THE TALE OF SOULMATES OR A MARRIAGE OF CONVENIENCE? TYING THE KNOT OF HUMAN RIGHTS WITH DEVELOPMENT AND ITS GOALS THROUGH DONOR PROGRAMS AND PROJECTS. THE CASE OF THE CANADIAN INTERNATIONAL DEVELOPMENT AGENCY (CIDA)

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by

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DISSERTATION

Submitted to the Balsillie School of International Affairs/Faculty of Arts in partial fulfilment of the requirements for Doctor of Philosophy in Global Governance Wilfrid Laurier University

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ABSTRACT

The purpose of the dissertation was to examine whether globally agreed development goals (Millennium Development Goals (MDGs), with a specific focus on poverty reduction) were operationalized in human rights, access to justice and rule of law programs/projects of Canadian International Development Agency (CIDA) and of its executing partners. The analysis of the CIDA’s reports to Parliament and programming documents indicates that from the first years of the launch of MDGs, they were operationalized within the CIDA’s programming architecture and remained as a macro-level goal of the agency. MDGs, with the focus on poverty reduction, were treated as an ultimate goal, towards which the issues within the democratic governance portfolio were also geared. Though CIDA acknowledged that human rights were not explicitly mentioned in MDGs, in its programming documents CIDA continuously linked MDGs with human rights considerations. CIDA’s programming also envisioned the achievement of poverty reduction through activities which focused on human rights, rule of law, legal and judicial system.

Despite the fact MDGs were declared as the overarching aim of CIDA’s efforts, documents of the analyzed CIDA funded projects did not reference MDGs within their projects’ architectures. Neither projects’ goals nor outcomes indicated that they were explicitly contributing to reaching MDGs. While not explicitly referring to MDGs, some projects stated their intent to contribute to poverty reduction and/or assistance to the poor and marginalized. Even though these projects were concerned with poverty reduction and/or interest of the poor and vulnerable groups, the silence towards the MDGs can be
interpreted as a gap between the CIDA’s corporate declared development agenda and goals of the projects implemented in the field.

The conclusions are based on the analysis of Government of Canada policy papers, CIDA’s official policy and strategy papers on democratic governance, human rights, poverty reduction and sustainable development, and CIDA’s reports to Parliament. As a part of the data collection, interviews were conducted with CIDA’s current and former staff, as well as professionals who worked for organizations which implemented CIDA financed projects. Documents analyzed in the dissertation projects were obtained through access to information requests.
ACKNOWLEDGMENTS

The support and encouragement of my parents have always been an important factor in the attainment of my educational and career goals. Both of them equally stood next to me during happy and challenging times and guided me with their wisdom. This dissertation owes to my parents for many years of their unconditional support. Though my father did not live long enough to see the dissertation completed, in our family we jokingly told him that upon the completion of degree requirement he would share the diploma and the degree. This dissertation is devoted to his memory.

I would like to express my unreserved gratitude to my supervisor, Dr. Alistair Edgar, for guiding my research, providing advice on how to efficiently address issues I faced while conducting research and writing the dissertation, and valuable comments to improve the dissertation. I also want to thank him for his open door policy and always giving me time when I dropped by his office for advice on urgent questions I had even if I did not have an arranged appointment. My sincere appreciation goes to my dissertation committee members, Dr. Daniel Gorman and Dr. Yasmine Shamsie. Their advice and recommendations both during the research phase and writing the dissertation, allowed me to assess the issues analyzed in the dissertation from more diverse angles and enriched it.

I would like to acknowledge the advice and input of Dr. Rhoda Howard-Hassmann and Dr. Thomas Homer-Dixon during the first steps in conceptualizing the research ideas and structuring them. The advice of Dr. Rhoda Howard-Hassmann to file access to information requests with CIDA at early stages when research ideas were conceptualized proved invaluable in offsetting the delays faced subsequently in receiving the documents. The help and advice of Dr. Patricia Goff, Dr. William Coleman, Dr.
Andrew Thompson, and Kelly Brown in steering me through PhD dissertation administrative requirements were invaluable. I am appreciative of professionals who kindly agreed to participate in conducted interviews. I would also like to recognize the important role that all support and administrative staff, as well as scholars and students of BSIA, play in creating supportive and welcoming attitude which contributed to the research. My gratitude goes to them all, including the fellow PhD candidates from my cohort. The librarians of Wilfrid Laurier University played an important role in aiding to locate relevant materials. I am also grateful to the professors from previous universities I studied and former job supervisors for supporting my PhD and scholarship applications. I am grateful to my sister and her family for lending a hand and assisting me whenever I needed. My friends living in different countries and continents continuously provided support and encouragement and I thank you all for being with me. My sincere appreciation goes to Gwenith Cross for proofreading the text of the dissertation.

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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>ALG</td>
<td>Alternative Law Groups, Inc.</td>
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<tr>
<td>APJR</td>
<td>Action Program for Judicial Reform</td>
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<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<tr>
<td>BP</td>
<td>Batas Pambansa Blg 22 (the so called Bouncing Check Law)</td>
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<td>BSIA</td>
<td>Balsillie School of International Affairs</td>
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<td>CA</td>
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<td>CAM</td>
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<tr>
<td>CBA</td>
<td>Canadian Bar Association</td>
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<td>CCIC</td>
<td>Canadian Council for International Co-operation</td>
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<tr>
<td>CEA</td>
<td>Canadian Executing Agency</td>
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<tr>
<td>CIDA</td>
<td>Canadian International Development Agency</td>
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<tr>
<td>CP</td>
<td>Civil and Political (rights)</td>
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<tr>
<td>CUJCP</td>
<td>Canada-Ukraine Judicial Cooperation Project</td>
<td></td>
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<tr>
<td>DEA</td>
<td>Department of External Affairs</td>
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<tr>
<td>DAC</td>
<td>Development Assistance Committee</td>
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<tr>
<td>DFAIT</td>
<td>Department of Foreign Affairs and International Trade</td>
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<tr>
<td>DFATD</td>
<td>Department of Foreign Affairs, Trade and Development</td>
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<tr>
<td>DPR</td>
<td>Departmental Performance Report</td>
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<tr>
<td>EAO</td>
<td>External Aid Office</td>
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<td>ESC</td>
<td>Economic, Social and Cultural (rights)</td>
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GNI  Gross National Income
GNP  Gross National Product
GOP  Government of the Philippines
HDR  Human Development Report (UNDP)
HFHL Habitat for Humanity Lesotho
HRBA Human Rights-Based Approach
HRDGG Human Rights, Democratization and Good Governance (short for Government of Canada Policy for CIDA on Human Rights, Democratization and Good Governance)
IDGs International Development Goals (OECD’s)
ICCPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic, Social and Cultural Rights
ILO International Labour Organization
JDR Judicial Dispute Resolution
JURIS Justice Reform Initiative Support project
LFA Logical Framework Analysis
LAP Ghana Land Administration Project
NJI National Judicial Institute
NGO Non-Governmental Organization
MDG Millennium Development Goal
NEPAD New Partnership for Africa's Development
NDP New Democratic Party
PAD Project Approval Document
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tr>
<td>RBM</td>
<td>Results-Based Management</td>
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<tr>
<td>RPP</td>
<td>Report on Plans and Priorities</td>
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<td>SEARCH</td>
<td>Southeast Asia Regional Cooperation in Human Development project</td>
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<td>SER</td>
<td>Social and Economic Right</td>
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<td>SSEA</td>
<td>Secretary of State for External Affairs</td>
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<td>ODA</td>
<td>Official Development Assistance</td>
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<td>ODAAA</td>
<td>Official Development Assistance Accountability Act</td>
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<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<td>OVC</td>
<td>Orphans and Vulnerable Children</td>
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<tr>
<td>PAA</td>
<td>Program Activity Architecture</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UN CESCR</td>
<td>Committee on Economic, Social and Cultural Rights (United Nations)</td>
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<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>UNDG</td>
<td>United Nations Development Group</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UN OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<td>WSSD</td>
<td>World Summit for Social Development</td>
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The fallow ground of the poor would yield much food, but it is swept away through injustice. (Proverbs 13:23, The Bible, ESV)

1 INTRODUCTION

In the procession of ideologies, democracy is presented as a model of prosperous, fair and equal society with human rights, and justice, while the institutions which support and promote them are regarded as haute couture items which any aspiring modern fashionista society has to have and transplant. International development activities financed by Western donors have been playing a crucial role in both projecting that image of how prosperous and effectively functioning societies should look and act, and in supporting the achievement of that ideal. Though, in the meantime in the background of this catwalk of ideologies there have been ongoing debates on the constitutive elements of the normative fabric adorning this widely lionized model, how they emerged and are contested, and how the new components are woven into it.

1.1 PURPOSE OF THIS RESEARCH

International development programs and projects are mostly viewed as operational tools through which donor countries disburse money and material resources in developing countries. However, they play an even more central role by being channels through which norms and ideas are promoted in developing countries. By signing on to these programs and projects the governments of donor and developing countries most importantly commit to the shared understanding of principles set in them. The financial and operational considerations come only to support the achievement of the developed, discussed and agreed upon norms and principles. The Canadian International

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1 The subchapters 1.1, 1.2 and 1.3 incorporate texts from the approved dissertation proposal.
Development Agency’s (CIDA)\textsuperscript{2} policy on \textit{Human Rights, Democratization and Good Governance} (HRDGG) recognized the importance of programs in the transfer of norms and noted that “program initiatives are important instruments for expressing Canadian values, and in working to build a more just, secure and prosperous world for all.”\textsuperscript{3} But in the analysis of development programs and projects there is a tendency to either mechanically assess whether they reach declared outcomes or not, or whether money is efficiently utilized and final beneficiaries benefit from a project.

Yet, the design of the program/project architecture represented by goals, outcomes, outputs, indicators, milestones, baselines, as well as the description of issues and risks of individual programs/projects are a foundation over which the operational side of the program/project implementation is based. Similarly foundational is the analysis of whether, through operationalization, the program/project architecture reflects internationally agreed macro-level development goals and the theoretical framework over which those goals are developed. The research analyzes the interaction between the international development global normative framework and local norms represented by the projects implemented in the field.\textsuperscript{4} Particularly, this research studies whether globally agreed development goals (Millennium Development Goals (MDGs), with a specific focus on poverty reduction) “cascade”\textsuperscript{5} via operationalization in human rights, access to

\begin{footnotesize}
\footnote{In 2013, CIDA merged with the Department of Foreign Affairs and International Trade (DFAIT). The amalgamated department was named the Department of Foreign Affairs, Trade and Development (DFATD). The current name of the department is Global Affairs Canada (renamed in November 2015).}
\footnote{Adjusted based on the conceptual framework suggested (developed) by Dr. Homer-Dixon to the initial draft of the research proposal, which had been presented as an assignment for the \textit{Global Governance Research Methods} course, Balsillie School of International Affairs. I would also like to thank Dr. Howard-Hassmann for her advice during the first steps in forming the research ideas.}
\footnote{Finnemore and Sikkink, “International Norm Dynamics and Political Change.”}
\end{footnotesize}
justice and rule of law programs/projects of CIDA and of its executing agencies/partners. The specific research questions are listed in the subheading 1.3 below.

1.2 STATEMENT OF ISSUE

CIDA acknowledged the crucial importance of democratic governance and human rights in poverty reduction and “long-term sustainable development,” because “[a] democratic society—built on a foundation of freedom, human rights, the rule of law, an engaged civil society, and effective and accountable public institutions—is more able to provide human security and poverty alleviation for its citizens.” While Chapter V of the United Nations Millennium Declaration specifically focuses on democracy, governance, and the promotion and protection of human rights and the rule of law, the MDGs do not contain specific references to governance and human rights. This discrepancy becomes more salient in human rights, access to justice and rule of programs and projects of donor countries and United Nations’ (UN) agencies. CIDA touched upon that “gap” in MDGs which it considered to “be a global roadmap for CIDA’s development assistance” by stating in its Sustainable Development Strategy: 2004–2006 that “the MDGs represent long-term targets for most areas of sustainable development – with the notable exception of governance, to which CIDA actively contributes.”

As a practitioner, I observed the challenge of justifying whether activities and objectives of access to justice and human rights projects at the operationalization and reporting level had a direct causal link with, or contributing to, one or several MDGs or

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7 Ibid., 9.
8 Ibid., 3.
in rationalizing the development mandate of such projects. For example, how could capacity building of justice sector officials or awareness-raising on human rights topics among the public could lead to poverty reduction? Even the beneficiary populations of projects might question the utility of spending hundreds of thousands of dollars on human rights, access to justice, and awareness-raising activities as they could not experience immediate or even short-term improvements in their lives; especially improvements in their social and economic conditions. Another layer of the challenge in the areas of human rights, access to justice, and rule of law was to develop indicators for program/project internal evaluations which measure not only the quality of the implementation of programs/projects, but also show whether they contribute to global development priorities and improve the lives of the most vulnerable. In addition, external evaluators’ measurement of program/project efficiency in reaching development goals might apply different measurement indicators, raising questions about whether each party in a development program/project spoke the same language of development goals.

1.3 **RESEARCH QUESTIONS, METHODS OF DATA COLLECTION AND ANALYSIS**

During the research proposal defense stage, the following research questions were proposed and data collection and analysis conducted accordingly.

1. At the inception and project design stages, how accurately are international development goals (MDGs) translated into the outcomes, outputs and indicators of international development programs and projects and into relevant activities which contribute to these defined outcomes?
2. How do an international development donor and its executing partners operationalize the same development goals in their human rights and rule of law program/project documents and reflect “variables” of the capability approach and/or human rights-based approach (HRBA)?

3. Do M&E (monitoring and evaluation) plans of international development programs/projects measure the same variables as identified during the program/project design stage and their impact on the readjustment of project/program outcomes and macro-level policies/strategies, as well as on development of new programs/projects outcomes?

To determine whether and/or how CIDA operationalized the issues of poverty, human rights and MDGs in its corporate program architecture, the research analyzed CIDA’s official policy and strategy papers on democratic governance, human rights, poverty reduction and sustainable development (1995–2010) and CIDA’s reports to Parliament (Departmental Performance Reports (DPRs) and Reports on Plans and Priorities (RPPs)) from 2000 to 2010. The analysis of CIDA’s policy papers and reports was placed within the general framework of the overall Government of Canada policy papers and discussions in the Parliament through a lens of historical trajectory, including the public attitudes towards Canadian official development assistance.10 During the data collection, interviews were conducted with CIDA’s current and former staff and professionals who worked for organizations which implemented CIDA projects, as well as professionals who were involved with CIDA financed projects in various capacities.

The structure of CIDA’s goals, objectives and policy priorities at the corporate level are

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10 For the Ghana Land Administration Program, World Bank documents available online were also analyzed.
referred to as the program architecture. The project level operationalization of goals, objectives and issues addressed are treated as the project architecture.

The research also analyzed the projects financed by CIDA and for which access to information requests were filed with CIDA and then DFATD. The projects were selected from a list generated through a query from the CIDA data set at http://www.acdi-cida.gc.ca/cidaweb/cpo.nsf/fWebprojDataEn?Readform. The following selection criteria were applied:

- CIDA’s project status in the database – “closed” and/or “terminated.” While the majority of the selected projects followed the initially proposed status criteria, to increase the number of potential projects for the analysis, some selected projects also had the status “operational”;
- CIDA’s sector of focus – “democratic governance”;
- DAC sector – “human rights” and/or “legal and judicial development.”

Initially, the list of projects submitted with the access to information request was accompanied by the following text,

Project documents of the Canada Fund for Local Initiatives (law, justice, human rights components) 2000-10, as well as of projects listed in the table attached to the form, their periodic & annual reports by CIDA & executing agencies/partner, final reports, periodic, mid-term and final evaluation reports by CIDA, external evaluators and partners (not interested in budg. & financial reports). Also, emails of staff in program and evaluation units which relate to developing these programs/projects (focus on how goals, outcome, output, indicators & milestones were developed, monitored & evaluated). Documents in English only, Russian if any.

11 CIDA used DAC coding in its Project Browser Dataset. “DAC sector codes are 5 digit codes developed by the Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC). They are defined, standardized and organized into tables according to sectors such as Education, Health, Government and civil society, etc. There are specific criteria on how DAC sector codes should be selected.” Canada. Canadian International Development Agency, “Sector Coding Guide for CIDA Partners. Version 2.”
However, after the detailed explanation provided by CIDA’s relevant department that each requested document and email had to be reviewed and a decision made on meeting statutory requirements, I decided to amend the initial request to ensure shorter processing times. Eventually, the list of projects was shortened and the text of the request adjusted. In addition, the request for CIDA’s staff emails was completely removed because the required process for review of each relevant email before a decision could have been made for their release could significantly affect the timing of the release of the documents which related to projects requested.

I would like to acknowledge the extensive input of CIDA and DFATD staff in the relevant departments in compiling and releasing the documents. Their valuable work was an important factor contributing to this dissertation. Their guidance was also important for me to understand how requests are processed (debunking some of misconceptions I had about the process) and adjust them accordingly to ensure that I received as many documents as possible within the reasonable timeframe. In total, the volume of the documents received for the requested projects was over one thousand pages. However, there were also pages and requested documents which were withheld, including under the exemptions provided by the legislation. There were follow-ups with the relevant departments to ensure the release of as many requested documents as possible.

Although some additional documents were released after the follow-ups, in the end there was not a significant change in receiving the initially expected documents. The result was that the dissertation limited itself to the analysis of four projects for which the highest number of relevant documents were provided. The same difficulty contributed to the decision not to include any United Nations Development Programme (UNDP) project
financed by CIDA, as it was initially proposed, because the available documents did not provide sufficient data for the analysis. Even with such adjustments in determining the projects to be included in the dissertation, for each of the selected projects my analysis still faced too many gaps in anticipated information and data to be able to answer all the proposed research questions for each analyzed project. Therefore, the parts of findings of the dissertation which relate to the analysis of the projects are based on generalized assessment of the documents available, rather than each research question separately.

Those four projects which had the highest number of relevant documents analyzed in the dissertation included categorization by CIDA “legal and judicial development” and/or “human rights.” The Justice Reform Initiative Support (JURIS) project supported judicial reform, making the judiciary responsive to the needs of the poor and improving access to justice for them. The project involved building the capacities of justice sector actors such as judges and court staff (supply side) and groups which could improve access to justice for the poor (facilitate access for the demand side). The Southeast Asia Regional Cooperation in Human Development (SEARCH) project within democratic governance focused on the promotion of rule of law and human rights law reforms, as well as improving access to economic and social assistance for target groups. The Ghana Land Administration Program (LAP) was aimed at economic and social development and poverty reduction through securing land rights, improvements in land litigation cases and harmonization of laws. The Secure Tenure and Safe Space for Lesotho Widows, Orphan and Vulnerable Children project addressed the issues of housing and property ownership for vulnerable groups to improve their well-being and
living standards. The expectation of the project was that improved protection of the property rights of vulnerable groups would contribute to poverty reduction.

During the search for the original Government of Canada documents which related to issues addressed by the dissertation, I approached the librarian assigned to the Balsillie School of International Affairs (BSIA) to assist me in finding those resources faster and more efficiently. Her assistance was instrumental in building the database of those documents. Many of the Government of Canada, CIDA, and parliamentary documents analysed and cited in the dissertation were retrieved from the list she emailed to me. Atlas ti. qualitative research software was utilized in the analysis. Zotero software is used for citations and generating the bibliography. The citation style used from Zotero is “Chicago Manual of Style 16th edition (note)”.

1.4 ORGANIZATION OF THE DISSERTATION

The chapters of the dissertation which lay the groundwork for the case analysis (CIDA’s program architecture, policy documents and projects financed by CIDA) focus on the main concepts addressed by the dissertation - democracy, poverty, human rights, justice and access to justice, law, as well as their interaction within broader discourse such as social and economic rights, development and human rights, law and development, rule of law and MDGs (chapter 1–7). The chapters provide a review of the diverse opinions and critique of the concepts. The chapters also show the multi-dimensionality of concepts articulated in donors’ policy papers, reports and projects and that even within academic literature there is no common approach to those concepts. These chapters lay the groundwork for understanding the complexities that programs and projects face when operationalizing concepts such as justice, poverty, democracy, human
rights for which there might not be a common definition, and where approaches in definition are contested.

Chapters 2–7 begin with a block paragraph in italic are based on my personal experience of living through the collapse of the Soviet Union and the development challenges I witnessed after Armenia gained independence. The inspiration to begin chapters with the real life experiences came from the book Creating Capabilities by Nussbaum (the story of a woman Vasanti)\(^\text{12}\) and interviews with ordinary people cited in the World Bank publication Voices of the Poor.\(^\text{13}\) Though these opening paragraphs are a reflection of my personal experience, I argue that they were experiences of many people and not only in Armenia, but in other ex-Soviet countries as well. The experiences are narrated in the first-person plural to highlight the shared experiences and common challenges faced by people when ex-USSR republics embarked on the post-Soviet development path. The intent of including these paragraphs at the beginning of the chapters is also to accentuate that the concepts that are analyzed are not only theoretical conceptions belonging to the realm of academia and policy making, but, most importantly, they are notions and aspirations which are an integral part of everyday human experience.

Democracy has been a term frequently presented by the international donor community in their aid efforts to describe the aspirations of people in developing countries for a type of society that ensures better protection of human rights and the type of governance that contributes to overcoming development challenges. The term has been applied both in reference to countries with low living standards and high poverty levels

\(^{12}\) Nussbaum, Creating Capabilities: The Human Development Approach.

\(^{13}\) Deepa Narayan et al., Voices of the Poor: Can Anyone Hear Us? (2000); Deepa Narayan-Parker et al., Voices of the Poor: Crying Out for Change (2000).
and to countries with relatively high living standards, but marred by human rights violations. The debate about the term and its relation to human rights and development has been intensified by the foreign and military policy interventions by Western countries from Asia to Eastern Europe under the rubric of democracy promotion.

In spite of the ambiguity, the concept of democracy promoted by Western donors, including Canada, through financed projects remains as an overarching goal to be achieved via introduction and advancement of its claimed constitutive elements such as human rights, justice and rule of law. These constitutive elements are formulated based on conceptions and experience in Western countries and are advanced as means to shape developing countries into models of societies that are perceived as creating an environment that protects citizens and enables their development. Even in its program architecture and project coding approach, CIDA followed this rationale by subsuming human rights and rule of law under a broader concept of democratic governance.\textsuperscript{14} Though MDGs did not explicitly refer to democracy, democracy was continuously among CIDA’s programming outcomes and the concern about CIDA’s involvement. Therefore, this dissertation begins with the concept of democracy which not only occupies a central position in the Government of Canada foreign policy and development claims, but also as a framework towards which the analyzed CIDA projects were geared.\textsuperscript{15}

Chapter 2 presents the debates on the concept of democracy and identifies the approaches in defining what constitutes democratic governance. It positions the discourse about democracy within its relevance to the promotion of human rights, rule of law, and

\textsuperscript{14} For coding guidance see “CRS Purpose Codes (valid as of July 2010).”

\textsuperscript{15} All analyzed projects were under the CIDA sector focus of democratic governance.
its contribution to development. The chapter also addresses the use of notions of democratization and human rights in attempts to redesign societies in developing countries in accordance with the Western model of governance and the criticism of negative consequences those efforts have had. The chapter also acknowledges the potentially constructive role of the international development efforts of Western countries in the area of democratization and human rights in bridging the gaps in developing countries, especially in capacities of civil society to meet the needs of the poor and assist in the enjoyment of their human rights, and expanding the space for more diverse opinions.

While democracy is advanced as a governance framework which contributes to and sustains the results of development efforts, addressing poverty has been a central concern of those efforts. Even before MDGs were introduced as ultimate goals within CIDA’s programme architecture, poverty reduction was regarded as a principal objective for Canada’s international development efforts. After the inclusion of MDGs in CIDA programming, poverty reduction remained the ultimate target of Canada’s efforts and was addressed in CIDA’s periodic reports to Parliament. Despite the fact poverty reduction has been occupying a central position in the aid agenda of donors and their international development efforts, there are still ongoing debates among academics, politicians, and practitioners the definition of poverty. Chapter 3 highlights different approaches in defining what constitutes poverty. It explores poverty as a multi-dimensional concept which encompasses more than income deprivation. The chapter considers the consequences poverty has on the self-perception of the poor, as well as societal and legal challenges faced by them such as discrimination, stigmatization, and violation of their
social and economic rights. The chapter concludes with debates on the responsibilities and considerations to be observed while undertaking international development aid efforts to address poverty.

The discrimination and stigmatization that the poor face intertwines the issue of poverty with human rights. Along with poverty reduction, promotion and protection of human rights has been among the major priorities indicted in Government of Canada policies and CIDA’s programming documents. Promotion of human rights has not only been outlined as a key element of Canada’s development efforts, but also presented as the projection of Canadian values. Though human rights are given centrality in the rhetoric of Western donors and international governmental and non-governmental organizations, as in case with democracy and poverty, the nature and scope of human rights are still contested. Chapter 4 approaches the discourse on human rights as a concept which continuously evolves and reflects diverse values from different times and societies. It presents debates about identifying human rights and what they entail, whether they are universal claims or are bound to localized experience (relativity approach) and whether human rights and their interpretation are political in nature. While acknowledging the diverse approaches in defining and interpreting human rights, the chapter notes that there is growing reliance on laws and codified norms in discussions about the promotion of human rights. Specifically, it refers to appeals to norms set in international human rights treaties and adoption of responsibilities through states’ accession to and ratification of these treaties. But the chapter also underlines the pitfalls associated with the legalistic approach to human rights, including associating what entitlements people can have with what laws say.
The focus on the promotion of democracy, advancement of human rights, and poverty reduction in Canada’s foreign aid to developing countries has been inextricably intertwined with assistance to development and sustaining its results. However, while development is presented as raison d’être for donor aid, there are diverging visions of it, including what—if any—role human rights play in the process, and the duties of assistance to developing countries. Chapter 5 examines the intersection of human rights, development, and poverty reduction. The discussion on the right to development shows how developing and Western industrial countries have divergent approaches on the nature of development and whether development raises rights and corresponding duties. On the integration of human rights into the development agenda and the role they play in development, the chapter concentrates on mainstreaming human rights into international development initiatives, the positive input human rights can have, and the potential tensions they can bring.

Within the general human rights rhetoric and views on how to address the issue of poverty and underdevelopment, there is growing assertion to also focus on the protection and promotion of social and economic rights. While MDGs were not articulated in the language of rights, they addressed issues such as adequate food, employment, health, and education which are established in international human rights documents on socio-economic rights. Chapter 6 outlines the evolution of social and economic rights through the analysis of norms and obligations developed within the United Nation’s fora and expert guidelines advanced in the authoritative documents such as *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* and *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*. 
The chapter examines the debate on juxtaposing civil and political rights and social and economic rights, including the contestation of fixed categorization of the rights into different groups and hierarchy among them. The chapter focuses on justicability claims for economic and social rights, promotion and protection of these rights through the legal framework, and role of justice institutions.

Making justice institutions efficient and the advancement of legal and judicial reforms was part of CIDA’s supported priorities and projects. Though international development donor activities are focused on capacity building of justice institutions and assistance to improving access to justice particularly for the poor in developing countries and justice being a commonly referred term, there is a lesser attention paid to what justice denotes. Chapter 7 underscores that justice is a complex concept that encompasses diverse expectations about the processes, outcomes, and institutions within the society. The chapter also focuses on development efforts aimed at reforms of justice institutions and legal reforms (top-down), their role in development, poverty reduction and impact on the poor, as well as lessons learned from those initiatives, including the criticism of legal transplantation. The legal empowerment of the poor and access to justice development initiatives are presented as bottom-up approaches in international development activities.

Since the early 2000s, international development activities and donor programing have been guided by and geared towards Millennium Development Goals (MDGs). MDGs became the culmination of the transformative process of setting international development goals. As CIDA reports to Parliament show, from the first years of the endorsement of MDGs, CIDA incorporated them in its program architecture. Chapter 9 illustrates the contribution of the antecedents of MDGs, particularly of the World Summit
for Social Development (WSSD) and OECD’s International Development Goals (IDGs), and the background they had set for the politics of negotiating MDGs. The chapter questions the juncture between human rights and MDGs and the role that human rights can play in their advancement.

The dissertation also focuses on the theoretical approaches which have had an important contribution to MDGs and international development – capability(ies) approach (CA) (chapter 8) and human rights based approach (HRBA) (chapter 10). CA, pioneered by Amartya Sen, moved the discourse about poverty beyond income measurement and focused on such considerations as education, health, and nutrition. It also connected development with human rights and placed it within the framework of fundamental freedoms that enable people to choose to live the life they value. With growing impetus to intertwine human rights and development efforts, in 1990s governmental and non-governmental organizations either adopted HRBA polices or streamlined human rights into their international development programming. In 2001, in its Sustainable Development Strategy: 2001–2003, CIDA acknowledged the implication that human rights have on international development, including “the growing recognition that a human-rights approach to development assistance is not just desirable but necessary.”16 CIDA was also among three donors of the conference where the United Nations Development Group (UNDG) adopted the Statement on a Common Understanding of a Human Rights Based Approach to Development Cooperation (2003).17

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The final chapters focus on the case analysis: four projects financed by CIDA; CIDA’s historical path of inclusion of concepts of human rights and poverty in its policy documents; reports to the Parliament as well as Government of Canada policies (chapters 11–15). Chapter 11 sets the background for the analysis through a brief introduction of Canada’s aid efforts and government policy documents before 2000 and reference to public opinion about Canadian foreign aid. The analysis of CIDA’s policy documents and reports to parliament illustrates the place assigned to human rights, poverty reduction and MDGs within the CIDA’s program architecture. The chapter also addresses reports on Canadian aid efforts by the Auditor General of Canada and the review by the Parliament on Canada’s role in democratic assistance. Chapter 12 studies the JURIS project, financed by CIDA and aimed at supporting the Action Program for Judicial Reform of the Supreme Court of the Philippines. Chapter 13 focuses on a regional project financed by CIDA – SEARCH, which dealt with legal and judicial development and human rights, among other issues. A multi-year initiative to which CIDA also contributed – Ghana LAP – is researched in chapter 14. Chapter 15 examines Secure Tenure and Safe Space for Lesotho Widows, Orphan and Vulnerable Children, a project which intended to advance tenure security and inheritance rights.

The initial research proposal also suggested exploring the concept of resilience as applied to human rights, access to justice, and legal and judicial development. However, the analysis of the available data did not produce sufficient information to be formulated into findings. Therefore, the dissertation does not address the concept of resilience as it requires a more specifically tailored and separate research project. The dissertation concludes with findings, which aim to contribute to scholarship on international
development and theoretical approaches that integrate the principle of indivisibility of human rights and their essential role in poverty reduction.
2 THE SWAN LAKE OR DANCING WITH DEMOCRACY

It was a summer day in August 1991 and last weeks of the summer holidays to enjoy watching action movies guilt free before pupils and students would go back to studies. It was the afternoon. Many people were caught by a surprise bordering bewilderment of not understating what was happening and why. Instead of expected action movies, the Swan Lake ballet by Tchaikovsky was going on and on. While lined up ballet dancers on the screen were in motion, the real actions were taking place outside the broadcast. The septuagenarian communism system was making its last attempt to set the tone before being forced out from the main stage of the world dancehall and “Democracy” beginning to set tunes and rhymes instead.

In the Soviet Union, people were promised a brighter future full of “rights” and “prosperity” to come or as it was commonly presented within the society that the communism was not behind the mountains, which meant that the bright future was coming soon. But eventually it became a part of the joke in the Soviet Union that reflected the attitude of people towards the promise of the bright future in this commonly used by - “Yes, indeed communism was not behind mountains. We passed them and there was no communism there.” Reaching democracy came to symbolize that aspiration for the brighter future.

The promotion of democracy has become a polarizing concept. Proponents present democracy as a benign concept that is best positioned to ensure enjoyment of human rights, or—using two concepts interchangeably—promote democracy as a framework to contribute to and sustain development and poverty reduction efforts. Opponents of Western countries’ efforts to promote democracy point out the negative consequences those efforts have had and see them as meddling in other countries’ affairs.

This chapter addresses both sides of the debate, but it places these contested views within

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18 Wikipedia refers to the bright future as an “ideological cliché of the Soviet times which means the period of established communism” (“Светлое будущее-идеологическое клише советского времени, означающее эпоху построенного коммунизма”).

19 In my recollection, this joke was common among people in the last years of the Soviet Union and I heard it many times among ordinary people. I googled the phrase in Russian — "Коммунизм не за горами. Горы перешли, а коммунизма то нет" in order to determine the source/author of the joke if any, but the search results of the exact phrase did not produce results. The message was “No results found for ‘Коммунизм не за горами. Горы перешли, а коммунизма то нет’” and suggested instead to look without quotes.
propositions on the concept of democracy and what democratic governance encompasses. The chapter examines the relevance of democracy to the promotion of human rights, rule of law, and its contribution to development. The chapter also underlines how international development efforts of Western countries in the area of democratization and human rights are important and needed to bridge the gaps in developing countries, especially in capacities of civil society to meet the needs of the poor and assist in the enjoyment of their human rights, and to expand the space for more diverse opinions.

After the collapse of the Soviet Union—which allowed communism to return to a more theoretical concept—the era of a new brighter future with democracy came to substitute as the means of bringing respect to rights of ordinary people and ensuring their prosperity. In the speeches of politicians, Western advisors and human rights advocates proclaim democracy as THE way to the promised land where those they called “ordinary people” would have the living standards which other people in the West enjoyed behind the Iron Curtain. Namely, freedom to join parties and associations; freedom to promote the plurality of opinions without fear of being either thrown into a prison or being committed to a psychiatric institution; freedom to participate in political debates; and freedom to elect those who would govern them in an open and transparent process. The promises of the new brighter future were accompanied with the majority of “ordinary people” suddenly finding themselves losing most of what they had, struggling to feed their families. Or, as these “ordinary people” put it, their mouths were opened [which meant having freedom of speech] but there was nothing to put in the mouth, implying the scarcity of food. But not so “ordinary people”, namely new government functionaries, local and international business interests connected with them, organizations which were
involved in promoting the newly appeared buzzwords—human rights, rule of law and
democracy—saw the possibilities of having the new brighter future in the present.
Government functionaries and those connected to them benefited from what the
privatization implemented under the rubric of economic liberalization and rule of law.20
International organizations, even if they had good intentions, were asserting to be the
voice of the “ordinary people.” But those “ordinary people” who were told that they now
held power neither could feel that they had power even to decide what food was going to
be on their tables, if any, nor could they see that those who were speaking on their behalf
even asked to define their priorities. As Almond puts it,

The hangover from People Power is shock therapy. Each successive crowd is sold
a multimedia vision of Euro-Atlantic prosperity by western-funded "independent"
media to get them on the streets. No one dwells on the mass unemployment,
rampant insider dealing, growth of organised crime, prostitution and soaring death
rates in successful People Power states.21

But the generally presented narrative is that “the link between democracy and human
rights is interdependent, intricate, mutually supportive and symbiotic.”22 As the summary
of the International Round Table on Democracy and Human Rights emphasizes,
“[h]uman rights can be protected effectively only in a democratic state.” It argues that a
“functional democracy” based on the rule of law, and which is reflective of diversity,
equality, and individual freedoms, is an obstacle to “concentration of power” by a small

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20 This paragraph is based on my personal perceptions of events while I lived in Armenia, recollection of
news stories and, most importantly, the conversations and perceptions I heard among people. The reader
may also refer to Belohorská and Jaskiernia, “Explanatory Memorandum,” 20; Mirzakhanyan, “Economic
and Social Development,” 201–205; and Moreau, “(Ex-)Communist Elites and State Capture,” 519.
21 Almond, “The Price of People Power.” Almond while elaborating on People Power notes, ‘‘People
Power’’ was coined in 1986, when Washington decided Ferdinand Marcos had to go. But it was events in
Iran in 1953 that set the template. Then, Anglo-American money stirred up anti-Mossadeq crowds to
demand the restoration of the Shah. The New York Times's correspondent trumpeted the victory of the
people over communism, even though he had given $50,000 and the CIA-drafted text of the anti-Mossadeq
declaration to the coup leaders himself.”
22 Collins and Kędzia, Democracy and Human Rights: The Role of the UN, 6.
number of individuals and can prevent violation of human rights. Democratization has been seen as a process through which people can gradually gain power in decision making over the institutions that affect them. It is conceptualized as a process of “transition from authoritarian or semi-authoritarian systems to democratic political systems.” Democracy has become among the most referred to and promoted concepts by international organizations and bi-lateral organizations, but it should be noted that the concept, as Gallie points out, has “an essentially contested character”. Landman and Häusermann too argue that “there is not now, nor will there likely be, a final consensus on [its] definition or content” and with no internationally agreed definition of democracy “conceptual confusion remains.” Scholte, however, argues that there are common themes that are present in all perceptions of democracy. In democracy,

... a community of people exercises collective self determination. Through democracy, members of a given public- a demos- take decisions that shape their destiny jointly, with equal rights and opportunities of participation, and without arbitrarily imposed constraints on debate. In one way or another, democratic governance is participatory, consultative, transparent, and publicly accountable. By one mechanism or another, democratic governance rests on the consent of the governed.

Brinkerhoff provides that the democratic governance is a “political regime” where citizens have the “right to govern themselves (democracy) with structures and mechanisms that are used to manage public affairs according to accepted rules and

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23 Ibid., 7.
24 Governance for the Future: Democracy and Development in the Least Developed Countries, 176.
26 Landman and Häusermann, “Map-Making and Analysis of the Main International Initiatives on Developing Indicators on Democracy and Good Governance,” 1.
27 Ibid., 3.
procedures (governance).”

In the educational video by CivilNet, it is stated that, “in many countries, the democracy is called such a governance system when people through elections form those who govern them.” The video presents the main difference between the authoritarian and democratic governance through who holds the right to make decisions. The system of decision-making under the authoritarian system is depicted as a triangle with the decision maker on the top, while the inclusive circle depicts the democratic governance system. The authoritarian system is described as “a few or one person has the right to decide instead of everybody. S/he or they make decisions based on their whim and they are not accountable to anybody. They have the right to impose their will on others.” While, in democracy, “all citizens equally have the right to partake in decision-making. Thus, in this case the citizen’s right to decision-making is inalienable.”

Democracies are characterized by “universal suffrage, regular elections, civil society, the rule of law and an independent judiciary.” In democratic societies, individuals and groups enjoy opportunities to contest political power and participate not only in the “choice of leaders and policies” but also “in the allocation of societal resources.” Democratic societies provide protection of “certain categories of human rights, especially civil and political rights,” but “the most popular definitions of democracy” also refer to “some economic

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30 CivilNet Foundation, What is State? (Ի՞նչ է պետությունը). The language of the video is Armenian and translation into English by me.
31 Landman and Häusermann, “Map-Making and Analysis of the Main International Initiatives on Developing Indicators on Democracy and Good Governance,” 88.
and cultural rights, such as property rights and the rights of minorities.” As Donnelly points out, “[d]emocracy, although not strictly necessary for development, especially in the short and medium run, may restrict predatory misrule that undermines development.”

Such conceptions of democracy assume that the democratization process is an internally driven process moving from authoritarian regimes to “democratic political systems,” when people of a given country using their sovereign rights of self-determination jointly, through a transparent and accountable political process free from coercion and internal and external interference, consent on political and societal institutions which are reasonably just to everybody, provide equal opportunities and outcomes. While the aspirations of people are important drivers in the transition to democracy, the role that external actors, especially Western governments and non-governmental organizations, and the way their funding of local actors steer democratization processes are of no lesser—if not of more—importance. In this regards Almond’s description of the role and type of those external actors is worth mentioning:

Throughout the 1980s, in the build-up to 1989's velvet revolutions, a small army of volunteers - and, let's be frank, spies - co-operated to promote … People Power. A network of interlocking foundations and charities mushroomed to organise the logistics of transferring millions of dollars to dissidents. The money came overwhelmingly from Nato states and covert allies such as "neutral" Sweden.

When reflecting on Western donor involvement in developing countries Klein uses the “allure of the blank slate.” In her article she refers to the US State Department Office of

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33 Landman and Häusermann, “Map-Making and Analysis of the Main International Initiatives on Developing Indicators on Democracy and Good Governance,” 88.
35 Governance for the Future: Democracy and Development in the Least Developed Countries, 176.
36 Almond, “The Price of People Power.”
the Coordinator for Reconstruction and Stabilization, established in 2008. The first head of the office was the former ambassador to Ukraine, Carlos Pascual, whose office had a mandate to design “‘post-conflict’ plans for up to 25 countries that are not, as yet, in conflict.” She goes on to elaborate,

The plans Pascual's teams have been drawing up in his office in the state department are about changing "the very social fabric of a nation", he told CSIS. The office's mandate is not to rebuild any old states, you see, but to create "democratic and market-oriented" ones. So his reconstructors might help sell off "state-owned enterprises that created a nonviable economy". Sometimes rebuilding, he explained, means tearing apart the old.

Democracy is among the panaceas offered by Western countries and international organizations to remedy the development challenges faced by countries and make governments more accountable and transparent. Multiple actors varying from contractors, NGOs and international organizations are at the frontlines of promoting and transplanting those ideas. However, there has also been criticism on how much they adhere to promoted standards. The argument is that “‘democracy builders’ lecture governments on transparency and ‘good governance’, yet most contractors and NGOs refuse to open their books to those same governments, let alone give them control over how their aid money is spent.”

Despite this criticism of Western aid to democratization, there is a need to highlight that without such donor support local political and civil society actors involved in the promotion of democracy cannot mobilize sufficient financial resources locally to sustain the momentum since local populations generally do not have extra money to

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37 Currently subsumed into State Department Bureau of Conflict and Stabilization Operations (CSO). For more see Serafino, In Brief: State Department Bureau of Conflict and Stabilization Operations (CSO).  
38 Klein, “Allure of the Blank Slate.”  
39 Ibid.  
40 Ibid.
donate to such causes and/or fear that state officials might target them for supporting critical views. It should be also acknowledged that there are many local organizations that have provided important services, including assisting those in need to claim and enjoy their rights. Without the Western donor support such services would have not been available. Their existence also enables broader and more diverse space for the discourse and advocacy of salient issues within the society. Therefore, the assistance of Western donors, including through development projects in areas of democratic development, rule of law, and human rights programs and projects channelled through their development agencies are presented as a helping hand with only benign intentions to assist locally driven aspirations. The justification for such assistance is that it will contribute to building societies which will be more equitable, especially for those marginalized, disadvantaged, and poor.

This premise, however, has come under more scrutiny and criticism in recent years when studying Western interventions in the Middle East, especially those accompanied by military force. In several cases, social and economic standards were higher under the previous authoritarian regime, while Western interventions brought a loss of those standards and even a worsening of governance. The process of democratization and assistance through development projects by Western governments has come to be viewed with suspicion regarding the real aims of the projects. It has also contributed to the growth of sceptical voices questioning whether “democracy” and “human rights” are what really people need first in developing countries. But on the other spectrum is scepticism about whether their local institutions and culture are able to accommodate the transplanted notions of democracy and laws.
When democratization is perceived as another facet of the Western driven globalization where the intent is not benign, but rather to assert its domination and pursue its own political and economic interests, there is greater temptation to see democratization and protection of human rights, particularly rights aimed at provision of basic needs, as separate processes. Democratization can lead to the establishment and functioning of institutions that are conducive to protection and enjoyment of human rights, including rights of the poor and marginalized, and enable their participation in governance through elections and accountability mechanisms. However, there are still considerations to be addressed regarding whether the promotion of democracy and human rights should be tied together. In addressing the distinction between the concepts of democracy and human rights, Langlois notes, “[i]f one assumes that democracy has to come before the observation of human rights, or even with the observation of human rights, it can be argued that this could delay the achievement of human rights indefinitely. Waiting for democracy in order to achieve human rights may mean an interminable wait.”  

If the reasoning to focus on human rights outside a democratic framework that enables the populace to participate and debate decisions affecting them is to be accepted, it would devolve the enjoyment of human rights to an act of charity granted by the elite and those in power. Human rights would not be regarded as entailments, the scope of which is determined through the participation of people. If rights and their scope are determined by the elite and those in power without the input of governed, and without the real mechanisms of public accountability, the self-interest of the elite and those in power is to give small concessions in order to maintain the status quo rather to satisfy the real

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needs of people. Acemoglu and Robinson argue that the elite agrees on changes in the status quo from which it benefits, and accepts the introduction of certain democratic institutions, because the poorer members of society “can threaten the elite and force it to make concessions.” The latter can resort to different protest methods or even a revolution; to restrict such actions is costly for the elite. That is why the elite “will try to prevent them. It can do so by making concessions, by using repression to stop social unrest and revolution, or by giving away its political power and democratizing.” If the cost of maintaining the contested status quo through repressions is perceived as being too high for the elite, it “would like to buy off the citizens with promises of policy concessions – for example, income redistribution.”

Democracy also may contribute to the development by “enlarge[ing] people's choices” because “democratic governance expands the range of options for human development.” The UN publication Governance for the Future argues that,

The predictability of principles enables economic agents to respond to incentives, and to make rational decisions. Mutual accountability among state and non-state actors promotes transparency and confidence for nation-building and enhances deliberative decision-making. Democratic governance seeks, in common with good governance, efficient institutions and a predictable economic and political environment that makes economic growth possible, and public services effective.

A responsive and deliberative governance system is better positioned to accommodate the objective variations in capacities and needs of people and to be more reflective in

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42 Acemoglu and Robinson, Economic Origins of Dictatorship and Democracy, xii–xiii. See also Easterly, The White Man’s Burden: Why the West’s Efforts to Aid the Rest Have Done So Much Ill and So Little Good, 122–126.
43 ul Haq, Reflections on Human Development, 14.
44 Governance for the Future: Democracy and Development in the Least Developed Countries, 38.
45 Welch, Nuru, and Hoover, Governance for the Future: Democracy and Development in the Least Developed Countries, 38–39.
changes in those needs. When a governance system is top-down without the proper channels to discuss the issues of importance for those whom it governs, even if it provides choices to people to function, those choices can be either insufficient or irrelevant to the actual needs. On the contrary, the democratic governance system provides channels to individuals and groups to participate in the decision-making process (also allowing a bottom-up information flow). This deliberative process not only makes the outcomes of the decision-making more relevant to the actual needs within the society, it also provides potential to expand the scope of the options available to meet those needs if they change or expand.

Though democracies enable the participation of different social groups in policymaking, there can be “differences in the capacity of groups to organize, contest and influence public policy.” Limitations in financial resources, information, and the availability of time to devote to activities other than income earning, can affect groups’ abilities to equally participate; even if democratic mechanisms are present. It is not only the poor in developing countries who face challenges in having their voices counted, but also in countries which claim long histories of democracy. As Schlozman et al. note, “[y]ear after year, decade after decade, and from one generation to the next, the affluent and well educated have participatory megaphones that amplify their voices in American politics.” In developing countries, and countries in transition where democratization is taking its nascent steps and where the transparency and accountability mechanisms are still weak, the voices of the poor can be usurped by the rich, including through vote

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47 Schlozman, Verba, and Brady, *The Unheavenly Chorus Unequal Political Voice and the Broken Promise of American Democracy*, 232. See also Weeks, “Why Are the Poor and Minorities Less Likely to Vote?”
buying.

When septuagenarian communist state structures crumbled, it was the democratic right to self-determination that inspired hundreds of thousands of people to stand in the streets and demand their rights. I still vividly remember the elated sense of partaking in the decision making despite many uncertainties. But two decades after the *Swan Lake* finally made the “democracy” as the main rule of game, elated feelings were erased when many people found themselves forced to survive in poverty. The voices of the poor came to be treated not as messages to act for elected and public functionaries and quests for participation, but rather actionable commodities remembered only during election cycles for the highest bidder. Poverty keeps people in the trap of destitution, but more importantly cages their rights to reach and impact political and social developments that affect them and the societies in which they live.

There is no agreement on the definition of democracy and the set of attributes required for a governance system to be characterized as democratic. Regardless, democracy is evoked when people call for changes in or the replacement of governance structures and institutions which either suppress them or do not provide relevant options to meet their needs and expectations for a better life free from fear and want. Democracy is invoked when referred to when Western governments interfere to either assist in the process of locally driven change or to impose that change. Democracy is questioned when Western governments’ efforts result in the deterioration of governance structures and conditions that people live in, be they political or economic. However, until Western democratic societies are perceived as able to provide environment for people to feel freer and safer, to have more options to better utilize one’s capacities and enjoy higher living
standards, calls for democracy, indifferent to what exactly is understood locally to be democracy, will remain at the centre of local and international political discourse.
3 THE STORY OF AVOS'KA OR THE LOUD WHISPER OF POVERTY

The money and bread had been disappearing in the “new” country with the same pace and manner as the “old” country disappeared – fast, and catching the majority of people by surprise. Finding bread resembled a tenuous “treasure hunt” where people would find out through the word of mouth the place they needed to rush to queue for the bread and basic food items. But despite efforts it was the wind which was mostly passing through the mesh of people’s avos’kas. In the meantime, many people found themselves joining what in statistics was depicted as “less than a dollar,” but that depiction was only a dot in the palette of the condition in which they found themselves.

While assistance to democratization initiatives is an important component of international development aid, addressing the issue of poverty has been at a core of both international development and local efforts. In spite of being at the centre of international and local policies and activities, what constitutes poverty is still debated. This chapter highlights diverse approaches in explaining poverty and treats poverty as a multidimensional phenomenon which is more than an income deprivation. The chapter examines how poverty affects self-perception of the poor, as well as societal and legal challenges faced by them such as discrimination, stigmatization and violation of their social and economic rights. The chapter also presents debates on responsibilities in international development aid to address poverty and issues to be aware of while undertaking development initiatives.

The portrayal of poverty has been characterized by a mosaic of notions and attributes, including stereotypes propagated through printed and visual information mediums. The images of squalid desperation, misery, and the eyes of people conveying no hope for the future (unfortunately in many instances the poor are stripped from agency in such portrayals) have become posters for what has to be urgently addressed and to

48 Avos’ka (авоська) or “maybe-bag” was a net looking grocery bag popular in Soviet Union. See more in RT, “Of Russian Origin: Avoska.”
mobilize public around combating poverty. During the twentieth century, countries undertook economic and social reforms to address the domestic issues of poverty, but during 1980s the discourse and efforts to deal with poverty moved also to the global level. Reiterating Kumar, nowadays “[p]overty is probably the most important human rights and development issue facing both developed and developing countries.” Poverty is viewed not only as a manifestation of material depravations but also as an injustice. Rukooko argues, however, that the treatment of poverty as “social injustice” is a recent phenomenon. He points out that “[i]n Greek philosophy poverty is not particularly negative. …The biblical conceptualization of poverty seems supportive of poverty. Jesus for instance, taught that heaven will be more easily accessed by the poor than by the rich.” Though, “in earlier times” poverty might have been viewed as a ”natural phenomenon,” nowadays it is considered, as the UN Office of the High Commissioner for Human Rights puts it, “a social phenomenon aggravated by discrimination.”

As in case of democracy, however, the notion of poverty is interpreted and perceived differently depending on the country, the support culture in a society, and even among individuals. Akindola highlights this difference in understanding the concept of poverty and its implications by pointing out that “[a] generally acceptable working definition of poverty is as elusive as ever, making poverty reduction strategies more complex. An important reason for this has been that individuals’ experience of poverty varies significantly.” He emphasizes that what one individual might perceive as poverty

49 On how the poor are represented see for example Ilcan and Lacey, *Governing the Poor: Exercises of Poverty Reduction, Practices of Global Aid*, 24–31.
50 Ibid., 24.
51 Kumar, “National Human Rights Institutions (NHRIs) and Economic, Social and Cultural Rights,” 774.
may not be regarded as poverty by another. The perception of poverty is also prone to change and adjustment based on expectations, even if the conditions improve and reach the level of prior expectations. Based on personal experience and observations of people in Armenia, I noticed that the perception of what constituted poverty shifted with the growth of expectations about what living standards should be and the income needed to satisfy them. Even though there was an increase in income and improvement in living standards in comparison to hardship experienced after the collapse of the USSR, when those increased income and improvements did not satisfy or surpass our new expectations, the feeling of being poor persisted. Sindzingre rightly underscores the physiological point of view in understanding poverty—“the feeling that one is poor” which is perceived through the lenses of “income, health, education, and employment” as well “the resources of others (relative poverty), the perceptions of the other’s perceptions, and on expectations as to future welfare – that is, the perceptions of social mobility prospects offered by a society.” Similar considerations on variations in understanding poverty are voiced by Narayan-Parker et al. in the study *Voices of the Poor: Can Anyone Hear Us?* where they indicate that “[p]overty varies across and within countries; its precise contours and dimensions are always contingent on time, place, and social groups involved. Aggregate data by definition do not reveal location specific variations.” But even if there is no agreement what constitutes poverty, “defining poverty remains central to formulating appropriate policy interventions.”

Akin to the issues generally invoked by defining the concept of poverty, Riddell

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54 Akindola, “Towards a Definition of Poverty: Poor People’s Perspectives and Implications for Poverty Reduction,” 122.
56 Narayan et al., *Voices of the Poor: Can Anyone Hear Us?*, 1:15.
57 Akindola, “Towards a Definition of Poverty: Poor People’s Perspectives and Implications for Poverty Reduction,” 122.
underlines divisions in opinions also associated with the definition of *extreme poverty*. He notes that “it may come as a surprise (even shock) to discover that today scholars remain divided about how extreme or absolute poverty should be defined and how it can be best assessed and measured.” 58 This fragmented approach to poverty, according to Øyen, leads to the diversity of views and “call[s] for eradication, abolition, reduction and alleviation of extreme poverty as well as all other kinds of poverty.” The diversity of opinions is driven by the individual rationale of what contributes to extreme poverty, as well as why and how it has to be eliminated. However, when using the same phrase there is an assumption that the reference is to the same experiences and facts, which might not be the case. Therefore, this “vagueness and dualism in the concepts [also] add to the vagueness of the research agenda.” 59 But as Riddell argues, the initial step in “eradicating extreme poverty is to ensure we agree on precisely what poverty is—how it is manifested and its key characteristics.” 60 A common understanding of poverty and its specific attributes may mitigate misconceptions propagated due to the inclusion of diverse meanings into the same phrase and make expectations on policy outcomes more predictable. But the question still remains whether it is feasible for the phenomenon which is not only closely linked with individual experiences and social environment, but its perceived attributes are also prone to continuous adjustments with the changes within the society. But the question remains of whether it is feasible to define the phenomenon, given that it is closely linked with individual experiences and social environment and its perceived attributes are prone to continuous adjustments in a changing society. With these challenges in defining poverty, there still will be a tendency to discern and focus on

certain attributes and apply indicators which can be better measured and which have more straightforward associations.

Poverty is most commonly associated and equated with low income, but there are certain issues with this approach. One is a presumption that it is possible to apply easily quantifiable monetary amounts to various types of poverty, “including the things that poor people say they need to live a decent human life.” Another concern with the focus on income is the perception that people do not face poverty if they are able to receive basic food and services and if their lives are improved by an ability to gain a minimum income.61 In addition, the income level approach to poverty not only conceals the fact that people do “not live by bread alone,”62 but also can give an excuse to governments not to address the broader social, legal, and political factors that contribute to poverty. As Mack summarizes, “[t]he problem is so complex because most of the time poverty is not an outcome of specific economic problems alone, but a political, social, cultural, geographic or climatic one.”63 However, there is a growing tendency among practitioners and experts to argue for the consideration of more criteria when examining poverty and greater reflection of “the way people themselves understand what is of value to them in order to live humanely.”64

There is more agreement, especially among development professionals, that “poverty is multidimensional – that is, it is composed of a number of different elements and cannot (and therefore should not) be explained or measured by one attribute only.”65

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61 Ibid., 219.
62 Matthew 4:4
65 Ibid.
It is a “hybrid concept”\textsuperscript{66} which Rukooko describes being “constructed out of specific actions and struggles, compromises and temporarily settled relations of cooperating and competing social actors in relation to material goods.” \textsuperscript{67} Cottrell and Ghai expand on the aspects of a person’s life that poverty, which they see as “the lack of qualities that facilitating a good life,” can affect.

…access to conditions supporting a reasonable physical existence enabling individuals and communities to realize their spiritual and cultural potential-opportunities for reflection, artistic creativity, development of and discourse on morality, and contribution to and participation in the political, social and economic life of the community.\textsuperscript{68}

Thus, poverty is presented as a both material and spiritual “absence representing the world view of particular actors.”\textsuperscript{69} Sedmak describes poverty “as ‘identity deprivation’, as the deprivation of cultivating and using resources of identity”\textsuperscript{70} and associates absolute poverty “with a complete loss of resources [when] an effected person has no access to inner resources that would strengthen her resilience and give her a sense of orientation, motivation, and vision.”\textsuperscript{71}

However, the point on the aspect of spiritual absence warrants noting that poverty does not necessary manifest itself in the former. On the contrary, individuals might choose to live a life of poverty and austerity to achieve spiritual enrichment for religious reasons or even for completely secular reasons. The important factor is whether they made a choice to live in “poverty” or whether they are confined to poverty with obstacles

\textsuperscript{67} Ibid.
\textsuperscript{68} Cottrell and Ghai, “Constitutionalising Socio-Economic Rights: A Lifeline for the Millennium Spirit,” 8.
\textsuperscript{70} Sedmak, “Christian Ethics and the Challenge of Absolute Poverty,” 71.
\textsuperscript{71} Ibid.
not allowing them to overcome poverty. But even if it is the latter case, while not underestimating the objective facts that poverty can and do contribute to the sense of isolation and desperation, it should also be acknowledged that even in the most destitute conditions people can and they do maintain the spiritual side of what is to be a human. Assuming otherwise would mean stripping those who find themselves in poverty, even unwillingly, of the last things they have the agency to control – it is their inner world, hopes, believes and aspirations and treat them as “empty,” “emotionless” living bodies.

In the World Bank study *Crying out for Changes* people “equate poverty with powerlessness and impotence, and … relate wellbeing to security and a sense of control of their lives.” Those interviewed often mentioned the ability to be a good person (e.g. to be able to buy clothing for the family or be able to help others when they have problems). It is the feeling of “moral responsibility, with having the wherewithal to help others, and with having enough money to be able to give to charity or a religious organization.”

That said, there is also a perception that people who live in poverty are poor because they are lazy and apathetic. The argument of “laziness,” if put within the policy context, can lead to such extremes as criminalizing unemployment in the manner proposed in 2014 by the president of Belarus – Alexander Lukashenko. He aimed to reintroduce the Soviet-era legal concept of “social parasitism” (“tuneyadstvo”) for people who “‘intentionally don't work,’ including by imposing forced labor.” In 2015, the president signed a decree which introduced fines for unemployment that are applied to citizens and permanent residents who do not “‘participate in financing state expenditures’ for at least 183 days a

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73 Ibid., 2:93.
74 *The Moscow Times*, “Belarus Wants to Criminalize Unemployment.”
year.” It is a view of “the poor as a homogenous grouping” and vagabonds that ignores “diverse experiences of poverty and lives of the poor, even locally, let alone globally.”

But the poor, as any group in society, are not homogenous, nor are the reasons that contribute to their poverty necessarily similar, though they can be some commonly shared experiences. Of course, it is a rather unpopular, and in some ways politically incorrect, view to assume that there can be people in any society who choose not to work even if there are opportunities and they are capable. They might view the available income earning opportunities as requiring too many efforts or below their expectations of the type of employment they are willing to pursue and instead to prefer to rely on assistance and social networks. For example, during the economic hardship in Armenia after the collapse of the Soviet Union, many families began relying on working the land and growing their food. There were many families who embraced the need to overcome the hardship by doing labour and energy intensive agricultural work to substitute for food and income, but there were also people who, while having access to the same opportunities, considered the work too hard and instead would expect the government, donors and/or social security networks to assist them.

There are undoubtedly people who would prefer to rely on social assistance even if they can work, however, in my experience there were also “many poor people [who were] hardworking and resilient.” Narayan-Parker et al. try to explain the contradiction between the hard work that the poor put to earn for basic needs and the perception of “laziness.” They argue, “[t]he apparent contradiction, however, might be resolved this way: workers short of food become exhausted. ‘Apathy’ and ‘laziness’ minimize effort.

76 Ilcan and Lacey, Governing the Poor: Exercises of Poverty Reduction, Practices of Global Aid, 24.
77 Narayan et al., Voices of the Poor: Crying Out for Change, 2:93.
Such attitudes and behaviour can be seen as a strategy for conserving energy.” The perception that people find themselves in poverty because of their “laziness” also ignores the growing group of working poor in low paid and part-time jobs, including in developed countries. Those who argue that laziness is the cause of poverty do not want to notice people like Maria Fernandes who died while taking a nap in the running SUV between her three part-time jobs. She worked for the chain Dunkin’ Donuts, but in three different locations. But even with the work in three places for the multinational company whose CEO in 2013 “received $4.2 million in pay, stock options incentive awards and perks last year, up 120% from 2012,” Fernandes’s landlady mentioned that she fell short on her rent a couple of times “struggling to come up with $550 a month for the basement apartment … that she rarely slept in.”

Poverty generally is associated with the poor “lack[ing] adequate and secure livelihoods.” Unemployment, precarious and temporary jobs, meagre wages, unhealthy and unsafe work conditions are only a few of the challenges faced by the poor everyday. In rural areas, poverty can manifest in the lack of “access to land and irrigation, lack of seeds and fertilizers, deficiencies of transport, and the overexploitation of common resources such as pastureland, forests and fish.” They live in places, such as remote areas, which disadvantage them, face hazardous housing conditions which are overcrowded and polluted. To add to their vulnerabilities, the places they live either have poor or no proper infrastructure to access water, power and sewage facilities. The poor...

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78 Ibid.
80 Swarns, “For a Worker With Little Time Between 3 Jobs, a Nap Has Fatal Consequences.”
82 Ibid.
83 Ibid., 31.
face challenges in diversifying sources of income and food and “[w]ith their opportunities so limited, many people living in poverty are drawn into work that is anti-social, dangerous and illegal, such as sex work, child labour, bonded labour and other slavery-like practices.”\textsuperscript{84} Khan presents many facets of poverty by summarizing,

[t]o live in poverty is to live in uncertainty and insecurity. For poor people life is a daily struggle to secure survival: food, work, a roof over their heads. At every turn there is fear, not only of disease and hunger, but also of gangs and guns, police brutality, family violence or armed conflict.\textsuperscript{85}

Not only do structural imbalances within the society exclude the poor from the participation in society and enjoyment of their socio-economic rights, they also face self-exclusion because of the shame associated with poverty can result in depravation of basic socialization. The study \textit{Voices of the Poor: Crying Out for Change} found that, for example, the destitute may not be included in social and family events and even if invited “may decide not to go because of being unable to appear and behave appropriately.”\textsuperscript{86} For those who are especially the “new poor,” shame associated with loss of status makes them into “invisible poor”, and leads to self-exclusion resulting in reluctance to ask for help.\textsuperscript{87} As a poor man from Bulgaria shared,

There was a man in our apartment building. A silent, shy fellow, always very neatly dressed. They found him dead in his apartment. The doctor said that he had become so feeble that he died of a common cold; they found just a piece of stale bread in his flat. It’s a pity we never spoke with him. He had dignity, that fellow.\textsuperscript{88}

Therefore, to retain at least some sense of dignity and self-esteem, the poor opt to keep “a few scarce assets even during times of hunger, illness, or other hardship” because

\textsuperscript{84} Ibid., 23.
\textsuperscript{85} Khan, \textit{The Unheard Truth: Poverty and Human Rights}, 73.
\textsuperscript{86} Narayan et al., \textit{Voices of the Poor: Crying Out for Change}, 2:35–36.
\textsuperscript{87} Ibid.
\textsuperscript{88} Ibid.
ownership of assets is also perceived to be “symbols of status.”

The vulnerabilities faced by the poor are not only characteristics of the poverty faced by people in developing countries, but also in developed ones—though maybe to a different degree. Howard-Hassmann and Welch underline it by noting that,

To be a member of the working class, or to be unemployed, in Canada or the United States is often to live in margins of society. The margins became even more remote from the center in the late twentieth and early twenty-first century. Poverty was exacerbated by declining social supports and the proliferation of low-wage, dead-end jobs, at the same time that the number of secure, unionized industrial jobs declined.

Poverty is not an act of God, but is an outcome of imbalances in societies and malfunctioning of governments. The poor are routinely harassed, including by corrupt officials, exploited by employers and face discrimination. UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, indicates that “[d]iscrimination is both a cause and a consequence of poverty.” Open and hidden discrimination largely contribute to poverty. The poor are discriminated and stigmatized by “public authorities and private actors precisely because of their poverty. Thus, those living in poverty tend to experience several intersecting forms of discrimination, including on account of their economic status.”

The poor experience discrimination and marginalization in the enjoyment of their economic and social rights. Additionally, their ability to equal enjoy civil and political rights is curtailed though they “desire to have influence and control over institutions that

89 Narayan et al., *Voices of the Poor: Can Anyone Hear Us?*, 1:42.
91 See also Cottrell and Ghai, “Constitutionalising Socio-Economic Rights: A Lifeline for the Millennium Spirit,” 8.
affect their lives.” The enjoyment of civil and political rights requires “not only an understanding of the dynamics of society and access to public institutions, but also confidence in themselves.” Socially excluded poor find themselves politically marginalized. Their access to information is more limited and they lack “political power necessary for meaningful participation in political decision-making.” The outcome of political underrepresentation is that their voices are not taken into account in the decision-making process and their needs often are not reflected. Socio-political exclusion and poverty create the self-perpetuating cycle of marginalization of the poor, because “[s]ocially and politically excluded people are more likely to fall into poverty, and the poor are more vulnerable to social exclusion and political marginalization.”

The capture of public institutions with political and economic elite that are powerful with no efficient mechanisms to hold them accountable leaves the poor with the sense of exclusion and alienation.

These feelings are reflective of what an interviewee from Bulgaria shared for the study *Voices of the Poor: Crying Out for Change,*

We the Bulgarians are serfs. We all know that if you are down…we are afraid of those on the top. The people cannot gather together to put them in their place. There are some young ones who wanted to make a debate with the mayor on the local TV; they announced that everybody could ask him questions and what happened? He asked them not to interrupt him when he was speaking, they cut the telephone lines, he delivered a speech, and he went home.

Poverty as a multifaceted phenomenon demands that it is addressed by taking into

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94 Narayan et al., *Voices of the Poor: Crying Out for Change,* 2:186.
97 Ibid.
98 Narayan et al., *Voices of the Poor: Crying Out for Change,* 2:186.
99 Ibid.
account factors that contribute to and propagate it. Poverty alleviation, poverty reduction, and poverty elimination are strategies frequently used in international aid discourse. Toye shows the distinctions in these approaches by noting that poverty alleviation “temporiz[es] … poverty rather really confront[s] it” and poverty elimination while having the right purpose “has a utopian feel about it.” But it is poverty reduction that is “resolute and realistic.”

When channelling international development aid aimed at addressing poverty, Riddell suggests three possibilities:

- first, aid could help to *speed up* the general process of development and poverty eradication;
- second, if current development processes do not sufficiently benefit the poorest, aid could be *targeted at and channelled directly to those living in extreme poverty*;
- third, aid could be used to help *alter the process of development* so that wealth creation and decision-making become more inclusive of poor people.

Aid to the poor is viewed not only as a matter of policy decisions and but also the moral duty to assist those including “foreigners in distant lands.” These duties for Pogge include the duties “not to harm” and acknowledge that “[i]f the unfairness of the global order we impose causes poverty to persist in the poor countries, then [the] moral responsibility for the associated deaths and deprivations is not diminished by diversity of nationality and geographical or cultural distance.” Therefore, efforts to assist the poor should also be guided and reflect the context specific to those factors and their importance and “be informed in particular by the view of poor people.” These efforts need to look into specific issues and obstacles the poor encounter and recognize that

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100 Toye, “Poverty Reduction,” 47.
102 Pogge, “Assisting the Global Poor,” 55.
103 Ibid.
issues and obstacles can “differ radically across groups and within different countries, regions, and localities.” When inquiring on opinions and views of the poor, they should be “treated as free and autonomous agents.” There should be an acknowledgment that the poor have the right to make decisions on issues which impact their life and be considerate of their abilities “to fulfill their own potential.” While inquiring and incorporating the voices of the poor in international aid, Easterly underlines that foreign aid is “inherently difficult” because the poor hold weak power.

The sad part is the poor have had so little power to hold agencies accountable that the aid agencies have not had enough incentive to find out what works and what the poor actually want. The most important suggestion is to search for small improvements, then brutally scrutinize and test whether the poor got what they wanted and were better off, and then repeat the process.

There are different approaches in understanding poverty and how to tackle it and the role the poor should have in the process, but within those different approaches there is growing articulation about the connection between poverty and human rights. Human rights are seen as emanating from human dignity, while poverty can adversely affect human dignity. Poverty restricts the choices people have, while human rights expand those choices and empower people to choose. Poverty itself has become to be recognized as “a serious global human rights issue.”

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105 Ibid., 224.
107 Easterly, The White Man’s Burden: Why the West’s Efforts to Aid the Rest Have Done So Much Ill and So Little Good, 206.
109 Kumar, “National Human Rights Institutions (NHRIs) and Economic, Social and Cultural Rights,” 774.
4 POLICE CORDONS OR PROMENADE TO HUMAN RIGHTS

It had become routine for police to block roads leading from the provinces and obstruct people wanting to reach the capital to protest against yet another rigged election. Police cordons were set up in the outskirts of the capital and not only the potential protesters but also people who needed to go to work or attend other everyday matters were not allowed into the capital. In the country which was still doing the first steps in recovery from the economic collapse and facing rampant poverty, where scarce jobs were available mostly in the capital, police cordons were not only hampering the enjoyment of civil rights. They were obstacles in accessing employment and to “the right to a standard of living adequate for ... [themselves] and for ... [their] families.”

When an individual or a group lays a claim to a certain set of entitlements, the concept of human rights is referred to with the assumption that it is understood what it implies. However, the concept of human rights constantly changes and expands and encompasses diverse values from different times and societies. What human rights represent is an evolutionary process in which ideals are the manifestation of the outcomes of negotiations and reinterpretations within societies. That process of redefinition includes also basic assumptions as who is human, whether rights are inalienable part of the human, whether there is a set of entitlements that is universally applicable, or whether human rights should first and foremost be a result of locally framed expectations of societal norms.

This chapter approaches the discourse on human rights from this perspective of continuous evolution where both local and universal norms are in interplay. It presents debates on what constitutes human rights and what claims they lay, whether those claims are universal or are bound with localized experience (cultural relativism approach) and whether human rights and their interpretation are political in nature. The chapter also underscores that there is growing reliance on laws and codified norms in formulating

110 The Constitution of the Republic of Armenia, Art. 34.
what constitutes human rights, their scope and how they should be promoted. There is particular focus on appeals to norms articulated in international human rights treaties and an assumption of human rights related obligations by states through accession to and ratification of these treaties. The chapter further examines drawbacks associated with the legalistic approach to human rights, including equating what entitlements people can have with rights and freedoms set in laws.

Human rights are evoked when individuals feel aggrieved or when NGOs or other actors position themselves as defenders of those individuals. Individuals call upon human rights to justify their claims and use them as shields to ward off the claims of others. Human rights are appealed to when aiming to expand the scope of equality and rights to the greatest number of individuals. In the meantime, human rights are used to censor and silence opinions which may deviate even slightly from human rights orthodoxy and lead to public sanctioning of those “deviants.” In foreign relations human rights have become a reference point to justify the transfer to a “better model” for the benefit of those in far lands. Human rights have been used to also provide the cover of piety to military interventions, sometimes under false pretence. The article by Cockburn in The Independent on Libya is helpful to illustrate such instances of using human rights. By juxtaposing the speech by David Cameron, the Prime Minister of the United Kingdom, in Benghazi in September 2011 after the overthrow of Qaddafi “your city was an example to the world as you threw off a dictator and chose freedom,” Cockburn notes, “Mr Cameron has not been back to Benghazi, nor is he likely to do so as warring militias reduce Libya to primal anarchy in which nobody is safe. The majority of Libyans are demonstrably worse off…” While protection of human rights and stopping atrocities were the main
justification for the military intervention, he also questions some of that premise by
pointing out “there was no evidence for several highly publicised atrocities supposedly
carried out by Gaddafi's forces that were used to fuel popular support for the air war in
the US, Britain, France and elsewhere.”

On the other end of the spectrum of the discourse of human rights is when states
where there are ongoing violations of human rights oppose changes to improve living
conditions by claiming human rights are just a foreign agenda. They aim, not only to
undermine the legitimate claims that their citizens have, but to also ignore the need to
engage with the populace. Whatever the reason for evoking them, human rights will
continue to mobilize and polarize and remain one of the most frequently referred to
phrases. Speaking about the hype around human rights, Iyer notes,

‘Human rights’ has become one of the fashionable phrases of our time. The
concept has been elevated to the status of a ‘global religion’. Seldom goes a week
pass without some new report or initiative or campaign being launched on the
subject somewhere in the world. The concept has also given rise to the whole new
‘industry’—an issue which has divided people as much as it has united them.112

While human rights promote the ideas of inclusion and tolerance, human rights are also
used to create what is perceived as the pantheon of the commandments “thou shalt” or
“thou shalt not”113 and self-appointed advocates with priestly zeal and with much less
forgiveness assume the role of defining what and who are good and evil. Those who
might question the established and promoted narratives may be treated as modern day
heretics. But, as with any idea, the concept of human rights is not immune from being
challenged by either its proponents or opponents.

111 Cockburn, “The West Is Silent as Libya Falls into the Abyss.”
113 A reference to the phrase used in Ten Commandments, the Bible (Exodus 20: 1–17).
Human rights are both a perceived and prescribed set of entitlements which one has and which can be enjoyed by virtue of being regarded a “human,” and which put duties on all members of society as well as state to enable the enjoyment of those rights. But those entitlements, their scope and responsibilities that they put on individuals and state, are continuously reshaped and adjusted to reflect the competition over values during different times and in diverse societies. As Rukooko puts it, human rights are “a product of struggles and compromises.” Habermas presents human rights as “Janus-faced, looking simultaneously toward morality and the law.” As moral norms they are applied to everybody who has “a human countenance,” while as legal norms they provide protection to individuals as part of a certain “legal community,” typically as “citizens of a nation state.” Whether a “legal or moral or social concept,” they are seen as a “relational concept” which can lend protection to the weak against the more powerful, and offer safeguard from the unnecessary intrusion by the state into lives of individuals.

Donnelly describes human rights as “the rights that one has simply as a human being. As such they are equal rights, because we are all equally human beings. They are also inalienable rights, because no matter how inhumanely we act or are treated we cannot become other than human beings.” Similarly, Blakeley and Raphael, anchoring the universal application of human rights to every individual by “virtue of the fact that we

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114 The rationale for putting “human” in quotation marks is to underscore that there is still no societal unanimity regarding who is “human” due to the pro-life and pro-choice debates. Because these debates are not a simple matter of theoretical discourse but have a real and tangible impact on the lives of many people and have a strong impact on legal and political institutions, it would be an omission not to reflect that debate while addressing the concept of human rights. The debate will be addressed in more detail in a subsequent section of this chapter.
are human,” claim their inalienability as “expressed at the global level” and which “cannot be taken away from us, except for some rights in particular contexts which are themselves governed by ‘due process’ and the rule of law.”\textsuperscript{119} Though, they also acknowledge that there are certain rights, like right to life, freedom from torture and prohibition of slavery which are applicable all the time and are non-derogable when “there are no circumstances whatsoever which would allow for these rights to be curtailed.”\textsuperscript{120}

For Brysk human rights are “a set of universal claims” which safeguard “human dignity from illegitimate coercion, typically enacted by state agents.”\textsuperscript{121} The UN OHCHR, which sees human rights stemming from “cherished human values that are common to all cultures and civilizations,”\textsuperscript{122} frames them as “the language of basic human wants” which “help in articulating wants and the response of those who have to address those wants.”\textsuperscript{123} As “universal legal guarantees” they provide protection against actions and omissions that hamper fundamental freedoms and entitlements and they “[c]annot be waived or taken away.”\textsuperscript{124} Or, putting it into Dworkin’s words, “someone has a ‘right’ to do something, impl[ies] that it would be wrong to interfere with his doing it, or at least that some special grounds are needed to justify any interference.”\textsuperscript{125} In Gabel’s interpretation, however, rights are “social experiences that are merely possible rather than the experiences themselves.” It suggests that an individual is “a passive locus of possible

\textsuperscript{120} Ibid.
\textsuperscript{121} Brysk, “Introduction: Transnational Threats and Opportunities,” 3.
\textsuperscript{123} Ibid., 9.
\textsuperscript{125} Dworkin, Taking Rights Seriously, 188. See also Ferraz, “Poverty and Human Rights,” 591.
action, rather than as in action with others already.” Another consideration is that rights are perceived to be given from the outside authority, “from ‘the State’ which either creates them (in the positivist version of the constitutional thought-schema) or recognizes them (in the natural-law version) through the passage of ‘laws.’” This approach assumes that people are able to engage with each other because they have “been ‘allowed’ to do so in advance.”

In recent decades the acceptance and codification of rights was mostly done either through peaceful adoption through “State” mechanisms or promotion through international codification mechanisms, such as international treaties. But the proposition that rights are “being granted…from an outside” would negate the centuries of struggle, including revolutionary, to assert the rights which people perceived they had even in the absence of the law which would “grant” them. Of course, there can be a discussion whether the rights individuals believe they possess are anchored in the belief that exist in divine sources or whether they are an outcome of the social contestation and agreement and being “authoritatively given by a society to itself.”

Even as social constructs “once … accepted through a norm-creating process, they become binding on the community” do not make an individual a mere a passive observer and recipient of rights but still leave a space for an individual to be among the creators. It allows a space to see rights also as a reflection of localized experiences. The approach to rights as being “framed locally” Ensor formulates, “as on one hand, the individual interests that rights

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127 Ibid.
129 Ibid.
protect are subject to local social forms, while on the other hand, the character of societies (which rights reinforce) differ across communities and through time.” There should not be an assumption that human rights speak with local norms and, if human rights language is “transferred, unchanged, from one context to another,” it maybe seen “as a challenge or threat to a community.”

However, it should be mentioned that these definitions of human rights seem to imply that it is understood who is the “human” to whom these entitlements belong. But within the human rights rhetoric, even who qualifies as a type of “human” that triggers rights and protections is still debated. Abortion debates accentuate that question by challenges from both sides. The article “After-Birth Abortion: Why Should the Baby Live?” Giubilini and Minevra in the context of suggesting post-birth abortion is illustrative of this contention. They contend that “[t]he moral status of an infant is equivalent to that of a fetus, that is, neither can be considered a ‘person’ in a morally relevant sense.” While stating that the fetus and infant “are human beings and potential persons” they argue that both cannot be considered as “a ‘person’ in the sense of ‘subject of a moral right to life.’” They continue to define the person “to mean an individual who is capable of attributing to her own existence some (at least) basic value such that being deprived of this existence represents a loss to her.”

In spite of diverse opinions about what human rights are and even contestation of who is regarded a “human,” human rights are used to lay a claim to combat societal and political dogmas. But in the meantime, the human rights movement gradually relies on a more authoritative, and perhaps less locally reflective, perception of what human rights

\[131\] Ibid.
\[132\] Giubilini and Minerva, “After-Birth Abortion: Why Should the Baby Live?” The article is also referenced in Adams, “Killing Babies No Different from Abortion, Experts Say.”
are and how the model society has to look. Iyer rightly notes that within the human rights movement, as in other social movements, there is “a fair share of individuals, institutions, and many professional human rights activists who are driven by ideology and dogma, rather than by a sense of genuine commitment to the notion of human rights, familiarity with social realities, and a sense pragmatism and common sense.” I33 He continues to stress that human rights professionals need to acknowledge that human rights are prone to redefinition, because “different cultures and societies…interpret human rights differently, in accordance with the values that underpin those societies.” He criticizes the reluctance within the human rights movement to admit this reality and argues that it leads to “inconsistencies in their approach to fundamental issues—inevitably which most ordinary people find very difficult to understand or overlook.” I34

The claim of universality of human rights as being “applicable through the world, and reach into all political, cultural and religious systems” has been also challenged on the basis that it forces Western values, which are products of Western cultures, and historical development on other societies. I35 Even the existence of ratified human rights agreements does not resolve the challenge to the universality claim, because there is still an issue with “whether their content is sufficiently reflective of international diversity of thought and belief to be legitimate.” I36 In Kennedy’s opinion the “institutional practice of human rights promotion” conveys the “abstract idea about people, politics and society” and “one-size-fits-all emancipatory practice” that does not sufficiently reflect the

I34 Ibid.
I36 Uvin, Human Rights and Development, 22.
“possibility for particularity and variation.”

There are propagandists, as the authors cited in paragraphs above, who seek to demonstrate the “organic match between human rights and key elements in cultures and religions worldwide.” Falk aims to reconcile the claim of universality by stating, “that only the subaltern discourse that encompasses the full panoply of human rights can establish the moral, political, and cultural ground for the genuine embrace of human rights on a universal foundation.” O’Manique outlines his proposition of universality by indicating that “rights and law are human manifestations of the propensity to develop found in all living organisms. Human rights encompass all what is required for total human development.” However, he goes to acknowledge the localized experiences in conceptualizing and constructing rights. He elaborates,

Defining rights and law is very different from defining tables or horses. A horse is a horse no matter what one believes it to be, but what right or law is will very much depend on a person's or a community's beliefs. Ultimately, rights and law within a community are what that community says they are. Rather than defining law and rights for all of the world's communities, I am saying that what are usually called law and rights have probably evolved from behaviors and institutions which emerged as integral parts of the beginnings of human evolution and are, consequently, common to our species. Furthermore, an awareness of those common origins could help us to determine the nature and function of law and rights in our own communities and in the world community.

This proposition to determine the commonly shared societal and legal norms that are nevertheless the result of the localized evolutionary norm development process is attractive and has its merits when observing the developments within Europe which

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141 Ibid.
encompasses diverse communities and ethnicities with their unique cultures. But a closer look into the legal and human rights framework of countries that have common heritage reveals that there is still divergence on the treatment of fundamental rights. For example, countries which have a common heritage shaped by Christianity diverge on a fundamental right—the right to life—as reflected in debates about the capital punishment. Countries in the European Union abolished the death penalty and do not extradite convicted criminals if they can be executed.142 Meanwhile, in the USA, capital punishment not only exists but the debates are about what constitutes more “humane” ways of depriving the convict of life.

The decision by the Supreme Court of Canada, *Minister of Justice v. Burns and Rafay*, illustrates the divergence in treatment of a fundamental right in countries which otherwise share similar values towards human rights – Canada and the USA. In their decision on the extradition sought for Canadian citizens accused of murders in the USA, without the assurance that the death penalty would not be applied, the Supreme Court of Canada ruled that extradition would violate the right to life, liberty and security guaranteed by the section 7 of the Canadian Charter of Rights and Freedoms.143 These examples are provided not to challenge the merits of the proposition that commonly shared values and norms can serve as a basis for their universal application. It is rather to indicate the strong influence of localized experiences even within communities which

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142 “Where the offence for which extradition is sought is punishable by death under the laws in the requesting State and not punishable by death under the laws in the requested State, the requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or if for procedural reasons such condition cannot be complied with by the requesting State, on condition that the death penalty if imposed shall not be carried out.” (Article 13) Agreement on Extradition Between the European Union and the United States of America; Cornell Law School, “Death Penalty Worldwide. Extradition.”

have common or similar origins and heritage. But, as Uvin points out, “at the end of the day, there is probably no perfect solution to the relativity conundrum.”\textsuperscript{144} He argues that because human rights are normative “rather than descriptive facts, it is impossible to ground them with uncontested certainty in a universal manner.” Human rights are always going to be contested because they use the “language to make claims with, to conceive of and fight for social change” and are about the concepts of a better world and about political aspirations.\textsuperscript{145}

The contestation of the concepts and understandings of human rights in framing and reframing them as social constructs draws them into a political process. The framing of the nature, scope and application of human rights enters the political process not only through the contestation over ideals by individuals and groups in a given society; it is also an outcome of the positions and decisions adopted by more structured institutions such as political parties and the law making process in national parliaments. On the other side, political order and institutions governing society themselves can be outcomes of human rights as a result of readjustment to meet human rights standards. Furthermore, contestation over human rights as a part of the local political process for social changes is integrally linked with international human rights norms and standards. The local political processes are linked to aspirations to meet international human standards and choosing which standards to meet, and they also contribute and challenge international the human rights norm setting process in international fora.

But “[i]f we accept that human rights are social constructions,” as Hoover indicates, “then it follows that they express the political order in which they have been

\begin{footnotes}
\item[145] Ibid.
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created” and it raises questions about “their status as universal norms of social life.” He also argues that “the admission that human rights are only conventional” bolsters opinions that human rights reflect “interests of western powers” which are able to dominate “weaker states and disempowered people.” He points out that “[i]f we suspect that human rights might be unavoidably political, we are forced to consider whether this politics is objectionable – and it would seem that for many people it is.”

Human rights politics faces strong objection when it is among Western countries’ foreign policy tools and is used to ostracize countries which stand on the way of Western foreign policy agendas. The opposition to politicizing human rights is most salient when human rights demands by Western countries are promoted and imposed selectively. That is, when human rights politics is determined not so much by the graveness of human rights violations in a country or oppressiveness of its state structures, but rather by the rationale of whether those structures are conducive for Western economic and political interests.

There are also proponents of human rights politics because it is seen as a way to garner wider support to address human rights violations. It is sometimes regarded as more a peaceful means of enforcing compliance with human rights standards. Butler explains the merits the politicized nature of human rights through the need to enforce them using foreign policy tools. While human rights are codified either in constitutions or international treaties, “protected through the courts,” but with “the world judicial system is still incomplete, politicized enforcement sometimes occurs through the human-rights based foreign policies of major sovereign states rather than through courts.”


asserts that, “enforcement in the courtroom is morally preferable.”

People have and will continue to have a different conception of rights and the means of their promotion and enforcement, but there is growing reliance on appealing to laws and codified norms when discussing and promoting human rights. Developing laws, according to Kennedy, is seen “as an emancipatory end in itself, leaving the human rights movement too ready to articulate problems in political terms and solutions in legal terms.” Furthermore, as Evans points out, “[i]n contrast to the moral abstract nature of the philosophical discourse, the legal discourse focuses upon a large corpus of international human rights law, mostly generated under the auspices of the United Nations.” They are codified in international human rights treaties and are ratified by states, laying ground for what is interpreted as “an expression of the international rule of law for the purpose of protecting the individual regardless of any other conditions such as nationality, religion or status.”

McInerney-Lankford indicates that, through a voluntarily accession process, states are able to negotiate the parameter of obligations they are willing to assume “circumscribed through reservation and derogation.” The voluntary accession and states’ consent to the terms “secur[e] a clarity and legitimacy that approaches based on principles and values or even general principles of international law may not avail of as

148 Ibid.
easily.”\textsuperscript{154} It can be also argued that accession to international human rights instruments is a manifestation of “a new sovereignty regime signalling changes in the prerogatives of sovereignty, setting new limits to its legitimate exercise.”\textsuperscript{155} But even with the voluntary accession and consent by sovereign states to impose certain standards of behaviour on themselves, the fact that sovereign states still remain the main decision-makers able to withdraw that consent leaves the notion of what is the “legitimate” norm open to challenge. The statement by the Prime Minister of the United Kingdom during the Conservative party conference in Birmingham in September, 2014 is descriptive in this regard. He stated, “[t]he suggestion that you’ve got to apply the human rights convention even on the battlefields of Helmand. And now – they [European Court of Human Rights] want to give prisoners the vote. I’m sorry, I just don’t agree.”\textsuperscript{156} Such a statement stands against even less aspirational interpretations of international human rights within the governance framework where sovereignty, not human rights, is the main linchpin of the legal system as described by Cohen.

…although the international legal norms and rules regarding the prerogatives of sovereign statutes have changed, sovereignty has not been displaced by human rights as the basic principle of the international legal order. International human rights treaties are not designed to abolish state sovereignty or to replace it with global governance and global law but to prod states to erect and commit to a common international standards and to abide by it in their domestic law and polices.\textsuperscript{157}

\textsuperscript{154} McInerney-Lankford, “Human Rights and Development: A Comment on Challenges and Opportunities from a Legal Perspective,” 68.
\textsuperscript{155} Cohen, \textit{Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism}, 163.
\textsuperscript{156} Owen Bowcott, “Cameron’s Pledge to Scrap Human Rights Act Angers Civil Rights Groups.”
\textsuperscript{157} Cohen, \textit{Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism}, 162.
However, the legalistic approach has its drawbacks as it is mostly concerned with “what-the-law-says”\footnote{VeneKlasen et al., \textit{Rights-Based Approaches and Beyond: Challenges of Linking Rights and Participation}, IDS Working Paper 235:7.} and pays less attention to “the political process that shapes the extent to which rights are enforced and realised in people’s daily lives.”\footnote{Ibid.} VeneKlasen et al. criticize the overreliance on the legalistic approach by indicating that “[w]hile working with laws and legal systems is critical” it also contributes to the failure “to expand the scope of rights.” They argue that “[i]nstead of starting with people’s daily problems, rights groups usually use a discussion of law as an entry point into communities, failing to relate to how people experience the world.”\footnote{Ibid.} In addition, the legalistic approach to human rights is becoming a more favoured approach in international human rights discourse and if there are failings within human rights regime “the usual response is to clarify legal rules by drafting more international law, rather than to question the efficacy.”\footnote{Evans, “International Human Rights Law as Power/Knowledge,” 1047.} By closely tying human rights with law, there is an assumption that individuals do not have human rights unless they are incorporated within the legal system.\footnote{Katselli, “The Rule of Law and the Role of Human Rights in Contemporary International Law,” 131.} But even if human rights are framed through the language of law, whether domestic law or international instruments, their moral application is not dependent on them being codified within enforceable laws.\footnote{Cohen, \textit{Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism}, 178.} However, recognizing human rights, whether morally or legally, is not sufficient; there should also be an enabling environment and mechanisms created to facilitate the enjoyment of rights.\footnote{See Sengupta, “The Political Economy of Legal Empowerment of the Poor,” 33.}

Whether human rights are viewed or interpreted through the legalistic or social and moral construct lens, the interpretation and the definition of the scope is a dynamic
and ever expanding process with “newer” rights being claimed and expected to be codified and enforced. This process encompasses claims adjusted to accommodate the continuously changing understanding individuals and societies have of what they are entitled, which is shaped by local experiences and how and by whom they have to be satisfied. But localized experiences are neither standalone nor isolated. They are in constant interaction by affecting and enriching each other and setting common standards with corresponding duties to meet those standards. Though, it should be noted that the dynamic nature of human rights may also be a source of tension within and among societies, particularly when it concerns resource distribution, such as in socio-economic development and guaranteeing social-economic rights.
5 DOES IT INDEED TAKE TWO TO DANCE? OR HUMAN RIGHTS MEETS DEVELOPMENT

1994. The ceasefire is signed. There is hope in the air that the country will finally embark on the path of development, the economy will grow and people will have a better life. No more food allocation cards, they will have decent jobs, better nutrition and access to health. Many do not have much money nor do they have job opportunities. But they are told that international donors requested that the government liberalizes prices, stops state subsides, including of bread – their staple food. Nobody asks them when the decisions are made. Their opinions are of lesser importance. Now, many of them can afford even less, while a few are getting rich and quickly. In time, people learnt that academics and practitioners called the recommendations by highly paid international advisors a “shock therapy,” but for them, who had little, it was shocking “development.”

Development and poverty reduction have been closely associated with each other and advocated as mutually reinforcing processes aimed at improving the livelihood of people, advancing opportunities within societies, and contributing to efficiently functioning governance institutions capable of satisfying people according to their needs. Increasingly, human rights are introduced into the discourse of development and its role is magnified in poverty reduction efforts, thus compelling a reassessment of the nature of international development initiatives. Chapter 5 analyzes the intersection between human rights, development, and poverty reduction. Debates on the right to development show the contesting approaches developing and Western industrial countries held on the nature of development. They also raise the question of whether development triggers rights and corresponding duties. While addressing the integration of human rights into the development agenda and the role they play in development, this chapter examines human rights mainstreaming into international development initiatives, the role they can play in development and poverty reduction, as well as the potential tensions they can cause.

In its introduction, the report of the UN Secretary General on An Agenda for
Development states “Development is a fundamental human right.”\textsuperscript{165} It continues, “People are a country’s principal asset. Their well-being defines development … The enormous challenge of development cannot be undertaken by people whose every thought is bent towards getting enough to eat or recovery from debilitating sickness.”\textsuperscript{166} In his article “Poverty: A Denial of Human Rights” Speth writes,

The right to be free of the crushing burden of poverty must be counted among the most fundamental of human rights. Poverty is brutal. It is embedded in all realms of the existence of poor people, and extends beyond lack of income. Perhaps the most basic human right challenged by human poverty is the right to life.\textsuperscript{167}

Donor agencies rationalize the provision of aid with the claim that it contributes to development with a focus on social justice and assistance to the poorest. CIDA, in its Sustainable Development Strategy, argued that “[d]emocratic governance and human rights are essential for development progress.” It contended that a “democratic society” which is based on human rights and the rule of law “is more able to provide … poverty alleviation for its citizens. With this recognition, CIDA has promoted democratic governance and human rights for over a decade.”\textsuperscript{168} But despite aid, with the gap persisting or growing between developed and developing countries, and criticism of the effectiveness of aid, the paradigm has been shifting from “aid as help, to development as a general process that could not be affected by aid alone.”\textsuperscript{169} Currently, there is recognition that development is “no longer … narrowly conceptualised as economic development or growth” but by the ability “to respond to the multidimensional nature of poverty.” Therefore, when “framed in these terms, human rights become a constitutive

\textsuperscript{166} Ibid., 18–19.
\textsuperscript{167} Speth, “Poverty: A Denial of Human Rights,” 282.
\textsuperscript{169} Barratt, Human Rights and Foreign Aid: For Love or Money?, 20.
element of development and human rights violations become both a cause and symptom of poverty."\textsuperscript{170} There is also a growing tendency to see development in terms of human development that “address[es] the human being in relation with both resource management and participation.”\textsuperscript{171}

The discourse on the intersection between human rights, development, and poverty reduction has gained prominence only in recent decades. Uvin points out that whether in discourse or practice, development and human rights evolved separately. He argues that “[t]he problem originated from both sides, an act of choice, not a necessity.”\textsuperscript{172} Among the reasons was the fact the human rights movement dominated by richer Western countries prioritized, if not exclusively focused, on civil and political rights (CP) while marginalizing attention to economic, social and cultural rights (ESC). Thus, “[b]eyond routine declarations about the indivisibility of all rights, for all intents and purposes most ESC rights have not been part of human right practice for most of the last half century.”\textsuperscript{173}

Though the Universal Declaration of Human Rights adopted in 1948 included both CP and ESC rights and recognized that “[e]veryone is entitled to all the rights set forth in … [the] Declaration,”\textsuperscript{174} in 1966 CP and ESC rights were divided into two separate conventions. While the International Covenant on Civil and Political Rights (ICCPR) raised the immediate obligations of governments, rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) were left to the progressive realization conditioned by the availability of resources.

\textsuperscript{170} O’Neil, “Introduction,” 1.
\textsuperscript{171} Hamm, “A Human Rights Approach to Development,” 1010.
\textsuperscript{172} Uvin, \textit{Human Rights and Development}, 47.
\textsuperscript{173} Ibid. See also Nelson and Dorsey, \textit{New Rights Advocacy}, 13.
\textsuperscript{174} United Nations, \textit{The Universal Declaration of Human Rights}, Article 2.
Sengupta mentions that the dissatisfaction in the international community by this “split in the commitment to human rights” is because such an approach was contrary to the interdependence of human rights acknowledged in the *Proclamation of Tehran* (1968). The Proclamation asserted that “[s]ince human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.”\(^{175}\) The *Declaration on Social Progress and Development* (1969) affirmed that development should guarantee “the promotion of human rights and social justice, which requires … [t]he recognition and effective implementation of civil and political rights as well as of economic, social and cultural rights without any discrimination.”\(^{176}\)

Within the human rights rhetoric, the concept of development initially received more prominence through the notion of the “right to development.” It was initiated by a Senegalese jurist M’Baye in 1972 during the debates about the New International Economic Order (NIEO).\(^ {177}\) The *Declaration on the Right to Development* adopted in 1986 reiterated the indivisibility of rights by stating, “All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.”\(^ {178}\) It also asserted “the right to development … [as] an inalienable human right.”\(^ {179}\) The concept of the right to development also “provided

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\(^{176}\) *Declaration on Social Progress and Development*, Article 2. See also Sengupta, “On the Theory and Practice of the Right to Development,” 839.


\(^{178}\) *Declaration on the Right to Development*, Article 6 (2).

\(^{179}\) Ibid., Article 1 (1).
legal and ethical authority to the Third World’s request for the international redistribution of resources.”

But the Declaration had a push back from the most developed countries: the US voted against it and eight other countries (Federal Republic of Germany, Iceland, Denmark, Israel, Japan, Sweden, United Kingdom and Japan) abstained. During the discussions of the Declaration, the US voiced its strong objections, and the Third Committee’s Summary Record of 61st Meeting illustrates US objections. The US position was that,

unlike the Universal Declaration of Human Rights, the declaration on the right to development just adopted by the Committee was imprecise and confusing. Development, which the declaration defined as the constant improvement of the well-being of the entire population, was not assured by governmental promises but by performance. References to the human rights of peoples were inconsistent with the proper concept of human rights as rights of the individual.

The declaration, which treated the right to development as both individual and collective, was also criticized for not clearly specifying to whom those collective rights belonged which “nourished the suspicion of Western industrial countries.” The understanding of Western countries was that developing countries viewed themselves as rights-holders and Western countries as those who had a duty to provide aid to them.

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183 “…right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations.” Declaration on the Right to Development. The Declaration also reaffirms individual and collective responsibility for development (Art. 2.2)
The US delegation expressed its opposition to the premise that development would be achieved by the redistribution of resources from developed to developing countries. The delegation also asserted that would weaken “human rights agenda of the United Nations” which, it argued, was “overflowing with issues posed by numerous failures to respect the Universal Declaration of Human Rights.” 185 But, as Kennedy stresses, when “emancipatory projects” among which is addressing how the issues of development and poverty are being framed in the language of rights, those “[e]fforts that cannot be articulated in these terms seem less legitimate, less practical less worth the effort.”

Increasingly, people of good will concerned about poverty are drawn into debate about a series of ultimately impossible legal quandaries—right of whom, against whom, remediable how, and so on—and into institutional projects of codification and reporting familiar from other human rights efforts…186

While human rights practitioners and activists place human rights at the centre of development, governments in developing countries give primacy to development before human rights, particularly civil and political rights, and argue that development leads to better protection of human rights, including social and economic ones.187 Curtailment of freedoms is justified as needed to maintain stability required for development. Among the summary arguments of why precedence is given to development priorities, Donnelly names liberty trade off when “[t]he exercise of civil and political rights may disrupt or threaten to destroy even the best-laid development plan, and must therefore be temporarily suspended.” Justifications include the exercise of freedoms (such as freedom

185 Third Committee, Summary Record of 61st Meeting, November 28, 1986, A/C.3/41/SR.61, December 5, 1986, para 190, cited in Bunn, The Right to Development and International Economic Law: Legal and Moral Dimensions, 43 (footnote 69). In regards to the US position Obiora notes that “[i]n the opinion of Ronald Reagan, the incumbent president when the Declaration was promulgated, development itself is not a right, but the product of rights.” Obiora, “Beyond the Rhetoric of a Right to Development,” 385.
of speech, assembly) and can contribute to divisions in the society that fragile states may not be able to cope with.\textsuperscript{188} The stance of contrasting human rights and development rather seeing them as complementary wilfully diverts attention from shortcomings within the governance structures and institutions which hamper development in the first place. These shortcomings are among the sources of making a state fragile by making relevant structures and institutions inflexible to accommodate changes required for development. They also undermine the ability of societies and countries to sustain the results of development.

The term development which has been among the buzzwords of policy and academic discussion for decades, but as Rist mentions, “its actual meaning is still elusive, since it depends on where and by whom it is used.”\textsuperscript{189} In his overview of meanings of development Haque distinguishes between the conservative, the reformist, and radical traditions.

In the conservative tradition, development is understood in terms of increased economic production, consumption, and accumulation; further social differentiation, adaptation, and integration; more political stability, participation and institutionalization; or enhanced physiological orientation towards entrepreneurship and achievement. In the reformist tradition, on the other hand, development is perceived in terms of higher economic growth with some degree of redistribution… in the radical tradition, development is construed in terms of progressive changes in the forces and relations of production, freedom from all forms of class exploitation, the realization of a classless society, or the liberation of peripheral nations from the world capitalist system.\textsuperscript{190}

The debate over development includes various definitions and measures and, depending on what each development agency decides what “development ‘is,’” it shapes their

\textsuperscript{188} Donnelly, “Human Rights and Development: Complementary or Competing Concerns?,” 257.  
\textsuperscript{189} Rist, “Development as a Buzzword,” 19.  
\textsuperscript{190} Haque, Restructuring Development Theories and Policies: A Critical Study, 163.
goals.\textsuperscript{191} But as Sumner and Tribe point out, “[a] common theme within most definitions
is that ‘development’ encompasses ‘change’ in a variety of aspects of the human
condition.”\textsuperscript{192}

Within the context of developments, change should not be seen in a sense of just a
linear, chronological transition from a past condition ($A_1$), to the present condition ($A_2$
then to the future one ($A_3$). For example, during the economic and political transition
after the collapse of the Soviet Union, such linear movement from one condition to
another was viewed by people as stagnation rather than development. The process was
regarded as development only if the change in conditions provided essentially better
options to function within the society. Therefore, the change as development is rather
expected to be an advancement when the current condition (B) is an improvement and is
essentially better than the previous one (A). The future condition (C) has to manifest
higher living standards and provide better options in comparison to the current condition
(B). However, improvements in material conditions of people and state infrastructure
alone may not be regarded as development unless these improvements take place within a
framework which also enables individuals to reach the potential to which they aspire. To
illustrate this argument, I would like to mention that when there was a gradual general
increase in income of people in Armenia in the mid-1990s, and there were more
economic activities taking place, the perception was still that there was lack of
development. The reason was that people did not view those changes as creating enabling
institutional frameworks and environments for applying their full potential and making
choices to live the life they desired. The consequence was and is still the brain drain and

\textsuperscript{191} Abouharb and Cingranelli, \textit{Human Rights and Structural Adjustment}, 30.
\textsuperscript{192} Sumner and Tribe, \textit{International Development Studies Theories and Methods in Research and Practice}, 10.
emigration of skilled workers.

During the last decades, bilateral and multilateral development donors have also been mainstreaming human rights into their international development activities. Some donors have an expressed agenda to promote human rights and directly integrate “human rights into country programs or existing aid interventions in different sectors or toward particular groups, such as children’s rights, women’s rights, the rights of minorities and indigenous peoples, health, education, and livelihoods.” Most commonly initiatives are undertaken through projects which aim at “the realization of specific rights, the protection of particular groups, or in support of human rights organizations.” In instances where human rights are not among the explicitly stated goals, they are implicitly promoted through governance projects which “indirectly address civil and political rights,” or increasingly through access to justice and anti-corruption projects. Human rights also direct development processes from being mere aggregate wealth accumulation mechanisms in society to activities that are more sensitive to the needs of individual members of society and transform the wealth into the richness of individual experiences.

On the relationship between development and human rights, Marks argues that at the theoretical level “both deal with advancing human well-being.” While development is concerned with “material conditions” and allocation of benefits of economic activities within society, human rights put restraints on power to “eliminat[e] … repressive and oppressive practices.” Integrating human rights into development is important to

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194 Ibid., xxxii.
empower people to address their needs, claim their rights, and combat discrimination and marginalization. By incorporating human rights in development, the structural roots of discrimination and marginalization are challenged and give rise to obligations to address those structural impediments. Human rights can not only contribute to the advancement of claims by individuals, but also serve “as indicators of progress toward their achievement and ultimately the objectives to be attained.” By placing humans at the centre of development, whether as an individual or a member of a collective, human rights bring forward their expectations of well-being as standards to which development should be aiming. These standards do not only concern access to and enjoyment of material resources, but also how society has to be structured to enable access to opportunities of importance for an individual and the responsibilities that governments have to meet those standards. Human rights also serve as a background for relations between recipient governments and donors and facilitate the shared view of what issues affect the realization of rights and actions to be undertaken to address them. Human rights are not only means for donors to contribute to development, but also expand their focus by including considerations of justice and political participation.

In the meantime, while discussing the role human rights plays in development, there should be an understanding that “[c]ertain human rights may be relevant to particular development processes and activities, but the relevance may not be generalized, nor involve all human rights.” The needs of people and their living

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198 Robinson, A Voice for Human Rights, 141.
conditions are the outcomes of local experiences; therefore, for human rights to contribute to development they have to be reflective of particular experiences. These experiences also encompass competition over what issues need to be prioritized and how those issues should be addressed and by whom. Therefore, as Pettit and Wheeler rightly point out,

While economic, social and political rights are indivisible in practice, this does not imply that there will be no conflicts between rights. Rights-based approaches, if reduced to technical and operational plans that ignore political context and power relations, will fail to be effective in promoting social justice in a sustainable way.\textsuperscript{202}

Western donors have provided trillions of dollars in foreign aid to developing countries with the aim to improve the lives of those most in need, but that mostly top-down approach with projects transplanting Western institutions has yet to produce declared expectations. International development efforts have been driven more by the perspectives of donors, shaped by their own development experiences and what they considered as the achievements of their societies, rather than by views of recipient societies and what they regard as an achievement. But, foreign aid should be provided with “the understanding that helping other countries is not the same as forcing them to adopt western institutions, modes of governance, dispute-resolution systems and rights.”\textsuperscript{203} Without sensitivity to the views of people and communities on development priorities and attitudes towards foreign aid, donors face alienating the very people they want to help. Uvin acknowledges that “at the level of daily practice people seem not to participate enthusiastically in the projects and programs implemented by aid agencies.” The priorities set by development practitioners and solutions to reach them do not


\textsuperscript{203} Posner, “The Case Against Human Rights.”
necessarily match with ones that local communities and people have in their minds. Even
if there is such divergence of expectations, when the discourse is dominated by Western
countries, “governments and people are willing to conform to dominant discourse,
especially if such conformity brings with it large flows of money and opportunities.”

The promotion and enjoyment of socio-economic rights is one such instance of
the divergence in opinions. Without questioning the importance of civil and political
rights for people at the local level, including for the poorest, there should be recognition
that violations of, and obstacles to enjoying, socio-economic rights can have a more
dramatic and immediate impact on the everyday life of the poor. Though there is an
increasing importance placed on the socio-economic rights within the dominant
development discourse, they are still “by far, the most frequently unfulfilled human
rights.” Pogge’s position is that their “underfulfillment also plays a major role in
explaining global deficits in civil and political human rights demanding democracy, due
process, and the rule of law.” People living in extreme poverty whose physical and
mental state are adversely affected by poor nutrition, illiteracy, and constant concern
about the well-being of their families do not pose either much threat nor are they
regarded as of political importance for the ruling elite. As a result, those who have the
duty to ensure that the poor are able to access and enjoy their rights “pay much less
attention to the interests of the poor than to the interests of agents more capable of
reciprocation, including foreign governments.”

When the poor face impediments for in making their voices heard and their
interests be reflected in polices, both national and international development efforts may

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204 Uvin, Human Rights and Development, 33.
205 Pogge, World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms, 97.
206 Ibid., 97–98.
be captured by more powerful groups prioritizing their own interest which do not necessarily benefit those most in need. The promotion of rights, such as social and economic rights, may also affect the material resource redistribution and be perceived to adversely impact the interests of groups which have more access to decision makers. The disproportionate power influence can also dilute initiatives that benefit the poor. Despite such constraints, the promotion of the social and economic rights of the poor, and ensuring access to those rights, have grown into major themes within international development assistance. Access to and guarantee of basic nutrition, education, health, and opportunities for providing livelihood for oneself and the family have come to be viewed as an integral part of the development process rather than its charitable outcome.
6 THE GEOMETRY OF HUMAN RIGHTS OR WHERE IS THE PLACE OF SOCIAL AND ECONOMIC RIGHTS

Yet another election was organized and conducted. Each time they entered voting booths with the hope that their votes would be counted, their voices would be heard and that the election would lead to changes that bring higher standards of living, better employment opportunities and progress in social protection. Millions of dollars were spent—both by the national government and international donors. The outcome was another rigged election and them questioning the utility of spending millions on elections with predetermined outcomes and asking whether money could have been better used on improving their social conditions. Was the right to vote more immediate than the right to have some basic economic and social protection? Should there be a question of choice? After casting their votes, they went back to their families some with no prospects of job, income, and economic and social stability, and with the only way out from that situation—the airport.

The focus on improving social and economic conditions, particularly for the poor, has been a prominent feature within both human rights and poverty reduction discourse. The enjoyment of social and economic rights (SER) is viewed as an important means, not only for improving the livelihood of people or merely satisfying their basic needs, but rather as contributing to their abilities to partake in society the way they deem important. Though SERs have been given heightened attention, including in international development debates, the debates still carry contentions from previous decades. This chapter outlines the progression of SERs through the analysis of norms and obligations developed within the United Nation’s fora and expert guidelines advanced in authoritative documents such as Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (ICCPR). The chapter examines the debates that contrast civil and political rights to SERs, including the contestation of fixed categorization of the rights into different groups and
the hierarchy among them. The chapter also addresses justicability claims for SERs, promotion and protection of SERs through the legal framework, and the role justice institutions can play.

The recognition of the need to address social and economic problems that hamper development, and the sentiment that advancements in social and economic conditions are important for stability and peace, have been among the declared core principles of the international community from the inception of the UN. Article 55 of the UN Charter states, “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations…the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems.”

The 1997 publication, CIDA’s Policy on Meeting Basic Needs, contended that “[b]asic rights are the foundation for meeting basic human needs.” The document elaborated that “[p]erforming the basic functions of life (the intake of adequate nutrition, maintenance of health, protection, reproduction, growth) and taking part in the socio-economic and cultural life of the community (learning, understanding, communicating, producing, exchanging) are considered to be people's most basic needs.”

Within international development discourse, states have been viewed as primary duty-bearers to further economic and social development and to undertake relevant reforms by garnering available resources.

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209 Charter of Economic Rights and Duties of States, Article 7.
However, efforts to advance social and economic rights as a part of a unified human rights agenda faced challenges from the initial steps of the agenda setting process and codification of the relevant norms. In 1947, a decision to draft a human rights treaty, Covenant, was made at the UN Commission on Human Rights. But the drafting process stretched for nearly twenty years and from the beginning of the process the Commission decided not to include social, economic and cultural rights in the Covenant. In its resolution, the UN General Assembly disagreed with the position by the Commission and asserted that “the Universal Declaration regards man as a person, to whom civic and political freedoms as well as economic, social and cultural rights indubitably belong.” The resolution asserted that without economic, social and cultural (ESC) rights a person could not be regarded as “the human person whom the Universal Declaration” held as a model of a free person and called to include ESC in the Covenant.

The Commission prepared a draft which included ESC rights but the unified draft faced objection from some states. The United Kingdom and the United States rejected equal consideration of ESC, and the reasoning was that they were not justiciable rights. The United Kingdom, United States, Belgium, India, and Uruguay submitted a resolution requesting that the UN General Assembly re-examine the decision of having all rights

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212 Whelan and Donnelly are critical of presenting the post-war discourse on the evolution of ESC rights through the prism of Western opposition to them. They consider arguments that “[t]he international norm of the interdependence and indivisibility of all human rights … as a compromise forced upon a resistant West…” to be a “myth” and contend that “perhaps the most perverse aspect of …[that] myth…[is] the claim that the West resisted or opposed including economic and social rights in the postwar global human rights regime.” Among reasoning behind the argument they mention “the centrality of economic and social rights in Allied wartime goals and the central Western role in drafting a Universal Declaration that prominently featured economic and social rights.” “See Whelan and Donnelly, “The West, Economic and Social Rights, and the Global Human Rights Regime,” 909–910.
listed in a single document.\footnote{Normand and Zaidi, \textit{Human Rights at the UN: The Political History of Universal Justice}, 205.} Despite the push of some countries to have a unified document, in 1952, the UN General Assembly adopted resolution 543 (VI), which tasked the Commission to draft two separate covenants of human rights.\footnote{United Nations, General Assembly, \textit{Resolution, A/RES/543 (VI), February 5, 1952}, 36.} It took more than a decade to draft and adopt the covenants in 1966 – \textit{International Covenant on Civil and Political Rights} and \textit{International Covenant on Economic, Social and Cultural Rights}. It took another decade for them to enter into force.

The split of rights into different categories with civil and political rights claimed to require the immediate realization and ESC rights being left to the discretion of states to progressively implement rekindled arguments on the nature of rights and corresponding obligations and criticisms of treating rights differently.\footnote{For a detailed discussion on the nature of rights refer to Sepúlveda, \textit{The Nature of the Obligations Under the International Covenant on Economic, Social, and Cultural Rights}.} Reflecting on the juxtaposition discourse between civil, political, and ESC rights, Raes posits that there is “no fundamental difference between … ethical basis … of [both] set[s] of rights.” The argument being that both are related and are “prerequisites for one another” and “[a]ll of these rights conceive human beings as persons, as the source of intentions and purposes, decisions and choices, as actors capable of choices they may be held responsible for and as capable of engaging and valuing certain forms of self development.”\footnote{Raes, “The Philosophical Basis of Social, Economic and Cultural Rights,” 44.} Within the discourse on differences between the two sets of rights, the proponents of the approach argue that civil and political rights are individualistic and ECS rights are collectivist because they focus on the group. Addressing this argument Raes asserts that “all human rights are rights of individuals” because ESC rights are rights which belong to “individuals within particular communities.” The fact rights belong to individuals and
individuals are at the centre of human rights discourse does not make them “individualistic.” For example, political rights, such as freedom of assembly or association are commonly exercised with a group.\textsuperscript{217}

Another conventional argument is that ESC rights put positive obligations,\textsuperscript{218} promotion or protective actions, upon duty-bearers\textsuperscript{219} and “socio-economic rights advance human rights deep into the sphere of allocation of scarce resources” while CP rights assume a negative-preventive stance.\textsuperscript{220} However, this conventional dichotomy has been challenged because the realization of certain negative rights still requires actions of duty-bearers.\textsuperscript{221} The organization of elections in developing countries, including with the substantial financial and technical support of foreign state donors, highlights the challenge of categorizing rights as positive and negative. Not infrequently, even people in developing countries where elections tend to be marred with violations and outcomes that are far from fair, seeing the organization of elections thorough the state’s “positive” obligation raises questions of the utility of spending millions on elections, believing that the money could have been better spent if used to improve their social and economic condition. But the UNDP stresses that “it is important to understand that both sets of rights have positive and negative dimensions, and that the language that has evolved to describe these different dimensions now includes state obligations to respect, protect, and

\begin{itemize}
  \item \textsuperscript{217} Ibid.
  \item \textsuperscript{218} Orend frames the distinction between “positive” and “negative” rights in the following manner, “A negative right can be defined as one which imposes a correlative duty which calls only for inaction on the part of the duty-bearer, be it a person or institution. The duty-bearer can fulfill his duty merely by refraining from acting … A positive right, by contrast, can be defined as one which imposes a correlative duty which does call for action on the part of the duty-bearer.” While providing this definition he also acknowledges that there are disagreements with such a definition. Orend, \textit{Human Rights: Concept and Context}, 31–32.
  \item \textsuperscript{219} Sengupta, “On the Theory and Practice of the Right to Development,” 859.
  \item \textsuperscript{220} Pedersen and Murray, “Examining Critical Perspectives on Human Rights: An Introduction,” 11.
\end{itemize}
The Masstricht Guidelines on Violations of Economic, Social and Cultural Rights place on states, as primary duty-bearers, obligations to respect, protect and fulfill ESC rights and declares that “[f]ailure to perform any one of these three obligations constitutes a violation of such rights.” The obligation to respect denotes that states do not interfere with the enjoyment of ESC rights. The obligation to protect requires states to prevent, including preventing third parties, from violating these rights. For example, “the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work.”

Ssenyonjo argues that the obligation to protect also refers to “the State’s obligation to exercise due diligence not to violate human rights in other States and not to permit non-State actors within the State’s jurisdiction to violate human rights in other States.” The obligation to fulfil implies that states have to take appropriate legislative, administrative, budgetary, judicial actions and other measures towards the full realization of ESC rights.

Article 2(1) of ICESCR stipulates progressive full realization of ESC, including through enactment of laws, with states acting “individually and through international assistance and co-operation.” The UN Office of the High Commissioner for Human Rights (UN OHCHR) interprets “progressive realization” as recognition that “some rights may have to be given priority over others, because not all rights can be fulfilled at the same time or at the same place.” It also recognizes, however, that there are core

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obligations that states have “derived from the rights to life, food and health, to ensure that all individuals within their jurisdictions are free from starvation. Core obligations must be treated as binding constraints; they cannot be traded off.”\footnote{Office of the United Nations High Commissioner for Human Rights, “Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation,” 12.} Another dimension is what Darrow and Tomas emphasize—“it is important to recognize that not all human rights are permitted to be realized only progressively.”\footnote{Darrow and Tomas, “Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation,” 514.} Jorgensen and Serrano-Berhet add that “[a]lthough economic, social, and cultural rights often are realized progressively, guarantees imply immediate obligations.”\footnote{Jorgensen and Serrano-Berhet, “Comprehensive Social Policy for Inclusive and Sustainable Globalization,” 64.}

UN OHCHR lists following obligations which are of immediate effect:

- The obligation not to discriminate between different groups of people in the realization of the rights in question;
- The obligation to take steps (including devising specific strategies and programmes) targeted deliberately towards the full realization of the rights in question; and
- The obligation to monitor progress in the realization of human rights. Accessible mechanisms of redress should be available where rights are violated.\footnote{Office of the United Nations High Commissioner for Human Rights, “Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation,” 3.}

States are also immediately bound by the obligation to not discriminate, which implies immediate steps “to identify the most disadvantaged or vulnerable with respect to the proposed policy measures, with data disaggregated as far as possible according to the prohibited grounds of discrimination reflected in international human rights instruments.”\footnote{Ibid., 12.} The ICESCR ties the implementation of economic and social rights not only with progressive realization but also with availability of resources, which raises the question how feasible it is for developing countries with limited resources to ensure the

enjoyment of social and economic rights. Is it true that “even with the best of efforts, it may not be feasible to realize many of the alleged economic and social rights for all.”

In addressing such arguments, Sen underscores that “if feasibility were a necessary condition for people to have any rights, then not just social and economic rights, but all rights—even the right to liberty—would be nonsensical, given the infeasibility of ensuring the life and liberty of all against transgression.”

Prima facie it may appear that for an individual to enjoy life and liberties it is sufficient that there is no interference in their enjoyment, thus no positive action from the state, requiring resources, is needed to protect those rights. However, in reality there are multiple state institutions which are “positively” involved in ensuring that liberties and freedoms are enjoyed. For example, police forces ensure that the right of life and security of a person is guaranteed against interference by other individuals and groups. There are more state institutions which could be listed as having positive obligations to ensure that individuals enjoy rights and freedoms argued to raise only “negative” non-interference obligations. For these institutions to exist and effectively function, substantial financial, material, and human resources are allocated. Therefore, if the feasibility argument connected with the availability of resources were to be accepted, spending resources on such institutions as judiciary, policing, constitutional and legal reforms that are needed to guarantee life and liberties of a person might look even less justifiable in conditions where people die of diseases and hunger and hardly have any possessions or shelter to be protected by those institutions.

The Limburg Principles on the Implementation of the International Covenant on

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233 Ibid., 384.
Economic, Social and Cultural Rights in addressing the wording in ICECSR “to the maximum of its available resources” indicated that states “are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.” Nevertheless, the Limburg Principles also acknowledge there might be factors beyond states’ “reasonable control [that] may adversely affect its capacity to implement particular rights.” Khan also calls to overcome interpretation of progressive realization as a denial of rights in the Covenant by “acknowledge[ing] that the capacity of the state to deliver on these rights is an element to be taken into account when judging whether it has complied with its obligations.” The Limburg Principles “take into account the fact that some constraints may be beyond a single State’s capacity to address” and interpret “[i]ts available resources' refer[ing] to both the resources within a State and those available from the international community through international co-operation and assistance.”

Kuruvilla et al. note that “[t]he principles of the ‘margin of discretion’ and of the ‘progressive realization’ of rights focus attention on nationally-owned efforts to improve the enjoyment of human rights of citizens and on international responsibility to support these efforts.” International donor assistance and the provision of resources to nationally driven efforts in developing countries to address failures in the enjoyment of SERs have been an important contribution to ensuring the progressive realization of the

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235 Ibid., para. 71.
rights. Projects have been financed and implemented to address the issues of hunger, creation of employment opportunities, tenure security (like right to housing and land possession which is also used to access food), dealing with health issues (maternal and child health, HIV/AIDS, communicable diseases, etc.), and other initiatives aimed at advancing the livelihood and well-being of people. Such assistance of donors is presented as a volunteer commitment rather a positive obligation to contribute to local initiatives to ensure progressive realization of SERs; nevertheless, the donor assistance is an important part of nationally undertaken obligations to guarantee these rights. But there is also criticism that donor assistance is a top-down push of polices which may not be sensitive to a local context and that they are templates of ideals shaped by visions and experiences from donors’ own historical development and their national interests. Sensitivity to the local context and reflection of local interests in donor projects harnesses local ownership of donor financed efforts and addresses the most salient issues faced by communities (not the ones that are perceived by donors to be of importance for communities). Such an approach ensures a better utilization of local capacities. The report by the Secretary-General of UNCTAD recognizes the importance of the local context in realising the aspirations held by “[m]ost people in most countries … a decent job, a secure home, a safe environment, a better future for their children, and the right to voice their opinion on how the larger community goes about achieving these goals.”\textsuperscript{240} It asserts that “[t]here is no universal blueprint for achieving these ends, and the institutions and policies that are required can only be fashioned around the matrix of local capacities, conditions and

\textsuperscript{240} The United Nations Conference on Trade and Development (UNCTAD)
While there is acceptance of the importance of social and economic rights both for the well-being of individuals and development, there is still an ongoing debate on whether those rights raise claims of violations that can be rectified by judiciary systems. Those who oppose adjudication of social and economic rights argue that they are “too vague, costly, and institutionally complex for the judiciary to implement.” However, the multiplicity of court cases in regards to CP rights, particularly those which are concerned with the interpretation of the nature and scope of the right(s) under consideration, is an indication that CPs are not as explicit as they are claimed to be. Even the right to life, when put in the context of the discussion of euthanasia and withdrawal of life support when a person in vegetative condition, shows that such a basic right is open to interpretations. Freedom of religion has not only been among the most contested concepts not only involving interpretations of how it should be balanced against other rights, but even what constitutes “religion” and which practices are “religious” ones. The status of a religion can also trigger financial consequences either through tax exemptions or impose taxation on people, as is the case in some European countries, or raise the question of which “religions” are entitled to support in countries where there are state financial allocations for religious institutions. Linguistic rights of diverse groups,

243 In its 2015 decision on euthanasia, the Supreme Court of Canada elaborates, “The right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly. Here, the prohibition [euthanasia] deprives some individuals of life, as it has the effect of forcing some individuals to take their own lives prematurely, for fear that they would be incapable of doing so when they reached the point where suffering was intolerable.” It also argues that the prohibition of euthanasia for those who suffer “grievous and irremediable medical condition” interferes with their liberty by depriving them the right to make decisions on their “bodily integrity”. Carter v. Canada (Attorney General) (2015 SCC 5, [2015] 1 S.C.R. 331), 335 (2015). For more interpretations see “End of Life and the European Convention on Human Rights. Factsheet.”
particularly when they are legislated official languages, require substantial financial and human resources to guarantee and ensure their enjoyment. Therefore, if the vagueness or financial implications or complexities were the arguments against ESRs to also be guaranteed and protected by judiciary, that approach would assume that CP rights are simple, straightforward, and require no or insignificant financial input. Such an assumption is not accurate.

Another consideration invoked in the opposition of the adjudication of SERs is that the implementation of SERs “requires allocation of resources among competing objectives of social policy, and other forms of affirmative action, that should be left to the discretion of politically accountable public officials.” While ensuring the enjoyment of SERs requires decisions on allocation of resources, including through costing of proposed priorities and initiatives in state budgets, political agendas and processes are also prone to being skewed towards the interests of those who have power and the capacity to have their voices counted. The poor and marginalized have far fewer avenues to influence political processes and public officials, or to have their needs reflected in policies. Therefore, unless the judiciary rectifies discrimination faced by groups which do not have political clout to have their needs taken into account in public policy making, these groups might wait perpetually to enjoy even basic SERs and have their basic needs satisfied. But Osiatyński adopts a position that SER can be better implemented by “shifting the emphasis from social and economic rights to social needs and treating rights as one of a number of instruments that help to satisfy such needs … In short, a needs-based approach to social and economic rights assumes that all people have valid

social and economic needs that should not be dismissed."\textsuperscript{245} Though, as Ferraz illustrates, seeing through “needs” lenses still leaves the challenge of how they relate to rights – “[t]he crucial challenge… is … the justification of rights to these needs, i.e. why one should have rights that impose duties on others to provide them with the resources required for the satisfaction of these needs.”\textsuperscript{246}

On the other side of the adjudication debate are those who argue that it is the erroneous rigid categorization of civil and political rights and SERs that creates obstacles for when interpreting the latter within a judicial framework.\textsuperscript{247} In a 2008 speech to the European Court of Human Rights, High Commissioner for Human Rights Louise Arbour noted,

\begin{quote}
\ldots a final issue that has long been close to my heart is the effort to bring economic, social and cultural rights back into what should be their natural environment - the courts. The unnatural cleavage that took place decades ago when the full, interconnected span of rights set out in the Universal Declaration of Human Rights were split into supposedly separate collections of civil and political rights on the one hand and economic, social and cultural rights on the other has done great damage in erecting quite false perceptions of hierarchies of rights. In the area of justiciability of rights, particularly, the notion of economic, social and cultural rights as essentially aspirational, in contrast to the “hard law” civil and political rights, has proved especially difficult to undo.\textsuperscript{248}
\end{quote}

In a similar vein, the UN Committee on Economic, Social and Cultural Rights (UN CESCR) in its General Comment 9, while addressing the issue of judicial remedies of violations of ESC rights stated, “In relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential. Regrettably, the

\textsuperscript{246} Ferraz, “Poverty and Human Rights,” 589.
contrary assumption is too often made in relation to economic, social and cultural rights. This discrepancy is not warranted either by the nature of the rights or by the relevant Covenant provisions.”

But the UN CESCR document also addressed the scepticism towards the adjudication of SERs by pointing out the impact of such an approach to vulnerable groups in the society. The document, while responding to arguments that decisions that deal with resource allocation should be made by “political authorities rather than the courts,” stresses that courts are already adjudicating on issues with resource consequences. The document emphasizes that confining SERs to a category which places them outside of courts conflicts with the principle of the indivisibility and interdependence of rights – CP rights and SERs. Such an approach “would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.”

In recent decades, guaranteeing the enjoyment of SERs by vulnerable and disadvantaged groups, and the implementation of SERs through judicial decisions have both been gaining prominence “on grounds that are often relevant to development.” In some cases states have either needed to justify their acts or to follow due process in addressing issues if those acts negatively affected “access to basic services or disproportionately harm[ed] particular individuals or groups.”

Gauri and Gloppen advise when weighing on the pros and cons of litigation of SERs to remember that it is “a diverse phenomenon, both in substance and form.” Both the participants and form of litigation may vary. Litigation by individuals and groups is driven by the pursuit to

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250 Ibid.

improve their situation and address their needs. The litigation of social and economic rights by organizations and other actors “on behalf of others, usually disadvantaged groups in society” is, nevertheless, also “a means to achieve policy change.” Moreover, if the litigation of SERs process is positioned within “a broader mobilization process” it may not only raise the visibility of a case, but also further a successful outcome of the case and “a favorable judgment [to be] implemented.” In addition, for the rights to “create and allocate obligations,” they depend also on effective and reliable judicial institutions. Inefficient and corrupt institutions undermine the ability to claim rights.

Professional and independent judges play an important role in developing jurisprudence on SERs. To efficiently perform the role, UN CESCR General Comment 9 proposes that judges’ training reflect the understanding of “justiciability of the Covenant [ICESCR].” The efforts, according to the document, should also include raising awareness in courts and tribunals on the essence and implications of ICESCR, as well as on the importance of judicial remedies in the fulfillment of commitments undertaken under ICESCR. In the meantime, there should be an acknowledgment that the ability of courts to deliver judgments on SERs is significantly affected by “their independence from

252 Gauri and Gloppen, “Human Rights-Based Approaches to Development,” 497.
253 Ibid., 499.
254 James, “Realizing Rights as Enforceable Claims,” 81.
255 Gloppen, “Social Rights Litigation as Transformation: South African Perspectives,” 162. As an example of CIDA’s contribution to adjudication of SERs, the report to parliament indicates the landmark case in South Africa- Grootoomb case. The report credits the Constitutional and Legal Development project with changing laws and “a number of interpretations on constitutional matters” that contributed to protecting the rights of disadvantaged people. In the Grootoomb case the “court granted an order to the government to provide shelter to children and, on a derivative basis, to their parents with regards to a group of 900 homeless adults and children that had been evicted from municipal land.” Canadian International Development Agency, “Departmental Performance Report 2000–2001,” 23.
the state and dominant social interest, and on the financial resources at their disposal;257 and the capability of judges.258 However, seeking and providing remedy when SERs are infringed does not necessarily imply a judicial remedy. It also refers to administrative remedies that are “accessible, affordable, timely and effective.” But even with recognition that judicial remedies are not the only way to achieve the realization of rights, it still held that a judicial remedy is crucial to achieve rights listed in ICESCR; “judicial remedies are necessary.”259 As Klein recaps, “[t]here is no single comprehensive theory of the judicial role in enforcement even among the SER-friendly. Those who favour adjudication of SERs agree that courts ought to share the task of defining and enforcing the rights with government and other actors, but there is little agreement on how.”260 She also underscores that even those who are proponents of the judicial enforcement of SERs recognize that “their full implementation threatens to strain judicial capacities and push boundaries of judicial legitimacy.”261

Such arguments underscore the complexities and challenges that the adjudication of SERs can face. But they do not take into account that, as human rights are indivisible and interdependent, judicial remedies for SERs will be still sought through reframing violations of SERs as violations of CP rights (although with varying degrees of success).262 Therefore, the reluctance to adjudicate SERs is more homage to the

258 Ibid., 157.
261 Ibid.
262 For example, the decision of the Supreme Court of Canada on whether the prohibition in Quebec to obtain private medical insurance for “services already available under Quebec’s public health care plan” when there are long waiting times was in violation of rights enshrined in the Canadian Charter of Rights and Freedoms elaborated, “Where lack of timely health care can result in death, the s. 7 protection of life is
traditional categorization of rights and is also driven by a concern that judicial decisions might be perceived as dictating the decision making on resource allocations within the society over elected officials who are delegated through elections. Adjudicating on SERs while paraphrasing them as CP rights may make them be perceived as “legitimate,” as well as impartial and less intrusive into the functions of public officials. It does not, however, change the fact that the outcomes of such adjudication still may enter the realm of issues that the opponents of adjudication of SERs claim make such adjudication impractical. At the end of the day, the opposition to the justiciability of SERs may be matter of semantics rather than substance.

The question remains however, paraphrasing Gloppen’s question which addressed social rights to include economic ones, is the litigation worthwhile as a strategy to fulfill social and economic rights? SERs for a long time served as catalysis for the mobilization of different groups, to be defined in policies which reflected the political aspirations rather than rights to be adjudicated in courts. VeneKlasen et al. point out that “[t]he legalistic approach to rights all too often focuses on ‘what-the-law-says’ and downplays the dynamic aspect of the political process that shapes the extent to which rights are enforced and realised in people’s daily lives.” In Yamin’s opinion litigation and “court centric strategies to address ESC rights … resolves relatively narrow issues … [while] engaged; where it can result in serious psychological and physical suffering, the s. 7 protection of security of the person is triggered. In this case, the government has prohibited private health insurance that would permit ordinary Quebeckers to access private health care while failing to deliver health care in a reasonable manner, thereby increasing the risk of complications and death. In so doing, it has interfered with the interests protected by s. 7 of the Canadian Charter.” Chaoulli v. Quebec (Attorney General), [2005] 1 S.C.R. 791, 2005 SCC 35, 795 (2005). See also (right to food) Knuth and Vidar, Constitutional and Legal Protection of the Right to Food around the World, 14. And (right to housing) Supreme Court of Canada Leave Materials on Advocacy Centre for Tenants Ontario Website.

underlying structural factors are generally left unaddressed.”

Onazi’s criticism of the justiciability approach in enforcing SERs is that the “discourse does not consider other forms for participation apart from courts for the purpose of securing economic and social rights.” He adds,

To be clear, the objective, however, is not to dismiss the importance of justiciability. From the point of view of the poor, the aspiration for justiciable economic and social rights is more important today that it ever has before. But the point that I wish to highlight is that justiciability discourse does indeed stall or obscure much needed work on alternative ways in which economic and social rights can be provided.

In the discourse of justiciability, rights which cannot be legally enforced are treated “as social aspirations or statements of objectives.” Whelan and Donnelly propose that “non-justiciability is often presented as a defect of rights in general and of economic and social rights in particular” and stress that “access to courts” should not be regarded as a “measure of social (recognition of) value” of rights. They note that “[a]lthough judicial remedies do usually enhance the value of a right to a right-holder, justiciability does not exhaust the essential functions of rights and justiciable rights are not the only kind of rights.”

Moreover, protection of rights does not only depend on the duty of institutions to secure and enforce them, but individuals too have “secondary responsibility for doing their part to ensure that the social institutions they share have adequate resources to provide such protection.” Orend details that the “secondary responsibility of requires of all persons some degree of social engagement, political participation, and reasonable

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266 Onazi, Human Rights from Community, 6.
sharing of the tax burden require to fund such institutions.”  

However, even individuals have direct, legally prescribed obligations to satisfy SERs of others, such as dependants and their immediate family members and failure to provide the necessities of life (e.g. food, housing, health care, etc) may lead to criminal convictions.  

Even with the ongoing debate on the merits of codifying SERs as justiciable rights and the contribution that justice institutions can have in protecting and guaranteeing the enjoyment, of those rights, as well as to the development in general, it is not practical to overlook how laws and justice institutions have been playing an increasing role in regulating interactions within societies. Laws and justice institutions, including courts, are presented as being among the essential and core building structures that ensure the successful functioning of societies, with international development actors spending millions on projects in support and reform of those institutions. Within reform initiatives, justice and access to justice have become the catchwords associated with efforts rationalized as contributing to improving the conditions of the poor and marginalized.

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270 Ibid.
271 See Canada, Department of Justice, *Family Violence Initiative.*
IN CONSTANT MOTION OR WHAT IS THERE FOR JUSTICE

The white landscape of a snowy city was dotted by the rows of people on streets selling items varying from fuel wood, food, clothing, shoes and newspapers. With not much employment opportunities available, vending in streets became the only opportunity to provide for at least basic necessities of families. The constant motion was not only due to the interaction with customers, but also with the need to not freeze while standing for hours next to stalls. Holding warm cups of coffee with hands purple from cold was not of much help. But the weather was not the main vulnerability factor they faced. It was demands to pay informal “fees” for the “place” and law enforcement officials randomly and arbitrarily “enforcing” the “laws” that exacerbated the feeling of injustice, particularly faced with challenges to access justice to fend off what felt as an oppression exerted in the name of “laws.”

Assistance to national legal reforms and building the capacities of justice institutions have been among key international development efforts financed by donors. As poverty is a central concern of the international development agenda, activities supporting reforms in the justice sector are also expected to contribute to the efforts which address the issues leading to and resulting from poverty. The activities that target not only institutions but also individuals, particularly the poor, have been gaining prominence through legal empowerment and access to justice initiatives.

Justice institutions and access to justice are commonly referred terms in such initiatives, while there is less attention paid what “justice” actually implies. This chapter examines the complexities of interpreting what is justice; the term that encompasses diverse expectations about processes, outcomes, and institutions within the society. The chapter also focuses on development efforts aimed at the reform of justice institutions and legal reforms (top-down), their role in development, poverty reduction, and impact on the poor, as well as lessons learned from those initiatives, including the criticism of legal transplantation. Bottom-up approaches, the legal empowerment of the poor and
access to justice development initiatives, have been advanced to overcome the criticism of state and institution centric, top-down reform initiatives. This chapter addresses what such bottom-up approaches entail and their role in development.

Within development practice, access to justice and justice sector reform projects are positioned to be among initiatives that can contribute to the establishment of the context that enables people to thrive. But before proceeding with the discussion of access to justice we need, quoting Rhode, to “begin … with what we mean by ‘justice.”** In our quest for justice “we want to order and explain our intuitive beliefs about what fairness requires in different situations—beliefs that are at least to some degree uncertain and conflicting, whether within each person’s thinking, or between different people.”**

Human rights are positioned and presented as vocabulary to articulate claims for justice, including for “achieving justice outside the clash of political interest.”** Justice is seen as expansion of “equity, sustain[ing] outcomes across time, respect[ing] human rights.”** But Kennedy highlights issues with such an approach by criticizing the international human rights movement which “often acts as if it knows what justice means, always and for everyone—all you need to do is adopt, implement, interpret these rights.” He argues that “justice is not like that. It must be built by people each time, struggled for, imagined in new ways.”**

Addressing the perpetual shifts in the concept of justice, Engels wrote,

…this [ideal of justice, eternal justice] is but the ideologised glorified, expression of the existing economic relation… The justice of the Greeks and Romans held slavery to be just; the justice of the bourgeois of 1789 demanded the abolition of feudalism on the ground that it was unjust … The conception of eternal justice,

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therefore, varies not only with time and place, but also with the persons concerned…

But the concept of justice as expectations from societal process and outcomes not only varies from the group perspective (culture, ethnicity, religion, country, etc.), it is also reflective of diversity of personal beliefs of each individual. Even individual beliefs and expectations change with age and experience. As a child, for me, justice was that our parents provided me with exactly the same items my sibling had. But as I grew up I began to perceive justice as fair treatment and our parents providing us with the same opportunities—but which did not necessary result in the same outcomes because we were allowed to make different choices and we made those choices. The change in the individual conception of justice not only changed with the age but, most importantly, it transformed as a result of living and working in different countries and cultures. This transformation is a process of accommodating those values from diverse cultures that are perceived as enabling the optimum functioning of the society and rejecting ones that are regarded as contributing to the dysfunctional processes and disparity in the outcomes.

Groups and societies too morph and shape the concept of justice based on more than just the evolution of local experiences of what the ideal society is. It is also an outcome of cross-pollination and contestations of notions of “ideal societies” across groups and societies. It is a process of incorporating the characteristics of the model of society perceived to be closest to the ideal—even if that model is from another society—and discarding characteristics from their own society if they are seen to be oppressive and flawed. It is a quest for the essence of society. In Kolm’s opinion, “[f]acing the question

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of justice is in fact a condition for the very existence of a society.” He argues that “in all societies the most elaborate thinking is notably applied to solving, dissolving or displacing the question of justice. The modern world is too advanced to accept displacement into the hands of an autocrat or into the exclusive obedience to a tradition.”278 As Taylor points out, “[t]o an academic social scientist, justice is a nebulous but far from negligible concept that underlies the operating system of individuals, families, tribes, communities, and nations both separately and collectively.”279

The interpretation of justice varies from “political and social contexts” and as a political term justice “is more confusing than helpful for a clear conceptualization.”280 As is the case with the call to “establish a ‘just world’ without defining what the standard of this action must be in order to qualify as just and what exactly the notion of a ‘just world’ actually might mean conceptually.”281 In the interview for Politico magazine, the philosopher Michael Sandel provided the following summary of the word justice,

… the simplest way of understanding justice is giving people what they deserve. This idea goes back to Aristotle. The real difficulty begins with figuring out who deserves what and why.

Broadly speaking I think there are three answers to the question ‘What is justice?’ There’s the utilitarian answer which says justice means maximising happiness. Answer number two, given by Immanuel Kant, which says that justice is a matter of respecting human dignity, certain categorical duties and rights. And the third answer is the answer that Aristotle gave: justice means giving people what they deserve, where what they deserve depends on their virtue and depends on sorting out hard questions about the good life.282

278 Kolm, Modern Theories of Justice, 4.
279 Taylor, “Justice as a Basic Human Need,” 211.
281 Ibid.
Brück defines justice as “equal opportunity for participation in all aspects of life, personal and social.”

Valentini describes justice as “a set of principles whose function is to distribute entitlements to valuable social goods broadly construed- including liberties, opportunities, income and wealth- among a plurality of agents competing over them…[which] they need to pursue their ends and goals.”

As a political conception, justice according to Nagel “requires a collectively imposed social framework, enacted in the name of all those governed by it” in which authority is accepted even if there is a disagreement “with the substance of its decision.”

It is related “only to a form of organization that claims political legitimacy and the right to impose decisions by force.”

According to Valentini’s presentation of the liberal perspective, institutions are just if “under circumstances of reasonable disagreement about justice” they enable “respect each person’s basic rights, and allow competing reasonable accounts of justice to confront each other fairly, through broadly democratic procedures.”

For Rawls “[j]ustice is to be understood in its customary sense as representing but one of the many virtues of social institutions” but it should “not be confused with an all-inclusive version of a good society; it is only one part of any such conceptions.” He emphasizes the need “to distinguish that sense of equality which is an aspect of justice from that sense of equality which belongs to a more comprehensive social ideal.”

Rawls formulates justice in two principles:

284 Valentini, “Justice, Disagreement and Democracy,” 179.
286 Ibid., 83.
287 Valentini, “Assessing the Global Order: Justice, Legitimacy, or Political Justice?,” 601.
…first, each person participating in practice, or affected by it, has an equal right to the most extensive liberty compatible with a like liberty for all; second, inequalities are arbitrary unless it is reasonable to expect that they will work out for everyone’s advantage, and provided the positions and offices to which they attach, or from which they may be gained, are open to all. These principles express justice as a complex of three ideas: liberty, equality, and reward for services contributing to the common good.\textsuperscript{289}

Elaborating on the second principle, Rawls draws attention to the idea that inequality is permissible only if “there is reason to believe that practice with the inequality, or resulting in it, will work for the advantage of every party engaged in it.” He stresses that his second principle assumes that “every party must gain from the inequality.”\textsuperscript{290}

Koller categorizes Rawl’s first principle as the description of the “society’s political system” and “the distribution of political basic rights and basic liberties” while the second principle is about the “society’s socio-economic system,” which deals with the issue of “the distribution of social and economic primary goods.”\textsuperscript{291} Within the liberal conception of justice, “institutions establish entitlements” that allow everybody to pursue their goals “without preventing others from doing the same.”\textsuperscript{292} In the context of socio-economic justice, institutions are just “when they bring about just outcomes and rectify existing inequalities” and the “individual obligations of justice” is to contribute to “working of just institutions.”\textsuperscript{293} Sen acknowledges that institutions are given an important role in the discourse of justice, but he contends that instead of “treating

\textsuperscript{289} Ibid., 165–166.
\textsuperscript{290} Ibid., 167.
\textsuperscript{291} Koller, “The Principles of Justice,” 40.
\textsuperscript{292} Valentini, “Assessing the Global Order: Justice, Legitimacy, or Political Justice?,” 595.
\textsuperscript{293} Pellegrino, “Beneficence, Justice and Demandingness: A Criticism of the Main Mitigation Strategies,” 98.
institutions as themselves manifestations of justice” it is preferable “to seek institutions that *promote* justice.””

There is recognition among development practitioners that legal and regulatory systems play an important role in development and that “judicial systems shape the rules and structures that influence the opportunities available to different segments of the population.” There have also been calls for “concepts of law, regulation, rules systems and justice … to be infused more broadly into development programming.” Since the 1960s, there have been investments made, including financial, in reforming justice systems in developing countries with the aim to alleviate poverty. The main assumption in the initial projects was that “law and justice matter in development because they can

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295 The UNESCO publication on poverty and human rights treats “poverty and inequality … [as interconnected], and [that] current injustices reflect past injustices. [Therefore], … [there is] a moral responsibility and a legal obligation regarding poverty and the poor.” (Sané, “Foreword,” xi.) There are claims that rich countries have to relocate resources to developing countries not as a matter of charity but rather remedial for past wrongs inflicted by colonialism, similar to domestic claims of indigenous populations of courtiers which are the outcome of colonialism. (Opeskin, “The Moral Foundations of Foreign Aid,” 26.) But is there anything that “world's poor [is] owed as a matter of justice?” (Miller, *National Responsibility and Global Justice*, 248.) Miller argues that there are cases when rich courtiers have “[d]uties of justice [as] enforceable” ones towards the poor in the world rather than “humanitarian duties.” Among the reasons that might trigger such a duty of justice is “as a result of past injustice that has left its victims in continuing poverty.” (Ibid., 248–249.) Though, the rectification of past injustice depends on establishing “which effects of historically unjust acts and policies demand redress and which do not.” (Ibid., 250.) But generally, the attitude in the West is that past exploitation and wrongs do not provide sufficient bases to claims to remedy justices, especially there is “the scientific difficulty of proving a claim for corrective justice, since it requires a counterfactual assessment of how the state would have fare had the relevant wrong not been committed.” (Opeskin, “The Moral Foundations of Foreign Aid,” 27. See also Kukathas, “Responsibility for Past Injustice: How to Shift the Burden,” 169.) Another issue is how and to whom to attribute the responsibilities and blame for past injustices, especially when it concerns the descendants. (Ibid., 166.) The concern those who are assigned the responsibility have is “why … [they are] … made to compensate victims…[especially this cannot be done by asserting that … [they are] … simply … member[s] of a category of persons who ought to be held responsible.” (Ibid., 169.) The issue of remedial justice for the past injustices becomes even more complicated because intermarriages between descendants of oppressed and oppressors and challenges in allocating blame when descendants are of mixed ancestry. (Ibid., 170.)

297 Ibid., 22.
help either to ‘free’ the market or to hold it under the control of the state.” The model promoted in developing countries emulates Western legal frameworks “as they were key for economic growth, and economic growth is the recipe for eradicating poverty.” It was also expected that “there would be spillover from an effective and instrumental orientation in economic law to ‘democracy values’ such as access to justice and protection of civil rights.”

The anticipated outcome that growth would automatically contribute to democracy and the protection of human rights did not happen: “human rights had to be pursued as an independent goal.” Subsequently, there was an increased focus on domestic institutions and the promotion of greater judicial independence, constitutional guarantees, and access to justice. This shift “led to ideas about the construction of ‘the rule of law’” and understanding that substantial efforts were required “to dismantle older systems” and “to create the new culture and institutions needed to protect democratic freedoms.” Important legal and judicial institutions such as courts, ministries of justice, bar associations, law schools become the focus of reform initiatives. Judicial reforms address improvements in the performance of judicial institutions and training “as well as an enhanced focus on process, procedure, and access to justice; they may involve the supply side reforms, as … reforms to judicial institutions, or demand side to access to

298 Tomas, “Reforms That Benefit Poor People- Practical Solutions and Dilemmas of Rights-Based Approaches to Legal and Justice Reform,” 171.
299 Ibid.
301 Ibid., 84.
302 Ibid.
justice reforms.”

Elaborating more on judicial reforms, Rittich notes that “judicial reforms appear to be driven by efforts to improve the position of marginalized groups.” Though there has been an increase in access to justice projects, the support for reforms still mostly focuses on addressing the issues at the supply-side. The initiatives mostly relate to “the old goals of facilitating transactions and securing property and contract rights.” The reforms have been concerned with the rule of law and a stable investment environment, as well as with institutions and judges capable of litigating on property issues pertaining to property and contract rights. In the Governance for the Future publication it is contended that “rights can only be guaranteed by the State,” therefore, strengthening the judiciary system which “is the guardian of the constitution and plays a key function in building the rule of law, protecting human rights and enabling economic growth” should be among important objectives in developing countries. With the executive and legislative branches the judiciary equally contributes to good governance, and the judiciary is essential to hold the other state institutions fully accountable “under the law, for their activities and decisions.” Independent judiciaries contribute to the perception of the public “as an impartial, accessible body that strives to protect their rights.”

Within a human rights discourse, it is courts, as a part of the formal justice system, that are mostly viewed as mechanisms to protect and enforce rights, including in

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305 Ibid., 222.
306 Governance for the Future: Democracy and Development in the Least Developed Countries, 133.
307 Welch, Nuru, and Hoover, Governance for the Future: Democracy and Development in the Least Developed Countries, 134.
308 Ibid., 135.
litigations against authorities to hold them accountable.\textsuperscript{309} Courts provide protection of human rights by applying national and, depending how international legal principles and instruments relate to the national system, international human rights standards. They play a role in interpreting and advancing human rights standards and when “the national statutory framework is lacking basic standards for rights protection, a progressive judiciary can expand domestic normative protection to protect disadvantaged groups.”\textsuperscript{310} There also has been growing trend of using courts for bringing forth cases on social and economic rights. Litigation on social and economic rights is not only a means for individuals to remedy the violation of their rights and improve their condition, it is “also a strategy pursued by actors and organizations on behalf of others, usually disadvantaged groups in society, as a means to achieve policy change.”\textsuperscript{311}

But judicial enforcement of rights is also associated with expensive and lengthy litigations which can either put a significant burden on the destitute, or make them too costly even to initiate the case. Therefore “[l]itigation is sometimes perceived to be an inappropriately punitive means of holding public authorities and policymakers to account, or to privilege individual claims over broader social interests.”\textsuperscript{312} In countries, especially the least developed ones, where courts operate in state official language which might be different from the language spoken by the majority of the population, or a significant part of it, access to and usage of the court can be a challenge. Also, in such countries the functioning of the formal justice is hampered by institutional weakness and

\textsuperscript{311} Gauri and Gloppen, “Human Rights-Based Approaches to Development,” 497.
deficiencies in skills and financial resources. They are also dependent on donor financial support in operations to address some of those deficiencies.\footnote{313} Among the factors that discourage people accessing formal justice system Wojkowska and Cunningham indicate weakness and dysfunctionality of the system, especially in post-conflict countries where “formal justice systems have eroded over time or become de-legitimized following lengthy periods of grave human rights abuses.”\footnote{314} Other deficiencies within the formal justice system that can deter access, especially by the poor and marginalized, are high levels of corruption, lack of judicial independence, “[e]xcessive delays due to overloaded and poorly operated case management,” lawyers fees, “…excessive ‘legalese’ in court proceedings [which] can confuse and intimidate” and the location of courts in larger cities which people in rural communities may be unable to reach due to the time and money required to make the journey.\footnote{315} These deficiencies also contribute to the choices of people to seek justice instead within the informal justice system.\footnote{316}  

\footnotetext[313]{Governance for the Future: Democracy and Development in the Least Developed Countries, 127.}
\footnotetext[314]{Wojkowska and Cunningham, “Justice Reform’s New Frontier: Engaging with Customary Systems to Legally Empower the Poor,” 96.}
\footnotetext[315]{Ibid.}
\footnotetext[316]{For factors influencing the choices of people to use informal justice systems see box 1 in UN Women, UNICEF, and UNDP, Informal Justice Systems, Charting a Course for Human Rights-Based Engagement, 10., as well as pp. 75–77.}
\footnotetext[317]{There is an ongoing debate on the correct terminology to be used when referring to customary justice systems (Wojkowska and Cunningham, “Justice Reform’s New Frontier: Engaging with Customary Systems to Legally Empower the Poor,” 95). In an introduction to the customary justice system, Harper (Harper, Customary Justice, 17) notes that, “[i]nformal or non-state justice systems are umbrella terms often used to describe mechanisms of justice and conflict resolution that operate outside the bounds of a formal, state-based legal system. These may include, but are not limited to, indigenous, customary and religious legal orders, alternative dispute resolution mechanisms and popular justice forums.” She also outlines the following differentiation between them, “[c]ustomary justice refers to a system of customs, norms and practices that are repeated by members of a particular group for such an extent of time that they consider them to be mandatory. The formal justice system refers to controls organized by the state and enforced by specific institutions that follow procedures determined by law. These include courts, the police, prosecution offices and correctional facilities. Indigenous law can form the basis of a customary justice system. It refers to a set of norms, principles, values, authorities, procedures and methods used by}
In conditions when state institutions have a limited reach of power, the principles based on which they function also “have limited meaning and legitimacy for everyday citizens.” Informal justice systems are entrenched within local communities and social norms and carry “local legitimacy and authority that is not always afforded to formal operators.” The decision makers within the informal justice system generally command more knowledge about local customs, therefore, their decisions are perceived to be more culturally acceptable for community members involved in the dispute. However, like the formal justice system, the informal system is prone to elite capture by those who benefit from discriminatory practices. The informal justice imitations which are mostly dominated by older men in communities may contribute to inequalities in communities. Within the informal justice system “women, children, minority groups and the disabled are often highly discriminated against.” In addition, gaps in the knowledge and skills of informal justice leaders, in combination with the influence they have, may deprive the poor of opportunities if they were to use the formal justice system. Among other concerns is what International Council on Human Rights Policy calls “diluted due process guarantees and other procedural protections” which can lead to the violation of rights and hamper access to justice.

Despite the informal justice system being utilized by a significant percentage of the population in countries where the formal justice system lacks the credibility and

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321 Ibid., 98.
reach, external programs of justice sector reforms\textsuperscript{323} traditionally “overemphasized” … formal institutions (courts, lawyers, prosecutors, police)” and transplanted Western legal models.\textsuperscript{324} However, the models that are promoted are from countries with well-financed and functioning state apparatus and in developing countries where they are promoted “the state is weak, has limited reach and legitimacy.” The reform initiatives even if they focus on several institutions with the “justice sector” (judiciaries, ministries of justice, police, prosecutorial services, legal aid, etc.) can be compromised by weaknesses in the other arms of the state governance apparatus necessary for functioning justice institutions.”\textsuperscript{325}

Judicial reform is seen as a part of the governance strategies because it contributes to judicial independence, rule of law and promotion of human rights.\textsuperscript{326} Aid money spent largely on the formal justice systems, including on making state courts more efficient, with the assumption that “modernized systems of case management, newer buildings and facilities, and business friendly laws will have a trickle-down effect that will inevitably facilitate better governance, more effective rule of law, better access to justice and economic development.”\textsuperscript{327}

The expectations that these improvements lead to poverty alleviation have been

\textsuperscript{323} In its study International Council on Human Rights Policy interprets “justice sector” as referring “to all national institutions, laws and policies established to administer both criminal and civil justice, including legal regulation and monitoring.” It deals with “institutions in all three branches of government (executive, legislature and judicial), as well as independent national institutions such as human rights commissions and ombudsman offices. In particular, we refer to courts, prosecutors, legal education institutions, parliaments, police, prison administrations, ministries of justice and the interior (or their equivalents), and related institutions.” They also include NGOs which are “directly involved in the administration of justice, either as parts of the system or as independent monitors of its legality, fairness and effectiveness. Examples might be human rights NGOs working on justice issues, associations of defence lawyers or legal aid lawyers or bar associations, and organisations offering paralegal support.” (International Council on Human Rights Policy, \textit{Local Perspectives: Foreign Aid to the Justice Sector}, 6)

\textsuperscript{324} Tomas, “Reforms That Benefit Poor People- Practical Solutions and Dilemmas of Rights-Based Approaches to Legal and Justice Reform,” 171.


\textsuperscript{326} Miller and Armytage, “Legal and Judicial Reform Performance Monitoring: The PNG Approach,” 141.

\textsuperscript{327} Wojkowska and Cunningham, “Justice Reform’s New Frontier: Engaging with Customary Systems to Legally Empower the Poor,” 94.
contested due to lack of evidence. 328 While addressing the causal links between judicial reforms, effective courts and economic development, Santos brings in the contrary argument that “economies in countries that reformed their judiciaries in the last two decades have not fared well and many of them are doing worse than before.” 329 In his presentation to the House of Commons Standing Committee on Foreign Affairs and International Development, William H. Goodridge (member, International Development Committee, Canadian Bar Association) noted that based on the experience of the Canadian Bar Association it was not possible to “assume that one model … [would] work the best” when dealing with legal and justice systems because “different models may work in different places at different times.” He acknowledged that even in Canada “the vast majority of people only ever use the formal justice system at the lower court level, the entry level. In fact, the most people usually avoid courts completely and use other types of dispute resolution.” That is why he questioned focusing Canada’s aid on higher levels of justice sector with which the poor do not interact much. He argued that “[p]aradoxically … the majority of Canada’s aid aimed at improving justice systems goes into the supreme courts, the law ministries, and other places that actually have little impact on the lives of the poorest and most disadvantaged.” 330

In addition to the lack of evidence, the weakness of knowledge about justice programs is due to “a lack of sufficient understanding of how change occurs within and through the justice system, and of how reform programmes can contribute to such change … adequate qualitative parameters for assessing programs and projects are not

available.” The preference is for quantitative assessments of development programs, including those in assessing justice reform programs, “primary focus[ed] on ‘efficiency’ of the justice system.” But the traditional criteria used to assess justice reform programs are deficient because,

(i) it is difficult to assess the positive or negative impact of programmes on poor people’s lives; and (ii) the definition of ‘fair and effective’ justice risks being subjected to elite capture. Practical and meaningful indicators for justice programmes are scarce.

In addition, there are challenges to present “justice” as “as a stand-alone sector in development”; therefore, it is argued that it should be understood “as a sector that infuses most aspects of almost every development activity.”

In other sectors of development it is more feasible to derive and agree on measurable indicators and expected outcomes, as well as on priorities, but with justice programs the challenge comes from differences in the concept of justice itself. Hammergren succinctly summarizes it stating,

According to many judges, their role is not to provide “Justice” but to resolve conflicts by using the law and where necessary providing a definite interpretation of its meaning. When the populace calls for justice this is usually not what they mean, and in the minds of many reformers it is not the answer either. Are the programs really about forwarding justice with a capital J or they are about making certain institutions and the functions they perform work better? Donors, or at least their home judiciaries, know something about the latter. Whether they have answers for the former is a good question, and if they do not, the corollary query is why they are acting as they do.

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331 Tomas, “Reforms That Benefit Poor People- Practical Solutions and Dilemmas of Rights-Based Approaches to Legal and Justice Reform,” 171.
332 Ibid., 172.
334 Hammergren, Justice Reform and Development Rethinking: Donor Assistance to Developing and Transition Countries, 16.
However, as Sage et al. reason “law and justice reform should not be seen as forging some perfect rule or institutional form.” They should be considered as processes which enable the compromise between differing interests.\textsuperscript{335}

It might be argued that when justice moves from a realm of theory to practice it may be neither pragmatic nor feasible to be overly concerned with defining what “justice,” as it is delivered by relevant institutions, encompasses in a practical sense. It may be more practical to focus on processes of delivering justice rather than outcomes. But this approach still leaves open the main concern of whether just processes necessarily lead to outcomes perceived as just by the parties involved; or, whether outcomes that might not be considered as just for some in balance of general social good that injustice still can be considered as just. Despite such challenges in conceptualizing justice, including in practice, however, justice institutions are essential mechanisms for the amicable resolution of conflicts within the society and in arbitrating differing individual and group interests.

Legitimate justice institutions are also instrumental for peaceful societal changes and “have the ability to change in equitable ways.”\textsuperscript{336} They are “not static and therefore ‘perfectable’ bodies, but rather are continually shaped and re-shaped in response to the demands of society.”\textsuperscript{337} It should be also recognized that relatively just societies are the products of not only adaptation of laws and institutions but also shared evolving norms. In Fukuyama’s words, “although formal law and strong political and economic institutions are critical, they are not in themselves sufficient to guarantee a successful

\textsuperscript{336} Ibid., 32.
\textsuperscript{337} Ibid.
modern society. Liberal democracy has always been dependent on certain shared cultural values to work properly.”

There is an acknowledgement among governments and experts of the role that law can play in development\textsuperscript{339} considering that “law itself has become a constitutive element of development: respect for the rule of law … and the recognition of certain legal rights have become definitional to the achievement of development itself.”\textsuperscript{340} The law and development movement which came to prominence in the 1950s and 1960s positioned law as a central component of social change and saw legal development assistance as a factor in an effective protection of individual freedoms, leading to more social equality and involvement in decision making.\textsuperscript{341} Carson and Daniels in their summary of the movement underscore that its presumption was that “the nature of law and its role in development well understood but that the functions that law could and would serve within a society were universal, unaffected by variations in cultural, historical, economic, and political realities.”\textsuperscript{342} The supporting assumption of proponents was that as the law sustained the market system and liberal democracy all countries could follow the Western development pattern.\textsuperscript{343}

As Glenn points out, during the initial period, the movement was “characterized by an effort to transfer western legal methods and education to jurisdictions characterized


\textsuperscript{339} Khan, \textit{The Unheard Truth: Poverty and Human Rights}, 207.


\textsuperscript{342} Carson and Daniels, “The Persistent Dilemmas of Development: The Next Fifty Years,” 494.

\textsuperscript{343} Ibid., 494–495.
as less developed…“ It was the pursuit of the model which some consider the “ideal situation that also does not exist in the West.” In his critical assessment of the movement, Al Attar writes that “[l]aw and development, for its part, was an avenue via which such First World prerogatives could be transposed upon an emergent Third World.” The way developing countries emulated the institutions of developed countries was a means to externally influence their independence and development path. Despite references to self-determination, practitioners promoted and reinforced “Euro-American legal consciousness as an effective protagonist in the pursuit of Third World social advance.” In 1972, writing on the relationship between law and development, Trubek brought up two points of that conception,

First, there is the implicit concept of development which equates it with gradual evolution in the direction of the advanced, industrial nations of the West. Second, given its definition of development, the core conception quite predictably equates modern law with the legal structures and cultures of the West. The Third World is thus assumed to be doomed to underdevelopment until it adopts a modern Western legal system.

The strongly held conviction that it is Western institutions that are conducive to development drives the imposition of “desired legal reform” in countries which have diverse “legal and cultural traditions, economic organizations, or political structures.”

However, the general assessments of the approach and efforts to implement them were critical and even negative. In subsequent efforts the movement incorporated

345 van Rooij, “Bringing Justice to the Poor, Bottom-up Legal Development Cooperation,” 299, references Upham, “Mythmaking in the Rule of Law Orthodoxy”, Trubek, “The “Rule of Law” in Development Assistance”, at p. 87
346 Al Attar, “Counter-Revolution by Ideology? Law and Development’s Vision(s) for Post-Revolutionary Egypt,” 1612.
348 Ibid.
issues of democracy and social considerations, but those still involved in international development pursued “the idea that there is one basic model that should be followed by all developing and transition countries.”\textsuperscript{350} But the initiatives that promote or transplant best practices—in their opinion—from developed countries often may not have proper knowledge of the local context or take local dynamics into consideration.\textsuperscript{351} Even so, if the local considerations were taken into account and institutions were the outcomes of continuous evolution of local norms, the following issues would still remain. Would such institutions have been able to deliver social arrangements and structures that are regarded as models where the treatment of people is more in compliance with human rights norms?\textsuperscript{352} Or would they rather institutionalize and prolong existing local practices that might be discriminatory but socially acceptable under the guise of being reflective of local considerations? The argument could be assessed through the similar lens of universalist and cultural relativist approach to human rights. If the assessment of law reform projects is done with the assumption that Western legal models provide a better framework for the enjoyment of rights that are considered as universal, then it might be argued that legal transplantation enables better protection of those universal rights. Such an argument could be countered by assuming that there is not one framework to achieve the same outcome, but rather people living in different countries with diverse cultural

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\textsuperscript{352} This statement does not assume that Western countries have ideal models of societies or that there is no discrimination and injustices in those societies. Neither does it assume that Western countries have institutions and frameworks that are in full compliance with international human rights norms and standards. Western countries have had their own share of criticism for falling short of meeting those standards and certain groups facing institutionalized discrimination. The statement is rather based on the assumption that in developed countries people in general are both relatively freer, more equal in their political, social, cultural and economic transactions and enjoy higher living standards.
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power dynamic could enjoy similar protection of their rights.

But the question still remains whether those localized diverse cultural power dynamic processes do not inherently lead to outcomes which are more reflective of local aspirations rather than universal ones. Also, if local conditions are to be prioritized, rather than transplanting external models, does it assume there should be tolerance of possible discriminatory practices which might result from institutionalizing local conditions? At the end of the day, laws and legal framework are not mere technical tools, but rather outcomes of various complex interrelated political and social processes and in turn they also affect those processes. As Tamanaha argues, development scholars and practitioners understand the role that the local conditions play, but it is the multiplicity of interconnected factors which affect law projects in the development setting and stalemates them. As he puts it,

Because it is impossible to know or consider everything, one might be tempted to give up in despair. Law and development practitioners have plowed ahead anyway, using general templates on transplanting legal codes, bolstering courts, training lawyers, and hoping for the best.353

Cohen et al. also stress the multiplicity of social and political considerations which come into play when undertaking legal reforms because to bring in changes in “legal, regulatory and social values is complex, politically charged work that proceeds with multiple stakeholders and through multiple agents.”354 Underlining the political nature of law Kennedy states,

The lawyer’s denial that law is political or ethical, apology or utopia, the political scientist’s denial that politics is legal, and the secularist’s denial that humanism is religious have all been equivocal denials at best. Sure, we know law is a secular project, just as we are all, all secular men and women … Law and politics have

been disciplinary divided by a smoky mirror, the lawyer claiming to see in politics only subjective arbitrariness and ideology...

While the legal systems are political due to the multiplicity of actors involved in negotiating and shaping them, organizations that are involved in reform initiatives regard issues within institutions as requiring technical assistance. This approach leads to a preference for “technical solutions – expert missions, sharing of best practices, training programs.” But the legal framework is not only about institutions that are expected to impartially arbitrate conflicts and interests in a society. The legal framework most importantly provides the basis for how the political and governance structures in a society are organized and sets the parameters of their authority.

The criticism of rule of law based legal reform projects has been that they are “inherently top down, state-centred, fostering legal elites, carrying a false pretence of political neutrality, creating more formalism and bureaucracy.” The reforms are also time consuming and there are challenges to showing and establishing a causality link between the activities and expected outcomes. Despite the criticism such projects have faced, the role the law plays in shaping and organizing societies should not be underestimated. Laws outline social arrangements and prescribe the expectations from them. As social structures and processes continuously undergo transformation and change, laws also incorporate and reflect, as well as facilitate social changes. Gready and Vandenhole recap two views on law and social change by noting that in one view the law precedes the change (proactive)—“it may trigger, facilitate or speed up change”—and

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357 van Rooij, “Bringing Justice to the Poor, Bottom-up Legal Development Cooperation,” 299.
another view is that it follows (reactive)—“law follows change- it legally codifies and thus consolidates the change that has taken place.” In Rittich’s words, “[l]aw is a condition of possibility of both social justice and democratic participation; even if law were not explicitly emphasized, it would remain important to assess effects of the legal and institutional environment on the realization of social goals.” Within the context of the rule of law, Otto speaks to its substantive elements construed as “justice” referring “to the moral foundations of the law, to fundamental conceptions of justice, and in particular to human rights.”

Kelsen, however, delineates law and morals. He argues that “law is a coercive order, that is, a normative order that attempts to bring about a certain behavior by attaching to the opposite behavior a socially organized coercive act; whereas morals is a social order without such sanctions.” While there are institutions that impose sanctions prescribed by laws, morals also impose sanctions. Asserting that morals do not sanction behaviours and opinions deemed to be in violation of acceptable social norms or certain values, which may be treated with secular holiness, is to ignore instances of individuals being boycotted by other individuals and groups for even expressing opinions which are perceived to be in violation of those norms and values and, as a result, losing their jobs and livelihood. Sanctions based on moral considerations can have as a detrimental impact on affected individuals as is the case with those imposed by law. But, unlike sanctions imposed by law which are the outcomes of the due process, sanctions imposed based on

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morals maybe outcomes of individual and group whim, particularly groups which dominate norm and value setting discourse within a society.

Addressing the role the law plays in the society, in 1971 A Manifesto for Law Reform Honorable Turner emphasized that the “law is not just a ‘technical body of rules’; it is the organizing principle for the reconfiguration of society. Law is not just an agency of social control; it articulates the values by which men seek to live.” The law as a foundation for institutions is the approach of the Commission on Legal Empowerment of the Poor: “[t]he law is the platform on which rest the vital institutions of society. No modern market economy can function without law, and to be legitimate, power itself must submit to the law.” Within societies, law plays various roles and is used by different actors to promote and accomplish their goals. Discussing these differing roles, Otto provides that “[l]aw is used by states as an instrument of development policies, by market parties as an instrument of economic activity, and by NGOs as a channel for helping the poor in obtaining access to justice. This variety of users, ideologies and objectives is reflected in international rule of law promotion.” But as Trubek cautions, the law in relation to development itself should not be viewed as “producing economic development” or “bring[ing] about political development.” The law only facilitates the organization of the “free market system” and prompts “the centralized bureaucratic state which depends for its legitimacy on a belief that its decisions are rational.”

In a similar line, Tomas contends that “laws and institutions cannot provide … opportunity by themselves; it is the application of those laws and the factual functioning

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364 Commission on Legal Empowerment of the Poor and United Nations Development Programme, Making the Law Work for Everyone, 1:3.
of those institutions that can.”

In her opinion, the concern should not be about the existence of particular laws “but rather how laws and institutions relate to people and how people perceive, use, change and develop them.”

Laws, while being the important for individuals to access justice, “ideally would be … required for the exercise of all human rights by all community members for the community's development,” but they do not necessarily ensure that there is “equality of access and equality of treatment before the law for rich and poor.”

The poor might find laws to be exclusionary and even unfairly targeting them. As Khan rightly points out,

Exclusion may be *de facto* as well as *de jure*. That is, even if the law ostensibly serves those living in poverty, it may force people to negotiate nearly impassable bureaucratic barriers (often paying bribes in the process) in order to work, go to school or be treated in hospital, legally. The upshot is that poor people may be better off living outside the ambit of the law, even if doing so keeps them poor.

Furthermore, instead of protecting the poor, law can be used to provide a veil of neutrality and legitimacy to discriminate the poor. For example, sanitation regulations can be used against poor vendors who earn their livelihoods by selling in streets and hinder their ability to support themselves and their families. But such regulations are presented as needed to ensure societal good by controlling public health. While working in informal economy, the poor might miss out on retirement pensions if laws provide a progressive increase in state paid pensions amounts tied to the years of work for which there are formal payments made to the government during the course of the “official”

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367 Tomas, “Reforms That Benefit Poor People- Practical Solutions and Dilemmas of Rights-Based Approaches to Legal and Justice Reform,” 172.
368 Ibid.
369 Wojkowska and Cunningham, “Justice Reform’s New Frontier: Engaging with Customary Systems to Legally Empower the Poor,” 94.
372 Khan, *The Unheard Truth: Poverty and Human Rights*, 204.
employment.

Laws can also be used as tools to control and exploit the poor by, for example, “permit[ing] compensation so low and employment conditions so onerous that the workers remain poor” or establishing ownership rights which favor landowners at the expense of tenant farmers. It can go even as far as criminalizing poverty and the poor. 373 Among such instances when laws create “new crimes” Pande lists beggary, and squatting in a public place, which are treated as “status offences.” He elaborates, “[s]tatus offenders are persons whose condition or behaviour is designated by the laws of a State, but not necessarily violate of the accepted customs or standards of that society or community.” 374 Even the laws written with the intention of assisting the poor can inadvertently have a negative impact on the poor, such as the law to formalize land ownership by the poor allowing land to be used as collateral. This law resulted in an increase in prices thus “stimulating land speculation, and push the poor out to the periphery.” 375

Although they were written decades ago, and in Canada, the words of Honourable John N. Turner describing how poor experience law and justice is worth quoting in length as it can be argued that it speaks to predicaments that the poor face both in developed and developing countries.

…it is the poor who suffer most from society masked in the trappings of the law. For it is they who are victimized when urban renewal arbitrarily disrupts a

373 Ibid.
374 Pande, “Criminality of the Marginalized Sections or the Lumpen-Proletariat Criminality: Critical Perspectives,” 401. For example, in 2014 the Honolulu City Council enacted legislation which among several measures prohibited sitting and lying down on sidewalks in some areas with the aim to decrease the number of homeless in popular tourist areas (Quinn, “Honolulu Tells Homeless to Beat It: Hawaiian City Bans Sitting and Lying Down on Sidewalks in Waikiki to Drive Rough Sleepers out of Tourist Hubs.”) The case of a homeless man in Toronto, Louis Quinn, is telling. He died with more than CAD 30,000 debt as a result of fines handed to him under Ontario’s Safe Streets Act (Donkin, “Homeless Man Died Owing More than $30,000 in Fines.”)
neighbourhood; it is the poor who are hurt when creditors garnishee wages or repossess furniture; it is the poor who are deprived when welfare agencies deny, reduce or terminate welfare benefits on vague, unarticulated or clearly illegal grounds; it is the poor who are penalized when Draconian clauses permit landlords to withhold repairs or capriciously evict them into the street; it is the poor who are hit by bail procedures linked to financial means; it is the poor whose privacy is invaded and whose dignity is denied.

The poor do not use lawyers. They are often thought of as having no need of lawyers. Too many of us think of lawyers as counsellors to corporations, drafters of estate plans or wills, advisors on creditors' rights. But if the poor are rarely plaintiffs they are often defendants. They are bewildered and bemused by legalities they face daily as parents, consumers, tenants, recipients of public assistance and accused offenders. Too often the poor see the law not as a friend but as an enemy, not as an aid but as an adversary, not as a remedy but as an obstacle.376

The laws that reflect the class bias of those educated and in power, and the “norm” to be complied with, can be used to perpetuate stigmatization of the poor. They can also be used to discriminate them by reframing issues faced by the poor as deviances from the legal norms which may reflect the worldview of more wealthy members of society.377 For example, children from poor families can be taken away under the justification of neglect and abuse even if no such thing happens, but is perceived as such by state authorities if poor families are not able to provide housing and/or food to the level considered normal.378

Exclusion and discrimination can lead to “other social, economic, political and

377 See e.g. Roberts, “Race and Class in the Child Welfare System.” Roberts mentions, “Black families diverge the most from the parenting ideal embodied in the white, middle-class model composed of married parents and their children.” See also Grotevant et al., “The Dynamic of Poverty and Affluence in Child Adoption,” 202. Grotevant et all stress that “the primary foster care support system in the United States until the 1980s, was guided by the standards, perceptions, and judgments of American middle and upper classes. As many poor families (often racial minorities) were unable to meet “appropriate” standards of care set by middle and upper classes (often white majority), children of poor parents were often remanded to foster care on claims of child neglect.”
criminal injustices” and even minor disputes “negatively affecting livelihoods, and economic and social development.”379 In her criticism of “narrow legal approaches, as in using the law to deliver rights” Khair argues that “they fail to comprehend how people actually experience their world and tend to sustain hegemonic hierarchies.”380 The perception by the poor of the legal and judicial system is that it is not responsive to their needs and cannot be trusted. Years of corruption and inefficiency plaguing judicial institutions contribute to the unwillingness of the poor to pursue their claims. In addition, they “might not regard their problems, often involving complex socio-economic elements, as ones that could be redressed through the formal legal process.” The poor may acknowledge grievances, but still “fear of retribution may well keep them from approaching the court for redress.”381

Even though the most of the poor “do not experience justice in expensive courthouses under the ruling of a well-trained judge,”382 international aid donors still mostly invest in state legal institutions. The rationale is that the support of state legal institutions is important for development and when those institutions are reformed they are able to perform their duties without the need for outside funding.383 The focus on state legal institutions means lawyers, judges and other actors of the formal justice system become the main recipients of aid activities. However, for the system to deliver, it also requires that the cooperation between those actors is also addressed. The report of the CIDA supported and UNDP implemented access to justice and rule of law project is

379 Wojkowska and Cunningham, “Justice Reform’s New Frontier: Engaging with Customary Systems to Legally Empower the Poor,” 94.
381 Ibid.
382 Wojkowska and Cunningham, “Justice Reform’s New Frontier: Engaging with Customary Systems to Legally Empower the Poor,” 94.
illustrative in this regard. The project defined “justice” in its annual report as “the outcome of a system composed of numerous actors, institutions, and processes.” The report elaborated that,

For justice to obtain- for those who access the justice system to be able to achieve a just outcome- each of these components must execute their discrete functions, and also work together. For example, it is not enough that the police are able to effectively investigate cases; they must also be able to cooperate with the public prosecutor’s office if their findings are to enable the state to hold a perpetrator accountable. Prisons may be able to adequately accommodate, nourish, and clothe inmates, but if they do not liaise with courts, then hearings are missed, and the human rights of pre-trial detainees held illegally or unnecessarily are violated. In the other words, supporting the development of technical capacities is necessary, but not sufficient, to promote access to justice and the rule of law. Efforts must also be invested in developing capacities for communication, cooperation and collaboration, and the confidence which underpins them.384

But to achieve such cooperative functioning of various factions of the justice system requires a change in the institutional culture – a process that can take years to manifest.

Reflecting on its experience of implementing judicial reform projects, Office of the Commissioner for Federal Judicial Affairs Canada emphasized that

all judicial reform projects take years to accomplish. A change in a judicial system, whether it deals with judicial conduct, judicial education or even court administration, fundamentally entails the changing of values and attitudes. …[the report text is whited out]... It requires time to establish the trust and confidence of the beneficiary and subsequently a ‘buying’ from this beneficiary in both the project goals and the methodology for its achievement.385

385 The Office was the executing agency of the CIDA Canada-Ukraine Judicial Cooperation project. The Office of the Commissioner for Federal Judicial Affairs Canada et al., “Semi-Annual Report, 2007. Ukraine-Canada Judicial Reform Project (Z020697),” 20. (Note: while the title of the report uses Canada-Ukraine Judicial Reform Project, but under the part General, the report uses Canada-Ukraine Judicial Cooperation Project (CUJCP) as it is indicted on the project the CIDA website http://www.acdi-cida.gc.ca/cidaweb/cpo.nsf/vWebCSAZEn/024CB404EA00095D85257195005D68F7. The website of the Office of the Commissioner for Federal Judicial Affairs lists Canada-Ukraine Judicial Reform Project as a six-years project which was completed in 2002 and CUJCP as approved on July 2006 http://www.fja-cmf.gc.ca/cooperation/ukraine-eng.html. The citation uses the text as it appears on the title page of the report.)
There should be an understanding that those changes are not going to manifest themselves immediately; they will be outcomes of gradual progress. In his presentation to the House of Commons, *Standing Committee on Foreign Affairs and International Development*, William H. Goodridge reminded the House that rule of law was not an immediate outcome in Canada, implying the evolutionary process, and that there should not be expectations of immediate changes in countries which face “social, political, and economic challenges.” He further stated that “[b]uilding values takes longer than transferring technocratic skills.” That is why he advised that “[t]he impact of donor supported activities may not be evident for 10 years or more, so ... [there is a need] to adjust both the way we plan and design projects and our own expectations. We need to set realistic goals, and we need to ensure that performance measurements reflect that understanding.”

In his analysis of the World Bank’s access to justice initiatives, Maru, while acknowledging that “a better-functioning judiciary benefits all citizens by strengthening the rule of law,” also stresses that “if the intention to widen access to justice is genuine, reforms should also consider the specific justice needs of poor people.” Bottom-up approaches which are “less state-centred and less biased merely on court reform” are more focused on reforms and activities to access to justice or the legal empowerment of the poor. Although there is considerable overlap between the two, access to justice approach is primarily concerned with the ability of the poor to access the formal

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388 van Rooij, “Bringing Justice to the Poor, Bottom-up Legal Development Cooperation,” 316.
389 Ibid., 293.
institutions of justice, while the legal empowerment “considers the empowerment of the weak and the poor to be the main goal, seeing lack of power as the basic problem underlying poverty.”

But the difference between them is not clearly delineated and “legal empowerment may involve access to justice and access to justice may involve legal empowerment.”

Andreassen’s critique of the presentation of legal empowerment as having access to justice and formalized rights, which put the poor in a better position to move out is poverty, is that “legal empowerment should not be reduced to a narrow concept of access to justice institutions and the rule of law.” Legal empowerment should be placed within the framework of human rights, “social ethics and communal action” and moral norms. If the legal aspect implies “justiciability of human rights,” its moral side underlines “the social ethics of human rights as embedded in social relations and collective action.”

But for legal empowerment to have benefits for the poor, there is still should be initiatives undertaken to improve the accessibility of justice institutions. As the report by the UN Secretary General, Legal Empowerment of the Poor and Eradication of Poverty, notes, “reforming the law on paper is often not enough to change the reality on the ground. The poor also need a legal and judicial system that is accessible to them and that can make their legal entitlements practical, enforceable and meaningful.” The analyzed JURIS project similarly viewed access to justice as the ability of justice sector actors to deliver decisions which were timely, affordable to litigants, and fair, and empowerment of the poor through educating them on rights, laws and legal procedures.

390 Ibid., 289.
391 Ibid.
In *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights*, Magdalena Sepúlveda Carmona, the UN Special Rapporteur on Extreme Poverty and Human Rights underlines that “[w]ithout effective access to justice, [the poor] are unable to seek and obtain a remedy for breaches of domestic and international human rights law, exacerbating their vulnerability, insecurity and isolation, and perpetuating their impoverishment.” However, Sheldrick rightly brings up the fact “[n]otions of access to justice are inherently problematic” because “there is no clear definition of what constitutes either access or justice.” Though there is an acknowledgment that there is a need for a more holistic approach to access to justice when experiences of poor are concerned, there is still a tendency to see access to justice through the narrow understanding of the “access to courts,” “ability of citizens and communities to make use of courts” and formal justice systems, and the “guarantee of legal representation.” In this reductionist view, access to justice is frequently interpreted as “the accessibility of lawyers and courts to potential claimants.”

Access to justice is also "defined in terms of ensuring that legal and judicial outcomes are just and equitable". *International Council on Human Rights Policy* emphasizes that “[a]ccessibility … involves far more than the physical creation of new institutions or offices. It is equally necessary to make institutions economically, socially,.Warned
linguistically and culturally accessible. If attention is not given to issues of access, assistance for reform may merely reinforce the privileges of those who are already advantaged.” The Final Draft of the Guiding Principles on Extreme Poverty and Human Rights in its recommendation adopted this expanded understanding of the access to justice. It acknowledged the importance of access to justice not only through the formal, but also non-formal dispute resolution mechanisms. It recommended improvements within formal justice systems by “training judges, lawyers, prosecutors and law enforcement officials in meeting the specific needs of various groups living in poverty,” “domestic legal recognition and judicial recourse” of rights enshrined in international human rights instruments or waiving court and legal fees for those who cannot afford them. It also called for legal information to be available to the poor in a form which is suitable for them.

Increasingly, access to justice programs have begun to include activities in legal aid, legal literacy and education, rights awareness, support to paralegals, and alternative dispute resolution (ADR) mechanisms. This shift reflects the fact that, in many countries, diverse factors economic, social, political, and knowledge – undermine the access to the formal justice system. For example, legal illiteracy and costs can prevent the poor from even initiating a complaint “to challenge administrative or judicial decisions that affect them adversely.” For those disadvantaged in the society such obstacles frequently become insurmountable. Legal empowerment initiatives aim to

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401 International Council on Human Rights Policy, Local Perspectives: Foreign Aid to the Justice Sector, 58.
405 Pillay, “Justice in Austerity - Challenges and Opportunities for Access to Justice.”
address those barriers by “assisting the poor to engage with the formal system while improving the accessibility and quality of non-state dispute resolution mechanisms.”

The Legal Empowerment of the Poor (LEP) approach has been trying to address the criticism that one of the reasons why there is still poverty is “partly because the poor do not enjoy legal rights or the power to exercise those rights.” The approach broadened the scope of discourse by making the poor the “subject in law and development discourse” rather than being treated as “the indirect, long-term beneficiaries of institutional reform.” Empowerment of the poor is considered not to be only about resource allocation, but also requires such political, legal, and institutional frameworks that are responsive to the needs of the poor and vulnerable while also holding leaders accountable.

The Commission on Legal Empowerment of the Poor in its report “Making the Law Work for Everyone” remarked that “[l]egal empowerment is the process through which the poor become protected and are enabled to use the law to advance their rights and their interests, vis-à-vis the state and in the market.” It enables the poor to enjoy their rights and opportunities by relying on their pursuit and assistance of “supporters and wider networks.” In the legal empowerment of the poor there has to be acknowledgment of their civic and economic identity “as citizens, asset holders, workers, and businessmen/businesswomen.” In addition, legal empowerment has to include the opinions of the poor, formed through “information and education.” The Commission’s vision of legal empowerment was “as a process of systematic change” that enabled the

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409 Banik, “Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication,” 119.
poor and did not “use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.”

The definition the legal empowerment by Domingo and O’Neil, regarding it as a transformative process, includes the use of both formal and informal laws and justice institutions by marginalized individuals “to advance their rights or interests.” Sengupta frames legal empowerment through the human rights framework as derived from principles set in international human rights law which extends the obligation of the rights set in those instruments beyond the nation state to “the entire community of states, which have recognized these rights.” Nevertheless, the legal empowerment as a transformative process is not neutral and aims at challenging the inclusion of existing power relations within the state and societies. Holding “power holders to account or … contest[ing] unjust power relations” always bears a potential for backlash from those groups which benefit from such power imbalance, because to address the issues the poor face requires not only the redistribution of economic resources, but also social and political powers. The analyzed Secure Tenure and Safe Space for Lesotho Widows, Orphan and Vulnerable Children project viewed the empowerment of vulnerable groups, and raising awareness about their rights and property ownership, as a means to improve their social standing; subsequently improving their socio-economic conditions. However, public awareness about rights was not welcomed by all community members, as in the case of awareness raising on the rights of children, which was believed would contribute to children being disrespectful to the authority of family members.

411 Ibid., 1:3.
413 Sengupta, “The Political Economy of Legal Empowerment of the Poor,” 35.
The UN Secretary General report on *Legal Empowerment of the Poor and Eradication of Poverty* acknowledges that “[l]egal empowerment must be firmly anchored in the realities of poverty and exclusion.” Because legal empowerment of the poor may undermine the interest of certain groups, and be perceived as creating winners and losers, there might be scenario when those whose interests are threatened hinder “reforms that could empower the poor and the disadvantaged.” Addressing the concerns of those who regard the legal empowerment as a threat to their interests may be done through “building alliances with stakeholders and seeking ways to overcome cultural impediments to legal empowerment of the poor.”

Despite challenges the legal empowerment provides the poor with knowledge and skills enabling them to frame their grievances into respective rights and claim them from duty-bearers who are responsible for satisfying those claims. Legal empowerment is also important in fostering the autonomy of the poor to defend their rights and build the skills so that they may represent themselves without being interceded by lawyers and/or paralegals.

If, in the earlier top-down initiatives the focus was on the supply side of the justice by building the capacities of the judiciary and legal profession through trainings and education, the bottom-up approach has widened the scope by focusing on the demand side including through empowering the poor. In the former approach the “assumption [is] that the establishment of an independent judiciary would improve access by increasing people’s willingness to make use of the courts. This would, in turn, generate a body of law that would support economic development and the establishment of better

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functioning markets.”

The bottom-up, “justice demand,” approach, in addition to seeing the poor among the agents of the transformative change to improve their lives, see “[t]he (market) rationale behind ‘building demand for legal and judicial reform’” because the demand will enhance “volume and quality of legal and judicial services.”

Bottom-up approaches are credited for being directly concerned with the issues that the poor experience, however, as Hammergren observes, they “may have a bottom-up focus but still follow a “top-down” logic.” Other critiques of bottom-up approaches include that they may “suffer from over-ambitiousness” by aiming to resolve large scale issues such as “alleviation of poverty, eradication of injustice and protection of human rights, while changing existing power structures, not only locally but also nationally.” Not reaching these ambitious goals, even with the disclaimer that changes take time, can lead to disappointment and frustrations associated with the previous legal reform programs.

Access to justice might appear as elusive as the notion of justice itself as it is reflective of diverse individual experiences. It is shaped by individual perceptions and expectations to what tangible and intangible resources one is entitled to, and individual ideas about who is responsible for safeguarding the access to, and enjoyment of, those resources. Though laws and institutions that enforce them are not the only means through which such guarantees are provided, they have been given centre stage. Modern societies are marked by the ever increasing number of laws and regulatory instruments affecting multiple aspects of interactions within the society and making it challenging—even for

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418 Hammergren, Justice Reform and Development Rethinking: Donor Assistance to Developing and Transition Countries, 191–192.
419 van Rooij, “Bringing Justice to the Poor, Bottom-up Legal Development Cooperation,” 316.
ordinary people in developed countries—to navigate through them and to deal with the institutions that enforce them. In spite of acknowledging the associated complexities, international development projects have been transposing this approach into developing countries. Improvements in legal and regulatory frameworks, as well as functioning justice institutions, are presented among the main factors contributing to a decrease in societal conflicts, enhancing the predictability of social transactions, and further development. It is assumed that predictable and legitimate institutions provide better guarantees and expand freedoms that individuals can enjoy, thus providing more opportunities to choose the life one would like to live and prevent avoidable deprivations.
8 TO BE OR NOT TO BE,\textsuperscript{420} TO DO OR NOT TO DO: EXAMINING THE CAPABILITY(IES) APPROACH

Poverty and deprivation have been closely associated with low income. However, in recent decades the analysis of the well-being and individual welfare has been broadened to include other than income considerations, including what opportunities people need to have to obtain and enjoy the level of well-being they choose, as well as institutions which guarantee those opportunities. The capability(ies) approach (CA) is among the main analytical frameworks applied in the broad conceptualization of the issue of poverty, causes contributing to it, inequality, justice and their impact on the individual well-being. This chapter examines CA through the writings of pioneering scholars Amartya Sen and Martha Nussbaum. The chapter also focuses on interrelations between CA and human rights.

8.1 THE APPROACH

Since the 1980s, the discourse on capabilities has been shifting the view of poverty as a multidimensional concept which includes such considerations as “income, consumption, education, health, sanitation, nutrition, assets and access to basic amenities.”\textsuperscript{421} It focuses on the role of individuals in changing their conditions, public policies, and institutions.\textsuperscript{422} It also links poverty to human rights. The idea of a connection between human rights and development acquired prominence through the works of Amartya Sen whose “early 1980s challenges to conventional development wisdom and ultimate redefinition of the overall goal of development-development as

\textsuperscript{420}Commonly used Shakespeare quotation. Shakespeare, \textit{Hamlet}, 284.
\textsuperscript{422}Fukuda-Parr, “Global Poverty and Unequal Development: Contemporary Trends and Issues,” 18.
The capability approach (CA), also referred as the capabilities approach, is increasingly used to evaluate the quality of life across countries, public policies, social institutions, as well to frame issues of justice, equality, and opportunities. The contributions by Amartya Sen and Martha Nussbaum are the primary works referenced and analyzed when discussing or applying this approach. The United Nations Development Programme drew on their propositions and with its human development reports has played an important role in tying development and human rights and bridging theory and international development practice. UN OHCHR tapped into the capability approach to develop the human rights-based definition of poverty.

The capability approach moved the discourse about development and poverty from the income driven explanation to a more multidimensional consideration of the causes and consequences of poverty. Development and poverty are not analyzed through the narrow lens of “economic growth and macroeconomic performances,” but rather through a multifaceted analysis by “mainstream[ing] human rights paradigm into development practices.” It includes certain fundamental freedoms and social arrangements that provide a framework for the enjoyment of those freedoms to achieve the level of functioning individuals value. It provides a conceptual framework for analyzing the interconnectedness of the opportunities to enjoy the freedoms with human freedom.”

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424 In this regards Nussbaum clarifies that UNDP Human Development Reports “use the notion of capabilities as a comparative measure rather than as a basis for normative political theory. Amartya Sen has a major intellectual role in framing them but they do not incorporate all aspects of his (pragmatic and results-oriented) theory; they simply aim to package comparative information in such a way that to reorient the development and policy debate, rather than to advance a systematic economic or political theory.” Nussbaum, Creating Capabilities, 17.
well-being and views poverty as a depravation of freedoms.\textsuperscript{427}

Nussbaum uses the term “capabilities approach”, in plural, to “emphasize that the most important elements of people’s quality of life are plural and qualitatively distinct … [and which] cannot be reduced to a single metric without distortion.” She defines it as “an approach to comparative quality-of-life assessment and to theorizing about basic social justice.”

It holds that the key question to ask, when comparing societies and assessing them for their basic decency or justice, is, “What is each person able to do and to be?” In other words, the approach takes \textit{each person as an end}, asking not just about the total or average well-being but about the opportunities available to each person.\textsuperscript{428}

The approach treats individuals “as agents who have their own goals … make their own choices, and are not mere receptacles for resource-inputs and satisfaction.”\textsuperscript{429}

CA has a strong and enduring impact on development discourse, but it should be understood that “the capability approach is not a theory that can explain poverty, inequality or well-being; instead, it rather provides a tool and a framework within which to conceptualize and evaluate these phenomena.”\textsuperscript{430} Weiss and Sirkin describe the capability approach as “a broad framework for sustainable development,” where the goal of development is to expand capabilities “valuing both individual and contextual factors as essential components of policies, programs, and evaluation for social change.”\textsuperscript{431} In describing the capability approach Srinivasan notes that it “provided a compelling

\textsuperscript{428} Nussbaum, \textit{Creating Capabilities: The Human Development Approach}, 18.
\textsuperscript{431} Pick and Sirkin, \textit{Breaking the Poverty Cycle: The Human Basis for Sustainable Development}, 8.
alternative to income/growth-centred methods for conceptualising the ends of development, evaluating wellbeing/poverty and formulating development policy.”

The capability approach focuses on “actual opportunities a person has, not the means over which she has command” and also on the variations between them.

In his seminal work, *Development as Freedom*, Sen describes the focus of human capability approach to be “on the ability – the substantive freedom – of people to lead the lives they have reason to value and to enhance the real choices they have.” Development eradicates “unfreedoms” (such poverty, tyranny, poor economic opportunities, social depravation, etc.) which curtail choices and opportunities for individuals to exercise their agency.

Therefore, development, which “expand[s] the real freedoms that people enjoy,” moves the discourse of development away from being “identified with the growth of gross national product, or with the rise in personal incomes, or with industrialization, or with technological advance, or with social modernization.” Still acknowledging that “[g]rowth of GNP or of individual incomes” are key in expanding freedoms individuals enjoy, he adds that “freedoms depend also on other determinants, such as social and economic arrangements … as well as political and civil rights.” Development as the expansion of freedoms is concerned about the “ends that make development important” rather with looking at “some of the means … [that] play a prominent part in the process.” Freedoms of individuals are considered to be a constituent part of development, therefore, “attention is… paid particularly to the

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434 Sen, *Development as Freedom*, 293.
435 Ibid., xii, 3.
436 Ibid., 3.
437 Ibid.
438 Ibid. See also Ibid., 36.
expansion of the ‘capabilities’ of persons to lead the kind of lives they value- and have reason to value.” 439 Sen defines capability as,

… alternative combinations of functioning that are feasible for … [an individual] to achieve. Capability is thus a kind of freedom: the substantive freedom to achieve alternative functioning combinations (or, less formally put, the freedom to achieve various lifestyles). For example, an affluent person who fasts may have the same functioning achievement in terms of eating or nourishment as a destitute person who is forced to starve, but the first person does have a different “capability” set than the second (the first can choose to eat well and be well nourished in a way the second cannot). 440

It involves the individual autonomy of decision making in determining the quality of life a person wants to attain, and in prioritizing which competence and actions to harness to attain that quality of life.

Among substantive freedoms are capabilities “like being able to avoid such deprivations as starvation, undernourishment, escapable morbidity and premature mortality, as well as the freedoms that are associated with being literate and numerate, enjoying political participation.” 441 As Nussbaum interprets, capabilities are not just inner abilities of an individual “but also the freedoms or opportunities created by a combination of personal abilities and the political, social, and economic environment.” 442 In her version of “capabilities approach” Nussbaum refers to these substantive freedoms as combined capabilities and distinguishes them from basic capabilities (“the innate faculties of the person that make latter development and training possible” 443), and internal capabilities. Internal capabilities are different from the basic ones in that they

439 Sen, Development as Freedom, 18.
440 Ibid., 75.
441 Ibid., 36.
443 Ibid., 24.
444 Ibid., 20–23.
are abilities developed through lifelong learning “in most cases, in interaction with the social, economic, familial, and political environment.”\textsuperscript{[445]} In Alexander’s words, “basic capabilities invariably require appropriate external conditions both for their full development (as \textit{internal capabilities}) as well as for the ability to exercise and realize different functionings (\textit{combined capabilities}).”\textsuperscript{[446]} Sen defines functionings as the “various things a person may value doing or being,”\textsuperscript{[447]} for example working, resting, being literate,\textsuperscript{[448]} being in good health or being well nourished,\textsuperscript{[449]} and “a set … of such functionings makes up a person’s life.”\textsuperscript{[450]} However, Sen stresses that a functioning should not be “seen as freedom of any kind, such as capability,” but see a capability as an opportunity to have a combination of functionings that an individual is free choose to use the opportunity or not.\textsuperscript{[451]}

Capability as freedom denotes “the extent to which the person is free to choose particular levels of functionings (such as being well-nourished), and that is not the same thing as what the person actually decides to choose.”\textsuperscript{[452]} Nussbaum points out that “[a] functioning is an active realization of one or more capabilities.”\textsuperscript{[453]} Burger and Christen interpret capabilities “as a special kind of dispositional qualities human beings may or

\textsuperscript{[445]} Ibid., 21.
\textsuperscript{[446]} Alexander, \textit{Capabilities and Social Justice: The Political Philosophy of Amartya Sen and Martha Nussbaum}, 130. The reasoning behind distinguishing \textit{internal capabilities} and combined capabilities, according to Nussbaum, is that “[t]he distinction corresponds to two overlapping but distinct tasks of the decent society. A society might do quite well at producing internal capabilities but might cut off the avenues through which people actually have the opportunity to function in accordance with those capabilities.” She brings in an example that a society can have educated people who have a capability for “free speech on political matters- internally” but in practice not to provide opportunities for them to exercise that free speech. Nussbaum, \textit{Creating Capabilities: The Human Development Approach}, 21.
\textsuperscript{[452]} Ibid., 154–155. See also Sen, \textit{The Idea of Justice}, 236.
may not activate. One can freely choose not to realize one’s capabilities, but to do that requires that one has the possibility to exercise them, if one wishes to.⁴⁴⁴ An outcome—such as attaining “being” or “doing” that which a person cherishes—is important, but a focus on available possibilities that enable an individual to decide whether to engage or not engage one’s facilities underscores the liberty of individuals in shaping and reshaping their lives and that there is no one prescribed way to achieve it.⁴⁴⁵

Nussbaum accentuates that the emphasis is on people’s “choice or freedom” of the set of opportunities that a good society should promote and respect for “people’s powers of self-definition.”⁴⁴⁶ The approach is concerned “not just on what person actually ends up doing, but also on what she is in fact able to do.”⁴⁴⁷ As Robeyns distinguishes, the difference “between achieved functionings and capabilities is between the realized and the effectively possible; in other words, between achievements on the one hand, and freedoms or valuable options from which one can choose on the other.”⁴⁴⁸ Therefore, “[a] capability is an opportunity or a freedom and [a] functioning is an outcome or achievement.”⁴⁴⁹ Furthermore, as Whiteside and Mah expound, “[t]he more capabilities a person has, the greater her effective freedom to make choices about her life and work.”⁴⁵⁰ However, Van Ootegem and Spillemaeckers criticize that focus on “freedom” and “choices” because, even if in theory they are considered as worthwhile, for “[s]ome

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⁴⁴⁶ Nussbaum, Creating Capabilities, 18.
people … increased freedom [is associated] with increased insecurity and doubt.” ⁴⁶¹

Personal aptitudes can affect how individuals make use of their abilities and some of the choices may lead to negative outcomes. But even the acknowledgement of such potential weaknesses in certain individuals point out that each individual has a different way of converting abilities and resources to enjoy life they want, thus shifting thinking from one-size-fits-all model to one which is reflective of individual characteristics.

Nussbaum points out that heterogeneities in abilities and physical differences impact on the conversion of resources into functionings and argues that this information should also inform public policies.

Some of the pertinent differences are physical: a child needs more protein than an adult for healthy physical functioning, and a pregnant or lactating woman needs more nutrients than a nonpregnant woman. A sensible public policy would not give equal nutrition-related resources to all, but would … spend more on the protein needs of children, since the sensible policy goal is not just spreading some money around but giving people the ability to function. Money is just an instrument. ⁴⁶²

Such sensitivity to individual variations underscores that approaches to address the deficiencies which prevent people from enjoying the quality of life they want require more considerations than a simple allocation of resources. There is a recognition that the approaches should be dynamic to be relevant to changes in individual aptitudes, expectations of the life individuals value and environment in which they function.

Because of the heterogeneity among individuals affecting “the degree to which resources can be converted into capabilities differs from person to person,” ⁴⁶³ the approach focuses on an individual conception of the good and on “the actual lives we

⁴⁶¹ Van Ootegem and Spillemaeckers, “With a Focus on Well-Being and Capabilities,” 388.
⁴⁶² Nussbaum, Creating Capabilities: The Human Development Approach, 57.
lead and are free to choose to lead.”

It should also be stressed that “[t]he level and quality of the achieved functionings and capabilities depends on not only personal characteristics, but also on the features of the society one lives in.”

The capacities that individuals can have “can be enhanced or hampered depending on the opportunities they face in their familial, social and political circumstances.”

CIDA in its 2003–2004 Report on Plans and Priorities (RPP) underlines the complexity and multiplicity of societal and political factors that affect the ability of people to thrive. It states that “Canadians, strong supporters of development assistance understand that global imbalances—in wealth, environmental quality and standards, freedom, democracy, security, and opportunities for economic and social development—can prevent people from achieving their full potential and leading productive, creative and fulfilling lives.”

While Sen placed capabilities in the centre of the discourse, he did not outline a specific list of capabilities which are of particular importance. He argues,

> “to insist on a ‘fixed forever’ list of capabilities would deny the possibility of progress in social understanding, and also go against the productive role of public discussion, social agitation, and open debates. I have nothing against the listing of capabilities (and take part in that activity often enough), but I have to stand up

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464 Srinivasan, “No Democracy without Justice: Political Freedom in Amartya Sen’s Capability Approach,” 460. Nussbaum emphasizes that capabilities belong to individuals and “only derivatively to groups.” It sees “each person as an end” and the goal is that each person has capabilities, “not to use some people as a means to the capabilities of others or of the whole.” (Nussbaum, Creating Capabilities: The Human Development Approach, 35.) Sen mentions that “[c]apabilities are seen primarily as attributes of people, not of collectives as communities. There is, of course, no great difficulty in thinking about capabilities of groups.” (Sen, Development as Freedom, 244.) Though, while responding to “the charge of methodological individualism”, Sen acknowledged that “there …[was] indeed no particular analytical reason why group capabilities…must be excluded a priori from the discourse on justice or injustice in their respective societies, or in the world.” But he adds that the capabilities of a group to be understood “… in terms of the value that members of the group (or for that matter, other people) place on the proficiency of that group.” Sen, The Idea of Justice, 246.


against any proposal of a grand mausoleum to one fixed and final list of capabilities.\textsuperscript{469}

As Srinivasan notes, that reluctance comes from the “concern that it is individuals who have the legitimate right to choose and prioritise capabilities and functionings achieved … whether for themselves specifically or as part of collective discussion and decision-making about social arrangements that in turn impact upon these individuals’ agency, choice and freedom.”\textsuperscript{470} Another concern expressed by Sen on establishing the list of capabilities is the problem of assigning relative weights and importance to different capabilities.\textsuperscript{471} But Gasper raises the question whether the ambiguities in capability approach, and how it interacts with other disciplines, really matter and notes that “underdefinition” gives space to everyone representing different backgrounds to contribute to the discourse with their interests and skills.\textsuperscript{472} In the meantime, he also outlines the disadvantage of the “underdefinition” that it makes it “hard to communicate, to teach, to use with at least some potential cooperators and to assess and therefore improve.”\textsuperscript{473} The lack of specificity “on which capabilities matter, which ones more than others, and why” is seen as weakening “a strong philosophical foundation … at the practical level.”\textsuperscript{474}

In contrast to Sen’s approach, Nussbaum puts forward a list of ten central capabilities, which serve as a philosophical framework for some basic constitutional

\begin{itemize}
\item \textsuperscript{469} Sen, “Human Rights and Capabilities,” 160.
\item \textsuperscript{470} Srinivasan, “No Democracy without Justice: Political Freedom in Amartya Sen’s Capability Approach,” 463.
\item \textsuperscript{471} Sen, “Human Rights and Capabilities,” 158.
\item \textsuperscript{473} Ibid., 337.
\item \textsuperscript{474} Srinivasan, “No Democracy without Justice: Political Freedom in Amartya Sen’s Capability Approach,” 460.
\end{itemize}
principles implementation by each nation,\textsuperscript{475} thus laying a universalistic applicability claim.\textsuperscript{476} Nussbaum’s rationale is that

… Sen sometimes speaks as if all capabilities were valuable zones of freedom and as if the overall social task might be to maximize freedom. He speaks of a “perspective of freedoms”- as if freedom were a general, all-purpose social good of which the valued capabilities were simply instances. The Nussbaum version of the approach does not proceed in this way. It makes commitments as to content, using the list of ten Central Capabilities as a basis for the idea of fundamental political entitlements and constitutional law. This task of selection is crucial if the approach is to have anything to say about justice.\textsuperscript{477}

She affirms that her version of the approach “focuses on the protection of areas of freedom so central that their removal makes a life not worthy of human dignity.” The freedom which is not as central is left to “ordinary workings of the political process.”\textsuperscript{478}

In addressing Sen’s position that the list of capabilities should be left to the democratic process in each nation,\textsuperscript{479} Nussbaum notes that her “proposal is intended for persuasion, and the issue of implementation is distinct one.”\textsuperscript{480} Ten central capabilities proposed by Nussbaum are: (1) life – not dying prematurely; (2) bodily health – good health, adequate nourishment and shelter; (3) bodily integrity – freedom of movement, security against assault, freedom in a matter of reproduction, etc.; (4) sense, imagination and thought (e.g. education, literacy, etc.), “[b]eing able to use one’s mind in ways


\textsuperscript{477}Nussbaum, Creating Capabilities: The Human Development Approach, 70.

\textsuperscript{478}Ibid., 31–32.

\textsuperscript{479}“Sen expressed that he is against “…fixing of a cemented list of capabilities, which is absolutely complete (nothing could be added to it) and totally fixed (it could not respond to public reasoning and to the formation of social values)...[P]ure theory cannot “freeze” a list of capabilities for all societies for all time to come, irrespective of what the citizens come to understand and value. That would be not only a denial of the reach of democracy…”Sen, “Capabilities, Lists, and Public Reason,” 78.

\textsuperscript{480}Nussbaum, Creating Capabilities: The Human Development Approach, 71.
protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise”; (5) emotions; (6) political reason – “[b]eing able to form a conception of the good and to engage in critical reflection about the planning of one’s life”; (7) affiliation; (8) other species; (9) play; and (10) control over one’s environment – ability “to participate effectively in political choices that govern one’s life” and having property rights, employment, freedom from unwarranted search and seizure, etc.  

Central capabilities are conceptually connected with government and “one of the major avenues of implementation of the Central Capabilities is a nation’s system of constitutional adjudication involving fundamental rights” and richer nations owe duties of aid to poorer nations because without that aid “poor nations cannot meet all their capability obligations.” Nelson and Dorsey, commenting on Nussbaum’s position, note that “[b]y emphasizing government’s obligation to create conditions that preserve human functioning above minimum levels, Nussbaum, although preferring “capabilities” to rights, provides an intellectual framework for an approach to development that starts from the inalienable rights of individuals and obligations of governments.”

Sen identifies instrumental freedoms which impact the overall freedoms that an individual has “to live the way they would like to live,” and directly enhance capabilities: political freedoms (e.g. right to decide who should govern and how, opportunity to scrutinize and criticize authorities, freedom of expression and press, etc); economic facilities (“opportunities … to utilize economic resources for the purpose of consumption, 

\[481\] Ibid., 33–34.  
\[482\] Ibid., 63.  
\[483\] Ibid., 97.  
\[484\] Nussbaum, Creating Capabilities, 64.  
or production, or exchange”); *social opportunities* (“arrangements that society makes for education, health care and so on”); *transparency guarantees* (“the freedom to deal with one another under guarantees of disclosure and lucidity”); and *protective security* (“social safety net”). Morsink’s comment on five instrumental freedoms is that they

...cover the entire range of the Declaration [UDHR], but (disappointingly) Sen does not say that people have a *human right* to any of these freedoms, nor does he say that people have a *right* to “live the way they would like to live.” … Of course, we can easily surmise that Sen must think (though he does not say it) that people have a right to the flourishing life that results when these instrumental freedoms are in place.

Even if not framed through the language of rights, the arrangements which establish and sustain a favourable environment for individuals to flourish can still be structured and regulated through diverse legal instruments and secure available options from which individuals can choose to enhance their lives.

### 8.2 POVERTY

Though Sen refused to support a set list of capabilities, he acknowledges that certain functionings and corresponding basic capabilities are key when examining poverty and that poor people face very limited opportunities to pursue their well-being.

Within the framework of capabilities as “the substantive freedoms he or she enjoys to lead kind of like he and she has reason to value,” poverty is viewed as the deprivation of basic capabilities rather than only being the manifestation of low income, thus

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challenging “overconcentration on means (such as incomes and primary goods).”

Nevertheless, as noted by UN OHCHR, “not all kinds of capability failure would count as poverty.” Since poverty is “an extreme form of deprivation,” failure in those capabilities which are considered to be basic in a given society are regarded as poverty. Because each society has different views on what constitutes a basic capability, there is an inherent variation in what the definition of poverty is. While that variation exists, there are “certain basic capabilities that would be common to all - for example, being adequately nourished, being adequately clothed and sheltered, avoiding preventable morbidity, taking part in the life of a community, and being able to appear in public with dignity.”

CIDA in the Departmental Performance Report also viewed poverty beyond low income and contended that “[r]educing poverty means addressing the various challenges … such as lack of education, … poor health, access to food and water, economic opportunities, as well as concerns of safety and security.”

Osmani argues that “when the failure of only basic capabilities is considered, not every case of such failure may be characterised as poverty.” His position is that the “origin of failure is relevant for this purpose.” The consideration is that the “lack of command over economic resources must play a role in the causal chain leading to a low level of well-being” for that to be regarded as poverty. In the meantime, it is stressed that while poverty generally is associated with “a low level of well-being, not every case

of a low level of well-being can be regarded as poverty.\textsuperscript{495} As an illustrative example for such a case, the publication UN OHCHR differentiates between “a low level of well-being” due to the ill-health as a result of a genetic disorder and “ill-health caused by lack of access to basic health-care resources.”\textsuperscript{496} In the former case it is argued that ill-health “will not in itself be recognised as a case of poverty,” while in the latter it will be.\textsuperscript{497}

It is a fact that each person has different genetically conditioned abilities, including learning abilities and physical strength. If this position on poverty were to be accepted, it would mean that less endowed individuals with the same set of failure of basic capabilities as more endowed ones would be treated as not being “poor,” while the latter ones would be considered “poor.” This also raises the question about which level and types of “genetic disadvantage” warrant consideration of being relevant for the purposes of defining poverty as a capability failure. Does this mean that ill-health which results from a “freak accident” which leads to the same level of disability as one born with the genetic defect and results in similar failures “to lead the kind of lives they value and have reason to value”\textsuperscript{498} should be treated differently just because it is an acquired disability? Does it mean if a person who cannot earn and have minimum required conditions for the life due to ill health as a result of genetic defect dies, his/her death should be attributed to the unfortunate inborn ill-health rather than poverty because his/her “low level of well-being”\textsuperscript{499} was not the result of “ill-health caused by lack of access to basic health-care resources”?\textsuperscript{500}

\textsuperscript{495} Ibid., 7.
\textsuperscript{496} Ibid., 7–8.
\textsuperscript{498} Sen, Development as Freedom, 18.
\textsuperscript{500} Ibid., 7–8.
Nussbaum cautions against over-emphasizing the inborn traits of individuals when discussing capabilities. She calls not to “hold that people’s political and social entitlements should be proportional to their innate intelligence or skill.” On the contrary, she argues that the approach requires that all individuals in a nation should obtain “above a certain threshold level of combined capability” and that functionings should not be an outcome of duress but of a real freedom to choose. The equal treatment of people suggests that an approach to “people’s basic capabilities is not a meritocratic one” where more gifted people receive better treatment, but rather the opposite, providing more assistance to those who need it more to move above the threshold.

In the case of people with cognitive disabilities, the goal should be for them to have the same capabilities as “normal” people, even though some of those opportunities may have to be exercised through a surrogate, and the surrogate may in some cases supply part of the internal capability if the person is unable to develop sufficient choice of capability on her own…

It can be argued that if the person had “some kind of a guarantee of basic healthcare … concerned with giving people the capability to enhance … [his/her] state of health” illness due to whatever a reason can be addressed and in the meantime deprivations leading to poverty can be removed. However, “[i]f a person has the opportunity for socially supported healthcare but still decides, with full knowledge, not to make use of that opportunity”, even if the outcome is the same as it “would be [with] the failure to provide the person with the opportunity for healthcare,” in the former scenario the person has a freedom choose with the latter there is no opportunity for that.

In regards to the connection between individual capabilities and low income, CA

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503 Ibid.
sees the relationship as two-way (e.g. “low income can be a major reason for illiteracy and ill health as well as hunger and undernourishment”). But income is also “an important means to capabilities” and improved capabilities can in turn contribute to an increase in earning potential and the eradication of income poverty. Viewing poverty as deprivation of basic capabilities, (“the freedom to do some basic things that are necessary for survival and to avoid or escape poverty”) such as “leading[ing] a healthy life, … tak[ing] part in the life of the community,” rather than low income puts focus on poverty being associated with developing countries but also in richer countries. For example, unemployment in developed countries where there are social security protections still focuses mostly on income and state transfers to compensate income shortfalls. However, unemployment is not only a “deficiency of income,” but “it is also a source of far-reaching debilitating effects on individual freedom, initiative, and skills.” Unemployment can lead to “social exclusion,” “loss of self-reliance, self-confidence and psychological and physical health.” The analysis of the focus group discussion on well-being in Belgium by Van Ootegem and Spillemaeckers showed that the most dissatisfaction expressed by the participants with their achievements was an inability to change the situation even when trying hard.

A lack of capabilities makes people feel trapped. Suffering from long-term unemployment with a low social status, and trying to improve one’s situation without succeeding, causes deep dissatisfaction. Things get worse when comparison is made with a better, former situation and when one cannot accept the current status.

505 Ibid., 90.
507 Sen, *Inequality Reexamined*, 82.
509 Van Ootegem and Spillemaeckers, “With a Focus on Well-Being and Capabilities,” 388.
The CA questions poverty beyond “a low level of income or the inability to obtain goods and services deemed necessary for a decent living.” Poverty as capability deprivation focuses on “deprivations that are intrinsically important.” The relation between low income and low capability is “instrumentally significant” and it varies between communities, families and individuals. The differences arise due to age, gender, social roles, location, etc. Poverty can also be a result of the “coupling” of different deprivations. For example, ill and disabled people have fewer opportunities to earn; but it is also harder for them “to convert income into capability,” because they may need more income “to achieve the same functionings.” Therefore, as Sen contends, “real poverty’ (in terms of capability deprivation) may be, in a significant sense, more intense that what appears in the income space.” This argument refocuses public actions to groups affected. Disadvantages and differences among family members add another layer of challenge to the income explanation of poverty. Family income cannot fully explain intra-family distribution of money. It also obscures disadvantages that family members experience due to biases, including gender ones. Or the decision maker on income allocation might choose to spend money, not on basic needs of the family members, but on non-essential items like tobacco and alcohol. Though the family might not be regarded as poor, in reality some members of the family do not have their basic needs met due to income allocation decisions within a family. Similar considerations affect the conversion of

511 Sen, Development as Freedom, 87.
512 Ibid., 88.
goods and services into capabilities.\textsuperscript{515}

By focusing on “ends that people have reason to pursue,” rather than the means, the capability approach to analyzing poverty shifts the discourse on “the freedoms to be able to satisfy these ends.”\textsuperscript{516} In Osmani’s opinion, the advantage of the capability approach in analyzing poverty is that it distinguishes between “[t]he foundational question of what constitutes poverty” and “the operational question of what causes poverty, which should be answered in terms of the ends that people value but are unable to achieve, not in terms of the means of achieving them.”\textsuperscript{517} The approach highlights that, while means are important, even their availability is not sufficient to escape poverty if there are obstacles to utilizing them and making choices about which ones to utilize in order to live the life an individual wants.

\section*{8.3 HUMAN RIGHTS}

Both CA and human rights have a common concern - “dignity and freedom of an individual.”\textsuperscript{518} On the value that the capability approach can add to human rights discourse, Vizard et al. note that “[t]he idea of capabilities can help to clarify the nature and scope of the idea of human rights, by providing an understanding of what it means to secure human rights, as well as a framework for elucidating economic and social rights, and for thinking about the grounds of human rights.”\textsuperscript{519} Nussbaum argues that “the best way of thinking about rights is to see them as \textit{combined capabilities}” - the right to

\begin{footnotesize}
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\item \textsuperscript{516} Sen, \textit{Development as Freedom}, 90.
\item \textsuperscript{517} Osmani, “Poverty and Human Rights: Building on the Capability Approach,” 208.
\item \textsuperscript{518} Vizard, Fukuda-Parr, and Elson, “Introduction: The Capability Approach and Human Rights,” 1.
\item \textsuperscript{519} Ibid., 4.
\end{itemize}
\end{footnotesize}
political participation, free speech, etc., “all best thought of as capacities to function.”

The guarantee of these rights enables people to have the combined capability to function.

By defining rights in terms of combined capabilities, we make it clear that a people in country C don’t really have the right to political participation just because such language exists on paper: they really have this right only if there are effective measure to make people truly capable of political exercise. …thinking in terms of capability gives us a benchmark as we think about what it is to secure a right to someone.\footnote{Nussbaum, \textit{Women and Human Development: The Capabilities Approach}, 98. See also Nussbaum, “Capabilities and Human Rights,” 135.}

In the areas of economic rights, Nussbaum argues, CA allows to distinguish between differently positioned people and the need for diverse resource allocation decisions to enable them the same level of functioning. CA, in analyzing economic rights, provides a framework for rationalizing why more resources should be allocated to certain disadvantaged groups or creating “special programs to assist their transition to full capability.”

If we think of these economic rights while asking the question, “What are people actually able to do and to be?” then I think we have a better way of understanding what it is really to put people securely in possession of those rights, to make them able really to function in those ways, not just to have the right on.\footnote{Nussbaum, “Capabilities and Human Rights,” 138. See also Nussbaum, \textit{Women and Human Development: The Capabilities Approach}, 98--99.}

Nussbaum stresses that the capabilities approach adds to human rights by expanding the considerations from “merely ‘negative liberty’ or the absence of interfering state action” to “the full ability of people to be and to choose these very important things.” It also highlights the economic aspect of capabilities—“even the freedom of speech requires education, adequate nutrition, etc.”\footnote{Nussbaum, “Beyond the Social Contract: Capabilities and Global Justice. An Olaf Palme Lecture, Delivered in Oxford on 19 June 2003,” 13.} It contrasts with the approach where rights are perceived to shield from state interference: “if the state just
keeps its hands off, rights are taken to have been secured.” CA argues for affirmative actions of the state and active reinforcement of people’s capabilities, not just abstaining from setting obstacles.\textsuperscript{523}

Sen, from his side, emphasizes the importance of civil and political freedoms in meeting the economic needs of people. Civil and political freedoms are directly connected to basic human capabilities (“including that of political and social participation”), instrumentally important enhancing capabilities of people being heard and their claims be politically supported, including on economic needs, and play a “constructive role in the conceptualization of ‘needs.’”\textsuperscript{524} However, their importance is not only conditioned by their impact on economic opportunities. Even if the restrictions on those freedoms do not lead to other adversities, “such as economic disasters,” because they are an integral part of human freedom “their denial is handicap itself.”\textsuperscript{525} Political freedoms and civil rights can also play an important role in the formulation of what “economic needs” are through open and public debates and which are essential for the “formation of values and priorities.”\textsuperscript{526} But public discussions connote “not just in the ‘thin’ sense of having leadership succession determined by a regular electoral process, but in the ‘thick’ sense of messy and continuous involvement of the citizenry in the setting of economic priorities.”\textsuperscript{527}

Sen argues human rights and capabilities compliment each other provided that one does not subsume another and he highlights that while for many human rights the capability approach can offer much for analysis, in spite of this approach “human

\textsuperscript{523} Nussbaum, Creating Capabilities: The Human Development Approach, 65.
\textsuperscript{524} Sen, Development as Freedom, 148.
\textsuperscript{525} Ibid., 16–17.
\textsuperscript{526} Ibid., 153. See also Ibid., 158.
\textsuperscript{527} Evans, “Collective Capabilities, Culture, and Amartya Sen’s Development as Freedom,” 55.
rights to important process freedoms cannot be adequately analysed within the capability approach."\(^{528}\)

On the importance of human rights, Sen contends that human rights are “ethical affirmations of the need to pay appropriate attention to the significance of freedoms incorporated in the formulation of human rights.”\(^{529}\)

Proclamations of human rights, even though stated in the form of recognizing the existence of things that are called human rights, are really strong ethical pronouncements as to what should be done. They demand acknowledgement of imperatives and indicate that something needs to be done for the realization of these recognized freedoms that are identified through these rights. One thing they are not are claims that these human rights are already established legal rights, enshrined through legislation and common law…\(^{530}\)

Such an approach does not see human rights as either legal claims or being “basically grounds for law, almost ‘laws in waiting.’”\(^{531}\)

Acceptance of the link between moral rights and laws is not equivalent to anchoring human rights into “coercive legal rules,” but rather treating human rights as “powerful moral claims” that open other venues in promoting those claims.\(^{532}\) Although the pre-legal moral claims may not be considered as “justiciable rights in court and other institutions of enforcement,” this cannot be viewed as a basis for rejecting them.\(^{533}\)

Legislating human rights should not be considered as the only way of promoting and implementing human rights.\(^{534}\) They can be promoted also through “public discussion,

\(^{528}\) Sen, “Human Rights and Capabilities,” 163. Sen distinguishes two aspects of freedom: opportunity and process. The opportunity aspect of freedom implies that more freedoms provide more opportunities to choose from to pursue life and individual values. While the process aspect is concerned with “the process of choice itself.” Sen, *The Idea of Justice*, 228.


\(^{532}\) Ibid., 327. See also Sen, *The Idea of Justice*, 366–367.

\(^{533}\) Sen, *Development as Freedom*, 229.

appraisal and advocacy.” Freedoms which are integrated in the formulation of rights are determined by how essential their integration is in those rights. For freedoms to be considered as the foundations of human rights it should meet “‘threshold conditions’ of (i) special importance and (ii) social influenceability.” It is through public discussions that it will be determined whether the freedom has “any ethical importance whatsoever.” They are also conditioned by “the extent to which they can be influenced by social help.”

For a freedom to count as a part of the evaluative system of human rights, it clearly must be important enough to justify requiring that others should be ready to pay substantial attention to decide what they can reasonably do to advance it. It also has to satisfy a condition of plausibility that others could make a material difference through taking such an interest.

Human rights, which include economic and social freedoms, even “if they cannot be realized because of inadequate institutionalization,” still can trigger obligations through their recognition. Referring to Twining on this point, “[h]uman rights exist independently of whether responsibility for realising these rights has been allocated. For example, everybody has a right to food, even though it is unclear who has primary responsibility for its provision.” The position in the UN OHCHR’s publication on human rights and poverty reduction is that “there [is]… a natural transition from capabilities to rights.”

Most human rights are concerned with the human person’s rights to certain fundamental freedoms, including the freedoms from hunger, disease and

539 Ibid.
540 Ibid., 319–320.
illiteracy. The capability approach requires that the goodness of social arrangements be judged in terms of the flourishing of human freedoms. The focus on human freedom is thus the common element that links the two approaches.\textsuperscript{542}

CA accentuates that rights are not mere a list of entitlements to choose from to justify claims, but rather, when these rights are enjoyed by people, they are able to achieve their desired level of the functioning in the society. For example, the right to education, if enjoyed, enables literacy and that in turn enhance the opportunities to be employed, have more income which can expand people’s choices of how to be better nourished.

Nussbaum elaborates on relations between capabilities and human rights by rationalizing it through UDHR, “I shall understand a human right, in the same way was the Universal Declaration, namely as involving an especially urgent and morally justified claim that a person has, simply in virtue of being a human adult, and independently of membership in a particular nation, class, sex, or ethnic, religious, or sexual group.”\textsuperscript{543} The rights are seen as combined capabilities (e.g. right to political participation, freedom of speech, freedom to seek employment outside the home, etc.). There is an internal and external aspect. To illustrate the former, Nussbaum notes that if an individual systematically lacks access to information about religion, even when state does not actively put obstacles to “religious choice,” the individual lacks religious freedom. The external aspect is highlighted by an example of a woman who wishes to seek employment outside home; if she faces systematic denial of employment or physical constraint preventing her from going outside, she is not able to enjoy the right to seek employment. Therefore, “to secure a right to a citizen in these areas is to put them in a position of

\textsuperscript{543} Nussbaum, “Capabilities, Human Rights and the Universal Declaration,” 34.
capability to go ahead with choosing that function if they should so desire.” Another way of looking at rights from a perspective where they are not identified with capabilities. When it is said that an individual has a right to seek employment outside home, even when there are no conditions which enable the person to enjoy that right, a person puts a justified claim to secure the capability. In this way, human rights become the basis for securing the capability and are close to “‘basic capabilities,’ since typically human rights are thought to derive from some actual feature of human persons, some untrained power in them that demands or calls for support from the world.” The rationale of expressing rights as capabilities, according to Nussbaum, is to underscore that it takes much more to secure rights than simply writing them down. This approach also provides a criterion for understanding “what it is really to secure a right to someone.”

Nussbaum ranks the language of capabilities above the language of rights as there is no strong association with a “particular cultural and historical tradition.” In comparison, the language of human rights is associated mostly with the European Enlightenment. Nussbaum asserts that capabilities approach is “fully universal” and it is “similar to the international human rights approach.” While the approach stands against cultural relativism, it also respects pluralism. The list of capabilities is open to revisions (both addition and deletion) reflecting a “society’s account of its most fundamental entitlements.” The reason for leaving the list of capabilities “somehow abstract and general way” is so citizens, legislatures and courts in a society are part of refining the language reflecting different historical and development patterns. But implementation

544 Ibid., 34-35; Nussbaum, “Capabilities and Human Rights,” 135-137.
545 Nussbaum, Women and Human Development: The Capabilities Approach, 99.
... we can justify this list as a good basis for political principles all around the world. But this does not mean that we thereby license intervention with the affairs of a state that does not recognize them. It is a basis for persuasion... military and economic sanctions are justified only in certain very grave circumstances, involving traditionally recognize crimes against humanity. 

Sen’s position is that “[t]he viability and universality of human rights are dependent on their ability to survive open critical scrutiny in public reasoning.” It is driven by the discussion “across national boundaries” conditioned with “a reasonably free flow of information and uncurbed opportunity to discuss differing points of view.”

The shift from an income driven definition of poverty to a recognition of the multidimensional nature of poverty – with the need to tackle various societal, structural and political aspects affecting both poverty and development – has gained also prominence in policy making. The Millennium Development Goals (MDGs) and their precursor, International Development Goals (IDGs), reflect the growing consensus of the multidimensional nature of poverty and development, looking beyond income. MDGs have become the guiding and mobilizing vision of development and how to tackle the issues of poverty in developing countries, including for rallying the donor funding support in the areas not explicitly mentioned in MDGs such as human rights and governance.

546 Nussbaum, Frontiers of Justice: Disability, Nationality, Species Membership, 78–79.
547 Ibid., 80.
549 Ibid., 319–320.
WHAT WOULD HAVE DARWIN SAID ABOUT MDGs OR IS THERE A MISSING LINK?552

Everything was affected. People did not have access to enough and healthy nutrition and in combination with the stress to fend for basic need of the families, their health was affected too. It was really cold at homes during the winters and, if they were sick, there was not much income to allocate for health. Education previously funded by the state, especially tertiary education, had gradually become fee based and the privilege of those who could afford it. Those from poor families who were enrolled with the stipend as an echo of the socialist education, still needed their parents to seek manual labour jobs to pay for their living expenses and transportation, even if it meant working at nights under the candle light. Though donor aid was trickling, there was a long way still to go to reach what had been before and lift people from deprivation they faced.

2000 marked the year when countries and donors set a new development agenda to lead their efforts in addressing pressing development challenges faced by countries and raise people from the deprivation they experienced. The Millennium Development Goals (MDGs), which were the culmination of the international development agenda setting process, became a guide in framing and implementing donor programs and projects. MDGs marked the formalized global recognition that development challenges faced by developing countries were interdependent and propagating each other, so the interventions to resolve them had to address various dimensions. Such a formal recognition was strengthened by formal commitments to implement MDGs in donor government policy priorities and government policies of aid recipient countries. While MDGs signalled the launch a “new” stage in international development efforts, they developed out of political, intellectual and policy background and the legacy of previous decades. Therefore, this chapter illustrates the contribution of the antecedents of MDGs, particularly of the World Summit for Social Development (WSSD) and OECD’s

552 The chapter includes text of the paper written for the course at the BSIA “Global Governance in Historical Perspective,” instructor Dr. Daniel Gorman.
International Development Goals (IDGs), in creating the development framework and the bases for negotiating MDGs.

In the meantime, MDGs as an outcome of political negotiations and a balancing process suffered from gaps created by compromises. While human rights and rule of law were part of the Millennium Declaration, they were not explicitly referenced in MDGs. This absence of human rights language was among the main criticism of MDGs, but it also rekindled the arguments about a rights-based language in framing social-economic aspirations, or whether MDGs showed other avenues for the promotion and guaranteeing the relevant human rights. Even if there is no explicit reference to human rights, or goals are not framed in the language of rights, it is undeniable that MDG targets and their indicators – which were connected to poverty reduction, access to primary education, gender equality, improving child and maternal health, and fighting contagious diseases – are the intentions of the rights listed in ratified international human rights treaties. For example, commitment to poverty reduction implies that states undertake efforts to ensure opportunities for people to generate income that would allow them to have an “adequate standard of living for himself and his family, including adequate food” (ICESCR Art. 11). This also includes ensuring that people are rewarded for work they perform and are not kept in slavery and servitude (ICCPR Art.8). This chapter examines these differing assessments of the juncture between human rights and MDGs, as well as the role that human rights can play in advancing them.

553 “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... The States Parties will take appropriate steps to ensure the realization of this right...” International Covenant on Economic, Social and Cultural Rights, (Art.11(1)).
554 “1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude”, International Covenant on Civil and Political Rights, (Art. 8).
9.1 THE ANTECEDENTS

The MDGs are not the first global pledge to address and solve the issue of human deprivations and its antecedent can be traced back to the “Four Freedoms” speech by President Franklin D. Roosevelt (January 1941), where he stated, “The third freedom is freedom from want—which translated into universal terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world.”\(^{555}\) Despite the fact hunger, education, and child survival had been the issues of concern for many years, they had not been a main focus of international development during the first decades of UN activities. It was economic transformation, industrialisation and growth which were the primary concerns of the UN’s First, Second, and Third Development Decades (1960s, 1970s, and 1980s).\(^{556}\) Furthermore, until the 1990s, UN goal-setting exercises mostly remained as an aspiration and, as Hulme argues, around the 1980s the idea of multilateral actions in global poverty reduction was stalled. The reason for this deceleration was the dominance of neoliberal ideas under Reagan and Thatcher. In the 1990s, there were UN summits which can be regarded as precursors to MDGs, such as 1990 “Children’s Summit” by UNICEF, 1995 World Summit for Social Development in Copenhagen and the Beijing World Conference on Women.\(^{557}\)

In the early 1990s, the notion of human development entered the international development discourse and it “posit[ed] that human beings are the ends as well as the


\(^{556}\) Fukuda-Parr and Hulme, *International Norm Dynamics and “The End of Poverty”: Understanding the Millennium Development Goals (MDGs)*, 3.

\(^{557}\) Hulme, “Lessons from the Making of the MDGs: Human Development Meets Results-Based Management in an Unfair World,” 16.
means of development, challenging the focus of many economists and policymakers on *per capita* economic growth.” The concept of human development had at its core Sen’s concept of human capabilities, with the main purpose of development being to increase human choices and enhance human capabilities. The first UNDP *Human Development Report*, published in 1990, not only introduced the idea of human development to a wider group of professionals, scholars, and the media; it also provided an alternative, non-socialist, framework for social activists to argue for policy changes; “[r]ather than simply criticising the Washington Consensus... the UN increasingly began to articulate an alternative approach.”  Human development represented the process of widening the choices of people and “the level of well-being they had achieved.”

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558 Ibid., 15.
559 Jolly et al., *UN Contributions to Development Thinking and Practice*, 179. As Alkire and Deneulin note, “[h]uman development has been pioneered by different people under different names and at different times. A focus on people’s freedoms can be found in the notion of *ubuntu* in South Africa, with liberation theology in Latin America and beyond, with participatory development, community mobilization, rights based approaches, sustainable livelihoods, and many other ethical approaches to development. It is equally applicable in developed and developing countries. One of its leading voices is the philosopher and Nobel laureate in economics Amartya Sen, whose writing on the ‘capability approach’ provide the philosophical basis of human development.” (Alkire and Deneulin, “The Human Development and Capability Approach,” 23.
561 Hulme, “Lessons from the Making of the MDGs: Human Development Meets Results-Based Management in an Unfair World,” 16. While Canada showed its support to structural adjustment through its vote in international financial institutions (IFIs), that support was from the Finance Department and initially it did not affect many of CIDA’s policies. (Black, Thérien, and Clark, “Moving with the Crowd: Canadian Aid to Africa,” 270.) Burdette notes that Canada’s position towards structural adjustments developed late and was not subjected to serious public scrutiny, but [b]y 1990, senior Canadian aid officials were firmly in support of the structural adjustment processes, albeit tempered by concern for the impact on vulnerable groups.” (Burdette, “Structural Adjustment and Canadian Aid Policy,” 216.) In its 1987 strategy document *Sharing Our Future*, CIDA addressed structural adjustment among six Canadian aid priorities though with concern about social and economic consequences. CIDA began using structural adjustment among policy means to “encourage the recipient country to follow a certain set of policies.” (Ibid., 217.) CIDA also undertook capacity building efforts for its specialist in macro-economic issues. (Ibid., 220.) If, during the 1980s, CIDA did not have much input in formulation of structural adjustment programs of IFIs or individual countries. But later CIDA staff traveled regularly to Washington in a bid “to become a ‘policy maker,’” or at least a participant in the making of policy, rather than a ‘policy taker.’” (Ibid., 221.) Though, support for structural adjustment was met with controversy and in its 1991 mission statement CIDA
What gave the concept of human development such appeal was the quantification of the concept. The HDR [UNDP Human Development Report] focused on three essential elements of human life: longevity, knowledge, and “decent” standards of living. For the first component, life expectancy at birth was chosen as indicator; for the second, literacy figures; and for the third, command over resources needed for a decent living, the logarithm of real GDP per capita.652

Human and social aspects of development were also advanced through UN global conferences. The World Summit for Social Development (WSSD), held in Copenhagen, March 6–12, 1995, was an important step in placing the “social dimension firmly on the agenda.”653 The Declaration adopted at the WSSD contained ten commitments. Among the commitments was the creation of an economic, political, social, cultural, and legal environment that would enable people to achieve social development. The markers of such achievement included the eradication of poverty, full employment as a basic priority of economic and social policies, the attainment of universal and equitable access to education and primary health care and improving and strengthening the framework for international, regional, and sub-regional cooperation for social development.654 The WSSD also adopted a Program of Action which consisted of four components: an enabling environment for social development; eradication of poverty; expansion of productive employment and reduction of unemployment; and social integration.655 As former UN Secretary General Boutros-Ghali highlighted:

“avoid[ed] use of the phrase ‘structural adjustment.”’ It was phrased as promotion of sustainable development. (Ibid., 224.) Canadian NGOs and churches had been critical of structural adjustment and considered “it as a betrayal of Canada's putative primary goal of poverty alleviation.” (Black, Thérien, and Clark, “Moving with the Crowd: Canadian Aid to Africa,” 270.) For more detailed discussion on human rights conditionality in Canadian development aid, refer to the chapter of this dissertation: *Skating on the Rideau Canal or Channeling Canada's International Development Aid: Human Rights, MDGs, and Poverty*.  

652 Stokke, *The UN and Development from Aid to Cooperation*, 345.  
653 Ibid., 12.  
655 Ibid., 455.
The World Summit for Social Development in Copenhagen...stressed the interconnectedness of the entire continuum of conferences. It is obvious that economic problems have social consequences and the social deterioration in turn undermines economies. The ills that societies feel most acutely all have social origins and social consequences, and the Copenhagen summit focused on these: the urgent and universal need to eradicate poverty, expand productive employment, reduce unemployment and enhance social integration.566

The WSSD marked a crucial step towards the MDGs because the outcome was a global political commitment that prioritized the eradication of poverty.567 The attendance of 117 heads of states provided a particular legitimacy to the agreement reached at the summit.568 The summit also approved the target to eradicate extreme poverty (less than $1 per day) by 2015.569

Many NGOs welcomed that the summit adopted a multi-sectoral approach and prioritized the issues of poverty. However, there were also NGOs that argued that the summit did not succeed in addressing the effects of economic globalization. They contested that the summit dealt with symptoms rather than consequences. However, the summit provided impetus for the initiatives to address the issue of poverty.570 The UNDP realigned its programs so poverty became their principal goal and the UN announced 1996 as an International Year for the Eradication of Poverty, which become the Decade for the Eradication of Poverty the following year. Although the summit did not result in “binding goals for poverty eradication, it clearly had a profound impact on multilateral

566 Boutros-Ghali, Unvanquished: A U.S.-U.N. Saga, 171. See also Schechter, United Nations Global Conferences, 139–140.
569 Ibid., 16.
570 Hulme, The Millennium Development Goals (MDGs): A Short History of the World’s Biggest Promise, 11.
and some bilateral programmes, which increasingly began to define their developmental role as poverty eradication or reduction.” The WSSD also endorsed the 20/20 principle where by twenty percent of the donor development aid was spent on basic social services and developing countries allocated twenty percent of national state budgets to similar programs. The principle particularly focused on health and education, which were considered very important to achieving development and combatting poverty. This focus tried to address the concern that when governments met conditions requested by structural adjustment programs funding of those sectors was reduced. This in turn had a social impact and in some countries accomplishments in health and education during the 1960s and 1970s were stalled and in the 1980s even declined.

In the mid-1990s, most bilateral aid agencies experienced the reduction of their total budget allocations for official development assistance. The development assistance was not regarded favourably. Those on the political right considered aid “a waste of time” and those on the left did not treat aid sympathetically due to the consequences of structural adjustment programs. Hulme notes that, “[t]he atmosphere at the Chateau de la Muette where the DAC was holding its high level meeting (HLM) on 3–4 May 1995 was gloomy, with many delegates talking about ‘aid fatigue’ and lack of public support for long-term development.” The meeting participants approved Development Partnership in the New Global Context, which had been produced over the previous year, and it viewed development cooperation as an investment rather than an expenditure. It

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571 Ibid.
572 Boutros-Ghali, Unvanquished: A U.S.-U.N. Saga, 171. See also Schechter, United Nations Global Conferences, 141.
573 Stokke, The UN and Development from Aid to Cooperation, 352–353.
called for an increase in aid, also making it more effective and coherent. However, despite acknowledging the merits of the document, “many [delegates] also offered their support to the European Union’s proposal (under the French Presidency) ‘…to set up a *Groupe de Réflexion* with a view to review the future of development aid and the role of the DAC’[OECD’s Development Assistance Committee (DAC)].”

Three weeks after the meeting, the *Groupe de Réflexion* was initiated at the OECD ministerial event. It was tasked with assessing past experiences and suggesting policies for development aid. Early in the process the DAC staff was mandated to draft a list of UN summit declarations. The members of the *Groupe* intended to argue a credible case for aid, which could mobilize actors with diverse views about the role of aid after end of the Cold War. The listing exercise within *Groupe* led to discussions about which goals should be included. The UK and Japanese delegations wanted to solely “focus on income poverty reduction (through economic growth).” Their preference was a single goal rather than a multi-goal list. The US delegation was not keen of having focus solely on poverty as it “was not a popular concept for politicians or the public in the US” and they needed specified goals. Furthermore, for the US “[g]oing for a broad set of goals would give the list a form of democratic legitimacy, as it was derived from numerous UN summits.” This would allow for the support of NGOs, because NGOs could see their

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576 Ibid., 14.
organisations’ mandates fitting one of the goals.\textsuperscript{580} Human development ideas also provided a sound claim that tackling the issue of poverty requires a framework with several goals. As a balancing act between these positions was that the “document would be a listing but it would be headed by ‘economic wellbeing’ to ensure that the importance of economic growth was clear. This goal would focus on a global goal for income poverty reduction, the ‘social development’ goals would be subsumed under a single heading and environmental sustainability came third.”\textsuperscript{581}

The result of the year-long work of the \textit{Groupe} was the final document \textit{Shaping the 21st Century: The Contribution of Development Co-operation}, which was launched at the OECD High Level Meeting of Ministers of Development Cooperation on 6–7 May, 1996.\textsuperscript{582} In the introductory part of the documented it was highlighted:

\begin{quote}
In the year 2000, four-fifths of the people of the world will be living in the developing countries, most with improving conditions. But the number in absolute poverty and despair will still be growing. Those of us in the industrialised countries have a strong moral imperative to respond to the extreme poverty and human suffering that still afflict more than one billion people ... All people are made less secure by the poverty and misery that exist in the world. Development matters.\textsuperscript{583}
\end{quote}

The document emphasised the need for the international community to keep the momentum of official development assistance and expand its volume to turn around “the growing marginalisation of poor” and reach “realistic goals of human development.” It also stated, “[t]oday’s investments in development co-operation will yield a very high

\begin{flushleft}
\textsuperscript{580} Ibid., 15.  \\
\textsuperscript{581} Hulme, \textit{The Making of the Millennium Development Goals: Human Development Meets Results-Based Management In an Imperfect World}, 6.  \\
\textsuperscript{582} Hulme, \textit{The Millennium Development Goals (MDGs): A Short History of the World’s Biggest Promise}, 16.  \\
\textsuperscript{583} Development Assistance Committee (DAC), \textit{“Shaping the 21st Century: The Contribution of Development Co-Operation,”} 1.
\end{flushleft}
return over the coming years.” In the chapter “The Vital Interests at Stake,” three main motivations for official development assistance by OECD members were provided: humanitarian, enlightened self-interest, and solidarity of all people with one another. The humanitarian motive meant supporting development as “a compassionate response to extreme poverty and human suffering” because deprivation was “unnecessary and its continuation intolerable.” Enlightened self-interest as a reason to support development implied that development benefits people in both poor and developed countries. Increase in prosperity in developing countries would expand markets for goods and services of developed countries. Solidarity in development would allow people from all nations to cooperate to address “common problems and pursue common aspirations.” The document set three targets. The first goal of economic well-being aimed at halving the proportion of people in developing countries who lived in extreme poverty by 2015. The goal of social development was concerned with primary education, access to reproductive health care, as well as the reduction of infant and child mortality rates. The third goal focused on environmental sustainability.

Media covered the IDGs for only a few days. According to Hulme, the document did not have much practical impact and it did not come as a surprise because the document “did not have a plan of action and it was a collective document that belonged to a set of minor ministries or agencies in the rich.” He notes that “[f]or example John Vereker, the UK’s lead bureaucrat on international development, [was] reported [to have been] engaged in the drafting process primarily to ensure that the proposal did no damage

584 Ibid.
585 Ibid., 6.
586 Ibid., 9–10.
to the UK aid programme.” When this goal was achieved, the document was put aside.

On the approach by other OECD countries, he provides the insight:

USAID took it back to Washington DC, but with Jesse Helms chairing the Foreign Relations Committee it was unlikely to have much immediate influence on policy. As far as one can judge, the ‘like minded’ group of developmentally progressive donors (Denmark, the Netherlands, Norway and Sweden) took the agreement seriously. But they were already pursuing IDG-type policies and had limited leverage over the larger donors (US, Japan, UK, France) and the multilateral institutions.  

There was little or no resonance on the IDGs in developing countries, because they were the outcomes of negotiations among rich countries and the call for partnership resembled “standard aid agency rhetoric.” Goals and the ideological orientation of NGOs affected their response to the IDGs. Broad-based development NGOs expressed some satisfaction with the “social development” approach in IDGs, while radical NGOs viewed IDGs as an attempt “to mask its dependence on the exploitation of labour and the environment.” The response from multi-lateral institutions varied. The IDGs were reflected in UNDP Human Development Reports and they pressed the World Bank to see poverty as a multi-dimensional issue. The IDGs did not have much impact on IMF.

9.2 **MILLENNIUM DEVELOPMENT GOALS**

The MDGs signified an important normative shift in the international development discourse by making poverty eradication and human well being the fundamental objectives of development. They not only set the agenda for international development,

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589 Fukuda-Parr and Hulme, *International Norm Dynamics and “The End of Poverty”: Understanding the Millennium Development Goals (MDGs)*, 3.
but also provided strong impetus for mobilization around globally agreed commitments and issues they aimed to address.\textsuperscript{590} MDGs may not have been perfect, but they served as a blueprint for donors and developing countries to strategize their efforts in addressing salient issues in developing countries and to accumulate more targeted knowledge about failures and achievements to develop and proceed with the new development goals.

On December 17, 1998, the UN General Assembly adopted Resolution 53/202 which called to convene the Millennium Summit as a part of the General Assembly (Millennium Assembly) to be held in 2000. The preparatory process for the Summit was important in a goal setting process and the UN Secretary General, Kofi Annan, was eager to put global poverty eradication in the centre of the UN agenda.\textsuperscript{591} In March 2000, a report of the UN Secretary General titled \textit{We the Peoples: The Role of the United Nations in the 21st Century} (A/54/2000), was released. In its introduction the document noted,

There is much to be grateful for. Most people today can expect to live longer than their parents, let alone their more remote ancestors. They are better nourished, enjoy better health, are better educated...There are also many things to deplore, and to correct ... Grinding poverty and striking inequality persist within and among countries even amidst unprecedented wealth. Diseases, old and new, threaten to undo painstaking progress. Nature’s life-sustaining services, on which our species depends for its survival, are being seriously disrupted and degraded by our own everyday activities.\textsuperscript{592}

The document highlighted some basic priorities which aimed at reaching global equity and greater solidarity. The set priorities were poverty reduction, providing children at least with primary education, sustainable development, and employment generation,

\textsuperscript{590} Fukuda-Parr, “Millennium Development Goals: Why They Matter,” 397.
\textsuperscript{591} Hulme, “Lessons from the Making of the MDGs: Human Development Meets Results-Based Management in an Unfair World,” 17.
\textsuperscript{592} The UN Secretary-General, “We the Peoples: The Role of the United Nations in the Twenty-First Century,” 3.
combating HIV/AIDS, upgrading slums, and bridging the digital divide.\textsuperscript{593} The report also indicated priorities for ensuring global security. Among the priorities were prevention of conflicts, protection of individuals from the gross violations of human rights, and addressing the dilemma of intervention when gross violation of human rights are committed by sovereign states.\textsuperscript{594}

Civil society organizations also became involved in the process of defining international development priorities\textsuperscript{595} based on the particular focus of their interest and “welcomed the broader approach … expanding the area of concern away from merely extreme income poverty to include a range of social development issues.”\textsuperscript{596} 1,350 NGO representatives participated in the Millennium Forum organized at the UN headquarters in May, 2000. The result of the Forum was the publication of the \textit{Millennium Forum Declaration}. The Forum put pressure on governments and the United Nations to fully implement pledges made at the 1995 World Summit for Social Development, oversee debt cancellation, and introduce “binding codes of conduct for transnational corporations.”\textsuperscript{597} The civil society organisations saw their role in monitoring and pressuring governments to fulfil commitments they had undertaken and engaging “the poor in real partnership in eradicating poverty and exert their best efforts to implement the Universal Declaration of Human Rights.”\textsuperscript{598}

During the Millennium Summit preparatory process, UN Secretary General Kofi Annan needed to show that the UN was coordinating its initiatives in global poverty

\textsuperscript{593} Jolly et al., \textit{UN Contributions to Development Thinking and Practice}, 304. United Nations, General Assembly, “We the Peoples: The Role of the United Nations in the 21st Century: Presented to General Assembly by Secretary-General, Press Release, GA/9704.”
\textsuperscript{594} Jolly et al., \textit{UN Contributions to Development Thinking and Practice}, 305.
\textsuperscript{595} Foster, “The Millennium Declaration: Mobilising Civil Society Organisations,” 162.
\textsuperscript{597} Foster, “The Millennium Declaration: Mobilising Civil Society Organisations,” 162.
\textsuperscript{598} Ibid.
reduction with the World Bank, IMF, and OECD members. The result was the launch of *Better World for All: Progress Towards the International Development Goals* in June 2000, which almost exactly repeated the IDGs. The joint press release issued by four multilateral organisations indicated, “[t]he report focuses on seven interrelated development goals, set during world conferences in the 1990s, which, if achieved in the next 15 years, will improve the lives of millions of people.” The goals aimed at halving the proportion of people living on less than $1 a day, enrolling all children in primary school, empowering women by eliminating gender disparities in education; reducing infant and child mortality rates, reducing maternal mortality ratios; promoting access to reproductive health services and promoting environmentally sustainable development.

As Hulme noted, the *Better World for All* revealed that the process of global poverty reduction was a “twin-track process,” when “[t]he OECD... was continuing with its IDGs, while the UN, a multilateral institution with greater legitimacy but few resources, was mounting a similar exercise to produce a list from the Millennium Summit.” Civil society responded to the document with harsh criticism and they viewed such a position of the UN Secretary General as a “betrayal.” The anti-globalisation stance of NGOs was “often framed in anti-market ideology and portrayed the World Bank and the IMF as the enemy.”

The fifty-fifth session of the UN General Assembly, the Millennium Assembly, took place from 6–8 September, 2000. The Millennium Summit, organized as a part of

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602 Fukuda-Parr and Hulme, *International Norm Dynamics and “The End of Poverty”: Understanding the Millennium Development Goals (MDGs)*, 15.
the Millennium Assembly, gathered together representatives of 191 nations, which included 147 heads of state and government.\textsuperscript{603} The result of the Millennium Summit was the adoption of the UN General Assembly Millennium Declaration (Resolution A/RES/55/2)\textsuperscript{604} by 189 world leaders. The declaration asserted “a collective responsibility to uphold the principles of human dignity, equality and equity at the global level” and called for the assistance for the most vulnerable ones.\textsuperscript{605} But it should be noted that the Millennium Declaration and MDGs are two distinct entities. The former was “like most UN summit declarations before it” and the latter was an outcome of a political process involving negotiations between OECD member states, UN agencies and World Bank.\textsuperscript{606}

In December 2010, the General Assembly tasked the UN Secretary-General to draft a road-map for the implementation of the Millennium Declaration and to prepare an annual progress report on its implementation. In September 2001, Annan produced the \textit{Road Map towards the Implementation of the United Nations Millennium Declaration} “which proposed eight Millennium Development Goals with special targets for each (in all eighteen targets) and a total of forty-eight indicators to measure performance against the baseline year 1990.”\textsuperscript{607} Part three of the \textit{Road Map} “Development and Poverty eradication: the millennium development goals” underlined the multidimensional nature of development issues and interconnectedness of MDGs requiring a multi-sectoral program approach. It also urged to put human rights “at the centre of peace, security and development programmes” and mobilize diverse stakeholders, including civil society and

\textsuperscript{603} Stokke, \textit{The UN and Development from Aid to Cooperation}, 443.
\textsuperscript{604} Ibid., 676 endnote 4.
\textsuperscript{607} Stokke, \textit{The UN and Development from Aid to Cooperation}, 445.
private sector around MDGs. The declared eight MDGs were the eradication of extreme poverty and hunger; achievement of universal primary education; promotion of gender equality and empowerment of women; reduction of child mortality; improvement of maternal health; combating HIV/AIDS, malaria and other diseases; ensuring environmental sustainability; and development of a global partnership for development.

However, as Hulme and Scott remark, the existence of two sets of goals—one by the UN and another by DAC—“operating side by side looked messy” and could have been used by the opponents of aid to point out the inability of “the world’s development agencies …. to agree on a single set of objectives.” They note that, while an option could have been to merge the two, the issue was that the Millennium Declaration, which was endorsed unanimously, was not likely to be altered and IDGs were viewed as “simpler, monitorable and achievable” by donor agencies and Bretton Woods Institutions and more suitable for soliciting increase in ODA spending. Months before the Road Map, there were extensive negotiations to address the issue of “twin-track” when OECD was moving with IDGs and the UN with the goals proclaimed in the Millennium Declaration. The negotiations were sparked by a speech by Mark Malloch Brown at the meeting organized by the World Bank in Washington DC, on 19–21 March 2001. At the meeting he proposed that the UN would accept the Breton Woods institutions’ oversight of poverty reduction strategy papers (PRSP) of developing countries, if the institutions would commit to targets which would be developed based on the Millennium Declaration. On the results of the negotiations, Hulme provides, “it is clear that agreements

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608 UN Secretary-General, *Road Map Towards the Implementation of the United Nations Millennium Declaration*, 19, Paragraph 82.
609 Ibid., 56–58.
611 Ibid.
were reached. Malloch Brown’s proposal that there be a clear division of labour between the IFIs (PRSPs) and the UN (Millennium Goals) was carried forward. The result of negotiations was that IDGs were amended. The reproductive health goal, which was a part of IDGs, was not included in MDGs as it was a contentious issue for some UN members. The UN Millennium Declaration contributed to amended IDGs by adding a goal on global partnership, and, as Fukuda-Parr notes, “[i]t commit[ed] rich countries to do more in the areas of access to trade, aid, debt relief, and technology transfer. If this goal had not been included, developing countries would not have agreed to the MDG package.”

While being a succinct “what-to-do” list, MDGs still resonated global aspirations of working on ending deprivations faced by people and improving their well-being. Yet, they were framed as the criteria of advancement of development objectives rather entitlements triggering duties to be satisfied. As Nelson comments, MDGs became “a careful restatement of poverty-related development challenges, in language that avoids reference to rights; they are a donor country interpretation of the key issues for a donor-country audience.” The MDGs, as a short list of development goals, were better positioned than a lengthy list to receive the support of the public and mobilize political actions around them. As Sachs mentions, “[t]hese eight goals were what stuck in the public’s mind, not the 18 targets and 48 indicators. Simplicity has worked effectively in

this case from the point of view of public awareness, mobilisation, advocacy, and continuity.” 617 MDGs marked “a major departure from previous efforts to set development objectives.” They were “limited and selective,” enabling the prioritization of specific development objectives among the many declared during the previous decades of international development efforts. They included measurable indicators and had set a time-frame. In addition, broad-range institutions were established to promote and implement MDGs such as the Millennium Project, a network of policy-makers, practitioners, and experts; the Millennium Campaign which mobilized civil society; and the process of producing national MDG reports and being a key focus of major international agencies. 618 MDGs also revitalized fulfilment of pledges made during the previous world conferences. As little had been achieved with the previous efforts “in concrete terms for the poorest members of society and the MDGs were designed to remedy that failure.”619

But foreign aid to support the implementation of MDGs still depended on voluntary financing mechanisms and there was no clear plan to finance them. 620 The first attempt to address the issue was the International Conference on the Financing of Development, held in Monterrey in March 2002. 621 The final document declared the need for “a new partnership between developed and developing countries” to achieve MDGs and pledged “to mobilizing domestic resources, attracting international flows, promoting international trade as an engine for development, increasing international financial and

619 Ibid., 756.
621 Swanson in Sarbib, “Putting People at the Center,” 22.
technical cooperation for development.” The Monterrey Consensus accentuated the responsibility of developing countries in addressing development challenges with external assistance being dependent on their initiatives; “[e]ach country has primary responsibility for its own economic and social development, and the role of national policies and development strategies cannot be overemphasized.” The Monterrey Consensus also recognized the role of good governance, democratic institutions, “respect for human rights, including the right to development, and the rule of law, gender equality…, and an overall commitment to just and democratic societies” in sustainable development.

Human rights and democracy, while being a part of the Millennium Declaration, were not included in MDGs. Fukuda-Parr explains that this was partially due to “the difficulty in finding quantitative goals” for them, but also because they were not regarded as a part of the development agenda. But during the course of the last decade there has been growing recognition of connections between them and that “[t]he aim of development is not just economic growth but also democracy and human rights.” Even though they are not framed as entitlements, MDGs provided a strong impetus for the promotion of human rights and revitalized debates on the role human rights can, and should, play in lifting people from destitution. The added value of MDGs to human rights was that they “provided a framework for mobilizing resources to help realize a small but

625 para. 11 ibid., 7.
significant number of socio-economic rights.”

Human rights also contributed to MDGs by advancing human rights commitments undertaken by states through accession to treaties, focusing on discrimination which contributes to deprivations, and “direct[ed] MDG interventions to those with the greatest need.” The inclusion of the language of rights in the MDG implementation process “necessitate[d] greater consideration of the structural causes of poverty among, and impact of MDG projects on, vulnerable groups such as minorities and indigenous peoples.” It also contributed to the mobilization of the civil society, public and governments in support of MDGs and around issues of the poor. Nelson, however, is critical of the mobilization factor of human rights. He argues that if “human rights have been an important mobilizing resource and source of leverage for social movements and local citizen organizations in demanding government action to protect, respect, and fulfill their rights” in case of the MDGs they “have not proven to be a motivating force or source of political leverage for such citizen action.”

In countering the criticism towards MDGs, Alston observes that critics see the human rights framework “through rose-colored glasses” instead of noticing that both human rights and MDGs have “a number of weaknesses, as well as strengths.”

In many cases the effort required is to strengthen both rather than to sing the praises of the former and then reject the latter as being inadequate. Several

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examples are pertinent in this regard. The suggestion that the MDG process is a top-down rather than a grassroots one is true in some respects, but equally it is true of the human rights that were first proclaimed in 1948 by the UN General Assembly in the UDHR … Finally the allegation that the MDG project reflects a one-size fits all approach can be levelled equally well against the aspirations of a universalist human rights regime.633

However, there is still a difference between goals and rights. Rights invoke corresponding duties—particularly on states, which are the primary-duty bearers—to ensure the enjoyment of rights. Goals do not raise similar claims that the rights-holders can put on governments and “[t]he MDGs … [were] not any individual citizen’s goals in the same sense that the right to food or to information is that individual’s right.”634 Though, not being legally binding, however, MDGs served as “moral and practical commitments.”635 As Sachs indicated, because they were not designed to be legally binding “[l]ittle time was lost negotiating the exact words of the MDGs.” He rationalized that “[l]egally binding commitments are almost universally regarded as the gold standard of international diplomacy, but the number of years that are often invested in reaching legally binding treaties on sustainable development are unlikely to counterbalance the heavy transaction costs and delays.”636

MDGs reflected the multidimensional perspective of development and “consider[ed] people not only as the beneficiaries of progress but also as the key agents of change.”637 From their launch, MDGs became a catalyst for international development activities. International development projects and national strategies were realigned to

636 Ibid.
meet the MDGs locally and globally. The design and implementation of projects led to
closer involvement with national actors, and this in turn has contributed to the capacity
building of national counterparts in government or civil society. Human rights were not
explicitly referenced in MDGs, however, they were an integral part of development
discourse, including programing of donor agencies. Despite criticism of MDGs as
declaratory goals with no firm commitments and lack of human rights vocabulary in its
implementation, both mutually reinforced the ambition to resolve the challenges of
destitution and underdevelopment. While MDGs provided a multifaceted approach to
development policies, human rights principles and standards—including through the
adoption of HRBA—sets the expectations not only about the outcomes but also about the
processes of development.
With international development efforts focusing on bringing economic prosperity, building infrastructures and institutions, human rights were seen as either a separate domain of activities, or as a prop to “humanize” development efforts, rather than binding commitments to be factored into those efforts. It was assumed that improvements in the economy and institutions would lead to the reduction of poverty, betterment of livelihood, and improved quality of life by creating environment where people could thrive and providing opportunities they could benefit from, thus also satisfying people’s needs. The goal was to boost the overall economic development and establish institutions conducive to development rather looking into entrenched inequalities and discrimination causing deprivations. Those deprivations were regarded as unsatisfied needs, not as failures to guarantee the entitlements people had – claims that raise corresponding duties to ensure the enjoyment of those entitlements.

However, as development efforts were deficient in specifically addressing challenges faced by those in need and vulnerable, but also in some instances they even negatively impacted the livelihood of people. Consequently, there was a push to incorporate human rights standards and principles as a yardstick for both outcomes and processes of development. It has been argued that the human rights framework has been a way to reformulate the essence of development and poverty when destitution is not just a failure of meeting basic needs but also a denial of basic human rights and a nonfulfillment of obligations to guarantee those rights. The chapter presents the role HRBA plays as a conceptual framework in development and poverty reduction processes.

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638 The chapter includes text of the paper written for the course at the BSIA - Human Rights in a Globalized World, instructor Dr. Andrew Thompson.
It emphasizes the principle of indivisibility and interdependence of human rights in addressing the issue of poverty, as well as the role human rights play in empowering rights-holders to claim their entitlements and establishing obligations of duty-bearers to meet those claims.

Since the 1990s, governmental and non-governmental organizations involved in development have used the term human rights-based approach. During the last decades, bilateral and multilateral donors adopted policies incorporating HRBA. Some of those policies include binding requirements, while others included more general guidance. Even if the donor does not have a specific policy, human rights considerations are streamlined and implemented through projects in the areas of good governance and access to justice. But Kindornay et al., while addressing the question on the emergence of HRBA, note that “there is no scholarly consensus yet on how and why the new paradigm emerged.”

The Human Rights Council of Australia was among the first NGOs advocating for interlinkage between human rights and development with the publication of The Rights Way to Development in 1995. The premise of the document was that human rights and development should not be viewed merely through areas they intersect, but rather the development should be seen “as a subset of human right where, for practical purposes, ‘human rights’ are accepted as those standards, norms and requirements elaborated in the International Bill of Rights and in associated instruments.

639 In regards to terms used within the discourse, Nyamu and Cornwall point out that “[i]n this field of definitional differences, slippages between talk of a ‘rights-based approach to development’ with that of a ‘human rights approach to development’ are common, and distinctions remain fuzzy and inconsistent.” Nyamu-Musembi and Cornwall, What Is the “Rights-Based Approach” All About?: Perspectives from International Development Agencies, 12.
641 Kindornay, Ron, and Carpenter, “Rights-Based Approaches to Development: Implications for NGOs,” 477.
642 Chong, Freedom from Poverty. NGOs and Human Rights Praxis, 108.
and decisions of the United Nations.”

Until the 1990s, Western-based NGOs were generally not involved with SERs. During the WSSD at Copenhagen in 1995, humanitarian NGOs and groups from developing countries were active in promoting a rights-based approach, while “the campaign was not spearheaded by the mainstream international human rights movement, as one would expect.” However, by the turn of the millennium, major NGOs such as CARE and ActionAid adopted HRBA.

UNDP has been among the leaders of mainstreaming HRBA. In its 1998 policy paper it asserted the connection between the promotion of human rights and sustainable human development. The adopted approach was “holistic and multidimensional, recognizing the mutual dependency and complementarity of sustainable human development and social, economic, cultural, civil and political rights.” As Schmitz notes when referring to the emergence of HRBA the narrative is about the top-down process; nevertheless, it “was primarily driven from the bottom up and emerged as a result of broader shifts, including the progressive indigenization of development non-governmental organizations (NGO) staff and the increasing profile of social

644 Cornwall and Nyamu-Musembi, “Putting the ‘Rights-Based Approach’ to Development into Perspective,” 1422–1423.
645 CARE in its January 1999 Human Rights Initiative stated “… achieving minimum conditions for living with dignity (i.e., attaining ... human rights—as validated by national and international law). A ‘rights-based approach’ ... empowers poor communities to claim and exercise their rights and enables those responsible to fulfil their duties.” (Cited in Ibid., 1429.)
movements”649. Different development organizations have adopted “their own ‘brand’ of HRBA, shaped by pre-existing understandings of the core development challenges.”650 However, as Darrow and Tomas rightly argue, “[a] rights based approach has come to mean different things to different people, depending upon thematic focus, disciplinary bias, agency profile, and the external political, social, and cultural environment.”651 HRBA includes diverse techniques and institutional mechanisms. It can involve advocating to ratify international human rights instruments and implement commitments set in them. In other cases, HRBA aims to strengthen accountability of institutions – such as human rights commissions or ombudsmen – or mobilize citizens as rights-holders, including through civil society engagement. Depending on the country, the approach may vary and use different HRBA elements.652

The UN OHCHR defines HRBA as “a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.”653 HRBA puts the focus on both development outcomes and processes. It requires that they are in compliance with human rights standards654 and raises “corresponding obligations established by international law.”655 The approach reformulates development issues and

650 Ibid., 540.
652 Gauri and Gloppen, “Human Rights-Based Approaches to Development,” 487.
actors into rights-holders and duty-bearers, as well as “into claims, duties, and mechanisms that can promote respect and adjudicate the violation of rights.” It moves the focus from needs to rights and from charity to duty and operationalizes “development by incorporating norms, standards and principles of human rights.” It aims at examining inequalities that cause development problems and remedy discriminatory practices and power imbalances that are obstacles to development. The approach sees the empowerment of people, especially those who are vulnerable and marginalized, to be a part in the policy making and hold those with “a duty to act” accountable.

The UN OHCHR acknowledges that there is no one fits-all approach, but it lists several components that are utilized by the UN agencies:

- Even at the design stage of development policies and programs, “the main objective should be to fulfill human rights”;
- “[R]ights-holders and their entitlements” and duty-bearers with correlating obligations are specified;
- Capacities of rights-holders to claim their rights and “duty-bearers to meet their obligations” strengthened;
- Programing in all sectors and at all stages is guided by principles and standards “derived from international human rights treaties”

Special attention is paid to treaties which are ratified by states and which represent “country ownership” of the relevant principles and standards enshrined in those treaties.

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The concern of HRBA is about all human rights and it sees them as interdependent, with “special attention to economic and social rights as the authentic concern of development policy.”\footnote{Hamm, “A Human Rights Approach to Development,” 1006.} Human rights also serve as a normative underpinning in drafting national and international policies, including those aimed at poverty reduction, to ensure that such principles as non-discrimination and equality are reflected.\footnote{Office of the United Nations High Commissioner for Human Rights, \textit{Human Rights and Poverty Reduction: A Conceptual Framework}, 2–3. See also Office of the United High Commissioner for Human Rights, “Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies,” 4.}

Development organizations have been using “human rights instruments in their arguments for eradication of poverty in general and extreme poverty in particular.”\footnote{\Oyen, “Conclusion: Paradox of Poverty Research: Why Is Extreme Poverty Not in Focus,” 265.} On the role of the HRBA in poverty reduction, Banik indicates that “it is an important tool not only for \textit{poverty reduction} but also in efforts to combat \textit{poverty production} since it entails comprehensive re-definition of the aims and approaches to development.”\footnote{Banik, “Rights, Legal Empowerment and Poverty: An Overview of the Issues,” 25.}

HRBA regards poverty as a multi-dimensional phenomenon and focuses on how poverty is affected by civil and political freedoms. Deprivations are examined and addressed through diverse avenues, including economic and social factors, such as stigma, discrimination, insecurity, and social exclusion. The approach looks into manifestations of discrimination in laws, polices and acts of institutions and seeks to rectify the discrimination of individuals and groups.\footnote{\textit{Office of the United Nations High Commissioner for Human Rights, “Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies,”} 4.}

HRBA assesses poverty through international human rights norms and treats aid recipients as rights-holders rather than those who...
merely receive aid. HRBA “recognises poor people as having inherent rights essential to livelihood security—rights that are validated by international standards and laws.”

Though poverty is predominantly viewed and treated through the lenses of economic and social deprivations, the human rights framework accentuates that enjoyment of social and economic rights “may be crucially dependent on the enjoyment of civil and political rights.” Such a focus underlines that civil and political rights are not “luxuries relevant only to relatively affluent societies” and that economic and social rights are not just ambitious goals, rather, they are rather interconnected and relevant parts in the poverty reduction process. The human rights framework conveys the message that “economic, social and cultural rights are binding international human rights, not just programmatic aspirations.” There is also an intersection between HRBA and capability approach in addressing the issue of poverty. Poverty can be characterized as “the failure of basic freedoms - from the perspective of capabilities.” The UN OHCHR argues that poverty can be regarded as non-fulfilment of human rights if those human rights are associated with capabilities that are presumed basic in a society and that non-fulfilment is a result of “[i]nadequate command over economic resources.” Among the common basic capabilities are “being adequately nourished, avoiding preventable diseases and premature mortality, being adequately sheltered, having basic education, being able to ensure personal security, having equitable access to justice, being able to live in dignity,

being able to earn a livelihood and being able to take part in the life of a community.**670

Although HRBA is similar to the capability approach, it frames poverty as a multi-dimensional concept and as a deprivation of basic human rights required for a dignified life, there are differences too. If within the capability approach there is no consensus on either the list of capabilities pertaining to poverty or methods of defining it, HRBA anchors it in international human rights norms and treaties. International human rights treaties set legal obligations upon states and the HRBA definition of human rights transposes those legal obligations on to government institutions.671 The report of the UN Secretary-General summarizes these considerations,

A rights-based approach to development describes situations not simply in terms of human needs, or developmental requirements, but in terms of society’s obligations to respond to the inalienable rights of individuals, empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance where needed.672

Within the HRBA framework, “the political dimensions of poverty and power dynamics” that contribute to exclusion and discrimination are among the central considerations.673 The HRBA provides a framework to analyse inequalities that contribute to disparities in development. It also aims to remedy practices which lead to discrimination “and unjust distributions of power that impede development progress.”674 HRBA places addressing power imbalances and elite capture at the centre of the development process and poverty

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reduction by setting minimal human rights protection standards to those who are adversely affected.\textsuperscript{675} Individuals, civil society, and legal systems are mobilized to hold primary duty-bearers accountable for the fulfillment of their obligations.\textsuperscript{676} Obligations of duty-bearers are both positive – protection, promotion and provision – and negative – abstaining from violations.\textsuperscript{677} Assigning responsibility is central in HRBA. When it is asserted that somebody has a right to something, it is “interpreted in terms of the corresponding obligations and duties of counter-parties to ensure” that the right is upheld.\textsuperscript{678}

States are considered the primary duty-bearers. They are responsible for creating conditions for people to enjoy their rights, “security and well-being, for ensuring their just and adequate access to social services and other public goods,”\textsuperscript{679} and equal access to justice. In access to justice initiatives, HRBA focuses on enhancing capacities of state institutions as a “supply side” of the justice system to provide remedies demanded by rights-holders. In the meantime, the efforts also target rights holders as the “demand” side of the justice system aiming to “enhance the ability of poor and disadvantaged people to access” justice institutions.\textsuperscript{680} People living in poverty face obstacles in accessing justice and remedying wrongs. Therefore, it is the obligation of states to ensure individuals have access to remedies if the poor are discriminated based on their socio-economic status. States should provide redress possibilities for human rights, including socio-economic

\textsuperscript{675} Darrow and Tomas, “Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation,” 489.
\textsuperscript{677} Governance for the Future: Democracy and Development in the Least Developed Countries, 178.
\textsuperscript{678} Vizard, HDCA Approach and Human Rights: Briefing Note, 2.
\textsuperscript{679} Mander, “Rights as Struggle - Towards a More Just and Humane World,” 246.
\textsuperscript{680} Schlaeppi and McCabe, Rule of Law, Justice Sector Reforms and Development Cooperation: SDC Concept Paper, 13. See also Jonsson, “A Human-Rights Based Approach to Programming,” 60.
rights, stipulated in international human rights instruments. They should “[i]nvest in training judges, lawyers, prosecutors and law enforcement officials” and build their capacity to respond without discriminating against the poor. States should also facilitate the availability of legal information for the poor in an accessible format.681 It should be noted that while judicial enforcement of rights and ensuring access to justice is essential, for people living in poverty litigation can be expensive, and consume both time and effort.682 Thus it can be said, HRBA “means listening to and respectfully working with marginalized groups, not hiring more lawyers.”683

While relationships between rights-holders and duty-bearers are at the core of HRBA, conventionally it is states which are viewed, especially by international law scholars, as prime duty-bearers.684 However, in practical terms, the HRBA language introduces a dimension of accountability into development—accountability of both states and non-state actors. Because states are not the only duty-bearers, individuals, international organizations, and other non-governmental actors also have human rights obligations. For example, “individuals have general responsibilities towards the community at large and, at a minimum, must respect the human rights of others.”685 These responsibilities include not only the positive aspect of protecting human rights, but also the negative aspect of abstaining from actions which could lead to a violation of human rights. Therefore, as Jonsson argues, there is a need to expand “claim-duty relationships to include all relevant subjects and objects at subnational, community and household

683 Uvin, Human Rights and Development, 179.
levels.” Rights-holders and duty-bearers are not fixed to specific individuals because one can be both duty-bearer and rights-holder depending on “relation to actors at different levels of society.”

It is equally important to realize that an individual very often cannot meet his/her duties, because he/she has some of his/her own rights violated. Parents, for example, have a duty to provide food for their children, but may fail to do so due to lack of a job or cultivable land. In such cases parents cannot be held accountable for not providing food for their children.\(^{686}\)

But the responsibilities of the state as a primary duty-bearer remain. States are to guarantee the rights of and assist the vulnerable members of society even if individual duty-bearers are not able to meet their obligations. The HRBA framework emphasizes not only the duties to guarantee the enjoyment of rights, but it also to tailor the efforts with a specific consideration to the needs of indigent and marginalized. HRBA places “an important check against tendencies to neglect the poorest and most marginalized in development efforts.”\(^{687}\)

The Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, emphasized that HRBA “respects the dignity and autonomy of persons living in poverty and empowers them to meaningfully and effectively participate in public life, including in the design of public policy.”\(^{688}\) The participation should be “‘active, free, and meaningful,’ which implies that mere formal or ‘ceremonial’ contacts with beneficiaries are not sufficient.”\(^{689}\) Participation is not regarded as discretion to be granted when needed by the right itself. It entails provision of specific arrangements to

\(^{689}\) Governance for the Future: Democracy and Development in the Least Developed Countries, 178.
overcome obstacles that the poor and marginalized face in partaking in processes and decisions that affect their life and “play[ing] an effective part in the life of the community.” Participation is valuable not only as a means of mobilization for individuals to demand satisfaction of their claims by different levels of governments, but also for better programing. The human rights-based approach to development requires that the development assistance leads to enjoyment of human rights and that development is “participatory, accountable and transparent with equity in decision-making and sharing of the fruits or outcome of the process.” It aims to assist “in the participatory formulation of the needed policy and legislative framework” and to incorporate the participatory process into national and local policy making.

The rights-based discourse also brings rights to the forefront, instead of needs and charity, and puts a spotlight on duties, as duties imply the responsibility to act. Boesen and Martin emphasize, “[r]ights always trigger obligations and responsibilities, whereas needs do not” and rights evoke the accountability of duty-bearers. If a needs-based approach is concerned with meeting needs, HRAB advances the realization of human rights and puts “claims toward legal and moral duty-bearers.” The needs-based approach treats individuals as mere recipients of development activities while HRBA empowers people individually and as a group to assert their rights. By moving from needs-based

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695 Boesen and Martin, Applying a Rights-Based Approach an Inspirational Guide for Civil Society, 10.
to rights-based, the main issue under consideration becomes not how to increase the available resources, but rather how to assure equality in benefiting from them. If the needs-based approach is concerned with guaranteeing “additional resources for delivery of services to particular groups, a rights-based approach calls for existing resources to be shared more equally and for assisting the marginalised people to assert their rights to those resources.” Marginalized and excluded populations are the groups that face the most discrimination, be it in civil and political or socio-economic rights. Therefore, they are the main focus of the HRBA, the framework which also puts human rights principles at the center of governance.** Human rights have an impact on governance through the introduction of interrelations between duty-bearers and rights-holders, thus emphasising the “importance of state-citizens linkages.” Capacity development of both ordinary people (to claim their entitlements) and duty-bearers (to deliver on state commitments) is among the tools of the HRBA to facilitate the governance process.

However, HRBA implementation can face conflicts between rights-holders and duty-bearers as a result of the shift of power and there can be “resistance to the empowerment of marginalized people through donor-supported programmes” at different levels. HRBA may exacerbate social and economic inequalities and polarize politically different groups. As Uvin cautions, “[t]here is no neutrality” in the HRBA process.

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696 Cornwall and Nyamu-Musembi, “Putting the ‘Rights-Based Approach’ to Development into Perspective,” 1417.
697 Ibid.
700 Ibid.
702 Hickey and Mitlin, “The Potential and Pitfalls of Rights-Based Approaches to Development,” 225.
HRBA emphasizes that good governance establishes and maintains conditions that are also advantageous for those “who are impoverished, oppressed and socially vulnerable and excluded.”

Another issue with HRBA programs is the apparent contradiction of work done by donors in enhancing accountability of state institutions at different levels, while the accountability of donors is rather weak. Organizations that advance anti-corruption efforts in national governments, may be prone to similar failings when it comes to identifying partners to work with, hiring of experts, and planning project activities. While they proclaim adherence to human rights principles, they might not provide efficient and accessible means for people to be informed about inner workings of the development assistance, about “potential negative impact of development projects, or to get adequate remedies when they occur.”

On the operational level, the challenge faced by the HRBA programs is the growing expectations of delivering “results,” which are mostly understood as “financial delivery targets and the production of tangible, quantitatively measurable outputs.” Because human rights and empowerment projects are long-term commitments with societal and financial risks involved, the challenge of how to define and account for “results” is highly accentuated. UN OHCHR, in its publication, asserts that there is no inconsistency between results-based management (RBM) and HRBA because HRBA also aims at reaching results—even if those results can change and reflect the participatory programming while RBM strategizes how to achieve those results.

705 Tomas, “Reforms That Benefit Poor People- Practical Solutions and Dilemmas of Rights-Based Approaches to Legal and Justice Reform,” 182.
706 Ibid., 181.
Vandenhole rightly indicates, there is a tendency within RBM to “assume a direct causal chain between interventions and results" despite no evidence for such simple causality linkages in human rights. As a result, the multidimensionality and complexity of human rights interventions are overlooked.\textsuperscript{708} Munro highlights another issue with programing in the human rights field, because within the HRBA framework rights are viewed as interdependent and indivisible. He asks “if there can be no hierarchy of rights, can a rights-based organization choose its strategic priorities?” The answer is illustrated through a position by a UNICEF staff member that the planning document of the agency should have been “one line long: Implement the Convention on the Rights of the Child.”\textsuperscript{709}

In its 2008 report on governance programing, CIDA’s report also indicated “a poor fit between RBM frameworks, as … implemented by CIDA, and the realities with which governance programming seeks to engage.” It acknowledged that “[s]ocio-political and institutional changes are long-term, multi-dimensional and uneven processes, making it difficult to define outcomes achievable within a five-year term.”\textsuperscript{710} The report argued that it was not so much that the design of projects was faulty, but rather that results frameworks were unrealistic.\textsuperscript{711} These concerns are similar to ones faced by judicial reform projects. The final report of the \textit{Canada-Ukraine Judicial Cooperation Project} highlights the challenges experienced when framing judicial reform projects within the RBM framework. The report acknowledges that “RBM is a very useful tool that keeps the project team focused.” But it goes on to emphasize that “judicial reform projects

\textsuperscript{708} Vandenhole, “Overcoming the Promotion-Protection Dichotomy: Human Rights-Based Approaches to Development and Organisational Change Within the UN at Country Level,” 116, 125.
\textsuperscript{709} Munro, “The ‘Human Rights-Based Approach to Programming’: A Contradiction in Terms?,” 198.
\textsuperscript{711} Ibid., 28.
aimed at changing people’s attitudes and mindset, achieving anything deeper and broader than an output – a shorter-term development result that is the logical consequence of project activities – is a major struggle and, if successful, a major accomplishment.” When reflecting on “CIDA-type projects,” the report draws attention to the fact “there is not enough time to arrive at true outcomes, let alone impacts. It is not that these outcomes are not necessarily there; it is just that they may only manifest themselves long after the project has been completed.” In its 1996 publication CIDA already recognized the challenges in “measure[ing] results in human rights and democratic development.” Among the challenges highlighted are the absence of “comprehensive or ‘objective’ theory/model of democracy or human rights … against which to measure progress”; culturally and context specific framing of notions such as justice, freedom, etc.; the complexity of human and institutional development cannot be fully captured by a few indicators in donor programs.

Despite the challenges faced in HRBA programing, there is still an argument that the human rights framework serves not only as a philosophical basis for development activities, but also that human rights are accounted for in development activities during their design, implementation, monitoring and evaluation. The framework accentuates that enjoyment of human rights are not only the end goal of programming and project activities. It puts a requirement that human rights are also guiding the process of drafting and executing projects with beneficiaries being active participants rather than passive

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recipients of project outputs. The broader impact is that the human rights discourse also
galvanizes main stakeholders in donor countries to advance the reassessment of
governmental official policy documents and positions to reflect the urgent development
issues and priorities of the day.
Poverty reduction and support to economic and social development have been among the primary concerns of the Canadian international development assistance since the 1970s. In the early years of development aid, however, human rights were not explicitly referenced in development aid, but from the 1990s they have been occupying an increasingly prominent place in the policies of Canadian governments and CIDA. Nevertheless, poverty reduction has remained a fundamental underpinning of the Canadian aid programming and MDGs became the overarching goal of CIDA’s program architecture from the first years after they were launched. While governance, human rights, and rule of law were not a part of UN MDGs, they were CIDA’s key programming elements aiming to contribute to reaching MDGs. This chapter sets the context for the analysis of the Canadian development aid by a brief introduction of Canada’s aid efforts and government policy documents before 2000 and refers to public opinions towards the Canadian foreign aid. The analysis of CIDA’s policy documents and reports to parliament indicates the place and role assigned to human rights, poverty reduction, and MDGs within CIDA’s program architecture. The chapter also examines the Auditor General of Canada’s reports on Canadian aid and the review by the parliament on the Canada’s role in democratic assistance.

In its 2013 budget, Canada’s Economic Action Plan 2013, the Conservative Government announced the merger of CIDA and the Department of Foreign Affairs and International Trade Canada (DFAIT). The new department, the Department of Foreign Affairs, Trade and Development (DFATD), undertook the mandates of the amalgamated
departments. Expressing the sentiments around the merger, Brown wrote, “MANY LOVED TO HATE the Canadian International Development Agency (CIDA). It is barely gone, but it's already missed.”

The history of the Canadian official development assistance (ODA) can be traced back to 1950 and Canada’s membership in the Colombo Plan. The early focus of aid distribution was on Asia and the Pacific, “disbursed through a variety of transitory arrangements and eventually solidified in the External Aid Office (EAO) under the Secretary of State for External Affairs (SSEA).” In 1968, under Trudeau’s Liberal government, EAO was transformed into CIDA. In addressing the legal basis of CIDA, Morrison notes that it “could hardly been vaguer.” A cabinet memorandum dated August 29, 1968, also mentioned 1960 and 1962 orders-in-council establishing EAO and stated: “that is now considered that the name ‘External Aid Office’ implies Canada is primarily concerned with aid as such rather that will all aspects of co-operative international development.” The September 1968 order-in-council did not provide more specificity and “merely substituted new titles for old ones.” Steeves notes that “[f]rom

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716 Brown, “The Life and Death of CIDA (1968–2013).”
717 Barratt, Human Rights and Foreign Aid: For Love or Money?, 125. The Colombo Plan for Cooperative Economic and Social Development in Asia and the Pacific, originally called the Colombo Plan for Cooperative Economic Development in South and Southeast Asia, was envisioned at the Commonwealth Conference on Foreign Affairs held in Colombo, Ceylon (currently Sri Lanka) in January 1950. It began its activities in 1951 to pursue the economic and social development of the peoples of South and Southeast Asia. Canada was among seven founding commonwealth countries. (The Colombo Plan for Cooperative Economic and Social Development in Asia and the Pacific, “History.”) See also Cermakian, “Canada’s Role in the Foreign Aid Programmes to the Developing Nations: A Geographical Appraisal,” 226–228.
718 Barratt, Human Rights and Foreign Aid: For Love or Money?, 125.
719 Morrison, Aid and Ebb Tide: A History of CIDA and Canadian Development Assistance, 63.
720 Cited in Ibid.
721 Ibid. In the Observations to the Fourth Report of the Standing Senate Committee on Foreign Affairs and International Trade dated 2008 it was noted, “Despite the fact that the Canadian International Development Agency (CIDA)’s annual budget exceeds $3 billion and the agency is the source of a full 80% of Canada’s ODA, its only legal mandate is in a one-paragraph insertion in the Department of Foreign Affairs and International Trade Act. Bill C-293, designed primarily to legislate that all Canadian ODA be allocated to
its inception in 1968 CIDA [was] … the subject of intense interest and debate, both as an institutional actor and in its management of the Canadian aid programme.” He holds that “[i]n general CIDA and Canadian aid … [did] not featured in major public debates” far from the focus put on Canada’s peacekeeping and military efforts; however, …[that did] not mean… that CIDA … [was] immune to the ‘bureaucratic politics’ which … [took] place within the Ottawa public service environment. Indeed, given CIDA’s budget and staffing levels, the agency … [was] embroiled in institutional struggle over the course of its history.723

In the 1970 policy document, *International Development: Foreign Policy for Canadians*, commitment to ODA was already among key considerations.724 The document’s part, *the Government’s Development Assistance Programme*, indicated that the purpose of development assistance was to advance the progress of “social, educational, industrial, commercial and administrative systems of the developing countries” with the primary goal of poverty elimination. The expected impact of the progress was that people in developing countries could improve their ability “to produce, distribute and consume goods and services” and contribute to raising their standard of living. The document emphasized that the intent of the development assistance was “to improve the quality of life and social justice within the total domestic and foreign environment in which Canadians … [would] have to live and work.”725 In addressing why poverty eradication

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723 Ibid.
724 Holloway, *Canadian Foreign Policy: Defining the National Interest*, 231.
was the primary goal for Canada,\textsuperscript{726} the document interconnects the poverty reduction efforts in developing countries and Canada.\textsuperscript{727} The argument was that a society’s attitude to poverty is determined by the way it addresses the same issue in other countries. A society which is indifferent to poverty in other countries would likely have a similar attitude towards domestic poverty and, vice-versa, that a society which is involved in addressing poverty overseas would be concerned about poverty among its population. Therefore, Canadians “could not create a truly just society within Canada if … [they] were not prepared to play … [their] part in the creation of a more just world society.”\textsuperscript{728} The 1970 policy document, \textit{International Development: Foreign Policy for Canadians}, explicitly connected development assistance programs with Canada’s national objectives. It stressed that the development assistance would be “concentrated in countries whose governments pursue[d] external and internal policies that … [were] broadly consistent with Canadian values and attitudes.”\textsuperscript{729} In its 1987 new strategy,\textsuperscript{730} \textit{Sharing Our Future}, CIDA reasserted that the primary purpose of Canadian ODA was “putting poverty first.” Mirroring the arguments within the capability approach, the strategy defined “poverty [as] … lack of choice.” It elaborated that poverty is about,

\begin{quote}
...lack of access- access to education, to jobs, to income, to services, and to decision making power. Poverty is inequality in opportunities, in the distribution of benefits of growth, and in social justice. Poverty is underdevelopment of human potential.\textsuperscript{731}
\end{quote}

\textsuperscript{726} Ibid., 8.
\textsuperscript{727} Ibid., 9.
\textsuperscript{728} Ibid.
\textsuperscript{729} Ibid., 12.
\textsuperscript{730} The document defined strategy as “a set of policies, programs ad commitments to guide the use of Canadian resources—taxpayer’s dollars—provided for development cooperation.” Canada. Canadian International Development Agency, \textit{Sharing Our Future: Canadian International Development Assistance}, 21.
\textsuperscript{731} Ibid., 23.
While the government was expressing its commitments to ODA and addressing the issue of poverty, there was less consistency in the levels of ODA. By 1975, Canada contributed 0.54 percent of GNI (gross national income) to aid. After 1975, however, the aid levels stagnated and then rapidly declined under Chrétien’s Liberal government.732 In 1993, Chrétien’s newly elected government began the budget deficit reduction process and one of the major areas suffering from cuts was foreign aid.733 Steeves explains that “[I]lacking a strong political constituency of support following years of trade emphasis, CIDA was an easy and ripe target for budget cuts. When the Liberals took office in 1993, Canadian aid stood at 0.44 per cent of GNP whereas by 2003 it had leveled out at 0.25 per cent of GNP.”734 Tomlinson indicates that, due to cuts, Canada’s position dropped from the 7th position among 21 OECD DAC countries in the beginning of 1990s to 17th by 1999.735 Only Italy and Finland introduced more cuts in the 1990s.736 The public opinion in Canada similarly reflected the policy context of the 1990s. The surveys in the early the 1990s showed higher public support to development assistance, but those levels had lowered by the mid-1990s. During 1993–95, when the balancing budget was the top government priority, “the proportion of Canadians who thought that the government

734 Ibid. (note: while the majority of consulted literature state that there was a decline, de Haan (de Haan, How the Aid Industry Works, 34.) notes that “Different Canadian prime ministers had significant impact on aid. Jean Chrétien reversed the decline in aid and prioritized Africa.”)
735 The Organisation for Economic Co-operation and Development's (OECD) Development Assistance Committee (DAC)
spent the right amount or not enough to assist developing countries dropped to around 50 percent (from 76 percent in 1989).”

In 1995, the Chrétien government produced a white paper, Canada in the World, which was the outcome of the 1993–1995 foreign policy review and treated the human rights as “a core Canadian value and central pillar of Canadian foreign policy.” Lui mentions that before Canada in the Word, the promotion of human rights and their status in “Canadian foreign policy was by no means firmly entrenched.” The document declared three key objectives:

- The advancement of prosperity and employment;
- The defense of Canada’s security, “within a stable global framework; and
- The projection of Canadian values and culture.”

It acknowledged that development is an intricate phenomenon and “that many conditions must be met before it takes permanent root.” The paper stated that “[i]ndividuals must have equitable access to basic social services, to productive assets and to employment opportunities” and affirmed gender equality in the process. It also underlined the importance of respecting human rights, as well as “healthy civil society and political systems that inspire confidence and trust.”

Addressing poverty was considered “vital,” but by recognizing that there was no single way of reducing poverty it called to focus Canada’s efforts to help the poor to

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739 Ibid., 74–75. See also Pratt, “DFAIT’s Takeover Bid of CIDA: The Institutional Future of the Canadian International Development Agency,” 4–5.
740 Canada. Department of Foreign Affairs and International Trade, Canada in the World, i.
741 Ibid., 40.
include an “array of programs and policies working together in an integrated fashion.”

Poverty reduction through support to sustainable development was declared a purpose of the Canadian ODA. Human rights, democracy and good governance were mentioned as one of six program priorities to achieve the declared purpose. The priority included an increase in respect for human rights, including children’s rights; promotion of democracy and better governance; and strengthening civil society and the security of the individual. The promotion of human rights, democracy, and the rule of law were presented as “the projection of Canadian values.” It was tied with the “contribution to international security in the face of new threats and stability.” It was also supposed to serve Canada’s “economic and security interests”, together with free markets and respect for environment. If the respect to human rights, rule of law and participatory government—as well as the free market and the environment—were to be observed, “there … [would] a greater prospect of stability and prosperity- where they … [would] not, of uncertainty and poverty. Their observance, therefore, … [was] both an end in itself and a means to achieving other priority objectives.” It was a statement of belief in Canadian values and “in the contribution these values make to the international community.” These are values of tolerance, democracy, equity, and human rights, the peaceful resolution of difference, social justice, and sustainable development. Universal respect for human rights was declared to be in Canada’s interest. Human rights were considered not only “a fundamental value, but also as a crucial element in the

742 Ibid., 41.
743 Ibid., 42.
744 Ibid., ii–iii.
745 Ibid., 34.
746 Ibid., 8.
development of stable democratic and prosperous societies at peace with each other.”747

The paper proclaimed the importance of democratic culture and civil society,

...one that is pluralistic and participatory, that allows for the expression of diverse views and that offers its members the opportunities and resources to participate in the life of their community and country. Essential is a legal and institutional framework, which includes the rule of law, an independent judiciary, honest and open government, respect for human rights and the subordination of military force to civil authority.748

In its Sustainable Development Strategy 2001–2003, CIDA affirmed that “CIDA's fundamental mandate set out in Canada in the World remain[ed] relevant” and that Canadian values of "social justice and of helping those who are poor, set in a context which recognizes that Canadian interests are also served by measures that serve our global interdependence.”749

Reflecting on the comments in the white paper, Oliver notes that they viewed the document “as advance justification for an ‘on-the-cheap’ foreign policy, one that made a political virtue of alleged fiscal necessity by cloaking real-world problems in a mix of wishful new age thinking and artfully contrived self-interest.”750 Another consideration was that the document had a strong business and prosperity focus, despite the appeal to national and cultural values, which was perceived as “to resemble a policy frontispiece

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747 Ibid., 34.
748 Ibid., 35–36.
750 Oliver, “External Affairs and Defence,” 71. Addressing the financial constraints, Canada in the World, stated, “The Government, therefore, will continue to pursue the foreign policy objectives that Canadians demand, but will have to do so in a manner that reflects the need for even more financial prudence: ‘more effective and less costly’ will have to be the watchwords guiding our approach to international relations, as it is to domestic programs. We will not do everything we have done in the past, nor shall we do things as we have done before.” Canada. Department of Foreign Affairs and International Trade, Canada in the World, 9.
more immoral than moral.”\textsuperscript{751}

At best, it might be argued, the white paper’s authors assumed confidently that economic contact and global integration could be deployed, gradually and with great subtlety, as the engine of social change for the world’s less privileged. The empirical grounds for such optimism were shaky…\textsuperscript{752}

Sanger in, his article in the \textit{Toronto Star}, described three key objectives outlined in the document as a “triangle”: the promotion of Canadian jobs and prosperity, ensuring Canada’s security, and sharing Canadian values with the world. Trade was placed in the middle of the triangle “for culture …[was] to be used to sell our [Canadian] goods … and security depend[ed] more on a prosperous economy than on any military muscle.”\textsuperscript{753} He expanded,

If Lester Pearson, Canada's greatest foreign minister, had been asked to describe his policies in a nutshell, he might well have said, “Doing good in a dangerous world.” His Liberal descendants, who produced their own policy statement, “Canada in the World,” on Feb. 7, have altered the thrust with a small adverbial change. The slogan today is “Doing well in a changing world.” Let's hope we can live up to this slogan. The modern image of a Canadian abroad is no longer the CUSO teacher in rural Tanzania but a hawk-eyed businessman flying off to Asia, occasionally twisting his neck round to check on Europe.\textsuperscript{754}

While concern for addressing poverty in developing countries was given a central place in Canadian foreign policy and CIDA’s development approaches, the place of human rights in the discourse was less prominent. The connection between the provision of development aid being conditional on the human rights record of recipient countries was less explicit. Keenleyside points out that until the late 1970s Canadian governments avoided making clear references to human rights in development aid. He notes that “[w]hen confronted with suggestions from Parliament or elsewhere that aid be made

\textsuperscript{751} Oliver, “External Affairs and Defence,” 71.
\textsuperscript{752} Ibid.
\textsuperscript{753} Sanger, “Triangle Replaces Trudeau’s Foreign Policy Hexagon.”
\textsuperscript{754} Ibid.
conditional on satisfactory observance of human rights, the government tended to react negatively.\textsuperscript{755} However, pressed with the increased concerned of interest groups and media, the Canadian government adopted a more accepting approach towards human rights.\textsuperscript{756} In October 1978, in his address the Secretary of State for External Affairs, Don Jamieson noted that “[h]uman-rights considerations are … a factor in determining levels of aid and the orientation of programs. … on a few occasions when the human-rights situation in a country has deteriorated to a stage where the effective implementation of the aid program is made extremely difficult, Canadian assistance has been suspended or not renewed.”\textsuperscript{757}

With growing sensitivity in the 1980s to human rights conditions in recipient countries, NGOs and churches were advancing the argument that human rights concerns needed to be taken into account. In 1983, Canada stopped assistance to Suriname due to human rights violations.\textsuperscript{758} Government-to-government aid was suspended after cancelled elections in Haiti in 1987, leaving poverty centred activities channelled through NGOs.\textsuperscript{759} Keenleyside, in describing Canada’s approach notes, that “in Asia, Africa, and Latin America where Canada … [took] punitive action, aid and other relationships were limited … the role of rights violations was ambiguous, and Ottawa was inconsistent in treating different states.”\textsuperscript{760} In 1987, the Standing Committee of the House of Commons on External Affairs and International Trade chaired by Winegard produced a report

\textsuperscript{755} Keenleyside, “Aiding Rights: Canada and the Advancement of Human Dignity,” 244.
\textsuperscript{756} Ibid.
\textsuperscript{757} External Affairs, Statements and Speeches 78/13, 26 October 1978, 6 cited in Ibid.
\textsuperscript{758} Morrison, \textit{Aid and Ebb Tide: A History of CIDA and Canadian Development Assistance}, 203.
\textsuperscript{759} Ibid., 259.
reviewing Canada’s foreign aid. Under the subchapter “The Uneasy Context for Human Rights Policy,” the report acknowledged that the issue of making aid conditional to the human rights situation in recipient countries received prominence in the 1980s, but also mentioned that this consideration raised uneasiness among “governments, bureaucracies, and business.” Even with the recognition of controversies human rights considerations could bring, the report argued that “the fear of controversy should not dictate policy.”

However, the report cautioned that human rights conditionality must not be used to punish and was not to be applied differently in different conditions depending whether it was emergency humanitarian aid or longer-term commitment. But even in the latter case when there were violations of human rights in recipient countries, a careful consideration must be taken to avoid re-victimizing the citizens of those countries by denying the aid. It is important to note that the report specifically underscored that, when dealing with human rights, both CP and ESC rights had to be taken into account. It noted that “human rights standards should not be defined too narrowly or in isolation from the conditions for development. In keeping with the international obligations …. human rights should encompass individual, civil and political, as well as socio-economic and cultural rights.” Then subsequently elaborated: “[h]owever, in the broadest sense, development itself is a human right.” To assess the situation with human rights in recipient countries, the report recommended “developing a classification grid” and suggested several criteria: (1) “human rights negative”; (2) “human rights watch”; (3) “human rights satisfactory”; and (4) “human rights positive.” In first two instances

763 Ibid., 26.
development assistance was to be carefully weighted. The first instance of “gross and systematic” violations of human rights in a recipient country would make it ineligible for government-to-government aid, although NGOs working with those in need might be able to deliver basic aid. In the second case of alleged serious violations, countries would be eligible for aid but it would be “carefully targeted and monitored.”

It its response to the report, the Government of Canada treated poverty as a “lack of choice.”

It is lack of access – access to education, to jobs, to income, to services and to decision-making power. Poverty is inequity of opportunities, in the distribution of benefits of growth and in social justice. … Deeply entrenched poverty and denied access to adequate shelter, health, nutrition, education and employment prevent the attainment of these rights. Development assistance, therefore, serves as a means for the realization of human rights.

Similar to the Winegard report, the response of the government asserted that “fundamental human rights – social, political, [and] economic … [are] prerequisites for global well-being.” However, at the level of bureaucratic implementation there was discomfort and concern that tying ODA eligibility with the human rights record could lead to diplomatic embarrassment. There were also doubts about whether it was feasible to operationalize human rights standards, that are general in nature, for assessment purposes, especially to be applied in countries where CIDA operated and which had

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764 Ibid., 27–28.
765 Presented by the Right Honourable Joe Clark, Secretary of State for External Affairs, and by the Honourable Monique Landry, Minister of External Relations.
767 Ibid., 6.
768 Ibid.
different legal systems, societal values, and traditions.\textsuperscript{769} The response of the government was that,

\ldots the establishment of a grid, and especially the classification of countries according to such a grid, would not serve the overall interests of Canadian development assistance or of Canadian foreign policy. The judgments implicit in the use of such a grid are too subjective. The grid would not adequately take into account the vast number of situations where violations of human rights are worrisome, but where they are at the same time unequal, applying only to some aspects of civil and political rights or to selected areas of economic, social and cultural rights. Moreover, the impact of such a grid would be essentially punitive and judgmental rather than positive and developmental.\textsuperscript{770}

Instead of classifying countries, the preference was given to less formal and more diplomatic means of addressing human rights violations. Though, CIDA still expressed its commitment “to make respect for human rights a ‘top priority’ in ODA policy.”\textsuperscript{771}

In CIDA’s strategy, \textit{Sharing Our Future}, which followed the Wineguard report, the title of the chapter on human rights is indicative of that tension, “Hard Choices: Eligibility and Human Rights.” In the chapter the new approach to eligibility focused on such concerns as “attack [on] global poverty” and “respect [of] the importance of human rights in deciding which countries to work with.”\textsuperscript{772} While all developing countries were declared eligible to receive development assistance,\textsuperscript{773} the strategy document indicated that Ministers would determine five-year plans. These plans would consider, among other

\textsuperscript{769} Morrison, \textit{Aid and Ebb Tide: A History of CIDA and Canadian Development Assistance}, 292.
\textsuperscript{771} Morrison, \textit{Aid and Ebb Tide: A History of CIDA and Canadian Development Assistance}, 292. In \textit{Sharing Our Future}, CIDA announced that “[d]iplomatic channels, including ministerial discussions, bilateral meetings, and international consultations, will be used to press governments that violate human rights to improve their records.” (Canada. Canadian International Development Agency, \textit{Sharing Our Future: Canadian International Development Assistance}, 32.)
\textsuperscript{773} Ibid.
criteria, “the country’s human rights record” and “the quality of the country’s economic and social policies, or commitment to improve its policies.”

Significantly, the strategy document still highlighted the challenges of linking human rights consideration with the provision of the development aid. It argued that that Canada was “committed to integrating human rights fully into the broad sweep of Canada’s external relations,” but emphasized that “the problems of promoting human rights are deceptively difficult.” The strategy document called for a balanced approach while weighing on the provision of aid to repressive regimes and the necessity of reaching populations in those countries who were in need of assistance. It acknowledged that,

… the Government intends to ensure that Canadian development assistance does not lend legitimacy to repressive regimes, [but] it must also ensure that victims of human rights violations are not doubly penalized by being deprived of needed help in addition to being deprived of their fundamental rights.

The strategy document proposed annual review by the Cabinet of human rights situation in countries to determine the level and channels of the development assistance. In cases of “violations of human rights … [were] systematic, gross and continuous” and there were risks that the Canadian aid would not reach those in need, the approach was that bilateral assistance would “be reduced or denied.” But the aid could still be provided through NGOs and multilateral organizations could deliver aid to the intended recipients. During “massive famine, epidemics or civil war,” even countries with oppressive regimes that were not eligible for any aid would still qualify for emergency humanitarian aid.

774 Ibid., 30.
775 Ibid., 31.
776 Ibid.
But, due to expectations to apply human rights conditionality, the tension remained. When, in 1995, Minister of Foreign Affairs André Ouellet at the meeting of ASEAN foreign ministers asserted “that Canada would pursue trade links with developing countries without regard to their human rights records,” his statement met criticism from human rights activists.\textsuperscript{777} In her 2008 published study of CIDA documents, Barrat states, “[i]n the thousands of pages of documentary evidence I examined from CIDA, I found no instances in which a bilateral aid program was terminated solely on the basis of human rights violations.”\textsuperscript{775} Even after the adoption of ODAAA, which made human rights as one of eligibility criteria for ODA, the 2013 Auditor General’s report raised the concern that spending proposals of CIDA funded projects “lack[ed] … consideration of consistency with international human rights standards.”\textsuperscript{779}

Despite challenges in bringing human rights to the forefront of Canada’s ODA considerations, human rights were gradually mainstreamed into CIDA’s activities and became one of its policy and programing concerns. Establishment of a human rights unit in 1987 was among the steps to increase human rights considerations in development assistance. In 1992, the unit was transformed into the \textit{Good Governance and Human Rights Policy Division} responsible for good governance, human rights, and democratic development.\textsuperscript{780} In 1996, CIDA issued a \textit{Policy on Human Rights, Democratization and

\textsuperscript{777} Morrison, \textit{Aid and Ebb Tide: A History of CIDA and Canadian Development Assistance}, 409.

\textsuperscript{778} Barratt, \textit{Human Rights and Foreign Aid: For Love or Money?}, 159.


Good Governance (HRDGG).  

The policy affirmed that “Canada's interest in a more just, more stable and more prosperous world requires that the Canadian government, through the development assistance program, addresses rights, democracy and governance concerns in the context of promoting sustainable development.” CIDA’s programs are placed as essential means to ascertain Canadian values and reach the proclaimed policy intentions.  

The declared objectives of HRDGG policy are to strengthen:

- “the role and capacity of civil society in developing countries in order to increase popular participation in decision making;”
- democratic institutions in order to develop and sustain responsible government;
- the competence of the public sector in order to promote the effective, honest and accountable exercise of power;”
- the capacity of organizations that protect and promote human rights;
- “the will of leaders to respect rights, rule democratically and govern effectively.”

The objectives were positioned as supporting “Canadian foreign policy priorities: peace and security, employment and prosperity, and Canadian values.”

However, the 2008 review of HRDGG policy conducted by CIDA’s Performance and Knowledge Management Branch found that the interviewed staff did not see the

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781 Barratt puts 2001 as a year for HRDGG policy (Barratt, Human Rights and Foreign Aid: For Love or Money?, 132.), however, during the search I was able to locate only 1996 policy and no information available that policy has been updated. In 2008 CIDA’s report it is even indicated, “[t]he HRDGG Policy has not changed over the past decade to reflect the evolution of knowledge and understanding that occurred outside the Agency or even within as CIDA explored notions related to governance in internal policy and strategy papers.” (Canada. Canadian International Development Agency, Government of Canada Policy for CIDA on Human Rights, Democratization and Good Governance, 6.)


783 Ibid., 4.

policy as “as a useful document to guide the work of staff” and several staff members were surprised that the policy was still in effect. Among the concerns expressed was that there were “so many policies that … [were] associated with various governance themes that they [staff] pay attention to none of them - thus in reality there … [was] ‘a policy vacuum in the Agency.’” Another finding was that, because governance was under the jurisdiction of several branches within CIDA – Policy Branch, Geographic Branches, Multilateral Branch, Canadian Partnership Branch, and the Executive Committee – the roles and responsibilities for it were not clear. The Review highlighted that “[s]ince governance so proliferates throughout the Agency, roles and responsibilities for it … [were] unclear. Given that no single, central authority … [was] identified as having responsibility for governance within CIDA, by default it seem[ed] many decisions … [were] left to the individual and his or her branch supervisor.” The additional policy strain was put on by “CIDA’s expansive policy suite.” The HRDGG policy was “one of 7 policies, 5 strategies, 2 results-chains, and numerous working papers that refer either fully or partially to governance.” The multiplicity of policy related documents “led to confusion of operationalizing governance policy.” The interviewed staff referred to CIDA’s policy process “as constantly in flux whereby the focus of attention move[ed] from theme to theme and sometimes seem[ed] more intended to solve specific problems.” Due to “a disconnect between policy and practice,” there were challenges to translating HRDGG policy language into action. The changes in the senior leadership of CIDA also had a negative impact and “[t]here … [was] little technical guidance

786 Ibid., 10.
787 Ibid., 11.
788 Ibid., 13.
(people and tools) available to guide the planning of institutional and country programming in governance.”

The initially limited approach to human rights in Canadian international development policies was justified mostly with claim that the primary aim of Canadian aid was to end poverty, and the withdrawal of aid due to human rights considerations could punish the victims of oppressive regimes. The same year as CIDA adopted HRDGG policy it released its policy on poverty reduction. The policy advocates to “address the root causes and structural factors of poverty” as a way to achieve “sustained poverty reduction” through “improving the poor’s human and productive capacities, and on removing barriers to their participation in society.” Policy interventions to remove systemic hindrances, which included promotion and guaranteeing “property rights which are equitable to women,” are considered as the means to address root causes of poverty. Among declared program strategies should be programs with the focus on poverty reduction activities directly involving the poor. It set two criteria for a project to fall under the declared program category: “the poor must be the specified target group (e.g., destitute women, rural landless); and key interventions must be designed to lead to poverty reduction through the promotion of sustainable livelihoods and the broader participation of the poor in society.”

The policy acknowledges that “[t]here is no automatic link between economic growth and poverty reduction”; nevertheless, the policy’s approach is for economic

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789 Ibid., vi.
790 Keenleyside, “Aiding Rights: Canada and the Advancement of Human Dignity,” 245. Though, Keenleyside notes that up to 1987 there were several instances when government-to-government aid was curbed supposedly due to human rights considerations.
792 Ibid., 7.
793 Ibid., 5.
growth to contribute to poverty reduction and there should be a match between the productive capacities of the poor and labor needs in sectors which contribute to growth. Investments into “in social sectors to meet basic needs” are vital in making economic growth more conducive for poverty reduction efforts.\textsuperscript{794} CIDA’s Sustainable Development Strategy 2001-2003 indicted that “CIDA’s raison d'être is sustainable development”\textsuperscript{795} and highlighted “the firm belief that poverty reduction should lie at the heart” of Canada’s efforts.\textsuperscript{796} The document also declared poverty-reduction to be “a key element of each … six ODA program priorities” among which were “human rights, democracy, and good governance, … increase respect for human rights, including children's rights, … support [of] democracy and responsible government, and … strengthen[ing of] civil society.”\textsuperscript{797}

In his speech at the 2000 UN Millennium Summit, Canadian Prime Minister Jean Chrétien, affirmed that “[a]lleviating world poverty … [was a] common cause,”\textsuperscript{798} and in 2002 expressed Canada’s support to the Monterey Consensus as a global partnership to contribute to commitments undertaken during the UN Millennium Summit. At the Monterey Conference on Financing for Development he called for “[l]eaders of developing nations … to follow policies that create a framework for sustainable economic growth and productive private sector investment. Including a commitment to good governance and the rule of law.”\textsuperscript{799} However, the Canadian Council for International

\textsuperscript{794} Ibid., 8.
\textsuperscript{796} Ibid., 14.
\textsuperscript{797} Ibid., 3.
\textsuperscript{798} Chrétien, “United Nations General Assembly, Fifty-Fifth Session, 6th Plenary Meeting,” 17.
Co-operation (CCIC)\textsuperscript{800} was far less supportive of the Monterey Consensus. In its letter to the Prime Minister, CCIC expressed frustration with the outcomes of the Monterey Consensus because of the negative impact of the policies on privatization, financial and trade liberalization on developing countries, and their contribution to worsening the situation with poverty and inequality. \textsuperscript{801} CIDA’s 2002 policy statement on aid effectiveness expressed its commitment to the Monterey Consensus. The policy statement declared that it was going to consider several criteria in selecting the countries with which it was going to work. Among the criteria were “[a] high level of poverty as measured by income per capita … a commitment to development effectiveness, as demonstrated through efforts to improve governance, ensure local ownership of poverty reduction strategies, end corruption and make effective use of aid monies.” \textsuperscript{802} The countries with which CIDA was planning to be engaged under Canada Fund for Africa \textsuperscript{803} needed to “demonstrate a commitment to democracy, good governance and human rights.” \textsuperscript{804}

After the Millennium Summit, poverty reduction remained the main concern of Canada’s development aid. In her 2001 Speech from the Throne, the Governor General of Canada, Adrienne Clarkson, outlined that Canada’s development assistance was going to

\textsuperscript{800} Canadian Council for International Co-operation is an affiliation of Canadian voluntary organizations which work on issues of sustainable development, social justice and ending poverty. http://www.ccic.ca/about/index_e.php

\textsuperscript{801} “Letter of the Canadian Council for International Co-Operation to the Right Honourable Jean Chrétiens, Prime Minister of Canada,” 3.


focus on poverty reduction, “strengthen[ing] democracy, justice and social stability worldwide.” And as early as its 2001–2002 Departmental Performance Report (DPR) CIDA stated its support to MDGs and four core areas—economic well-being, social development, environmental sustainability and governance, were planned to contribute to MDGs. CIDA’s 2002 policy statement on aid effectiveness recognized that the agency “moved to align its results framework with the … MDGs and new approaches for aid effectiveness.” The policy statement indicated that CIDA that MDGs and “related targets … [were] the overarching development results the Agency … [sought] to achieve.”

**CIDA’s Key Agency Results**

<table>
<thead>
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<th>Millennium Development Goals</th>
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<td>Gender is a crosscutting theme across all development results</td>
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<tr>
<td><strong>Economic Well-Being</strong></td>
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<td>Equitable economic growth and improved standards of living of the poor.</td>
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805 Clarkson, “Speech from the Throne to Open the First Session of the 37th Parliament of Canada.”
808 The chart is a replication of the part of the Chart 2 in Canada. Canadian International Development Agency, “Departmental Performance Report 2001–2002,” 21. (Reproduced with permission of Global Affairs Canada, Ottawa, 2016). The quotation marks are excluded for reading convenience. The colours of the boxes were added by me for the purposes of emphasis.
Within the governance pillar, the report indicated the legal reform efforts as “a key feature of governance programming” and among the types of initiatives mentioned were strengthening legislature, “establishment of the rule of law,” judicial reform, human rights, gender equality and enhancing participatory approaches to governance.\textsuperscript{809} DPR 2002–2003 highlighted that, “[s]ustainable development cannot occur if people are not physically safe or if they do not have the resources or the access to participate in decision making in the community” and human rights serve as “the foundation of equitable and sustainable development.”\textsuperscript{810} While DPR 2001–2002 put MDGs as an overarching goal, the DPR 2002–2003 chart on CIDA’s strategic outcomes segregated poverty reduction from MDGs and made it the ultimate goal to which MDGs would contribute with the input from development results contributing in turn to MDGs.\textsuperscript{811}

CIDA’s 2003–2004 Report on Plans and Priorities (RPP) acknowledged that many MDG targets followed international human rights obligations and commitments set in international human rights instruments. The report also declared the intent of CIDA to increase “integration of human rights principles in development programming” through:

• “more clearly defined” human rights-based approaches;
• “increase[d] understanding of the links between human rights and development throughout” CIDA and with partners;
• “ensur[ing] that human rights considerations continue to feature in programming and policy documents”;
• “develop new policy instruments on human rights, democracy and good governance, which will assist CIDA to further incorporate human rights into its programming”;
• advancement of “legal and judicial reform.”\textsuperscript{812}

CIDA’s DPR 2003–2004 positioned itself as an overview of Canada’s “early

\textsuperscript{809}”Ibid., 41.
\textsuperscript{811}”Ibid., 15.
efforts to contribute toward … [MDGs] and an accounting of Canada's contribution to the *new vision for human development*” (emphasis added). It stressed that “CIDA's development results reflect the MDG commitments, as well as Canadian contributions to development not explicit in the MDGs, such as in governance.” The ultimate goal of CIDA development efforts was the contribution to reaching MDGs, poverty reduction and sustainable development.\footnote{Canada. Canadian International Development Agency, “Departmental Performance Report 2003–2004.”}

Poverty Reduction/Sustainable Development\footnote{Ibid. The chart replicates only structure of the chart and the titles of its strategic outcomes and key area results. (Reproduced with permission of Global Affairs Canada, Ottawa, 2016). The quotation marks are not used for reading convince. Colors by me for the purposes of emphasis.}
justice. As a part of the contribution to human rights, the report indicated CIDA was one of three donors of a conference where UNDG adopted the *Statement on a Common Understanding of a Human Rights Based Approach to Development Cooperation*. The report credited CIDA as a lead in the creation of a task team on human rights and development in the OECD-DAC's Network on Governance.

In *Sustainable Development Strategy 2004–2006*, CIDA reiterated MDGs “as development targets that CIDA work[ed] to support” and its commitment to contribute to areas not explicitly referred in MDGs – such as human rights, democracy, and good governance – which it argued were fundamental to reaching MDGs. Within the agency’s governance priority, the following development outcomes were envisioned:

- “Governing structures and institutions are increasingly stable, accountable, transparent, and bound by the rule of law”;
- “Transparent and representative lawmaking processes and fair, accessible and independent legal systems that conform to internationally accepted standards”;
- “Transparency and equality in the resolution of disputes, conflicts, complaints, appeals, and redresses”;
- “Strengthened legal and judicial systems that are accessible to all and that are based on human rights’ norms and standards”;
- “Strengthened promotion and protection of the human rights of women and girls in law and in the actions of police, prosecutors, judges, and courts.”

CIDA’s *RPP 2005–2006* based the role of governance in poverty reduction “on the existence of sound governance structures.” It acknowledged that democratic societies based on the rule of law not only further respect for human rights, “they also encourage governments as well as local men, women, girls, and boys to take ownership of their

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816 United Nations Development Group. (UNDG brings together the UN funds, programmes, specialized agencies, departments, and offices that work on international development. [https://undg.org/home/about-undg/](https://undg.org/home/about-undg/)
819 Ibid., 45–46.
country's development—a critical factor for both economic growth and social development.” 820 In CIDA’s DPR 2005–2006, the declared goal of “poverty reduction, promotion of human rights, and increased sustainable development” 821 were described as being achieved through programing in “human rights, democratic development, the rule of law … and public sector capacity building.” 822 Canada’s role in promoting MDGs with poverty reduction as a special focus was also seen through participation in multilateral organizations as outlined in CIDA’s RPP 2006–2007.

As a member of the Boards of Directors and various management and policy committees of most multilateral institutions, Canada also contributes to the MDGs by advocating for the implementation of policies such as gender equality, environmental sustainability, and aid effectiveness, with special emphasis on poverty reduction mandates… 823

CIDA’s DPR 2006–2007 presented the revised Program Activity Architecture (PAA) approved by the Treasury Board in 2006, which “was developed to articulate the Agency’s contribution to developing countries’ achievement of their development results and, ultimately, to poverty reduction.” 824 It aimed at “[s]ustainable development to reduce poverty in the poorest countries, measured through progress on the development goals,” including goals related to freedom, democracy, human rights, rule of law, accountable public institutions. This focus was a direct support to “Government of Canada’s strategic outcome of global poverty reduction through sustainable development” (note: figure

822 Ibid., 18.
CIDA’s approach to democratic governance was articulated as “essential for poverty reduction” and aimed at “mak[ing] states more effective in tackling poverty by enhancing the degree to which all people, particularly the poor and the marginalized, can influence policy and improve their livelihoods.” Among the proposed interventions were support to formal human rights institutions and informal legal practices that respect human rights, promotion of impartial and effective legal systems, non-discriminatory judicial systems.  

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825 Ibid., 6. Replicates part of the graph on p. 10. (Reproduced with permission of Global Affairs Canada, Ottawa, 2016). The quotation marks are excluded for reading convenience.
826 Ibid., 122.
In 2008, the Parliament of Canada adopted the *Official Development Assistance Accountability Act* (ODAAA). ODAAA stipulated that ODA may be disbursed only if it meets three conditions: “(a) contributes to poverty reduction; (b) takes into account the perspectives of the poor; and (c) is consistent with international human rights standards.”

For years stockholders appealed to stipulate a legislative mandate of the Canadian ODA with the hope that the act would serve as one. This legislation was imperfect, as Gulrajani notes, because ODAAA does not provide a strong legal mandate for CIDA as applied to all its activities. Not all CIDA’s activities were considered as ODA, thus non-ODA spending part of International Assistance Envelope fell outside of

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827 Replicates the graph in Ibid. (Reproduced with permission of Global Affairs Canada, Ottawa, 2016). The quotation marks are excluded for reading convenience.

828 *Official Development Assistance Accountability Act, S.C. 2008, C. 17*, para. 4. Though sub-para. 4(1.1) added that also “…official development assistance may be provided for the purposes of alleviating the effects of a natural or artificial disaster or other emergency occurring outside Canada.”

the mandate of the Act.\textsuperscript{830} In addition, spending under ODAAA covered activities conducted not only by CIDA but also by other federal departments.\textsuperscript{831} The Act sets a requirement for a relevant minister (currently the Minister of International Development) to report on behalf of the government to Parliament on Canadian ODA spending. The 2011–2012 report on the \textit{Government of Canada's Official Development Assistance} asserted that for CIDA the promotion of democracy “is seen as a means of reducing poverty, by enabling people to realize their own capacities and goals, and by reducing barriers that limit people’s political participation in decision-making that affects them.” It put poverty reduction within the frameworks of “[f]reedom, democracy, human rights, and the rule of law” which empower people to life ‘a life of dignity’, to be engaged in making decisions that impact their lives and to hold governments answerable for their decisions.”\textsuperscript{832}

However, the 2013 report of the Auditor General of Canada, “Report of the Auditor General of Canada. Official Development Assistance through Multilateral Organizations” revealed issues with the consistency of funded projects and proposals with human rights standards.\textsuperscript{833} His assessment showed that they did not include any “assertions about specific rights along the broad spectrum of international human rights

\textsuperscript{830} DFATD’s \textit{Statistical Report of International Assistance 2012–2013} defines International Assistance Envelope as “a dedicated pool of resource that enables the Government of Canada to deploy its international assistance… The envelope is used to fund the majority of Canada’s ODAAA-related activities, and other specific activities that do not meet the definition of ODA, such as certain peace and security efforts and non-concessional loans for international climate change initiatives.” Canada. Department of Foreign Affairs, Trade and Development Canada, “Statistical Report on International Assistance 2012–2013,” 2.

\textsuperscript{831} Gulrajani, “Re-Imagining Canadian Development Cooperation: A Comparative Examination of Norway and the UK,” 45.


\textsuperscript{833} It should be noted that the report included the review of not only CIDA, but other departments which dispersed ODA. The audit covered ODA to 18 multilateral organizations and through 19 individual projects. The dissertation addresses the parts of the report that refer to CIDA.
standards, with the exception of gender equality.” Although it was noted that human rights analysis was undertaken at the country program strategy development level, the Auditor General’s finding was that “the project proposals did not address how the funded projects would be delivered in a manner consistent with international human rights standards.” But in regards to compliance with the requirement of poverty reduction, the report found that “all project spending proposals …. examined demonstrated a clear focus on reducing poverty as described in CIDA’s Policy on Poverty Reduction and the Millennium Development Goals.” While addressing the issue whether the perspectives of the poor were taken into account for core funding proposals, CIDA responded to the Auditor General that an indicator used in assessing multilateral organizations was the program strategy’s degree of the alignment with the development strategy of that country’s government. In this regard, the Auditor General’s report noted that “while this assessment provides important information at the strategic level, it provides little information at the operational level to demonstrate how perspectives of the poor have been considered.” However, the report also notes that the review of project proposals showed that there were consultations conducted with local communities in more than half of those projects and that “[m]ost proposals also indicated that the recipient government had been involved.” The findings by the Auditor General on poverty reduction, which

835 Ibid., 8.
836 The report by the Auditor General provides the following distinction of funding to multilateral organizations, “Canada provides core funding to support the general programs, administration, and management of multilateral organizations. It also provides funding that is earmarked for specific projects and initiatives.” Ibid., 4.
837 Ibid., 8–9.
838 Ibid., 8. Because organizational policies, management and administrative structures of international organizations for which core funds are allocated are designed based on internal processes and follow the respective founding or governing documents of their constitutive members, the expectation that poor will be consulted is more of a theoretical aspiration rather than a practical possibility.
had occupied a central position in Canadian aid, remained the main concern despite the challenges of involving the poor in programming.

In the 2005 publication *Canada’s International Policy Statement: a Role of Pride and Influence in the World*, the government declared that Canada’s efforts in governance were going to be focused on their contribution to the MDGs, as well as to democratization, human rights, and rule of law.\(^{839}\) It declared Canada’s commitment “to extending human rights and human security throughout the world” as a foundation for Canada’s approach to good governance. By recognizing that governance structures differ depending on political and cultural context, the document asserted that “Canada’s ultimate goal is to foster commitment on human rights, democracy and the rule of law that places individual citizens at the heart of society and creates a state committed to protecting their welfare.”\(^{840}\) The policy document was short lived and after the Conservative government assumed the office in 2006, it “lost much of its relevance.”\(^{841}\) In 2006, the House of Commons Standing Committee on Foreign Affairs and International Development undertook the analysis of Canada’s role in democracy assistance. In July 2007, it produced the report *Advancing Canada’s Role in International Support forDemocratic Development*. Reflecting on the report, Schmitz writes,

[t]aking into account familiar concerns about association with discredited US ideological rhetoric on democracy promotion - mainly aversion to the much-criticized “freedom agenda” of President George W. Bush - the Committee report took pains to elaborate a distinctively independent Canadian approach and to acknowledge the complexities of the enterprise (including a focus on context-specific analysis, learning from the lessons of comparative experience, local

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\(^{841}\) Major, “Canada: Democracy’s New Champion?,” 90.
ownership, better implementation and evaluation).\textsuperscript{842} The first recommendation of the report called for support of democracy with a focus on “the system of governance as a whole,” on international human rights – including socio-economic and cultural rights – as well as on “the full participation of citizens, including the most disadvantaged, in the processes of democracy.”\textsuperscript{843} Among the cited opinions in support of a broader conception of democracy building were ones that evoked Sen’s approach to development. The report highlighted that the position among development organizations and practitioners was to integrate advancement of democracy with “the overall development and poverty reduction process.” It evoked the speech by Hilary Benn, the UK’s Secretary of State for International Development, who acknowledged that,

Development, if it is to mean anything has also to be about what Sen calls the “freedoms to”: the freedom to choose- to choose people to represent your views; the freedom to make your views heard; to associate freely with others; to join a political party or a trade union; the freedom to worship and practice your own religion. If you ask poor people, they’ll tell you how much these things mean to them.\textsuperscript{844}

Roel von Meijenfeldt, from the Netherlands Institute for Multiparty Democracy, brought up similar points while speaking in Canada in January 2007:

Amartya Sen was one of the first to challenge the old paradigm that countries have to develop economically first before they become fit for democracy with a new paradigm that countries become fit (economically speaking) through

However, among the witnesses who expressed scepticism on the possibilities of
democratization in low-income countries, Professor Diane Éthier argued,

For more than 50 years now, all theories on democracy have supported the view
that democracy cannot flourish in a poor and underdeveloped country. This means
that socioeconomic development and democratization cannot be achieved
simultaneously, as democratization is born of socio-economic development. I
believe experts would say that if you want to help countries become democracies,
first help them achieve economic and social development, and later you will be
able to focus on establishing democratic political institutions.

Contribution to judicial reform was recommended by the witnesses as one of the areas
where Canada’s experience could be an added value in democracy building. In their
submission to the Committee, the Canadian Bar Association (CBA) recommended that
Canada’s contribution to the promotion of the rule of law involve “all elements of a legal
system.” But in its recommendation on strategic engagement, CBA’s submission
cautioned against legal transplantation “[a]s the failed law and development movement of
the 1960s proved.” The submission rightly pointed out that, while in many countries the
majority of ordinary people—if they even utilized the formal system—accessed the
justice system at the lower court levels, “the majority of justice system aid goes into
Supreme Courts, law ministries and other places which have little or no impact on the
lives of the poor and disadvantaged.” In the submission, however, it was also noted that
Canada’s expertise in the following areas could be valuable in building democracy and

Democratic Development: Report of the Standing Committee on Foreign Affairs and International
Development,” 45.
846 Ibid., 44.
for Democratic Development: Report of the Standing Committee on Foreign Affairs and International
Development,” 101.
rule of law: “bi-juridical legal system (common law and civil law), … participatory civil and criminal justice reform, land registry and aboriginal title issues, and restorative justice.”

In her testimony, Professor Mahoney stressed the role the judiciary could play in democracy building. She shared,

I think we’re seeing that the recipient countries are far more aware of how critically important the judiciary is, not just in the courtroom to dispense justice, but in developing public confidence in democracy. They’re seeing the judiciary as an arm of it that must be developed along with governance structures in the mainstream.

In its “dissenting report”, included in the overall report by the House of Commons Standing Committee, the opinion of the Bloc Québécois was that, when involved in promoting democracy, the democratic countries needed to show that they did not “control another country, or defend their own interests.” Rather, the efforts should be to assist people to control “their own destiny and creat[e] the institutions that will, little by little, ensure them democratic governance through justice, police, human rights, free elections.” Among the questions raised were “What intervention has been useful, in what conditions? [and] Are such conditions exportable?” In responding to the US experts’ opinion that Canada could play a role in democracy promotion, especially taking into account failures of the US efforts, the Bloc’s response was,

Would it not be timely to point out that the success of Canadian intervention appears to hinge on respect for the democratic approach adopted by the people of the country being helped, which is very unlike the American and British invasion of Iraq?


851 Ibid., 195.
Within the democracy building framework, the Bloc’s position was to exercise caution when deciding on which activities to focus the development assistance and be conscious of history, including the history of political and economic colonization. They reminded parliament that,

[i]t is often the case for the people in Arab/Muslim countries: they associate democracies with the countries that supported and still support authoritarian leaders who remain in power thanks to force, to torture and to corruption. Before the invasion of Iraq, American leaders were certain that Iraqis would thank them for rescuing them from Saddam Hussein. The Iranians recall that their own authentic democratic revolution, under the leadership of Mossadegh, was brought to a halt in 1953 by the coup d’état fomented by the CIA and the British secret services, who joined forces to prevent Iran from controlling its own oil.\textsuperscript{852}

The Bloc also brought up the experience of African countries, where “charismatic postcolonial leaders eliminated by the former colony’s military” and where Western corporations exploited natural resources “with impunity and support authoritarian leaders.” As they summarized, “[t]he governments of emerging democracies have often tried to exert control over their resources, only to run.”\textsuperscript{853}

The New Democratic Party’s (NDP) dissenting opinion on the report was critical that “no concrete recommendations” were provided on how to meet “Canada’s international commitments to provide for the basic economic and social rights of the world’s poorest populations.” It argued that,

[t]he development of healthy democracies cannot be separated from a comprehensive human rights framework. The Standing Committee report largely ignores this critical link between the social and economic rights of the poor and democratic development, and does not offer a single recommendation to the

\textsuperscript{852} Ibid., 193.
\textsuperscript{853} Ibid.
government to address these issues in its woefully deficient current development aid policy.\textsuperscript{854}

When elaborating on link between deprivation of basic economic and social rights and deficiencies in effective governance and civic engagement, the NDP emphasized that “[s]ecurity of the person, poverty reduction, sanitation, basic health services, and educational opportunity, are fundamental human rights that must be met if communities and individuals are to engage constructively in democratic processes.”

While acknowledged in the report with reference to “the full range of international human rights - including socio-economic and cultural rights,” (Recommendation 1), the subsequent recommendations are unacceptably silent on this critical interrelationship. The Standing Committee report fails to provide concrete guidance for how these related issues should be incorporated into the heart of Canadian development policy practice. The report acknowledges that democratic development cannot be effectively pursued in the absence of these social and economic rights. Yet, the NDP’s repeated attempts to amend the report to include these key considerations were rejected.\textsuperscript{855}

And as Forsythe and Heinze point out, although Canada views itself “as playing a constrictive role” in development and identifying social and economic roots of “of various problems such as political instability,” those issues have seldom been “framed in the discourse of internationally recognize welfare rights.”\textsuperscript{856}

The Committee’s report also addressed programing concerns, such as a lack of coherence in democratic assistance, including within the donor countries. Weighing on the issue of policy coherence, Ian Smillie, of Partnership Africa-Canada called for a balanced approach.

Some critics of Canada’s approach to governance lament the absence of coherent

\textsuperscript{854} Ibid., 205.
\textsuperscript{855} Ibid., 205–206.
policies tying all aspects of the agenda together. A patchy, project-by-project approach with no obvious central policy and no central management, they say, is unlikely to yield coherent results. This may be true, but given the overwhelming size of the governance agenda, and the limited track record in its promotion by any donor, healthy doses of humility and caution are warranted… Given the complexity of the challenge, a case can be made for selective interventions in concert with other donors, aimed at learning what works and what does not.857

Programing and operational concerns were also among the issues raised in the 2009 report by Canada’s Auditor General on aid effectiveness. It indicated that the “lack of clear direction and action plans, coupled with broadly defined and shifting priority sectors” hindered CIDA in “making a more meaningful Canadian contribution in a country or region by focusing its aid more narrowly.”858 The report further specified, “CIDA has been operating in an ever-shifting environment for many years, with changes to government policy objectives, emphasis on geographic orientation, priority sectors, and budget allocations.”859 Carin and Smith called CIDA a “victim of a system that has too many ‘masters’” being pulled by different interests groups that wanted issues of their concern to be prioritized. In addition, the government imposed “multi-dimensional operational constraints on CIDA’s freedom of action.” Their description of the latter point written in the article was,

The minister responsible for CIDA [was] an oft-shuffled “junior” minister, usually with relatively little influence in cabinet. Until recently, the Finance and Foreign Affairs departments dictated policy with respect to the bulk of our multilateral funding. Today the Prime Minister’s Office and the Privy Council Office appear to have great influence. The Finance Department still holds the whip hand over Canadian contributions and policy advice to the multilateral

859 Ibid., 28.
development banks. The 2009 Auditor General’s report also underscored that among the issues CIDA faced was the high turnover of its senior managers. It noted that, “[i]n its Geographic Programs Branch, since 2002, the average ... [was] about 30 percent per year, and, in the Policy Branch (which develops policy for the Agency), it has been about 45 percent.” In addition, “[s]ince 2000, five different ministers of International Cooperation and four different Agency presidents ... led CIDA” and the “significant turnover” in senior management became a “challenge to providing a stable operating environment.” Frequent changes in CIDA’s senior management had a negative effect, as did what Brown describes as “pet priorities” and micromanagement of aid programs imposed by different CIDA ministers. Among the other issues that strained CIDA’s operations Brown indicates that “[t]he Prime Minister's Office and the Privy Council Office overruled decisions made by development experts at CIDA, including which Canadian NGOs to fund - and which to punish for being critical of the government.” This in turn led to challenges “for CIDA officials to fulfill CIDA's poverty reduction mandate.” By 2006, in their study of Canadian foreign aid, Goldfarb and Tapp also state that, despite CIDA’s declared mandate of poverty reduction, CIDA was not fair in its efforts and was “criticized for ineffective policies and a lack of leadership.”

The 2013 Conservative government budget announced the merger of CIDA with...
DFAIT. The justification presented was that “enhanced alignment of ... foreign, development, trade and commercial policies and programs will allow the Government to have greater policy coherence on priority issues and will result in greater overall impact of our efforts.” Poverty alleviation remained a goal of international development. Proponents of the merger felt it better met the interests of Canada and offered more policy coherence. Yet in 2004, Canadian Council for International Co-operation/Canada's Coalition to End Global Poverty acknowledged in a briefing paper that the merger of CIDA with the Department of Foreign Affairs might lead to policy coherence in Canada’s relation with developing countries, but that “option would bring coherence at the expense of Canada’s commitments to poverty eradication and the MDGs.” Therefore, development experts and practitioners were wary of the change that happened in 2013. As Brown points out,

Even as a semi-independent agency, CIDA had trouble maintaining policy autonomy and a focus on poverty reduction. Former CIDA Minister Bev Oda and her successor Julian Fantino saw their mandate as including the promotion of Canadian commercial interests, especially those of mining companies. Assurances that the merger will benefit developing countries are not credible. Diplomacy and trade will continue to trump development, and the government will find it easier to hijack aid funds, especially now that the new legislation requires that aid-related decisions obtain more explicitly the "concurrence" of the Minister of Foreign Affairs ... As long as the Canadian government lacks the will to set aside short-term, narrowly defined self-interest and to prioritize fighting poverty and inequality in developing countries, no amount of administrative fiddling will make much of a difference.

It should, however, be noted that though Canada’s international development activities were marred by programing and operational challenges and issues were raised on its

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867 Brown, “The Life and Death of CIDA (1968–2013).”
priorities, the Canadian public has generally been supportive of foreign aid. Silvio acknowledges that the public opinion reflected the policy contexts, as for example lower levels of support in mid-1990s, but he also argues that “[o]ver time, Canadian attitudes towards development assistance have not varied, especially when compared to Canadian aid policy.”

The 2004 survey conducted by Environics Research Group found that the majority of Canadians—78%—were supportive of Canada’s aid program. In the 2007 survey by Innovative Research Group, 70% respondents expressed that Canada had an obligation to help poor countries. And the 2006 poll by the North–South Institute which asked “should Canada increase its official development assistance (ODA) to 0.7 percent of GNI by 2015?” showed that 53% responded positively and only 5% were against, while 42% wanted the government to commit to achieving this goal before 2015.

The 2013 report from Canada’s Auditor General, responding to “Why it’s important”, elaborates that “Canadian aid is important to people living in poverty around the world. It plays a key role in the future of Canadian security and prosperity. It also makes a significant contribution to establishing Canada’s place internationally and promoting Canadian values.”

Canada’s ODAAA also put forth the purpose of ensuring “all Canadian official development assistance abroad” provided “is consistent with Canadian values.” The promotion of Canadian values had been centrally positioned in the Government’s policy

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documents and was also frequently referenced in CIDA’s reports. The 1995 foreign policy statement, *Canada in the World*, indicated the “projection of Canadian values and culture” as a key objective, important for Canada’s success in the world. The values of “respect for democracy, the rule of law, [and] human rights” were stated to be important not only in “the struggle for international security” but also because their adaptation was “essential to ensuring that they … [were] viable” in Canada. It continued,

[v]itality of our [Canadian] culture is also essential to our [Canada’s] economic success. In the new knowledge-based world economy, the skills of people, their education, ingenuity and social adaptability, will become key elements of international advantage. Our educational system, cultural diversity and continued dynamic growth in exports of cultural products and services will contribute significantly to our achievement internationally.873

CIDA’s Departmental Performance Reports affirmed that “Canada’s aid program … provides a concrete expression of values that Canadians cherish: compassion for the less fortunate, democracy, freedom, human rights, and the rule of law.”874 DPR 2003–2004 stated that through development assistance Canada, in cooperation with governments in developing countries, other donors, and multilateral organizations took a leadership role in the “development of policies, programs, and activities that reflect Canadian values.”875

*Canada's International Policy Statement* (2005) had numerous references to Canadian values.

Commenting on the key focus on Canadian values, Brown writes that it “reinforce[s] the idea that Canadians have a special contribution to make, even an inherent moral superiority, and it seeks to use Canadians’ national pride to assure their

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support.” However, what was referred to as Canadian values was not based on “consensus that the drafters of the IPS would have readers believe. Even if Canadians agree on the desirability of the goals of global citizenship, equity, and environmental sustainability, they often disagree on the means to achieve them.” Therefore, I agree with Liebich who indicated that “[i]n governance, in human rights and justice sector reform … [the] starting point [should be] international human rights principles.” Human rights instruments that are signed and ratified can serve as entry points. Nevertheless, Member of Parliament Andrew Saxton, in his 2010 speech, asserted that human rights are “a core Canadian value.”

We cannot talk about international development without thinking about the context of human rights. …We recognize that Canadians expect their government

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876 Brown, “‘Creating the World’s Best Development Agency’? Confusion and Contradictions in CIDA’s New Policy Blueprint,” 216. While addressing the frequent reference to Canadian values in Canada in the World (2005) as presumed set of values, Howell notes that “there is no set definition of what Canadian values are.” (Howell, “Peaceful, Tolerant and Orderly? A Feminist Analysis of Discourses of ‘Canadian Values’ in Canadian Foreign Policy,” 50.). In her critique on references to Canadian values in foreign policy and portrayal as “Canada the good” and “Canadians as peaceful, tolerant, and orderly,” Howell argues that such discourse conceals the “histories of colonialism, violence, and marginalization within Canada” (Ibid., 49., see also Ibid., 56.) and also positions Canada and Canadians as possessing values that “are apparently lacking in others.” (Ibid., 61.) In the meantime, reference to “Canadian values” as a coherent set implies “sameness” in values of Canadians while overlooking rifts in the society. (Ibid.) Stairs expresses even harsher criticism of Canadians viewing “themselves not as others are, but as morally superior” and that Canadian values “are special in the sense of being unusually virtuous”- the attitude that negatively affects effectiveness of diplomacy both “next door and overseas.” (Stairs, “Myths, Morals, and Reality in Canadian Foreign Policy,” 239.)

Not aiming to underplay the points of criticism, however, as in any other society, in Canada the framing and perceptions of what constitutes societal values are informed by personal experiences. For example, it is undeniable that there are immigrants who choose Canada because of exactly of what they perceive to be “Canadian values” (whatever positive values they have in their mind) and which they believe lack in their countries of origin. Therefore, the discourse about the difference in values is not necessary about feeling “unusually virtuous” as Stairs tells. It can be mere a discourse about a model, however imperfect, of a society which offers relatively more personal security, freedoms, less conflicts and discrimination, better living standards and social protection, as well as more efficient functioning governance structures. And it is such perceptions that despite individual perceptions about “Canadian values” that visually manifest themselves when during the Canada Day it is a common sight seeing people of different walks of life and religion wearing red clothing item, including red hijabs and turbans. I acknowledge that even with such an approach questions still remain of what constitutes “Canadian values” and what sets our values apart from others and how those values are determined beyond personal experiences as common values which characterize us, Canadians. Though not being perfect, but international human rights instruments still provide more structured list of entitlements for guidance.

877 Liebich, International Development Consultant - formerly with the Canadian International Development Agency and UNHCR.
to be a leader in the field of human rights by reflecting and promoting Canadian values, including democracy and the rule of law on the international stage.\textsuperscript{878}

Poverty reduction remained the foundational focus of Canada’s international development agenda from the inception of CIDA’s activities. With the adoption of MDGs, poverty reduction was singled out and placed as an ultimate goal towards which CIDA’s development results were programmed to contribute. Furthermore, in 2008, ODAAA made contribution to poverty reduction a legally mandated requirement for the provision of the Canadian official development assistance. CIDA’s program architecture adopted a multidimensional view of poverty reduction intervention areas; among these areas were rule of law and human rights. Although human rights were not among the main concerns of CIDA’s initial activities, from the late 1990s they featured more prominently in policy documents by the government of Canada and CIDA. Even with the acknowledgment that MDGs did not implicitly refer to human rights, human rights and rule of law under governance development were presented as integral components in CIDA’s policy documents, reports, and program architecture; leading to the achievement of MDGs in general and poverty reduction specifically.

The promotion of human rights and democratic principles were also seen as a reflection of Canadian values and a means of advancing social justice for the poor in developing countries. There might be a divergence in defining Canadian values and whether and how they have to be advanced; however, even with the drawbacks that exist in Canada, the promoted concept of “Canadian values” still conveys the image of Canada as a state with functioning democratic processes, rule of law, and mechanisms available

to protect human rights. These are regarded as principles essential in contributing to the prosperity of a country and providing opportunities for people to thrive. If promoted and adapted, these principles can contribute to the establishment and development of societies and institutions that provide similar outcomes for its people as Canada provides for its citizens.
While being designed as a judicial reform support project, JURIS positioned itself as an actor in efforts to reduce poverty and contribute to sustainable development in the Philippines. Within its expected project impact, JURIS put a strong emphasis on improving access to justice for the poor. It was envisioned that this improvement be achieved by focusing on both the supply side of justice (duty-bearers) through the provision of socially responsive judicial education, and the demand side (rights-holders) by building the capacities of non-governmental organizations to facilitate access by the poor; including by sharing information with the poor to empower them. Access to justice was the primary aim of the project, however, the analyzed documents show that either the organization that implemented the project or the evaluators were trying to grapple with the concept. The issues raised were greater than the physical access to courts, costs and timeliness of decisions, and were instead concerned with the capacities of justice sector actors to deliver justice, power imbalance between litigants, and the fairness of decisions reached.

JURIS was a CIDA supported project (2003–2010) aimed at supporting the Action Program for Judicial Reform (APJR) of the Supreme Court of the Philippines in response to the Court’s appeal “to aid … in its reform agenda.” Although CIDA viewed the project being focused on the judicial sector, “the APJR provided entry points to advancing its poverty reduction mandate.” It also saw the project “as a “vehicle for

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879 JURIS is one of the CIDA supported projects analyzed for the dissertation. Documents relating to the projects were obtained through the access to information requests.
880 Mendoza, “End of Project Evaluation. Justice Reform Initiatives Support Project. JURIS. PH/A-031102,” 5–6. The report also indicates that CIDA was one of the donors which supported the government in its initiative. The project was implemented through National Judicial Institute (NJI), Stern, “Mid-Term Evaluation: Justice Reform Initiatives Support Project (JURIS),” 10.
pursuing broader development goals while responding to a specific request from the GOP.\textsuperscript{881} Moreover, the reform initiatives of the Supreme Court were regarded “as timely, relevant and uncommonly progressive given the judiciary’s institutional culture and history.”\textsuperscript{882} According to the end of project evaluation report, the broad goal of the reform initiative to which the project intended to contribute was “a judiciary that is independent, effective, efficient and worthy of public trust and confidence”. The APJR focused on:

1. “Improving judicial systems … [and] procedures
2. Institutional development
3. Human resource development, including legal ... [and] judicial education
4. Enhancing reform support systems
5. Developing institutional integrity
6. Improving access to justice by the poor\textsuperscript{883}

The APRJ project planned to achieve: “1. [i]mproved access to timely, convenient, affordable and fair judicial services, specially to the poor and marginalized groups; 2. [i]mproved knowledge of available judicial services and legal remedies, especially by the poor and marginalized groups; and 3. [i]mproved public confidence in the judicial system.”\textsuperscript{884} The project aimed at “contributing to poverty reduction in the Philippines through equitable, sustainable development”\textsuperscript{885} and its objective was “[t]o foster efficient, fair, responsive, transparent and accountable governance at all levels.”\textsuperscript{886} The expected impact was “[a] strengthened and gendered-responsive justice system with improved access to justice by the poor and marginalized.”\textsuperscript{887} In Mendoza’s words,\textsuperscript{888} “the

\textsuperscript{881} Government of the Philippines
\textsuperscript{883} As referred to in Ibid., 6.
\textsuperscript{884} Ibid., 13.
\textsuperscript{885} Ibid., 6.
\textsuperscript{886} Ibid., 86 Annex B-2. JURIS Logical Framework Analysis (LFA). (21 November, 2005); Ibid., 91 Annex B-3. JURIS Logical Framework Analysis (LFA). (23 February, 2007 (proposed)).
project afford[ed] CIDA a significant platform in addressing poverty reduction and gender equality.**889**

*Project Goal, Objective Impact and Indicators (final approved version 21 November, 2005)**890**

<table>
<thead>
<tr>
<th>The JURIS Project Goals</th>
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<tbody>
<tr>
<td>To contribute to poverty reduction in the Philippines through equitable, sustainable development</td>
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**Strategic Objective**

| To foster efficient, fair, responsive, transparent and accountable governance at all levels |

**Impact level**

| It seeks to achieve a strengthened and gender-responsive justice system with improved access to justice by the poor and marginalized |

**Impact indicators**

- Increasingly positive evaluation by stakeholders of the quality, effectiveness and gender responsiveness of justice reforms
- General awareness of the varieties of avenues for redress of grievances, whether individual or against the justice system
- Replication of successful ADR Model Court processes in other courts
- Approval by the Supreme Court of a change in the Rules of Court making ADR mandatory in all courts

JURIS consisted of three components: 1) judicial education and training; 2) alternative dispute resolution (ADR); and 3) reform advocacy. The first component on judicial education and training was intended to “improve capacity of the … Philippine Judicial Academy [PHILJA] to deliver effective, gender-sensitive and socially responsive judicial education and training in support of judicial reform and access to justice

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**888** The title of Mendoza indicated on the evaluation report is *JURIS Local Monitor, Judicial and Law Reform Advisor.*


**890** Replicates the table in Ibid., 20. (Source: Global Affairs Canada). Quotation marks are not used for the convenience of reading.
including court-annexed mediation (CAM) and judicial dispute resolution (JDR) on a sustainable basis.” The second component on ADR focused on enhancing the capacity of courts in model sites to provide “effective court-annexed mediation and judicial dispute resolution services on sustainable basis.” The third component on reform advocacy on improving the capacity of the ALG coalition to “effectively manage and coordinate legal reform advocacy for improving the quality of judicial services and access to justice by poor and marginalized groups.”

In the final evaluation report of the research on the access to justice component, *Social Weather Stations* noted that in APJR “access to justice by the poor … [was] understood to include: physical access to the courts, as well as speedy and fair adjudication of cases for all; protection of the poor from abuse by those who claim to influence judicial decisions; improvement of the affordability of judicial services to the poor.” But it further notes that “since access to justice is not only limited to access to the courts, these factors apply to other channels for obtaining justice” (e.g. “adjudication bodies of executing agencies”), Department of Agrarian Reform Adjudication Board, National Labour Relations Commission, Environmental Management Bureau. The research framework, *Access to Justice and Effectiveness of ADR Approaches*, from the National Judicial Institute’s (NJI) 2006–2007 Annual Report tried to operationalize

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891 Ibid., 13. The brochure of the project describes ALG (Alternative Law Groups, Inc.) as “a coalition of non-governmental organizations engaged in alternative lawyering, and has been working both as a network and through individual members, for the empowerment of the poor and marginalized groups of Philippine society through developmental and alternative legal work.” http://pmc.judiciary.gov.ph/downloads/JURIS_Brochure.pdf


893 NJI was the CIDA’s Executing Agency-Partner of the project.
both “access” and “justice” of the term.\textsuperscript{894} It specified the \textit{access} availability of mechanisms and in terms of time and cost effectiveness utilizing CAM/JDR by litigants in settling disputes.\textsuperscript{895} It was concerned with whether the mediation was conducted “in an open and informal setting” and with “the capability of judges, mediators and court personnel in CAM/JDR contributed to the litigants’ attainment of justice.” \textit{Justice} as applied in the project denoted,

… ‘justness’ of the settlement, i.e., whether the agreement reflect a ‘moral’ or fair (?) resolution of the case in the light of neutralizing power imbalance inherent in cases that involve men/women, landlord/tenant, employer/employee, corporate/individual; the differential impact of the mediation on women and small business; and, the compliance on settled cases. Justness/fairness is also manifested in the mediation process particularly in relation to neutralizing power imbalance between two parties.\textsuperscript{896}

\begin{center}
\begin{tikzpicture}
    \node at (0,0) {ACCESS};
    \node at (3,0) {TO};
    \node at (6,0) {JUSTICE};
    \node at (0,-1) {Time and Cost of Mediation};
    \node at (3,-1) {Mechanisms that facilitate one’s pursuit for justice (CAM/JDR)};
    \node at (6,-1) {Outcome of Mediation};
    \node at (4.5,-3) {Justness/Fairness};
    \draw[-latex] (0,0) -- (3,0);
    \draw[-latex] (3,0) -- (6,0);
\end{tikzpicture}
\end{center}

Stern in his comment on the objective of the project to improve the quality of judicial services and access to justice by the poor and marginalized raised the question “[W]hat exactly … [was] meant by reference to ‘access and quality of justice’”. He argued that both terms were interconnected and “relate to fairness of outcomes.”

That is, it is not enough that the poor and marginalized should have their “day in court”, so to speak, but the procedures should render a just outcome. If a decision is not just, it would be hard to argue that the mere presence of an individual at a

\textsuperscript{894} The chart below replicates one from the report of National Judicial Institute, “Justice Reform Initiatives Support (JURIS) Project Philippines. Annual Report. 1 April 2006 to 31 March 2007,” 5 Appendix 5.
\textsuperscript{895} Court-Annexed Mediation (CAM), Judicial Dispute Resolution (JDR).
\textsuperscript{896} National Judicial Institute, “Justice Reform Initiatives Support (JURIS) Project Philippines. Annual Report. 1 April 2006 to 31 March 2007,” 4–5 Appendix 5. The graphic depiction on access to justice replicates the chart from the report. (Source: Global Affairs Canada).
hearing constituted access to justice.\textsuperscript{897}

While reflecting on the project’s intention to address access to justice, Mendoza points out “[a]ccess to justice is not a concept that is commonly understood.” If all partners in the project agreed on a common understanding of the concept it would mitigate the ambiguity. However, because it was not done at the inception stage of the project, it led to

…a less well-defined PIP [Project Implementation Plan], and consequently, a deficient LFA [Logical Framework Analysis]. As a result, access to justice wasn’t given primary importance in the early stages of the project. Instead much of the thinking, strategizing, operationalization and monitoring was focused on declogging of the court dockets.\textsuperscript{898}

The project’s final narrative report indicated that the poor and marginalized were the direct beneficiaries and that the project focused on their needs “for better access to justice.”\textsuperscript{899} The report further elaborated that “[t]he poor and marginalized …[were] directly impacted both by the reforms advocated by the ALGs, as well as the mediation and JDR programs installed by the Court.”\textsuperscript{900} As the project’s evaluation report assessed the “welfare of the poor \textit{vis a vis} the law and the judicial system … [was] preeminent throughout the project.”\textsuperscript{901} The report (research) by \textit{Social Weather Stations} on the access to justice by the poor, reflecting on the focus group discussions, noted that the most frequently referenced impacts of ALGs’ activities in empowering the poor and marginalized through education were ones aimed “directly to poor and marginalized

\textsuperscript{897} Stern, “Mid-Term Evaluation: Justice Reform Initiatives Support Project (JURIS),” 3.
\textsuperscript{900} Ibid.
groups” and also involving “the capacity building of paralegals, police, social workers … through information dissemination and training, and transfer of technical expertise.” The report recapped that “[a]lmost all participants commended the ALGs in their efforts to empower the poor and marginalized groups in accessing justice by educating them of their rights, and of key substantive laws and legal procedures that affect their access to justice.”

The duty-bearers – “justice actors” – targeted by the project were judges, court personnel, prosecutors, lawyers, and mediators. By employing the HRBA language, the project’s final narrative report describes these groups as “the duty bearers, the carriers of the seeds of hope in … justice system.” Under Project Rationale and Justification, the narrative report states:

The Supreme Court, PHILJA and the courts are all providers of the justice system. Their main task is the speedy, impartial and efficient dispensation or administration of justice, and they belong to the supply side of the justice equation.

The ALGs on the other hand, together with their constituencies, which are organizations of poor and marginalized communities, like peasants, fisherfolk, urban poor, indigenous communities and the like, are seen more as claimants to the justice system. They belong to the demand side of the justice system. They propose reforms and expect continuous improvements in the … so that the public good of justice would be accessible to all.

The report (research) by Social Weather Stations on the access to justice by the poor brought up the point by the focus group participants that, in order to enhance access to justice, the improvements in substantive laws should be accompanied by “improvements in procedural aspects so that these laws could be properly and effectively enforced.”

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904 Ibid., 20.
Among the issues shared by the focus group participants that hindered the access to justice for the poor and marginalized were expenses. Court fees and transportation costs, challenges for “pauper litigants to provide sufficient documentary evidence that they … [were] really poor” or the requirement for the litigants to have proper clothing and identification were all barriers to access to justice. As a participant noted on the latter point, “It is totally unacceptable to expect people from rural areas to wear shoes, or to have IDs, so that they could go inside the Hall of Justice.”

At the same time, the research revealed that participants perceived ADR as improving justice for poor “because it equalizes the access to justice to the poor and the rich” and JDR was viewed as “a more effective way of dispute resolution because the judge acts as the mediator, and decides on the case primarily on the cause of conflict and not solely on the merits of the case.” However, the project’s mid-term evaluation report raised a concern that ADRs and JDRs were used also by the financial and lending institutions in so called BP 22 cases to collect money with minimum time and lesser costs. This in turn raised a question “How does this square with the project assumption that ‘court-annexed mediation can neutralize the power imbalance between the poor/marginalized and the more powerful litigants.’” In the first annual report 2003–2004, NJI mentioned that,

One type of case that is fuelling the case load is BP 22 cases in which criminal charges are laid for dishonoured cheques. The civil aspects of these cases (the actual payment of the amount of the cheques) are within the scope of mediatable cases. The criminal law is clearly being used as a ‘hammer’ to settlement of the civil obligation. There is significant concern on the part of justice advocates about

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906 Ibid.
this law. It appears to have a disproportionate effect on the poor and women in particular. This has created a risk in the project that mediation of these cases will simply entrench the effects of a bad or unjust law and not result in substantively better outcomes.  

The 2006 mid-term evaluation report highlighted that “Specific performance/Sum of Money with Damages and Violation of Batas Pambansa Blg 22 (the so called Bouncing Check Law)” was widely perceived to harm women because of “the statistical evidence that the majority of defendants …[were] women and while the majority of plaintiffs … [were] men.” The report also noted that BP 22 constituted the “majority of cases referred by the courts to mediation in … JURIS model projects sites.” It indicated that even the report by the APJR of the Supreme Court of the Philippines recognized that the law was contributing to the problems with the backlog of court cases. Among Stern’s recommendations to deal with the possible bias against the poor, especially women, was to address the issue of fees for mediation and enforce an “additional penalty in BP 22 cases for the criminal charge.” The reason being, according to Stern, that contingency fees, which represented a “proportion of the contested amount … payable whether or not the mediation … [was] successful,” affected the poor women’s ability to have representation by counsel. In addition, the requirement by a court to present a brief before the mediation – though it was examined only if the mediation failed – put a heavier burden on the poor.

The issue of the high court fees was also raised by the focus group participants for the research conducted by Social Weather Stations and suggested “strengthen[ing] the

910 Ibid., 7.
911 Ibid.
modes of alternative resolution so that the poor and marginalized groups would have easier access to justice.” In the meantime, participants raised the importance of financing the judiciary. As the research noted,

With limited budget, it would be impossible for the judiciary to cater to the justice needs of the people, especially the poor and the marginalized groups. Due to budget constraints, there is a shortage of PAO [Public Attorney Office] lawyers (already swamped with many cases of poor litigants) and judges, and lack to adequate court facilities. According to the … participants, this lack of adequate budget for the judiciary partly contributes to the inability or difficulty of the poor and marginalized groups to access justice.

Furthermore, as Mendoza in the end of project evaluation report emphasized, “[t]he judiciary has a role to play in poverty alleviation and it needs to better appreciate this role,” while its impact can be stronger by a partnership that includes civil society.

In its project vision, JURIS viewed the judiciary and justice sector actors as being a part of the process that contributes to poverty reduction. By building the capacities of duty-bearers to deliver justice the project aimed to make justice accessible to the poor and responsive to their needs. The project interpreted justice as an outcome which neutralizes power imbalances between litigants. As the research by Social Weather Stations showed, focus group participants considered ADR a way of equalizing the power imbalance and addressing the causes of the dispute – rather than adjudicating solely on the details of the case.

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913 Ibid.
The project envisioned that improvements in land administration would contribute to equitable registration of land rights. The rationale was that securing access to land and land rights would promote investments in agriculture and contribute to income because, if land rights were protected, that would make land a more attractive investment. Additionally, secure land rights would increase the value of land to be used in diverse financial transactions (e.g. collateral for loans). The outcome would be socio-economic growth and a reduction in poverty. Among the strategies to achieve the project results were the harmonization of the legal framework governing land administration and creation of land courts, as well as making land administration services affordable. However, in the project related document, there was an acknowledgement that the rate of HIV/AIDS could negatively affect tenure rights and potential investments in land. Widows and orphans from households affected by HIV/AIDS were at risk of losing access to land to stronger relatives or due to inheritance passed through a male linage. While not specifically addressing the issue of the HIV/AIDS impact on widows and orphans, the project approval document particularly emphasized the importance of securing land rights for women so they had access to land and were able use it for production and income.

Ghana’s Land Administration Project (LAP) was a multi-year initiative (2003–2009) to which CIDA contributed as one of the donors and World Bank being the executing agency. The project aimed to address serious issues that existed in land

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administration in Ghana, especially in urban and peri-urban areas, which were the source of conflict and created obstacles for “development and economic growth of the economy.” The project also recognized the growth in uncertainties and issues with land ownership of customary land holdings in rural areas. According to the World Bank’s project appraisal document, farmers who tended the land outside their native area did it under “various forms of [undocumented] tenancy arrangements with their hosts” which were prone to unilateral changes by landlords or chiefs. Such arrangements were often sources of conflicts and confrontations. Although a significant number of women were involved in farming, their land rights were not “clearly defined and documented.” As a result, changes in their family status or when the “land shortage … [became] acute” they faced the possibility of being dispossessed. The project appraisal document also noted that,

Land litigation and the threat of violence on disputed lands discourage[d] domestic and international investors who … [sought] land for development. The provision of secure titles to land would facilitate orderly and legal acquisition of land for development either by outright purchase or long-term lease thus enabling land to serve as collateral for credit to improve and develop land.

It specified that a focus should be on northern areas of the country where “the rural poor constitute the larger percentage of the population.” CIDA’s Project Approval Document (PAD) stated that the project would “help promote new investment in agricultural productivity and income, by reducing land conflicts and clarifying land-

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918 Ibid.
ownership.” The PAD envisioned that the project would “enhance social and economic growth” and aid poverty reduction by “improving access to land and improving land tenure security.” The assumption was that it would lead to “an increased willingness to invest in land due to improved land tenure security, an increase in household incomes and reduction of poverty in pilot areas.” The PAD underlined that “women’s access and control over resources,” through proper documentation, could facilitate their access to formal crediting and lead to investment opportunities. The PAD asserted that the project would help Ghana in achieving “equitable, sustainable poverty reduction.” As it noted,

By increasing security of land tenure for both rural and urban resident, the project is a direct compliment to CIDA’s program for Food Security in Northern Ghana, which is itself grounded in CIDA’s Social Development Priorities. Improved land tenure supports CIDA’s Gender policy, which identifies women’s access to and control over food production resources, of which land is of primary importance as a strategic point for attaining gender equality. The LAP also contributed to improved governance in Ghana’s land sector.919

The expected outcome of the project was the improvement in “governance of the land administration system, the development of systematic land documentation,” as well as a decrease in land conflicts “between individuals and between customary tenure authorities.”920 Among the inputs to decrease poverty and increase income outlined in the project logical framework were the harmonization of the legislative framework and establishment of the land court system. It also dwells on participatory land administration system with a focus on equal rights between men and women. The reduction in litigation over land was proposed to contribute to “the fair, efficient… [and] cost effective” land

administration system and to land tenure security. It was expected that improvements in land administration, tenure security, harmonized land laws, and the establishment of the land court system would lead to a rise in land investments, as well as an increase in incomes and decrease of poverty in areas of the project’s activities.\(^921\)

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<tr>
<th>Project Goal (Program Objective)(^922)</th>
<th>Impact</th>
<th>Performance Indicators</th>
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<tbody>
<tr>
<td>Enhance economic and social growth and reduce poverty by improving access to land and land tenure security</td>
<td>Increased willingness to invest in land due to improved tenure security</td>
<td>… increase in investment, leading to more production and employment</td>
</tr>
<tr>
<td></td>
<td>Increase in household incomes and reduction in poverty in pilot areas</td>
<td>… income increase</td>
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<table>
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<tr>
<th>Project Purpose</th>
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<tr>
<td>Development of a sustainable and decentralized land administration system which is fair, efficient, cost effective … [and] accountable, resulting in increase in land tenure security</td>
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<table>
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<tr>
<th>Outcomes</th>
<th>Performance Indicators</th>
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<tr>
<td>Improvement in governance of the land administration system, leading to efficient and equitable documentation of land rights…</td>
<td>Reduction of corruption in delivery of land services …</td>
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<tr>
<td>Traditional land authorities adopt participatory and inclusive land administration systems in pilot areas, respecting women’s</td>
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922 Replicates most of the table in Annex D. LAP Logical Framework Analysis ibid. (Source: Global Affairs Canada). Quotation marks are not used for the convenience of reading. According to the Project Performance Assessment Report Ghana Land Administration Project by the World Bank, in 2008 there were revisions in the results framework, however, in the absence of the relevant documents provided by CIDA through the access to information request to corroborate the information, only LFA in the documents provided by CIDA were analyzed. (Independent Evaluation Group/ World Bank, “Project Performance Assessment Report Ghana Land Administration Project. (Credit No. 3817; Project ID P071157),” 14.)
The PAD paid special attention to the connection between HIV/AIDS and land rights. It highlighted that “HIV/AIDS directly affects land rights.” While stating the complexities involved in determining the causality between HIV/AIDS and poverty, the document noted,

The presence and frequency of HIV/AIDS may make individuals and communities reluctant to invest in conservation and preservation of natural capital such as biodiversity, community water and land resources that require long term
investments. The land rights of widows and orphans tend to be lost where land is registered in a man’s name, or is inherited through the male line. Holdings of HIV/AIDS-affected households become depleted as land is grabbed by more able-bodied relatives or sold-off to cover hospital or funeral costs. 923

Additionally, the document acknowledged that this issue was not mentioned in either government’s document or the executing agency document and committed CIDA to ensure that the issue was continually raised during the annual review, monitoring, and evaluation missions. 924

As a benefit to Ghanaian society, changes in the legal system and institution of the equitable ADR mechanisms were projected to decrease land conflicts. The other anticipated benefits of the project for the Ghanaian society included an increase in land value due to documenting land tenure security, formation of “a functional land market, where land … [could] be purchased and sold with certainty,” and better access to “mortgage and production credit, using land titles as collateral.” More investment in land was viewed as a means of improving livelihoods and influencing production and the “employment generation.” The project was also expected contribute to the recognition of women’s tenure rights. 925 In spite of the purported benefits, there was an acknowledgment that the project activities could present risks to certain groups. It was recognized that “project activities such as titling and registration may result in loss of land rights for some people and the unintentional displacement of some families.” The secondary rights, “such as the right of poor village women to harvest the fruits of certain trees or the right of the community to use an established path across a property,” might also be lost.

Another risk of titling was the possible demise of tenant and sharecropping agreements due to the increase land prices and plots put up for sale. The migrants could be displaced too.\footnote{World Bank, “Project Appraisal Document on a Proposed Credit in the Amount of SDR 15.1 Million (US$20.5 Million Equivalent) to the Republic of Ghana for a Land Administration Project,” 26–27.}

In regards to the proposed harmonization between customary and statutory tenure, the critique by the \textit{Independent Evaluation Group} in its assessment report was that the project did not resolve what it called implicit contradictions. These contradictions were due to both recognizing the land control by customary authorities and also suggesting shifting rents away from the chiefs to strengthen the control of the state over the land. It stressed,

This tension at the heart of the project’s design was not resolved during implementation. The net effect was to leave the chief’s control over land unchallenged, an outcome that may, on balance, have reduced tenure security for many land users, particularly in those parts of Ghana where the traditional authorities were seeking to profit from rising land values.\footnote{Independent Evaluation Group/ World Bank, “Project Performance Assessment Report Ghana Land Administration Project. (Credit No. 3817; Project ID P071157),” 16.}

The reason for the implicit contradiction was the lack of discussions about the role chiefs played in land administration and/or how they could allocate land based on their own interests rather the interest of the general society.\footnote{Wily and Hammond, “Land Security and the Poor in Ghana: Is There a Way Forward?” cited in Independent Evaluation Group/ World Bank, “Project Performance Assessment Report Ghana Land Administration Project. (Credit No. 3817; Project ID P071157),” 32.} Among the issues that also affected the project were deficiencies in “public outreach on land laws, land rights and procedures” which were confined to the “distribution of flyers, brochures and [a] few public lectures.” While there were media and focus group debates, the approach was effective only in some places because of illiteracy rates. As a result of those issues, it was
suggested that the outreach resulted in the public’s view that there were corrupt and non-transparent processes.\textsuperscript{929}

In its project architecture, LAP conceptualized that poverty reduction and socio-economic development can be reached through interventions in protecting property rights, support to legal reforms, and functioning courts. By adopting a top-down approach to protecting rights, the project presented a functioning legal and land administration system which protected land tenancy as a way of decreasing land related conflicts, boosting investment in land productivity and allowing land to be used an economic commodity for business and financial transactions. While better protection of land rights was said to contribute to poverty reduction, there was also recognition that in Ghana land titling and registration might have adverse impact on rights people. Therefore, the same reform efforts would have a negative impact on secondary rights for the vulnerable strata of population, as well as lead to displacement of families, thus potentially affecting their abilities to earn a livelihood; instead contributing to poverty reduction the reform could contribute to more poverty.

The project positioned itself as a rule of law project that, through legal reforms and capacity building, would contribute to an international human rights compatible legal framework and judicial practices to uphold human rights of disadvantaged groups such as children, ethnic minorities and migrant workers. The project also intended to improve the accessibility of legal services for disadvantaged groups and protect their rights. To raise awareness among the project’s target groups about their entitlements and how to access services, the project adopted a mediated approach that channelled the information through capacity building of the project partners. Even with raising awareness and the availability of services, it did not necessarily mean that the project target groups could benefit from them. In the case of ethnic minorities in Thailand, their births were registered as a step to their right to citizenship as a result of project support. But the families of missing Lao migrants were less able to protect the rights of their family members because of fear of government punishment due to the “illegal” status of their family members in Thailand.

In the meantime, the documents under analysis highlighted tensions that law reform and human rights projects raise at the project operationalization level when

930 Because the analysis of the dissertation is mostly at the outcome level of the projects, I faced challenges in the analysis of the progress reports by the Canadian executing agency similar to ones expressed by the evaluators (see below),

• “Progress reports were largely activity-based with unclear links to results and indicators until the Deputy Director assumed responsibility.
• Reports often fell short of ‘telling the [project]… story’ … The reports combined narrative reports from the primary partners with charts filled with voluminous details on ‘progress toward results’ that were difficult to follow. The charts were based on the project LFA but rarely did they provide a clear sense of how the activities and output level results contributed to expected higher level results.” [emphasis added]

interacting with national authorities. The project was framed as a rule of law rather than a “human rights” project in an effort to placate states that had concerns over foreign governments backing human rights activism in their countries. In addition, the lack of nationally driven law reform initiatives contributed to the decision by organization implementing the project to focus on the facilitation of interactions between government and civil society, instead of dealing directly with governments. There was also recognition of the complexities associated with implementing law reform and human rights, especially at the impact level when national governments are responsible for acting on the change. The other consideration was the idea that law reform and human rights projects in the development setting should not be concerned with mere technical compliance or non-compliance with international human rights standards, but human rights should be considered a development goal itself. It was argued that such an approach would put the focus on advocacy rather than provision of services. Even with a focus on human rights, there was an acknowledgment that programming in human rights projects is political in nature, which makes engagement between those who oppose and who are for the change difficult. But even to contribute to the change, have an impact, and sustain it, human rights projects should have a longer timeline for implementation and they require a longer period to manifest the impact.

The SEARCH (2004–2011) was a regional project covering Indonesia, the Philippines, Cambodia, Thailand, Vietnam, Laos, and Timor-Leste. The project focused on “democratic governance, including legal and judicial development, democratic participation and civil society and human rights” with gender equality being a cross-cutting theme. Special attention was also given to children, ethnic minorities and migrant
workers.\textsuperscript{931} In the evaluators’ assessment, the project was relevant to three priorities of CIDA’s regional program among which were governance and rule of law, as well as “Canada’s foreign policy, which include[d] reflecting Canadian values and, as a priority, promoting and protecting human rights.”\textsuperscript{932} The project had built on the preceding CIDA supported initiative, but, as the mid-term performance review elaborated, SEARCH focused on human rights while also undertaking “more of an ‘upstream’ emphasis” with attention to the rule of law “through improvements to the legal and institutional mechanisms for the promotion and protection of the rights” for the project target groups.\textsuperscript{933} At the project initiation stage, there was an identified gap in the capacities of government and NGOs in promotion of human rights, which in turn impacted their ability “to keep pace with social and economic trends.”\textsuperscript{934} The request for proposals specified that the main focus was capacity building of civil society and government institutions, with the concept of the rule of law placed at the centre. The term ‘rule of law’ referred to “equality before the law, entitlement to equal protection of the law without discrimination, due process, right to fair trail and other concepts contained in international human rights conventions.”\textsuperscript{935} At the project initiation stage, CIDA and human rights organizations in the region identified rule of law and legal reform as the

\textsuperscript{931} Ibid., 2.
\textsuperscript{932} Ibid., 39.
\textsuperscript{933} Rawkins, “Mid-Term Performance Review South East Asia Regional Cooperation in Human Development Program (SEARCH). Final Report (March 18, 2008),” 2–3. The same document indicates the South East Asia Fund for Institutional and Legal Development (SEAFILD) as the project SEARCH was built upon.
\textsuperscript{934} “Project Definition Mission Report: Defining a Successor Project to SEAFILD”, ASEAN, APEC and SE Asia Regional Program, prepared for Asia Branch, CIDA, January 2002 cited in Ibid., 10.
most effective ways of addressing human rights violations. The project approval document programmed the capacity development of government and non-government institutions to be mutually engaged on issues relating to rule of law and human rights and raise awareness of the rights people hold. The goal of the project was “to promote and uphold rule of law as it applies to children, ethnic minorities and migrant workers in Southeast Asia.” The stated purpose was “to improve legal and institutional mechanisms for the promotion and protection of the rights of” the project’s three target groups. The logical framework (below) operationalizes how the intended project goals were to be achieved.

<table>
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<tr>
<th>NARRATIVE SUMMARY</th>
<th>EXPECTED RESULTS</th>
<th>PERFORMANCE MEASUREMENT</th>
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<tr>
<td><strong>Project Goals</strong>&lt;br&gt;(Program Objectives)</td>
<td>Impact</td>
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<td>Assumption/Risk Indicators</td>
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<tr>
<td>To promote and uphold rule of law as it applies to children, ethnic minorities and migrant workers in Southeast Asia</td>
<td>1. Rule of law promoted to create an enabling environment for the respect of human rights</td>
<td>1. Degree of enforcement of legislation in participating Southeast Asian countries; Protection available for target populations</td>
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<tr>
<td><strong>Project Purpose</strong></td>
<td>2. Increased transparency and</td>
<td>1. Number of laws reformed that directly or through</td>
<td>2. The ‘rights deficit’ between</td>
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937 Ibid., 9.
939 Replicates parts of the table in Ibid. Appendix B, Logical Framework Analysis. (Source: Global Affairs Canada). Quotation marks are not used for the convenience of reading.
To improve legal and institutional mechanisms for the promotion and protection of the rights of children, ethnic minorities and migrant workers in the SEA region, accountability of government in upholding the rule of law and the respect of human rights, interpretation increase government transparency and accountability, especially … rule of law & HR commitments to international HR conventions and adherence to those commitments increases

<table>
<thead>
<tr>
<th>3. Improved judicial practices and legal services in support of human rights.</th>
<th>1. Changes to legal/administrative practices; 2. Fairness of treatment; 3. Availability of legal services for project’s target groups</th>
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The project initiation stage also underscored the need for national and regional human rights organizations to cooperate with governments and academic institutions “to change the mind set and practices of various legal and judicial bodies that have an impact on the lives of citizens.” Activities in this area were presented as “among the most important initiatives to modify policy decisions and government or security force practices in a cooperative manner.”940 The Project Definition Mission Report argued that “Rule of Law issues are areas in which national and regional organizations are most comfortable in collaborating, and therefore could be channels for the promotion and

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protection of implementation of human rights.” Among the suggested methodology was capacity development of partner institutions, “[e]ducation and training at national and regional levels for government and law enforcement organizations and … [human rights] organizations.”

The expected outcomes of the project were:

1. “Improved capacity of selected institutions and partners to promote … [human rights] of targeted disadvantaged grouped and influence policy makers” (outcome 100);
2. “Increased effectiveness and sustainability of regional networks and partnerships in addressing … [human rights] issues related to” the target groups (outcome 200);
3. “Improved legislation and policy environment for the provision of legal/judicial services as applied to” the target groups (outcome 300); and
4. “Increased access to services and protection by law for” the target groups.” (outcome 400)

A representative of CIDA who was a part of the project initiation, explained to the evaluation team that the project was designed around rule of law “to appease countries such as Vietnam and Cambodia who were averse to foreign governments supporting human rights advocacy in their countries.” However, as report continues,

In the end, SEARCH was not a rule-of-law project. It evolved into a human rights advocacy project… It may have been more difficult to create a strong regional project relevant to CIDA’s seven eligible countries within the framework of rule-of-law, since individual governments are responsible for legal and judicial matters

941 “Project Definition Mission Report: Defining a Successor Project to SEAFILD”, ASEAN, APEC and SE Asia Regional Program, prepared for Asia Branch, CIDA, January 2002 cited in Ibid., 11.
and few transboundary legal/judicial issues apply to all countries of the region.\textsuperscript{943}

Initially, for the project’s intended outcomes three and four—improved legislation and enhanced protection by law—it was expected that that the project would engage directly with governments, judiciaries, local legal and civil society networks. However, the Canadian executing agency (CEA) specified that it would not get directly involved with governments, but rather “would support government-civil society dialogue and sharing of lessons learned.” In the 2008 mid-term performance review it is noted,

The project retain[ed] the emphasis on an “upstream” focus on influencing policy, legislative frameworks and strengthening institutions. However, the “Rule of Law” emphasis has been modified and the business of its principal partners, at least in part, continue[ed] to be human rights advocacy, dialogue and advice… and documentation of the deficiencies of current levels of protection.\textsuperscript{944}

The CEA rationalized its approach by indicating that “the conventional rule of law approach that CIDA was pushing would have required SEARCH to work with governments and CIDA had not negotiated a government role in the project during the design phase.” Among the reasons outlined for why “the project got tilted in favor of human rights and away from the rule of law” was the lack of law reform initiatives “at the national level specific to ethnic minorities, children and migrant workers.”\textsuperscript{945} The \textit{Summary Comments on the Project’s Risk Management Strategy}, for the risk stated “[a]n improved legislative and policy environment does not lead to an improvement in the

\textsuperscript{943} Bolger and Stiles, “End-of-Project Evaluation of the Southeast Asia Regional Cooperation in Human Development Project (SEARCH). Project Number: A-031101,” 18. Bolger and Stiles noted that four outcomes of the project “remained largely unchanged throughout the life of… [the project], even as the project focus shifted from rule of law to human rights advocacy…” Ibid., 19.

\textsuperscript{944} Rawkins, “Mid-Term Performance Review South East Asia Regional Cooperation in Human Development Program (SEARCH). Final Report (March 18, 2008),” 15.

\textsuperscript{945} GeoSpatial/SALSAN, in association with International Institute for Child Rights and Development, and Four Directions International Inc., “CEA Notes on the Draft Mid-Term Review (MTR) of the SEARCH Project (May 9, 2008),” 2–3. The response is to the Rawkins, “Mid-Term Performance Review South East Asia Regional Cooperation in Human Development Program (SEARCH). Final Report (March 18, 2008).”
provision of legal/judicial services.” The comments also noted that “[i]t … [was] true that an improved … [human rights] policy environment at the regional level … [did] not necessarily trickled down to improving the rights of vulnerable groups at the local level.”

Within the second outcome (outcome 200) the activities were piloted on the establishment of “formal and informal mechanisms at the village and central level” for reporting missing in Thailand Lao migrants. The goal of the activity was “to trace missing cases of Lao migrants to Thailand … [to] uncover[…] cases of trafficked persons and rescu[e] them, and break[…] the cycle of trafficking rings.” The process of gathering information about the missing people was planned at the village level from the accounts of the villagers collected by the local focal groups. Among the challenges faced, however, was a low number of reported cases, which was assumed to be due to “the fear that they [villagers] …. [would] be subjected to fine or punishment because their missing family member entered Thailand as an illegal immigrant.”

Whether or not there would be compliance of national laws and practices with international human rights standards and instruments was among the main concerns about the third output (outcome 300). This output focused on “[n]ational legislation and legal enforcement practices” that safeguarded “the rights of male and female children, ethnic

948 Ibid., 91.
949 Ibid., 93.
minorities and migrant workers” aimed at aligning them with international standards. The project also focused on agreed “recommendations on core labour standards, terms and employment and minimum working conditions … in line with international standards (human rights, ILO, etc.) … [to be] submitted them to governments.” Under the fourth outcome (outcome 400), which was intended to increase access to services by the project’s target groups, it was proposed to improve “[e]conomic and social support” and “quality of support services provided to victims of human trafficking.” The care and support procedures were proposed to “standardize[…] regionally in line with international norms and practices.” The project also proposed that the target group participate in “initiatives aimed at articulating and promoting their rights to protection, equality and access to services under the law.” Raising the target group’s awareness about “rights to protection, equal treatment and access to services under the law” through capacity building of the project partners was planned to contribute to the fourth output. Among the expected results of heightened awareness was “increased media attention” to the issues of the project’s target groups, especially ethnic minorities.

954 Ibid., 26. (output 430)
In assessing the results achieved in regards to Outcome 300, however, the evaluators emphasized the challenge of attributing them directly to CIDA funded initiatives because the financed partners had other sources of funding. In the meantime, they underlined that “it may have been unrealistic for CIDA to expect a great deal of progress, particularly in relation to legal and judicial legislation, which are the responsibility of national governments.” Due to the “scant and unreliable” data, the evaluators “found little conclusive evidence of progress toward the achievement of” Outcome 400, but did find “limited tangible” evidence a pilot project in northern Thailand granted legal rights to social services through the provision of citizenship status to ethnic minorities. The End of Project Final Report indicates that the project supported “a number of community based projects, in registering child births in a number of Thai hill tribe communities as a prerequisite to accessing citizenship rights.” But the report underscores that the project “was designed mainly as a macro level rather than a micro level intervention”; therefore, its ability to impact service delivery which was “a lower level activity, was limited.”

The End of Project Final Report, in its lessons learned, provides a valuable insight into the implementation of human rights projects in the field. In one of the observations the report emphasizes that,

958 Ibid., 32–33. It should be noted, that the term “ethnic” minorities itself was considered problematic. In the inception report, CEA among the challenges faced by the project was that “the words ‘ethnic minority’, ‘indigenous people’, ‘hill tribes’ and ‘native people’ carried different meanings in the different countries of the region.” There was a great variance in how ethnic minorities were treated by national laws. (GeoSpatial/SALSAN, International Institute for Child Rights and Development, and Four Directions International Inc., “Inception Phase Report. Southeast Asia Regional Cooperation in Human Development (SEARCH),” 8.
[e]ffecting change in human rights requires moving beyond judgments concerning countries compliance or non-compliance with international human rights normative instruments to the adoption of a developmental rights-based approach built on a perception of rights as a developmental goal to be achieved independently of other goals and a recognition of the importance of advocacy as opposed to service provision.960

Furthermore, as the report highlighted while addressing the project risk, “[t]he ‘rights deficit’ between commitments to international … [human rights] conventions and adherence to those commitments diminish,” the adoption of “a developmental as opposed to a legalistic approach to human rights development” also contributed to the “establish[ment] and maintain[ance of] trusting relationship with both the governmental and non-governmental” actors.961

Bolger and Stiles, in the project evaluation report, emphasised challenges faced by human rights projects, including at the design stage “because of the volatile nature of the political environment and the potential for rapid change.” They elaborated that due to “[t]he nature of human rights programming … [being] fundamentally political and prone to volatility” there is a risk associated with “pre-determining technical assistance when needs and priorities are subject to change.”962 They stressed the risks of involvement in human rights projects, thus making it “difficult and potentially dangerous to share publicly lessons about lobbying activities.” Their advice was “[t]he “do-no-harm” principle should prevail” and even the valuable information is communicated “given the vulnerability of some groups and the individual who support change” it should be done

960 Ibid., 86.
961 Ibid., 92.
with due care. In regards to programing human rights projects, they rightly argued that

“[L]ong timeframes are needed for human rights” because

…major improvements in human rights architecture and practices can take a long
time. Donors need to think in terms of decades for positive changes in policies,
laws and their implementation. Similarly, long time frames are needed for
effective institutional capacity development of human rights organizations
whether government or NGOs.964

The long timeframe of the human rights projects relates not only to programing, but also
to observing the outcomes of the activities and assessing whether those outcomes are
sustainable, because it “is typical of governance and human rights projects where results
or impacts are often not seen until years after the project has ended.”965

963 Ibid., 53.
964 Ibid.
The project linked the protection of vulnerable groups’ property rights of with their ability to live life with dignity and make decisions independently. It emphasized that the enjoyment of property, which takes into account the safety and privacy of vulnerable members of the family, contributes to their bodily security, integrity, and health. The project also underscored that the security of property rights enables vulnerable groups to reap economic benefits from property and alleviates poverty. The approach of the project was that empowerment, public awareness about rights, and property ownership could affect power dynamics and provide better standing for women, which would help improve their socio-economic conditions. Securing women’s rights would enable women to increase the economic output from agricultural activities, provide better nutrition to their children, and reduce instances of exposure to abuse and HIV/AIDS.

To empower the project’s target group, the project adopted a mediated approach which trained paralegals to conduct a public awareness campaign. However, it accentuated the importance of professional competence in those who were tasked with the conducting public awareness campaign for its success. Issues with professional competence of paralegals and misunderstandings about the legal system were mentioned among the factors that impacted the public awareness campaign. Another concern with the expected outcomes was the anticipation of the behavioral change; because the issues the project aimed to address were mostly conducted based on traditional practices, it was challenging to convince people to change the behavior to adopt more formal arrangement such as civil marriage contracts and wills. Awareness about rights was also perceived as a challenge to perceptions held by community members and the belief that knowledge of
human rights would make, for example, children more disrespectful to elders in their families and community. The public awareness campaign aimed at behavioral change and moving away from traditional practices that violated the target group’s rights, but there was also recognition that behavioral change is a long process. It was highlighted that the change to more formal arrangements is more than mere adoption of laws, but rather the change in people’s way of thinking.

CIDA supported Secure Tenure and Safe Space for Lesotho Widows, Orphans and Vulnerable Children project (2007–2010) “[i]n response to Lesotho’s increasing number of widows and orphans and vulnerable children (OVC).” It was implemented by Habitat for Humanity Lesotho (HFHL), which works on providing housing to low-income and vulnerable groups “in addition to raising awareness about housing laws, property ownership and inheritance rights.”966 According to the End-of-Project Report, the issue that the project intended to address was the dependence of OVC children on either extended families, particularly elderly and unemployed grandmothers, or living in child-headed households, which made those children “an easy target of violence, abuse, and exploitation.” Another concern was that orphans, as well as widows, who were deprived of their parental and martial properties, frequently ended up living either in overcrowded conditions with other relatives or became homeless. Overcrowding not only curtailed the privacy of women who were forced to carry their “personal activities in the presence of male housemates” but also, in conjunction with reliance “on male relatives for food and shelter … [led] to sexual abuse, which further … [increased the]}

risk of contracting HIV/AIDS." Limited living space also compelled children of different sexes to share sleeping space “regardless their age,” often putting children into abusive situations and contributing to early pregnancies.

The rationale presented for the project was,

With secured housing and property ownership, OVC and widows can live with dignity and a sense of security. Inheritance rights and secure tenure make women and children less vulnerable to abuse and exploitation, which lessens their chance of contracting HIV. Property rights cultivate the level of independence which allows women and children to make their own decisions. They are able to reap the economic benefits from land to curtail the cycle of poverty, resulting in enhanced well-being, economic standing, and living standards. Security allows vulnerable females to focus on other aspects of life, such as education, livelihoods, and the future.

Overcrowding was relevant not only sharing the living spaces, but also to hygiene because “too many people shar[ing] one latrine” led to highly unsanitary conditions and health problems. The purpose of the project was “1. To secure tenure and inheritance rights of widows and children who have been orphaned and made vulnerable by HIV/AIDS” and “2. To reduce incidents of abuse and sexual molestation of widows and female orphans and vulnerable children.” The goals were: “1. Full recognition of tenure and inheritance rights of widows and OVC in traditional systems that reflect the current law” and “2. Adequate and safe living spaces for widows and female OVC separate from male housemates.”

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967 Ibid., 4–5.
971 Habitat for Humanity Canada, “CIDA VSF-Habitat for Humanity Canada Application,” 3.
A document which provides accurate information on tenure security and inheritance rights based upon a correlation between the written (established) law and practiced customary (traditional) law in each of the three districts.

Baseline established in order to measure changes over a three year period.

A joint approach to deal with relevant gaps between traditional practice and established law, how to confront them, and to what extent over the medium to long-term.

… paralegals trained to sensitize … groups via [public awareness campaign] …

… persons sensitized through drama, lectures and interactive participation on the rights of women and children according to the laws enacted by the [Government of Lesotho] …

A noticeable decline in land grabbing from women and OVC resulting in greater property security and a reduction of poverty for this vulnerable group [emphasis added].

… subsides for construction of additional bedrooms and, in some cases, rondevels (small round, detached huts which serve as sleeping quarters in rural areas).

… “safe spaces” created for … females living with extended relatives or friends - i.e. a bedroom addition (urban) with both an interior entry and an exterior entry, or a female only rondevel (rural), allowing them to come and go at will.

Significant and measurable reduction in incidents of female abuse, and empowerment of assisted females.

… latrines constructed,

Reduction in health

Reduced incidents of diarrhea

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972 Replicates part of the table in Ibid., 3–4. (Source: Global Affairs Canada). Quotation marks are not used for the convenience of reading.

mostly in rural areas, with full involvement of beneficiaries and beneficiaries sensitized as to the benefits of proper use and maintenance. related incidents attributable to lack of access to pit latrines… and dehydration, resulting in stronger bodies and increased productivity for wage earners and subsistence farmers.  

The indicators used to measure performance were the changes in the mindset regarding the tenure of widows and OVC, “[f]ewer reported incidents of property-grabbing,” safe spaces that would improve safety and security of females, fewer reported incidents of abuse, “[f]ewer health complaints … related to sanitation,” and more “consistency between Common Law (written) and Customary Law … with the Common Law being accepted and recognized as predominant.”

The public awareness campaign was considered central to securing tenure rights and the participation of paralegals in the public awareness campaign was the cornerstone of the activity. Nevertheless, the report by HFHL raised the issue regarding their professional knowledge, because their status in the community rather the familiarity with laws was the factor in their selection. While acknowledging that the respect in the community made them “a trusted source of information for villagers” who often turned to the paralegals for advice, the lack of understanding among some trained paralegals of the country’s dual legal system became an obstacle in reaching “project goals and awareness raising efforts.” An example of such a negative outcome is the fact the project did not

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974 However, the end of project report indicated that “[i]n terms of the families’ physical ability to work since receiving latrine, all the surveyed respondents indicated, that in their view, the latrines … did not affect[…] their ability to work.” (Habitat for Humanity Lesotho, “End-of-Project Report: July 1, 2007–June 30, 2010. Secure Tenure and Safe Space for Lesotho Widows, Orphans, and Vulnerable Children Project,” 17.

meet all targeted numbers for will registration. Cumbersome creation and registration processes also had an impact on the will registration. The report stated that according to the Wills Act of Lesotho, for the will as a legal document to “be defensible in the courts of law,” it had to be “be written only by a practicing lawyer” and the cost of the services was between the equivalent of $187 and $312 – a cost that was not affordable for many. The customary law provided an alternative “to individuals to write an informal will, also called ‘inheritance instructions’… administered by a local chief.” Although people could choose this more affordable alternative, inheritance instructions were different from a formal will and “the limitation … [was] that it … [might] not stand the test of time … [if it was] contested in a court of law.” To address these issues, HFHL cooperated with Legal Aid Services and the Master of the High Court, located in the Capital, Maseru city. Legal Aid Services agreed to provide the destitute with discount prices, the equivalent of $25, for services and the Master of the High Court would provide free review and registration of wills. But in the End-of-Project Report, HFHL emphasized that the “[w]ill creation and registration … [was] a lengthy process in Lesotho,” which was also influenced by the fact the Office of the Master of the High Court was located in the capital city, too far for many people to travel. Therefore, the process “was quite time consuming” because paralegals needed to travel on public transport “to collect the wills,

977 Ibid., 25.
978 According to the UN Habitat publication, Master of the High Court was established as an office within the Ministry of Law and Constitutional Affairs to administer states and with the assistance of “the District Administrative offices in the other nine districts.” The publication also states that “the Office of the Master of the High Court is not well known, particularly at village level.” United Nations Human Settlements Programme, Land Tenure, Housing Rights and Gender in Lesotho, 46.
legally register the documents, and meet their contractual targets.”

The sector strategy project review by CIDA specialists in their support for the proposal to improve the effectiveness of the project in “the promotion of socio-economic changes” advised “involving judicial and law enforcement agencies in the process” of securing the tenure rights for widows and OVCs because neither customary practices or formal laws protected their rights. It noted,

For example, the baseline study can record and documents to what extent or why existing state laws fail to protect the rights of women and OVC. In doing so, it involves judicial and law enforcement agencies in the process and this raises their level of awareness of land tenure issues and what limits the application of state laws to protect the rights of vulnerable groups. We strongly believe that the awareness raising strategy targets government officials, judges, police, schoolteachers, extension workers and politicians along with local and community leaders. Livelihoods issues such as land rights cannot be compromised, as they are critical to the very survival of households. What we should be seeking is not necessarily a strategy that produces an incremental change, such as change of attitude, but a strategy that delivers an immediate result such as easy and secured access by vulnerable groups to resources. This is possible if advocacy efforts are focused on influencing state policies so that politicians can introduce new laws that protect the land rights of Lesotho women and VOC.

But the End-of-Project Report by HFHL specifically highlights the “behavior change aspect” of the advocacy campaign as “[o]ne of the cross-cutting challenges.” Among the cited reasons was that many people were used “to a traditional way of life, which include[d] customary marriages and traditional modes of property distribution.” Therefore, for the change to happen and protections under the common law to be guaranteed, there was a need for citizens to “adapt a non-customary lifestyle which include[d] civil marriage contracts and written property wills.” But as the report notes,

981 Mequanent et al., “Strategic Planning and Policy Directorate Sector Specialist Proposal Review.”
“[i]t was a difficult process to encourage people to change a mode of life in which they practiced for generations.” Another challenge in the public awareness campaign was that there were strongly held perceptions within communities that contradicted the campaign’s messages. As an example, the report refers to a “myth” held in some communities that,

... educating children about their rights encourage[d] them to disrespect their parents and elders; therefore, ... [those] communities ... [were] less receptive to the children’s rights component of the campaign (despite the paralegals' efforts to raise awareness on the issue). In other cases, some community chiefs simply refuse[d] to allot paralegals time during their public meetings to discuss child rights.982

The report also indicates a “lack of interest” among community members to participate in public gatherings, which they “attributed to a … local government system, which create[d] power struggles between local chiefs and local community council members.” Influential people in communities would cooperate with the project implementing organization and its partners to boost their authority in the community and “use[d] this factor against the other local government official.” The outcome was “community confusion and alliances, which hindered support for village gatherings.”983 Other reasons indicated as causes for low community participation were,

... due to the substance farming lifestyle individuals often ... [could not] spare time away from their field to attend public gatherings. In other cases, community members were resistant to the actual campaign content, claiming they already knew about inheritance laws. Often, rural communities ... [were] reluctant to let go of traditional laws which have governed families and communities for generations.984

983 Ibid., 24.
984 Ibid.
An expected impact of the public awareness campaign was the decline in land grabbing, however, it was revealed that actually there was an “increase in the number of reported property-related crimes.” But HFHL argued that it was still an indicator of success because “there was an increase in acquired knowledge in all advocacy campaign subject areas regarding crimes of this nature.” The conclusion was based on the assumption that “an increase in knowledge leads to increased participation in the protection of one’s rights.” Thus, the increase in the reported numbers of property grabbing was due to “increased awareness of property rights and confidence among communities to report such cases.”

Awareness raising was also considered important for advancing gender equality. Although it was recognized that “effects [of the project] on gender equality in Lesotho cannot be fully recognized at this time,” it was asserted that knowledge contributes to “the power to challenge unjust acts against women and increase women’s property holdings.” The causality effect of awareness raising, empowerment, and change in the power dynamic was presented as leading to an improvement of social and economic conditions, and a protection of civil rights.

As a result, women have the potential to increase their agricultural productivity, allowing their children to eat healthier and establishing security. Even more, owing property can change the power dynamics between women and men; having property gives women greater bargaining authority, which helps reduce their vulnerability to domestic violence and HIV infection.

However, the report acknowledges as a lesson learned that “[b]ehavior change is difficult to institute, especially due to the influence of social norms and peer pressure.” It went on to state that changes in behaviour happen through “seeking information, obtaining remedies, and enacting solutions.” It underlined the need for the projects to be responsive

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985 Ibid., 10.
986 Ibid., 18.
to social and cultural issues which could hamper activities and a recognition that change is gradual. As stated, “[m]oving away from cultural norms to a more Western lifestyle involves more than just new legislation.” Concluding this lesson, the report also recognizes the need for the change in perceptions about women in the society without which “women will not have the courage to protect their rights and advocate on their own behalf.”

There was recognition of the importance of ensuring vulnerable family members have and enjoy their rights to property as a way to improve their socio-economic standing, but as was the case with SEARCH project, this project also underscored that the anticipated impact of human rights projects takes a longer period to manifest. It was also stressed that adoption of laws alone is not sufficient to ensure the protection of rights of vulnerable groups. There was a need for change in behaviour within broader community. But even if people chose to use the formal system to protect their rights, the costs and complexities associated with dealing with the formal justice institutions remained an obstacle for vulnerable groups.

987 Ibid., 25.
16 CONCLUSION

16.1 CIDA’s PROGRAM ARCHITECTURE

Addressing the issue of poverty as a part of Canada’s development assistance efforts was a feature of both the Government of Canada’s policies and CIDA’s documents, which presented the poverty as a multidimensional phenomenon. Efforts to address poverty included not only tackling income related deprivations but rather addressing it as an issue that required the input and changes in broader social institutions, which could expand the freedoms people could have to live the life they choose. As early as the 1970s, the government policy document, *International Development: Foreign Policy for Canadians*, put poverty alleviation as an ultimate goal for development programs and placed it within advances and improvements—including in social and educational systems, which were viewed as contributing to the capacity of people to be productively involved in enhancing the quality of their lives. CIDA’s 1987 strategy paper *Sharing Our Future*, akin to the capability approach, interpreted poverty as “lack of choice.” It viewed poverty through a lens of failings in accessing jobs and income as well as a lack of access “to decision making.” Poverty was about unequal opportunities and “underdevelopment of human potential.”

Unlike the concerns about addressing poverty, in the early years of Canada’s development efforts, human rights concerns were given less consideration. While there were arguments among scholars that human rights initially were not centrally placed within the Canadian development aid, as early as the late 1980s human rights and the concern about poverty have been intertwined in the Government of Canada’s approaches.

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CIDAs *Sharing our Future* strategy document while declaring that Canadian ODA was “putting poverty first,” also underscored the importance of taking into account human rights considerations in dealing with recipient countries. Nevertheless, the strategy document recognized the difficulties associated with promoting human rights. The 1995 *Canada in the World* white paper placed human rights at the centre of Canadian foreign policy, which was projected to lead to meeting the goal of the “advancement of prosperity and employment.” The white paper recognized the importance of equal access to opportunities and resources in society, specifically focusing on equal and full participation in development. While poverty reduction was the declared goal of the Canadian ODA, a broader institutional framework which included a focus on human rights, democracy, and security of the person was considered necessary to support the achievement of the goal. The legal framework, rule of law, and judiciary were presented as important components to the establishment of prosperous societies. CIDA’s 1996 HRDGG policy also recognized that human rights are vital to development and reaching a just and prosperous world. Its 1996 policy on poverty reduction reasserted the approach that poverty was a multidimensional phenomenon; therefore, poverty reduction is linked to developing human and productive capacities of the poor, and addressing structural barriers that hindered their involvement in society.

The focus on addressing poverty continued with MDGs entering CIDA’s program.

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989 Ibid.
990 Ibid., 28.
991 Ibid., 31.
992 Canada, *Canada in the World*, i.
993 Ibid., 40.
994 Ibid., 42.
995 Ibid., 35–36.
architecture and report vocabulary in the early 2000s, though neither CIDA’s HRDGG nor their poverty reduction policies were updated to reflect MDGs.\textsuperscript{998} The analysis of CIDA’s reports to the Parliament and programing documents show that within the first years of the launch of MDGs by the United Nations, MDGs were reflected and incorporated in CIDA’s programing architecture and continued to feature prominently as a macro-level goal. MDGs, with the focus on poverty reduction, were treated as the overarching goal, including for the issues within the democratic governance portfolio. While acknowledging that human rights were not explicitly mentioned in MDGs, CIDA’s documents continuously recognized the connection between MDGs and human rights considerations. CIDA’s programing envisioned the achievement of poverty reduction through activities which focused on human rights, rule of law, and the legal and judicial system.\textsuperscript{999}

As early as 2001, CIDA integrated MDGs within its program architecture as an overarching goal towards which human rights and a judiciary reformed under the governance aimed to contribute.\textsuperscript{1000} The next year poverty reduction was added as an ultimate goal to CIDA’s program architecture. CIDA’s Report on Plans and Priorities (RPP) 2003-2004 is reflective of the human rights based approach as it declares CIDA’s plans to mainstream human rights into policies and program instruments and recognizes the need for well-defined approaches to the integration of human rights into

\textsuperscript{998} 2008 CIDA’s report noted that “[t]he HRDGG Policy has not changed over the past decade to reflect the evolution of knowledge and understanding that occurred outside the Agency”. (Canadian International Development Agency, Government of Canada Policy for CIDA on Human Rights, Democratization and Good Governance, 6.


In its 2002 policy statement on aid effectiveness, CIDA declared that MDGs were “the overarching development results the Agency … [sought] to achieve.” CIDA’s Sustainable Development Strategy 2004–2006 incorporated MDGs as targets of Canada’s development efforts to be attained within the institutional framework of accountable governance institutions, functioning, and accessible legal and judicial system based on human rights.

Within its program architecture, CIDA saw the enhancement of people’s abilities, especially poor and marginalized individuals, to affect policies and advance their livelihood as a means of addressing poverty. The Official Development Assistance Accountability Act accentuated the focus on poverty reduction and the interests of the poor, and CIDA reflected it by also situating the poverty reduction within the framework of human rights and compliance with their standards. The Government of Canada’s 2005 policy paper, Canada's International Policy Statement: a Role of Pride and Influence in the World, reasserted the contribution of human rights and rule of law to reaching MDGs. The 2011–2012 report on the Government of Canada's Official Development Assistance stated that, for CIDA, the promotion of democracy contributed to poverty reduction by providing an environment for people to fulfil their abilities and aspirations, as well as to live “a life of dignity,” participate in decision making, and to scrutinize decisions made

by public authorities. Similar to the capability approach, the report underscores the importance of freedoms in poverty reduction. The enjoyment of civil and political rights is conditional on those freedoms, including by the freedom to scrutinize the decisions of public authorities.

16.2 ANALYZED PROJECTS

Before proceeding to the presentation of findings from the four CIDA financed projects, it should be stressed that because some of the requested documents were not released, there is an acknowledgment that there is a possibility that the conclusions might be different if all requested documents were provided and pages were not withheld.

Despite MDGs being declared the overarching goals of CIDA towards which its activities and projects were aimed, the documents related to the projects analyzed here did not reference MDGs within their project architecture. Neither the projects’ goals nor outcomes indicated that they were explicitly contributing to reaching MDGs. However, in spite of the absence of the explicit reference to MDGs in the projects’ documents, some projects explicitly stated their intent to contribute to poverty reduction and assistance to the poor and marginalized. A project that had such an explicit reference was JURIS, which was implemented in the Philippines. Although it was a judicial reform project, its vision was to contribute to poverty reduction and sustainable development. The available documents from the project, including progress reports and evaluation reports, reflected

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1006 In addressing what the capability approach brings to the “poverty analysis”, Sen notes that it “enhance[s] the understanding of the nature and causes of poverty … by shifting primary attention … to the freedoms to be able to satisfy these needs.” (Sen, Development as Freedom, 90.) Sen argues that development is “a process of expanding the real freedoms that people enjoy” and when freedoms are conditioned by “social and economic arrangements (… facilities for education and health care) as well as political and civil rights (… the liberty to participate in public discussion and scrutiny).” (Ibid., 3.)
the concern about poor and marginalized groups, while the research by *Social Weather Stations* provided the voice to those groups by raising their concerns and issues of importance. The project’s primary anticipated impact was to improve access to justice for the poor and marginalized. The empowerment of the poor was regarded as a means of enhancing access to justice, but the adopted approach was to build the capacities of NGO actors to educate the poor. However, the analyzed documents show that there were challenges in defining what constitutes access to justice, which is reflective of similar challenges faced by academics and practitioners. JURIS’s approach followed the human rights-based approach. It targeted both the supply and demand side of justice, duty bearers by aiming to improve the judiciary so it was accessible to the poor and marginalized with a simultaneous focus on the demand side, rights holders, especially the poor and marginalized, by furthering their knowledge about the judicial services and remedies. Among the activities aimed at the supply side was building their capacities in ADR to improve the quality of justice services and also better access to justice by rights-holders. The project architecture placed poverty reduction as an ultimate goal of the project, with a strong justice system and accessible justice for poor and marginalized being the elements of the strategy to reach the goal.

The project on secure tenure and safe space for widows and OVCs in Lesotho focused on vulnerable groups within the family setting. The project acknowledged heterogeneities between family members and looked at, what Sen indicated to,

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1009 “They are the duty bearers, the carriers of the seeds of hope in … justice system.” “Final Narrative Report. Justice Reform Initiatives Support Project of the Philippines,” 19.
“distribution of … opportunities within the family.”\textsuperscript{1010} The project took note that within an extended family there were members who experienced more deprivations than other family members. The project rationalized its interventions by recognizing that deprivations which were a result of the heterogeneities affected the capacities of the vulnerable members of families to live a safe and healthy life as they were subjected to abuse, violations of their privacy, and exposure to HIV/AIDS. Or, in other words, the project recognized the cultural and inter-familial obstacles curtailing what Nassbaum called central capabilities—control over one’s environment (property rights), bodily health (good health and shelter) and bodily integrity of widows and OVCs.\textsuperscript{1011} The project made a connection between the protection of rights to inheritance and property ownership with widows and OVCs’ freedom to make independent decisions and live a life they want; a healthier life, free from abuse, with fewer chances of being exposed to HIV/AIDS. Security of property rights was also considered a leading in changing the power balance with women acquiring more bargaining power to negotiate better living conditions.

The project’s planned outcome was to build the knowledge and capacities of the public through public awareness events resulting in better protection of rights for OVCs and widows and poverty reduction among these vulnerable groups. The project noted the importance of raising awareness and empowering the target groups in order to contribute to the improvement of their socio-economic conditions because secure tenure could increase their agricultural productivity and provide better nutrition to their children. As was the case with JURIS, the project adopted a mediated approach to educate the poor

\textsuperscript{1010} Sen, \textit{The Idea of Justice}, 257.
\textsuperscript{1011} Nussbaum, \textit{Creating Capabilities: The Human Development Approach}, 33–34.
through public awareness campaigns. The project considered building the capacities of paralegals, however, it faced challenges surrounding the professional competence of paralegals. Another issue was that public awareness was perceived by some community members as being a challenge to customs and traditional familial authorities. In the meantime, the analyzed documents reiterated the familiar issue with human rights projects; that it takes long time to achieve behavioural change. The project also underscored the fact formal laws were not sufficient to protect the rights of the target group and that it was also dependant on the behavioural change.

Creating safe spaces was presented as being among the means to protect the rights of those vulnerable groups and enable them to live in safe housing conditions. Building latrines was envisioned to provide opportunities for the target groups to reach the functioning level required for health. This in turn was anticipated as contributing to a better ability to work and an associated increase in productivity. While the project planned to work with both customary and formal duty bearers, including the Master of the High Court, in reaching the project objectives, it also acknowledged that societal obstacles (“myths” as they were called) contributed to the curtailment of freedoms of OVCs and widows. These obstacles were persistent and it would take time to change the attitudes.

The regional project in Southeast Asia, SEARCH, had a vision of promoting and sustaining the rule of law through functioning legal and institutional mechanisms conducive to the protection of human rights of the project’s target groups, but with no

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1013 See Ibid., 25.
reference to poverty in its project architecture. The legal reform, improvement of law enforcement, and availability of legal services were among the strategies to achieve the declared project goal. The project was also concerned with improving the accessibility of legal services for disadvantaged groups and guaranteeing their rights. The project focused on the supply side of justice by identifying gaps in the capacities of the government and NGOs, and planned to work on changing the practices of various relevant legal and judicial bodies. It saw capacity development through education and training of justice sector actors as a means of contributing to upholding the human rights of the project’s target groups. Activities in the supply side of justice were programmed to impact the provision of legal and judicial services. The project also employed the establishment of formal and non-formal mechanisms to address the issues of vulnerable groups, such as encouraging the reporting of missing people by affected families. SEARCH, through one of its activities, was tying the provision of civil rights with the enjoyment of socio-economic rights. By protecting the right to the legal personality of children through registered births, the project aimed to give them citizenship rights which could allow enjoyment of social and economic rights through access to social services. In one of its outcomes, the project followed a human rights-based approach by calling to align (anchor) national laws with international human rights. For example, aligning labour, employment, and working condition standards with human rights and ILO standards.\textsuperscript{1015} The project also planned awareness raising among project’s target groups, but such awareness was done through intermediaries—building the capacities of project partners and mass media.

\textsuperscript{1015} International Labour Organization
As with the previous analyzed projects, SEARCH also adopted a mediated approach in awareness raising among the project’s target groups by delivering the relevant information to them through the capacity building of the project partners. However, there was also an acknowledgment that awareness raising would not necessarily mean that the target groups would use the acquired knowledge to defend their rights. While ethnic minorities in Thailand were able to benefit from project activities and register births on their path to citizenship, families of Lao migrants whose family members illegally traveled to Thailand were more hesitant to assert their rights due to the fear of government retaliation. The project also highlighted the tensions that human rights and rule of law projects raise with national authorities when operationalized in the field. The perception of national authorities is that human rights projects might meddle in internal affairs and, to placate such concerns, the project was declared as a rule of law project despite the fact it operated as a human rights one.\textsuperscript{1016} Even with a human rights focus, there was an acknowledgment that human rights are political, thus causing contention between proponents and opponents of change; for changes to manifest, human rights projects should have a longer implementation period.

The Ghana land administration project connected land tenure security to general development and economic activities, attracting investments, as well as the establishment of a more secure setting for people to be involved in productive employment opportunities, thus in turn contributing to poverty reduction. Its vision was that securing and documenting land tenure would lead to the increase in income and socio-economic growth. Among the strategies to reach the project’s vision was the improvement in the

legislative framework by passing laws and regulations that would be functional and establishing the land court system. Through a top-down approach (functioning legal and land administration system), the project intended to decrease land related conflicts and enhance agricultural productivity through investments.\textsuperscript{1017} It also proposed working with both traditional and formal authorities—duty-bearers—involved in land administration. CIDA’s project approval document suggests an interesting angle on how health issues could affect land rights, such as HIV/AIDS and, as a result, contribute to less productive usage of land and increase poverty. It also underlined the need to pay attention to the issue. The project’s approach was that protection of land rights could address the issue of gender equality with women benefiting from control over production, employment opportunities, and improvement in their livelihood. But there was also recognition that land rights titling could have an adverse impact on some vulnerable groups, which could hinder secondary rights holders’ ability to harvest and result in families being displaced. Thus, this could lead to more poverty instead of reaching the project goal of poverty reduction.

Though three out of four analyzed projects were concerned with poverty reduction and the interests of the poor and vulnerable groups, the silence towards the MGDs shows a disconnect between CIDA’s declared development agenda and the agenda of the projects implemented in the field. The references to poverty reduction could be inferred to contribute an internationally agreed goal on poverty reduction; however, the absence of an explicit reference to MDGs within the projects suggests that at the stages of the project design and implementation MDGs, as globally agreed goals to

which Canada expressed its continuous commitment, were not regarded to be part of these projects’ activities, though MDGs were clearly stated to be the overarching goals of CIDA’s overall activities.

16.3 CONTRIBUTION TO THE INDIVISIBILITY OF HUMAN RIGHTS

During the first decades of Canada’s international aid activities, while the concern for addressing the issue of poverty was paramount with support to economic and social development, human rights considerations were not explicitly addressed. However, the 1987 Winegard report already emphasized that when human rights were concerned, both CP and ESC rights had to be taken into account. It noted that “human rights should encompass individual, civil and political, as well as socio-economic and cultural rights.”

In its response to the report, the Government of Canada connected poverty, deficiencies in access to education, employment opportunities and income with the lack of the decision-making power and inequality. As in the Winegard report, the government stressed that “fundamental human rights – social, political, [and] economic … [are] prerequisites for global well-being.” The 1995 Canada in the World white paper emphasized promotion of democracy, strengthening civil society and security of person together with efforts directed to poverty reduction. It included the exercise of rights to participate in the life of country in the framework of leading to greater

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1020 Ibid., 6.
1021 Canada. Department of Foreign Affairs and International Trade, Canada in the World, 42.
1022 Ibid., 35–36.
prosperity and addressing the issue of poverty. A similar approach was echoed in CIDA’s Sustainable Development Strategy 2001–2003.

DPR 2001–2002, in the program architecture included both economic well-being (“improved standards of living of the poor”) and governance (democratic principles and strong civil society) as key development results leading to MDGs. DPR 2002–2003 signified the link between security of a person, participation in the decision making and development. The democratic governance was declared as “essential for poverty reduction” in DPR 2006-2007, especially underlining the ability of the poor and marginalized to impact policies. It also highlighted the importance of equality while dealing with judiciary.

The SEARCH project aimed to advance the right to recognition everywhere as a person before the law for ethnic minorities, by registering births in order to acquire citizenship rights and to be able to access social services. The JURIS project was concerned with providing the poor and marginalized with access to fair and competent justice mechanisms and exercise fair trail rights as a means for poverty reduction and equitable development. The Ghana land administration project made a link between the failures in the enjoyment of the right of property ownership of women with economic

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1023 Ibid., 34.
opportunities, including access to financing instruments such as credits.\textsuperscript{1029,1030} However, there was also a recognition that the land titling could have an adverse impact on livelihood and economic activities of others, as well as disruption of other type of agreements such as tenancy and sharecropping, thus also leading to the displacement of more vulnerable people.\textsuperscript{1031}

The project on secure tenure and safe space in Lesotho argued that the deprivation of property rights of widows and orphans hampered their enjoyment of standards of health, housing and living conditions. In turn, lack of proper housing and living conditions was affecting their rights to privacy and security, such as being forced to carry their “personal activities in the presence of male housemates” and being subjected to sexual abuse. The project also maintained that property rights would allow women and children to more independently form their opinions and receive more economic benefits from their properties, increase their “economic standing”, put more emphasis on

\textsuperscript{1029}World Bank, “Project Appraisal Document on a Proposed Credit in the Amount of SDR 15.1 Million (US$20.5 Million Equivalent) to the Republic of Ghana for a Land Administration Project,” 11–12. However, I should mention that the treatment of property ownership as a civil right is more a traditionalist and reductionist approach because the concept of property is very complex and there are various powers attached when dealing with it such as ownership, possession, usage, etc. As Golay and Cismas point out “intrinsic tension between the right to property as a civil liberty and its social function. … Western liberal tradition places this right among other freedoms, while its characteristics unequivocally would lead to its inclusion among economic, social and cultural rights.” (Golay and Cismas, \textit{Legal Opinion: The Right to Property from a Human Rights Perspective}, 2.) For a more detailed discussion about how the right to property is treated in international human rights instruments and non-inclusion in either ICCPR or ICESCR, refer to Golay and Cismas, \textit{Legal Opinion: The Right to Property from a Human Rights Perspective}.

\textsuperscript{1030}ICCPR Comment 28 when interpreting article 16 of ICCPR — “Everyone shall have the right to recognition everywhere as a person before the law” — emphasizes that the “right implies ... [also] the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground.” United Nations. Human Rights Committee, \textit{ICCPR General Comment 28, Equality of Rights between Men and Women (article 3)}. For the list of international human rights instruments that address property see Bayefsky, \textit{How to Complain to the UN Human Rights Treaty System}, 269–270.

\textsuperscript{1031}World Bank, “Project Appraisal Document on a Proposed Credit in the Amount of SDR 15.1 Million (US$20.5 Million Equivalent) to the Republic of Ghana for a Land Administration Project,” 26–27.
education and livelihood. The project proposed awareness raising (the right to receive information) to be important not only in advancement of gender equality, but also for changing the power dynamics which could lead to the betterment of their socio-economic conditions.

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1033 Ibid., 18.
AGENDA FOR THE FUTURE RESEARCH

As the findings of this dissertation showed, from the first years of the MDGs, CIDA framed and conceptualized its contribution to the internationally agreed global development goals as a raison d’être towards which addressing the issues and failures in such areas as democratic governance and human rights — not mentioned in MDGs — was also directed. However MDGs being the outcome of the international agenda setting process, should have involved the participation of not only civil servants and the minister responsible for international development, but also those responsible for Canadian foreign policy. The analysis of the communication between civil servants in those departments could contribute to understating whether Canada’s role in the international norm setting such as MDGs and commitments to adopt those norms was conceptualized as an actor whose position was driven by the primacy of sovereignty and pursuit of national interests, or if instead it was a process driven by a perception of Canada as a rational “principle” which constructed the norms together with the “agent” – international organization (IO; in this case the United Nations).1034

If it were the former, would it be the manifestation of the persistency of sovereignty in the governance of global goals coordinated by the IO? And even if Canada committed and worked on global norms reflected in MDGs and which governed the states’ conduct in areas of international development such arrangements were “neutral mutants that have coexisted with rather than supplanted sovereignty.”1035 Of the particular interest would be the exchanges on MDGs as the outcomes of the norm conceptualization and processes between CIDA’s staff and those stationed with the

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1034 For more detailed discussion on principal–agent relations see Barnett and Finnemore, “The Politics, Power, and Pathologies of International Organizations.”
Permanent Mission of Canada to the UN, especially by taking into account the declared mission of the Permanent Mission:

… negotiation and daily monitoring of UN activities, we work to advance Canada’s interests, promote international development, security and human rights, and keep our government informed of developments in multilateral relations.\(^{1036}\) [emphasis added]

Or perhaps the staff in the Permanent Mission of Canada acted as a conduit of norms developed together with the UN as an “agent” and transferred those norms to CIDA? Such a framework treats “IOs as actors in their own right with independent interests and capabilities”\(^{1037}\) where the UN acted as the actor which developed the roadmap from the Millennium Declaration and where MDGs were listed. As Barnett and Finnemore emphasize “[a]utonomous action by IOs is to be expected.”\(^{1038}\) However, if MDGs are viewed as “international regimes [which] are defined as principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area”,\(^{1039}\) the challenge is to explore to what extent there was a convergence in expectations among bureaucrats in CIDA, the Permanent Mission of Canada and those in the UN.

Research on bureaucracy in Canada involved not only in constructing the narrative of MDGs in the international fora, but also within Canadian society as reflected in the operationalization of MDGs in the program architecture, authority to advocate certain priority countries Canada focused on, as well as selection of projects to be

\(^{1036}\) The Permanent Mission of Canada to the United Nations, “Mission’s Role.”

\(^{1037}\) Barnett and Finnemore, “The Politics, Power, and Pathologies of International Organizations,” 705. However, Barnett and Finnemore caution, “The problem with applying principal-agent analysis to the study of IOs is that it requires a priori theoretical specification of what IOs want. Principal-agent dynamics are fueled by the disjuncture between what agents want and what principals want.”

\(^{1038}\) Ibid.

\(^{1039}\) Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” 185.
financed by CIDA, can contribute to understanding of Canadian civil servants as rational and impersonal authority. This understanding of authority will examine CIDA’s staff as “[the] … authority [that] is ‘rational’ in that it deploys socially recognized relevant knowledge to create rules that determine how goals will be pursued.”\(^{1040}\) While considering CIDA’s staff as impersonal rational authority, a special concern can be the determination of which processes and rules within the department contributed to the fact that the main policy documents such as CIDA’s HRDGG and on poverty, as this dissertation findings showed, had not been adjusted to reflect CIDA’s declared commitment to MDGs.

Another point of interest is whether CIDA’s staff as an impersonal rational authority had the power to affect the choices of priority countries, and what issue areas of projects to be financed based on the international development rationale and program architecture, or if they were forced to adjust their decisions to accommodate Canada’s foreign policy priorities. Could this be a possible reason why there was no MDG reference in the analyzed projects? Was it a choice to use human rights, access to justice and rule of law projects as a means of using Canada’s soft power through the projection of “Canadian values” instead of a more formalized US approach implemented also through the Millennium Challenge Corporation (MCC)\(^{1041}\)?


\(^{1041}\) It is argued that MCC was established “to segregate the funds from U.S. strategic foreign policy objectives that often strongly influence where U.S. aid is spent.” (Tarnoff, “Millennium Challenge Corporation,” 1). However, the closer look at the selection criteria which includes “Ruling justly” reflect the concepts continually vocalized as the US foreign policy priorities such as “promoting good governance, fighting corruption, respecting human rights, and adhering to the rule of law.” (Ibid., 5). On its website, MCC indicates that it is “one of several U.S. Government agencies that helps support its partner countries in their efforts to achieve the U.N.’s Millennium Development Goals (MDGs) and improve the lives of their people. … MCC’s emphasis on good governance, country ownership and accountability for results lays the groundwork for partner countries to make sustainable progress toward the MDGs.” (The Millennium Challenge Corporation, “MCC and the Millennium Development Goals.”)
While no reference was made to MDGs — as the dissertation findings showed — three out of four projects indicated their intent to contribute to poverty reduction. The concern for the poor and human rights in developing countries had been articulated in the overall Canadian development agenda as the projection of Canadian values with implied notion of altruistic motives rather than accepting “egoistic” motives. But could this approach be driven not by altruism or egoism but rather rational choice? As Keohane posits, rejecting egoism,

… does [not] it imply altruism: People can empathize with others without being self-sacrificing. What it does is demand that norms and values be brought back into the picture. Committed individuals, seeking policy goals as well as office for its own sake, and constrained by norms of fairness or even by more transcendental values, can nevertheless calculate as rationally as the egoists of economic theory.1042

Two of the cases analyzed in the dissertation projects (LAP and Secure Tenure and Safe Spaces) were concerned with property ownership, and viewed it important not only in rectifying the power imbalances experienced by the poor and marginalized, but also important for economic well-being.1043 In developing countries, property, particularly land distribution can be assessed through the lens of distributive justice. Nozick’s principles of the just distribution – justice in acquisition, justice in transfer and “the rectification of

1043 The report of the project implemented in Lesotho noted, “With secured housing and property ownership, OVC and widows can live with dignity and a sense of security. … Property rights cultivate the level of independence which allows women and children to make their own decisions. They are able to reap the economic benefits from land to curtail the cycle of poverty, resulting in enhanced well-being, economic standing, and living standards.” Habitat for Humanity Lesotho, “End-of-Project Report: July 1, 2007–June 30, 2010. Secure Tenure and Safe Space for Lesotho Widows, Orphans, and Vulnerable Children Project,” 5.

CIDA’s PAD for the LAP project in Ghana argued that the project would “help promote new investment in agricultural productivity and income, by … clarifying land-ownership.” The document asserted that the project would contribute to poverty reduction by “improving access to land and improving land tenure security.” It also emphasised that “women’s access and control over resources”, through proper documentation, could improve their access to formal crediting. Annex A: Project Approval Document (PAD). Ghana Land Administration Project (LAP) # GH-A-31898 Book, “Memorandum. Subject: Approval- Land Administration Project,” 2.
injustice in holdings” can frame the analysis of processes and impacts of the intended outcomes of the projects. Of particular importance could be the questions raised by Nozick in regards to the latter point,

If past injustice has shaped present holdings in various ways, some identifiable and some not, what now, if anything, out to be done to rectify these injustices? What obligations do the performers of injustice have toward those whose position is worse than it would have been had the injustice not been done? Or, than it would have been had compensation been paid promptly? How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but for example, their descendants?1044

The analysis of these projects through the *current-time slice*1045 and *historical* principles of justice can provide another dimension of how Canada approached in its projects to the issue of the distributive justice, especially in countries with still persisting issues of historical injustices. In the meantime, the analysis can advise whether the types of law reforms supported by CIDA created legal frameworks that regulated resources distribution in recipient countries in accordance to the understanding of justice that CIDA pursued through its programs and projects.

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1045 Nozick provides that the *current time-slice* analysis of justice is concerned with “who has what”. No other information is considered. With the *historical* analysis of justice, the assessment is “whether a distribution is just depends upon how it came about.” Ibid., 153.
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