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Show Me the Money

Achieving Economic, Social, and Cultural Rights through
Government Budgets

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Government Budgets

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HENRY M. JACKSON SCHOOL OF INTERNATIONAL STUDIES
Task Force Report 2011

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MEMORANDUM

To: Helena Hofbauer, Manager of Partnership Development, International Budget Partnership
 From: Jackson School Task Force M
 Re: Achieving Economic, Social, and Cultural Rights through Government Budgets
 Date: March 10, 2011

Article 2 of the ICESCR outlines state obligations to take steps, using the maximum available resources, to achieve progressively the full realization of rights without discrimination. Budgets are one of the most effective means to achieve these goals by ensuring and tracking progress. To improve the implementation of rights in budgets, this Task Force has analyzed developments of the human rights framework and critical factors that affect budget processes. Based on these analyses, we recommend that IBP support further clarification of concepts by the CDESCR, establish specific budgetary priorities, address issues of implementation, and work to improve Overseas Development Aid and enforcement mechanisms.

Successful implementation of economic, social, and cultural rights under the Covenant requires:

- 1) **Clarification of concepts** regarding government obligations through budgetary guidelines and successive stages of objectives that establish priorities.
- 2) **Establishment of specific budgetary priorities** to provide the contours of these rights so that governments can formulate budgets to ensure progressive realization of rights.
- 3) **Addressing issues surrounding implementation** of rights in budgets, particularly misallocation of funds as a result of structural deficiencies and corruption.
- 4) **Improvement of Overseas Development Assistance** to strengthen support for governments and to promote accountability and transparency.

Providing Clarity in the Framework of Human Rights and Government Obligations

Despite progress made by the CDESCR, State obligations remain vague, particularly with regard to budgets. The court cases that this Task Force analyzed indicate that lack of clarification can lead to retrogression. Clarification using budgetary guidelines and concrete objectives will provide the direction states need to ensure progress and fulfill their obligations.

- For *maximum available resources*, the CDESCR should clarify priorities for provisions as a country develops its resource base and promote the expansion of international aid.
- For *non-discrimination*, the CDESCR should emphasize the use of budgets, particularly to target vulnerable populations, and elaborate on efficient and equitable distribution of funds.
- For *progressive realization*, the CDESCR should strengthen monitoring and accountability by working closely with State parties and conducting regular reviews to track progress and establish a series of successive stages with concrete objectives for states.

Prioritization to Promote Progressive Realization

To establish specific standards that align with the obligations in the ICESCR, this Task Force has examined the international targets regarding the rights to education, health, and food security. The goals set forth by international structures should be standards for prioritization in budgets.

- This Task Force recommends that IBP urge state governments to:
 - Allocate resources to provide for universal primary education, construction of new schools, renovation of unsafe structures, and teacher training programs.
 - Target budgets to health programs that are sustainable and that prioritize the provision of clean water, food, hospitals and clinics, trained workers, and adequate medicine.
 - Focus spending on infrastructure, agricultural sustainability, research, education, and health to provide populations with the means to overcome a cycle of poverty.

- Strengthen domestic enforcement mechanisms to ensure that standards are met.
- This Task Force recommends that IBP urge the international community to:
 - Promote liberalization of subsidies in rich countries to support developing economies.
 - Encourage governments to support the work of civil society organizations.
 - Focus international aid toward long-term growth to build the foundation for progress.

Addressing Issues of Implementation

There are several issues that have hindered implementation of rights in government budgets. These issues result from lack of accountability, institutional deficiencies, and corruption. To enforce accountability and ensure proper allocation of funds, we have several recommendations.

- This Task Force recommends that IBP urge governments to:
 - Consider private sector funding and foreign aid as supplemental – rather than primary – forms of funding in fulfilling their commitments to ICESCR.
 - Target funding to areas of most need to use MAR most efficiently.
 - Promote community involvement and decentralization of decision-making processes.
 - (In countries with high rates of poverty) Focus on broad geographic targeting.
 - Strengthen the agency and investigative powers of Supreme Audit Institutions.
- This Task Force recommends that IBP work with the international community to:
 - Implement spending requisites that account for national GDP and population figures.
 - Verify that governments respond to reports that identify leakages and corruption.
 - Support community and civil society initiatives that promote budget transparency.
 - Foster communication between governments, audit institutions, and communities.

Incorporating Overseas Development Assistance (ODA)

ODA has played a significant role as a source of funding for development initiatives. Multilateral Development Banks, Export Credit Agencies, and Bilateral Aid Agencies are three of the most prominent actors involved in ODA. Problems in the framework of ODA affect these actors and the implementation of rights in budgets. To remedy these issues, we recommend IBP work with:

- IBP should work with MDBs to:
 - Establish independent accountability mechanisms with compliance review and problem-solving capacities and require public disclosure of these mechanisms.
 - Ensure accessibility and user-friendliness of mechanisms in affected communities.
- IBP should work with ECAs to:
 - Enhance “Guiding Principles” to improve standards as operational objectives.
 - Modify Sustainable Lending Principles to establish mechanisms that provide data and ensure transparency, and revise them to apply to low- and middle-income countries.
- IBP should work with Bilateral Aid Agencies to:
 - Improve policies to incorporate a human rights framework in evaluating projects.
 - Allow recipient governments more power in design and implementation of projects.
- IBP should work with the CDESCR to:
 - Ensure that states implement legislative reforms to address issues of implementation and target disadvantages groups through individualized programs and policies.

Conclusion

To support effective implementation of economic, social, and cultural rights in government budgets, there are several areas that need improvement. By promoting clarification of obligations and budgetary requirements, prioritizing specific objectives, improving accountability and

transparency of government expenditures, and working on behalf of organizations involved in ODA, IBP can set new standards for achieving human rights in tangible and effective ways.

Executive Summary

Alizeh Bhojani and Giselle Lopez

This Task Force focuses on examining and elaborating on the possibilities of implementation of three specific obligations outlined in Article 2 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) through increased transparency, participation, and thus accountability in public budgeting processes. The three obligations – utilizing maximum available resources, progressively realizing rights, and implementing rights without discrimination – are explored in both international and national contexts to clarify their meaning and implications for government budgets. Economic, social, and cultural rights guarantee basic rights such as a right to health, housing, and food security, and are integral for maintaining human dignity and well being. Government budgets are one of the most concrete and effective means to ensure that progress is made to realize these rights, yet there are several fundamental issues that need to be addressed. This report examines the various avenues through which IBP, the CESCR, governments, and international organizations can cooperate to improve budget processes. By working to clarify obligations, prioritize specific budgetary objectives, improve spending practices, and develop international funding and monitoring mechanisms, IBP can continue to be a force for progress in the field of human rights.

This report is divided into four sections. The first section provides a theoretical framework for understanding basic Article 2 obligations and specifically highlights responsibilities to progressively realize the right to education, health, and food security. The second section focuses on legal cases involving these rights, and the budget issues and implications that result from such precedents. The third section delves into the specifics of implementation through examining government budgets and spending. Finally, the fourth section

examines the role of overseas development assistance as a part of a country's budget in shaping the implementation of rights.

Section I

Updates on Government Obligations by the CESCR

Section 1 begins with an analysis of the three main obligations in Article 2 of ICESCR: the obligation of a state to use its maximum available resources (MAR) in order to implement rights, to progressively realize (PR) these rights, and to eliminate discrimination (ND) with regards to the enjoyment of ESC rights. In Chapter 1, the subsection on MAR provides an update on the Committee on Economic, Social, and Cultural Rights' (CESCR) Comments regarding MAR since 2001, the year in which Magdalena Sepulveda analyzed the comments of the Committee.¹ The CESCR has primarily made progress in three areas: minimum benefits, allocation restrictions, and international assistance. Sepulveda described minimum benefits as an integral component of MAR that helps protect the marginalized population of society. They are the minimum efforts required by a government to implement low-budget programs to aid the poor. In recent years, the Committee identified the right to water and the right to social security as falling under the umbrella of minimum benefits that should be available to the public immediately. While these updates have helped to clarify the concept of MAR, the Committee has not provided concrete, structured guidelines or definitions linking MAR and budgets.

The subsection on non-discrimination analyzes the General Comments, specifically the topic of allocation restrictions, as they relate to the obligation of non-discrimination. Focusing on the right to water, the Committee demands that State parties ensure equal access to water for all

¹ Magdalena Sepulveda, *The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights* (Antwerpen: School of Human Rights Research series, 2003).

members of society, regardless of race or social class.² Finally, the Committee has elaborated on the role of international assistance since 2001. Developed countries that are party to the treaty are obligated to aid developing countries with economic and technical aid. This aid must follow a human rights framework and not disrupt the cultural or social life of the recipient country. Further, the ICESCR requires countries to immediately implement non-discriminatory practices regardless of resource restrictions. However, both the Covenant and the Committee lack explicit guidelines outlining the relationship between budgetary practices and the implementation of ND. Expanding on the right to water, as with MAR, the Committee emphasizes that investment in water resources should not favor the elite class, but should make an effort to invest in water facilities and supply services that are available to the larger population. The Committee also requires that a government practice ND with regards to the work force. The State should have a national employment policy that would ensure the right to work for everyone without discrimination. The Committee also suggests the implementation of vocational and technical training programs. The most recent comment on ND, General Comment 20, finds that States should eliminate discrimination both through legal means (laws, policies, legislations), and through practical means. Both public and private actors are required to draft plans to eliminate discrimination within their institutions.³ The 2009 United Nations Annual Report further emphasizes the importance of providing access to resources for marginalized populations, and recommends that government allocate budgets to low-cost programs that will reduce discrimination instead of increasing budget allocations for defense.⁴

² Committee on Economic, Social and Cultural Rights, “General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights),” Center United Nations Economic and Social Council, 2002.

³ Committee on Economic, Social and Cultural Rights, “General Comment No. 20 (2009) Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights),” United Nations Economic and Social Council, 2009.

⁴ Committee on Economic, Social and Cultural Rights, “Report on the forty-second and forty-third sessions,” United Nations Economic and Social Council, 2009.

As with MAR, the CESCR emphasizes the role of international aid in helping progressively realize the implementation of ESC rights. In the subsection on progressive realization, this report examines the emphasis in the General Comments on the “positive” role of the international community in working with developing countries to achieve ESC rights. The Committee calls for cooperation between the United Nations, the United Nations Development Fund, and the World Health Organization to provide general guidelines for sustainable water provision. The Committee also urges the involvement of the International Monetary Fund (IMF) and the World Bank (WB) with human rights in the implementation of their projects. The Committee acknowledges the important role played by non-governmental entities in helping progressively achieve human rights, even though these entities are not directly responsible to the Covenant. Despite some substantial progress made by the Committee in outlining certain State obligations, the Comments remain vague with regard to practical implications for State budgets.

However as this subsection notes, the Committee’s Concluding Observations, which are responses to individual country reports, provide substantive criteria for implementation of ESC rights. These Observations give specific guidelines for how countries should be progressively realizing the right to education, health, and culture. The Concluding Observations are useful for determining non-compliance by State parties with the provisions of the Covenant, as they provide concrete recommendations and analyze measures of implementation. Another means for accountability can be found in the Covenant’s Optional Protocol, which allows for State parties or individuals and groups to bring complaints to the Committee regarding treaty violations. The Committee then has the authority to investigate the claims and provide recommendations for the offending State party. This Optional Protocol has exciting implication for the accountability of States to the Covenant, and allows for the involvement of civil society and the international community in the implementation of ESC rights.

Recommendations

This Task Force recommends that IBP urge the CESCR to further clarify and define the obligations on State governments to fulfill these rights. In the case of MAR, the Committee should further define the components that encompass “resources”, and to what extent both domestic and international resources are included in this definition. The Committee also should place further emphasis on the role of budget allocations in implementing ESC rights. It should specify what percentage of a government’s total budget should be used to advance ESC rights. The Committee could produce guidelines for how countries can prioritize their budgets, starting by eliminating discriminatory spending practices. For example, as discussed with regard to geographic disparity in Section 3, the CESCR could provide countries with specified standards against which to assess disparities of access and funding, and methods that States should follow to address these disparities. Such guidelines would also include timelines for when projects should be carried out and material goals for specific steps, as well as guidelines to prevent retrogression. These guidelines and objectives would keep States accountable to the ICESCR, and would clearly show when a country is in non-compliance with the Covenant.

Standards of Progressive Realization

The proceeding chapters of the report further address government obligations under progressive realization as they relate specifically to the right to health, the right to education, and the right to food security. This section defines the implications of the four fundamental components of these rights – availability, accessibility, acceptability, and adaptability – and establishes specific standards and priorities for government budgets in each of these areas.

Chapter 2 explores the contours of the right to education; it defines the right as a fundamental aspect of every society that supports other human rights and has a vast impact on

the empowerment, protection, and development of individuals and communities. This chapter explores current conditions and some of the main issues of global education: as of 2010, 72 million children of primary school age are still out of school and 759 million adults are illiterate, two-thirds of whom are women.⁵ To address these major voids in education, this Task Force promotes progressive measures that support education as a life-long process. The utmost priority for governments should be provision of primary education with free access and availability to all areas of the country. According to the 2010 *Education for All Global Monitoring Report*, the “annual financing gap” for the six key education goals is US\$16 billion; however, the report also estimates that low-income countries could raise an additional US\$7 billion per year.⁶ Both the international community and domestic governments can and should take steps to improve access and quality of education. States should allocate their budgets to improve basic infrastructure and maintenance of facilities to ensure accessibility. Effective implementation of measures will help to address the significant concerns that hinder developments in global education.

Chapter 3 examines the progressive realization of the right to health. The right to health is defined as a fundamental human right whose realization is essential to the basic survival and well being of millions, and directly relates to the realization of several other international human rights goals. This chapter defines priorities for government budgets primarily by examining the Millennium Development Goals. Primary targets for government budgets should be to reduce child mortality, to support maternal health, and to combat HIV/AIDS, malaria, and other infectious diseases – particularly in sub-Saharan Africa. These are some of the most fundamental issues of global health and should be prioritized in budgets to progressively realize this right.

⁵ Unesco (United Nations). 2010. *EFA Global Monitoring Report: Reaching the Marginalized*. United Nations Educational, Scientific, and Cultural Organization (UNESCO). 1.

⁶ Williams, Susan. United Nations Educational, Scientific, and Cultural Organization. *EFA Global Monitoring Report: Financial crisis threatens to set back education worldwide, UNESCO report warns*. http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/efareport/single-view/news/financial_crisis_threatens_to_set_back_education_worldwide_unesco_report_warns-2/. (Accessed 1 February 2011).

In Chapter 4, this report addresses the right to food and defines government priorities to address the primary issues affecting global food security. The chapter defines food insecurity as a major global issue caused by economic, political, and environmental factors that contribute to a protracted crisis. Food insecurity is characterized by lack of access, poor allocation of resources, deficiencies in humanitarian assistance, and widespread poverty. This chapter also explores the current conditions and factors that contribute to food insecurity – population increase, water scarcity, the global economic crisis and its effects, and food price volatility. According to this chapter, critical factors and areas that budgets should address are agricultural subsidies, sustainable programs for land expansion, and effects of climate change and population growth.

Recommendations

Right to Education

To promote effectiveness of programs, IBP should work with governments to promote an emphasis within budgets on teacher training programs, promotion of gender equality and increase in female enrollment, and support for access to vocational, technical, and higher education to support skills training and economic empowerment. Further, governments should transfer primary responsibility for implementation of programs to local communities with a focus on CSOs, to facilitate access to free quality primary education and to ensure a more efficient use of funds. This Task Force supports these measures as priorities for government budgets in progressively realizing the right to education.

Right to Health

Targeted strategies to achieve these priorities include ensuring access to functional and effective public health services and facilities – specifically potable water, adequate food, sanitation, hospitals and clinics, trained personnel, and essential drugs. As a focus of their budgets, state governments should provide personnel training in health clinics and hospitals to

promote proper practice and medical ethics. Furthermore, government budgets should prioritize provision of health services and access to vulnerable groups and marginalized areas.

Right to Food Security

As a primary focus of their budgets, this report recommends that IBP urge governments to prioritize agricultural subsidies and sustainable practices to support farmers in a volatile global price market and mitigate the effects of climate change. This report also recommends that IBP work within the international community to urge wealthier nations to support food aid through humanitarian assistance and to promote fair trade through liberalization of trade policies. To address these issues and to progressively realize the right to food, IBP can help governments focus budgets on long-term solutions that support sustainable agriculture, food aid, and infrastructural development such as roads, power, and irrigation systems.

Section II

Section 2 focuses on legal cases on ESC rights brought before Courts in Colombia, India, and South Africa and examines their implications for government budgets and budget processes. These cases cover the questions of right to health, education, and housing.

Chapter 5 examines two court cases in Colombia concerning the rights to health and education. The case regarding the right to health is significant because the judgment required the state to take concrete steps to alleviate health care disparities in Colombia. The judgment focused on budgetary issues, emphasizing the need to immediately aid low-income citizens and provides a concrete timetable for funds distribution. The second case discusses the option in Colombia for primary schools to charge fees. The Colombian Constitutional Court ruled that the government must continue to provide free education, especially to disadvantaged populations, regardless of

resource or budgetary restrictions. The judgment points to earlier pieces of legislation in Colombia that allocated a specific percentage of the budget to the national education system.

Chapter 6 analyzes two cases in India. First, the chapter presents a case in Rajasthan, India, that concerns the right to food security. The government failed to prevent food relief to the people during a famine, even though food stores were available. The Indian Supreme Court stated that the Indian Government had endangered the lives of the people in Rajasthan, and needed to make provisions in their budget allocation for food alleviation strategies. The second case focuses on the right to health and the issue of non-discrimination. A woman named Shanti Devi was refused medical services because her husband did not have the proper ration card, and she consequently carried a dead fetus in her womb for five days. The woman died shortly after. The High Court of Delhi found that her hospital failed to provide appropriate pre- and post-natal care. The Indian government thus failed to protect Mrs. Devi's right to health. Her treatment at the hospitals further portrays the institutionalized discrimination of the caste system in India.

Chapter 7 presents court cases in South Africa that involve the rights to health, water, and housing. The first case is about the right to health, and is significant because it was the first case regarding ESC rights to be brought before the South African Court. It sets guidelines and standards for the appropriate implementation of health care and the budgetary resources that should be dedicated for the progressive realization of this right. The second case speaks to the benefits of implementing a human rights framework in order to prevent future costs to the government. In this case, the South African government refused to make a drug that reduces the risk of mother to child HIV infection available to the public sector. The court decided that this constituted a breach of the government's constitutional responsibilities, and ordered a comprehensive health plan for mothers infected with HIV that included extensive counseling and testing services. The chapter then examines three cases on the right to housing, each of which

aided in the progressive implementation of ESC rights in South African legislation. The first case sets the standard for “suitable alternative land” that is offered by the government for individuals evicted from their land for various reasons. The second case focuses on the government’s obligation to resolve issues of property and housing arising between tenants and landowners in a timely fashion. The last case once again revisits the question of suitable alternative land, this time linked with the right to work. These cases show the variety of circumstances that affect an individual’s or community’s housing situation.

Recommendations

While CESCR commentaries have not sufficiently drawn explicit connections between conceptual human rights frameworks and practical implementation in government budgets, court cases such as these demonstrate how it is possible for governments to effectively use their budgets to ensure non-discrimination in the implementation of rights outlined in ICESCR. This Task Force recommends that IBP urge the Committee to increase its emphasis on budget allocations and use both legal and policy frameworks as a means of ensuring that the rights outlined in ICESCR are implemented.

This Task Force further recommends that IBP work with governments to establish organizations that will examine the context of each housing case and resolve the issue after examining its context. IBP should also urge the CESCR to accept reports from non-governmental entities regarding the progress of the ESC rights framework in their country of operation. Such actions will improve accountability of government expenditures and prevent retrogression.

Section III

In Section 3, this report explores the challenges and issues of implementation; it highlights the institutional deficiencies that affect government spending and discusses factors

that undermine accountability and progressive realization of rights. Specifically, this section addresses effectiveness and efficiency in spending, under-expenditures, geographic disparity of funding, leakages, and wasteful expenditures.

In Chapter 8, this report deals with effectiveness and efficiency in government expenditures. This chapter defines effectiveness as having both the intention and result of enhancing people's enjoyment of rights, and defines efficiency in terms of the amount of foregone resources as they are moved to their desired allocation. In an analysis of comparative effectiveness and cost effectiveness, this chapter supports the cost-effective perspective as the most useful approach. While comparative effectiveness compares all options for budget allocation and chooses the most effective solution, cost-benefit analysis takes into account both the benefits of different solutions and their value and costs. Cost effectiveness promotes the most effective and efficient use of maximum available resources by using the fewest inputs to achieve the maximum outputs. Further, to enforce accountability, transparency is essential to improve effectiveness of spending and should be a matter of priority for government policy.

In Chapter 9, the topic of under-expenditures is addressed as another form of financial mismanagement. The chapter addresses the issue in light of gross domestic product analysis, private sector and international aid contributions, and a philosophical analysis of rights. As the chapter notes, an increase in GDP per capita should translate to an increase in spending toward progressive realization of rights, and governments are obligated to recognize all three components of progressive realization: to respect, protect, and fulfill. In India, despite an implementation of universal healthcare in principle, clinics and hospitals remain understaffed and underfinanced, there are vast deficiencies in standards, and many facilities are expensive and unavailable to poorer classes. With the government relying on private sector aid and spending only 5.1% of public funds on healthcare, this case of under-expenditure highlights a need for

specific international standards of fund allocation.⁷ By contrast, in Sweden, the universal healthcare system has been successful. With the government spending approximately 9% of its annual income on the right to health, public expenditures account for about 98% of all healthcare costs in the country⁸, and standards are set and enforced in a multi-level system. Improvement in spending practices can address these under-expenditures and enhance the effectiveness of programs and quality of services.

Chapter 10 addresses the issue of geographic disparity as a violation of the ICESCR, as it contradicts the principle of non-discrimination and maximum available resources. This chapter discusses the reasons for geographic disparity, including budget leakages, centralized political power, and lack of information. It also presents the concept of marginal utility – the idea that it is more efficient and useful for governments to spend in areas where marginal benefits are the highest. To truly progressively realize these rights, governments should mobilize resources to reach those in greatest need as a matter priority. In Kenya a program intended to target funds toward the most disadvantaged citizens was unsuccessful due to its use of specific targeting that relied on high administrative costs. Peru, on the other hand, was successful in decreasing geographic disparity of funding, with antipoverty programs targeted directly to poor, mostly rural areas and an increase in access, transparency, and efficiency in social service provision. In Brazil, the Rural Poverty Reduction Program (RPRP) has been highly successful at tackling poverty at a community level by implementing projects that respond to local demand. As this chapter depicts, while specific geographic targeting can be highly effective, as in Brazil and Peru, in others it can be inefficient, and a broad targeting strategy may be necessary. To address

⁷ ICRA Industry Report on Indian Healthcare. 2008

⁸ Glennard, A., Hjalte, F., Svennson, M., Anell, A., & Bankauskaite, V. (2005). Health Systems in Transition: Sweden. WHO Regional Office for Europe, 2005

geographic disparity, funding should be targeted to areas of most need to utilize resources in the most efficient way possible.

In Chapter 11, this report focuses on wasteful expenditures as a form of financial mismanagement hindering progressive realization of rights. Wasteful expenditures are defined as public funds allocated to services for leisure and personal activities rather than basic services to citizens and communities, and are usually intricately linked with corruption. The chapter uses an example in the United States of government-issued credit cards used by public employees to pay for personal or superfluous purchases. With the economic downturn and the U.S. poverty rate at its highest since 1994, these wasteful expenditures expose flaws in allocation of funds that could be diverted to welfare services such as food stamps and low-income tax credits to address basic needs and support human rights. In Kenya, high levels of corruption and a lack of transparency have allowed Members of Parliament (MPs) to use funds for personal use. Through social audits, CSOs such as the Muslim for Human Rights organization (MUHURI) have exposed corrupt practices using government funds in Kenya; following its revealing reports, the organization was shut down and prevented from accessing information. In Mexico, with significant corruption and a lack of transparency, a substantial amount of funds earmarked for the Centers to Assist Women were diverted to Provida, an ultraconservative organization, which itself used the funds for luxury items, overpriced equipment, and campaigns against contraception. Such corrupt practices define wasteful expenditures and significantly hinder progressive developments to realize ESC rights.

Chapter 12 addresses the issue of budget leakages and accountability in the budget process. As this chapter discusses, misuse and misappropriation of funds occur primarily as a result of a lack of government accountability, weak expenditure management, poor accounting systems, and inadequate checks and balances. Supreme Auditing Institutions (SAIs) have an

important role in this regard to investigate and oversee management of funds. However, as a result of inadequate funding, lack of autonomy, and basic inefficiencies, they are limited in their ability to promote accountability in public spending. Civil society organizations (CSOs) have played a substantial role in strengthening the budget process, disseminating information, and curbing budget leakages. By engaging with SAIs, conducting Public Expenditure Tracking Surveys (PETS), and engaging with the public, CSOs have been able to foster public awareness and fill in the gaps of SAIs. This chapter uses case studies to depict the importance of civil society organizations. In Uganda, Tanzania, South Africa, and India, CSOs have conducted surveys and produced reports detailing budget leakages; these efforts have had a substantial effect in these communities to promote public awareness, government accountability, and transparency of expenditures. As primary auditing institutions, SAIs should have primary authority to report on corruption and investigate expenditures. They should be able to actively respond to petitions made by CSOs and other community organizations, and should promote public information sharing and feedback. Transparency, public awareness, and strong accountability mechanisms collectively will compel governments to live up to their responsibilities under ICESCR and take progressive steps to do so.

Recommendations

Effectiveness and Efficiency of Spending

To implement this perspective on cost-effectiveness, this report recommends that IBP assist and urge governments to 1) articulate specific, quantifiable policy programs rather than general objectives; use indicators to measure progress and tangible impacts; 2) prioritize specific areas that reflect the greatest potential gain so that programs can then be assessed accordingly; 3) promote a participatory process incorporating government organizations, intellectuals, and civil

society; and 4) develop standardized systems of evaluation based on feedback from civil organizations and statistical data.

Under-expenditures

To address under-expenditures, this report recommends 1) that IBP ensure that governments regard private sector and international aid as supplementary rather than primary resources and allocate maximum possible resources toward realization of rights, and 2) that IBP work with the Committee to implement standards that proscribe minimum levels of government funding based on population and GDP.

Geographic Disparity of Funding

To target resources and reduce geographic disparity, this report recommends that IBP work with governments and organizations to focus their practices on decentralization and accountability of public funding, customize programs to target geographic areas, and provide clear information regarding these processes. By taking these steps, governments can sufficiently address the fundamental issue of geographic disparity.

Wasteful Expenditures

To curb wasteful expenditures, this Task Force strongly recommends that IBP work with governments to curb the influence of special interest groups, promote transparency in legislation and budget allocation, and ensure that funds reach their intended beneficiaries and are prioritized to actually progressively realize the rights outlined by the ICESCR.

Leakages

To combat budget leakages, this report recommends that IBP work with governments and the international community to strengthen the position of SAIs by authorizing these institutions to report directly on cases of corruption and investigate areas of the budget at high risk of corruption. IBP should cooperate closely with SAIs and legislative officials to promote

transparency of public expenditures, and ensure that reports are made available to community organizations to foster public awareness. In these ways, IBP can address these issues of leakages and ensure that funds are properly managed.

Section IV

Section 4 of this Task Force proceeds from examining national sources of budget and spending, and examines overseas development aid, which also contributes to a country's MAR.

Chapter 13 examines the role of Multilateral Development Banks (MDBs) and their effect on economic, social and cultural rights. It begins with an overview of the World Bank and describes the effects that a lack of a human rights framework can have on development projects. The chapter includes an overview of accountability mechanisms utilized by MDBs, highlighting their inadequacies in responding to human rights violations. Finally, the chapter suggests a model accountability mechanism to implement in MDBs that ties incentives to ESCR promotion in development projects.

Next, Chapter 14 explores another facet of overseas development assistance: Export Credit Agencies (ECA). This chapter explains the role of ECAs in a nation's budget, explores their role in the realm of international development, and further examines their impact in society in regards to economic, social, and environmental rights. Next, the current legislation in place to guide and monitor the behavior of ECAs is scrutinized. Finally, this chapter proposes policy solutions to make these guiding principles more binding, ultimately holding ECAs more accountable to the projects they undertake.

Chapter 15 examines the roles of the United States Agency for International Development (USAID), the Canadian International Development Agency (CIDA) and the Japan International Cooperation Agency (JICA) in promoting ICESCR goals recipient countries. Close

analysis of the operations manuals of these organizations, and of various projects implemented, reveals a general lack of attention by bilateral organization to human rights. This lack of attention can result in regression in terms of human rights.

Finally, Chapter 16 focuses on positive, empirical, examples of the progressive realization of human rights in countries around the world. It provides examples of successful policy decisions that countries have made in order to progressively realize human rights. This chapter looks at legislative measures, public/private partnerships, and budgeting for non-discrimination, especially towards women, minorities, and indigenous groups. In analyzing these case studies, this Task Force provides concrete, real-world examples of the proper application of some of the recommendations included in previous chapters. The examples included in chapter 16 focus primarily on issues of health, land rights, cultural and political sovereignty, education, and increased agency of groups currently discriminated against by national policies that do not have specialized measures that address disparities. By looking at the process by which these policies have been formed, this Task Force makes recommendations on how to replicate successful policies in different political and social environments.

Recommendations

This Task Force recommends that IBP:

- Cooperate with these international development organizations to implement an accountability mechanism that incorporates benefits for both the bank and the civil society in which they are working. Organizations such as the World Bank should ensure that clients and citizens are made aware of existing accountability mechanisms and provide access to mechanisms like the World Bank Inspection Panel.
- Urge ECAs implement rigid structures of accountability in their projects and examine both the human rights and environment effects of their developmental aid. For example,

groups like the Berne Union should revise their “Guiding Principles” to include more explicit regulations of ECA transactions, including a further clarification of “sound business ethics” and “consideration of environmental issues”⁹.

- Work with these three bilateral aid organizations to implement a human rights framework for future development projects, design projects specifically to progressively realize human rights, and allocate funds to recipient nations to design and implement their own development projects. IBP should recommend the implementation of an evaluative process before initiating a project that would examine the human rights implications of the project and take steps to mitigate any negative externalities.
- Cooperate with states to implement provisions for human rights through taking both constitutional and legislative measures. Furthermore, states should take steps to include marginalized groups in the policy making process in order to reduce discrimination and create relevant programs to aid these communities.

⁹ "Guiding Principles." Berne Union. <http://www.berneunion.org.uk/guiding-principles.html> (February 16, 2011).

Introduction

Alizeh Bhojani

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) is the primary international document that governs such fundamental human rights as the right to housing, health, and food security. The governments that have ratified this document are required to implement these rights through various means, including developing laws, policies, and budgetary frameworks. This Task Force focuses on exploring the role of budgets in implementing the rights and obligations outlined in the Covenant. We focus on three specific State obligations for implementing rights, which are outlined in Article 2 of the Covenant (emphasis added):

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁰

In order for governments to fulfill their obligations under ICESCR, they must understand explicitly what is required of them. Civil society and non-governmental organizations that wish to hold governments accountable to this Covenant must also have a common base for the

¹⁰ United Nations Economic and Social Council. "International Covenant on Economic, Social, and Cultural Rights," United Nations Economic and Social Council, 1966.

standards that governments must follow. In this report, this Task Force will seek to define these three obligations and explore their relationship with government budgets. We have examined United Nations documents, court cases on ESC rights, various challenges in budget processes, and operations of overseas development aid organizations to provide a clearer understanding of economic, social, and cultural rights. The budget is a powerful government tool that can improve the quality of life for entire populations. Through this report we hope to clarify how IBP can influence the CESCR, state governments, and international organizations to implement budget reforms to make meaningful progress and fulfill the obligations under the ICESCR.

Section I:
Theoretical Framework for Economic, Social, and
Cultural Rights

Section I Introduction

The Committee on Economic, Social and Cultural Rights (CESCR) provides State parties with obligations to progressively realize the rights outlined in ICESCR. These include Maximum Available Resources (MAR), Non-Discrimination (ND) and Progressive Realization (PR). The following chapter will outline the progress made by the committee on expanding on each of these components. States are obligated to follow MAR which according to the committee is defined as utilizing both internal and international resources which will assure the progressive realization of ICESCR rights. Since 2001, MAR has been expanded upon within the categories of minimum benefits, allocation restrictions, and international assistance. Minimum benefits are closely related to the non-discrimination clause of ICESCR. Non-discrimination focuses on immediacy and prioritizing funding. Upon fulfilling MAR and ND, State parties are obligated to follow through, to their fullest extent, on PR. Progressive Realization hinges on the involvement of the international community, domestic obligations of State parties, and continued assessment of the articles laid out in ICESCR. Education, health, and food security are fundamental rights, which this chapter analyzes with respect to Progressive Realization. Each of these rights should intersect with one another to lay the foundation for more efficient usage of governmental budgets. This implementation of government budgets will ensure the prevention of retrogression of State parties.

Chapter I:
**Updates by the Committee on the
ICESCR**

*By Youjin Choe, Manmeet Dhami,
Camille Dodson, and Akshika Patel*

Chapter I
Updates by the Committee on the ICESCR

Maximum Available Resources
Akshika Patel

Introduction

Maximum available resources are most often defined as both internal and international resources that can be allocated in order to progressively realize those rights detailed in the International Covenant of Economic, Social, and Cultural rights (ICESCR). Since Sepulveda's update in 2002, the Committee has attempted to clarify the vague definition of the maximum available resource. While the Committee neglected to clarify the specifics of maximum available resources, the Committee did expand on the concepts of minimum benefits, allocation restrictions, and international assistance. In accordance with the non-discrimination stance that the Committee takes, they expect State parties to, even in times of resource scarcity, ensure that marginalized citizens have access to the rights outlined in the ICESCR. In addition to their discussion of minimum benefits, the Committee also addressed preventing the diversion of resources that are meant for rights realization. The Committee in numerous general comments as well as their statement on maximum available resources emphasized the role of international assistance. The Committee provides the most detail on the subject of international assistance. Since Sepulveda, the Committee further expanded on the topics of minimum benefits, allocation restrictions, and international assistance. Since 2001, the Committee elaborated on the definition

of MAR in terms of minimum benefits, allocation restrictions, and international assistance. Even though emphasis has been given on these three components, in order to integrate MAR into government budgets further clarification is needed.

Sepulveda defines maximum available resources by expanding on the necessity of minimum benefits, allocation restrictions, and the acquisition of international assistance. Maximum resources, according to Sepulveda, are at minimum to implement low-budget programs in order to aid the marginalized citizens of society. Sepulveda emphasizes that restrictions are necessary for resource allocation in order for these programs to be implemented. Resources, Sepulveda states, should be drawn from international bodies as well as internally. In 2007, the Committee submitted a statement evaluating the maximum available resources under the “optional protocol”¹¹ to the Covenant. This statement provides additional commentary that clarifies the three components of MAR that Sepulveda examined.

Minimum Benefits

According to the committee, even in times of resource constraint States are obligated to provide at least minimal protection to marginalized groups in accordance to the rights that are basic necessities for life. This is to be done by implementing low-cost targeted programmes.¹² However, the committee neglects to provide examples of these “low-cost targeted programmes”. The General Comments 15 and 19 further clarify the requirement for maximum available resources within the context of the rights to water and the right to social security. Right to water is the most basic necessity for human life. Water is considered both an internal and natural

¹¹ Committee on Economic, Social and Cultural Rights, “An evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the covenant,” United Nations Economic and Social Council, revised September 21, 2007.

¹² Committee on Economic, Social and Cultural Rights, “An evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the covenant,” United Nations Economic and Social Council, revised September 21, 2007.

resource within a State. Therefore, “priority should also be given to the water resources required to prevent starvation and diseases.”¹³ Starvation and disease are both elements that threaten the well-being of marginalized citizens of society. By placing greater emphasis on disease prevention, General Comment 15 is exemplary of the Committee’s requirement that States, regardless of resource constraint, are to provide minimum benefits to their citizens. This is also shown to be a key factor of MAR in General Comment 19. The premise of the General Comment on the right to social security is to implement a system where a significant amount of the population can benefit. In the General Comment, social security is described as providing at minimum essential health care, basic care, basic housing, water, sanitation, food, and at least rudimentary education. If the State Party cannot provide these minimums because of resource restraints, “the Committee recommends that the State party, after a wide process of consultation, select a core group of social risks and contingencies.”¹⁴ By core group, the Committee asserts that there are a number of core obligations that are necessary for the State Party to meet. These core obligations are those provisions which are absolutely necessary for the right to life.

Within the budget it is necessary that resources aimed for providing minimum benefits in accordance to ICESCR are given a place. If State parties hope to fulfill their MAR obligations and ensure minimum benefits for their citizens their budgets must be changed. By change, the budgets need provisions that ensure that the resources meant for minimum progressive realization of ICESCR are not allocated incorrectly.

Allocation Restrictions

¹³ Committee on Economic, Social and Cultural Rights. 2003. *General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*. United Nations Economic and Social Council, E/C.12/2002/11 (accessed 16 January 2011).

¹⁴ Committee on Economic, Social and Cultural Rights. 2008. *GENERAL COMMENT NO. 19 The right to social security (art. 9)*. United Nations Economic and Social Council, E/C.12/GC/19 (accessed 16 January 2011).

Within the Committee documents, it becomes apparent that when considering maximum available resources, resource restrictions are important in progressively realizing the covenant. Only by prohibiting the diversion of Covenant-related resources will States be able to combat corruption.¹⁵ Since Sepulveda's analysis, the Committee further clarified this in their 2007 statement. In regards to resource allocation, non-discrimination is an important "core obligation" that State parties have an immediate obligation to. State parties must "guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind."¹⁶ Throughout the General Comments the Committee emphasizes methods on how allocation restrictions can stop discrimination. States Parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society.

"Inappropriate resource allocation can lead to discrimination that may not be overt."¹⁷ In order to prevent discrimination, the Committee must provide State parties with more detailed methods in which they can improve their budgets so that inappropriate resource allocation does not occur. As it stands, the committee only provides a general recommendation. In order for the budget to be more efficiently utilized the committee needs to give State parties specific method for budget implementation.

International Assistance

¹⁵ Carmona, Magdalena Sepulveda. 2009. "The obligations of 'international assistance and cooperation' under the International Covenant on Economic, Social and Cultural Rights. A possible entry point to a human rights based approach to Millennium Development Goal 8." *International Journal of Human Rights* 13, no. 1: 86-109. *Academic Search Complete*, EBSCOhost (accessed January 15, 2011).

¹⁶ Committee on Economic, Social and Cultural Rights, "An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant," United Nations Economic and Social Council, revised September 21, 2007.

¹⁷ Committee on Economic, Social and Cultural Rights. 2003. *General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*. United Nations Economic and Social Council, E/C.12/2002/11 (accessed 16 January 2011).

In defining maximum available resources, the Committee has expanded on the specifics of the origin of the resources. Sepulveda noted that State resources include not only internal resources but also those which are given by the international community. In fact, the Covenant entitles State parties to this funding. In the 2007 statement the Committee says, “The undertaking by a State Party to use “the maximum” of its available resources towards realizing the provisions of the Covenant entitles it to receive resources offered by the international community.”¹⁸ While both Sepulveda’s analysis and the Committee’s statement have shown an emphasis on the right of the State Party to receive international assistance, the General Comments of the committee expand on the obligations of the international community to aid State parties in the realization of certain rights. State parties have an obligation to provide both economic and technical aid. In General Comment 15, the Committee allows the international community some control in the degree to which they aid certain State parties: “Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required.”¹⁹ Considering the State parties’ availability of resources the international community has the prerogative to decide upon the amount of aid to be given. Regardless of this prerogative there are stipulations that the Committee places upon the international community. General Comment 19 addresses the first world especially by stating that, “Economically developed States parties have a special responsibility for and interest in assisting the developing

¹⁸ Committee on Economic, Social and Cultural Rights, “An evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the covenant,” United Nations Economic and Social Council, revised September 21, 2007.

¹⁹ Committee on Economic, Social and Cultural Rights. 2003. *General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*. United Nations Economic and Social Council, E/C.12/2002/11 (accessed 16 January 2011).

countries in this regard.”²⁰ The responsibilities of these developed nations goes beyond assisting financially and technically; they are to take into account the individual circumstances of each developing state party. International assistance should be given “in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate.”²¹ While the Committee obligates the international community to financially aid developing countries, it also places a concurrent obligation to respect and work within the culture of the State Party.

Unlike the other components of MAR, international assistance does not affect the domestic State Party’s budget but rather those budgets of developed State parties. The Committee needs to provide the international community with specific methods, such as several multi-lateral banks, through which the international community can efficiently enlarge their resources. The committee has only provided State parties with recommendations that they should include international resources within their budgets.

Recommendations:

In order to affect the budget of the state party, while considering maximum available resources, greater emphasis is placed on transparency in the implementation of appropriate legislation. In assessing whether a State party has progressively realized the provisions of the Covenant within the limits of its maximum available resources the Committee holds, the

²⁰ Committee on Economic, Social and Cultural Rights. 2008. *GENERAL COMMENT NO. 19 The right to social security (art. 9)*. United Nations Economic and Social Council, E/C.12/GC/19 (accessed 16 January 2011).

²¹ Committee on Economic, Social and Cultural Rights. 2008. *GENERAL COMMENT NO. 19 The right to social security (art. 9)*. United Nations Economic and Social Council, E/C.12/GC/19 (accessed 16 January 2011).

“transparent and participative decision-making processes at the national level”²² in high regard. This Task Force recommends that IBP ask the Committee for greater clarification of the term maximum available resources. As it stands, the ambiguity behind the term gives too much discretion to State parties as to what they consider is the definition of maximum available resources. Furthermore, it is advisable that the Committee clarify exactly what defines a resource. Do maximum available resources include the both the domestic financial and technical resources, as well as international? While the statement produced by the Committee does assert that the international community is under obligation to aid developing State parties, no specific methods of aid are addressed. In order for State parties, through the way of budget analysis, to realize the rights detailed in ICESCR available resources needs to be further defined. Merely continuously stating that State parties are to progressively realize the right under ICESCR within the constraints of their maximum available resources does not aid State parties.

²² Committee on Economic, Social and Cultural Rights, “An evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the covenant,” United Nations Economic and Social Council, revised September 21, 2007.

Non-Discrimination

Manmeet Dhami

Sepulveda's Findings

Sepulveda's 2001 update provides a thorough analysis of the obligations outlined in the International Covenant on Economic Social and Cultural Rights (ICESCR) regarding non-discrimination. In accordance with the Covenant, State parties are still obligated to exercise the rights presented in the Covenant without "discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"²³. In her analysis of obligations surrounding non-discriminatory practices, Sepulveda highlights the fact that unlike "maximum available resources" and "progressive realization," the exercising of non-discriminatory practices is to be implemented immediately²⁴. While the Covenant recognizes that implementation measures may take time, it obligates States to make an immediate effort to minimize and eliminate any discriminatory practices that may interfere with the enjoyment of rights outlined in ICESCR. While budget allocation is not directly mentioned as being a means to address non-discrimination, Article 2 does suggest that States allocate the "resources" needed to address discrimination. Thus it is implied that budgets can and should be used as a means to rectify these issues of discrimination. In order to ensure the elimination of discriminatory practices, States are first advised to evaluate current national legislation. States must then take active steps to either repeal or amend any legislation that is deemed discriminatory.

²³ United Nations Economic and Social Council. "International Covenant on Economic, Social, and Cultural Rights," United Nations Economic and Social Council, 1966.

²⁴ Magdalena Sepulveda, *The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights* (Antwerpen: School of Human Rights Research series, 2003).

Sepulveda's 2001 update underscores the lack of discussion surrounding the use of budgets to address discrimination. This lack of an emphasis on budgets can be attributed to the difficulties associated with defining funding priorities and relating conceptual human rights frameworks to real world implementation. The process of determining budget allocations depends heavily on the political processes of each respective State, various institutional cultures and the availability of funding. The Committee's minimal discussion of budget allocation is mostly likely a result of these challenges. While the majority of additional commentary since Sepulveda's analysis also fails to include any specific mention of budgets, there are a select few documents which do offer some form of an update on the use of budgets to uphold human rights. These updates, as well as recent court proceedings, demonstrate how governments can best raise, allocate, and spend their budgets so as to comply with their obligations under ICESCR. Through utilizing legal frameworks, prioritizing funding, and recognizing the importance of immediacy in the prevention of discrimination, governments can better ensure that their budgets are being effectively used to achieve human rights.

Updates

General Comment 15 (2002), which focuses on the right to water, provides some insight into how budgets can be used to ensure that the rights outlined in ICESCR are upheld without discrimination. As stated in this General Comment, "States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society²⁵." Continuing in this theme of making water accessible to large parts of the

²⁵ Committee on Economic, Social and Cultural Rights, "General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)," Center United Nations Economic and Social Council, 2002.

population, the Committee states that “investments should not disproportionately favor expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population²⁶.” This Comment highlights a government’s obligation to focus funding specifically on the most disadvantaged members of society who could be prevented from accessing water because of discrimination. It appears that, at least regarding access to natural resources, budgets can be utilized to ensure equal accessibility. By focusing on investing funds in affordable water supply services, governments can provide disadvantaged sectors of the population with the same access to resources as more privileged sectors of the population. Although General Comment 15 highlights a State’s obligation to use budgets to ensure equal access to resources, it fails to provide any substantial input as to what appropriate means of allocating budgets are.

General Comment 18, from 2005, also offers some discussion of the use of budgets in ensuring that the rights outlined in ICESCR are upheld without discrimination. This General Comment emphasizes the realization of non-discrimination in the workforce. It is interesting to note that while this General Comment does not specify what measures a State should take in implementing non-discrimination, it does specify what qualifies as a misuse of government budgets. According to General Comment 18, violations of non-discrimination include “failure to adopt or implement a national employment policy designed to ensure the right to work for everyone; insufficient expenditure or misallocation of public funds which results in the non-enjoyment of the right to work by individuals or groups, particularly the disadvantaged and

²⁶ *Ibid.*

marginalized²⁷.” This document also includes discussions of technical and vocational training programs, perhaps suggesting that States can fight discriminatory practices by allocating more funding to such programs. Once again, budgets are highlighted as being a means through which governments can provide equal access to disadvantaged populations. Missing from this discussion, however, is an explanation of what qualifies as an *appropriate* allocation of funds. It would be helpful to have a better understanding of what percentage of funds should be utilized for these programs as well as how budget allocations aimed at fighting discrimination in the workplace should be prioritized.

The 2005 United Nations Annual Report offers details as to what obligations States have in combating discrimination, but like the General Comments, it fails to offer any specific budget implications. In its discussion of temporary measures, the Report states that, “even in times of severe resource constraints, the disadvantaged and marginalized individuals and groups of society must be protected by the adoption of relatively low-cost targeted programmes²⁸.” The language of section 15 of the 2005 Annual Report suggests that government funding must be used to enact measures to help disadvantaged populations who might be prevented from enjoying the rights entitled to them because of discrimination. One method of enacting these measures is through funding low-cost programs that address the inequality experienced by disadvantaged and marginalized groups. Missing once again from this commentary are specific details concerning how much of the budget should be allocated for these purposes as well as how a government can determine what its funding priorities are.

²⁷ Committee on Economic, Social and Cultural Rights, “General comment No. 18 the right to work, adopted on 24 November 2005 Article 6 of the International Covenant on Economic, Social and Cultural Rights,” United Nations Economic and Social Council, 2006.

²⁸ Committee on Economic, Social and Cultural Rights, “Report on the thirty-fourth and thirty-fifth sessions,” United Nations Economic and Social Council, 2005.

General Comment 20 from 2009 provides the most substantial update on the exact scope of a state's obligations in regards to the use of budgets and non-discrimination. According to General Comment 20, in order to achieve the rights outlined in ICESCR, a state must eliminate discrimination both formally (laws, constitutions, policies, etc.) and substantively (in practice). States are obligated to adopt measures that are permanent in nature and targeted specifically at eliminating conditions that lead to discrimination²⁹. In discussing a state's obligation to eliminate discrimination, the Committee specifically outlines the various forms of prejudiced treatment that can result in discrimination. The document then goes on to list the prohibited grounds of discrimination. According to the recommendations set forth by the Committee, "Economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination³⁰." Both public and private institutions are required to have plans of action that address the elimination of discrimination and these plans should include measures that accelerate the elimination of discrimination. In order to ensure the elimination of systemic discrimination, states should funnel more resources (both financial and human) to traditionally neglected groups. This Comment also specifies that States must make every effort possible, regardless of what resources are available, to ensure the removal of differential treatment. States are also obliged to monitor the implementation of measures relating to the Covenant through specific benchmarks.

As demonstrated by the developments made in General Comment 20, the Committee has made progress in regards to the use of budgets to fight discrimination. General Comment 20 provides the most substantial update since Sepulveda's analysis but it too falls short. It includes

²⁹ Committee on Economic, Social and Cultural Rights, "General Comment No. 20 (2009) Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)," United Nations Economic and Social Council, 2009.

³⁰ *Ibid.*

budgetary allocations as a potential means of addressing discrimination but does not specifically outline what should be done with this funding. It also fails to address what proportion of a state's budget should be used for these purposes. Although General Comment 20 does not outline specific implementation measures, it does identify budgets as being a means of addressing discrimination. This inclusion of budgets is something that has been missing from previous commentary on non-discrimination with regards to ICESCR.

The United Nations Annual Report from 2009 also mentions budgets as being a means to address non-discrimination. As outlined in the Report, "Economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination³¹." It goes on to recommend that States develop plans to address issues of non-discrimination, but fails to outline the specific steps a State should take. Also of significance is this Report's discussion of the need for an increased emphasis on using budgets to address discrimination. The Committee recognizes that budgetary allocations to social sectors have decreased while funding for sectors such as defense has increased.

Recommendations

While additional commentary since Sepulveda's update has provided more information on the budget implications of ICESCR obligations, the Task Force sees a clear need for additional details. Considering the implications of funding on the realization of human rights, there needs to be a greater emphasis on how budgets can be allocated. Current commentary only includes budget allocations as being a means to address non-discrimination and fails to specify

³¹ Committee on Economic, Social and Cultural Rights, "Report on the forty-second and forty-third sessions," United Nations Economic and Social Council, 2009.

how States can utilize their budgets most effectively. In order to better address how a State's obligations under ICESCR should shape government budgets, we recommend that the Committee outline how States can prioritize allocation of their budgets. Obligations under ICESCR for non-discrimination emphasize immediacy, thus States should prioritize funding for eliminating the practice of discrimination in existing programs before allocating funding to the creation of new programs. In order to ensure that budgets are properly utilized, the Committee should implement a timeline for the timely distribution of funds. Special attention should also be paid to utilizing budgets to *maintain* access to health, education, work and other related programs.

We also recommend that the Committee provide a more detailed account of what percentage of government budgets should be set aside for the purpose of fighting discrimination. ICESCR specifies "maximum available resources" but the lack of detail makes it difficult to hold governments accountable to specific standards. While it would be difficult for the Committee to stipulate what percentage of a government's budget should be used for specific programs, the Committee should specify what percentage of a government's *total* budget should be used to protect various rights. Measures such as these would also make it easier for States to prioritize funding. By holding States accountable to detailed standards and priorities we can better ensure that ICESCR obligations are realized free of discrimination.

Progressive Realization

Youjin Choe and Camille Dodson

Introduction

In Sepulveda's thorough analysis on Article 2(1) of ICESCR, she covers content from obligation to prohibit retrogressive measures and improve conditions to interpretation of 'all appropriate means' and obligation to monitor. She also analyzes the implication of minimum core obligation and international cooperation.³² Such analysis is still applicable to the official documents of the Committee. Nevertheless, there are some additional suggestions and ideas presented by the Committee on Economic, Social and Cultural Rights (CESCR) in terms of implementing progressive realization at the national level. The Committee has especially emphasized the responsibility of other countries and international bodies since Sepulveda's 2001 analysis. This may have significant budget implications for countries if we consider the need to fulfill Article 2 obligations through assisting in global progressive realization of the ICESCR. Aside from this element, and in spite of countless comments, statements, and reports issued since 2002, there is little that the CESCR has done to clarify substantively the meaning of the Article 2 obligations, specifically progressive realization, not to mention any budgetary implications that may spring from them. This will be one recommendation that our Task Force has for the committee – that their general comments and elaboration of the ICESCR rights, particularly in Article 2, include specific and concrete indicators of progressive realization, including budgetary benchmarks.

³² Magdalena Sepulveda, *The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights*, (Utrecht University, 2002), pp. 319 – 376.

In addition to interpreting the Committee's General Comments and statements, it is also useful to draw on its most recent Concluding Observations for specific countries. In these reports, the Committee highlights "positive aspects" of each country's implementation of economic, social, and cultural rights. Drawing from these observations, we can begin to highlight concrete examples of progressive realization. We have compiled "positive aspects" from a number of country reports from 2008 to 2010. Common themes that are beginning to emerge from these aspects are the targets for progressive realization in education (such as steps towards eventual free education through the university level), health care, and the obligation to dedicate a share of gross national product (GNP) to international official development assistance. Another way these observations can potentially be used in understanding progressive realization is by providing concrete examples of progressive realization towards certain rights that get less attention, such as the right to culture.

International Cooperation and Role of Non-government Entities

Since 2002, one of the Committee's new areas of concern is how progressive realization requires international cooperation from states as well as non-governmental bodies. In fact, this is one of the few areas where substantive budget standards are becoming established. Based on the Concluding Observations of the Committee in the last two years, a figure of 0.7 percent of GDP devoted to international development assistance was cited as a "positive aspect" of implementation of economic, social, and cultural rights for countries such as in the Netherlands and Sweden.^{33,34} In comparison, Committee recommendations prior to 2002 framed

³³ Committee on Economic, Social and Cultural Rights, "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Netherlands," revised December 9, 2010.

international assistance towards the realization of human rights as a responsibility of the recipient country's Article 2 obligations. A frequent recommendation, for example, was that "the State party continue to seek international technical assistance, as provided for in article 23 of the Covenant, in its efforts to improve the implementation of economic, social and cultural rights in the country."³⁵ The language of General Comments, Statements, and country recommendations of the Committee and other human rights authorities in recent years, however, point to the positive obligation of countries to actively direct resources to progressive realization beyond their borders. In a recent Resolution of the Human Rights Council regarding the "[q]uestion of the realization in all countries of economic, social and cultural rights," the council affirmed that "primary responsibility" for protecting rights lies with states, but emphasized the "importance of international cooperation in assisting Governments to fulfil their obligation." They also explicitly mentioned international assistance and cooperation as an element, in tandem with "national development policies" of securing progressively the "full realization" of rights particularly in regards to those marginalized and made vulnerable by poverty.

In addition to this focus on State parties' role in contributing to global progressive realization, the Human Rights Council reiterated this goal as a fundamental purpose of the United Nations and affirmed "that wider international cooperation would contribute to lasting progress in implementing economic, social and cultural rights."³⁶ This component of the committee's most recent reflections on Article 2 obligations regarding the importance of international assistance and cooperation could be leveraged in efforts to align budget priorities

³⁴ Committee on Economic, Social and Cultural Rights, "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Sweden," revised December 1, 2008.

³⁵ Committee on Economic, Social and Cultural Rights, "Report on the forty-second and forty-third sessions," Economic and Social Council, revised November 2009.

³⁶ Human Rights Council, "Report of the Human Rights Council," Economic and Social Council, revised 2006.

with the implementation of economic, social, and cultural rights. On the right to water, for example, the Committee called for cooperation between the UN and other relevant organizations such as the United Nations Development Plan (UNDP) and the World Health Organization (WHO) to provide general guideline for sustainable water provision.³⁷ Cooperation between State parties and international organizations is considered equally crucial for the realization of the rights under the Covenant. On the right to social security, the Committee lists relevant organizations such as the International Labor Organization (ILO), WHO, the Food and Agricultural Organization (FAO), UNDP, and the UN Human Settlement Programme and reasserts their effort to cooperate and assist individual countries when necessary. It also urges the cooperation of the International Financial Institutions, namely the International Monetary Fund (IMF) and the World Bank in various agendas, though they are not directly related to the issues stated in the General Comments.³⁸ This implies the importance of financial assistance of these organizations which would likely contribute to the realization of the rights in “promoted and not comprised” way. It parallels State obligations to avoid using retrogressive measures.³⁹ This Task Force further explores the role of the international community in realizing rights in the last section of this report.

Additional focus is given to the issue of sustainability. For the last eight years following Sepulveda’s comments on ESC rights, the Committee’s statements have been focused on the issue of sustainable development and ESC rights on a global scale. Specifically, its statement on the Millennium Development Goals (MDGs) urges State parties to progressively realize each

³⁷ Committee on Economic, Social and Cultural Rights, “General Comments No. 15,” Committee on Economic, Social and Cultural Rights, revised January 20, 2003.

³⁸ Committee on Economic, Social and Cultural Rights, “General Comments No. 19,” Committee on Economic, Social and Cultural Rights, revised February 4, 2008.

³⁹ Committee on Economic, Social and Cultural Rights, “Report on the forty-second and forty-third sessions,” Economic and Social Council, revised November 2009.

goal and relevant right under the Covenant, strengthening the Committee's role on reviewing and assisting the full realization.⁴⁰

Another recent emphasis is placed on non-government entities, including private sectors and civil society, for aid in implementing progressive realization. It is quite a distinguishing feature from the past documents where the Committee primarily concentrated on providing the obligations of State parties regarding the progressive realization of ESC rights. The Committee states that it is also a State's responsibility to implement policies that are "favourable" to the rights under the Covenant so that private sectors and civil society can follow appropriately. In other words, non-government entities are not considered to have direct responsibility to follow the obligations set out in the Covenant.⁴¹ However, as the importance of cooperation between various entities increases, the CESCR has made further comments on the desirable role of non-State parties. The Committee also recognized the responsibilities of private sectors and civil society in terms of the realization of ESC rights on the national scale. It is worth noting that, in General Comment 18 regarding the right to work, the Committee explicitly discusses the role of private sectors and civil society for the progressive and full realization of the right. Although the Committee makes clear that the primary obligation lies with State parties to progressively realize the right, it points out that "private enterprises – national and multinational – while not bound by the Covenant, have a particular role to play in job creating, hiring policies and non-discriminatory access to work."⁴² The Committee also encourages the private sectors to

⁴⁰ Committee on Economic, Social and Cultural Rights, "The Millennium Development Goals and economic, social and cultural rights: joint statement by the Committee and the Special Rapporteurs on economic, social and cultural rights of the Commission on Human Rights," Committee on Economic, Social and Cultural Rights, revised November 29, 2002.

⁴¹ Committee on Economic, Social and Cultural Rights, "General Comments No. 15."

⁴² Committee on Economic, Social and Cultural Rights, "General Comments No. 18," Committee on Economic, Social and Cultural Rights, revised February 4, 2008, p. 13.

cooperate with State parties to realize this right in non-retrogressive ways.⁴³ This shows the shift in the role of non-government entities toward more proactive involvement in progressively realizing the right.

Concluding Observation - Further Guidance for the implementation at the national level

For the last three years or so, the Committee started to suggest more extensive and detailed guidelines for the realization of the rights than it had in previous years. As Sepulveda mentioned, one of the Committee's major problems was that it lacked further guidelines.⁴⁴ The General Comments are based on outlines for normative obligations, implementation, monitoring mechanism, and violation, which are written in vague terms and descriptions. For example, it states that in order to realize the rights under the Covenant, it is essential to use "the means by which the purpose could be achieved" and "remedies and recourse procedures"⁴⁵ and that the State party should "ensure that these authorities [national ministries, regional and local authorities] have at their disposal sufficient resources to maintain and extend the necessary water services and facilities."⁴⁶ Such recommendations is one of the factors that slow the effective implementation of obligations in the national legal and administration system since the interpretation of what a sufficient measures is for progressive realization is subjective. Moreover, in many cases, budgetary implications are not explicitly presented as separate recommendations. Rather, legislative measures are mentioned as the primary means for rights allocation, with the implicit understanding that budgets and resource allocations are also important for the full realization of rights.

⁴³ Ibid.

⁴⁴ Magdalena Sepulveda, p. 358.

⁴⁵ Committee on Economic, Social and Cultural Rights, "General Comment No. 15."

⁴⁶ Ibid.

Compared to the vague descriptions provided in General Comments, Statements, and Resolutions, the Committee's Concluding Observations offer far more substantive criteria for implementation and progressive realization of economic, social, and cultural rights. These documents, issued in response to individual country reports, highlight accomplishments and give specific recommendations about measures that should be undertaken to progressively implement specific rights. A review of these evaluations gives us a clearer understanding of what progressive realization looks like in relation to certain rights. For the right to education, for example, the Committee routinely issues endorsements that include the progressive realization of compulsory and free elementary education, with efforts towards free secondary and eventually post-secondary education a progressive realization necessity.⁴⁷ Used as standards for progressive realization (as opposed to immediate obligations), it is significant to note that these targets can be applied to any country, regardless of its level of development. Although a country may not have the resources currently available to provide free post-secondary or even secondary education, these could be used as concrete goals for progressive realization action.

Other areas where these standards are emerging are in progressive realization towards the right to health. Based on the endorsed "positive aspects" and recommendations, effort towards creation of a national health system with attention to access for rural, low-income, and undocumented/migrant populations, demonstrates a country's work towards progressive realization.⁴⁸ The endorsement of "positive aspects" of countries' implementation of rights, such

⁴⁷ For examples of accomplishments in PR towards the right to education noted by the Committee, Concluding Observations for (2010) the Netherlands, Kazakhstan, Mauritius, Afghanistan, Algeria, and (2008) Kenya, Benin.

⁴⁸ For examples of accomplishments in PR towards the right to health noted by the Committee, Concluding Observations for (2010) Uruguay, Dominican Republic, Kazakhstan, Mauritius, Afghanistan, Algeria, and (2008) Sweden, India.

as in this example for the right to health, could be instrumental in creating more concrete and universally acceptable standards for measuring progressive realization for all countries.

Country-specific endorsements and recommendations drawn from concluding observations can also be used to develop innovative approaches to progressive realization for economic, social, and cultural rights that remain largely unimplemented in any systematic national program. In Korea, for example, the committee noted positively the creation of a national program to provide vouchers to low-income individuals and families to attend cultural events.⁴⁹ This effort towards progressively realizing the right to culture, along with other significant examples of targeted implementation efforts identified by the committee, could be compiled to develop more concrete indicators and corresponding budgetary benchmarks for progressive realization.

Another way the concrete indicators of progressive realization found within the Concluding Observations can be utilized is determining country-by-country cases of non-compliance with Article 2 obligations over fairly short time periods. When reviewing successive Concluding Observations for a single country, there are demonstrable cases where the Committee has issued very concrete steps needed for progressive realization of a certain right and yet the state has failed to implement them, according to the Committee's observations in subsequent years. For example, in the Concluding Observation for Bolivia in 2008, the Committee showed its concern that "the majority of its recommendations from 2001" were not effectively implemented in the national system. The Committee reiterated eight issues including minimum wage, child abuse, and forced eviction and reaffirmed the responsibility of the State party to progressively realize the rights according to Article 2 obligations. In the subsequent

⁴⁹ Committee on Economic, Social and Cultural Rights, "Concluding observations of the Committee on Economic, Social and Cultural Rights: Korea," Committee on Economic and Social Rights, revised December 17, 2009.

section for suggestions and recommendations, the Committee required Bolivian government to include information and data regarding the issues listed above in the next periodic report.⁵⁰

Assuming that the Committee's specific recommendations in these cases are feasible, this could be one mechanism for determining a failure or achievement of Article 2 obligations with respect to progressive realization.

Most of the rights under the Covenant that the Committee has recommended with detailed guidelines are the ones that should be implemented for immediate effect. Although these rights are distinguished from the ones under obligation of progressive realization, they are important steps for "progressive implementation of each of the rights recognized in the Covenant".⁵¹ Among the seven General Comments that were adopted by the Committee's periodic sessions from 2002 to 2009, four of them are set out with the condition of immediate effect, which are right to water, to work, to social security, and to take part in cultural life. These rights are considered as the primary requirements for the basis of human life, thus need immediate action.⁵²

Effect of Optional Protocol

One recent addition to the ICESCR that was adopted by the General Assembly and only made available for signature starting September 2009 is the Optional Protocol. This resolution allows for State parties as well as *individuals and groups* to bring complaints to the Committee regarding treaty violations perpetrated by States that have ratified the Covenant, giving the

⁵⁰ Committee on Economic, Social and Cultural Rights, "Concluding observations of the Committee on Economic, Social and Cultural Rights: Bolivia," Committee on Economic, Social and Cultural Rights, revised August 8, 2008.

⁵¹ Economic and Social Council, "Report of the United Nations High Commissioner for Human Rights," Economic and Social Council, revised June 25, 2007.

⁵² Committee on Economic, Social and Cultural Rights, "Report on the forty-second and forty-third sessions."

Committee the authority to receive, investigate, and suggest recommendations in response to these allegations.⁵³ It seems as though the possible interpretation and implementation of this protocol could have significant budget implications for countries' efforts towards progressive realization. This may be one new opportunity to create a framework in which budget allocations based on responses to individual needs, as brought before the Committee under the Protocol, can be systematically and progressively implemented to address economic, social, and cultural rights.

The Optional Protocol also demonstrates the Committee's previously mentioned focus on international assistance in realizing ICESCR. Article 14 of the document's 22 total articles is entitled "International assistance and cooperation." This provision stipulates that the Committee can submit to the state party as well as relevant non-state actors its recommendations and advice on inquiries that "indicate a need for technical advice or assistance," as well as its views on the "advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognized in the Covenant." It also establishes a General Assembly "trust fund" to be administered for the purpose of "providing expert and technical assistance to States Parties . . . for the enhanced implementation of the rights contained in the Covenant, thus contributing to building national capacities in the area of economic, social and cultural rights" in relation to concerns raised under the Protocol.⁵⁴

Recommendations

There are many possible ways that IBP can appeal to the Committee in terms of setting out further guidelines for national legal structures in alignment with the various rights covered by

⁵³ General Assembly, "Optional Protocol to the International Covenant on Economic, Social and Cultural Rights," United Nations, revised March 5, 2009.

⁵⁴ General Assembly, "Optional Protocol."

the Covenant. One possible way is to suggest the Committee work even more closely with the individual State parties and strengthen its monitoring and reviewing function. Although the Committee started to provide more detailed guidelines on some of the rights in its Concluding Observations, they are still more general frameworks than detailed guidelines. The Committee defends itself by stating that it respects the sovereignty of the individual states to choose what they consider as the most appropriate way to facilitate the realization of rights. However, this does not mean that the Committee's role is to suggest the same recommendation on either legislative or budgetary measurements to different countries without considering various political and social capacities. Implications on budget need to be highlighted with the same importance as policy implementation and legislative measures.

The second recommendation is to suggest that the Committee reinforce its reviewing and monitoring mechanism so that progressive realization can be actually achieved. We recommend that the Committee, using the power afforded it in the ICESCR Optional Protocol, issues a General Comment that classifies the failure of a state party to attempt to implement the recommendations issued for specific concerns in the Concluding Observations as negligence in pursuing Progressive Realization and thus a violation of Article 2 obligations.⁵⁵ This would give more authority to Concluding Observations as part of the Committee's decisions on whether individual countries are in violation of ICESCR. In addition, IBP should recommend to the Committee that it set out successive stages for progressive realization and a materialized goal for each stage. During the process, it is important to take into account the willingness and ability of the State to deliver the policies and legal measurements for full and progressive realization.

⁵⁵ Human Rights Milestone: New protocol boosts economic, social, and cultural rights, available at: <http://www.un.org/en/events/tenstories/08/humanrights.shtml>.

Chapter 2:
Right to Education

By Elisa Casey

Chapter 2

Right to Education

Introduction

The right to education is internationally recognized as one of the fundamental social, cultural, and economic rights. Asserted over sixty years ago by the General Assembly of the United Nations in Article 26 of the Universal Declaration of Human Rights, the right to education was determined to include three primary qualities. First, primary education is a right to which everyone is entitled; it “shall be free, at least in the elementary and fundamental stages.”⁵⁶ Second, education will be “directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”. Education is not only a right in unto itself for the individual, but through progressively realizing the right to education states shall promote economic development, reduction of poverty, preservation of peace, and subsequently strengthen and encourage other fundamental human rights.⁵⁷

Given that the right to education is not only an essential aspect of human development and social capital, but also of economic growth and poverty reduction within states, states have a crucial responsibility to achieve the progressive realization of the right to education. Many states have dedicated their governments to realizing education on paper, but have failed to take necessary steps towards progressive realization of this right. States have the responsibility to utilize, prioritize, and allocate budgets and resources in order to wholly realize the right to

⁵⁶ United Nations. 1948. *The Universal Declaration of Human Rights (article 26)*.
<http://www.un.org/en/documents/udhr/index.shtml#a26>. (accessed 27 January 2011)

⁵⁷ *ibid*

education universally. In order to successfully realize the right of education, states must progressively apportion adequate budget resources to eliminate primary school fees, promote accessibility through the maintenance of school structures and development of distance learning programs, establish and improve teacher training programs, increase enrolment of girls in school, and stimulate adult literacy and employability through Technical and Vocational Education.

This chapter will be dedicated to the progressive realization of the right to education, as set forth by the International Covenant on Economic, Social, and Cultural Rights (ICESCR). First, this chapter will investigate the ethical concerns and human rights dimension of education, as well as the current conditions of education around the world. After achieving a necessary understanding of the right of education as set forth by ICESCR, it will examine the four fundamental components guiding the realization of the right to education: availability, accessibility (physical accessibility as well as non-discrimination and economic accessibility), acceptability, and adaptability. These four main components will be applied and demonstrated across various levels of education. In addition to specific levels of education, two other necessary components in progressively realizing the right to education are the establishment of functioning and organized school systems and the proper development and maintenance of teacher training. The ICESCR recognizes that for each level of education (primary, secondary, higher, and fundamental, as well as school systems and teacher training) these four main components vary in terms of necessary protocols for implementation, and will require states to take distinctive measures towards progressive realization.

The following section will be devoted to the assessment of the structures that have already been established by the United Nations, as well as supporting international non-governmental organizations and the progress that has been made in establishing the right of

education. The prioritization that this Task Force urges governments to use to achieve the right to education will draw from international human rights documents such as the Millennium Development Goals (goal 2: Achieve Universal Primary Education and goal 3: Achieve Gender Equality) and the *Education for All* campaign through the United Nations Educational, Scientific, and Cultural Organization. Once the current primary structures have been illuminated, attention will be focused on the critical factors involved in the realization of the right to education, particularly in the challenges states face in the implementation process. Finally, this chapter on the progressive realization of the right to education will conclude with recommendations of the Task Force on this issue.

Background and Current Conditions:

Since its inclusion in the Universal Declaration of Human Rights, the right to education has been a focal priority of the United Nations and many of its specialized branches. The Committee on Economic, Social and Cultural Rights devotes Articles 13 and 14 of the ICESCR to the right to education, making the right to education the longest provision in the covenant. The right to education significantly intersects with many other basic human rights. Through the progressive realization of the right to education, other essential and necessary rights can be supported and strengthened. Education is one of the most essential human rights due to its impacts on empowerment, protection, and development of individuals and communities.

Despite the vast efforts that have been made towards the transformation of education, stark realities persist in many countries around the world. As States continue to endure the aftershocks of the global financial crisis, pressures on budgets and increased poverty due to reduced economic growth threaten to have a devastating impact on the positive developments

that have been made in recent decades towards the progressive realization of the right to education.⁵⁸ As of 2010, 72 million children, with an additional 71 million adolescents, are not attending school.⁵⁹ Trends suggest that by 2015, 56 million primary school age children will still be out of school⁶⁰. In addition to the vast number of children who are not attending school, there exist additional challenges of education. Gender inequality remains a considerable problem in many countries, with “28 countries across the developing world having nine or fewer girls in school for every ten boys.”⁶¹ Women also remain marginalized in terms of adult-literacy; of the 759 million adults worldwide who are illiterate, two-thirds are women.⁶² The absence of education in the lives of children, and particularly young girls, has a devastating affect on the rest of their lives.

The Committee recognizes the right to education as the “primary vehicle” by which marginalized and impoverished adults and children can escape from poverty. Through education people are empowered. Through such empowerment both children and adults are able to fully participate as active members in their communities. Education is a particularly empowering tool for women, giving them social capital and skills with which to navigate the social and economic networks of their communities. By becoming students, children are protected from sexual exploitation and hazardous labor conditions. Education is not only tremendously beneficial for

⁵⁸ Williams, Susan. United Nations Educational, Scientific, and Cultural Organization. *EFA Global Monitoring Report: Financial crisis threatens to set back education worldwide, UNESCO report warns*.

http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/efareport/single-view/news/financial_crisis_threatens_to_set_back_education_worldwide_unesco_report_warns-2/.

(Accessed 1 February 2011).

⁵⁹ Williams. UNESCO

⁶⁰ *ibid*

⁶¹ Right to Education Project. *Reaching the marginalized – 2010 GMR Report (UNESCO press release)*.

<http://www.right-to-education.org/es/node/743>. (Accessed 27 January 2011).

⁶² *ibid*

the realization of individual rights and development, but is also a key component in strengthening the structure of the state. As stated in the Covenant, education encourages the promotion of democracy, the protection of the environment, the promotion of understanding among ethnic groups, and the slowing of population growth.⁶³ In sum, the right to education is recognized as “one of the best financial investments States can make.”⁶⁴ Above all, the most fundamental aspect as identified in the International Convention on Economic, Social and Cultural Rights remains that “education shall be directed to the full development of the human personality and the ‘sense of its dignity’ ... [and] it shall ‘enable all persons to participate effectively in a free society’.”⁶⁵ Through education and increased social capital, individuals will become active members of the economy, political process, and development of society.

The right to education is a focal priority of the United Nations and many of its specialized agencies. Efforts by The United Nations Children’s Fund (UNICEF), the International Labor Organization (ILO), and The United Nations Educational, Scientific, and Cultural Organization (UNESCO) have recognized the right to education, as defined in the Universal Declaration of Human Rights and ICESCR, as the solution to many social injustices and inequalities. Though these efforts are essential and crucial, the progressive realization towards the right to education, as set forth in ICESCR, will only fully thrive when States take active measures to effectively and efficiently allocate funds and secure budgets towards to construction of adequate systems of education and the progressive introduction of free public education. State responsibilities include the assurance of: availability, accessibility, acceptability, and adaptability. These four

⁶³ Committee on Economic, Social and Cultural Rights. 1999. *GENERAL COMMENT NO. 13 the right to education (art. 13)*. United Nations Economic and Social Council, E/C.12/1999/10 (accessed 16 January 2011).

⁶⁴ Committee on Economic, Social and Cultural Rights

⁶⁵ Committee on Economic, Social and Cultural Rights

essential requirements should be applied at all levels of education, for the education of both children and adults. Education must be promoted as a life-long process in an effort to reduce school withdrawal and to encourage adult learning through technical and vocational training. It also must be available to all people in all locations, rural or urban, transgressing socioeconomic boundaries. Progressive realization of the right to education includes promotion of non-discrimination within education and the strengthening of human rights education.⁶⁶

The General Comments by the CESCR specify the goals and responsibility of States in regards to the right to primary, secondary, technical and vocational, fundamental and higher education.⁶⁷ In addition, the formation of a school system, “adequate” fellowship system, assurance of quality material conditions for teaching staff, and the right to educational freedom are also expanded upon.⁶⁸ In terms of broad application of the right to education special topics include: non-discrimination and equal treatment, academic freedom and institutional autonomy, and discipline in schools. Though “the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect.”⁶⁹ The next section in this report on the right to education will include a brief explanation on the General Comments by the CESCR, as well as States obligations in the progressive realization of the right to education at all levels.

General Comments by CESCR for Implementation:

The Right to Primary and Secondary Education:

⁶⁶ Committee on Economic, Social and Cultural Rights

⁶⁷ Committee on Economic, Social and Cultural Rights

⁶⁸ Committee on Economic, Social and Cultural Rights

⁶⁹ Committee on Economic, Social and Cultural Rights

The right to primary education is unmistakably the most crucial and immediate need in realizing the right to education. Lack of basic education in childhood establishes a pattern of a lifelong absence and neglect of learning. Access to primary education protects children from the threat of forced or dangerous labor, sexual exploitation, and possible conscription in armed conflict. In addition to protection from such forms of abuse, children will also be better equipped to become positive participants in the State economy. The World Declaration on Education For All interprets the term primary education as “the main delivery system for the basic education of children outside the family. Primary education must be universal, ensure that the basic learning needs for all children are satisfied, and take into account the culture, needs and opportunities of the community.”⁷⁰ The term is further clarified by the position taken by the United Nations Children’s Fund: “primary education is the most important component of basic education.”⁷¹

Through the General Comments for implementation as outlined by CESCR, it is evident that primary education must be the utmost priority for State budgets. Distinct from the succeeding levels of education, primary education is the only stage at which participation is compulsory, and availability must be free for all.⁷² Article 14 of the ICESCR, *Plans of action for primary education*, is specifically dedicated to outlining the components necessary to achieve universal education at the primary level, and demonstrates its critical importance to the overall right to education.

The Right to Technical and Vocational Education (TVE) and Higher Education:

⁷⁰ Committee on Economic, Social and Cultural Rights

⁷¹ Committee on Economic, Social and Cultural Rights

⁷² Committee on Economic, Social and Cultural Rights

Technical and Vocational Education joins together both the right to education as well as the right to work (article 6 (2)).⁷³ TVE can be understood as a fundamental aspect of secondary education, or through a more comprehensive understanding, TVE can have a wider role in “helping ‘to achieve steady economic, social and cultural development and full and productive employment’.”⁷⁴ According to the CESCR, TVE forms an integral element of all levels of education; similarly, the Universal Declaration of Human Rights acknowledges that TVE should be made available to all.

TVE largely contributes to individual “personal development, self-reliance, and employability and enhances the productivity of ...families and communities.”⁷⁵ By extension, TVE also largely contributes to the states economic and social development. The CESCR also stipulates that TVE should take into account the educational, cultural, and social background of the population involved, gearing skills knowledge and training towards specific localities and sectors of the economy while considering necessary qualifications, occupational health and safety, and welfare.⁷⁶ TVE programs will provide “retraining” for adults whose current knowledge and understanding has become obsolete due to applicable changes. Finally, the CESCR’s General Comments on this particular aspect of the Right to Education highlights the value of TVE in decreasing gender disparity in education and the economy, as well as including other marginalized groups such as: “unemployed youth, the children of migrant workers,

⁷³ Committee on Economic, Social and Cultural Rights

⁷⁴ Committee on Economic, Social and Cultural Rights

⁷⁵ Committee on Economic, Social and Cultural Rights

⁷⁶ Committee on Economic, Social and Cultural Rights

refugees, and persons with disabilities.”⁷⁷ TVE programs provide tangible stepping-stones for economic development.

The Right to Fundamental Education:

As is common to education at all levels, fundamental education includes aspects of availability, accessibility, acceptability, and adaptability. The CESCR determines that “individuals ‘who have not received or completed the whole period of their primary education’ have a right to fundamental... education”, however considering that everyone has the right to “the satisfaction of their ‘basic learning needs’, fundamental education extends to all those who have not satisfied that need.”⁷⁸ The CESCRs General Comments on the right to fundamental education emphasize the non-discriminatory nature of fundamental education, stipulating that it must include gender and marginalized groups and extend to all ages. Therefore, fundamental education is a crucial part of the development of “life-long learning.”⁷⁹

Millennium Development Goals:

In 2000, 189 member states of the United Nations embraced the Millennium Declaration, which includes eight distinct and interconnected goals. Drawing on the conclusions of numerous international conferences and world summits that took place during the 1990’s, the Millennium Development Goals (MDGs) were consolidated into eight succinct goals that would act as “benchmarks” by which to measure progress.

Universal Education:

⁷⁷ Committee on Economic, Social and Cultural Rights

⁷⁸ Committee on Economic, Social and Cultural Rights

⁷⁹ Committee on Economic, Social and Cultural Rights

The goal of Universal Education as expressed at the United Nations Summit in 2010 is to “ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.”⁸⁰ The current rate of progress for primary school enrolment is “insufficient” to reach the objective by 2015.⁸¹ Although as of 2008 enrolment in primary education was up 7% from 2000, reaching 89% in 2008,⁸² this is still an insufficient rate at which to achieve universal education in the coming years. The goal of Universal Education, however, is more than just enrolment statistics, but strives to guide children through to full completion of primary education. A significant challenge remains to ensure not only the enrolment of children in school, but also the completion of their education. Many children drop out of school without becoming “literate, numerate, or possessing basic life skills.”⁸³ In sub-Saharan Africa, the dropout rate is as high as 30% of enrolled students.⁸⁴ One key component of increasing the completion of primary education is through the number and quality of teachers. In some regions, such as sub-Saharan Africa, the number of teachers needed in order to achieve MDG goal 2 by 2015 is twice the current amount present in the classroom.⁸⁵ In addition, even if the need for teachers is met, the level of training and quality of hired teachers remain significant concerns.

States must also identify the socially and economically marginalized populations that are more likely to either enroll or complete primary education. In the 2010 report on the Millennium Development Goals, a household data survey from 42 countries showed that rural children are

⁸⁰ United Nations. “Goal 2: Achieve Universal Primary Education”. *We Can End Poverty: 2015 Millennium Development Goals*, September 20-22, 2010. http://www.un.org/millenniumgoals/pdf/MDG_FS_2_EN.pdf

⁸¹ *ibid*

⁸² *ibid*

⁸³ United Nations. Millennium Development Goals

⁸⁴ United Nations. Millennium Development Goals

⁸⁵ United Nations. Millennium Development Goals

twice as likely to not attend school as children living in urban areas.⁸⁶ More than the disparities of urban and rural settings, the primary obstacle to the completion of primary education is poverty. Among marginalized and impoverished groups, children who are disabled are severely limited in educational opportunities. In Malawi and Tanzania for instance, disabled children are twice as likely to never attend school.⁸⁷ Through greater access, improving the learning environment, providing better trained educators, reducing the cost of education for households, and continually increasing and assessing the quality of education, states will be more successful in achieving the Millennium Development Goal of universal primary education.

Gender Equality:

The third Millennium Development Goal defined by the United Nations General Assembly is Gender Equality. The target of this goal is specifically devoted to the promotion of education as a means of empowering women. The objective is two fold: first, to “eliminate gender disparity in primary and secondary education, preferably by 2005”, and second, to “eliminate gender disparity... in all levels of education no later than 2015.”⁸⁸ Though the majority of the Millennium Development Goals aim to be accomplished by 2015, the ambition of achieving gender equality in education aimed to be realized ten years earlier, revealing the foundational significance of education in the progressive realization of “all other development goals.”⁸⁹ Failure to ensure the inclusion of girls and women in education could mean the failure to realize other pivotal and critical development goals.

⁸⁶ United Nations. Millennium Development Goals

⁸⁷ United Nations. Millennium Development Goals

⁸⁸ United Nations Girls' Education Initiative. *Goal 3: Promote Gender Equality and Empower Women*. http://www.ungei.org/whatisungei/index_2589.html. (Accessed 7 February 2011).

⁸⁹ UNICEF. *Millennium Development Goals. Goal: Promote gender quality and empower women*. http://www.unicef.org/mdg/index_genderequality.htm. (accessed 7 February 2011)

Two-thirds of the world's illiterate adults are women, and two-thirds of the children not attending school are girls. Due to legal discrimination and lack of access to land and credit, uneducated girls are more at risk to face marginalization within their countries as adults. Girls are particularly vulnerable when not attending school. Domestic violence, forced early marriage, and other mandated societal practices such as such as genital mutilation can contribute to poor health and increased gender inequality. In addition, diseases such as HIV/AIDS are twice as likely to be contracted by girls who have not attended school.⁹⁰ Equal access to education is a necessary element that must be firmly established in order to begin “to eradicate poverty and hunger [and] combat disease.”⁹¹

In 2000, Secretary-General Kofi Annan began the United Nations Girls' Education Initiative (UNGEI) “as the principal mechanism and platform for addressing gender and girls' education.”⁹² Operating at a global level, UNGEI has successfully promoted broader elimination of gender inequality, the fight against HIV and AIDS, and “childhood disability and child labor issues in the appraisal process for the Education for All Fast Track Initiative (EFA-FTI) funding.”⁹³ In developing regions the gap in education is narrowing: 96 females for every 100 males in school.⁹⁴ And worldwide, there are now more women than men enrolled in higher education. The four factors that have made the biggest contribution to gender parity in schools are: elimination of user fees, demand-side financing mechanisms, community and NGO managed schools, and increased employment of female teachers.⁹⁵

⁹⁰ *ibid*

⁹¹ *ibid*

⁹² United Nations. *Thematic paper on MDG 3; Promote Gender Equality and Empower Women*.
http://www.undg.org/docs/11421/MDG3_1954-UNDG-MDG3-LR.pdf. (Accessed 8 February 2011)

⁹³ *ibid*

⁹⁴ *ibid*

⁹⁵ *ibid*

Notably, the elimination of school fees has greatly increased female school enrolment in many countries, including some of the least developed countries around the world. User fees act as a particular barrier in impoverished or rural communities, where any money put towards user fees are usually allocated to the boys of the family.⁹⁶ Though eliminating school fees does not reduce the cost of schooling entirely, it is still a particularly pivotal step in encouraging school enrolment. The School Fee Abolition Initiative (SFAI), led by UNICEF with support from the World Bank, works to encourage state governments and help them to develop policies and strategies integrated into national planning to reduce cost barriers to education. A policy of free primary education was promoted in Malawi on the basis of equity. Between the years of 1991 and 1999, girls' enrolment in school rose from 47% to 97%.⁹⁷ Clearly, the elimination of user fees plays a significant role in school enrolment growth.

The MDGs identify poverty as the main contributing factor to gender disparity in primary and secondary education. Girls not attending school are often involved in work within the household or involvement in outside employment. In order to continue improving equality within education, this MDG recommends two important strategies to be implemented by states that must be included in national budgetary planning. The first is to develop a monitoring system for tracking female attendance in school: "girls often drop out or fail to attend for reasons such as distance from home, lack of or poor sanitary facilities, class size, or poor school security. Older girls may be needed for household or farm labour, or may drop out due to early marriage or high poverty levels."⁹⁸ The second recommendation is to improve the quality of education.

⁹⁶ *ibid*

⁹⁷ United Nations. *Thematic paper on MDG 2*

⁹⁸ United Nations. *Thematic paper on MDG 2*

This may be done through an increase in female teachers, improvement of security, monitoring of curriculum and teachers, and improved accessibility to schools.

Education for All:

In addition to the Millennium Development Goals, the Education for All campaign has set forth six key goals towards the progressive realization of education. In 2000, over 160 countries committed themselves to seeing these goals accomplished. These six goals include the expansion of early childhood care and education, the promotion of learning and life skills for young people and adults, an increase in adult literacy by fifty percent, the achievement of gender parity by 2005 and gender equality by 2015, and the improvement in the quality of education. According to the 2010 *Education for All Global Monitoring Report: Reaching the Marginalized*, independently developed then published by UNESCO, the “annual financing gap” for the six key education goals is (US)\$16 billion.⁹⁹ However, the report also estimated that “low-income countries could raise an additional \$US 7 billion per year, or 0.7% of GDP, by increasing domestic resources and allocating more to education.”¹⁰⁰ In the wake of the financial crisis, aid commitments have significantly decreased, and even if governments prioritize efforts towards domestic spending on education, reaching the estimated gap of US \$16 billion is still a distant goal. Currently, the foreign aid that the 46 lowest in-come countries receive for basic education is just US \$2.7 billion.¹⁰¹ The discrepancy in these numbers is largely due to an underestimation

⁹⁹ Williams. UNESCO

¹⁰⁰ Right to Education Project

in previous reports of the finances necessary to achieve the core educational goals, and neglect to account for the additional costs in reaching particularly marginalized groups.¹⁰²

The 2010 Global Monitoring Report for *Education for All* introduces a new measurement tool, the “Deprivation and Marginalization in Education data set”, to explore magnitude of “education poverty.”¹⁰³ Education poverty is identified in populations where young adults (ages 17-22) have not completed the four years minimum requirement to develop basic literacy.¹⁰⁴ Eleven countries in sub-Saharan Africa were recognized as having 50% or more of their young adults falling below this threshold, identifying them as plagued by “education poverty”. “Extreme and persistent inequalities linked to poverty, gender, ethnicity and language are holding back progress in education, wasting human potential and undermining prosperity. Lost opportunities for education hinder economic growth, and efforts to reduce poverty and improve health.”¹⁰⁵ These stark realities of marginalization are fueled by structural weaknesses, poor policies, and the negligence of political leaders to the severity of education inequality.

There are great needs to improve accessibility and incentives for attending and completing school. In Cambodia, families were awarded grants when girls reached the final grade of primary school. The condition of the grant stipulated that girls would go on to secondary school, the report estimated that enrolment increased “among participants by 30%.”¹⁰⁶ Additional efforts must be made to strengthen the learning environment. A case study in Bolivia revealed “inter-cultural bilingual” teachers, considered highly skilled, where offered incentives for “deployment” to remote and needy areas. This program sought to overcome linguistic

¹⁰¹ Williams. UNESCO

¹⁰² Williams. UNESCO

¹⁰³ Williams. UNESCO

¹⁰⁴ Williams. UNESCO

¹⁰⁵ Williams. UNESCO

¹⁰⁶ Williams. UNESCO

disadvantages, while challenging societal discrimination.¹⁰⁷ Broader policy tactics include integrating strategies to improve education into broader “anti-marginalization policies”. Such incentives and entitlements have played a significant role in removing educational inequalities.

Recommendations:

As acknowledged by the committee, it is recognized that progressive realization accounts for a process of change and the planning, organizing, and implementation of new programs. However, there are immediate steps that must be taken, particularly in the allocation of budgets and finances. Movement towards realizing the universal right to education cannot begin to take place until States assume responsibility in actively funding the programs that make education possible. Funding may come through avenues of foreign aid, increased production and GDP, or through the redirecting of current resources. Financial attention to the right to education will be most affective if pursued at both the national and local levels.

First and foremost, this Task Force recommends that primary education be made universal and that states abolish school fees in order to make school available to all. In order to achieve this, states must allocate sufficient funds to cover the costs otherwise paid by students. In Kenya, while seeking to abolish primary school fees, the national government transferred responsibility of funds to local communities. This not only ensured that communities received funds promptly, but also gave communities the opportunity to actively participate in the budget process. By monitoring budget at the school level, there was increased accountability, and more effective use of funds due to a greater understanding of local needs. “The introduction of the Free Primary Education (FPE) programme in 2003 led to increased enrolment, but the financial

¹⁰⁷ Williams. UNESCO

and human resources have not kept up with demand, which has led to difficulties in children accessing quality education. The focus of CSOs and the Kenya National Association of Parents has been on ensuring that the FPE programme provides adequate financial and human resources to facilitate children's access to free quality primary education. As discussed earlier in this chapter, a principal challenge in realizing universal primary education is the strain that increased enrollment has put on local schools, communities, and national budgets to adequately deal content with the increased demands. By including local schools and communities in the budget allocation process, states will experience a more efficient use of funds.

To manage increased enrollment in schools, states must prioritize funding towards the building and maintenance of school facilities. This Task Force recommends that states appropriate funds in the national budget to necessary construction of new or renovation of dilapidated and unsafe school structures. In order to ensure full accessibility to education, in addition to physical school sites, funding must be assigned to the development and implementation of distance learning programs. This may include making technology, such as cell phone and computers, more available in remote communities. The use of distance learning will be more affective in regards to higher education or technical and vocational training, rather than at the primary level. In both cases, such distance learning programs will be more effective with the accessibility of a centralized resource center, such as a technical and vocational training center, where adults, particularly women, can come and learn job skills. This Task Force also recommends that states evaluate the location of public spending to ensure that marginalized populations, as well as rural poor, are receiving necessary funding for education.

A fundamental piece in the progressive realization of the right to education is the assurance of quality educators in the classroom. This Task Force recommends that states

prioritize funds towards an adequate and thorough teacher certification and training program. Skilled and motivated educators will be a vital support in realizing not only the enrolment of children in primary education, but the completion of primary education in its entirety. States must also distribute funds to adequately supply classrooms with basic materials and updated curriculum. Both teachers and classroom resources are a vital component of realizing the right of education.

In addition to funding towards primary education, this Task Force recommends that states reappropriate funds to improve access, availability, and affordability of technical and vocational education programs. Through implementation of adult literacy programs, and jobs skills training, adults who may not have completed primary education will be more employable and able to provide economically for their families.

In terms of long-term recommendations in the progressive realization of the right to education, this Task Force recommends that States include in their budget a method for monitoring and assessing improvement, challenges, and needs with the implementation of new budgetary provisions. Such monitoring will include evaluating and updating curriculum, evaluating the quality of teacher education, seeking to increasingly include marginalized groups, and progressively reducing the costs of secondary, higher, and TVE education.

Critical Factors and Challenges:

Often, the challenge may not be in collecting numbers from sheer enrolment, but determining a way to reduce and eliminate drop out from schools. Withdrawal from the classroom could be the result of any number of factors, but the greatest contributing factors have the potential for reversal with proper identification and commitment by the State. Obstacles to

the completion of primary education are often the result of deficiency or failure in realizing one or more of the four guiding principles identified of Article 13 of ICESCR (availability, accessibility, acceptability, and adaptability).

It is estimated that in order to achieve the goal of universal primary education by 2015, 10.3 million new teachers must be hired.¹⁰⁸ This figure is daunting, but poses an even greater challenge when one considers the proper preparation and training required to be a quality educator. Though much of the world has been successful in increasing the number of children enrolled in primary education programs, growing attendance puts a significant strain on both staffing of schools and the construction and maintenance of facilities. Marginalization and ethnic and lingual oppression are also key factors in the lack of funding towards education; national and local redistributing of public funds is necessary to ensure that discrimination is not taking place. Disparities in education are directly linked to issues of poverty and societal discrimination, and the cost of attending school remains the significant barrier to many people.

¹⁰⁸ Right to Education Project.

Chapter 3:
Right to Health

By Emilia Sternberg

Chapter 3

Right to Health

Introduction

In 1978, the Declaration of Alma-Ata, adopted by the International Conference on Primary Health Care, announced that health is a fundamental human right, and that the achievement of health for all needs to be a world-wide social goal. The declaration went on to state that the current inequality in health is politically, economically, and socially unacceptable and that “the promotion and protection of the health of the people is essential to sustained economic and social development, and contributes to a better quality of life and to world peace.”¹⁰⁹ These bold statements were backed up by an even bolder goal: primary health care for all people of the world by the year 2000. Now, eleven years past that goal and thirty-three years after the Declaration, we have made substantial progress, but much of the world still lives without access to affordable, quality health care, if any at all. 1.3 billion people lack access to food, water, sanitation, other essential health care services and primary education - 70% of those people are women.¹¹⁰ While the richest fifth of the world sits on 85% of the world’s wealth, the poorest fifth, holding 1.4%, are told that this is an “unavoidable side-effect of the global market,” and that their social, economic, and cultural rights – such as the right to health, food, and a basic education – are optional policy objectives, rather than fundamental human rights.¹¹¹ The Alma-

¹⁰⁹ DECLARATION OF ALMA-ATA. International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978.

¹¹⁰ Hofbauer, Helena, and Gabriel Lara. "Health Care: a Question of Human Rights, Not Charity." FUNDAR. www.fundar.org.mx/index.html/.../doc-healthcarequestionofhumanrights.pdf (accessed January 20, 2011). pg 3.

¹¹¹ Hofbauer, Helena, and Gabriel Lara. pg3.

Ata Declaration is spot on – the current state of global health is unacceptable, and state governments need to make it a social, political, and economic priority to ensure access to health for all. In order to do so, governments need to restructure their public health policies and enforce them through a reprioritization of national budgets to refocus resources on specific contours of the right to health.

The Right to Health

Social, economic, and cultural rights are by their very nature hard to define and enforce, few more so than the right to health. The right to health is more than simply having access to a fully functioning and affordable healthcare system; it is a combination of access to physical, mental, and social resources affecting all individuals. Article 12 of the International Covenant on Economic, Social, and Cultural Rights asserts that everyone retains the right to "the enjoyment of the highest attainable standard of physical and mental health."¹¹² This seemingly simplistic statement is full of issues and concerns for member countries to address when seeking to uphold the covenant. The World Health Organization provides the definition of health as it is used in the covenant as "a state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity."¹¹³ Health as a right rests on a foundation of many interlocking rights that together help achieve the "highest attainable standard" of health. Along with the right to healthcare, some of these related rights include the right to nutritional food, potable water, sanitation, housing and shelter, safe working conditions, and primary education.

¹¹² United Nations. "International Covenant on Economic, Social and Cultural Rights." OHCHR . <http://www2.ohchr.org/english/law/cescr.htm> (accessed January 16, 2011).

¹¹³ United Nations Economic and Social Council. "The Right to the Highest Attainable Standard of Health." CESCR General Comment 14. www.unhcr.ch/tbs/doc.nsf/%28symbol%29/E.C.12.2000.4.En (accessed January 16, 2011).

Ensuring an entire country's health is clearly a formidable and daunting task, but it can and needs to be done. Health is a fundamental and indispensable human right, the adherence to which is essential to the survival of millions. In order to do so, the governments of the world need to assess their resources and reprioritize them towards health care systems, which are currently in crisis. According to the World Health Organization, in 2008 8.8 million children under the age of five died, 2 million people died of HIV/AIDS related causes and 2.7 million more were newly infected.¹¹⁴ The same year, approximately half a million women died of complications during childbirth,¹¹⁵ largely due to the fact that less than half of pregnant women are attended by a skilled caretaker during labor. Currently, 57 countries face a health worker crisis.¹¹⁶ While this is a global issue, action must begin on a nation-by-nation basis. By signing the ICESCR, a nation is taking an important step towards protecting its population's right to health, and the legislative and budgetary commitment that that entails.

The key provision in ICESCR to ensure these rights is the Progressive Realization clause in Article 2. Through this clause State parties guarantee that they will achieve the rights of the covenant using the maximum available resources at their disposal. While the covenant recognizes that this is a gradual process, there are certain core obligations that a country agrees to by ratifying the covenant according to the CESCR's General Comment 14. These obligations - including access to potable water, adequate food, and basic shelter - must be ensured to the entire population, regardless of what resources the country may claim are or are not available to

¹¹⁴ Department of Social and Economic Affairs of the United Nations Secretariat. The Millennium Development Goals Report 2010. <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf> (accessed January 15, 2011).

¹¹⁵ World Health Organization. 2010. *World health statistics 2010*. Geneva, Switzerland: World Health Organization.

¹¹⁶ United Nations. "Data and Statistics." World Health Organization. <http://www.who.int/research/en/> (accessed January 20, 2011).

them.¹¹⁷ The regression or removal of these is non-negotiable, as they are non-derogable rights according to the CESCR.¹¹⁸ If a country is not meeting these standards, it must prove the State's inability to do so is due to a "lack of available resources" and that it has made every effort to use the maximum of its available resources to meet the minimum obligations, including making sure its expenditures and use of resources are as efficient as possible¹¹⁹. Often, a state will need to reorganize its internal structure to focus more on the rights in question in order to achieve them. To effectively, progressively, and expeditiously realize the right to health, States party to the covenant should utilize their national budget. Restructuring and reanalyzing budgets can be the fulcrum upon which this right rests. Prioritization and efficiency is key. State parties need to achieve these goals through the careful formulation of health policies and national budgets.

International Support for Right to Health

The right to health is not only a fundamental human right that should be respected and protected by states, but is also concretely written into several international treaties and documents; thus the right to health is legally, not just morally, mandated.¹²⁰ As noted previously, Article 12.1 of the ICESCR defines and describes the right to health. Article 12.2 further flushes out this right as: a) the right to maternal, child, and reproductive health, b) the right to healthy natural and workplace environments, c) the right to prevention, treatment, and control of diseases, and d) the right to equal and timely access to health facilities and goods and services

¹¹⁷ CESCR General Comment 14.

¹¹⁸ CESCR General Comment 14.

¹¹⁹ CESCR General Comment 14.

¹²⁰ Ooms, Gorik. "Towards a Global Health Fund: Extending the Health Finance Revolution of the Fight Against AIDS to General Health Services." *Budget Brief* 4 (2008): 1.

related to health. The Universal Declaration of Human Rights, though not legally binding, is nonetheless a fundamental and widely recognized human rights document that directly supports the right to health. Article 25 proclaims that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family,” and that this includes the right to food, housing, and medical care and necessary social services, as well as protection in the case of sickness or disability.¹²¹ Other documents that uphold and support this right include: the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (e)(iv)), the International Convention on the Elimination of All Forms of Discrimination Against Women (Article 11.1(f), Article 12), as well as the Convention on the Rights of the Child (Article 24). Several other regional treaties and documents have also chosen to include this right as a part of their frameworks, showing that it is integral to the domain of human rights.

The State of World Health

In 2000, the countries of the UN signed a vital document called the Millennium Declaration. By signing this declaration, they agreed to meet eight goals and standards focused around combating hunger, poverty, environmental degradation, and illiteracy, all to be achieved by 2015.¹²² These goals also function as useful tools for monitoring the state of the world’s health, as they all have specific guidelines and standards that are frequently assessed. While all of the goals are interconnected and relate to improving global health and well being, some are more targeted than others. The three that specifically relate to improving the global health are the reduction of child mortality, the improvement of maternal health, and combating HIV/AIDS,

¹²¹ "The Universal Declaration of Human Rights." United Nations.
<http://www.un.org/en/documents/udhr/index.shtml> (accessed January 16, 2011).

¹²² "Data and Statistics." World Health Organization.

Malaria, and other infectious diseases. These goals have become important benchmarks for the world to gauge progress and shortcomings and to assess what still needs to be done to create an equitable world. The need to meet these goals is ever more pressing and vital; not doing so means the loss of millions of people's lives due to inequality and resource disparities.

Today, the state of world health care is such that millions of children under the age of five die ever year. This is the result of the issues that the MDGs are seeking to remedy: poverty, hunger, disease, a lack of resources, and a combination of many other issues. The goal is to reduce by 2015 the under five mortality rate by two-thirds of the 1990 figure.¹²³ Some progress has been made toward achieving this goal, from 100 out of every 1000 children dying to now 72 out of every 1000.¹²⁴ This is a global drop from 12.5 million children to 8.8 million in 2008¹²⁵. Developing countries have seen the most marked improvement, decreasing the child/infancy mortality rate by 28 percent.¹²⁶

But more must be done. 8.8 children dying annually is an alarming figure, especially when many of the causes have simple remedies. Improving nutrition and ensuring that children have access to nutritionally sound and caloric foodstuffs would save millions¹²⁷. Efforts must be increased against pneumonia and diarrhea, illnesses that in the Western world mean a trip to the drug store or doctor for a mother, rarely a life or death situation. So far, only ten countries in the world are on track to meet the goal of reducing child mortality¹²⁸. Regionally, sub-Saharan Africa is lagging the farthest behind. In this region, one out of every seven children will die

¹²³ The Millennium Development Goals Report 2010. Pg 26.

¹²⁴ The Millennium Development Goals Report 2010. Pg 26.

¹²⁵ The Millennium Development Goals Report 2010. Pg 26.

¹²⁶ The Millennium Development Goals Report 2010. Pg 26.

¹²⁷ The Millennium Development Goals Report 2010. Pg 27.

¹²⁸ The Millennium Development Goals Report 2010. Pg 27.

before reaching the age of five, despite the 22 percent improvement in the mortality rate since 1990¹²⁹, and sub-Saharan Africa accounted for half of the 8.8 million deaths of children globally in 2008.¹³⁰ 43 percent of these deaths were due to pneumonia, diarrhea, malaria, or HIV/AIDS. These illnesses are preventable and some even curable with simple medicines and vaccines.¹³¹

On a similar goal to reducing the child mortality rate is improving maternal health around the globe. The target of this MDG is to reduce by three-fourths the 1990 maternal mortality rate by 2015.¹³² Women need access to quality reproductive health services and timely check-ups throughout pregnancy to ensure the safety and health of both the mother and child. While this is a difficult category to measure and gauge due to underreporting and false reporting, there seems to be progress in improving maternal pre and post-natal health. Unfortunately, this progress falls far short of the 5.5 percent reduction in maternal mortality needed for the world to remain on track to meeting the 2015 goal.¹³³ Most of the deaths that occur during pregnancy – such as those caused by hemorrhage and hypertension - could be avoided if only a skilled attendant were present during labor¹³⁴.

In 2008, about half of all women who gave birth did so without a qualified attendant.¹³⁵ Accordingly, one of the targets of the maternal Millennium Goal is to ensure universal access to reproductive health. Currently, wealthy urban families in developing countries are three times as likely to have access to reproductive care as rural, poor families¹³⁶. This huge disparity is perpetuated by poverty and a lack of information and education on reproductive health and

¹²⁹ The Millennium Development Goals Report 2010. Pg 27.

¹³⁰ The Millennium Development Goals Report 2010. Pg 27.

¹³¹ The Millennium Development Goals Report 2010. page 26-28

¹³² The Millennium Development Goals Report 2010. Pg 30.

¹³³ The Millennium Development Goals Report 2010. Pg 30.

¹³⁴ The Millennium Development Goals Report 2010. Pg 31.

¹³⁵ *World Health Statistics 2010*. Pg 18.

¹³⁶ The Millennium Development Goals Report 2010. Pg 37.

family planning. Meeting the need for family planning and contraceptive use could lead to a 27 percent drop in maternal deaths per year.¹³⁷ Unfortunately, the 2008 MDG report showed no increase in contraceptive use, and in rural, poor areas contraceptive use has even slowed.

More positively, the spread of HIV/AIDS appears to have peaked in 1996 and has now stabilized in most regions. People are living with and surviving the disease more frequently than before. As the goal regarding infectious diseases aims to halt and reverse the spread of HIV/AIDS by 2015, this is extremely good. Unfortunately, while the AIDS related mortality rate peaked in 2004, HIV remains the world's leading infectious killer.¹³⁸ In 2008, 33.4 million people were living with HIV, 22.4 million of which live in sub-Saharan Africa. In 2008, 72 percent of new HIV infections occurred in that region¹³⁹. In other regions of the world the epidemic has been halted and even partially reversed. The world needs to now focus on the goal of providing universal access to treatment and medicine for the disease and providing education on how the disease is spread, especially amongst young people aged 15-24, who accounted for 40 percent of new infections.¹⁴⁰

The second part of this goal is to halt and reverse incidences of malaria by the year 2015. About half of the world's population is at risk – leading to 863,000 deaths in 2008.¹⁴¹ While the production of mosquito nets has increased five-fold, from 30 million to 150 million nets since 2004, this is only enough for half of the at-risk population¹⁴². The poorest households in at risk countries are still the least likely to have the life-saving nets¹⁴³. Similarly, the production and

¹³⁷ The Millennium Development Goals Report 2010. Pg 36.

¹³⁸ The Millennium Development Goals Report 2010. Pg 40.

¹³⁹ The Millennium Development Goals Report 2010. Pg 40.

¹⁴⁰ The Millennium Development Goals Report 2010. Pg 41.

¹⁴¹ The Millennium Development Goals Report 2010. Pg 46.

¹⁴² The Millennium Development Goals Report 2010. Pg 47.

¹⁴³ The Millennium Development Goals Report 2010. Pg 47.

procurement of anti-malarial drugs is on the rise, but the distribution is disparate and uneven. More support is needed, yet funding by national governments remains at 2004 levels.¹⁴⁴

The global state of tuberculosis is in a similar condition. There has been slow progress in reversing the spread of the disease, but it has at least appeared to have peaked in 2004, with 143 out of every 100,000 infected.¹⁴⁵ The current ratio is 139 out of 100,000¹⁴⁶. The incidence of tuberculosis seems to be falling in most regions, but it remains the second leading killer after HIV. In 2008, 1.8 million people died because of tuberculosis – half of these were HIV related and could have been prevented with access to retroviral therapy.¹⁴⁷

While the state of the world's health is precarious and dire, in many cases there continues to be substantial progress. Governments' agreement to the Millennium Goals shows a commitment to improving the state of world health. The conversation now needs to be on how to realize these goals most efficiently, both as a world and as individual countries. To do so, governments must first and foremost look at the needs of its population, and the resources available to meet those needs.

The Realization of Health through Budgets

In order for a nation to expeditiously and effectively realize its population's right to health, the government must develop targeted strategies and a national plan for the achievement of goals. Human rights impose three obligations on states: respect, protect, and fulfill.¹⁴⁸ When signing onto the ICESCR, states make a commitment to respect the right to health, and not to interfere, directly

¹⁴⁴ The Millennium Development Goals Report 2010. Pg 47.

¹⁴⁵ The Millennium Development Goals Report 2010. Pg 50.

¹⁴⁶ The Millennium Development Goals Report 2010. Pg 50.

¹⁴⁷ The Millennium Development Goals Report 2010. Pg 51.

¹⁴⁸ Gostin, Lawrence O. "The Human Right to Health: a Right to the "Highest Attainable Standard of Health"." *The Hastings Center Report* 31, no. 29 (2001): 30.

or indirectly, with the enjoyment of this right. They also promise to take measures to protect this right from private persons and business seeking to jeopardize it. Lastly, states must facilitate the fulfillment of this right through positive measures, such as creating targeted national budgets.

Critical Factors

Several key factors must be taken into account when assessing the current state and needs of a nation's health system: availability, accessibility, acceptability, and quality.¹⁴⁹ States must make available functioning public health services and facilities, and a sufficient quantity thereof. This includes access to potable water, food, sanitation, hospitals, clinics, trained personnel, and essential drugs, as defined by the WHO. These facilities and services must also be accessible without discrimination; including physical, economic, and information accessibility. The health system must be respectful and considerate of medical ethics, taking into account varying cultures and beliefs; while simultaneously maintaining a quality that is both medically and scientifically appropriate. For example, not using expired or unapproved drugs, utilizing trained and skilled personnel, and meeting proper sanitation standards.¹⁵⁰

While the wording in Article 2 of the ICESCR for a country to "take steps" is slightly vague and varies from language to language ("to act" in French - *s'engage a' agir*, and "to adopt measures" in Spanish - *adoptar medidas*), the general idea is the same.¹⁵¹ States agree to work towards the achievement of the rights laid out in the covenant, and to do so in a relatively short period of time. Deliberate, concrete, and targeted steps need to be taken in a non-discriminatory manner. These steps should be effective and never regressive, keeping in mind the states obligation to respect, protect, and fulfill the right to health. This entails creating a national strategy to meet the health

¹⁴⁹ CESCR General Comment 14.

¹⁵⁰ CESCR General Comment 14.

¹⁵¹ The Office of the High Commissioner for Human Rights. "The Nature of States Parties Obligations (Art. 2, par.1)." CESCR General Comment 3.
<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/94bdbaf59b43a424c12563ed0052b664?Opendocument#%20Contained%20i> (accessed January 16, 2011).

needs of the nation and to adjust legislation and budgets as necessary to use the maximum available resources.

The Alma Ata Declaration, from the 1978 International Conference on Primary Health Care, expressed “the need for urgent action by all governments, all health and development workers, and the world community to protect and promote the health of all the people of the world,” and to get primary health care to all people by the year 2000.¹⁵² Now, some thirty-three years later, we are still far from meeting that goal. While many great advancements have come about as a result of the Millennium Development Goals and the pressure that has placed on governments to meet international standards and goals, much more needs to be done to do justice to the lofty, but realistic goals of the Alma Ata Declaration. The key to making sure that every person in the world has access to primary health care and has the tools they need to achieve the highest attainable standard of health are resources. All programs, people, governments, and other structures need resources to function, and so do healthcare systems. Currently, most countries in the world seem to be putting forth a front that they lack the resources to be able to create functioning, well-equipped, and efficient health systems that can also offer affordable care. In some countries of the world, up to five percent of the population has been forced into poverty because of medical care costs, a total of 100 million people annually across the globe.¹⁵³ But there are also countries that have an abundance of resources, which are not always distributed or allocated effectively. In 2006, the World Bank estimated the sum of the combined GDPs of all high-income countries in the Organization for Economic Co-operation and Development to be US \$35,000 billion. Only about .1% of this sum would be needed in order to completely finance the health related MDGs.¹⁵⁴ Even given that states did donate and cooperate internationally, this does not ensure that the money would go

¹⁵² DECLARATION OF ALMA-ATA.

¹⁵³ *The World Health Report 2010*. Pg 8.

¹⁵⁴ Ooms, Gorik. pg 3.

where it is most needed and useful. It is up to each individual state to create a budget that will allow health to be realized as a national goal and priority.

Very few countries meet the 2001 Abuja Declaration pledge to spend at least 15% of the government budget on health. In fact, nineteen of the signatories now spend less on health than they did at the time of the declaration. Increasing revenue collection efficiency is one solution to put more money into the system to work with. Inefficiency and inequitable distribution is currently leading to about 20-40 percent of health resources being wasted.¹⁵⁵ To achieve efficiency and an equitable distribution of resources within the health sector, countries need to reprioritize their budgets.

Revamping the System

Increased efficiency within the health care system itself is an obvious way to improve the system. Increasing hospital efficiency by utilizing technology and health services to the fullest and eliminating wasteful spending can save countries up to five percent on health expenditures.¹⁵⁶ Countries should critically assess what services are needed and most important to promote the right to health.

Along with revamping the national budget in order to prioritize health spending using the maximum available resources, countries will want to create a strategy of implementation for the healthcare system to ensure that it is progressively and non-discriminatorily realized. While countries respect, protect, and fulfill their population's right to health by maximizing their resources by the means of the budget, they need a plan for where the money is going to go. The national health policy needs to provide a detailed plan for implementing immunizations programs, funding reproductive and maternal health care, hiring trained and capable staff at clinics that are

¹⁵⁵ *The World Health Report 2010*. Pg 8.

¹⁵⁶ *The World Health Report 2010*. Pg xvii.

accessible to all, and ensuring the provision of medicine, food, potable water, sanitation, and housing.¹⁵⁷ Governments are responsible for making sure that all providers of health care, public and private, are operating appropriately and efficiently and that equal coverage is being given to all members of the population, with special attention being paid to the most vulnerable and at risk groups – such as women and minority populations.¹⁵⁸ Furthermore, national programs educating the populace on health risks and prevention need to be devised and implemented. Prevention and education will not only save millions of lives, but also millions of dollars in lowered health care needs.

Core Obligations

At the heart of states' obligation to progressively realize the rights set out in the ICESCR lie the core obligations. These are the fundamental obligations that states must realize as a matter of first priority upon signing the covenant. Failure to meet these would constitute a violation of the covenant, as they are of a non-derogable nature. The core obligations include access for all people to health facilities, goods and services, essential food, potable water, sanitation, basic shelter and housing, as well as essential drugs. These must all be available on a non-discriminatory basis, with equitable distribution throughout the country, especially to poor, rural areas and at-risk populations. To do this countries must adopt and implement a national public health strategy and plan of action regarding the health needs of the population to be measured and assessed by indicators and benchmarks on an on-going basis.

ICESCR has also compiled a list of rights of comparable priority to the Core Obligations. These urge countries to ensure reproductive, maternal, and child healthcare, as well as the provision of minimum immunizations against major infectious diseases. Countries must also work

¹⁵⁷ CESCR General Comment 14.

¹⁵⁸ *The World Health Report 2010*. Pg xviii.

to prevent, treat, and control such diseases, both endemic and epidemic, and provide information and education on the major health concerns facing the public. This includes providing appropriate training and education for all health personnel and staff. The international community and countries in a position to do so are urged to provide assistance and cooperation to developing countries in need, in order to achieve more expeditiously the worldwide realization of health.

Recommendations

Given the state of global health, countries must take certain steps to ensure access to affordable and quality health care for all the people within their country, and if they have the resources to do so, aid others in progressively realizing the right to health as well. The key to success will be for states to create framework legislation for a national strategy and plan of action, and to allocate sufficient resources to carry this plan out.¹⁵⁹ The health sector needs to be governmentally regulated and legislated. The WHO suggests that the national health system must be “home-grown” and targeted specifically for the needs and disparities in that particular country; it cannot simply be imported.¹⁶⁰ The national budget must be efficient and equitable, and prioritize health spending while working to eliminate leakages, waste, and inefficiencies. Devising and implementing a health finance strategy is a process of modification and adaptation, rather than a linear process.¹⁶¹ States need to identify their goals and what and where the health needs are, and draft a budget and spending plan accordingly.

For some countries, this might mean needing increased aid from external partners and the international community, specifically to finance health. To ensure the effective use of this aid money, donors and recipient countries need to harmonize and align aid with global and national

¹⁵⁹ Gostin, Lawrence O. Pg 3.

¹⁶⁰ *The World Health Report 2010*. Pg xix.

¹⁶¹ *The World Health Report 2010*. Pg xix.

goals.¹⁶² This can be done most effectively by sticking to three guidelines for development aid use: 1) encouraging developing country governments to take stronger leadership of their own policies and engage citizens and parliaments, 2) building more effective and inclusive partnerships between donor and developing nations, and 3) openly accounting for the achievement of development results.¹⁶³ Partner countries need to make commitments to be mutually accountable, both on aid delivery and aid allocation¹⁶⁴. Donors should seek to work within the framework of the recipient country's health system as much as possible, to strengthen and enforce it. Recipient countries need to focus on transparency and efficiency in achieving the healthcare plan of the nation. Hopefully these partnerships can then not only improve the health of the world, but also build efficient and resilient institutions in developing countries to provide domestic health care services and managing funds.¹⁶⁵ If the world is to meet the MDGs by 2015, international cooperation will be key not only to the goals, but also to future prosperity and progress.¹⁶⁶

As part of the national plan of action to achieving health, countries should create health indicators and benchmarks to assess and meet, much like the MDGs have done on a global level.¹⁶⁷ This will allow countries to see where and in what sectors they are lacking and need to not only feed more resources into, but also make the process more efficient and less wasteful. These benchmarks should be assessed at least every five years, and funding and budget prioritization should be adjusted accordingly.¹⁶⁸

Finally, countries need to establish accountability mechanisms. Since the world lacks its own enforcement mechanism for the violation of most human rights, it is vital that states realize

¹⁶² The Paris Declaration on Aid Effectiveness (2005), and the Accra Agenda for Action (2008). OECD.

¹⁶³ Accra Agenda for Action (2008).

¹⁶⁴ The Paris Declaration on Aid Effectiveness (2005)

¹⁶⁵ The Paris Declaration on Aid Effectiveness (2005)

¹⁶⁶ Accra Agenda for Action (2008).

¹⁶⁷ Gostin, Lawrence O. Pg 3.

¹⁶⁸ CESCR General Comment 14.

their own limitations and provide their population with the tools to hold them accountable to their obligations. This means not only making a legal framework for the right to health domestically, but also creating remedy mechanisms, such as an ombudsman, commission, or other monitoring body. These bodies can act dually as a tool of justice for violations and remedies, and as an assessment and monitoring tool for the progressive realization of the right to health.¹⁶⁹ Just as states need to ensure access to health services for everyone, all people must be guaranteed access to justice if they have been denied their right to health. Having this mechanism will be key, because without a system for enforcement of the right to health, it will not be met.

Conclusion

Clearly, increased funding alone will not close the world's health care gap. Nor will simply getting countries to sign international declarations and treaties. Reorganizing health systems through strategic plans of action on a country-by-country basis, and focusing on budgets to accomplish these goals is key. Budgets need to be efficient, transparent, and targeted. To ensure the progressive realization of the right to health, governments need to establish benchmarks and standards to be assessed continually. The MDGs are a good assessment mechanism on an international scale for countries to see where they are comparatively. However, more domestically targeted and focused standards need to be created. Lastly, governments need to create a domestic enforcement mechanism to address violations of the right to health and to keep the country on track to meeting its stated goals. Through the utilization of these strategies, states will hopefully be able to not only meet the MDGs but also to ensure that all people enjoy the highest attainable standard of physical and mental health. After all, health is the most fundamental and basic of rights, and it is a government's obligation to ensure that it is being met.

¹⁶⁹ Wiley, Ellen. "Aspirational Principles or Enforceable Rights?." *American University International Law Review* 22, no. 1 (2006): 35-64.

Chapter 4:
Right to Food Security

By Naomi Joswiak

Chapter 4
Right to Food Security
Contemporary Perspectives and Strategies for the Future

Introduction

Along with access to education and health care, food security is an elemental human right, yet many countries of the world fail to attain this ideal. Each year, ten million people perish due to inadequate access to food and diseases related to insufficient nutrition.¹⁷⁰ Poverty is one of the largest contributors to global food insecurity, and many of the 1.02 billion undernourished people in the world have no escape from poverty due to trends of high food prices.¹⁷¹ The right to food is a right recognized in the most influential international human rights treaties, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. These treaties set the standards for food security for governments to meet the measures of availability, accessibility, utilization, and stability. States are responsible to their citizens to allocate their budgets responsibly to protect this right and to address issues contributing to food insecurity. Despite the heavy influence of international structures, one seventh of the world remains chronically hungry and their governments are unable to meet the standards of food security.¹⁷² A combination of poor accessibility, food price volatility, inefficient use and allocation of resources, lack of humanitarian assistance, and political and economic factors have created this protracted crisis.

¹⁷⁰ United Nations. Millennium Development Goals. *Millennium Development Goals Monitor*. <http://www.mdgmonitor.org/goal1.cfm> (accessed January 15, 2011).

¹⁷¹ Food and Agriculture Organization of the United Nations. 2009. *The state of food insecurity in the world*. Rome, Italy: Food and Agriculture Organization of the United Nations, 1.

¹⁷² Runge, C. Ford, Benjamin Senauer, Philip G. Pardey and Mark W. Rosegrant, *Ending Hunger in Our Lifetime: Food Security and Globalization*, (London: The Johns Hopkins University Press, 2003), 14.

98% of the world's undernourished people live in developing countries, an indication that these nations should be the focal point for poverty reduction.¹⁷³ The human right to food can be realized through government budgets by actively recognizing food as a subsistence right and policies that focus on marginalized groups to reverse worldwide hunger. Given current major global issues such as increasing population, the economic crisis, price volatility, protective trade policies, land use, lack of international aid, and poor infrastructural supports, it is more important than ever for governments to take proactive measures to ultimately realize food security. Governments should prioritize heavy investment in technological and human capital, infrastructure, economic development, liberalizing international trade policies, and increasing international food aid to create a food secure world.

CESCR General Comment 12

Food security is a “global effort to eliminate hunger and malnutrition,”¹⁷⁴ as well as the assurance that all people have the right to access of sufficient, nutritious, and safe food that allows “for an active and healthy life.”¹⁷⁵ The International Covenant on Economic, Social, and Cultural Rights (ICESCR) acknowledges the right to food as the “fundamental right of everyone to be free from hunger.”¹⁷⁶ The CESCR, governing body to the Covenant, recognizes that the fundamental issue of food security is not lack of food itself, but rather the poor level of access to

¹⁷³ Food and Agriculture Organization of the United Nations. 2010. *The state of food insecurity in the world*. Rome, Italy: Food and Agriculture Organization of the United Nations, 8.

¹⁷⁴ Schanbacher, William D. 2010. *The politics of food: the global conflict between food security and food sovereignty*. Santa Barbara, Calif: Praeger Security International, vii.

¹⁷⁵ FAO, *The State of Food Insecurity*, 2009, 8.

¹⁷⁶ United Nations. *International Covenant on Economic, Social, and Cultural Rights*. <http://www2.ohchr.org/english/law/cescr.htm> (accessed January 21, 2011).

available food.¹⁷⁷ In 1999, in response to provide greater accountability to State parties with poor transparency with respect to food security, CESCR implemented General Comment 12 on the “Right to Adequate Food.” General Comment 12 elaborates on the concept of the *right to adequate food* with stipulations such as minimum caloric intake, but most importantly, each state party is expected to progressively realize the access to adequate food sources even during times of crisis. Progressive realization assumes expeditious movement toward the goal of food security, and implies the assurance of security in the future with the assurance of availability and accessibility. The Committee also acknowledges that vulnerable and marginalized groups in times of disastrous weather patterns, including drought and flooding, may require special or increased attention. States can realize their obligation to respect, protect, and fulfill the right to food through proactive measures including increasing access, utilizing resources, and improving the livelihood of their citizens.¹⁷⁸ The CESCR maintains that these standards should be implemented with each state’s maximum available resources, as all the components are intertwined, complementary to one another, and necessary for the progressive realization of food security.¹⁷⁹

International Structures

The following section will illustrate the steps the international community is taking to combat the high prevalence of chronic hunger and extreme poverty. Of the many international

¹⁷⁷ U.N. Economic and Social Council. Committee on Economic, Social, and Cultural Rights, 20th Session. CESCR General Comment 12. “The Right to Adequate Food.” [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument) (accessed January 25, 2011), paragraph 6.

¹⁷⁸ CESCR, General Comment 12, paragraphs 8-15.

¹⁷⁹ *Ibid.*, paragraph 17.

structures and policies that are in place to limit poverty and guarantee food stability, the United Nation's Millennium Development Goals (MDG) provide some of the most influential targets, some of which are replicated through other international organizations. The first MDG, which includes three intended targets for 2015, is devoted solely to the commitment to eradicate extreme poverty and hunger.¹⁸⁰ These objectives provide standards for the international community to target for the realization of food security worldwide.

The first of the three targets sets the commitment to reduce the number of people who live under one dollar per day by half between 1990 and 2015.¹⁸¹ The absolute number of people living under the economic poverty line of \$1.25 per day declined from 1.8 billion to 1.4 billion between 1990 and 2005 while poverty rates dropped from 46% to 27% within the same time frame.¹⁸² Despite this setback, the United Nations is committed to the idea that the goal of poverty reduction and eradication of hunger will be met. Poverty rates are expected to fall from 51% in 1990 to 24% in 2015, even with the global recession, with the result of bringing 188 million people out of extreme poverty.¹⁸³ Currently, every major region of the world with the exception of sub-Saharan Africa is expected to meet this target.¹⁸⁴ However, governments should continue poverty reduction programs to sustain realization of this goal.

The second target of the first MDG is the realization of full employment and work for all people. However, over 1.5 billion people are working in conditions with vulnerable employment,

¹⁸⁰ Runge et al. "Ending Hunger," 181.

¹⁸¹ Department of Social and Economic Affairs of the United Nations Secretariat. *The Millennium Development Goals Report 2010*. <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20low%20res%2020100615%20-.pdf> (accessed January 15, 2011 8).

¹⁸² *Ibid.*, 8.

¹⁸³ *Ibid.*, 7.

¹⁸⁴ United Nations Economic and Social Council. 2007. "Strengthening efforts to eradicate poverty and hunger, including through the global partnership for development". Geneva: U.N. Economic and Social Council, 5.

including poor working conditions, inadequate wages, and low levels of productivity.¹⁸⁵ The economic crisis only pushed people farther into unstable working conditions, negating much of the progress of the previous years.¹⁸⁶ To combat this issue, governments should encourage labor productivity to stimulate economic progress, and reduce economic insecurity within their populations.

The last target of the first MDG is the commitment to halve the proportion of people who suffer from hunger between 1990 and 2015. The financial recession reversed previous progress in this target: in 2008, food prices reached an all-time high, incomes diminished, and in 2009 the number of undernourished people exceeded one billion.¹⁸⁷ While some progress had been made with respect to malnourished and underweight children, a lack of progress in the last few years is another consequence of high food prices in impoverished areas. States should maintain systems to decrease costly food prices and other mechanisms that prevent people from reaching basic nutritional goals.

The Food and Agricultural Organization (FAO) maintains a similar commitment to sustain a world without poverty through the priorities of food security. In order to address the state of world poverty and food insecurity, the FAO called the World Food Summit in 1996, producing the Rome Declaration on World Food Security, a document that affirmed, similar to the MDG, to reduce the number of undernourished people throughout the world by half. Similarly, the World Food Program (WFP) is the world's largest humanitarian program committed to reducing hunger and poverty levels worldwide. Such high-profile events and organization help to raise international awareness and provide important targets that help

¹⁸⁵ Department of Social and Economic Affairs, *MDG Report 2010*, 10.

¹⁸⁶ Department of Social and Economic Affairs, *MDG Report 2010*, 11.

¹⁸⁷ *Ibid.*, 12.

stimulate governments into actively realizing food security through their budgets and remaining committed to food availability, accessibility, utilization, and stability.

Critical Factors and Strategies for the Future

Food security has four main components, all of which are standards for the progressive realization of food security worldwide: availability, access, utilization, and stability.¹⁸⁸ Each gauge is an obligation for states to reach in the progressive realization of food security, which can be achieved through a reorganizing of government budgets. Government budgets are a necessary tool to help in the ultimate eradication of poverty, however, in many cases the budget is forgotten, ignored, underutilized, and wasted with inefficient and unnecessary spending. With this in mind, we can look at current issues, which are in many cases propelled from inefficient resource allocation, to develop specific targets for states to meet to actively realize the right to food. The following section will analyze how governments can address global food prices, protectionist policies, land sustainability, and food aid, and offer priorities for governments to implement and maintain standards for global food security.

The Increasing Population

By the year 2050, the global population is expected to grow by more than 33% to total 9.1 billion people, most of whom will live in developing countries.¹⁸⁹ Two-thirds of the world's chronically hungry live in seven nations: Bangladesh, China, India, DRC, Ethiopia, Indonesia,

¹⁸⁸ CESCR, General Comment 12.

¹⁸⁹ Food and Agricultural Organization. "The technology challenge." *How to Feed the World in 2050*. Rome, Italy: October 2009, 2.

and Pakistan, while 40% of the world's malnourished live in China and India alone.¹⁹⁰

Currently, 1.2 billion people live in regions that are water-scarce and the number is expected to rise to 1.8 billion by 2025, mainly as a result of increasing population.¹⁹¹ The population surge will similarly increase the demand for food by 70%, further complicating accessibility for many people around the world.¹⁹² The population increase will increasingly strain the demands on the global food supply, indicating that current production of food resources will not be sufficient to sustain the growing population.

To account for and mitigate the effects of these trends, governments should prioritize policies that target increasing agricultural yields and production. Strong agricultural policies play a large role in poverty reduction and economic development by improving poor and rural livelihoods in agriculture-based communities. In order to fulfill obligations for global food security, production will need to increase by one billion tonnes in grains and 200 tonnes in livestock.¹⁹³ States should also place significant attention on water systems to sustain agricultural systems. Without policies that target water allocation, the necessary increased crop yields will falter and food crises will continue globally.¹⁹⁴ With the increasing global population, nations should actively seek means to increase agricultural growth for the future, especially to sustain their populations in times of strife, such as economic crises and environmental disasters.

¹⁹⁰ FAO, *The State of Food Insecurity*, 2010, 10.

¹⁹¹ FAO, "The technology challenge", 2.

¹⁹² Food and Agricultural Organization. "Global agricultural towards 2050." *How to Feed the World in 2050*. Rome, Italy: October 2009, 1-2.

¹⁹³ Food and Agriculture Organization. "How to Feed the World in 2050." *How to feed the world in 2050*, Rome, Italy: October 2009, 8.

¹⁹⁴ International Fund for Agricultural Development. "Rural Poverty Report: New realities, challenges: new opportunities for tomorrow's generation," (Rome: Quintily, 2010), 155.

International Shocks: The 2008 Financial Crisis and Climate Change

The globalization of hunger has become even more pronounced in light of current trends. The 2008 financial crisis and increasing global temperatures have contributed to increasing food prices. The economic recession had global implications that will likely continue into 2015, indicating that fewer people will be able to overcome destitute conditions than under normal non-crisis conditions.¹⁹⁵ Statistics estimate that a further 100 million people crossed the poverty threshold due to increasing food prices from the economic recession, causing even more cases of undernourishment and malnutrition.¹⁹⁶ In sub-Saharan Africa alone, more than 20 million people fell into extreme poverty as a result of the recession.¹⁹⁷ Similarly, climate change threatens to raise global temperatures by 1.8 to 4.0 degrees Celsius by 2100; this temperature differential will negatively impact all aspects of food production, from access to stability.¹⁹⁸ During times of economic and environmental uncertainty, states should prioritize hunger reduction in their populations.

Governments should focus on long-term sustainable outcomes that will seek to minimize the advent of shocks in the future. The World Food Program is using this tactic within impoverished nations to prevent acute hunger from shocks and disaster situations. The WFP's main objective is strengthening governmental reaction systems and working within communities to mitigate the negative consequences of disasters.¹⁹⁹ Along the same vein of ensuring future security for the environment, governments should focus on limiting environmental degradation,

¹⁹⁵ Department of Social and Economic Affairs, *MDG Report 2010*, 6.

¹⁹⁶ United Nations. MDG Monitor.

¹⁹⁷ IFAD, "Rural Poverty Report," 30.

¹⁹⁸ FAO, "How to Feed the World by 2050," 29.

¹⁹⁹ World Food Program. "Strategic Plan 2008-2013." Division of Communications and Public Policy Strategy. (Rome: WFP), 17.

deforestation, land restoration, and limiting waste and use of natural resources.²⁰⁰ If implemented immediately, these steps will serve to lessen future internal shocks to domestic agriculture and food supply.

High Food Price Volatility

Food prices are highly volatile in the international market. Shocks such as floods, drought, and international and domestic pressures all contribute to the poor equilibrium in international food prices, and countries with few infrastructural supports and poor governance are more susceptible to the highly mutable market prices.²⁰¹ While some variation in global food market prices is normal and expected, many impoverished farmers are unprepared for these swings in food prices. Over 75% of the world's poor maintain a large portion of their livelihood through agricultural means, indicating that these high food prices are heavily affecting much of the world.²⁰² Additionally, increasing demand and slowing production growth make these shocks even more consequential for the poor.²⁰³ When these shocks arise poor rural farmers are likely to rely on incurring debt and sacrificing their children's education, ultimately leaving them more vulnerable to future food price swings.²⁰⁴ In light of these issues, high food prices should be addressed by states along with help from the international community.

In response to highly volatile food prices, some countries and international donors such as the United Nations' International Fund for Agricultural Development (IFAD) have provided agricultural inputs to poor farmers including fuel, irrigation, credit, cancellation of debt, and

²⁰⁰ FAO, "How to Feed the World by 2050," 30.

²⁰¹ IFAD, "Rural Poverty Report," 94.

²⁰² FAO, "Global agriculture towards 2050," 4.

²⁰³ FAO, "How to Feed the World in 2050," 23.

²⁰⁴ IFAD, "Rural Poverty Report," 17.

storage infrastructures.²⁰⁵ While these inputs are important, in order to fully realize availability for marginalized groups, governments need to target specific ways that food prices can be lowered and more accessible for rural families. Governments should encourage rural market participation. Currently, less than two-fifths of the farming sector in developing countries are actively participating in the market environment,²⁰⁶ however, if there was increased participation in rural markets, farmers may have an incentive to make the necessary investments in their land and their agricultural technique to maintain a sustainable and higher yielding farm. It is important to note that even though increasing yields may produce more food, there is no guarantee that all people will have the access to that food.²⁰⁷ This means that nations should progressively act to provide openness of markets. While some consequences of increased market participation include high transport costs over long distances, poor quality, and lack of diversity in produce present high risks to farmers who sell their goods in markets, the overall benefit would greatly help reduce food costs.²⁰⁸ For example, smallholding farmers would be able to use markets to gain better money and access, a large component in securing food their family, ultimately helping to decrease dependence on international food markets.²⁰⁹

Trade Liberalization

Affluent countries are able to protect their farmers from the volatile international food market with subsidization of artificial prices for commodities, thereby allowing for a layer of

²⁰⁵ Ibid., 96.

²⁰⁶ IFAD “Rural Poverty Report,” 115.

²⁰⁷ FAO, “How to Feed the World in 2050,” 27.

²⁰⁸ IFAD, “Rural Poverty Report,” 116.

²⁰⁹ Ibid., 114.

protection from international markets and competition.²¹⁰ Worldwide, subsidies total over \$200 billion yearly, about one sixth of the total agricultural trade. This number is significant due to the fact that the main players are allocating a portion of their budget to bolstering internal support for farmers, a zone of comfort many developing countries do not have.²¹¹ The United States and the European Union are large players in the subsidy industry. The European Union spends 43% of its budget on promoting the agriculture and fishing industries, an amount that provides European farmers with high levels of protection from the unpredictable international market.²¹² This widespread distortion in domestic crop value upsets the price of food worldwide, destabilizing the global market and causing detrimental consequences for farmers in other nations.²¹³ Smallholding farmers in developing nations cannot compete with the high synthetic prices for crops in richer nations, causing them to fall further into poverty. Additionally, many African governments place taxes on food production, making farmers less likely to invest in agriculture and thereby creating higher food prices for consumers, subsequently perpetuating the cycle of global food insecurity.²¹⁴

In response to these protectionist policies, governments should implement more liberalized trade reforms that promote healthy competition within the global agriculture market, sustain poor farmers with higher food prices to have greater incomes to afford food. An additional \$32.4 billion annually would be generated annually if subsidies were eliminated for 16 commodities.²¹⁵

However, a more liberal global trade would decrease some amounts of production, causing

²¹⁰ Congressional Budget Office, "Policies that Distort World Agricultural Trade: Prevalence and Magnitude," in *Agricultural Subsidies*, ed. Noel Merino (New York: Greenhaven Press, 2010), 23.

²¹¹ *Ibid.*, 24.

²¹² European Union. *Financial Programming and Budget of the European Union*. http://ec.europa.eu/budget/budget_glance/what_for_en.htm, (accessed February 11, 2011).

²¹³ Runge et al., "Ending Hunger," 62.

²¹⁴ *Ibid.*, 64.

²¹⁵ *Ibid.*, 62.

countries to import food at a higher rate than export more likely to feel the negative consequences of trade liberalization. Despite this detrimental effect, a more liberal trade policy would encourage taxed African farmers to use more sustainable inputs for the future and lower the prices for consumers.²¹⁶

Land Inefficiency and Technology

Land sustainability is another crucial component in realizing food security; however, many governments do not properly allocate their budgets to promote land sustainability for farmers. Sustainable land holdings, productivity, and viability are essential for agricultural stability and production, and ultimately to decrease the level of food insecurity. The potential for productive land includes factors such as the level of soil nutrients, desertification, erosion, biodiversity, and freshwater reserves.²¹⁷ However, inefficiencies in land use are common throughout the developing world. In the near future most production and yield increases will come from developing countries, due to their high potential to expand agriculture.²¹⁸ Developing countries in sub-Saharan Africa and Latin America are expected to increase their agricultural land holdings by 120 million hectares to maintain food supply for the global population.²¹⁹ If governments do not provide incentives for farmers to change their non-sustainable practices, the agriculture production in that country will be obsolete and ineffective at reducing poverty and bolstering domestic livelihoods. Lack of economic incentives for farmers makes small holding farmers in poor countries less likely to adopt the more expensive yet more

²¹⁶ Ibid., 64.

²¹⁷ FAO, "How to Feed the World in 2050," 8.

²¹⁸ FAO, "The technology challenge," 1.

²¹⁹ Food and Agricultural Organization. *2050: A third more mouths to feed*.
<http://www.fao.org/news/story/en/item/35571/icode/> (accessed January 28, 2011).

resistant seeds that remove the issues of pests, diseases, droughts, floods, and insects.²²⁰

To combat these non-sustainable practices, states must provide their citizens with incentives or supports to maintain future agricultural endurance. Governments should allocate their budgets to encourage the use of more environmentally friendly farming techniques, and maximizing the viability of the “farming cycle.”²²¹ Another option is to provide farmers with larger amounts of genetically modified crops (GMOs). GMOs are able to combat typical farming annoyances such as pest destruction and drought, without requiring farmers to buy expensive, dangerous, and environmentally harmful pesticides and insecticides.²²² Other techniques that would increase land sustainability include more efficient use of water, improving soil fertility, and combining farming technology and local knowledge to achieve more productive land.²²³ These changes would help to ensure a world with higher levels of productive land for agriculture.

Food aid

Development aid is a crucial component for nations that are in situations of protracted crisis; however, current amounts of aid are not enough to sustain a food secure world. Food aid is most crucial in times of crisis to provide refugees with nutrition and prevent cases of malnutrition. In 2008, nations in protracted crisis received \$11 billion, or 9% of all Official Development Assistance (ODA).²²⁴ Aid dedicated solely to agriculture received only 3-4% of

²²⁰ FAO, “The technology challenge,” 1.

²²¹ IFAD, “Rural Poverty Report,” 20.

²²² Runge et al., “Ending Hunger,” 93.

²²³ IFAD, “Rural Poverty Report,” 20.

²²⁴ FAO, *The State of Food Insecurity*, 2010, 27.

ODA, despite the fact that agriculture supports 62% of populations in nations in crisis.²²⁵ An increase in levels of humanitarian food aid is necessary to lay the foundation for a fully functioning economy without food insecurity.

Food aid is critical in times of protracted crisis and in maintaining a progressive livelihood for those living in impoverished nations. Nations with the necessary means to positively contribute to the eradication of world hunger should step forward and assist countries without the sufficient resources to protect their populations from hunger. In order to realize the full range of the Millennium Development Goals, the United Nations states that an annual increase in spending of \$40-60 billion, double the amount of current aid, should be applied to achieve all of the MDG.²²⁶ On a positive note, food aid is more heavily funded than any other sector of humanitarian aid, receiving 96% of the requested funding.²²⁷ However, overseas agriculture aid only received 44% of the requested funds.²²⁸ Other funding for aid also falls well below expected levels. During times of crisis, affluent nations should provide immediate aid assistance to make the transition to their livelihood easier for affected populations.²²⁹ Additionally, the World Food Program maintains the commitment to save and protect lives during emergencies. This includes services such as providing micronutrients that help to decrease levels of malnutrition and mortality due to food inadequacy during times of unexpected crises. Through promoting better preparation during times of emergencies, particularly to reach vulnerable groups, humanitarian assistance programs promote freedom from hunger.²³⁰

²²⁵ Ibid., 4.

²²⁶ Runge et al., "Ending Hunger," 181.

²²⁷ FAO, *The State of Food Insecurity*, 2010, 28.

²²⁸ Ibid., 31.

²²⁹ WFP, "Strategic Report 2008-2013," 13.

²³⁰ Ibid., 13.

Economic and Infrastructural Investment

Poverty is most often a consequence of economic, social, and political factors that marginalize populations and contribute to inequality and a lack of access. Investments in human and technological capital are crucial to reverse the trends of poverty. Providing education will help develop a nation economically by making it more competitive in the international system. Furthermore, high investments in women's social capital will provide women with skills and knowledge to be active participants in their communities and will boost efforts to improve economic security of the general population.²³¹ Additionally, economic growth is a prerequisite for reducing poverty with help from government spending “on agriculture and rural development.”²³² Currently, governments are not providing enough means for increasing the level of economic development. However, investments in areas linked to agriculture growth will ultimately lay the foundation for economic development. Governments should focus on their investments on 1) rural infrastructure including roads, power, and irrigation systems; 2) promoting research to increase agricultural sustainability, risk management, and food safety systems; and 3) non-agricultural investments that target human well-being and social programs for the impoverished and marginalized.²³³ These are the necessary measures that governments must take in order to overcome poverty and global food insecurity.

Recommendations

²³¹ Runge et al., “Ending Hunger,” 138.

²³² United Nations Economic and Social Council, “Strengthening efforts,” 6.

²³³ FAO, “Global Agriculture towards 2050,” 4.

States have to prioritize their budgets to actively, effectively, and expeditiously realize the right to food security. Heavy investments in long-term solutions will create a more stable world for the future. In order to maintain the standards of availability, accessibility, utilization, and stability, governments must make deliberate steps to ensure their populations are well equipped with proper nutrition, fair and open markets, improved farming technologies, sustainable practices, developed economies, and increased international aid. Through these measures, hunger and food insecurity will decrease and positive livelihoods will flourish.

In nations with high levels of poverty and hunger, domestic governments should focus on capital development.²³⁴ This includes investment in infrastructure projects including roads to increase rural accessibility, improve agricultural sustainability, and promote research to further advances in crop production.²³⁵ Investments in human capital, with increased focus on women's rights, education, health, and technological knowledge, will provide citizens with the knowledge and skill base to overcome a cycle of poverty.²³⁶ Domestic governments should also direct funding toward technical improvements in agriculture to improve crop yields and provide farmers with larger incomes.²³⁷ States should also foster long-term sustainability of the agriculture sector through land reform that prevents degradation and targets biodiversity, with increased focus on efficient allocation of water.²³⁸ Bolstering livelihoods through social barriers like welfare nets will help to provide protection for those living at the margins of society.²³⁹

While states should aim to address hunger and poverty without international assistance, until

²³⁴ FAO, "How to Feed the World in 2050," 16.

²³⁵ FAO, "Global Agriculture towards 2050," 4.

²³⁶ Runge et al., "Ending Hunger," 137.

²³⁷ *Ibid.*, 142.

²³⁸ *Ibid.*, 155-57.

²³⁹ FAO, *The State of Food Insecurity*, 2010, 47.

states can fully support their population the global community should strive to maintain an appropriate level of interposition to assure the realization of food security for the future.²⁴⁰

The international community should focus its priorities on trade policies, subsidies, and food prices. International organizations already do much work in these areas, but the commitments should be reaffirmed. The 2009 World Summit on Food Security presented the idea that the increasing global population was an important issue to be addressed in the coming years, which should be addressed by reconfirming international investment in agriculture, opening markets and access to poor nations, and promoting regional cooperation to improve opportunities for farmers.²⁴¹ Protectionist trade policies harm farmers in poor countries. Liberalizing subsidies within rich countries would open markets worldwide, and would make the international food trade more competitive. While more liberal trade policies would open markets, only nations with strong infrastructures would benefit immediately. This means that poor nations need to work on developing their internal markets, institutions, and increase farmer technology before this policy would fully benefit the poor.²⁴² In place of subsidies, affluent nations should divert the resources that were intended to support their domestic farmers and instead invest the money into eliminating global hunger and fund institutions such as the World Food Program and the Food and Agricultural Organization.²⁴³ This aid would go a long way to eliminating poverty and hunger.

Other approaches to development aid should be focused on fueling long term-growth and

²⁴⁰ WFP, “Strategic Report 2008-2013,” 29-30.

²⁴¹ Food and Agricultural Organization of the United Nations. *World Summit on Food Security: Feeding the World, Eradicating Hunger*. Rome, Italy. 2009. <ftp://ftp.fao.org/docrep/fao/Meeting/018/k6077e.pdf> (accessed January 15, 2011), 8-12.

²⁴² Pinstrup Andersen, Per, “Agricultural Subsidies Harm the Poor in Developing Countries,” in *Agricultural Subsidies*, ed. Noel Merino (New York: Greenhaven Press, 2010): 92.

²⁴³ Nath, Kamal, “Instead of Funding Agricultural Subsidies, Resources Should be Used for World Hunger,” in *Agricultural Subsidies*, ed. Noel Merino (New York: Greenhaven Press, 2010): 208.

economic development to prevent future tragedies. The international community should address the shortcomings from the many sectors of humanitarian aid, including health, education, irrigation, water management, and agricultural policies to increase amounts of aid for crisis and disaster situations; improving these areas will build a strong foundation for long-term food security.²⁴⁴ To reach these goals, investment in agricultural aid needs increase by 60%, a number that may be partially obtained through increased public endowments.²⁴⁵ The United States spends one-sixth of one percent of the annual federal budget on development aid.²⁴⁶ This number should be increased, but also more regulated in the areas to which it is distributed, focusing on internal agriculture structures of poor nations.²⁴⁷ Increased development aid will help to maintain disaster preparedness and sustainability for the future.²⁴⁸

Finally, to sustain these priorities and standards, there need to be enforcement mechanisms to make sure that the progressive realization of food security is achieved. Strengthened monitoring and evaluation systems should be implemented in nations to provide extra encouragement to sustain economic and agricultural growth.²⁴⁹ International donors and organizations should commit to providing these mechanisms to ensure continued implementation of ways to enforce government's commitment to poverty reduction.²⁵⁰ These watchdogs will also provide continued assessment over the course of several years to maintain poverty reduction as an ongoing process. These steps will help ensure that our world will be more committed to poverty reduction.

²⁴⁴ FAO, *The State of Food Insecurity*, 2010, 31.

²⁴⁵ FAO, "How to Feed the World in 2050," 15.

²⁴⁶ Runge et al., "Ending Hunger," 186.

²⁴⁷ Runge et al., "Ending Hunger," 190.

²⁴⁸ *The State of World Food Insecurity*, 48

²⁴⁹ FAO, *The State of Food Insecurity*, 2010, 45.

²⁵⁰ *Ibid.*, 47.

Conclusion

Millions of people are suffering from poverty and hunger today. The international community has initially addressed these issues through United Nations treaties and international organizations, yet many nations are failing to fulfill their basic obligations of feeding their populations. Contemporary issues have destructive tendencies for those who live on the margins. International shocks, high food prices, biased trade policies, poor or misuse of agricultural land for a sustainable future, lack of development aid, and infrastructural inconsistencies are some of the most prevalent issues plaguing the poor and undernourished. To maintain the standards given within CESCR General Comment 12, nations should take the proper precautions to assure a stable livelihood for their citizens. Investing heavily in capital, education, technology, agricultural sustainability, and social welfare programs will lay the foundation for future stability and food security. The international community should prioritize reducing trade barriers and increasing development aid to provide assistance to other nations without proper resources. Finally, the continuation of assessment mechanisms will assure the progressive realization of the right to food. The recommendations within this paper may provide a basis for long-term stability and ensure that food security can be fully realized as a human right for people worldwide.

Section I

Summary of Recommendations

The International Covenant of Economic, Social, and Cultural Rights stipulates that each state party must progressively realize human rights. This Task Force has focused on the clarification of the terms MAR, ND, and PR as well as the rights to education, health, and food security, all of which are interconnected and necessary to maintain the standards laid out within the Covenant for basic human liberties. Due to the vagueness in the Articles, State parties do not have the direction needed to fulfill their obligations. In the clarification, the Committee must include budgetary guidelines so that State parties have examples of properly implementing budget analysis in progressive realization. Without this clarification, the ramifications affect individuals on the ground level. The court cases provide real life examples of how the lack of clarity given in the committee articles lead only to retrogression. In order to progressively realize the rights outlined in ICESCR, governments must utilize their budgets effectively and expeditiously. Additionally, the international community must supply crucial targets to be recognized during the allocation of budgets, including availability, accessibility, utilization, and stability. International Structures such as the Millennium Development Goals, UNICEF, the World Health Organization, and the Food and Agricultural Organization provide the best priorities and standards for which states should be held accountable. Ultimately, states must clarify the terms MAR, ND and PR in order to prioritize and reallocate their budgets to progressively realize the rights to education, health, and food security. To do so fully, this Task Force recommends the following.

Maximum Available Resources:

- For State parties to provide citizens minimum benefits with MAR, the committee needs to provide clarification on what provisions should be implemented in the budgets of State parties
- In order to enforce the proper allocation of resources meant for PR, the committee should provide State parties with concrete methods of how this can be done.
- Since MAR also includes international resources, the committee needs to provide the international community with specific methods to enlarge international aid.

Non-Discrimination:

- In order to follow the obligations under ND, the committee should better emphasize prioritizing the allocation of the budget.
- Within this prioritization, governments should focus on maintaining access to programs for disadvantaged populations.
 - o The timely distribution of funds also needs to be elaborated on, specifically in regards to combating ND.

Progressive Realization:

- This Task Force recommends that the Committee work closely with the individual States and strengthen its monitoring and reviewing function.
- We also recommend to Issue General Comment that reinforces the individual State parties' responsibilities to achieve suggestions listed on the Concluding Observations.
- Additional recommendation for progressive realization of ESC rights under the Covenant is to set out the series of successive stages with materialized goals.

- Governments should allocate resources and policies to prioritize education, health, and food security, while eliminating leakages, waste, and inefficiencies.

- State governments should allocate funds and legislation that target the abolition of school fees to make primary education universal, the construction of new schools, the renovation of unsafe school structures, and provide funds to teacher training programs.
- States should target their budgets to health programs that are sustainable and committed to the progressive realization of health as a right, including funding for the allocation of sanitary water, food, hospitals and clinics, trained workers, and adequate drugs.
- Governments should focus spending on technological and human capital investments in infrastructure, agricultural sustainability, research, education, and health to help the populations overcome the cycle of poverty.
- The international community should focus its priorities on liberalizing subsidies within rich countries to open worldwide markets to developing nations.
- International governments should encourage developing nation's governments to create policies that establish more effective partnerships between citizens and their governments.
- Development aid should be directed to fueling long-term growth by focusing on humanitarian aid, health, education, and agricultural policies to provide the foundation for the long-term progressive realization of human rights.
- Finally, states should implement continued enforcement mechanisms that will ensure the progressive realization of education, health, and food security for the future.

Section II:
Legislative and Judicial Implications of the ICESCR
Precedential Court Cases

Section II Introduction

The prevalence of ambiguity in the ICESCR articles in relation to budgets is a critical problem for State parties. In the following chapters, court cases from Colombia, India and South Africa are examined through the scope of MAR, PR, and ND. These court cases bring to the committee's attention the difficulties facing citizens. By examining the cases of specific individuals or groups, the Task Force hopes to call to attention that the ambiguity in the articles of the committee has severe ramifications for State parties at the individual level. Colombian citizens have the authority to file complaints about the lack of access to right. These *tuelas* reveal that budget allocation is an aspect that the committee needs to elaborate upon. In addition to the budget allocation, the Task Force recommends that the committee elaborate on methods that combat discrimination. Due to the ambiguity in the methods prescribed to fighting discrimination, Colombian citizens are expected to pay for primary education. Impoverished women in India face institutionalized discrimination despite the fact that the Indian Government does have medical programs that help marginalized citizens. The lack of budgetary guidelines results in the Indian Government failing to fulfill food schemes, which are designed to alleviate starvation. The numerous South African cases center around the observation that the success of ICESCR depends on domestication of international standards. All of these cases highlight a general recommendation that the committee provide more detail in their articles.

Chapter 5:
Colombia

By Manmeet Dhani

Chapter 5 Colombia

Right to Health in Colombia *Judgment T-760/08 – July 31, 2008*

Judgment T-760/08 relates to *tutelas*, “A flexible jurisdictional action designed to protect fundamental rights²⁵¹.” In Colombia, citizens are given the authority to file complaints with the government when they find that government actions are preventing them from enjoying the fundamental rights to which they are entitled. The majority of *tutelas* are “right to health cases²⁵².” This case represents the claims of multiple Colombians who have found the government to be in violation of its obligation to provide equal access to healthcare. These claims stem from a variety of different situations, including pre-natal care and children’s health. Judgment T-760/08 is significant because it mandates specific measures that the Colombian government must take to ensure equal access to health. This judgment represents a compilation of 22 *tutelas* filed by Colombians against the government of Colombia in 2008. By highlighting specific ways that non-discrimination can be realized through government budgets, Judgment T-760/08 demonstrates that while realizing human rights through budgets is a difficult task, it is possible.

Budget Implications

²⁵¹ Colombian Constitutional Court, “Judgment T-760/08,” Colombian Constitutional Court, revised July 31st, 2008.

²⁵² *Ibid.*

This judgment requires that States take “appropriate legislative, administrative, budgetary, judicial or other measures towards the full realization of the right to health²⁵³.” It specifically highlights a State’s obligation to fulfill the basic health needs of populations incapable of funding their own health care expenses. In regards to the use of budgets in achieving these needs, the judgments states that “[There must be an] adequate guarantee of the flow of resources, which is necessary to ensure that everyone actually enjoys the *highest attainable standard of health*, given the budgetary, administrative and structural constraints that exist²⁵⁴.” While this case doesn’t specify a timeline for the distribution of funds, it does emphasize the importance of immediacy in addressing the health needs of lower-income Colombians. Judgment T-760 emphasizes the need for maintaining the financial sustainability of the expansion of coverage for low-income Colombians and allocating funds to the existing system. In cases where citizens are unable to pay for their own medical expenses, the government is obligated to provide access to health care: “Everyone has the constitutional right not to be denied access to health services so the provision of the health services cannot be conditional on the payment of a sum of money when the individual lacks the financial ability to pay²⁵⁵.” This case is of particular importance because it demonstrates how Colombia has been able to better utilize its budget since Sepulveda’s findings. Sepulveda’s update specifically details concerns about Colombia’s ability to allocate funds in the health sector in ways that ensure non-discrimination and suggests that the government “ allocate a higher percentage of its GDP to the health sector and to ensure that is system of subsidies does not discriminate against the most disadvantaged and marginalized

²⁵³ Colombian Constitutional Court, “Judgment T-760/08,” Colombian Constitutional Court, revised July 31st, 2008.

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

groups²⁵⁶.” This case of right to health in Colombia demonstrates how countries can improve upon their allocation of budgets in order to better address human rights. This judgment specifically obligates Colombia to reimburse at least 50% of the costs incurred by patients who were forced to pay for medical care that should have otherwise been funded by the government. While Judgment T-760/08 could be more detailed in its discussion of what percentage of funds should be designated toward ensuring equal access to healthcare, it does represent a step towards progressively realizing non-discrimination through the use of government budgets. It identifies various benchmarks, including the implementation of a timetable aimed at ensuring the timely distribution of funds and the specific steps that need to be taken in order for these goals to be achieved.

Right to Education in Colombia *Decision C-376/10 of the Colombian Constitutional Court*

Decision C 376/10 of the Colombian Constitutional Court is an extension of an earlier piece of legislation, Law 115 of 1994, which regulated national education and required the Colombian government to provide free primary education. Plaintiffs in this case argued that Law 115 of 1994 had been violated with respect to access to primary education because schools were given the option to charge fees. The adoption of fees was considered an obstacle to access to education and thus a violation of the right to education under ICESCR. Decision C 376/10 reiterates the government’s obligation to offer free and accessible education, utilizing

²⁵⁶ Magdalena Sepulveda, *The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights* (Antwerpen: School of Human Rights Research series, 2003).

international human rights treaties as well as past government legislation as a basis. According to the Court, Colombia's obligation to provide free primary education to its citizens, specifically to disadvantaged sectors of its population, is immediately enforceable. The Court also highlights the fact that the government cannot avoid its obligation to fund primary education even if there are limited resources available.

Budget Implications

Decision C 376/10 of the Colombian Constitutional Court emphasizes the Colombian government's obligation to allocate funds for the primary education of citizens who are unable to afford fees. It specifically points to earlier pieces of legislation, such as "Le Ley 12 de 1934," which stipulates that the government must dedicate at least 10% of its budget to the national education system and to offering a free primary education²⁵⁷. This law was later incorporated into the constitutional reform of 1936. In 1938 this policy of free education was also extended to the secondary school level. A later constitutional reform, in 1991, amended this obligation to exclude members of the population that are able to fund their education.

Decision C 376/10 clearly outlines the different human rights treaties and national legislation through which the Colombian government is obligated to provide free primary school education. By drawing on the precedence set by past legislation, this judgment clarifies how the Colombian government should allocate its budget in order to more effectively meet the needs of low-income students in the education system. This case offers a clear example of how a specific percentage of a government's budget can be allocated for the purpose of ensuring equal access to rights such as the right to education. This case is also significant because it highlights the need to

²⁵⁷ Colombian Constitutional Court, "Decision C 376/10," Colombian Constitutional Court, revised May 19, 2010.

for immediacy in the prevention of discrimination. According to this judgment, Colombia's obligation to provide free primary education is immediately enforceable, regardless of what funds are currently available.

Conclusion

Although there has been notable progress in the use of budgets to address non-discrimination, there remains a clear need for more detail. Commentary since Sepulveda's analysis has highlighted budgets as a means to address discrimination but it fails to discuss what specific steps a government can take to more effectively use its budget. This additional commentary also fails to provide any substantial benchmarks for determining whether a State is adequately fulfilling its obligation to ensure that the rights outlined in ICESCR are enjoyed free of discrimination. In regards to non-discrimination, most of the additional commentary since Sepulveda's update seems to emphasize the need for immediacy in addressing issues of discrimination, suggesting that States make an effort to prioritize funding for programs aimed at preventing discrimination. While the Committee's commentary has fallen short of providing a way for States to relate conceptual human rights frameworks to real world implementation, court cases such as the ones outlined above have demonstrated how it is possible for governments to effectively use their budgets to ensure non-discrimination in the implementation of rights outlined in ICESCR. In moving forward, the Committee should increase its emphasis on budget allocations and use legal frameworks as a means of ensuring that the rights outlined in ICESCR are implemented.

Chapter 6:
Right to Food and Health in India

By Akshika Patel

Chapter 6

Right to Food and Health in India

Introduction

While a party to the ICESCR, India is an example of a State Party that fails to progressively realize the rights under the covenant. In the cases of *People's Union for Civil Liberties v. Union of India & Ors* and *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors* India has proven that without specific guidelines for the budget, State parties do not progressively realize the rights outlined by ICESCR. Interestingly enough, in both cases India had the plans in place to proactively give access to marginalized citizens to medical health care and alleviate starvation in times of famine. However, only upon prodding from the Indian Courts did the Indian Government fulfill its obligation to progressively realize the right to health and right to food. To ensure that there is a hint of immediacy in the process it is necessary that the Committee give greater detail on the methods that are implemented.

Case 1: People's Union for Civil Liberties v. Union of India & Ors

On April 2001²⁵⁸, after numerous starvation deaths in Rajasthan, the People's Union for Civil Liberties petitioned the Supreme Court to ensure enforcement of the food schemes and the Famine Code. In 1878 the Relief Commissioner and Secretary to the government wrote the

²⁵⁸ *People's Union for Civil Liberties v. Union of India & Ors*, ESCR Writ Petition (Civil) No.196 of 2001 (Supreme Court of India 2003)

Famine code with the intention that it would replace the ad-hoc food schemes.²⁵⁹ Within the Famine Code there are specific regulations that depend on the government budget. Under the Code, funds are to be allocated specifically for hunger relief. Even before signing ICESCR, India had within its legislation that those resources for relieving hunger were to have a place within the government's budget. Unfortunately, the Indian Government did not follow the Famine Code in the aftermath of the 2001 famine. While granaries had food available but the government had neglected to allocate food to the citizens. This code should have ensured the release of stocked grain in times of famine. Even after the Supreme Court issued interim orders, the government failed to improve the food scheme.

Finally, in 2003, the Court released a judgment stating that the Indian Government had endangered the right to life because of their failure to enforce both the Famine Code and food schemes. The Indian Supreme Court ordered the Famine Code be implemented for three months. In addition to this, the court ordered that grain allocation be doubled, financial support increased, and ration shop licenses provide grain to families below the poverty line. Within the education system, the Indian Government was expected to “progressively implement”²⁶⁰ the mid-day meal scheme.

In the petition to the Supreme Court, the People's Union argued that by withholding the grain supplies during a famine, the Indian Government had neglected to observe the civil, political, social and cultural rights under the Universal Declaration of Human Rights. Citing Per Bhagwati, a well respected Indian lawyer, ““We think that the right of life includes the right to

²⁵⁹ “Rajasthan PUCL Writ in Supreme Court on Famine Deaths,” Rajasthan PUCL, revised November 2010, <http://www.pucl.org/reports/Rajasthan/2001/starvation-writ.htm>

²⁶⁰ Supreme Court, “People's Union for Civil Liberties v. Union of India & Ors, ESCR Writ Petition (Civil) No.196 of 2001,” revised 2003.

live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition,”²⁶¹ the Union focused on the Government’s failure to progressively realize the right to proper nutrition. In fact, the State of Maharashtra had not met the relief measures that were established in Rajasthan’s Famine code in 1962.²⁶² The State of Maharashtra failed to uphold these measures despite the fact that approximately 50 million tonnes that are in the storage space. In many cases, these storage spaces were only 75 kilometers from the areas in which most of the starvation occurred.²⁶³ Grounding their argument on the right to food, the Union convinced the Court to issue orders upon this matter.

Despite all of the evidence accumulated by the applicant, the government argued that they were not at fault for their failure to progressively realize the right to food. In fact, the government argued that there was a lack of availability of food. Regardless of the fact that there were storage grains available, the government blamed the lack of progress on so-called resource restrictions.

Maximum available resources, progressive realization, and the issue of vulnerable and marginalized groups all arose as important subjects in this case. As defined earlier, maximum available resources are those which a state party can use to progressively realize economic, social, and cultural rights. In the case of the starvation that occurred in Rajasthan, the grain storage was the very resources that could have been used to progressively realize the right to

²⁶¹ “Rajasthan PUCL Writ in Supreme Court on Famine Deaths,” Rajasthan PUCL, revised November 2010, <http://www.pucl.org/reports/Rajasthan/2001/starvation-writ.htm>

²⁶² “Rajasthan PUCL Writ in Supreme Court on Famine Deaths,” Rajasthan PUCL, revised November 2010, <http://www.pucl.org/reports/Rajasthan/2001/starvation-writ.htm>

²⁶³ “Rajasthan PUCL Writ in Supreme Court on Famine Deaths,” Rajasthan PUCL, revised November 2010, <http://www.pucl.org/reports/Rajasthan/2001/starvation-writ.htm>

food. Regardless of the presence of available resources, the government failed to use said resources to help the impoverished.

The measures which the Supreme Court forced the Indian Government to implement set a precedent for future government budgets. While the Indian Government set aside a significant amount of food to relieve the hunger of their citizens, they failed to carry out in actually delivering the food. This failure stems from the failure of the State of Marashtra to allocate money for the food delivery systems. In 2003, the Indian Supreme Court demanded that the Famine Code be addressed in the national budget. Responding to this, the Attorney General affirmed that in the 2003-2004 budget the government would include a provision for the Antyodaya Anna Yojana (AAY) which aides the destitute sectors of the population.²⁶⁴ Regardless of the fact that the Indian Government had in fact set up storage of extra food, the absence of budgetary provisions that provide details of the food security process proves that State parties need further clarification from the committee.

Case 2: Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors

Applicants of the People's Union case brought to the High Court of Delhi a right to health case on the behalf of Shanti Devi and another plaintiff Fatima. This analysis will focus on the case of Mrs. Shanti Devi. Shanti Devi's fetus died in 2008 after being refused adequate maternal health care. Despite being of Scheduled caste, and as such being qualified for free services, Shanti Devi had to carry a dead fetus in her womb for five whole days. Scheduled caste is a term for those individuals who occupy low social positions. Individuals of Scheduled caste are eligible

²⁶⁴ Supreme Court of India, "Interim Order of May 2, 2003," revised May 2, 2003.

for numerous government programs. Due to the fact that Mr. Devi lacked the proper ration card for medical services, the hospital refused to aid Mrs. Devi. Later in 2010, Mrs. Devi died giving birth to a two-month premature daughter. The High Court of Delhi found that the Deen Dayal Harinagar Hospital failed to offer proper pre and post maternal health care.

Citing the decision of the *People's Union for Civil Liberties v. Union of India*, the Court stated that “(1) the right to healthcare, including the right to access public health facilities, to receive a minimum standard of treatment and care, the enforcement of the reproductive rights of the mother,”²⁶⁵ constituted an important facet of the realization of the right to health. Also, the Court acknowledged that the right to food and health are interrelated. Only by progressively implementing food and health schemes can India complete their obligations as outlined in the ICESCR. On June 4th 2010, the Court ruled that the Indian health schemes needed immediate reorganization.²⁶⁶ This reorganization includes the availability of health care across states and clarification of over-lapping provisions. In addition to this, the Court ordered the State of Haryana to implement corrective measures and to gather affidavits of compliance eight weeks after June 4th.

In their argument, the applicant drew from the ICESCR to prove to the High Court of Delhi that the Government of India had failed to ensure the right of health to its impoverished citizens. They argued that the government is responsible for facilitating adequate health care and that it is not the responsibility of the citizen to prove their eligibility. Focusing on the marginalized people affected by the failure of the Deen Dayal Hospital, the applicant emphasized the discrimination

²⁶⁵ Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, ESCR W.P.(C) Nos. 8853 of 2008. (High Court of Delhi 2010)

²⁶⁶ Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, ESCR W.P.(C) Nos. 8853 of 2008. (High Court of Delhi 2010)

prevalent throughout the Indian health care system. In General Comment 14 of 2000, the Committee addressed this:

“ The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements....By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”²⁶⁷

Focusing on the presence of a marginalized group, the applicant, Shanti Devi, drew mainly from Articles 10 and 12. Article 10 of the ICESCR discusses the protection of the rights of both women and children. Point 2 of Article 10 directly addresses the lack of maternal care afforded to Shanti Devi and her child. According to Point 2, the Deen Dayal hospital failed to offer protection to the mother “during a reasonable period” both prior and following childbirth.²⁶⁸ As proven by the refusal of the Hospital to afford Devi medical care, the Indian Government failed to realize Shanti Devi’s right to health. Article 12 concerns the healthy development of the child. Particularly vulnerable, impoverished children can only access health care if the government creates conditions in which they can easily access medical services. By merely offering health ration cards, the Indian Government is not sufficiently realizing the right to health. In their refusal to provide Mrs. Devi with medical care based on her low-income status, the hospital violated the principle of non-discrimination.

In response to the applicant’s argument of government institutionalized discrimination, the respondents placed the blame on the victim’s husband. Considering the lack of proper ration cards, in the eyes of the petitioners, Mr. Devi is the main reason behind why the hospital did not provide medical treatment. While the hospital did not give medical treatment to the mother, the

²⁶⁷ High Court of Delhi, “Manal Court Decision,” revised April 6, 2010, http://www.escrnet.org/usr_doc/Mandal_Court_Decision.pdf.

²⁶⁸ High Court of Delhi, “Manal Court Decision,” revised April 6, 2010, http://www.escrnet.org/usr_doc/Mandal_Court_Decision.pdf.

B.K. General Hospital did extend treatment to the new born. In their analysis of the case, the respondents identified the low-income citizen as the reason for why the governmental hospital refused to give treatment.

By refusing to give medical treatment to Mrs. Devi, even when her low income status qualified her for free medical service, the Dee Dayal Hospital took a retrogressive measure. India is obligated under the ICESCR to progressively realize the right of its citizens, especially the impoverished, to adequate health care. While the ration card is a program designed to allow access to health care to the lower caste in India, as this case has shown the impoverished are still barred from medical services. According to the Committee, even with the lack of availability of resources, the marginalized should remain a priority for State parties. It is the government who should proactively provide medical care for the impoverished. In India, there is a stigma against those of scheduled caste. Individuals such as Mrs. Devi are considered within Indian culture as contaminated and as such are widely discriminated against. Marginalized citizens such as Mrs. Devi are not responsible for the inadequacies of the Indian health system. Considering the social position of Mrs. Devi, the Deen Dayal Hospital's refusal to provide service is a form of institutionalized discrimination.

The case of Mrs. Devi proves that the committee needs to provide State parties with explicit guidelines of how they can progressively realize rights such as the right to health. Despite its obligations to ICECSR, the Indian Government gave a blatant lack of attention to poverty alleviation. This government neglect is directly related to the strong presence of institutionalized discrimination.

Recommendations

This Task Force recommends in regards to India that the committee provides detailed guidelines for food security provisions and health care programs created for marginalized citizens specifically. As it stands, the ambiguity in the committee articles does not provide the Indian Government with a clear idea of what steps should be taken in order to progressively realize the rights to food and health. This is evident in the presence of food storage bins yet the absence of budget provisions for the allocation of food in times of famine. In the articles, the committee emphasizes the need for non-discrimination. While the committee prescribes that State parties enact legislation to prevent institutionalized discrimination, no specifics are given. By not giving State parties examples and details, cases such as Shanti Devi's are more likely to occur. In order to timely realize the right to food and the right to health in India, the committee needs to develop guidelines within their articles that give State parties concrete methods to change budgetary provisions and combat discrimination.

Chapter 7:
South Africa

By Youjin Choe and Camille Dodson

Chapter 7

South Africa

Introduction

Our research on court cases focuses on several pivotal economic, social, and cultural rights related cases in South Africa from 1997 to 2009, with each creating precedents that were used and built on in subsequent cases. These court cases demonstrate how a framework for judging the implementation of economic, social, and cultural rights can be created through national legal systems that have domesticated ICESCR norms and language. In a number of the cases, the judges determined that the state failed to uphold its progressive realization obligations in the right to health, housing, and social security, which are built into the state's constitution. Even in cases where the state was found to be not at fault, these cases demonstrate that there are standards being created that can be used to decisively determine whether ICESCR rights have been violated.

Using this framework, it is possible that court cases can be used to show the link between economic, cultural and social rights and government budgets. Decisions made by the Constitutional Court in South Africa demonstrate a national court's ability to determine how and whether or not a government should or has adequately directed budget resources towards achieving these types of rights. The key is for a country to connect the international standards of ESC rights outlined by the ICESCR to domestic legislation, holding their government accountable to these standards by their own courts. This, in turn, moves implementation of

human rights from the national level to local policies and effective service delivery.²⁶⁹ In South Africa, these rights, also known as “second generation rights,” are built into the constitution, and include provisions similar to ICESCR Article 2 obligations, calling for use of maximum available resources, progressive realization, and non-discrimination.²⁷⁰ Additionally, successful cases have also made extensive use of references to international human rights instruments such as ICESCR to further influence and support their courts’ interpretation of constitutional provisions in light of the principles of these documents.²⁷¹

Right to Health

Soobramoney vs. Minister of Health, 1997

Thiagraj Soobramoney brought a case against the Minister of Health, claiming that his constitutional right to health was violated when a state-funded hospital in Durban refused him renal dialysis treatment. Due to the limited staff and equipment available to provide this type of treatment, the hospital applies an in-house standard to determine which patients are eligible to receive treatment. The policy dictates that patients who have acute renal failure that can be “treated and remedied by renal dialysis” are automatically accepted for renal dialysis, while those who have chronic renal failure are not automatically admitted. The policy also outlines that the patient must also be eligible for a kidney transplant, which requires being free of “significant vascular or cardiac disease” to receive the dialysis treatment. Soobramoney not only suffered from chronic, irreversible kidney failure, he also had “ischaemic heart disease and

²⁶⁹Helena Hofbauer, “Challenging Poverty and Inequality through Human Rights: International Strategy Meeting on Economic, Social, and Cultural Rights and ESCR-NET General Assembly,” Nairobi, Kenya, revised December 14, 2008.

²⁷⁰ Chapter 2, Bill of Rights, Constitution of South Africa, available at: <http://www.info.gov.za/documents/constitution/1996/96cons2.htm>.

²⁷¹ Botha, J. High Court Justice, “In the High Court of South Africa, (Transvaal Provincial Division), Case No.: 21182/2001,” The High Court of South Africa, revised 2002.

cerebro-vascular disease” which made him ineligible for a kidney transplant, and thus ineligible for the requested dialysis treatment to prolong his life.²⁷² Drawing on section 27 of the Constitution which guarantees right to health, Soobramoney claimed that the state violated the constitutional obligation that “no one may be refused emergency medical treatment” as well as the right to life guaranteed in Section 11.^{273,274}

The court decided that the obligations imposed by the constitution in the sections regarding health are dependent on and therefore limited by the resources available. In light of the hospital’s significant lack of resources and high demand for the treatment, the court maintained that an “unqualified obligation to meet these needs would not presently be capable of being fulfilled” and asserted that “this is the context within which section 27(3) must be construed.”²⁷⁵ Although the applicant alleged that the state could make more resources available for funding of this treatment, the respondents proved that the district’s Department of Health was already operating on funds insufficient to cover the costs of the public health services being provided. Even while overspending to keep renal dialysis treatment available, it was necessary to impose the hospital’s guidelines so as to benefit as many patients as possible who could be cured by the treatment. Additionally, the court affirmed that “it has not been suggested that these guidelines are unreasonable or that they were not applied fairly and rationally” in deciding to deny Soobramoney treatment. In terms of its budget obligations then, in the court’s view, the

²⁷² The Constitutional Court of South Africa, “Thiagraj Soobramoney versus Minister of Health (Kwazulu-Natal) Case CCT 32/97,” The Constitutional Court of South Africa, revised 1997, pp. 2-4.

²⁷³ South Africa, Constitution. Chapter 2, Section 27(3).

²⁷⁴ Constitutional Court, “Thiagraj Soobramoney vs. Minister of Health,” p. 5.

²⁷⁵ *Ibid*, p. 7.

government was already making reasonable efforts towards progressive realization of the right to health, despite the resource constraints it faced.²⁷⁶

This was the first case in which the court was tasked with determining whether the government of South Africa had upheld its constitutional obligations to progressively realize the right to health. Within the context of scarce resources, the main question revolved around whether the government had taken “reasonable” measures to progressively realize the right to health.²⁷⁷ While the Constitutional Court upheld the decision that the state had adequately allocated its available resources and thus did not order that the applicant receive the requested dialysis treatment, this case is significant for linking economic, social, and cultural rights to budgets. It shows the preliminary ways in which standards for progressive realization, maximum available resources and non-discrimination can be determined and linked to substantive resource allocation measures. This case demonstrates that the principles derived from ICESCR obligations, when domesticated into state constitutions, can be adjudicated and enforced with concrete budget requirements.

Minister of Health, et al. v. Treatment Action Campaign, 2002

This case was an appeal by the government to reverse orders made in the high court that the government had not adequately fulfilled its obligation to progressively realize the right to health, using the maximum of its available resources and without discrimination, because of the shortcomings in its program for addressing mother-to-child transmission of HIV/AIDs. The government was judged to have failed in reasonably addressing “the need to reduce the risk of

²⁷⁶ Ibid, p. 17.

²⁷⁷ The Constitutional Court of South Africa, “Soobramoney v. Minister of Health (Kwazulu-Natal),” ESCR-Net, revised 2005, www.escr-net.org/caselaw/caselaw_show.htm?doc_id=673074.

HIV-positive mothers transmitting the disease to their babies at birth” by refusing to make Nevirapine, an antiretroviral drug, available in the public health sector. Instead, the treatment was restricted to authorized testing sites. The applicants charged that the policy of restricting Nevirapine to certain testing sites was unfair and discriminatory, as this restricted access to the treatment to only 10% of the population. The respondents allegedly did not have a plan in place to realize the extension of these testing centers, which represents a failure of progressive realization.

In favor of the applicants, the court ordered the respondents to make Nevirapine available to women with HIV and their babies who gave birth in the public health sector, in consultation with a medical consultant and after appropriate testing and counseling, even in facilities into which the current program had not been extended. Additionally, it was determined that the government had failed to set out a timeline for implementation of a comprehensive national program to prevent mother-to-child transmission, as mandated by constitutional provisions for progressive realization towards the right to health. The respondents were ordered to “plan an effective comprehensive national programme to prevent or reduce the mother-to-child transmission of HIV” which included providing necessary counseling and testing services, as well as the formula for milk if needed to prevent transmission through breast feeding, and to “implement it in a reasonable manner.”²⁷⁸

This case is extremely significant because the constitutional court ruled that the government had not done enough to progressively realize the right to health and, in the process,

²⁷⁸ Botha, J. pp. 45-49.

established “a conceptual and remedial framework for judicial review and enforcement of the obligation to ensure access to healthcare and other esc rights.”²⁷⁹

Not only does this case create a framework for linking human rights to budgetary action, it also demonstrates the long-term savings that can be created by protection of human rights as a preventive strategy. This could have significant budget implications for governments and could be used as leverage by the CESCR, IBP, and other groups invested in the implementation of economic, cultural and social rights.²⁸⁰ This Task Force recommends that the long-term savings and consequent budget projections for implementing economic, social, and cultural rights be an area for more research as a means to convince governments of the possible fiscal benefits of preventative implementation.

Khosa & Ors v. Minister of Social Development, 2004

In this case, a group of permanent residents living in South Africa filed a complaint against legislative provisions that restricted entitlements to “social grants” for the elderly to only individuals with South African citizenship. These provisions also prevented non-citizens from receiving childcare grants, regardless of the child’s citizenship status. They alleged that this violated Section 27 of the Constitution, which guarantees the right to health care, food, water and social security for everyone. The court interpreted the right of “everyone” to expand beyond citizens to include those living in the country legally. They ruled that the exclusion of legal immigrants from receiving these benefits was “not reasonable” and acknowledged that the

²⁷⁹ The Constitutional Court of South Africa, “Minister of Health v Treatment Action Campaign (TAC) (2002) 5 SA 721 (CC),” ESCR-Net, revised 2002, www.escr-net.org/caselaw/caselaw_show.htm?doc_id=403050&country=13630.

²⁸⁰ Botha, J. p. 7.

“impact upon life and dignity that a denial of such access would have, far outweighed the financial and immigration considerations on which the State relied.” Additionally, the court determined that “the exclusion of children from access to these grants amounted to unfair discrimination on the basis of their parents' nationality” that would violate the obligation of the state to secure these rights without discrimination.²⁸¹

The court recommended that the legislative provisions in question be amended to include “or permanent resident” after the word “citizen.” This case was also followed by the Social Assistance Act of 2004, which included “ministerial discretion,” which can be used to protect the rights of permanent residents. This case is significant for several reasons related to ICESCR article 2 obligations, including the creation of standards for non-discrimination and progressive realization. Most significantly, it set the standard for inclusion of permanent citizens in the implementation of economic, social and cultural rights and the budgetary allocations that flow from this obligation. This case also introduced a more clearly determined framework for a “reasonableness” test that can be used to determine the extent to which efforts to implement a right are acceptable or not. The application of this standard in this case demonstrates the court’s increasing authority to hold the government to article 2 obligations, which carries significant budgetary implications. In this case, social security must be expanded to include legal residents and the state budget must be adjusted accordingly without future retrogressive measures to adequately pursue progressive realization.²⁸²

²⁸¹ The Constitutional Court of South Africa, “Khosa & Ors v Minister of Social Development & Ors. 2004(6) BCLR 569 (CC),” ESCR-Net, revised 2004, www.escr-net.org/caselaw/caselaw_show.htm?doc_id=401099.

²⁸² The Constitutional Court of South Africa, “Khosa & Ors v Minister of Social Development & Ors. 2004(6) BCLR 569 (CC),”

Lindiwe Mazibuko & Others v. City of Johannesburg & Others, 2009

This more recent case involves the right to water, guaranteed under Section 27 of the constitution. A group of civilians living in Phiri in Soweto sued the City of Johannesburg along with its water company, Johannesburg Water, as well as the national Minister for Water Affairs and Forestry. It alleged that the city's policy to provide six kiloliters of water per month for every account holder along was insufficient for adequate access to water and that the installation of pre-paid water meters that charged fees for water usage above the allotted basic amount conflicted with the right to water. When the case was first heard by the South Gauteng High Court, the court found the City's Free Basic Water policy to be "unreasonable in terms of Section 27(2) of the constitution" and ordered that the city provide 50 liters of free basic water daily to the applicants and other Phiri residents. The Supreme Court of Appeal modified this ruling slightly, ordering that the residents needed 42 liters of water daily. However, this decision was overturned by the Constitutional Court which rejected the applicants' argument that "the Court should adopt a quantified standard determining the 'content' of the right not merely its minimum content." They ruled the city's Basic Water Policy represented a "reasonable" step towards progressive realization of the right to water using the maximum available resources, and so was not in violation of Section 27, given the court's inability to determine "minimum content" of a right²⁸³.

Surprisingly, this case represents the constitutional court's retraction and increasing conservatism in ruling on economic, social, and cultural rights cases. In particular, the court judged it "inappropriate" for a court to determine content or quantifiable standards for the

²⁸³ *Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09, [2009] ZACC 28, South Africa, ESCR-Net, 2009, available at: http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=1110326&country=13630.

acceptability of implementation of a right. While this case may seem discouraging because of its failure to produce concrete standards for budget allocations towards ESC rights, there is actually a great deal of insight to be gleaned from this example. Although the court denied any competency to identify “quantifiable” determinants for implementation of the right to water, it could still apply a “reasonableness” test as developed in previous cases. In this instance, if there was a concrete indicator of the amount of water necessary for securing the right, they could have deemed whether or not the government had taken reasonable measures to progressively realize it. Thus, to successfully link the increasing legal power of enforcement with actual budgetary obligations for economic, social, and cultural rights, it is up to the CESCR and the advocates of human rights with which it partners, to definitively issue these concrete indicators that can aid in courts’ decision-making ability. Since national courts may have limited abilities to determine quantifiable standards for economic, social, and cultural rights, the committee and its civil-society partners should make efforts to create and publish the minimum standards to be exercised in budget allocation. Using the model of applying a “reasonableness” standard, like the one which has been developed and applied successfully in cases like this, these concrete indicators could, in turn, then be used to determine compliance with ICESCR Article 2 obligations.²⁸⁴

Right to Housing

Looking at court cases regarding ESC rights gives an overall understanding of current problems and realistic budgetary suggestions for improvement in progressive ways. In this context, South African court cases on the right to housing are examples that show how the recent decisions of the Constitutional Court progressively reflect ICESCR on both national and local

²⁸⁴ Magdalena Sepulveda, p. 337.

budgets. Historically, under the apartheid regime, land distribution in South Africa was unevenly skewed to a specific proportion of the population in South Africa. Indigenous African populations were forced to move from their homes to assigned rural area in the country. The Prevention of Illegal Squatting Act 52 of 1951 (PISA) is one of the laws that supported such violation of the right to housing. In 1998, the country adopted the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 (PIE).²⁸⁵ In section 26 of the Constitution, it clearly states that “everyone has the right to have access to adequate housing” and that the “State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.” Moreover, the section prohibits any arbitrary, forced eviction of one entity by other, without a court order.²⁸⁶

Housing is more than mere property. It is recognized as an initial component of “personal intimacy and family security”.²⁸⁷ Nevertheless, the housing circumstances for common people, especially for vulnerable and marginalized population are still difficult.²⁸⁸ Therefore, court cases regarding the right to housing in compliance with ICESCR have significant meaning for implementation and opportunities for further improvements in the near future.

Port Elizabeth Municipality v. Various Occupiers, 2004

The first case to be examined has implications for defining “just and equitable” reasons for forced eviction and the conditions of “suitable alternative” land for evicted populations. The

²⁸⁵ The Constitutional Court of South Africa, “Full Text of Judgment on Port Elizabeth Municipality versus Various Occupiers,” The Constitutional Court of South Africa, revised October 1, 2004.

²⁸⁶ The Constitutional Court of South Africa, “Full Text of Judgment,” p. 12.

²⁸⁷ The Constitutional Court of South Africa, “Full Text of Judgment on Port Elizabeth Municipality versus Various Occupiers.”

²⁸⁸ Lilian Chenwi, “Putting Flesh on the Skeleton: South African Judicial Enforcement of the Right to Adequate Housing of Those Subject to Evictions,” *Human Rights Law Review* (February, 2008).

Port Elizabeth Municipality filed an eviction order the Court of South Africa against the 68 occupiers, including 23 children, in the area for illegal occupancy in private land. In order to claim forced eviction, three “just and equitable” reasons set out in the Section 26 need to be met. The three reasons are overall circumstance, time period that occupiers have stayed in the land and the availability of the “suitable alternative accommodation.”²⁸⁹

The municipality’s stance is that the occupiers violated their property rights and public interests as well. It also argued that it fulfilled the requirements for the eviction by offering the occupiers the alternative land for relocation, Walmer Township. It showed its concern on the issue of “queue-jumping” in the process of providing the suitable alternative land which would allow “any unlawful occupier within a Municipal area [to] simply occupy a property unlawfully and then demand security of tenure.”²⁹⁰

The question remains, to what extent should the conditions be set out for the “suitable alternative land” that can justify forced eviction? One of the judges in the Constitutional Court interpreted it as “land on which adequate provision is made for basic infrastructure in the form of water, ablution facilities, lighting, etc.”²⁹¹ In the same context, the occupiers argued back that the situation in Walmer Township, the only legitimate option offered for the relocation, is no better than in Port Elizabeth with high crime rate and poor social infrastructure. The occupiers condemned the municipality’s unwillingness to solve the situation through mediation, “since the

²⁸⁹ Port Elizabeth Municipality, “Applicant’s Heads of Argument,” The Constitutional Court of South Africa, revised December 22, 2003.

²⁹⁰ Port Elizabeth Municipality, “Applicant’s Heads of Argument.”

²⁹¹ Ibid.

result of a failure to resolve such dispute would result in the eviction of the unlawful occupiers.”²⁹²

This case illuminates that it is inappropriate to decide whether on right is more important than another, in this case the right to property and the right to housing. It is important to consider the specific circumstances and particularities on a case-by-case basis. After such a process, appropriate budgetary measurements should be allocated. The municipality is not bound to the effective implementation of the ICESCR. After all, it is the State party that has the ultimate obligation to follow the principle of maximum available resources, progressive realization, and non-discrimination. Nevertheless, the municipality’s role as the civil society that conducts ICESCR at the practical level is crucial. According to the Constitution, local authorities have obligations which are set out in accordance to the Covenant. In this sense, the Municipality failed to allocate appropriate amount of resources and efforts to ameliorate the situation. Moreover, it did not give special attention to the occupiers, the vulnerable and marginalized group in society.²⁹³ In this particular case, the Constitutional Court’s decision to fulfill “duties extend beyond the development of housing schemes” indicates that the municipality needs to have flexibility in its budget to deliver policies in order to resolve and/or improve the situation. The government, and to a certain extent, the Municipality must do more than “show that it has in place a programme that is designed to house the maximum number of homeless people over the

²⁹² Various Occupiers of Erven 113 to 128 inclusive, Lorraine, Port Elizabeth, “Respondents’ Written Response to Applicant’s Argument in the Aforesaid Matter,” The Constitutional Court of South Africa, revised May 28, 2004.

²⁹³ The Constitutional Court of South Africa, “Full Text of Judgment on Port Elizabeth Municipality versus Various Occupiers.”

shortest period of time in the most cost effective way.”²⁹⁴ The government must engage with civil society in order to produce results with maximum benefits for all parties involved.

President of South Africa and Anor. v. Modderklip Boedery (Pty) Ltd, 2005

The second court case reaffirms the State’s extensive obligation, as stated in ICESCR, to resolve questions of property and housing in a timely manner even if the State is not directly involved, and thus does not have direct responsibility. More than 400 people who were evicted from a nearby municipality settled on the privately run Modderklip farm in the City of Johannesburg. The initial eviction order was issued in 2001 but the occupiers stayed on the land since they were unable to find another place to live. The sheriff required the farm to pay the huge amount of deposit for the eviction processes but the farm could not afford to pay the cost. As a result, Modderklip farm appealed to the High Court of South Africa that the government did not take action to protect the right of the land owners. This dispute went further to the Constitutional Court.²⁹⁵

The government and Ministry of Land and Agriculture argued that Modderklip farm “shifted the responsibility to protect and vindicate its property” to the local authorities. Consequently, they claimed that it is the farm’s responsibility to pay the cost for the eviction process which would have been cheaper if it was done earlier in 2000.²⁹⁶ The government also argued that it fulfilled its obligation by implementing a series of land reform policies. In their point of view, the occupiers are the one who violated the property right of the Modderklip, not

²⁹⁴ Ibid.

²⁹⁵ The Constitutional Court of South Africa, “Full Text of Judgment on the President of the Republic of South Africa and Modderklip Boedery (Pty) Ltd,” The Constitutional Court of South Africa, revised May 13, 2005.

²⁹⁶ The President of the Republic of South Africa and the Minister of Agricultural and Land Affairs, “Applicants’ Main Heads of Argument,” The Constitutional Court of South Africa, September, 2004.

the State. The government made its position clear that if “unlawful occupations are compensated with the expedited allocation of land and housing, the entire program of land reform and housing would collapse.”²⁹⁷

The respondent, Modderklip farm, argued that the right of the property owner was not protected appropriately by the government, which is enshrined in the Section 9(1) and 25(1) of the Constitution. Furthermore, it claimed that the government violated the Section 7(2), “that a state must respect, protect, promote and fulfill fundamental rights.”²⁹⁸ According to their statistics, the State overlooked the larger problem of providing alternative land for the some 14,000 occupiers, which became 18,000 and soon over 40,000 people in 2001.²⁹⁹ They further claimed that it is the government’s responsible to solve housing shortage since “the occupiers do not claim any right to reside on Respondent’s property, but that they only reside there because they have nowhere else to go.”³⁰⁰ At the final decision by the Constitutional Court in 2008, the Modderklip farm won the case.

This case demonstrates how budget expenditure can increase unnecessarily because of the State’s unwillingness to ease the situation in an earlier phase. Although the government was not directly responsible for the infringement of property rights, and thus had no reason to allocate extra budget to help the eviction process, it is still its obligation to provide effective measurement to protect primary rights. Furthermore, it can ameliorate the situation by assisting the private entity to provide alternative land for the occupiers.

²⁹⁷ The President of the Republic of South Africa and the Minister of Agricultural and Land Affairs, “Applicants’ Main Heads of Argument.”

²⁹⁸ Modderklip Boerdery (Pty) Ltd, “Respondent’s Written Argument,” The Constitutional Court of South Africa, revised September, 2004.

²⁹⁹ Modderklip Boerdery (Pty) Ltd, “Respondent’s Written Argument”

³⁰⁰ Ibid.

Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v. City of Johannesburg and others, 2008

The last case, which is the most recent one, shows the progress on implementing budgets regarding the realization of the right to housing. In 2007, the City of Johannesburg evicted about 400 people in Berea area; they were occupying two buildings that were considered to have insufficient fire safety measures, water supplies and other basic infrastructure for necessary for a basic standard of living. In order to protect public health and promote fire security, the City evicted the occupiers. It argued that it fulfilled its obligation to progressively realize the right to housing by offering alternative land for the evictees. It further claimed that it is the occupiers who turned down its suggestion for alternative accommodation.³⁰¹

However, the occupiers argued that the City did not serve its responsibility to provide sufficient measures, “within the available resources of the City, to have brought about the progressive realization of the right of the occupiers to access to adequate housing.”³⁰² Furthermore, the right to housing is not the only right relevant to this case; the right to work also plays a major part in the situation. The region offered by the City as “suitable alternative land” was in fact located at the outskirts of the City, which limited the occupiers’ employment opportunities.³⁰³ The occupiers were concerned that they would have no choice but to move to the periphery of the city with less chance to improve their livelihood on their own. They referenced the previous case of *Port Elizabeth Municipality versus Various Occupiers* in order to

³⁰¹ Occupiers of 51 Olivia Road, “Applicant’s Heads of Argument,” The Constitutional Court of South Africa, revised July 30, 2007.

³⁰² Occupiers of 51 Olivia Road, “Applicant’s Heads of Argument”

³⁰³ Ibid.

show the necessity of considering situations of forced evictions on a case by case basis.³⁰⁴ The occupiers further questioned the accountability and transparency of the local authority in terms of budget implementation. They argued that the City neglected “to address the affordability of such a demand” which showed an unwillingness to solve the situation.³⁰⁵

The budgetary implications of this case are significant. The Constitutional Court ordered the City of Johannesburg to pay the costs and to provide “adequate alternatives” to the occupiers which should be located in the inner city, considering its likely impact on their right to work as well.³⁰⁶ This implies, as the Court mentioned in the case of *Port Elizabeth Municipality versus Various Occupiers*, that the local authority has to include basic social infrastructure such as water, electricity, public sanitation, and transportation to meet the condition for “suitable alternative” environments. However, unlike the Port Elizabeth Municipality case where the Constitutional Court only suggested that the local authority take into account the situation of the occupiers, in this case, the Court ordered the City of Johannesburg to provide suitable alternative accommodation and to pay the costs. This also recalls the local government’s obligation to fully engage in the situation and solve it in non-retrogressive ways. Actual efforts to reflect this order to budget and to continuously improve the condition is crucial for progressive realization and further attention to vulnerable and marginalized groups of people in the society.³⁰⁷

Recommendations

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ The Constitutional Court of South Africa, “Full Text of Judgment,” The Constitution Court of South Africa, revised February 19, 2008.

³⁰⁷ The Constitutional Court of South Africa, “Full Text of Judgment.”

The budgetary implications that permeate the court cases are closely related to the interpretation of “just and equitable” reasons to evict unlawful occupiers and of the “reasonableness” of measures for implementing the right to health. These court cases in South Africa show the recent emphasis on government’s and local authority’s obligations to provide appropriate measures to realize the right to housing and health on a case-by-case basis.³⁰⁸ Therefore, this Task Force recommends that the Committee support individual State parties to establish organizations that can examine each case of dispute on ESC rights under the Covenant. This can reduce wasteful expenditure on court proceedings and the costs that increased due to late implementation of the appropriate alternatives by recommending optimized budgets and time periods to ameliorate the situation. Additionally, we recommend that the Committee focus on research that demonstrates the long-term financial benefit in implementing human rights as a preventive strategy. For example, in resolving the right to housing, it would be more beneficial in the long run for the government to allocate an adequate portion of the budget to those who cannot afford to have secured tenure by themselves. This would also resolve the government’s concern on “queue-jumping” and reduce the financial burden to settle disputes on right to housing which would likely impact the entire housing plan.

This report further recommends that the CESCR accepts periodic reports not only from the State parties but also from NGOs and other community-based organizations. Moreover, according to the optional protocol adopted by the Committee in 2008, even individuals are encouraged to file a complaint if the government is not serving its responsibility through legislative and budgetary measurements. This implies that State parties will implement further

³⁰⁸ Lilian Chenwi, “Putting Flesh on the Skeleton: South African Judicial Enforcement of the Right to Adequate Housing of Those Subject to Evictions,” pp.130.

efforts to improve accountability and transparency. The Committee is able to reinforce its monitoring and reviewing function by analyzing data from the NGOs, other community organizations, and individuals, thus examining the actual policy and budget implementation at the local level. This Task Force also recommends that the Committee work closely with the local organizations to develop concrete standards for the minimum content of ESC rights. In the South African case, for example, the domestic court could have used such standards to decide whether the government had implemented reasonable measures to provide adequate amounts of water. This will prevent the Committee from having a skewed view on how the compliance between the ICESCR and national implementation has worked.

Section II

Summary of Recommendations

With the vagueness present throughout the Committee's General Comments, there is a general lack of accountability and clarity of obligations. A lack of progressive realization and failure of governments to take deliberate measures are largely due to the fact that the Committee does not explicitly state obligations using budgets as a key element. In many cases, even though programs to realize rights are available, no progress is made due to the lack of budgetary guidelines. By neglecting to clarify terms such as MAR, PR and ND, the Committee has created opportunities of State Party retrogression. In a number of the cases, the judges determined that the state failed to uphold obligations specified in the Covenant and in their Constitutions. Even in cases where the state was found to be not at fault, they demonstrate that courts create standards that can be used to decisively determine whether ICESCR rights have been violated. In this section, we focused on court cases in three specific countries: Colombia, India, and South Africa. These cases are significant because they form legal precedents that pave the way for future reforms in ESC rights, and provide the CESCR with frameworks for effective budgetary and resource allocations that decrease violations of State obligations.

- Colombia
 - Right to health: The court decision outlines specific benchmarks for budget allocations toward health services and emphasizes the need for immediacy in providing health services to citizens.

- Right to education: The court emphasized the need for free primary education, and upholds an earlier law stipulating that at least 10% of the national budget should be dedicated to the education system.
- India
 - Right to food: This case highlights the retrogressive actions of the Indian government. The Indian government ignored its obligations under the Covenant and did not provide immediate famine relief to their starved citizens, despite availability of food nearby. The court demanded that the government's budget focus on providing food security for citizens.
 - Right to health: A woman of lower caste in Indian society was refused medical treatment and subsequently died. The court ordered a reorganization of the Indian healthcare system in order to eliminate institutionalized discrimination and ensure equal access to healthcare across all the Indian states.
- South Africa
 - Right to health care and water: We examined four cases that show the link between budgets, human rights, and the legal system. These cases are significant because they establish standards for the progressive realization of ESC rights in South Africa. They demonstrate the courts authority to implement reforms that hold the government accountable to Article 2 obligations.
 - Right to housing: These cases show the importance of examining the contextual realities of each case in order to create a solution that fits the specific issue. They show that if the government ignores ESC rights, they can be held accountable later and forced to allocate more resources to the realization of the rights.

After examining the empirical legal evidence in these specific cases, this Task Force recommends that:

- The Committee support the creation of institutions that can examine specific ESC violations within member States;

- IBP and the Committee research the long-term budgetary benefits of implementing ESC rights immediately rather than waiting to be forced to reform by the citizenry and the legal system;
- The Committee should accept reports from NGOs as well as countries on attempts to fulfill their Article 2 obligations;
- The Committee should work closely with civil society organizations and NGOs to develop concrete standards for ESC rights implementation.

Section III: Challenges and Issues of Implementation

Section III Introduction

While it is important to critically examine the theoretical framework of the International Covenant on Social, Economic and Cultural Rights, without an analysis of the problems in implementation that framework has no real strength. This section will set out to evaluate the institutional deficiencies that influence government spending and create obstacles for the full realization of rights. By exploring the topics of efficient and effective spending, under-expenditures, geographical disparities, leakages and, wasteful expenditures it will become clear that transparency and accountability are key to success.

First, chapter 8 discusses the prevalence throughout ICESCR of rhetoric concerning effectiveness and efficiency in spending. However, as the Covenant mostly pertains to governments and aid organizations, when it comes to budget allocation the economic connotation is not as clear. In this section effectiveness and efficiency will be defined in a way that elaborates on how these terms relate to the utilization of MAR as well as the specific implications for program development and public policy.

Next, chapter 9 explains under-expenditures as the simplest and most common form of budget inefficiency. The term will be defined as having several components including a percentage of gross domestic product (GDP), and the amount of involvement by the private sector. The necessity for revisions that clarify and standardize the responsibility of governments to sufficiently allocate and distribute funds for social services will become apparent through the comparison of the affects of two national spending patterns.

Geographical disparities in funding will be addressed in chapter 10. Here it is demonstrated that disproportionate sharing of funds and services is not compatible with the

ICESCR's ideals of nondiscrimination in human rights. Furthermore, current models of targeted spending are not efficiently achieving these rights and reducing discrepancies. Some examples of the negative outcomes these spending patterns can have are demonstrated here and as a result, it is suggested that funds should be more heavily allocated to areas of greater need rather than centers of political or populous concentration.

Chapter 11 highlights the problem of government leakages. While governments may allocate the maximum of available resources towards the achievement of social, economic and cultural rights, the official budgetary amount is not always representative of the reality of funding received by beneficiaries and service providers. These inconsistencies have severe consequences for the effectiveness of social programs. Therefore, it is necessary for governments to engage with organizations such as Supreme Auditing Institutions (SAIs) and Public Expenditure Tracking Surveys (PETS) to track the disbursement of human rights resources.

The final chapter of this section will illustrate the significance of wasteful expenditures in national budgets. These inefficiencies are a medium for corruption and private gain rather than justified expenses of progressive reform. Chapter 12 outlines the detriments of this problem for ICESCR related budgeting and depicts the need for accountability on national and international levels. To accomplish these goals it is recommended that governments increase transparency of budgeting and decision-making and reduce involvement of private interest groups.

Implementing ICESCR's ideals and obligations seem straightforward in theory. However, the lack of economic insight sometimes makes its provisions difficult to implement into the national budget. However, this section addresses several of the most significant issues and suggests that with appropriate measures to increase transparency and accountability, effective and efficient spending for human rights can be achieved.

Chapter 8:
**Effectiveness and Efficiency in
Spending**

By Sarah Van Houten

Chapter 8

Effectiveness and Efficiency in Spending

Introduction

Throughout the ICESCR, the theme of implementing effective and efficient spending towards realizing human rights is constant. Achieving effective and efficient spending determines the success of budget allocation in realizing full economic, social, and cultural rights and therefore forms the foundation of ICESCR's objectives. However, the concepts of "effectiveness" and "efficiency" in terms of budget execution are not clearly defined, which translates into significant problems in implementation.

In this chapter, we argue that the cost-effective perspective on effectiveness is the most efficient and therefore the most appropriate interpretation of effectiveness according to ICESCR. To help governments and aid organizations to better execute cost-effectiveness and efficiency in spending, the process is divided into three components of analysis: implementation, evaluation and accountability. This chapter will begin by analyzing two perspectives on effectiveness and how each perspective relates to ICESCR, specifically the interpretation of MAR. We will then delve into the process of achieving effectiveness and efficiency in spending in a way that best fulfills the Covenant's goals of realizing full economic, social and cultural rights. We will conclude by providing an outline of the three components of analysis that would help IBP assist governments and aid organizations to utilize concrete strategies in implementing sustainable, effective and efficient budget allocations.

Definition: Effectiveness and Efficiency

Effectiveness is the extent to which one is successful in achieving or producing a desired or intended result. It is the degree to which objectives are achieved and to which targeted problems are resolved. It is the concept of “outcome-oriented” financing in that allocation depends on potential benefit. Efficiency on the other hand is the comparison of what is actually produced or preformed with what can be achieved with the same consumption of resources³⁰⁹. In other words efficiency means productivity in the sense that it is realizing the best effect with the fewest possible resources such as money, time or labor. In general, the basic definitions of both effectiveness and efficiency do not vary. It is in the definition of the desired result and the way in which that result is determined successful that the differences in perspective arise.

Two Perspectives on Effectiveness: Interpreting MAR

According to ICESCR, effectiveness refers to “the obligation to use MAR but also means that ESC rights expenditures must be effective; that is, they must have not only the intention, but also the result, of enhancing people’s enjoyment of their rights”³¹⁰. However, the Covenant does not specifically define what the “result” of enhancing people’s rights actually means in practice nor does it discuss how to achieve that result.

Comparative Effectiveness

The idea of comparative effectiveness involves comparing all options for budget allocation and choosing the policy or program that is most effective for that specific problem. In other

³⁰⁹ BusinessDictionary. Available at: <http://www.businessdictionary.com/definition/efficiency.html>

³¹⁰ “Note to Task Force on Achieving Human Rights Through the Government Budget” Research Outline for UW.

words, the program or policy with the greatest benefit or value should be implemented regardless of cost or other forms of resource consumption. Under the comparative effectiveness approach with regard to realizing ESC rights, quality and maximum improvement is always considered over cost. In this way, comparative effectiveness seems like the interpretation of effectiveness used in the Covenant, as it would be the most purely effective method of achieving the full realization of ESC rights. However, this perspective is incomplete because when considering the limited resources available for social spending, cost cannot be ignored.

In Sepulveda's principal conclusions regarding the obligations of governments to use the MAR to realize ESC rights, she argues that expenditures must be both efficient in reference to the consumption of resources and effective in reference to the extent of impact. However, without a cost-benefit analysis, the comparative effectiveness approach does not address efficiency in spending. The incorporation of efficiency therefore prompts a more specific interpretation of MAR. The implementation of MAR according to the ICESCR cannot be interpreted according to the comparative effectiveness approach because governments cannot ignore the limited resources in budget allocation. More spending does not mean better spending and the interpretation of MAR should incorporate an efficient use of resources to reflect the realities of budget constraints.

Cost Effectiveness

In contrast to the comparative effectiveness interpretation, which is determined without reference to costs, cost-effectiveness requires an analysis of value and therefore incorporates efficiency into the allocation of the budget. In other words, "cost-effectiveness provides the

clearest simple way to promote value for money”³¹¹. This approach embraces an optimized management of limited resources in that there is an analysis of whether additional spending yields an improved outcome.

“Regarding redistribution, effectiveness of social spending can be defined by the degree to which the realized allocation approaches the socially desired outcome. For example, a social objective could be to reduce the risk of poverty (defined by some income threshold). If the market allocation without government intervention leaves 30% of the population at risk of poverty, effectiveness is measured by the extent to which government intervention reduces the poverty risk. Efficiency can be defined by the amount of foregone resources by moving towards the desired allocation. Social spending is more efficient if less resources are used for a given change, or if, for a given level of foregone resources, the economy moves closer to the desired allocation.”³¹²

In this way, the cost-effective interpretation is also the most efficient because it uses fewest inputs (money) to achieve the maximum outputs. The comparative effectiveness approach will have the result of enhancing people’s enjoyment of rights, but cost-effectiveness due to its analysis of value is the more efficient interpretation. Therefore, in order to incorporate both efficiency and effectiveness in spending into the realization of ESC rights, an analysis of resource output or cost-benefit is required. In this way, cost-effectiveness implies deciding whether the benefits of that specific program of policy justify the price tag. More spending, while creating a marginally better outcome, is not necessarily the best option. For example, the U.S. based think tank Center for American Progress recently released the report “Return on Educational Investment” using data from over 9,000 school districts across the country to evaluate the correlation between education spending and student performance. The results found that over the past four decades (after adjusting for inflation), U.S. expenditure per student has

³¹¹ Philip Musgrove and Julia Fox-Rushby, “Economics and Cost Effectiveness,” The International Bank for Reconstruction and Development/The World Bank, revised 2006

³¹² Peter Herrmann, Arno Tausch, Almas Heshmati and Cheman Bajalan, “Efficiency and Effectiveness of Social Spending,” Institute for the Study of Labor, revised May 2008

nearly tripled³¹³. Despite increased funding, overall student performance and achievement has only increased marginally if at all. The report states that many schools and districts are using their resources towards inefficient ends and “without controls on how additional school dollars are spent, more education spending will not automatically improve student outcomes.”³¹⁴ It is recommended that rather than spending on administration, operations and other non-instructional expenditures, districts should target resources to more efficient projects such as investing in teacher quality and focusing spending on the least-productive schools. In this way, “many low-performing school districts could boost student achievement without increasing spending if they used their money more productively”³¹⁵. Therefore, as long as there are opportunities to substitute more cost-effective strategies for less cost-effective ones, costs can be lowered without adversely affecting the realization of ESC rights³¹⁶.

It is important to note that an emphasis on cost-effectiveness should not compromise the comparison of benefits. In order to achieve cost-effectiveness, one must consider the best option relative to cost not just chose the cheapest option. If programs or policies that are expensive and inefficient were to be cut back without reordering priorities from less to more cost-effective services, then it could result in even worse outcomes³¹⁷. Thus, prioritization is key to the successful execution of efficient, cost-effective strategies. Just as in the “Return on Education Report” it is argued that prioritizing spending based on potential impact and budget constraints will have more overall returns than continuing homogenous spending. In this way, “maximum

³¹³ Ulrich Boser, “Return on Educational Investment,” Center for American Progress, revised January 19, 2011

³¹⁴ Boser, “Return on Educational Investment”

³¹⁵ Boser, “Return on Educational Investment”

³¹⁶ Milton Weinstein and Jonathan Skinner, “Comparative Effectiveness and Health Care Spending—Implications for Reform,” *The New England Journal of Medicine* (February 2010)

³¹⁷ Weinstein and Skinner “Comparative Effectiveness”

available resources” should be interpreted as the most money spent for the justifiable value. In other words, the maximum amount of resources should be targeted on the strategy that will yield the highest return with the least cost. For example, the right to health is about health outcomes (lower infant mortality, clean drinking water etc) not specific rights to the output of public health (hospitals, clinics). In this way, MAR implies a prioritization of actions; rather than MAR being applied universally across all ESC rights agendas, governments and aid organizations must prioritize and invest in those programs and policies that will provide the maximum returns while also addressing the greatest need.

Unlike the comparative-effectiveness approach, which just picks the best option, regardless of how much it costs, cost-effectiveness is all about value. The decision is based on the justification of the costs of programs and policies against the projected benefits.. The implicit premise here is that conducting a cost-benefit analysis means establishing a threshold beyond which ESC rights spending is unreasonable or counter-productive³¹⁸. It is defining this threshold that causes most concern over determining the specific implications of effectiveness of government spending to realize ESC rights. In order to apply efficiency and effectiveness into tangible policy goals and programs, three steps of budget allocation must be analyzed: implementation, evaluation and accountability.

Implementation

ICESCR has made it clear that it is necessary to assess both effectiveness (conversion of outputs to outcomes) and efficiency (conversion of inputs to outputs) in spending in order to

³¹⁸ Maggie Mahar, “Comparative vs. Cost-Effectiveness,” available at <http://takingnote.tcf.org/2008/06/comparative-vs.html>

fully realize ESC rights. When considering multidimensional phenomena such as poverty, deprivation and the realization of human rights, efficiency and effectiveness are difficult to observe. It is challenging to monitor and evaluate reform initiatives because many activities are “grounded in complex social environments at the community level, where the trajectory of impacts tends to be non-linear and difficult to measure.”³¹⁹ However, many of the challenges of implementing and measuring efficiency and effectiveness in spending can be mitigated with a clear framework of policy goals.

The Importance of Goals

A well specified policy environment with clearly articulated goals is a critical condition for improving the effectiveness of public expenditure management. Without defining specific policy goals it is very difficult to employ outcome-oriented budget allocations; essentially, effectiveness in spending can only be achieved when there is a clear, actionable objective in which improvement can be measured³²⁰. In defining policy goals, there should be a focus on specific, quantifiable policy programs rather than far-reaching or general objectives. For example the goals of eradicating poverty or improving the education system are appropriate goals but require actionable initiatives with which to evaluate progress. Goals must be highly specific and related to a measurable outcome in order for the subsequent policies or programs to be effective.

In order to evaluate progress or achieve effectiveness and efficiency in spending the creation of a determinate index or indicator is necessary. For example indicators “would help focus attention on the ultimate outcomes of development programs as a whole—more jobs, more

³¹⁹ “Development Effectiveness,” The World Bank, revised July 30, 2009

³²⁰ Andy Norton and Diane Elson, “What’s behind the budget? Politics, rights and accountability in the budget process,” Overseas Development Institute, revised 2002

educated children, steady access to electricity—not just the inputs created by aid projects (power plants, school buildings, etc.)”³²¹. By utilizing indicators that are easy to explain, easy to measure, and relatively easy to verify, they will successfully capture information on the tangible impact of ESC rights expenditures and ensure an effective allocation of funds. According to a report written by the Center for Global Development five indicators are listed as a means of guiding development expenditures towards effective ends.

1. *Primary School Assessed Completers* – the number of children completing primary education and sitting for a standardized examination
2. *Electricity Delivered and Paid For* – adjusted for tariff subsidies and non-payment. Measured in megawatts, and compared year-over-year
3. *Adjusted Agricultural Yield* – the yield per acre under cultivation of Pakistan’s main crops, adjusted for water use
4. *DTP3 Vaccination Rate* – the percentage of infants receiving three doses of the Diphtheria-Tetanus-Pertussis vaccine (DTP3) and
5. *Domestic Revenue Spent on Development* – funds raised through domestic taxation and directed toward development projects.³²²

These types of metrics provide clear, quantifiable goals and as a result generate controllable outcomes. Establishing this type of clarity at the level of policy goals and objectives facilitates concrete improvement as it stimulates an assessment of progress. While finding indicators or defining goals that measure the strength of overall ESC rights improvements can be difficult, by focusing narrowly on individual actions and outcomes, progress can be monitored and maintained.

Prioritization

³²¹ Nancy Birdsall and Wren Elhai, “Shared Goals: Measuring Overall Development Progress in Pakistan,” Center for Global Development, revised January, 2011

³²² Birdsall and Elhai, “Shared Goals”

As mentioned earlier, prioritization is critical to the execution of efficient and effective social spending and involves designing the strategies that will yield maximum benefit with lowest cost. Strategies of implementation or budget execution should reflect prioritization to ensure that budget expenditures (MAR) reflect the greatest potential gain. Appropriate prioritization techniques aid governments and other organizations in implementing policies or programs that maximize the effectiveness and efficiency of resource allocation in realizing ESC rights.

One strategy of implementing prioritization is informed decision-making. In order to uncover where spending should be prioritized, it is necessary to have a participatory process, incorporating government officials, intellectuals and civil society. Information regarding the reality of local situations is key to developing effective policies and programs and “because there is no single, all-encompassing, objective source that can be used for assessing effectiveness, multiple sources of information are needed”³²³. By utilizing sources and insight from a variety of institutions, governments and aid organizations can better allocate funds to generate the greatest impact with the least amount of resources. Manipulating the budget to realize ESC rights is complex and subjective and “successful work to take forward social goals in budget processes often involves networks of actors with different positions and skills – including NGOs, researchers, parliamentarians, members of political parties, technocrats and members of the social groups in question themselves”³²⁴. By incorporating a broader political analysis, “governments and aid agencies can identify key actors in public service and civil society who

³²³ Miriam P Kluger, Nelson Rivera and Marie Mormile-Mehler, “Defining and Measuring Program Effectiveness at a Mental Health Social Services Agency,” *Families in society: The Journal of Contemporary Human Services*, (2001), pp 1044-3894

³²⁴ Norton and Elson, “What’s behind the budget?”

can bridge the gap between citizen groups and the typically relatively closed world of officials engaged in the budget process”³²⁵. In this way, priorities would be more evident and decisions regarding public expenditures would be more focused thereby maximizing efficiency and effectiveness of budget execution.

Another prioritization technique to aid effective implementation is to focus on the programs or locations that lead to the most benefit with the least resources. For example, a study published by the IMF concerning public spending on education and health found that investing specifically in primary education and preventative health care yielded the highest social rates of return. The data concluded that health and education indicators improved as spending was targeted towards primary education and preventive care. In this way, “increases in spending for primary education and preventive care can ensure that the benefits of social spending are distributed more equitably while accelerating human development”³²⁶. In other words, primary education and preventative health care are the most cost-effective strategies and should be prioritized in social spending. In addition, focusing more sharply on states and districts of greatest need would improve effectiveness of budget execution. According to an article from Health Affairs magazine, outcomes are greatest when resources are concentrated on those regions of greatest need rather than spreading resources homogeneously across all sectors. For example, “a program that initially focuses on just the 100 districts with the largest absolute number of infant deaths would be more effective than one spread thinly over all 602 districts”³²⁷. By prioritizing those most in need of ESC rights protection, success brings more available

³²⁵ Norton and Elson, “What’s behind the budget”

³²⁶ Sanjeev Gupta, Benedict Clemets and Erwin Tiongson, “Public Spending on Human Development,” *Finance & Development: Quarterly Magazine of the IMF*, (September 1998), pp. 10-13

³²⁷ Anil Deolalikar, Dean Jamison, Prabhat Jha and Ramanan Laxminarayan, “Financing Health Improvements in India,” *Health Affairs*, (August 2008), pp. 978-990

resources, which would permit programs to be gradually phased in providing for universal coverage. By prioritizing spending to those programs and regions with the greatest potential for benefit, the value of the same amount of social expenditures is amplified.

Evaluation

Evaluation is a crucial aspect of effectiveness and efficiency in spending because measuring and analyzing the outcomes of a policy or program determines the extent to which the a given amount of resources actually promotes the realization of ESC rights. While developing a standardized system of evaluation can be challenging, the incorporation of a feedback mechanism can greatly reduce difficulties.

Assessment of feedback from locals and civic groups would provide invaluable insight into the productiveness of a policy or program. The perspective of those to whom the programs are geared is the most important information policy-makers can gain on the effectiveness of social spending because they are “experiencing the service first-hand and depending on their articulateness and perceptiveness, are able to describe whether the program made a difference from their vantage point”³²⁸. By utilizing local systems of communication and feedback governments and aid organizations can gain a heightened more accurate sense of the impact of a given program or policy.

In addition to on-the-ground feedback, statistical feedback is also necessary for evaluation. Without an effective system for reporting and recording expenditures, it is impossible to assess the degree to which budget allocations match the reality of expenditures on the ground. Data on distribution, demographics, rate of benefits, and other indicators provide concrete

³²⁸ Kluger, Rivera and Mormile-Mehler, “Defining Effectiveness”

evidence around which governments and aid organizations can design their policy. For example, global research and development programs in the DAC Network on Development Evaluation work to increase the effectiveness of international development programs by supporting informed, independent and analytical evaluation of data and feedback. These organizations set out time-bound and assessable proposals to implement results-oriented development programs. Various in-depth studies and reports that measure development indicators and annual progress are implemented and results are synthesized to draw out broader conclusions about the actual impacts of increased aid effectiveness³²⁹. By implementing effective evaluation techniques, MAR would be used most efficiently, as consistent monitoring and evaluation would continually inform more accurate formulation.

Accountability

According to the World Bank Institute, accountability is the “ability to require that public officials, private employers, and service providers answer for their policies, actions, and use of funds”³³⁰. Accountability is critical in achieving effective and efficient spending and an analysis of the process of resource allocation and use will potentially reveal not just the stated intentions of government or aid agencies but the extent to which implementation actually reflects those priorities. Without accountability, there is substantial potential for corruption or reallocation of funds to less or unproductive ends. Under these precarious conditions, it is unlikely that key actors such as CSO’s, donors and government officials will invest efforts in making a budget

³²⁹ “Governance and Development,” OECD available at http://www.oecd.org/department/0,3355,en_2649_34565_1_1_1_1_1,00.html

³³⁰ Dennis Arroyo and Karen Sirker, “Stocktaking of Social Accountability Initiatives in the Asia and Pacific Region,” The World Bank Institute, revised 2005

realistic. Therefore, transparency and openness in the management of public expenditures are critical to establishing effective political and public accountability.

“The transparency of the system of budget management is critically important. Transparency takes many forms, but in all its forms is founded on a system of budget information that allows for both officials and the public to scrutinise what actually happens to the money. When such information is available, and publicly disseminated, it can act as the ‘nourishment’ on which a culture of greater accountability can develop – often in ways that cannot be planned or predicted in advance”³³¹

A more transparent budget process is required for stakeholders to be able to meaningfully analyze public budgets in order to improve budget efficiency in the future. By publishing and distributing locally specific information on budget expenditures, citizens and officials would be encouraged to use this information to increase accountability for performance and to monitor progress in improving it. Project monitors, citizen report cards and community surveys as well as the proliferation of information and communications technology have all been successful techniques to monitor and observe implementation and performance of local projects, public services or government programs³³². Improving information availability and oversight engenders public participation in the budget process thereby enforcing accountability and improving effectiveness of spending.

An additional way to encourage accountability is to provide incentives. Creative incentives to motivate governments such as performance and outcome-based grants can affect the decision-making process of politicians and officials and improve effectiveness. For example, according to a recent report from The World Bank Publications, Uganda has successfully incorporated systems of performance incentives for accessing grants based on demonstrating good practices in local public expenditure management and transparent procurement and

³³¹ Norton and Elson, “What’s behind the budget”

³³² Arroyo and Sirker, “Stocktaking of Social Accountability Initiatives”

financial management procedures. For instance, to improve school facilities, “districts receive additional funds if they have good ratios of input to output”³³³ In this way, fiscal rewards and penalties can spur healthy competition between governments and communities, which strengthen empowerment and provide incentives for improved cost-effectiveness. These types of social accountability frameworks can mitigate the risks of corruption and misuse of resources and build citizen’s capacity to oversee the budget process. However while performance grants may be a start to create effective budget accountability, it is the participation of civil society that will ultimately develop sustainable accountability and transparency of the budget.

The most effective way to promote social accountability is through the sharing of information and civic collaboration. Advocacy chains, in which different groups involved in social accountability mechanisms link together to hold the State accountable have proved to be successful especially in India and the Philippines³³⁴. The World Bank Institute offers recommendations to strengthen advocacy chains and the effectiveness of social accountability. First, civic organizations must conduct thorough fiscal research and closely monitor public spending. By gathering systemic data we can better determine communities’ most pressing needs. Second, NGO’s and activist groups should develop ties with the mass media by commentating on TV and radio, developing websites, alert newspapers, hold press conferences or sponsor events that are newsworthy. Editorials, features and investigative reports are valuable aids for public analysis. Third, civil society should foster a strong Internet presence. By making data and performance reports public online, the public at large can monitor budgets rather than on single organization. Fourth, public opinion surveys should be utilized. Government officials

³³³ Hans Binswanger-Mkhize, Jacomina de Regt and Stephen Spector, *Local and community driven development: moving to scale in theory and practice*, (Washington D.C.: The World Bank 2010), p. 189

³³⁴ Arroyo and Sirker, “Stocktaking of Social Accountability Initiatives”

and politicians would be more supportive to surveys that reveal public opinion to maximize votes during elections. Finally, it is crucial to incorporate lobbying and social mobilization. It is not enough for civic groups to display budget and public opinions. Civil society movements also need to directly approach policy makers to present alternatives and begin negotiations³³⁵.

Through these initiatives, the public can successfully hold policy-makers accountable to their priorities and greatest needs and this will ensure that MAR is implemented to the most effective and efficient means.

Conclusion

Effectiveness and efficiency of the budget is crucial to realizing ESC rights. The cost-effectiveness approach is the best interpretation of MAR because it incorporates a cost-benefit analysis thereby comprising efficiency in spending. In order to achieve cost-effectiveness in spending, 3 methods must be applied: implementation, evaluation and accountability. The development of clear, measurable goals that can be monitored with indicators or benchmarks is necessary for realizing an effective use of MAR. Goals provide a policy framework in which effectiveness can be measured and therefore results achieved. Correct prioritization of resources, therefore, is key in determining the goal that will provide the greatest results with the fewest resources. By utilizing information from a broad array of institutions, governments and aid agencies can implement programs and policies efficiently and maximize the value of MAR. Evaluation of statistical data and public feedback provide an assessment of actual impact and productivity. In this way, data can be used to replicate successful strategies or reform existing ones in ways that would better utilize MAR. Finally, accountability both political and social,

³³⁵ Arroyo and Sirker, "Stocktaking of Social Accountability Initiatives"

holds governments and aid organizations responsible for results. As a result, policies and programs would reflect the priorities and opinions of the people thereby ensuring sustainable and effective budget allocations.

Nevertheless, effectiveness and efficiency vary depending on specific regions, sectors, populations and institutions. While the rubric outlined here is a general strategy for achieving effectiveness and efficiency in spending, specific challenges and constraints to budget allocation should be addressed individually and in more detail. In the next chapters, we will delve into the explicit problems that arise when attempting to use the budget to adequately realize ECS rights and offer further recommendations to improve efficient and effective budget allocation.

Chapter 9:
**Under-Expenditures in Domestic
Budgets**

By Cassie Tillman

Chapter 9

Under-Expenditure in Domestic Budgets

Introduction

In terms of budgets and human rights, under-expenditure is the simplest and most common form of financial mismanagement. The International Covenant on Economic, Social and Cultural Rights (ICESCR) declares that the government of every member state is legally obligated to expend the full amount of its allocated resources towards the protection and enjoyment of these human rights and the sustention of its citizens.³³⁶ However, despite one hundred and sixty countries being party to the covenant as of 2008, significant under-expenditure (UE) in social service areas is still widespread today³³⁷. At present, this lack of spending is negatively affecting the populations of numerous countries both developing and prosperous worldwide.

To address this issue it is important to first define under-expenditure in terms of national and international budgets. In addition, identifying the effects of these spending models on human rights in specific areas and populations will shed understanding on the consequences of such reductions. It is essential to comprehend why these spending patterns occur and what their outcomes are, in order to make essential recommendations for change that fulfill a government's obligations to the ICESCR and its citizens. These recommendations include the necessity for governments to rely on foreign aid and private sector support only as supplemental income for

³³⁶ UN: International Covenant on Social, Economic and, Cultural Rights, Article 2:1, 1996

³³⁷ UN Treaty Collection: International Covenant on Economic, Social and Cultural Rights. 2009

social service funding and that the Committee should include a standard for allocating domestic budget funding as a function of national GDP and population.

Part 1: Defining Under-Expenditure

For the governments of relevant parties, lack of adequate funding towards achieving human rights and providing social services is negligent and fails to meet the obligations set out in the UN Covenant of Economic, Social and Cultural Rights. This is not to say that financially struggling and/or developing countries are expected to spend the same unit amounts as the wealthiest nations on providing services such as healthcare and education. However, it is important to analyze a country's budget and spending and determine if the *maximum* of available resources (MAR) is being appropriately allocated. This assessment can be accomplished by budget comparison to three different models; gross domestic product (GDP) analysis, private sector and international aid contributions, and philosophical dimension of human rights.

The first of these models, gross domestic product analysis, may be the most significant and readily applicable evaluation of under-expenditures in social service budgets. These assessments can give an accurate evaluation of spending in very concrete and indisputable terms. This is because GDP comparisons deal exclusively with numbers, percentages of resources and, proportions of funds- in essence the dollars and cents. Although these figures can be daunting and difficult to sort through there are two simple ways of determining whether a given budget appropriates an adequate amount of funding for social services and human rights in accordance with the ICESCR.

In the case of a general increase of annual GDP for any given country, the overall budget and therefore overall funding for improving social services should increase as well. The logic follows that if a country's annual income increases its maximum available resources improve proportionately with it. Moreover, the ICESCR mandates that parties take steps towards progressively improving conditions in human rights areas and make priority the greatest amount of utilizable capital to do so. Assuming that the maximum of available resources were being properly allocated before the increase in revenue, a change in income would result in a divergence between the amount of spending and the new MAR. It is therefore essential that the national budget should be revised to accommodate this increase and growth as well as to reflect the progressive enhancement of and human rights provisions and protections, and social services.

Gross domestic product can also be considered in terms of per capita expenditure. Nation's with higher populations are expected to spend more in social service areas to meet the minimum "core requirements" in social, economic and cultural rights³³⁸. For example, two countries may spend the same percentage of GDP on healthcare but the quantity of service each individual citizen receives will differ based on the population and the actual amount of revenue available. For example, one country might have a larger population than another and therefore the amount of monies allotted per person is much less than its counterpart and may not be enough to bring the citizen's health to a "highest attainable standard of physical and mental health."³³⁹ On the other hand, a wealthier nation or one with a significantly smaller population may have more to spend per person. This does not mean however, that if a more prosperous nation allocates more resources on human rights per capita than another and is able to meet or

³³⁸ *An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" Under an Optional Protocol, to the Covenant*. UN Committee on Social, Economic and Cultural Rights. Comment March, 2007

³³⁹ ICESCR, Article 12:1

exceed the minimum core obligations for a given right that they are not responsible for continuing to make improvement a priority. Each assessment is made on an individual basis founded on the particular economic and political position of the nation and not on a comparison to another country's condition³⁴⁰.

Using gross domestic product in these ways is not the only method of determining whether an ICESCR member state has under spent in achieving and protecting human rights. Comparing the involvement of the private sector, international aid organizations and other non-governmental organizations (NGOs) to the contribution of the government is also significant. In some cases, a substantial amount of resources is appropriated to achieving human rights in a particular area by these groups. As a result, the enjoyment of said right is obtainable by the nation's citizens. However, it is the government and not the external organizations that are party to the Covenant and therefore responsible for meeting the requirements set forth within it.

While the Covenant encourages the cooperation and use of assistive funds, especially in times of resource constraint or national crisis, it does not endorse a government's use of those resources, as the sole means for achieving and protecting the right³⁴¹. The government maintains the responsibility to apportion an amount of its *own* domestic budget to preserve and improve human rights conditions regardless of any additional support. Therefore, completely relying on external funds for any extended amount of time, or when the state is not in crisis, without taking steps to provide and improve those services using the national budget is in violation of the Covenant and adjustments must be implemented.

³⁴⁰ *An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" Under an Optional Protocol, to the Covenant*. UN Committee on Social, Economic and Cultural Rights. Comment 10. March, 2007

³⁴¹ *An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" Under an Optional Protocol, to the Covenant*. UN Committee on Social, Economic and Cultural Rights. Comments 4, 5, &6 . March, 2007

Finally, government under-expenditure in terms of human rights can be analyzed philosophically based on whether or not all aspects of the right have been suitably met. Each right has three components that must be met for its full realization³⁴². The first of these obligations is to *respect* the right. This means, that a government “must not act counter to the guarantees in the Covenant”³⁴³. In other words, every government has a negative duty not to disrupt or interfere with its citizens (or non nationals) enjoyment of their economic, social and cultural rights. This includes negative intervention with institutions and organizations that provide services such as education.

The second obligation a government has to its citizens is to *protect* their rights³⁴⁴. This means that it is necessary for governments to prevent others, such as other citizens, businesses and corporations, international actors or, other governments from infringing upon those rights. This positive duty implies that each government has a responsibility to not only implement policy that makes breaches of the Covenant’s guarantees illegal and punishable by law, but to also allocate funds to the policing and enforcement of these policies.

The final, obligation for each individual right is the liability to *fulfill* said right. This means that administrations are required to provide its citizens with the means to attain each right. Government’s “have an affirmative duty to take appropriate measures to ensure that the rights enumerated... [in the Covenant]... are attained”³⁴⁵. This mandate is most relevant to a discussion of budgets because it requires the most resources and planning by the national government, while the others require legislation and minimal financial assistance for implementation.

³⁴² *Dignity Counts*. IBP Report on Budgets Through Rights. 2004. p 30

³⁴³ *Dignity Counts*. IBP Report on Budgets Through Rights. 2004. p 30

³⁴⁴ *Dignity Counts*. IBP Report on Budgets Through Rights. 2004. p 30

³⁴⁵ *Dignity Counts*. IBP Report on Budgets Through Rights. 2004. p 30

All three philosophical components of a human right, to respect, protect and, fulfill must be in place for a given party to fulfill its duties to that right and the guarantees of ICESCR. However, in many instances governments provide the first two aspects by implementing policy that protect human rights and then believe their commitments to guarantee said rights have been met as a result. However, by not allocating funds within the domestic budget and/or putting in place programs that take steps to *provide* that right to its citizens they under-spend and fail to successfully achieve their core obligations.

These three methods of defining under-expenditure in national budgets can be applied to individual governments to determine whether or not their obligations under ICESCR have been sufficiently met. Analysis of gross domestic product, private sector involvement and, philosophical dimension of rights, can be used as templates to provide a comprehensive evaluation of the spending patterns of governments in social service areas on an individual basis. By comparing these cases where under-expenditure occurs to examples where adequate amounts of funds are being allocated and analyzing the physical outcomes of each, suggestions for revisions in budget policy can be shaped.

Part 2: An Example in Healthcare

A critical examination of under-expenditure in a government provided social service such as healthcare can highlight how nations may be failing to live up to their legal obligations under ICESCR. This misuse of funds is inefficient and contradictory to the progressive realization and full attainment of human rights. However, by exploring the reasons behind these financial decisions as well as their outcomes, constructive and realistic revisions can be created.

Essentially every important human rights document today has very specific guidelines concerning an individual's right to health. The Universal Declaration of Human Rights (UDHR), which is the first and arguably the most influential human rights document, states that;

“Everyone has the right to a standard of living adequate for the health and well-being of his family, including food, clothing, housing and medical care, and necessary social services and security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”³⁴⁶

This means that not only do individuals have duties not to interfere and/or deprive their fellow citizens of their health (and those things that are necessary to maintain it such as food and medical care) but that governments also are required to provide the attainment of that right to each and every person under their jurisdiction. Similarly, ICESCR “recognize[s] the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”³⁴⁷ The Covenant goes further to demand specific goals necessary for the achievement of that right including taking steps towards reducing the infant mortality rate, the improvement of environmental and industrial hygiene, the prevention and treatment of widespread disease, and the assurance of appropriate medical service in the event of illness³⁴⁸.

While these requirements are the essential components necessary to satisfy the minimum standard of the right, the Covenant also expects that nations use the maximum of available resources to continue to improve upon the existing circumstances and to achieve the highest possible standard of health. A comparison of the universal healthcare systems of India and Sweden will serve to evaluate these key commitments and provide evidence for appropriate

³⁴⁶ Universal Declaration of Human Rights. Article 25:1. 1948

³⁴⁷ International Covenant on Economic, Social and Cultural Rights. Article 12. 1966

³⁴⁸ Ibid.

revisions such as standardizing budget requirements in terms of GDP and relying less on private sector funding to meet the expected standards.

India

India ratified the International Covenant of Economic, Cultural and Social rights in April of 1979 and is therefore legally bound to pursuing the complete fulfillment of the rights it sets forth. This includes not only prioritizing funding for social wellness programs but implementing policy that aims to protect and maintain these rights. However, health provisions fail to present its citizens with the ability to achieve the highest possible standard of wellbeing. This is largely due to under-expenditure in the budget.

As a member of ICESCR India's government is responsible for upholding the principles set forth in the Covenant. In addition, the national constitution lists "raising [...] the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties."³⁴⁹ In attempt to fulfill this obligation across the board a universal healthcare system has been implemented. In this case, taxpayer monies pay for the majority of hospital expenses including some patient care. In most instances those citizens whose income falls below the poverty line are provided out-patient services free of charge.³⁵⁰ However, services are executed and regulated on the local level and not by a national authority and while health standards have radically improved in some aspects (i.e. famine reduction and treatment of chronic disease) the overall level of health for the majority of India's population remains much

³⁴⁹ Constitution of India. 1949

³⁵⁰ Mukherji, Srimoti. *Health Indicators*. International Trade Administration. India. 2005

below international standards.³⁵¹ In addition, clinics and hospitals are very understaffed and underfinanced. In many cases providers are not properly or adequately trained and funding for necessary services, drugs and outpatient services are lacking or nonexistent. Furthermore, there is a strong correlation with the spread of disease through India's healthcare settings because provider and facility hygiene is not monitored and has no legal standard.³⁵²

Though it may seem as though India has met ICESCR requisites concerning health because it provides "free" healthcare to all of its citizens, that healthcare does not achieve the "highest possible standard." While universal healthcare is a positive step in the progressive realization of this standard the current state is a failure and an example of under-expenditure and inefficiency in the domestic budget. These circumstances are labeled as under-expenditures because they fail to use an appropriate percentage of GDP, fail to fulfill each aspect of the right (respect, protect, fulfill) and rely too heavily on private funding.

According to IBP's tripod model for the full enjoyment of human rights the government must respect, protect and fulfill each right its citizens are entitled to. In the case of India's healthcare system the right to an adequate level of health is respected (the government does not deliberately stifle efforts by foreign aid groups or the private sector to provide services) and it is protected (the Indian constitution promises prioritization of health wellbeing and legislated against practices detrimental to that aim). However it fails to carry out the fulfillment guarantee. The government under spends when it comes to providing funding for resources, training and staff. It also fails to implement a body at the national level to implement and police standards for care and hygiene within its healthcare facilities.

³⁵¹ *Healthcare In India: A Report By Boston Analytics*. Boston Analytics. 2009

³⁵² Mukherji

The dimension of under-expenditure in India's healthcare system increases further when private funding is taken into consideration. Much research has shown that medical technology and facilities have improved drastically over the last two decades since the implementation of the National Health Policy in 1983.³⁵³ However these statistics include private hospitals and clinics which comprise of about two-thirds of the available facilities in India. These institutions are not available to the majority of the population as they are generally very expensive by Indian standards of wealth and are often supported by "medical tourists" who come to receive specialized treatment at costs lower than are available in most Western countries.³⁵⁴ Unfortunately this means that 80% of the entire national healthcare system is supplied by these private organizations and only 20% is provided by the government and available to all.³⁵⁵

The most damning evidence of India's blatant and irresponsible under-expenditure is rooted in the country's annual gross domestic product. The proportion of domestic GDP spent on healthcare annually does not reflect ICESR's goals or those of India's own constitution for that matter. At 5.1% India is well under the international standard for healthcare spending.³⁵⁶ While the figure is within the expected range for developing countries, it is not completely accurate in and of itself because it does not account for India's significantly larger population. Consequently, taking into consideration both the country's poor level of wealth and national income as well as its substantial population, per capita, India's government healthcare spending is amongst the very lowest statistics in the world.³⁵⁷

³⁵³ The World Health Organization. India's National Health Policy. 2000

³⁵⁴ Mukherji

³⁵⁵ Mukherji

³⁵⁶ ICRA Industry Report on Indian Healthcare. 2008

³⁵⁷ Technology, Information, Forecasting, and Assessment Council. 2008

As a result of India's massive budget under-expenditures in healthcare the standards of health for the majority of the country's immense population is extremely poor. Specific measures set out in ICESCR such as infant and maternal mortality rates, infectious disease and life expectancy are amongst the poorest countries of the world. The decision to prioritize funding away from healthcare is a problem of national leadership and reliance on private sector aid. However, the current system falls short of adequately achieving human rights or upholding the obligations (such as prioritizing the maximum of available resources towards progressively realizing rights) to ICESCR and therefore requires revision and a method of accountability.

Sweden

In contrast with India's failure to responsibly allocate funds for social services, Sweden appropriately prioritizes its domestic budget to reflect the precedence of the right to health. Sweden also has universal healthcare in place however the structure of the system differs in that it is denominated as a "single-payer" scheme.³⁵⁸ This means that the government is responsible for paying for all healthcare costs and providing insurance to each and every citizen. This is as opposed to a "two-tier" or "multi-level" system which provides a very basic government funded insurance plan and level of care with the option for citizens to choose additional private insurance (India's system is more similar to this model).³⁵⁹

The capability for the provision of this type of healthcare system is created by the increased rate of taxation in Sweden and produces much higher levels of health in the country. While the system is very decentralized and local authorities and governments regulate facilities,

³⁵⁸

³⁵⁹ Mariam-Webster Medical Dictionary. 2008

there is a central ministry of health that mandates certain regulations universally throughout the country. These requirements include policies on hygiene, staff qualifications and patient care.

Sweden's spending on healthcare meets (and may even exceed) the spending requirements of ICESCR and the full enjoyment of the right to health. All three aspects of the right are satisfied in this case. The right is respected in that citizens are freely able to pursue their health needs to whatever extent they desire. On top of the government's provisions for payment, citizens have the opportunity to enlist the services of private sector insurance companies to supplement their security. The right is even fulfilled because the government provides excellent coverage and funding for medical technology and patient care to each and every citizen regardless of employment status, handicap or any other discriminatory factor.

Not only are most hospitals and clinics in Sweden are government owned and operated the funding for citizens is entirely paid for with government revenue. Sweden's public expenditure on the health of its citizens accounts for approximately 98% of all healthcare costs in the country including costs of care, drugs, technology, training and staff salaries. The other 2% are provided by private insurance and excess personal expenses such as copays.³⁶⁰ This is in comparison to India's 20% domestic expenditure.

As a function of GDP, Sweden spends approximately 9% of its annual income on the right to health.³⁶¹ This is one of the very highest rates in the world. In addition, Sweden has a relatively small population and therefore spending per capita is about \$3,000 US dollars annually. That is more than 30 times India's per capita expenditure (India spends about \$109 US

³⁶⁰ Glennard, A., Hjalte, F., Svennson, M., Anell, A., & Bankauskaite, V. (2005). Health Systems in Transition: Sweden. WHO Regional Office for Europe, 2005

³⁶¹ Organization for Economic Cooperation and Development (OECD). Health Data. 2006

dollars per capita annually).³⁶² Considering the disparity in actual GDP between the two countries, Sweden still spends proportionally almost twice as much of its domestic budget (5% vs 9%) on realizing the right to health.³⁶³

A Comparison

Though these figures are convincing in and of themselves that India failed meet its obligations to ICESCR and to allocate the maximum of its available resources towards achieving human rights and more particularly the right to health, the outcomes of these decisions must be considered as well. While the healthcare facilities and technology available in Sweden far outweigh those available in India it is important to note that the system itself is more efficient. More funding for training and the implementation of a national regulatory body, both help to maintain a higher standard of treatment for Sweden's citizens. In India the reality is that private companies, charitable organizations and foreign aid provide essentially all of the actual care for the population. The typical level of health in India is already below international standards, but without private funding and international aid, India's government would be in serious violation of ICESCR and other human rights treaties and the conditions for its people are unimaginable.

Currently most of the indicators set out in Article 12 of ICESCR which are meant to be methods of evaluating a country's progressive realization of the right to health are not being met by India's budgeting for healthcare. The infant mortality rate remains at about 49 of every 1000 births.³⁶⁴ This statistic is potentially more than 15 times higher than countries with elevated

³⁶² World Health Organization. Facts by Country <http://www.who.int/countries/en/>

³⁶³ WHO (above)

³⁶⁴ CIA World Fact Book. India. 2006

levels of spending per capita on healthcare like Sweden with 2.7 per 1000 births.³⁶⁵ Prevalence of infectious disease, another indicator, is low to none in Sweden where the HIV prevalence is .1% or 6,200 people. In India where essentially no domestic monies are spent on the education and prevention of spreading sexually transmitted diseases, .3% of the population and 2.4 million people are affected by the disease. Furthermore, average life expectancy is a staggering 15 years more in Sweden than in India. These figures solidify the effectiveness of prioritized spending and the severe detriments of under-expenditure for human rights.

Recommendations

Under-expenditure is the simplest form of budget inefficiency related to human rights. National governments have the responsibility (and the legal requirement under ICESCR) to prioritize their domestic budgets for realizing human rights and social services. However, many times these rights are only partially apportioned for. Leaders often make the mistake of believing that implementing policy that respects and protects a social, economic or cultural right is enough to fulfill their obligations. However, governments also have the duty to provide services, programs and institutions that make available the complete enjoyment of that right as well. These provisions typically require funding and in the case where the needs have been met or significantly attempted by the private sector and other sources of aid governments again write off the need for additional commitments. Yet, the reality is that parties to the International Covenant on Economic, Social and Cultural Rights (and therefore the national governments of most countries of the world) have not only the moral obligation but the legal obligation to take these expenditures upon themselves. ICESCR mandates that domestic budgets must take into

³⁶⁵ CIA World Fact Book. Sweden. 2006

consideration that the maximum of available resources be allocated towards the progressive realization of human rights.

Based on the comparison of budget spending in healthcare and its results this Task Force has several recommendations to address under-expenditures:

- First, governments must understand that their obligations to achieving human rights are threefold. It is not enough to respect and protect any given right. Each country has positive duties to its citizens to *fulfill* their human rights as well. Therefore it is recommended that ICESCR include a comment that specifies these obligations and requires governments to allocate any necessary funding not only towards just one aspect of a right but to all three.
- Second, it is necessary for governments to consider private sector financing and, foreign and charitable aid as supplemental income and not as primary resources for achieving human rights. The national domestic budget should reflect the maximum amount of possible resources for each social service before considering any additional programs and funding. In this way, it will be ensured that human rights will be made priority in budgets and that under-spending for social services will not occur. Therefore it is recommended that an additional comment to the Covenant affirm this opinion.
- Finally, it is important that the Committee implement a method of standardization for describing a minimum level of funding for human rights. It is recommended that ICESCR be amended to include a formula for individualized specifications based on population and GDP. This will help prevent de-prioritization and set goals and parameters for achieving rights.

Chapter 10:
Geographical Disparity of Spending

By Brittney Riley

Chapter 10

Geographical Disparity of Spending

Introduction

The excessive economic disparity throughout the world is unjust but the issue becomes much more problematic when one takes into account that fact that areas with a low standard of living receive a much lower amount of government funding for public goods and services. In other words, rich areas of a country are almost always over-served, and poor areas are under-served, especially in sectors like health and education. For example, Managua, the capital city of Nicaragua, contains around half the country's health personnel but only one-fifth of the population.³⁶⁶ In Cambodia, only 12 percent of residents in a rural area have access to potable drinking water, but more than 90 percent have access in richer, urban areas.³⁶⁷ Study after study demonstrates that those above the poverty line typically receive a disproportionate share of public spending. This unevenness in service is a violation of human rights and raises concerns for countries that have signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) and agreed to allocate their maximum available resources in an effective and efficient manner towards realizing human rights. In order to align with ICESCR, decrease the disparity of funding, and use resources efficiently, government services should be targeted towards areas of greatest need.

³⁶⁶ Neeru Gupta, Pascal Zurn, Khassoum Diallo, and Mario R Dal Poz, "Uses of Population Census Data for Monitoring Geographical Imbalance in the Health Workforce," (2003), 2:11.

³⁶⁷ "Visualizing Rights, Cambodia," Fact Sheet Number 7. Center for Economic and Social Rights, (2009).

In the following chapter this Task Force will first analyze why there is a geographic disparity of funding. Three of the most significant reasons for this disparity are leakages, centralized political power and a lack of information. Second, the concept of marginal utility will be outlined and discussed. This is the idea that governments get a higher return on their investments if they spend funds in areas where it is most needed. Third, this Task Force will present the idea of targeting poor geographic areas as a way to increase efficiency of spending. Some of the problems of implementation with geographic targeting will be addressed. After a full analysis of efficiency of spending related to geographic disparity, three case studies will be presented. First, Kenya will be presented as an unsuccessful example of targeting funds towards the most disadvantaged citizens. Next, the success and failures the Peruvian government has had with targeted poverty reduction programs will be analyzed. Last, the Rural Poverty Reduction Program in Northeast Brazil will be presented as a specific program that has had great success in alleviating poverty in an efficient manner. The case studies in Brazil and Peru will illuminate the ways to successfully decrease geographic disparity of funding through targeting. The last part of this chapter will provide three recommendations of how to target government services efficiently. Governments and organizations should focus on decentralization and accountability of funding, target geographic areas, and provide clear information. When these steps are taken, targeting has proven to an efficient and effective way of reducing geographic disparity.

Geographic Disparity

In order to analyze and develop ways to efficiently reduce geographic disparity of funding, it is necessary to first address why there is such a large disparity in most countries. One

of the main reasons is that the intended money does not actually reach poorer regions due to leakages. There is a much higher rate of leakages in money intended for poor areas than rich areas. This is often because the government does not require transparency and accountability in money transfers and the money is often lost in the process of reaching poor areas.³⁶⁸ Also, government services in poor areas often handle money less efficiently and therefore less of the money actually gets to the citizens.³⁶⁹ This idea will be discussed in more detail later in the chapter. Another reason for disparity in funding is that the richer areas hold greater political power and have great influence on policy decisions regarding the budget. Those in power want to receive the best of the government services and do not want to “lose out to poorer regions”.³⁷⁰ This often results in those in power allocating a majority of the budget to the geographical area that will benefit them, instead of the area in most need. Political power is also centered in cities, so rural areas often hold much less weight in political decisions. There are transportation issues as well: it is more expensive to transport goods and services to rural areas and governments often fail to provide funding or spend a great portion of the allocated money on transportation, which diminishes available resources to spend on programs.

Another reason for a geographic disparity in funding is that it is often difficult to hire trained personnel to work in poor areas. This is especially prevalent in the health and education sectors. There is little incentive to work in poor areas because there is often inadequate pay, few

³⁶⁸ Branko Milanovic, “Conflict Between Horizontal Equity and Maximum Poverty Reduction, How Best to Allocate Funds to Regions”, Asia and Pacific Forum on Poverty: Reforming Policies and Institutions for Poverty Reduction, (Feb 2001).

³⁶⁹ “East Asia Decentralizes: Making Local Government Work,” Washington, D.C.: World Bank. (2005).

³⁷⁰ “East Asia Decentralizes: Making Local Government Work,” Washington, D.C.: World Bank. (2005).

benefits, and poor management of school or health centers.³⁷¹ Most qualified nurses and teachers work in the areas that provide adequate pay and this results in not only less teachers and health personnel in poor areas but under-qualified workers being hired.³⁷² Lastly, poor areas are often under-funded by governments because of a lack of information. The political center is often poorly informed about the performance of different areas in reaching the poor and the specific needs of certain areas. If there is no poverty map to highlight the areas in need of funding and no data concerning effectiveness of spending in poor areas, there is likely to be under funding or ineffective funding.³⁷³ A lack of information also affects disparity in the way that people living in poor areas often do not have a comprehensive understanding of their rights and therefore do not fight for what they deserve.³⁷⁴ A clear transfer of information would certainly help alleviate the disparity of funding. With leakages, poor incentives, uneven political power, and a lack of information, there are several reasons for the disparity of funding in many countries. These issues cause an unevenness and inefficiency of spending which is a clear violation of ICESCR.

Marginal Utility

Geographic disparity of funding violates ICESCR because it is discriminatory and does not disperse funding in the most efficient way possible. Unequal distribution is discriminatory because certain citizens are not receiving the same rights and services because of where they

³⁷¹ Neeru Gupta, Pascal Zurn, Khassoum Diallo, and Mario R Dal Poz, "Uses of Population Census Data for Monitoring Geographical Imbalance in the Health Workforce," (2003), 2:11.

³⁷² Gupta, Neeru, Zurn, Pascal, Diallo, Khassoum, and Dal Poz, Mario R. 2003.

³⁷³ Martin Ravallion, "Monitoring Targeting Performance when Decentralized Allocations to the Poor are Unobserved". *World Bank Economic Review*. V14 (n2): 331-45. (2000).

³⁷⁴ Daniel Cotlear "Making Accountability Work- lessons from RECURSO". *En Breve, The World Bank*. (Sept 2008).

live. ICESCR clearly states that all citizens receive the same rights regardless of their status.³⁷⁵

Secondly, efficiency entails utilizing the maximum available resources to provide the greatest possible amount of assistance to those who need it most. If there is geographical disparity, this is a problem of efficiency because of the concept of marginal utility. According to this concept, it is most efficient to use funds in areas that need assistance the most. More specifically, this brings up the idea that the most efficient way to reduce poverty is to target the poor, or poor areas. Both of these ideas will be discussed below.

Government spending in areas in which populations have more capital and already have access to government services is inefficient because of decreasing marginal utility. The marginal utility of a government service is the utility gained from an increase in the consumption of that service. The law of diminishing marginal utility is the idea that the more goods or services an area has, the less they gain from additional goods or services. For example, a health center built in a poor area will provide a greater overall utility than one built in a more affluent area. A health center that is built in an area or town that does not have access to healthcare would save hundreds of lives and greatly increase the well being of that area. A health center built in an area that already has access to healthcare would provide shorter lines, better facilities, or more doctors. The health center in area that did not previously have one will provide a much greater amount of utility and with each health center that is added to the area, there will be less of a return on the investment. This is a simple example of the law of diminishing returns but it sheds light on why geographical disparity in funding is inefficient. If governments are striving for efficiency of spending, they should provide goods and services to areas that are most needy.

³⁷⁵ International Covenant on Economic, Social and Cultural Rights. Part 2, Article 2.

The idea of diminishing returns applies to both geographical disparity and basic development issues. For example, it has consistently been confirmed that setting up primary schools in areas of need provides greater social rates of return than spending money on tertiary education schools and universities, which are almost always in wealthier, urban areas. A study by the IMF found that sub-Saharan Africa allocates the largest share of education spending to tertiary education and also has experienced little to no improvements in education indicators.³⁷⁶ Countries that devoted a larger share of money to primary education in areas of need, specifically in Asia, showed the greatest improvements of education.³⁷⁷ Investing in the areas of greatest need showed the greatest growth in development.³⁷⁸ This is a clear indicator that it is a much more efficient use of governmental money to invest in primary education, particularly in low-income areas. While higher education is undoubtedly important in realizing rights, it is inefficient to prioritize spending on higher education in countries where the need for free universal primary education is not met in poorer areas, and therefore countries that do so are not using their maximum available resources to realize rights.

Geographic Targeting

The idea of marginal utility can be used to support the idea of “targeting the poor” or geographical targeting. With tight budget constraints and little money to spend on development, researchers and policymakers are striving for improved efficiency of funding through targeting government or aid services directly to needy areas. One study found that the poorest 40 percent

³⁷⁶ Sanjeev Gupta, Benedict Clements and Erwin Tiongson, “Public Spending on Human Development,” *Finance & Development: Quarterly Magazine of the IMF*, volume 35 no. 3 (1998).

³⁷⁷ Sanjeev Gupta, Benedict Clements and Erwin Tiongson, “Public Spending on Human Development,” *Finance & Development: Quarterly Magazine of the IMF*, volume 35 no. 3 (1998).

³⁷⁸ Sanjeev Gupta, Benedict Clements and Erwin Tiongson (1998).

of citizens in developing countries received less than 40 percent of poverty alleviation budget expenditures.³⁷⁹ Due to poor targeting, governmental services are not going to areas or groups who need them most, and therefore funding is inefficient. If governments were to target the poorest or most needy, they would achieve the maximum impact of their budget.³⁸⁰ A study in Uganda found that geographic targeting seems to be the easiest and most cost effective way of reaching the poor. This is because, unlike household income targeting, geographic targeting does not require detailed census information on every household to distinguish who is eligible for a government service.³⁸¹ Such a process would be expensive, time consuming and unrealistic in developing countries where data is especially difficult to produce. While geographical targeting may not be as precise as household targeting, the study in Uganda concluded that perfect targeting is not necessary for cases where poverty is extremely high. The researchers found that targeting poor areas provides more absolute benefits than identifying sub-groups.³⁸² Overall, targeting funding is a way to insure that the maximum available resources are reaching those in need and helps prevent geographical disparity of funding.

While targeted funding to improve the efficiency of spending seems practical theoretically, the concept is not without problems of implementation. First, the administrative costs can be high and much of the development budget can be spent on simply getting resources to the poor.³⁸³ As discussed above, costs can be significantly reduced if geographical targeting is

³⁷⁹ Nanak Kakwani, and Hyun H. Son, "Evaluating Targeting Efficiency of Government Programmes International Comparisons," *UNU World Inst. for Development Economics Research* (UNU/WIDER), (2006).

³⁸⁰ Nanak Kakwana, and Hyun H. Son, (2006).

³⁸¹ David S Kraybil, and Bernard Bashaasha. "The Potential Gains from Geographical Targeting of Anti-poverty Programs in Uganda", *AfJARE*, (Dec. 2006).

³⁸² Nanak Kakwana, and Hyun H. Son (2006).

³⁸³ Gwatkin, Davidson R. "Targeting in Health: A Summary of the Evidence," The World Bank, Washington D.C. (2000).

used, but such targeting requires a well-developed poverty map.³⁸⁴ Second, in order for targeted funding to be effective, there needs to be both strong central and strong local government. The local government needs to be strong and stable enough to allocate funding efficiently and be held accountable for the money that is allocated. When the local government is weak, the transfer of funding is expensive and susceptible to leakages. While theoretically it is much more efficient to distribute funds to the poor, leakages decrease the efficiency substantially. There is a strong correlation between the level of poverty in a region and the amount of leakages, which is an indicator for inefficient spending.³⁸⁵ For example, funding allocated to building a school in a richer area is much more likely to go towards that school than funding for building one in a poor area.³⁸⁶ Poor management of budgets results in the money simply disappearing. Governments are then forced to decide whether to give money to where it is needed most, even though most of the money will be lost through leakages, or to allocate their funds to the area that will use a much higher percentage of the money. This highlights the importance of accountability in targeting programs. Government funding needs to be targeted and transfer systems need to be held accountable in order to maximize efficiency. Despite the problems with administrative costs and leakages, geographical targeting has been proven to be a more efficient way of allocating funds and if governments are able to combine accountability with targeting, they would spend more efficiently.³⁸⁷ The following case studies will provide examples, highlighting the benefits and costs of targeting funds.

³⁸⁴ Jose Lopez-Calix, Lorena Alcazar and Erik Wachtenheim, “Improving the Efficiency of Public Spending in Peru,” World Bank Report, (June 2002).

³⁸⁵ Branko Milanovic, (Feb 2001).

³⁸⁶ Milanovic, Branko, (2001).

³⁸⁷ David S Kraybil, and Bernard Bashaasha. “The Potential Gains from Geographical Targeting of Anti-poverty Programs in Uganda”, *AfJARE*, (Dec. 2006).

Case Studies

Given this analysis of geographic disparity and the concept of targeting, the following case studies will help conceptualize the idea of targeting and shed light on some of the ways in which targeting can or cannot be successful in reducing geographic disparity of funding.

Kenya's' waver fee program will be used as an unsuccessful example of targeting: the Peruvian governments efforts to target will be analyzed on a broad scale: and The Rural Poverty

Reduction Program in Brazil will be examined as a another successful targeting program.

Through these case studies it becomes clear that targeting poor areas is an effective way to reduce disparity of funding and increases the overall efficiency of government spending.

Kenya

Kenya is an example of a country whose government has been largely unsuccessful in decreasing the disparity of public services, particularly health services. There is a large shortage of staff for health services in the areas that have the lowest health indicators.³⁸⁸ While a medical professional oversees eight out of ten births in Nairobi, less than one in ten births in the North Eastern province are overseen, and this ratio continues to decline.³⁸⁹ The inequity of the quality and access to health services is increasing, which clearly suggests that the government's current efforts to decrease disparity are not effective.

Because the Kenyan government does not have the resources to provide free healthcare, it implemented user fees for health services in 1992.³⁹⁰ Those residing in rural or poor areas lack access to health services due to cost constraints and an inability to pay the clinic or hospital fee.³⁹¹ User fees resulted in a large drop in demand in hospitals and the government has attempted to resolve this issue with waivers for those who cannot afford healthcare costs.³⁹² This program is meant to target the poor in order to decrease the health disparity in Kenya, but the program has been unsuccessful. There are many factors responsible for the poor performance of this program; those eligible for waved fees are often not aware of the service provided, there is a lack of clear guidelines to determine eligibility, the process to grant a waiver is lengthy and the administrative costs are not accounted for, and there is no incentive for staff to grant waivers.³⁹³

³⁸⁸ Agnes Odhiambo, "I am Not Dead, but I am Not Living: Barriers to Fistula Prevention and Treatment in Kenya," New York, NY: Human Rights Watch, (2010).

³⁸⁹ "Visualizing Rights, Kenya," Fact Sheet Number 4. Center for Economic and Social Rights, 2008.

³⁹⁰ Agnes Odhiambo, (2010).

³⁹¹ Agnes Odhiambo, (2010).

³⁹² Ricardo Bitran, and Ursula Giedion, "Waivers and Exemptions for Health Services in Developing Countries," *Social Protection Unit, Human Development Network*, The World Bank, (2003).

³⁹³ Ricardo Bitran and Ursula Giedion. (2003).

From this long list of issues, there are two overarching themes that highlight the failure of this targeting program: there is no accountability and a lack of clear information.

In order to solve this problem, there needs to be a monitoring mechanism, much clearer guidelines for eligibility, a more efficient process and an information campaign to inform citizens of their rights—all of which are expensive. Targeted programs are only efficient if the administrative costs are a small part of the overall program cost. Since poverty in Kenya is clearly condensed in rural areas, it would be more effective and efficient to implement a geographic targeting program that waves fees for all citizens in certain poverty stricken areas. This would be a more cost effective way to provide health services to the greatest amount of those in need. The targeting program implemented by the Kenyan government has failed to decrease disparity because it uses specific targeting, for which effectiveness relies on high administrative costs. Since the Kenyan government does not have the resources to implement specific targeting, they should use broad geographic targeting to decrease the disparity of health services. Broad geographic targeting would allow for the Kenyan government to efficiently use the maximum available resources to realize the right to health.

Peru

Peru is an example of a country that has been successful in decreasing their geographic disparity of public goods and funding. Although there continues to be a higher rate of poverty in rural areas, the national poverty rate fell 12.4 percent points between 2004 and 2008 and poverty fell in both the city and the countryside.³⁹⁴ While part of this success may be attributed to a

³⁹⁴ “Peru Country Brief, Development Highlights”. *The World Bank* (2009), <http://go.worldbank.org/AHUP42HWR0>

growing economy, the Peruvian Government has also made a deliberate effort to decrease the disparity of public goods.

In the early 2000's, safety net programs reached less than 40 percent of their intended target of people living in extreme poverty.³⁹⁵ Many scholars and researchers called for broad geographical targeting that reached the poorest populations in order to best use the limited financial resources. In 2004, the World Bank's board of directors approved a \$100 million loan called the Fourth Programmatic Social Reform Loan. The main goal of this loan was to "support reforms aimed at increasing access, transparency, and efficiency in social service provision".³⁹⁶ Through targeting their antipoverty programs directly to the poor, mostly rural areas, and increasing transparency of social programs they have begun to decrease the geographical disparity within Peru. Peru has experienced huge increases in coverage of education, health care and social assistance programs. As of 2008, 82 percent of poor households have access to social programs. Importantly, 84 percent of those in extreme poverty have access to social programs, which highlights the successful efforts to target the most poor regions or groups.³⁹⁷

While Peru has been very successful in improving provision of equal services to various regions, there continues to be problems with disparity. One of the major concerns is that there continues to be a quality disparity—meaning that the quality of health services and education continue to be highly unequal, with the poor receiving much worse services.³⁹⁸ For example, there was a much higher coverage of education but children in poor areas received very low test

³⁹⁵ Jose Lopez-Calix, Lorena Alcazar and Erik Wachtenheim, "Improving the Efficiency of Public Spending in Peru," World Bank Report. (June 2002).

³⁹⁶ "Peru: World Bank Approves \$200 Million For Social Services, Decentralization And Competitiveness In Peru," News and Broadcast. The World Bank, (2005) <http://go.worldbank.org/BQSYK4IXS0>.

³⁹⁷ "Peru Country Brief, Development Highlights," The World Bank, (2009).

³⁹⁸ Daniel Cotlear, "Making Accountability Work- Lessons from RECURSO". En Breve, The World Bank. (Sept 2008).

scores and rates of literacy.³⁹⁹ After many studies, researchers found that poorer groups do not have expectations for the quality of services and therefore do not hold the services accountable.⁴⁰⁰ Peru is working to resolve this issue through a program called RECUERSO, an information campaign with the purpose of providing poor areas with benchmarks that explain the quality of services they should receive. With this program, the Peruvian government aims to inform citizens of their rights and empower them to hold governmental systems accountable.

The Peruvian government has been successful in alleviating the disparity of funds by making a clear effort to improve targeting and accountability. They have been able to get the most out of their funding by targeting the poorest regions, preventing leakages, and provided citizens with the tools to insist accountability. This has increased efficiency of spending and allowed them to use MAR of public goods, which has lead to an alleviation of overall poverty.

Brazil

After looking at a broad analysis of how Peru is working to alleviate poverty, a specific program in Brazil will now be analyzed. Like the government of Peru, Brazil is working to decrease disparity through targeting and accountability. One of their most successful programs has been The Rural Poverty Reduction Program (RPRP), which was first implemented two decades ago. The program is targeted in Northeast Brazil, where there are 20 million rural inhabitants and of which 75 percent are considered poor.⁴⁰¹ This region has many geographic and climatic barriers that intensify poverty and make poverty reduction more problematic. The

³⁹⁹ Daniel Cotlear, (Sept 2008).

⁴⁰⁰ Daniel Cotlear, (Sept 2008).

⁴⁰¹ Luis Coirolo, and Jill Lammert, "Rural Poverty Reduction in Northeast Brazil, Achieving Results through Community-Driven Development" En Breve, The World Bank (June 2008).

Rural Poverty Reduction Program began on a very small scale in the late 1980's but as of 2008 has financed more than 50,000 community sub-projects and reached around 38,000 community associations.⁴⁰²

The main idea behind the program is to tackle poverty at a community level. The projects are responding to the actual demand, because communities work with the government and the private sector to design and implement investments. A municipal Council receives project proposals from local associations and decides whether to approve the project. Eighty percent of the council members are from poor, rural communities; which ensures equal distribution of funds and allows for the poor to have a political voice. Once a project is approved, the funding goes directly to the community associations' bank account and they are responsible to implement, operate and maintain the project. The decentralization of decision-making and implementation, active community participation, transparency, and clarity of objectives ensure that the program is effective and efficient.⁴⁰³

Decentralization of investment decisions has improved targeting mechanisms and made sure that the poorest areas are reached. The efficiency of funding has also increased because money transfers are transparent and not lost in administrative layers. The program has been able to reach 60 percent of the 20 million people living in rural Northeast Brazil with at least one investment.⁴⁰⁴ In terms of efficiency, evidence shows that PRPR investment cost (at equal or better levels of quality) 30 to 40 percent less than most traditional, top down programs

⁴⁰² Luis Coirolo, and Jill Lammert, (June 2008).

⁴⁰³ "Empowering the Poor Through Decentralization: Brazil Rural Poverty Alleviation Program," Social Development Notes, World Bank, (March 2001), Note No. 51.

⁴⁰⁴ Luis Coirolo, and Jill Lammert, (June 2008).

implemented by public sector agencies.⁴⁰⁵ It becomes clear from the Rural Poverty reduction Program in Brazil that when money goes straight to communities and they are given the proper resources to fund projects, the money is not lost through multiple money transfers and responds better to local needs. Decentralization and targeting improves the efficiency of funding and makes sure that the maximum available resources are used supply goods and services to the areas of most need.

These three case studies provide clear examples of how targeting, specifically geographic targeting, can be effective or ineffective in providing social services. In the case of Peru and Brazil, there is prominent geographic targeting and accountability, and information is transferred between the government and citizens. This has helped maximize government resources and progressively decrease the disparity of funding in their countries. In Kenya, too specific of targeting and little to no accountability led to an ineffective targeting program and thus an inefficient use of government budgets. After a full analysis of geographic disparity and targeting, this Task Force will now present three recommendations for how to effectively target funds.

⁴⁰⁵ Luis Coirolo, and Jill Lammert, (June 2008).

Recommendations

This Task Force recommends that governments and organizations target funding to areas of most need in order to use the maximum available resources in the most efficient way possible. This Task Force has three recommendations in order to achieve successful targeting programs that decrease the disparity in government services.

1. Decentralization and Accountability of Funding

In order to target funds efficiently, the decision-making and implementation of funding should be decentralized and involve active community participation. This will ensure that government investments are meeting the actual demand of the community and the money is not lost through multiple money transfers. The local government needs to be supported so that it is strong and stable enough to allocate funding. Without accountability and transparency there is a likely potential that the efficiency of funding will be decreased through poor targeting or corruption. Overall, the decentralization of funding will be successful if there is both transparency and accountability for the spending of local governments.

2. Custom Targeting Mechanisms, with Emphasis on Broad Geographic Targeting

In the case of targeting, there is a tradeoff between efficiency and accuracy. Perfect targeting is not possible because of its high administrative costs. It is recommended that each targeting program is customized and tailored to the country or region in order to create balance between efficiency and accuracy. While each targeting program should be individually tailored, this Task Force recommends that there is an emphasis on broad geographic targeting, especially in countries with high rates of poverty or a very uneven spatial distribution of poverty. It has been concluded that targeting poor areas provides more absolute benefits than identifying sub-

groups because of the low administrative costs involved.⁴⁰⁶ Geographic targeting is efficient because it yields the highest return on investment with the least possible cost. In order to realize MAR, developing countries should target their funding to areas of most need and not waste time and money on striving for perfect targeting.

3. Transfer of Information

In order to achieve successful targeting programs, it is imperative that there is a clear transfer of information. First, governments need to develop a poverty map in order to have a better understanding of the distribution of poverty in their country. A poverty map will enable them to take spatial factors into account and target funding correctly.⁴⁰⁷ Governments must also foster provision and transfer of information to citizens about their rights to government services. In both the Peru and Kenya case study, targeted programs encountered issues because citizens were not aware that they were entitled to the programs services. This resulted in a quality disparity in Peru and the program not being used in Kenya. Lastly, information needs to be transferred from the local governments to the federal governments on the progress of the targeted program in order to enforce accountability. If there is proper information on where to target programs, progress is reported, and citizens are aware of the services provided, programs will be targeted more efficiently and used more effectively.

Conclusion

In conclusion, geographic disparity of funding is a clear violation of ICESCR because it shows that governments have failed to allocate maximum available resources to realizing human

⁴⁰⁶ Nanak Kakwana, and Hyun H. Son (2006).

⁴⁰⁷ Todd David Benson, Nicholas Minot, and Michael Epprecht. "Mapping Where the Poor Live," Washington, D.C.: International Food Policy Research Institute, (2007).

rights indiscriminately for their entire population. According to ICESCR, budgets must be spent in an efficient and effective manner, and an unevenness of spending is inefficient, because there is a higher return on an investment and a greater benefit to all if it is spent in the area of most need. In order to align with ICESCR, governments should target spending to areas that need the most assistance. Targeting programs should focus on decentralization and accountability of funding, target geographic areas in cases of high poverty, and promote a clear transfer of information. When these steps are taken, targeting is an efficient and effective way of reducing geographic disparity.

Chapter II:
Wasteful Expenditures

By Neena Goswamy

Chapter II

Wasteful Expenditures

Introduction

Countries that sign onto the International Covenant on Economic, Social, and Cultural Rights agree to allocate their maximum available resources in an effective and efficient manner. Wasteful expenditures are one form of financial mismanagement that hinders countries from investing in what is needed to best progressively realize economic, social and cultural rights. Wasteful expenditures often go hand-in-hand with corruption, as funds benefit the personal tastes of the politicians or other public figures endorsing the funds rather than the general population. Reallocating funds from wasteful to effective spending can change the course of a country's social, economic, and political trajectory. In this chapter I will be analyzing the negative effects of wasteful expenditures and ways of improving these bad practices.

In this chapter, I argue that as a direct violation of human rights, wasteful expenditures must be eliminated from government budgets and substituted with more transparent and regulatory procedures to ensure the complete erasure of wasteful expenditures in any government budgets. To explain this I will first provide an explanation of what wasteful expenditures are and their link to corruption. I will then assess the dangerous consequences of wasteful expenditures in three countries: The United States of America, Kenya, and Mexico. Next, I will explain possible justifications used by politicians for wasteful spending and the negative impacts these have on the local constituency. I will conclude the chapter by offering recommendations on how wasteful expenditures can be avoided and spending practices improved.

Definitions of Wasteful Expenditures and Corruption

Wasteful Expenditures

Wasteful expenditures are expenditures gained through taxpayers' money that are used to indulge in personal taste rather than deliver basic services to citizens. They are referred to as fiscal looseness or presidential slush funds, and they represent a medium for corruption and private gain rather than justified expenditures toward progressive reform. Wasteful expenditures are revealed upon closer inspection of official government documents that claim to distribute budgets towards a "human-rights friendly" route but instead distribute resources to acquire expensive cars or pay for extravagant services. In this chapter, wasteful expenditures refer to resources that are not invested in what is needed the most to continue progressively realizing ESC rights⁴⁰⁸.

Corruption

Corruption is inextricably tied to the distribution of wasteful expenditures. According to Transparency International, corruption is defined as the abuse of entrusted power for private gain both in the public and private sectors⁴⁰⁹. There are two approaches to measure corruption. The first is through analyzing objective and quantifiable data, such as tracking country's institutional features or examining audits of specific projects. The second approach uses subjective data, usually through surveys by firms, public officials by individuals. Because corruption, when administered effectively, leaves no paper trails, this second approach may be necessary; analysis

⁴⁰⁸ "The Outcome of Public Forums Held Throughout the Country on the 2001 Annual Budget," August 2001, www.internationalbudget.org/resources/howto/PublicFora.pdf

⁴⁰⁹ "What is CPI?", www.transparency.org/policy_research/surveys_indices/cpi/2010/in_detail

of corruption based on individual experience may often be the best information available⁴¹⁰.

Case Studies: USA, Kenya, Mexico

Case Study 1: Credit Card Abuse and Embezzled Funds

The United States of America is often hailed as a leading proponent of human rights and a country to which other countries measure themselves against. According to the World Bank, the USA occupies the top 90th percentile in its ability to control corruption and, agreeably, the IBP has also scored the US with 82 out of 100 in its extensive distribution of information and accountability to local constituency⁴¹¹⁴¹². However, this does not mean corruptive practices do not occur and, in the case of the United States, they occur at the top echelons of government where oversight should be taking place.

According to a report by the Office of Inspector General of the US Department of Agriculture (USDA), in 2001 and 2002 federal employees from the USDA, Air Force, and Navy personnel used government-funded credit cards originally designed to save money for their own personal expense. The pitch made to taxpayers was that federal employees could save time and money by using credit cards to make job-related purchases that would be covered by their agency. In this way, federal employees could concentrate more on their work to help citizens rather than receipts and reimbursements.

Upon closer inspection, however, employees at the USDA, Air Force, and Navy streamlined millions of dollars for personal purchases vis-à-vis their government-issued credit

⁴¹⁰ Daniel Kaufmann, Aart Kraay, and Massimo Mastruzzi, *Measuring Corruption: Myths and Realities*, The World Bank, December 2006

⁴¹¹ "United States," Worldwide Governance Indicators, http://info.worldbank.org/governance/wgi/sc_chart.asp

⁴¹² "Open Budgets. Transform Lives," The Open Budget Survey 2010, http://www.internationalbudget.org/files/2010_Full_Report-English.pdf

cards⁴¹³. A look into over 300 employees' purchases over six months at the USDA reveals an estimated cost of \$5.8 million in credit card abuse. The taxpayers' money went to the following: Ozzy Osbourne concert tickets, tattoos, lingerie, bartender school tuition, car payments, and cash advances⁴¹⁴. The USDA is currently circulating 55,000 USDA credit cards and 1,549 of those are still being held and used by people who no longer work at the USDA⁴¹⁵.

The abuse centering on the Department of Defense is equally disappointing. A survey of Air Force and Navy personnel over an eighteen-month period disclose *at minimum* \$102,400 for admission to entertainment events, \$48,250 for gambling, \$69,300 for cruises, and \$73,950 for exotic dance clubs and prostitutes⁴¹⁶. Nearly \$300,000 was allocated towards personal taste and luxuries rather than protecting U.S. citizens and ensuring their ESC rights.

The intent behind government issued credit cards was to save money and time – rather than concentrating on receipts and reimbursements, federal employees could streamline government and be more productive civil servants. However, after wastefully spending nearly 6 million dollars on the personal tastes of federal employees and considering that the U.S. poverty rate is at its highest level since 1994 at 14.3 percent, those funds could be better directed to fighting poverty⁴¹⁷. Historic losses in employment and housing prices in the past three years has

⁴¹³ "Top 10 Examples of Government Waste," The Heritage Foundation, <http://www.heritage.org/research/reports/2005/04/top-10-examples-of-government-waste>

⁴¹⁴ *Ibid.*

⁴¹⁵ "Adequacy of Internal Controls over the Individually Billed Travel Card Program," U.S. Department of Agriculture, Office of Inspector General, Headquarters Audit Report, Report No. 50601-05-HQ, June 19, 2003, www.usda.gov/oig/webdocs/50601-05-HQ.pdf

⁴¹⁶ U.S. General Accounting Office, *Travel Cards: Air Force Management Focus Has Reduced Delinquencies, But Improvements in Controls Are Needed*, GAO-03-298, December 20, 2002, p. 4, and "Travel Cards: Control Weaknesses Leave Navy Vulnerable to Fraud and Abuse," testimony before Committee on Government Reform, U.S. House of Representatives, GAO-03-148T, October 8, 2002, p. 8.

⁴¹⁷ Donna Smith, "US poverty rate hits 150year high," *Reuters*, September 16, 2010,

led to more poverty and hunger since the US Census Bureau began collecting data in 1987⁴¹⁸. Since people at lower income levels have been impacted by the economic downturn the hardest, the 6 million dollars wasted by federal employees could be reallocated to food stamps and low-income tax credits. This kind of distribution of funds is what will help the United States better align with the ICESCR and truly become a leading proponent of human rights for the rest of the world.

Case Study 2: Social Audits in Kenya

President Mwai Kibaki has held the presidency in Kenya since 30 December 2002. In 1997, the IMF discontinued Kenya's Structural Adjustment Program due to the government's failure to maintain reform and control corruption⁴¹⁹. According to the World Bank, Kenya occupies the 9th percentile in corruption⁴²⁰. The IBP appears to agree with the World Bank as they grant Kenya a score of 57 out of 100 on the Open Budget Index⁴²¹. The IBP explains that the score of 57 reflects a government that makes it difficult for citizens to hold government accountable for its budget management because there is incomplete and inaccessible information on the government's financial activities⁴²².

The Constituency Development Fund (CDF) is a fund in Kenya that allots *every* Member of Parliament (MP) with an estimated \$1 million a year to support anti-poverty and development

⁴¹⁸ Ibid.

⁴¹⁹ "Kenya," The Central Intelligence Agency: The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>

⁴²⁰ "Kenya," Worldwide Governance Indicators, http://info.worldbank.org/governance/wgi/sc_chart.asp

⁴²¹ "Open Budget Index 2008: Kenya," http://www.internationalbudget.org/files/cs_kenya.pdf

⁴²² Ibid.

projects for their constituency⁴²³. The purpose is to provide Kenyans with a more direct distribution of development aid rather than the traditional voting line MP's take.

Yet the reality of CDF's is that they are notorious for allegations of corruption, fraud, nepotism, and lack of oversight and monitoring. Funds devoted to the constituency are instead allocated to building lodges, brothels, and nightclubs in neighboring Southern Sudan⁴²⁴. In many cases, MPs use these funds to form companies with their relatives, friends, and spouses. There have also been reports of MPs writing personal checks as contributions to local community events only to swap them with CDF checks – this is a clear theft of public funds only to gain popularity with the politicians' constituency⁴²⁵. This is a wasteful expenditure that has been sustained for years due to a lack of accountability and standardized criteria for financial or performance reporting on the use of funds.

The Muslims for Human Rights (MUHURI) is a CSO based in Mombassa, Kenya working to make MPs who exploit CDF more accountable, mainly through social audits⁴²⁶. Social audits are a participatory process in which CSO's like MUHURI evaluate the use of public resources and ways to increase their voice in the legislative process especially when considering public programs and policies. From 2005 to 2007, MUHURI had to dedicate their efforts simply to *finding and obtaining* access to CDF records⁴²⁷.

⁴²³ "Social Audits in Kenya: Budget Transparency and Accountability," International Budget Partnership, <http://www.internationalbudget.org/files/ImpactMUHURI1.pdf>

⁴²⁴ Jerry Okungu, "The Beauty and Shame of Kenya's Constituency Development Fund," *Afro Articles*, November 13, 2006, <http://www.afroarticles.com/article-dashboard/Article/The-Beauty-and-Shame-of-Kenya-s-Constituency-Development-Fund---CDF/6337>

⁴²⁵ *Ibid.*

⁴²⁶ "Social Audits in Kenya: Budget Transparency and Accountability," International Budget Partnership, <http://www.internationalbudget.org/files/ImpactMUHURI1.pdf>

⁴²⁷ *Ibid.*

Once they did, they found numerous problems. Some cases revealed that laborers who worked on infrastructure development were not paid monetarily, but through food instead. Other survey's showed that money dedicated to building schools and making education more inclusive for young girls left schools only partially constructed⁴²⁸. MUHURI was quickly shut down and prevented from accessing information soon after. Yet MUHURI's work has done enough to show how CDF corruptively distributes money and resources to MPs rather than citizens and, as such, is a wasteful expenditure.

Kenya is one of the fifteen most severely affected countries with HIV infections in the world. A far better expenditure would be to eliminate the CDF and transfer that money – approximately \$210 million – towards providing free universal access to antiretroviral treatment, dietary information and free supplements. A study in 2007 indicated that 79 percent of those with advanced HIV infection received antiretroviral treatment, and the number of new cases of HIV infection in children declined five-fold between 1999 and 2007⁴²⁹. What this means is that preventing HIV infection is possible in a country where infection rates are one of the highest and redefining a budget to concentrate on this issue can help it realize ESC rights more fully than sustaining CDF.

Case Study 3: Mexico

⁴²⁸ "Kenya: Millennium Development Goals," The World Bank Group, http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=&REPORT_ID=1305&REQUEST_TYPE=VIEWADVANCED

⁴²⁹ "Goal 6: Combat HIV/AIDS, Malaria and Other Diseases," UN Department of Public Information, September 1, 2010, http://www.un.org/millenniumgoals/pdf/MDG_FS_6_EN.pdf

Felipe Calderon is currently the President of Mexico and has been since 2006. Calderon's personal goals for Mexico are to fight poverty and increase employment⁴³⁰. Yet according to the World Bank, which ranked Mexico in the 25th percentile in its ability to control corruption, and the International Budget Index, which gave Mexico a score of 52 out of 100, perhaps more time should be dedicated to increasing transparency and accountability⁴³¹.

In 2002, Mexican Congress had issued 600 million pesos from the federal budget, the equivalent of US\$56.5 million, towards promoting women's health and HIV/AIDS treatment and prevention⁴³². Civil society organizations work persistently to add women's programs and particular health issues on the federal budget, so this step by the Mexican Congress in 2002 was revolutionary. It was soon revealed that 30 million pesos, approximately US\$2.8 million, were earmarked for the Centers to Assist Women⁴³³. It was later revealed, however, that the Centers to Assist Women were really a façade for Provida – an ultraconservative pro-life organization that campaigns widely against abortion and against the use of condoms.⁴³⁴ This is a wasteful expenditure because the motives of Provida are directly opposite to the Mexican government's policies in the field of HIV/AIDS prevention.

Civil society organizations were able to uncover the wrongdoings not only of the Mexican Congress' corruptive earmark to Provida, but also of Provida itself. A 6,000-page file detailing the transference of federal money into the pockets of Provida revealed that ninety-

⁴³⁰ "Mexico," The Central Intelligence Agency: The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>

⁴³¹ "Open Budget Index 2008: Mexico," <http://internationalbudget.org/files/OBI2010-Mexico.pdf>

⁴³² "The Provida Case Study: Developing An Advocacy Strategy: Step by Step," International Budget Partnership, <http://www.internationalbudget.org/files/PROVIDACASESTUDY.pdf>

⁴³³ Ibid.

⁴³⁴ Ibid.

percent of the 30 million pesos was misused⁴³⁵. Money went to hiring a public relations firm to begin a campaign against emergency contraception, renting a ballroom, luxury pens, clothing, groceries, and overpriced medical equipment⁴³⁶. Although CSO's did prompt the government to account for why 30 million pesos was directed to a private organization with health policies contradictory to the Mexican government, it was to no avail. Provida was charged with a fine of 13 million pesos and asked to return the original funds – none of which was ever actually done.

30 million pesos could have been better directed towards improving maternal health in Mexico, where maternal mortality is higher than in other Latin American countries⁴³⁷. The problem is 70% higher in the poorer south among Indians (indigenous) than the national average, where indigenous women are three times less likely to survive birth than non-indigenous women⁴³⁸. However, the tragedy of maternal deaths can be mostly avoided with a few simple investments. 30 million pesos could go towards providing transportation for women in remote areas, purchasing their laboratory tests and medical supplies and also spending more on midwives and contraceptives that could help save mothers' lives⁴³⁹. Refocusing Mexico's budget towards maternal health, which is a largely uncontroversial topic when compared to contraceptives and pregnancy reduction, would be a better way of progressively realizing ESC rights.

Justifications for Wasteful Spending and Common Themes

⁴³⁵ Richard D. Hartley, *Corporate crime: a reference handbook* (Santa Barbara, CA: ABC-CLIO), p101

⁴³⁶ Ibid.

⁴³⁷ San Cristobal De Las Casas, "Maternal health in Mexico: A perilous journey," *The Economist*, June 24, 2010

⁴³⁸ Ibid.

⁴³⁹ "Goal 5: Improve Maternal Health," UN Department of Public Information, September 2010, http://www.un.org/millenniumgoals/pdf/MDG_FS_6_EN.pdf

Justifications for Wasteful Spending

In an era of tight budgets and limited resources for change and improvement, the reasons for a reluctance among lawmakers to reverse the trend of wasteful expenditures are elusive. However, there does exist a litany of justifications used by politicians to fund projects that are wasteful. A major reason is interest groups, who ceaselessly defend their special-interest subsidies. In an international context, this includes relatives, friends, and business associates of congressmen whose interests outweigh citizen needs in political contexts⁴⁴⁰. The Mexican case study clearly illustrates this. If the Calderon administration were not ultraconservative, the chance of Provida gaining a large portion of federal money would be slim. Yet there are cases when congressmen openly acknowledge that certain programs show no positive effects but refuse to terminate these programs. The reason behind this is two-fold: fighting special interests who advocate for these programs is often a ruthless and tiring battle and secondly, and most of this fight would go unnoticed by voters and lead to little or no press coverage⁴⁴¹.

Apart from the influence of interest groups, congressmen often consider federal grants as “free money,” and so lack incentives to spend this money well because they simply did not have to extract it themselves⁴⁴². This is apparent in Kenya’s case with the CDF. Congressmen no longer have to advocate for the \$1 million granted to them annually and because there was no oversight before the MUHURI, the opportunity to use the money at their discretion was vast.

⁴⁴⁰ S.R.Sen, “Vote Power and Lobby Power,” *Economic and Political Weekly*, Vol.29, No.33, August 13, 1994, p. 2138, <http://www.jstor.org/stable/4401622>

⁴⁴¹ Mathias Dewatripont and Paul Seabright. 2006. "Wasteful Public Spending and State Aid Control". *Journal of the European Economic Association*. 4 (2-3): 2-3.

⁴⁴² Brian Riedl, “Ten Guidelines for Reducing Wasteful Government Spending,” The Heritage Foundation, February 12, 2003, <http://www.heritage.org/research/reports/2003/02/ten-guidelines-for-reducing>

Common Themes

As seen in the cases presented, the impact of wasteful expenditures within government budgets can be profoundly detrimental in fully realizing economic, social and cultural rights. Without effective political and public accountability, as discussed in Chapter 1 of this section, improving performance of local projects, public services, and government programs is hardly possible and opens the doors for corruptive practices. Kenya's case exemplifies this as there were no project monitors, citizen report cards or community scorecards allowed to measure the effects of CDF, and MPs answered to no one as they spent taxpayers' money. Only with the efforts of MUHURI was there an increase in accountability of CDF performance and active engagement in monitoring progress. The need for greater accountability to curb corruption, and thus better realize full rights of every citizen, is prevalent among all types of governments the world over. The more willing governments are to engage with citizens when discussing the budget process, the more accountable and effective government spending can become. In many cases, the proper structure is not put into place to hold those elected representatives accountable to their populations – information is willingly and unwillingly withheld to protect these officials, despite their wrongdoings.

Recommendations and Conclusion

In order to truly rectify wasteful expenditures in government budgets, some recommendations have been made. The first recommendation that can lead to greater transparency is to curb the influence of lobbyists and special interests that have prevented governments from progressively realizing these ESC rights. This recommendation includes

writing legislation in public rather than behind closed doors, which is where lobbyists gain advantages and special treatment in budget processes.

Another recommendation is to require that all governments produce and maintain a public spending database available on the internet, in the newspaper, or through local community leaders – whichever is the most accessible source of information gathering to local citizenry. This will include information on government spending, performance of politicians, and government obligations according to the ICESCR. Thus information will be more dispersed and accessible, and opportunities for corruption will be limited.

The lack of accountability and efficiency in government budgets not only prevents effectiveness of critical programs but also erodes people's faith in their government's ability to tackle hard-pressing national issues. The United States, Kenya, and Mexico are all examples of governments that have in many ways favored the influence of special interests over their constituency either because it is too hard to fight them, because they fear that their battles will go unnoticed, or because it is simply easy to take money from taxpayers and use it at their own discretion. Money could be focused on better realizing ESC rights such as maternal health in Mexico, HIV prevention in Kenya, or fighting the effects of the recession on poverty in the United States; in order for this to happen, changes are necessary. That is why we recommend governments to make spending and violations a public and accessible feature in state politics to ensure that actions of politicians are acknowledged and understood. Writing these budget allocations in public will also create a more transparent government that helps take the government out of the hands of special interests and place it into the hands of the people.

Chapter 12:
Leakages in the Budget

By Kelsey Bachenberg

Chapter 5: Leakages in the Budget

Introduction

While governments may fulfill their obligation to allocate the maximum available resources (MAR) towards the achievement of human rights as required by ICESCR, this official allocation is often misrepresentative of the funds actually being received by service units. Government revenue may be misused outright at the national level, yet funds allocated for a specific project are also prone to leakages, misuse and capture as they are passed between tiers of governance before reaching intended beneficiaries, severely limiting the effectivity of these government-sponsored programs and projects. While certain sectors may be more prone to leakages than others, capture, kickbacks and misappropriations occur at each level of governance from “the lowly clerk all the way to the elected agency head.”⁴⁴³ These leakages occur primarily due to a lack of public accountability, weak expenditure management, poor accounting systems, and inadequate checks and balances which allow for misappropriations to go unnoticed. Needless to say, the siphoning of public funds has enormous negative affects on public service delivery and the fulfillment of human rights that these public projects seek to address. For governments to be in compliance with MAR standards, a system of accountability and management must be in place to curtail this form of corruption and ensure that funds are received in full by intended beneficiaries. This report addresses the issue of accountability in the budget

⁴⁴³ Vivek Ramkumar, “Case Study, Part 2: The Right to Know Movement in India,” Just Associates: Making Change Happen Series #2, p. 3 www.justassociates.org/MKSS%20Case%20Study%20Section%20II.pdf

process, and identifies ways in which governments, anti-corruption institutions and civil society organizations may strengthen expenditure oversight and prevent budget leakages.

Supreme Auditing Institutions (SAIs)

Supreme Auditing Institutions (SAIs), also referred to as Auditor Generals, are the bodies traditionally responsible for overseeing the management of public funds and reporting on leakages, misallocations and mismanagement. As “watchdogs” of the financial management system, SAIs conduct audits of government expenditures and report findings and recommendations to Public Accounts Committees (PACs), who in turn interpret reports and present their findings to legislative or judicial branches for review. In their proceedings, SAIs are tasked with investigating systems of accounting and financial management (financial auditing), tracking expenditures (compliance audits) and reporting on the effectiveness and efficiency of government programs (performance audits).⁴⁴⁴ The most relevant of these audits to the issue of leakages is compliance auditing, which investigates whether transactions were made in accordance with official budget allocations as well as country regulations and laws.⁴⁴⁵ By means of auditing government expenditures, SAIs have the potential to be a decisive actor in identifying corruption and promoting accountability in public spending; however, in practice these institutions have been limited in their capacity to do so.

SAIs are not only provided with inadequate funding and resources necessary to conduct effective investigations, but are limited by a lack of autonomy in conducting research, reporting

⁴⁴⁴ Warren Krafchik and Vivek Ramkumar, “The Role of Civil Society Organizations in Auditing and Public Finance Management,” International Budget Partnership

⁴⁴⁵ Albert Zyl, Vivek Ramkumar and de Paolo Renzio, “Responding to the Challenges of SAIs: Can Legislatures and Civil Society Help?” *Chr Michelsen Institute*, U4 Anti-Corruption Resource Center, revised 2009, p. 8
<http://www.cmi.no/publications/file/3287-responding-to-the-challenges-of-supreme-audit.pdf>

findings and following up on reports to ensure that recommendations have been acted upon. Owing to the fact that SAIs are funded by the Federal government in most countries and deliver reports directly to government officials, the autonomy of SAI activities and the objectivity of audit reports are often undermined by political influence.⁴⁴⁶ To illuminate this, a study conducted by the International Organization of Supreme Audit Institutions (INTOSAI) in 2001 reported that 63 of 113 countries surveyed expressed that their autonomy was challenged by executive pressure.⁴⁴⁷ A lack of autonomy from other institutions has seriously limited the freedoms of SAIs to provide objective reports and to identify areas of corruption.

The effectivity of SAI activities is also restrained by the narrow mandate awarded to them, which restricts these institutions from reporting directly on instances of corruption and from further investigating corrupt activities.⁴⁴⁸ SAIs are regarded as having a role in deterring and preventing corruption by ensuring effective financial management systems, but are not expected to assume a role in identifying and prosecuting corrupt practices⁴⁴⁹. SAIs are similarly unable to directly prosecute offending officials or institutions, or to follow up on reports to ensure that legislative and executive branches implement recommendations. These limitations place the power of discretion in the hands of the legislative body to whom the SAI reports, which may choose to only review a portion of cases or to ignore recommendations made by the SAI altogether.⁴⁵⁰

Of great consequence to curbing the issue of leakages, SAIs have proven ineffective in transmitting information and findings from reports to the public in an accessible manner. Reports

⁴⁴⁶ Alastair Evans “The Role of Supreme Audit Institutions in Combating Corruption,” *Chr Michelsen Institute*, U4 Anti-Corruption Resource Center, p. 5 <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=203>

⁴⁴⁷ Zyl et al, 12

⁴⁴⁸ Krafchik and Ramkumar, 5

⁴⁴⁹ Evans, 5

⁴⁵⁰ Zyl et al, 14

are not only delayed in their delivery, in some cases up to 2 to 3 years⁴⁵¹, but are also extremely complicated, making them incomprehensible by civil society. Furthermore, reports are seldom produced to follow the actions taken by the government in response to SAI recommendations, which erodes government accountability.⁴⁵²

Due to these restrictions, the power of SAIs to oversee the usage of public funds has been severely limited. In response to these challenges, several solutions may be posited to promote better systems of auditing and diminish corrupt activity, including granting SAIs more autonomy, improving communication between government bodies and SAIs and expanding SAI mandates. Before discussing ways in which current SAI processes may be made more effective, this chapter will address the critical role that civil society organizations (CSOs) have played in strengthening the audit process, disseminating information regarding the usage of public funds, and curbing budget leakages and corruption.

Civil Society and the Audit Process

Civil society organizations have begun to participate in and strengthen the auditing process by engaging directly with SAIs and conducting micro-level budget tracking, in order to promote accountability in the transfer of public funds and to make budget information accessible by the public. An effective way in which CSOs, NGOs, and research institutes have taken on budget work and fostered public engagement in budget processes is through Public Expenditure Tracking Surveys (PETS). PETS relies on micro level surveys which track funds from the central government, through district levels and on to frontline service delivery providers, such as schools

⁴⁵¹ Zyl et al, 23

⁴⁵² Krafchik and Ramkumar, 9

and clinics.⁴⁵³ Financial records are accessed at each level, and amounts officially allocated are compared to amounts received by each tier of governance to account for leakage and capture of funds. This data is then disseminated to such actors as public officials, SAIs, legislatures and other CSOs, as well as publicized for community access via newspapers, media and the internet. In this way, PETS may identify weaknesses in public expenditure management systems and identify cases of corruption, helping to foster public accountability for the capture of funds based on collected information.

Community organizations may also undertake expenditure tracking on a smaller, local scale by carrying out social audits. This process involves community members accessing and evaluating public expenditure data regarding fund allocations designated for public services and projects in the region, as well as undertaking surveys to gather resident feedback concerning these programs. Information is scrutinized for misuse and fraud, whereupon results are delivered to SAIs, government bodies and other relevant institutions, as well as widely distributed to the community through public meetings, newspapers or other media sources. This process empowers citizens to hold public bodies accountable for the funds which they are entitled, and to promote transparency regarding the budget.⁴⁵⁴

In other cases, civil society has fostered awareness of corruption in public expenditure systems by analyzing and publicizing SAI reports and official budget information. CSOs have engaged with budget processes by cross-checking government records, making official audit

⁴⁵³ Geir Sundet, "Following the Money: Do Public Expenditure Tracking Surveys Matter?" Governance and Social Development Resource Center, revised 2008, <http://www.gsdr.org/go/display&type=Document&id=3581>

⁴⁵⁴ Anu Pekkonen and Manjunath Sadashiva, "Social Audits," CIVICUS World Alliance for Citizen Participation, revised http://pgexchange.org/index.php?option=com_content&view=article&id=142&Itemid=136

reports available to the public in a readable and accessible format, and undertaking information campaigns which advocate public access to restricted government budget documents.⁴⁵⁵

While a combination of tactics is generally employed in CSO initiatives, these approaches share common goals: to promote civil participation in budget monitoring, disseminate information regarding leakages, and foster communication and information exchange between anti-corruption bodies to ensure that measures are taken to address issues of corruption.⁴⁵⁶ Through these processes, officials are held accountable for their actions and the public is made aware of the funds to which they are entitled, putting pressure on administrative bodies. In this way, the involvement of CSOs has helped both to fill in the gaps of SAI activities and to curtail incidences of corruptive practices, ensuring that the maximum available resources reach service providers and intended beneficiaries.

Case Studies

The following case studies demonstrate ways in which CSOs have engaged in the audit process and promoted citizen oversight of public expenditures. The case studies of PETS conducted in both Uganda and Tanzania serve to demonstrate the severity of leakages in public funding for health and education, and to highlight the successes and challenges that these initiatives encountered in applying findings towards public accountability initiatives. The case study of the Public Service Accountability Monitor (PSAM) in South Africa and the Mazdoor Kisan Shakti Sangathan (MKSS) in India serve as examples of how civil society has fostered

⁴⁵⁵ Mark Robinson, "Budget Analysis and policy advocacy: the role of non governmental public action," Institute of Development Studies at Brighton, revised 2006, p. 30 <http://www.ids.ac.uk/go/idspublication/budget-analysis-and-policy-advocacy-the-role-of-non-governmental-public-action>

⁴⁵⁶ Mary McNeil and Takawira Mumyuma, "Demanding Good Governance: A Stocktailing of Social Accountability Initiatives by Civil Society in Anglophone Africa," World Bank Institute, revised 2006, p. 20 http://siteresources.worldbank.org/WBI/Resources/Demanding_Good_Governance-FINAL.pdf

public oversight of financial management systems through information campaigns that have publicized financial reports and identified instances of corruption.

Public Expenditure Tracking in Uganda

Uganda was the first country to carry out a Public Expenditure Tracking Survey in 1996, after a government capitation grant that increased public spending in education failed to improve primary education enrollment and pupil-teacher ratios. The 1996 PETS relied on reports by government ministries, financial and in-kind receipts at central and local levels of governance, and surveys and interviews undertaken in 19 districts, 250 government primary schools and 100 health clinics regarding budget receipts and allocations between 1991 and 1995.⁴⁵⁷ The PETS surveyors began by collecting data from the central level regarding the amount of capitation funds transferred to district governments, and worked their way to the head teachers where they obtained school records of supplies and money actually received.⁴⁵⁸

The PETS in Uganda uncovered that only 13% of the capitation grant funds had reached primary school facilities, while the remaining 87% had been captured by government officials, often used for patronage politics and political activities. Of the 250 schools surveyed, 73% received less than 5% of allocated funds, while only 10% received more than 50% of the promised funding. A large proportion of these figures were attained by translating in-kind material transfers made between the district level and facility level, into quantified, monetary values that could more easily be accounted for. In this way it was discovered that “a good deal of

⁴⁵⁷ Ritva Reinikka and Jakob Svensson, “Assessing Frontline Service Delivery,” World Bank, revised 2002, <http://www.worldbank.org/wbi/governance/assessing/pdf/reinikka.pdf>

⁴⁵⁸ Ritva Reinikka and Nathaniel Smith, “Public Expenditure Tracking Surveys in Education” International Institute for Educational Planning, <http://www.unesco.org/iiep/PDF/pubs/Reinikka.pdf>

resources were diverted through inflating the prices of procured items supplied for schools,”⁴⁵⁹ and that a significant percentage of leakages were made after funds were converted into supplies.

The 1996 PETS prompted an information campaign in Uganda in which monetary transfers between central and district governments were published in newspapers, posted by local primary schools for public access, and broadcasted on local radio stations. The results of the information campaign were substantial, reducing captures from 78% in 1995 to 18% in 2001 across all school districts.⁴⁶⁰ Furthermore, it was found that the reception of funds by schools was heavily contingent upon the school’s proximity to the nearest newspaper in which these transfers were listed. It was discovered that schools with newspapers saw a 14% greater increase of capitation funding than those without access to newspaper sources and an assessment of the information campaign estimated that nearly 75% of the overall reduction in leakages could be explained by the information campaign. The impact of the PETS and subsequent information campaign in Uganda indicates the enormous impact that public accountability can have on ensuring sound management of public funds⁴⁶¹.

Public Expenditure Tracking in Tanzania

A PETS was undertaken in Tanzania in 2004 by a local research institute, Research on Poverty Alleviation (REPOA) in order to track funds and materials being passed from the Central government, through council headquarters and finally onto health and education service units. The survey was based firstly on reports and records obtained from the government as well as the Integrated Management System which accounted for budget estimates and actual

⁴⁵⁹ Reinikka and Smith, 75

⁴⁶⁰ *ibid.* 75-79

⁴⁶¹ *ibid.*, 76-79

disbursement of funds and supplies. In addition, field surveys were undertaken at the central government where the ministries of finance, education and health were surveyed, at the local authority level where councils in Babati, Kisarawe, Dodoma, Mtwara and Kigoma were visited, and finally at the council level where primary schools and health facilities were interviewed in these same districts. The PETS surveyors tracked flows of funds from the Ministry of Finance through the service units to account for leakages occurring at each level of transaction. The Ministry of Finance was first unit investigated regarding the amount of funds disbursed for educational and health purposes, after which the councils were investigated on the actual reception of funds from the Ministry of Finance and so on, from the councils to the service units.

⁴⁶² Throughout the expenditure tracking survey, the system as a whole was evaluated based on the effectivity of reporting and accountability existing between each level of budget transaction.

The survey uncovered that treasury disbursements were subject to leakages between the national treasurer and council level (treasurers office), within the council itself in transfers to sectoral heads, and finally between council sectoral heads and community service providers. ⁴⁶³ In the end, a mere 43% of intended funds for primary schools reached service providers due to severe leakage. ⁴⁶⁴ The following tables compare PE (personal emolument) and OC (other charges) disbursements made by the treasury as compared to approved budget estimates, as well as the percentage of this disbursement actually received by local councils in the five surveyed regions during two financial periods.

⁴⁶² Pro-poor Expenditure Tracking, Research on Poverty Alleviation (REPOA) and Economic and Social Research Foundation, revised March 2001, p. 1-6 <http://www.scribd.com/doc/28084575/Pro-Poor-Expenditure-Tracking-repoa-2001>

⁴⁶³ Pro-Poor Expenditure Tracking, 19

⁴⁶⁴ Svennson and Reinikka

Disbursements and Receipts of Government Pro Poor Funds: July 1999-June 2000⁴⁶⁵

		Selected Local Government Authorities				
		Kis	Dom	Bat	Mtw	Kig
Disbursement as % of approved estimates	PE	85	123	130	114.4	124.4
	OC	93	88	96.8	113.46	105
Receipts as % of disbursement	PE	100	100	100	100	100
	OC	84.8	84.8	64	78	96.5

Disbursements and Receipts of Government Pro Poor Funds: July-December 2000

		Selected Local Government Authorities				
		Kis	Dom	Bat	Mtw	Kig
Disbursement as % of approved estimates	PE	69.7	61.7	85	76.75	68.5
	OC	74.3	76.4	61.5	130	99.5
Receipts as % of disbursement	PE	100	100	100	100	100
	OC	100	100	103.8	35.1	76.6

PE: Personal Emoluments (Salaries) OC: Other Charges

This data shows that not only did the treasury disburse only a percentage of the approved allocation for each council, but the councils also claimed to have received less than was disbursed from the treasurer level in regards to OC funds.

Leakages were also discovered between council treasurer and council sectors levels, as demonstrated in the table below, which presents percentages of actual sectoral disbursement and approved sectoral allocations. Reports found that sectors received less than both approved funding and actual disbursement on the part of council treasurers in September, October and November of the year 2000.

Department receipts of OC as a % of sectoral disbursement by the treasury for selected three months:

September, October, and November 2000⁴⁶⁶

⁴⁶⁵ Pro-Poor Expenditure Tracking, 19-20

Item	Name of Local Authority	Department		
		education	Health	Water
Actual receipt as a % of actual sectoral disbursement	Kisarawe	126	31.7	84.4
	Dodoma	42	90.2	80.5
	Babati	101.86	16.8	0
	Mtwara	89.18	100	N/A
	Kigoma	72.7	93.9	N/A
Actual receipt as a % of approved sectoral allocation	Kisarawe	118.3	57.2	97.5
	Dodoma	46.9	59.9	93.7
	Babati	86.1	16.3	0
	Mtwara	77.2	37.4	N/A
	Kigoma	81.4	29.3	N/A

Beyond the council sectors, no cash flow took place as funds were converted into supplies, making accountability especially difficult in transfers taking place between the council and service providers. With the allocation of funds at the discretion of council sectoral heads, it is clear that funds were mismanaged and disproportionately spent on supplies that did not serve intended beneficiaries but rather the council department itself. The table below breaks down these expenditures in the districts of Kigoma and Babati, where a mere 0% and 9.8% of funds were spent on medical supplies, and 19.8% and 6% on school supplies.⁴⁶⁷

Breakdown of department OC expenditures in Health and Education in selected district councils: July 1999-June 2000⁴⁶⁸

⁴⁶⁶ Pro-poor expenditure tracking, 21

⁴⁶⁷ *ibid.* 21

⁴⁶⁸ *ibid.* 24

District	Department	Travel and Vehicles	Office Stationary	Fuel for generator	Exams	School Materials	Training	Sanitation	Equipment for dispensaries	Misc.
Kigoma	Education	56.60%	16%	5.00%	1.00%	19.80%	0.10%	n/a	0%	0.40%
	Health	28.10%	3.70%	22.90%	n/a	n/a	5.30%	35.60%	0%	4.40%
Babati	Education	34.70%	7.60%	0%	39.70%	6.00%	3.90%	n/a	0%	8.40%
	Health	61%	25.20%	0%	n/a	n/a	1.80%	0%	9.80%	2.20%

The report identified that a lack of communication between different tiers of governance has allowed for unwarranted reallocations, especially at local levels where an Integrated Financial Management System has not been implemented. Therefore, success of the disbursement system is contingent on equal accessibility to information regarding the budget and resource transfers: “in situations of scarce resources ownership of information and misinformation are important for redistributing resources to suit the owners of information.”⁴⁶⁹ In addition, the PETS identified that a lack of predictability in the distribution of funds and materials, especially between sectoral departments and service units, has promoted leakages, and therefore the implementation of a more reliable schedule of disbursement would diminish the chances of leakage significantly.⁴⁷⁰

While the Tanzanian PETS compiled credible information regarding leakages in the transfer of public funds for education and health, it failed to have the same positive affect on accountability and corruption as the PETS in Uganda. Following the survey, the Tanzanian government refused to formally acknowledge the findings and disregarded the report.⁴⁷¹

Furthermore, the researchers who undertook the PETS did a poor job of disseminating report

⁴⁶⁹ Pro-poor Expenditure Tracking, 32

⁴⁷⁰ *ibid*, 33

⁴⁷¹ Sundet, 3

information among communities, and when information was posted for public access it was too confusing and incomprehensible for community members to interpret or use as leverage to demand entitled funds⁴⁷². Consequently, the survey did little to heighten public awareness of budget leakages, and succeeded minimally in empowering community leaders to take a more aggressive role in budget accountability and monitoring. This outcome of the PETS in Tanzania demonstrates that “for civil society to effect lasting change in organizational providers directly through stand alone Public Expenditure Tracking Surveys is unlikely. Rather, change occurs when information generated by tracking is used by others,”⁴⁷³ and a failure to effectively fulfill this will ensure that patterns of fund misuse remain unchanged, as was the case in Tanzania.

Mazdoor Kisan Shakti Sangathan (MKSS) and Social Auditing in India

The Mazdoor Kisan Shakti Sangathan (MKSS), established in 1990, is a social justice group comprised of peasants and workers in Central Rajasthan. When first undertaking a campaign to ensure minimum wage payments to peasants in the region in 1990, the group realized that the privacy of government financial records seriously impeded the citizen’s ability to lay claim to missing payments. The group undertook social auditing in the region by first collecting and analyzing information and records regarding project funds, and interviewing community members for public opinions and information regarding these funds. Community members went to great lengths to cross-check official financial data and identify discrepancies and fraud, then distributed copies of this information from house to house in local villages. The social auditing in Rajasthan was, and is, contingent upon Jan Sunwais, or public hearings, which

⁴⁷² De Graaf, 5

⁴⁷³ *ibid.* 8

followed the dissemination of compiled project fund information. These public hearings involved local residents, marginalized groups such as women and the poor, and government officials in charge of projects to be discussed. At these public hearings, citizens are given a forum to discuss issues of public expenditure in the community, and bring light to identified instances of corruption and inefficiencies as well as discrepancies in public financial records. While officials would naturally attempt to defend themselves against these allegations, they were often unable to make a case against these well-documented cases of corruption and in some cases both admitted to these actions and even paid back project funds that had been captured.⁴⁷⁴ Through these public hearings, the MKSS also launched its well-regarded Right to Information Campaign, which called for citizen access to restricted government documents detailing fund transfers.⁴⁷⁵

Following public hearings, MKSS members led an advocacy campaign that called for action regarding corruption and mismanagement identified by community members, and advocated for government transparency and the right to information. Findings from public hearings were also summarized in a report that was sent to government officials, media groups, and other social justice groups along with recommendations of appropriate action to be taken. In response to the MKSS right to information campaign, the Right to Information Act was adopted into legislature in Rajasthan in 2000 and later was enacted by the national government in 2002. Furthermore, the group lobbied for the institutionalization of social audits, which has since been adopted into government proceedings, requiring villages to undertake social audits at least once a year.⁴⁷⁶ Having undertaken social audits for twenty years, the MKSS has been extremely

⁴⁷⁴ Vivek Ramkumar, "Case Study, Part 2: The Right to Know Movement in India," Just Associates: Making Change Happen Series #2, www.justassociates.org/MKSS%20Case%20Study%20Section%20II.pdf

⁴⁷⁵ *Mazdoor Kisan Shakti Sangathan*, available at: <http://www.mkssindia.org/about-us/>

⁴⁷⁶ Ramkumar, 1-6

successful in holding government officials accountable for corrupt activities and involving community members in the budget process.

Public Service Accountability Monitor (PSAM) in South Africa

A statement released by the Auditor General in South Africa in 2002 stated that “not a single one of the Standing Committee on Public Accounts recommendations had ever been implemented by any provincial department.”⁴⁷⁷ In response to this lack of corrective action in identified instances of corruption in South Africa as well as rampant corruption and misuse of resources by provincial departments, the Public Service Accountability Monitor (PSAM) has been working since 1999 to use social accountability as a means to holding government bodies and public officials accountable for the management of public resources.

The PSAM focuses on investigating budget processes within the sectors of health, education, welfare, public works and housing in attempts to shed light on failing financial management and weak systems of accountability which jeopardize quality service delivery in these units.⁴⁷⁸ The PSAM draws on information released by the press, reports produced by the Auditor General, and government department records to investigate flawed financial management; the organization pays close attention to whether specific officials and departments have taken steps towards implementing recommendations made to them by the Auditor General and other oversight committees.⁴⁷⁹ These findings, including budget documents, annual reports, cases of misconduct and Auditor General reports are then publicized on the PSAM website for public access, as well as on local radio programs and in a newspaper column. Findings based on

⁴⁷⁷ Ramkumar and Krafchik, 13

⁴⁷⁸ McNeil and Mumyuma

⁴⁷⁹ Krafchik and Ramkumar, 14

Auditor General and government reports are sent directly to audited departments by the PSAM with a request that the audited body provide information on steps being taken to address the issue of corruption. These responses are also provided for public access, and transmitted to legislatures and the Auditor General in order to hold audited departments and officials accountable for curbing corruption and retrieving public funds.⁴⁸⁰

By working with other oversight agencies such as the Auditor General and publicizing findings related to corrupt activities, the PSAM has created a strong network of accountability based around public engagement in budget processes and oversight. As an example, the PSAM reported in 2000 that between 1996 and 2000 10 of the 13 public agencies in the East Cape district had received audit disclaimers by the Auditor General, but that these reports had not generated any corrective action. The issue was publicized by the PSAM and the public was made aware that this lack of responsible financial reporting meant that over 90% of public funds could not be tracked for these given years. Due to the public awareness generated by this campaign, audit disclaimers in 2002 only accounted for 41% of the budget. This campaign further promoted the government to form a Joint-Anti-Corruption Task team in 2003, with members representing agencies such as the SAI as well as the PSAM. The team was given the task of acting upon past corruption cases, and by 2003 the group had investigated 374 cases and made 114 arrests.⁴⁸¹

Conclusion

These CSO initiatives in Uganda, Tanzania, India and South Africa demonstrate the powerful effect that public access to information can have on public expenditure tracking

⁴⁸⁰ PSAM, available at: http://www.karmayog.org/anticorruption/anticorruption_1573.htm

⁴⁸¹ Krafchik and Ramkumar, 15

systems and budget accountability. Researchers commented regarding the Tanzanian PETS that “surveys provide information but do not necessarily result in change...findings need to be used strategically.”⁴⁸² Similarly, researchers of the PETS survey in Uganda commented that “interestingly, the extent to which funding reached the intended beneficiary had little to do with conventional audit and supervision mechanisms, but on the schools opportunity to voice their claims for the funds”⁴⁸³ In accordance with these statements, the successes of the CSO initiatives detailed in this report relied on the dissemination of expenditure tracking reports to the public and the generation of public awareness regarding the budget process. These initiatives gave community members a sense of responsibility for funds to which they were entitled and resulted in curtailing corrupt practices that wasted these resources before they reached beneficiaries.

It is evident that current official systems of accountability are inadequate and incapable of preventing leakages and executing measures of prosecution in cases of corruption. While SAIs wield some power in tracking government expenditures and the usage of public funds by government officials, their capacity has been severely limited and corruption in the budget has gone unacknowledged by both governments and citizens. Government failure to undertake anti-corruption strategies for reducing leakages, should be regarded as a violation of ICESCR obligations to allocate the maximum available resources to the achievement of human rights and these governments should be pressured to initiate proper programs for curtailing leakage in social spending. Measures must focus on supporting official auditing institutions, anti-corruption programs, CSO and community initiatives, and information campaigns which make critical

⁴⁸² Sundet, 14

⁴⁸³ Ritva and Svensson, 11

budget and leakage data available. These initiatives should be undertaken with the goal of strengthening networks of accountability and promoting information sharing, fostering citizen and government oversight of public expenditures and budget leakages.

Recommendations

Corruption in the form of leakages has a devastating effect on social services and programs, limiting the ability of these initiatives to fulfill basic human rights for intended beneficiaries. This report argues that for signatory states to be in actual compliance with ICESCR and their commitment to allocate the maximum available resources toward the fulfillment of these rights, a system of national accountability must be in place to operatively prevent the capture of public funds.

To begin with, this report recommends that the position of SAIs, as supervisors of public expenditure management, be strengthened to allow for SAIs to act as anti-corruption bodies. To effectively monitor public funds, the investigative power of SAIs must be extended by authorizing these institutions to report directly on cases of corruption, investigate areas of the budget at high risk of corruption, and follow up on recommendations made to legislative bodies regarding these instances. To accomplish this, SAIs should actively respond to petitions made by CSOs, community organizations, legislative powers or other relevant sources regarding perceived areas of corruption to be audited, and facilitate this process of public opinion and information sharing. This includes utilizing information from PETS, social audits and other monitoring initiatives to identify cases of fund misuse, and audit these specifically.

To ensure that measures are taken to act upon recommendations made in audit reports, the role of both SAIs and legislative officials in following up on reports must be strengthened,

essentially granting these institutions greater power of prosecution. SAIs and legislative bodies must cooperate closely with other transparency and anti-corruption organizations, enforcement agencies, and government officials to ensure that leakages in the budget are handled appropriately. Furthermore, SAIs should be held accountable for producing and publicizing comprehensible and useful audit reports to be distributed widely regarding instances of public fund misuse and capture. These reports should be made available to community organizations and affected communities to foster public awareness of findings.

CSOs, community organizations and research groups must be particularly targeted to further promote public accountability regarding the funding of social services. Methods of social auditing and expenditure tracking should be encouraged and assisted, to provide micro-level information to governments, anti-corruption bodies and SAIs, and to hold officials accountable for the misuse of public funds. Governments should be pressured to allow citizen access to data regarding fund-transfers at the national, district and local levels so that this type of financial management analysis is possible, and they should make a commitment to responding to findings of these reports. Furthermore, organizations undertaking expenditure tracking and social auditing must be made aware of the importance of disseminating information regarding fund misuse to the public as well as SAIs, anti-corruption agencies and government officials to promote information sharing and to garner public awareness surrounding budget leakages.

Section III

Summary of Recommendations

This section addressed the challenges of applying government budgets and spending towards the progressive realization of human rights. These chapters highlight ways in which government spending can be made more efficient and effective, and how accountability in financial management can be enforced. These measures are recommended for the purpose of holding governments responsible for allocating the maximum available resources to the realization of ICESCR, prioritizing spending so that funds are used in an efficient manner, and ensuring that public funds are received in full by intended beneficiaries. In order to achieve these goals, this report recommends that IBP work with governments and other civil society agencies to address the following recommendations.

- Under ICESCR, signatory states must be obliged to respect, protect and fulfill each given right.
- Governments should consider private sector funding and foreign aid as supplemental forms of funding, and not as primary resources for the fulfillment of ICESCR commitments.
- The Committee should implement a method of standardization for spending requisites that is a function of national GDP and population figures.
- Governments and organizations should target funding to areas of most need in order to use the maximum available resources in the most efficient way possible.
- In order to target funds efficiently, the decision-making process and implementation of funding should be decentralized and involve active community participation.

- Each targeting program should be customized and tailored to the country or region in which it is implemented, in order to create balance between efficiency and accuracy of spending.
- There should be an emphasis on broad geographic targeting of spending in countries with high rates of poverty or a very uneven spatial distribution of poverty.
- The agency and investigative powers of Supreme Auditing Institutions (SAIs) should be strengthened, and SAIs and legislative powers should be allowed agency in following up with audit reports and recommendations.
- Governments must be held accountable for following up on audit and expenditure tracking reports that identify leakage and corruption in the budget.
- CSO and community organization budget accountability initiatives must be supported and encouraged, to facilitate accountability around the budget.
- Information about budget leakages and corruption must be widely disseminated and greater cooperation and information exchange between governments, audit institutions, anti-corruption enforcement agencies, CSOs and community members should be fostered.
- IBP should encourage governments to define clear, measurable goals using specific indicators in order to assess impact.
- Spending should prioritize those programs and policies that will generate the highest yield.
- Both on-the-ground and statistical feedback must be utilized in order to evaluate progress and monitor improvement

Section IV:
**Overseas Development Assistance and
National Policy**

Section IV Introduction

Beyond analyzing the problems involved in how states use their budgets, it is important to look at the sources of the budget itself. For some states, a significant portion of the budget comes from Overseas Development Assistance (ODA). Section 4 addresses the role of ODA in the fulfillment of ESC rights through budgets. The section is divided into 4 chapters:

Accounting for ESC rights in Multilateral Development Banks, Exporting Dependency and Destruction, Achieving ESC rights Through Bilateral Aid, and Policy By Example: Progressive Budgetary Measures Towards ESC rights.

Chapter 16 looks at the role of Multilateral Development Banks (MDB) in ODA.

Multilateral Development Banks' impacts on human rights is significant, whether positive or negative. Human rights are referred to in MDB rhetoric, but in practice there are no mechanisms committing MDB policies to fulfilling human rights. Accountability mechanisms, a tool for voicing complaints of infrastructural development projects, are a step towards the greater goal.

The accountability mechanisms at MDBs are flawed, however, producing a limit to potential.

This Task Force outlines options for accountability mechanism structures and advocates for one which combines compliance review and problem-solving.

Chapter 17 discusses Export Credit Agencies (ECA) and their role in ODA. First, ECAs will be defined and their structure will be examined. In doing this, various questions will be raised such as: To what extent do ECAs encourage or support budgetary transparency among recipient governments? Are their mechanisms in place to monitor and evaluate the way in which aid is distributed by the recipient government? To what extent is ECA activity held accountable to ESC rights? Are their guidelines in place to monitor the effect of ECAs on ESC rights? In answering these questions, this Task Force will make recommendations in order to further the

advances of ESC rights in respect to ECAs.

Chapter 18 looks at the role of the bilateral aid programs of the United States (USAID), Japan (JICA) and Canada (CIDA). USAID, CIDA and JICA all give ODA through loans and grants, and the implementation of projects for the benefit of the recipient nation. The fact that most of the aid is used in projects that are selected, designed and implemented by bilateral organizations does not allow recipient governments to learn how to budget effectively to realize human rights. Thus, this Task Force will recommend that bilateral organizations free up more of their aid to be used in projects that are designed by recipient governments. Another problem with USAID, CIDA and JICA is that all three bilateral aid organizations do not use a human rights framework when analyzing the impact of their projects. Thus, this Task Force will argue that they make the PR of HR more of a priority by implementing more programs designed to realize rights, and by adding a human rights component to their project evaluation process.

Chapter 19 departs from the emphasis on ODA in order to make some concluding remarks about the use of budgets for ESC rights purposes. It is meant to provide positive, progressive policy steps that states have taken towards further achieving ESC rights. This is important to analyze and discuss because these case studies can serve as examples for other states who have had trouble forming and implementing an infrastructure of policy that is non-discriminatory, inclusive, and progressive. Recommendations will be made by analyzing what worked, why it worked, and how it can work in other social, economic and political environments.

Chapter 13:
**ESCR Accountability in Multilateral
Development Banks**

By Thayer Hastings

Chapter 13

ESCR Accountability in Multilateral Development Banks

Introduction

Multi-lateral Development Banks (MDBs) including the World Bank⁴⁸⁴ (WB) and regional development banks are on the forefront of the development industry. Intergovernmental institutions such as the WB, the Asian Development Bank (ADB), the Inter-American Development Bank (IADB), the European Bank for Reconstruction and Development (EBRD), and the African Development Bank (AfDB) participate in lending funds for specific infrastructural projects⁴⁸⁵ and developing States' macro-economic policy⁴⁸⁶. Aid contributions by MDBs come in two forms. 'Budget support'⁴⁸⁷ is a direct financial contribution to a State's government and 'project aid' is funding provided for specific projects. In their rhetoric, MDBs prioritize human development largely in response to criticism for their neglect of and damage to human rights principles.⁴⁸⁸ Either way, their impact on human rights is significant.

The WB's General Counsel in 2006, Ana Palacio, explicitly describes the WB's commitment to human rights in, *The Way Forward: Human Rights* The next logical step *and the*

⁴⁸⁴ The World Bank is composed of two institutions: the International Development Association (IDA) and International Bank for Reconstruction and Development (IBRD).

⁴⁸⁵ MDBs design and provide loans to countries for a range of development projects such as hydroelectric dams or large-scale irrigation schemes.

⁴⁸⁶ Additional to infrastructural projects and loans, MDBs' engage in structural adjustment programs (SAPs). These typically require restructuring of government budgets and economic policy with an emphasis on free trade.

⁴⁸⁷ For further clarification the May, 2005 *Practitioners' Forum on Budget Support held in Cape Town, South Africa* defines budget support, "as a form of financial assistance provided directly to a partner country's budget on a regular basis, using its own financial management systems and budget procedure."

<http://siteresources.worldbank.org/PROJECTS/Resources/budgetsupportconceptsissues.pdf>, Accessed Feb. 17, 2011.

⁴⁸⁸ See Mac Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law*, (Oxford: Hart Publishing, 2003), Chapter III.

World Bank. She writes, “The [WB] Articles of Agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities, since it is now evident that human rights are an intrinsic part of the Bank’s mission.”⁴⁸⁹ Budget and human rights work, such as that practiced by International Budget Partnerships (IBP) among others⁴⁹⁰, applies issues of ‘costing’⁴⁹¹ and ‘frontloading’⁴⁹² human rights. Aligning MDBs’ budget input with the International Covenant on Economic Social and Cultural Rights (ICESCR) entails promoting Economic Social and Cultural Rights (ESCR) progression and inhibiting ESCR retrogression. If ESCR are intrinsic to MDBs as claimed, how do actors such as IBP promote their maximum realization? However, MDBs often give ESCRs little priority resulting in ESCR retrogression, not production.⁴⁹³ How can IBP reduce the distance between rhetoric and practice?

Chapter Focus

The World Resources Institute produced a 2010 report synthesizing the relationship between human rights and the WB’s development work.⁴⁹⁴ Their thorough discussion provides

⁴⁸⁹ Ana Palacio, “The Way Forward: Human Rights at the World Bank,” The World Bank Institute, 2006.

⁴⁹⁰ Prominent budget and human rights work organizations include IBP, Equalinrights, Fundar and IHRIP.

⁴⁹¹ Addressed in the work of human rights budget organizations such as Equalinrights ‘costing’ concerns defining the cost of fulfilling a right to food in Tanzania, for instance.

⁴⁹² Similar to ‘costing’, ‘frontloading’ refers to developing a budget plan that identifies all steps for realizing a specific right, developing related programs and projects, and calculating the cost of implementing those programs and projects.

⁴⁹³ In *Application of the International Covenant on Economic, Social and Cultural Rights in the Framework of International Organisations* (2007), Fons Coomans writes: “On the basis of extensive research and a number of interviews with World Bank (former) staff members, M. Darrow has concluded that in practice international human rights standards arise only selectively and usually only marginally in the framework of the Bank’s programmes. Human rights norms have been of little practical relevance in the discharge of the Bank’s social safeguard functions and assessment procedures.”

⁴⁹⁴ See Kirk Herbertson et al., “A Roadmap for Integrating Human Rights into the World Bank Group, World Resources Institute”. *World Resources Institute*, 2010.

recommendations for imbedding human rights in WB policies and operations. These recommendations are summarized in the table below.

STRATEGIC GOALS FOR INTEGRATING HUMAN RIGHTS INTO THE WORLD BANK⁴⁹⁵
SHORT TERM (by 2015) <i>Achieve a medium level of human rights integration.</i>
1. Begin an open dialogue on human rights at the WB.
2. Invest consistently with clients’ human rights obligations and responsibilities.
3. Improve assessments of human rights risks.
4. Integrate human rights standards into the WB’s safeguard policies.
5. Limit the types of resettlement that the WB will support.
6. Use the human rights framework to manage risks in fragile and conflict-affected countries.
7. Empower communities to use the WB’s accountability mechanisms.
MEDIUM TERM (after 2015) <i>Continue to strengthen human rights integration.</i>
8. Adopt a comprehensive WB human rights strategy.

WRI’s greater goal is to establish a human rights structure internal to MDBs that can hold these international actors affirmatively responsible for particular violations of human rights. The research of this chapter focuses on the 7th area of WRI’s recommendations: accountability mechanisms⁴⁹⁶, equivalent to WRI’s “grievance mechanisms.” This chapter expands research

⁴⁹⁵ Ibid., 6.

⁴⁹⁶ The term “accountability mechanism” in this chapter refers to an avenue for private individuals and groups to file claims against the MDBs for redress of their grievances on poorly designed and/or implemented projects.

past WRI's suggestions for accountability mechanisms and applies conclusions to MDBs in general. As with WRI, the focus of the research is on the WB as it is the most significant and influential MDB. Analysis derives lessons transferrable to other Banks. The WB's accountability mechanism, the Inspection Panel (IP), is limited by its lack of a final enforcement tool. This Task Force recommends a reformation of accountability mechanisms in a way that strengthens ICESCR achievement by including incentives for both stakeholders: MDBs' management and society's partners. ESCR is implicit in much of MDBs' work, however, making ESCR explicit is a long-term endeavor. The proposed model for accountability mechanisms promotes ICESCR fulfillment. In this light, the accountability mechanisms of MDBs are at the forefront of international human rights law, which "depend[s] in no small measure upon the ability of individuals and private groups to challenge unlawful deprivations."⁴⁹⁷ The accountability mechanism is a significant step in that direction.

The WB is the most significant MDB in terms of budget input and media attention. This chapter will discuss the structure of the WB and its accountability mechanism, the IP, in depth. Understanding and prescribing a best practice for the WB serves as a framework for advising other MDBs. Following is a comparative review of accountability mechanisms and a discussion of MDBs that fit those models. Specifically, the Task Force will survey the Asian Development Bank, the Inter-American Development Bank, European Bank for Reconstruction and Development and the African Development Bank.

Accountability mechanisms incorporate participation by affected parties while maintaining consistency with MDBs' missions, that is to say, poverty alleviation through economic growth and human development.
⁴⁹⁷ Eisuke Suzuki and Suresh Nanwani. "Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks." *Michigan Journal of International Law* 27.1 (2005): 177-226.

This Task Force advises MDBs to implement a hybrid accountability mechanism, which blends the strengths of compliance review with problem-solving⁴⁹⁸ work. This model is most politically and economically feasible while providing the best tools for producing accountability to ICESCR principles. This Task Force offers broad and specific recommendations on the proposed accountability mechanism. In order to holistically advance budget and human rights work accountability mechanism promotion should be partnered with other avenues of advocacy.

The World Bank

An independent agency of the UN, the WB, is composed of several institutions. Its' development subsections, and what are collectively referred to as 'The World Bank,' is composed of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). With the self-stated goal of eliminating poverty the IBRD lends to middle-income countries and the IDA lends to the world's poorest countries. IDA loans typically constitute around 25 per cent of total WB lending in a given year.⁴⁹⁹ In discussing WB accountability we will be referring to the IBRD and the IDA.

The World Bank is related to the UN but functions distinctly and with little accountability to the UN system. As such, it is not responsible to UN covenants such as ICESCR. However,

⁴⁹⁸ Bissell and Nanwani describe compliance review functions as internally driven and problem-solving functions as externally driven by individuals or organizations. Problem-solving functions are a recent trend in accountability mechanisms that address the problems of affected communities on the ground compared to compliance reviews' concern with institutional policies. Richard E. Bissell and Suresh Nanwani, "Multilateral Development Bank Accountability Mechanisms: Developments and Challenges," *Central European Journal of International and Security Studies* 3.2 (2009): 174-175.

⁴⁹⁹ Potter, Robert. "Chapter 7: Institutions of Development." In *Geographies of Development* 2nd ed, edited by Robert Potter, Tony Binns, Jennifer Elliott, and David W. Smith. New York: Pearson Press, 2004: 281.

sustainable development⁵⁰⁰ thinking has become more established in the WB, exemplified by the introduction of the Comprehensive Development Framework in 1998. The WB website describes the Framework as based on four principles of ‘sustainable development’ for low and middle income countries, which “mark significant shifts in thinking about development since the 1990s.”⁵⁰¹ In self-confirmation the WB website declares that its attitudes have evolved. Its language signifies a shift towards securing the human rights covered by ICESCR. This Task Force will demonstrate that the Inspection Panel, while significantly inhibited by its lack of a final enforcement mechanism, is the best internal implement to pursue for aligning WB actions with ICESCR.

Overview

The WB’s operation policies state their priority as, “sustainable poverty reduction.”⁵⁰² The Bank was first formed through the Bretton Woods process to revive war-torn Europe. In the 1960’s it entered a phase of ‘development-ism’ catering, almost exclusively, to the global south. Infrastructural development projects have been the Bank’s main output since. More recently, the Bank has worked to influence states’ macro-economic policy through its Structural Adjustment Programs (SAPs). However, SAPs have correlated with a decrease in living standards and a

⁵⁰⁰ The concept of sustainable development includes environmental, economic and socio-political sustainability. As a whole this term encompasses the rights protected by the ICESCR.

⁵⁰¹ “Projects and Operations: Comprehensive Development Framework,” the World Bank, accessed February 22, 2011, www.web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20120725~menuPK:41393~pagePK:41367~piPK:51533~theSitePK:40941,00.html.

⁵⁰² “Operation Manual: OP 1.00 – Poverty Reduction,” the World Bank, last modified August, 2004. www.web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064696~menuPK:64701763~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html

general decline of socio-economic rights.⁵⁰³ Human rights retrogressions are a common critique of MDBs.⁵⁰⁴

Demanding accountability in the WB is a recent trend of the past thirty years. This has come about for two primary reasons. Firstly, financial institutions like the WB began to expand their range of operations from specific development projects to supplying funding and advice in the form of Structural Adjustment Programs. The WB's range of influence expanded from localized infrastructural projects to regional policy architecture. De facto, MDBs became important participants in policymaking but unlike other members of that process, they were not directly accountable to those affected by their decisions. Secondly, perceptions about social and environmental responsibility have adapted due, to a large degree, to non-state actors who argued that MDBs lack of accountability was inconsistent with the principles of good governance being advocated by the institutions themselves.⁵⁰⁵

Accountability Mechanisms at the WB

The Independent Evaluation Group (IEG) is charged with evaluating the activities of the WB. The IEG reports directly to the Executive Board of Directors. None of its criteria explicitly detail economic, social or cultural rights. Only one criterion may reflect ESCR as a priority, but human rights are not explicit. Specifically, the IEG is mandated with evaluating a WB project's

⁵⁰³ Potter, Robert. "Chapter 7: Institutions of Development." In *Geographies of Development* 2nd ed, edited by Robert Potter, Tony Binns, Jennifer Elliott, and David W. Smith. New York: Pearson Press, 2004: 291.

⁵⁰⁴ See Darrow, *Between Light and Shadow*, Chapter III.

⁵⁰⁵ Daniel D. Bradlow, "Private Complainants and International Organizations: a Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions," *Georgetown Journal of International Law* 36 (2005): 418.

relevance, efficacy, efficiency, sustainability, institutional development impact, and the performance of bank and borrower.⁵⁰⁶

The WB's various programs include loan guarantee structures providing risk protection for member governments and the private sector. A combination of guarantee structures are built into the WB's Multilateral Investment Guarantee Agency covering political risks such as expropriation or political violence, or the default of a loaning nation.⁵⁰⁷ No comparable structures ensure breaches of economic, social or cultural rights.

Created in 1993 the WB Inspection Panel was the first mechanism in which non-state actors could hold an international organization directly accountable for its actions. The IP has set a precedent for all MDBs. Since 1993, a number of other financial institutions have established their own independent accountability mechanisms.

Inspection Panel Structure

The Inspection Panel is an independent, "bottom-up" accountability and recourse mechanism that investigates WB financed projects to determine whether the Bank has complied with its operational policies and procedures (including social and environmental safeguards), and to address related issues of harm.

Three individuals of different nationalities are appointed to the Panel based on criteria evaluating their ability to deal thoroughly and fairly with the requests brought to them. The Panel process is initiated by a request for inspection submitted by an affected party, a local representative or the Executive Directors. In the majority of instances the request for inspection

⁵⁰⁶ "Independent Evaluation Group: Impact Evaluation," the World Bank, February 22, 2011, www.worldbank.org/oed/ie/.

⁵⁰⁷ *The World Bank Group Guarantee Instruments 1990-2007: An Independent Evaluation*, the World Bank, 2009.

has been received from an affected party or local representative. In the request for inspection, the affected party:

“[M]ust demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal, and/or implementation of a project financed by the Bank (including situations where the Bank is alleged to have failed in its follow-up on the borrower's obligations under loan agreements with respect to such policies and procedures) provided in all cases that such failure has had, or threatens to have, a material adverse effect.”⁵⁰⁸

In essence, a request for inspection must demonstrate that the party's rights or interests have been, or are likely to suffer from an adverse material effect as a result of Bank failures in following its operational policies and procedures.⁵⁰⁹ The findings are delivered to the Bank's Board of Executive Directors. Within six weeks, Management must prepare a response to the Panel's findings of noncompliance and harm indicating its recommendations to the Board of Executive Directors. The Board of Executive Directors considers both the Panel's findings and Management's response and decides future actions. The Panel's report is made public within two weeks of the Board's decision.⁵¹⁰ However, in the end the Panel plays no role in monitoring implementation of the Board's conclusion and non-state actors have not been able to hold the WB or other MDBs accountable to their own prescriptions. As of 2004 there have been 30 Inspections, 15 Panel recommendations and ten Executive Board approvals.⁵¹¹ There have been many cases when the Board's decision has not been implemented.⁵¹² Final power lies with the WB and no check or enforcement mechanism exists. Effectively, the WB is not required to follow the IP's recommendations. Despite this major weakness, the IP is useful for highlighting

⁵⁰⁸ Bradlow, “Private Complainants and International Organizations,” 414.

⁵⁰⁹ *Ibid.*, 414.

⁵¹⁰ *Ibid.*, 417.

⁵¹¹ *Ibid.*, 417.

⁵¹² See “The Argentina/Paraguay Yacyreta Hydroelectric Project,” section of this chapter for an example.

the WB’s impact on human rights and, with a trend towards human rights prioritization reflected in the Bank’s practices, may be increasingly significant in realizing final accountability.

ICESCR and the WB: Tunisia

Until 2011, Tunisia had been an ideal example of the WB’s work in the developing world. With regular economic growth, stability and predicted achievement of the Millennium Development Goals it was a demonstration of successful socio-economic development through WB economic policy and projects. Expectations of economic and social success were high, but the grassroots revolution, ousting ex-President Zin El Abidine Ben Ali on January 15th 2011, undermined expectations. The public demonstrations vocalized a narrative of joblessness, stagnation and disappointment. The Tunisian example is a portrayal of perceived WB-induced socio-economic progress confronted by a contradicting public narrative.

The WB emphasizes that its work delivers social development in areas such as poverty, education and health, covered in Articles 11, 12, 13 of ICESCR. From 1986 to 2002 Tunisia’s GDP increased from 3% to over 5%, one of the fastest growing economies in the Middle East and North Africa. Below, the WB’s table displays the, relatively higher, human development indicators in Tunisia compared to other states in the Middle East and North Africa.

Selected Human Development Indicators in Tunisia and Comparator Countries⁵¹³					
Indicator	Tunisia		MNA		Lower-middle-income countries 2000-01
	1970-75	2000-01	1970-75	2000-01	

⁵¹³ This table displays human development in many sectors most of which overlap with ICESCR. See *Tunisia: Understanding Successful Socioeconomic Development: A Joint World Bank - Islamic Development Bank Evaluation of Assistance*, the World Bank, 2005: 4.

Life expectancy (years)	55	72	46	68	69
Total fertility rate (births per woman)	5	2	6.6	3	2
Infant mortality (per thousand births)	94	26	125	43	33
Gross primary enrollment (% of school-age population)	72	119	69	97	107
Male	79	123	-	103	107
Female	65	116	-	90	107
Gross secondary enrollment (% of age group)	22	73	29	64	70
Adult literacy (% of population 15 years and above)	64	28	67	34	15
Male	51	18	56	24	9
Female	77	39	77	46	21

The Bank has used GDP growth in Tunisia as an indicator of increasing quality of life.⁵¹⁴ However, access to wealth and resources are not evenly distributed in such societies. The recent political turmoil and ousting of Tunisian President Ben Ali is a powerful counterpoint to the WB's agenda, which has praised Tunisia's progress in their SAP and similar programs, claiming that social progress coincides with growth. As stated in a WB socio-economic development report from 2005: "Rapid economic growth laid the groundwork for poverty reduction, given that income inequality remained unchanged."⁵¹⁵ This exploration of WB effects in a single country demonstrates some of the real-world faults with their human rights rhetoric; a hypocrisy that improved accountability mechanisms can ameliorate.

Comparative Accountability Mechanisms for Multilateral Development Banks

This section compares accountability mechanisms at different multilateral development banks. The main feature of MDB accountability mechanisms address citizen complaints through

⁵¹⁴ The World Bank evaluation of socioeconomic development in Tunisia from 2005 states that, "Tunisia has already met some MDG target levels and is likely to meet them all by 2015. The Bank's assistance contributed to many of these outcomes," (*Tunisia: Understanding Successful Socioeconomic Development*, the World Bank, 2005: 23).

⁵¹⁵ *Ibid.*, 25.

either compliance review or problem-solving.⁵¹⁶ The existing models of accountability mechanisms are organized into three categories. The Full-Time Inspection Panel category includes the World Bank. The Inspection Committee, Inspection Unit and Roster of Experts includes the Inter-American Development Bank (IADB) and the Asian Development Bank (ADB). The “Virtual” Inspection Panel includes the African Development Bank (AfDB) and the European Bank of Reconstruction and Development (EBRD). The Task Force will highlight the institutional advantages and disadvantages of each mechanism and provide an overview of lessons learned. Finally, the Task Force will provide a description of the accountability mechanism’s ‘ideal-type’.

Full-Time Inspection Panel

An inspection panel such as the WB’s is endowed with several positive traits, but is disadvantaged by its high cost. It is uniquely capable of promoting public confidence because it is perceived as independent from Bank Management. The full-time presence of the Panel promotes the relationship between Bank staff and the Panel because of increased time working together. Theoretically, the efficiency and efficacy of its work should improve. Because of its permanent nature the Panel will be capable of handling a larger quantity of cases. As previously mentioned the cost of the Inspection Panel model is much higher than other accountability mechanisms. As of 2005, the annual budget of the WB Inspection Panel was about \$2 million.⁵¹⁷ Furthermore the IP is criticized for its poor user-friendliness.

⁵¹⁶ See Bissell, “Multilateral Development Bank Accountability Mechanisms”: 169. Bissell and Nanwani refer to compliance review as “investigation,” however they are synonymous.

⁵¹⁷ Bradlow, “Private Complainants and International Organizations,” 2005: 474.

Inspection Committee, Roster of Experts

IADB's Independent Mechanism was first established in 1994. It employs a 15-member Roster of Investigators from the Bank's member countries similar to the ADB's Accountability Mechanism established in 2003. These mechanisms investigate breaches of the Banks' compliance with their policies. Both Banks have had extensive problems with their inspection mechanisms. These problems arose from weaknesses in the mechanisms' structures such as a steep learning curve for members of the accountability mechanisms, a concern with the independence of the mechanism and difficulty in incorporating problem-solving responsibilities or a lessons-learned function. The advantages of these accountability models is their relatively cheap cost of implementation compared to alternate models.⁵¹⁸

"Virtual" Inspection Panel

This version of accountability mechanisms blends other models. Primarily it seeks to address the problems of the Roster while keeping costs low. The "Virtual" Inspection Panel⁵¹⁹ is used at both the EBRD (titled the Independent Recourse Mechanism) and AfDB (titled the Independent Review Mechanism). Unlike other accountability mechanisms, there are no permanent inspectors. The Banks employ a three-person panel, which is called upon only when a complaint is submitted. Both mechanisms employ a mixture of compliance review and problem-solving, however the two areas lack distinction incurring a serious conflict of interest and undermining independence from Bank management.⁵²⁰ This mechanism's advantage is that the

⁵¹⁸ Ibid., 470.

⁵¹⁹ Daniel Bradlow uses the term "Virtual" Inspection Panel to refer to the EBRD and AfDB in "Private Complainants and International Organizations," 2005.

⁵²⁰ Bissell, "Multilateral Development Bank Accountability Mechanisms": 191.

Panelists' identities are known in advance, enhance confidence in the mechanism. Furthermore, costs are lower than other mechanisms such as the WB's Inspection Panel. The disadvantage is the 'virtual' nature of the mechanism, which reduces opportunities for the Panel and its personnel to familiarize. As a result, it is likely that the mechanism's efficacy will be relatively low.⁵²¹

The Ideal-Type

MDBs are directly accountable to their member states and to the entities with which they have entered treaties or other international agreements. The group that has not been able to hold MDBs accountable is non-state actors. Non-state actors who are adversely affected by MDB actions have no contractual relationship with MDBs.⁵²² Inspection mechanisms have resulted in real-world victories for ESCR proponents by requiring MDBs to provide thousands of individuals with compensation for the adverse effects caused by projects funded by these institutions. In some cases, they have even resulted in project alterations in order to avoid harm.⁵²³ Legally, accountability mechanisms are useful forums for affected people (particularly for indigenous or involuntarily resettled people) to raise claims. Furthermore, these mechanisms are beginning to influence international human rights law, international administrative law, international environmental law and international financial law.⁵²⁴

Thus far, accountability mechanisms at MDBs from the World Bank to the African Development Bank have made an exclusive choice between compliance review, on the one hand,

⁵²¹ Bradlow, "Private Complainants and International Organizations," 2005: 475.

⁵²² *Ibid.*, 406.

⁵²³ See *Accountability at the World Bank: The Inspection Panel 10 Years On*, the World Bank, 2003.

⁵²⁴ Bradlow, "Private Complainants and International Organizations," 2005: 409-410.

and problem-solving, on the other. The former refers to an investigative function that applies bank policy to projects, such as the Compliance Review function in the IADB. A problem-solving mechanism refers to an entity such as the Special Project Facilitator of the ADB. The Special Project Facilitator responds to specific problems of locally affected people.⁵²⁵

Compliance review will require a more formal procedure so that stakeholders understand their rights and responsibilities. Problem-solving focused mechanisms will lend to a more flexible and informal process, as each stakeholder involved will be able to determine how to deal with findings of the inspection mechanism.⁵²⁶

A multifaceted approach that incorporates both compliance review and problem-solving is ideal and possible, but has not yet been implemented. David Bradlow writes that, “the newly created Independent Review Mechanism at the African Development Bank is the closest in form and function to this option.”⁵²⁷ The mixed method consists of a Director (correlating to MBD compliance review and Management interests) Roster of Experts (correlating to MBD problem-solving and state recipients’ or affected individuals’ interests). In comparison to other mechanisms, the multifaceted approach is advantageous because it combines the interests of senior management, who prioritize a bank’s mandate, with affected parties, who prioritize human rights standards.

The annual report produced by the Director serves as a useful lessons learned function. Costs for this accountability mechanism are no more expensive than the cheapest of comparative mechanisms. The fixed costs include the Director and his support staff. Further costs are directly related to the cases the mechanism receives. The compliance review and problem-solving

⁵²⁵ Suzuki, “Responsibility of International Organizations,” 2005: 177-226.

⁵²⁶ Bradlow, “Private Complainants and International Organizations,” 2005, 468.

⁵²⁷ *Ibid.*, 479.

mechanism's disadvantage is its level of accountability. A failed problem-solving effort could result in a compliance review, which may reduce incentives for the parties to engage as actively as possible in problem-solving activities. The user-friendliness of this mechanism, its clarity, and its relatively high level of accountability make it ideal for use in MDBs. ESCR are more likely to be addressed and acted upon through a mechanism that includes both the interests of MDB management and citizens affected by them.⁵²⁸

The Argentina/Paraguay Yacyreta Hydroelectric Project

The case of the Yacyreta Dam project located on the border of Argentina and Paraguay was referred to as the “monument to corruption,” by Argentina’s Carlos Menem during his presidential campaign. Since the mid-1970’s the WB and IADB have been involved in designing and implementing one of the largest hydro projects in Latin America and one of the longest running unfinished hydro projects in the world. 80,000 people have been negatively affected through displacement, loss of food source or livelihood and other means. Meanwhile, over US\$15 billion has been spent on the project.⁵²⁹ Throughout a protracted exchange the IP conducted investigations and produced recommendations for the WB’s Management. This survey highlights the limitation and potential of accountability mechanisms.

Despite lagging social and environmental mitigation measures the WB and IADB decided to continue the Yacyreta Dam project. Many negative externalities were produced including pollution of drinking water, disturbed sanitation systems and disruption of fish migration. In 1996 a Paraguayan NGO submitted a Request for Inspection to the WB on behalf

⁵²⁸ Ibid., 483.

⁵²⁹ “Yacyreta Dam,” International Rivers, accessed February 23, 2011, <http://www.internationalrivers.org/latin-america/paraguay-paran%C3%A1-basin/yacyret%C3%A1-dam>

of residents of Encarnacion, Paraguay. “The organization alleged that the environment, as well as the standard of living, health, and economic well-being of people in the Yacyretá area, had been or could be directly and adversely affected as a result of filling the Yacyretá reservoir to 76 meters above sea level.”⁵³⁰ In response IP recommendations confirmed the NGO’s grievances: “With regard to the socioeconomic impacts, the Inspection Panel found that thousands of residents, including fishermen and brick makers, lost their jobs and source of income as a result of the construction of the dam, and those people had not received any kind of compensation.”⁵³¹ The IP’s recommendations have not been implemented and the project remains unfinished. The limitations of accountability mechanisms are clear. Promoting accountability mechanism reform can lead to greater synchronization between Bank Management and affected parties through ESCR promotion. This can make MDBs compliant with the obligations outlined in ICESCR and lessen the criticism lanced at organizations like the WB for violating human rights.

Recommendations

The MDBs do not have outlined human rights policies. Rather, these priorities must be deduced from their policies and actions. As a result, MDBs use human rights rhetoric on its publicity materials, but argues that human rights obligations are outside its mandate. Researchers such as David Bradlow have demonstrated that MDBs are failing to live up to the good governance practices they advocate to States.⁵³² Organizations such as IBP and the constituents

⁵³⁰ *Accountability at the World Bank*, the World Bank, 2003: 60.

⁵³¹ *Ibid.*, 65.

⁵³² Daniel D. Bradlow. "The World Bank, the IMF, and Human Rights," *Transnational Law and Contemporary Problems* 6.1 (1996): 78.

they advocate for, negatively impacted individuals and parties, have not had effective methods for holding MDBs accountable to human rights.⁵³³

Lessons Learned

This Task Force has shown that accountability mechanisms are a method of promoting human rights in MDB projects. Existing models, their attributes and weaknesses have been described. An ‘ideal-type’ has been described. For the purpose of promoting ICESCR the primary concern is a problem-solving function. A problem-solving function empowers the accountability mechanism’s recommendations.⁵³⁴ It is this mechanism that is most likely to emphasize ESCR and, therefore, the main characteristics of an ideal accountability mechanism: credibility, effectiveness, independence, objectivity, professionalism, and accessibility.⁵³⁵ In order to promote independence of these mechanisms it is important to ensure the distinction between problem-solving and compliance review functions to avoid a conflict of interest.⁵³⁶

Working towards ICESCR fulfillment is multidimensional. In terms of MDBs, one of the most significant and feasible avenues for IBP’s work is through promoting independent accountability mechanisms. This Task Force recommends that MDBs reform current

⁵³³ Historically, non-state actors have had four means of holding MDBs accountable: 1. Non-state actors can seek to persuade their home state to exercise its diplomatic protection and to hold the bank accountable on their behalf, 2. Can try to persuade the bank to waive its immunity and agree to submit to one of its member states, 3. Can try to persuade a court that the bank has acted *ultra vires* or with such gross negligence or willful recklessness that it should set aside the bank’s immunity, 4. They can seek to persuade a domestic or international court to hold the member states responsible for the acts of the bank. Because none of these options are likely to succeed the result has been that non-state actors have not been able to hold MDBs accountable. See Bradlow, “Private Complainants and International Organizations,” 2005: 405-7.

⁵³⁴ Bissell, “Multilateral Development Bank Accountability Mechanisms”: 175.

⁵³⁵ *Ibid.*, 188.

⁵³⁶ *Ibid.*, 179.

mechanisms to incorporate distinct compliance review and problem-solving functions.

Recommendations for MDB accountability mechanisms are outlined below.

1. Implement an independent accountability mechanism with compliance review and problem-solving functions.
2. Ensure distinction between the problem-solving and compliance review functions of the accountability mechanism.
3. Ensure accessibility and user-friendliness. MDBs should require clients to disclose the existence of their accountability mechanisms to affected communities.

Considerations

Banks such as the WB declare their economic policies apolitical. Developing a strategy to implement MDB accountability must consider that contradiction. MDB language may not employ political rhetoric, but political motivations and repercussions are unavoidable.⁵³⁷

For affected parties, utilizing accountability mechanisms can be time and resource intensive, while yielding limited results. Depending on the context, these accountability mechanisms should be pursued despite their limitations. Affected parties or organizations representing them should also pursue coinciding avenues of ICESCR promotion such as international legal accountability, developing a human rights framework in MDBs, improvement of domestic human rights conditions and community support.⁵³⁸ Innovative and alternative accountability methods such as the Accountability Counsel's Foreign Investor Accountability

⁵³⁷ See *Global Poverty, Ethics and Human Rights: The role of multilateral organizations* by Desmond McNeill and Asuncion Lera St. Clair, 2009.

⁵³⁸ "Ripple in Still Water: Reflections by Activists on Local and National-Level Work on Economic, Social and Cultural Rights," Human Rights Resource Center, 1996: Chapter 7.

Mechanism⁵³⁹ should be explored further in order to determine their potential for producing significant results.

Several WB Inspection Panel cases have revealed that critics of development projects have faced retaliation. A threat of retaliation is likely to prevent communities from utilizing MDBs' grievance mechanisms. MDBs should carefully examine host countries' socio-political environment for freedom of speech and assembly, use of military forces, and other potential human rights concerns.

After achieving ESCR accountability in MDBs the next logical step is pursuing responsibility. Financial responsibility to damage caused by violating policies and procedures can take two dimensions. First, the bank should provide additional grant financing to the borrower, or, secondly, the bank should compensate individual victims.⁵⁴⁰ Reparations are distinguished from legal accountability and responsibility to international law, an even broader tool and aspiration for holding MDBs accountable.⁵⁴¹

Conclusion

Human rights philosophies are imbedded in the goals of MDBs. Independent accountability mechanisms at MDBs, first pioneered by the WB, are available avenues for addressing transgressions of human rights and, therefore, reinforcing ESCR actualization. This Task Force recommends that IBP pursue accountability mechanisms in its ICESCR promotion

⁵³⁹ See the *Accountability Counsel*, http://www.accountabilitycounsel.org/Accountability_Counsel/AC_FIAM.html.

⁵⁴⁰ Bissell, "Multilateral Development Bank Accountability Mechanisms," 2009:183.

⁵⁴¹ Human rights advocates have made legal arguments for MDBs' responsibilities to human rights laws. (See Andrew Clapham, *Human Rights Obligations of Non-State Actors*, Oxford, 2006:137-159.) However, MDBs have demonstrated their resistance to international legal compulsion. (See Roberto Danino, "Human Rights and Development: Towards Mutual Reinforcement," Conference at New York School of Law, March 1, 2004.)

and budget work. This mechanism should adopt dual compliance review and problem-solving functions while maintaining their distinction. Furthermore, the mechanism should ensure the participation of affected parties by developing its accessibility and user-friendliness. The Task Force acknowledges that existing mechanisms are limited and that theoretical ones are difficult to attain. Therefore, it is also important to maintain a holistic approach that pursues other avenues of ICESCR advocacy in addition to accountability mechanisms.

Chapter 14:
Exporting Debt and Dependency

By Julian Fellerman

Chapter I4
Exporting Debt and Dependency
The Adverse Role of Export Credit Agencies in Achieving Economic, Social, and Cultural Rights

Introduction

Overseas development aid (ODA) comprises a considerable portion of a recipient country's budget, thereby rendering it a vital tool for the public sector in achieving policies that promote and realize the economic, social and cultural rights of its citizens. Development assistance typically comes in different variations; multi-lateral lending from international financial institutions (IFIs) such as the World Bank and bi-lateral aid between governments are the most acknowledged and pronounced forms of aid in the realm of international development in recent history. However, as these institutions have been continuously deemed most culpable by NGO's and human rights activists worldwide for the seemingly unfair and perverse nature of their lending practices, a third lending body has quietly but assuredly transformed the development landscape; the Export Credit Agency (hereafter referred to as ECA).

This chapter seeks to first introduce and explain the underlying objectives and operations of the ECA. Consequently, drawbacks associated with the activity of ECAs in developing countries are addressed, emphasizing shortcomings and lack of realization of ICESCR principles. Next, the legislation responsible for outlining the standards, terms, and conditions associated with ECA lending, as well the monitoring of potential socio-economic and environmental rights impacts of ECA practices, are examined. Lastly, tangible policy solutions on how to best hold ECAs accountable to ICESCR are recommended. Thus, this chapter will focus on the interplay

between ECA activity, public sector budgets, and ESCR, critically assessing the mechanisms in place to hold ECA activity accountable and identifying potential room for improvement.

Defining the Role of Export Credit Agencies

ECAs are public or quasi-governmental institutions that provide government-subsidized loans, guarantees and risk insurance to domestic corporations seeking to do business in countries where the investment climate is perceived as potentially too risky for typical private-sector financing. These agencies seek to mitigate two varieties of commonly encountered risks -- commercial and political. Commercial risks, such as financial insolvency, often involve the inability of the buyer to pay the insured amount within the time frame outlined in the credit agreement. Political risks include exchange rate problems, inflation, and political instability, or any unforeseen event that prevents the import of the insured shipments on behalf of the buyer. These risks are rather commonplace with projects undergone in developing countries where numerous factors can contribute to an uncertain investment environment. Additionally, official ECAs in industrialized countries often fill in the trade finance gaps where private sector financing is unavailable or generally insufficient. The foremost objective for most ECAs is to contribute to the economic betterment of their home country; this is achieved by supporting and encouraging trade, boosting the domestic companies' ability to win major export contracts abroad. In exchange for a premium payment, the exporter will be reimbursed with public money, usually extracted through the home country's tax base, in the event of default. Through a mechanism called "sovereign counter guarantee", the exporter's government will then seek to

recover the loss from the government of the host country⁵⁴². Essentially, ECAs are an instrumental part of a broader government policy framework aimed at promotion of trade and investment, boosting national exports, and creating jobs at the domestic level. However, their primary objectives of serving interests at home quite often have wide-reaching effects on the world economy at large.

ECAs in a Global Context

Unbeknownst to many, ECAs play a central role in international trade and investment flows, with export credits representing a substantial portion of the external debt amassed by developing countries and economies in transition. At the turn of the new millennium, these credits accounted for roughly one fifth of the total indebtedness of these developing countries⁵⁴³. The framework and scenario of operation for these agencies, deemed the “Unsung Giants of International Trade”, varies considerably and is generally contingent on a wide variety of factors.

The extent of their exposure to the world of international trade and flow of investment is unmistakable, from advanced private capital flows to the most basic levels of economic exchange. Between the fifteen year period from 1982 to 1997, statistics confirmed that export credit agencies collectively accounted for (in USD): supported exports valued at 5.6 trillion, recoveries or collections on unpaid debts of about 71 billion, received-income of about 40 billion, and at the end of 1997, a combined exposure to the global economy of 515 billion, of

⁵⁴² "Export Credit Agencies - General Introduction and Regulation - Log, Stock and Barrel - Financial Institutions in the Resource Sector." Heinrich Böll Stiftung: The Green Political Foundation. <http://www.boell.de/finance-resources/index-110.html> (accessed January 27, 2011).

⁵⁴³ Ross, Doris C., and Richard T. Harmsen. 2001. *Official financing for developing countries*. Washington, D.C.: International Monetary Fund. P. 13

which about three quarters involved transactions with developing countries⁵⁴⁴. These statistics represent the impact of a particular group of ECAs predominantly of the industrialized world formally known as the International Union of Credit and Investment Insurers, commonly referred to as the Berne Union (hereafter BU). This group of ECAs, which accounts for nearly 10 percent of international trade in the form of officially-supplied export credits and insurance, coordinates their policies through the Organization for Economic Cooperation and Development (OECD), specifically through the OECD's Export Credit Group (ECG)⁵⁴⁵.

Basic Mechanisms of Export Credit Insurance

Officially supported export credits vary widely in nature and disposition. Official support can take the form of direct credits or financing, refinancing, interest-rate support, aid financing (credits and grants), export-credit insurance, and guarantees⁵⁴⁶. However, there are two forms of export credit most commonly provided by ECAs, with each trade credit arrangement established under different sets of factors and conditions. The first, supplier credit, is the most traditional and straightforward of an export credit facility. In this scenario, the exporter contracts to export goods and services to the importer, with any terms of credit stipulated in the sales contract. The ECA then sells the exporter insurance to cover the potential risk, usually commercial and political, that the importer does not pay. This credit is typically used in most situations for short-term credit insurance (transaction spanning a year or less). The other primary technique

⁵⁴⁴ Stephens, Malcolm. 1999. *The changing role of export credit agencies*. Washington, D.C.: International Monetary Fund. p. 3

⁵⁴⁵ Morel, Fabrice. "Credit Insurance in Support of International Trade: Observations Throughout the Crisis." *Yearly Report 7* (2010): 5. *Berne Union*. Web. 2 Feb. 2011.

⁵⁴⁶ Organisation for Economic Co-operation and Development. 1998. *The export credit arrangement: achievements and challenges 1978-1998*. Paris, France: Organisation for Economic Co-operation and Development. p. 18

employed by ECAs is buyer credit. This form of export insurance is typically reserved for medium and long-term credits (spanning two years or more), frequently dealing with construction on infrastructure and other large-scale projects spanning over longer periods of time, usually with foreign suppliers involved. The standard arrangement is as follows: an exporter contracts with an importer to supply certain goods and services. There is then a separate, parallel loan agreement in which the bank in the exporting country lends to the bank in the importing country. In this case, the ECA lends its credit insurance directly to the lending bank; the importer then arranges to repay the loan to the borrowing bank. The agreement will typically stipulate that this borrowing bank must repay the loan, whatever may have taken place under the terms of the contract, thereby assuming any external risks involved⁵⁴⁷.

In effect, the export credit arrangement in international trade can be viewed as a complex set of exchange and interaction between exporters and importers, lending banks and borrowing banks, all facilitated by ECAs in order to avert looming risks inherent in developing markets. However, as these particular scenarios listed above encompass mostly those transactions where the importer is a private company, it is necessary to clarify the role of the public sector in these scenarios.

ECAs, Budgets, and the Public Sector: How Recipient Governments Get Involved

Governments at the buying or importing end of transactions can influence, directly and indirectly, the flow of private capital and trade put forth by ECAs in numerous ways. Indirectly, the public sector can hamper trade and payments by preventing imports or imposing restrictions

⁵⁴⁷ Stephens, Malcolm. *The changing role of export credit agencies*. p. 8-10

on payments. It may be a notable supplier of raw material for an industrial project, or a primary purchaser of its output. In most cases, the government is the ultimate decision-maker and enforcer regarding tax arrangements and regulations, as well as the final arbiter on tariffs charged on the completed projects, issuance of export and import licenses, provider of foreign exchange, and approver of transfers of profits, loan repayments, and total dividends associated with a certain undertaking. However, when larger-scale projects are involved, such as those focusing on infrastructure, energy, and construction, the government can play a more prominent role, either directly or through particular entities that it owns or exercises considerable control over⁵⁴⁸. In the case of dealings with ECA-facilitated projects, the consent and discretion of the host government is usually mandatory in allowing a project to be undertaken in the first place, and if need be, postponed or terminated. Finally, these governments may provide guarantees to stand behind importers or banks in the private sector, with some importers or borrowers actually being part of or owned by that government⁵⁴⁹. This is often the case with the previously mentioned “sovereign guarantee mechanism”; this stipulation serves as an official declaration that the host government will assume responsibility for defaulting private sector transactions to be repaid to the exporter through the ECA⁵⁵⁰.

These scenarios demonstrate the intertwined role of the public sector in the affairs of officially supported export credits. They also attest to the unique ability of ECAs to transfer the original risk of a private undertaking on to host governments in developing countries, thus making it feasible to turn the business risks of private companies of industrialized countries into

⁵⁴⁸ I will point this out with both the LNG Gas Plant in Nigeria and Bataan Nuclear Plant in the Philippines.

⁵⁴⁹ Stephens, Malcolm. *The changing role of export credit agencies*. p.11-12

⁵⁵⁰ Wiertsema, Wiert . "Export Credit Debt: How ECA Support to Cooperations Indebts the World's Poor." *European ECA Reform Campaign: Briefing Note 5* (2008): n. pag.*FERN.org*. Web. 6 Feb. 2011.

external public debt of developing country governments. This accordingly brings into question the role played by ECAs as a “for-profit entity” that seemingly encourages sustainable development in the countries with which they conduct business.

The Ambiguous Nature of ECAs in Overseas Development Aid

With its private-sector makeup and for-profit operating structure, quasi-governmental status, as well as core aim of advancing the trade agenda and economic interests of its home country, the role of the ECA as an impartial, unbiased player in the international development arena is naturally cause for contention. Although ECAs are not forced to adhere to a specific developmental mandate, the nature of their work and exposure to developing countries indirectly requires them to take development-related issues, such as ESCR, into heavy consideration. As of 2005, the aggregate exposure of medium and long-term export credits to a great portion of the world’s developing countries, including Africa, the Americas, South East Asia and Eastern Europe totaled at 39.4 million in SDR (\$61.2 million)⁵⁵¹, accounting for nearly three fourths of ECA activity in the world economy at that point. Described as a “Gentlemen’s Agreement” among participant ECAs and administered through the OECD secretariat, the “Arrangement on Officially Supported Export Credits” exemplifies this indistinctness between for-profit motive and development obligation. In Article 30, Paragraph A of the Arrangement, it is stipulated that “export credit policies should be based on open competition and the free play of market forces”. However, this is contrasted by the following line, stating that the policies should “provide needed external resources to countries, sectors, and projects with little financing” and that they

⁵⁵¹ Organization for Economic Co-Operation and Development. "Statistics on Export Credit Activities (up to and including the year 2005)." OECD.org. <http://www.oecd.org/dataoecd/30/35/37931024.pdf> (accessed February 16, 2011).

“minimalize trade distortion and contribute to developmentally effective use of these resources”⁵⁵². As a result of these competing motives, the role of ECAs as financiers of large-scale capital and investment flows in developing economies often undermines their claims of promoting and encouraging sustainable development practices in those countries.

Inconsistencies with ECAs in the ICESCR framework

The contradictory agenda of ECA operations and policies often has adverse effects on their recipient constituencies. The tendencies of ECAs to undertake grandiose projects which have serious environmental repercussions in turn have a profound impact on the economic and social rights of the populace in countries where business is conducted.

Economic Rights Implications

The nature of ECA loans, methods of debt recovery and collections employed by creditors, as well as the result of ECA-endorsed projects each run counter to the economic rights of those in developing countries.

Low-income countries that do not have access to private sources of capital are not typically perceived as major markets for official export credits; nonetheless, official export credits provided to public buyers represent official flows that contributed largely to the external public debt burden of several of these IDA-countries. These countries constitute the poorest countries that are only eligible for interest free loans and grants from the International

⁵⁵² Organization for Economic Co-Operation and Development. "Arrangement on Officially Supported Export Credits." OECD.org.
[http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/pg\(2010\)2&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/pg(2010)2&doclanguage=en) (accessed February 15, 2011).

Development Association of the World Bank⁵⁵³. The first way occurs when ECAs directly lend to a government or public entity, or when they guarantee credit or loans from a commercial bank to a government entity. An example of this scenario can be seen in the US-backed Bataan Nuclear Power Plant in the late 1970's, a deal between the US Ex-Im Bank and the government-owned and controlled corporation NAPOCOR. As the biggest energy-related endeavor ever pursued in the Philippines, it contributed significantly to debt of the Philippines government over the course of a decade with an increase in external debt of nearly \$15 billion. As of 2002, the residual debt from this project assumed by the Philippines sits at nearly \$4.3 billion, \$2.8 billion of which is owed to the US ECA⁵⁵⁴. Furthermore, not a single watt of electricity has been generated from the plant, which has yet to be fully-commissioned and put into operation. Another example is the aforementioned "sovereign counter-guarantee", which often renders a purely private transaction between an exporter and a private importer into completely public, sovereign debt owed by the developing country's government to the industrialized country's ECA.

In certain cases, ECAs generate substantial budgetary burdens for these governments that do not always appear in debt statistics. This type of scenario occurs when ECA projects involve governments in what are called "large-contingent liabilities"; these are possible future liabilities, usually in the form of a guarantee or legal dispute that will only become certain on the occurrence of some future event (i.e. credit default, insolvency). For example, ECAs often finance power and energy projects in developing countries largely because the ECAs shoulder

⁵⁵³ "Sustainable Lending and Export Credits." *OECD.org*. Organization for Economic Cooperation and Development, n.d. Web. 6 Feb. 2011. <www.oecd.org/about/0,3347,e

⁵⁵⁴ Cardenas, Maristella. "ECAs in the Philippine Power Sector and the Continuing Debt Problem." Jubilee South . http://www.jubileesouth.org/index.php?option=com_content&task=view&id=73 (accessed February 17, 2011).

the risk for private investors in privatized power and other infrastructure sectors. However, many developing countries' governments must still offer extraordinarily generous terms in order to attract this private investment. In the case of a power project, the government is typically required to sign a power purchase agreement (PPA), which guarantees the purchase of power (whether it is needed or not), frequently at high, dollar-denominated prices. Since this purchase agreement is not a loan, it is not counted as debt, even though it may have multibillion-dollar budgetary implications. One example occurred when an Indian state electricity board refused to adhere to its PPA with the Enron Corporation's massive, ECA-funded Dabhol power plant in India; Enron estimated the size of its legal claim on the government of India at \$4 to \$5 billion, none of which is counted as debt, as it was claimed via the large contingent liability clause.⁵⁵⁵

Aside from sizeable debt incurred by the public sector budget, the economic impact of ECAs on a micro-scale is still notable. With many larger infrastructure and energy projects, such as dams, the negative externalities which indirectly affect the local economy are abundant. Spillover or water displacement resulting from a dam can destroy potentially arable farm land, rendering it useless in harvesting food or engaging in any other agricultural activity.

Social Rights Implications

There are often significant environmental repercussions associated with these projects which present negative externalities for many social rights. With certain renewable energy projects, such as a nuclear or natural gas plant, pollution in the form of toxic waste or air pollutants pose notable threats to water and air quality in the surrounding area, thus threatening the health and safety of those adjacent communities. Of the consequences brought about by

⁵⁵⁵ Goldzimer, Aaron. "Worse Than the World Bank? Export Credit Agencies--The Secret Engine of Globalization | Food First/Institute for Food and Development Policy." Food First/Institute for Food and Development Policy | Institute for Food and Development Policy. <http://www.foodfirst.org/node/50> (accessed January 25, 2011).

ECA-related projects, the most notable is the widespread displacement of people as a result of large-scale energy projects, usually dams. In order to accommodate dam-related operations, construction space, as well as the dam itself, masses of people are forced to evacuate their homes and involuntarily resettle elsewhere. ECAs are mandated to provide resettlement and transition compensation, but quite often this reimbursement is extremely insufficient to fully cover the associated costs. These environmental consequences directly threaten the right to an adequate standard of living, including food and housing, and rights to overall social insurance.

ECAs and Government Budget Allocation to Non-ICESCR Areas

This emphasis and devotion of ECA-backing towards large scale energy, infrastructure, and construction projects implies that a substantial portion of export credit funds are not being allocated to areas which more effectively improve specifically economic and social rights in those countries. As ICESCR is the predominant international treaty guaranteeing people such essential rights as the right to education, health, housing, work and food the projects carried out by ECAs whose countries are signatories of the treaty must bear these mine when pursuing potentially retrogressive transactions. However, the frequent disparity in resources allocated towards human rights to those distributed to other non-related areas is demonstrated in the following table:

1 January 2001 - 31 December 2009

Sector	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
TOTAL ALL SECTORS	629.7	922.2	837.8	739.1	1,159.1	764.1	982.3	2,330.6	1,256.3	9,621.3
1000 - EDUCATION	0.2	0.8	0.0	0.0	0.0	0.0	0.0	0.0	317	32.6
5000 - GOVERNMENT AND CIVIL SOCIETY	4.0	0.0	0.0	0.0	0.0	0.0	5.6	0.0	612	70.8
6000 - OTHER SOCIAL INFRASTRUCTURE AND SERVICES	0.0	0.0	0.0	0.0	0.0	0.0	11.0	2.4	0.0	16.4
2100 - TRANSPORT AND STORAGE	188.8	199.6	442.9	348.7	339.0	310.8	425.5	483.8	311.6	2,913.6
22000 - COMMUNICATIONS	119.2	79.7	72.4	109.4	38.3	132.6	121.6	284.9	152.9	1,111.0
23000 - ENERGY GENERATION AND SUPPLY	17.3	87.2	115.0	94.0	258.6	40.7	25.1	554.9	399.2	1,592.0
25000 - BUSINESS AND OTHER SERVICES	0.4	0.3	0.0	0.0	0.0	0.0	0.2	5.7	17	8.2
3100 - AGRICULTURE	3.5	3.9	2.9	4.4	0.9	0.4	0.8	8.6	0.0	25.3
31000 - FISHING	0.0	0.0	18	0.0	0.0	26.2	7.3	0.7	0.0	36.0
32100 - INDUSTRY	92.8	564.5	117.2	60.4	417.4	52.1	152.9	579.4	239.6	2,276.2
32200 - MINERAL RESOURCES AND MINING	126.0	17	112	55.9	114	111.0	156.0	322.4	8.8	822.3
70000 - HUMANITARIAN AID	0.0	0.0	0.0	0.0	10.3	0.0	0.0	0.0	0.0	10.3
99800 - UNALLOCATED/UNSPECIFIED	20.8	15.7	117	25.4	10.2	3.7	2.0	414	318	1,198.8

Table 1: This table represents official export credits from OECD countries to the public and private sector in IDA-only countries, with credit value in SDR millions⁵⁵⁶.

In terms of overall credit value of projects undergone in core areas of ICESCR, such as education, social services and infrastructure, civil society, and agriculture, the resources allocated to this effect are easily trumped by the high volume of investment in non-ICESCR related areas, such as energy generation and supply, transport and storage, communications, mineral resource extraction, and general industry. Taking into account the inefficiencies and failures frequent in these industrial undertakings and countering them with the reality of the economic instability, lack of social services, and insecure access to food endemic in most recipient countries, it is clear that both the ECA lending practices as well as management of public sector budgets are often not conducive to funding high-need, fundamental projects in human rights. An example is evident in the LNG Gas Plant in Lagos, Nigeria: ECA's are responsible for providing guaranteed international commercial bank loans totaling \$620 million

⁵⁵⁶ OECD. "Sustainable Lending: Review of Official Export Credit Commitments to IDA-Only Countries (2001-2009)." Organization for Economic Cooperation and Development. www.oecd.org/dataoecd/42/59/36945707.pdf (accessed February 7, 2011). p. 6

to expansion of an already costly, questionable project⁵⁵⁷, while roughly 64 percent of Nigeria's entire external debt can be attributed to export credits⁵⁵⁸. Consequently, this requires us to draw back on the initial set of questions so as to understand where the obligations and accountability of ECA transactions lie, and how IBP should approach them.

Guiding Principles of ECAs: Berne Union and the OECD Regulatory Frameworks

First and foremost, to what extent do ECAs encourage or support budget transparency among recipient governments? Are there mechanisms in place to monitor and evaluate the way their aid is distributed by the recipient government? The ECG partially addresses this key concern through their document titled “Principles and Guidelines to Promote Sustainable Lending Practices for the Provision of Export Credit in Low Income Countries”, geared towards lending to IDA-countries, as well as those eligible for IMF/World Bank concessionality requirement. First, in focusing the document towards only extremely low-income countries, marginal countries not part of this classification but still maintaining a large amount of ECA-induced debt are not included in this legislation. Second, Article Four binds ECAs to “obtain reasonable assurances that their commercial lending decisions are not likely to contribute to debt distress” within recipient countries⁵⁵⁹. In order to do this, they “seek assurances from government authorities in the buyer country for any transaction involving a public or publicly guaranteed buyer in an IDA-Only country that the project/expenditure is in line with the

⁵⁵⁷ Nigeria LNG Limited. "Financing." Facts and Figures on NLNG 2010. www.nlng.com/NR/rdonlyres/2C5AE78E-F775-41BA-8E79-3C78407CD29F/3615/51to55.pdf (accessed February 17, 2011). p. 52

⁵⁵⁸ Goldzimer, *Worse than the World Bank?*

⁵⁵⁹ Organization for Economic Co-Operation and Development. "Principles and Guidelines to Promote Sustainable Lending Practices for the Provision of Export Credit in Low Income Countries" OECD.org. [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG\(2008\)1&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG(2008)1&doclanguage=en) (accessed February 15, 2011). p. 2

country's borrowing and development plans, and/or budget"⁵⁶⁰. In regards to transparency, the ECAs aim to "provide data on transactions supported to IDA-Only countries for review on an annual basis" in order to ensure "consistency with the aims of the Debt Sustainability Framework for these countries"⁵⁶¹. However, a footnote for the Article indicates that "with respect to the sub paragraphs of Article Four, it is understood that the operational details remain subject to further discussion, the result of which could be reflected in a future revision of the Principles"⁵⁶². This renders the possible execution of Article Four quite difficult, thus prompting the question of "how" will these principles be implemented in practice.

Lastly, to what extent is ECA activity held accountable to human rights, specifically economic and social rights, as well as environmental best practice, and the subsequent realization of these rights? Additionally, are there effective guidelines in place to monitor, assess, and provide disclosure on ECA projects' impact on these rights before, during, and after they are undertaken? After review of the following policies in place for ECAs, it is apparent that there are still areas that require improvement.

Among the principles for the BU relating to conduct and ethics of business, those of "promoting export credit and investment insurance terms that reflect sound business practices" and "taking environmental issues into account in the conduct of our business" are quite vague, and in practice, leave ample room for interpretation. Additionally the end statement following the list completely undermines the legitimacy and relevance of the guiding principles, claiming that they "are not legally binding obligations and are not representations of behaviors which

⁵⁶⁰ OECD, Sustainable Lending, Article C

⁵⁶¹ Ibid, Sub-Paragraph (i)

⁵⁶² OECD, Sustainable Lending, p. 2

would create any rights for, or obligations to, any parties”⁵⁶³. Next, the “Common Approaches on the Environment for Officially Supported Export Credits” (hereafter Common Approaches) is the primary piece of legislation assessing potential social and environmental impacts among ECAs. It serves to *recommend* that ECAs consider the positive or negative environmental effects of new and existing projects before taking a decision⁵⁶⁴. Regarding the screening process, the Common Approaches state that “members *should* screen all applications for officially supported export credits covered by this Recommendation”, and that “the parties involved in an application, such as applicants (exporters and lenders) and project sponsors should provide all information necessary to carry out the screening”. It then continues to outline what the screening should entail. As binding as these statutes might seem, in practice, the fact that these are limited to recommendations, using a lax, conditional tense throughout makes the obligation of compliance to these principles of ECAs easily disputable. Moreover, the Common Approaches proceed to lay out different categories for the potential threat posed by different projects, as well as steps to conduct an environmental impact assessment to classify the projects. In spite of this, a crucial clause completely compromises the integrity of the entire document:

“Projects should, in all cases, comply with host country standards. Projects are also expected to meet the international standards against which they have been benchmarked where these are more stringent than host country standards. *However, in exceptional cases, a Member may decide to support a project that does not meet the international standards against which it has been benchmarked, in which case, the Member shall report and justify the standards applied in accordance with paragraph 22*⁵⁶⁵.”

⁵⁶³ "Guiding Principles." Berne Union. <http://www.berneunion.org.uk/guiding-principles.html> (accessed February 16, 2011).

⁵⁶⁴ Organization for Economic Co-Operation and Development. "Recommendation on Common Approaches On Environment and Officially Supported Export Credits." OECD.org. www.oecd.org/dataoecd/26/33/21684464.pdf (accessed February 15, 2011).

⁵⁶⁵ OECD. Common Approaches. Article 13

This derogation clause basically exempts any ECA from adhering to the Common Approaches or any pressing environmental or social standards.

Regarding transparency and public disclosure of ECA projects, Article Nineteen regarding Category A projects, which are the most environmentally and socially destructive, recommend that ECAs “disclose publicly project information, including project name, location, description of project, environmental impact, and details of where additional information may be obtained”⁵⁶⁶. As sound as this seems, the next portion of the same article renders it ineffective, stating that “in the case where such project or environmental impact information has not, for exceptional reasons, been made public Members shall explain the circumstances and report these in accordance with paragraph 22”⁵⁶⁷. Consequently, Paragraph 22 entails that ECAs should report to the ECG *ex post*, or after the fact, on an on-going basis or at least semi-annually, in accordance with issues pertaining to environmental assessment of projects or existing operations”⁵⁶⁸.

Therefore, Articles 13 and 19 both serve as “safety-valve mechanisms” which essentially allow ECAs to disregard the existing safeguards and policies on environmental, social, and transparency matters. Instead of being obliged to public disclosure and maintaining transparency, ECAs can opt to report directly to the ECG in a private manner, on a much more flexible basis.

Recommendations

This Task Force recommends the following policies to more fully realize the economic, social, and environmental rights of recipient countries involved in ECA-endorsed transactions.

⁵⁶⁶ OECD. Common Approaches. Article 19

⁵⁶⁷ OECD. Common Approaches. Article 19

⁵⁶⁸ OECD. Common Approaches. Paragraph 22

- Taking into account the magnitude of BU-related export credit provision and exposure to the global economy, the “Guiding Principles” which shape BU activity must be equally comparable in rigidity. The ten principles themselves should use rhetoric that more explicitly regulates ECA transactions. This would include the expansion of each principle in order to specify and elaborate on details regarding “sound business ethics” and “consideration of environmental issues”, as well as adding the ways in which these principles will be realized in operation. Lastly, and most importantly, the clause at the end of the principles stating that the principles “are not legally binding obligations and are not representations of behaviors which would create any rights for, or obligations to, any parties” must be omitted. This clause absolutely undercuts the entire purpose of these guiding principles by allowing them to be easily dismissed.
- In regards to fostering sustainable development and encouraging sound business practices, the Sustainable Lending Principles need to specify and clearly establish in greater detail the mechanisms it intends to employ to provide data on its practices and ensure transparency. Additionally, the current Sustainable Lending Principles only apply to a small number of very low-income, IDA-countries. Realizing that ECAs conduct business in several low-middle and middle-income countries who still incur a notable amount of debt from ECA related projects, the Sustainable Lending Principles must be revised in order to be more inclusive towards marginal, adversely affected countries. Lastly, the footnote stating that the “operational details remain subject to further discussion” and will be “reviewed in future revisions of the principles” must be revised: the revisions should include more details on how the policies will be executed ‘in

operation’, as well as include a specific, established date regarding when it will be ‘reviewed’. Otherwise, this entire clause should be omitted to make the Principles themselves more accountable.

- To further ensure best practice in environmental and social standards, the Common Approaches must be made much more accountable. The foremost way of achieving this is to improve the rhetoric used throughout, replacing suggestive and conditional words such as ‘recommend’, ‘should’, or ‘shall’ with ‘request’, ‘demand’, or ‘must’, thereby making it much more binding and accountable towards ECAs. Lastly, the Article 13 derogation clause which allows ECAs to pursue a project even if it does not meet the utmost, international standards must be omitted. The Common Approaches themselves are rather holistic and all-encompassing; however, this clause detracts significantly from their efficacy.

In essence, dual notion and execution of these recommendations, with special attention to the absolving of the detraction clauses will make ECAs more subject and accountable to their actions, inevitably contributing to sustainable economic and social development in their recipient countries.

Chapter 15:
**Realizing ESCR through Bilateral Aid
Organizations**

By Kristen Hess

Chapter 15
Realizing ESCR through Bilateral Aid Organizations

Introduction

An essential component of the understanding of international aid's relationship to ESCR is an analysis of bilateral aid organizations. Bilateral aid organizations are responsible for a substantial amount of Overseas Development Assistance,⁵⁶⁹ and therefore have a large impact on recipient governments' ability to effectively budget for the progressive realization of human rights. This chapter will examine the bilateral aid organizations United States Agency for International Development (USAID), Canadian International Development Agency (CIDA) and Japan International Cooperation Agency (JICA), and their role in advancing ICESCR goals. Parts I, II and III will explore USAID, CIDA and JICA's respective aid-giving strategies and systems, and whether they are set up to help or hinder the progressive realization of human rights. Specifically, this section will look at the form bilateral aid takes, how the aid organizations' projects are evaluated, and the impacts of these projects, in an attempt to reveal the extent to which each aid organization makes human rights a priority, and the extent to which each aid organization is practically helping recipient nations progressively realize human rights. Part IV will offer general critiques of all three bilateral aid organizations and Part V will be composed of recommendations to them, which will ideally enable USAID, CIDA, JICA, and other similar institutions to help recipient countries move towards ICESCR goals of progressive

⁵⁶⁹ World Health Organization, "Aid Effectiveness and Health," (Geneva, WHO Press, 2007) Accessed January 14, 2011, <https://catalyst.uw.edu/workspace/file/download/e86f2bc794289aece38cd96c93850cab6b6db0bb41b027547f627f0eae1ca354?inline=1,3>.

realization of human rights. This Task Force will ultimately suggest that all three bilateral aid organizations employ a human rights framework to examine all projects, allocate more of their funds to projects designed to progressively realize human rights, and allow some of their aid to support projects designed by the recipient nations' ministries.

Part I: USAID

Forms of USAID bilateral assistance

USAID does not provide direct budgetary support to all of the governments of the nations it supports, such as Malawi⁵⁷⁰ or Mozambique.⁵⁷¹ Instead, even in the cases where states do receive some direct budgetary support, USAID mobilizes most of its resources toward designing projects and implementing them in collaboration with recipient nation's government, or in conjunction with private actors and NGOs in the area.⁵⁷² Such projects range greatly in nature and scope. For example, in Malawi, USAID is engaged in projects to improve agricultural sector productivity, family planning education and reproductive technology access, the protection of food security, sustainable management of natural resources and biodiversity, the financial services sector, the level of trade and investment, private sector competitiveness, equitable access to quality basic education, efforts to reduce transmission and impact of HIV/AIDs, and efforts to prevent and control infectious disease.⁵⁷³ There is little evidence of attempts by USAID to integrate the recipient nation's government into project selection, budgeting, planning or

⁵⁷⁰ USAID Malawi, Operational Plan. (Washington D.C.: U.S. Agency for International Development, 2006), 1.

⁵⁷¹ USAID Mozambique, Operational Plan. (Washington D.C.: U.S. Agency for International Development, 2006), 1.

⁵⁷² U.S. Agency for International Development, Strategic Plan: Fiscal Years 2007-2012. (Washington D.C.: U.S. Department of State, 2007), 19-21.

⁵⁷³ USAID Malawi, Operational Plan. 6-11

implementation in the cases of Malawi⁵⁷⁴ and Mozambique⁵⁷⁵, while in other nations like El Salvador⁵⁷⁶ and Jordan,⁵⁷⁷ USAID works with the recipient nations' governments only after the project has been designed and is being implemented. Although projects range widely, USAID does not necessarily prioritize the progressive realization of human rights. Instead, improving private sector competitiveness, improving the business and economic environment, increasing trade and investment, and increasing agricultural sector productivity are the goals that are emphasized in each operational report, and in the USAID strategic plan.⁵⁷⁸ Although these goals can be said to lay the groundwork for achieving rights in the long term, they do not directly address current, ongoing human rights lack.⁵⁷⁹ Each operational report generally has a few goals related to progressively realizing human rights, such as improving child survival, health and nutrition, and maternal health and nutrition⁵⁸⁰, or achieving equitable access to quality basic education⁵⁸¹, but the number of projects dedicated to realizing basic human rights is substantially lower than the number of projects dedicated to bringing about general structural and economic reform.⁵⁸²

USAID Evaluation of Projects

USAID utilizes a variety of mechanisms and bodies to evaluate its projects overseas, including independent Bureau studies, evaluations from the Office of the Inspector General and

⁵⁷⁴ *Ibid.* 1-11.

⁵⁷⁵ USAID Mozambique, Operational Plan. 5-11.

⁵⁷⁶ USAID El Salvador, Operational Plan. (Washington D.C.: U.S. Agency for International Development, 2006), 1.

⁵⁷⁷ USAID Jordan, Operational Plan. (Washington D.C.: U.S. Agency for International Development, 2006), 1.

⁵⁷⁸ U.S. Agency for International Development, Strategic Plan: Fiscal Years 2007-2012. 25-35

⁵⁷⁹ *Ibid.* 35.

⁵⁸⁰ USAID Mozambique, Operational Plan. 10; USAID Jordan, Operational Plan. 8.

⁵⁸¹ USAID Malawi, Operational Plan. 10; USAID El Salvador, Operational Plan. 10.

⁵⁸² U.S. Agency for International Development, "Strategic Plan: Fiscal Years 2007-2012." (Washington D.C.: U.S. Department of State, 2007), 25-35.

evaluations from the Government Accountability Office. It also uses the Office of Management and Budget's "Program Assessment Rating Tool (PART)" to evaluate USAID programs. In addition, USAID conducts "a number of special surveys" to determine program impact, such as the Demographic and Health Survey. Results from all of the evaluations then allow the USAID Agency to "track key program results, [and] aggregate them in a single Performance and Accountability Report (PAR)." ⁵⁸³ Because there are so many different actors involved in USAID program evaluation, there are many different sets of criteria by which programs are judged and analyzed. ⁵⁸⁴ Thus, the standards that USAID must meet in the design and implementation of aid projects are ill-defined. ⁵⁸⁵ Consequently, there is no single set of standard requirements for projects, and no cohesive movement of project planners and implementers to take into account USAID projects' impact on human rights. ⁵⁸⁶

USAID tends to focus on economic and market reform, and structural adjustments, as opposed to attempting to improve quality of life for individuals. ⁵⁸⁷ USAID projects not only largely fail to address human rights, but some of them have the potential to be regressive in terms of the progressive realization of these rights. For instance, some of USAID's economic reforms have the potential to make the poor poorer and consequently negatively impact their access to food security and health. ⁵⁸⁸ There is nothing in the project evaluation process that explicitly

⁵⁸³ *Ibid.* 51-52.

⁵⁸⁴ *Ibid.* 52

⁵⁸⁵ *Ibid.* 51-52.

⁵⁸⁶ *Ibid.* 52.

⁵⁸⁷ U.S. Agency for International Development, "Strategic Plan: Fiscal Years 2007-2012." 25-35.

⁵⁸⁸ World Health Organization, "Aid Effectiveness and Health," (Geneva, WHO Press, 2007) Accessed January 14, 2011, <https://catalyst.uw.edu/workspace/file/download/e86f2bc794289aece38cd96c93850cab6b6db0bb41b027547f627f0eae1ca354?inline=1>, 3-5.

assesses project impact on human rights, so negative project effects have the potential to go unnoticed and unidentified.⁵⁸⁹

One example of a project that USAID implemented which was regressive in terms of human rights began in the late 1990s. USAID helped finance and develop a population control program in order to help Peru meet international population targets, particularly among Peru's indigenous population. USAID trained U.S. military doctors and local doctors to perform sterilizations, provided sterilization of equipment, set up clinics, and helped fund the establishment of the Family Planning Policies Coordination National Commission (COORDIPLAN), which held "sterilization festivals." During these festivals, officials and doctors used brute force, bribes, incentives, and threats of withholding basic services to sterilize women of color. Some were even sterilized without their foreknowledge or consent during delivery. Sterilization often took place violently, and in unhygienic conditions. The program resulted in the sterilization of over 300,000 women. This USAID project was clearly regressive in terms of human rights. Specifically, the "sterilization festivals" violated Peruvian indigenous women's right to basic health and security.⁵⁹⁰

Part II: CIDA

Forms of CIDA bilateral assistance

⁵⁸⁹ World Health Organization, "Aid Effectiveness and Health," (Geneva, WHO Press, 2007) Accessed January 14, 2011, <https://catalyst.uw.edu/workspace/file/download/e86f2bc794289aece38cd96c93850cab6b6db0bb41b027547f627f0eae1ca354?inline=1>, 3-5.

⁵⁹⁰ Steven Mosher. "USAID Supported Fujimori Sterilization Campaign: Seeks to Cover-up Involvement." 2003. Accessed February 3, 2011. <http://pop.org/content/usaidsupported-fujimori-sterilization-1658>.

CIDA's international assistance takes two basic forms. First, CIDA provides direct financial support to many of its aid recipients, such as Mozambique,⁵⁹¹ Vietnam,⁵⁹² Honduras⁵⁹³ and Indonesia.⁵⁹⁴ However, CIDA prefers to focus on designing and implementing concrete development projects with national governments and private actors⁵⁹⁵ CIDA is responsible for implementing a broad range of projects⁵⁹⁶. Often, CIDA appears to prioritize the realization of human rights through their projects. For example, it identifies efforts to improve agriculture, food security, income generation, and capacity building in the education and health sectors in Mozambique, and efforts to improve food security, reduce child malnutrition, and improve the quality and accessibility of education in Honduras as their key projects in each of these nations.⁵⁹⁷ ⁵⁹⁸ However, CIDA's prioritization of human rights is inconsistent. CIDA's efforts to expand private-sector enterprise, to improve environmental governance and sustainability were identified as key projects in Indonesia,⁵⁹⁹ whereas rural enterprise expansion, food and agriculture products quality, banking sector reform, provincial government governance and policy implementation assistance were emphasized in Vietnam.⁶⁰⁰ While these projects may ultimately bring about improvement in the realization of human rights, the fact that privatization and enterprise expansion projects are granted priority over projects geared directly toward the

⁵⁹¹ "Mozambique: CIDA Report," CIDA, Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-047-Mozambique-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-047-Mozambique-E.pdf).

⁵⁹² "Vietnam: CIDA Report," CIDA, Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-057-Vietnam-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-057-Vietnam-E.pdf).

⁵⁹³ "Honduras: CIDA Report," CIDA, Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-057-Vietnam-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-057-Vietnam-E.pdf).

⁵⁹⁴ "Indonesia: CIDA Report," CIDA, Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-055-Indonesia-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-055-Indonesia-E.pdf).

⁵⁹⁵ "Aid Effectiveness Agenda," CIDA, Accessed January 27, 2011, <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/FRA-825105226-KFT>.

⁵⁹⁶ "Aid Effectiveness Agenda."

⁵⁹⁷ "Mozambique: CIDA Report."

⁵⁹⁸ "Honduras: CIDA Report."

⁵⁹⁹ "Indonesia: CIDA Report."

⁶⁰⁰ "Vietnam: CIDA Report."

realization of rights to food security, health and education indicates that CIDA's prioritization and focus on human rights is somewhat uneven.

CIDA Evaluation of Projects

CIDA uses "The CIDA Evaluation Guide" to inform the way that they assess aid projects.⁶⁰¹ During the planning process, potential projects are evaluated and shaped in order to "respect and accommodate local contexts, minimize disruptive impacts, counter negativity", and stay focused on the central goal.⁶⁰² Mid-term evaluations, end-of-phase evaluations, end-of-project/investment or program investments, and ex post impact evaluations (which look at long-term development results) are carried out for each project.⁶⁰³ Evaluations are contracted out to an external party,⁶⁰⁴ who evaluate the progress made toward the intended goals, the extent to which actual results contribute to the planned, targeted results, and the unintended results, by looking at various performance indicators.⁶⁰⁵ While CIDA employs an organized evaluation system, it does not use a human rights framework to assess potential projects, nor does it use one to evaluate projects that have been implemented.⁶⁰⁶

However, in addition to evaluating programs, projects and investments, CIDA carries out "thematic evaluations" to look at "gender equality, basic human rights needs, and capacity building" in recipient nations.⁶⁰⁷ Although CIDA does not specifically examine each project's

⁶⁰¹ "CIDA Evaluation Guide," CIDA, Modified October 2004, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Performancereview5/\\$file/English_E_guide.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Performancereview5/$file/English_E_guide.pdf)

⁶⁰² *Ibid.* 59-61.

⁶⁰³ *Ibid.* 5.

⁶⁰⁴ *Ibid.* 6.

⁶⁰⁵ *Ibid.* 47.

⁶⁰⁶ *Ibid.* 1-42.

⁶⁰⁷ *Ibid.* 4.

effect on human rights, it does examine and analyze large shifts and patterns in the realization of human rights within its aid recipients.⁶⁰⁸

CIDA claims to use a human right framework, and more of their projects are geared toward providing valuable social services to citizens of the recipient governments.⁶⁰⁹ In spite of the fact that more of their projects are geared towards human rights, CIDA does not directly assess human rights impact for all of their projects in recipient nations. This lack of human rights assessment can lead to the implementation of projects that are regressive in terms of human rights.

For example, CIDA began a project in Colombia in 1997, which was supposed to make Colombia's mining sector more environmentally friendly and sustainable. CIDA took responsibility for educating mining officials, and for helping to reform Colombian mining code to improve economic conditions through promoting freer trade and foreign investment. The new mining code created a more competitive tax and royalty structure for foreign companies, but it also stripped away many land rights provisions, decreased tax revenue for public investment, and consequently contributed to poverty. Thus, the project is regressive in terms of Colombian property rights, and has actually exacerbated poor conditions in Colombian mining communities.⁶¹⁰

Part III: JICA

Forms of JICA bilateral assistance

⁶⁰⁸ *Ibid.* 4.

⁶⁰⁹ "Aid Effectiveness Agenda."

⁶¹⁰ Britannica.com. November 2006. Accessed February 10, 2011.

JICA grants aid to recipient nations in three basic ways. First, it offers ODA loans directly to recipient governments. Loan types include Project loans, Engineering Services loans, Financial Intermediary loans, Structural Adjustment loans, Commodity loans and Sector Program loans.⁶¹¹ Out of these, Project loans are the predominant loan type given by JICA. These loans are given to “finance specific projects such as roads, power plants, irrigation, water supply and sewerage facilities...the procurement of facilities, equipment and services, or for conducting civil works and other related works.”⁶¹²

JICA also provides Grant Aid, for which recipient governments and NGOs may apply in order to implement projects to improve food production and security, provide support for disaster relief, improve child welfare conditions, or make a variety of other positive changes.⁶¹³

Finally, JICA provides “technical cooperation” to recipient countries, which means that it personally designs and implements projects to benefit recipient nations’ people, much like USAID and CIDA.⁶¹⁴ These projects tend to focus on infrastructure development, such as improving the transport sector in Bangladesh⁶¹⁵, or amending irrigation systems in Thailand.⁶¹⁶ JICA also clearly prioritizes projects that improve equitable access to quality education, but

⁶¹¹ “ODA Loans,” JICA, Accessed January 27, 2011, http://www.jica.go.jp/english/operations/schemes/oda_loans/overseas/index.html.

⁶¹² “Efforts to Increase Development Effectiveness of Projects,” JICA, Accessed January 27, 2011, http://www.jica.go.jp/english/operations/schemes/oda_loans/overseas/types.html.

⁶¹³ “Grant Aid,” JICA, Accessed January 27, 2011, http://www.jica.go.jp/english/operations/schemes/grant_aid/.

⁶¹⁴ “ODA Loans.”

⁶¹⁵ “Bangladesh: Joint Evaluation on Four Donors’ Assistance—Transport Sector,” JICA, Accessed January 20, 2011. http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part3-2_04.pdf.

⁶¹⁶ “Thailand: Impact Evaluation of Pasak Irrigation Project,” JICA, Accessed January 20, 2011, http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part3-2_05.pdf.

emphasis on the progressive realization of other basic human rights is not evident in its project plans for nations receiving bilateral assistance.^{617 618}

JICA Evaluation of Projects

JICA employs an extensive evaluation process with which to judge ODA loans, grants, and technical cooperation. It methodically examines aid relevance, effectiveness (impact), efficiency, and sustainability, before giving the project an overall rating.⁶¹⁹ JICA is in the process of improving impact evaluations, through the research of the Impact Evaluation Study Group, and the continuation of pilot Impact Evaluations.⁶²⁰ These reforms seek to implement project evaluations that are “conducted in parallel with the project over a long timeframe from the project’s start to finish.”⁶²¹ They also seek to involve recipient governments more directly in the assessment of JICA loans, grants and technical cooperation, through joint evaluations.⁶²² In addition, JICA has a third party do an “External Evaluation” of the project to bring to light issues that might perhaps be overlooked by JICA or recipient governments.⁶²³ While JICA has a strong project evaluation system that includes long-term project assessment, a joint evaluation from JICA itself, the aid recipient, *and* a third party, it does not utilize a human rights framework when judging impact of loans, grants or technological cooperation.⁶²⁴

⁶¹⁷ “Bangladesh: Joint Evaluation on Four Donors’ Assistance—Transport Sector.”

⁶¹⁸ “Thailand: Impact Evaluation of Pasak Irrigation Project.”

⁶¹⁹ “The Results of External Evaluation and Rating,” JICA, Accessed January 20, 2011, <http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part2-1.pdf>, 30.

⁶²⁰ *Ibid.* 22.

⁶²¹ *Ibid.* 22.

⁶²² “Efforts aimed at promoting impact evaluations,” JICA, Accessed January 20, 2011, <http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part1-3.pdf>, 25.

⁶²³ “The Results of External Evaluation and Rating.” 30.

⁶²⁴ *Ibid.* 30-35.

JICA—much like USAID—is characterized by its implementation of projects that are human rights-blind. JICA focuses on infrastructure development projects and— with the exception of critical attention to education reform—largely fails to make human rights improvements a priority in their programs.⁶²⁵ Additionally, in spite of its detailed and careful evaluation process, just like USAID and CIDA, JICA does not specifically analyze and evaluate its projects’ impact on human rights.⁶²⁶ As with the other organizations, this can result in the implementation of projects that negatively impact human rights.

This occurred with some of JICA’s efforts in the Philippines. JICA supported the decentralization and privatization of health care in the Philippines, without setting up a successful system to manage and organize the health sector. The result was extreme disorder. The responsibilities and roles of each private institution were unclear, which made various health services more difficult to obtain for individuals. The project was regressive in terms of right to health.⁶²⁷

Part IV: Critiques

Some general critiques can be made of all three bilateral aid organizations. The first of these is that there is a general lack of focus on human rights in the projects USAID, CIDA and JICA design and implement. This is perhaps due to the fact that the directions and ways that bilateral aid funds are channeled are to a large degree determined by “party affiliation,

⁶²⁵ “Thailand: Impact Evaluation of Pasak Irrigation Project.” ; “Bangladesh: Joint Evaluation on Four Donors’ Assistance—Transport Sector.”

⁶²⁶ “The Results of External Evaluation and Rating.”

⁶²⁷ “Capacity Development and JICA’s Activities: Cooperation for Promoting Partner Country Ownership,” JICA, Accessed February 10, 2011, http://www.jica.org.uy/cdstudy/library/pdf/20071101_23.pdf. 9

constituency interest, and public interest.”⁶²⁸ More directly, the selection of aid projects is strongly influenced by commercial and economic interests, and often is “closely coordinated with the commercial agendas of private sector actors and with the strategic economic agendas of the economic ministries.”⁶²⁹

A second critique of all three bilateral aid organizations is that they use their aid-giving capabilities primarily to create and use projects that are of their own design. The recipient government and local actors have minimal power in determining where aid is channeled and the manner in which projects are implemented. There are two major problems with this. One is that—as these organizations are not as intimately familiar with the recipient nation as its inhabitants are—they are not in the position to properly prioritize the needs of the people. Therefore, they may not channel aid into the areas in which it would be most needed and useful. For instance, according to the World Health Organization’s “Aid Effectiveness and Health”, “it is often politically advantageous for donors to raise and spend aid ‘vertically’ in order to show a direct link between their tax monies, and results”, so aid organizations have largely targeted the “big three” disease of HIV/AIDs, tuberculosis (TB) and malaria and consequently failed to address other, more essential health concerns.⁶³⁰ An official from the Polish Ministry of Industry illustrated the issue of the aid giver having sole control over the design and implementation of projects vividly. He described the average foreign aid consultant as “a surgeon who does his work without talking with the patient, and leaves without checking whether the operation was successful.”⁶³¹

⁶²⁸ Hoben, A. “USAID Organizational and Institutional Issues and Effectiveness.” *Cooperation for International Development: The United States and the Third World in the 1990s*. Eds. R.J. Berg and D.F. Gordon. London: Lynne Rienner Publishers, 1989. Pp. 253-278.

⁶²⁹ Peter Dauvergne. “The Rise of an Environmental Superpower? Evaluating Japanese Environmental Aid to Southeast Asia.” 3

⁶³⁰ World Health Organization, “Aid Effectiveness and Health,” (Geneva, WHO Press, 2007) Accessed January 14, 2011, <https://catalyst.uw.edu/workspace/file/download/e86f2bc794289aece38cd96c93850cab6b6db0bb41b027547f627f0eae1ca354?inline=1,3>.

⁶³¹ Janine Wedel. “U.S. assistance for market reforms.” Accessed February 5, 2011. http://cato.org/pub_display.php?pub_id=1197.

Another problem with the fact that bilateral aid organizations determine and design the projects for recipient nations is that the recipient nations do not learn to manage their own budgets; they never have to take responsibility for the progressive realization of the human rights of their people. Thus, the bilateral aid organizations are generating more and more dependency by recipient nations on foreign assistance and programming. JICA is doing a good job in this area, making sure that loans and grants are available to recipient states who desire to select and design their own projects, but USAID and CIDA are not as prone to allow recipient states to take control and responsibility of development projects.⁶³²

Recommendations

Two basic recommendations follow naturally from the above critiques. The first is that the bilateral aid organizations should make progressive realization of human rights a priority. In order to do so, they need to amend the way they give aid in two ways.

First, they can do this by employing a human rights framework with which to examine all current, ongoing and future projects in terms of their effects on human rights. USAID, CIDA and JICA already identify their project goals, costs, challenges, risks, and sustainability as part of their project planning process. It will thus be a simple task to add a human rights component to the evaluation process that would require project planners to identify the human rights that may be impacted by the project, determine whether the project will help or hinder movement towards the progressive realization of the identified right(s), determine whether there is serious risk of

⁶³² U.S. Agency for International Development, “Strategic Plan: Fiscal Years 2007-2012,” 25-35; “Aid Effectiveness Agenda.”

regression in terms of human rights, and—if so—establish a plan to mitigate the negative impacts of the project to safeguard the rights of the recipient nation’s citizens.

This Task Force also recommends that the Committee on Economic, Social and Cultural Rights (CESCR) release a statement encouraging the utilization of a human rights framework by bilateral aid organizations, if not all aid donors.

There are drawbacks to adding a human rights component to the project evaluation processes of USAID, CIDA and JICA. Implementing an additional evaluation component will require more resources to be expended during preliminary project research and follow-up assessments. However, using a human rights framework to analyze project plans may actually save money and time in the long run, because by paying attention to the project’s effects on human rights initially, the organizations will be able to prevent regression in terms of human rights. Thus, they will not have to spend as much trying to counteract the negative human rights impacts of projects.

It is in USAID, CIDA, JICA, and other bilateral aid organizations’ best interests to adopt a human rights framework that is in keeping with ICESCR when evaluating their projects for several reasons. First, it is progressive, and will enhance the aid organization’s international image and be positive for global relations. Second, by doing so, the bilateral organization will be in compliance with UN guidelines and requirements. Third, a human rights framework will illuminate previously unseen aspects and risks of projects, and help donor nations ensure that they are not working against themselves, but rather positively impacting recipient nations.

In order to make human rights a priority, bilateral aid organizations should also allocate a portion of aid to projects specifically designed to progressively realize human rights. The main

drawback to channeling more money into human rights projects is that there are fewer funds available for projects in other areas. However, basic human rights such as food security, health care and education, are essential for quality of life, and therefore should be prioritized as the most important goals of aid organizations.

This chapter's second main recommendation for bilateral organizations is that, instead of wholly controlling the designing and implementation of projects in recipient countries, they allow some of their aid to support projects designed by the recipient nations' ministries. This would allow the recipient nation to learn to take the initiative for realizing human rights for its own people, and would also allow them to channel aid to areas and community needs that are not readily apparent or are for whatever reason neglected by donor nations and other aid-givers.

This chapter also recommends that the CESCR comment on the necessity for recipient governments to have some control over the projects being implemented in their nation, and suggest projects that are designed by recipient nations' ministries, or in collaboration with them.

There are a few challenges to this idea. Recipient governments do not necessarily have the experience needed to budget effectively, and spend money efficiently and ethically. They may also lack systems that keep them accountable for their spending. Thus, it is necessary to set up a system in which the recipient nation is accountable to the bilateral organization for how it uses the aid. This chapter recommends that the recipient nation submit a detailed project plan that includes planned allocation for donated funds. The donor nation must set up a framework with which to analyze the plan, provide feedback, and hopefully ultimately approve it, based on whether the project plan and budget is well-designed. After the project is planned and implemented, the recipient nation must then submit a detailed project summary to the bilateral

aid institution that includes a detailed account of how they used the financial aid. The donor nation may audit the recipient nation if there is any suspicion of corruption or fund leakages (explored extensively in Section III of this report). If a project is found to be corrupt, or inefficient, the donor nation may partially or completely withdraw general aid, or demand more control over determining and designing projects for the recipient nation in the future.

One potential drawback with the above proposal is that recipient nations may not utilize bilateral aid in the most efficient way, due to corruption, flawed project plans, or other obstacles. However, the donor nation—if displeased with the recipient’s budgeting or spending—may always withdraw or further control aid money, which keeps the recipient nations accountable to donor nations for its spending. This will consequently eliminate corruption and inefficiencies. In addition, recipient governments design projects with feedback from donor nations, and this feedback will help hone and perfect projects, so that badly designed and implemented projects would be weeded out. Recipient nations may actually create projects that are better uses of aid as they are more aware of the needs and the complexities of their own communities. And, even if recipient governments do not budget perfectly, it is still important that they have the opportunity to design and manage their own projects and budgets. Otherwise, they do not have the opportunity to learn to effectively budget, and their dependency on foreign aid and management will be perpetuated.

Another drawback of this proposal is that the bilateral aid organization will have to spend a lot of time and resources analyzing project proposals, communicating with recipient governments and auditing them when it suspects corruption. However, this is an important system of checks and balances that forces the recipient nation to spend responsibly, be

transparent, and be accountable to donors. It prevents and exposes corruption. The system will save money and effort in the long run, by ensuring that the projects the recipient nation undertakes are actually positive and not money-drains.

It is in bilateral aid organizations like USAID, CIDA and JICA's best interests to allow recipient governments to use some aid for their own projects for several reasons. First, these projects could actually be a better use of aid funds, due to the fact that the recipient governments are most likely more in touch with the specific needs of their citizens than foreigners. Second, recipient nations have the opportunity to design positive projects for their own people and take responsibility for their own budgeting. In other words, it is an opportunity for them to become less dependent on bilateral aid and foreign assistance. Consequently, as bilateral organizations are less and less needed by their recipients they can become more and more able to channel funds to new recipients and new causes.

Chapter 16:
Policy by Example

By Jeff Meigs

Chapter 16
Policy by Example
Progressive Budgetary Measures Towards ESC Rights

Introduction

Section 4 concludes with a departure from Overseas Development Assistance (ODA). Sections 3 and 4 primarily looked at the problems involved in the implementation of economic, social and cultural rights (ESC) through budgets. When analyzing the obstacles that lie between the declarations of ESC rights and their implementation, it is easy to be overwhelmed with the challenges ahead. It is important to look at positive case studies, where the successful implementation of a human rights framework resulted in progress for civil society. These case studies can serve two purposes: first, that there are positive steps being made by states to implement ESC rights leading to concrete increases in welfare of disenfranchised groups, and second, that in examining these case studies, further recommendations on how other states can achieve similar results become clearer. Case studies where states used budgetary dollars to progressively realize ESC rights gives the observer the opportunity to trace how progressive policy formation happens, the players involved, and the ingredients for success.

This chapter includes case studies for reflection and analysis. These case studies revolve around discrimination of a particular group, recognition by the state of the forms of discrimination present, action in the form of legislative and/or constitutional reform, and finally concrete policy formation that directly addresses the discrimination. The groups affected in the case studies are primarily women, indigenous groups, and national minorities. Although

progressive realization of ESC rights should be observed through budgetary allocation made by states, it can also be seen without any direct budgetary expenditure spent explicitly on human rights. The Committee for Economic, Social and Cultural Rights (CESCR) notes in General Comments number 3; “the adoption of legislative measures” is an important component of satisfying states’ obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee recognizes that in many instances legislation is highly desirable and in some cases may even be indispensable⁶³³. It must be made clear, however, that the adoption of low or no cost measures in no way exhausts the responsibilities of states under Article 2 of ICESCR.⁶³⁴

As will be seen in the case studies discussed, states must take steps to form coherent public policy within their national structure that specifically addresses those groups that are currently discriminated against. Legislative and constitutional reforms are important first steps in the process of the progressive realization of rights. But without building an infrastructure in which policy can form that improves the welfare of these groups, the use of budgets to progressively realize rights is impossible. Disenfranchised groups must be encouraged to enter the political sphere in order to form the policy that directly affects them, thus creating a structure of governance that better reflects the population and the different needs of various groups.

Examples of Good Governance Through Legislative Measures

⁶³³ “The nature of States parties obligations (Art. 2, par.1): CESCR General Comment 3,” last modified December 14, 1990, <http://www.unhchr.ch/tbs/doc.nsf/0/94bdbaf59b43a424c12563ed0052b664?Opendocument>.

⁶³⁴ “The International Covenant on Economic, Social and Cultural Rights”, last modified 2007. <http://www2.ohchr.org/english/law/cescr.htm>

As previously stated, the important first step to progressively realizing ESC rights is recognizing that there is work to be done in that area. This is best expressed through legislation and constitutional reforms because it is a public acknowledgement by the state that the rights have not yet been achieved to the level that they need to be, and that they are committed to working towards achieving these rights. Below are two examples of such acknowledgement as made by Fiji and India.

Fiji Human Rights Commission

The Fiji Human Rights Commission was established in 1999 to declare the human rights objectives of the state of Fiji. It contains the norms by which it wishes to uphold and follow.

Some of these norms include:

1. The transparency of the contents of the Bill of Rights by educating citizens of the rights contained therein.
2. The active participation of citizens in making recommendations to the government regarding compliance with Human Rights norms. This includes bringing to the attention of the Supreme Court any abuses of said norms.
3. The active and consistent effort of Fijian parliament to develop policy that allows the most disadvantaged groups increased and equal access to education, job opportunities, land, housing, and participation in commerce and civil service as is consistent with the Constitution.⁶³⁵

⁶³⁵ United Nations. 2005. *Economic, social, and cultural rights: handbook for national human rights institutions*. New York: United Nations, 32.

Indian Human Rights Commission

The National Human Rights Commission of India was created in the 1990s and is designed to protect the rights in the Indian Constitution surrounding Civil and Political Rights as well as ESC Rights. Some of the norms and duties included in the Commission concerning ESC rights are inquiring into and investigating violations of the Constitution regarding ESC rights, intervening in cases where laws are passed that make regressive steps in concern to ESC rights, making periodic statements as to the status of human rights in the country, and encouraging the involvement of other groups, including NGOs and private groups into the monitoring of ESC rights.⁶³⁶

Public/Private Partnerships (PPP)

Another method states can take in order to work towards achieving ESC rights is through Public/Private Partnerships (PPP). PPPs are projects that involve both the public and private sector. The PPPs listed below are those that resulted in increased access to the public goods of health and electricity. One partnership involves a developed nation, and the other involves a developing nation, showing how PPPs can be implemented in various political and socio-economic environments, as long as ESC rights are at the forefront of the planning.

France

In 2004, the French government along with Eiffage, a large construction company, built the Centre Hospitalier Sud Francien, which, at 315 million euros, was the largest of its kind. The

⁶³⁶ Ibid 35.

benefits of this project include: higher quality health to the public, job creation, new legislation making PPPs easier to encourage similar actions in the future, efficient use of taxpayer money.⁶³⁷

Tajikistan

The Pamir Private Power Plant along with the government of Tajikistan, the International Finance Corporation, International Development Association, and the Aga Khan Fund for Economic Development worked together to restore electricity to poor, disenfranchised communities in rural areas. The government of Tajikistan owns all the principal assets, and the private sector acts as ODA in helping Tajikistan engage in good governance. Benefits of the project include: a framework of accountability and efficiency in completing the project due to the public/private relationship, a “payment for results” system – an agreement in which aid is given if results are achieved without the use of tariffs, and of course increased electricity access to disadvantaged groups.⁶³⁸

Public Policy

Public policy is the most sustainable and effective way to promote ESC rights for groups that are not enjoying them to the level that they could. While the steps previously mentioned are important and essential to begin thinking about the implementation of ESC rights through budgets, the forming of policy is the necessary next benchmark. The next sections will discuss various types of policy steps that states have taken that have had positive effects on ESC rights.

⁶³⁷ United Nations. 2008. *Guidebook on promoting good governance in public-private partnerships*. New York: United Nations, 77.

⁶³⁸ Ibid 83.

South Africa

Throughout the 1990s, encouragement by the South African government to help the citizenry engage politically was ineffective. In response to this, the government adopted the Municipal Systems Act of 2000 in order to help enhance community involvement in local government issues. The formation of this public policy measure was informed in part by the 1996 Constitution that declares the inclusion of the community in civil society, with special emphasis on women and disenfranchised minority groups. After the introduction of a White Paper in 1998 that called on the need for improved civil society involvement in political processes, the Municipal Systems Act started to become a reality. It “legally formalized public participation in municipal government”⁶³⁹. Part of the practical application of the Act includes community forums in which civil society organizations, socio-economic groups, and organized disadvantaged groups are informed about local government procedures, and directly engage with municipal policy formation. This represents a drastic and important shift away from policymaking by municipal authorities and towards local, democratic policymaking.⁶⁴⁰

Norway

The Sami people are an indigenous minority that lives in Norway, Sweden, Finland, and Russia. In Norway, before the 1970s, treatment of the Sami in the political sphere led to a series of acts of civil disobedience, leading to a series of changes in the response of the Norwegian government towards the minority. In 1989, the government of Norway created the Sami Parliament in order to mitigate two prevailing ideas in helping to increase the welfare and

⁶³⁹ United Nations. 2007. *Good governance practices for the protection of human rights*. New York: United Nations, 11.

⁶⁴⁰ Ibid.

political clout of the minority. First, the idea that the Norwegian state has special responsibilities to the minority in order to avoid discrimination, including special programs that address their disparate treatment. Second, the state needed to understand that part of this extent responsibility includes the granting of autonomy to define their own public policy agenda. The Sami parliament is an independent institution comprised of and controlled by the Sami. In 1988, the government passed an amendment to the Constitution stating “it is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop their language, culture and way of life”.⁶⁴¹

The Sami Parliament has the power to apply changes to the Education Act in Norway to focus on issues of the “Sami language, Sami handcraft and reindeer herding education”.⁶⁴² In addition, the Ministry of Local Government works directly with the Sami Parliament regarding their direct role in budgetary decisions. Norway introduced an updated Land Rights Bill in 2003, intending to address land reform for the Sami. The Sami Parliament, however, showed their autonomy by rejecting it, saying it did not adhere to international law.⁶⁴³

Uganda

Another problem that minorities face is discrimination based on service delivery. Even in states where there are national programs of education or health, there still exists discrimination based on the different needs of different groups. In northeast Uganda, the Karimojong – a “semi-nomadic, pastoral people”⁶⁴⁴ – experienced problems with their education rights. Being an

⁶⁴¹ Ibid 24.

⁶⁴² Ibid.

⁶⁴³ Ibid 23-25.

⁶⁴⁴ Ibid 30.

extremely poor, rural region, education accessibility is limited. In addition, cultural norms resulted in parents discouraging school attendance, especially for their daughters. This naturally created a disparity between male and female attendance. This example represents a dual problem: the government's responsibility to ensure children's right to education, while also making sure that included in said responsibility are provisions that address the needs of the minority, thus encouraging attendance. In other words, the issue goes beyond the question is qualitative rather than quantitative. In 1998, the government of Uganda created the Alternative Basic Education for Karamoja (ABEK) in order to focus on the specific cultural needs of the minority. The main players in this provision are the Ministry for Karamoja Affairs, Save the Children Norway and district education offices of Moroto and Kotido. Save the Children Norway concluded that the education system was not meeting the needs of the Karamoja, and that they consider it irrelevant to their needs. "Local teachers employed in the federal education system, representatives of the local communities, Save the Children Norway and the National Curriculum Development Center"⁶⁴⁵ created the curriculum. In addition to normal school subjects, the curriculum focuses on "livestock, crops, rural technology, home management and the environment". The program has been running smoothly since 1998.⁶⁴⁶

Women and Gender Responsive Budgeting (GRB)

The United Nations Development Fund for Women (UNIFEM) works extensively with local and national governments to create policy changes that positively affect women regarding issues of health. UNIFEM released an extensive report on how to integrate gender equity into

⁶⁴⁵ Ibid 31.

⁶⁴⁶ Ibid 32.

public policy. Included in this report are some successful case studies in which non-governmental organizations (NGOs) and women's groups were able to advocate successfully for policies that engender gender equity to local and national governments.⁶⁴⁷

Ecuador

In a number of municipalities in Ecuador, the government began to implement training sessions with the intent of integrating women into the workforce and decreasing gender disparity in hiring. In Cuenca, a law was introduced that prioritizes the hiring of women for infrastructure related jobs. The Equal Opportunity Plan – a measure intending to curb gender discrimination through progressive policy – designated significant budgetary allocations for the betterment of women as well. Also there have been increased efforts to offer free medical care to pregnant women and newborns. In Esmeraldas, municipal leaders set up a fund to promote micro-enterprise for women. On a national level, the government in Quito set up a monitoring agency to keep track of progress in each municipality.

India

Beginning in 2003, the government included a mission statement that emphasized the need for gender budgeting. In 2005, the Ministry of Finance spearheaded a program that led twenty-one ministries to the inclusion of “gender budgeting cells” into their framework. Additionally, in the state of Karnataka, when funds for women's programs were being threatened, a group of female elected officials campaigned in support of GRB, leading to a 56%

⁶⁴⁷ United Nations, *Gender Responsive Budgeting and Women's Reproductive Rights: A Resource Pack* (New York: UNFPA and UNIFEM, 2006).

increase to funding for women. This exemplifies the idea that the progressive realization of ESC rights that begins at the grassroots or local level leads to further advances due to the increased political agency of those groups previously discriminated against.

Mexico

UNIFEM along with various women's groups advocated for increased budget allocation for women's health issues. Beginning in 2003, the Mexican government guaranteed 0.85% budget allocation designated for the promotion of gender equity. The Ministry of Health introduced guidelines on how to incorporate gender into health policy in numerous Mexican states to curb systematic gender based discrimination in the national policy.

Fundar, an NGO based in Mexico, analyzed issues of women's health such as maternal mortality, finding that there were concrete disparities in budget allocation towards women's health state to state. In working with the government and various women's groups, they were able to increase budget allocations for maternal health by 900%. This success led to other NGOs getting involved in policy formation for increased obstetric care.

The Philippines

And finally, beginning in 1995, the Philippine government along with UNIFEM and other NGOs created a Gender and Development (GAD) budget policy, which states that 5% of the budget must go towards women's issues.⁶⁴⁸

These examples show the importance of including multiple players in the formation of policy that better the lives of women. In all cases, states did not act spontaneously, but rather

⁶⁴⁸ Ibid.

were influenced by organized groups of women, NGOs, United Nations organizations, and other groups. Ultimately, states are going to act in their interest, and so it is important that forming progressive public policy is in their interest. The inclusion of these groups in the policymaking process is integral to the re-shaping of state interests.

Health and Indigenous Peoples

Realizing the rights included in documents such as ICESCR requires specific public policy formation that addresses disenfranchised groups. The most successful and sustainable examples of policy advocacy begin from the ground up. Through this process, the disenfranchised groups obtain a level of agency – political, economic, social, or cultural – that allows them the hope of social betterment through state programs, and they can fight for them. This has been seen extensively in recent years with indigenous groups in Latin America. Most Latin American countries made constitutional and legislative reforms in the 1990s, but these reforms are empty without concrete policy implications.⁶⁴⁹ Treating traditional indigenous health practices as ones that should be implemented into Ministry of Health standards is a result of a new understanding of health care as a culturally contingent phenomenon. These special provisions that address indigenous medical practices include, in Bolivia for example, an Undersecretary of Traditional Medicine and Interculturalism, focusing on integrating these traditional practices into national health policy where it applies to indigenous groups.⁶⁵⁰

⁶⁴⁹ Economic Commission for Latin America and the Caribbean, *Public Policies and Health Programmes for Indigenous Peoples in Latin America* (Chile: United Nations, 2007), 241.

⁶⁵⁰ *Ibid* 244.

In analyzing the extent to which public policy has been adapted to non-discriminately address indigenous minorities, the Economic Commission for Latin America and the Caribbean notes,

Countries fall into four groups when it comes to indigenous health policies: a large number of countries have a national indigenous peoples' plan; a second group has begun the process to devise and implement such a policy; a third group has an explicitly intercultural approach as part of their national health policies; and finally there are those countries that have no specific policies for indigenous peoples.⁶⁵¹

The countries that have concrete policies for indigenous groups as part of their national health care policies include Venezuela, Bolivia, Brazil, Chile, Costa Rica, Ecuador, Mexico, Nicaragua, Panama and Peru. The countries that do not have fully formed health policies for indigenous groups, but have begun formulating such policies are Argentina and Colombia. Countries that do not have specific public policy for indigenous groups but do have progressive national health policies are Guatemala and Honduras. El Salvador and Paraguay have not displayed efforts to form indigenous health policy.⁶⁵² In the short term, public policy focuses on expanding primary health care to disenfranchised groups, while making access low cost or free. In regions where health care delivery is essentially absent, simply providing primary care is a progressive step.⁶⁵³

Brazil

Brazil has taken significant steps to expand health care delivery to indigenous groups, through focused programs that address issues of discrimination and accessibility. Health care services for geographically isolated indigenous groups were divided into Special Indigenous

⁶⁵¹ Ibid 245.

⁶⁵² Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of countries' replies to surveys.

⁶⁵³ Economic Commission for Latin America and the Caribbean, *What Kind of State? What Kind of Equality?* (Chile: United Nations, 2010).

Sanitary Districts (DSEI), which are geographically focused health delivery localities that gear service to the specific needs of the location. Included in this program is a degree of social autonomy given to the indigenous groups, in addition to respect for traditional practices, thus using state resources to progressively enhance welfare. As of 2002, there were a total of 34 DSEIs operating throughout 3,751 villages. Brazil accomplished this under the umbrella of their Single Health System.⁶⁵⁴

Venezuela

After a series of constitutional reforms in 1999, Venezuela began to form policy in response to indigenous needs. Throughout the last decade, the Ministry of Health formed the Department for Indigenous Health, designated to both expand care to indigenous groups, while respecting indigenous health traditions. The Department employs over 600 indigenous health professionals, and serves over 40 indigenous groups spread throughout Brazil. The program includes significant social auditing, as well as coherence through all levels of government, up to the national level.⁶⁵⁵

Colombia

A similar degree of success can be seen in Colombia. The health system is subsidized, expanding low cost and free health care to a greater number of people generally. In addition, indigenous groups are allowed to form their own health maintenance organizations (HMOs) that

⁶⁵⁴ Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of Ministry of Health, Brazil, “Política nacional de atenção à saúde dos povos indígenas”, 2002.

⁶⁵⁵ Workshop-Seminar “Indigenous People in Latin America: Health Policies and Programmes, How Much and How Has Progress Been Made?”, Economic Commission for Latin America and the Caribbean (ECLAC), Santiago, Chile, 25 and 26 June 2007.

receive financial aid from the state. One of these HMOs is the Dusakawi indigenous service provider. It serves 12 indigenous groups in northern Colombia, adhering to international standards of interculturalism and indigenous rights. It uses a blend of ancestral, traditional medicinal practices and western traditions of epidemiology, thus leading to a more holistic view of health for the indigenous minorities.⁶⁵⁶

Towards Non-Discrimination: Indigenous Groups in Bolivia and Beyond

Since the election of Evo Morales as the country's first indigenous president, the government implemented major policy changes in their treatment of indigenous groups. Some of the major developments in the process of increasing the welfare of the country's poorest groups include the nationalizing of various natural resources – in reaction to previous privatization measures that wreaked havoc on the most vulnerable – as well as a constitutional measure to eradicate illiteracy.⁶⁵⁷ 5% of the tax issued on hydrocarbon is going directly to indigenous farmers as part of the Indigenous Development Fund. There have been significant steps in education as well, with the creation of three indigenous universities, part of the Indigenous Universities of Bolivia (UNIBOL). Law number 3545, instituted in 2006, deals with land redistribution, dissolving vast swathes of landowner holdings where indigenous persons are working in servitude and the land use is not benefiting social betterment. Many of these provisions are aimed at taking some basic steps towards the realization self-determination for groups that have been systemically discriminated against for decades.⁶⁵⁸

⁶⁵⁶ Ibid.

⁶⁵⁷ United Nations. 2009. *Permanent Forum on Indigenous Issues*. New York: United Nations (1)

⁶⁵⁸ Ibid 3.

Indigenous Women

The new constitution that was implemented in February of 2009 takes important steps towards gender neutrality, giving women special attention in the present to address disparities. In addition to numerous articles in the constitution declaring the improved status of women, the constitution includes programs that attempt to counter gender discrimination by establishing quotas for political positions in government, such as the National Equal Opportunity Plan and Quota Act.⁶⁵⁹

Land ownership in Bolivia does not revolve solely around the material idea of property, but rather is an integral part of social, cultural, and spiritual life. Thus, creating gender neutral policies of land distribution is key to progressively realizing rights for indigenous peoples. Beginning in 2004, a dramatic increase in land deeds certified jointly to women and men was seen, with less than 1,000 in 2004 to almost 4,000 in 2005. As of 2008, men and women/men held a near equal amount of deeds. Although deeds held solely by women are just over half of that of men or women/men, the number is continually rising year to year.⁶⁶⁰

African Examples of Land Reform for Women

Bolivia is not the only country where there have been positive steps towards redistribution of land for women. In Tanzania, various reforms in the last decade have given women the possibility to acquire and use land equally to men. In 2004 this provision was extended, giving women the opportunity to take out a mortgage on land and increased credit

⁶⁵⁹ Ibid 5.

⁶⁶⁰ Ibid 7.

opportunities.⁶⁶¹ The Namibian Communal Land Reform Act of 2002 gives women equal rights to men regarding communal land ownership. Part of inclusion of women in land ownership includes the designation of at least 4 women on a panel of 11 that constitute the Communal Land Board, the group that forms communal land policy.⁶⁶² In Rwanda, a policy of land ownership equality was formed in the context of marital agreements. The Law of Matrimonial Regimes, Succession and Liberalities requires couples that are getting married to choose an option of shared land ownership and other marital property.⁶⁶³ It also broadly “enshrines the principle that women may own and inherit property on an equal basis with men”.⁶⁶⁴

Recommendations and Conclusions

The road between a vague recognition of discrimination of disenfranchised groups and the coherent and progressive formation of policy is a long one. It is important to remember, however, the states’ obligations under Article 2 of ICESCR. The question then is: how can the state be influenced – depending on where it finds itself in relation to the implementation of ESC rights – to take steps in a positive direction? And further, how can examples of states using their budgets effectively speak to the possibility of other states achieving similar success? What follows is a series of recommendations for how states can learn from successful examples of

⁶⁶¹ Combined fourth, fifth and sixth periodic reports of Tanzania to the Committee on the Elimination of Discrimination against Women (CEDAW/C/TZA/6) and Responses to the list of issues and questions with regard to the consideration of the combined fourth, fifth and sixth periodic reports (CEDAW/C/TZA/Q/6/Add.1), considered at the Committee’s 42nd session from 30 June to 18 July 2008.

⁶⁶² Combined second and third periodic reports of Namibia to the Committee on the Elimination of Discrimination against Women (CEDAW/C/NAM/2-3), considered at the Committee’s 37th session from 15 January to 2 February 2007).

⁶⁶³ UN Millennium Project, Task Force on Education and Gender Equality, *Taking Action: Achieving Gender Equality and Empowering Women* (2005), page, 82.

⁶⁶⁴ United Nations. 2009. *Human Rights of Women*. New York: United Nations.

ESCR implementation. Although this chapter is not as focused on recommendations as the others – due to its nature – there are broad lessons from these case studies to keep in mind.

Firstly, in cases where it does not exist, this Task Force recommends that states make legislative and constitutional reforms that address the challenges they face in regards to the implementation of ESC rights. This is an important step both for the public acknowledgement of the challenges at hand and for the acknowledgement by the state that overcoming these challenges is a priority. It is a natural next step from signing the ICESCR, because it addresses the problems unique to each state, and contains the intent to form policy that addresses it. Although in isolation it achieves very little, its significance – both symbolic and social – leads to a different attitude towards ESC rights within government.

The formation of public policy that benefits the groups that are typically discriminated against is a direct result of the players involved in its formation. The inclusion of disenfranchised groups in the policymaking process is integral to the progressive realization of ESC rights. Those making political decisions must share the interests of the groups they are serving. Otherwise the policy that is formed will not reflect the needs of the population. Therefore this Task Force recommends that states take steps to include marginalized groups in the policy forming process, from the local to the national level. This begins with community forums in which organized groups can voice their concerns about their current state of affairs as well as their needs in regards to ESC rights.

Including groups that slip through the cracks of national policy programs can be a difficult task. States must learn what is holding back national policies from serving those in need, and more importantly, they must learn how to overcome it. States must create

individualized accommodations to both serve disadvantaged groups to the degree that their international obligations suggest, while also refraining from squelching traditional and cultural uniqueness. Therefore this Task Force recommends that when forming policies that are intended to include disadvantaged groups, states should both create individualized programs that address the specific needs that these groups have, while also integrating these specialized policies into the national framework. This will in turn lead to a level of welfare for these groups that is equal to the rest of the citizenry. At the same time, these specialized programs must celebrate the traditional and cultural customs of the groups that they serve, and when appropriate, implement these customs into the specialized programs. Much of this is contingent on the broad social attitudes in states, which are only partially controlled by government action.

Section IV

Summary of Recommendations

Overseas Development Assistance (ODA) plays a significant role in shaping the lives of individuals and groups in other nations, including the extent to which their ESC rights are enjoyed. Multilateral Development Banks (MDBs), Export Credit Agencies (ECAs) and Bilateral Aid Agencies are three of the most prominent actors involved in ODA. Currently, there are numerous problems within the ODA framework that either do not further the progressive realization of rights of the citizens to which the aid is going, or regressively affect the realization of rights. Many of the problems that this Task Force finds with ODA are treatable. In addition, we looked at case studies in which states took steps to progressively realize ESC rights, in order to make recommendations on how to take similar steps in other states where ESC rights are not realized to the same degree. In light of the findings of this section, we recommend:

- The implementation of an independent accountability mechanism with compliance review AND problem-solving arenas within MDBs.
- The formation of a distinction between the problem-solving and compliance review functions of the accountability mechanism within MDBs.
- Accessibility and user-friendliness within MDBs. They should require clients to disclose the existence of their accountability mechanisms to affected communities.
- That the “Guiding Principles” should use rhetoric that more explicitly regulates ECA transactions: this should include the expansion of each principle in order to specify and elaborate on how these principles will be realized in operation, as well as the omission of the end clause stating that the principles “are not legally binding obligations” or representing of “any rights for, or obligations to, any parties”.

- That the Sustainable Lending Principles need to specify and clearly establish in greater detail the mechanisms it intends to employ to provide data on its practices and ensure transparency.
- That the Sustainable Lending Principles must be revised in order to be more inclusive towards marginal, adversely affected countries, instead of being applicable only towards extremely low-income countries classified as IDA-only (eligible for funding from the World Bank's International Development Association funding).
- That the footnote stating that the "operational details remain subject to further discussion" and will be "reviewed in future revisions of the principles" must be revised to include more details on how the policies will be executed 'in operation', as well as include a specific, established date regarding when it will be 'reviewed'.
- That if the previous recommendation is not realized in full, the entire footnote itself should be eliminated.
- That the Common Approaches must be made much more accountable by improving the rhetoric used throughout, replacing suggestive and conditional words such as 'recommend', 'should', or 'shall' with 'request', 'demand', or 'must', thereby making it much more binding and accountable towards ECAs.
- That in the Common Approaches, the Article 13 derogation clause which allows ECAs to pursue a project even if it does not meet the utmost, international standards must be omitted, as this clause detracts significantly from their efficacy in practice.
- That bilateral aid organizations utilize a human rights framework in evaluating projects.
- CЕСSR release a statement mandating the utilization of a human rights framework by bilateral aid organizations.
- Bilateral aid organizations allow recipient governments' ministries more power in designing and implementing projects for their citizens.
- CЕСSR release a statement suggesting that bilateral aid organizations free up more of their funds to be used for projects designed by recipient governments' ministries
- That states make legislative and constitutional reforms that address the challenges they face in regards to the implementation of ESC rights.

- That states take steps to include marginalized groups in the policy forming process, from the local to the national level.
- That when forming policies that are intended to include disadvantaged groups, states should both create individualized programs that address the specific needs that these groups have, while also integrating these specialized policies into the national framework.

Conclusion

Alizeh Bhojani

Budgets are a powerful tool for both the international community and national governments to realize ESC rights. This Task Force analyzes State obligations as outlined in the Covenant and explores in-depth the theoretical possibilities of progressively realizing rights. We examine the legal implications of specific court cases focused on ESC rights and budgets, and how those could be used by the Committee to create further standards that governments can follow. We further dissect the relationship between discriminatory budgetary allocations of resources and the subsequent human rights concerns such practices create. International aid also comprises a significant portion of government budgets. We evaluate the role of international development agencies – such as multi-lateral development banks, export credit agencies, and bilateral aid organizations – in addressing human rights issues on the national level. We also examine the positive relationships between international organizations and civil society in order to implement projects that effectively use budgets to improve human rights and development in the specific region.

IBP and other civil society and non-governmental organizations should work with the CESCR and governments to implement the provisions outlined in the Covenant, reduce corruption and inefficient allocation of resources, and institute accountability mechanisms. On the international level, IBP should work with CESCR to create explicit guidelines for how States can use their maximum available resources to progressively realize ESC rights without discrimination. Our analysis of the progressive realization of the rights to education, health, and food security provides specific areas where governments can increase spending in order to

progressively realize each right. Court cases focused on ESC rights highlight how lack of clear guidelines within the Covenant allows governments to withhold or insufficiently provide for essential rights. The decisions from these cases provide frameworks for how budget allocations and the legal system can work together to achieve ESC rights.

Accountability plays an important part in our examination of budget practices and ESC rights. The lack of specific guidelines within the Covenant allows governments significant freedom to implement human rights programs at their own convenience. We examine the empirical results of this vagueness by focusing on issues regarding budget expenditure and resource allocation. On the international level, we analyze the lack of human rights frameworks in projects initiated by international development agencies like the World Bank, the Berne Union, or USAID. These organizations, among others, are not accountable to either the CESCR or to the government in the country where they work. They are not obligated to uphold the provisions of the Covenant, and their projects have significant influence over the socio-economic environment of the recipient country. IBP should work with governments and international aid organizations to institute reliable accountability mechanisms such as public audits in order to reduce corruption and inefficient spending practices that result in harming civilian populations.

The main recommendations of this Task Force focus on holding governments and international organizations accountable to the needs of the people. Clearer guidelines from the CESCR could provide specific benchmarks for countries to which IBP and other non-governmental organizations could hold governments accountable. International standards allow both civilian populations and government officials to understand their rights and obligations and follow through on them. Accountability mechanisms are integral to achieving ESC rights, both

on the national and international levels and budgets provide one method through which actors (both state and non state) can work to realize the rights specified in the Covenant.

These developments in international and domestic structures can serve to incorporate budget processes and strengthen the human rights framework. By addressing these critical factors of budget processes, IBP can be a powerful source of change to promote progress of economic, social, and cultural rights in concrete and meaningful ways.

Works Cited

- Advocacy Counsel. "Foreign Investor Accountability Mechanism Advocacy." Accessed February 17, 2011.
http://www.accountabilitycounsel.org/Accountability_Counsel/AC_FIAM.html.
- Amnesty International " Economic, Cultural and Social Rights: Questions and Answers." http://www.amnestyusa.org/escr/files/escr_qa.pdf Accessed Jan. 2011
- Benson, Todd David; Minot, Nicholas and Michael Epprecht. 2007. "Mapping Where the Poor Live," Washington, D.C.: International Food Policy Research Institute.
- Bigman, David, and Hippolyte Fofack. 2000. Geographical targeting for poverty alleviation: methodology and applications. World Bank regional and sectoral studies. Washington, D.C.: World Bank.
- Birdsall, Nancy and Wren Elhai. "Shared Goals: Measuring Overall Development Progress in Pakistan," Center for Global Development.
<http://www.cgdev.org/content/publications/detail/1424744>
- Bissell, Richard E. and Suresh Nanwani. "Multilateral Development Bank Accountability Mechanisms: Developments and Challenges," Central European Journal of International and Security Studies 3.2 (2009): 154-198.
- Bitrán, Ricardo, and Ursula Giedion. 2003. Waivers and exemptions for health services in developing countries. Washington, DC: World Bank.
- Bradlow, Daniel D. "Private Complainants and International Organizations: a Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions". Georgetown Journal of International Law 36 (2005): 403-494.
- Bradlow, Daniel. "The World Bank, the IMF, and Human Rights." Transnational Law and Contemporary Problems 6.1 (1996): 47-90.
- Canadian International Development Agency homepage. Accessed January 27, 2011.
<http://www.acdi-cida.gc.ca/home>
- Cardenas, Maristella. "ECAs in the Philippine Power Sector and the Continuing Debt Problem." Jubilee South .
http://www.jubileesouth.org/index.php?option=com_content&task=view&id=73
(accessed February 17, 2011).
- Carlitz, Ruth. "Quantity Without Quality." Budget Brief, International Budget Partnership. 2008.
<http://www.internationalbudget.org/resources/briefs/brief8.htm>

- Carmona, Magdalena Sepulveda. 2009. "The obligations of 'international assistance and cooperation' under the International Covenant on Economic, Social and Cultural Rights. A possible entry point to a human rights based approach to Millennium Development Goal 8." *International Journal of Human Rights* 13, no. 1: 86-109. Academic Search Complete, EBSCOhost (accessed January 15, 2011).
- CIA World Factbook. Sweden. <https://www.cia.gov/library/publications/the-world-factbook/geos/sw.html>. Accessed Jan. 2011
- CIDA. "Aid Effectiveness Agenda." Accessed January 27, 2011. <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/FRA-825105226-KFT>.
- CIDA. "Honduras: CIDA Report." Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-057-Vietnam-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-057-Vietnam-E.pdf).
- CIDA. "Indonesia: CIDA Report." Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-055-Indonesia-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-055-Indonesia-E.pdf).
- CIDA. "Mozambique: CIDA Report." Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-047-Mozambique-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-047-Mozambique-E.pdf).
- CIDA. "Vietnam: CIDA Report." Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-057-Vietnam-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-057-Vietnam-E.pdf).
- Clapham, Andrew. *Human Rights Obligations of Non-State Actors*. Oxford, 2006.
- Coirolo, Luis and Jill Lammert, 2008. "Rural Poverty Reduction in Northeast Brazil, Achieving Results through Community-Driven Development" En Breve, The World Bank.
- Cotlear, Daniel. 2008. "Making Accountability Work- Lessons from RECURSO". En Breve, The World Bank.
- Combined second and third periodic reports of Namibia to the Committee on the Elimination of Discrimination against Women (CEDAW/C/NAM/2-3), considered at the Committee's 37th session from 15 January to 2 February 2007).
- Combined fourth, fifth and sixth periodic reports of Tanzania to the Committee on the Elimination of Discrimination against Women (CEDAW/C/TZA/6) and Responses to the list of issues and questions with regard to the consideration of the combined fourth, fifth and sixth periodic reports (CEDAW/C/TZA/Q/6/Add.1), considered at the Committee's 42nd session from 30 June to 18 July 2008.

Committee on Economic, Social, and Cultural Rights. 1999. *GENERAL COMMENT NO. 11 plans of action for primary education (art. 14)*. United Nations Economic and Social Council, E/C.12/1999/4 (accessed 16 January 2011).

Committee on Economic, Social and Cultural Rights. 1999. *GENERAL COMMENT NO. 13 the right to education (art. 13)*. United Nations Economic and Social Council, E/C.12/1999/10 (accessed 16 January 2011).

Committee on Economic, Social and Cultural Rights. 2003. General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). United Nations Economic and Social Council, E/C.12/2002/11 (accessed 16 January 2011).

Committee on Economic, Social and Cultural Rights. 2005 General comment No. 16 (2005) The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights). United Nations Economic and Social Council, E/C.12/2005/4 (accessed 16 January 2011).

Committee on Economic, Social and Cultural Rights. 2006. **THE RIGHT TO WORK** General comment No. 18 Adopted on 24 November 2005 Article 6 of the International Covenant on Economic, Social and Cultural Rights. United Nations Economic and Social Council, E/C.12/GC/18 (accessed 16 January 2011).

Committee on Economic, Social and Cultural Rights. 2007. An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant. United Nations Economic and Social Council, E/C.12/2007/1 (accessed 16 January 2011).

Committee on Economic, Social and Cultural Rights. 2008. **GENERAL COMMENT NO. 191** The right to social security (art. 9). United Nations Economic and Social Council, E/C.12/GC/19 (accessed 16 January 2011).

Committee on Economic, Social and Cultural Rights. 2009. General Comment No. 20 Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2). United Nations Economic and Social Council, E/C.12/GC/20 (accessed 16 January 2011).

Committee on Economic, Social and Cultural Rights. 2002. **REPORT ON THE TWENTY-EIGHTH AND TWENTY-NINTH SESSIONS**. United Nations Economic and Social Council E/C.12/2002/13 (accessed 16 January 2011).

Committee on Economic, Social and Cultural Rights. 2003. **REPORT ON THE THIRTIETH AND THIRTY-FIRST SESSIONS**. United Nations Economic and Social Council, E/C.12/2003/14 (accessed 16 January 2011).

- Committee on Economic, Social and Cultural Rights. 2004. REPORT ON THE THIRTY-SECOND AND THIRTY-THIRD SESSIONS. United Nations Economic and Social Council, E/C.12/2004/9 (accessed 16 January 2011).
- Committee on Economic, Social and Cultural Rights. 2005. REPORT ON THE THIRTY-FOURTH AND THIRTY-FIFTH SESSIONS. United Nations Economic and Social Council, E/C.12/2005/5 (accessed 16 January 2011).
- Committee on Economic, Social and Cultural Rights. 2006. REPORT ON THE THIRTY-SIXTH AND THIRTY-SEVENTH SESSIONS. United Nations Economic and Social Council, E/C.12/2006/1 (accessed 16 January 2011).
- Committee on Economic, Social and Cultural Rights. 2007. REPORT ON THE THIRTY-EIGHTH AND THIRTY-NINTH SESSIONS. United Nations Economic and Social Council, E/C.12/2007/3 (accessed 16 January 2011).
- Committee on Economic, Social and Cultural Rights. 2007. An Evaluation of the Obligation to Take Steps To the “Maximum of Available Resources” Under an Optional Protocol to the Covenant. United Nations Economic and Social Council, E/C.12/2007/1 (accessed January 20 2011).
- Committee on Economic, Social and Cultural Rights. 2008. REPORT ON THE FORTIETH AND FORTY-FIRST SESSIONS. United Nations Economic and Social Council, E/C.12/2008/3 (accessed 16 January 2011).
- Committee on Economic, Social and Cultural Rights. 2009 REPORT ON THE FORTY-SECOND AND FORTY-THIRD SESSIONS. United Nations Economic and Social Council, E/C.12/2009/3 (accessed 16 January 2011).
- Congressional Budget Office, “Policies that Distort World Agricultural Trade: Prevalence and Magnitude,” in *Agricultural Subsidies*, ed. Noel Merino (New York: Greenhaven Press, 2010), 20-30.
- Coomans, Fons. 2006. Justiciability of economic and social rights: experiences from domestic systems. *Maastricht series in human rights*, 5. Antwerpen: Intersentia.
- Danino, Roberto. “Human Rights and Development: Towards Mutual Reinforcement,” Paper presented at the Conference at New York School of Law, New York. March 1, 2004.
- Darrow, Mac. *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law*. Oxford: Hart Publishing, 2003.
- Dauvergne, Peter. “The Rise of an Environmental Superpower? Evaluating Japanese Environmental Aid to Southeast Asia. Canberra: National Library of Australia, 1998. <http://dspace.anu.edu.au/bitstream/1885/41013/2/98-3.pdf>.

DECLARATION OF ALMA-ATA. International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978.

Department of Social and Economic Affairs of the United Nations

Secretariat. *The Millennium Development Goals Report 2010*.

<http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf> (accessed January 15, 2011).

Dir. Etienne, Carissa. *The World Health Report 2010 Health Systems Financing: The Path of Universal Coverage*. Geneva: The World Health Organization, 2010.

East Asia decentralizes: making local government work. 2005. Washington, D.C.: World Bank.

Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of countries' replies to surveys.

Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of Ministry of Health, Brazil, "Política nacional de atenção à saúde dos povos indígenas", 2002.

Economic Commission for Latin America and the Caribbean, *Public Policies and Health Programmes for Indigenous Peoples in Latin America* (Chile: United Nations, 2007), 241.

Economic Commission for Latin America and the Caribbean, *What Kind of State? What Kind of Equality?* (Chile: United Nations, 2010).

"Empowering the Poor Through Decentralization: Brazil Rural Poverty Alleviation Program." 2001. Social Development Notes, World Bank. Note No. 51.

European Union. *Financial Programming and Budget of the European Union*.

http://ec.europa.eu/budget/budget_glance/what_for_en.htm, (accessed February 11, 2011).

"Export Credit Agencies - General Introduction and Regulation - Log, Stock and Barrel - Financial Institutions in the Resource Sector." Heinrich Böll Stiftung: The Green Political Foundation. <http://www.boell.de/finance-resources/index-110.html> (accessed January 27, 2011).

Food and Agriculture Organization of the United Nations. 2009. *The state of food insecurity in the world*. Rome, Italy: Food and Agriculture Organization of the United Nations.

Food and Agricultural Organization. *2050: A third more mouths to feed*.

<http://www.fao.org/news/story/en/item/35571/icode/> (accessed January 28, 2011).

Food and Agriculture Organization. "How to Feed the World in 2050." How to feed the world in 2050. Rome, Italy: October 2009.

Food and Agricultural Organization. "Global agricultural towards 2050." How to Feed the World in 2050. Rome, Italy: October 2009.

Food and Agricultural Organization. "The technology challenge." How to Feed the World in 2050. Rome, Italy: October 2009.

Gauri, Varun, and Daniel M. Brinks. 2008. *Courting social justice: judicial enforcement of social and economic rights in the developing world*. Cambridge: Cambridge University Press.

"Goal 2: Achieve Universal Primary Education". *We Can End Poverty: 2015 Millennium Development Goals*, September 20-22, 2010.
http://www.un.org/millenniumgoals/pdf/MDG_FS_2_EN.pdf

Goldzimer, Aaron . "Financing development: a civil society perspective | Aaron Goldzimer - China Dialogue." *China Dialogue - China and the World Discuss the Environment*.
<http://www.chinadialogue.net/article/show/single/en/2029-Financing-development-a-civil-society-perspective> (accessed January 25, 2011).

Goldzimer, Aaron. "Worse Than the World Bank? Export Credit Agencies--The Secret Engine of Globalization | Food First/Institute for Food and Development Policy." *Food First/Institute for Food and Development Policy | Institute for Food and Development Policy*. <http://www.foodfirst.org/node/50> (accessed January 25, 2011).

Gostin, Lawrence O.. "The Human Right to Health: a Right to the "Highest Attainable Standard of Health". " *The Hastings Center Report* 31, no. 29 (2001): 30.

Grootboom and Others v Government of the Republic of South Africa and Others - Constitutional Court Order. (CCT38/00) 2000. ZACC 14 (21 September 2000).

Grossman, Claudio. 2006. "JUSTICIABILITY OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: LEGAL APPROACHES AND THE CONTRIBUTIONS OF CASE LAW." *American University International Law Review* 22, no. 1: 1-4. Business Source Complete, EBSCOhost (accessed January 15, 2011).

"Guiding Principles." Berne Union. <http://www.berneunion.org.uk/guiding-principles.html> (accessed February 16, 2011).

Gupta, Neeru, Zurn, Pascal, Diallo, Khassoum, and Dal Poz, Mario R. 2003. Uses of population census data for monitoring geographical imbalance in the health workforce: snapshots from three developing countries. *International Journal for Equity in Health*, 2:11
<http://www.equityhealthj.com/content/2/1/11>

Gupta, Sanjeev, Benedict Clements, and Erwin Tiongson. 1998. "Public spending on human development". *Finance & Development*. 35 (3): 10-13.

- Gwatkin, Davidson R. 2000. "Targeting in Health: A Summary of the Evidence," The World Bank, Washington D.C.
- Herbertson, Kirk, Kim Thompson and Robert Goodland. "A Roadmap for Integrating Human Rights into the World Bank Group", World Resources Institute, 2010.
- Hoben, A. "USAID Organizational and Institutional Issues and Effectiveness." Cooperation for International Development: The United States and the Third World in the 1990s. Eds. R.J. Berg and D.F. Gordon. London: Lynne Rienner Publishers, 1989. Pp. 253-278.
- Hofbauer, Helena, and Gabriel Lara. "Health Care: a Question of Human Rights, Not Charity." FUNDAR. www.fundar.org.mx/index.html/.../doc-healthcarequestionofhumanrights.pdf (accessed January 20, 2011).
- Human Rights Council. 2006. Report of the Human Rights Council. United Nations. Economic and Social Council, A/62/53 (accessed 24 January 2011).
- Human Rights Resource Center. "Ripple in Still Water: Reflections by Activists on Local and National-Level Work on Economic, Social and Cultural Rights," Chapter 7, 1996. Accessed February 14, 2011. www1.umn.edu/humanrts/edumat/IHRIP/ripple/chapter7.html.
- International Budget Partnership, "Dignity Counts: A guide to using budget analysis to advance human rights." 2004.
- International Budget Partnership. "MSS Undertakes Social Audit in India" http://www.internationalbudget.org/files/MKSS_case.pdf
- International Centre for Technical and Vocational Education and Training.* United Nations Educational, Scientific, and Cultural Organization. <http://www.unevoc.unesco.org/snippet.php>
- International Fund for Agricultural Development. "Rural Poverty Report: New realities, challenges: new opportunities for tomorrow's generation," (Rome: Quintily, 2010).
- International Human Rights Instruments. 2008. Compilation of general comments and general recommendations adopted by human rights treaty bodies. United Nations International Human Instruments, HRI/GEN/1/Rev.9 (accessed 16 January 2011).
- JICA. "Bangladesh: Joint Evaluation on Four Donors' Assistance—Transport Sector." Accessed January 20, 2011. http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part3-2_04.pdf.

- JICA. "Capacity Development and JICA's Activities." Accessed February 10, 2011.
http://www.jica.org.uy/cdstudy/library/pdf/20071101_23.pdf
- JICA. "Efforts aimed at promoting impact evaluations." Accessed January 20, 2011.
<http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part1-3.pdf>
- JICA. "Efforts to Increase Development Effectiveness of Projects." Accessed January 27, 2011.
http://www.jica.go.jp/english/operations/schemes/oda_loans/overseas/types.html
- JICA. "Grant Aid." Accessed January 27, 2011.
http://www.jica.go.jp/english/operations/schemes/grant_aid/
- JICA homepage. Japan International Cooperation Agency. 2008.
<http://www.jica.go.jp/english/index.html>
- JICA. "ODA Loans." Accessed January 27, 2011.
http://www.jica.go.jp/english/operations/schemes/oda_loans/overseas/index.html.
- JICA. "Thailand: Impact Evaluation of Pasak Irrigation Project." Accessed January 20, 2011.
http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part3-2_05.pdf.
- JICA. "The Results of External Evaluation and Rating." Accessed January 20, 2011.
<http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part2-1.pdf>.
- Kakwani, Nanak, and Hyun H. Son. 2006. Evaluating targeting efficiency of government programmes international comparisons. Helsinki, Finland: UNU World Inst. for Development Economics Research (UNU/WIDER).
- Kaufmann, Daniel. "Aid Effectiveness and Governance: The Good the Bad and the Ugly," Brookings. 2009.
http://www.brookings.edu/opinions/2009/0317_aid_governance_kaufmann.aspx
- Kraybil, David S, and Bernard Bashaasha. 2006. "The potential gains from geographical targeting of anti-poverty programs in Uganda", AfJARE.
- Ladley, R.B. "Financial Models for Projecting National Educational Expenditure." The Journal of the Operational Research Society
- Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, ESCR W.P.(C) Nos. 8853 of 2008. (High Court of Delhi 2010)
- Lopez-Calix, Jose, Alcazar, Lorena and Erik Wachtenheim, 2002. "Improving the Efficiency of Public Spending in Peru," World Bank Report.
- McNeil, Desmond and Asuncion Lera St. Clair. Global Poverty, Ethics and Human Rights: The role of multilateral organizations. Abingdon: Routledge, 2009.

- Milanovic, Branko. 2001. Conflict Between Horizontal Equity and Maximum Poverty Reduction, How Best to Allocate Funds to Regions. Asia and Pacific Forum on Poverty: Reforming Policies and Institutions for Poverty Reduction.
- Morel, Fabrice. "Credit Insurance in Support of International Trade: Observations Throughout the Crisis." Yearly Report 7 (2010): 5. Berne Union. Web. 2 Feb. 2011.
- "Monitoring the Effectiveness of the Australian aid program," Australian Government. Commonwealth of Australia 2011. <http://www.usaid.gov.au/ode/default.cfm>
- Mosher, Steven. "USAID Supported Fujimori Sterilization Campaign: Seeks to Cover-up Involvement." 2003. Accessed February 3, 2011. <http://pop.org/content/usaaid-supported-fujimori-sterilization-1658>.
- Mukherji, Srimoti. "Health Indicators." International Trade Administration, India. 2005
- Nath, Kamal, "Instead of Funding Agricultural Subsidies, Resources Should be Used for World Hunger," in Agricultural Subsidies, ed. Noel Merino (New York: Greenhaven Press, 2010): 205-208.
- National Audit Office. "International Health Comparisons: A compendium of published information on healthcare systems, the provision of healthcare and health achievement in 10 countries." 2003.
- Naz Foundation v. Government of NCT of New Delhi and Others, ESCR WP(C) No. 7455/2001. (High Court of Delhi 2009)
- Nigeria LNG Limited. "Financing." Facts and Figures on NLNG 2010. www.nlng.com/NR/rdonlyres/2C5AE78E-F775-41BA-8E79-3C78407CD29F/3615/51to55.pdf (accessed February 17, 2011).
- Odhiambo, Agnes. 2010. "I am not dead, but I am not living": barriers to fistula prevention and treatment in Kenya. New York, NY: Human Rights Watch.
- Ooms, Gorik. "Towards a Global Health Fund: Extending the Health Finance Revolution of the Fight Against AIDS to General Health Services." Budget Brief 4 (2008): 1.
- Organization for Economic Co-operation and Development. 1998. The export credit arrangement: achievements and challenges 1978-1998. Paris, France: Organisation for Economic Co-operation and Development.
- Organization for Economic Cooperation and Development "Aid Effectiveness and Selectivity: Integrating Multiple Objectives into Aid Allocations." OECD DAC/Development Centre Experts' Seminar. Paris, 10 March 2003 <http://www.oecd.org/dataoecd/4/33/18444948.pdf>

Organization for Economic Co-Operation and Development. "Arrangement on Officially Supported Export Credits." OECD.org.
[http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/pg\(2010\)2&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/pg(2010)2&doclanguage=en) (accessed February 15, 2011).

Organization for Economic Co-Operation and Development. "Recommendation on Common Approaches On Environment and Officially Supported Export Credits." OECD.org.
www.oecd.org/dataoecd/26/33/21684464.pdf (accessed February 15, 2011).

Organization for Economic Co-Operation and Development. "Statistics on Export Credit Activities (up to and including the year 2005)." OECD.org.
<http://www.oecd.org/dataoecd/30/35/37931024.pdf> (accessed February 16, 2011).

Organization for Economic Co-Operation and Development. "Principles and Guidelines to Promote Sustainable Lending Practices for the Provision of Export Credit in Low Income Countries" OECD.org.
[http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG\(2008\)1&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG(2008)1&doclanguage=en) (accessed February 15, 2011).

Palacio, Ana. "The Way Forward: Human Rights at the World Bank." World Bank Institute, 2006.

Paul, S., 1998, Making Voice Work: The Report Card on Bangalore's Public Services, Policy Research Working Paper 1921, The World Bank.

People's Union for Civil Liberties v. Union of India & Ors, ESCR Writ Petition (Civil) No.196 of 2001 (Supreme Court of India 2003)

"Peru Country Brief, Development Highlights".2009. The World Bank,
<http://go.worldbank.org/AHUP42HWR0>

"Peru Country Brief, Development Highlights," 2009. The World Bank.
<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/PERUEXTN/0,,menuPK:343633~pagePK:141132~piPK:141107~theSitePK:343623,00.html>

"Peru: World Bank Approves \$200 Million For Social Services, Decentralization And Competitiveness In Peru," 2005. News and Broadcast. The World Bank.
<http://go.worldbank.org/BQSYK4IXS0>.

Pinstrup Andersen, Per, "Agricultural Subsidies Harm the Poor in Developing Countries," in Agricultural Subsidies, ed. Noel Merino (New York: Greenhaven Press, 2010): 85-92.

Potter, Robert. "Chapter 7: Institutions of Development." In Geographies of Development 2nd ed, edited by Robert Potter, Tony Binns, Jennifer Elliott, and David W. Smith. New York: Pearson Press, 2004.

- Ravallion, Martin. 1998 "Reaching Poor Areas in a Federal System", World Bank Research Working Paper. No. 1901,
- Ravallion, Martin. 1999, "Are poorer states worse at targeting their poor?", Economics Letters. 65, pp. 373-377.
- Ravallion, Martin. 2000. "Monitoring Targeting Performance When Decentralized Allocations to the Poor Are Unobserved". World Bank Economic Review. v14 (n2): 331-45.
- Reinikka, R. and Svensson, J. "Assessing Frontline Service Delivery." World Bank, Washington D.C. 2002.
- Research on Poverty Alleviation (REPOA), and Economic and Social Research Foundation (ESRF). 2001. "Pro-poor expenditure tracking." Dar es Salaam.
- Right to Education Indicators*. Right to Education Project: promoting mobilization and legal accountability. <http://www.right-to-education.org/node/860>.
- Right to Education Project. *Reaching the marginalized – 2010 GMR Report (UNESCO press release)*. <http://www.right-to-education.org/es/node/743>. (Accessed 27 January 2011).
- Ross, Doris C., and Richard T. Harmsen. 2001. Official financing for developing countries. Washington, D.C.: International Monetary Fund.
- Runge, C. Ford, Benjamin Senauer, Philip G. Pardey and Mark W. Rosegrant, Ending Hunger in Our Lifetime: Food Security and Globalization, (London: The Johns Hopkins University Press, 2003).
- Schanbacher, William D. 2010. The politics of food: the global conflict between food security and food sovereignty. Santa Barbara, Calif: Praeger Security International.
- Scully, Gerald W. 1991. "Rights, Equity, and Economic Efficiency". Public Choice. 68 (3): 195-215.
- Sen, Anindya. "Is Health Care a Luxury? New Evidence from OECD Data." International Journal of Health Care Finance and Economics, Vol. 5, No. 2 (June, 2005)
- Silverstein, H. 2009. "Varun Gauri and Daniel M. Brinks, eds. Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World". PERSPECTIVES ON POLITICS. 7 (3): 687.
- Stephens, Malcolm. 1999. The changing role of export credit agencies. Washington, D.C.: International Monetary Fund.

"Sustainable Lending and Export Credits." OECD.org. Organization for Economic Cooperation and Development, n.d. Web. 6 Feb. 2011. <www.oecd.org/about/0,3347,e

Suzuki, Eisuke and Suresh Nanwani. "Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks." Michigan Journal of International Law 27.1 (2005): 177-226.

"The International Covenant on Economic, Social and Cultural Rights", last modified 2007. <http://www2.ohchr.org/english/law/cescr.htm>

"The nature of States parties obligations (Art. 2, par.1): CESCR General Comment 3," last modified December 14, 1990, <http://www.unhchr.ch/tbs/doc.nsf/0/94bdbaf59b43a424c12563ed0052b664?Opendocument>.

The Office of the High Commissioner for Human Rights. "The Nature of States Parties Obligations (Art. 2, par.1)." CESCR General Comment 3. http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/94bdbaf59b43a424c12563ed0052b664?Opendocument#*%20Contained%20i (accessed January 16, 2011).

"The Paris Declaration and Accra Agenda for Action, Development Co-operation Directorate. OECD http://www.oecd.org/document/18/0,3343,en_2649_3236398_35401554_1_1_1_1,00.html

The Paris Declaration on Aid Effectiveness (2005), and the Accra Agenda for Action (2008). OECD.

The World Bank. Accountability at the World Bank: The Inspection Panel 10 Years On, 2003.

The World Bank. "Independent Evaluation Group: Impact Evaluation." February 22, 2011. www.worldbank.org/oed/ie/.

The World Bank. "Operation Manual: OP 1.00 – Poverty Reduction." Last modified August, 2004. www.web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064696~menuPK:64701763~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html.

The World Bank. "Projects and Operations: Comprehensive Development Framework." Accessed February 22, 2011. www.web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20120725~menuPK:41393~pagePK:41367~piPK:51533~theSitePK:40941,00.html.

The World Bank. Tunisia: Understanding Successful Socioeconomic Development: A Joint World Bank - Islamic Development Bank Evaluation of Assistance, 2005.

- The World Bank. *The World Bank Group Guarantee Instruments 1990-2007: An Independent Evaluation*, 2009.
- UNICEF. *Millennium Development Goals. Goal: Promote gender quality and empower women*. http://www.unicef.org/mdg/index_genderequality.htm (accessed 7 February 2011).
- United Nations. 1948. *The Universal Declaration of Human Rights*. <http://www.un.org/en/documents/udhr/index.shtml> (accessed January 16, 2011).
- United Nations. 1948. *The Universal Declaration of Human Rights (article 26)*. <http://www.un.org/en/documents/udhr/index.shtml>. (accessed 27 January 2011)
- United Nations. 2005. *Economic, social, and cultural rights: handbook for national human rights institutions*. New York: United Nations, 32.
- United Nations. 2007. *Good governance practices for the protection of human rights*. New York: United Nations, 11.
- United Nations. 2008. *Guidebook on promoting good governance in public-private partnerships*. New York: United Nations, 77.
- United Nations. 2009. *Human Rights of Women*. New York: United Nations.
- United Nations. 2009. *Permanent Forum on Indigenous Issues*. New York: United Nations
- United Nations Children's Fund. *Abolishing School Fees in Africa*. http://www.unicef.org/publications/files/Abolishing_School_Fees_in_Africa.pdf (Accessed 10 February 2011).
- United Nations Children's Fund. *Millennium Development Goals: Goal: Promote gender equality and empower women*. http://www.unicef.org/mdg/index_genderequality.htm. (Accessed 1 February 2011).
- United Nations. "Data and Statistics." World Health Organization. <http://www.who.int/research/en/> (accessed January 20, 2011).
- United Nations Development Programme. 2010. *Thematic Paper on MDG 3: Promote Gender Equality and Empower Women*. http://www.undg.org/docs/11421/MDG3_1954-UNDG-MDG3-LR.pdf. (accessed 8 February 2011)
- United Nations Economic and Social Council. 2007. "Strengthening efforts to eradicate poverty and hunger, including through the global partnership for development". Geneva: U.N. Economic and Social Council.
- United Nations Economic and Social Council. "The Right to the Highest Attainable Standard of Health." CESCR General Comment 14.

www.unhchr.ch/tbs/doc.nsf/%28symbol%29/E.C.12.2000.4.En (accessed January 16, 2011).

United Nations Educational, Scientific, and Cultural Organization.
<http://www.unesco.org/new/en/unesco/> (17 January 2011).

United Nations Educational, Scientific, and Cultural Organization. *EDUCATION FOR ALL BY 2015*. http://portal.unesco.org/education/en/ev.php-ID=42579&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed 27 January 2011)

United Nations Educational, Scientific, and Cultural Organization. *Education for All: Global Monitoring Report. Financial crisis threatens to set back education worldwide, UNESCO report warns*. http://www.unesco.org/new/en/education/themes/leading-theinternationalagenda/efareport/singleview/news/financial_crisis_threatens_to_set_back_education_worldwide_unesco_report_warns-2/ (accessed 1 February 2011)

United Nations Girls' Education Initiative. *Goal 3: Promote Gender Equality and Empower Women*. http://www.ungei.org/whatisungei/index_2589.html. (Accessed 7 February 2011).

United Nations Girls' Education Initiative. *UNICEF and partners help educate children displaced by conflict in DR Congo*. http://www.ungei.org/news/drc_2706.html. (accessed 15 February 2011)

United Nations, Gender Responsive Budgeting and Women's Reproductive Rights: A Resource Pack (New York: UNFPA and UNIFEM, 2006).

United Nations. *International Covenant on Economic, Social, and Cultural Rights*. <http://www2.ohchr.org/english/law/cescr.htm> (accessed January 21, 2011).

United Nations. Millennium Development Goals. *Millennium Development Goals Monitor*. <http://www.mdgmonitor.org/goal1.cfm> (accessed January 15, 2011).

United Nations. *Thematic paper on MDG 2: Achieve Universal Primary Education*. http://www.undg.org/docs/11421/MDG2_1954-UNDG-MDG2-LR.pdf. (Accessed 8 February 2011).

United Nations. *Thematic paper on MDG 3; Promote Gender Equality and Empower Women*. http://www.undg.org/docs/11421/MDG3_1954-UNDG-MDG3-LR.pdf. (Accessed 8 February 2011)

UN Millennium Project, Task Force on Education and Gender Equality. 2005. *Taking Action: Achieving Gender Equality and Empowering Women*. New York: United Nations.

U.S. Agency for International Development, "Strategic Plan: Fiscal Years 2007-2012." Washington D.C.: U.S. Department of State, 2007.

- USAID homepage. United States Agency for International Development. January 24, 2011.
<http://www.usaid.gov/>.
- USAID Honduras. Operational Plan. Washington D.C. : U.S. Agency for International Development, 2006.
- USAID Jordan. Operational Plan. Washington, D.C. : U.S. Agency for International Development, 2006.
- USAID Malawi. Operational Plan. Washington, D.C. : U.S. Agency for International Development, 2006.
- USAID Mozambique. Operational Plan. Washington, D.C. : U.S Agency for International Development, 2006.
- U.S. Department of State & U.S. Agency for International Development. Strategic Plan: Fiscal Years 2007-2012. 2007.
- USAID. Organizational Chart. Washington, D.C.: USAID, 2005. Accessed February 10, 2011.
<http://www.usaid.gov>.
- Visualizing Rights, Cambodia, Fact Sheet Number 7. 2009. Center for Economic and Social Rights, <http://www.cesr.org/downloads/cambodia%20WEB%20CESR%20FINAL.pdf>
- “Visualizing Rights, Kenya,” 2008. Fact Sheet Number 4. Center for Economic and Social Rights.
- Wang, Jian. Officially supported export credits in a changing world . Washington, D.C.: International Monetary Fund, 2005.
- Wedel, Janine. “U.S. assistance for market reforms.” Accessed February 5, 2011.
http://cato.org/pub_display.php?pub_id=1197.
- Wiertsema, Wiert . "Export Credit Debt: How ECA Support to Cooperations Indebts the World's Poor." European ECA Reform Campaign: Briefing Note 5 (2008): n. pag.FERN.org. Web. 6 Feb. 2011. <http://www.oecd.org/dataoecd/42/59/36945707.pdf> (Graphs)
- Wiley, Ellen. "Aspirational Principles or Enforceable Rights?." *American University International Law Review* 22, no. 1 (2006): 35-64.
- Williams, Susan. United Nations Educational, Scientific, and Cultural Organization. *EFA Global Monitoring Report: Financial crisis threatens to set back education worldwide, UNESCO report warns*. http://www.unesco.org/new/en/education/themes/leading-the-internationalagenda/efareport/singleview/news/financial_crisis_threatens_to_set_back_education_worldwide_unesco_report_warns-2/. (Accessed 1 February 2011).

Workshop-Seminar “Indigenous People in Latin America: Health Policies and Programmes, How Much and How Has Progress Been Made?”, Economic Commission for Latin America and the Caribbean (ECLAC), Santiago, Chile, 25 and 26 June 2007.

World Food Program. “Strategic Plan 2008-2013.” Division of Communications and Public Policy Strategy. (Rome: WFP).

World Health Organization. 2010. *World health statistics 2010*. Geneva, Switzerland: World Health Organization.

World Health Organization. “Aid Effectiveness and Health.” Geneva: WHO Press, 2007.

Accessed January 14, 2011.

<https://catalyst.uw.edu/workspace/file/download/e86f2bc794289aece38cd96c93850cab6b6db0bb41b027547f627f0eae1ca354?inline=1>.

Endnotes

1. United Nations Economic and Social Council. "International Covenant on Economic, Social, and Cultural Rights," United Nations Economic and Social Council, 1966.
2. Magdalena Sepulveda, *The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights* (Antwerpen: School of Human Rights Research series, 2003).
3. Committee on Economic, Social and Cultural Rights, "General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)," Center United Nations Economic and Social Council, 2002.
4. Committee on Economic, Social and Cultural Rights, "General Comment No. 20 (2009) Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)," United Nations Economic and Social Council, 2009.
5. Committee on Economic, Social and Cultural Rights, "Report on the forty-second and forty-third sessions," United Nations Economic and Social Council, 2009.
6. Unesco (United Nations). 2010. *EFA Global Monitoring Report: Reaching the Marginalized*. United Nations Educational, Scientific, and Cultural Organization (UNESCO). 1.
7. Williams, Susan. United Nations Educational, Scientific, and Cultural Organization. *EFA Global Monitoring Report: Financial crisis threatens to set back education worldwide, UNESCO report warns*. http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/efareport/single-view/news/financial_crisis_threatens_to_set_back_education_worldwide_unesco_report_warns-2/. (Accessed 1 February 2011).
8. ICRA Industry Report on Indian Healthcare. 2008
9. Glenngard, A., Hjalte, F., Svennson, M., Anell, A., & Bankauskaite, V. (2005). *Health Systems in Transition: Sweden*. WHO Regional Office for Europe, 2005
10. Committee on Economic, Social and Cultural Rights, "An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant," United Nations Economic and Social Council, revised September 21, 2007.
11. Committee on Economic, Social and Cultural Rights, "An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant," United Nations Economic and Social Council, revised September 21, 2007.
12. Committee on Economic, Social and Cultural Rights. 2003. General Comment No. 15 (2002)
13. *The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*. United Nations Economic and Social Council, E/C.12/2002/11 (accessed 16 January 2011).
14. Committee on Economic, Social and Cultural Rights. 2008. *GENERAL COMMENT NO. 19*
15. *The right to social security (art. 9)*. United Nations Economic and Social Council, E/C.12/GC/19 (accessed 16 January 2011).
16. Carmona, Magdalena Sepulveda. 2009. "The obligations of 'international assistance and cooperation' under the International Covenant on Economic, Social and Cultural Rights. A possible entry point to a human rights based approach to Millennium Development Goal 8." *International Journal of Human Rights* 13, no. 1: 86-109. *Academic Search Complete*, EBSCOhost (accessed January 15, 2011).
17. Committee on Economic, Social and Cultural Rights, "An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant," United Nations Economic and Social Council, revised September 21, 2007.
18. Committee on Economic, Social and Cultural Rights. 2003. General Comment No. 15 (2002)
19. *The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*. United Nations Economic and Social Council, E/C.12/2002/11 (accessed 16 January 2011).
20. Committee on Economic, Social and Cultural Rights, "An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant," United Nations Economic and Social Council, revised September 21, 2007.
21. Committee on Economic, Social and Cultural Rights. 2003. General Comment No. 15 (2002)
22. *The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*. United Nations Economic and Social Council, E/C.12/2002/11 (accessed 16 January 2011).
23. Committee on Economic, Social and Cultural Rights. 2008. *GENERAL COMMENT NO. 19*
24. *The right to social security (art. 9)*. United Nations Economic and Social Council, E/C.12/GC/19 (accessed 16 January 2011).

25. Committee on Economic, Social and Cultural Rights. 2008. *GENERAL COMMENT NO. 19 The right to social security (art. 9)*. United Nations Economic and Social Council, E/C.12/GC/19 (accessed 16 January 2011).
26. Committee on Economic, Social and Cultural Rights, "An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant," United Nations Economic and Social Council, revised September 21, 2007.
27. United Nations Economic and Social Council. "International Covenant on Economic, Social, and Cultural Rights," United Nations Economic and Social Council, 1966.
28. Magdalena Sepulveda, *The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights* (Antwerpen: School of Human Rights Research series, 2003).
29. Committee on Economic, Social and Cultural Rights, "General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)," Center United Nations Economic and Social Council, 2002.
30. *Ibid.*
31. Committee on Economic, Social and Cultural Rights, "General comment No. 18 the right to work, adopted on 24 November 2005 Article 6 of the International Covenant on Economic, Social and Cultural Rights," United Nations Economic and Social Council, 2006.
32. Committee on Economic, Social and Cultural Rights, "Report on the thirty-fourth and thirty-fifth sessions," United Nations Economic and Social Council, 2005.
33. Committee on Economic, Social and Cultural Rights, "General Comment No. 20 (2009) Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)," United Nations Economic and Social Council, 2009.
34. *Ibid.*
35. Committee on Economic, Social and Cultural Rights, "Report on the forty-second and forty-third sessions," United Nations Economic and Social Council, 2009.
36. Magdalena Sepulveda, *The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights*, (Utrecht University, 2002), pp. 319 – 376.
37. Committee on Economic, Social and Cultural Rights, "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Netherlands," revised December 9, 2010.
38. Committee on Economic, Social and Cultural Rights, "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Sweden," revised December 1, 2008.
39. Committee on Economic, Social and Cultural Rights, "Report on the forty-second and forty-third sessions," Economic and Social Council, revised November 2009.
40. Human Rights Council, "Report of the Human Rights Council," Economic and Social Council, revised 2006.
41. Committee on Economic, Social and Cultural Rights, "General Comments No. 15," Committee on Economic, Social and Cultural Rights, revised January 20, 2003.
42. Committee on Economic, Social and Cultural Rights, "General Comments No. 19," Committee on Economic, Social and Cultural Rights, revised February 4, 2008.
43. Committee on Economic, Social and Cultural Rights, "Report on the forty-second and forty-third sessions," Economic and Social Council, revised November 2009.
44. Committee on Economic, Social and Cultural Rights, "The Millennium Development Goals and economic, social and cultural rights: joint statement by the Committee and the Special Rapporteurs on economic, social and cultural rights of the Commission on Human Rights," Committee on Economic, Social and Cultural Rights, revised November 29, 2002.
45. Committee on Economic, Social and Cultural Rights, "General Comments No. 15."
46. Committee on Economic, Social and Cultural Rights, "General Comments No. 18," Committee on Economic, Social and Cultural Rights, revised February 4, 2008, p. 13.
47. *Ibid.*
48. Magdalena Sepulveda, p. 358.
49. Committee on Economic, Social and Cultural Rights, "General Comment No. 15."
50. *Ibid.*
51. For examples of accomplishments in PR towards the right to education noted by the Committee, Concluding Observations for (2010) the Netherlands, Kazakhstan, Mauritius, Afghanistan, Algeria, and (2008) Kenya, Benin.
52. For examples of accomplishments in PR towards the right to health noted by the Committee, Concluding Observations for (2010) Uruguay, Dominican Republic, Kazakhstan, Mauritius, Afghanistan, Algeria, and (2008) Sweden, India.

53. Committee on Economic, Social and Cultural Rights, “Concluding observations of the Committee on Economic, Social and Cultural Rights: Korea,” Committee on Economic and Social Rights, revised December 17, 2009.
54. Committee on Economic, Social and Cultural Rights, “Concluding observations of the Committee on Economic, Social and Cultural Rights: Bolivia,” Committee on Economic, Social and Cultural Rights, revised August 8, 2008.
55. Economic and Social Council, “Report of the United Nations High Commissioner for Human Rights,” Economic and Social Council, revised June 25, 2007.
56. Committee on Economic, Social and Cultural Rights, “Report on the forty-second and forty-third sessions.”
57. General Assembly, “Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,” United Nations, revised March 5, 2009.
58. General Assembly, “Optional Protocol.”
59. Human Rights Milestone: New protocol boosts economic, social, and cultural rights, available at: <http://www.un.org/en/events/tenstories/08/humanrights.shtml>.
60. United Nations. 1948. *The Universal Declaration of Human Rights (article 26)*. <http://www.un.org/en/documents/udhr/index.shtml#a26>. (accessed 27 January 2011)
61. *ibid*
62. Williams, Susan. United Nations Educational, Scientific, and Cultural Organization. *EFA Global Monitoring Report: Financial crisis threatens to set back education worldwide, UNESCO report warns*. http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/efareport/single-view/news/financial_crisis_threatens_to_set_back_education_worldwide_unesco_report_warns-2/. (Accessed 1 February 2011).
63. Williams. UNESCO
64. *ibid*
65. Right to Education Project. *Reaching the marginalized – 2010 GMR Report (UNESCO press release)*. <http://www.right-to-education.org/es/node/743>. (Accessed 27 January 2011).
66. *ibid*
67. Committee on Economic, Social and Cultural Rights. 1999. *GENERAL COMMENT NO. 13 the right to education (art. 13)*. United Nations Economic and Social Council, E/C.12/1999/10 (accessed 16 January 2011).
68. Committee on Economic, Social and Cultural Rights
69. Committee on Economic, Social and Cultural Rights
70. Committee on Economic, Social and Cultural Rights
71. Committee on Economic, Social and Cultural Rights
72. Committee on Economic, Social and Cultural Rights
73. Committee on Economic, Social and Cultural Rights
74. Committee on Economic, Social and Cultural Rights
75. Committee on Economic, Social and Cultural Rights
76. Committee on Economic, Social and Cultural Rights
77. Committee on Economic, Social and Cultural Rights
78. Committee on Economic, Social and Cultural Rights
79. Committee on Economic, Social and Cultural Rights
80. Committee on Economic, Social and Cultural Rights
81. Committee on Economic, Social and Cultural Rights
82. Committee on Economic, Social and Cultural Rights
83. Committee on Economic, Social and Cultural Rights
84. United Nations. “Goal 2: Achieve Universal Primary Education”. *We Can End Poverty: 2015 Millennium Development Goals*, September 20-22, 2010. http://www.un.org/millenniumgoals/pdf/MDG_FS_2_EN.pdf
85. *ibid*
86. *ibid*
87. United Nations. Millennium Development Goals
88. United Nations. Millennium Development Goals
89. United Nations. Millennium Development Goals
90. United Nations. Millennium Development Goals
91. United Nations. Millennium Development Goals
92. United Nations Girls’ Education Initiative. *Goal 3: Promote Gender Equality and Empower Women*. http://www.ungei.org/whatisungei/index_2589.html. (Accessed 7 February 2011).
93. ¹ UNICEF. *Millennium Development Goals. Goal: Promote gender quality and empower women*. http://www.unicef.org/mdg/index_genderequality.htm. (accessed 7 February 2011)

94. *ibid*
95. *ibid*
96. United Nations. *Thematic paper on MDG 3; Promote Gender Equality and Empower Women*.
http://www.undg.org/docs/11421/MDG3_1954-UNDG-MDG3-LR.pdf. (Accessed 8 February 2011)
97. *ibid*
98. *ibid*
99. *ibid*
100. *ibid*
101. United Nations. *Thematic paper on MDG 2*
102. United Nations. *Thematic paper on MDG 2*
103. Williams. UNESCO
104. Right to Education Project
105. Williams. UNESCO
106. Williams. UNESCO
107. Williams. UNESCO
108. Williams. UNESCO
109. Williams. UNESCO
110. Williams. UNESCO
111. Williams. UNESCO
112. Right to Education Project.
113. DECLARATION OF ALMA-ATA. International Conference on Primary Health Care,
114. Alma-Ata, USSR, 6-12 September 1978.
115. Hofbauer, Helena, and Gabriel Lara. "Health Care: a Question of Human Rights, Not Charity." FUNDAR.
www.fundar.org.mx/index.html/.../doc-healthcarequestionofhumanrights.pdf (accessed January 20, 2011). pg 3.
116. Hofbauer, Helena, and Gabriel Lara. pg3.
117. United Nations. "International Covenant on Economic, Social and Cultural Rights."
a. OHCHR . <http://www2.ohchr.org/english/law/cescr.htm> (accessed January 16, 2011).
118. United Nations Economic and Social Council. "The Right to the Highest Attainable Standard of Health." CESCR
General Comment 14. www.unhcr.ch/tbs/doc.nsf/%28symbol%29/E.C.12.2000.4.En (accessed January 16, 2011).
119. Department of Social and Economic Affairs of the United Nations Secretariat. The Millennium Development Goals
Report 2010. <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf> (accessed January 15, 2011).
120. World Health Organization. 2010. *World health statistics 2010*. Geneva, Switzerland: World Health Organization.
121. United Nations. "Data and Statistics." World Health Organization. <http://www.who.int/research/en/> (accessed
January 20, 2011).
122. CESCR General Comment 14.
123. CESCR General Comment 14.
124. CESCR General Comment 14.
125. Ooms, Gorik. "Towards a Global Health Fund: Extending the Health Finance
a. Revolution of the Fight Against AIDS to General Health Services." *Budget*
b. *Brief* 4 (2008): 1.
126. "The Universal Declaration of Human Rights." United Nations. <http://www.un.org/en/documents/udhr/index.shtml>
(accessed January 16, 2011).
127. "Data and Statistics." World Health Organization.
128. The Millennium Development Goals Report 2010. Pg 26.
129. The Millennium Development Goals Report 2010. Pg 26.
130. The Millennium Development Goals Report 2010. Pg 26.
131. The Millennium Development Goals Report 2010. Pg 26.
132. The Millennium Development Goals Report 2010. Pg 27.
133. The Millennium Development Goals Report 2010. Pg 27.
134. The Millennium Development Goals Report 2010. Pg 27.
135. The Millennium Development Goals Report 2010. Pg 27.
136. The Millennium Development Goals Report 2010. page 26-28
137. The Millennium Development Goals Report 2010. Pg 30.
138. The Millennium Development Goals Report 2010. Pg 30.
139. The Millennium Development Goals Report 2010. Pg 31.

140. *World Health Statistics 2010*. Pg 18.
141. The Millennium Development Goals Report 2010. Pg 37.
142. The Millennium Development Goals Report 2010. Pg 36.
143. The Millennium Development Goals Report 2010. Pg 40.
144. The Millennium Development Goals Report 2010. Pg 40.
145. The Millennium Development Goals Report 2010. Pg 41.
146. The Millennium Development Goals Report 2010. Pg 46.
147. The Millennium Development Goals Report 2010. Pg 47.
148. The Millennium Development Goals Report 2010. Pg 47.
149. The Millennium Development Goals Report 2010. Pg 47.
150. The Millennium Development Goals Report 2010. Pg 50.
151. The Millennium Development Goals Report 2010. Pg 50.
152. The Millennium Development Goals Report 2010. Pg 51.
153. Gostin, Lawrence O. "The Human Right to Health: a Right to the "Highest Attainable Standard of Health"." *The Hastings Center Report* 31, no. 29 (2001): 30.
154. CESCR General Comment 14.
155. CESCR General Comment 14.
156. The Office of the High Commissioner for Human Rights. "The Nature of States Parties Obligations (Art. 2, par.1)." CESCR General Comment 3.
http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/94bdbaf59b43a424c12563ed0052b664?Opendocument#*%20Contentained%20i (accessed January 16, 2011).
157. DECLARATION OF ALMA-ATA.
158. *The World Health Report 2010*. Pg 8.
159. Ooms, Gorik. pg 3.
160. *The World Health Report 2010*. Pg 8.
161. *The World Health Report 2010*. Pg xvii.
162. CESCR General Comment 14.
163. *The World Health Report 2010*. Pg xviii.
164. Gostin, Lawrence O. Pg 3.
165. *The World Health Report 2010*. Pg xix.
166. *The World Health Report 2010*. Pg xix.
167. The Paris Declaration on Aid Effectiveness (2005), and the Accra Agenda for Action (2008). OECD.
168. Accra Agenda for Action (2008).
169. The Paris Declaration on Aid Effectiveness (2005)
170. The Paris Declaration on Aid Effectiveness (2005)
171. Accra Agenda for Action (2008).
172. Gostin, Lawrence O. Pg 3.
173. CESCR General Comment 14.
174. Wiley, Ellen. "Aspirational Principles or Enforceable Rights?." *American University International Law Review* 22, no. 1 (2006): 35-64.
175. United Nations. Millennium Development Goals. *Millennium Development Goals Monitor*.
<http://www.mdgmonitor.org/goal1.cfm> (accessed January 15, 2011).
176. Food and Agriculture Organization of the United Nations. 2009. *The state of food insecurity in the world*. Rome, Italy: Food and Agriculture Organization of the United Nations, 1.
177. Runge, C. Ford, Benjamin Senauer, Philip G. Pardey and Mark W. Rosegrant, *Ending Hunger in Our Lifetime: Food Security and Globalization*, (London: The Johns Hopkins University Press, 2003), 14.
178. Food and Agriculture Organization of the United Nations. 2010. *The state of food insecurity in the world*. Rome, Italy: Food and Agriculture Organization of the United Nations, 8.
179. Schanbacher, William D. 2010. *The politics of food: the global conflict between food security and food sovereignty*. Santa Barbara, Calif: Praeger Security International, vii.
180. FAO, *The State of Food Insecurity*, 2009, 8.
181. United Nations. *International Covenant on Economic, Social, and Cultural Rights*.
<http://www2.ohchr.org/english/law/cescr.htm> (accessed January 21, 2011).
182. U.N. Economic and Social Council. Committee on Economic, Social, and Cultural Rights, 20th Session. CESCR General Comment 12. "The Right to Adequate Food."

- [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument) (accessed January 25, 2011), paragraph 6.
- 183.CESCR, General Comment 12, paragraphs 8-15.
- 184.Ibid., paragraph 17.
- 185.Runge et al. "Ending Hunger," 181.
- 186.Department of Social and Economic Affairs of the United Nations Secretariat. *The Millennium Development Goals Report 2010*. <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf> (accessed January 15, 2011 8).
- 187.Ibid., 8.
- 188.Ibid., 7.
- 189.United Nations Economic and Social Council. 2007. "Strengthening efforts to eradicate poverty and hunger, including through the global partnership for development". Geneva: U.N. Economic and Social Council, 5.
- 190.Department of Social and Economic Affairs, *MDG Report 2010*, 10.
- 191.Department of Social and Economic Affairs, *MDG Report 2010*, 11.
- 192.Ibid., 12.
- 193.CESCR, General Comment 12.
- 194.Food and Agricultural Organization. "The technology challenge." *How to Feed the World in 2050*. Rome, Italy: October 2009, 2.
- 195.FAO, *The State of Food Insecurity*, 2010, 10.
- 196.FAO, "The technology challenge", 2.
- 197.Food and Agricultural Organization. "Global agricultural towards 2050." *How to Feed the World in 2050*. Rome, Italy: October 2009, 1-2.
- 198.Food and Agriculture Organization. "How to Feed the World in 2050." *How to feed the world in 2050*, Rome, Italy: October 2009, 8.
- 199.International Fund for Agricultural Development. "Rural Poverty Report: New realities, challenges: new opportunities for tomorrow's generation," (Rome: Quintily, 2010), 155.
- 200.Department of Social and Economic Affairs, *MDG Report 2010*, 6.
- 201.United Nations. MDG Monitor.
- 202.IFAD, "Rural Poverty Report," 30.
- 203.FAO, "How to Feed the World by 2050," 29.
- 204.World Food Program. "Strategic Plan 2008-2013." Division of Communications and Public Policy Strategy. (Rome: WFP), 17.
- 205.FAO, "How to Feed the World by 2050," 30.
- 206.IFAD, "Rural Poverty Report," 94.
- 207.FAO, "Global agriculture towards 2050," 4.
- 208.FAO, "How to Feed the World in 2050," 23.
- 209.IFAD, "Rural Poverty Report," 17.
- 210.Ibid., 96.
- 211.IFAD "Rural Poverty Report," 115.
- 212.FAO, "How to Feed the World in 2050," 27.
- 213.IFAD, "Rural Poverty Report," 116.
- 214.Ibid., 114.
- 215.Congressional Budget Office, "Policies that Distort World Agricultural Trade: Prevalence and Magnitude," in *Agricultural Subsidies*, ed. Noel Merino (New York: Greenhaven Press, 2010), 23.
- 216.Ibid., 24.
- 217.European Union. *Financial Programming and Budget of the European Union*. http://ec.europa.eu/budget/budget_glance/what_for_en.htm, (accessed February 11, 2011).
- 218.Runge et al., "Ending Hunger," 62.
- 219.Ibid., 64.
- 220.Ibid., 62.
- 221.Ibid., 64.
- 222.FAO, "How to Feed the World in 2050," 8.
- 223.FAO, "The technology challenge," 1.
- 224.Food and Agricultural Organization. *2050: A third more mouths to feed*. <http://www.fao.org/news/story/en/item/35571/icode/> (accessed January 28, 2011).
- 225.FAO, "The technology challenge," 1.

226. IFAD, "Rural Poverty Report," 20.
227. Runge et al., "Ending Hunger," 93.
228. IFAD, "Rural Poverty Report," 20.
229. FAO, *The State of Food Insecurity*, 2010, 27.
230. *Ibid.*, 4.
231. Runge et al., "Ending Hunger," 181.
232. FAO, *The State of Food Insecurity*, 2010, 28.
233. *Ibid.*, 31.
234. WFP, "Strategic Report 2008-2013," 13.
235. *Ibid.*, 13.
236. Runge et al., "Ending Hunger," 138.
237. United Nations Economic and Social Council, "Strengthening efforts," 6.
238. FAO, "Global Agriculture towards 2050," 4.
239. FAO, "How to Feed the World in 2050," 16.
240. FAO, "Global Agriculture towards 2050," 4.
241. Runge et al., "Ending Hunger," 137.
242. *Ibid.*, 142.
243. *Ibid.*, 155-57.
244. FAO, *The State of Food Insecurity*, 2010, 47.
245. WFP, "Strategic Report 2008-2013," 29-30.
246. Food and Agricultural Organization of the United Nations. *World Summit on Food Security: Feeding the World, Eradicating Hunger*. Rome, Italy. 2009. <ftp://ftp.fao.org/docrep/fao/Meeting/018/k6077e.pdf> (accessed January 15, 2011), 8-12.
247. Pinstrip Andersen, Per, "Agricultural Subsidies Harm the Poor in Developing Countries," in *Agricultural Subsidies*, ed. Noel Merino (New York: Greenhaven Press, 2010): 92.
248. Nath, Kamal, "Instead of Funding Agricultural Subsidies, Resources Should be Used for World Hunger," in *Agricultural Subsidies*, ed. Noel Merino (New York: Greenhaven Press, 2010): 208.
249. FAO, *The State of Food Insecurity*, 2010, 31.
250. FAO, "How to Feed the World in 2050," 15.
251. Runge et al., "Ending Hunger," 186.
252. Runge et al., "Ending Hunger," 190.
253. *The State of World Food Insecurity*, 48
254. FAO, *The State of Food Insecurity*, 2010, 45.
255. *Ibid.*, 47.
256. Colombian Constitutional Court, "Judgment T-760/08," Colombian Constitutional Court, revised July 31st, 2008.
257. *Ibid.*
258. Colombian Constitutional Court, "Judgment T-760/08," Colombian Constitutional Court, revised July 31st, 2008.
259. *Ibid.*
260. *Ibid.*
261. Magdalena Sepulveda, *The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights* (Antwerpen: School of Human Rights Research series, 2003).
262. Colombian Constitutional Court, "Decision C 376/10," Colombian Constitutional Court, revised May 19, 2010.
263. People's Union for Civil Liberties v. Union of India & Ors, ESCR Writ Petition (Civil) No.196 of 2001 (Supreme Court of India 2003)
264. "Rajasthan PUCL Writ in Supreme Court on Famine Deaths," Rajasthan PUCL, revised November 2010, <http://www.pucl.org/reports/Rajasthan/2001/starvation-writ.htm>
265. Supreme Court, "People's Union for Civil Liberties v. Union of India & Ors, ESCR Writ Petition (Civil) No.196 of 2001," revised 2003.
266. "Rajasthan PUCL Writ in Supreme Court on Famine Deaths," Rajasthan PUCL, revised November 2010, <http://www.pucl.org/reports/Rajasthan/2001/starvation-writ.htm>
267. "Rajasthan PUCL Writ in Supreme Court on Famine Deaths," Rajasthan PUCL, revised November 2010, <http://www.pucl.org/reports/Rajasthan/2001/starvation-writ.htm>
268. "Rajasthan PUCL Writ in Supreme Court on Famine Deaths," Rajasthan PUCL, revised November 2010, <http://www.pucl.org/reports/Rajasthan/2001/starvation-writ.htm>
269. Supreme Court of India, "Interim Order of May 2, 2003," revised May 2, 2003.

270. Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, ESCR W.P.(C) Nos. 8853 of 2008. (High Court of Delhi 2010)
271. Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, ESCR W.P.(C) Nos. 8853 of 2008. (High Court of Delhi 2010)
272. High Court of Delhi, “Manal Court Decision,” revised April 6, 2010, http://www.escrnet.org/usr_doc/Mandal_Court_Decision.pdf.
273. High Court of Delhi, “Manal Court Decision,” revised April 6, 2010, http://www.escrnet.org/usr_doc/Mandal_Court_Decision.pdf.
274. Helena Hofbauer, “Challenging Poverty and Inequality through Human Rights: International Strategy Meeting on Economic, Social, and Cultural Rights and ESCR-NET General Assembly,” Nairobi, Kenya, revised December 14, 2008.
275. Chapter 2, Bill of Rights, Constitution of South Africa, available at: <http://www.info.gov.za/documents/constitution/1996/96cons2.htm>.
276. Botha, J. High Court Justice, “In the High Court of South Africa, (Transvaal Provincial Division), Case No.: 21182/2001,” The High Court of South Africa, revised 2002.
277. The Constitutional Court of South Africa, “Thiagraj Soobramoney versus Minister of Health (Kwazulu-Natal) Case CCT 32/97,” The Constitutional Court of South Africa, revised 1997, pp. 2-4.
278. South Africa, Constitution. Chapter 2, Section 27(3).
279. Constitutional Court, “Thiagraj Soobramoney vs. Minister of Health,” p. 5.
280. Ibid, p. 7.
281. Ibid, p. 17.
282. The Constitutional Court of South Africa, “Soobramoney v. Minister of Health (Kwazulu-Natal),” ESCR-Net, revised 2005, www.escr-net.org/caselaw/caselaw_show.htm?doc_id=673074.
283. Botha, J. pp. 45-49.
284. The Constitutional Court of South Africa, “Minister of Health v Treatment Action Campaign (TAC) (2002) 5 SA 721 (CC),” ESCR-Net, revised 2002, www.escr-net.org/caselaw/caselaw_show.htm?doc_id=403050&country=13630.
285. Botha, J. p. 7.
286. The Constitutional Court of South Africa, “Khosa & Ors v Minister of Social Development & Ors. 2004(6) BCLR 569 (CC),” ESCR-Net, revised 2004, www.escr-net.org/caselaw/caselaw_show.htm?doc_id=401099.
287. The Constitutional Court of South Africa, “Khosa & Ors v Minister of Social Development & Ors. 2004(6) BCLR 569 (CC),”
288. Lindiwe Mazibuko & Others v City of Johannesburg & Others, Case CCT 39/09, [2009] ZACC 28, South Africa, ESCR-Net, 2009, available at: http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=1110326&country=13630.
289. Magdalena Sepulveda, p. 337.
290. The Constitutional Court of South Africa, “Full Text of Judgment on Port Elizabeth Municipality versus Various Occupiers,” The Constitutional Court of South Africa, revised October 1, 2004.
291. The Constitutional Court of South Africa, “Full Text of Judgment,” p. 12.
292. The Constitutional Court of South Africa, “Full Text of Judgment on Port Elizabeth Municipality versus Various Occupiers.”
293. Lilian Chenwi, “Putting Flesh on the Skeleton: South African Judicial Enforcement of the Right to Adequate Housing of Those Subject to Evictions,” *Human Rights Law Review* (February, 2008).
294. Port Elizabeth Municipality, “Applicant’s Heads of Argument,” The Constitutional Court of South Africa, revised December 22, 2003.
295. Port Elizabeth Municipality, “Applicant’s Heads of Argument.”
296. Ibid.
297. Various Occupiers of Erven 113 to 128 inclusive, Lorraine, Port Elizabeth, “Respondents’ Written Response to Applicant’s Argument in the Aforesaid Matter,” The Constitutional Court of South Africa, revised May 28, 2004.
298. The Constitutional Court of South Africa, “Full Text of Judgment on Port Elizabeth Municipality versus Various Occupiers.”
299. Ibid.
300. The Constitutional Court of South Africa, “Full Text of Judgment on the President of the Republic of South Africa and Modderklip Boerdery (Pty) Ltd,” The Constitutional Court of South Africa, revised May 13, 2005.
301. The President of the Republic of South Africa and the Minister of Agricultural and Land Affairs, “Applicants’ Main Heads of Argument,” The Constitutional Court of South Africa, September, 2004.

302. The President of the Republic of South Africa and the Minister of Agricultural and Land Affairs, “Applicants’ Main Heads of Argument.”
303. Modderklip Boerdery (Pty) Ltd, “Respondent’s Written Argument,” The Constitutional Court of South Africa, revised September, 2004.
304. Modderklip Boerdery (Pty) Ltd, “Respondent’s Written Argument”
305. Ibid.
306. Occupiers of 51 Olivia Road, “Applicant’s Heads of Argument,” The Constitutional Court of South Africa, revised July 30, 2007.
307. Occupiers of 51 Olivia Road, “Applicant’s Heads of Argument”
308. Ibid.
309. Ibid.
310. Ibid.
311. The Constitutional Court of South Africa, “Full Text of Judgment,” The Constitution Court of South Africa, revised February 19, 2008.
312. The Constitutional Court of South Africa, “Full Text of Judgment.”
313. Lilian Chenwi, “Putting Flesh on the Skeleton: South African Judicial Enforcement of the Right to Adequate Housing of Those Subject to Evictions,” pp.130.
314. BusinessDictionary. Available at: <http://www.businessdictionary.com/definition/efficiency.html>
315. “Note to Task Force on Achieving Human Rights Through the Government Budget” Research Outline for UW.
316. Philip Musgrove and Julia Fox-Rushby, “Economics and Cost Effectiveness,” The International Bank for Reconstruction and Development/The World Bank, revised 2006
317. Peter Herrmann, Arno Tausch, Almas Heshmati and Cheman Bajalan, “Efficiency and Effectiveness of Social Spending,” Institute for the Study of Labor, revised May 2008
318. Ulrich Boser, “Return on Educational Investment,” Center for American Progress, revised January 19, 2011
319. Boser, “Return on Educational Investment”
320. Boser, “Return on Educational Investment”
321. Milton Weinstein and Jonathan Skinner, “Comparative Effectiveness and Health Care Spending—Implications for Reform,” *The New England Journal of Medicine* (February 2010)
322. Weinstein and Skinner “Comparative Effectiveness”
323. Maggie Mahar, “Comparative vs. Cost-Effectiveness,” available at <http://takingnote.tcf.org/2008/06/comparative-vs.html>
324. “Development Effectiveness,” The World Bank, revised July 30, 2009
325. Andy Norton and Diane Elson, “What’s behind the budget? Politics, rights and accountability in the budget process,” Overseas Development Institute, revised 2002
326. Nancy Birdsall and Wren Elhai, “Shared Goals: Measuring Overall Development Progress in Pakistan,” Center for Global Development, revised January, 2011
327. Birdsall and Elhai, “Shared Goals”
328. Miriam P Kluger, Nelson Rivera and Marie Mormile-Mehler, “Defining and Measuring Program Effectiveness at a Mental Health Social Services Agency,” *Families in society: The Journal of Contemporary Human Services*, (2001), pp 1044-3894
329. Norton and Elson, “What’s behind the budget?”
330. Norton and Elson, “What’s behind the budget”
331. Sanjeev Gupta, Benedict Clemets and Erwin Tiongson, “Public Spending on Human Development,” *Finance & Development: Quarterly Magazine of the IMF*, (September 1998), pp. 10-13
332. Anil Deolalikar, Dean Jamison, Prabhat Jha and Ramanan Laxminarayan, “Financing Health Improvements in India,” *Health Affairs*, (August 2008), pp. 978-990
333. Kluger, Rivera and Mormile-Mehler, “Defining Effectiveness”
334. “Governance and Development,” OECD available at http://www.oecd.org/department/0,3355,en_2649_34565_1_1_1_1_1,00.html
335. Dennis Arroyo and Karen Sirker, “Stocktaking of Social Accountability Initiatives in the Asia and Pacific Region,” The World Bank Institute, revised 2005
336. Norton and Elson, “What’s behind the budget”
337. Arroyo and Sirker, “Stocktaking of Social Accountability Initiatives”
338. Hans Binswanger-Mkhize, Jacomina de Regt and Stephen Spector, *Local and community driven development: moving to scale in theory and practice*, (Washington D.C.: The World Bank 2010), p. 189
339. Arroyo and Sirker, “Stocktaking of Social Accountability Initiatives”

- 340.Arroyo and Sirker, “Stocktaking of Social Accountability Initiatives”
- 341.UN: International Covenant on Social, Economic and, Cultural Rights, Article 2:1, 1996
- 342.UN Treaty Collection: International Covenant on Economic, Social and Cultural Rights. 2009
- 343.*An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” Under an Optional Protocol, to the Covenant.* UN Committee on Social, Economic and Cultural Rights. Comment March, 2007
- 344.ICESCR, Article 12:1
- 345.*An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” Under an Optional Protocol, to the Covenant.* UN Committee on Social, Economic and Cultural Rights. Comment 10. March, 2007
- 346.*An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” Under an Optional Protocol, to the Covenant.* UN Committee on Social, Economic and Cultural Rights. Comments 4, 5, &6 . March, 2007
- 347.*Dignity Counts.* IBP Report on Budgets Through Rights. 2004. p 30
- 348.*Dignity Counts.* IBP Report on Budgets Through Rights. 2004. p 30
- 349.*Dignity Counts.* IBP Report on Budgets Through Rights. 2004. p 30
- 350.*Dignity Counts.* IBP Report on Budgets Through Rights. 2004. p 30
- 351.Universal Declaration of Human Rights. Article 25:1. 1948
- 352.International Covenant on Economic, Social and Cultural Rights. Article 12. 1966
- 353.Ibid.
- 354.Constitution of India. 1949
- 355.Mukherji, Srimoti. *Health Indicators.* International Trade Administration. India. 2005
- 356.*Healthcare In India: A Report By Boston Analytics.* Boston Analytics. 2009
- 357.Mukherji
- 358.The World Health Organization. India’s National Health Policy. 2000
- 359.Mukherji
- 360.Mukherji
- 361.ICRA Industry Report on Indian Healthcare. 2008
- 362.Technology, Information, Forecasting, and Assessment Council. 2008
- 363.Mariam-Webster Medical Dictionary. 2008
- 364.Glennard, A., Hjalte, F., Svennson, M., Anell, A., & Bankauskaite, V. (2005). *Health Systems in Transition: Sweden.* WHO Regional Office for Europe, 2005
- 365.Organization for Economic Cooperation and Development (OECD). *Health Data.* 2006
- 366.World Health Organization. *Facts by Country* <http://www.who.int/countries/en/>
- 367.WHO (above)
- 368.CIA World Fact Book. India. 2006
- 369.CIA World Fact Book. Sweden. 2006
- 370.Neeru Gupta, Pascal Zurn, Khassoum Diallo, and Mario R Dal Poz, “Uses of Population Census Data for Monitoring Geographical Imbalance in the Health Workforce,” (2003), 2:11.
- 371.“Visualizing Rights, Cambodia,” Fact Sheet Number 7. Center for Economic and Social Rights, (2009).
- 372.Branko Milanovic, “Conflict Between Horizontal Equity and Maximum Poverty Reduction, How Best to Allocate Funds to Regions”, *Asia and Pacific Forum on Poverty: Reforming Policies and Institutions for Poverty Reduction*, (Feb 2001).
- 373.“East Asia Decentralizes: Making Local Government Work,” Washington, D.C.: World Bank. (2005).
- 374.“East Asia Decentralizes: Making Local Government Work,” Washington, D.C.: World Bank. (2005).
- 375.Neeru Gupta, Pascal Zurn, Khassoum Diallo, and Mario R Dal Poz, “Uses of Population Census Data for Monitoring Geographical Imbalance in the Health Workforce,” (2003), 2:11.
- 376.Gupta, Neeru, Zurn, Pascal, Diallo, Khassoum, and Dal Poz, Mario R. 2003.
- 377.Martin Ravallion, “Monitoring Targeting Performance when Decentralized Allocations to the Poor are Unobserved”. *World Bank Economic Review.* V14 (n2): 331-45. (2000).
- 378.Daniel Cotlear “Making Accountability Work- lessons from RECURSO”. *En Breve, The World Bank.* (Sept 2008).
- 379.International Covenant on Economic, Social and Cultural Rights. Part 2, Article 2.
- 380.Sanjeev Gupta, Benedict Clements and Erwin Tiongson, “Public Spending on Human Development,” *Finance & Development: Quarterly Magazine of the IMF*, volume 35 no. 3 (1998).
- 381.Sanjeev Gupta, Benedict Clements and Erwin Tiongson, “Public Spending on Human Development,” *Finance & Development: Quarterly Magazine of the IMF*, volume 35 no. 3 (1998).
- 382.Sanjeev Gupta, Benedict Clements and Erwin Tiongson (1998).

383. Nanak Kakwani, and Hyun H. Son, "Evaluating Targeting Efficiency of Government Programmes International Comparisons," *UNU World Inst. for Development Economics Research* (UNU/WIDER), (2006).
384. Nanak Kakwana, and Hyun H. Son, (2006).
385. David S Kraybil, and Bernard Bashaasha. "The Potential Gains from Geographical Targeting of Anti-poverty Programs in Uganda", *AfJARE*, (Dec. 2006).
386. Nanak Kakwana, and Hyun H. Son (2006).
387. Gwatkin, Davidson R. "Targeting in Health: A Summary of the Evidence," The World Bank, Washington D.C. (2000).
388. Jose Lopez-Calix, Lorena Alcazar and Erik Wachtenheim, "Improving the Efficiency of Public Spending in Peru," World Bank Report, (June 2002).
389. Branko Milanovic, (Feb 2001).
390. Milanovic, Branko, (2001).
391. David S Kraybil, and Bernard Bashaasha. "The Potential Gains from Geographical Targeting of Anti-poverty Programs in Uganda", *AfJARE*, (Dec. 2006).
392. Agnes Odhiambo, "I am Not Dead, but I am Not Living: Barriers to Fistula Prevention and Treatment in Kenya," New York, NY: Human Rights Watch, (2010).
393. "Visualizing Rights, Kenya," Fact Sheet Number 4. Center for Economic and Social Rights, 2008.
394. Agnes Odhiambo, (2010).
395. Agnes Odhiambo, (2010).
396. Ricardo Bitran, and Ursula Giedion, "Waivers and Exemptions for Health Services in Developing Countries," *Social Protection Unit, Human Development Network*, The World Bank, (2003).
397. Ricardo Bitran and Ursula Giedion. (2003).
398. "Peru Country Brief, Development Highlights". *The World Bank* (2009), <http://go.worldbank.org/AHUP42HWR0>
399. Jose Lopez-Calix, Lorena Alcazar and Erik Wachtenheim, "Improving the Efficiency of Public Spending in Peru," World Bank Report. (June 2002).
400. "Peru: World Bank Approves \$200 Million For Social Services, Decentralization And Competitiveness In Peru," News and Broadcast. The World Bank, (2005) <http://go.worldbank.org/BQSYK4IXS0>.
401. "Peru Country Brief, Development Highlights," The World Bank, (2009).
402. Daniel Cotlear, "Making Accountability Work- Lessons from RECURSO". En Breve, The World Bank. (Sept 2008).
403. Daniel Cotlear, (Sept 2008).
404. Daniel Cotlear, (Sept 2008).
405. Luis Coirolo, and Jill Lammert, "Rural Poverty Reduction in Northeast Brazil, Achieving Results through Community-Driven Development" En Breve, The World Bank (June 2008).
406. Luis Coirolo, and Jill Lammert, (June 2008).
407. "Empowering the Poor Through Decentralization: Brazil Rural Poverty Alleviation Program," Social Development Notes, World Bank, (March 2001), Note No. 51.
408. Luis Coirolo, and Jill Lammert, (June 2008).
409. Luis Coirolo, and Jill Lammert, (June 2008).
410. Nanak Kakwana, and Hyun H. Son (2006).
411. Todd David Benson, Nicholas Minot, and Michael Epprecht. "Mapping Where the Poor Live," Washington, D.C.: International Food Policy Research Institute, (2007).
412. "The Outcome of Public Forums Held Throughout the Country on the 2001 Annual Budget," August 2001, www.internationalbudget.org/resources/howto/PublicFora.pdf
413. "What is CPI?", www.transparency.org/policy_research/surveys_indices/cpi/2010/in_detail
414. Daniel Kaufmann, Aart Kraay, and Massimo Mastruzzi, *Measuring Corruption: Myths and Realities*, The World Bank, December 2006
415. "United States," Worldwide Governance Indicators, http://info.worldbank.org/governance/wgi/sc_chart.asp
416. "Open Budgets. Transform Lives," The Open Budget Survey 2010, http://www.internationalbudget.org/files/2010_Full_Report-English.pdf
417. "Top 10 Examples of Government Waste," The Heritage Foundation, <http://www.heritage.org/research/reports/2005/04/top-10-examples-of-government-waste>
418. Ibid.
419. "Adequacy of Internal Controls over the Individually Billed Travel Card Program," U.S. Department of Agriculture, Office of Inspector General, Headquarters Audit Report, Report No. 50601-05-HQ, June 19, 2003, www.usda.gov/oig/webdocs/50601-05-HQ.pdf

420. U.S. General Accounting Office, *Travel Cards: Air Force Management Focus Has Reduced Delinquencies, But Improvements in Controls Are Needed*, GAO-03-298, December 20, 2002, p. 4, and "Travel Cards: Control Weaknesses Leave Navy Vulnerable to Fraud and Abuse," testimony before Committee on Government Reform, U.S. House of Representatives, GAO-03-148T, October 8, 2002, p. 8.
421. Donna Smith, "US poverty rate hits 150 year high," *Reuters*, September 16, 2010.
422. Ibid.
423. "Kenya," *The Central Intelligence Agency: The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>
424. "Kenya," *Worldwide Governance Indicators*, http://info.worldbank.org/governance/wgi/sc_chart.asp
425. "Open Budget Index 2008: Kenya," http://www.internationalbudget.org/files/cs_kenya.pdf
426. Ibid.
427. "Social Audits in Kenya: Budget Transparency and Accountability," International Budget Partnership, <http://www.internationalbudget.org/files/ImpactMUHURI1.pdf>
428. Jerry Okungu, "The Beauty and Shame of Kenya's Constituency Development Fund," *Afro Articles*, November 13, 2006, <http://www.afroarticles.com/article-dashboard/Article/The-Beauty-and-Shame-of-Kenya-s-Constituency-Development-Fund--CDF/6337>
429. Ibid.
430. "Social Audits in Kenya: Budget Transparency and Accountability," International Budget Partnership, <http://www.internationalbudget.org/files/ImpactMUHURI1.pdf>
431. Ibid.
432. "Kenya: Millennium Development Goals," The World Bank Group, http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=&REPORT_ID=1305&REQUEST_TYPE=VIEWADVANCED
433. "Goal 6: Combat HIV/AIDS, Malaria and Other Diseases," UN Department of Public Information, September 1, 2010, http://www.un.org/millenniumgoals/pdf/MDG_FS_6_EN.pdf
434. "Mexico," *The Central Intelligence Agency: The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>
435. "Open Budget Index 2008: Mexico," <http://internationalbudget.org/files/OBI2010-Mexico.pdf>
436. "The Provida Case Study: Developing An Advocacy Strategy: Step by Step," International Budget Partnership, <http://www.internationalbudget.org/files/PROVIDACASESTUDY.pdf>
437. Ibid.
438. Ibid.
439. Richard D. Hartley, *Corporate crime: a reference handbook* (Santa Barbara, CA: ABC-CLIO), p101
440. Ibid.
441. San Cristobal De Las Casas, "Maternal health in Mexico: A perilous journey," *The Economist*, June 24, 2010
442. Ibid.
443. "Goal 5: Improve Maternal Health," UN Department of Public Information, September 2010, http://www.un.org/millenniumgoals/pdf/MDG_FS_6_EN.pdf
444. S.R. Sen, "Vote Power and Lobby Power," *Economic and Political Weekly*, Vol.29, No.33, August 13, 1994, p. 2138, <http://www.jstor.org/stable/4401622>
445. Mathias Dewatripont and Paul Seabright. 2006. "Wasteful Public Spending and State Aid Control". *Journal of the European Economic Association*. 4 (2-3): 2-3.
446. Brian Riedl, "Ten Guidelines for Reducing Wasteful Government Spending," The Heritage Foundation, February 12, 2003, <http://www.heritage.org/research/reports/2003/02/ten-guidelines-for-reducing>
447. Vivek Ramkumar, "Case Study, Part 2: The Right to Know Movement in India," Just Associates: Making Change Happen Series #2, p. 3 www.justassociates.org/MKSS%20Case%20Study%20Section%20II.pdf
448. Warren Krafchik and Vivek Ramkumar, "The Role of Civil Society Organizations in Auditing and Public Finance Management," International Budget Partnership
449. Albert Zyl, Vivek Ramkumar and de Paolo Renzio, "Responding to the Challenges of SAIs: Can Legislatures and Civil Society Help?" *Chr Michelsen Institute*, U4 Anti-Corruption Resource Center, revised 2009, p. 8 <http://www.cmi.no/publications/file/3287-responding-to-the-challenges-of-supreme-audit.pdf>
450. Alastair Evans "The Role of Supreme Audit Institutions in Combating Corruption," *Chr Michelsen Institute*, U4 Anti-Corruption Resource Center, p. 5 <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=203>
451. Zyl et al, 12
452. Krafchik and Ramkumar, 5
453. Evans, 5

- 454.Zyl et al, 14
- 455.Zyl et al, 23
- 456.Krafchik and Ramkumar, 9
- 457.Geir Sundet, "Following the Money: Do Public Expenditure Tracking Surveys Matter?" Governance and Social Development Resource Center, revised 2008, <http://www.gsdrc.org/go/display&type=Document&id=3581>
- 458.Anu Pekkonen and Manjunath Sadashiva, "Social Audits," CIVICUS World Alliance for Citizen Participation, revised http://pgexchange.org/index.php?option=com_content&view=article&id=142&Itemid=136
- 459.Mark Robinson, "Budget Analysis and policy advocacy: the role of non governmental public action," Institute of Development Studies at Brighton, revised 2006, p. 30 <http://www.ids.ac.uk/go/idspublication/budget-analysis-and-policy-advocacy-the-role-of-non-governmental-public-action>
- 460.Mary McNeil and Takawira Mumyuma, "Demanding Good Governance: A Stocktailing of Social Accountability Initiatives by Civil Society in Anglophone Africa," World Bank Institute, revised 2006, p. 20 http://siteresources.worldbank.org/WBI/Resources/Demanding_Good_Governance-FINAL.pdf
- 461.Ritva Reinikka and Jakob Svensson, "Assessing Frontline Service Delivery," World Bank, revised 2002, <http://www.worldbank.org/wbi/governance/assessing/pdf/reinikka.pdf>
- 462.<http://www.worldbank.org/wbi/governance/assessing/pdf/reinikka.pdf>
- 463.Ritva Reinikka and Nathaniel Smith, "Public Expenditure Tracking Surveys in Education" International Institute for Educational Planning, <http://www.unesco.org/iiep/PDF/pubs/Reinikka.pdf>
- 464.Reinikka and Smith, 75
- 465.*ibid.* 75-79
- 466.*ibid.* 76-79
- 467.Pro-poor Expenditure Tracking, Research on Poverty Alleviation (REPOA) and Economic and Social Research Foundation, revised March 2001, p. 1-6 <http://www.scribd.com/doc/28084575/Pro-Poor-Expenditure-Tracking-repoa-2001>
- 468.Pro-Poor Expenditure Tracking, 19
- 469.Svensson and Reinikka
- 470.Pro-Poor Expenditure Tracking, 19-20
- 471.Pro-poor expenditure tracking, 21
- 472.*ibid.* 21
- 473.*ibid.* 24
- 474.Pro-poor Expenditure Tracking, 32
- 475.*ibid.* 33
- 476.Sundet, 3
- 477.De Graaf, 5
- 478.*ibid.* 8
- 479.Vivek Ramkumar, "Case Study, Part 2: The Right to Know Movement in India," Just Associates: Making Change Happen Series #2, www.justassociates.org/MKSS%20Case%20Study%20Section%20II.pdf
- 480.Mazdoor Kisan Shakti Sangathan, available at: <http://www.mkssindia.org/about-us/>
- 481.Ramkumar, 1-6
- 482.Ramkumar and Krafchik, 13
- 483.McNeil and Mumyuma
- 484.Krafchik and Ramkumar, 14
- 485.PSAM, available at: http://www.karmayog.org/anticorruption/anticorruption_1573.htm
- 486.Krafchik and Ramkumar, 15
- 487.Sundet, 14
- 488.Ritva and Svensson, 11
- 489.The World Bank is composed of two institutions: the International Development Association (IDA) and International Bank for Reconstruction and Development (IBRD).
- 490.MDBs design and provide loans to countries for a range of development projects such as hydroelectric dams or large-scale irrigation schemes.
- 491.Additional to infrastructural projects and loans, MDBs' engage in structural adjustment programs (SAPs). These typically require restructuring of government budgets and economic policy with an emphasis on free trade.
- 492.For further clarification the May, 2005 *Practitioners' Forum on Budget Support held in Cape Town, South Africa* defines budget support, "as a form of financial assistance provided directly to a partner country's budget on a regular basis, using its own financial management systems and budget procedure."
<http://siteresources.worldbank.org/PROJECTS/Resources/budgetsupportconceptsissues.pdf>, Accessed Feb. 17, 2011.

493. See Mac Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law*, (Oxford: Hart Publishing, 2003), Chapter III.
494. Ana Palacio, "The Way Forward: Human Rights at the World Bank," The World Bank Institute, 2006.
495. Prominent budget and human rights work organizations include IBP, Equalinrights, Fundar and IHRIP.
496. Addressed in the work of human rights budget organizations such as Equalinrights 'costing' concerns defining the cost of fulfilling a right to food in Tanzania, for instance.
497. Similar to 'costing', 'frontloading' refers to developing a budget plan that identifies all steps for realizing a specific right, developing related programs and projects, and calculating the cost of implementing those programs and projects.
498. In *Application of the International Covenant on Economic, Social and Cultural Rights in the Framework of International Organisations* (2007), Fons Coomans writes: "On the basis of extensive research and a number of interviews with World Bank (former) staff members, M. Darrow has concluded that in practice international human rights standards arise only selectively and usually only marginally in the framework of the Bank's programmes. Human rights norms have been of little practical relevance in the discharge of the Bank's social safeguard functions and assessment procedures."
499. See Kirk Herbertson et al., "A Roadmap for Integrating Human Rights into the World Bank Group, World Resources Institute". *World Resources Institute*, 2010.
500. *Ibid.*, 6.
501. The term "accountability mechanism" in this chapter refers to an avenue for private individuals and groups to file claims against the MDBs for redress of their grievances on poorly designed and/or implemented projects. Accountability mechanisms incorporate participation by affected parties while maintaining consistency with MDBs' missions, that is to say, poverty alleviation through economic growth and human development.
502. Eisuke Suzuki and Suresh Nanwani. "Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks." *Michigan Journal of International Law* 27.1 (2005): 177-226.
503. Bissell and Nanwani describe compliance review functions as internally driven and problem-solving functions as externally driven by individuals or organizations. Problem-solving functions are a recent trend in accountability mechanisms that address the problems of affected communities on the ground compared to compliance reviews' concern with institutional policies. Richard E. Bissell and Suresh Nanwani, "Multilateral Development Bank Accountability Mechanisms: Developments and Challenges," *Central European Journal of International and Security Studies* 3.2 (2009): 174-175.
504. Potter, Robert. "Chapter 7: Institutions of Development." In *Geographies of Development* 2nd ed, edited by Robert Potter, Tony Binns, Jennifer Elliott, and David W. Smith. New York: Pearson Press, 2004: 281.
505. The concept of sustainable development includes environmental, economic and socio-political sustainability. As a whole this term encompasses the rights protected by the ICESCR.
506. "Projects and Operations: Comprehensive Development Framework," the World Bank, accessed February 22, 2011, www.web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20120725~menuPK:41393~pagePK:41367~piPK:51533~theSitePK:40941,00.html.
507. "Operation Manual: OP 1.00 – Poverty Reduction," the World Bank, last modified August, 2004. www.web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064696~menuPK:64701763~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html
508. Potter, Robert. "Chapter 7: Institutions of Development." In *Geographies of Development* 2nd ed, edited by Robert Potter, Tony Binns, Jennifer Elliott, and David W. Smith. New York: Pearson Press, 2004: 291.
509. See Darrow, *Between Light and Shadow*, Chapter III.
510. Daniel D. Bradlow, "Private Complainants and International Organizations: a Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions," *Georgetown Journal of International Law* 36 (2005): 418.
511. "Independent Evaluation Group: Impact Evaluation," the World Bank, February 22, 2011, www.worldbank.org/oed/ie/.
512. *The World Bank Group Guarantee Instruments 1990-2007: An Independent Evaluation*, the World Bank, 2009.
513. Bradlow, "Private Complainants and International Organizations," 414.
514. *Ibid.*, 414.
515. *Ibid.*, 417.
516. *Ibid.*, 417.
517. See "The Argentina/Paraguay Yacyreta Hydroelectric Project," section of this chapter for an example.

518. This table displays human development in many sectors most of which overlap with ICESCR. See *Tunisia: Understanding Successful Socioeconomic Development: A Joint World Bank - Islamic Development Bank Evaluation of Assistance*, the World Bank, 2005: 4.
519. The World Bank evaluation of socioeconomic development in Tunisia from 2005 states that, "Tunisia has already met some MDG target levels and is likely to meet them all by 2015. The Bank's assistance contributed to many of these outcomes," (*Tunisia: Understanding Successful Socioeconomic Development*, the World Bank, 2005: 23).
520. *Ibid.*, 25.
521. See Bissell, "Multilateral Development Bank Accountability Mechanisms": 169. Bissell and Nanwani refer to compliance review as "investigation," however they are synonymous.
522. Bradlow, "Private Complainants and International Organizations," 2005: 474.
523. *Ibid.*, 470.
524. Daniel Bradlow uses the term "Virtual" Inspection Panel to refer to the EBRD and AfDB in "Private Complainants and International Organizations," 2005.
525. Bissell, "Multilateral Development Bank Accountability Mechanisms": 191.
526. Bradlow, "Private Complainants and International Organizations," 2005: 475.
527. *Ibid.*, 406.
528. See *Accountability at the World Bank: The Inspection Panel 10 Years On*, the World Bank, 2003.
529. Bradlow, "Private Complainants and International Organizations," 2005: 409-410.
530. Suzuki, "Responsibility of International Organizations," 2005: 177-226.
531. Bradlow, "Private Complainants and International Organizations," 2005, 468.
532. *Ibid.*, 479.
533. *Ibid.*, 483.
534. "Yacyreta Dam," International Rivers, accessed February 23, 2011, <http://www.internationalrivers.org/latin-america/paraguay-paran%C3%A1-basin/yacyret%C3%A1-dam>
535. *Accountability at the World Bank*, the World Bank, 2003: 60.
536. *Ibid.*, 65.
537. Daniel D. Bradlow. "The World Bank, the IMF, and Human Rights," *Transnational Law and Contemporary Problems* 6.1 (1996): 78.
538. Historically, non-state actors have had four means of holding MDBs accountable: 1. Non-state actors can seek to persuade their home state to exercise its diplomatic protection and to hold the bank accountable on their behalf, 2. Can try to persuade the bank to waive its immunity and agree to submit to one of its member states, 3. Can try to persuade a court that the bank has acted *ultra vires* or with such gross negligence or willful recklessness that it should set aside the bank's immunity, 4. They can seek to persuade a domestic or international court to hold the member states responsible for the acts of the bank. Because none of these options are likely to succeed the result has been that non-state actors have not been able to hold MDBs accountable. See Bradlow, "Private Complainants and International Organizations," 2005: 405-7.
539. Bissell, "Multilateral Development Bank Accountability Mechanisms": 175.
540. *Ibid.*, 188.
541. *Ibid.*, 179.
542. See *Global Poverty, Ethics and Human Rights: The role of multilateral organizations* by Desmond McNeill and Asuncion Lera St. Clair, 2009.
543. "Ripple in Still Water: Reflections by Activists on Local and National-Level Work on Economic, Social and Cultural Rights," Human Rights Resource Center, 1996: Chapter 7.
544. See the *Accountability Counsel*, http://www.accountabilitycounsel.org/Accountability_Counsel/AC_FIAM.html.
545. Bissell, "Multilateral Development Bank Accountability Mechanisms," 2009:183.
546. Human rights advocates have made legal arguments for MDBs' responsibilities to human rights laws. (See Andrew Clapham, *Human Rights Obligations of Non-State Actors*, Oxford, 2006:137-159.) However, MDBs have demonstrated their resistance to international legal compulsion. (See Roberto Danino, "Human Rights and Development: Towards Mutual Reinforcement," Conference at New York School of Law, March 1, 2004.)
547. "Export Credit Agencies - General Introduction and Regulation - Log, Stock and Barrel - Financial Institutions in the Resource Sector." Heinrich Böll Stiftung: The Green Political Foundation. <http://www.boell.de/finance-resources/index-110.html> (accessed January 27, 2011).
548. Ross, Doris C., and Richard T. Harmsen. 2001. *Official financing for developing countries*. Washington, D.C.: International Monetary Fund. P. 13
549. Stephens, Malcolm. 1999. *The changing role of export credit agencies*. Washington, D.C.: International Monetary Fund. p. 3

550. Morel, Fabrice. "Credit Insurance in Support of International Trade: Observations Throughout the Crisis." *Yearly Report 7* (2010): 5. *Berne Union*. Web. 2 Feb. 2011.
551. Organisation for Economic Co-operation and Development. 1998. *The export credit arrangement: achievements and challenges 1978-1998*. Paris, France: Organisation for Economic Co-operation and Development. p. 18
552. Stephens, Malcolm. *The changing role of export credit agencies*. p. 8-10
553. I will point this out with both the LNG Gas Plant in Nigeria and Bataan Nuclear Plant in the Philippines.
554. Stephens, Malcolm. *The changing role of export credit agencies*. p. 11-12
555. Wiertsema, Wiert. "Export Credit Debt: How ECA Support to Cooperations Indebts the World's Poor." *European ECA Reform Campaign: Briefing Note 5* (2008): n. pag. *FERN.org*. Web. 6 Feb. 2011.
556. Organization for Economic Co-Operation and Development. "Statistics on Export Credit Activities (up to and including the year 2005)." *OECD.org*. <http://www.oecd.org/dataoecd/30/35/37931024.pdf> (accessed February 16, 2011).
557. Organization for Economic Co-Operation and Development. "Arrangement on Officially Supported Export Credits." *OECD.org*. [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/pg\(2010\)2&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/pg(2010)2&doclanguage=en) (accessed February 15, 2011).
558. "Sustainable Lending and Export Credits." *OECD.org*. Organization for Economic Cooperation and Development, n.d. Web. 6 Feb. 2011. <www.oecd.org/about/0,3347,e
559. Cardenas, Maristella. "ECAs in the Philippine Power Sector and the Continuing Debt Problem." Jubilee South. http://www.jubileesouth.org/index.php?option=com_content&task=view&id=73 (accessed February 17, 2011).
560. Goldzimer, Aaron. "Worse Than the World Bank? Export Credit Agencies--The Secret Engine of Globalization | Food First/Institute for Food and Development Policy." Food First/Institute for Food and Development Policy | Institute for Food and Development Policy. <http://www.foodfirst.org/node/50> (accessed January 25, 2011).
561. OECD. "Sustainable Lending: Review of Official Export Credit Commitments to IDA-Only Countries (2001-2009)." Organization for Economic Cooperation and Development. www.oecd.org/dataoecd/42/59/36945707.pdf (accessed February 7, 2011). p. 6
562. Nigeria LNG Limited. "Financing." Facts and Figures on NLNG 2010. www.nlng.com/NR/rdonlyres/2C5AE78E-F775-41BA-8E79-3C78407CD29F/3615/51to55.pdf (accessed February 17, 2011). p. 52
563. Goldzimer, *Worse than the World Bank?*
564. Organization for Economic Co-Operation and Development. "Principles and Guidelines to Promote Sustainable Lending Practices for the Provision of Export Credit in Low Income Countries" *OECD.org*. [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG\(2008\)1&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG(2008)1&doclanguage=en) (accessed February 15, 2011). p. 2
565. OECD, Sustainable Lending, Article C
566. *Ibid*, Sub-Paragraph (i)
567. OECD, Sustainable Lending, p. 2
568. "Guiding Principles." *Berne Union*. <http://www.berneunion.org.uk/guiding-principles.html> (accessed February 16, 2011).
569. Organization for Economic Co-Operation and Development. "Recommendation on Common Approaches On Environment and Officially Supported Export Credits." *OECD.org*. www.oecd.org/dataoecd/26/33/21684464.pdf (accessed February 15, 2011).
570. OECD. Common Approaches. Article 13
571. OECD. Common Approaches. Article 19
572. OECD. Common Approaches. Article 19
573. OECD. Common Approaches. Paragraph 22
574. World Health Organization, "Aid Effectiveness and Health," (Geneva, WHO Press, 2007) Accessed January 14, 2011, <https://catalyst.uw.edu/workspace/file/download/e86f2bc794289aece38cd96c93850cab6b6db0bb41b027547f627f0eae1ca354?inline=1,3>.
575. USAID Malawi, Operational Plan. (Washington D.C.: U.S. Agency for International Development, 2006), 1.
576. USAID Mozambique, Operational Plan. (Washington D.C.: U.S. Agency for International Development, 2006), 1.
577. U.S. Agency for International Development, Strategic Plan: Fiscal Years 2007-2012. (Washington D.C.: U.S. Department of State, 2007), 19-21.
578. USAID Malawi, Operational Plan. 6-11
579. *Ibid*. 1-11.
580. USAID Mozambique, Operational Plan. 5-11.
581. USAID El Salvador, Operational Plan. (Washington D.C.: U.S. Agency for International Development, 2006), 1.
582. USAID Jordan, Operational Plan. (Washington D.C.: U.S. Agency for International Development, 2006), 1.

583. U.S. Agency for International Development, Strategic Plan: Fiscal Years 2007-2012. 25-35
584. *Ibid.* 35.
585. USAID Mozambique, Operational Plan. 10; USAID Jordan, Operational Plan. 8.
586. USAID Malawi, Operational Plan. 10; USAID El Salvador, Operational Plan. 10.
587. U.S. Agency for International Development, "Strategic Plan: Fiscal Years 2007-2012." (Washington D.C.: U.S. Department of State, 2007), 25-35.
588. *Ibid.* 51-52.
589. *Ibid.* 52
590. *Ibid.* 51-52.
591. *Ibid.* 52.
592. U.S. Agency for International Development, "Strategic Plan: Fiscal Years 2007-2012." 25-35.
593. World Health Organization, "Aid Effectiveness and Health," (Geneva, WHO Press, 2007) Accessed January 14, 2011,
<https://catalyst.uw.edu/workspace/file/download/e86f2bc794289aece38cd96c93850cab6b6db0bb41b027547f627f0eae1ca354?inline=1>, 3-5.
594. World Health Organization, "Aid Effectiveness and Health," (Geneva, WHO Press, 2007) Accessed January 14, 2011,
<https://catalyst.uw.edu/workspace/file/download/e86f2bc794289aece38cd96c93850cab6b6db0bb41b027547f627f0eae1ca354?inline=1>, 3-5.
595. Steven Mosher. "USAID Supported Fujimori Sterilization Campaign: Seeks to Cover-up Involvement." 2003. Accessed February 3, 2011. <http://pop.org/content/usaaid-supported-fujimori-sterilization-1658>.
596. "Mozambique: CIDA Report," CIDA, Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-047-Mozambique-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-047-Mozambique-E.pdf) .
597. "Vietnam: CIDA Report," CIDA, Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-057-Vietnam-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-057-Vietnam-E.pdf) .
598. "Honduras: CIDA Report," CIDA, Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-057-Vietnam-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-057-Vietnam-E.pdf) .
599. "Indonesia: CIDA Report," CIDA, Accessed February 7, 2011, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/\\$file/10-055-Indonesia-E.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Countries-of-Focus/$file/10-055-Indonesia-E.pdf).
600. "Aid Effectiveness Agenda," CIDA, Accessed January 27, 2011, <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/FRA-825105226-KFT>.
601. "Aid Effectiveness Agenda."
602. "Mozambique: CIDA Report."
603. "Honduras: CIDA Report."
604. "Indonesia: CIDA Report."
605. "Vietnam: CIDA Report."
606. "CIDA Evaluation Guide," CIDA, Modified October 2004, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Performancereview5/\\$file/English_E_guide.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Performancereview5/$file/English_E_guide.pdf)
607. *Ibid.* 59-61.
608. *Ibid.* 5.
609. *Ibid.* 6.
610. *Ibid.* 47.
611. *Ibid.* 1-42.
612. *Ibid.* 4.
613. *Ibid.* 4.
614. "Aid Effectiveness Agenda."
615. Britannica.com. November 2006. Accessed February 10, 2011.
616. "ODA Loans," JICA, Accessed January 27, 2011,
http://www.jica.go.jp/english/operations/schemes/oda_loans/overseas/index.html .
617. "Efforts to Increase Development Effectiveness of Projects," JICA, Accessed January 27, 2011,
http://www.jica.go.jp/english/operations/schemes/oda_loans/overseas/types.html.
618. "Grant Aid," JICA, Accessed January 27, 2011, http://www.jica.go.jp/english/operations/schemes/grant_aid/.
619. "ODA Loans."
620. "Bangladesh: Joint Evaluation on Four Donors' Assistance—Transport Sector," JICA, Accessed January 20, 2011.
http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part3-2_04.pdf.

621. "Thailand: Impact Evaluation of Pasak Irrigation Project," JICA, Accessed January 20, 2011, http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part3-2_05.pdf.
622. "Bangladesh: Joint Evaluation on Four Donors' Assistance—Transport Sector."
623. "Thailand: Impact Evaluation of Pasak Irrigation Project."
624. "The Results of External Evaluation and Rating," JICA, Accessed January 20, 2011, <http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part2-1.pdf>, 30.
625. *Ibid.* 22.
626. *Ibid.* 22.
627. "Efforts aimed at promoting impact evaluations," JICA, Accessed January 20, 2011, <http://www.jica.go.jp/english/operations/evaluation/reports/2009/pdf/part1-3.pdf>, 25.
628. "The Results of External Evaluation and Rating." 30.
629. *Ibid.* 30-35.
630. "Thailand: Impact Evaluation of Pasak Irrigation Project." ; "Bangladesh: Joint Evaluation on Four Donors' Assistance—Transport Sector."
631. "The Results of External Evaluation and Rating."
632. "Capacity Development and JICA's Activities: Cooperation for Promoting Partner Country Ownership," JICA, Accessed February 10, 2011, http://www.jica.org.uy/cdstudy/library/pdf/20071101_23.pdf. 9
633. Hoben, A. "USAID Organizational and Institutional Issues and Effectiveness." Cooperation for International Development: The United States and the Third World in the 1990s. Eds. R.J. Berg and D.F. Gordon. London: Lynne Rienner Publishers, 1989. Pp. 253-278.
634. Peter Dauvergne. "The Rise of an Environmental Superpower? Evaluating Japanese Environmental Aid to Southeast Asia." 3
635. World Health Organization, "Aid Effectiveness and Health," (Geneva, WHO Press, 2007) Accessed January 14, 2011, <https://catalyst.uw.edu/workspace/file/download/e86f2bc794289aece38cd96c93850cab6b6db0bb41b027547f627f0eae1ca354?inline=1>, 3.
636. Janine Wedel. "U.S. assistance for market reforms." Accessed February 5, 2011. http://cato.org/pub_display.php?pub_id=1197.
637. U.S. Agency for International Development, "Strategic Plan: Fiscal Years 2007-2012," 25-35; "Aid Effectiveness Agenda."
638. "The nature of States parties obligations (Art. 2, par.1): CESCR General Comment 3," last modified December 14, 1990, <http://www.unhcr.ch/tbs/doc.nsf/0/94bdbaf59b43a424c12563ed0052b664?Opendocument>.
639. "The International Covenant on Economic, Social and Cultural Rights", last modified 2007. <http://www2.ohchr.org/english/law/cescr.htm>
640. United Nations. 2005. *Economic, social, and cultural rights: handbook for national human rights institutions*. New York: United Nations, 32.
641. *Ibid.* 35.
642. United Nations. 2008. *Guidebook on promoting good governance in public-private partnerships*. New York: United Nations, 77.
643. *Ibid.* 83.
644. United Nations. 2007. *Good governance practices for the protection of human rights*. New York: United Nations, 11.
645. *Ibid.*
646. *Ibid.* 24.
647. *Ibid.*
648. *Ibid.* 23-25.
649. *Ibid.* 30.
650. *Ibid.* 31.
651. *Ibid.* 32.
652. United Nations, *Gender Responsive Budgeting and Women's Reproductive Rights: A Resource Pack* (New York: UNFPA and UNIFEM, 2006).
653. *Ibid.*
654. Economic Commission for Latin America and the Caribbean, *Public Policies and Health Programmes for Indigenous Peoples in Latin America* (Chile: United Nations, 2007), 241.
655. *Ibid.* 244.
656. *Ibid.* 245.

657. Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of countries' replies to surveys.
658. Economic Commission for Latin America and the Caribbean, *What Kind of State? What Kind of Equality?* (Chile: United Nations, 2010).
659. Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of Ministry of Health, Brazil, "Política nacional de atenção à saúde dos povos indígenas", 2002.
660. Workshop-Seminar "Indigenous People in Latin America: Health Policies and Programmes, How Much and How Has Progress Been Made?", Economic Commission for Latin America and the Caribbean (ECLAC), Santiago, Chile, 25 and 26 June 2007.
661. Ibid.
662. United Nations. 2009. *Permanent Forum on Indigenous Issues*. New York: United Nations (1)
663. Ibid 3.
664. Ibid 5.
665. Ibid 7.
666. Combined fourth, fifth and sixth periodic reports of Tanzania to the Committee on the Elimination of Discrimination against Women (CEDAW/C/TZA/6) and Responses to the list of issues and questions with regard to the consideration of the combined fourth, fifth and sixth periodic reports (CEDAW/C/TZA/Q/6/Add.1), considered at the Committee's 42nd session from 30 June to 18 July 2008.
667. Combined second and third periodic reports of Namibia to the Committee on the Elimination of Discrimination against Women (CEDAW/C/NAM/2-3), considered at the Committee's 37th session from 15 January to 2 February 2007).
668. UN Millennium Project, Task Force on Education and Gender Equality, *Taking Action: Achieving Gender Equality and Empowering Women* (2005), page, 82.
669. United Nations. 2009. *Human Rights of Women*. New York: United Nations.

