATT. The Appellate Body stated in its findings that a technical regulation under Annex 1.1 of the TBT Agreement referred to a

document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.

A document must meet three criteria to fall within the definition of a technical regulation: (i) it must apply to an identifiable product; (ii) it must lay down one or more characteristics of the product; and (iii) compliance with the product characteristics must be mandatory.

In the light of the findings of the Appellate Body in the EC-Sardines case, where a technical regulation does not satisfy the above three criteria, it may not be considered as consistent with the TBT Agreement. Meanwhile, where a relevant international standard cannot fulfil the legitimate objectives of a domestic technical regulation, the technical regulation may not adopt the international standard. In this regard, the members must clarify their objectives while preparing a technical regulation. In cases where international standards are adopted, the principal constituents and fundamental principles of the relevant technical regulation must comply with the international standards.

As the EC-Sardines case demonstrates, the TBT Agreement is very technical in nature. There is plenty of room for the members to adopt international standards with respect to their obligations. For example, a member concerned can always advocate that fulfilment of the objectives of a technical regulation will inevitably cause an adverse effect or obstacles with regard to trade. This indicates that the effective implementation of the TBT Agreement still has a long way to go.

With regard to the SPS Agreement, to further the purpose of protecting human, animal or plant health or life, measures shall be applied only 'to the extent necessary', and be based on scientific principles.<sup>265</sup> Moreover, they shall not constitute unjustifiable or arbitrary discrimination, including discrimination among members of the WTO as well as between domestic and foreign enterprises.<sup>266</sup> In order to ensure that 'such measures are not more trade-restrictive than required to achieved their appropriate level of sanitary and phytosanitary protection', while ensuring that such measures are technically and economically feasible, the SPS Agreement requires that the design of measures take into account technical and economic factors in the risk assessment process when determining whether the 'to the extent necessary' requirement is satisfied. The decision of whether a level of protection of a certain measure is appropriate depends upon whether there are better alternatives. Where another measure – reasonably available taking into

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265. SPS Agreement, Article 2.2.

266. SPS Agreement, Article 2.3.

account technical and economic feasibility – may achieve the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade, the Member concerned is obliged to choose the other measure; otherwise, it may violate the obligation to provide an appropriate level of protection.<sup>267</sup>

The SPS Agreement was designed to serve as a catalyst to increase market access in food and agricultural markets for developing countries where they have comparative advantage. The difficulties in implementing the SPS Agreement have seen expectations for developing countries, especially LDCs, fail to materialize. The higher standards required for imported goods by many developed countries have turned out to be disguised trade barriers. It was estimated that African countries lost US\$670 million in agricultural exports because of the higher EU standard for aflatoxin as compared to the Codex Alimentarius standard; the ACP secretariat estimated that the operational costs of complying with SPS represented 2 per cent to 10 per cent of the value of products exported by ACP countries; China was estimated to have lost US\$9 billion of exports in 2002 alone due to SPS barriers in the EU, Japan and the United States (Shafaeddin 2007).

To meet the requirement of the SPS Agreement, developing countries have to reform their standard regulations and standard-setting process.<sup>268</sup> Standards must be upgraded to international levels and the capacity to undertake risk assessment must be created. Notification and enquiry points must be established.<sup>269</sup> In order to derive benefits from the Agreement, exporting countries must also restructure public agencies and educate personnel so that the SPS regulatory regimes of trading partners can be followed and the country is capable of responding (Friis Jensen 2002: 31). The costs for a country in implementing the SPS Agreement are twofold: the production cost of respecting the SPS requirements of the importing countries, and the cost involved in conformity assessment procedures. In either case, the cost for developing countries is much higher than that for their developed peers, as most of the latter have similar safety, health and technical domestic regulation and standards. Insufficient financial resources, under-developed technology and absence or weakness of institutional mechanisms are just some of the difficulties facing developing countries (Finger and Schuler 1999: 16).

According to Article 4 of the SPS Agreement, different standards proven to be of the appropriate protection level of the importing member should be recognized. In practice, however, importing countries often require 'sameness' instead of 'equivalence' – a practice that has led developing countries to interpret as unwillingness the refusal of developed countries to accept the SPS measures adopted by other countries as equivalent.<sup>270</sup>

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267. SPS Agreement, footnote 3. In cases where the relevant scientific evidence is insufficient but adoption of the measure is necessary, any member may introduce provisional measures on the basis of available pertinent information. This provision is an exception to the technical requirements.

268. SPS Agreement, Article 3.

269. SPS Agreement, Annex B.

270. WTO, Equivalence: Consideration of Article 4 of the SPS Agreement – Summary of the Discussions of the SPS Committee. G/L/423. Geneva: World Trade Organization, November 2000.



The Australia–Salmon case<sup>271</sup> is instructive for interpretation of the risk assessment obligations of members. This case concerned the Quarantine Proclamation of Australia, which was issued on 19 February 1975. This Quarantine Proclamation prohibited the importation of dead salmon unless the salmon had been treated prior to importation. The Australian Director of Quarantine believed that such treatments were helpful in preventing the introduction of any infectious or contagious disease or pest affecting persons, animals or plants. Pursuant to the Proclamation, the Director of Quarantine permitted the entry of commercial imports of heat-treated salmon products for human consumption and other salmon for scientific research. Canada requested access for uncooked, fresh, chilled or frozen salmon. In response, Australia conducted an import risk analysis on the salmonid product ('Pacific Salmon'). The Australian Salmon Import Risk Analysis published in 1996 ('1996 Final Report'), provided that the quarantine measures should be applicable to the Pacific Salmon. Consequently, based on the 1996 Final Report, the Director of the Quarantine banned the importation of Pacific Salmon on 13 December 1996 based on sanitary considerations.<sup>272</sup>

This case concerned the Australian prohibition of both Pacific Salmonid Product and Canadian Salmon. However, with respect to the introduction of the prohibition on Canadian Salmon, Australia did not conduct any form of risk assessment. On these grounds, the WTO Panel found that Australia acted inconsistently with Article 5.1 of the SPS Agreement.<sup>273</sup> The question of whether the Australian import prohibition on Pacific Salmon was inconsistent with Article 5.1 was appealed by Australia. The Appellate Body took the view that the Panel erroneously emphasized that the heat-treatment requirement was not based on risk assessment, but instead that the heart of the case was whether the 'import prohibition' was based on a risk assessment. Therefore, the Appellate Body reversed the Panel's finding.<sup>274</sup>

In the view of the Appellate Body, the question of whether the 1996 Final Report was in accordance with the provisions of Article 5.1 of the SPS Agreement on risk assessment must be addressed, and that in the light of Annex 1.4 of the SPS Agreement, a risk assessment must:

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271. On 5 October 1995, Canada, requested consultations with Australia, pursuant to the SPS Agreement, regarding the government of the latter's prohibition on the importation of untreated fresh, chilled or frozen salmon from Canada. Because they failed to settle the dispute, Canada requested the DSB to establish a Panel. A Panel was constituted on 10 April 1997, and circulated its report on 12 July 1998. See Australia – Measures Affecting Importation of Salmon – Report of the Panel, WT/DS18/R (hereinafter 'Australia–Salmon, Panel Report'). On 22 July 1998, Australia appealed on certain issues of law in the Panel Report. The Report of the Appellate Body was circulated to Members on 20 October 1998. See Australia – Measures Affecting Importation of Salmon – Report of the Appellate Body, WT/DS18/AB/R. (hereinafter 'Australia–Salmon, Appellate Body').

272. Australia–Salmon, Panel Report, pp. 1–2.

273. The parties to the case did not appeal this aspect of the Panel decision. Australia–Salmon, Panel Report, p. 154.

274. Australia–Salmon, Appellate Body Report, p. 35.

- (i) identify the disease whose entry, establishment or spread a Member wants to prevent within its territory, as well as the potential biological and economic consequences associated with the entry, establishment or spread of these diseases;
- (ii) evaluate the likelihood of entry, establishment or spread of these diseases, as well as the associated potential biological and economic consequences; and
- (iii) evaluate the likelihood of entry, establishment or spread of these diseases according to the SPS measures which might be applied.<sup>275</sup>

The Australian 1996 Final Report identified twenty-four diseases whose entry, establishment or spread Australia wanted to prevent within its territory, as well as the potential biological and economic consequences of the diseases, which met with the first requirement. Regarding the second criterion, however, the Report only conducted some evaluation on the possibility of entry, establishment, or spread of disease. The Appellate Body concluded that 'some' evaluation of likelihood was not enough.<sup>276</sup> With regard to the third requirement, the Appellate Body stated that the 'measures which might be applied' referred to those which may reduce the risks. The 1996 Final Report examined a large number of different risk reduction factors for each of the twenty-four diseases of concern, and also provided 'some' evaluation to the extent to 'which these factors could reduce risk', but it failed to evaluate the relative risks associated with different options. On these grounds, the Appellate Body found that the 1996 Final Report did not meet the third requirement. Inasmuch as the 1996 Final Report did not meet the second and the third requirements, it was inconsistent with Article 5.1 and Annex A.4 of the SPS Agreement and therefore, the Australian measures applied to the Pacific Salmon were not based on a proper risk assessment and were inconsistent with the SPS Agreement.<sup>277</sup>

The Australia–Salmon case also concerned the question of whether Australian measures were inconsistent with Article 5.5 of the SPS Agreement. Following the Appellate Body Report in EC-Hormones, the Appellate Body pointed out that a violation of Article 5.5 of the SPS Agreement needed to prove the following three elements: (i) the member concerned adopted different appropriate levels of sanitary protection in several different situations; (ii) those levels of protection exhibited differences which were arbitrary or unjustifiable; and (iii) the measure embodying those differences resulted in 'discrimination or a disguised restriction on international trade'.<sup>278</sup>

What, then, are the tests for determining which level of sanitary protection should be adopted in a given situation? The Appellate Body stated that situations could not be compared unless they presented some common elements. It required

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275. Australia–Salmon, Appellate Body Report, p. 36.

276. Australia–Salmon, Appellate Body Report, p. 39.

277. Australia–Salmon, Appellate Body Report, pp. 40–42.

278. Australia–Salmon, Appellate Body Report, p. 42

the parties concerned to provide evidence that these situations involved either a risk of 'entry, establishment or spread' of the same or a similar disease or of the same or similar 'associated biological and economic consequences'. Therefore, for different situations to be comparable under Article 5.5, there is no need for both the diseases and biological and economic consequences to be the same or similar. It is enough if these situations involve either a risk of the same or similar disease, or a risk of the same or similar 'associated potential biological and economic consequences'. Moreover, it is sufficient for different situations to have in common a risk of entry, establishment or spread of one disease of concern, and there is no need for these situations to have in common a risk of entry, establishment or spread of all diseases of concern. In the view of the Appellate Body, the import of Pacific Salmon and other fish and fish products were different situations under Article 5.5.<sup>279</sup>

There were differences in SPS measures and corresponding levels of protection introduced by Australia between the Pacific Salmon and other fish and fish products, for which the only justification could be that imported salmon had a higher risk. However, on the basis of all the available evidence, the risk of Pacific Salmon was comparable to other fish or fish products. As a result, the Australian sanitary measures and the corresponding levels of protection were found to be arbitrary and unjustifiable.<sup>280</sup> As such, they were also discriminatory and disguised restrictions on trade which by definition are inconsistent with the WTO Agreement. The finding was based on 'three warning signals' as well as three 'other factors more substantial in nature'. The first warning signal was 'the arbitrary or unjustifiable character of the differences in levels of protection'. The second warning signal was the substantial difference in levels of protection between an import protection on Pacific Salmon as opposed to tolerance for imports of herring and live ornamental finfish. The third warning signal was the inconsistency of the SPS measure with Articles 5.1 and 2.2 of the SPS Agreement. The first additional factor was the fact that the two substantially different SPS measures that Australia applied led to discrimination between Pacific Salmon on the one hand and herring and live ornamental finfish on the other. The second additional factor was the substantial but unexplained change in conclusion between the 1995 Draft Report and the 1996 Final Report. The third additional factor was the absence of controls on the internal movement of salmon products within Australia compared to the prohibition of the importation of Pacific Salmon.<sup>281</sup>

The SPS Agreement aims to place the testing measures of each member within a multilateral mechanism and therefore minimize trade restrictions on international trade. To encourage members to adopt the generally approved measures and standards rather than taking unilateral measures, the SPS Agreement requires, on the one hand, that sanitary or phytosanitary measures 'conform to technical standards, guidelines or recommendations', and on the other hand, that

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279. Australia-Salmon, Appellate Body Report, pp. 43-46.

280. Australia-Salmon, Appellate Body Report, p. 47.

281. Australia-Salmon, Appellate Body Report, pp. 48-54.

measures based on international standards, guidelines or recommendations be presumed to be of the extent necessary and hence, in accordance with the SPS Agreement and the GATT.<sup>282</sup> Encouraging members to participate in international organizations is another means of making the SPS measures conform with international standards.<sup>283</sup>

Moreover, the SPS Agreement also requires that members give mutual recognition to the SPS measures of other members. It mainly requires that the importing members recognize the SPS measures imposed by the exporting members with one precondition.<sup>284</sup> According to Article 4, the measures of the exporting members have to achieve the appropriate level of sanitary and phytosanitary protection of the importing members. On condition that such requirement is met, it is immaterial whether the measures of the exporting member are the same as those of the importing member. In order to examine whether the above requirement is met, the importing member may request to review the exporting member's testing, inspection and other relevant procedures while the exporting member has the obligation to provide a reasonable opportunity for the importing member to conduct such a review.<sup>285</sup>

Another issue relating to the mutual recognition of SPS measures is the sanitary and phytosanitary characteristic of the country of origin and the destination. The heart of this provision is that the importing member should consider the appropriateness of the measures applied, '*inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.' In a word, the importing member shall not impose a disguised restriction on international trade by applying inappropriate testing measures. On this basis, the SPS Agreement advocates that 'Members shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence.' Any exporting member may claim that areas within its territory are 'pest- or disease-free' or 'of low pest or disease prevalence', and provide

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282. The SPS Agreement, Articles 3.2 and 3.3. Pursuant to Article 5.8, when a member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another member is constraining, or has the potential to constrain, its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the member maintaining the measure. And the latter, that is, the Member that applies the measure has the obligation to explain.

283. Specifically, Article 3.4 requires that members shall play a full part, within the limits of their resources, in the codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention.

284. For example, in Japan–Agricultural Products, Japan permitted exporting countries to test their own exported products on condition that the exporting countries' testing measures complied with Japanese importing standards.

285. Obviously, if the exporting member refuses to provide the importing members with an opportunity to review, the importing member concerned may refuse to accept the former's SPS measures.

'the necessary evidence thereof in order to objectively demonstrate [...] that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence'. The purpose of such a claim is to seek the recognition of the importing member and that products can be exported unrestricted by the SPS measures of the latter.<sup>286</sup>

It is clear that both TBT Agreement and SPS Agreement advocate the use of international standards and guidelines to facilitate trade, and both include provisions specifically applicable to developing countries, in particular provision of technical assistance with respect to the preparation and implementation of technical regulations and sanitary and phytosanitary measures.<sup>287</sup> Yet, both at the same time are silent on specific procedures for establishing those standards and on how to provide assistance to developing countries. As a result, since the establishment of the WTO, such commitment has remained mostly on paper, while most developing countries are short of financial and human resources to actively take part in the process of standard-setting, which has undeniably always been the exclusive domain of developed countries despite treaty provisions encouraging participation by developing countries in international standard organizations (Michalopoulos 2001: 93). Without the full participation of developing countries, their special needs and circumstances may not be fully reflected in the formation of international standards and requirements, which is the root of current problems with the contemporary system.

Intellectual property protection is now an important part of trade and in turn is closely related to health, patent rights and trademarks for medicine, among others. In this regard, the TRIPS Agreement has placed developing countries in a dilemma of either ignoring the deterioration of public health or violating WTO rules. The patentability of medicines enables the big pharmaceutical companies from developed countries to keep the price of medicine at a high level. According to a report by the UN, in India where no patent protection to the medicine for curing AIDS is provided, 150 grams of medicine can be manufactured with US\$55, while it requires US\$697 and US\$817 to manufacture the same amount under patent in Malaysia and the Philippines respectively (see Sykes 2002). The imported medicines become unaffordable for most of the patients in developing countries, especially in LDCs where diseases like AIDS and malaria are widely spread. Since the mid-1990s, Brazil began to implement an AIDS prevention scheme, encouraging the manufacturing of pharmaceutical products in Brazil. Its patent law encourages domestic production and compulsory licensing,<sup>288</sup> which resulted in the pharmaceutical products of Brazil being reduced by 82 per cent in

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286. In order to prevent abuse of this right, the SPS Agreement requires that 'reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.' See the SPS Agreement, Article 6.3.

287. TBT Agreement, Article 11. SPS Agreement, Article 9.

288. Article 68 of Brazil's Patent Act stipulates that all patents must be applied for within three years of the grant thereof, otherwise the government may grant compulsory licenses. Where the patent holders use import as a means to enforce patent rights, Brazil will allow parallel imports of the products.

five years (see Hoen 2002). However, the Brazil Patent Act was challenged by the United States under the WTO DSM, which claimed that the Brazilian measure constituted a form of discrimination against American patent holders. Although the dispute was settled by agreement in which Brazil agreed to hold consultations with the United States on the compulsory licensing of US patents,<sup>289</sup> the issue relating to the interpretation of Articles 27 and 28 of the TRIPS has not come to an end.<sup>290</sup> Since 2005, when the Indian Patents (Amendment) Ordinance required patents to be granted on new medicines to implement TRIPS, developing nations have no longer been able to import affordable generic drugs from India (see Médecins Sans Frontières 2005).

Having considered the complexity and importance of the TRIPS, including its effect on the public health of all members, the Declaration on the TRIPS Agreement and Public Health was adopted at the Doha Ministerial Conference.<sup>291</sup> It expanded the possibilities of compulsory licensing and parallel imports of medicine but failed to address the problem of insufficient pharmaceutical manufacturing capability in developing countries. This drawback was partly compensated by the TRIPS Council's Decision of 30 August 2003, which allows for these countries to import generic drugs from a country that issues a compulsory license, so long as both parties inform the WTO of all relevant details. The WTO, however, has only received notifications from Canada as an exporting country and Rwanda as an importing country.<sup>292</sup> For this reason, some scholars criticize the Doha Declaration as being far from a panacea for the availability of medicines in developing countries under TRIPS (see Sykes 2002).

Health services are listed by the WTO Secretariat as a sector of trade in services. Health is, however, a human right and a public good. The total privatization and marketization of the healthcare market cannot resolve its externalities. Article 1.3 of the General Agreement on Trade in Services (GATS) excludes the healthcare services supplied in the exercise of government authority from its coverage. For most developing countries, public and private healthcare suppliers coexist. The liberalization of health services may therefore exacerbate existing problems with access and equity of health services and financing, especially for poor people in developing countries.<sup>293</sup> While the opening up of the domestic healthcare market in developing countries may create job opportunities, it is still possible for local health professionals to pursue better-paid jobs abroad, which thus worsen domestic health personnel shortages. On the one hand, the export in health professionals can produce foreign remittance, on the other hand, their outflow results in a loss to governments in terms of the previous investment in training them. It is estimated that for South Africa the loss in investment from doctors

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289. See WTO Doc. WT/DS199/4, 9 July 2001.

290. The United States argued that the compulsory licensing provisions of Article 31 of the TRIPS should be interpreted side-by-side with Article 27.1, thus no member may take measures inconsistent with the Agreement based on public health reasons. See Gathii (2002).

291. Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001.

292. IP/N/10/CAN/1, IP/N/9/RWA/1.

293. For more, see UNCTAD 1999.

who subsequently emigrated has reached tens of millions (see Bundred and Levitt 2000). Although for developing countries the price competitiveness in the health service market may attract foreign patients and thus increase foreign exchange income, limited medical facilities and professionals mean that increases in foreign patients translate into less health services accessible for domestic patients. This is another dilemma facing developing countries – trade having failed to make their healthcare services strong.

#### 11.4. AGRICULTURE REMAINS A THORNY ISSUE

No matter what agreements are reached as to whether or not developing countries and LDCs are beneficiaries of economic globalization and hence trade liberalization, an indisputable fact remains that agriculture is still critical to developing countries, especially LDCs, as it is, for most of them, the largest sector of employment,<sup>294</sup> the largest source of GDP,<sup>295</sup> and the largest source of foreign exchange earnings. About 75 per cent of the poor population worldwide reside in rural areas and make their living on agriculture (McCalla and Nash 2007). Therefore any assessment of the effect of the current trade system on reducing poverty must take into account agricultural trade.

Agricultural trade has always been the crux between developing and developed countries in the WTO. Prior to the Uruguay Round, non-tariff barriers including the export subsidies and import restrictions of developed countries with regard to the agricultural industry constituted serious obstacles for developing countries wishing to participate in international trade, which resulted in restrictions to their foreign exchange earning capacity. Without sufficient foreign exchange to import technology from developed countries, it is extremely difficult, if not impossible, for developing countries to realize modernization.

Current agricultural subsidies cause the domestic and export price of numerous commodities to remain lower than their cost of production in industrial countries (World Bank 2003: 126). The direct effect of agricultural subsidies in developed countries is that, on the one hand, the products of developed countries become more competitive in the markets of developing countries; on the other hand, it is more difficult for the products of developing countries to get access to developed countries. Agricultural subsidies in developed countries have been criticized by scholars, international organizations and developing countries for contributing to poverty in the developing world.<sup>296</sup>

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294. In low-income countries, agriculture accounts for about 60 per cent of the labour force. Even in middle-income countries, the sector still accounts for more than 25 per cent of employment (World Bank 2003: 103).

295. In low-income countries, agriculture produces about 25 per cent of GDP. In middle-income countries, the sector still accounts for more than 15 per cent of GDP. When coupled with agro-related industries and food-related services, its share, even among middle-income countries, is typically 25 per cent to 40 per cent of GDP (World Bank 2003: 103).

296. For example, see Cline (2005) and Stuart and Fanjul (2005).

Take Jamaica as an example; its unique natural situation makes itself an ideal place for milk production. However, because of cheaper EU subsidized milk powder, increased imports have brought serious losses to local farmers. In 1999, dairy farmers like Phyllis March had to pour away more than 1,000 gallons of milk that could not be sold.<sup>297</sup> Needless to say, this constitutes a substantial loss for a small farmer who makes a living by selling milk.

The same situation takes place in other territories and sectors. The misery suffered by Mohammed Ali Indris in Ethiopia is another example. Five years ago, his annual income from selling coffee and corn was US\$320, which was enough to cover the living expenses of his whole family. However, the competition of foreign subsidized agricultural products led to a substantial reduction in the market price. Even with a four times increase in sales volume, Mohammed could not earn enough money to pay for his family's expenses. As a result, not only did he have no money to send his children to school, but also had to sell his farm cattle to repay the loan lest he be sent to prison.<sup>298</sup>

The Jamaican and Ethiopian experiences are shared by other developing countries that account for 80 per cent of the world's population. It was reported that,<sup>299</sup> before China joined the WTO, the Chinese government encouraged farmers to grow industrial crops by providing the latter with bank loans. Many farmers in Guangxi Autonomous Region hence engaged in growing sugarcane and sugar production. Their living standards grew very fast. Take a farmer, for example, who borrowed money from a bank to plant sugarcane and started to produce sugar. By doing so, he was able to earn RMB2,500 annually and was full of hope. The WTO membership of China, however, led to an influx of subsidized imported sugar into the Chinese market, which resulted in a sharp decrease in sugar prices thereof. This farmer's income decreased to less than RMB0.8 daily. With this small amount of money, he can barely cover his child's education fee, not to mention the original plan to reconstruct his house. Not only that, he had no money to repay the loan.

As the Uruguay Round has already brought agricultural trade within the multilateral discipline of the WTO, one may wonder why the poverty situation of developing countries and LDCs has not improved. The answer is that the WTO has failed to shake the foundation of protectionism in agriculture. According to the Agreement on Agriculture, each member should implement tariffication and tariff bindings on import measures. Ironically, the peak tariff on agricultural products is still as high as 200 per cent (OECD 2003: 5), and the current average agricultural

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297. See Canadian Council for International Cooperation, 'What direction for development? Focus on agriculture'. This document was distributed by the Canadian Council for International Cooperation at the Fifth WTO Ministerial Conference.

298. See Canadian Council for International Cooperation, 'What direction for development? Focus on agriculture'.

299. This information was disclosed by a survey report of Oxfam Hong Kong published in a local newspaper during the Cancún Ministerial. The report was prepared by surveyors of the Chinese Academy of Social Sciences and Chinese Agricultural Ministry. The author had an opportunity to discuss the issues in detail with the surveyors during the Cancún Ministerial in September 2003.



bound tariff is 60 per cent (World Bank 2003). Moreover, the tariff of agricultural products increases along with the sophistication of the level of manufacturing, which aggravates import protection and adversely impacts developing countries' export interests. So far as export subsidies are concerned, under the Agreement on Agriculture, the member that imposes export subsidies must include in its schedule commitments on reduction of subsidies. In other words, the member may continue to provide the subsidies, given it undertakes to reduce the subsidies gradually.

The above situation is explainable in terms of certain aspects of the current multilateral system under the WTO. In the first place, the tariff deduction method for agricultural products reached in the Uruguay Round makes it possible for developed countries to maintain high tariffs on sensitive agricultural products imported from developing countries. The Uruguay Round required members to commit to an average cut in tariffs rather than a cut in average tariffs. As a result, developed countries can choose to reduce agricultural tariffs in the field where tariff levels are already low and then easily met the WTO's requirements. For example, if the original tariff for a product is 2 per cent, a 1 per cent cut represents a 50 per cent tariff reduction. But these fields are generally not sensitive agricultural products and, therefore, the tariff cuts would not have a substantial impact on the agricultural industry of the importing countries.<sup>300</sup>

Secondly, the bound tariff system on agricultural products does not work to the advantage of developing countries. According to the WTO Agreement, both developed and developing countries have the same right to bind importing tariffs. However, in practice, applied tariffs in developing countries are always lower than the bound tariffs, while the applied tariffs of the developed countries are, as a general rule, higher than the bound tariffs.<sup>301</sup> This *de facto* inequality does not only have direct adverse impacts on the export of agricultural products of the developing countries, but also creates a psychological obstacle to the negotiations at the Cancún Ministerial.

Thirdly, there are problems with the method used to calculate domestic subsidies under the WTO. According to the Agreement on Agriculture, subsidies in general are grouped and represented by green box, blue box and amber box.<sup>302</sup> When calculating the aggregate of domestic support, WTO allows blue box subsidies to be included, but in ascertaining the subsidy deduction the blue box subsidies would not be taken into account. This results in an over-estimation of domestic support and makes it easier for the member concerned to satisfy the requirement of a reduction in subsidies. Moreover, the aggregate support itself does not require the subsidy reduction in certain fields. There is also a tendency

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300. At the moment, there is no international agreement on what constitutes sensitive products. As such, the issue is almost completely left to the discretion of the importing countries.

301. A survey of the World Bank indicates that for some developing countries, the tariff overhang is five times more than the applied tariff; while the applied tariff of OECD countries is two times more than the bound tariff. See World Bank (2003: 103).

302. Green box subsidies are not restricted; blue box subsidies are for special circumstances; and amber box subsidies should be reduced gradually. For details, see Wang (2003: Chapter 7).

for developed countries to try to avoid important issues and dwell on the trivial to elude the obligation of reducing subsidies. As a result of the above manoeuvres, it is possible that a member's subsidies in agriculture may increase constantly, while its aggregate domestic support decreases.

Fourthly, the peace clause of the Agreement on Agriculture restricts developing countries from resorting to WTO dispute settlement mechanisms on issues concerning agricultural subsidies, provided those subsidies satisfy the requirements of the Agreement on Agriculture.<sup>303</sup> With the expiration of this clause at the end of 2003, this problem has officially come to an end. Taking into consideration the complexity of the subsidies provided by the developed countries in agriculture, it will take a long time for the developing countries to figure out what subsidy is prohibited and what is not, not to mention taking such matters to the Dispute Settlement Body of the WTO.<sup>304</sup>

### 11.5. THE FUTURE

Trade, health, reduction of poverty and human rights are highly interrelated. The right to health is an important aspect of human rights under which states are obliged to ensure that public health services, as well as medicines and health care, are made available to all and are accessible to all (WHO 2005: 8). Therefore, for the purposes of protecting or improving human health, the establishment and monitoring by states of product safety, sanitary and phytosanitary standards should be considered as measures for safeguarding human rights. Yet such measures may be contrary to measures aiming at reduction of poverty, the solution of which is also an important part of human rights – albeit not explicitly referred to in international human rights documents – as it is closely related to fundamental economic rights. Both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights refer to the right of everyone to an adequate standard of living, including adequate food, clothing, housing and medical care and necessary social services.<sup>305</sup> Those who do not have enough money (poverty) obviously cannot afford adequate food, clothing, housing and medical care and their economic rights cannot be realized. For the international trading system, whilst trade liberalization is the aim, its ultimate goal must be, *inter alia*, raising the standard of living, in particular the living standards of those who live below the average, namely the people of developing countries and LDCs.

According to available statistics, at the beginning of the twentieth century, the standard of living of 1.2 billion of the world population was below US\$1 a

303. For details see Agreement on Agriculture, Article 13.

304. Even between the members that invented and have used such subsidies such as the United States and the EU, there is hardly any agreement as to what is a prohibited subsidy and what is permissible. This illustrates the essential problems for negotiations on reduction of agricultural subsidies.

305. Universal Declaration of Human Rights, Article 25, International Covenant on Economic, Social and Cultural Rights, Article 11.

day and that of 1.6 billion was below US\$2.<sup>306</sup> Statistics also show that, since the 1950s to the beginning of this century, international trade grew seventeen times, whilst the total amount of world production only increased by six times over the same period.<sup>307</sup> This shows that growth of trade does not necessarily coincide with growth of production, and if we take into consideration the relatively small portion of developing countries and LDCs in world trade, their benefit from this increase is even less. Therefore, in order to enable developing countries and LDCs to share the fruits of world trade, namely reducing their poverty, it is important for such countries to have the needed capacity to enter the markets of the developed world. After decades of multilateral trade negotiations, especially the Uruguay Round negotiations, the tariffs on industrialized products have reduced significantly, but tariffs on competitive products from developing countries and LDCs still remains comparatively high. This in effect makes developing countries unable to benefit from the general reduction of tariffs.

The Doha Ministerial Declaration places emphasis on providing a major opportunity for developing countries, including ‘gradually reducing with a view to phasing out, all forms of export subsidies and substantial reductions in trade-distorting domestic support.’<sup>308</sup> Yet, despite repeated promises by politicians, the conclusion of the Doha Development Round still seems very far away, which is substantially attributable to the vast gap between the developing and developed countries, especially on agricultural trade. As for developing countries, immediate elimination of agricultural subsidies is important, but for developed countries to do so would equally affect their interests. This serious disagreement on agricultural trade led to the failure of the Cancun Ministerial in 2003 and the non-success of the Hong Kong Ministerial in 2005.

Although the Doha Round resumed in July 2007 after being suspended for almost six months, no substantially breakthrough has occurred to date. Because the Singapore Issues<sup>309</sup> were excluded from the agenda in the Geneva Ministerial of 2004, the developed countries now lack motivations to substantially eliminate agricultural subsidies and reduce tariffs on agricultural products. In July 2008, the United States offered to cut its ceiling on trade-distorting agricultural subsidies to US\$15 billion, which is well below the US\$48.2 billion ceiling allowed under WTO rules. Yet, taking into account the fact that current US spending on trade-distorting farm programmes is about US\$7 billion, such an offer means the

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306. Opening Address by the Director-General to the Ministerial Conference of LCDs entitled ‘Implementation of the Programme of Action for the LDCs and Combating Poverty’, Cotonou, Benin, 5 August 2002, p. 1.

307. Opening Address by the Director-General to the Ministerial Conference of LCDs entitled ‘Implementation of the Programme of Action for the LDCs and Combating Poverty’, Cotonou, Benin, 5 August 2002, p. 2.

308. Doha Ministerial Declaration, para. 13.

309. At the WTO Ministerial Conference of 1996 in Singapore, four working groups were entrusted with looking into the issues of transparency in government procurement, trade facilitation, trade and investment, and competition policy, these subjects often now being referred to as the ‘Singapore Issues’.

possibility for the United States to increase agricultural subsidies in the future.<sup>310</sup> The EU also committed a 60 per cent cut of its tariffs on agricultural products, but still lower than the 66–73 per cent rate of reduction in the modalities.<sup>311</sup> Dissatisfaction with the compromises made by the United States and the EU in turn led to some developing countries' insistence on a special safeguard mechanism for developing countries, which would allow them to raise tariffs temporarily in order to deal with import surges and price falls. This finally led to a collapse in the talks in Geneva in July 2008.

The deadlock did not come to an end until the holding of the G20 summit.<sup>312</sup> Surprisingly, the leaders agreed that it was critically important to reject protectionism in the face of the unprecedented financial crisis. They also decided to 'refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions' and to 'strive to reach agreement this year [2008] on modalities that leads to a successful conclusion to the WTO's Doha Development Agenda with an ambitious and balanced outcome'.<sup>313</sup>

According to the Revised Draft Modalities for Agriculture,<sup>314</sup> a document prepared by Ambassador Crawford Falconer, chairperson of the agriculture negotiations, reductions in Overall Trade-Distorting Domestic Support (Base OTDS) for agriculture

shall be the sum of:

- (a) the Final Bound Total AMS specified in Part IV of a Member's Schedule; plus
- (b) for developed country Members, 10 per cent of the average total value of agricultural production in the 1995–2000 base period (this being composed of 5 per cent of the average total value of production for product-specific and non-product-specific AMS respectively); plus
- (c) the higher of average Blue Box payments as notified to the Committee on Agriculture, or 5 per cent of the average total value of agricultural production, in the 1995–2000 base period.<sup>315</sup>

The Revised Draft Modalities for Agriculture also made an exception to developing countries by providing that such members may maintain the AMS level at '20 percent of the average total value of agricultural production in the 1995–2000 or 1995–2004 period',<sup>316</sup> which is twice as much as that applicable to developed

310. US Offers To Cut Farm Subsidies By \$1.4 Billion To Help Trade Talks, *Herald Tribune*, 22 July, 2008. <http://www.iht.com/articles/2008/07/22/business/22wto.php>

311. Committee on Agricultural Special Session, Revised Draft Modalities for Agriculture, 10 July 2008, TN/AG/W/4/Rev.3.

312. The G20 was held on 15 November 2008 in Washington DC as a result of the worldwide financial crisis, which was triggered by the subprime mortgage lending of financial institutions in the United States. For the purpose of resolving the crisis, state heads of the twenty most important countries gathered to find a solution.

313. Para. 13 of G20 Declaration on Financial Crisis adopted on 15 November 2008.

314. See WTO document, TN/AG/W/4/Rev.4, 6 December 2008.

315. WTO document, TN/AG/W/4/Rev.4, 6 December 2008, para. I-A(1).

316. WTO document, TN/AG/W/4/Rev.4, 6 December 2008, para. I-A(2).

country members. The question is again whether developing country members have the resources to fund such expensive subsidies.<sup>317</sup>

The tiered reduction formula does not work for developing country members either. According to the formula, the reduction of the Base OTDS should be achieved as follows:<sup>318</sup>

- a) where the Base OTDS is greater than US\$60 billion, or the equivalent in the monetary terms in which the binding is expressed, the reduction shall be 80 per cent;
- b) where the Base OTDS is greater than US\$10 billion and less than or equal to US\$60 billion, or the equivalents in the monetary terms in which the binding is expressed, the reduction shall be 70 per cent;
- c) where the Base OTDS is less than or equal to US\$10 billion, or the equivalent in the monetary terms in which the binding is expressed, the rate of reduction shall be 55 per cent.

Developed country members whose level of Base OTDS is at 40 per cent or more of the average total value of agricultural production in the 1995–2000 period are required to make an additional effort in reducing the Base OTDS.<sup>319</sup>

The Revised Draft Modalities for Agriculture were prepared by the Chairperson based on the previous negotiations, and therefore may or may not be agreed by the WTO members. Another set of difficulties is that the ascertainment of the reduction of subsidies is at least as complicated as the determination of subsidies, if not more so. This together with the concerns of developing country members have made the future conclusion of the Doha Round very unpredictable. Even Secretary-General Pascal Lamy was not optimistic upon the release of the Chairperson's text, saying:

With these revised texts we are closer to our goal of clinching modalities in agriculture and industry, a stepping stone towards the conclusion of the Doha Round. We still have a long way to go before the Round is concluded and all Members are asked to cast their ballot on the final package. However, the modalities step would send a signal that all WTO members stand united to face the challenges of the current economic crisis. It will confirm that they reject unilateral beggar thy neighbour solutions.<sup>320</sup>

317. For instance, when China joined the WTO, it was permitted to subsidize its agriculture to 9 per cent of the average total value of agricultural production. Yet, in reality China's actual subsidy level was not even up to one-third of the permissible level, even though China's economy is in much better shape than most of the developing country members.

318. WTO document, TN/AG/W/4/Rev.4, 6 December 2008, Para. I-A(3). Developing country members also enjoy differential treatment according to which those 'with Final Bound Total AMS commitments, the applicable reduction in the Base OTDS shall be two-thirds of the relevant rate' applicable to developed country members and net food-importing developing country members are not required to undertake reduction commitments. WTO document, TN/AG/W/4/Rev.4, 6 December 2008, Para. I-A(7).

319. WTO document, TN/AG/W/4/Rev.4, 6 December 2008, Para. I-A(4).

320. See [http://www.wto.org/english/news\\_e/pres08\\_e/pr543\\_e.htm](http://www.wto.org/english/news_e/pres08_e/pr543_e.htm), checked on 6 December 2008.

Developing country members themselves may constitute another difficulty to the success of Doha Round. Although developing countries in general share common and unified interests, their experiences, needs and expectations are dissimilar. For instance, whilst agriculture subsidies are considered by some developing countries as obstacles, the net food import countries welcome subsidized grains and other agricultural products. The cotton-producing countries are concerned about the subsidies by developed countries to the cotton industry, while importers of cotton may benefit from such subsidies. This situation further complicates the already difficult negotiations.

By the time of completion of this article, the deadline made by the G20 leaders has well passed. Yet no substantial progress has been made for the conclusion of the Doha Round. Unless a breakthrough can be made quickly, countries may be forced to resort to trade protectionism in the face of the unprecedented financial crisis. This shows that countries have not learnt from the lessons that humanity has experienced in the past, that trade protectionism is bound to lead to other difficulties and problems for the world. The irony is that everyone agrees that international trade brings wealth to humanity and therefore liberalization of trade is unavoidable in order to improve the standard of living for the people in the world, and that reduction and ultimate elimination of poverty of the world to a large extent also depends on trade liberalization. Yet, despite the common belief in trade liberalization, each nation due to natural selfishness tries to make use of permissible and sometimes non-permissible means to raise barriers to trade. It is national selfishness and short-sightedness that have prevented the conclusion of the Doha Round. The world is now again at a crossroads and if the right decision is made by both developed and developing countries on further liberalizing trade, every nation will benefit, which in turn will contribute to the reduction and elimination of poverty and improvements in the living standard of the whole world. No matter what choice may be made by current leaders, the trend of globalization cannot be reversed. In the long run, further trade liberalization is still a 'must'. It is just a matter of time.

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## Human Rights and Extreme Poverty: An Economist's Perspective

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### 12.1. INTRODUCTION AND BACKGROUND

Since 1989 the United Nations Commission on Human Rights (UNCHR) has been discussing extreme poverty as a major source of deprivation – one that affects all human rights and constitutes a violation of human dignity – and has therefore called for immediate national and international action to eliminate poverty. In 1998, the Commission decided to establish the mandate of an independent expert on the question of human rights and extreme poverty. Anne-Marie Lizin served as the independent expert from 1998 to 2004, and I succeeded her in 2004.

In its resolutions 1998/25, 2004/23 and 2005/16, the UNCHR invited the independent expert to focus on three areas: the relationship between extreme poverty and the enjoyment of human rights, the obstacles encountered and progress made by women living in extreme poverty, and the impact of discrimination on extreme poverty.

This chapter builds on four reports on these subjects that I submitted to the UNCHR in 2005, 2006, 2007 and 2008, respectively, as well as on my mission report on extreme poverty conditions in the US, which was considered by the UNCHR in 2006. I have added findings from my experiences in some African, Asian and EU countries to suggest how looking at extreme poverty from the perspective of human rights adds considerable value to the discourse on poverty and its eradication. In 2005, I outlined my general approach to the mandate in my first report to the Commission (Sengupta 2005) by defining 'extreme poverty' as a combination of income poverty, human development poverty and social exclusion. My aim was to focus on the multi-dimensionality of poverty and its attributes which can be addressed by means of specific policy interventions.

I explored how this definition can be linked to the concept of human rights and how the policies to remove such poverty can be presented as obligations to

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fulfil those rights. I also suggested concrete actions that could contribute to a more efficient eradication of poverty based on the principles of human rights.

In my second report (Sengupta 2006a), I sought to show the value of approaching extreme poverty in terms of the violation or denial of human rights following the definition of extreme poverty I had provided in the foregoing report. I also focused on the obligations it implied for relevant actors to ensure the implementation of programmes combating such extreme poverty. During the same period, I carried out a fact-finding mission to the US from 24 October 2005 to 4 November 2005. Despite the country's high per capita income, a significant proportion of its population has consistently been extremely poor, according to our definition. I met and consulted with people living there in extreme poverty and representatives of civil society organizations and the government. The findings of that mission were included in the report I submitted to the UNCHR (Sengupta 2006b).

On 23–24 February 2007 the Office of the High Commissioner for Human Rights organized an Expert Seminar in Geneva on my work on human rights and extreme poverty. The key topics discussed included: 1) a clear definition and indicators for extreme poverty, including the elements to be considered and a threshold of 'extremeness'; 2) extreme poverty as a problem not limited to developing countries; and 3) extreme poverty as a combination of income poverty, human development poverty and social exclusion. The discussion there also highlighted issues such as the legal empowerment of the poor; the need to safeguard social security expenditure with international support; the role played by national agencies, transnational companies and developed countries in the fight against extreme poverty; and strengthening participatory approaches transcending domestic sovereignty.

In my third report (Sengupta 2007) to the UNCHR, I expanded on the approach to extreme poverty as a violation of human rights and suggested methods of dealing with extreme poverty based on my findings from several case studies of different regions and the results of the expert consultation.

In my fourth report (Sengupta 2008), I took stock of all the issues related to extreme poverty and human rights, particularly the issues of social exclusion, identified as a component of extreme poverty and seen as a key characteristic in many approaches to extreme poverty adopted in the EU. I visited Brussels, where I met a representative group of beggars, rag pickers, homeless and unemployed, all of whom were socially excluded. Their problems went far beyond income poverty and called for a concerted attempt to change societal attitudes and practices. In that fourth report, I also considered the importance of international development cooperation and Poverty Reduction Strategy Papers (PRSPs) in Africa as tools for eradicating extreme poverty.

Section 12.2 discusses my working definition of extreme poverty – as a combination of income poverty, human development poverty and social exclusion – as well as whether these types of poverty are cumulative (union) or overlap (intersection). Section 12.3 indicates the significance of looking at extreme poverty from a human rights perspective and what value it adds to poverty eradication

programmes that treat poverty as a violation of human rights and to national and international actions to combat poverty. Section 12.4 lays out the characteristics of such actions that take a human rights approach, while Section 12.5 discusses some of the anti-poverty programmes I observed during my missions as Independent Expert to the US and to various African, Asian and EU countries. The chapter concludes (Section 12.6) with a discussion of the contribution an economist's perspective can make to human rights approaches to poverty.

## 12.2. THE DEFINITION OF EXTREME POVERTY

My working definition of 'extreme poverty' as a combination of income poverty, human development poverty and social exclusion highlights the extreme vulnerability of a segment of the poor. In view of this definition, a society could be expected to accept responsibility for mitigating at least this kind of poverty. Extreme poverty is an extreme form of deprivation, according to widely accepted definitions of severity of deprivation, especially when all of the above elements of deprivation coexist.

### 12.2.1. Income Poverty

The first dimension of poverty, of course, is income poverty. Conventionally, poverty has been viewed as the lack of income or purchasing power to secure basic needs. Such poverty can be considered in absolute or relative terms, depending on how one understands 'basic needs'. A simple absolutist interpretation would be to fix a minimum daily amount of calorie intake from food necessary for survival in a reasonably healthy condition, supplemented by some minimum amount of non-food items regarded as essential for a decent social existence. An alternative form of this absolutist interpretation of income poverty would be to agree, by consensus, to a per capita level of expenditure as a poverty line, such as US\$1–2 per day, in terms of a comparable level of purchasing power.<sup>322</sup> This approach would avoid the difficulties involved in determining minimum calorie requirements from food and minimum amounts of non-food item consumption.

Income poverty can also be viewed from a relativist perspective. Basic needs may be dependent on the sociocultural norms of a country such that even though a person's income meets the requirements of subsistence and essential consumption, he or she may be regarded as poor if his or her income were not to allow him or her access to goods and services required to satisfy sociocultural norms. For instance, a group of people would be deemed poor in the US if their income were not to give them access, say, to minimally decent housing, with

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322. As noted in Chapter 2 above, the World Bank has recalculated the income poverty line at US\$ 1.25 per day, although others have contested this definition.

heating and sanitation, or reasonably warm clothing or transportation between places of residence and work – even if their income were more than sufficient to provide food that satisfied the calorie requirement and other essential consumer goods. Poverty would still be related to access to goods and services and therefore purchasing power or income, although the poverty line would be much higher in some countries than in other, poorer countries. Alternatively, relative poverty can be viewed in terms of income distribution. For example, people belonging to the lowest 10 per cent on the scale of income distribution can be regarded, by social consensus, as extremely poor.

The distinction between poverty and extreme poverty within this framework of income poverty would essentially be a question of the degree or extent of the phenomenon. Since poverty is defined in terms of access to and availability of goods and services, ‘extreme poverty’ would mean the command over a much smaller basket of goods and services and/or the prevalence of a longer duration of poverty. Or if some groups remain poor over generations, they could be described as suffering from *chronic poverty* and considered to be extremely poor. Within a relativist framework, people affected by chronic poverty may suffer from a rigidity of social standing because society expects them to behave in particular ways or play particular roles from which it is difficult for them to deviate – behaviours or roles that differ from those of people with higher income and who are part of the social mainstream. Those suffering from chronic poverty would thus tend to become socially excluded.

### 12.2.2. Human Development Poverty

The second dimension of poverty is human development poverty, where extreme poverty may be regarded as severe deprivation of human development. The international community has affirmed, in virtually all international forums, that poverty is not confined to economic deprivation but also extends to social, cultural and political deprivation. Growth in gross national product (GNP) was the goal of development in the 1950s and 1960s. However, in the last two decades, the poverty discourse has moved far beyond the narrow focus on the income criterion. While it is true that steady growth in per capita income is a necessary condition for the improvement of all the different components of well-being, it is not sufficient, especially if certain elements, such as being healthy or being well educated, are considered more important or more pressing than others. A policy of maximizing income growth does not take into account the problem of income distribution or allocation of resources to areas that may be socially more desirable than their market value. For example, the benefits of primary education, especially in rural areas, may be socially much more valuable than what those who receive such education would be willing or able to pay. Therefore, in a market economy even with high income growth, the expansion of primary education or the salaries paid to primary school teachers would be much less than what would be most desirable according to social valuation. Under such circumstances, it would

thus be necessary to adopt specific policies of market intervention to reallocate resources or to redistribute incomes, even in a rapidly growing economy. A policy of maximizing income growth alone will not necessarily maximize the well-being of the people.

For several years, especially in the 1960s and 1970s, this concern with elements of well-being, which could not be secured only by increased GDP growth, was accommodated by targeted expenditure of resources and provision of goods and services in an attempt to adjust the structure of economic activities of aggregate demand and supply to supplement the policy for maximizing economic growth. It was only with the emergence of the human development literature that income growth ceased to be an objective characterizing development and was recast as an instrument for promoting development. This indicates the role of economic policies and the concomitant role of policy-making institutions, such as the state and other corporate and non-corporate authorities.

The first *Human Development Report* (1990) of the United Nations Development Programme (UNDP) stated that promoting individual development has to be carried out in terms of human development, which it defined as the process of expanding people's options, giving them greater opportunities for education, health care, income, employment, etc. Income is but one constituent element of well-being, though it also plays an instrumental role insofar as it enables the enjoyment of other elements that contribute to well-being. To operationalize this notion, the UNDP report introduced the Human Development Index (HDI), based on available data from different countries, which captures three essential components of human well-being: longevity, knowledge and basic income for a decent standard of living. Poverty could then be regarded as deprivation, and extreme poverty as severe deprivation of human development.

Amartya Sen has provided the rationale for regarding HDIs as components of well-being by giving a multidimensional definition of poverty as *capability deprivation*, where 'capability' is defined as the freedom or ability to lead a life of value in terms of what a person chooses to be or to do. Thus, extreme poverty can be regarded as extreme deprivation of such capability. The role of such freedoms is both constitutive and instrumental. For instance, the freedom to lead a healthy life is a constitutive element of a person's well-being, but it is also instrumental insofar as it allows the person to enjoy other freedoms, including freedom of work and movement. *Capability poverty*, then, means deprivation of basic capabilities and is a composite of income poverty and human development poverty in both the constitutive and the instrumental sense. The indicator levels to be identified with poverty and extreme poverty have to be decided by some form of consensus about the meaning of 'basic' in the expression 'basic capabilities', which would differ across countries.

The World Summit for Social Development also stated in its 1995 *Copenhagen Declaration* (WSSD 1995a) that poverty has various manifestations, including lack of income and productive resources sufficient to ensure a sustainable livelihood; hunger and malnutrition; ill health; minimum access to education and a lack of other basic services that increases morbidity and mortality from

illness, homelessness and inadequate housing; an unsafe environment; and social domination and exclusion. It further stated: 'Absolute poverty is a condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to social services' (WSSD 1995b: para. 19). This characterization of poverty has been reiterated on several occasions, such as at the World Food Summit in Rome in 1966, in the *United Nations Millennium Declaration* of 2000 and at the World Summit on Sustainable Development in 2002.

### 12.2.3. Social Exclusion

The third dimension of poverty is social exclusion, which can be seen both in its constitutive role with intrinsic value and in its instrumental role. Social exclusion is an extension of the relativist concept of income poverty, except that it goes beyond simple purchasing power to cover other elements not captured by the concept of income. Social exclusion affects the level of different human development indicators and often the level of income itself, just as income and human development would influence social exclusion. It is this relational aspect of social exclusion that adds considerable value in identifying problems associated with poverty.

In his report on *Chronic Poverty and Lack of Basic Security* commissioned by a French government body, Father Joseph Wresinski (1987, 1994: iv) observed:

The poor are pushed into areas where others rarely penetrate: inner city slums, the outskirts of towns and isolated rural dwellings. When they appear in the public eye, it is often because they have been made homeless in their own neighbourhoods. Geographically segregated and socially isolated, they are cut off from the cultural, political and civic life of the country.

Wresinski suggests that it is this exclusion that traps poor families and that any effort to reduce poverty will not be successful unless it addresses the effects of exclusion.

Social inclusion is seen as crucial in many of the approaches that the EU has adopted to eradicating poverty. The EU programmes include eradicating child poverty by breaking the vicious circle of intergenerational inheritance, making labour markets more inclusive (EC 2009a), ensuring decent housing for everyone that promotes social inclusion related to homelessness (EC 2009b), tackling financial exclusion, overcoming discrimination, and increasing the integration of people with disabilities, ethnic minorities and immigrants by adopting a three-pronged approach: increasing inclusion of vulnerable and marginalized groups, increasing access to mainstream services and opportunities, and enforcing legislation to overcome discrimination and developing targeted approaches to respond to the specific needs of each group, particularly immigrants and ethnic

minorities. The Open Method of Coordination (OMC; EC 2000, 2009d) was also established at the Lisbon European Council in March 2000 as a framework for political coordination without legal constraints between EU Member States for the identification and promotion of policies with regard to social protection and social inclusion.

Incorporating the notion of social exclusion in the definition of extreme poverty clearly adds considerable value to the understanding and treatment of the problem because deprivation resulting from social exclusion may be quite different from deprivation of income or of human development. Measuring social exclusion may be difficult because it requires focusing on specific failures and social relations that may be both context-specific and intertemporal in nature. However, such difficulties should not lead to the omission of exclusion from the notion of poverty. Several attempts have been made in different EU countries, notably Belgium and the UK, to estimate social exclusion and to establish a relationship between social exclusion and other aspects of poverty that lead to the denial of basic freedoms or security to different people. In many developing countries, statistics exist on the number of people who are socially marginalized, excluded or ostracized, as well as on their living conditions. In India, a substantial debate is underway on the living conditions of members of the lower castes and tribes who are socially excluded and on whether affirmative action by the government should be extended to all such people or be confined to those who are also income poor. In this regard, adopting the view that people who are socially excluded suffer from extreme poverty would add considerable value to the discussion in both developed and developing countries.

Thus in my reports I have presented poverty as a composite of income poverty (i.e. income below a minimum level barely sufficient to meet basic needs), human development poverty (i.e. deprivation of food, health care, education, housing and social security needed for human development), and social exclusion (i.e. being marginalized, discriminated against and left out in social relations). 'Extreme poverty' would be regarded as extreme deprivation, and 'chronic poverty' would be used to describe the condition of those who suffer from income poverty and human development poverty, as well as social exclusion, for such a long time that social relationships become ossified inasmuch as the affected group is expected by others to remain deprived and socially excluded forever.

This view of extreme poverty conforms to the prevalent definitions, the most comprehensive of which, used in human rights reports on extreme poverty, is based on Wresinski's concept of the lack of 'basic security', combining the European view of social exclusion as a lack of participation and rupture of social bonds, with other economic and social factors that prevent one's enjoyment of freedoms and human rights.

Nothing would be lost if this definition were to be recast as a composite of income poverty, human development poverty and social exclusion. Capability poverty can also be regarded as a simultaneous deprivation of income and human development, as well as social exclusion. The recast definition would combine income and human development as components of capability, both as constituent

and instrumental variables. Although the capability approach is individualistic and can be said not to capture the relational notion of social exclusion, Sen (2004: 4) rightly notes that ‘we have good reasons to value not being excluded from social relations and in this sense social exclusion may be directly a part of capability poverty’, which he considers to deprive one of things one values. Social exclusion can thus be both constitutively a part of capability deprivation and instrumentally a cause of capability failure.

#### **12.2.4. Union or Overlap**

The total universe of a country’s poor should be regarded as the aggregate or union of all three groups – those who are income poor, those deprived of human development and the socially excluded. Extreme poverty in such a case would be a portion of each of these categories selected in terms of the severity of the conditions of deprivation.

Since this number can be very large in many developing countries, a society may choose a set of criteria that limit the number of people suffering from extreme poverty to a smaller subset – thus, to an overlap or intersection of the three sets of people who are income poor, human-development poor and socially excluded, or those suffering from all three categories of poverty – resulting in a smaller number of people than implied in the union approach.

The advantage of the overlap or intersection approach is that every member of society could be made aware of the severity of the poverty conditions. Following the Rawlsian principle of justice, which emphasizes the need to concentrate on the most vulnerable segments of society, it should therefore be possible to appeal to people’s sense of justice and persuade them to accept the obligations associated with the elimination of extreme poverty – which makes a small segment of the population extremely vulnerable, causing it to suffer from the loss of all liberties or freedom of action. If extreme poverty is to be regarded as a denial of human rights, obligations to eliminate extreme poverty must be recognized and accepted by society. The ‘overlap’ definition increases the chances of such acceptance. Also, because this approach focuses on a smaller set of people, it becomes possible to develop indicators for these forms of poverty based on existing data that capture not only the outcomes but also the processual aspects of activities, and thus not just the availability of goods and services but also access to them. The eradication of poverty thereby becomes more manageable, with limited sacrifice of resources and privileges of other segments of the population, which any re-distributive policy needed for this purpose would entail.

### **12.3. POVERTY SEEN FROM A HUMAN RIGHTS PERSPECTIVE**

The significance of recognizing a desirable objective as a human right is that it is translated into a corresponding enforcement of obligations. Human rights are then recognized as highly valuable objectives to which all individuals in a society are



inherently entitled as human beings. Agents of society – individuals, institutions, corporations and governments – are regarded as having obligations to enable individuals to enjoy their rights. And the state is regarded as the primary duty-bearer and thus as being obliged both to frame laws and mechanisms to influence the behaviour of other agents and to protect, respect, promote and fulfil human rights.

### **12.3.1. Social Objectives and Obligations**

When an objective of social arrangement is accepted as a human right, it implies that all agents of society would regard the fulfilment of that objective as a 'binding' obligation, one that supersedes all other policy objectives. Because not all social objectives can be regarded as human rights, it is helpful to apply what may be described as Amartya Sen's (1999: 227–31) 'legitimacy' and 'coherence' tests. A social objective must be of sufficient importance to inform a society's constitutional norms as standards of achievement, the realization of which would provide legitimacy to the behaviour of all agents and authorities, especially the state. The objective should also be 'coherent' so that the obligations or duties that have to be carried out, and the agents who have to do so, can both be specified.

There may be several different social objectives, but the obligation to realize human rights 'trumps' all others. Obligations would be binding for the agents in the sense that if an agent were not to carry out the specified obligations, there would be a mechanism of reprimand and sanction in order to induce appropriate corrective or compensatory actions. If the obligations are incorporated into the domestic legal system, this mechanism is 'legal', and disputes relating to them can be settled in courts of law. If the rights are recognized in international human rights law, then states parties to international human rights treaties are bound by this obligation.

The state authorities are the primary duty-bearers. It is up to the state authorities to take appropriate steps to implement the rights through direct action, or by establishing rules and procedures and adopting specific laws to induce other agents to adopt appropriate action. In addition to state authorities, all other states and members of the international community that recognize human rights have the obligation to cooperate among themselves and take whatever action is necessary to realize the rights in all countries belonging to that community. Normally, other states and international institutions provide assistance and take complementary action to help the national state authorities to realize the rights of their citizens. In certain situations, and by following appropriate procedures, other state members of the international community can supersede the national state authority and directly help citizens realize their rights when these national states fail to fulfil their obligations or act against their citizens. States are also subject to monitoring and continuous review by civil society and human rights institutions.

### 12.3.2. Poverty as a Violation of Human Rights

The human rights language is obviously appealing, for if poverty is considered a violation of human rights, it could mobilize public action that itself could contribute significantly to the adoption of appropriate policies, especially by governments in democratic countries. Also, the international community, donor states, international institutions, multilateral institutions and multinational corporations would have to cooperate to enable nation states to implement anti-poverty programmes. The poverty reduction programme would then be a matter not of charity but of duty, which would include the possibility of claiming rights through the legal system and courts. It would make a government's intervention 'justiciable' insofar as a 'violation' of this right would have a potential cost for the government, as cases could be taken to courts.

Another value addition of the human rights approach is that when the interventions involved in the application of instruments to reduce poverty are opposed by the rich, the adoption of extreme poverty as a denial or violation of human rights would help to overcome their resistance by: a) increasing the cost to the rich of opposing those interventions, thereby implying a change in their opportunity sets; b) convincing the rich of the desirability of reducing the incidence of poverty, implying a change in preference on the part of the rich; and c) limiting the sacrifices of wealth and privileges to a small set of people without impinging much on the position of others. Countries may adopt policies to resolve internal conflicts and reduce extreme poverty, as would be required by an international convention, even without becoming parties to it. However, the effect of peer pressure could prove quite a relevant consideration for many countries joining the convention, as they would not wish to be isolated as the only country not following the obligations after having ratified such a convention. In fact, the value added to poverty reduction by an international convention increases as a function of both the importance of peer pressures and the effect of its monitoring and 'naming and shaming' provisions on parties.

There is considerable debate as to whether extreme poverty can be described as a violation of human rights, or whether it is a condition that is caused by human rights violations. If extreme poverty can be identified in itself as a violation of human rights, it becomes an obligation for both the concerned states and the international community to make the best efforts directly to remove it. The discussion would then effectively centre on which policies would have the maximum impact for poverty eradication and, if such policies are not adopted, which agencies would be responsible and accountable, and what steps could be taken to compensate for less than 'best efforts' made by the respective duty-bearers. However, if extreme poverty were associated with conditions created by the non-fulfilment of the various human rights, the obligations would turn on the realization of those rights. That might or might not be sufficient to eradicate extreme poverty. In the latter proposition, human rights are taken in their instrumental role in creating a state of well-being for the right-holder, leading to the eradication of extreme poverty.

In the former proposition, human rights are constituent elements of well-being, identified with the eradication of extreme poverty.

It can be demonstrated, both empirically and logically, that a denial of some human rights would cause and be instrumental in creating a state of extreme poverty. It also should be possible to demonstrate that the fulfilment of all human rights would facilitate the removal of basic insecurity, as defined by Wresinski, and thereby the eradication of extreme poverty. However, it is plausible that people can enjoy basic security without enjoying all human rights; so the lack of basic security need not be equivalent to a lack or denial of human rights as such.

The case is similar with respect to capability deprivation. Unless the freedoms that are lacking when there is a deprivation of capabilities that are identified with and claimed as human rights, equivalence between capability deprivation and human rights deprivation cannot be established. International human rights law currently recognizes only a limited number of such freedoms as human rights – including civil, political, economic, social and cultural rights. The space of capability is much broader, consisting of all kinds of freedoms that are necessary to enable an individual to lead a life of value. A number of steps must first be taken, however, before all such ‘freedoms’ can be elevated to ‘rights’. As Sen (2004: 328) puts it, ‘rights involve claims (specifically claims on others who are in a position to make a difference)’ and ‘freedoms are primarily descriptive characteristics of conditions of persons’. Society has to recognize certain freedoms to be enjoyed by its members as a fundamental value or norm, binding them in the society and claimed by them as ‘rights’. These freedoms have to be universal, enjoyed by all equally and without discrimination. They must fulfil the criteria of ‘legitimacy’ and ‘coherence’, and they must be claimed following ‘due’ procedures, through an accepted ‘norm-creating’ process. Basic capabilities that correspond to the notion of extreme poverty would cover only a subset of the total space of capabilities. If that subset is taken as consisting of freedoms currently recognized as rights, then extreme poverty, or basic capability deprivation, can be designated a lack of human rights.

Incidentally, the condition of extreme poverty can be considered as the violation of the right to development (established in the *Declaration on the Right to Development* of 1986 and reiterated by international consensus in the *Vienna Declaration and Programme of Action* of 1993) for those a society deems poor. But there is still no consensus on the content of this right and the nature of corresponding obligation; so I have not pursued here the approach of equating extreme poverty with the denial of human rights to development, a subject I have explored extensively as the Independent Expert on the Right to Development (Sengupta 2002).

Thus it may not always be possible to go beyond the instrumental role of human rights to the assertion that poverty is equivalent to a violation of human rights. The absence of those rights may be the result of existing social arrangements for which no individual party can be blamed or held accountable. It depends upon the states parties that have taken on obligations as legally and morally binding. Several states have not yet fully ratified the international human rights

conventions, and even those that have done so have failed to incorporate them into their domestic legal systems or to respond to international criticisms. Such states do not deny the importance of human rights, or the value of these norms; rather, what they object to is having to accept the legality of these rights. In such cases, claiming that poverty is a violation of human rights will contribute little to the actual alleviation of poverty.

It so happens that the fulfilment of most of the human rights that have been recognized in international human rights law through the covenants on economic, social and cultural rights and on civil and political rights can be described as the basis of conditions of life without poverty. If these rights – such as the right to food, health care, education and an adequate standard of living – were fulfilled, it is difficult to imagine that a society would still have conditions of poverty. This does not mean that poverty is to be defined as the violation of human rights, for these two concepts are not equivalent. If rights were realized, there might not be any poverty; but even if there were no poverty in a society, there could still be violations or denials of some human rights.

Despite being signatory to the international covenants, countries have shown no political will to adopt poverty reduction programmes or have not accepted the 'obligations' that would follow from their legal recognition of the relevant human rights. Hence, in view of this, the notion of extreme poverty, as defined above, is best proposed as a concept that would appeal to the international community of states to accept the obligations that promise to effectively remove those conditions that create extreme poverty and that are regarded as consistent with human rights norms.

The idea is to identify a group as extremely poor whose number is limited so that a society does not find it unmanageable to deal with their problems. Once such a group has been identified, the removal of their conditions of extreme poverty must be taken on as an obligation corresponding to the fulfilment of human rights norms. Even if the countries concerned may not be able to ensure the realization of all human rights, those rights, whose denial has directly caused extreme poverty, should be subject to immediate fulfilment. The international community and all Member States should voluntarily accept the obligations to eliminate extreme poverty as a core element of their human rights obligations.

The remainder of this section discusses national and international actions that would be required to implement poverty eradication programmes from a human rights perspective.

### **12.3.3. Applying a Human Rights Perspective to National Actions to Combat Extreme Poverty**

Besides aiming directly at fulfilling civil, political, economic, social and cultural rights in order to eliminate income and human development poverty and social exclusion, an important requirement to conduct human rights policy is for all states that have ratified international human rights treaties to incorporate them in their domestic legal systems and establish their own national human rights

commission, which would adjudicate, review and recommend appropriate remedial actions when human rights are claimed to have been denied to individuals and groups who seek such actions. There should be a universal campaign to set up such institutions all over the world, as well as a universal campaign to spread human rights education.

Measures have to be taken in a planned and coordinated manner to promote a development programme that facilitates the realization of human rights. These rights are supposed to be realized progressively; some more immediately than others, and the speed of progression will depend on both the flexibility of social, legal and economic institutions and the availability of resources. For the removal of extreme poverty, such programmes must be aimed at the most vulnerable, those lacking essentially in income and human development. Dependence on the markets alone can seldom achieve these specific targets and may often accentuate the deprivation of vulnerable groups even further. This highlights the importance of reforms in the system of governance for implementing any effective programme for rights-based development.

The generation of sustainable employment opportunities, especially for a population's poorer members who reside in rural or urban areas and particularly in unorganized sectors, can have a substantial impact on eradicating extreme poverty. Such a programme should rely on establishing connectivity with markets, skills and finance. To make the programme sustainable, it should be allowed to expand to include eventually the unemployed labour force of the country as a whole. Employment provides income and allows access to all human development facilities, which in turn increases labour productivity and contributes to employment sustainability.

Employment generation programmes in the informal sector have to be based on three essential measures. First, those targeted must have access to training, which means that facilities have to be set up throughout the country for the transmission of specific but low-grade and simple skills. The programme must be driven by market demand for skills, with public support to increase supply by training and vocational education. Secondly, the products of these semi- and low-skilled workers must have access to markets. Connectivity with markets depends on information, transport facilities and telecommunications. Connectivity with product markets has to be supplemented by access to input markets and essential services for engaging in production, such as access to power, water, shelter and sanitation, and then to finance. Expanding microfinance facilities, such as those that have been instituted in many developing countries, together with the reorientation of a country's existing financial intermediary institutions through adequate refinancing and appropriate risk-sharing, must be taken up in these countries supported by central banks and often by national and international financing institutions.

A plan for employment generation consistent with human rights standards, respecting international labour rights and removing the constraints induced by income poverty, human development poverty and social exclusion, will be universally relevant both in developed and developing countries.

#### **12.3.4. Applying a Human Rights Perspective to International Actions to Combat Extreme Poverty**

International obligations for the realization of human rights take the form of both international cooperation to which all states of the world pledged themselves under Articles 55–56 of the Charter of the United Nations (UN 1945) and obligations specified in various international conventions.

Agencies of the international community may be galvanized to adopt policies specifically aimed at removing income and human development poverty and social exclusion by following policies based on human rights standards of participation, accountability, transparency, equity and non-discrimination. The reorientation of their methods of operation is imperative for all agencies, such as the United Nations Development Programme (UNDP), the World Trade Organization (WTO), the World Health Organization (WHO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Children's Fund (UNICEF) and the United Nations Industrial Development Organization (UNIDO). But most important would be the role of the World Bank and the International Monetary Fund (IMF). It is a necessary to coordinate official development assistance (ODA) with policies of international cooperation, as well as to increase it.

Within the existing mechanisms, it would be useful to concentrate on the operations of the World Bank and the IMF and their implementation of poverty reduction strategies explicitly in the form of human rights fulfilment. To this end, a first requirement may be the amendment of the Articles of Agreement of the World Bank and the IMF.

It may also be necessary to make the funding of poverty reduction strategies open-ended and allow international financial institutions to recommend the effective expansion of cooperation in the fields of trade, debt and technology transfer, and additional funding, when countries successfully conduct their strategies in a rights-based manner. In addition, it may be useful to set up a financing facility of callable funds created on the basis of commitments by all countries to contribute 0.7 per cent of their GDP. The funds would be available only after the World Bank and the IMF had determined that the poverty reduction strategy had been implemented in accordance with human rights standards.

In addition, for each implementing country an independent body consisting of independent experts could be set up to monitor the programmes and to adjudicate on appeals by all the concerned parties, focusing on responsibilities and recommending remedial actions. Even if those recommendations were not binding, the exercise would facilitate the programme's implementation.

Finally, a special window could be created within the World Bank and the IMF for developing countries' financing plans to expand employment opportunities for the poor, the marginal and the vulnerable in the unorganized sector. This would be the international counterpart of the national action described above.

#### 12.4. CHARACTERISTICS OF A HUMAN RIGHTS APPROACH TO POVERTY REDUCTION: ENPAT

Although most experts argue that developed countries have no legally binding international obligation to provide international aid and development assistance to developing countries, the existing international legal framework on international cooperation encourages wealthy developed countries to assume a moral and political obligation to reach out to developing countries in the spirit of international cooperation.

In this connection the eradication of extreme poverty may be regarded as the primary objective of development policies, an objective that can be achieved only by way of a rights-based approach to development. Such policies must internalize the basic principles of international human rights norms: equity, non-discrimination, participation, accountability and transparency. In my reports, I have proposed a development compacts model of international cooperation. To implement a rights-based poverty reduction programme, it is necessary to resolve the issue of donor conditionalities such that developing countries, while receiving international aid and assistance to fulfil their development objectives, do not have to sacrifice ownership in the design and implementation of their policies and programmes. This approach calls for developing countries to accept obligations to fulfil and protect human rights. The international community, including donor countries and international agencies, must ensure that developing countries that meet their obligations will have free access to trade and finance. It must be ensured that the conditions or obligations accepted by the developing countries are in their best interest and closely monitored by themselves in a manner consistent with the rights-based approach.

As such the international community has adopted a framework of international cooperation to achieve poverty reduction targets under the aegis of developed donor countries and international financial institutions such as the World Bank and the IMF. PRSPs, initiated by the IMF and the World Bank in 1999, are prepared by low-income countries; they detail a given country's strategies for poverty reduction, linking national action, donor support and development outcomes and involving domestic stakeholders and development partners, including the IMF and the World Bank. I introduced the acronym 'ENPAT', which is shorthand for 'Equity, Non-Discrimination, Participation, Accountability and Transparency', the key characteristics of the rights-based approach of development, in my first report in 1998 (Sengupta 1999: para. 57–80) to the UNHCR as the Independent Expert on the Right to Development. ENPAT applies to the policies for promoting the right to development based on both national actions and international cooperation. The same approach applies equally for any action aimed at poverty reduction, especially in connection with international cooperation for a poverty reduction strategy promoted by the IMF and the World Bank (Adejumobi 2006). Different authors have named these elements differently, but

ideas are fully incorporated in the original 1999 concept of ENPAT for the right to development.<sup>323</sup>

### 12.4.1. Equity and Non-Discrimination

Equity is to be construed as such with respect to growth, structure and distribution of resources in the economy, as well as equitable distribution of income and benefits accruing from the exercise of rights. Non-discrimination entails abstention from discriminating on the grounds of sex, race, language, political affiliation or socioeconomic status in the design and implementation of policies and practices and in the practice of democracy and the rule of law, while particular attention is paid to the well-being of vulnerable groups.

Social safety nets, including cash transfers, food and price subsidies, public works and so on, are aimed at the poor or those at risk of poverty to protect them against the insecurity of unequal distribution of income and to help them to overcome vulnerability to shocks and adversities that can render them completely destitute. However, in most developing countries, especially in Africa, the right to social security has not been achieved, for the fruits of economic growth have failed to trickle down to the poorest and most vulnerable. Gender inequality is also a major obstacle to rights-based economic growth.

### 12.4.2. Participation

All members of a community that adopts a rights-based approach to development should be able to participate, either individually or collectively in a) decision-making about policy priorities, b) formulation of programmes to implement policies, c) monitoring the process of implementation, and d) evaluating outcomes and then taking corrective actions.

For example, technocrats, in collaboration with IMF and World Bank officials, have usually prepared the interim PRSPs, which are the basic documents used for drafting the final papers, and have done so without any external participation. That needs to be changed to make such strategy papers integral to the rights-based programme of poverty reduction.

### 12.4.3. Accountability and Transparency

Accountability concerns the transformation of right-holders from passive recipients of aid into empowered claimants. Since duty-bearers are accountable for any failure to fulfil their duties, appropriate *legal procedures* should be put in place

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323. The concept of ENPAT was further elaborated in Sengupta (2000), para. 25.



to cover the process of implementation, *indicators* to assess the process, reforms of the judiciary and other institutions that can provide evaluation and assistance in overcoming corruption, and *effective governance*.

States and the international community at large have the responsibility to realize universal human rights. Thus, monitoring and accountability procedures should involve not only states but also extend to global actors, such as the donor community, intergovernmental organizations, international NGOs and transnational corporations whose actions have a bearing on the enjoyment of human rights.

Due to the gross inadequacy of the national monitoring and evaluation system, the PRSP approach faces serious challenges in ensuring transparency and accountability. The monitoring and evaluation system should examine the input, process and outcome of PRSPs and should also be participatory in nature, such that it includes the voices of civil society, academia, the private sector, the media and other stakeholders.

## 12.5. RESULTS OF THE INDEPENDENT EXPERT'S COUNTRY MISSIONS

In this section I present findings from my mission report on extreme poverty conditions in the US and the policy experiences of some African, Asian and EU countries. I have conducted studies in the US, the EU, Africa and Asia to identify the implementation of poverty reduction policies within a human rights framework in a specific environment. Thus, in the economically advanced region of the EU, where social protection systems are well-developed, poverty reduction programmes have been devised to focus on those 'at risk of poverty'. For developing and underdeveloped regions in Africa and Asia, poverty reduction programmes also reflect each country's sociopolitical and economic development. Hence, the focus of my studies has been more on programmes that provide for welfare services and access to basic services in the form of health, education and safe drinking water. In Africa, the added burden is of lack of participation by democratic institutions in such programmes and even lack of governance in many countries.

### 12.5.1. Poverty Reduction in the US

Even with its high per capita income, the US has not eradicated extreme poverty as I have defined it. I conducted a fact-finding mission there from 24 October to 4 November 2005 (Sengupta 2006b). Based on my findings, I made several observations and recommendations applicable to the situation at that time, including the following:

- i) Despite the economic wealth of the US and the efforts of its government, the poverty rate remains high compared to other wealthy nations, and

- there is no evidence that the incidence of poverty, and especially extreme poverty, is waning.
- ii) Government programmes and policies have not effectively remedied the vulnerable situation of those groups most at risk of extreme poverty, notably African-Americans, Hispanics, immigrants and single-women-headed households.
  - iii) The US has yet to implement any national anti-poverty legislation. All that exists is a patchwork of sundry laws that address aspects of poverty in a limited manner.
  - iv) If the US were to adopt a comprehensive national strategy and programmes based on human rights principles, it would be possible to reduce poverty and eradicate extreme poverty.
  - v) Social safety nets for poor families should be administered through entitlement programmes, and measures should be taken to facilitate participation in these programmes and ensure that cumbersome enrolment procedures do not discourage those who qualify for social benefits from applying.
  - vi) The full participation of those living in poverty should be ensured in the design, implementation, monitoring and assessment of programmes for combating poverty. Such programmes should build on poor people's own efforts, ensuring the full participation of those concerned and responding to their actual needs.

The US was encouraged to adopt the following steps towards a rights-based programme of poverty eradication. First, US authorities, in cooperation with civil society and expert organizations, should identify a segment of its population that is suffering from conditions of extreme poverty (defined in terms of a combination of income poverty, human development poverty and social exclusion). Secondly, once this group has been identified, US authorities should adopt legislative provisions to accord them the legal entitlement to the programmes that are needed to lift them out of these conditions of poverty. This legal entitlement would allow the extremely poor, or their representatives, to seek redress in the courts if they are denied their entitlements. Thirdly, to finance such programmes, the federal government may wish to create a fund with the sole purpose of abolishing the conditions of extreme poverty.

In the meantime and in response to the more recent financial crisis, the US Congress adopted the *American Recovery and Reinvestment Act of 2009*, which includes numerous anti-poverty programmes, such as 'Pathways Out of Poverty' grants, which are aimed at helping disadvantaged populations to escape poverty and to achieve economic self-sufficiency through employment in energy efficiency and renewable energy industries (Recovery.gov 2010). According to the Center on Budget and Policy Priorities (CBPP), the Act has succeeded in keeping more than 6 million Americans out of poverty and reducing the severity of poverty for another 33 million (Sherman 2010). The Act's main provisions include a new tax credit called the 'Making Work Pay' tax credit, an expanded Child Tax Credit

for lower-income working families with children, an expanded Earned Income Tax Credit, additional weeks of emergency unemployment benefits (paid after a worker's 26 weeks of regular state unemployment benefits expire), an additional \$25 per week for all jobless workers receiving unemployment benefits, a one-time, \$250 payment to certain retirees and veterans and people with disabilities, and, finally, an increase in food stamp benefit levels (Sherman 2010).

### **12.5.2. Poverty Reduction in the EU through Social Protection and Social Inclusion**

Despite the prevailing impression that prosperity and well-being are the rule in the EU, nearly 78 million people in the EU (or 16% of the EU population) are currently living at risk of poverty. The 'at risk of poverty' rate is defined as the 'share of persons with an equivalized disposable income, before social transfers below the risk-of-poverty threshold, which is set at 60 per cent of the national median equivalized disposable income (after social transfers)'. In the EU, 19 per cent of children (under 16 years) are at risk of poverty (ETF 2008).

Poverty reduction is one of the top priorities on the EU agenda. The Lisbon Strategy that emerged from the Lisbon Summit in 2000 addressed the key issue of social exclusion and set the goal of poverty eradication within the region by 2010, to be achieved through the OMC. These objectives, if met, would help the EU to achieve its larger goal of a 'socially cohesive Europe'. The objectives were to be fulfilled through the development of appropriate National Action Plans against Poverty and Social Exclusion (NAPS), subject to periodic reporting and monitoring of progress. Further improvements of the indicators for social inclusion were made at the Laeken Economic Council in December 2001.

Social protection systems are fairly well developed in the EU; they attempt to provide adequate coverage to 'at risk of poverty' populations affected by unemployment, old age, ill health, inadequate income and parental responsibility.

The EU has also been actively involved in the modernization of social protection systems in member countries. The Social Protection Committee, established by the EC after the Lisbon Summit in 2000, is mandated to work on policy challenges related to secure income, safe and sustainable pension systems, social inclusion and high quality health care. In 2005, the EC adopted the new Social Agenda 2005–2010 (EC 2005), which focuses on two priority areas of action: employment and equal opportunities for all. PROGRESS, the EU's integrated programme for employment and social solidarity support, which runs from 2007 to 2013, further contributes to the EU's wider strategy for jobs and growth. In July 2008, the EC proposed to reinforce the OMC in the social field to allow the EU to achieve better results for the 2008–2010 period and pave the way for the introduction of a sound framework after 2010. Here 2010 is not only the final year of the 2008–2010 OMC cycle but also the first year of a new policy strategy for the EU and the European Year for Combating Poverty and Social Exclusion. The European Year 2010 aims to recognize the rights and capacities of excluded

people to play an active part in society, promote social cohesion, underline the responsibility of everyone in the society to tackle poverty, and reinforce the commitment of all major political players to take more effective actions.

As of 2008, 9.2 per cent of working-age adults in the EU were living in jobless households (i.e. where no member of the family was working).<sup>324</sup> The existence of working poverty in the EU raises serious questions about the quality of work and the commitment of the EU to poverty reduction.

As with increasing life expectancy, the proportion of elderly and very elderly persons in the population has increased. Ageing also increases the pressures to provide better curative and rehabilitative health care, and most EU member countries are presently ill-equipped to provide such long-term care. No EU country has effected specific legislation on long-term care; France and the Czech Republic are among the only countries to have incorporated long-term care into their social assistance programmes. The EU also recognizes the health care sector as a potential generator of employment opportunities for skilled workers. With a greater number of elderly persons in need of care, the demand for health care professionals is on the rise; but interestingly, with more professionals reaching retirement age, the supply of professionals in this sector is shrinking. The decline in the number of health care professionals, in turn, raises health care expenditures and thereby adversely affects the financial sustainability of health care. This problem can be tackled by devising better human resource strategies.

### 12.5.3. Poverty Reduction in Africa

In Africa poverty reduction strategies have been based on the recognition that engineering economic growth through structural adjustment programmes (SAPs) may exacerbate inequality and poverty, and, in the absence of conscious efforts to mitigate these side effects, social resentment and popular discontent may increase such that it negatively impacts on the growth process. Poverty reduction strategies incorporated in PRSPs are meant to counter this tendency. PRSPs typically have three main features: macroeconomic reforms and trade liberalization in order to stimulate economic growth; the redirection of social policy towards the provision of welfare services to the poor and the vulnerable; and an emphasis on ownership and popular participation. In terms of real social welfare impact, country statistics show that PRSPs are making a visible difference. However, apart from a few countries like Uganda and Ghana, civil society organizations, labour and trade unions and professional associations have been sidelined in the consultation process, and democratic institutions such as parliament and political parties have not been included in the process. As a result, PRSPs often undermine the growth of democracy, rather than strengthening it (Adejumobi 2006). Despite

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324. See Eurostat (2010). This information relates to the EU-25, consisting of the 25 Member States following the expansion that occurred between 1 May 2004 and 31 December 2006 (the EU currently has 27 members).

these criticisms, it is generally recognized that the PRSPs have brought anti-poverty programmes to the forefront of national development policies and have highlighted the nature of political regimes and governance in Africa.

#### **12.5.4. Poverty Reduction in Asia**

Development policy now emphasizes that national governments themselves should identify their priority areas in order to enable them to design their own national poverty reduction strategies within the context of social development. In line with this approach, many Asian countries have adopted PRSPs, with the broad participation of civil society, as the framework for their efforts at poverty reduction and as a basis for accessing loans and grants from international donors.

Most countries in the Asia-Pacific region focus their national poverty reduction strategies and programmes on the majority of the poor population. These programmes aim at reducing poverty, increasing access to basic services (e.g. education, health care and safe drinking water), and addressing issues of equity, non-discrimination and participation through targeted safety net programmes. Although in many of these countries the actual implementation process is still in its infancy, success in terms of overall poverty reduction is already becoming apparent. In Nepal, for example, the Central Bureau of Statistics (2005) reveals that the national poverty rate per capita declined from 41.76 per cent in 1995–1996 to 30.85 per cent in 2003–2004. Viet Nam also has been able to meet significant poverty reduction targets through the implementation of its Comprehensive Poverty Reduction and Growth Strategy (CPRGS), which it adopted in 2000. The incidence of poverty in Viet Nam has declined from 17 per cent in 2000 to 7 per cent in 2005 (CPRGS 2006).

Most Asian countries also attach considerable importance to providing social safety nets for targeted vulnerable groups in order to fulfil the criteria of equity and non-discrimination. Bangladesh, in particular, has had significant success in its social safety net programmes (SNPs), 27 of which represent 4.4 per cent of public expenditure. With regard to basic education, public schools account for the bulk of primary school enrolment in the region (89%), and their share of overall education expenditure is 79 per cent. In contrast to education, however, the average public sector share in overall health expenditure is only about 52 per cent for developing Asian countries, a figure that is particularly low in South Asian countries, which reflects the predominance of private and other forms of health care provision in this sub-region. The low quality of many public health systems leads even the poor to opt for private services. This is particularly the case in rural areas, where the health systems are often administered by traditional doctors and under-qualified practitioners. In some cases, impact evaluation studies assessing the effectiveness of public health systems and health service delivery by NGOs found that contracting to NGOs can be both effective in terms of attaining higher improvements in health indicators and more equitable in terms of reaching the poor (ADB 2004).

Experience of participation in PRSPs has shown that there is a need to establish a clear framework for participation that defines guidelines and benchmarks for determining who can be involved, when or at what stage and with what 'level of participation', as well as for the methodology to be used in the process. Most case studies point to a general failure to directly involve the poor, as well as to the absence of a clear and appropriate framework for participation. However, some success has been achieved in fostering community participation. Monitoring and accountability still remain the weakest aspects of the implementation of a rights-based approach to development. The existence, in most countries of the region, of democratic political systems makes it possible to establish the monitoring and accountability procedures that are an essential ingredient of the rights-based approach to development. Yet electoral democracy on its own is seldom enough to guarantee accountability. An extensive institutional framework needs to be in place, including a well functioning parliament and effective parliamentary committees, semi-judicial institutions (e.g. a human rights commission and ombudsmen), and an effective system of decentralization.

## **12.6. CONCLUSION: THE CONTRIBUTION OF ECONOMIC PERSPECTIVES TO HUMAN RIGHTS APPROACHES TO POVERTY**

This chapter has drawn on my work as Independent Expert in order to explore the economic dimensions of dealing with freedom from poverty as a human right. It has called attention to the intersection of the three components of poverty (income poverty, human development poverty and social exclusion) when social consensus on poverty reduction strategies is formulated. It has approached poverty reduction comprehensively in a human rights framework and emphasized the need to recognize that extreme poverty is a denial of human rights. In so doing, it has sought to demonstrate that a rights-based approach adds considerable value to poverty reduction strategies in all countries, whether developed or developing, where a significant proportion of the country's population suffers extreme forms of poverty. The idea is to identify as extremely poor any group whose number is limited so that a given society can deal with its problems. Once such a group has been identified, the removal of their conditions of extreme poverty must be taken on as an obligation akin to the fulfilment of human rights norms. Even when the countries concerned are unable to ensure the realization of all human rights, those rights whose denial has directly caused extreme poverty should be subject to immediate fulfilment.

While the context-specific nature of the problems are brought out through the study of policy experiences in the US and in African, Asian and EU countries, the overall conclusion is that a human rights approach contributes significantly to dealing with extreme poverty. While none of the debates among economists on the key issues have been settled, it is nevertheless to be hoped that more empirical

studies and theoretical investigation will refine and improve the rights-based process of poverty reduction and ultimately the eradication of poverty.

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## Why Should Human Rights Issues be Addressed by the World Bank? Some Instrumental Economic Arguments

*Desmond McNeill and Luis Sanchez*

### 13.1. INTRODUCTION

The primary reason why human rights issues should be addressed by those concerned with development and poverty reduction rests on an intrinsic ethical argument: all human beings share a common humanity, and this is the basis for moral judgments concerning how one, or the collective, should treat others.

Arising out of this is a legal argument, which some also regard as intrinsic: that the nations of the world, in the name of their peoples, have committed themselves to a number of human rights conventions, and that these conventions apply equally to the World Bank.<sup>325</sup>

Internationally-recognized human rights are those included in the International Bill of Human Rights. The International Bill includes the Universal Declaration of Human Rights (UDHR) and the two Covenants adopted on the basis of that Declaration, that is, the International Covenant on Civil and Political

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325. Perhaps the most detailed attempt to provide guiding principles is found in the 'Tilburg Guiding Principles of World Bank, IMF and Human Rights' (Van Genugten et al 2003; see also Van Genugten and Perez-Bustillo, 2001). And in her book concerning the legal obligations of the Bank, Skogly (2001) argues that from the Articles of Agreement it follows that the Bank is a legal person with duties and responsibilities, arguably in the same way as business corporations are treated as legal persons; and hence the Bank has a responsibility to carry its mandate 'within the framework of international law' (Skogly, 2001: 47). From this, it follows that the Bank is also obliged to respect human rights as articulated by the UN Charter, as well as by customary international law and 'general principles' of law (Darrow, 2003). This obligation entails that Bank programmes and policies ought not to violate human rights. Skogly adds that such an obligation is not only negative, but also positive. According to her, even though the Bank has recognized its positive role in the promotion of economic, cultural and social rights, there is no indication as to how this is ensured or monitored (Skogly, 2001: 55). The Bank's former Chief General Counsel, Roberto Dañino, argued in a legal opinion that there is no reason why the Bank should not demand from its clients respect for human rights; but he fell short of committing the Bank as an institution to be subject to human rights law – because human rights law, he claimed, applies to countries rather than to multilateral institutions (Dañino, 2006).

Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The distinction between the two covenants is reflected also in different legal instruments. It is often stated that while the former constitute a core of basic freedoms with an 'absolute' and 'immediate' value, being directly 'justiciable', the latter are programmatic principles to enlighten public policies concerning human dignity.

As an international organization, the World Bank is in a rather special position. It is owned and controlled by its shareholders, predominantly rich countries, but its task is to benefit the poor, predominantly in poor countries. As McNeill (2007) argues, one might say that the Bank is formally accountable to its Board, but morally accountable to the poor of the world.<sup>326</sup> There are a number of reasons, both intrinsic and instrumental, why it is appropriate for the World Bank to address human rights issues. Some of these may be more relevant and more compelling with one audience, others with another. It should not be assumed that instrumental arguments – by virtue of their being economic, or based on some supposed 'more factual' foundation – are privileged; indeed, there are grounds for arguing that the reverse is the case. For many people, one or both of the two reasons just stated is sufficient to answer the question: 'Why should human rights issues be addressed by the World Bank?' The purpose of this chapter, however, is to set out a purely instrumental argument based on an economic rationale: that promoting human rights is an effective approach for the design and implementation of policies to promote development and reduce poverty.

### 13.1.1. The Contribution of Amartya Sen

The Nobel Prize winning economist Professor Amartya Sen has, through a number of works, provided what is probably the most important single contribution to the case for human rights in development – argued both on instrumental and intrinsic grounds. He has made a strong case, on instrumental grounds, that factors such as the institutional context, including respect for fundamental freedoms and human rights, may play an important role in the creation of wealth and its distribution.<sup>327</sup> He has thus made a significant contribution to the arguments summarized in this chapter: the so-called instrumental justification of human rights.

But he is perhaps even better known for his intrinsic arguments: his challenge to the narrowly economic view of human well-being. With reference to HDRs, he stresses that an individual's satisfaction cannot be measured only in terms of a

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326. To quote President Wolfowitz's Annual Meeting address, 24 September, 2005: 'Implications for the World Bank: Whether investing in education, health, infrastructure, agriculture, or the environment, we in the World Bank must be sure that we deliver results. And by results, let me be clear. I mean results that have a real impact on the daily lives of the poor. *We stand accountable to them.*' (Emphasis added.)

327. Economists' interest in non-income variables as explanatory factors in economic development has increased during the last two decades, but the specific issue of human rights seems not to have been taken up to any great extent.

single parameter (what economists call utility), but also in terms of the freedom that a person has to pursue her own fate and goals according to her capacity (what in Sen's terminology is known as the capabilities and functionings approach). An exclusive focus on income can result in systematic bias and policy failure due to the focus on a single instrument when many may be relevant, and to the focus on the wrong policy target.<sup>328</sup> Focusing rather on fundamental freedoms and human rights is what can lead us to better achieve those goals and to avoid those biases.

### 13.1.2. The 'Two Pillars' of the World Bank and the Structure of this Chapter

The task of the World Bank is to promote development and the reduction of poverty. In flagship documents in recent years (for example, *WDR 2000* and *WDR 2006*) the World Bank has often presented its analysis and policy in terms of two 'pillars': improving the investment climate and empowerment. These are seen by the Bank as complementary. A minority of critics might disagree; either suggesting that true empowerment of poor people is likely to damage the investment climate, or that a favourable climate for investment is more effectively ensured by limiting rather than increasing the power of the people. Between these two extreme views are those of many who would maintain that the two pillars are compatible, but that there are also potential and actual conflicts between them when one moves from the level of rhetoric to practice. And this may lead to disagreements, not about the desirability of the two goals, but about the extent to which one or the other should be given priority, where resources – economic, human and political – are in limited supply. Evidence of this is even to be found in the mere fact that in drafting *WDR 2000* there was lively debate about which of the two pillars should be treated first. In order to appreciate the significance of this point, it is useful to recognize that debate about the two pillars to some extent maps onto fundamental debates that have long shaped development research and policy: concerning 'redistribution and growth', and 'the role of state and market'.

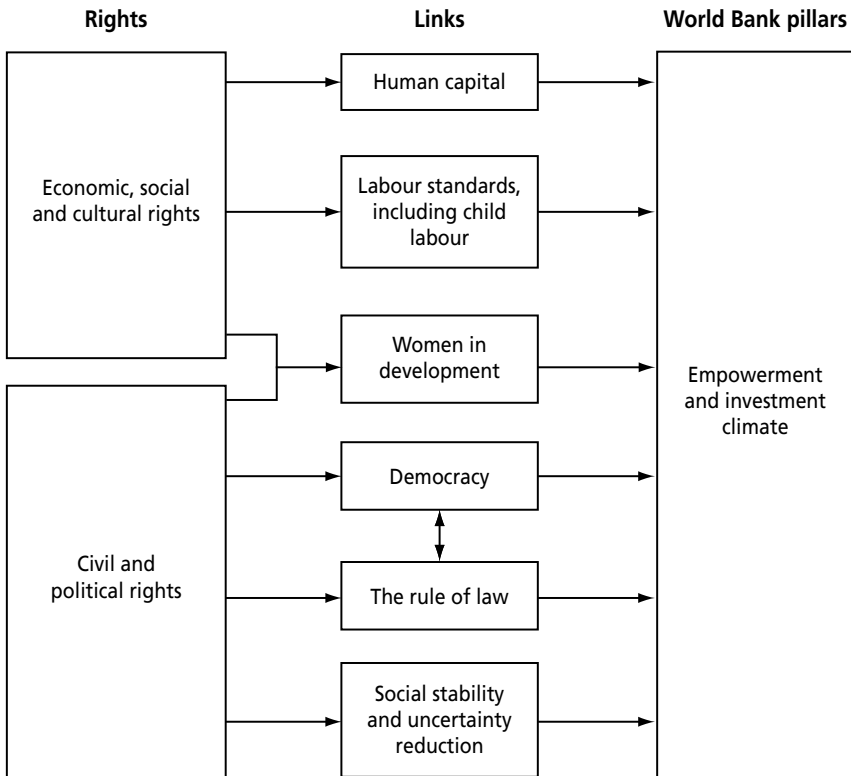
In this chapter, we will not enter into these discussions, but we will try to show how different categories of rights may be linked to the two pillars of the World Bank, as summarized in Figure 13.1. The links in each case are based on arguments to be found in the literature, mainly by economists. Some of these arguments are quite old, but take on a new twist when couched in the language of human rights. Many of the arguments are *a priori* theorizing – logically compelling, perhaps, but still not empirically based. Some are well grounded empirically. But what constitutes a solid empirical base differs between disciplines; some will take seriously evidence – from, say, historians and political scientists – of a primarily qualitative nature. Others, notably economists, require statistical evidence: hypothesized causal links being tested by correlations between quantified variables. Since the purpose

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328. See Dreze and Sen (1989) and Sen (1999).

of this chapter is primarily to provide economic arguments, we have chosen to refer mainly to arguments by economists – which are necessarily couched in the language of economics, and relate especially to quantitative measures.

**Figure 13.1. Categories of rights and the World Bank pillars**



We begin with the issue of women's rights, which relates to the 'women in development' debate which has developed especially in the last twenty years. Next, we consider economic, social and cultural rights, which relate to the substantial literature on human capital, and to more recent work on labour standards. Third, we consider civil and political rights, which relate to the relatively recent, and complex, debate on governance, democracy and the rule of law. We then devote one section to a recent paper which deals precisely with the economic effects of human rights, before ending with a brief section linking human rights and human obligations, and making reference to the Scandinavian experience.

### 13.2. WOMEN'S RIGHTS

All human rights instruments have explicitly included non-discrimination clauses relating to the rights provided for in the conventions. Full enjoyment and protection of the rights listed in the ICCPR and the ICESCR apply both for women and men;<sup>329</sup> but, in addition, there are specific principles within the covenants that underline the need for special protection for women. This is the case, for instance, of Article 10 of the ICESCR, which promulgates the need for special protection of mothers. This privileged legal status illustrates the importance attached to gender inequality issues. This in itself is a good reason to begin with the issue of women's rights, and to treat it as a separate issue. But it is also very relevant to begin with the issue of Women in Development (WID)<sup>330</sup> because it illustrates well the significance of distinguishing between intrinsic and instrumental arguments. The case for WID, especially in the World Bank, has been argued mainly on instrumental grounds – for example, that promoting women's education would raise economic output – rather than on an intrinsic argument based on gender equality and women's rights.<sup>331</sup>

One simple and powerful argument for encouraging gender equality in development policies is simply that, by doing so, we are enhancing the well-being of half the population. There are, however, several others that have been made. When WID was being promoted in the World Bank in the late 1980s, one of the arguments of the division was that improved education and increased income levels of women would tend to lower the birth rate. This argument seems to be less emphasized in a more recent World Bank publication on the subject (2001), but other instrumental arguments are still predominant. These may be briefly summarized:

- Inefficiencies in the allocation of productive resources between men and women within households may lead to losses in terms of output.<sup>332</sup>

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329. Article 3 of both covenants. See also the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

330. We use the term 'Women in Development' (WID) rather than the alternative 'Gender and Development' (GAD) mainly because economic arguments have tended to relate primarily to the former, less political, version of the agenda.

331. To quote an evaluation carried out by McNeill for the Norwegian Ministry of Foreign Affairs: 'Does translating the case into Bank language subvert the argument? [...] There are a number of different, and valid reasons for promoting WID, which do not rely on treating women as a wasted productive asset, or a regrettable reproductive liability.' (1989: 90.)

332. According to the report, in households in Burkina Faso, Cameroon and Kenya, more equal control of inputs and farm income by women and men could raise farm yields by as much as one-fifth of current output. With regard to the rates of productivity, it has been observed that female farmers are not less efficient than male farmers; the lower yields by female farmers stem from lower levels of inputs or education relative to male farmers.

Another striking conclusion from the report shows the importance of women in the family organization and its economic performance. Indeed, empirical evidence from Bangladesh, Brazil and the Ivory Coast shows that putting additional income in the hands of women within the household tends to have a larger positive impact than putting income in the hands of men. Investing in women's welfare thus contributes to economic prosperity by creating positive externalities to other sectors of the society.

- Low investment in female education reduces a country's total output. Education improves the efficiency of human capital.<sup>333</sup> (See next section on human capital.)
- Gender inequality not only has repercussions for women's welfare but also for their children, and thus, the next generation's welfare.<sup>334</sup>

Finally, the report stresses the role of gender equality in the achievement of good governance. It is claimed that enhanced women's rights and more equal participation in public life by women and men are associated with cleaner business and governments. Where the influence of women in public life is greater, the level of corruption is lower.<sup>335</sup>

In summary, in relation to the World Bank's two 'pillars', one may with confidence claim that promoting women's rights (notably ICCPR Article 3 'equal right of men and women') contributes to empowerment. With regard to the investment climate, the argument from women's rights is also compelling: a more efficient allocation of resources should lead to increased productivity and production.

These are the main (instrumental) economic arguments for promoting women's rights. More generally, however, one may make a case for promoting the rights of all people in order to enhance human capital, as discussed in the next section

### 13.3. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The promotion of economic, social and cultural rights can be a very effective means for enhancing levels of health and education, and hence increase what economists refer to as human capital. At least since the time of Adam Smith, economists have recognized that acquired abilities and improved health affect productivity, but it was in the early 1960s that the theory of human capital became formalized.<sup>336</sup> One of the early contributors to human capital theory was Gary Becker. In his book *Human Capital* (1964) he concludes 'I would venture the judgement that human

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333. The private rate of return for an additional year of schooling for women is generally at least as large as that for men. This implies that women can benefit more than men from one additional year of schooling, because women have lower average schooling. However, this does not imply that women earn more than men from the same level of schooling.

334. Low female schooling rates translate into poor quality of care for children and then higher infant and child mortality and malnutrition. Accordingly, mothers with more education are more likely to adopt appropriate health-promoting behaviours, such as having young children immunized.

335. See Kauffman (1998): women in business are less likely to pay bribes to government officials, perhaps because women have higher standards of ethical behaviour or greater risk aversion.

336. 'This knowledge and skill are in great part the product of investment and, combined with other human investment, predominantly account for the productive superiority of the technically advanced countries' (Schultz, 1961: 3).



capital is going to be an important part of the thinking about development, income distribution, labour turnover, and many other problems for a long time to come.’

The term has recently received an added boost thanks to work by economists on growth theory, and more specifically on so-called ‘endogenous growth models’. According to one authoritative source:

T.W. Schultz was ahead of his time, at least among economists. The earliest postwar models of development emphasized accumulation of physical capital, and saw spending on health and education as a drain on the accumulation of ‘productive’ assets. But eventually, the newer classical growth models incorporated formally Schultz’s insight, and related work on accounting for growth by Hollis Chenery and colleagues at the World Bank pointed to the contribution of more skilled workers with more human capital to increased productivity and growth. The more recent endogenous growth models are even more emphatic. [...] In these models, the new ideas and new technologies that are critical to high sustained growth rely fundamentally on high levels of human capital. (Birdsall 2001)

Thus, there is now considerable evidence that there are strong instrumental economic arguments for securing better health and education of the population. While in poor countries both health and education are of great importance, the emphasis in economic research in rich countries has been largely on education, and more specifically on ‘knowledge’ – both as regards theoretical modeling and empirical research.<sup>337</sup>

Interest in the human capital theories dating from the work of Schulz, Becker and others in the sixties has been renewed: work began in the second half of the decade on human capital indicators in response to the 1996 OECD Ministerial Council request. [...] Major international studies were carried out during much of the nineties on the employment trends, needs and difficulties of member countries (OECD 1994; Bowers et al 1999). In these, [...] the core theme might be summarised as a growing need for a workforce displaying highly intelligent, flexible, knowledge-based production and information processing capability, together with resourcefulness, initiative and skill in group problem solving. (OECD 1994)

A recent paper by Barrera (2005) is of particular interest since it seeks to link knowledge and human rights. He notes that the development of human capital is only viable if economic agents have access to the basic means to satisfy their needs. For that reason, basic needs that contribute to the formation of human capital

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337. See, for instance, Mankiw (1995) and Mankiw, Romer and Weil (1992), although the exact extent to which education may influence the capacity to create wealth still remains as a controversial point mainly due to the difficulties of measurement (how to measure the aggregated levels of skills of an economy?).

constitute an element of allocative efficiency. Although his paper is concerned mainly with knowledge, two points are more generally applicable to the case for promoting human rights in the interests of building human capital. The first is that prevention is better than cure: basic needs satisfaction is a cheaper *ex ante* measure compared to *ex post* remedies. This seems to be particularly applicable to the case of human capital creation. Take the case of child labour and malnutrition: in forgoing an education because of the need to supplement meagre household income, children are condemned to a lifetime of illiteracy and poverty. Malnutrition at an early age often results in irreversible physical and mental disabilities.

A second argument is that after shocks caused by pecuniary externalities, the higher the level of education and health standards, the easier it is to get human capital back on stream in the economy. Indeed, malnourished and illiterate workers are more likely to be irreversibly marginalized after pecuniary externalities.

In summary, several rights are directly relevant to human capital, such as ICESCR Article 13 on the 'right to education' and Article 12 on the 'right to physical and mental health'. In relation to the World Bank's two 'pillars', promoting rights such as these contributes to improving the investment climate, through the potential for increased production; but also to improving empowerment.

A closely-related issue is that of labour standards, but here the argument is rather more complex and the causal links are contested. We may, however, summarize some of the main results in economic theory that have implications for the expected effects of greater concern on workers' rights in developing countries.

Brown, Deardorff and Stern (1996), summarized in Singh and Nirvikar (2001), set out the analytical framework required to evaluate the distributive effects of the implementation of common global labour standards. However, their results contradict empirical experience:

This analysis would suggest that, purely from the terms-of-trade perspective, less developed countries (developing countries) would want higher labour standards, and developed countries would not. Therefore the analysis seems to be at odds with the current debates on international labour standards. Of course this conclusion neglects different interests within countries. For example, owners of capital may disproportionately influence policy.<sup>338</sup>

But the outcome may be very different when countries decide their own standards rather than working towards common global standards. It is widely assumed that international competition will drive down labour standards in all countries to levels that are too low (known as the 'race to the bottom'). However, there are a number of counter-arguments. Some are based on models of local government competition. A race to the bottom occurs in such models when

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338. This is an example of the limitations of *a priori* theorizing, but it is not possible to do full justice to the paper here. See Singh and Nirvikar (2001).

standards for some aspect of firm operations (pertaining to working conditions, environmental effects, and so on) are set inefficiently low.<sup>339</sup> In general, with perfect competition and a complete set of tax-subsidy instruments, this inefficiency cannot occur. Some other models based on imperfect competition do not support the race-to-the-bottom argument. The conclusion from the local public economics literature appears to be that the possibility of an international race to the bottom, taken to mean inefficiently low domestic labour standards, is highly dependent on the particular set of assumptions made about competition and policy instruments.<sup>340</sup>

According to Piore (1994), labour standards might create positive externalities for the creation of human capital: if workers are better-off than the subsistence level, they may be able to invest in their own or their children education. He also postulates a link between working standards and innovation: higher labour costs encourage producers to invest in innovation (Piore 1994).

A major concern that arises repeatedly in discussions of international labour standards is whether they will have unintended effects. Rich countries are taking an increasing interest in the way in which imported products are made, but their instruments of intervention are primarily through trade, and thus exclude working conditions in non-trading firms; introducing trade-oriented measures to improve standards simply moves the problem out of the trade sector (Bardhan 2001a, 2001b).

The phenomenon of child labour is a very particular problem due to its exceptional ethical implications. Probably one of the best attempts to illuminate the problem is provided by Basu (2003). His paper may be briefly summarized.<sup>341</sup>

The conclusion of the model<sup>342</sup> is that where adult wages do not yield a minimum subsistence level, child labour will be employed. The model shows certain dynamics that can lead the economy towards a vicious circle, in which

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339. Levels are 'too low', in terms of the allocational efficiency of outcomes, their distributional impacts, on the basis of criteria that emphasize rights and procedures, or some subset of these concerns.

340. Relevant models of local government competition include those of Zodrow and Mieszkowski (1986), Oates and Schwab (1988), Bucovetsky and Wilson (1991) and Revesz (1992). Wilson (1996) re-examines and extends this set of models to clarify when a race to the bottom could conceivably occur.

341. According to Basu, much of the debate on child labour focused on whether policy intervention was even appropriate. In the heyday of *laissez-faire* many observers believed that if child labour was a product of the market, it must be efficient to have child labour; if one were committed to the efficiency of the market, the state then had no reason to be involved in the market. This would now be regarded by the great majority as unreasonable.

342. The model is based on two axioms:  
The luxury axiom: 'households send their children to work only when driven do so by poverty'. This assumes that parents do not wish to make their children work unless compelled by circumstances. Therefore, education is regarded as a luxury good.  
The substitution axiom asserts that: 'adult and child labour are substitutes, subject to some adult equivalency correction'. But, of course, adults cost more, and for that reason firms may be reluctant to make the transition to adults-only labour.

high levels of child labour are employed.<sup>343</sup> At an aggregate level this micro model is empirically supported by the fact that as nations become richer, the incidence of child labour tends to fall.

However, the 'poverty approach' has not gone unquestioned. For instance, some argue that increased land ownership may contribute to higher child labour, since households that own (or operate) larger amounts of land will tend to make their children work more (Bhalotra and Heady 2003). Another similar argument against is that households that start their own business are more likely to send children to work (Edmonds and Turk 2002).

The literature seems to support the view that, although some work can help children acquire human capital, by teaching them the skills and attitudes needed to function well as adults, and at times enabling them to earn the money needed to go school, child labour generally impedes the acquisition of education and human capital. Child labour inhibits the acquisition of human capital through loss of education and through other channels, for instance by damaging health or affecting attitudes. Empirical data show that starting to work at a younger age results in foregone earnings as an adult for both men and women. Furthermore, due to the dynamics explained above, poverty is transmitted from one generation to another. These downward shocks not only leave families worse off but can impede the formation of human capital among descendants.

In summary, there is a burgeoning economic literature on the subject of labour standards, which is relevant to the instrumental economic argument for human rights. However, the results are to a very large extent dependent on the assumptions made; and the empirical results are so far largely inconclusive; perhaps not surprising in view of the complexity of the issue.

#### 13.4. CIVIL AND POLITICAL RIGHTS

The promotion of civil and political rights is closely linked to the issue of governance, which has received considerable attention in development policy in recent years, and attracted the interest also of economists. A number of attempts have been made to test the empirical relationship between economic performance and 'good governance' (often equated with democracy, some broader notion of 'freedom', or, perhaps, 'the rule of law'). Economists have tried to assess to what extent countries with higher institutional quality yield better economic results. However, there are several conceptual and methodological difficulties that complicate the issue and limit the value of their results. For example:

- Statistical correlation does not necessarily imply a causal link from good governance to better economic performance; one could explain a

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343. This is not to deny that some other social factors could explain the phenomenon of child labour. For instance Zelier (1985) describes how in the nineteenth century child labour was often commended as necessary for building character and discipline for industrial competition.

positive correlation by reasoning that richer countries can afford better institutions.

- Quantitative measures, or indicators, of 'good governance' are not easy to establish. 'Governance' is not a unique parameter, but a system of different features that may affect each other.<sup>344</sup> Economists have paid great attention to the role of democratic institutions in wealth creation, but also the capacity of a regime to enforce the law; two rather different things.

Recent economic literature has made some advances beyond earlier work,<sup>345</sup> through the use of new statistical tools and methodologies, to seek to disaggregate the causal linkages between democracy, rule of law and economic growth. Some of the latest findings are the following:<sup>346</sup>

1. Democracy and the rule of law are both good for economic performance, but the latter has a much stronger impact on incomes.
2. Higher income produces better governance (but estimates here are not very significant). This is true both for democracy and for rule of law.
3. Rule of law and democracy are generally mutually reinforcing. Greater rule of law produces more democracy, and vice versa. But the effects are not always significant.

Although these findings still need further testing, it seems that, at first glance, they would support an emphasis on human rights policies. Earlier, there was much scepticism about the role of political and civil rights in economic development; in part based on some historical cases in which authoritarian regimes were yielding good economic performance (e.g. Chile during the 1970s), and in part because previous studies found no significant relevance of democracy for economic growth.<sup>347</sup> Note that the conclusion of these new studies implies that it is possible to obtain good economic performance with authoritarian regimes as long as the law is enforced properly; but the evidence shows that a combination of effective enforcement of the law with extensive political rights may provide a powerful engine of economic growth, as in the case of Botswana. This new empirical evidence is encouraging further theoretical economic research. For example, Gradstein (2005) develops a growth model in which political rights have a positive effect both in the enforcement of property rights and in fiscal distribution, leading to higher rates of output growth.

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344. Here we have an example of what was mentioned in the introduction about the complexity of effects in the human rights system. While the rule of law is mainly related to the protection of property rights, the degree of democratization points towards the implementation of pure political rights such as freedom of thought, participation, association, speech, and so on. However, both are embedded within the concept of governance as an explanatory variable of economic growth.

345. Probably the most important study within these preliminary attempts is Knack and Keefer (1995).

346. See Kauffman and Kraay (2002) and Rigobon and Rodrik (2004), for example.

347. See Barro (1991) and Helliwell (1992), for example.

We have chosen not to include the issue of property rights in this chapter.<sup>348</sup> The claim that property rights is a human right has been a major ideological issue from the start, and for this reason, although it features in the Universal Declaration, it does not feature in the two subsequent Covenants (see Eide et al 2001). This provides a rather formalistic justification for omitting it from this chapter. Another reason is that the relationship between property rights and economic performance is much contested by economists.<sup>349</sup>

### 13.5. THE ECONOMIC EFFECTS OF HUMAN RIGHTS

It is appropriate to devote a section to a perhaps unique attempt in the economic literature to empirically test the economic effects of human rights. In their paper, which also contains a useful summary of much of the relevant literature, Blume and Voigt (2004) distinguish between four categories of rights, as follows:<sup>350</sup>

- ‘basic human rights’: absence of torture, disappearances, political killing;
- ‘property rights’: protection of property, impartial courts, judicial independence;
- ‘civil rights’: absence of censorship, political participation, no restrictions on travel and religious practices;
- ‘emancipatory rights’: workers rights, absence of discrimination, social equality of women.

In summary they conclude as follows:

Our results show that high degrees of human rights are conducive to economic growth and welfare in a significant manner. [...] Basic human rights and property rights are conducive to investment. Social or emancipatory rights do not have a discernible impact on investment. On the other hand, basic human rights do not have a discernible impact on productivity development. Here, property rights, civil rights and social rights have a clearly discernible impact. Nevertheless, none of the four groups of rights used in this paper ever has a significant negative impact on the economic variables used. (3)

348. Note that the right is a negative right: the right not to be illegitimately expropriated.

349. For very poor countries a particularly important issue is rights to land. There is little doubt that secure rights over land, and confidence that laws and informal agreements will be adhered to, will tend to encourage investment and hence growth. But there is disagreement as to whether this necessarily implies the adoption of the institutions associated with an individualist, Western-style market system, or whether property and other rights can be well protected under traditional systems. In some countries, attempts are being made to formalize land tenure in order, in part, to encourage foreign investment in agriculture, which sometimes leads to conflict. The case of intellectual property rights is also contested, as is the effect of these on economic growth and distribution.

350. They use the statistical method of ‘factor analysis’ to determine these four groups and their contents. The terms used to refer to them are their own.

They emphasize the role that uncertainty plays in society and in economic development. More specifically, uncertainty concerning the extent to which human rights are respected makes the return on investment more risky, hence reducing levels of investment and rates of growth. Blume and Voigt (2005) identify two possible channels through which uncertainty regarding human rights might limit economic activity:

- If government's respect for basic human rights functions as a signal for its policy credibility concerning property rights enforcement, then we should expect a reduction in the flow of international and domestic investments and in the degree of creditworthiness. Rodrik (1991) describes how policy uncertainty might determine the way in which those signals relate to investment decisions. He argues that investors use those perceptions (including respect for human rights) to calculate the 'policy reversal probability', which in turn determines their investment decisions.
- Arbitrary imprisonment and politically-motivated killings and torture would lead to a general climate of anguish and fear, which does not encourage innovative activities. Insofar as innovation enhances long-run economic growth, the economic outlook for an authoritarian and repressive regime is seriously limited.

On the basis of their analysis, Blume and Voigt (2005) claim that basic human rights are a necessary but not sufficient condition for economic development. They hypothesize:

a state whose government strictly respects basic human rights but which does not secure for the protection of other property rights by adequate laws [...] will almost certainly not achieve high income levels. Likewise, a state whose government protects property rights narrowly [...] but does not respect basic human rights will also have difficulties in achieving economic growth.<sup>351</sup>

Their paper thus provides a compelling instrumental economic argument for the promotion of human rights. The problem is that their findings are proven only for the top two-thirds of countries ranked by income per head. In other words, for the poorest one-third of countries, the statistical correlation is not significant. And it is these that are especially relevant for a development agency such as the World Bank. This is not to say that their results are wrong in these countries. And one may argue (as has been done in other contexts) that the results may come to apply when poorer countries move up the income scale. But this is, regrettably, a serious limitation of their work for the purposes of this chapter.

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351. However, this should be taken as a general tendency rather than a necessary condition, since one could find contradictory cases. China is an example of an authoritarian regime, with a dubious human rights record towards its own citizens, that is actually able to attract investments. With regard to the innovation argument, USSR would be an example of how innovative activities might take place within the boundaries of an authoritarian regime.

However, the central point that they make in their paper is surely undeniable: that the promotion of human rights is likely to reduce uncertainty and human insecurity in a country, which not only promotes economic development, but also promotes human well-being directly, through reducing fear and insecurity.<sup>352</sup>

### 13.6. HUMAN RIGHTS – AND HUMAN OBLIGATIONS

Following Kant, a number of philosophers (for example Onora O'Neill 1986), have pointed out that rights also imply obligations. What has not commonly been argued, however, is that human rights, granted and guaranteed by the state to its citizens, may thereby also imply human obligations – by each individual citizen to the state. This may be an added instrumental argument as to why a state may wish to safeguard the rights of its citizens: that they will thereby reinforce the correlate responsibility of the citizen, to uphold the law, pay taxes and so on. In more general terms, it may improve – to the benefit of all – the relationship between state and citizen; which can also be directly beneficial in instrumental economic terms. Here, the example of the Scandinavian countries is relevant. The social democratic system in these countries has brought about not only a high level of social welfare, but also a high level of economic productivity.<sup>353</sup> Economists have attributed the success of the model largely to a policy of 'wage compression attained through highly coordinated wage-setting'. (Moene and Wallerstein 2005; see also Moene and Wallerstein 2006). In Norway, agreement to this policy followed only after considerable political turbulence in the inter-war period; but since the Second World War, Norway has benefited from a high degree of consensus, coupled with a generally positive relationship between citizen and state. Halvard Vike, an anthropologist who has specialized in the study of the Norwegian welfare state, refers to

an awareness of the importance of having civil rights in a political system in which the state and the individual are involved in a reciprocal relationship. Without necessarily being aware of it, most people have a relatively high expectation that political power is not distant and inaccessible. It is assumed to be relatively committed, oriented towards the common good and morally based. (Vike 2004)<sup>354</sup>

Although we would not argue that this model arose out of a 'human-rights based approach', the Scandinavian experience – of welfare states which have combined

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352. Many of these issues relate, to varying extents, to what may be called the rule of law. The argument is that economic growth is achieved through investment and innovation, and that a prerequisite for investment is a stable society, and a degree of confidence in the future and in other people: that crime and violence are kept in check, that contracts will be honoured, that rules will not be changed without due process, and so on.

353. Labour productivity in the Scandinavian countries is almost unrivalled in the world.

354. Translated from the Norwegian.



a high degree of equity with high labour productivity and economic growth – is of considerable international interest. And recent experience in other countries has shown that an appeal to human rights can be an effective means to give moral and political force to claims for greater equity – whether by those who are disadvantaged or those who seek to act on their behalf. It empowers people to make legitimate claims on their representatives in government.

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# Index

- Abouharb, M.R. and D. Cingranelli, 59, 81
- accountability/transparency
- authorities' resistance to, 99-100, 102-3
  - collectivities/group farming, 136-7
  - economists' attitudes towards, 24-5, 36-7
  - food, right to/food security and, 254-7, 258-9
  - human rights-based approach and, 26, 237-8, 254-7
  - institutional framework, need for, 314
  - justiciability, relevance, 99
  - NGOs and other non-state actors, role and, 24, 309
  - PRSPs and, 308-9, 312-13, 314
  - rights/obligations equation and, 90-2, 99, 332-3
  - victim vs empowerment and, 37-8, 45, 46, 90-3, 308-9
- Adejumobi, S., 307, 312, 315
- adequate standard of living, right to
- collectivities/group farming and, 145
  - equitable utility and, 46
- ICESCR 11(1), 23-4, 242, 285
- indicators, 23
- informal employment and, 115
- obligation to promote (corporations), 75-6
- as recognized human right, 43
- as right not to be poor, 2-3, 5, 23-4, 56, 297, 304
- social security/social protection and, 220
- statistics, 285-6
- trade liberalization measures, 289
- UDHR 25, 23-4, 57, 175-6, 214, 241-2, 285
- work, right to and, 195
- WTO/GATT and developing countries and, 266
- Africa
- see also* AGRA (Alliance for a Green Revolution in Africa); sub-Saharan Africa; *and individual countries*
  - accountability/transparency, 312-13
  - human rights and poverty reduction in, 312-13
  - PRSPs, 312-13
- African Charter on Human and Peoples' Rights (1982), 'maximum available resources' obligation, 219
- Agarwal, Bina
- 'Agricultural Production Collectivities', 6, 134-68
  - citations, 31, 136, 140, 141
  - notes on, xiv, 133 n. 89
- AGRA (Alliance for a Green Revolution in Africa)
- aims, 67-8, 73-4
  - IAASTD and, 68, 71
  - criticisms of, 68, 70-1
  - NGOs and other non-state actors, role, 70-1
- agricultural and rural development
- see also* cooperative globalization
  - AGRA, 67-8, 70-1
  - 'Agriculture for Development' (Work Bank Reports, 2008/2009), 65
  - AKST, changes of approach, 66-7
  - CFA, 68-9
  - collectivities/group farming, *see* collectivities/group farming
  - eco-culture approach, 64, 76
  - education, role, 72
  - environmental costs/sustainability, 71, 76
  - farmers' markets, 71
  - grain stock management, 78
  - human rights-based approach, 5, 70-8, 265
  - IAASTD (2008), 66-7
  - ILO standards, applicability, 73, 77
  - intensive high-technology approach, 64-5
  - monoculture, 64-5
  - NGOs and other non-state actors, role, 66 n. 45, 67
  - off-farm employment, 72
  - out-migration, 72-3
  - participation of rural communities in policy development, 56 n. 28
  - seasonal work, problems of, 72-3
  - social security and, 77
  - strategies, 63-81
  - urban population and, 71
  - victim vs empowerment, 133-6, 141-2, 156-61, 257
  - women's rights and, 72
  - workforce statistics, 133-4
- agricultural trade
- importance of agriculture to the economy, 82-5
  - subsidies, problems relating to, 282-3

- WTO Ministerial Conferences, attempts to resolve issues, 285-9
- Agriculture Agreement (WTO)
- bound tariff system, 284
  - continuing protectionism, 283-5
  - dispute settlement provisions, 285
  - domestic subsidy calculation, 284-5
  - Modalities for Agriculture, Revised Draft, 287-9
  - tariff reduction method, 284
  - transitional period, 267
- agrofuel, problems associated with, 59-60, 64-5, 74, 76, 246
- Agüero, J., M. Carter and I. Woolard, 218, 231
- aid, *see* international development aid
- AIDS, *see* HIV/AIDS
- Albright, Madeleine, 29, 118
- Alexander, B.B., 180, 183, 193
- Alma-Ata Declaration (1978) ('Health for All'), 178
- Alston, P., 47, 48, 244, 259
- Alston, P. and M. Robinson, 48, 52
- Alula, A. and F.G. Kiros, 137, 138, 162
- American Declaration on the Rights and Duties of Man (1948) (ADRDM), social security (ACRDM XVI), 214 n. 194
- Anderson (2008), 221, 224, 229
- Andreassen, Bård A., notes on, xiv
- Annan, A., 215, 231
- Anti-Dumping Agreement (WTO), 268
- APMAS, 161, 163
- Arango, R. and J. Lemaitre, 216 n. 199, 231
- Arias, O.S., *see* Perry, G.E, W.F. Maloney, O.S. Arias, P. Fajnzylber, J. Saavedra-Chanduvi
- Arrow, K., 38, 48
- Asia
- accountability/transparency in PRSP process, 312
  - agriculture, role, 65
  - child benefits, 226-7
  - civil society actors, 313
  - collectivities/group farming in, 139
  - health care, 313
  - human rights and poverty reduction, 313-14
  - universal social protection schemes, 223
  - women in informal employment, 112
- Asian values, 86
- Bakvis, 218
- Bangladesh
- child benefits, 225, 226-7
  - collectivities/group farming, 158-9
  - poverty reduction in, 313
  - social security/social protection in, 313
- Banik, Dan
- citations, 82, 245, 251, 252, 253, 255, 259, 260
  - 'Hunger and Human Rights', 7-8, 237-60
- Barrera, A., 325-6, 333
- Barro, R., 329, 333
- Basu, A., Chau, N. and R. Kanbur, 16, 17
- Basu, K. and Z. Tzannatos, 327, 333
- Baverman, A., 142, 163
- Becker, Gary S., 324, 333
- Behrendt, C., *see* Franziska and Behrendt; Gassmann, E. and C. Behrendt; Mizunoya, Behrendt, Pal and Léger
- Ben-David, D., *see* Nordstrom, H., D. Ben-David and L.A. Winters
- Berend, I.T., 137, 163
- Bertucci, M.L., *see* Lawson, E.H., M.L. Bertucci and L.S. Wiseberg
- Bhadhuri, A., 205, 209
- Bhalotra, S. and C. Heady, 328, 333
- Bhaskar, A., *see* Menon, P., A. Deolalikar and A. Bhaskar
- bilateral investments treaties (BITs), human rights problems and, 60
- Binswanger, H, *see* Deininger, K.W. and H. Binswanger
- Birdsall, Nancy, 325, 333
- Blume, L. and S. Voigt, 331, 333
- Bolivia, PRSPs and, 39
- Booth, D. et al, 251, 260
- Borda, O.F., 137, 138
- Borras, S.M., 136, 163
- Boyer, R., 198, 209
- Bradshaw, S. and A. Quiróz Viquez, 211, 231
- Brady, D., 217, 231
- Brazil
- social security/family benefits, 217, 222
  - TRIPS Agreement, compliance difficulties, 280-1
- Brenner, B., *see* Mort, J.-A. and G. Brenner
- Bretton Woods institutions, *see* World Bank/IMF development policy role
- Britto, T., *see* Medeiros, M., T. Britto and F. Veras Soares
- Brown, D., A. Deardorff, and R. Stern, 326, 333
- Bucovetsky, S. and J.D. Wilson, 327, 333
- Bulow, D.V. and A. Sorensen, 142, 163
- Burchell, B. et al, 116, 129

- business rights  
 informal economy and, 6, 120-1  
 range of rights, 120
- Byres, T.J., 136, 163
- Cambodia, PRSPs and, 39
- Cameroon, PRSPs and, 39
- Canada  
 human rights and poverty reduction, 21  
 social security, 220
- Canadian Council for International  
 Cooperation, 283
- Cancún Ministerial Meeting (2003), 283,  
 284, 286
- capability/ies  
 basic capabilities, 87  
 capability deprivation, 297, 299-300, 303  
 capability rights, 87-8, 95  
 as conceptual bridge between poverty and  
 human rights, x, 86-90  
 definition, 87, 299-300  
 as economics concept, 35-6  
 education, role, x, 87-8, 91-2  
 work, right to and, 199
- Card, D. and A.B. Kreuger, 119, 129
- Caribbean, agriculture, role, 65
- Carlos, V., 137, 163
- Carr, M., *see* Chen, Martha et al (2004)
- Carré, D., 71-2, 129
- Carré, D. and A.B. Kreuger, 71-2, 129
- Carter, M., *see* Aguero, J., M. Carter and I.  
 Woolard
- Castells, Manuel and Alexandro Portes, 106,  
 129
- CEDAW, *see* Women, Convention on the  
 Elimination of Discrimination  
 Against (1979) (CEDAW)
- CERD, *see* Racial Discrimination,  
 Convention on the Elimination of  
 (1965) (CERD)
- CFA (Comprehensive Framework for Action  
 on the Global Food Security Crisis)  
 criticisms of, 69  
 scope, 68-9
- Chad, malnutrition in, 61
- Chandiramani, Menka, 293 n. 321
- Charmes, J. and M. Lakehal, 111, 130
- Chau, Nancy, *see* Basu, A., Chau, N. and R.  
 Kanbur; Kanbur, Ravi and Nancy  
 Chau
- Chaudhury, N. and D. Parajuli, 232
- Chen, Martha  
 'Informality, Poverty and Gender', 6,  
 105-30  
 notes on, xiv  
 Chen, Martha et al (2004)/(2005), 111, 114  
 n. 81, 115  
 Chen, Martha and Joann Vanek, 108 n. 77  
 Chen, S. and M. Ravallion, 22, 48  
 child benefits, *see* family benefits  
 Child, Committee on the Rights of, 219  
 child health, 136-7  
 child labour, 31, 45, 47, 199, 211, 229, 326,  
 327-28  
 Child Rights Convention (1989) (CRC)  
 disease (CRC 24(1)(c)), 242  
 food, right to (CRC 27(3)), 242  
 health, right to, 174  
 'maximum available resources' obligation,  
 219  
 social security (CRC 26), 214  
 Child, Youth and Family Policies,  
 Clearinghouse on, 223-4  
 Childress, M.D., *see* Sabates-Wheeler, R. and  
 M.D. Childress  
 Chile, family benefits, 213  
 China  
 agricultural subsidies, 288  
 collectivization, 136, 137, 139  
 land-grabbing by, 60  
 subsidies, impact on, 283  
 targeted vs universal social protection  
 schemes, 222  
 trade liberalization/economic growth, 264  
 WTO membership, 288  
 Chirwa, W., Patel, N. and Kanyongolo, F., 255  
 Chisinga, B., 255, 318  
 Chiweza, A.L., 257, 318  
 Cichon, M. and K. Hagemeyer, 211, 213, 218,  
 232  
 Cingranelli, D., *see* Abouharb, M.R. and D.  
 Cingranelli  
 civil society actors  
*see also* NGOs  
 CESCROW shadow reports, 189  
 changing role, 22, 162, 254  
 effectiveness/monitoring of, vi, 254, 312  
 IAASTD and, 66  
 inadequate involvement of, 243  
 in India, 252, 254  
 litigation role, 254  
 monitoring and participation role, 69, 71,  
 73, 81, 179, 184 n. 172, 255-6, 258,  
 301, 309, 313  
 Clearing House on Child, Youth and Family  
 Policies, 223-4

- CLEP (Commission on the Legal Empowerment of the Poor), 29, 118
- climate change, *see* global warming measures; global warming measures/climate change
- Cline, W.R., 282, 289
- Cohen, D., 28, 48
- collective bargaining, informal economy and, 128
- collectivities/group farming, 133-68
  - accountability and, 136-7
  - adequate standard of living, right to and, 145
  - advantages, 140-3
  - bottom-up approach, 140-3
  - class, gender and social inequalities, 138-9
  - decollectivization, 143-4
  - equity and, 136-7
  - financing/loans, 159-61
  - food, right to, *see* food, right to/food security
  - free riding and, 143, 162
  - governing principles, 139-40
  - history of, 136-9
  - human rights-based approach, 136-7
  - IMF/World Bank and, 136
  - India, 135, 138-9, 140, 142, 143-4, 148-9, 155, 157, 158, 159-61
  - joint production vs service collectives, 137-8
  - NGOs and, 148, 155, 156, 158-61
  - participation and, 136-7
  - reconstituted collectivities, 144-8
  - socialist vs non-socialist model, 136-7
  - women's rights and, 6, 135, 138-9, 140, 148, 149-62
- Collier, Paul, 4, 9, 61 n. 30, 73-4, 82
- Collins, J.J., 143, 163
- commercial law, informal economy and, 127
- Commons, J.R., 198
- conditional cash transfer programmes, 218
- Coomans, F., 219, 232
- cooperative globalization
  - see also* economic globalization; New International Economic Order (NIEO); PRSPs
- Cordóba Declaration on the Right to Food (2008), 79-80
- Declaration on the Right to Development (1986), 62, 73-4
- European Network to reduce marketing pressure on children, 76 n. 51
- food, right to/food security and, 241-7, 249-52, 258
- global justice, ix-xi
- global warming measures, 76
- grain stock management, 78
- health, right to, 172-3
- international trade/WTO undertakings, 59, 77, 79
- monitoring of corporate compliance, 75-6
- original conceptions, 55-6, 58
- poverty reduction targets, 307-8
- re-orientation of international agencies, need for, 306
- regional cooperation; *see also* AGRA (Alliance for a Green Revolution in Africa)
- research and technological development, 78
- social protection systems, 77
- Stamford Declaration (2003), 244-5
- structural changes, need for, 78-81
- UDHR and, 57
- UN Charter 55 and 56, 57, 180-1, 306
- Copenhagen Declaration (1995), 297-8
- Cordóba Declaration on the Right to Food (2008), 79-80
- Cornwall, A., *see* Nyamu-Musembi, C. and A. Cornwall
- corporations, role, 24-5, 75-6
  - Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003), 24-5
- Countdown to 2015*, 66 n. 45
- Customs Valuation Agreement (WTO), 267
- Czech Republic, family benefits, 213
- Dandekar, V.M. and N. Rath, 205, 209
- Dañino, Roberto, 319 n. 325
- Darling, M., 148, 164
- Darrow, M., 319 n. 325, 333
- Dasgupta, Partha, 32
- Day, D., 116, 129
- de Gaay Fortmann, B., 241
- De Schutter, Olivier (Special Rapporteur on the Right to Food), 60, 70, 76-7, 243
- de Soto, Hernando, 118, 129, 130
- de Toqueville, Alexis, 206
- Deardoff, A., *see* Brown, D., A. Deardorff, and R. Stern
- debt crisis, effect, 5, 58-9
- debt relief, 40
- Deininger, K.W., 136, 142, 163
- Deininger, K.W. and H. Binswanger, 136, 164

- democracy, role and effectiveness, vi, 8-9, 31, 46, 63, 65, 78, 138, 221, 238, 248, 256-7, 308, 309, 312-13, 314, 328-9, 332-3
- Deolalikar, A, *see* Menon, P, A Deolalikar and A Bhaskar
- developing countries and WTO/GATT, *see* WTO/GATT and developing countries
- development aid, *see* international development aid
- Development, Declaration on the Right to (1986) (UNGA resolution 41/128)
- cooperation obligation (Art. 3(3)), 62
  - equality of access to resources (Art. 8(1)), 62
  - 'Extreme poverty and human rights: the rights of the poor: Guiding principles' (2005), 63
  - inter-governmental focus, 63
  - positive results from, 62-3
  - poverty as human rights violation and, 303
- Development, Independent Expert on the Right to, 62-3, 303
- development, right to
- 'development', 62
  - development partnership, 40-1, 62-3, 169, 182
  - MDGs and, 62-3
- DFID, 21, 238, 244
- differential treatment, justification, 101
- dignity, *see* human dignity, right to/poverty as violation of
- dispute settlement, *see* WTO dispute resolution (DSU)
- Dobb, M., 197, 209
- Doha Development Agenda (2001), 265, 271
- Doha Ministerial Statement (2001)
- health, 178
  - trade liberalization, 286
- Doha Round, problems, 40, 286-9
- Dorsay, E., *see* Nelson, P.J. and E. Dorsay
- Dresler, C. and S. Marks, 175, 193
- Drèze, J. and A.K. Sen, 321, 333
- Drèze, J. and R. Khera, 205, 209
- DSU, *see* WTO dispute resolution (DSU)
- Earle, P., *see* Frankovits, A. and P. Earle
- Easterly, W., 4, 9, 49
- Eastern Europe
- collectivization, 136-7, 139
  - family benefits, 213
- eco-culture approach
- AGRA, 67-8, 70-1
  - pros and cons, 64, 76
- economic globalization
- see also* cooperative globalization
  - as cause of impoverishment, 55-7
  - cooperative globalization and, 55-6, 74-8
  - food, right to and, 59-61
  - neo-liberalism and, 5, 57-61, 74, 78, 125-6, 201
  - trade liberalization and, 125-6, 265
- economic growth
- economic, social and cultural rights and, 42-3, 325
  - 'growth at any cost', rejection, 9
  - human rights and economics approaches to distinguished, 32-4, 42-3
  - market deregulation and, 125-6
  - neo-liberalism and, 125-6
  - privatization, 125-6
  - resources for poverty reduction and, 97-8, 217
  - social security and, 217-18
  - trade liberalization and, 125-6, 264
- economic models, integration of informal economy, 123
- economic, social and cultural rights
- civil and political rights compared, 42-3, 85-6
  - growth theory and, 42-3, 325
  - human capital, promotion of, 324-8
- Economic, Social and Cultural Rights Committee (CESCR)
- see also* International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)
  - Conclusions and recommendations relating to social security obligations, 220
  - Maximum Available Resources, Statement on, 38, 219
  - social security, development of benchmarks, 220
- economic theories
- institutional economics, 198
  - neo-liberalism, 5, 57-61, 74, 78, 125-6, 201
  - and the right to work, 197-201, 206
  - variety of, 4
- economics and human rights, balancing
- affordability argument, 219, 222-8, 230
  - affordability, methodology for determining, 224-7
  - available resources, measurement, 220, 221
  - effects of redistribution/prioritization on other rights, 220



- evidence of effectiveness, 330-32
- externalities and, 220, 229, 230, 281-2, 285, 326-7
- family benefits, 218-21
- fiscal restrictions/conditionalities, 211-12, 231
- 'maximum available resources' obligation, 219
- prioritization, 228-9
- public goods considerations compared, 221
- targeted schemes, 227-8
- targeted vs universal schemes, 222-8, 230-1
- trade-offs, scope for, 7, 34-5, 101, 199, 211-12, 228, 229-30
- universal schemes, 223-7
- economics and human rights, compatibility, 1-4, 19-54
- accountability/transparency and, 24-5, 36-7
- choices, attitudes towards, 32-3
- a common conceptual framework?, 42-8
- complementarity, 211
- compliance measurement tools, 41-2
- conception bridges, 21-2
- convergence, 214-18
- definitions of poverty and, 22-7
- see also* poverty, definition and measurement
- economic growth, 32-4, 97-8, 217
- global development partnerships (MDG 8) and, 40-1
- good governance and, 36
- growing commitment to poverty reduction within human rights framework and, 4, 20-1
- institutional economics, 198-9
- labour theory of value and, 197-8
- macroeconomics indicators and guidelines, 5, 39-40
- non-discrimination/equality of treatment and, 37
- normative approach to poverty, economists' resistance, 1-2, 30-5, 211
- norms and principles, economists distinction between, 25-7
- ODI views on, 20-1
- OECD views on, 20-1, 325
- official statistics, failure to take account of human rights considerations, 41-2
- participation and, 37-8, 39
- property, right to, 5, 27-30
- see also* property, right to
- quantity vs quality, 3-4, 20, 34, 41-2, 156
- Rawls J. and, 33
- resources for poverty reduction, shared attitudes towards management of, 38-41
- state responsibility/accountability of corporations and, 24-5
- utility concept and, 35-6
- work, right to and, 7, 197-201
- Ecuador, collectivization, 136, 137
- Edmonds, E. and C. Turk, 328, 334
- Edmonds, E. and N. Pavcnik, 31, 49
- education, role
- agricultural and rural development strategies, 56, 62, 64, 67-8, 72
- capability rights and, x, 87-8, 91-2
- CESCR General Comments, 184, 216
- collectivities/group farming and, 153
- economic impact, 47, 88-9, 92, 325, 326
- employment/right to work, 305, 327-8
- family benefits and, 229
- health and, 92
- malnutrition, 79-80, 249, 326
- market intervention and, 296-7
- MDGs and, 39, 169
- prioritization of resources and, 96-8, 101
- private vs public provision, 313
- understanding of human rights issues, 304-5
- women's rights and, 72, 113, 115, 323, 324
- Egziabher, Tewolde Berhan Gebre, 62 n. 38
- Eide, Asbjørn and Wenche Barth Eide
- 'Economic Globalization and the Human Rights of Poor People in Rural Areas', 5, 55-84
- notes on, xiv, xv
- Eide, Asbjørn, citations, 94-6, 241
- Ekeberg, E, 213, 232
- Elliott, Caroline, 158
- Emmerij, L, *see* Jolly, R, L Emmerij, D Ghai, F Lapeyre
- employment, non-standard (developed countries)
- part-time work, 116
- temporary employment, 116-17
- women and, 115-17
- Enabling Clause (GATT), 267, 270-1
- Englund, H., 256, 257
- environmental costs/sustainability considerations, 71, 76
- equity
- climate change measures, 76

- collectivities/group farming, 135
  - as human rights principle, 9, 22, 25, 45, 68
  - scope of application, 308
- ethics, relevance, 1, 31, 43
- Ethiopia
  - collectivization, 136, 137
  - malnutrition in, 61
  - subsidies, impact on, 283
- EU
  - human rights and poverty reduction measures, 311-12
  - social exclusion and, 298-9, 311-12
  - social security/protection, 311-12
- European Network to reduce marketing pressure on children, 76 n. 51
- European Social Charter
  - 'maximum available resources' obligation, 219
  - social security, 214 n. 194, 215
- evaluation criteria, *see* policy evaluation criteria
- externalities, 3-4, 220, 229, 230, 281-2, 285, 326-7
- Fairtrade Foundation report (2009), 59, 82
- Fajnzylber, P, *see* Perry, G.E., W.F. Maloney, O.S. Arias, P. Fajnzylber, J. Saavedra-Chanduvi
- Falconer, Crawford, 287
- family benefits, 211-35
  - see also* social security
  - affordability argument, 219, 222-8, 230-1
  - CESCR General Comments, 219
  - Child, Committee on the Rights of, 219
  - country comparisons, 223-4
  - disadvantaged groups, 213
  - economics and human rights, balancing, 7, 211-12, 218-21
  - education, role, 229
  - informal economy and, 213
  - international development aid and, 213, 218
  - IPC study, 225-7
  - non-OECD countries and, 213, 217-18
  - OECD countries and, 213
  - poverty, impact on, 223-4
  - prioritization considerations, 228-9
  - targeted schemes, 227-8
  - targeted vs universal schemes, 7, 222-8, 230-1
  - UDHR 25 and 28, 214
  - universal schemes, 223-7
  - WGDs and, 213-14
- Fanjul, G., *see* Stuart, L. and G. Fanjul
- FAO (Food and Agriculture Organization)
  - see also* food, right to
  - BIOFUELS: prospects, risks and opportunities* (2008), 60, 82
  - Voluntary Guidelines (2004), 242-3
- farmers' markets, 71
- Felner, 221, 223, 224
- Ferraz, O. and J. Mesquita, 173-4, 176, 177, 188-9, 193
- FIAN (FoodFirst Information and Action Network), 41 n. 22, 69, 71, 79-80, 82, 250
- financial crisis (2008)
  - reasons for/consequences, 5, 74
  - rich vs poor, 61-2, 263
- financing/loans
  - collectivities/group farming, 159-61
  - health (proposed Global Fund), 191-2
- Finland, social security, 215
- FIVIMS (Food Insecurity and Vulnerability Information Mapping System), 75
- Fizbein, A. and N. Schady, 211, 218, 230, 232
- food, right to/food security, 241-7, 249-52
  - see also* AGRA (Alliance for a Green Revolution in Africa); agricultural and rural development; FAO (Food and Agriculture Organization)
  - accountability and, 254-7, 258-9
  - collectivities/group farming and, 136-7, 154
  - cooperative globalization and, 241-7, 258
  - Cordoba Declaration (2008), 79-80
  - CRC and, 242
  - crisis management vs prevention, 246-7
  - economic globalization and, 59-61
  - economic losses caused by hunger/malnutrition, 7-8, 237
  - education, role, 79-80, 249, 326
  - FIAN, 41 n. 22, 69, 71, 79-80, 82, 250
  - FIVIMS, 75
  - G8 Summit Statement on Food Security (L'Aquila, 2009), 69-70
  - General Comment 12, 242
  - global approach, scope for, 243-4
  - health and, 80 n. 58
  - human rights-based approach, 237-60
  - ICESCR and, 242
  - implementation procedures, attempts to improve, 243-6, 257-9
  - as international law obligation, 241-7
  - LDCs/WTO and, 268
  - Malawi and, 249-52

- malnutrition in prospering countries, 74 n. 48
- malnutrition statistics, 56, 60-1, 74 n. 48, 237, 246
- MDGs and, 242
- national responsibilities, 247-54
- NGOs and, 79-80, 154, 238, 251-2, 254-5
- participation and, 258
- People's Forum on Food and Nutrition Security, 79
- price increases and, 246
- raising awareness, 258
- state responsibility and, 252-4
- trade liberalization measures, effect, 77
- UDHR and, 241-2
- UNDP and, 244, 245
- UNICEF and, 244
- unified strategy, absence, 244-5
- victim vs empowerment and, 8, 247-8, 254-9
- Voluntary Guidelines (2004), 242-3
- World Development Reports, 247
- World Food Summits, 61, 75, 79, 242
- WTO and, 243
- Food Security, Committee on (CFS), reform and prospects, 81
- Food, Special Rapporteur on the Right to, reports, 56, 60
- Foresti, M. and R. Sharma, 20, 32, 48, 49
- Förster, M.E. and I.G. Töth, 213, 232
- Four Freedoms Speech (Roosevelt) (1941), 57
- France, family benefits, 212
- Frankel, F., 136, 164
- Frankovits, A. and P. Earle, 21, 49
- Franziska and Behrendt, 223-6
- free riding, 143, 162
- Freeman, Richard, 198, 209
- Friedman, B.M., 31-2, 34, 49
- Friedman, M., 28, 32, 49
- G8 Summit Statement on Food Security (L'Aquila, 2009), 69-70
- G20
- Accord for Sustained Growth* (2004), 32
- Global Development Issues* (2005), 32
- Summit on financial crisis (2008), 287
- Ganguli, B.N., 141, 164
- Gassmann, e. and C. Behrendt, 220, 232
- GATS and healthcare services, 281-2
- GATT, *see* WTO/GATT and developing countries
- Gauthier, A., 212, 232
- Gavron, D., 137, 164
- General Assembly (UNGA) resolutions in date order
- 3201 (S-VI) (NIEO), 58
- 41/128 (Declaration on the Right to Development), 62-3
- General Comments (CESCR)
- 3 (Nature of states' obligations (ICESCR 2(1))) (1990), 181, 219
- 12 (Right to adequate food), 242
- 13 (Right to education), 184
- 14 (Right to highest attainable standard of health), 177, 182-4, 186, 187
- 18 (Right to work), 202
- 19 (Social security), 211 n. 191, 216-17
- 20 (Non-discrimination), 216-17
- General Comments (Child Rights Committee), 5 (General measures of implementation of Convention) (2003), 219
- Georgia, social security, 220
- Germain, R.D., 28, 49
- Germany, family benefits, 212
- Germany (East), collectivities/group farming, 144-8
- Germany (Reich), social security, 215
- Ghai, D., *see* Jolly, R., L. Emmerij, D. Ghai, F. Lapeyre
- Ghana, accountability/transparency in PRSP process, 312
- Ghose, A.K., 137, 164
- Ghosh, N. and S.S. Yadav, 142, 165
- global justice, ix-xi
- global partnership (MGD 8), 40-1, 62-3, 169, 182
- Global Social Security Floor, 218
- global warming measures/climate change, 5, 63, 66, 74, 76, 78, 142, 156, 158, 171, 245
- globalization, *see* cooperative globalization; economic globalization
- Gostin, L.O., 172-3, 175, 185, 186, 188, 189-90, 193
- Goyal, S.K., 136, 148, 164
- Gradstein, M., B. Milanovic and Y. Ying, 331, 336
- Green Revolution, *see* AGRA (Alliance for a Green Revolution in Africa)
- Griffin, K., R. Khan and A. Icrowitz, 136, 164
- Grover, Anand (UN Special Rapporteur on the Right to Health), 179
- GSP (Generalized System of Preferences), 267, 269-70
- Guiguo Wang

- notes on, xviii, 263 n. 229  
 'Trade Liberalization, 263-91
- Hagemejer, K, *see* Cichon, M and K Hagemejer
- Hall, A., 213, 232
- Hansen, J.K. and H.-O. Sano, 241, 318
- Hansen, T.T., 256
- Harris, J.W., 28, 49
- Harvey, P., 198, 209
- Hayek, F.A., 28, 49
- Heady, C., *see* Bhalotra, S. and C. Heady
- health, right to as international law obligation, 173-9
- accountability, monitoring and compliance, 6-7, 188-9
- Alma-Ata Declaration (1978), 178
- CEDAW, 174
- CERD, 174
- CESCR General Comment 14, 177
- Child Rights Convention (1989), 174
- externalities (emigration of trained personnel), 281-2
- financing (proposed Global Fund), 6-7, 190-2
- GATT XX (measures necessary to protect human, animal or plant life), 272-3
- General Comment 14, 177, 182-4, 186, 187
- Global Convention on Health, proposal for, 189-90
- healthcare services, 281-2
- as human right/core obligation, 186, 281-2
- ICCPR, 174
- ICESCR, 174, 176-8, 181-4, 285
- international aid and, 171-2, 180-5
- MDGs (2000), 39, 169, 178-9, 182, 187
- Monterrey Consensus (2002), 178-9
- non-binding declarations, resolutions and commitments, 178-9
- progressive realization, 180, 181, 187
- as public good, 281-2
- TBT Agreement, 273-4, 280
- trade liberalization measures, 272-82
- TRIPS, *see* TRIPS Agreement and health
- UDHR, 174, 175-6
- UN Human Rights Commission resolutions, 177-8, 179
- WHO Constitution (1946), 174-5
- WTO Doha Declaration (2001), 178
- health, right to and the poverty trap, 170-2
- Alma-Ata Declaration (1978) and, 178
- in Asia, 313
- cooperative globalization, 172-3
- donor nation responsibilities, 180-5
- education, role, *see* education, role
- food security and, 80 n. 58
- HIV/AIDS, 39, 64, 177-8, 179, 183, 191, 249-50
- inequalities, causes, 169-70
- Macroeconomics and Health: Investing in Health for Economic Development*, 170-1
- Macroeconomics and Health Commission (MHC), 188
- Millennium Project (2005), 172
- national government obligation, 184-5
- NGOS, role, 313
- Taskforce on Innovative International Financing for Health Systems (2009), 172
- UN Special Rapporteur, 179
- as vicious circle, 6
- health statistics
- life expectancy, 169-70
- statistics, 169-70
- Heintz, J., 110-11, 129
- see also* Chen, Martha et al (2004)/(2005)
- Heintz, J. and R. Pollin, 111
- Helliwell, J., 329, 334
- HelpAge International, 218
- HIV/AIDS, 39, 64, 177-8, 179, 183, 191, 249-50
- Hong Kong Ministerial Meeting (2005), 286
- Human Development Reports, 194, 214, 235, 297
- human dignity, right to/poverty as violation of, vii, 2, 24, 26, 30, 31, 34-5, 62, 63, 87, 115, 156, 169, 174, 182, 202, 205, 242, 293, 320
- human rights
- see also* Universal Declaration of Human Rights (1948) (UDHR); *and individual rights*
- Asian values, 86
- bilateral investment treaties (BITs) and, 60
- capability rights, 86-90, 95
- collectivities/group farming and, 136-7
- economic, social and cultural rights and, 42-3, 85-6
- economics and, *see* economics and human rights, balancing; economics and human rights, compatibility
- hierarchy, whether, 35
- IMF/World Bank and, 74
- inalienability, 25-6
- indivisibility, 26

- interdependence, 23-4, 26, 44, 45, 57, 156-7, 244-5, 263, 285-6
- International Bill of Human Rights, constituent documents, 176, 178 n. 149, 321-2
- justiciability, relevance, 99, 256, 258, 302, 320
- market intervention and, 296-7
- norms and principles distinguished, 25-7
- Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003), 24-5
- norms, sources of, 1
- regional cooperation, 73-4
- right to property, whether, 329-30
- rural development and, 70-8
- see also* agricultural and rural development
- state responsibility for, x-xi, 73, 94-100, 301
- see also* state responsibility (human rights)
- universality, 25-6, 35
- human rights and poverty reduction
- see also* economics and human rights, compatibility; poverty, definition and measurement; resources for poverty reduction
- in Africa, 312-13
- in Asia, 313-14
- basic needs vs equal shares, 240
- capability approach, x, 86-90
- see also* capability/ies; state responsibility (human rights)
- causes of poverty and, 249-50
- sequentialist argument, 13, 14-17
- effectiveness as instrument for, 4-5, 6, 13-17, 85-103, 302-4
- employment generation, 305
- in EU, 311-12
- externalities and, 281-2, 285
- 'Extreme poverty and human rights: the rights of the poor: Guiding principles' (2005), 63
- growing commitment to, 4, 20-1
- 'Human Rights and Extreme Poverty', 293-317
- incorporation of human rights
- conventions, desirability, 15, 249, 301, 303-5
- judicial enforcement, 252-7, 258
- linkage
- diagram showing, 322
- growing recognition of, 237-41
- hard (statistical) arguments vs soft (qualitative evidence), 321-2
- two-pillars (World Bank) and, 321-2
- loss of rights and freedoms consequent on poverty, 87-8
- see also* victim vs empowerment
- moral right not to be poor, vi, 2-3, 5, 23-4, 56, 297, 304
- non-discrimination/equality of treatment and, 100-1
- as obligation, 239-41, 301
- participation and, 39, 73, 100, 102-3, 240, 308
- poverty giving rise to violation of human rights, 302-3
- poverty as ipso facto violation of human rights, 2-3, 13-15, 19, 238, 240-1, 294-5, 302-4
- poverty reduction targets, 307-8
- progressive realization, 96-8
- re-orientation of international agencies, need for, 306
- resources for, 96-8
- see also* resources for poverty reduction
- 'rights-based' and 'human rights-based' distinguished, 240-1
- social security/protection, 308
- targeting the most vulnerable, 305
- in USA, 309-11
- winners and losers, 4, 55, 104
- women's rights and, 323-4
- 'Hunger and Human Rights', 7-8, 237-60
- see also* food, right to/food security
- Hungry, family benefits, 213
- Hunt, P., M. Nowak and S. Osmani, 38, 41, 49
- see also* van Genugten, W., P. Hunt and S. Matthews
- Hunt, Paul (UN Special Rapporteur on the Right to Health), 179, 183
- Hyun Son, H. and N. Kakwani, 217, 234
- Iceland, social security, 215
- Icrowitz, A., *see* Griffin, K., R. Khan and A. Icrowitz
- identity, *see* legal identity
- ILO Conventions
- 102 (Social Security (Minimum Standards) Convention) (1952), 211 n. 191, 212, 213, 215
- 118 (Equality of Treatment (Social Security) Convention) (1962), 215

- 122 (Employment Policy Convention) (1964), 197
- 143 (Migrant Workers (Supplementary Provisions) Convention (1975)), 215
- 156 (Workers with Family Responsibilities Convention) (1981), 215
- agricultural and rural development strategies, applicability to, 73, 77
- pros and cons of signature/adoption, 15-16
- ILO General Conference (2001), social security, 216
- ILO publications
- Decent Work*, 202, 207-8
- Employment, Incomes and Equality: A Strategy for Increasing Productive Employment in Kenya* (1972), 106-7, 129
- Women and Men in the Informal Economy: A Statistical Picture* (2002), 107-10
- ILO and the right to work
- constraints, 196
- Decent Work*, 202, 207-8
- Declarations
- Equality of Opportunity and Treatment for Women Workers (1975), 197
- Principles and Rights at Work (1998), 118
- economic and legal approaches, clash, 199-201
- freedoms-based approach, 199
- informal economy, 107-8, 118
- rights in the workplace, focus on, 196-7, 199
- IMF, *see* World Bank/IMF development policy role
- impact assessments, 77
- impoverishment, economic globalization and, 55-7
- Inayatullah, 138, 165
- India
- agricultural employment in, 134
- child benefits, 226-7
- civil society actors, 252, 254
- collectivities/group farming, 135, 138-9, 140, 142, 143-4, 148-9, 155, 157, 158, 159-61
- Constitution, 252
- employment guarantee schemes, 205, 206, 207
- food, state responsibility for provision of, 252-4
- malnutrition in, 61, 74 n. 48
- National Rural Employment Guarantee Act (NREGA) 2005, 16, 218
- poverty and the right to work, 205
- Saxena Commission (2003), 253
- social security, 217-18
- TRIPS, compliance difficulties, 281
- indigenous peoples, *see* traditional land user, protection of
- Indonesia, land-grabbing in, 60
- inequalities, *see* non-discrimination/equality of treatment; rich vs poor
- informal economy, 105-30
- see also* employment, non-standard (developed countries)
- business rights and, 6, 120-1
- causes, 114-15
- changing patterns, 111
- collective bargaining and, 128
- commercial law and, 127
- consequences, 115
- definitions, 107-8, 117-18
- in developed countries, 115-17
- economic models and, 123
- employment status and, 108-9
- family benefits and, 213
- feminization of labour force and, 110-11
- as growth area, 107, 125-6
- hierarchy of earnings/segmentation, 110, 112-14
- ILO Declaration of Principles and Rights at Work (1998) and, 118
- ILO publications on, 107-8
- informal employment by sex, 112-14
- labour rights and, 118-20
- lack of information relating to, 105-6
- legal empowerment and, 6, 122-3
- participation/empowerment of the poor and, 123-4
- poor, need to acknowledge, 123
- poverty risk and, 112-14
- property rights and, 121
- schools of thought, 107-8
- social security/protection and, 122, 128
- statistics, 6, 107-10, 121
- USA and, 125-6
- women and, 121, 124
- worker organization and, 128
- informal employment, adequate standard of living and, 115
- intensive farming, disadvantages, 64-5
- International Bill of Human Rights, constituent documents, 176, 178 n. 149, 319-20

- International Conference of Labour Statisticians (2003), 107-8
- international conventions
- compliance obligations, 5, 15
  - incorporation into national legal systems, failure/reluctance, 15, 249, 301, 303-5
  - pros and cons of signature/adoption, 5, 15-16
  - reservations, impact, 190
  - women's rights and, 323
- International Covenant on Civil and Political Rights (1966) (ICCPR)
- health, right to, 174
  - ICESCR compared, 320
  - justiciability, 320
  - women's rights (ICCPR 3), 323
- International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)
- accountability, monitoring and compliance, 188-9
  - adequate standard of living (ICESCR 11(1)), 23-4, 242, 285
  - binding effect/enforceability, 181-4
  - CESCR General Comments; *see also* Economic, Social and Cultural Rights Committee (CESCR); General Comments (CESCR)
  - health, right to (ICESCR 12), 174, 176-8
  - ICCPR compared, 320
  - individual right of petition (Optional Protocol), 188-9
  - programmatically principles and, 320
  - progressive nature of obligations (ICESCR 2(1)), 176-7, 180, 181, 187, 216-17
  - protection of mothers (ICESCR 10), 323
  - ratification, relevance for individual States, 181
  - scientific progress, right to enjoy benefits of (ICESCR 15(1)(b)), 177
  - social security (ICESCR 9), 214, 216
  - USA and, 181
  - women's rights (ICESCR 3), 323
  - work, right to (ICESCR 6), 197, 202
- International Day for the Eradication of Poverty (2008), xi
- international development aid
- see also* cooperative globalization
  - charity begins at home and, 97
  - ethics-based approach, 31
  - family benefits and, 213, 218
  - governance issues, 185
  - health, right to and, 171-2, 180-5
  - international legal obligation, whether, 307
- International Development Ethics Association (IDEA), 31
- International Poverty Centre (IPC), 22, 226-7
- international trade/WTO undertakings, *see* trade liberalization measures, effect
- Israel, collectivization (kibbutz), 136, 137
- Jamaica, subsidies, impact on, 283
- Jolly, R., L. Emmerij, D. Ghai, F. Lapeyre, 58, 83
- Jonsson, U., 239-40
- judicial enforcement of human rights, 252-7, 258
- justiciability, relevance, 99, 256, 258, 302, 320
- Kakwani, N., F. Veras Soares and Hyun H. Son, 222, 225-6, 233
- see also* Hyun Son, H. and N. Kakwani
- Kanbur, Ravi
- 'Attacking Poverty: a Human Rights Approach', 5, 13-17
  - citations, 14, 15-16
  - notes on, xv, 13 n. 7
- Kanbur, Ravi and Nancy Chau
- see also* Basu, A., Chau, N. and R. Kanbur
  - 'The adoption of international labor standards: who, when and why', 15-16, 17
- Kaufmann, D., 34, 50, 324, 334
- Kaufmann, D. and A. Kraay, 329, 334
- Kaul, I., I. Grunberg and M. Stein, 221, 233
- Kayongolo, F., *see* Chirwa, W., Patel, N. and Kanyongolo, F.
- Kennedy Round (1964-7), 266-7
- Kenya
- collectivities/group farming, 159
  - family benefits, evaluation, 228-9
- Kerkvliet, B.J.T., 137, 139, 165
- Khan, R., *see* Griffin, K., R. Khan and A. Icrowitz
- Kinney, E.D., 188, 193
- Kiros, F.G., *see* Alula, A. and F.G. Kiros
- Korea, *see* Republic of Korea
- Kraay, A., *see* Kaufmann, D. and A. Kraay
- Kulke, U., 218, 233
- Kumar, P., 135, 142
- Kuszler, P.C., 174, 176, 178-9, 188, 193
- Kyrgyzstan, collectivities/group farming, 144-8
- La Hovary, Claire, 195 n. 181
- labour rights
- employers' perception of, 118-19
  - informal economy and, 118-20
  - winners and losers, 118-19
- labour standards as externality, 326-28

- Lamy, Pascal, 288
- land acquisitions/land-grabbing, 59-60, 74, 80
- Development-based Evictions and Displacement, UN Principles and Guidelines (1997), 76
- Langford, Malcolm
- citations, 213, 216, 219, 233
- notes on, xv
- 'Social Security and Children', 7, 211-35
- Lapeyre, F., *see* Jolly, R., L. Emmerij, D. Ghai, F. Lapeyre
- Larsen, E., 212, 233
- Latin America
- agriculture, role, 65
- collectivization, 136, 137, 139, 142
- family benefits, 213
- women in informal employment, 112
- Lawson, E.H., M.L. Bertucci and L.S. Wiseberg, 178
- Least-Developed Countries (LDCs), 265, 268-70
- legal empowerment, 6, 29-30, 122-3, 254-8
- legal identity, informal economy and, 122-3
- Léger, *see* Mizunoya, Behrendt, Pal and Léger
- Lemaitre, J., *see* Arango, R. and J. Lemaitre
- Lim, J.A., *see* Vandemoortele, J., K. Malhotra and J.A. Lim
- Lin, J.Y., 136, 165
- Lloyd, C., 231, 233
- Loayza, N.V. et al, 119, 130
- Locke, John, 27
- Lopez, A., *see* Mathers, C.D., A. Lopez, C.J.L. Murray
- Lund, J., *see* Chen, Martha et al (2004)/(2005)
- Lustig, Nora C. and D. McLeod, 119, 130
- McLeod, D., *see* Lustig, Nora C. and D. McLeod
- McNeill, D
- citations, 320
- notes on, xvi
- McNeill, Desmond and Luis Sanchez, 'Human Rights and the World Bank', 8-9, 319-35
- Madagascar, land-grabbing in, 60
- Mahal, Ajay
- see also* Marks, Stephen P. and Ajay Mahal
- notes on, xv, 19 n. 15
- Malawi
- accountability and, 254-7
- Constitution, 250
- food, right to/food security in, 249-52
- judicial enforcement of human rights, 256-7
- Malhotra, R., 38, 50
- see also* Vandemoortele, J., K. Malhotra and J.A. Lim
- malnutrition, *see* food, right to
- Maloney, William F., 106, 130
- Mankiw, N.G., 325 n. 337, 334
- Mankiw, N.G., D. Romer, and D. Weil, 327 n. 337, 336
- Marchione, T.J., 247 n. 221
- market deregulation, 125-6
- Marks, Stephen P., 135 n. 92, 195 n. 181
- see also* Dresler, C. and S. Marks
- notes on, xvi, 19 n. 15
- Marks, Stephen P. and Ajay Mahal, 'Economics and Human Rights Perspectives', 19-54
- Maskus, K., 31, 50
- Mathers, C.D., A. Lopez, C.J.L. Murray, 170
- Mathihijis, E. and J.E.M. Swinnen, 144, 145, 146-7, 165
- Matthews, S., *see* van Genugten, W., P. Hunt and S. Matthews
- Maul, D., 200, 209
- 'maximum economic resources' obligation, 38-41, 218-21
- Médecins Sans Frontières (MSF), 21, 281, 290
- Medeiros, M., T. Britto and F. Veras Soares, 218, 233
- Menon, P., A. Deolalikar and A. Bhaskar, 61, 83
- Mérida Declaration (1989), 31
- Mexico, social security/family benefits, 217, 230-1
- Michalopoulos, C., 280, 290
- Middle East
- agriculture, role, 65
- collectivization, 136
- women in informal employment, 112
- Mieszkowski, P., *see* Zodrow, G.R. and P. Mieszkowski
- Milanovic, B., *see* Gradstein, M., B. Milanovic and Y. Ying
- Millennium Declaration (2000), 39, 53, 182, 238, 298, 317
- Millennium Development Goals (MDGs)
- child survival (Goal 4), 39, 170, 187
- Claiming the MDGs: A Human Rights Approach*, 40, 41
- disease control (Goal 6), 169
- education (Goal 2), 39, 169
- environmental sustainability (Goal 7), 169



- eradication of extreme poverty (Goal 1), vi-vii, 39, 242  
 eradication of major diseases (Goal 6), 39, 187  
 family benefits and, 213-14  
 global partnership (Goal 8), 40-1, 62-3, 169, 182  
 health, emphasis on, 169, 178-9, 182  
*Human Rights and the Millennium Development Goals: Making the Link*, 40  
 maternal health (Goal 5), 169, 187  
 poverty and hunger (Goal 1), 169, 214  
 Mizunoya, Behrendt, Pal and Léger, 223, 225-6  
 monitoring and compliance  
   civil society actors and, 69, 71, 73, 81, 179, 184 n. 172, 255-6, 258, 301, 309, 313  
   corporate compliance, 75-6  
   externalities as deterrent, 119  
   health, right to, 188-9  
   ICESCR obligations, 188-9  
   indicators and tools for measuring, 5, 39-40, 41-2  
   international conventions, role, 5, 15-16  
   state responsibility, 98, 301  
   thresholds, need to clarify, 37  
 monoculture, disadvantages, 64-5  
 Monterrey Consensus (2002), 40, 178-9  
 Moore, Barrington, 28, 50  
 Moore, Mike (WTO Director-General), 264  
 moral hazard, 37, 46, 98, 99  
 Mort, J.-A. and G. Brenner, 137, 165  
 Moser, Caroline N., 106, 130  
 Mowbray, J., 243  
 Moyo, D., 4, 10  
 Mujahid-Mukhatar, E., 231  
 Müller, K., 213, 234  
 Murray, C.J.L., *see* Mathers, C.D., A. Lopez, C.J.L. Murray  
 Nabli, M.K. and J.B. Nugent, 198, 209  
 Nair, A., 161, 165  
 Nangia, Rita, 293 n. 321  
 Nelson, P.J. and E. Dorsay, 21, 51  
 neo-liberalism, negative effects of, 5, 57-61, 74, 78, 125-6, 201  
 Nepal  
   child benefits, 225, 226-7  
   poverty reduction in, 313  
 Netherlands, social security, 215  
 New Deal (1933), 5, 78, 215  
 New International Economic Order (NIEO)  
   breakdown, 56, 58, 78  
   Declaration and Programme of Action (UNGA Resolution 3201 (S-VI)), 58  
 NGOs  
   accountability/transparency and, 24, 309  
   AGRA and, 70-1  
   agricultural and rural development, 66 n. 45, 67, 70-1  
   collectivities/group farming and, 148, 155, 156, 158-61  
   food, right to/food security and, 79-80, 154, 238, 251-2, 254-5  
   human rights framework, adoption of, 21  
   as key to communities, xi  
   public health, 313  
 Nicaragua, collectivities/group farming, 136, 137, 144-8  
 non-discrimination/equality of treatment  
   definition and scope, 308  
   differential treatment, justification, 101, 205  
   economists attitude towards, 37  
   as fundamental principle, vii, 100-1  
   work, right to and, 205  
 non-retrogression of rights, 101  
 Nordic countries, part-time work, 116  
 Nordstrom, H., D. Ben-David and L.A. Winters, 264, 290  
 Normand, R., 38, 51  
 North Africa, women in informal employment, 112  
 North Viet Nam, collectivization, 136, 137  
 North/South divide, 62  
 Norway, family benefits, 212, 223-4  
 Nove, A., 136, 137, 166  
 Nowak, M., *see* Hunt, P., M. Nowak and S. Osmani  
 Nozick, R., 28, 51  
 Nugent, J.B., *see* Nabli, M.K. and J.B. Nugent  
 Nussbaum, M., 59, 87 n. 63  
 Nyamu-Musembi, C. and A. Cornwall, 244  
 Oates, Wallace E. and Robert M. Schwab, 327  
 ODI (Overseas Development Institute), 20-1  
 OECD, vies on compatibility of human rights and economics, 20-1, 325  
 Olsen, M., 143, 166  
 O'Neil, T., *see* Piron, L.H. and T. O'Neil  
 Osmani, Siddiqur R.  
   citations, 42, 86, 92 n. 68, 96 n. 69, 97 n. 70, 101 n. 72, 103  
   *see also* Hunt, P., M. Nowak and S. Osmani  
   'The Human Rights Approach to Poverty Reduction', 6, 85-103  
   notes on, xvi, 41 n. 59

- out-migration, 72-3  
 OXFAM, 21, 238, 247, 283  
 Pakistan  
   family benefits, impact, 231  
   land-grabbing in, 60  
 Pal, *see* Mizunoya, Behrendt, Pal and Léger  
 Palmer-Jones, R., *see* Wood, G. and R.  
   Palmer-Jones  
 Parajuli, D., *see* Chaudhury, N. and D.  
   Parajuli  
 part-time work, 116  
 participation, 73, 100, 102-3  
   collectivities/group farming, 136-7  
   economists attitude towards, 37-8, 39  
   food, right to/food security and, 258  
   human rights-based approach and, 237-8,  
     240, 308  
   informal economy and, 123-4  
   PRSP preparation and, 308  
   rural populations, 56 n. 28  
   standards/standard-setting, 280  
 Patel, N., *see* Chirwa, W., Patel, N. and  
   Kanyongolo, F.  
 Pathak, Namrata, 293 n. 321  
 Pavcnik, N., *see* Edmonds, E. and N. Pavcnik  
 Peek, P., 138, 166  
 Pereira Leite, S., 39, 51  
 Perez-Bustillo, C., *see* Van Genugten, W. and  
   C. Perez-Bustillo  
 Perry, G.E., W.F. Maloney, O.S. Arias, P.  
   Fajnzylber, J. Saavedra-Chanduvi,  
   106, 130  
 Peterson, L.E., 16 n. 35, 83  
 Philippines, land-grabbing in, 60  
 Pincus, J., *see* Seymour, D. and J. Pincus  
 Piore, M., 327, 334  
 Piron, L.H., 251, 319  
 Piron, L.H. and T. O'Neil, 21, 51  
 policy evaluation criteria, 13-14, 47, 187, 189,  
   213, 228, 229, 257-9, 326-7  
 political will as critical factor, vii-viii, 4-5,  
   13-14, 225, 302, 304  
 Pollin, R., *see* Heintz, J. and R. Pollin  
 Portes, A., *see* Castells, Manuel and  
   Alexandro Portes  
 poverty, definition and measurement  
   *see also* human rights and poverty  
   reduction  
   absolute vs relative basis, 22  
   access to goods and services as test, 295-6  
   access to social services as test, 297-8  
   capability deprivation, 86-90, 297,  
     299-300, 303  
   Copenhagen Declaration (1995), 297-8  
   Development, Declaration on the Right to  
     Development, 303  
   disputed facts and models, 4  
   economics-based definition, 5, 22-3  
   extreme poverty, 6, 295-300  
   human development poverty, 296-8, 303  
   Human Poverty Index (UNDP), 23, 297  
   human rights-based definition, 5, 23-7  
   income poverty, 295-6  
   long-term/chronic poverty, 296  
   non-monetary factors, 5, 23-7, 55, 89,  
     296-300, 320-21  
   overlap/intersection approach, 300  
   role/status definition and, 296  
   social exclusion and, 24, 298-300, 308  
   as unintended externality, 3-4  
   Vienna Declaration and Programme of  
     Action (1993), 2, 303  
   World Social Development Summit  
     (WSSD), 24, 297-8  
 poverty production, *see* impoverishment  
 Poverty Reduction and Growth Facility  
   (IMF/World Bank), 264  
 Poverty Reduction Strategy Papers (IMF/  
   World Bank), *see* PRSPs  
 poverty statistics, 22, 133-4, 285-6  
 privatization, 125-6  
 property, right to  
   ECHR, Optional Protocol, 28  
   ICCPR and, 28  
   ICESCR and, 28  
   informal economy and, 121  
   as interface between economics- and  
     human rights-based approaches to  
     poverty reduction, 5, 27-30  
   relationship between protection of and  
     poverty, 29  
   status as human right, 27-8, 329-30  
   UDHR 17, 28  
 PRSPs  
   *see also* cooperative globalization; human  
   rights and poverty reduction;  
   poverty, definition and measurement;  
   resources for poverty reduction  
   accountability/transparency and, 308-9,  
     312-13, 314  
   in Africa, 312-13  
   definition and scope, 39, 264, 307-8  
   'ENPAT' criteria, 25, 307-8  
   extreme poverty, as tool for eradication  
     of, 294  
   human rights, inclusion in, 39

- laissez-faire attitude towards, 75  
 participation and, 39, 308  
 public goods, 264  
 Putterman, L., 136, 137, 166  
 quantity vs quality, 3-4, 20, 34, 41-2, 156  
 Quiróz Viquez, A., *see* Bradshaw, S. and A. Quiróz Viquez  
 Racial Discrimination, Convention on the Elimination of (1965) (CERD)  
   health, right to, 174  
   social security (CERD 5(3)(iv)), 214 n. 193  
 Rath, N., *see* Dandekar, V.M. and N. Rath  
 Ravallion, Martin, 218, 222, 234  
   *see also* Chen, S. and M. Ravallion  
 Rawal, V., 134, 166  
 Rawls, John, 33, 51-52, 221, 300  
 Reagan/Thatcher regime, 58-9  
 Republic of Korea, trade liberalization/  
   economic growth, 264  
 resources for poverty reduction  
   addressing the deficiencies, viii  
   economic growth/generation of increased  
     resources, 97-8, 217, 296-7  
   economics- and human rights-based  
     approaches to, 38-45  
   efficiency measures, 97  
   indivisibility of rights, 101  
   internal redistribution, 96-7, 296-7  
   international development aid, 97, 180-5  
   international redistributive justice and, 238  
   moral hazard and, 37, 46, 98, 99  
   non-retrogression of rights and, 101  
   prioritization and, 97, 228-9  
   redistribution, obstacles to, 96-7  
 Revesz, R., 327, 335  
 rich vs poor  
   financial crisis (2008), 5, 61-2, 263  
   income differentials, 263-4  
   political will and, 4-5, 302  
   resource redistribution and, 96-7  
 Riedel, E., 220, 234  
 rights/obligations equation, 25-7, 90-2, 99,  
   332-3  
 Rigobon, R. and Dani Rodrik, 31, 52, 329,  
   335  
 Robertson, R., 220, 234  
 Robinson, G.T., 136, 137, 166  
 Robinson, M., *see* Alston, P. and M. Robinson  
 Roddis, S. and Tzannatos, Z., 213, 234  
 Rodgers, Gerry  
   notes on, xvi  
   ‘Right to Work and the Reduction of  
     Poverty’, 7, 195-210  
 Rodrik, Dani, 331, 335  
   *see also* Rigobon, R. and Dani Rodrik  
 Romania, collectivities/group farming, 144-8  
 Romer, D., *see* Mankiw, N.G., D. Romer, and  
   D. Weil  
 Roosevelt, Eleanor, 196  
 Roosevelt, Franklin D  
   Four Freedoms Speech (1941), 57  
   New Deal (1933), 5, 78, 215  
 Rousseau, Jean-Jacques, 27  
 Russell, Bertrand, 196  
 Russian Federation, social security, 220  
 Rwanda, PRSPs and, 39  
 Saavedra-Chanduvi, J., *see* Perry, G.E., W.F.  
   Maloney, O.S. Arias, P. Fajnzylber, J.  
   Saavedra-Chanduvi  
 Sabates-Wheeler, R., 144-8, 166  
 Sabates-Wheeler, R. and M.D. Childress,  
   144, 167  
 Sachs, Jeffrey D., 4, 10, 31, 52  
 Sachs, Lisa E. and Jeffrey D.  
   ‘Human Right to Health in Low-Income  
     Countries’, 169-94  
   notes on, xvii, 169 n. 131  
 Sakikio, 221  
 Samuelson, Paul A., xxii, 221  
 San Salvador Protocol, social security, 214  
   n. 194  
 Sanchez, Luis, *see* McNeill, Desmond and  
   Luis Sanchez  
 Sanitary and Phytosanitary Measures:  
   *see* SPS Agreement (Agreement  
     on Application of Sanitary and  
     Phytosanitary Measures)  
 Sano, H.-O., 21, 52  
   *see also* Hansen, J.K. and H.-O. Sano  
 Save the Children, 21, 238  
 Saxena Commission (2003), 253, 320  
 Schady, N., *see* Fizbein, A and N Schady  
 Schwab, R.M., *see* Oates, Wallace E. and  
   Robert M. Schwab  
 scientific progress, right to enjoy benefits of  
   (ICESCR 15(1)(b)), 177  
   CESCR General Statement on Human  
     Rights and Intellectual Property, 177  
 seasonal work, problems, 72-3  
 Sen, Amartya  
   citations, 1 n. 1, 22-3, 30-1, 61, 86-90, 99 n.  
     71, 103, 198-9, 201, 207-8, 256, 297  
   contribution to role of human rights in  
     development, 320-1  
   Royer Lectures (1986), 1 n. 1, 31

- Senegal, social security/family benefits, 220, 223, 224, 226
- Sengupta, Arjun  
 citations, 13-14, 17, 38, 52, 62, 97 n. 70, 240-1, 243-4, 248, 293-5, 308 n. 323, 309  
 'Human Rights and Extreme Poverty', 293-317  
 notes on, xvii
- Sepúlveda, M., 216 n. 199, 220, 234
- Sethuraman, S, V, 106-7, 130
- Seymour, D. and J. Pincus, 211, 234
- Sharma, R., *see* Foresti, M. and R. Sharma
- Sherman, A., 310, 317
- Shleifer, Andrei, 49
- Shleifer, Andrei and Robert Vishny, 31, 52
- SIDA, 21, 238, 244
- Singapore Ministerial Conference (1996), 286
- Singh, Nivirkar, 326, 335
- Singh, S., 142, 167
- Skogly, S., 320 n. 325, 335
- Smith, Adam, 1, 27-8, 52, 61, 324
- social exclusion  
 EU programmes for tackling, 298-9, 311-12  
 measuring, 299  
 as poverty test, 24, 298-300
- social security/protection  
*see also* family benefits  
 ACRDM, 214 n. 194  
 as basic human right, 216  
 CEDAW, 214 n. 193  
 CERD, 214 n. 193  
 CESC General Comment 3, 219  
 CESC General Comment 19, 211 n. 191, 216-17  
 compliance with legal obligations, relevant factors, 219-21  
 conditional cash transfer programmes, 218-21  
 economic growth and, 217-18  
 Equality of Treatment (Social Security) Convention (1962) (No 118), 215  
 EU and, 311-12  
 European Social Charter, 214 n. 194, 215  
 Global Social Security Floor, 218  
 ICESCR 9, 214, 216  
 ILO General Conference (2001), 216  
 ILO Migrant Workers (Supplementary Provisions) Convention (1975) (No 143), 215  
 ILO Social Security (Minimum Standards) Convention (1952) (No 102), 211 n. 191, 212, 213, 215, 216  
 ILO Workers with Family Responsibilities Convention (1981) (No 156), 215  
 informal economy and, 122, 128  
 jurisprudence (international tribunals), 215 n. 197, 219 n. 201  
 jurisprudence (national courts), 216, 219-20, 221  
 minimum threshold, 214-17  
 post-WW I constitutions, 215  
 poverty eradication measures and, 308  
 rights-based approach, 213-17  
 and rural populations, 77  
 San Salvador Protocol, 214 n. 194  
 scope ('pillars'), 185 n. 191  
 UDHR, 214  
 victim vs empowerment, 231
- social security/social protection, adequate standard of living and, 220
- Solow, Robert, 198, 209
- South Africa  
 externalities (emigration of trained personnel), 281-2  
 social security, 217, 221, 229  
 targeted vs universal social protection schemes, 222, 223
- sovereign equality, 58-9
- Soviet Union, collectivization, 137, 139
- Spain, social security, 215
- SPS Agreement (Agreement on Application of Sanitary and Phytosanitary Measures)  
 Australia-Salmon case, 276-8  
 criteria for determining acceptability of measures under, 274-5  
 Japan-Agricultural Products case, 279 n. 284  
 multilateral framework, desirability, 278-9  
 mutual recognition of measures, 270-80  
 risk assessment and, 274-5, 276-8  
 'sameness' vs 'equivalence', 275  
 standards/standard-setting, 275-6  
 transitional period, 267
- Srinivasan, T.N., 30, 52
- Stamford Declaration (2003), 244-5  
 standard of living, *see* adequate standard of living, right to  
 standards/standard-setting, 275-6, 280
- Standing, G., 196, 206, 209
- state responsibility (human rights)

- accountability mechanisms, x-xi, 98-100, 102-3  
     *see also* accountability/transparency  
 capability rights and, 95  
 classification of obligations, 94-5  
 economists' lack of interest in, 24-5  
 food, right to/food security and, 252-4  
 monitoring mechanisms, 98, 301  
 primary responsibility of national government, 73, 184-5, 247-54, 301  
 progressive realization of rights, 96-8  
 work, right to and, 7  
 Stefanoni, S., 218, 234  
 Steger, M., 58-9, 83  
 Stern, R., *see* Brown, D., A. Deardorff, and R. Stern  
 Stewart, F. and M. Wang, 39, 52  
 Stiglitz Commission (2009), 213  
 Stiglitz, J.E., 28, 52  
 Stuart, L. and G. Fanjul, 282, 290  
 sub-Saharan Africa  
     agriculture, role, 65  
     collectivities/group farming, 159  
     life-expectancy, 169-70  
     targeted vs universal social protection schemes, 222  
     women in informal employment, 112  
 Subsidies and Countervailing Measures Agreement (SCM) (WTO), 268  
 Sudan, land-grabbing in, 60  
 sustainability, *see* environmental costs/sustainability considerations  
 Swain, N., 137, 139, 163  
 Sweden, human rights and poverty reduction, 21  
 Swepston, Lee, 195 n. 181  
 Swinnen, J.E.N., *see* Mathihijis, E. and J.E.M. Swinnen  
 Sykes, A.O., 218, 280, 290  
 Tankha, A., 161, 167  
 Tanzania  
     child benefits, 225  
     collectivization (Ujaama experiment), 136, 137  
     PRSPs and, 39  
     social security, 223  
 Technical Barriers to Trade Agreement (TBT)  
     EC-Sardines case, 273-4  
     standards/standard-setting, 280  
     'technical regulation', 273-4  
     temporary employment, 116-17  
 Textiles and Clothing Agreement (WTO), 267  
 Thomas, C., 167, 266, 290  
 Tobacco Control, WHO Framework Convention on (2003), 175  
 Tokman, V., 106-7, 118, 130  
 Tomas, A., *see* Darrow, M. and A. Tomas  
 Torrente, Luis Sánchez, notes on, xvii  
 Töth, I.G., *see* Förster, M.E. and I.G. Töth  
 Townsend, P., 213, 234  
 trade liberalization measures, effect, 263-91  
     *see also* Agriculture Agreement (WTO)  
     adequate standard of living and, 289  
     agricultural, textile and tropical products markets, 265, 283-5  
     EC-Tariff Preferences case, 270-1  
     economic globalization and, 265  
     economic growth and, 125-6, 264  
     externalities, 281-2, 285  
     food, right to/food security, 77  
     health, right to, 272-82  
     structural adjustments, externalities, 59, 78-81, 306  
 trade-offs, scope for, 7, 34-5, 101, 199, 211-12, 228, 229-30  
 traditional land user, protection of, 60, 71-8  
 transparency, *see* accountability/transparency  
 TRIPS Agreement and health, 280-1  
     importation of generic drugs, 281  
     transitional period, 267  
     TRIPS Agreement and Public Health, Council Decision (2003), 281  
 Tunisia, informal economy in, 110, 111  
 Turk, C, *see* Edmonds, E. and C. Turk  
 Uganda, 39  
     PRSPs and, accountability, 312  
 UN Charter  
     cooperation obligation (UNC 55 and 56), 57, 180-1, 306  
     NIEO and, 58  
 UN Human Rights Commission  
     resolution 2001/33 (Access to medication in context of pandemics such as HIV and AIDS), 177-8  
     resolution 2003/28 (linkages between poverty reduction strategy and the right to health), 179  
 UN Principles and Guidelines on Development-based Evictions and Displacement (1997), 76  
 UN Research Institute for Social Development (UNRISD), 110

- UN System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment, High-level Panel, 74
- UNCTAD, Report on Global Food Crisis (2008), 59
- UNDP, food, right to/food security and, 244, 245
- UNICEF, food, right to/food security and, 244
- United Arab Emirates, land-grabbing by, 60
- United Kingdom, human rights and poverty reduction, 21
- Universal Declaration of Human Rights (1948) (UDHR)
- adequate standard of living (UDHR 25), 23-4, 57, 175-6, 214, 241-2, 285
  - effective remedy (UDHR 8), vii
  - equality (UDHR 7), vii
  - food, right to, 241-2, 285
  - health, right to, 174, 175-6, 285
  - human rights, poverty as violation of, vii, 57
  - motherhood and childhood, right to special care and assistance (UDHR 25(2)), 214
  - non-binding nature, 176
  - property (UDHR 17), 28
  - social and international order as basis for realization of UDHR rights and freedoms (UDHR 28), 57, 62
  - social security (UDHR 22), 214
  - work, right to, 195, 196
- Unni, Jeemol, 113 n. 80
- urban migration, *see* out-migration
- USA
- American Recovery and Investment Act 2009, 310-11
  - family benefits, 212
  - health in, 169
  - human rights and poverty reduction, 309-11
  - ICESCR and, 181
  - part-time work, 116
- Uvin, P., 239-40, 245, 247-8
- Van Genugten, W. and C. Perez-Bustillo, 319, 335
- Van Genugten, W., P. Hunt and S. Matthews, 82, 319, 335
- Vandemoortele, J., K. Malhotra and J.A. Lim, 40, 54
- Vandenhoe, W., 182, 183-4, 195
- Vanek, Joann, *see* Chen, Martha et al (2004)/ (2005); Chen, Martha and Joann Vanek
- Veras Soares, F., *see* Medeiros, M., T. Britto and F. Veras Soares
- vicious circles, 6, 66, 171-2, 298, 327-8
- victim vs empowerment
- accountability/transparency and, 37-8, 45, 46, 90-3, 308-9
  - agricultural and rural development, 6, 133-6, 141-2, 156-61, 257
  - attitudes towards, vii-x, 254
  - Commission on Legal Empowerment of the Poor (CLEP), 29, 118
  - food, right t/food security and, 8, 247-8, 254-9
  - legal empowerment, 6, 29-30, 122-3, 254-8
  - social security/protection, 231
  - women's rights and, 6, 39, 138-9, 156, 158-60, 257, 324
  - work, right to and, 32, 123-4, 204, 205, 208
- World Bank and, 9, 43, 238, 240-1, 321-2, 324, 326, 332-3
- Vienna Declaration and Programme of Action (1993), 2, 303
- Viet Nam
- see also* North Viet Nam
  - child benefits, 226-7
  - Comprehensive Poverty Reduction and Growth Strategy (2000), 313
  - PRSPs and, 39
- Villanger, E., 222, 224, 235
- Vishny, R., *see* Shleifer, Andrei and Robert Vishny
- Wang, Guigo, *see* Guiguo Wang
- Wang, M., *see* Stewart, F. and M. Wang
- Washington Consensus, 58-9
- Weil, D., *see* Mankiw, N.G., D. Romer, and D. Weil
- Westerly, William, 32
- WHO
- Constitution (1946), 174, 175
  - conventions and regulations, reluctance to adopt, 175
  - Framework Convention on Tobacco Control (2003), 175
  - health as a fundamental right, 174
  - Macroeconomics and Health: Investing in Health for Economic Development*, 170-1
- Wilson, J. D., 327
- winners and losers, 4, 55, 104

- Winters, L.A., *see* Nordstrom, H., D. Ben-David and L.A. Winters
- Wiseberg, L.S., *see* Lawson, E.H., M.L. Bertucci and L.S. Wiseberg
- Wittman, Donald, 25, 54
- Women, Convention on the Elimination of Discrimination Against (1979) (CEDAW)  
 health, right to, 174  
 social security (CEDAW 11 and 14), 214  
 n. 193
- Women in Informal Employment: globalizing and organizing (WIEGP), 107
- women's rights  
 agricultural and rural development and, 72, 133-5  
 collectivities/group farming and, 6, 135, 138-9, 140, 148, 149-62  
 education and, 72, 113, 115, 323, 324  
 effectiveness as instrument for poverty reduction, 323-4  
 empowerment and, 6, 39, 138-9, 156, 158-60, 231, 257, 324  
 feminization of labour force and, 110-11  
 financing/loans, 159-61  
 ICCPR, 323  
 ICESCR, 323  
 ILO Declaration on Equality of Opportunity and Treatment for Women Workers (1975), 197  
 income and assets holdings, importance, 113, 154  
 informal economy and, 107, 112-14, 124  
 MDGs and, 39  
 non-standard employment and, 115-17  
 World Bank/IMF development policy role, 325-6
- Wood, G. and R. Palmer-Jones, 159, 167
- Woolard, I., *see* Aguero, J., M. Carter and I. Woolard
- work, right to, 169-209  
 adequate standard of living and, 195  
 affirmative action/positive discrimination, 205-6  
 capability/ies and, 199  
 cross-disciplinary approach, need for, 207-8  
*Decent Work* (ILO), 202, 207-8  
 definitions, 201-8  
 economic theories and, 7, 197-201  
 education, role, 305, 329-30  
 employment guarantee schemes, effectiveness, 205, 206, 207  
 employment productivity and, 207  
 as freedom, 199  
 ICESCR 6, 197, 202  
 ILO, role, *see* ILO and the right to work  
 legal approach to, 7, 199-200  
 non-discrimination and, 205  
 as part of complex of rights, 195  
 poverty and, 204-8  
 right and obligation distinguished, 196-7, 207-8  
 rights-based approach, 198-9, 207-8  
 in socialist economies, 196, 206, 207  
 state as guarantor, 7, 206, 207-8  
 state responsibility and, 7  
 UDHR, 195  
 victim vs empowerment and, 32, 123-4, 204, 205, 208  
 work as means to an end, 7, 195
- worker organization, informal economy and, 128
- World Bank/IMF development policy role, 319-25  
 collectivities/group farming and, 136  
 family benefits, 213  
 human rights and, 8-9, 74, 211-12, 319-35  
 human rights conventions/international legal obligations and, 319-20  
 neo-liberalism and, 58-9, 125-6  
 Poverty Reduction and Growth Facility, 264  
 Poverty Reduction Strategy Papers, 75, 264  
 structural changes, need for, 59, 78-81, 306  
 'Tilburg Guiding Principles of World Bank, IMF and Human Rights', 320  
 n. 325  
 two-pillar approach (empowerment and investment climate), 9, 43, 238, 240-1, 321-2, 324, 326, 332-3
- UN System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment, High-level Panel on, 74
- women's rights/women in development, 323-4
- World Development Reports (WDR)* (World Bank)  
 2008 and 2009 reports compared, 65  
 two-pillar approach, 321
- World Food Summits  
 targets (1996), 61, 75, 242  
 Third (2009), 79
- Voluntary Guidelines on the Right to Food (2004), 79

- World Social Development Summit (WSSD),  
poverty, definition and measurement,  
24, 297-8
- Wresinski, Joseph, 298, 299, 303, 318
- WTO dispute resolution (DSU)  
Agriculture Agreement provisions, 285  
difficulties for developing and LDC  
members, 268, 270, 271, 285
- WTO dispute resolution (DSU), AB  
decisions  
Australia–Salmon, 276-8  
EC-Tariff Preferences, 270-1  
EC–Sardines, 273-4  
Japan–Agricultural Products, 279 n. 284
- WTO/GATT and developing countries  
adequate standard of living and, 266  
Agriculture Agreement, 267  
Anti-Dumping Agreement (WTO), 268  
balance of payments provisions, 266  
benefits for developing country and LDC  
members, 271-2  
Cancún Ministerial Meeting (2003), 283,  
284, 286  
Committee on Trade and Development,  
266  
decision-making and, 265-6  
'developing' country for purpose of, 265  
n. 236  
Doha Development Agenda (2001), 265  
Doha Ministerial Declaration (2001), 178  
Doha Round, 286-9
- Enabling Clause, 267, 270-1  
food, right to/food security and, 243  
GATS, 281-2  
GSP, 267, 269-70  
health issues, 178, 272-82  
history prior to Uruguay Round, 265-6  
Hong Kong Ministerial Meeting (2005),  
286  
Kennedy Round changes (1964-7), 266-7  
LDCs, 265, 268-70  
membership statistics, 265  
restraints and restrictions, right to impose  
(GATT 18), 266-7  
SCM Agreement, 267  
Singapore Ministerial Conference (1996),  
286  
SPS Agreement, 267, 274-80  
TBT Agreement, 273-4, 280  
Textiles and Clothing Agreement (WTO),  
267  
transitional periods, 267  
TRIPS Agreement, 267, 280-1  
WTO-related agreements, special  
provisions relating to developing  
countries, 266, 267-72
- Yamin, A.E., 181-2, 194  
Ying, Y., *see* Gradstein, M., B. Milanovic and  
Y. Ying
- Zapada, 228-9  
Zelner, V., 327  
Zodrow, G.R. and P. Mieszkowski, 327, 335



The dialogue between economists and human rights specialists is slowly evolving after having for too long been subject to mutual ignorance or only occasional curiosity, whether genuine or disdainful. Recently, the topic of global poverty has facilitated a dialogue between the two professions insofar as economists have had to acknowledge the moral imperative of alleviating the intolerable levels of poverty, and human rights specialists have had to admit that no progress can be made in realizing the human rights of poor people unless the economic conditions are altered through effective economic policy based on sound evidence.

This volume examines the relationships between poverty eradication and human rights and approaches the question of poverty as a violation of human rights from a range of economic perspectives. It brings together leading economists and social scientists familiar with the relationship between poverty and economic structures, processes and policies. Their particular modes of analysis address the structures of poverty from a global perspective and explore specific issues of women's empowerment, food, health, work and employment, social security and children, drawing attention to individual and collective responsibilities to respond to the claim that poverty is a violation of human rights. It complements the other volumes in this series, which look at poverty in the light of philosophy, political science and law.

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