Policy Research on the Implementation of a Human Rights-Based Approach in Development Partnerships

IBON Institute for International Development

CSO Partnership for Development Effectiveness

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Introduction

This publication is a collection of critical papers written by fourteen CSO Partnership for Development Effectiveness (CPDE) member organizations undertaking development work in twenty-five countries. Guided by the UNDG Common Understanding of the Human Rights-Based Approach (HRBA), contributions by CPDE CSO members examine HRBA in Development Partnerships for sustainable development particularly in working to attain the Sustainable Development Goals (SDGs) for 2030. These multi-stakeholder partnerships include those which involve governments, donors, the private sector, civil society organizations, and local communities.

Policy and implementation as well as outcomes and impacts of the absence or presence of HRBA in different stages of project development in development partnerships reviewed were evaluated by contributors with focus on communities directly affected by activities under discussed projects and programmes, which should ideally promote economic equality, gender justice, social inclusion, decent work, environmental sustainability and human rights.

Authors conducted in-depth literature reviews as well as investigations on experiences in projects and programmes with elements intended to give beneficiary access to basic human rights such as education, health provisions, and various infrastructures for the said purpose. In many featured cases, the price that came with such intentions were found to be grave and yielding more harm than good. Examples of these are the loss of shelter, hindrances to livelihood opportunities, and health hazards as a result of poor planning and implementation by key actors.

Authors analyze the involvement and commitment of stakeholders as reflected in project outcomes and impacts and formulate recommendations on HRBA in various development pursuits. In particular, authors review whether institutional policy frameworks and operational guidelines reference human rights principles. Authors review the extent to which marginalized communities involved are ensured of access to their basic human rights through effective participation and consultations which require democratic ownership in stages of planning, implementation, and monitoring at the national, regional and global levels that ensure power holders are accountable to communities involved. Donor standards in selecting responsible contractors, particularly in infrastructure development programmes, are considered in terms of human rights compliance in relation to measured community-focused risks and benefits as opposed to profit-oriented agreements.

In light of the present global political context of neoliberal globalization with the domination of liberalization, privatization and deregulation policies, this publication, through experiences of featured key development actors, seeks to surface the state of human rights in global development, where priorities may be questionable. As global policies have advanced in identifying where focus on human rights need further efforts, studies in this publication put forward major gaps in HRBA as well as seek solutions in effectively protecting human rights, especially of the most vulnerable sectors of society where the grave impacts of the current global political landscape are more intensely felt.

Part 1

Overview

Reinforcing Rights-based Partnerships for Sustainable Development*

Human Rights and Development

Framing Development

Development and human rights are conceptual frameworks for the human condition that have long and distinct trajectories of evolution. For most of the 20th century, development was understood as mainly concerned with the economic development of former colonies and dependent countries in order to "catch up" with the advanced industrialized countries. On the other hand, human rights work was traditionally more concerned with the protection of civil liberties and freedoms of individuals against abuses of the State (Ferguson, 2011).

The 1986 UN Declaration on the Right to Development was a milestone towards an integrated understanding and practice of human rights and development. The 1993 World Conference on Human Rights and other UN conferences held in the succeeding years further reaffirmed the indivisibility and interdependence of all human rights, and emphasized the interrelatedness between human rights, development, democracy and fundamental freedoms (*ibid*.).

Over the last few decades, governments have tried various ways to integrate human rights with development policy and practice. Donors have used an assortment of strategies for this purpose including norm-setting; policy dialogue; aid conditionality; funding specific projects and programmes; mainstreaming human rights across all areas of development cooperation; and promoting Human-Rights Based Approaches (HRBA) to development (D'Hollander, Pollet, & Beke, 2013).

Different actors have varying definitions of the HRBA to development. The United Nations Development Group (UNDG) defines it as "a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights" (OHCHR, 2006). For the Swedish International Development Cooperation Agency (SIDA) the HRBA is based on the human rights found in national, regional and international laws, treaties and systems. The main purpose of the HRBA, according to SIDA, is "to empower boys, girls, men and women to claim their human rights (as rights holders) and to increase the capacity of those who are obliged to respect, promote, protect and fulfil those rights (as duty bearers)." (SIDA, 2015).

Many civil society organisations have also adopted the HRBA. The CPDE advocates that human rights are at the very heart of the development agenda, and therefore aid and development must be consistent with human rights instruments and norms, bridging international human rights standards and development interventions. For ITUC, concretely, this means that development cannot be achieved in a given country if labour standards and decent work are not promoted, the right to collective bargaining is not respected, and participatory modalities as social dialogue are not granted in the first place. For CARE, a rights-based approach deliberately and explicitly focuses on people achieving the minimum conditions for living with dignity. It does so by exposing the root causes of vulnerability and

*This chapter was prepared with the assistance of Paul L. Quintos, the editor of this policy research.

marginalization and expanding the range of responses. Similarly, ActionAid asserts that the most effective way for people living in poverty to claim, secure and enjoy their human rights is to organise and mobilise with others, have a voice and develop their power to negotiate (ActionAid, 2008).

While numerous development actors have contributed to the evolution of HRBA concepts and practice, most agree on five core principles of HRBA according to the International Human Rights Network (IHRN, 2008):

1. The explicit, accurate use of the international human rights framework;
2. Participation in development decisions as a right;
3. Empowerment as a right and a precondition for effective participation;
4. Non-discrimination and prioritisation of groups vulnerable to human rights violations; and
5. Accountability of duty-bearers to rights-holders.

While there is no single recipe for implementing the HRBA among development actors, the UNDG adopted a Common Understanding of this approach in 2003. According to this, UN agencies have agreed on three core attributes of the HRBA:

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

Since then, this Common Understanding has served as a key reference point for multilateral donors, bilateral donors and civil society organisations (CSOs) to further operationalize a HRBA (D'Hollander, Pollet, & Beke, 2013).

The significance of the HRBA

The HRBA helps to shift the framework of development away from a narrow focus on economic growth towards a more holistic appreciation of the multiple (political, social, cultural, etc.) and interrelated dimensions of human development – where development is understood as the process whereby people are able to fulfil their full potential through realizing their human rights. Moreover, the HRBA helps clarify the roles and responsibilities of individuals and groups as rights holders on the one hand, and governments and other relevant development actors as duty bearers on the other.[1] Human rights standards reflected in human rights treaties as well as recommendations from human rights bodies serve as guide to setting goals and targets and development programming at all stages (OHCHR , 2006).

Perhaps most importantly, the human rights-based approach to development requires participation from rights-holders in the decision-making processes of the duty-bearer.

1 In reality the dichotomy is not clear-cut, as CSOs are highly diverse and considered development actors in their own right. Therefore they may be regarded as both rights holders and duty bearers at the same time.

Conversely, duty-bearers are accountable to rights-holders for human rights obligations under international law and codified in national legislation (ibid). This affirms the agency of the poor and marginalized people to chart their own destiny by empowering all people to claim their rights rather than treat them as passive recipients of aid and charity.

As Fukuda-Parr (2013, p. 203) summarizes it, "The value added of human rights to development is therefore the concern with the accountability of States for putting in place adequate institutions, norms and processes… Another way of approaching this concept is to contrast human rights with development aspirations; human rights are claims that are to be enforced, for which others—duty bearers—are to be held accountable. To evaluate progress in human rights requires an assessment of the conduct of duty bearers in putting in place the appropriate social arrangements."

The HRBA to development takes on even more significance in the context of neoliberal globalization, which has imposed a standard set of liberalization, privatization and deregulation policies throughout the world. The more neoliberal policies dominate development strategies, the more governments downplay or even deny their human rights obligations – especially in fulfilling economic, social and cultural rights – in favour of commercial or profit-oriented provision of goods and services by the private sector. The HRBA underscores that governments have an obligation to establish a regulatory and policy framework that ensures access to essential services for all without discrimination. Indeed governments must see to it that nobody is deprived of such services solely because he or she is unable to pay.

However many developing country governments rightly point out that because of neoliberal globalization, resulting policy impositions hinder them from fulfilling their human rights obligations. These are often decisions and actions undertaken by external or international actors, notably the more powerful states, international financial institutions, and transnational corporations (TNCs), which impact on their national economies. These in turn impact negatively on the people in terms of fully realizing their individual and collective rights.

Therefore in an increasingly globalized world, a HRBA accentuates the need for international cooperation to hold globally powerful entities to account for the social and environmental impacts of their operations. This implies that human rights obligations reside not only with the State but also with other duty-bearers such as international financial institutions and TNCs, many of which are beyond the reach of any individual State to regulate on its own. Concretely, this means human rights principles must guide the choices and trade-offs to be made not just in terms of domestic policies but also in international trade and investment agreements as well as development partnerships. This is to ensure that human rights serve as the overarching framework or anchor for policy coherence.

Unfortunately, this idea has not been developed beyond statements of principle. Even the large and growing body of literature and programmes promoting HRBA focus on national policy and have done little to address the international dimension of State obligations. There is as yet no clear body of norms and standards that define what these international obligations are in international human rights law. Accordingly, no formal procedures exist to hold States or other actors accountable for their international responsibilities (Fukuda-Parr, 2013).

The 1986 UN Declaration on the Right to Development was a historic step towards recognizing the international dimension of human rights obligations of states. However, since the beginning, the U.S. and other advanced industrialized countries have consistently blocked the elaboration of the Right to Development into a legally binding instrument that would enable its enforcement out of fear that developed countries would be legally obligated to transfer financial, technological or other resources to developing countries.

According to Marks (2011), "the more conservative North American and European members of the drafting committee [for the Declaration on the Right to Development] agreed that, while a general moral (not legal) commitment to human development was acceptable, under no circumstances would they allow a text that would either affirm any legal obligation to transfer resources from North to South or codify specifics regarding any of the issues contained in the Declaration."

But the Committee on Economic, Social and Cultural Rights (CESCR) is unequivocal in its opinion that there are human rights obligations attached to international cooperation. In its General Comment No. 23 (2016) on the Right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), it states:

> 66. All States must take steps individually and through international assistance and cooperation, especially economic and technical, with a view to achieving progressively the full realization of the right. It is particularly incumbent upon those States which are in a position to assist others in this regard. International assistance and cooperation is a means of transferring knowledge and technology and a tool for States to maximize available resources for the full realization of Covenant rights.
>
> 67. Where a State party is not in a position to meet its obligations to realize the right, it must seek international assistance. Depending on the availability of resources, States parties should respond to such requests by providing economic and technical assistance and technology transfer, and promoting transnational dialogue between employer and worker organizations, among other measures. Such assistance should be sustainable, culturally appropriate and provided in a manner consistent with human rights standards. Economically developed States parties have a special responsibility for, and interest in, assisting developing countries in this regard.

Yet, according to Fukuda-Parr (2013, p. 201), donor countries still prefer to keep such assistance "voluntary" and therefore "still rooted in the logic of charity, rather than the logic of shared responsibilities in a global community… This misses the essential value added of human rights to development policy, namely the framework of obligations and accountability for what are otherwise aspirational objectives".

HRBA policies and guidelines of development actors

According to Tomlinson (Chapter 2 in this volume), donors generally have two main motivations for integrating human rights in development cooperation. The first is a legal rationale – for instance the Maastricht Principles on Extraterritorial Obligations of States stresses the relevance of social, economic and cultural human rights obligations for European donor support in development cooperation and the reduction of poverty and inequality. The second, and more common rationale according to Tomlinson, is instrumental. Many donors maintain that certain human rights obligations and standards, such as effective participation and non-discrimination, ultimately enhance the effectiveness of development cooperation in reducing poverty.

A comprehensive study of aid providers by the World Bank and the Organisation for Economic Co-operation and Development (OECD) in 2013 identified 17 multilateral and bilateral organizations with "no overall human rights policies but occasional references to human rights limited to sector policies…." compared to 12 organizations – mostly UN agencies – where human rights is an integral part of the overall institutional mandate.

However, even this World Bank-OECD study acknowledged that while many donors have demonstrated varying degrees of reference to human rights in their overarching policies governing development cooperation, few donors have actually implemented a human rights-based approach in their programs.

This is also evident in the mapping of existing guidelines and best practices on HRBA of different stakeholders prepared by D'Hollander et al for the CSO Partnership for Development Effectiveness (CPDE) in 2013 (pp. 11-22).

Reviewing the policies and guidelines of the OECD Development Assistance Committee (DAC), the World Bank, the UNDG and the EU, the authors note:

- While all four of the multilateral organisations recognize the importance of human rights, there are still variations in the extent to which their respective human rights frameworks serve as a frame of reference, action and accountability for their policy.
- Although the UNDG and the EU have formally adopted a HRBA to development, its operationalization is still work in progress.
- Recognizing the mutual relation between the aid-effectiveness and human rights agenda, the OECD-DAC has developed 10 principles on the integration of human rights into development policies, but is yet to follow up on their concrete implementation.
- The WB has been reluctant to recognize a HRBA to development but is increasingly looking into the relation between economic growth and human rights.
- It is important to note that none of these institutions, apart from the UN, has indicated that the post-2015 framework for global development should build upon obligations laid out in international human rights law.

In their review of HRBA policies of major bilateral donors – including those who are strong champions of the HRBA and those who are more critical of it – the authors conclude:

- A significant number of bilateral donors have adopted a HRBA over the last decade.
- While a HRBA in theory presents a 'paradigm shift', donors stress the need for flexibility and pragmatism, whereby the integration of human rights principles are often seen as more constructive than a 'confrontational' use of human rights.
- Donors have also faced a number of challenges in consistently applying the approach to different thematic and geographic policy areas. While they have developed tools and guidance material, there is often no systemic follow-up framework to track progress.
- Similarly, there is still a considerable knowledge gap on how to carry out monitoring and evaluation from a human rights perspective, and how to do so within a results based-management framework.
- Some donors such as DFID seem to have moved away from their initial HRBA as they adopt a 'value for money' approach, focusing foremost on the 'mechanics' of aid effectiveness.
- In addition to this counter-stream, a number of donors continue to see human rights as an overly political concept, and have thus not adopted a HRBA.

As for civil society actors, the authors note:

- While many CSOs take a strong stand in favour of HRBA, there is no consensus on the exact scope and implementation of a HRBA.
- Some NGOs try to bring a paradigm shift into their daily practice, by replacing development goals by human rights and adapting their strategy, their theory of change

and their operational apparatus.
- Some NGOs implement HRBA under the form of mainstreaming, which also implies operational changes on the ground.
- Others still implement a HRBA in a mainly rhetorical manner.
- HRBA is also applied more easily in certain sectors such as children's rights, social protection and minority groups.

The review, however, did not cover the policy and practice of HRBA among emerging donors and South-South cooperation, nor among recipient governments and local authorities. Nor did they cover the extra-territorial dimensions of accountability or the private sector.

A Review on HRBA in Practice

This present volume includes 14 chapters contributed by various authors examining the application of the HRBA in selected development partnerships in 25 countries. While the contributors did not adopt a common or universal definition of development partnerships or HRBA, the different chapters in this book describe or prescribe elements or principles for rights-based partnerships for development.

Tomlinson's chapter in this volume provides an overview of the experiences of selected donors belonging to the OECD DAC. He notes that in terms of aid allocation, DAC donors as a whole do not demonstrate a high commitment to human rights purposes and civil society participation. A mere 2% of "real aid" coming from the DAC in 2015 was spent on these purposes – a key indicator of the degree to which development cooperation is dedicated to ensuring the realization of human rights for all. Moreover, only a handful of DAC providers contribute significant amounts to this pot – eight out of 24 DAC providers accounted for 78% of aid allocated to human rights purposes and 71% allocated to civil society participation. These donors are Canada, Denmark, Finland, Germany, the Netherlands, Norway, Sweden and the United Kingdom. Even among these donors, evaluation reports indicate an uneven implementation of their human rights policies.

Most of the authors in the remaining chapters of this volume present a critical evaluation of the HRBA practice of governments and agencies for development cooperation including the World Bank Group (WB), the African Development Bank (AfDB) and the Asian Development Bank (ADB). They also examine cases of official development assistance (ODA) from the European Union (EU), United States (US), United Kingdom (UK), France, South Korea and China as well as specific examples of inter-regional development cooperation in West Africa (ECOWAS) and South America (UNASUR). A few authors also present examples of multi-stakeholder development partnerships involving non-state actors – both the business sector and civil society.

Human Rights Frameworks

Nearly all the bilateral ODA providers reviewed by the authors in this volume reference human rights principles and instruments in their development partnerships or related sector policies (e.g. education and health) with the notable exception of China. Similarly, recipient governments have national legislation for implementing international human rights conventions as well as national plans of action for achieving MDGs and SDGs.

In the case of China, the 2000 Beijing Declaration of the Forum on China-Africa Cooperation

(FOCAC) actually rejects "the imposition of human rights conditionalities on Chinese ODA". Nevertheless, CAMYOSFOP reports that China is gradually developing some human rights or environment-friendly policies for its development cooperation with other countries such as basic minimum voluntary social and environmental safeguards for Chinese funded projects or "green credit" guidelines for commercial loans.

Similarly, the WB projects reviewed by contributors in this volume do not reference human rights at all (see chapters by PCFS and IDRAC). Indeed, as a general rule the WB only considers human rights as far as they have economic consequences – a reflection of the bank's development paradigm that equates development with economic growth. Like the WB, the ADB's Articles of Incorporation give primacy to economic considerations and regards human rights as political. Moreover, the WB and ADB maintain that it is member states that have human rights obligations whereas the role of multilateral development banks (MDBs) is to support members in the realization of human rights (Fujita 2013).

Nevertheless, both the WB and the ADB have guidelines and safeguard mechanisms that aim to protect affected communities and the environment from possible adverse consequences of their projects.

Human Rights and Development Outcomes

Most development partnerships reviewed in this volume were able to demonstrate their contributions to the progressive realization of human rights, at least at the project level or on the part of intended beneficiaries. These include improvements in access to education in Bangladesh, Pakistan (Chapter 3), Malawi and Mozambique (Chapter 4); food production in Palestine and Jordan (Chapter 6); job creation in Cameroon and Zimbabwe (Chapter 11); smallholder land ownership in Cambodia (Chapter 7); infrastructure development in Peru, Brazil and Bolivia (Chapter 12); and social protection and decent work and gender equality in Uruguay, Indonesia (Chapter 13), Korea and Hong Kong (Chapter 14).

However, the following chapters also draw attention to grave unintended consequences of these same partnerships or projects, which undermine the human rights of the target beneficiaries, other communities or the broader public. These include:

- landgrabbing and displacement of farmers and indigenous peoples as a result of ODA-funded projects or public-private partnerships in parts of Africa, the Philippines, Brazil, and other areas (See chapters by PCFS, UNITAS and IPMSDL)
- deforestation and environmental destruction by extractive industries in the Amazon facilitated by infrastructure development for regional integration (See chapter by UNITAS)
- worsening health conditions and land degradation as a result of ADB-funded energy projects in the Philippines and Mongolia (see chapter by CPDG)
- violation of workers rights by Chinese companies in Sino-African partnership projects (see chapter by CAMYOSFOP)
- degrading treatment of irregular migrants resulting from EU-supported migration policies in West Africa (see chapter by ARCADE)
- increasing inequity in Jordan and Palestine resulting from USAID-supported capital-intensive food production for high-end markets or exports (see chapter by APN)
- militarization and state repression directed at opponents of WB-funded infrastructure projects in the Philippines (see chapter by IPMSDL)
- corruption in PPPs in Peru, Bolivia and Brazil (see chapter by UNITAS)

Challenges to implementation

There are many factors that can widen the gap between human rights aspirations and the actual impacts of development partnerships on human rights that can be gleaned from the following chapters. One is that human rights considerations are simply elided in some development partnerships and no rights-based guidelines or safeguards are put in place, as in the case of Chinese aid abroad.

Another is that human rights are often outweighed by other considerations deemed more important or more strategic, particularly to elites who determine policies and priorities. This is clearly the case with the EU's partnership with ECOWAS where the former's security interests were deemed more important than the human rights of "irregular migrants." Likewise, many donor countries and their development partners consider foreign investments vital to promoting economic growth even if this means a race to the bottom in terms of workers wages, labour standards, social welfare and environmental protection. Even in UNASUR, which claims to break away from the neoliberal development paradigm, partnerships with large corporations (PPPs) are being promoted as the new panacea for infrastructure deficits, placing the imperatives of profit above human rights.

In other cases, the social and environmental guidelines or safeguard mechanisms adopted by development partners are either not enforced or implemented in a way that departs from their avowed purpose. For example, this is often the case with respect to the right of indigenous peoples to free, prior and informed consent (FPIC). In the cases reviewed by the IPMSDL and UNITAS for this volume, the mechanisms of participation, consultation and safeguards (including FPIC processes) were conducted as mere formalities or, worse, used to promote the projects rather than present the full information on risks and benefits so that affected communities can make truly knowledgeable decisions.

Likewise, despite the avowed commitment of the EU Social Protection System Programmes in Ethiopia and Kyrgyzstan, PWESCR argues that they lack a gender focus and place too much emphasis on cash transfers that will not be able to redistribute unpaid care burden from women to the State. Provisions of maternity entitlement and childcare services are not found as focus areas in any of the programme documents nor any reporting on maternity entitlements except the coverage in the formal sector – which cover a small fraction of the labor force. The gender-blind outcome indicators do not focus on the economic upliftment of women who do not share equal opportunities.

Several authors in this volume also fault partnerships that ignore the structural social conditions or deeper political economy that ultimately limit the long-term transformative potential of development initiatives and the full realization of human rights. APN, for instance, points out that USAID's support for agriculture in Palestine obscures the discriminatory policies, resource dispossession and movement restrictions imposed by Israeli occupation which constitutes the gravest threat to the socioeconomic and cultural prosperity of the Palestinian people and the Arab region at large. At the same time, USAID projects in the region make no attempt at addressing the neoliberal agenda that pushed for economic liberalization and reduced government intervention, favouring capital-intensive agribusinesses and foreign interests; consequently marginalizing small and medium scale farmers.

Similarly, AFRODAD acknowledges the USAID's contribution to education and health in Malawi and Mozambique but notes that this hardly makes a dent in the overall social indicators in these countries because domestic resources are siphoned out as debt payments.

This illustrates the need to address trade, investment, finance, aid, debt, technology, innovation and global governance comprehensively and coherently with the ultimate policy objective of ensuring the realization of human rights of all. The Right to Development provides the HRBA "a framework for the consideration of extraterritorial obligations and the obligations of States in their collective capacities, including as members of international organizations like the World Trade Organization and multilateral development banks, and as actors in global trade, investment and finance." Unfortunately, States remain divided as to the nature of the duties of States, the relative emphasis of international obligations, and the criteria for measuring progress in implementing this right, among others. (OHCHR, 2016)

Tomlinson enumerates other challenges in implementing a human rights-based approach in his review of selected provider agencies (chapter 2), namely:

- Changing political leadership and support
- Local context
- Shrinking and closing of space for civil society
- "Ghettoization" of human rights within agencies
- Limitations in institutional capacity and support to officials in the field
- Limited provider accountability

A common criticism of the development partnerships covered in this book is the lack of meaningful civil society participation and the dearth of effective redress mechanisms to ensure the accountability of duty bearers to rights holders.

In this regard, the chapters contributed by ITUC and APMM diverge from the rest because they showcase examples of development partnerships wherein civil society actors are among the principal partners. The ITUC highlights the importance of social dialogue as "it brings together rights holders and duty bearers to discuss and establish policies that will contribute to more inclusive development processes… This in turn ensures democratic ownership … which itself reinforces the application of human rights."

For APMM, "only through organizing, educating and mobilizing people, in this case migrants, can they collectively realize and claim their rights. Through capacity building, migrants develop their skills to understand their situation, to address and devise means to resolve their concerns, and to confidently engage with other actors, such as governments. Through empowerment migrants are able to realize their full potential as development actors."

Strengthening HRBA in the Post-2015 Era

The 2030 Agenda for Sustainable Development

The new 2030 Agenda for Sustainable Development formally adopted by the 193-Member UN General Assembly last September 25, 2015, offers new opportunities to promote and strengthen a Human Rights-Based Approach to Development.

The new framework, "Transforming Our World: the 2030 Agenda for Sustainable Development," lays out a path over the next 15 years "to end extreme poverty, fight inequality and injustice, and protect our planet." At the heart of this new 2030 Agenda are

the Sustainable Development Goals (SDGs) – 17 goals and 169 targets – that apply to all countries and aim to "leave no one behind." These built on and expanded the MDGs, which expired in 2015 (United Nations, 2015).

According to the Office of the High Commissioner for Human Rights (OHCHR, 2015), the 2030 Agenda is unequivocally anchored in human rights as it is explicitly grounded in the UN Charter, the Universal Declaration of Human Rights, international human rights treaties and other instruments, including the Declaration on the Right to Development (para 10).

The Agenda states that the SDGs aim to "realize the human rights of all" (preamble) and emphasises "the responsibilities of all States… to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status" (para 19). Moreover, although the specific SDGs are not framed explicitly in the language of human rights, many targets reflect the content of corresponding human rights standards.

The OHCHR also points out that the new Agenda is "to be implemented in a manner that is consistent with the… obligations of states under international law"(para 18). This means that any gaps or ambiguities should be resolved in accordance with the requirements of international human rights law.

Critics point out, however, that on key areas such as wealth redistribution, financing, civil society participation and accountability, the 2030 Agenda fails to integrate human rights principles that live up to the central challenges of today (Human Rights Caucus, 2015).

For instance, there is little recognition of the need for an effective and mandatory accountability framework for the private sector given its enormous influence in development and development partnerships today. The Agenda does not even point to mandatory social and environmental reporting as suggested by the Secretary General.

The Agenda also does not contribute to defining international obligations of States and other duty-bearers with regards policies and actions that have impacts beyond their borders. It fails to acknowledge that numerous policies promoted by international financial institutions, the World Trade Organisation, international trade and investment agreements as well as donor agencies need to be reviewed and vetted in terms of their impacts on human rights. These include trade and investment liberalization, financial deregulation, labour migration, tax reduction, debt, and other policies that limit the policy space and constrain the ability especially of developing countries to fulfil their human rights obligations.

While the need for policy coherence is mentioned several times in the Agenda, there are no concrete, time-bound commitments identified for high-income countries and international institutions. For instance, there are no concrete commitments as to how a global partnership will ensure the use of maximum available resources to cover the estimated USD$3 trillion per year required to finance this agenda.

The 2030 Agenda acknowledges the important role of civil society including in multi-stakeholder partnerships. However, the CPDE notes that the Agenda lacks commitment to inclusive and participatory approaches as it limits the role of civil society to the review processes rather than expanding and institutionalizing spaces for civil society in all stages and levels of development programming (CPDE Working Group on Post-2015 Development Agenda).

The CPDE concludes that the 2030 Agenda falls short in terms of advancing a HRBA to Development as an operational framework for the implementation of the SDGs. Indeed, the UN underlines the purely voluntary character of the follow-up and review process of the Agenda, including the voluntary nature of the reporting from the national to the regional and global levels (*ibid*).

Nevertheless, highlighting how the SDGs and targets are underpinned by international legally binding human rights instruments with institutionalised monitoring bodies is one way to enhance accountability that is otherwise absent from the agreed follow-up and review mechanisms of the 2030 Agenda (Feiring & Hassler, 2016).

Development Partnerships for Sustainable Development

The 2030 Agenda calls for a "revitalized Global Partnership for Sustainable Development" that is based on "a spirit of global solidarity, in particular solidarity with the poorest and with people in vulnerable situations." SDG 17 calls for governments and stakeholders to revitalize this Global Partnership through development cooperation, mobilizing finance, technology cooperation, capacity building, open trade and policy coherence (United Nations, 2015).

SDG 17 also calls for multi-stakeholder partnerships between governments, business, civil society, the UN and other actors to mobilize and share knowledge, expertise, technology and financial resources in support of the SDGs' achievement in all countries, particularly in developing countries. Indeed, in the context of fiscal restraint among the developed countries, most observers expect that governments will be relying more on "non-traditional" means of implementation including South-South cooperation as well as multi-stakeholder partnerships (*ibid.)*.

The UN Department of Economic and Social Affairs (DSD/DESA) set up the Partnerships for SDGs online platform in 2015 to serve as a registry for multi-stakeholder partnerships and other voluntary initiatives to achieve the SDGs. It lists 3,639 such initiatives in support of one or more of the 17 SDGs as of October 9, 2017 (UN DESA, 2017).

While the proliferation of development partnerships for the SDGs is welcomed by many for mobilizing more resources, encouraging innovation and enhancing participation of different stakeholders including civil society, others warn that voluntary multi-stakeholder initiatives also pose new and perhaps greater challenges in terms of fragmentation, limited transparency, lack of accountability and weak adherence to human rights.

Reinforcing Rights-based Partnerships for Sustainable Development

Many important policy recommendations can be gleaned from the following chapters to help reinforce rights-based partnerships for sustainable development.

1. **Analyse human rights in the context of power relations** at multiple layers and intersections. Impoverishment, marginalization and oppression are very much dependent on political, military, religious, ethnic, patriarchal, corporate and cultural factors. And these interact in dynamic and complex ways at multiple intersections, at various levels (from local to international) and over time. Applying the HRBA must take these ever-shifting power dynamics faced by marginalized populations into account.

2. **Empower rights-holders, especially women and the most marginalized, by fully respecting their right to organize**. It is notable that over half of the world's population live in countries that have not ratified ILO Conventions 87, on Freedom of Association and Protection of the Right to Organise, or ILO Convention 98, on the Right to Organise and Collective Bargaining. Development partners should support people's organizations, encourage higher levels of association and alliances among them, and help them achieve long-term self-governance and self-determination.

3. **Institutionalize participation of rights-holders** at the local, national and even at the international level. Dialogue should be structured around best-practice standards – 1) timeliness with sufficient notice; 2) openness to a diversity of views, with active exchange of views; 3) availability of relevant documentation in advance in relevant languages; 4) transparency, with dialogue and feedback to those consulted; and 5) iterative on-going processes, not episodic one-off events. Multi-stakeholder bodies can be established that will not only design policies but also implement, monitor and assess them. This requires clear mandates in which each stakeholder's rights and responsibilities are acknowledged. Resources for this should be ensured.

4. **Allow local actors to take the lead** in defining priorities and strategies for the development agenda. Local actors are in the best position to ensure effective and relevant adaptation of international normative frameworks to local contexts. Local actors should include marginalized sectors in society, as well as local governments, parliament, the domestic private sector and national agencies. Working with parliament and the judiciary is particularly important to ensure adoption (in legislation) and oversight over implementation of international human rights norms and standards.

5. **Build the capacity of duty-bearers to fulfil human rights.** Developed countries should ensure maximum resources are made available for the realization of human rights in developing countries through debt cancellation, fair trade as well as transfer of finances, technology and technical capacity. The staff of national and international agencies for development cooperation should also undergo training on the HRBA and provided with the necessary tools to better perform their roles.

6. **Enhance transparency of development partnerships** by providing timely and easy access to relevant information for all stakeholders – partner governments, civil society and people's organizations, citizens in provider and partner countries. Governments should also adopt a disclosure policy and maintain a database on the social and environmental record of their private sector partners.

7. **Conduct rights-based audits** of development partnerships. Human rights and gender equality indicators should be developed and adopted, especially structure and process indicators in all aspects of the project cycle. Partnerships should include social and environmental impact assessments at the design stage, and rights-based performance assessments at various stages of implementation. These should be mandatory and undertaken in a timely, independent, and participatory manner with the results available to the public. This should also point out extraterritorial obligations and the obligations of States in their collective capacities, including as members of international organizations like the World Trade Organization and multilateral development banks, and as actors in global trade, investment and finance.

8. **Improve the accountability of duty-bearers** by strengthening a range of mechanisms that include grievance procedures, human rights institutions, ombudsmen, courts, parliaments, civil society and the media. States should not partner with companies that do not conduct human rights due diligence in their investments and operations, and sanction those that violate human rights (at home or abroad).

For advocates of a rights-based approach to sustainable development including the CPDE, the post-2015 development era will be a much more diverse and challenging landscape. This book hopes to contribute to a more informed and effective civil society engagement with all stakeholders, at all levels and stages of development.

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Implementing a Human Rights-Based Approach: Lessons from the Experience of Providers of International Assistance

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Human rights, *Agenda 2030* and development cooperation

After more than five years of deliberations, the international community adopted *Agenda 2030* in September 2015.[1] This *Agenda* commits to ending extreme poverty and reducing other forms of poverty by half. Its mandate is to "leave no one behind." In adopting the *Agenda* countries recognized "that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development." [§2]

Agenda 2030 acknowledges standing human rights covenants and treaties, with the understanding that it "is to be implemented in a manner that is consistent with the rights and obligations of States under international law." [§18] Linkages were explicitly made between women's rights and empowerment and progress on the goals and targets [§20]. However, human rights commitments and standards were largely invisible in the articulation of the *Agenda's* 17 goals and 169 targets. [Marks 2017, 16-19; CPDE, 2015]

There is considerable evidence, not least in the partial implementation of the earlier set of Millennium Development Goals, that realizing the *Agenda's* goal of ending poverty and protecting and promoting human rights are strongly connected and mutually reinforcing.[2] *Agenda 2030* sets out a transformative shift towards a comprehensive model for sustainable development affecting *"people, planet, prosperity, peace and partnership."* It is intended to be universal – applicable to all countries, inclusive – respecting equality and non-discrimination between and within countries, and accountable – achieving results for all peoples. Given these ambitions, country plans and strategies to implement this *Agenda* at all levels "will open up new avenues to integrate human rights into global and national policies in both developed and developing countries."[3]

The global community has also highlighted the important and unique contributions that development cooperation will make in achieving *Agenda 2030*. Starting in Monterey in 2001, a parallel United Nations process on strengthening financing of development has resulted in subsequent informal provider and country commitments to improve the effectiveness of development cooperation.[4] Aid providers (donors) and developing country governments first articulated the connections between human rights and effective development cooperation in the 2008 *Accra Agenda for Action*, the outcome of the Third High Level Forum on Aid Effectiveness. This *Agenda for Action* states that:

> "[G]ender equality, respect for human rights, and environmental sustainability are cornerstones for achieving enduring impact on the lives and potential of poor women, men, and children. It is vital that all our policies address these issues in a more systematic and coherent way."[5]

While human rights principles were re-affirmed by all stakeholders in the 2011 *Busan Outcome Document* (as "agreed international commitments on human rights"), it was limited to a short preamble to the four principles for effective development cooperation.[6] Since Busan, human rights have become less central in the international development agenda, as is evident in their treatment in *Agenda 2030*.

In contrast, civil society organizations have been increasingly advocating for a robust commitment to human rights as the framework for effective development cooperation since the early 2000s. The core mission of CSO Partnership for Effective Development (CPDE), a platform of more than 1000 CSOs from around the world and a member of the Global Partnership for Effective Development Cooperation (GPEDC) is "to promote development effectiveness in all areas of work, both our own and the work of others, … *guided by a human rights-based approach*." [CPDE 2012, emphasis added]

CPDE's goal is:

> "to pursue and advocate a transformative agenda for development and development cooperation, *informed by our guiding principles and a human rights-based approach to development* that prioritizes gender equality, decent work, and environmental sustainability as well as dignity, justice and improved livelihoods for all people living in poverty, including the most marginalized, victims of violence, and those with disabilities, and the full realization of human rights for all." [CPDE 2012, emphasis added]

CPDE and its affiliated CSOs suggest that the development effectiveness principles articulated in commitments made in Busan, and more generally the SDGs in *Agenda 2030*, require renewed attention to the experience of linking human rights and international assistance through a human rights-based approach.

What then is a "human rights-based approach" (HRBA)? What does it mean for this approach to be rooted in international human rights standards? To what degree has it been reflected in aid providers policies and practices over the past decade? What challenges have they faced in integrating this approach in their own practices? What are the implications for future efforts aid providers in their development cooperation?

This paper attempts to answer these questions. It provides an overview of the experiences of selected providers who have affirmed the importance of human rights in development cooperation. It points to lessons from this work to inform future civil society organization (CSO) advocacy for HRBAs. The paper uses a range of resources, including academic literature, donor evaluations, and CSO commentaries to highlight key issues and to draw tentative conclusions on the relevance of HRBAs to provider engagement in development cooperation.

Human Rights-Based Approach: Its defining characteristics

While there are different approaches to the integration of human rights into development cooperation, the 2003 *Common Understanding among UN Agencies* is generally accepted as the framework for human rights-based approaches to development cooperation. [UNDG 2003]

In the *Common Understanding*, UN sets out three basic characteristics of a human rights-based approach:

1. All programmes of development co-operation, policies and technical assistance *should further the realisation of human rights* as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other *international human rights instruments guide all development cooperation* and programming in all sectors and in all phases of the programming process.
3. Development cooperation *contributes to the development of the capacities* of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights. [Quoted from UNDG 2003, 1, emphasis added]

Among the core human rights principles that should guide all aspects of development cooperation programming are:

Universality and inalienability;
Indivisibility;
Inter-dependence and inter-relatedness;
Non-discrimination and equality;
Participation and inclusion;
Accountability and
The rule of law

A human rights-based approach in development cooperation stresses coherence with internationally agreed human rights conventions and is informed by related human rights standards in the implementation of all aspects of development cooperation. Human rights standards interpret the core conventions in relation to practical strategies for effective and progressive realization of social, economic and cultural rights and the centrality of political and civil rights. For example, principles of "indivisibility" and "inter-dependence" of rights does not mean that every initiative must implement activities related to all human rights, but rather that the development and strategies for particular development goals take account a holistic understanding of the rights of those affected by these initiatives. Importantly, the conventions and standards also recognize the centrality of accountability to people as rights-holders and their rights as development actors, not as beneficiaries of charity.

HRBA and Aid Providers: A short history

Attention to human rights and development cooperation did not begin with the *Common Understanding* in 2003. In the UN system the earliest formulation of the connection between human rights and development assistance was the 1986 *Declaration of the Right to Development*.[7] According to the *Declaration*, the right to development implies:

> "the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources." [Article 1]

Article 4 states that "as a complement to the efforts of developing countries, *effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development*," and thereby fulfill the right to development. [emphasis added]

From 1986 to the present, the *Right to Development* has been contested between developed and developing countries. There is no broadly accepted agreement in the United Nations on instruments to implement this right. Providers of development assistance (donors) consistently resist the notion put forward by developing countries that aid provided by developed countries is a *legal* human rights obligation, as implied by the *Right to Development*. [Piron 2005, Rosa 2010, D'Hollander et al 2013] Developed countries, on the other hand, prefer to focus on the obligations of developing country governments to establish institutions and processes to maximize actions for the elimination of poverty, which developing countries maintain is one-sided. [Piron 2003] Partly because of these differences, the *Right to Development* has had little practical traction in influencing the relationship between development and human rights.

The 1993 World Conference on Human Rights and its Vienna Declaration, under the auspices of the UN, resulted in increased attention to the relationship between development, democracy and human rights. The *Vienna Declaration* was a non-binding reaffirmation of political and moral commitment to the centrality of human rights.

The global UN conferences in the 1990s brought greater consideration and sensitivity to economic, social and cultural rights and their relationship to development among the largest international human rights CSOs. During this period, human rights NGOs and development NGOs proposed tentative collaborations, increasing the understanding of the human rights / development nexus, particularly among development NGOs. [Kindornay 2012, D'Hollander et al 2013] At the same time, several DAC aid providers were also exploring the convergence of the human rights and development agenda in their policies and practices. These two developments brought significant attention in the early 2000s to human rights considerations in the discourse of development cooperation, and to some degree in its practice. [Kindornay 2012] Unfortunately, by the 2010s much of this interest has waned in practice among many providers, as providers' realign their development cooperation with the underlying goal of strengthening the private sector in development.

Situating HRBAs within providers' human rights policies

In 2007, the OECD's Development Assistance Committee (DAC) observed that "many DAC members and multilateral donors are now seeking to promote human rights more comprehensively as a means of improving the quality of development cooperation." [DAC 2007, 1] A comprehensive World Bank study, published jointly with the OECD, documented eleven donor countries that took systematic account of human rights in their development cooperation during the 2000s.[8] [World Bank & OECD, 2013] The approaches to human rights among these aid providers, however, have varied greatly.

Various analyses of provider approaches to human rights point to two main motivations for integrating human rights in development cooperation. The first is a legal rationale. The Maastricht Principles on Extraterritorial Obligations of States stresses the relevance of social, economic and cultural human rights obligations for European provider support in development cooperation and the reduction of poverty and inequality. [D'Hollander et al 2013] In another example, Canada's parliament passed the ODA Accountability Act (ODAAA) in 2008 requiring that all ODA disbursements are consistent with international human rights standards. [CCIC 2010]

The second, and more common rationale in provider policies, is instrumental. It maintains that *aspects* of human rights obligations and standards, such as effective participation and non-

discrimination, are essential to effective provider approaches in development cooperation to reduce poverty. Attention to human rights establishes the necessary political environment to tackle the underlying causes of poverty and inequality. For these providers, 'empowerment' of affected populations is crucial, as it "encourages people whose rights have been violated to take control and push for social change." [Piron, 2005, quoting the Dutch Advisory Council on International Affairs] A careful understanding of the local context and power relationships affecting marginalized populations, as is the valuing of local voice, is essential to sustainable development outcomes. [Powell 205; World Bank & OECD 2013]

While paying more attention to human rights in program delivery strategies, these concerns often do not constitute a human rights-based approach to all aspects of the provider's development cooperation. As examples of good practice the World Bank cites Sweden's Sida initiatives on human rights, democratization, rule of law, people's participation and good governance. All contribute to poverty reduction in the context of the politics of development. The Bank also reviews the Dutch policy and highlights its linkages between human rights, specific development initiatives, and the country's foreign policy goals. [World Bank & OECD 2013]

History has shown that the framework for development policies and provider practices are often a function of changing governments. For example, UK DFID, policies in the early 2000s emphasized the importance of empowerment, a human rights approach and the rights of the very poorest people. The current (2017) DFID represents a major departure from this with a policy statement on the implementation of *Agenda 2030's* commitment to "leaving no one behind," which does not include a reference to human rights.[9]

Canada's Conservative Government (in power from 2006 to 2015) dragged its feet in the implementation the ODAAA Act (2008), which mandated a human rights approach in development cooperation programs. It waited seven years (early 2015) before finally publishing three guidance documents on the implementation of the ODAAA obligation. Further, there is little evidence that any of this guidance was actually implemented.[10] Now, Canada's current Liberal Government, elected in 2015, published a new "feminist" international assistance policy in June 2017. This policy outlines an intention to focus exclusively on women's rights and empowerment in the country's development cooperation, with only passing reference to the ODAAA. Unfortunately the Government has not committed any new resources for this work and is only now seeking out experiences in human rights approaches, despite nearly a decade of the ODAAA.[11]

In this context, can a human rights-based framework for development cooperation be, in the words of one commentator, "more than a metaphor"? [Piron, 2005] Some provider evidence from the 2000s would support this hope. At that time there was considerable provider engagement with human rights in their development cooperation. These experiences range from posturing in policy discourse with little practical implication, to significant attention to issues in governance, civil society strengthening and rule of law. There have also been a few serious attempts to implement a human rights-based approach.

David D'Hollander and colleagues describe five policy approaches, which exhibit increasing consideration of human rights in different providers' development policy and practice [D'Hollander et al 2013, 12-29; World Bank & OECD 2013, 12]:

1. **Rhetorical endorsement of human rights** in policy discourse, sometimes linked to concerns for aid effectiveness (for example, the importance of addressing provider-defined needs of poor populations, or 'lip-service' to participation in development);

2. **Human rights considerations as provider conditionalities,** leveraging aid in policy dialogue with developing country partners to affect specific human rights conditions, often linked to provider foreign policy interests;
3. **Human rights and democracy projects** as a specialized area of provider programming with human rights organizations and/or other civil society partners (focusing on legal reform, judicial training, election monitoring, etc.);
4. **Human rights mainstreaming** in which not only are provider programs screened to ensure a 'do no harm' impact on human rights (e.g. mainstreaming women's and children's rights), but also the provider consistently addresses human rights in policy dialogue; and
5. **Human rights-based approaches** in which human rights are the primary goal in development cooperation, and in which the provider draws on human rights principles and internationally agreed standards to shape the content, the means of implementation and levels of accountability in provider development cooperation.

Trends in Human rights mainstreaming and/or human rights-based approaches

To what extent are these different approaches reflected in aid provider practices in the 2000s? The World Bank/OECD's 2013 study identified

- 17 multilateral and bilateral organizations with "no overall human rights policies but occasional references to human rights limited to sector policies…."
- 19 multilateral and bilateral organizations with "established human rights policies" where human rights are mainly an overarching component of good governance. Among these bilateral donors are Canada, Switzerland, Finland, Austria, New Zealand and the United Kingdom.
- 7 multilateral and bilateral organizations with 'second generation' policies, or 'human rights-based approaches,' where human rights is a cross agency theme covering all operational programs and projects. Among these bilateral donors are Germany, the Netherlands, Sweden and Denmark. [World Bank & OECD 2013, 5]

This World Bank study noted that while many providers have demonstrated varying degrees of reference to human rights in their overarching policies governing development cooperation, few providers have actually implemented a human rights-based approach in their programs.[12] To what degree are these human rights priorities reflected in the aid disbursements of eight providers,[1] identified in the World Bank study?

As the accompanying charts confirm, these providers together provided higher disbursements to human rights areas than the other 16 traditional DAC providers, between 2007 and 2015. The eight providers accounted for 38% of total DAC providers' 'real aid' in 2015.[13] But they accounted for 78% aid allocated to "human rights" purposes and 71% allocated to "participation and civil society," both key indicators of an emphasis on human rights in aid allocations and development cooperation. As the charts demonstrate, these trends have been

1 These donors are Canada, Denmark, Finland, Germany, the Netherlands, Norway, Sweden and the United Kingdom.

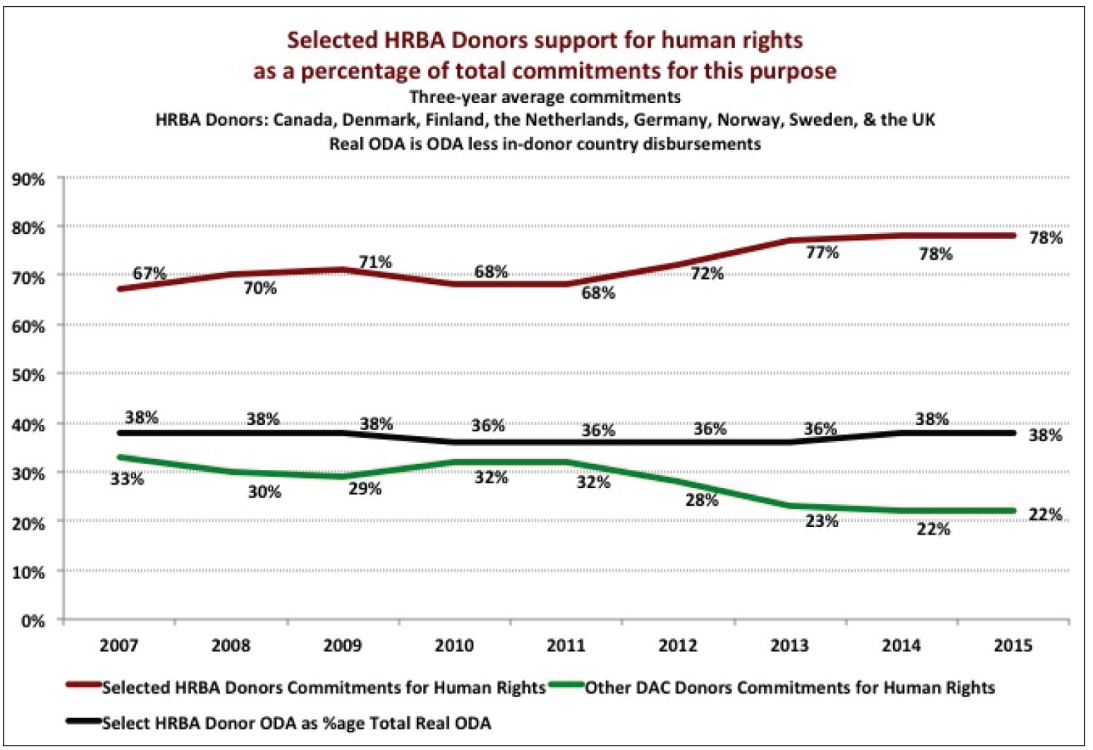
maintained since 2007. In contrast, the other 16 DAC providers had very limited commitments to these two areas – contributing 22% and 29%, respectively, for human rights aid.

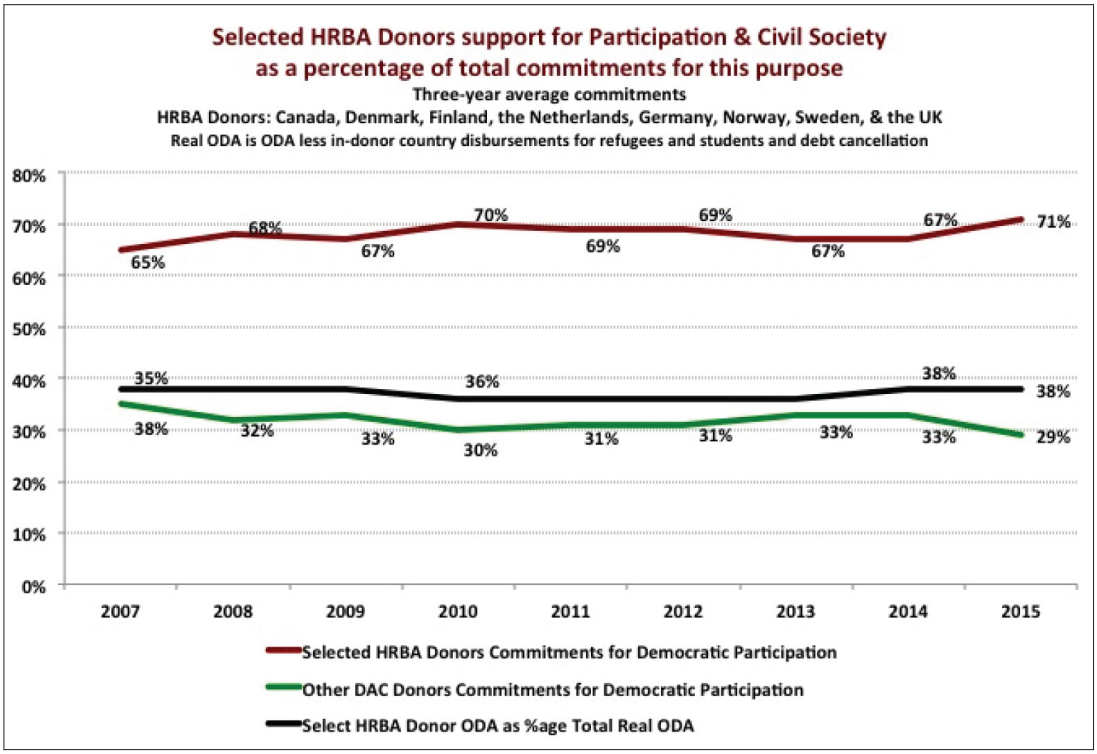
When considering all DAC providers, commitments to human rights purposes and participation and civil society is very low, making up only 2% of real aid in 2015.[14] For the eight providers, the share for these two areas is somewhat larger, but still only a modest 3.8%. There are also marked differences in the commitments of these eight providers, as a proportion of their real aid in 2015:

Sweden – 11.6%
Denmark – 9.4%
Netherlands – 7.8%
Finland -- 6.0%
Norway – 4.9%
Germany – 2.3%
Canada – 1.9%
United Kingdom – 0.7%

The differences indicate a human rights approach was strongest among the Nordic providers. For some providers – Canada and the UK – human rights was a stated priority at various points since the early 2000s, but has not been reflected in their aid allocations.

Reviews of selected human rights programming in provider agencies, and academic studies, reveal some reasons for this limited implementation of a human rights-based approach.





Challenges in implementing a human rights-based approach by provider agencies

Evaluations of provider practice consistently report an uneven implementation of their human rights policies. [Piron 2003; Ministry of Foreign Affairs, the Netherlands 2015; DANIDA 2016; D'Hollander et al 2013] Powell and others have also noted similar limitations in mainstreaming gender equality and women's empowerment in provider agencies' programs, a key component of a rights-based approach,. [Powell 2005; Canadian CSO Working Group on Women's Rights 2010; Pinto et al 2010]

The following challenges to implementing and strengthening HRBA in provider agencies have been identified. They should inform CSO strategies in strengthening HRBA in provider agencies.

Changing political leadership and support Implementing development cooperation within a human rights-based approach requires a long-term commitment to changing deeply ingrained provider behaviour and ways of thinking in development practice. Commitments to a HRBA are often launched through policy statements by Ministers, which are then translated (often unevenly) into provider practice. With changes in political leadership, the relative importance of HRBA is likely to be affected. The electoral timeframe also affects continuity in provider's practices as a new government will be eager to distinguish itself from the practices of the previous government.

These changes have been observed in several countries. For example, in the Netherlands, the promotion and protection of human rights was a clear foreign policy priority during the 2007 to 2010 period, but less so in the 2010 to 2012 period, when economic interests became a greater political priority. [Ministry of Foreign Affairs, the Netherlands, 2014] The changing

emphases in the UK's DFID has already been noted, where strong policy statements and leadership on HRBAs in the early 2000s [Piron 2003] have also given way to a greater focus on UK economic interests and the promotion of the private sector in development.

Local context matters Addressing sensitive power dynamics in relation to poverty and inequality is a fundamental part of a human rights-based approach in directing provider development initiatives. But tensions can arise between partner country interests in 'local ownership' of development programming and the objectives of these initiatives. Explicit human rights language and program objectives can create difficult relationships with partner governments and other implementing actors at country level, where governments can be very sensitive to issues in civil and political rights, for example. [Piron 2003]

Engagements with partners in fragile states, in particular, face particularly strong political barriers and institutional and capacity weaknesses, if not overt resistance to human rights. [World Bank & OECD 2013] In these contexts, it is important to balance the need to avoid harm (within a human rights framework), against the perception or reality of provider complicity with human right violations. [OECD DAC 2007]

In a HRBA, a provider interacts with a diversity of grass roots and local actors. For many it may not be appropriate or easy to use human rights language in their everyday engagement with local populations. In these cases local organizations can help 'translate' the rights approach in ways that have meaning within the local context. [Kindornay & Ron 2012]

In the Accra and Busan High Level Forums, several challenges were noted in operationalizing a HRBA in the context of aid and development effectiveness commitments. Partner governments may see human rights as "an externally imposed agenda," conflicting with the principle of country ownership and effective leadership over their development strategies. [World Bank & OECD 2013] A HRBA implies a stronger emphasis on budget support as an aid modality, which may be in conflict with the provider's policies on due diligence and fiduciary accountability. [DANIDA 2016] In contrast, some donors such as Sweden argue that a HRBA offers tools to strengthen adherence to the principles of aid and development effectiveness, particularly in areas of inclusion and transparency. [D'Hollander 2013]

Shrinking and closing of space for civil society A human right-based approach in development cooperation is rooted in an enlarged political space for peoples' participation and scope for self-defence of their rights. [DAC 2007] Civil society organizations, particularly at the local level, are a primary avenue for reaching those who are discriminated and marginalized.

Against this critical importance of non-state actors in a HRBA are challenges posed by the shrinking and closing of civil society space in today's world.[15] The effective engagement of civil society in development is affected by growing restrictions in legal and regulatory environments for CSOs, in access to policy dialogue, particularly for dissenting voices, at the country level, attacks on human rights defenders, and providers' policies in support of CSOs. Today, according to CIVICUS' country monitoring of trends in civil society space, "almost one in ten people live in a country with closed civic space and over a third of people live in countries with repressed civic space."[16]

A review of Dutch human rights policy implementation concluded that "support to civil society was found to be essential for Dutch human rights policy implementation, and it should be sustained and, where possible, expanded to more countries, both financially and otherwise." [Ministry of Foreign Affairs, the Netherlands, 2014] Another Dutch evaluation

of its women's rights and gender equality policy implementation stressed the importance of smaller (women's) organizations in all areas of gender equality and women's empowerment. [Ministry of Foreign Affairs, the Netherlands, 2015] Many of these organizations are under various levels of threat/attack. These conditions are clearly a challenge for aid providers that are intent on implementing a human rights-based approach in countries where the scope for civil society is limited or under threat.

'**Ghettoization'** In policy and practice, many aid providers emphasize human rights as integral to democratic governance and the strengthening of participation. However, this expertise can become isolated in a particular unit of a provider agency and therefore, in practice, inaccessible. The result can be aid providers that are unable to facilitate or support these initiatives. [D'Hollander 2013] An evaluation of the European Union's HRBA work, identified several levels of 'ghettoization.' This included – conceptual, where non-human rights specialist staff were ill-equipped to translate policy into actual development work; political, where human rights dialogue took place in foreign policy initiatives removed from the day-to-day working of the development agency; and institutional, where resources were concentrated in a particular implementation unit that had limited capacity to influence and engage other bodies in the agency. [Particip et. al 2011, 70]

Limitations in institutional capacity and support to officials in the field Several evaluations reported that human rights approaches are often ad hoc and dependent on the interests/skills of individuals inside provider agencies. [Particip 2011, page x] In DFID for example, rights-based approaches in a few countries were seen to be the result of particular advisors. While country programmers recognized their value for DFID and effective outcomes, there were few formal requirements related to HRBA for projects, nor were there special efforts to increase the capacities of officials to undertake human rights impact assessments. [Piron, 2003, 14] The Dutch evaluation noted "limited gender expertise in both headquarters and 'the field,' unclear organizational positioning of a 'gender unit' and little training on gender-related topics." [Foreign Affairs Ministry, the Netherlands, 2015, 21] The Danish evaluation observed that technical support made a big difference in closing the gap between policy and country level practice. [DANIDA, 2016, 38]

Limited provider accountability As the World Bank study observes, "there is a dearth of instruments to hold donors accountable for their human rights policies." [World Bank & OECD 2013, 105] Others noted technical difficulties in determining appropriate indicators and assessment tools to measure outcomes in a human rights-based approach. [D'Hollander et. al 2013, 20-22] DANIDA found scant evidence of efforts to document change among vulnerable populations, and to learn from this experience in its assessment of the Danish human rights-based approach. [DANIDA 2016, 7]

Strengthening mutual accountability platforms between providers and partner countries has been a key principle for aid and development effectiveness since the Paris Declaration in 2005. In 2016, the Global Partnership for Effective Development Cooperation (GPEDC) reiterated the importance of mutual accountability and mutual benefit in aid relationships in the context of "the unique role of the [GPEDC's] monitoring framework."[17] While providers have improved aid transparency as a pre-condition for mutual accountability, little progress has been noted by the GPEDC for providers' systematic engagement in inclusive 'mutual accountability' at the country level.

Ten years after the Paris Declaration, it is discouraging that only 46% of the 81 countries undertaking GPEDC monitoring conducted mutual reviews with other stakeholders to track

progress on commitments and targets for development cooperation. Only 44% of these countries made the results of these reviews publically available. Existing mutual accountability mechanisms are also far from inclusive, a critical dimension of a HRBA. Less than half (47%) were multi-stakeholder in character, involving local governments and non-executive stakeholders (CSOs, parliamentarians) in the processes beyond government/providers.[18]

A core principle of a human rights-based approach is that all development actors are held accountable for development outcomes. This accountability is achieved through various forms of transparency, inclusivity and dialogue. Human rights accountability in aid relationships must address the profound impact of inequalities in power and capacities at all levels. Yet, for the most part, providers often invest in and insist on close scrutiny of partner country governments and other non-state development actors, but limit their own answerability to provider country parliamentary oversight. [Kindornay & Ron 2012, 18-19]

Embedding a human rights-based approach in aid providers' institutions

Most countries are signatories to human rights conventions and related standards. These instruments provide actors with explicit normative and analytical foundations for development cooperation. Human rights-based approaches move beyond policy rhetoric to highlight power relationships so that development assistance can help achieve sustainable outcomes for people living in poverty and those who are otherwise marginalized. This is the key goal of 'leaving no one behind' in *Agenda 2030*.

A HRBA creates practical avenues for achieving *Agenda 2030* in several ways [Canadian Council for International Cooperation et al, 2014; UK Interagency Group 2007]. A human rights-based approach

- Drives development actors to focus on empowering excluded and marginalized populations as rights-holders, not beneficiaries of charity;
- Requires a holistic viewpoint of the political, social, institutional and cultural environment in determining priorities, moving away from sectoral program 'stovepipes';
- References already agreed human right standards for determining programmatic goals and modalities for service delivery and other development initiatives, moving away from provider-imposed policy conditionalities in policy dialogue;
- Embeds democratic ownership through human rights standards for participatory processes, institutionalized consultations with diverse stakeholders, and through the obligation to seek free, prior and informed consent from affected populations;
- Strengthens capacities for ministries and state institutions to meet their responsibilities as 'duty-bearers' in relation to all citizens, including attention to government resources to meet these obligations (e.g. through reform of tax policies);
- Strengthens commitments to transparency in development cooperation and provides opportunities for empowered people and communities to hold governments, official aid providers and CSOs to account; and
- Leads to sustained development results, by addressing underlying conditions for poverty, unjust power relations and inequalities.

The challenges in achieving these directions for development cooperation should not be taken lightly. A HRBA requires a substantial paradigm shift for all development actors in the structuring of development practices and the changing of behaviour. [Nelson & Dorsey 2003] The Implementation of a HRBA may face significant barriers and backlash from politicians, staff, partners and development counterparts rooted in different politics and power relations. [Actionaid, forthcoming]

In this context of contested development policies, CSOs need to be strong advocates for HRBA, aligning with officials and politician allies, pointing to the practical advantages of this approach in realizing the SDGs. In doing so, CSOs can draw attention to a number of avenues that sustain a HRBA within a provider organization.

1) Understanding and adapting a HRBA to local context Although aid is delivered through a range of instruments and relationships, the focus for a HRBA is ownership at the country level. Each country, sector or community may have unique human rights challenges, which will affect and shape the nature of a particular provider/partner intervention. Providers must adapt the implementation of a HRBA accordingly. Country/local strategies and aid modalities need to focus on appropriate means for strengthening local priorities towards the interests of those most discriminated, the improvement of diverse stakeholder engagement, and the realization of new levels of accountability. These initiatives should move and change over time in ways consistent with human rights standards. [ActionAid, forthcoming]
According to a comprehensive evaluation of the European Union's support for human rights, a 'localization' process is crucial to

> "allow local actors to define a realistic and prioritized reform agenda … and to better connect international normative frameworks with societal dynamics at country level, since there is no contradiction between maintaining human rights as a global reference and allowing variations in the content in order to make human right protection as locally relevant as possible." [Particip 2011]

2) Analyzing human rights in the context of power dynamics within country strategies The tactics in applying a HRBA at a country level are highly dependent on an analysis and understanding of power relations in a given context. As ActionAid points out in its review of its HRBA, understanding the changing power dynamics faced by marginalized populations, with all its political, military, religious, ethnic, patriarchal, corporate and cultural dimensions, is critical to determining an appropriate programmatic approach. [ActionAid, forthcoming; Powell 2005]

A careful process for determining provider country strategies is a crucial step in a HRBA. [DANIDA 2016; World Bank & OECD 2013, 29] The design, implementation and monitoring of provider program partnerships must take into account all human rights considerations. While country sectoral priorities may not shift with the adoption of a HRBA, their objectives and approaches to implementation may. Serious local engagement with a range of development and human rights actors is essential. The systematic application of human rights assessment tools across all major country programs may help in the weighing and application of relevant human rights standards in programming and, in so doing, create conditions for consistency in a HRBA for the provider agency.

Provider tools for country programmers can be a critical resource. DANIDA put emphasis on tools to improve country programs at the design stage. Its evaluation noted that these tools played "a key role in improving analytical rigour and providing more systematic focus on the empowerment of vulnerable groups identified as rightsholders." [19] [DANIDA 2016, 41]

In 2009, DFID published *A Practical Guide for Assessing and Monitoring Human Rights in Country Programs*. The objective of this assessment tool was to establish a comprehensive picture of human rights at the country level including civil, political, economic, social and cultural rights. The intention was to assess both rights "on paper," and rights "in practice." It provides tools for an examination of vertical accountability – "the degree to which the governed in any society have effective mechanisms for voicing their concerns and interest to those who govern them." It also looks at horizontal accountability or "the degree of independent oversight between and among branches of government." [DFID 2009, 14-15] The guide sets out detailed questions for human rights assessment in all of these areas and at the program level, including attention to women's equality and empowerment issues.[20]

3) Strengthening mechanisms for policy dialogue and mutual accountability The DAC guidance paper on human rights and development stresses the importance of providers working with a range of accountability mechanisms, through human rights institutions, ombudsmen, courts, parliaments, civil society or the media. [DAC 2007] This engagement should both strengthen these mechanisms in relation to provider country initiatives (mutual accountability dialogues, and extend their inclusion to diverse civil society and other actors.

A HRBA creates the basis for provider/partner dialogue so that programs and policies are informed by the views of people living in poverty and other targeted populations. Providers and partner governments should institutionalize this engagement with civil society from local to national levels. Consultations should be structured around best-practice standards – 1) timeliness with sufficient notice; 2) openness to a diversity of views, with active exchange of views; 3) availability of relevant documentation in advance in relevant languages; 4) transparency, with dialogue and feedback to those consulted; and 5) iterative on-going processes, not episodic one-off events. [Tomlinson, 2010]

Certain elements are basic pre-conditions for accountability and related policy dialogue. Clear transparency of provider programming intentions is essential. Just as important is timely and easy access to relevant information, available for all stakeholders – partner governments, civil society and peoples organizations, citizens in provider and partner countries. This information should allow for an assessment of the degree to which all stakeholders are sustaining a human rights-based approach in specific initiatives in development cooperation.

An evaluation of the EU's support for human rights seeks a revitalization of political dialogue on human rights. This dialogue should be inclusive (not only focused on government), iterative and take advantage of informal opportunities for real exchange on important issues. It should pursue deeper and direct engagement with citizens and diverse civil society actors. [Particip 2011, 76-77]

In the Global Partnership for Effective Development Cooperation, providers and partner country government can build upon existing mutual accountability mechanisms to reinforce HRBAs.

4) Addressing the shrinking and closing space for CSOs Civil society, in all its diversity, are critical development actors in advancing a HRBA. As noted earlier, CSOs are increasingly experiencing shrinking and closing of the political space for advocates and development actors, particularly in critical areas such as resource development, environmental issues, women's reproductive rights, and LGBTO issues.

At a High Level Meeting for the GPEDC in November 2016, governments agreed to work to "reverse the trend of shrinking civic space wherever it is taking place and to build a positive

environment for sustainable development, peaceful societies, accountable governance, and achievement of the SDGs and the 2030 Agenda."[21]

Providers can commit to a range of initiatives and approaches, consistent with a HRBA, to counter current trends in the limiting of civil society space. German CSOs have made a number of specific suggestions [Venro et al, 2016]:

- Screen provider policies and political decisions, such as general anti-terrorism measures, to ensure no negative impact on human rights or on civil society partnerships;
- Support expanding space for engagement with civil society in international organizations and multilateral negotiation processes;
- Sanction companies that do not conduct human rights due diligence in their foreign investments and operations;
- Support civil society and human rights defenders through ongoing contact with local human rights organizations, implement public and discreet diplomatic measures, and in extreme situations, guarantee protection of individuals;
- Work to improve international networking, early warning and collective support mechanisms on challenges to civic space;
- Prioritize human rights and space for civil society in guidelines for country development programs;
- Implement programs to strengthen support for rights to freedom of expression, association and assembly in governance, environment, justice and media;
- Undertake regular exchanges and consultation with local civil society actors and human rights defenders; and
- Facilitate flexible financial support for civil society development actors, including institutional support, with exceptions to standards and processes for civil society working under conditions of extreme repression.

5) Taking deliberate measures to build institutional capacities for HRBA An important dimension in the implementation of a HRBA is the need to change internal attitudes and behaviour, particularly relating to the exercise of "donor power." According to ActionAid, "it is important … to challenge the assumption that all staff who are recruited instantly share the values, attitudes, skills and knowledge needed for using HRBA." [ActionAid, forthcoming] The critical importance of human relationship-building in HRBA implies that human resource policies, training, and performance reviews need to be consistent with the roles that HRBA implies for provider staff. Human resource policies need to address common staff pushback on changes needed – understanding of expectations, workloads at the country level, or fear that sensitive country relationships may be undermined.

As already noted, the investment in tools and training can make a difference. The DANIDA evaluation of Denmark's human rights-based approach examined several other official and CSO providers that were implementing a HRBA. They concluded that DANIDA's systematic technical and headquarters support for country programmers was a key difference in a consistent application of HRBA at the country level. They pointed to DANIDA's investment in necessary tools for HRBA in the roll out of its policy, which were a significant value-added in Denmark's HRBA [DANIDA 2016, 41]

6) Ensuring committed political leadership A number of studies point to the importance of proactive commitment to a HRBA on the part of senior level officials – ministers, senior managers, champions at country level, and CSO leaders. [Piron 2003; DANIDA 2016; Morton 2010] These leaders must not only articulate clear directions and policies related to HRBA, they must also be prepared to confront backlash and potentially high levels of political risk associated with human rights. Ministers should be prepared to finesse the inevitable tensions with provider foreign and economic policy interests in some developing countries. Agency line managers should be trained and empowered to offer consistent support to country programmers. These roles may require new skills in analysis, consultations, evaluation and reporting.

Conclusion

The international community has adopted the highly ambitious *Agenda 2030* and its 17 Sustainable Development Goals (SDGs). Among these goals are the full eradication of extreme poverty, the cutting of national poverty in all its dimensions by half, and the reduction of inequalities within and among countries, by 2030. In their pledge to 'leave no one behind,' member states also committed to the required financing to achieve these goals. Providers of Official Development Assistance (ODA) will play a key role in these efforts. ODA is a unique and critical public resource for the SDGs as it is the one resource that may be deliberately programmed to reduce poverty as its primary purpose.

This paper argues that a human rights-based approach for ODA sets out a realistic and transformative framework to advance *Agenda 2030*. A HRBA provides the necessary focus to support and empower people living in poverty, those who face discrimination or those otherwise marginalized, to claim their rights as engaged citizens, not as objects of charity.

During the 2000s, a number of providers adopted policies that related human rights norms and standards to achieving development objectives. While many of these efforts focused on expanding governance-related programming, several providers moved towards a human rights-based approach in their development cooperation. The lessons from this experience provide a foundation for CSOs advocating for a human rights-based approach to aid and *Agenda 2030*.

Of course, it is important to acknowledge the significant challenges in making the shifts in provider priorities and practices that are implied by a HRBA. Critical among these are the tensions with the aid effectiveness principle of local ownership, the translation of norms and standards into complex country realities, and the sustaining of political leadership as governments and foreign policy priorities change. Equally important is the move away from a ghettoization of human rights programming and expertise in provider agencies. The shrinking and closing of space for civil society organizations as actors within a HRBA is a key challenge as is the paucity of mechanisms to hold providers to account.

Nevertheless, a concerted move by providers to implement a human rights-based approach is possible. Its advantages are key to expanding effective development cooperation for the SDGs based on principles of universality and global solidarity.

Yes it will require investments in a paradigm shift, to one where a human rights framework becomes the determining norm for program choices and development practice. But this is to be welcomed.

Policies and investments are essential

- In expanding human rights expertise throughout the provider agency, with appropriate training for staff and partners, and with resources for educating citizens in the provider's country;
- In the implementation of human rights assessment tools, including country program strategy processes, in setting and monitoring program priorities at country level;
- In giving priority to creating and renewing of mechanisms for inclusive policy dialogue and mutual accountability, which address human rights issues and norms, at all levels; and
- In deliberate measures to confront the realities of shrinking and closing space for civil society organizations in increasing numbers of countries in the South, but also in some provider countries in the North.

There is no blueprint for an HRBA, how it is organized and implemented. A HRBA will be reflected differently in different country contexts. Programmatic expressions of a HRBA will therefore be along a continuum. An indispensable ingredient is its critical reflection on practice and internalization of lessons from country experience. Clear effective political leadership, committed at the highest level to a HRBA can drive and sustain the necessary changes on the ground, changes and commitments that must be sustained over the lives of several governments in a given provider country.

HRBAs can provide new direction for ODA practices. The result may not only be more effective development cooperation, but also broader foreign policy initiatives, shaped by sensitivity to human rights, gender equality and women's empowerment.

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7 UN General Assembly, *Declaration on the Right to Development*, A/RES/41/128, accessed July 2017 at http://www.un.org/documents/ga/res/41/a41r128.htm.

8 These 11 donors include Sweden, the UK, Germany, Austria, Australia, Canada, the Netherlands, the United States, Switzerland, New Zealand, Norway, and Ireland. This paper focuses on the practices of eight of these DAC donors: Sweden, the UK, Germany, Canada, the Netherlands, Norway, Finland and Denmark where there has been a strong and explicit focus on human rights in their development cooperation.

9 See DFID, "Leaving no one behind: Our promise," Policy Paper, updated January 10, 2017, accessed July 2017 at https://www.gov.uk/government/publications/leaving-no-one-behind-our-promise/leaving-no-one-behind-our-promise

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12 It was unfortunately beyond the research scope of this study to examine current policies and practices of providers identified by the World Bank/OECD as implementing a HRBA in the 2000s. The paper, however, does draw from evaluations and assessments of aid practices in implementing a HRBA focusing on several of these providers.

13 Real aid is total DAC aid less provider allocations for in-provider country expenditures for refugees, imputed costs for students from developing countries and debt cancellation. It is a more true measure of aid that is available to developing countries for development purposes

14 The following statistics are the author's calculations based on the OECD DAC CRS+ data.

15 See Amnesty International, "Human rights defenders under threat: A shrinking space for civil society," Report, May 2017; Thomas Carothers, "The Closing Space Challenge: How are funders responding," Carnegie Endowment for International Peace, November 2015; CPDE and Brian Tomlinson, GPEDC Indicator Two: Civil Society Operates within an environment that maximizes its engagement in and contribution to development – An Assessment of Evidence (June 2016), compiled by the Working Group on Enabling Environment and the Working Group on CSO Development Effectiveness; and CIVICUS, Monitor – Tracking Civil Society Space.

16 See CIVICUS Monitor – Tracking civil society space, "Findings – April 2017", accessed July 2017 at https://monitor.civicus.org/findings/.

17 GPEDC, High Level Meeting, Nairobi Outcome Document, para 30 and 31, accessed July 2017 at http://effectivecooperation.org/wp-content/uploads/2016/12/OutcomeDocumentEnglish.pdf. The Partnership had a weak commitment for mutual accountability -- "to update mutual accountability arrangements at country level to include all relevant development partners, in an inclusive and transparent manner." [§12b]

18 See Brian Tomlinson, Reflections on the Global Partnership's Second Progress Report, AidWatch Canada, November 2016. See also GPEDC, Making Development Cooperation More Effective: 2016 Progress Report, accessible at http://effectivecooperation.org/2016/11/2016-monitoring-report-released/.

19 This tool was created during 2013 and may be found at http://amg.um.dk/en/technical-guidelines/hrba-guidance-and-screening-note/.

20 The questions can also be found in CCIC, *A Time to Act*, as Appendix One. [CCIC 2010] The publication, *Integrating HRBA and Equitable Partnerships into Development Programming*, also sets out a range of questions to develop a human rights profile in relation to determining programmatic priorities and implementation. [CCIC et al 2014]

21 GPEDC, *Nairobi Outcome Document*, op cit.' para 18.

Part 2

Economic Rights in Development Partnerships

Assessing USAID's Implementation of a Human Rights-Based Approach: A Comparative Study on Jordan and Palestine's Agricultural Sectors

The Arab Group for the Protection of Nature (APN)

Thousands of years ago, the Middle East was known as the Fertile Crescent and the cradle of civilization, largely lauded for its incredible fertility and advanced agricultural development; from extended irrigation networks to the domestication of livestock. In the 1930s, the Middle East was a net wheat exporter, with Egypt, Iraq and Transjordan as major producers (Woertz, 2014). However, a multitude of complex geopolitical, socioeconomic and environmental issues have led to the brutal decline of the region's renowned agricultural superiority. Consequently, MENA is now considered one of the most food insecure regions globally (Center for International and Regional Studies, 2012).

Both Jordan and Palestine have fallen as casualties to weak agricultural policies and neoliberal-driven economic development strategies that led to the neglect of agriculture. There has been a plethora of development partners, including the World Bank, the U.S. Agency for International Development (USAID), EuropeAid, among others, deploying a number of projects in an effort to enhance both countries' agricultural sectors. These agencies have attested that their interventions have led to considerable improvements in the agricultural sector with a large number of beneficiaries and an enhancement of farmers' standards of living. However, their efforts have seldom been assessed on whether or not their projects are in fact in line with a rights-based approach that is inclusive, sustainable and truly empowering.

As such, this paper will provide a comparative study on the efforts of development partners, namely USAID, in integrating a human rights-based approach (HBRA)and prosperous growth in the agricultural sector while safeguarding the primary entitlements of smallholder farmers in both Jordan and Palestine.

Current state of agriculture

Jordan

Throughout the late 1990s, an eager focus on economic development and modernization, largely based on the Western model of societal reform, led to an overwhelming neglect of a key source of stability and welfare: the agricultural sector (Baylouny, 2008). As a condition of joining the World Trade Organization (WTO), Jordan began implementing the Agricultural Structural Adjustment Program (ASAP), which was in line with neoliberal policies that favored deregulation and privatization of the sector (Jabarin, 2005; El Saadi, 2017). As such, ASAP led to a major decline in governmental support of the sector through the elimination of agricultural subsidies and incentives, the removal of standard pricing of agricultural commodities, and the placement of interest rates on agricultural loans (EuropeAid, 2012; Jabarin, 2005) The agricultural reform also led to the adoption of an export-led and trade-based food security strategy with an excessive reliance on foreign labor for domestic productivity (Woertz, 2014).

As a result of neglect, Jordan has an incredibly weak infrastructure for post-harvest storage and processing, and has only one agricultural credit institution (Ibid.). Other institutional constraints include the weak farm extension system with considerably limited physical and

technical capacity. Today, the sector's contribution to the national GDP stands at a mere 4 percent, a considerable decline from roughly 40 percent in the 1950s (EuropeAid, 2012).

In the 1960s, Jordan's wheat self-sufficiency was at 70 percent, whereas today, the country imports 98 percent of its cereal needs (Santos & Ceccacci, 2015), and in 2011, its food self-sufficiency ratio[1] stood at a mere 53 percent (AFED, 2014). The over-reliance on food imports has exposed Jordan to the vulnerability and volatility of international food supply chains and food prices (AFED, 2014; ESCWA, 2010); Jordan was hit particularly hard by the 2008/09 and the 2011 global food crises[2] and faces high fiscal and political pressures as a result of its soaring food import bill (Harrigan, 2015).

Environmental and geopolitical challenges

Jordan is one of the top five most water stressed countries in the world (Hadadin, et al., 2010; EuropeAid, 2012), and over 90 percent of the country is classified as arid and receives less than 200 mm of annual rainfall (Ministry of Water & Irrigation, 2016). The limited area fit for cultivation is slowly declining due to urban sprawl and other biophysical constraints, including excessive groundwater extraction, depletion of soil quality, soil salinization, and frequent droughts (UNDP, 2013; EuropeAid, 2012). Furthermore, the progression of climate change in the region and nationally is expected to significantly affect local production (IFAD, FAO & The World Bank, 2009).

While Jordan is widely considered as an oasis of peace surrounded by turmoil, the country has not escaped the consequences of regional war, conflict and occupation.

The aforementioned climatic challenges undoubtedly add pressure to Jordan's natural resources, but it is important to note that the country's resource scarcity is also largely man-made; Jordan's resource crisis has been exacerbated by Israel's water strategy, which relies on the full exploitation of water resources within and largely beyond its boundaries (Stork, 1983). In 1964, Israel's National Water Carrier project had the task of transferring water from the Sea of Galilee to the Negev mainly be allotted to irrigation projects (Bleier, 1994). This required the diversion of water flow from the Jordan River into the Sea of Galilee, which has been deemed as resource appropriation that left Jordan and Syria with brackish, saline water, and has substantially affected local agricultural activity (ibid.).

In addition, the country has long depended on Syrian and Iraqi markets as both major export destinations and gateways to European markets. Thus the closure of the two markets due to political instability has had dire consequences on agricultural exports. There has been a 35 percent drop in exports compared to the same period in 2016 (Namrouqa, 2017).

Palestine

Similar to the case of Jordan, the Palestinian agricultural sector has witnessed a tragic decline in its contribution to GDP; from roughly 18 percent in the late 1980's, down to a sheer 5.5 by

1 Self-sufficiency is an indicator of the extent to which a country produces its own food; the higher the ratio, the greater the level of self-sufficiency (FAO, 2015).

2 It is important to note that the 2011 global food price crisis that spiked the price of wheat, and subsequently bread, had major political repercussions in the Middle East and North Africa region. There has been ample evidence on the linkages between the aforementioned price hikes and the civil unrest sparked the Arab Spring (Werrell & Femia, 2013; Maystadt, et al., 2014).

2010 (Palestinian National Authority, 2010). This again, is largely due to the implementation of poor economic policies and a trade-driven political agenda pushed by international financial institutions, including the World Bank and the International Monetary Fund (Samara, 2000).

More notably, however, are the perils of the longstanding Israeli occupation and colonization. The Palestinian food and agricultural systems have been substantially affected by discriminatory policies, resource dispossession and movement restrictions imposed by the State of Israel (United Nations Conference on Trade and Development, 2015).

The confiscation of Palestinian land to facilitate the expansion of the state of Israel has had among the largest detrimental consequences on agriculture (The Applied Research Institute of Jerusalem , 2015). To date, taking into account all land that has been confiscated, Area C of the West Bank that is under full Israeli control[3], and the area of land lost as a result of the construction of the Apartheid Wall, considerably less than 15 percent of historical Palestine remains (Palestinian Central Bureau of Statistics, 2017; Anon., 2011). Moreover, approximately 63 percent of Palestinian agricultural land is located within the Area C zone, deeming the land inaccessible to Palestinian farmers (The Applied Research Institute of Jerusalem, 2008). The situation in Gaza is comparatively worse, where the ten-year long blockade has devastated public infrastructure and disrupted food and agricultural imports. Military imposed 'buffer zones' have rendered 30-40 percent of agricultural arable land, in what was considered as Gaza's food basket, inaccessible (Palestinian Farming and Civil Society Organizations, 2013). This has left 47 percent of its households as food insecure and roughly 80 percent of the population dependent on international aid (UNRWA, 2016).

Another factor significantly affecting agricultural productivity is the alarming disparity in the access to water between Palestinians and Israelis (Amnesty International, 2009). Israel determines the amount of water Palestinians can extract from aquifers, such that Palestinians are limited to 17 percent of the total water in the aquifers, while Israel extracts the remaining 83 percent for consumption and use in settlements or in Israel, or for sale to Palestinians at inflated prices (The World Bank, 2008b; The Applied Research Institute of Jerusalem, 2008).

Development partners case studies

USAID Jordan

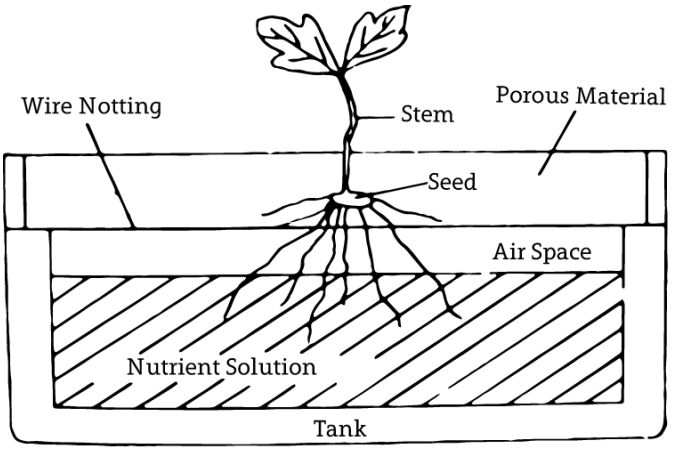
For several decades now, a number of development partners committed to support economic growth projects in Jordan. USAID, for instance, has been present in the country since 1957 working on issues of economic development, democracy, rights and governance, health, and female empowerment (USAID, 2017a). Despite its heavily funded involvement in the field of socioeconomic prosperity, the 3-year Hydroponic Green Farming Initiative (HGFI) launched in 2013[4] is one of the only agricultural endeavors that the development partner has partaken in Jordan; in 2013, USAID had a budget of $692,394,445 in Jordan, only $1.1 million of which was allocated to the HGFI.

3 *The Oslo II Accord (1995) divided the West Bank into three administrative categories: Areas A, B and C. The distinct areas differed according to the amount of self-government the Palestinians would have through the Palestinian Authority* (Amnesty International, 2009b).

4 It is important to note, however, that USAID has recently issued a 5-year $35 million grant on the Water Innovations Technology that will be implemented by Mercy Corps. The project will focus on water-saving interventions to improve Syrian refugee resilience and support their Jordanian host communities; one such intervention will be a focus on the establishment and the expansion of hydroponic production systems.

With hydroponic farming, plants are raised in an indoor nutrient-rich circulated water medium rather than in soil (see figure 1). Compared to conventional farming, hydroponic systems are meant to give higher yields and could be considerably more efficient in terms of water and land (Harris, 1966; Barbosa, et al., 2015). The system has therefore been embraced as a modern farming technique that could be a panacea for food insecurity and traditional agriculture's resource intensity and unsustainability (Bradley & Hernan Marulanda Tabares, 2000).

Figure 1. Basic diagram of an indoor hydroponic system



A typical water-culture (hydroponic) tank unit
(after W. F. Gericke)

Source: Harris, 1966

In this a simple diagram of a hydroponic system. The plants are held by a platform that floats on the nutrient solution. An air pump is normally used to create oxygen that is supplied to the plants' roots.

In this regard, USAID's HGFI seeks to respond to the country's crippling water and energy scarcity, increase revenues and increase economic opportunity. In the USAID-funded greenhouse provided in Zarqa, Jordan, for example, 29,000 heads of lettuce can be produced using 216 m^3 of water, compared to 1,160 m^3 of water needed with conventional farming, reaching overall water savings of over 80 percent (USAID, 2017b). The project is also looking at the potential for linking these hydroponic farmers with large agribusinesses to gain risk assurance and new marketing channels. USAID has also acknowledged the need to focus on enabling marginalized groups by expressing its willingness to prioritize the training of women and the youth. The project will also connect farmers and households to financing streams for future hydroponic projects (ibid).

However, despite the environmental and economic virtues of hydroponic systems, the affordability and sustainability of a hydroponic system in a rural and development context is highly contentious (Baumgartner & Belevi, 2001; Dasso & Pinzas, 2000). There is a considerably large investment cost required for the hydroponic system even when installed in its most basic form. The system also demands a high level of technical expertise to manage the highly precise fertilizing regimen and monitor pH levels and electric conductivity (Baumgartner & Belevi, 2001; USAID & ECO Consult, 2015b). This is in complete contrast to conventional or traditional farming that requires no capital intensive materials or economic resources, and can be performed on any small homestead or field plot (Okemwa, 2015).

Also, the HGFI focused largely on medium- and large-scale private farmers, with no prior consideration of small-scale farmers' priorities or willingness to adopt modern technology. This is especially important in a rural setting, where the rates of uptake and retention of modern agricultural technology are notoriously slow; primarily due to low technical skills and socio-cultural stigma (Parvan, 2011). This top-down approach gives credence to the deliberate oversight of small-scale farmers' rights to self-determination and prosperity.

It is also important to note that the water used for irrigation in the Jordan Valley is primarily treated wastewater sourced from the King Talal Dam, which is of high salinity and not suitable for hydroponics (USAID & ECO Consult, 2016). Therefore, the cost of water increases significantly as it must go through additional filtration stages followed by a final water purification system. In the Highlands, while water derived from groundwater wells is of high quality and can be used directly for hydroponics (ibid.), most smallholder farmers do not have access to groundwater wells and must purchase treated water at a higher cost.

Hydroponics, therefore present two problems for the traditional smallholder farmers; first, there is a sizeable gap in expertise and education between a well-trained hydroponic engineer, and rural smallholder farmers who are arguably poorly educated and barely technologically proficient. Second, the high operation costs of the system will undoubtedly require long-term funding, rendering the financial sustainability of the project highly disputable (Savvas, 2003). Thus, due to its expensive setup and maintenance, the hydroponic systems have very low economic feasibility at a small-scale, making the technology one that is confined to large agribusinesses with the capital to afford it.

Another important aspect to consider is that while hydroponically grown vegetables are cost saving for farmers, they are considered high-quality crops that are destined for either exclusive local markets or for export. Hydroponic lettuce, for instance, can be sold at ten-times the market price of conventionally grown lettuce (USAID & ECO Consult, 2015). As such, these high-priced vegetables will assuredly be unaffordable for local communities, negating financial accessibility as an essential pillar for food security.

It could therefore be argued that the drive to infest the agricultural sector with hydroponic systems will only serve to aggravate the balance that is tipped in favor of large farmers, and at the expense of small and medium holder farmers. The technology creates a perpetual reliance on USAID, and this virtual eternal dependence on a development partner is antithetical to the empowerment precondition in a human rights-based approach, and completely undermines rural communities' sovereignty over their own resources.

USAID Palestine

USAID has also had a strong presence in Palestine; since 1994, $5.4 billion have been invested in a range of programs from democracy and governance to education, water resources and infrastructure (USAID, 2017a). Compared to Jordan, the agency has a much more extensive agricultural project portfolio running in the Occupied Palestinian territories, primarily in the West Bank. USAID has invested heavily in a diverse number of agricultural fruits, vegetables and herbs; including carrots, dates, guava, avocado, potato, strawberry, mango, broccoli and sweet potato. USAID's involvement in the West Bank and Gaza has been centered on increasing exports by improving job skills, improving product quality, introducing new crops with high export potential, and by linking farmers with international agribusinesses and distributors (USAID, 2015).

These projects have resulted in an admittedly remarkable feat; according to USAID, their projects in 2012 and 2013 helped Palestinian agribusinesses increase the value of exports by $25 million; this included a $15 million increase in the export of fresh herbs and a $1.7 million increase in Mejdoul date exports (USAID, 2013). The contracts that had been negotiated by USAID to link Palestinian farmers with both domestic and international agribusinesses led to the infusion of $8 million into the Palestinian economy (ibid.)

Again, despite the economic merits of these export-oriented initiatives, USAID's interventions have been overwhelmingly concerned with producing cash crops for the external market. This is incredibly problematic under occupation, where the flow of Palestinian agricultural exports is dependent on Israeli's lengthy export procedures and often requires a fee to the Israeli government (Mansour, 2012; The World Bank, 2008a). So, while USAID projects bask in assisting Palestinian farmers to achieve an improved standard of living; they simultaneously force these very farmers to legitimize a colonial settler regime that strips them of their fundamental human rights. This also aggravates the subordination of the Palestinian economy to that of Israel's. This is complete negligence on the part of USAID that, as development cooperation, must contribute to the capacity of rights-holders to claim their rights, or of duty-bearers to meet their obligations.

This is also particularly dangerous in the context of the Palestinian context of food insecurity. As of 2010, Palestine had a total export/import ratio of 1.1 compared to a world average of 11.3, indicating a frightening food import dependency (ESCWA, 2010). Considering the dwindling state of agricultural production and food security, this ratio has assumedly declined further. Furthermore, these imports are extremely precarious due to the high dependence on the Israeli market and the continued Israeli-imposed restrictions on the movement of goods, which frequently result in higher food prices (WFP, 2011; Ma'an Development Center, 2015; Palestinian Ministry of National Economy & ARIJ, 2011). Thus, where over 1.6 million people are food insecure (World Health Organization, 2017), only a strengthening of the domestic market would serve to improve the absolute level of sovereignty where Palestinians have true and complete jurisdiction over food resources (WFP & ARIJ, 2010).

Moreover, the projects have been criticized for working with large scale agricultural companies and farmers; aggravating a segregated system where these agribusinesses thrive and the small and medium sized farmers languish as sheer wage laborers for these businesses (Mansour, 2012). As such, these projects and contracts have contributed towards making a Palestinian plutonomy, provoking considerable imbalances where better off farm owners are given priority over vulnerable farmers.

Comparison of USAID strategies

The development partner USAID used different strategies in the two countries. In Jordan, it showed little interest in developing the agricultural sector and relied on modern technological solutions to enhance resource efficiency. In Palestine, it was comparatively more involved in the sector, albeit with a predominantly export-centered program. As discussed above, the two strategies have perhaps produced some benefits, be it economic or environmental. In both Palestine and Jordan, however, USAID took a market-based approach that strengthens the links between medium- and large-scale farmers and high-value domestic and export markets that do not warrant agricultural development, innovative research, or livelihood empowerment.

Evidently USAID focused on market failure and detached itself from the deep-rooted core of the agricultural plight that has lingered for decades in both Jordan and Palestine. For instance, the projects implemented in both countries make no attempt at addressing the neoliberal agenda that pushed for economic liberalization and reduced government intervention, favoring capital-intensive agribusinesses and foreign interests; consequently marginalizing small and medium scale farmers. USAID emphatically chose to allocate its resources on unsustainable solutions that do not call for comprehensive agricultural reform that empowers disenfranchised farmers and works towards alleviating the two countries from their donor and import dependence.

Additionally, neither project calls for the accountability of perpetrators in the agricultural industries from corrupt officials, to those complicit in land and water grabbing. By absolving these actors of their complicity, USAID does not contribute to push duty-bearers to meet their most basic obligations. Nor has USAID made any attempt at challenging the status quo of the Israeli occupation; unmistakably the largest threat to the socioeconomic and cultural prosperity of the Palestinian people and the Arab region at large.

The benefits from the USAID projects have not been sufficient to meet the standards of the crucial human rights-based approach; by focusing on producing food that is exclusive and out of reach by the masses, the projects have augmented the trade imbalances that have long cemented both countries in a state of import dependence. This is especially dangerous in a region that has become achingly well accustomed with the downfalls of international food price volatility and the precarious international food market. This is also in complete contradiction with the concept of food sovereignty that aspires towards a just food system where farmers and communities are free to define their own agricultural policies, away from institutional hegemony and vested political and economic interest (Patel, 2012).

Therefore, in its inability to provide the two countries with instruments to genuinely improve aspects of food security, food sovereignty and development, USAID has in effect shown no plausible interest in truly transforming the agricultural sectors, and has precluded itself from a human rights-based approach. Alternatively, this paper proposes five human rights-sensitive instruments that must be considered by development partners in the future:

1. **Focus on local markets.** It is irrefutable that in both Jordan and Palestine, more support is needed to shorten the food supply chain and revitalize the local agricultural market. This strategy will allow small and medium farmers to compete fairly, ease the fiscal burdens of the current exhausting import-based food strategy, and will also have a number of socioeconomic and environmental knock-on effects.

2. **Access to means of production.** Means of production, particularly a diverse variety of traditional seeds, are essential for promoting resilience, nutrition, and independence among smallholder farmers (McGuire, 2016; Food and Agriculture Organization of the United Nations, 2015). Thus, development partners should support local, farmer-driven, seed sector development to ensure that quality seeds are available and accessible. They should work with governments and stakeholders to regulate the seed sector in order to protect farmers from agribusiness monopolization and supremacy. Development partners must also ensure the provision of the other primary resources required for agricultural sustenance, including, but not limited to, land and water rights.

3. **Boost farmers' unions.** In line with a rights-based approach that emphasizes the realization of rights, development partners should endorse and support the right of people to join a trade union. Also with regards to the rights-based approach that promotes empowerment and physical, intellectual and socioeconomic capacity building, farmers should be encouraged to establish a strong and united agricultural front in both Palestine and Jordan. This includes agricultural cooperatives and other farmer-led associations that will contribute towards the creation of a space for small and medium scale farmers to achieve long-term self-governance and self-determination. This collectivism of farmers will serve to ensure that their social and economic priorities are relayed within the national and regional political and economic arena.

4. **Bolster intra-regional (MENA) agricultural trade and research cooperation.** Rather than adopt an export-based strategy with a seemingly chronic predilection for Western markets, development partners should encourage and facilitate the creation of opportunities to boost suboptimal intra-regional agricultural trade (Hoekman, 2016). However, two caveats; first, this should be harmonious with rather than contradictory to proposition (1). Second, this should be a bottom-up approach that mobilizes community and trade union participation. Only this would offer a truly pro-poor instrument that catalyzes an equitable allocation of resources. As such, it is important for this to be linked to proposition number (3) to ensure the generation of long-term socioeconomic payoffs across the Middle East and North Africa. Furthermore, development partners should invest in both boosting innovative agricultural research and building on indigenous knowledge to look into new crop varieties (particularly staples such as wheat, barley, lentils, chickpeas, and fava bean), natural resource management, improving nutrition, and raising smallholder farmers' incomes. Considering most of the MENA countries are afflicted by the same agroecological challenges, development partners could support building a collaborative educational platform to promote the transfer of knowledge and expertise across the region.

5. **Dismantle the Israeli occupation.** No genuine agricultural development can take place with the capitulation of development partners to Israel as the occupying state. Development partners wishing to assist the Palestinian economy must play an active role in contributing towards helping the Palestinian people claim their rights by holding Israel accountable for its blatant and unabated infringement of international humanitarian law. It is important to note that this proposition is not limited to the rights of Palestinians, as the aforementioned resource theft committed by the Israeli state transcends borders and threatens the Jordanian agricultural sector.

Land-related World Bank projects in Cambodia and Vietnam: A comparative HRBA

People's Coalition on Food Sovereignty (PCFS)

Land is a major issue in both Cambodia and Vietnam. Agriculture is a big component of these countries' economies and majority of their population derive livelihood from agriculture. Farmers and indigenous peoples form a significant section of these countries' respective populations.

When examining land and agriculture in these countries, the problem of "land grabbing" always crops up. Lands where farmers and indigenous peoples live and workare being taken away from them by economic elites, both foreign and local, often with the complicity or active support of local and national officials of the government.

Landgrabbing in these countries is occuring in the context of "people's ownership and state management" of lands in Vietnam, and significant state ownership with private land ownership in Cambodia. Some sectors are making efforts to push such a systems of land ownership towards full private land ownership and the creation of land markets in these countries. This is also the contextwithinwhichWorldBankdevelopmentprojectsinthesaidcountriesarebeingundertaken.

This article seeks to use a human rights-based approach or HRBA in analyzing two land-related World Bank projects in Cambodia and Vietnam – the Land Allocation for Social and Economic Development Project II or LASED II and the Vietnam Project for Improved Land Governance and Database or VILG, respectively.

At the same time, this research seeks to locate the said projects within the major land issue facing the two countries, which is landgrabbing; the land ownership regimes within which landgrabbing is happening; and the alternative being proposed in changing these regimes.

This article will present a general overview of the said projects and the political-economic context of such projects. It will then proceed to use HRBA in analyzing the said projects and in comparing them. It will also evaluate these projects in relation to landgrabbing and, related to these, the proposed alternatives to the land ownership regimes in the two countries. It will end with a set of recommendations for grassroots organizations of farmers and indigenous peoples confronting landgrabbing and various land issues in Cambodia and Vietnam.

Cambodia: LASED II

The International Development Association's 2016 project appraisal document on LASED II states the following information on the project.

The project's objective is to "help improve target beneficiaries' access to agriculture resources and selected infrastructure and social services..."

Out of the $25.06 million loan, $22.71 is allocated for "infrastructure and livelihood systems." From the latter, $14.8 million will go to "land preparation and infrastructure development." This includes the following: "(1) provision of settling-in assistance to new land recipients; (2)

provision of initial land preparation assistance including a first cover crop; and (3) provision of productive and social community infrastructure such as rural roads, small-scale irrigation systems, rural water supply and sanitation, education facilities, health posts and community centers, among others."

Its beneficiaries are more than 5,100 families who "were previously landless or land-poor population groups" living in project communities located in 14 Social Land Concession sites in five provinces. The project covers 17,000 hectares of land.

The document itemizes the concrete ways the project would help beneficiaries: (1) help eligible beneficiaries to acquire titles for lands, (2) provide them with "technical experience and know-how as regards land cultivation and agricultural technology," (3) provide them with the capital to prepare land for farming, "including the planting of the first cover crop," (4) increase the capacity of community groups through the deployment of "development facilitators," and (5) provide community groups with community grants that would serve as capital to procure "agricultural production inputs, tools and equipment."

The "result indicators" stipulated in the document are the following: "(1) Eligible families that have received support for land tenure security…; (2) Public infrastructure and other services provided…; (3) Number of targeted beneficiaries with agricultural services (disaggregated by gender); and (4) Number of targeted clients (disaggregated by gender)."

To achieve the project's objective, the following will be undertaken: "(1) strengthening community groups to better identify and prioritize technology and infrastructure investments; (2) financing priority productive and social community infrastructure; and (3) scaling up agricultural and livelihood support activities."

The same document describes the project's "strategic context" as follows: Despite attaining "remarkable" economic growth and "macroeconomic stability" since the early 2000s, despite lifting a big portion of the population above the poverty line, and despite improving the "overall welfare" of households, Cambodia is still one of the poorest countries in the Southeast Asian region, and poverty is concentrated in the rural countryside.

It states that since 1993, the Cambodian Constitution guarantees citizens the right to private property, including the full ownership of lands, and that since 2001, there has been a law that recognizes the right to own land. Policies enacted in 2002 and 2003 mandate the distribution of state lands to landless and land poor households. The government's economic strategy identifies land reform as a priority to bring about growth in agriculture and the country's strategic development plan indicates targets for land reform.

The Cambodian government, through the Social Land Concession (SLC) Program undertakes to distribute "several hundred thousand hectares of private state land" to the landless and land poor people. The SLC is seen as an important means for reducing poverty. In the process of implementing and updating it, the need for "infrastructure development and… livelihood support services," as well as for "state land identification and mapping" was recognized. SLC is not only about distributing land but also about providing infrastructure and support services.

The document notes that LASED II supports the Cambodian government's SLC Program and four World Bank projects have supported the government's drive to distribute state lands to the landless and land poor.

Vietnam: VILG

The International Development Association's project appraisal document on VILG, released in 2016, states that the project aims to "improve the efficiency and transparency of land administration services" in provinces covered by the project through the "development and implementation" of the national Multipurpose Land Information System (MPLIS) and a National Land Database.

The project costs $180 million, $150 million of which will be provided as loan by the World Bank and $30 million of which will be provided by the national government of Vietnam. Out of this amount, $160.39 million will go to setting up and improving the MPLIS and National Land Database, $12.77 million will go to "project management, monitoring and evaluation of activities and reporting," and $6.4 million will go to various efforts to improve "land service delivery."

The MPLIS and National Land Database are described as "national virtual Data Centers that would store and make available land information." The biggest cost that will be incurred by the project is the technical assistance for the creation of the MPLIS and land database. It involves the "digitization of existing maps and records on land use rights; updating and integration of cadastre data (both cadastre map users and land use information), land price data, land use plan data, and land statistics and inventory."

The project's target beneficiaries are the land users and general public, government institutions and the private sector. The achievement of the project's objectives will be measured through the following indicators: "(1) number of entities accessing MPLIS, (2) average time to register a simple land transfer, (3) customer satisfaction with the land services in the project areas, (4) percentage of [Land Use Rights Certificates] with the name of women, single or co-land users against total number of LURCs recorded."

The document also states what the World Bank sees as the project's "strategic context." It says that Vietnam has undergone "rapid and inclusive economic growth since the early 1990s," but that various challenges remain. It states, tellingly, that the country "faces shrinking financing options on account of growing fiscal pressures and insufficient private sector participation." It also talks about the need for adjustments in the country's "institutions of governance."

The paper goes on to cite Vietnam's development plan and its partnership strategy with the World Bank which both state the importance of "effective and sustainable land management and improved governance." The latter, it says, will lead to lesser transaction costs and efficient land markets and bring about increased production and private and public investments.

The paper is clear in pointing out a problem: "A significant proportion of land parcels are not registered with accurate geo-references and about five percent of land parcels have not been issued LURCs." It says that out of the 75-80 million land parcels in Vietnam, around 42 million land users have been provided LURCs, only about 72 percent of which "are supported with properly geo-referenced coordinates and cadastral maps."

It says that many of the lands that were previously surveyed lack coordinates and the coordinates of those that had been surveyed "are incompatible with current technology." It also states that "many land parcels have not been recorded in digital form, or integrated with a national mapping system. Finally, the land pricing and use systems are not fully integrated

with the registration system." The document lists studies stating the need for "completeness and reliability of land registry information and cost-effectiveness of land services."

The document lauds Vietnam's move to distribute land to smallholders and recognize their land use rights. At the same time, it recognizes that two-thirds of Vietnam's poor come from its rural population which, it says, "have limited access to productive land and capital for investment." It lauds the World Bank-financed Vietnam Land Administration Project or VLAP for "improving access by all stakeholders to tenure security and land information services." At the same time, it says that "a comprehensive national program remains to be developed to effectively manage and coordinate all efforts" towards developing land records and databases.

Political-Economic Context

Land ownership. Both Cambodia and Vietnam have had governments that proclaimed socialist ideals and eliminated private ownership of land. Despite opening up to the world market since the early 1990s, both have retained, in part in the case of Cambodia and in whole in the case of Vietnam, such policies in the area of land.

In Cambodia, the state owns a significant portion of the country's land while private ownership of land is legal. There are "state public lands" which have public interest value but can be leased for 15 years. And then there are "state private lands" which do not have public interest value and can be sold or granted via long-term leases to private entities. There are collective lands for Buddhist monasteries and indigenous peoples, and then there are privately-owned lands (Open Development Cambodia 2017).

In Vietnam, all lands are under "people's ownership and state management." Occupants of lands are granted "land use rights" which means long-term use of residential lands in urban areas and licenses for farmlands that last for 20 years (Gillespie 2012). Said occupants are either individuals, families or organizations and the timeframe of their land use right depends on whether the land they occupy is "residential, agricultural or forestry (Hansen 2013)."

Landgrabbing. In both countries, the state is seen as playing an important part in landgrabbing. At the same time, there is a focus on the lack of secure land rights as a factor contributing to landgrabbing.

In Cambodia, the chief form of landgrabbing occurs through the government's granting of Economic Land Concessions or ELCs to private entities for industrial and agricultural use. ELCs are long-term leases that last for 99 years and cover state private lands, though some sectors say that even state public lands are included (Cambodian Center for Human Rights 2013). More than two-thirds of the country's arable lands have been given to foreign and local companies through ELCs (Sochua and Wikstrom 2012).

In Vietnam, the chief form of landgrabbing is through the transfer of state lands to private entities for the construction of "export processing zones, industrial zones, economic zones and high-tech zones" and other structures that are of "national significance." There is also a significant section of landgrabbing where the state seizes land for its purposes, for the creation of "military bases, schools, hospitals, roads, bridges, etc." although this is secondary to the first cluster of purposes (Hansen 2013).

Opposition to landgrabbing. In both Cambodia and Vietnam, landgrabbing is met with opposition from communities being evicted from their land, from people's organizations and non-government organizations at the national level, and from supporters outside the country.

Resistance is considered "more open and confrontational" in Cambodia, while "increasingly bold direct actions" in relation to land conflicts are being seen in Vietnam (Hirsch and Scurrah 2015, 22).

In both countries, protests against landgrabbing decry the government's lack of consultation with affected communities and therefore arbitrariness in taking particular lands. These denounce the insufficient compensation given by the government in exchange for the land, and the lack of relocation plans for those affected.

Protests also condemn corruption involving government officials who allegedly take bribes from private entities, or generally government officials' complicity, if not collaboration, with such entities.

The Cambodian and Vietnamese governments' approach to communities opposing landgrabbing and land activists are considered heavy-handed (The Economist 2017, Hiebert 2012, Kozlovski 2013, Narin 2017).

The negative impacts on the environment of landgrabbing, usually of protected forest areas, is also condemned (Seiff, Titthara, Worrell 2o13).

Interests behind landgrabbing. In Cambodia, those engaged in landgrabbing are "regional investors from China, Thailand and Vietnam (Hirsch and Scurrah 2015)." At the same time, an estimated 20 percent of the concessions are held by five senior senators of the ruling Cambodian People's Party (Cambodian Center for Human Rights 2013).

In Vietnam, private individuals and corporations are the beneficiaries of land provided by the government (Hansen 2013), while the operation of state enterprises in the country's uplands is also pronounced (Hirsch and Scurrah 2015).

In both Cambodia and Vietnam, local officials are accused of engaging in corruption in favor of private developers (The Economist 2013, Burnett 2017).

"Crop booms" are considered to be "a key driver" of landgrabbing, pertaining to "boom crops" like rubber, sugar, maize, cassava, bananas and coffee (Hirsch and Scurrah 2015).

World Bank on land in Cambodia and Vietnam. The World Bank has been advocating for what it calls "secure land rights," saying this is crucial to reducing poverty and increasing "shared prosperity" by "stimulating investment and growth." Ede Ijjasz-Vasquez, the bank's Senior Director for the Social, Urban, Rural and Resilience Global Practice, called for "secure rights, clear boundaries, and accessible land services." A World Bank feature article on the issue makes beneficiaries of land rights projects in Macedonia and Vietnam talk about using their land as "a capital asset" used for making loans for businesses (World Bank 2017).

The World Bank was involved in land titling projects in Cambodia. This was aborted, however, because of clashes between "transparent market-based property rights in land devoid of State

interference" and the concept of "land as being reserved for State projects to be handed over to wealthy investors (Hirsch and Scurrah 2015)." In 2011, the World Bank suspended loans to Cambodia as a result of a prominent case of landgrabbing where community resistance was strong. This was seen as a positive move by the World Bank against landgrabbing in the country (Sochua and Wikstrom 2012). In 2012, the World Bank said in relation to a project in the country: "It is overwhelmingly clear to both government and donors that the overriding problem, and the one with the greatest contribution to poverty, is lack of land tenure security (and the associated landlessness) and restricted access to common property resources (quoted in Centre for Public Impact 2017)."

In Vietnam, the World Bank released a 2012 study that shows that land administration is perceived to be very corrupt by government officials, businesses and ordinary citizens. Perpetrators and beneficiaries of such corruption are government officials taking advantage of opaque land laws and complex procedures for acquiring land titles. The World Bank has stood for prolonging land use tenure from longer periods to "unlimited" time frame, allowing buyers to own a bigger piece of land, abolishing limitations on alternatives to farmland use, and allowing "more effective and flexible land planning (Hansen 2013)." In 2014, there were changes in Vietnam's land management policies, in a direction closer to that being advocated by the World Bank. The new, 50-year land-use rights, said one commentator, is "virtually equivalent to full private ownership (Prosterman 2014)."

The observation made by Gillespie (2013) on the land situation in Vietnam also proves to be true for Cambodia: "the government is prepared to strengthen the legal rights of land users – a reform that in theory could support farmers in their struggles with state officials and rapacious private investors. The socialist idea that land is a special commodity is giving way to state-recognised private land markets. Government officials also look set to lose powers to compulsorily acquire farm land for private investments — the source of the many complex land disputes."

Condition of farmers. Landgrabbing affecting a significant portion of the populations of Cambodia and Vietnam highlights the negative situation of farmers in the said countries. While observers say that opening up to the global economy has brought about an improvement in that condition, majority are still in poverty. This could only mean that the farmers' basic human rights are being denied in these countries.

In Cambodia, the major challenges, according to a report from the World Bank itself, are "poor infrastructure, particularly limited irrigation and rural roads, and inadequate access to technology and extension services (Joosu-Palu, 2015)." This has pushed farmers into going into debt, selling their lands, and squatting in other people's lands (Ford 2017). In Vietnam, some of the challenges that were identified are the high cost of inputs caused by the "lack of support services, unstable market of consumption and lack of comprehensive solutions to ensure stable consumption in light of heavy dependence on the seasonality (Anh and Chanh 2015)."

In sum, what is lacking is agricultural support services for farmers. This, it can be argued, is essential to the right to land since without such services, farmers are unable to keep their land in the long term, and are forced to sell their lands or to use their lands in ways that deny the substance of their right to land. While farmers may be empowered by the right to land recognized by the government, the lack of agricultural support services disempower them, even to the point of negating the empowerment enabled by the government's recognition of the right to land.

Land and Human Rights

Land is so fundamental to life and livelihood, especially for farmers and indigenous peoples, that having a piece of land to till can be seen as a key to enjoying many human rights.

Setting aside the contentious debates about whether "land to the tiller" should mean private ownership or the right to use or till, land is crucial to attaining the following rights enumerated by King (2003): the right to work, to an adequate standard of living, to food, to adequate housing, to health, and to education. It can also be argued that denying tillers land means denying them the said rights .

The United Nations special rapporteur on adequate housing as a component of the right to an adequate standard of living (2007) says that "forced evictions constitute gross violations of a range of internationally-recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement."

It also says that "forced evictions intensify inequality, social conflict, segregation and 'ghettoization,' and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples."

An HRBA to projects related to the "land to the tiller" call should therefore seek to answer the questions: Will these projects actually give land to the tiller? Will these projects do so with necessary support? Will these projects do so for the long-term? Will these projects empower landless or land poor farmers in claiming their right to land?

It is important to observe that the documents issued to explain the World Bank projects being studied here do not reference human rights at all. It is clear from the presentation above that the projects anchor their existence primarily on their supposed positive effects on the general economy in the case of Cambodia and Vietnam and secondarily on direct beneficiaries in the case of Cambodia.

This is also the case in the land policies of Cambodia and Vietnam, even if "land use rights" are prominent in the case of Vietnam's land policies. The policies were adopted with the objective of fostering economic development, not of upholding human rights. Despite this, the policies do not reference even the "right to development" recognized by the United Nations (1986).

It is also important to note that consultation with major organizations of the landless and land poor, of farmers and indigenous peoples, are not prominent in the presentation of the rationale for the projects. Such consultations are not referenced in the design and implementation of the projects.

From an HRBA, however, these supposed positive effects should, whether immediately or in the long run, affect positively the human rights of farmers, indigenous peoples and people in general. In analyzing the said projects, therefore, we should seek to answer the four questions stated above.

The World Bank's LASED II project in Cambodia follows LASED – a US$13 million project funded by the World Bank and German Development Assitance (or GIZ, for Deutsche Gesellschaft für Internationale Zusammenarbeit). LASED ran from 2008 to 2015 and endeavored to distribute

land to 3,000 landless families for farming and residential purposes. It was in line with the Cambodian government's transfer of lands to the landless and poor through SLCs – designed and named to provide contrast with its much-reviled Economic Land Concessions.

While the World Bank and GIZ initially gave glowing reviews to the project, Cambodian human-rights organization LICADHO (or Cambodian League for the Promotion and Defense of Human Rights) released a study exposing problems with the project.

The group claims that "less than 50 percent of the families that received residential land in the LASED SLC sites had settled and remained at those sites at the time of LICADHO's visits. Half of the SLC sites were not yet functional and will need substantial financial and technical support to be minimally sustainable. Numerous villagers reported limited ability to use the allocated agricultural plots and had gained no significant improvement in terms of food security. The land allocated by Cambodian authorities appears to be – at least in part – simply not suitable for agricultural purposes."

While saying that "millions of dollars in additional investments are needed to address six years of shortcomings and failures," LICADHO states that "a project that demands such high investment over so many years cannot be considered a replicable model for future SLC initiatives (LICADHO 2015)."

Without directly addressing these criticisms, the International Development Association's 2016 project appraisal document states that LASED II will "build on the experiences and lessons" learned from LASED. The "lessons learned" are "reflected in the project design" in the following aspects: (1) assisting beneficiaries attain land titles to ensure "land tenure security," (2) providing "quality extension services and technical advice" to the beneficiaries, (3) providing assistance for "start-up land preparation," (4) increasing the capacity of community organizations and (5) providing "access to finance."

The implementation of LASED II was immediately met with a problem: the new site chosen for the project, Tipo 1, was "already packed with hundreds of working farms." LICADHO raised the concern that LASED II would repeat the problems of LASED: "The first LASED project faced several problems because…recipients received land that was already occupied… In some cases, landlessness was simply transferred as poor families were forced to make way for other poor families. In other cases, land recipients remain unable to use the land given to them due to ongoing disputes with other families or powerful actors (Peter and Pheap 2016)."

This problem highlights the lack of consultation with the landless and land poor and their organizations in the conceptualization, design, and implementation of LASED and LASED II.

While these problems must be resolved by the World Bank in a way that does not attack the right to the land and other basic human rights of farmers already occupying and working on the land, the design of LASED II can already be evaluated from an HRBA.

The World Bank project in Cambodia is clearly designed to help provide land to particular beneficiaries and help them maintain the land in the coming years; it is aimed at helping beneficiaries secure titles for their lands and then live off the land through agriculture. It may include victims of landgrabbing among its beneficiaries. It can be said from an HRBA that by providing land to tillers, the project helps farmer-beneficiaries attain the most basic of human rights – at least in the coming years.

A caveat is in order with regard to the project's sustainability in the long term because the political-economic context of the project can be seen as detrimental, if not hostile, to the smallholders' claim to their land. For one, government support to farmers, even to the beneficiaries of its land reform program, is lacking. The World Bank cited this as a reason for its project. Second, the farmers will sooner than later be subjected to the vagaries of the Cambodian economy which has impoverished farmers who previously have rights to till a piece of land.

While the project upholds giving land to the tillers and therefore upholds their most basic human rights in the short term, it has to be seen whether it will enable them to maintain the land and enjoy their most basic human rights in the coming years.

With regard to empowering the landless and the land poor, the project is clear about the creation of community organizations. The said organizations, however, are geared towards managing and improving the project. Given the threat of landgrabbing, these organizations should also become vehicles for fighting for the right to land.

The World Bank project in Vietnam, meanwhile, does not immediately or directly provide lands to farmers or indigenous peoples. It does seek to contribute to securing their right to own land, which may pave the way for enjoying the human rights that go with it, but in a way that can be described as indirect and minimal.

What the project can do is support small landholders' claim to their land. It can provide another basis by which farmers and indigenous people can assert their claim to their land, especially when these corroborate other government documents. By affirming existing land registries, the project can provide a basis by which arbitrary changes to such registries can be exposed and countered. It therefore provides a somewhat legal, but primarily political, check to arbitrary changes in land registries.

The project's support for victims of landgrabbing, however, can be described as indirect, even long-winded. They must have the werewithal to buy the land, must be able to secure land titles for the land, must have the capital to farm, and must find a destination of crops that will enable them to live and keep the land.

The project, in fact, poses a danger to farmers or indigenous peoples. The project presents itself as a response to the problem that many land registries in Vietnam are problematic, and many cases of landgrabbing have involved such registries. The project would have to make decisions, especially with regard to borders, in contentious areas. The danger is that farmers and indigenous peoples may find their lands decreased or even removed because of the project.

In the bigger scheme of things, in the context of widespread landgrabbing, the project provides small landholders another weapon for asserting their claims to their land. It is important to recognize, however, that in the same context, weapons such as land registration do exist but are disregarded or rendered powerless by weapons more powerful in the hands of government bureaucrats, economic elites, and the military and the police.

Seven points of comparison emerge from this discussion: the projects' coverage; their direct benefits to farmers and indigenous peoples in terms of securing claims to land and upholding human rights; their use in the struggle for land to the tiller, against landgrabbing, and for more secure claims to land; their contribution to the empowerment of communities of the landless and land poor; and their long-term value for the said struggle.

(1) The World Bank's project in Vietnam aims to benefit all of the citizens in the country, while the World Bank's project in Cambodia aims to directly benefit particular communities of small landholders primarily and benefit all of the citizens in the country secondarily.

(2) The World Bank project in Cambodia provides benefits more directly to particular communities of farmers compared to the World Bank project in Vietnam.

(3) The World Bank's project in Cambodia provides small landholders, though in particular communities, with more weapons to assert their claims to land and against landgrabbing, than the World Bank's project does in Vietnam.

(4) The World Bank's project in Cambodia may be more useful in the short term for the struggle for more secure land for the tillers than the World Bank's project does in Vietnam.

(5) There is a chance that the Vietnam project may also become useful in the long-run for the struggle for more secure claims to land – that is if the data centers it has created will become a nationally-recognized authoritative source of information on land. This can only be possible, however, if communities struggling for more secure claims to land hold it up as one of their basis for claiming particular parcels of land.

(6) The World Bank's project in Cambodia has a greater potential to be useful in the long term for the landless and the land poor than the bank's project in Vietnam. Much, however, needs to be done for this to be so, particularly in empowering community organizations to fight for land.

(7) The World Bank project in Cambodia is more advanced than the World Bank project in Vietnam with regard to empowering the landless and the land poor. The first directly talks about forming community organizations and increasing their capacities. For such organizations to be truly empowered, however, they have to move beyond managing and improving the project towards fighting for land.

Watering plants can provide an illustration that will clarify the comparison between the World Bank projects in Cambodia and Vietnam. The Vietnam project aims to water many plants with little water, while the Cambodian project aims to water a few plants with a significant amount of water. This is despite the fact that the Vietnam project received a fund bigger than that received by the Cambodian project.

An HRBA to the two World Bank projects, which necessarily situates them in their political-economic context, also requires that they be analyzed in terms of the policy direction that they advance.

On this score, the two projects are similar in terms of pushing for private ownership of land and strengthening the land market in the two countries – the policy direction with which the World Bank's projects and pronouncements are aligned. The World Bank, as many commentators say, serves the interests of the biggest multinational corporations in the world.

The policy direction of pushing for private ownership of land is of course in opposition to the current land ownership policy embraced by the governments of Cambodia (significant state ownership of land and legal private ownership of land) and Vietnam ("people's ownership and state management"). This, however, is the condition that enables landgrabbing mostly by economic elites – from China in the case of Cambodia and from within the country in the case of Vietnam.

Simplifying a bit, we can say that the contradiction is between private ownership of land that will most likely favor MNCs' interests on the one hand and significant state ownership in theory that favors Chinese and local economic elite interests in practice. In the current situation where Chinese and local elite interests are dominant, the World Bank projects serve to stem the full onslaught of Chinese and local elite interests.

The question still remains: will private ownership of land and strengthening of the land market provide tillers land and uphold the human rights of farmers, indigenous peoples and peoples who are dependent on land for their lives and livelihood? Here, we can draw lessons from the experiences of countries where vast areas of lands are owned by a few families or corporations while the vast majority of farmers remain landless.

In conclusion, while significant state ownership and "people's ownership and state management" may mean landgrabbing in the context of Cambodia and Vietnam, respectively, private land ownership and the strengthening of land markets being pushed by the World Bank in these countries are no guarantee against landgrabbing or the overconcentration of land ownership. It does not automatically mean land to the tillers and does not automatically uphold the basic human rights of farmers and indigenous peoples.

Conclusion and Recommendations

The World Bank project in Cambodia studied in this paper will help the landless and land poor acquire land and receive agricultural support that will last for the coming years. It will help them in a concrete way against landgrabbing. It will therefore aid farmer-beneficiaries in attaining their right to land, crucial in enjoying their most basic human rights in the coming years. It remains to be seen, however, whether land and basic human rights will remain in the hands of farmers in succeeding years.
The World Bank project in Vietnam, on the other hand, does not directly help farmers or indigenous peoples acquire land, let alone keep the land. It only provides them with a weapon in asserting their claims to their land. It has a minimal impact in helping farmers and indigenous peoples oppose landgrabbing. It has a minimal impact in helping them attain their most basic human rights. There is a possibility, however, that the project will become most useful to farmers and indigenous peoples in asserting their rights to their land, attaining their right to land, and enjoying their most basic human rights – that is, when the data centers created become nationally-recognized authoritative sources of information on land.

The general policy direction being forwarded by the projects on private land ownership is no guarantee against landgrabbing currently being faced by farmers and indigenous peoples in the said countries. The modus operandi may change from state ownership or tight state control to private land ownership, but landgrabbing will more likely persist in the context of the political economy of both countries. Attacks on the farmers' and indigenous peoples' right to land, and to their enjoyment of their basic human rights, will tend to continue whichever regime of land ownership prevails.

In this light, the following recommendations are being forwarded to the grassroots and national organization of farmers and indigenous peoples in the said countries:

(1) Genuine land reform must be implemented. The government must provide tillers land for free. Full support must be provided by the government from seeds to fertilizers and irrigation, among others. Various measures must be implemented to increase productivity and maximize

labor for national development, including mechanization of agriculture. Land reform should therefore go hand-in-hand with national industrialization. Agriculture should primarily be geared towards meeting the country's food and other needs, and must uphold food sovereignty.

(2) Struggles against landgrabbing must be strengthened, broadened and intensified. To communities of peasants and indigenous peoples in Cambodia and Vietnam facing its reality or threat, landgrabbing is a most pressing issue. A human rights-based approach shows us that landgrabbing also means denying affected communities their most basic human rights. Resistance on the ground against immediate forces carrying out landgrabbing, as well as national and international support for them, must be heightened.

(3) Farmers must fight for land reform and indigenous peoples must fight for their land in ways that will ensure security for their claim to land. Landgrabbing, the more prominent issue, is enabled by the lack of security among farmers and indigenous peoples over their claim to their land. The defensive fight against landgrabbing must be complemented with an offensive fight for genuine land reform and indigenous people's land. Communities not facing the immediate threat of landgrabbing must unite for these demands.

(4) In the course of waging the said struggles, the organizations of farmers and indigenous peoples should be strengthened and their consciousness should be raised. Even as mass campaigns seek legal and political guarantees against landgrabbing, what will ultimately ensure that farmers and indigenous peoples are not evicted is their strength, which lies on their unity. As long as big foreign capitalists and big local capitalists and landlords hold sway, landgrabbing will continue to be a threat to farmers and indigenous peoples.

(5) Human-rights based approaches must be used in evaluating development projects related to farmers' and indigenous peoples' demand for land. These can be used to ascertain whether a project can provide immediate or remote support to farmers and indgenous peoples' claim to their lands. Development projects that have direct and immediate positive effects to the struggles of farmers and indigenous peoples must be maximized for strengthening struggles and movements. Development projects which do not should be exposed for the motives they serve.

(6) Development paths being presented by the Cambodian and Vietnamese governments and the World Bank must be questioned, and new development paths should be charted. Progressive movements seeking radical change have always endeavored to capture and use the state for their purposes. Significant state ownership of lands and control over lands in Cambodia and Vietnam, however, has served as a foil for landgrabbing by foreign and local elites. On the other hand, private land ownership that will enable landgrabbing by MNCs is not a genuine alternative for farmers and indigenous peoples. A new and genuine development path favoring farmers, indigenous peoples and peoples of Cambodia and Vietnam should be charted and fought for.

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Assessing the Impact of ODA on IPs Using a Human Rights-Based Approach: A Comparative Study of ODA-Funded Projects in the Philippines and Kenya

International Indigenous Peoples Movement for Self Determination & Liberation (IPMSDL)

Introduction

Under the dominant development paradigm, indigenous peoples (IPs) are often marginalized in considerations of the impact of foreign aid or investment on recipient countries. Especially in developing countries, discourse regarding official development assistance (ODA) in the government, the media, and other institutions tend to center around "national development," whereby development is understood to mean, primarily, economic growth.

This research takes a human rights based approach (HRBA) in assessing the impact of ODA, with a particular focus on how IP communities have been affected by ODA-funded projects. The principal human rights issues faced by IPs involve a lack of protection for their land and natural resources, which are often degraded by "inappropriate development and conservationist policies," (OHCHR, 2007) and a lack of protection for their own rights of ownership and self-determination, arising from discrimination, and leading to forced eviction and relocation.

In this analysis, two IP communities will be studied: the Maasai, in Kenya, and the Tumandok, in the Philippines. In both cases, IPs were displaced in the service of large-scale, ODA-funded projects: a geothermal power plant in Kenya and a dam in the Philippines. Both governments enacted relocation efforts that were met with criticism and resistance by the affected IPs.

The HRBA divides the stakeholders in this issue into IPs as right-holders, and government and donors as duty-bearers. In both Kenya and the Philippines, ODA was used for projects that stripped IPs of their land and access to natural resources, even while paying lip service to the concept of free and prior informed consent (FPIC). While "development" should properly be understood to include IP participation in democratic processes, instead they are coerced or manipulated into giving consent to these projects, and denied agency in shaping their role in development.

Under a rights-based framework, donors and governments must be held accountable for their failure to fulfill their obligation as duty-bearers to respect and uphold the rights of IPs. This paper will look at the specific context of the countries included in this study, apply the HRBA (with reference to the United Nations Declaration on the Rights of Indigenous Peoples, and other similar documents) to analyze data from the case studies, and highlight key findings and propose recommendations.

Background of Projects

The Maasai and the Kenya Electricity Expansion Project

The Maasai are a semi-nomadic, pastoralist tribe inhabiting southern Kenya and northern Tanzania. Their traditional livelihood consists of pastoralism, livestock trade, and recently, the tourism industry. The Maasai in Kenya are estimated at 900,000, and their ancestral land in

the country includes a large section of Laikipia and the Great Rift Valley, a geothermal-rich area that runs through Kenya from north to south (Barume, 2014).

The lack of strong laws protecting the Maasai have made them perennial victims of injustice. Under British colonization, over 11,000 Maasai and two million cattle were relocated to the United Maasai reserve from the Naivasha region to "pave the way for 48 Europeans," under the Anglo-Maasai Treaties of 1904 and 1911, which the Maasai later attempted to legally overturn, but without success (Schade, 2017). After Kenya transitioned to independence, the IPs' situation did not significantly improve. The Land Act of 1968, enacted under the Moi presidency, was "high-jacked by Kenya elites," which led to further alienation of large sections of land from the Maasai (Schade, 2017).

In 1980, the Maasai were displaced by the construction of the World-Bank funded Olkaria I Power Plant. In 2010, another power project was approved, which would expand the Olkaria I and begin construction of the Olkaria IV. This was the Kenya Electricity Expansion Project (KEEP), a geothermal development project requiring the involuntary resettlement of four Maasai villages in the Rift Valley (NCDG, 2017).

The $1.5 billion project, co-financed by loans from the World Bank (WB) and the European Investment Bank (EIB), among others, aims to increase the capacity and efficiency of electricity supply in the region, while expanding access to electricity in urban, peri-urban, and rural areas (WB, 2017). The KEEP is funded by the WB's International Development Association (IDA), and has five components: (1) geothermal generation, with $100M; (2) transmission, $70M; (3) distribution upgrading and infilling $75M; (4) rural electrification, $35M; and (5) technical assistance for sector development and contingencies, with $20M. Over 3,000 Maasai were displaced, including those evicted in 2013 who were not classified by the Kenyan government as eligible for resettlement, but only 1,170 Maasai were resettled (Inspection Panel, 2015).

The WB has Operational Policies for Indigenous Peoples, intended to safeguard IP rights during the implementation of its projects. However, the WB did not classify the Maasai people as indigenous due to their pastoralist and nomadic character (BWP, 2015), and consequently, did not apply these policies (The Inspection Panel, 2015). The WB, the Kenyan government, and other financiers decided to classify the Maasai as "vulnerable people" instead of "indigenous people."

The Tumandok and the Jalaur River Multipurpose Project

Around 90,000 Tumandok live in the mountainous regions of Panay island, along the 123-kilometer Jalaur river, which they traditionally consider as "sacred ground," as it is the source of all their water (Ayroso, 2015). Their major economic activities are hunting, fishing, *kaingin* farming (slashing and burning to create fields for agriculture), and foraging for roots and crops.

Kaingin farming has been criticized for causing destruction of forests, but such subsistence farming methods are necessary for the Tumandok, whose landlessness prevents them "from developing their land through more sustainable methods (PNFSP, 2013).

In 1962, then-President Diosdado Macapagal issued Presidential Proclamation 67, turning 33,310 hectares of the Tumandok's ancestral land in Capiz into a military reservation. They were charged *tumado*, or land rent, to till the land. Many refused to pay, resulting in human rights abuses such as harassment and intimidation. The IPs also reported that the military

tried to divide them "by recruiting them as paramilitary volunteers and by reviving old tribal feuds" (PNFSP, 2013). At present, the Armed Forces of the Philippines continues to maintain a military camp in Jamindan, Capiz.

The Jalaur River Multipurpose Project (JRMP) began with Republic Act 2651 in 1960, which provided for the construction of the JRMP in the province of Iloilo. The first stage was funded by the WB and comprised of the rehabilitation of four irrigation systems, carried out from 1977-1983. There were no further developments until August 9, 2012, when then-President Benigno Aquino III revived the project by signing a loan agreement with the Korea Export-Import Bank (EximBank).

Financed through the Economic Development Cooperation Fund (EDCF), a South Korean ODA program under Korea EximBank, the second stage of the project (JRMP-II) was launched in 2012. JRMP-II has two phases. Phase I is an irrigation component, with US$207.88 million, or P8.96 billion, funded by the EDCF. This is 80 percent of the total project cost of P11.2 billion. Phase I consists of: (i) a high dam and reservoir, (ii) after bay dam, (iii) catch dam, (iv) 81-km high line canal, (v) penstock between the high dam and the after bay dam that is ready for a future hydroelectric power plant, and (vi) connection from the highline canal to a raw water reservoir in Iloilo (DA 2013). Details for Phase II, the project's hydropower and potable water component, depends on the progress of the irrigation component.

Under RA 2651, the JRMP's purpose is "regulating and controlling floods caused by the Jalaur River, storing its waters and using them to irrigate agricultural lands in the Jalaur Valley, and generating and transmitting electrical power and energy." The local government of Iloilo celebrated the revival of the JRMP, claiming that Phase II would also "contribute to the national rice self-sufficiency target," "augment the province's and the city's demand for power and potable water," and generate "employment opportunities during construction" as well as "ecotourism in the areas it covers" (Cordero, 2015).

However, this promised infrastructure development and economic growth led to the displacement of some 17,000 IPs (JRPM, 2012). It would also impact 1.2 million people who live in 18 towns along the Jalaur river (Ayroso, 2015). Local alliances argued that the project would put communities at risk of earthquakes and flooding, while adding to the country's already massive debt and intensifying human rights violations against the Tumandok.

Impact on IP rights

Right to ownership

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) declares in Art.26 that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." The scope of this right includes: ownership, utilization, development, and control. As per the HRBA, with the IPs as rights-holders, the State is a duty-bearer, required to "give legal recognition and protection to these lands, territories, and resources." The Philippines joined a majority of 143 states in voting to adopt UNDRIP, while Kenya was among 11 countries who abstained from voting.

Kenya has no specific legislation governing IPs, and its "political history and the entrenchment of a centralised system of government have had the effect of denying indigenous peoples

the right to manage their own affairs in accordance with their own traditions, customs and ways of life" (ACHPR, 2009). However, Kenya is a signatory to the African Charter on Human and Peoples' Rights, an instrument for protecting and promoting human rights in the African continent, which is aligned with UNDRIP, as stated in an advisory opinion by the African Commission on Human and People's Rights (ACHPR). The African Charter grants all peoples the right to property (Art. 14), the right to free disposal of wealth and natural resources (Art. 21), and the right to freedom from discrimination in the practice of all other rights (Art. 2).

In Kenya, to give way to the construction of the Olkaria IV, three communities of Maasai (Cultural Centre, OloNongot, and OloSinyat) were resettled. Another community, OloMayana Ndogo, needed to relocate because of the anticipated health hazards from the power plants (Schade, 2017). The Inspection Panel (2015) cites that approximately 1,170 people (150 households) were resettled in 2014. The number does not include landless Maasai who were considered ineligible for resettlement.

Long-standing land conflicts further aggravated the predicament of the Maasai. In 2013, the Ngati Farmer Cooperative Society (NCFS) forcibly evicted around 2,000 Maasai living on the land in Naivasha they were about to sell to KenGen. On August 2013, houses of the Maasai on the disputed NCFS land were demolished and burned by armed policemen, leaving hundreds homeless and hungry, as cattle such as lambs and calves died in the fire (Macharia, 2014).

The relocation site was hounded with issues. The Maasai from the four villages would jointly own 1,700 acres of land in Kedong Ranch outside the Olkaria Power Generating Plant, when before they had occupied 4,200 hectares of land. They would settle there as a single group in a village-like environment (Schade, 2017; Mwangi, 2012; Kimani, 2014). The Maasai felt they became poorer in their new homes, as the resettlement site was small and unsuitable for pastoralism. They were relocated even before structures necessary for the resettlement, such as connection to electricity, were all available. Moreover, the affected Maasai found ineligible for resettlement were left with no homes and livelihoods, though they received cash compensations. These included women who were widows, single mothers, and household heads who comprised 20% of the affected Maasai (Inspection Panel, 2015).

Alliances criticizing the KEEP argued that the resettlement was "not culturally appropriate, did not rely on reliable socioeconomic census data, did not provide adequate replacement land, and failed to restore livelihoods" (NCDG, 2017).

In the Philippines, the Indigenous Peoples' Rights Act (IPRA), or Republic Act 8371, was enacted in 1997 to "address extreme marginalization of IPs" (Candelaria, 2012). IPRA defines ancestral lands and domains as inclusive of all natural resources therein, privately but communally owned by IPs. The Tumandok, a nomadic people, do not "exclusively occupy" the range of territory upon which they live and conduct subsistence activities, but such territory still counts as their official ancestral domain, and thus, they have rights of ownership over it.

The Jalaur megadam will submerge five villages and threaten to flood seven others (JRPM, 2012). Trees and crops have already been destroyed by the construction of access roads to the project site (Agham, 2014). The dam itself, tagged as a "killer dam" in the media, will "aggravate calamity risks from earthquakes, landslides, and flash floods" (Mongaya, 2013). The dam may also cause "irreversible changes to the environment," driving away fish, reducing land habitat for animals due to erosion, and starving animals who feed on the flora destroyed by the construction (CEC, 2014).

A primary concern is "geological soundness of the proposed structure" (CEC, 2014) — the risks and vulnerabilities arising from the location of the Jalaur megadam. It is being constructed 11 kilometers from the active West Panay fault line, and the area around it is tagged as having higher susceptibility to landslides and flooding in case of an earthquake. The government claims that the dam is "earthquake-resilient," but civil society organizations (CSOs) and experts argue that the JRMP-II "threatens the lives and livelihood of the people" (Bayan Muna, 2013).

The dam has also resulted in the rise of militarization and repression of those in opposition to the project (JRPM, 2012). A paramilitary group was established by the municipal government, guarding the area around the dam construction site. In the Philippines, the recruitment of people (including IPs) to assist the military is a tried-and-tested tactic, to ensure the "protection of corporate interest in [IP] territories" (IWGIA, 2015).

The World Commission on Dams (WCD) reported in 2000 that large dams "display a high degree of variability in delivering predicted water and electricity service — and related social benefits — with a considerable portion falling short of physical and economic targets." They also suggest that dams tend to serve as "a focal point for the interests and aspirations of politicians, centralized government agencies, [and] international aid donors," without comprehensive evaluation of alternatives for meeting the same targets, such as "decentralized, small-scale options (micro hydro, home-scale solar electric systems, wind and biomass systems)" for rural areas.

The cases of both the KEEP and the JRMP-II illustrates how ODA has not only failed to uphold the international consensus regarding the ownership rights of IPs, but has been instrumental in further subverting such rights.

Right to self-determination

Under UNDRIP, indigenous peoples have "the right to self-determination" (Art.3), "the right to autonomy…in matters relating to their internal and local affairs" (Art.4), "the right to participate in decision-making in matters which would affect their rights" (Art.18), and "the right to determine and develop priorities and strategies for exercising their right to development" (Art.23). Meanwhile, the African Charter grants all peoples, especially marginalized or oppressed peoples such as IPs, the "unquestionable and inalienable right to self-determination," including the right to "pursue their economic and social development according to the policy they have freely chosen." Self-determination is understood to include the right to FPIC. Consequently, the state as duty-bearer must "consult and cooperate in good faith" with IPs to obtain their FPIC in the adoption/implementation of measures affecting them.

In 2010, the implementing agency for KEEP, the Kenya Electricity Generating Company Ltd (KenGen), obtained consent from the project-affected communities, bypassin the Maasai's traditional council of elders, and instead seeking consent from elected village chairmen. However, the Maasai reported that KenGen officials interfered in the election process (Schade, 2017). Newly elected leaders who signed the letter of consent might have been subjected to "undue influence" — some were illiterate, and the discussions were not conducted in their native tongue (Cultural Centre, 2011, as cited in Schade, 2017). The elders were also sidelined in the resettlement consultations, as KenGen and the WB included only one member of the Council of Elders in the resettlement implementation committee which includes 24 community representatives.

In the Philippines, the National Irrigation Authority (NIA) served as project implementer for the JRMP II. They announced that they had secured full consent from the local IPs in April 2015. Under IPRA, IPs must sign a memorandum of agreement (MOA) as manifestation of FPIC. However, the FPIC process was initiated two months after the NIA and the NCIP had already submitted their feasibility study to Kexim Bank for approval, and the consent came from tribal leaders organized by NCIP (not chosen by the community) and whose lives and livelihood were not directly affected by the project (Mongaya, 2016). CSOs have criticized the NCIP for violating the process of FPIC in the case of the Jalaur megadam, as well as other projects — instead of working for the benefit of IPs, they have instead worked to facilitate the smooth and speedy approval of State projects that violate IP rights (PSPD, 2016).

The government conducted a geohazard assessment of the relocation site, which was selected "by the relocatees themselves after a series of consultative discussions," according to a government press release (Salvilla, 2015). However, the Tumandok contests the government's narrative of "full consent," arguing that the involved government agencies were "not truthful. They enticed the local indigenous people with the enormous 'benefits' of the project, without presenting the grave dangers involved" (JRMP, 2012). The Tumandok were promised "free education, free medication, and jobs" in return for consent, an "element of bribery" which violates FPIC procedure (Agham, 2014).

Various CSOs have released position papers against the JRMP-II, and legislators have made efforts to investigate the issues surrounding the megadam project. Several independent missions have been conducted, confirming the occurrence of "lapses" in obtaining FPIC and a lack of transparency in disclosing all aspects of the project (Agham, 2014).

With regard to the process of identifying project-affected persons, both KEEP and JRMP-II had errors and inconsistencies. The census for KEEP excluded some community members and included temporary visitors and migrant labourers (Schade, 2017), and failed to identify vulnerable groups such as widows, elderly, disabled persons, and orphans, all of whom had distinct/special needs. The census carried out by the WB to identify persons eligible for compensations and their entitlements was thus unreliable due to "methodological flaws", which resulted in the awarding of replacement houses and cash compensations to ineligible persons and exclusion from compensation of the eligible ones (Inspection Panel, 2015). Meanwhile, NIA's census for JRMP II came up with a count of the number of affected persons (601 households) that was significantly less than the count (2,400 households) of Kexim Bank (PSPD, 2016), resulting in complaints from the affected parties.

HRBA and the Development Partners

Over the past twenty years, there has been a growing "convergence between human rights and development, particularly at the level of international political statements and policy commitments," with reference to the 2010 UN World Summit Outcome Document and the commitments arising from the High-Level Fora on Aid Effectiveness in Accra and Busan, among other documents (WBG, 2013). Despite these advances, it is clear from the cases of Kenya and the Philippines that there has been no effective effort to ensure the inclusion and proper enforcement of rights-based principles in the implementation of aid. Donor institutions have also failed to enact any sustained mechanism for assessing aid outcomes, and ensuring concrete actions based on such assessments, under a rights-based framework.

South Korea joined the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD) in 2010, cementing its shift from recipient

to donor country. The DAC released in 2007 an Action Oriented Policy Paper on Human Rights and Development (AOPP), vowing to integrate human rights "more systematically" into development assistance processes. As per the DAC, the Korea EximBank is mandated to conduct consultation with partner countries, but these policy dialogues have "failed to secure the meaningful participation of the partner countries' local peoples, especially the poor and excluded" (ISC, 2009).

Moreover, in the Philippines, the need for greater investment in social services such as health and education is evident, yet ODA remains geared towards infrastructure development (Africa, 2009). Other strings are attached. For instance, the contractor for JRMP II, under the terms of Korea EximBank, is a South Korean firm (Conserva, 2015). Such conditionality undermines genuine national development for the aid recipient.

The Korea EximBank, based on civil society assessments of its aid efforts since the early 2000s, must make "further efforts... to provide binding power to the recommendations from Environmental and Social Impact Assessments and to ensure access to ODA information and consultation with civil society in the affected communities" (Yun & Lee, 2012).

The WB, meanwhile, follows its own policy and procedure in providing loans to borrowers, two of which are relevant to Indigenous People's rights: the Operational Policy 4.10 (Operational Policy for Indigenous People) and OP 4.12 (Operational Policy for Involuntary Resettlement). According to the findings of the Inspection Panel (2015), the WB's independent complaint mechanism reporting directly to the WB board, these policies were violated in the implementation of the KEEP project.

KenGen committed "serious shortcomings" in the processes of obtaining consent and relocating the Maasai. Various NGOs in Kenya, such as the Jamaa Resource Initiative, criticized the WB for failing to "closely monitor" the processes by which consent was obtained for resettlement (BWP, 2015). Moreover, the failure to classify the Maasai as IPs went against the ACHPR report which listed the Maasai as among the IP groups in Kenya (ACHPR & IWGIA, 20016).

Conclusion

Aid is intended as a global effort to support poverty eradication and social development of recipient countries. In the case studies of the JRMP and the KEEP, however, the values of democracy, human rights, and peace have been overridden by parochial politics and lack of binding safeguards governing how donor countries disburse, and partner countries use, the allotted ODA.

To ensure a more rigorous application of the HRBA in aid effectiveness, the following key points must be considered:

- Enforcement of stricter standards in applying existing policies for IP rights protection. Though the WB and Kexim Bank already have existing policies to protect IP rights, the observance of these policies at various stages of the project cycle proved to be lenient. Strengthened monitoring of project implementation can address this, through the creation of an independent monitoring body akin to the Inspection Panel but present throughout the whole project cycle, complemented by legally binding agreements between financiers and borrowers.

- **Concrete mechanisms for accountability.** There is no accountability for harm done to affected communities, especially IPs, who are given little consideration in national laws and policies, and even less in the toothless "safeguards" put in place by donor countries and IFIs. The UNDRIP has no internal supervisory mechanism for monitoring implementation by states. This must be addressed by putting in place concrete measures to protect IP rights, and ensure redress for human rights violations.

- **Greater CSO involvement and engagement.** While CSOs themselves have yet to fully embrace and implement the HRBA, they have a greater engagement at the grassroots level with the marginalized groups affected by ODA projects, including IPs. They also tend to have a better track record than state institutions for upholding human rights principles.

- **Review of alternatives.** There are less risky options for achieving similar goals, including smaller-scale projects, further rehabilitation of existing water and electricity systems, alternative energy projects, and the provision of other forms of assistance such as farm inputs to local communities. Under the HRBA, there must be more substantial involvement from civil society and the marginalized groups who are affected by projects such as the Jalaur Dam, to properly understand and assess the benefits, impacts, risks, and alternatives to large-scale infrastructure that has an adverse impact on IPs.

- **Reframing "development."** The rationale for both KEEP and the JRMP-II was "national development" and "national interest." Yet too often, domestic policy is disproportionately directed by local elites, foreign interests, and international financial institutions (IFIs), rather than the broad majority of the people. Africa (2009) observes that aid is "limited by its excessive focus on mainly financial and procedural matters at the expense of developmental processes and outcomes," and "currently tends to buttress the inequitable status quo" in recipient countries. ODA, instead of being donor-driven, should be shaped by the peoples poised to benefit from it.

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The ECOWAS/EU Partnership on Migration and the Human RIghts-Based Approach to Development

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Introduction

The European Union (EU) is the largest "donor" for most West African countries – members of the Economic Community of West African States (ECOWAS). In recent years, migration has become one of the most contentious issues in their development cooperation, following the dramatic increase in what the EU calls "irregular migration." In fact, the worsening economic crisis in African countries, due to the failure of externally-imposed "development" models since independence in the 1960s, has unleashed waves of young Africans trying to get to Europe through several routes, including the Mediterranean Sea, where hundreds of them have lost their lives.

To find a solution to the migration issue, the EU and ECOWAS have initiated a partnership on migration, within the broader partnership between the European Union and Africa. However, the partnership has been affected by external and internal factors that led to a shift in EU policies, with the link made between migration and security, after terrorist attacks against EU members. This shift has resulted in a more aggressive anti-migration policy, characterized by a systematic crackdown on "irregular" migration and even its criminalization.

At the same time, however, the EU leaders have realized that the anti-migration policy driven by security concerns alone is not a viable solution. The solution lies in tackling the root causes of youth migration, namely, the under development of African countries and the lack of job opportunities for the youth. Will the solutions proposed by the EU respond to the challenge of "irregular" migration? Are they within the HRBA framework?

This research will attempt to provide answers to these questions. It is organized as follows. The first section will examine EU global policy on migration and assess whether it is consistent with HRBA principles. The second section will look at the EU partnership with Africa on migration while the third section will focus on the partnership with ECOWAS. The fourth section will provide a summary and make recommendations on what should be a genuine partnership on migration between the EU and ECOWAS.

The EU Global Approach to Migration

The EU policy on migration was spelled out in the Global Approach to Migration and Mobility (GAMM), published in 2005.[1] It explains how the EU conducts its policy dialogues and operational cooperation with third countries, including development cooperation. Migration is considered a strategic policy with regard to EU economic competitiveness and security.

The Principles

The GAMM focuses on four thematic priorities: (1) better organizing legal migration and fostering well-managed mobility; (2) preventing and combating irregular migration and

1 *The Global Approach to Migration and Mobility,* {SEC(2011) 1353 final

eradicating trafficking of human beings; (3) maximizing the development impact of migration and mobility; (4) promoting international protection and enhancing the external dimension of asylum.

The document says that the protection of human rights is a cross-cutting priority. In that regard, it says that special attention should be paid to protecting and empowering vulnerable migrants, such as unaccompanied minors, asylum-seekers, stateless persons and victims of trafficking. The document says this policy is consistent with the Charter of Fundamental Rights of the European Union, one of the key components of its policies on migration.

Shift in EU Policy

However, in recent years, external and internal factors have prompted a big shift in EU policy on migration. The claim that human rights are a cross-cutting priority in EU immigration policy has been undermined by the economic crisis affecting the Eurozone and the change in the world geopolitical landscape. Since the breakout of the "Arab Spring", the EU policy on migration has taken a more aggressive stance. The flood of refugees from war-torn countries in the Middle East and terrorist attacks inside the European Union have dramatically influenced the EU's policies on migration, with security becoming an overarching priority.

This is reflected in the extension of FRONTEX to several African countries to keep an eye on would-be candidates for "irregular" migration. As we will see later, FRONTEX is particularly prominent in ECOWAS countries in West Africa.

Another alarming development in the new EU policy is the militarization of anti-migrant policies. Under the pretext of preventing human trafficking and criminal networks smuggling people to Europe via the Mediterranean Sea, the EU has decided to use military force. Italy has launched naval missions on August 3, 2017, in order to stop Libyan migrants from entering the country. Italy is doing it with the full political and financial backing of the other EU members. So, Italy is implementing a consensus policy of the European Union. NGOs rescuing drowning migrants are being threatened and falsely accused of "complicity" with criminal gangs trying to smuggle migrants to Europe.

This alarming development seems to be part of a policy aimed at criminalizing migration. The criminalization and even demonizing of migration by the mainstream European media and some leading politicians has galvanized racist and xenophobic far-right groups from France, Germany and Italy, who decided to go on a boat to chase migrants off the coast of Libya.

In addition to the above policies, the European countries propose building camps in transit countries, like Libya, to help keep irregular migrants in place, prevent them from crossing the Mediterranean Sea and, eventually, try to convince some of them to return to their countries of origin. But NGOs working in those camps call them "concentration camps" because of the horrendous living conditions there.

This is the general context of the partnership on migration between the EU and Africa.

Africa/EU Partnership on Migration

Migration is a powerful vehicle for boosting sustainable economic and social development. It has contributed to the development of all continents throughout history.

Role of Migration in Africa

For Africa, in modern times, migration has been closely associated with the negative impact of externally-imposed economic policies since independence in the early 1960s.[2] The failure of the neocolonial model of development in the late 1970s was followed by the neoliberal model imposed by the International Monetary Fund (IMF) and the World Bank, under the name of structural adjustment policies (SAPs). They dismantled what African States tried painstakingly to build during the two decades of the post-independence era, and contributed to the aggravation of the economic and social situation of several African countries. As a result, migration seemed to be the only alternative available to young Africans attracted by a mythical Eldorado in Europe.

Remittances from migration represent an important factor for the development of several African countries. In 2012, remittances by the African diaspora reached $40 billion. They were slightly down in 2015, with $36.5 billion. Their share in Africa's GDP is higher than official development assistance (ODA) from other countries.[3] Between 2010 and 2016, Africa received an average of $34.2 billion a year from its diaspora, according to the World Bank.[4]

But beyond these dry figures are human beings, especially in rural areas, whose only source of income is money sent from abroad. So, migration is vital for many regions and families in Africa. It is very important to the African economies, both at the macro and micro levels. As a result, a policy aimed at curbing migration from Africa will hurt its economies.

Areas of Partnership between Africa and the EU

Based on the GAMM principles, the EU has initiated dialogues on migration with Africa at the continental, regional and bilateral levels.[5] In the 4th Africa/EU Summit in Brussels in 2014, a key political declaration on migration and mobility was adopted.[6] An Action Plan (2014-2017) was also adopted at that Summit, which gave new impetus to the cooperation on migration and mobility, already under way since the 2007 Lisbon Summit, during which the Africa-EU Partnership on Migration, Mobility and Employment (MME) was established, along with the Joint Africa-EU Strategy (JAES).

The Action Plan (2014-2017) identified the following key priorities for action:

1. Combating Trafficking in Human Beings
2. Fighting Irregular Migration
3. Mobility and Labor Migration (including intra-African mobility)
4. Remittances
5. International protection (including internally displaced persons)

The Action Plan enumerated important points for implementation of these Key Priorities for Action:

- Implement the international and regional instruments for the protection of refugees and

2 Economic Commission for Africa, Economic Report on Africa 2011. Managing Development: the Role of the State in Economic Transformation, Addis Ababa, Ethiopia, 2011
3 OECD, Development Cooperation Report 2014, Paris, 2014
4 World Bank, *Migration and Development Brief 26*, April 2016, table 1, page 6
5 They are summarized in the memo: *"The European Union's cooperation with Africa on migration"*, Brussels, 9 November 2015
6 EU-Africa Summit, Brussels 2014, *Fourth Africa-EU Summit, 2-3 April 2014, Brussels Declaration*

asylum seekers, and promote cooperation with the relevant international organizations active in this field;

- Encourage the link between humanitarian response and long term development;
- Promote exchange of information and good practices between Africa and the EU on refugee protection in the context of mixed migration flows;
- European and African States and Regional Economic Communities should adopt and fully enforce the international legal instruments on international protection of migrants and displaced persons. All relevant international conventions regarding the protection of refugees and displaced persons need to be taken fully on board and be placed at the center of the Africa-EU cooperation;
- Beyond international refugee protection, promote the respect of human rights of migrants as a cross cutting issue within the partnership including through the implementation of relevant continental and international legal instruments;

Clearly, the document appears to be consistent with the human rights-based approach to development as it refers to key documents on the protection of the rights of migrants and asylum seekers. It is also aligned with the objectives of the 2030 Sustainable Development Goals (SDGs) on migration. However, are these principles respected in the actual practice of partnership with ECOWAS countries?

The ECOWAS/EU Partnership on Migration

The Economic Community of West African States (ECOWAS) was created in July 1975, bringing together all West African countries,[7] transcending various colonial legacies: English, French and Portuguese. ECOWAS is the oldest and largest regional economic community in Africa, with more than 300 million citizens. It has taken several major steps in facilitating the free movement of persons and goods. This is thanks to the Protocol on Free Movement of Persons and the Right of Residence and Establishment, adopted in 1979 and subsequent documents.

ECOWAS countries are among the leading sources of migrants. Cote d'Ivoire, Guinea, Mali and Senegal have important diasporas in France. Several ECOWAS countries are highly dependent on remittances from their diasporas. Relative to GDP, those remittances account for 24.4% for Liberia; 22.4% for The Gambia; 10.5% for Senegal; 10.4% for Cape Verde; 8.8% for Togo; 7.4% for Mali and 6.2% for Guinea-Bissau.[8]

This high degree of dependence explains the complexity of dealing with migration in West Africa.

ECOWAS Common Approach to Migration

The Approach was adopted in January 2008.[9] The legal framework is based on ECOWAS' key conventions as well as on the UN Convention on Migration, on the EU/ACP Dialogue on Migration, and on the African Union's documents on migration and refugees.

7 Current ECOWAS membership is the following: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea-Bissau, Guinea, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. Mauritania was among its founding-members, but left to join the Maghreb Union, composed of Algeria, Libya, Morocco and Tunisia

8 World Bank, ibid, figure A8, p.32

9 ECOWAS Commission, ECOWAS COMMON APPROACH ON MIGRATION, 33rd of the Ordinary Session of the Head of State and Government, Ouagadougou (Burkina Faso), January 18, 2008

One of the key principles of the Approach is that legal migration towards other regions of the world contributes to ECOWAS Member States' development. The document says "ECOWAS countries reaffirmed the principle, according to which, *international migration impacts positively on both the host and home country when they are well-managed…They reiterated that within every region of the world, at one time or another in their history, resorting to migration was an integral part of their development process.".*

The other principles underpinning the document are:

Combating human trafficking is a moral and humanitarian imperative
"ECOWAS Member States reaffirm the need to ratify the United Nations Convention on the Protection of Migrant Workers' Rights and their Family Member's Rights and are calling on EU countries to do the same."

Protection of the rights of migrants, asylum seekers and refugees
"Member States reaffirm their commitment to ensure the implementation of the Protocol on the Free Movement of Person within the ECOWAS Zone and the International Convention on the Rights of Migrants and their Families"

Recognizing the gender dimension of migration
"ECOWAS Member States recognize the increasing role of women migrants within and beyond ECOWAS borders by providing gender disaggregated data on the profiles of migrants and ensuring the inclusion of gender dimensions in migration policies."

Fight against irregular migrations and human trafficking

Implementing the EU/ECOWAS Partnership

As stated earlier, the changes in the world geopolitical landscape, triggered by the "Arab Spring", the floods of migrants to Europe and terrorist threats inside Europe itself have led to a big shift in EU immigration policies. This can be particularly observed in the partnership with ECOWAS.

However, the EU has divided them into countries of origin and transit countries. Below is how the EU implements its migration policies in each category of countries.[10]

EU Policies with Countries of Origin

In the EU classification, Mali and Senegal are the largest countries of origin. Nigeria is becoming an important country as a result of the War on Boko Haram. In origin countries, the EU has a two-track policy. One is to strengthen anti-immigration schemes locally, the second is to try to dissuade potential migrants from leaving their homeland by funding projects in countries of origin.

The anti-immigration policy includes shoring up local security forces to help prevent potential "irregular" migrants from leaving their countries. This is done through the extension of the EU immigration borders, known as FRONTEX. This extension began in 2007/2008, with offices set up in Mauritania, Morocco, Niger and Senegal. Through FRONTEX, the EU provides

10 Some of the information was provided by Mr. Mamadou Mignane Diouf, Project Manager at the network Migration and Development Africa (MADE AFRIQUE) and Secretary of the Senegalese Social Forum. He has recently visited Chad, Morocco and Niger, where he met "irregular" migrants living in dire conditions.

money and technical training to develop security apparatus. The second aspect of this policy is to push governments to sign readmission agreements, whereby they agree to take back their citizens when they are caught in Europe. NGOs working on migration issues in Senegal have accused the government of signing readmission agreements with Germany, France and Spain. It is believed that 1,200 Senegalese are to be deported from Germany, under those agreements, which the government denied through the Director of the Office in charge of Senegalese migrants, at the Ministry of Foreign Affairs. [11]

But Mali has so far refused to sign such agreements, despite tremendous pressure from the EU and particularly from France.

Another aspect of the bilateral partnerships with countries of origin is to share information on criminal activities, such as trafficking in human beings and people smuggling to Europe. This has become important to the EU, due to the connection it makes between migration and security.

The other track of the migration policy with countries of origin is to provide funds to finance projects that might keep young people in their countries and prevent them from leaving. Several schemes have been proposed to that effect, as will be analyzed later.

The funds are invested in targeted regions and localities where large numbers of potential migrants come from. For instance, in Senegal, three regions are at the center of "irregular" migration: the North, the East and the Center.

However, critics say that this policy has had little impact, in part, because most of the funds are given to European NGOs to run projects, and in part, because those projects do not provide decent jobs for the youth.

Policies with Transit Countries

For the EU, Niger is the most important transit country in West Africa. It is followed by Chad in Central Africa. If Chad has become an important transit country, it is because of the war on Boko Haram waged by Nigeria, Cameroon and Chad itself. Libya is the leading transit country in North Africa since its destruction by NATO aggression. This is why on August 28, 2017, during a Summit on Migration held in Paris, the three countries were the only ones from Africa. From the European side, there were France, Germany, Italy and Spain. The Chief of EU Foreign Policy was also present.

In transit countries, the EU has also set up FRONTEX offices. In Agadez, the main transit center in Niger, there are security forces surrounding the city. In addition, drones are used to detect migrants trying to cross the Sahara Desert to Libya.

In Niger, detention centers have been built with funds provided by the EU. The objective is to keep in check would-be migrants in those camps as long as possible and send them home. This is why in transit countries, the EU works with the International Organization of Migration (IOM) to help persuade and repatriate those candidates willing to go back. Those who refuse to go home are threatened with getting left behindin those camps, which, as mmentioned, have been criticized by human rights NGOs to be similar to "concentration camps." Even the Head of Médecins Sans Frontières (Doctors Without Borders), Ms. Joanne Liu, called those camps "a criminal system" in which rape and torture take place. [12]

11 According to a Senegalese daily, *Le Populaire,* Dakar, August 7, 2017, page 5
12 *Dakar Times,* September 7, 2017, p.4

Still, in the bilateral partnership with transit countries, like Niger, the EU tries to push for restricting the free movement of ECOWAS citizens suspected of being potential candidates for "irregular" migration.

Similarities and Differences

Whether in countries of origin or in transit countries, the extension of the EU external borders, known as FRONTEX, is present. For example, Senegal – a country of origin - and Niger – a transit country- have FRONTEX offices.

The EU provides funds to both types of countries aimed at stopping "irregular" migration by all means possible.

In both types of countries, the EU is pushing governments to enact laws criminalizing "irregular migration". It seems that Niger has taken steps in that direction but is the only country so far to do so. Such laws would violate the ECOWAS Protocol on the free movement of citizens, stated above.

Another similarity is the signature of agreements on readmission of "irregular" migrants caught by European police in the EU space.

However, in countries of origin, part of the funds provided by the EU is allocated for investment in projects that could provide opportunities for young people who would be tempted by "irregular" migration. By contrast, in transit countries, the funds are mainly allocated for detention centers and security forces, with the objective of maintaining migrants in place and eventually returning them home. This policy is done in cooperation with the International Organization for Migration (IOM). When "irregular" migrants are undocumented or refuse to give their nationality, the EU simply issues a European safe passage document to allow deported migrants to travel to their final destination.

Lessons learned

Since the destruction of Libya by the NATO intervention, led by the United States, France and the United Kingdom, all Sahel countries are under tight surveillance, because they are considered countries of origin or transit for migration. [13] In the EU partnership on migration with ECOWAS, transit countries, like Niger, seem to resort to the most brutal repressive policies, with the use of detention centers, huge security forces and constant human rights abuses.
However, pressure is mounting on both countries of origin and transit to outlaw what the EU calls "irregular" migration. To achieve this, the EU is pushing transit countries, like Niger, to violate the ECOWAS Protocol on the free movement of persons.

But such violation would be in contradiction with the other policy pursued by the EU aimed at prodding ECOWAS countries to improve internal migration.

Improving intra-regional migration in West Africa

In eyes of the EU, improving intra-regional migration would contribute to absorbing a large number of migrants and reducing the prospect for "irregular" migration to Europe. ECOWAS

13 The information in this paragraph was drawn from an exchange with Samir Abi, from Togo, Permanent Secretary of the West African Observatory on Migrations. Mister Abi met with the Togolese President, Faure Gnassinbe, on Friday, August 4, 2017. Mister Gnassinbe is currently head of the ECOWAS rotating presidency for 2017. The goal of the meeting was to call attention to the plight of West African migrants and the necessity to remove all barriers to free movement within ECOWAS

countries are considered both as a major area of migration and as a region where significant majority of migrants remain. It is estimated that more than 80% of migration is within the region. Therefore, ECOWAS and the EU countries are looking at ways for improving mobility within ECOWAS by removing obstacles to the free movement of people as stipulated in the 1979 Protocols and other key documents.

Financial Schemes

As indicated earlier, the other track of the EU policy on "irregular" migration is to provide funds for projects in order to address the root causes of migration, by fostering economic growth in African countries and providing job opportunities for the youth. This was one of the reasons for the launch of the Emergency Trust Fund in Valetta, and other financial schemes.

The Emergency Trust Fund for Stability

In September 2015, the President of the European Commission, Jean-Claude Juncker, announced the Commission's proposal to establish an "Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa," with an allocation of €1.8 billion from several EU financial instruments, to be completed by EU Member States and other donors.

The Emergency Trust Fund was one of the major decisions taken at the Valetta Summit, in Malta, in November 2015. The objective of the Valletta Summit was to foster political cooperation between Africa and the European Union in addressing the root causes of irregular migration and fight against human trafficking. The Summit focused on five specific areas:[14]

1. Addressing the root causes of irregular migration and forced displacement
2. Promoting effective cooperation on legal migration and mobility
3. Facilitating the protection of migrants and asylum seekers
4. Fight against irregular migration, smuggling and trafficking in human beings
5. Enhancing cooperation on return, readmission and reintegration of migrants

The Emergency Trust Fund is part of the Valetta Action Plan. Its first beneficiaries will be the priority countries, such as Niger, a key transit country, receiving more than €100 million in allocated projects in 2016. It is followed by Mali, with €91.5 million. Mali is both a country of origin and transit: like Niger, it is crossed by important migratory routes towards the Mediterranean Sea. Other recipients include Burkina Faso, Senegal and Nigeria. All these countries are members of ECOWAS.

In addition to money from the Emergency Trust Fund, these countries will benefit from the 11th European Development Fund (EDF), the most significant European source of money for many African countries in 2014-2020. Mali and Niger, which are among the first three recipients of the Emergency Trust Fund, are also among the five leading beneficiaries of the 11th EDF, with respectively €615 million and €596 million.

The problem is how this money will be used. There is the likelihood that the European private sector will be the main beneficiary of these funds.

14 See European Union, *The Valetta Summit, November 11-12, 2015, Action Plan,*

The Compact with Africa Initiative.[15]

In the run up to the G-20 Summit in Germany in July 2017, the German Chancellor, Angela Merkel, proposed an agenda, targeting several African countries, aimed at promoting private investments to create job opportunities for their youth. The Compact includes ECOWAS countries, like Cote d'Ivoire, Guinea, Mali, Niger and Senegal.

The German initiative was presented to the G20 leaders, during the July Summit, who ended up endorsing it. *"The G-20 Compact with Africa (CWA) Initiative, under the G-20 Finance Track, provides a framework for boosting private investment and increasing the provision of infrastructure in Africa."*[16] So, the real aim of the Compact is to further open up African economies to Western corporations, especially through infrastructure, to make more profits under the guise of "development".

Therefore, the problem with both the Emergency Trust Fund and the Compact with Africa Initiative is that they do not respect the principle of democratic ownership of development policies. They are not aligned with African countries' development strategies. They are rather based on the assumption that by pouring in more money, through private investments, this can lead to stabilization in African countries and help stem the flows of irregular migration.

Civil Society Organizations and the ECOWAS/EU Cooperation on Migration

The EU migration policies as well as African governments' compliant position toward them have been sharply criticized by African and European CSOs. They see migration as a development issue, generally linked to failed neocolonial and neoliberal development models. This is why African CSOs make a direct link between trade and investment liberalization, land grabbing and migration. Therefore, African and European CSOs have formed international networks to try to influence EU migration policies in ECOWAS countries. Their representatives have participated in some Africa/EU Summits, such as the Valetta Summit (Malta), in November 2015, or in Brussels in January 2017. African and European CSOs will participate in the Africa/EU Summit, due to take place in late November 2017 in Abidjan (Cote d'Ivoire).

The European Commission accepts to invite some of those CSOs to hear their concerns but does not take them into account. For instance, representatives of African and European CSOs were in Malta, but were only invited to participate in the closing session, after the decisions were made. They issued a statement denouncing the excessive emphasis on security of EU migration policies and the pressure on African countries to enact Laws against "irregular" migration, in violation of the ECOWAS Protocol on the free movement of persons.[17]

African and European CSOs also participated in the meeting held in Brussels in January

15 Even if it was initiated by the German government, it is shared by all European countries. Germany being the leader of the European Union, its initiatives on migration are almost inevitably endorsed by the rest of the EU, as illustrated by the example of the Syrian refugees. The Compact aims to stop "irregular" migration by promoting policies that could provide job opportunities for young people tempted by migration to Europe. So, even if it is not an EU-specific project, it has the support of all EU countries and the same objectives as EU-sponsored projects. For instance, African networks working on migration are involved in discussions with German institutions to assess the possible impact of Compact on "irregular" migration. On September 21, 2017, a working session on the Compact was held at the Friedrich Ebert Foundation office in Dakar, Senegal, with the participation of Senegalese network and associations working on migration issues.

This clearly shows that the Compact is also part of the EU strategy to counter "irregular" migration.

16 The G-20 Compact with Africa. A Joint AfDB, IMF and WBG Report, G-20 Finance Ministers and Central Bank Governors Meeting, March 17-18, 2017, Baden-Baden, Germany, p.3

17 For instance, pressure and blackmail on States to enact Laws against « irregular » migration, to support and strengthen EU FRONTEX. One example is the Law taken by Niger in 2015, criminalizing migration and condemning any person attempting to cross the country's borders with Algeria and Libya, notably from Agadez, a city that has been at the center of intra-African migrations for centuries. The EU uses "development aid" as a weapon to force Niger and other African countries to accept its migration policies.

2017, whose objective was to assess the implementation of the Malta decisions. It was an opportunity used by CSOs' representatives to question the EU migration policies and call on African leaders to raise their voices against those policies.[18] They have put forward the following demands:

- Provide legal documents to migrants living and working in EU countries and to those in transit countries
- Respect migrants' human rights, especially their freedom of movement
- Promote alliances between state and non-state actors, as well as with Parliamentarians and journalists
- Involve Parliamentarians in the formulation and monitoring of migration policies

Summary & Recommendations

Migration from Africa is both a legacy of colonization and a result of the failure of externally-imposed development models. Several ECOWAS members are highly dependent on resources from migration. This makes the partnership with the European Union a very difficult issue.

While both ECOWAS and the EU refer to the HRBA principles and the 2030 Agenda on migration, the partnership has strayed away from these principles as a result of the shift in EU policies induced by the transformation of the world geopolitical context, terrorist attacks within Europe and the spread of jihadist groups in the Sahel region. This explains why EU migration policies have been mostly driven by security concerns at the expense of the principles enshrined in its GAMM. This manifests in the policies implemented with West African countries.

Yet, the right answer to the issue of "irregular" migration is to address the issues of development and job opportunities for the African people, especially among the youth. In that regard, the EU/ECOWAS partnership should be based on the following:

- Ensure safe, orderly and regular migration between West Africa and Europe
- Promote decent labor conditions for migrant workers, including women migrants
- Respect the human rights of migrants, including illegal migrants, based on regional and international Conventions and Protocols
- Urge member States to respect the UN Convention on the Rights of Migrants
- Comply with all international commitments made regarding migration
- Give priority to voluntary return over forced return, with due respect for their human rights and dignity
- Priority to political solutions over military solutions on illegal migration
- Provide funding for voluntarily returning migrants in countries of transit and origin
- Fighting against human trafficking but without criminalizing migration
- Empower civil society networks and observatories on migration, in West Africa
- Involve them in the formulation of migration policies and listen to their proposals

18 Networks on migration issued a Report of a fact-finding mission to Diffa (Niger) that was submitted to the Niger President of the Human Rights Commission. A campaign was launched at the regional level on the right to mobility and a petition was submitted to ECOWAS authorities for the respect of the Protocol on free movement of persons

Part 3

Social Rights in Development Partnerships

Development Partnerships in Health and Education in Malawi and Mozambique: Is it a HRBA?

African Forum and Network on Debt and Development (AFRODAD)

Introduction

The chapter is a comparative case study of Malawi and Mozambique. It is an analysis of how Official Development Assistance (ODA) has been delivered in the education and health sectors using a Human Rights Based Approach (HRBA). Human rights are supposed to be interrelated, interdependent and indivisible, hence the realization of one right often depends partly or wholly, upon the realization of others. This paper reviews two projects of the United States Agency for International Development (USAID) in the education sector, the Early Grade Reading Project (EGRP) in Malawi and the 'Learn to Read Project' in Mozambique as well as two projects in the health sector, the 'Applying Science to Strengthen and Improve Systems Project' in Malawi and the 'Maternal and Child Survival Program' in Mozambique. The constraints that these governments are facing, specifically their debt burdens and challenges in domestic resource mobilisation capacities, will also be analysed. The chapter notes that while USAID projects adhere to HRBA, the overall national education and health state in these two countries remain poor. The two governments should improve their revenue collection and debt sustainability frameworks for the realisation of a HRBA. The challenge is therefore how to meet development needs that satisfy a HRBA without accumulating debt beyond sustainable levels.

The World Health Organisation (WHO) in its constitution esteems the right to health as a fundamental right to every human being (WHO 1964). The right to education is also a fundamental human right enshrined in the Universal Declaration of Human Rights of 1948. According to Article 11 of the African Charter on the Rights and Welfare of the Child, every child has a right to education. SDG goal 4 aims to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. The UNESCO's Convention against Discrimination in Education resolution calls upon States to give full effect to the right to education, notably by "putting in place a regulatory framework for education providers guided by international human rights obligations"[1] The Sustainable Development Goal 3 alludes to ensuring healthy lives and promoting the well-being for all people of all ages. The African Charter on the Rights and Welfare of the Child, Article 16, gives rights to every individual to enjoy the best attainable state of physical and mental health.

Human rights based approach to health puts into account hospitals, clinics, medicines, and doctors' services that ensure appropriate quality healthcare. This should be delivered in a timely, acceptable, and affordable manner that is non-discriminatory, acceptable, accountable and universal. Also the right to education should ensure that every person can read and write basic statements. The right to education and health are guaranteed in the constitutions of Malawi and Mozambique. Every child has the right to education and this is promulgated in the Mozambique constitution article 88 that states, "In the Republic of Mozambique, education shall be a right and a duty of all citizens". Malawi also recognizes the right to education in its constitution. The question, therefore, is whether these countries are doing enough to ensure

1 http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/single-view/news/new_un_resolution_on_the_right_to_education_adopted/

that their populace enjoy these crucial rights in the course of engaging in development partnerships with donors as the United States Agency for International Development (USAID).

Implementation Frameworks of Development Partnerships Country Case Study Analysis

USAID professes to be a progressive agency that works towards ending extreme global poverty and enabling societies to realize their potential, projects that are in line with a HRBA. Malawi and Mozambique have a checkered relationship with their donor partners. They witnessed a shift from being the darling of the donors receiving substantial assistance to being investigated for maladministration of donor funds. They witnessed donors freezing budget support due to poor resource allocation. In Mozambique ODA freezes happened after it emerged in April 2016 that the government held undisclosed commercial liabilities worth US$1.4bn (10.4% of Mozambique's GDP) that pushed Mozambique's total debt stock to an unsustainable 112% of GDP by mid-2016[2]. Malawi also realised a freeze in ODA due to the "cash gate scandal" in which top government officials were exposed with huge sums of money. This prompted an investigation of illicit payments from the government in 2014 resulting in cuts in direct budget support from most donors. Malawi has made strides since the cash gate scandal to restore donor confidence and Mozambique is also currently going through the same process.

Malawi

Early Grade Reading Project (EGRP) for Education and ASSIST Project for Health Sector

The Malawi EGRP of USAID aims to improve the quality of education outcomes by building Ministry of Education, Science, and Technology (MoEST) capacity, improving both teacher capacity to teach reading and school management and leadership. The project provided continuous professional development (CPD) to 34,000 lower primary school teachers across the country and higher-intensity literacy programming in seven districts. EGRP learners in both Standards 1 and 3 according to the review of the project have shown improvements in reading and writing relative to comparison schools not in the EGRP program.

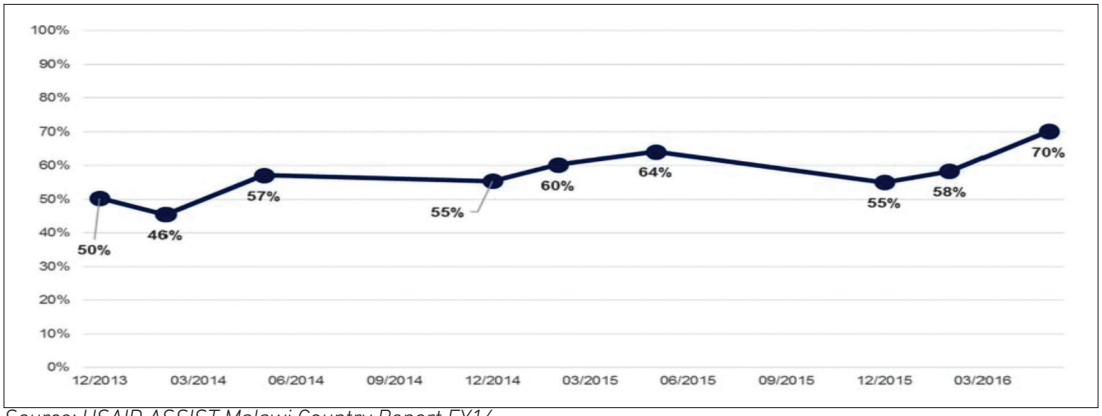
Despite this laudable progress at project level, the country continues to underperform in measures of basic literacy at a national level. By 2015 not all the students were able to read according to the MoEST benchmark of reading with comprehension and Oral Reading Fluency. Malawi Teacher Professional Development Support (MTPDS) end-of-program evaluation showed that more than 70 percent of Standard 1 and 3 learners who benefited from the intervention still had not improved their learning outcomes. Students interviewed still could not answer a single comprehension question after reading a simple short story. Nearly 50 percent remained unable to read even a single word. The country faces the persistent problem of high repetition rates, especially in lower primary, where some 25% of children each year repeat the same grade. The United Nations' 2016 Human Development Report Index ranks Malawi 170th out of 188 countries for its education achievements, behind Lesotho, Zimbabwe, Congo, and Swaziland.

The Applying Science to Strengthen and Improve Systems (ASSIST) Project aims to build the capacity of the Ministry of Gender, Children and Social Welfare (MOGCDSW) to imple-

2 https://www2.deloitte.com/content/dam/Deloitte/za/Documents/africa/ZA_Mozambique%20country_report_25012017.pdf

ment national standards to improve services for orphans and vulnerable children. The project promotes coordination, transparency, cost efficiency, and sustainability in programmes for Orphans and Vulnerable Children of selected district social welfare officers. The project also supports the implementing partners in their effort to assess the quality of voluntary medical male circumcision (VMMC) services (USAID 2016). This project provided information on how well children are doing (using the Child Status Index) and how well communities are adhering to the standards as illustrated below.

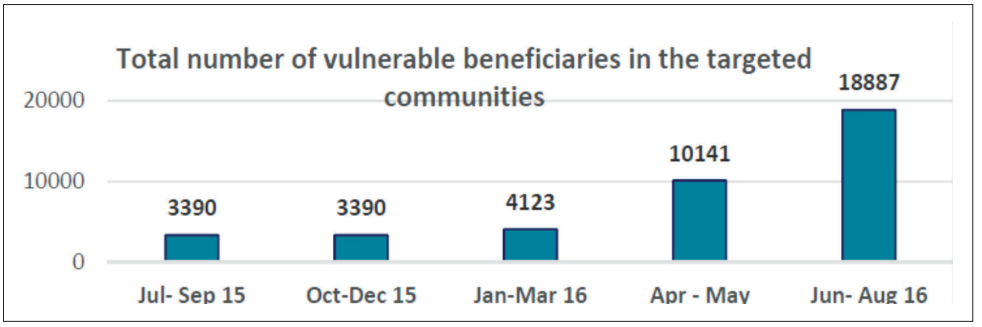
Percentage of children who passed term exams, 17 schools (Sept 2013-Aug 2016)



Source: USAID ASSIST Malawi Country Report FY16

The project interventions have resulted in improvements in the results of the learners from 55% in the 2rd term results to 70% in the third term results of 2016.

ASSIST is supporting the National OVC Task Force and implementers in applying quality standards to OVC services and working with the Partnership for HIV-free Survival to improve the quality of nutrition services for people with HIV. Besides OVC, the project also works towards improving the quality and safety of VMMC.



Source: USAID ASSIST Malawi Country Report FY16

ASSIST provides technical assistance to the MOGCDSW by supporting 10 communities to improve the welfare of vulnerable children and their families, using modern quality improvement techniques. The table above depicts an increasing number of vulnerable beneficiaries from 3390 in July 2015 to 18887 in August 2016. Though it has been noted that ASSIST programs are designed with host-country leadership at the forefront to ensure context appropriateness and local ownership, the design of the ASSIST Malawi project has excluded parliament and civil society organisation in terms of agenda setting. Moreover,

the ASSIST project has not been managed by local expertise. This is not inclusive as all the implementing partners are all foreign to Malawi. This has not facilitated the cascading of skills sets and capacity to the Malawians. Under a Human rights framework inclusivity is critical and this project has not demonstrated that.

Mozambique

Learn to Read Project for Education

Mozambique aspires to achieve universal access to education and made it compulsory for children from 6 to 12 years old to attend primary education. It abolished school fees for primary education (UNESCO, 2008). The Learn to read project (APAL) was launched in July 2012 by USAID and the Ministry of Education of Mozambique (MINED) targeting 849 first and second grade teachers, and 61 school headmasters' in 122 schools with 45,469 students in second and third grades. The project focuses on two objectives: to improve the quality of reading instruction to be achieved through teacher in-service training, coaching and monitoring; and increase more efficiency in school management. USAID's global goal aimed to get 100 million children reading by 2015.

Schools were categorised into Control, Mid and Full treatment groups. The results of the "Learn to read" intervention after a full school year of project implementation noted that both the Medium and Full treatment schools accomplished significantly higher levels than their counterparts in Control schools. The project's 2015 evaluation identified several obstacles affecting Mozambicans to enjoy their basic right to education including high teacher and student absenteeism, as well as limited student exposure to new techniques and practices. A good proportion of Mozambicans still cannot read and write or do simple arithmetic. The illiteracy rate stands at 44.9 percent.

Maternal and Child Survival Program (MCSP)

Mozambique made significant progress in reducing under-five and infant mortality rates by over 50% since 1990 and in the provision of primary healthcare. Policies for identification, prevention, and management of the key causes of maternal and newborn death are in place in Mozambique and the challenge is the implementation (World Health Organization and UNICEF, 2013).

The leading causes of death for under-five-year-olds are malaria (19%), pneumonia (15%), prematurity and HIV/AIDS (10%).[3] Valued at $500 million, MCSP aims to End Preventable Child and Maternal Deaths (EPCMD). It finances the introduction or amplification of high-impact, sustainable reproductive, maternal, newborn and child health interventions. MCSP also strengthens the responsiveness of civil society, local institutions and communities to health needs. The country is ranked 15th on the list of countries with the highest infant mortality rates[4]. Mozambique's maternal mortality was unacceptably high registering 103.82 deaths per 1000 registered births in 2010 and 72.42 deaths per 1000 live births in 2014[5] when the intervention started. Currently, as of July 2017, child maternal mortality rate is at 67.9 deaths per 1000 live births. More women are giving birth assisted by a skilled birth attendant. This suggests that the program has resulted in a reduction of maternal deaths by 6.23%,

3 World Health Organization (WHO, n/d), 'Mozambique: Health Profile', Geneva: WHO.
4 http://www.geoba.se/population.php?pc=world&page=1&type=019&st=rank&asde=&year=2017
5 http://www.indexmundi.com/g/g.aspx?c=mz&v=29

meaning that for every 1000 births 5 more lives were preserved in Mozambique. However Mozambique needs more efforts in this regards.

Adherence to Human Rights

Project	Duty Bearers Accountability	Contribute to Human rights	Adherence to Human Rights	Empowering the marginalised
Malawi: Early grade reading project Education sector	+ Ministry of Education, Science, and Technology	Right to Education	Improvements in learners ability to read and write	Teachers empowered for better learning outcomes/poor children access better education.
Malawi: ASSIST project in Health Sector	+ Ministry of Gender, Children and Social Welfare (MOGCDSW)	Right to Life, Right to health, Right to education	Improvements in the welfare of vulnerable children and their families	Vulnerable and marginalised children benefit from this project and showed better learning outcomes.
Mozambique Learn to read project for Education sector	+ Ministry of Education	Right to Education	Children access the right to Education with better learning outcomes for learners part of this project	Many marginalised children still cannot read or write who were not part of this project
Mozambique Maternal and Child Survival Program Health sector	+Ministry of Health	Right to Life Right to Health	child maternal mortality rate decrease	Poor women have access to maternal services

An analysis of the four projects shows that they contributed to the realization of the right to education and the right to life and health. The project worked in connection with relevant ministries like the Ministries of Education, Health, Gender, Children and Social Welfare in these countries. However these projects did not put in place meaningful accountability frameworks to hold duty- bearers to account, and provide effective means of redress for all actors involved in these projects. The marginalised and vulnerable were the biggest beneficiaries in these projects as shown by the positive changes in learning outcomes and number of death recorded at birth after intervention in Mozambique.

Debt Burdens and Domestic Resource Mobilisation Strategies

Besides the USAID interventions, these countries have other avenues for ensuring a HRBA such as collecting adequate revenue. Malawi is categorised as at moderate risk in terms of debt sustainability and recently Mozambique has moved from moderate to high risk. Mozambique and Malawi are beneficiaries of the HIPC debt cancellation initiative that prioritised expenditure on education and health. These benefits are fast fading away. Mozambique's annual debt levels since 2009 have increased to $10 Billion in 2016. Mozambique's debt to GDP threshold of 60% is unsustainable against SADC. Malawi's external debt stood at about US$1.9 billion in 2017.[6]These two countries have bilateral debt to the US government.

6 http://mwnation.com/external-debt-scare/

Domestic revenues are the largest and most stable source of financing that can be used to push towards a HRBA to development. It was identified in the Addis Ababa Agenda for Action of 2015 as a major source of financing for development. Also with a target of 17.1, the SDG Agenda pledges to strengthen "domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection" (UN, 2015).

Mozambique has had donor support that was vital in ensuring that it collected more revenue through core aid for tax-related activities. Donor support has helped the Mozambique Revenue Authority increase tax revenue as a share of GDP from 11% in 2005 to 23% in 2013 (IMF, 2015b). Support has been through the multi-donor trust fund which disburses approximately US$6 million per year in ODA resources that supported the revenue authority. The main existing taxes for the mobilisation of domestic resources are Value Added Tax (VAT), Corporate Tax (IRPC), Individual Tax (IRPS), to name a few. However in 2015, 75% of the overall government budget was funded by external donors—a substantial increase compared to the government's budget in 2014, when 65% was financed by external sources[7]. Therefore the country needs to improve its DRM and break free from donor dependence.

In Malawi the largest share of tax revenue comes from taxation of goods and services and 28% of public education resources are spent on tertiary education. The IMF assumes that tax revenue will gradually increase from 17.9 percent of GDP in the financial year of 2017 and 2018.[8] The Education commission notes that if illicit financial flows in Malawi were curbed it could have resulted in 3% of GDP going towards education in 2013. In that same year Malawi's public spending on education was 8% (Kar and Spanjers, 2015). In 2013 Malawi collected 21% of its GDP in tax and spent 20% of the government budget on education becoming one of the countries that has achieved high tax revenue and prioritizes education spending. However the government of Malawi has been ineffective in recovering money loaned to students for fees through its loan recovery system (Hall and Mambo, 2015). One recent estimate is that former students owed the government US$2.5 million in unpaid loans taken out between 1985 and 2012 (Muheya, 2016). Malawi therefore has a huge opportunity to collect more funds from domestic sources if more effort is dedicated to ensure that ODA goes towards institutions that collect revenue more efficiently.

Challenges and Key Lessons in HRBA in Education and Health

The interventions in the two countries have not taken a nationwide approach but tackled a selected sample size. Human rights, especially the right to health care and education, should be enjoyed by all. The Malawi and Mozambique case study has demonstrated that despite the education coverage reaching every part of these two countries, the quality of service has not been the same. Even after attending school most students could not read and write. The governments of the two countries face a huge challenge of ensuring access to human rights by making access to quality education a top priority.

Also in the two countries under review, efforts to address high levels of maternal mortality and of orphans and vulnerable children have been affected by the HIV/AIDS pandemic. There has been a high level of aid dependence in both countries at a time when some donors may be seeking to cut back their aid. In Mozambique the challenge is the staffing of clinics and hospitals. Patients continue to walk long distances to health facilities which remain a huge

7 https://www.healthpolicyproject.com/pubs/7887/Mozambique_HFP.pdf
8 http://www.imf.org/external/pubs/ft/dsa/pdf/2017/dsacr17183.pdf

problem. There is high inequality in access to health. A child in Cabo Delgado province is almost three times more likely to die before age five than a child in Maputo (UNICEF, 2011). The political engagement by civil society is inadequate and parliamentarians in Mozambique are also not raising these issues as guaranteed in the constitution. The other challenge is women's lack of agency to utilize health services. Both countries have provided inadequate financial and budgetary allocations resulting in poor services. The infrastructure especially in education in both countries is also not conducive for learners to perform. However unsustainable debt remains a major constrain to free up resources for health and education.

Policy recommendations

Though the four USAID projects under review played a part in ensuring a HRBA, governments in these two countries should ensure that all programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments. Part of the population in these two countries continues to be denied the right to education and health. Governments ought to meet their obligations of ensuring that rights-holders have access to their rights and there should be provisions for them to claim their rights.

The US government has not gone further to cancel the debt for these countries. To ensure that these two countries adhere to HRBA, debt repayment should not undermine the realization of human rights. Repayment in principle takes away the financial freedom for providing a HRBA governance system. By contracting debts that do not address the HRBA values, Malawi and Mozambique continue to face rising debt burden. The need for continued domestic resource mobilisation through enhanced progressive tax systems therefore becomes paramount if all the people of Malawi and Mozambique will fully enjoy their rights to health and education. It therefore should be a human rights obligation for donor countries to cancel debts which undermined the economic and social rights of the people.

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Education for All and International Development Partnership (The Case of Bangladesh and Pakistan)

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"When we focus resources directly on girls' empowerment, beginning with the poorest girls, boys and the rest of the society benefit. Whereas "trickle-down" doesn't work, "trickle-up-and-out" often does."

Chernor Bah, Population Council, The Guardian

Introduction

Education, primary and secondary in particular, is the very arena of the convergence between human-rights, poverty-reduction, and development. Motivated by the international development partnerships (DP) in the last one-and-half-decade, South Asian states have been committed to ensuring Education for All (EFA) and Universal Primary Education (UPE). As a means to achieve the said goals, development partners, mainly the UK's Department for International Development (DfID), European Union (EU), United Nations International Children's Fund (UNICEF) and the World Bank (WB) have been pledging millions of dollars to improve the vital literacy statistics based on the principle of 'right-to-education as the 'pre-condition for a country's socio-economic uplift'. Both formal and non-formal education/ literacy programmes have been launched to accomplish targets set-forth in the Millennium Development Goals (MDGs), and Sustainable Development Goals (SDGs).

This study makes inquiries on the following: 1) What lies ahead and how far have these goals been achieved? 2) Was the conventional education paradigm discarded or transformed to comply with the four principles of education i.e. availability, accessibility, acceptability and adaptability that help realize objectivity, equality and democratic plurality through education?

In line with the above, cases in Bangladesh and Pakistan will be examined. The two hold much in common and share a history in relation to their educational culture and constraints. Both countries are in need of more development aid to improve their primary education outcomes. This paper attempts to draw lessons from the successes and failures of this experience. It also examines the role of donors, NGOs, and Civil Society in promoting rights-based education in both the countries. The education programmes and outcomes in Pakistan and Bangladesh need to be investigated from a human rights perspective to extend critical policy and practical recommendations for the future.

Contextualizing the issue

Influencing national policies and priorities, at least partially, the Education for All (EFA) movement was, in fact, launched by the UNICEF, UNESCO (United Nations Educational, Scientific and Cultural Organization), UNDP (United Nations Development Programme), UNFPA (United Nations Population Fund) and the World Bank in the 1990s that resulted in the World Conference on Education[1] in (Jomtien) and orchestrated a degree of common

1 Supported by UNESCO, UNICEF, UNDP and the World Bank, World Conference for Education was organized in Jomtien (1990). Mobilizing governments, civil society and experts, education was recognized as being more than access. The same players and international community met again at the World Education Forum in Dakar (2000) and re-affirmed their commitment to achieve EFA by the 2015 known as MDGs followed by SDGs beyond 2015.

understanding about the educational goals and strategies to be adopted by the national governments. Mobilizing educational professionals, respective governments, civil society and international donors, the said agencies emphasized EFA (along with quality and competency) to be adopted as a top priority for the developing countries. The said Conference also laid the ground for the World Education Forum in Dakar (2000). Incorporating EFA, the MDGs' (2000-2015) commitments reinforced national gender-equity and UPE aspirations that were later revised with greater vigour and national ownership under SDGs beyond 2015.

In 2012, the UN Secretary-General pushed for the Education First Agenda. The purpose was to motivate a broad spectrum of actors and lay the groundwork for a post-2015 vision for education in line with the MDGs. In 2013, government representatives, civil society and academic organizations met again in Dakar to review progress in global education since 2000 and forwarded recommendations for a post-2015 education framework. The deliberations prioritized three things: equity, quality learning, and accessibility beyond primary education.[1]

By contributing to various programmes and annual development budgets, international DPs hold considerable leverage on national education policies and preferences of Bangladesh and Pakistan. Also, DPs inject an international perspective and encourage the adoption of lessons learned from diverse experiences in education development processes to realize MDGs-EFA goals. In Post-Dakar 2000, successive education plans were drafted by the said countries to accomplish the targets of the MDGs-EFA.

Rights-based national commitments to promote education

The Constitution of Bangladesh (CoB) and the Constitution of Pakistan (CoP) recognize education as a citizen's fundamental right and hold the state responsible to impart 'free and compulsory education' to all their citizens. As per Article 17 of the CoB, the state is responsible *"to provide uniform, mass-oriented and universal education to all children..."* Similarly, Article 25-A of the CoP prescribes, "*The state shall provide free and compulsory education to all children...*" Equality, equal rights and non-discrimination are also assured in the respective Constitutions of the two states.

The countries also commit themselves to the Jomtien (1990) and Dakar (2000) EFA vision along with the post-Dakar National Plan of Action (Bangladesh 2002-2015), (Pakistan 2001-2015) and aim to materialize MDGs and SDGs by extending 100% UPE to all their citizens. In other words, both states assume responsibility for imparting objective, accessible, free and equitable education to children as their fundamental right.

Development partnership in education

Development assistance in education turned out to be relatively more sectoral focused on the commencement of MDGs and EFA frameworks in the 2000s. Rather than facilitating isolated education projects, it also led DPs to contribute to national education programmes and priorities.[2] While at times referring to it as fiduciary risk, budgetary support for education has been provided by the DfID, EU, WB and other donors. Claims of employing robust primary and secondary school achievement[2] indicators[3] also occur in most donors' policy and assessment documents.

2 In certain cases without benchmarking the present status.

The EU supports one of the world's largest education programmes in Bangladesh. It has maintained the largest civil society and, governmental policy and implementation partnership there in the last 15 years and intends to retain it in the future.[4] With a massive amount of funding already extended and augmented by the recent commitment of £158m (2016-17), the UK believes Bangladesh is one of the most impressive success stories in Asia. According to Lord Bates, the DfID's minister, *"Bangladesh has made fantastic improvements to education… and demonstrates how well aid can help transform a society."*[5]

Like Bangladesh, Pakistan also happens to be one of the largest recipients of DFID's assistance in education. In the span of 2006-2015, it received about $2.1 billion for social sector development, inclusive of education.[6] Just to exemplify, the amount Pakistan received from DfID in 2013-14 was £284,735,437 which is about 3% of its total funding across the world. From 2011-2015, its priorities have been to enroll at least 4 million children in primary and at least 2.4 million children in secondary education; train 45,000 teachers and construct more than 20,000 classrooms and required toilets, and "incentivize" 3 million people to send their kids to school.[7] To enhance enrollment further, it commits to recruit 43,000 new teachers, construct 36,000 classrooms and put 5,000 schools on solar energy by 2018 in Punjab alone[3].[8] To supplement the enrollment of 500,000 children, the beneficiary families of 'Benazir Income Support Programme' are being provided cash transfers[4] by the UK High Commission since early 2017.[9]

Apart from allocating funds for rural infrastructure development, an amount of €210 million,about one-third of the total aid, is earmarked for equitable access and quality education along with reducing gender and regional disparities[10]. DfID made a commitment to provide £70 million to Punjab Education Foundation (PEF), helping the organization accommodate out-of-school children from 2013-2018[11].

Like DfID's continued support from 2010 to 2019, the WB's support commenced in 2003 and will continue until 2021. By the end of 2015, the USA pledged to assist Pakistan for doubling its education budget and launched the 'Let Girls Learn' project by contributing $70 million to educate about 200,000 adolescent girls.[12] The WB's funding for education in Pakistan is also the largest, though composed mostly of loans. From 2004 to 2011, the International Development Association, a lending-arm of the WB, extended over $1.1 billion to support education reforms in Sindh and Punjab[13]. This support was meant to improve teachers' recruitment and offer stipends to girls for attending schools[14].

Working in collaboration with the School Education Department, the UN Girls' Education Initiative, UNICEF and DfID facilitated more than 3 million children (of 15 million out-of-school-children with 55% girls) to go to school in Punjab in 2013. DfID further assisted 7.5 million children to attend school in 2016. It is estimated that around Rs 3,387 billion and 15% annual educational-development budgetary-increase is required to achieve 95-98% enrollment of 5-16 years' children in the province by 2024-2025[15].
With the assistance of €7.4 million, EU and UNICEF will facilitate the Balochistan Education Support Programme (2017 onwards) to improve infrastructure, enrollment and teaching quality in about 13,000 schools in the province.[16] In the backdrop of poor governmental commitment DfID rather opted to provide vouchers to parents in Sindh to send their children to low-cost private schools.

3 Certain aid agreements, particularly post-18th amendment that devolved the subject of education to provinces , are made with one or another province of Pakistan as preferred by one or another donor. Punjab is the largest recipient of donor funding.
4 About $195 or PKR 1600 is transferred per-month per-family to their purpose-created accounts.

Ostensibly, DPs in Pakistan and Bangladesh have been opting for various approaches within the education sector to achieve desired results. No comparative analysis is available to pinpoint a particular approach to be proffered. Nevertheless, the budgetary support, sector-wise targeted approach, increased national/provincial ownership, encouraging equitable and affordable private-education, building the governments' regulatory capacity and improved monitoring standards appear to be doing better, than the broader programme-based assistance practiced in the 1990s. Simultaneously, assistance without retrospective analysis and mutual harmonization neither yield results nor the desired pace of the results.

Supporting education departments, reform implementation units are installed outside the government premises, creating role-friction and consuming massive amount of donor's money[17]. Select strategic-intervention yield some success but the quantum shift in education is not observed.

Rights-based progress in education

Believing education to be an inalienable right of every child, it is appropriate to examine how responsive the respective states and donors have been in realizing the determined goals. The Goals 2, 3, and 6 EFA targets can be examined in relation to three principles i.e. accessibility including gender equity, quality, and adaptability of the content and contours of the literacy imparted. It implies that state policies and programmatic outreach must address the needs and preferences of the marginalized sections of society as well.

Despite well-funded programmes launched with the assistance of the DfID, EU, WB, UNICEF and USAID, progress around EFA and MDGs and Gross and Net Enrollment Ratios (GER and NER) remain below or far below the set targets in Bangladesh and Pakistan. Disparities in terms of region and gender are also persistently severe.

Expansion, availability and access to education in Bangladesh

With the support of DPs, the GoB adopted EFA agenda in the 1990s by translating it into the National Action Plan in 2003. Drawing from its home-grown development perspective and coinciding it with the MDGs, the plan aimed to eradicate illiteracy by 2015.

The gender-gap did narrow down in the last decade. By 2009, the NER of the primary school girls touched 94% compared to 88% for boys while the corresponding rates at the secondary level were 47% and 37% respectively. Female literacy also improved to 72% compared to 73% male literacy.[18] With the assistance of the said DPs, Bangladesh almost achieved gender-parity.[19]

By 2015, the overall GER and NER increased rather rapidly to 98% and 91% respectively. However, the GoB still lags behind achieving 100% literacy. The current ratio stands at 61.38% (64.57% for males and 58.49% for females) based on the reading-writing benchmark.[20] Both the GER and NER for primary-schooling correspond to Bangladesh's MDG-2 targets. Nevertheless, EFA as part of the NAP-II (2003-2015) aimed to bring the primary-level dropout rate down to 10% but the trend still remains higher at 26%.[21]

Secondary and tertiary levels also portray a dismal scenario. The GER for Grade VI-X is 52% (girls: 57%, boys: 46%). Secondary level dropout remains higher at 47% (boys: 40%, girls: 52%). Primary schooling witnesses frequent dropout of boys while the secondary level ominously reverses the trend.[22]

Horrible chasms and wider disparities between districts and communities keep on. The NER in poor eco-fragile villages stands below 50%. The primary level completion rate in urban areas hovers around 69% compared to 48% for the rural areas.[23]

Enrollment rate for chronically food-deficit-households is recorded at 78% compared to 84% for sometimes food-deficit-households and 88% for breakeven-households while the enrollment ratio for food-surplus-households becomes 91%.

Expansion, availability and access to education in Pakistan

The Economic Survey of Pakistan (ESP 2016-17), estimates its current literacy at only 58% (even falling 2% from 60% last year). With 12 million out-of-school children (5-16 years of age), Pakistan holds the second highest out-of-school-children in the world. The Annual Status of Education Report (ASER-2016), marks just 81% of the same age children enrolled. The ESP's Gender Parity Index (GPI) counter places its national score at 0.79 while Punjab scores 0.69, Sindh 0.61, KP 0.49 and Balochistan 0.35.

The country failed to achieve its EFA-MDGs of 97.5% by 2015.[24] Its GER even fell from 90% (2013-2014) to 87% (2015-2016). Over the same period its NER declined from 57% to 54%.[25] The NER from 2015-2016 for Punjab and KP declined from 64% to 59% and from 54% to 53%, respectively. Balochistan witnessed a decline from 39% in 2013-2014 to 33% in 2015-16.

The GER in Punjab rests at 70% (2016). It witnessed only a 6% enrollment rise since 2011. Presently, some 13-16% of children are out-of-school in provincial areas.[26]

In Khyber-Pakhtunekhwa, NER and GER at the primary level declined by 1% from 49% to 48% and from 63% to 62% respectively between 2014-15 and 2015-16.[27]Since 2012, 53% or almost half the adults remain non-literate in provinces.

Balochistan scores even worse. The overall literacy rate in the province stands barely at 56% and adult women's literacy is as low as 23% – the lowest in the world. Post-primary drop-out is glaringly high, i.e. 60%.

Likewise, the statistics for Sindh also transpire disappointingly. Its NER stands at 61.6% at the primary level (6-10th grades); 35.7% at the middle level; and 23.1% at the tertiary level.[28]The overall NER stagnates at 48% for the last couple of years.

Quality and content of education

Quality education is one of the 17 Goals constituting SDGs. Where both the countries demonstrate some success in expanding the spectrum of primary (and to some extent) the secondary education, there are miles to go in improving the quality of education and learning. Obsolete teaching and curriculum approaches fraught with habits of cramming fail to develop the students' creative and analytical skills.

In Bangladesh only 25% to 44% of the students in Grade-V to Grade-VIII hold reasonable command of the Bangla and English language, and basic arithmetic. Domestic quarterly/annual testing systems are also ineffective. The average passing score remains at 33%. It is no surprise that under a competitive exam, only 5% of the students get through the primary school cycle.[29]

In Pakistan, multiple national or international assessments reveal that students' knowledge and skills in languages and arithmetic are utterly disturbing. The national average score in languages (Urdu/English/Sindhi/Pashto) was only 32% for Grade-V and 37% for Grade-VIII. Average score for mathematics was only 24% for both levels. According to ASER (2016), 48% of the Grade-V students cannot read Grade-II level story texts. Only 46% of the Grade-V students were able to read simple sentences of Grade-II level English. Arithmetic competency is extremely poor. Only 48% of Class-V students can do two-digit division – technically meant for Grade-II level. Besides that Punjab Education Commission's exam has become a reward-and-punishment tool to schools as well as to districts despite the fact that narrow 'teaching-to-the-exams' proves counterproductive.

In a nutshell, with the assistance and influence of DPs, equity, access and availability of schools have partially improved in both the countries. But astute education-governance, efficiency and sustained financing seem to be a far cry from what is needed. Education planning, management, enhancing teachers' knowledge cum skills and quality of education particularly suffer. Beyond policy provisions, accountability, transparency as well as curriculum development and teaching-learning methods, by and large, stay retrogressive.

The role of NGOs/CSOs in promoting education

A number of NGOs are running low-cost community schools in remote and inaccessible areas. Others collaborate with donors and the central and/or provincial governments to provide and improve quality, access and missing facilities in schools. Strengthening Schools Management Committees[5], imparting teachers' training and even proposing curriculum amendments are some of the major activities that NGOs assume quite effectively.

NGOs/CSOs' Role in Bangladesh

The role of BRAC is worth mentioning, being one of the largest microfinance and development NGOs in the world. Beginning with 11 schools in 1999, it introduced 12 months pre-primary-classes for young learners at nominal fees. Improving upon this, BRAC introduced a pre-primary to Grade-V schooling system. BRAC-GoB collaboration has been exceptionally good, contrary to the prevailing ill-disposed attitude of the GoB towards NGOs in general.

In collaboration with some NGOs, the GoB and UNICEF launched the 'Hard to Reach Education Programme' for labouring children. Bangladesh Garments Manufacturers and Exporters Association, UNICEF and ILO also support such initiatives.[30] Since 2000, the ILO has also been facilitating a two-year basic literacy course by opening up around 5,000 centers for working children.[31]

Pioneered by BRAC, the non-formal primary education system is now seen as an essential component of formal education. Such schools, at present, serve millions of children. However, the system is neither acknowledged in the official education statistics nor embraced by UPE strategy. Similarly, the 'second-chance' non-formal and alternative primary education is also popular amongst adults. Beginning in 2006, Reaching-Out to the Out-of-School Children programme is also being replicated in other South Asian countries.[32]

5 Though NGOs put a lot of effort in strengthening SMCs but its members mostly being un/low-educated parents and/or community elders who fail to make any substantial contribution. Besides that teachers and education authorities also usually despise external interference.

Acknowledging the substantial contributions made by NGOs, the GoB nationalized about 26,123 non-government primary schools in 2013. Taking over the responsibility of 104,776 teachers' salary and school management, it shows commitment to continue imparting education to the kids already enrolled.[33]

NGOs/CSOs' role in Pakistan

In Pakistan, the government is downright hostile to CSOs. Despite assistance offered by scores of NGOs to the government in securing EFA-MDGs/SDGs, the GoP is constraining their freedom in all the provinces.[34] But the School Education Department, the UN's Girls' Education Initiative and UNICEF are encouraging NGOs/CSOs to collaborate with government schools to provide meals and maintain child-tracking and healthcare systems to ensure UPE.

Restructured in 2004, the Punjab Education Foundation (PEF) is meant to promote education in public schools through public-private partnership (PPP). Roughly, 2 million children are enrolled in about 3,000 PEF schools run by partner-NGOs such as ITA, Ghazali Trust, Development in Literacy, Care, Citizens Foundation, Muslim Hands and others. Poorly performing urban, suburban and rural schools with high rates of teachers' absenteeism are now gradually improving on all counts. In exchange for their services, the Foundation deposits Rs.550 and Rs.700 in respective NGOs' accounts for each student enrolled at the primary and secondary level. Teachers have undergone training under the Continuous Professional Development Programme.

Under the PPP initiative, the PEF's New School Programme helped motivate the poor parents to send their children to schools.[35] Seeking NGOs' assistance, the Sindh Education Foundation also initiated 'Promoting Private Schools in Rural Sindh' under Sindh Education Reform Programme (I and II in 2008-2009 and 2013-2014). Likewise Balochistan Education Foundation established 633 community schools enrolling above 26000 children, improving 633 school buildings and setting-up about 700 schools in collaboration with NGOs[36]. The said arrangement did help improve an increase in children's enrollment; however, its system impact is unclear.

Concluding analysis and policy recommendations

The data and analysis presented in this paper indicate that the 'education for development' regime in both Bangladesh and Pakistan has not been as successful as it might have been hoped.

While some improvement in enrollment and equity in access to education is observed, the countries remain far from achieving the stated goals and EFA targets. Obviously, a reductionist-mechanistic rise in enrollment is not enough. The quality of education imparted is hardly up to the mark. Inadequate teaching approaches, absenteeism, higher drop-out rates, and poorly developed and/or discriminatory text fail to impart a knowledge-based, objective education. On top of that, missing facilities and loss of working days under rampant political crises make the situation worse.

While international funding in education can be described as partially successful, the sporadic budgetary and programmatic support prove inadequate in realizing the desired overall improvements in education as committed in Jomtien, Dakar's EFA, MDG's and SDG's framework. Home countries' social, political, economic and demographic trends and most importantly the poor ground conditions pose barriers in realizing their national and international commitments.

Given the dearth of successful homegrown models, a lack of national political will and the absence of pre-requisites put-in-place for EFA/UPE, the introduction to, or at times imposition of "established best practices" from abroad seem to accomplish limited success. Technically, DP implies collective ownership, shared policy decisions, mutual trust, collective monitoring and evaluation, improved research capacity and mutually agreed implementation along with shared responsibilities. But this does not seem to be fully observed in the case of education partnerships in the two countries. DPs cannot be successful without addressing the socio-economic inequities, problems, and preconditions.[37]

Donor funding builds 'human' and 'capital' capacity and is largely confined to capital cost as opposed to the recurrent needs. But there is lack of commitment for building institutional capacity to absorb the trained man-power and to streamline or improve the administrative and governance system involved in managing these assets. Officials in Pakistan's management structure are non-technical persons. They sign off on whatever the technical experts offer. Officials making big decisions are political appointees and the time they are in position is very short. Donor-funded projects offer them financial and other opportunities for personal growth and benefits. The programme managers and policy makers both local and international only focus on immediate operational objectives, disbursement of funds, work-plans, deadlines and careers. [38] So has been the case of education programmes in Pakistan.

Though the duplication of funding has been addressed, the development problem is still being handled like a technical one rather than institutional or social phenomena. Pakistan's (and Bangladesh's[6]) social-cultural context becomes immaterial[39] (including the varying regional cultures). Arif Hassan, Pakistan's leading development expert says that "donors manage to impose their own cultures on government agencies." In certain cases, confusion and mistrust is multiplied by the creation of overlapping functions or institutions[7] with the support of donors[40]. DfID itself acknowledges the lack of a comprehensive reform plan and political commitment in the education sector.[41]

The imbalance of power, substituted sovereignty and the transposition of models and paternalism also cause negative effects. Donors' intervention across the board seems larger than the volume of extended funding. Instead, DPs need to constitute their relations horizontally in which parties participate as equals to enrich mutual experiences.

The skewed relationships of power between the (northern) donors and the (southern) recipients affect progress. The responsibilities must be shared in failure as well as in success.42 In certain cases, in-spite of proven failures by DPs, the programmes/projects are further extended. For example, independent assessments reveal that, Pakistan's Social Action Programme, driven and designed by multiple donors and inclusive of education (1992-2003) was a massive failure. Yet the WB added-up $500 million to support the program believing that it helped increase rural girls' enrollment[8] to schools. On top of its continuous support to Pakistan in the previous decade, the US Government extended another $7.5 billion to Islamabad for the period 2009-2014 to improve its social services, including education. [43]

In response to the needs and circumstances of diverse social groups, NGOs/CSOs have proven to be more innovative and responsive than the highly centralized and standardized approaches

6 The author's insertion.
7 Say Punjab Curriculum Authority in the presence of Punjab Textbook Board
8 SAP facilitated opening up separate schools for boys and girls. Resource crunch, unavailability of teachers and duplication of expenses later on compelled the donors and national management to prefer back co-education at the primary level.

of the governments. However, much of their efforts do not add-up to the official calculus. The public sector's dislike – even abhorrence in the case of Pakistan – to collaborate with and learn from them is a major cause. Despite serving millions of children in both countries, official data do not count hundreds of one-room, one-teacher schools and other non-formal facilities run by NGOs even though these figures, matter to gross-and-net-enrollment ratios.

Also, NGOs/CSOs play an important role in maintaining pressure on the powers-that-be and to hold them accountable for the delivery of citizens' right-to-education. They have been critical of inefficient and inappropriately designed state-driven projects, marred with bureaucratic delays, corruption and misappropriation. However, both the governments of Bangladesh and Pakistan, by and large, remain intolerant of NGOs/CSOs promoting human-rights (including the right to education) and exposing their failures to live up to their EFA/UPE promises.

In this regard, here are the key suggestions and recommendations:

- Having lost much of the MDGs-EFA targets, SDGs also seem difficult to achieve without enhancing the countries' domestic budget at least up to 20% (6% to start with) of the GDP. Only robust financial support can help promote equity, expansion and excellence in education.
- Higher drop-out rates at all three levels make increased GER/NER virtually meaningless and tantamount to exclusion. On top of inefficient policies and practices, distance, poverty, socio-cultural norms, disabilities, conflicts and natural disasters all contribute in keeping children out-of-school and/or forcing them to drop-out early. Data, evidence-based strategies and adequate investment may help in achieving the goal of the zero-drop-out and sustenance in schools.
- Bangladesh must address the plight of the children of indigenous communities while Pakistan needs to further include minority and suburban children where drop-out and teacher's absenteeism is too high. Terrorism-affected schools and areas need incentives and protection to create a safer environment to school-going-children.
- Madrasa education needs to be reformed and transformed to address the quality and content of education for thousands of children studying there. What is desired even more is that key donors, GoP and GoB should partner to plan and develop programmes to reform madrasa education to comply with the mainstream education policies. Apart from some NGO's short-term projects, no major DP is filling in that vacuum.
- Apart from being a fundamental right and a-priori need for social development, literacy has become an indicator of success for donors, executive agencies and governments. Therefore, maneuvering benchmarks and/or spinning statistics demonstrate conflicting results between governments and independent assessment agencies that affects policy and programme content. Exaggerated figures rarely justify reform processes and outcomes. An international standard and benchmark for DP in literacy must be adopted with clear competency indicators at all three levels.
- Heads-must-roll strategy to demonstrate progress to donors and donors' pressure to deliver sometimes end-up in 'deliverology' and compels education authorities to doctorfacts. Bottom-up district and provincial plans for reform and progress with adequate donors' assistance have proven more successful. Otherwise, the education department gets reduced to mere implementer of the agenda defined by the donors/authorities.

- Elimination of ghost-schools; ghost-teachers; absenteeism; test-and-merit-based teachers' recruitment; putting an end to political interference/cronyism; and removing corruption in posting, promotion and transfer are all essential to rectify the system from the ailments that halt progress.
- NGO-Government cooperation as well as PPP strategy needs to be clearly articulated. NGOs' potential must be employed; their contribution must be acknowledged, especially in Pakistan, in terms of education, assessment and policy formulation. Donors need to learn from the research and advocacy outcomes of BRAC, Oxfam, ActionAid, Alif-Ailan and Education Coalitions.
- A fundamental reorientation is needed in the way the government-donor relationship works before getting into a DP and articulating the state policy to realize the right-to-development approach.

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Assessing the Human Rights Gaps in Traditional Development Cooperation for Agenda 2030: Show-casing the Agricultural and Social Housing Sectors of Cameroon, Gabon and Congo

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Introduction

Since the adoption of the African Union (AU) Agenda 2063[1] and the United Nations (UN) Agenda 2030 in the second and third quarter of 2015 respectively, traditional donors have updated their development cooperation policies for the accelerated achievement of both frameworks. The prime aspiration of Agenda 2063 highlights the importance of building "a prosperous Africa based on inclusive growth and sustainable development by developing modern agriculture for increased productivity and food security"[2]. Fast tracking the achievement of the SDGs in Africa necessitates contextualizing these development objectives at country level according to National Development Plans (NDP). Moreover, they must be anchored in the HRBA to development with concrete steps toward "leaving no one behind".[3]

Today, addressing poverty from a multi-dimensional perspective must be anchored on human rights principles through effective participation of marginalized people as required by the Nairobi Outcome Document (NOD)[4] of December 01, 2016. The "non-discrimination engagement" is a core outcome of the NOD[5] which reaffirms the 2030 Agenda's pledge of leaving no one behind.

This study is a comparative multistakeholder appraisal of how traditional donors like the World Bank Group (WBG), the African Development Bank (AfDB) and the French Development Agency (AFD) integrate the Human Rights Based Approach (HRBA) to development in their cooperation mechanisms in Cameroon, Gabon and Congo, particularly for the agricultural and social housing sectors. The assessment was conducted in view of the 2030 sustainable development agenda.

Using a multi-stakeholder perspective, the paper examines whether traditional cooperation for the Sustainable Development Goals (SDG), particularly SDG 1 (End poverty...), SDG 2 (End hunger, achieve food security and improved nutrition...) and SDG 11 (Make cities and human settlements inclusive, safe, resilient...), is anchored in the HRBA.
The research examined the following dimensions:

- Traditional donor human rights and SDG orientations;
- Country ownership and the right to participation;
- Blended financing and the private sector's inclinations towards HRBA
- Protecting the rights of small farmers;

1 African Union Agenda 2063: The Africa We Want
2 African Union Agenda 2063: The Africa We Want, page 3
3 United Nations Agenda 2030 Declaration: Transforming Our World: the 2030 Agenda for Sustainable Development
4 The Nairobi Outcome Document for Effective Development Cooperation, December 01, 2016.
5 The Nairobi Outcome Document for Effective Development Cooperation, page 5, December 01, 2016

- Social housing and the protection of low-income people
- Parliamentary accountability;
- Gaps and challenges faced by traditional donors.

By and large, the research seeks to identify existing deficits in ensuring the protection of human rights and how these can be effectively addressed in the above national contexts. The study concludes with recommendations and avenues for follow up and advocacy with key stakeholders.

Palm plantation project-Ndian division-Cameroon

Social housing project, Olembe-Yaounde, Cameroon

Study Outcomes

Traditional Donor Human Rights and SDG Guidelines

To date, traditional donors (such as the WBG, AfDB and AFD) in Cameroon, Gabon and Congo have developed mandatory Social and Environmental Safeguards Systems (SESS) anchored on some human rights principles alongside their respective SDG policies.

The WBG has two Senior Vice Presidents responsible for the SDGs with the United Nations[6] and another for the Compliance Advisor Ombudsman (CAO) – responsible for Complaint Redressal Mechanism (CRM) for projects funded by the International Finance Corporation (IFC) as the private sector arm of the bank. However the WBG grants the latitude to waive safeguards in lieu of a country's national laws, raising the risk of exposing citizens to further human rights abuse. Thus far, the Bank has declined to adopt a binding commitment towards human rights.[7] Moreover, despite new provisions to protect communities, it lags behind in benefit-sharing.

The AfDB has a relatively advanced mandatory SESS with a CRM that aims to prevent harm against communities[8] alongside an SDG blueprint. According to its current President, Dr. Akinwumi Adesina, the AfDB's ten-year blueprint (2013-2022) for Africa dubbed the High

6 http://www.worldbank.org/en/programs/sdgs-2030-agenda ,July 13, 2017
7 Holes in the World Bank's safety net GRETCHEN GORDON.SEPTEMBER 1, 2016, http://www.rightingfinance.org/?p=1676
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Fives (5s) seeks to accelerate the achievement of the SDGs.[9] He further underscored linkages between the High 5s and the SDGs. These are: *Light Up and Power Africa; Feed Africa; Industrialize Africa; Integrate Africa; and Improve the Quality of Life for Africans.*

In a similar manner, the AFD has its own mandatory SESS with a CRM framework[10] coupled with its SDG policy[11] for Africa. According to the AFD, "achieving the 2030 Agenda will be a challenge for all countries; it is particularly salient to focus on the 48 Least Developed Countries (LDCs) with acute levels of deprivation regarding infrastructure, economies and capital".

In a nutshell, worthy to ascertain, is the fact that traditional donors do not have an independent external accountability framework to hold them accountable towards their respective human rights commitments.

Country ownership and the right to participation through multistakeholder consultation

Nowadays, traditional donors in Cameroon, Gabon and Congo align their ODA with the National Development Plan (NDP) of the recipient country for enhanced country ownership of development priorities anchored on the use of country systems and results framework. The right to participation is guaranteed through multistakeholder engagement in development processes as recommended by the NOD.[12] Furthermore, in 2012, traditional donors in Central Africa created the Multi-Partner Committee (MPC) to guarantee multistakeholder participation in development processes under the WBG coordination.[13] Cameroon's Growth and Employment Strategy Paper (GESP) also emphasizes CSO participation[14] in development processes.

Cameroon, Gabon and Congo each has a country CPDE Focal Point tasked with undertaking regular consultations with their respective government sectoral ministries.

Blended Financing (BF) and Private Sector inclinations towards human rights and additionality

Motivated by the drive to accelerate SDG implementation; traditional donors today are more inclined towards blending ODA with private capital for stronger social impact.

Blended Financing (BF) is a common practice by the WBG,[15] the AfDB[16] and the AFD[17] in Central Africa within the agricultural and social housing sectors. While BF in the region

9 Remarks at SDG Leadership Seminar in Oslo: Delivering on the SDGs – a plan of action for people, planet and prosperity-Delivered by Senior Vice-President Frannie Leautier on behalf of Dr. Akinwumi Ayodeji Adesina, President of African Development Bank Group, Oslo 6 June 2016
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12 The Nairobi Outcome Document for Effective Development Cooperation, December 01, 2016
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strives to achieve financial and development additionality, there are few cases that follow best practices. Indeed, private actors in both sectors in Central Africa are perceived to have little respect for human rights, and also lack transparency and accountability. In addition, private actors lack independent CRMs. These issues make it difficult for affected stakeholders to channel their concerns and hold donors accountable.[18]

Contrary to Busan commitments, traditional donors do not document and publish good practices and shortcomings regarding BF in development cooperation in the Global South.

Protecting the Rights of Small Farmers (SFs) through Policy Funding Mechanisms

Cameroon, like Gabon and Congo, has an unfavourable Land Tenure Governance System (LTGS) that encourages massive landgrabbing against Small Farmers (SFs).

For instance, through reduced land royalties, the Cameroon government granted 75,000 hectares of land to a US multinational company (Heracles Farms) without proper community and forest protection for a vast palm plantation project in the South West region. The local affiliate of this US multinational company – SG Sustainable Oils Cameroon (SGSOC) – is currently facing two court litigations filed in September 2016 by 244 small farmers alongside an international petition to halt the project.[19]

In Gabon, the government adopted a new "Sustainable Development Law" in August 2014 which established a BF model for companies to buy sustainable development credits. This was supposed to mitigate environmental degradation but the new law provided limited protection for rural communities[20] and women.

Congo provides an extreme example of landgrabbing by granting 470,000 hectares of land to a Malaysian partner – 70.8 per cent of Congo's total land area in one massive landgrab[21] – contrary to the country's agricultural laws (Law No 30-2012 of October 11, 2012; and Decree No 2012-1156 of November 9, 2012).

To date, traditional donors in Central Africa have developed policies that seek to strengthen sound LTGS. According to the WBG, land will not remain cheap for long and the remaining untitled cultivable land are vulnerable to unscrupulous investors.[22] According to a recent (April 2017) report by the Inclusive Development International' (IDI), the IFC facilitated landgrabbing in Africa through its investments in Financial Intermediaries (FIs).[23] The report covered landgrab cases in 11 projects backed by IFC covering a total of 700,000 hectares across the globe. For instance, in Africa, Guinea was severely affected where 380 families were forcibly evicted in 2015-2016 with a further 150,000 people under threat of eviction and facing increased health risks from cyanide pollution of water sources.

18 Blended Finance What it is, how it works and how it is used by Javier Pereira Independent consultant, February 2017 conducted by EURODAD and OXFAM. http://eurodad.org/files/pdf/58a1e294657ab.pdf
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Notwithstanding these LTGS policy gaps, the WBG in Central Africa has a policy framework to protect SFs thus[24]: by addressing financial needs; minimizing individual and systemic risks; addressing issues on policies and enabling environment; and fostering financial inclusion. The AfDB is fostering access to credit in order to stimulate and bolster smallholder agriculture.[25] Smallholders face constraints such as limited access to capital, markets and inputs, especially for women. For instance, women suffer from unequal land rights, restrictions on inheritance and vulnerability to dispossession in case of divorce or widowhood.[26]

The AFD has provided more than EUR 2 billion to support 320 projects targeting smallholders over the past seven years in African countries like Cameroon and Gabon. In 2012 alone, 900,000 smallholders benefited directly from AFD's financial support, mainly in Sub-Saharan Africa and Madagascar.[27] According to AFD, each financing proposal must now pass through a "sustainability analysis" that factors in the SDGs.[28]

The WBG, AfDB and AFD provide funding according to the specific needs of the recipient countries concerning agricultural projects. In this regard, the WBG has provided 300 million US Dollars for three agribusiness projects in Cameroon –Agricultural Competitiveness Improvement Project, the Agricultural Markets Investment and Development Project, and the Breeding Sector Project [29] – meant to boost growth and employment. Whereas in Congo, agriculture takes 11% of the WBG's operations[30] as attested by the Commercial Agriculture Project to improve productivity and market access[31].

The AfDB has funded Cameroon's agriculture with relatively considerable funding resources. Meanwhile, it has no funding operations in the agricultural sector of Gabon and Congo. The AfDB has recently funded Cameroon with 160 million US Dollars [32] to boost growth and jobs. The AFD is currently funding agriculture in Cameroon and Gabon but with no funding operation in Congo. The AFD has recently funded Cameroon with 185 million US Dollars[33] to grow its agro-pastoral sector. The AFD in Gabon has funded the second phase of Agricultural Investment and Development Program[34] that seeks to boost economic growth and productivity.

24 The World Bank BRIEF, Agriculture Finance ,November 23, 2015, http://www.worldbank.org/en/topic/financialsector/brief/agriculture-finance
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Thus far, success stories and best practices regarding the aforementioned projects funded by traditional donors cannot be judged for the moment. Likewise, inclinations and best practices towards HRBA by traditional donors in the agricultural sector have not been documented and proven in Cameroon, Gabon and Congo.

Social Housing and Protection of the Rights of Low-income Earners

The social housing sector in Cameroon, Gabon and Congo is currently witnessing a boom yet with little benefits for millions of low income earners. Although there have been some inroads made in Central Africa to meet growing demand, much needs to be done to bridge the gaps.

Today, the demand for social housing is estimated at 1 million homes[35] in Cameroon – far beyond supply. Achieving the 10,000 social housing units' benchmark by 2020 is highly unlikely. Despite increased BF investments in the social housing sector in Cameroon, the average cost of an apartment is US 35,000 Dollars, far beyond the reach of low income earners as the national minimum wage stands at 36,270 XAF[36] or approximately 65 US Dollars[37].

The Congolese government has made modest inroads in social housing by allocating units to low-income earners who lost their homes during the 2012 explosion of two munitions depots at the Mpila neighborhood in Brazzaville which left almost 14,000 people homeless[38]. Gabon has also made modest inroads in developing its social housing sector although with limited inclusion of low-income people.[39]

Concerning donor policy, the WBG assists Central African countries by developing affordable housing finance markets that are accessible to middle and lower income households.[40] The AfDB is seeking to develop social housing units for over 200 million Africans living in slums as a broader sustainable urban development solution through public-private partnerships including a site and service schemes for low-income families.[41] The AFD and the cement giant Lafarge have signed a partnership agreement to foster "affordable housing" for over 2 million people in Africa by 2020 through microfinance.[42]

The WBG, AfDB and AFD are not yet involved in funding social housing projects in Cameroon, Gabon and Congo, except in merely advocating for their respective social housing policies in the sub-region. To date, the existing social housing projects in the Central African sub-region are driven by Public-Private Partnerships.

Parliamentary Accountability towards Citizens

The role of national parliaments in addressing LTGS issues is weak in Central Africa. For instance, there is no model agricultural law in our target Central African countries that

35 http://www.lafargeholcim.com/building-houses-fast-and-efficiently-cameroon
36 http://www.businessincameroon.com/public-management/2207-4959-cameroon-to-increase-minimum-wage-from-de-28-000-to-36-270-fcfa
37 http://www.xe.com/currencyconverter/convert/?Amount=36270&From=XAF&To=USD
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41 African Development Bank's social housing policy brief AfDB Chief Economist Complex examines Housing Market Dynamics in Africa 24/04/2015, https://www.afdb.org/en/news-and-events/afdb-chief-economist-complex-examines-housing-market-dynamics-in-africa-14195/
42 AFD and Lafarge: Partnering for affordable housing - A partnership to improve housing in Africa through microfinance. 28/03/2014 http://www.afd.fr/lang/en/home/projets_afd/villes/wuf/a-la-une-forum-urbain?actuCtnId=113720

protects smallholder farmers against landgrabbing, unfair competition and lack of social security floors.[43] Thus far, traditional donors have shown keen interest in policy dialogue with parliamentarians as attested by the WBG's Parliamentary Strengthening Program.[44] The WBG has engaged systematically with MPs over the past ten years.[45] The AfDB recognizes the significant role of parliaments in governance oversight in Africa and has, therefore, committed to parliamentary consultation.[46] The AFD is also committed to multistakeholder dialogue that includes parliamentarians.[47]

Conclusions

Gaps and challenges faced by traditional donors

To date, traditional donors have made significant commitments towards materializing the HRBA coupled with sound policies in the agriculture and social housing sectors geared towards accelerating SDG implementation but stifled by the following:

- There is lack of an independent external accountability framework regarding the monitoring of their respective human rights commitments;
- There is limited transparency-disclosure regarding fostering sound human rights practices in BF flows with private actors.
- There is limited knowledge sharing amongst stakeholders regarding good practices and success stories.

Recommendations

Based on these outcomes, the following recommendations were made towards specific stakeholders:

To Donors

- Create an external independent monitoring and accountability framework to monitor their respective human rights commitments.
- Adopt a disclosure policy on BF flows to private actors regarding human rights, transparency and accountability.
- Strengthen knowledge sharing by creating a multistakeholder community of practice.
- Strengthen donor policies towards an inclusive LTGS that protects the vulnerable.
- Step up BF in the social housing sector to benefit low and middle-income earners.

To Governments and Parliamentarians

- Reform and strengthen LTGS to protect the vulnerable.
- Step up investments in the social housing sector for low and middle income earners.

43 http://camerouninfos.over-blog.com/article-cameroun-politique-un-avant-projet-de-loi-d-orientation-agricole-transmis-au-gouvernement-par-le-co-74907584.html
44 http://www.worldbank.org/en/news/feature/2014/11/25/building-capacity-in-cameroons-parliament-and-senate-to-boost-development
45 The World Bank, Parliamentarians , September 03, 2017 ; http://www.worldbank.org/en/about/parliamentarians
46 African Development Bank Assesses its Parliamentary Development Programme, 05-November-2015,cepa-africa.org/news/African-Development-Bank-Assesses-its-Parliamentary-Development-Programme
47 Transparency, accountability and dialogue, September 03, 2017, http://www.afd.fr/lang/en/home/AFD/redevabilite-dialogues

- Strengthen the capacity of parliamentarians regarding inclusive LTGS, HRBA and development effectiveness.
- Develop legal instruments to hold private actors accountable towards human rights for PPP projects.

To Civil Society

- Advocate for the creation of an external independent monitoring mechanism to hold traditional donors accountable for their respective human rights commitments.
- Advocate for the creation of a multistakeholder community of practice for enhanced knowledge sharing.
- Develop a scorecard to systematically monitor human rights and performance in BF flows.
- Strengthen the capacity of CBOs regarding the HRBA and LTGS.

Bridging the human rights gaps in traditional development cooperation requires that civil society undertakes consistent advocacy with stakeholders to improve human development indices in Central Africa. Strengthening the HRBA to development anchored in universal human rights principles and practices will contribute significantly in fast tracking the achievement of the SDGs across the whole of Africa and help the continent tap into its vast socio-economic potential so that its agricultural and social housing sectors, indeed its peoples, can truly benefit from the so-called Development Partnerships.[48]

48 http://www.un.org/africarenewal/sites/www.un.org.africarenewal/files/Africa_Renewal_29_3.pdf p.30

EU Social Protection System Programmes from a Human Rights Perspective: Ethiopia and Kyrgyzstan as Case Studies

Priti Darooka and Sudeshna Sengupta

In January 2015, The European Union launched the EU Social Protection Systems Programme (EU-SPS), a four-year, Euro 12.5 million programme to support ten low and middle-income partner country governments and national expert institutions in their efforts to operationalise nationally owned sustainable social protection systems. The project is focused on strengthening the partner countries' domestic analytic and management capacities in social protection by developing appropriate methodologies and tools to enhance administrative and technical capacity and generate evidence-based knowledge on social protection systems.

The ten partner countries for this project are: Cambodia, Ethiopia, Indonesia, Kyrgyz Republic, Mozambique, Namibia, Tanzania, Togo, Vietnam and Zambia. The project is co-financed by the Organisation for Economic Co-operation and Development (OECD) and the Government of Finland. The OECD Development Centre and the Government of Finland's National Institute for Health and Welfare (THL) are the implementing organisations.

This paper will examine the EU-SPS in terms of its commitment to a human rights based approach (HRBA) and gender equality. It will seek to gauge the EU's commitment to human rights in its development cooperation, and assess to what extent the EU SPS development partnerships contribute to the realization of human rights. In answering both the questions, a gender lens will be used.

The Rights framework is rooted in international human rights standards, principles of equality and non-discrimination. It ensures inclusive and meaningful participation of all in decision making processes and promotes transparency and accountability of duty bearers. Empowerment is broadly understood to have three main dimensions: resources, agency and achievements where resources include material, human and social resources; agency includes the process of decision-making; and achievements refer to the outcomes. The broad analytical framework of this paper will be based on the analysis of these dimensions, namely participation, empowerment and agency. Since the desk review is done from a feminist perspective, principles of women's empowerment as elaborated by feminist scholars like Naila Kabeer will guide the exercise.

The research focuses on the examination of the project in two countries – Ethiopia and Kyrgyz Republic. The analysis highlights key findings and also provides some recommendations. The study is a desk research based on literature survey of documents on EU-SPS available on the web, especially on OECD and European Commission websites1. At the time of this research, the project had completed two years and the midterm review was in process. Hence not many outcome documents were available in the public domain. We are grateful to Dr. Timo Voipo, Director, Strategy and Partnerships at EU SPS for providing us with the project related documents and information.

1 As the research is limited to desk review of documents, if certain processes to ensure HRBA and gender justice are not included in these documents by the project holders, the assumption is that they were not integrated part of the project.

EU and Development Effectiveness: A Policy Review

The EU has elaborated policies and guidelines for integration of human rights and gender equality in its development partnerships. The EU development policy[2] is focused on poverty reduction and is based on the key principles of development effectiveness which is as defined in the Busan outcome[3] as: "country ownership, transparency and accountability; focus on results and; inclusive development partnership." In 2015 the EU also adopted a new EU Action Plan on Human Rights and Democracy for the period of 2015-19. The policies and action plan demonstrate a commitment towards democracy, universality and indivisibility of human rights, rule of law, good governance, and access to justice, peace, and protection and sustainable management of the environment. Civil Society Organisations (CSOs) are recognised as important stakeholders in all aspects of development. EU commits to creating enabling environment by supporting CSO capacity building to enhance their engagement and voice to hold their governments accountable and also commits to promoting an environment where civil society and media can thrive.

Through its external policies, the EU also supports strengthening of partner countries' national policies and governance by promoting sustainable provision of essential services and fulfilment of human rights. The policy document recognises the importance of strengthening local institutions and systems that are responsive to people's needs to deliver essential goods and services. Since the adoption of Sustainable Development Goals (SDG) in 2015, the EU is working towards a new European Consensus on Development for development policy that incorporates the SDG promise to "leave no one behind" and emphasises the need to address multiple forms of discrimination faced by vulnerable and marginalised groups.

In policy documents related to social security, the European Union articulates its commitment to gender justice and underlines the need for participation of women in democratic processes. Additionally the EU has also adopted the Gender Equality and Women's Empowerment[4] policy. The gender policy states that equality between men and women is a core value for the EU and it acknowledges the centrality of gender equality in sustainable development. It recognises women and girls as key development and change agents, and the need to mainstream gender in all policies to achieve gender equality and empowerment. It further emphasizes the need to integrate a gender perspective in every stage of the process including design, implementation, monitoring and evaluation. It lists gender budgeting, and active participation of women and women's organisations in decision-making processes as ways to achieve gender empowerment. The plan includes indicators and monitoring mechanisms to ensure gender equality is achieved.

The EU also recognises the need for disaggregated data on all categories including gender to ensure information on marginalised groups. The gender policy is transformative as it also recommends that development projects take steps to address negative gender power relations to achieve equality for all. To further ensure gender analysis is incorporated in all their work, the EU has developed elaborate training and tools.

Overall, EU policies do show a political commitment towards human rights and gender equality. It goes beyond just including women and girls but recognise them as development

2 European Development Policy: https://ec.europa.eu/europeaid/policies/european-development-policy_en checked on August 20, 2017.
3 Busan Partnership for Effective Development Cooperation forth High level Forum on Aid Effectiveness, Busan, Republic of Korea, 29 November – 1 December 2011
4 Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations 2016-2020, EU.

agents and commits to a transformative approach for addressing negative power relations. How these policies are operationalised in EU development partnerships will be explored through the EU-SPS project and through the two country case studies below.

For this project, the EU signed the Agreement (Memorandum of Understanding) with the OECD [5] which states that the overall goal of EU-SPS is to support partner countries in the development of nationally owned sustainable and inclusive social protection systems, to reduce vulnerability and inequality through universal access to a nationally defined social protection floor throughout people's lifecycles, and higher levels of protection, with particular attention to the most vulnerable and disadvantaged people such as children, women, minorities, persons with disabilities and older persons.

Specific objectives of the project is to support the development of appropriate methodology and tools to assess the feasibility of partner countries; to apply the methodology and tools and to generate evidence-based knowledge on the feasibility of social protection.

Focus of the project is on administrative and technical capacity development; and support to address structural causes of inequality and vulnerability – particularly those affecting women, children and people with disabilities. The project does recognise social protection as a right endorsed in international human rights instruments.

The EU-SPS agreement does include civil society and social partners as stakeholders besides national governments (inter ministerial teams), social protection agencies, and research institutions. As the project's focus is to develop appropriate methodologies and tools to enhance administrative and technical capacity, the target group includes policy planners, and various government entities, as well as research institutions, social service providers, NGO and CSOs. However, it leaves it to national governments to identify and handpick CSO representatives and does not explicitly require women's participation and involvement of feminist experts or women's organisations.

The EU-SPS Agreement acknowledges the importance of national ownership. Methodology for assessment of current policies, status and needs is developed in collaboration with partner governments. This assessment forms the foundation of the project. Based on the findings from this assessment a capacity building plan is elaborated and implemented. The project will provide recommendations for national policies to ensure social protection systems are affordable, sustainable and inclusive. However, the use of human rights and gender equality indicators in national assessments are not specified. There are no clear parameters for women, human rights and gender expert's participation in these assessment processes.

The main project team (PMET or Programme Management Expert Team) is anchored by the OECD and Finland. Together with their partners, they play a key role in the management of the actions at headquarters and country levels. A Steering Committee composed of the European Commission, the OECD Development Centre and the Ministry for Foreign Affairs of Finland selected the first 15 countries. These selected countries were invited to make a proposal from which the 10 countries were identified.

The EU Committed to spend 12,500,000 Euro for the EU SPS. The project heavily supports EU staff salary and the two offices set up in Helsinki and Paris. The project budget shows

5 Contribution Agreement with European Union: Supporting the Establishment of sustainable and inclusive social protection systems. No DCI-HUM/2013/317-508 -- Agreement and Annexures signed

funds allocated for human resources, local office set-up, expenses related to service support and administrative costs. There are also expenses related to holding of consultations, travels, etc. Funds flowing back to Europe directly in terms of staff salary, staff travel, etc. amounts to a whopping amount 58% of project costs.[6] An additional 16% will be spent on production of 10 national reports and external services for capacity building, which are also most likely to find their way back to the EU. Hence 74% of the EU SPS funds go back to the donors leaving one fourth of the actual budgeted amount to be shared between the 10 partner countries funded through these programmes. Although the EU mentions gender budgeting in its gender policy, the project budget has no funds earmarked for women.

The budget clearly indicates that through this project the EU institutions and EU experts will gain tremendously. This affirms the growing critique of development aid benefiting the donor countries more than the receiving countries.

Case Study: Ethiopia

Ethiopia is a country of 80 million people with 83% of its people belonging to rural areas. It is a very young country with 44% of its population below 24 years of age. As in most of the developing world, the population classified as poor (30% below poverty line), are is located in the rural areas of the country. Food poverty is acute, life expectancy is as low as 54 years, and epidemics and HIV-AIDS have negatively affected mortality, livelihood and the quality of life of the people. The unemployment rate is high, especially among women in both urban and rural Ethiopia, and most of the workforce is absorbed by the informal sector.

Selection Process

Ethiopia was selected based on the following:[7]

1. Low level of income – A fast growing economy with 10% GDP growth rate but with 33% people below the poverty line and with a low rate of adult literacy.
2. The country seemed to have a broad political commitment and the existence of the National Social Protection Policy, a framework that proposes a comprehensive social protection framework.
3. The need for capacity building among legislators, policy makers, government functionaries and civil society members.
4. Diversity in country profile and contradictory realities, which include a strong central government and an autonomous local government.
5. The ownership and accountability of the country to universal social protection.
6. The country already had a Social Protection partnership with the EU.
7. The similarity in time zones and the convenience of travel makes it easier for the programme team to travel and coordinate

6 Human Resources: 3 years Salaries: Europe based team: 3,922.602Travel and per diem for staff including conference participation: 518410 Total: 5270183, Local Office setup: 353237, Other costs and services: Total 4637972 Includes Production of 10 national reports and social policy review 200000, Studies and research – contract for national and international thematic experts: International thematic experts & country level hosting partnerships =1000000, Evaluation: 1 external evaluator 100000Cost of conference/ seminar – 1 kick of event, 1 technical workshop, 1 global conference: 29000, Communication OECD website: 50000, External services for capacity building 2050000, Administrative costs 7% Euro 818008

7 Report from the 1st country mission to Ethiopia, D5 - (29.05.2015/TV/AH/TV)

However, there are other realities too. The Ethiopian parliament in 2009 passed the "Charities and Societies Proclamation (NGO law)", which criminalizes most human rights work in the country. In October 2016, the Ethiopian government ordered a state of emergency to restrict the rights to freedom of expression, association and assembly. Following the order, according to Human Rights Watch[8], the security forces killed hundreds of protesters and detained thousands. Arbitrary arrests and politically motivated prosecution and silencing of journalists and activists are rampant. Given the status of human rights in Ethiopia, selection of Ethiopia for this project raises concerns at two levels. First, whether the project team used human rights as selection criteria at all? Secondly, in such an oppressive environment, can the EU SPS claim to enhance human rights systems and institutions that will successfully hold the Ethiopian government accountable?

Social Protection as Human Rights and Gender Equality

As part of its objectives, the Mission Report on Ethiopia states "The Programme will adhere to and coordinate with all major international initiatives (such as SPF-I[9], SPIAC-B[10], ISPA[11], etc.) and apply the principles of the Human Rights Based Approach for Social Protection (HRBA)[12]. It also puts on record appreciation on the rights based approach followed by the African Union Commission, Department of Social Affairs (AUC-DSA) which commits to "pursue the rights-based approach to social protection and social security for our citizens, aiming at inclusive development that leaves no one behind. The document specifically mentions the need for a universal right to social protection. Rights of people with disabilities receive attention as a group whose social protection needs prioritization.

The Report[13], while underlining their commitment to SDG Goals, mentions gender equality, decent work, and inclusive growth. The other place where we find the use of the word "gender" is where the document mentions the contradictions and diversities of Ethiopia by admiring its gender equality alongside raising concerns on inequality.[14] These are the only two places gender finds space in the fourteen page long document. Women, with their large presence in the informal sector, stand at risk of being excluded due to the lack of focus in intervention.

The country level commitments on gender parity seem stronger as far as policy documents of the National Government and EU SPS documents on Ethiopia are concerned. For example, if we look at the National Food Security Programme, which was introduced in 2004 with the objective of addressing the long-standing food insecurity in the country, mentions gender sensitivity and equality as aims. To translate the intent on the ground, the Management Information System, owned by the Ministry of Labour and Social Affairs needs to disaggregate data to understand how far it has been able to reach out to women and how it has impacted stereotyped roles. Data is not available in the public domain to inform how aims were actually implemented through action.

8 Human Rights Watch report on Ethiopia, https://www.hrw.org/africa/ethiopia, accessed on 13 November 2017.
9 SPF-I = One-UN Social Protection Floors Initiative.
10 SPIAC-B = Social Protection Inter-Agency Cooperation Board.
11 ISPA = Inter-Agency Social Protection Assessments.
12 See: www.unrisd.org/sp-hr
13 Report from the 1st country mission to Ethiopia, D5 - (29.05.2015/TV/AH/TV), Ethiopia, EU-SPS First Country Consultations
14 Report "The 'Star of Africa' in terms of SP achievements on many fronts (11 million people covered by the PSNP, strong investments into food security, gender equality, inclusive education), side by side with highly visible poverty, inequalities and discrimination"

Health and pension is provided in Ethiopia through social insurance. Multiple reviews note that this only covers the formal sector, which is roughly around 1% of Ethiopia's population, whereas the majority of working people, especially women, are employed informally. Hence, social security in the form of health and pension needs universal coverage. Moreover, social insurance may not work, especially for health, if it is not backed up by adequate health services.

Unregulated informal sectors lead to absence of maternity protection or care and may interrupt women's participation in paid work, increase her work burden, and make her socially insecure. Bringing childcare and maternity benefits as universalized social protection provisions under the ambit of the comprehensive framework is critical to achieve gender parity.

Multiple Stakeholders including Civil Society:

Social protection in Ethiopia involves multiple sectors. Under the EU-SPS, the Ministry of Labour and Social Assistance, Ministry of Finance and Planning Commission were identified as partners for implementation; the UNICEF as international development agency; and the Ethiopian Development Research Institute (EDRI) and Ethiopian Society of Sociologists, Social Workers and Anthropologists (ESSWA) were identified as research partners. To bolster coordination, a National Social Protection Steering Committee represented by a Council of Ministers representing the Ministry of Labour and Social Affairs, Ministry of Agriculture, Ministry of Women, Children and Youth Affairs, Ministry of Education, Ministry of Heath, the HIV/AIDS Prevention and Control Office, and Ministry of Justice. The Steering Committee intended to enhance stakeholder participation and engage in participatory decision-making. The Mission document expressed intent to work out a structure with clarity regarding responsibility and accountability for social protection at federal, regional, *woreda* and *kebele* levels.

National Ownership

In 2012,the Federal Democratic Republic of Ethiopia came up with a National Social Protection Policy recognizing Social Protection as an important contributor to development. The Policy document[15]states, "*Government acknowledges social rights as defined in the constitution and reaffirms its intent to continue to expand the progressive realization of those rights according to the availability of resources." It also reaffirms that "There can be no poverty eradication without the sincere commitment to gender equality in general and addressing the problem of women in particular.*" The guiding principles include a human rights focus and mention of gender empowerment, inclusiveness, transparency and partnership. The comprehensive social protection framework covers pension, food security, basic services, national nutrition programme, support to vulnerable children, housing, and employment security.

Case Study: Kyrgyzstan

Kyrgyzstan, located at the heart of Central Asia, had been part of the Soviet Union until 1991. The disintegration of the USSR led to economic, administrative and political reforms as the economy moved from State-owned socialist form to market-driven capitalist form. The change in the character of the State exposed the economy to shocks as its industry and agriculture collapsed and the trade map needed overhauling. After years of political instability the country started showing signs of resilience and limped back to stability during 2011-12.

15 National Social Protection Policy, 2012

In 2015, some 37% of the population lived below the poverty line; of whom about 70% lived in rural areas. The social groups which are more economically vulnerable include people living in remote mountain regions, persons with disabilities, and ethnic minorities. Around 70% of the labour force is employed in the informal sector. There is a sizeable gender gap in employment and a sizeable gender gap in wages as well.

Social Protection as Means to Human Rights and Gender Equality

Kyrgyzstan has been appreciated[16] "*for systematizing its social protection provision*" also the Government spends a large amount on the Social Protection Programmes, hence there was a felt need on improving systematisation to make it a stronger and more robust system. The Social Protection System Review took place in March and June 2016. This review process is to feed into the final Social Protection System Review, which is to be published in mid-2017.

The EU provides support through training, developing toolkits and supporting monitoring and evaluation of programmes. The need for capacity development and setting up of training institutes has been identified as areas of support. The tool kit developed for monitoring captures fraud and corruption by identifying whether the targeted beneficiary is being excluded from the benefit. The toolkit tool is meant to prevent irregularities, detect eligibility of beneficiaries and act as a deterrent to error, fraud and corruption (EFC)[17]. The emphasis is therefore on the value for money that is measured only through reach. However, what the beneficiary gains from that money, whether it complies with the human rights framework and universality is not part of the monitoring and evaluation process.

The EU SPS Programme claims the following as some of the outcomes of the support:

- On average 360 thousand extremely poor beneficiaries receive their benefits every month on time and in full. The Guaranteed Minimum Income for extremely poor families was gradually increased from 200 KGS to 310 KGS and will increase further.
- Around 3,200 extremely poor families with children without birth certificates or parents without identification documents have been included in the system and started receiving monthly benefits.
- More than 3,000 children with special needs received services in rehabilitation centres.
- Children with disabilities are rehabilitated at home and EU-SPS is helping the universities to train future social workers to strengthen disability inclusion related learning in their curricula.

The target indicators are formulated in terms of outputs and outreach more than outcomes and impacts. It looks at the family as a consumption unit where each member is maximizing equity guided by altruism and does not look at the impact of these programmes on the lives of women. This is unlikely to change the "stereotypical" roles of women. It is also important to report whether income supplementation, which is pushed as an intervention, has any outcome on the distribution of her work. The absence of disaggregated information on gender parity and empowerment is limiting the study from analysing the impact of the programme on women.

16 "Supporting The Establishment Of Sustainable And Inclusive Social Protection Systems", Narrative Report Year 2, Reporting Period: 1 November 2015 – 31 October 2016 – OECD, By Government Of Finland And European Union appreciates

17 Toolkit on Tackling Error, Fraud and Corruption in Social Protection Programs, The World Bank, March 2010

Multiple Stakeholders including Civil Society

Civil society groups participate in the law making process in Kyrgyzstan. There are different types of civil society groups in Kyrgyzstan that engage with the legislatures. Some of the groups engaged in advocacy are Coalition of NGOs for Democracy and Civil Society, the Association of Civil Society Support Centers, the Network of Human Rights Organizations, the Association of Crisis Centers, and the Association of Independent Scientists–Lawyers of the Kyrgyz Republic.

Presently, a midterm assessment is being done and on the basis of the evaluation effort, the capacity building programme is being developed. The State also looks forward to the support of for-profit and not-for-profit private players in implementation, which once again tables the debate on the role of civil society.

National Ownership

The Kyrgyz Social Protection System includes both contributory (pensions and unemployment insurance) and non-contributory (social assistance) transfers. The contributory transfers comprise of contributions from both the State and the beneficiaries while non-contributory transfers comprise of only transfers from the State in the form of social assistance programmes. The contributory social protection systems include pensions, unemployment insurance, etc. while the non-contributory social protection systems include targeted transfers to families with children. Kyrgyzstan spends about 6% of its GDP (2012) on its Social Protection Programmes.

Gender equality is a Constitutional Right in Kyrgyzstan which guarantees equal opportunities and equal rights to both men and women, and also clearly articulates non-discrimination as a guiding principle. The country has a history of women's participation in administration and decision-making and is also witness to the puzzling fact that, whereas more women have higher education than men, this has not raised the labour force participation rate of women. However, Kyrgyzstan has done well in women's political participation and education compared to other central Asian countries. The programme thus has the potentiality to realize gender parity and empowerment by planning and monitoring the action plans with gender indicators capturing outcomes beyond reach.

A Comparative Analysis of the Two Country Conditions

Social protection frameworks covering food security, employment guarantee, and pension existed in both Ethiopia and Kyrgyzstan before the development partnerships were in place, underlining the political will of both these countries. The financing was a mixture of self-financing and contributory modes while programmes included both state provisions as well as social insurance. In both cases a push was given towards a floor income and social insurance instead of state provisions. However, the targeted approach defeats the guiding principle of HRBA as it frees the State from its responsibility of reaching out to every citizen. It will be relevant to mention here that access by design needs to be included in the programmes as a right. Even though the countries recorded high labour participation in the informal economy, the social protection programmes focused on the formal sector resulting in the exclusion of a large number of people from the social safety net. This was observed mainly in programmes on pension and health.

One of the major reasons why both these country came under the fold of EU-SPS was the felt need to strengthen governance, enhance capacities in implementing institutional mechanisms, and develop evidence-based mechanisms to track efficacy of implementation.

The MIS indicators and tools developed to track efficiency are yet to come out with outcomes of the capacity building and system strengthening, even though expansion in reach has been observed as an outcome. However, emphasis on strengthening institutional mechanisms to increase coordination between different tiers of the governance structure, plus capacity enhancement of the lowest tier will likely impact positively by giving a boost to participatory governance and strengthening of programme implementation.

The partnership in both the countries resulted in an increased focus on children and persons with disabilities as target groups, most likely due to the presence of UNICEF as a development partner. Income support to families with children, and coverage of children with disabilities has experienced an upsurge.

However, the gender-blind outcome indicators do not focus on the economic upliftment of women who do not share equal opportunities. This also calls for a relook at the programme design which ensures and is connected to universal access to essential services. Provisions of maternity entitlement and childcare services are not found as focus areas in any of the documents consulted nor did we find any reporting on maternity entitlements except the coverage of the formal sector. The absence of a gender focus and too much emphasis on cash transfers will not be able to redistribute unpaid care burden from women to the State. The redistribution is only possible through State provisions as time poor families are income poor too!

Observations around CSO engagement in development partnerships demonstrate that generally it gets reduced to a checklist. The EU, with its commitment towards creating an enabling environment with engaged civil society, should ensure CSO participation throughout the project cycle. By doing so it also will ensure national CSO capacities are enhanced to monitor and dialogue with their governments around human rights. By involving CSOs through consultative processes in law making, Kyrgyzstan went further than Ethiopia in ensuring that people truly engage the state as rights holders.

Given the EU's commitment and expertise, expectations were high that the EU could have advocated for much stronger HRBA and gender equality approach in the projects. However, our research highlights that HRBA and gender equality are not fully integrated in the EU SPS project. We however also do recognize that implementing the HRBA and gender equality at country level is challenging given the lack of resources, capacity and time limitations (D'Hollander etc. all). Human rights in development partnerships can be an end or objective in itself and also means to achieve other ends. In this regard the project perhaps will be successful in achieving human rights as an outcome but could surely have done more to integrate HRBA in the processes.

Recommendations

- With a strong commitment to human rights and gender equality, the EU SPS project should ensure dialogues between human rights defenders and development practitioners to guarantee a more integrated human rights based approach; stronger democratic ownership of the whole project; more meaningful participation of rights holders, including women; and greater transparency and accountability of duty bearers. This will also make sure that social security benefits are not limited to the concept of charity but rather follow the principle of social entitlements.

- The project is well designed to capture corruption and therefore could go further and also support access as well as quality of access for rights holders.
- EU should use this project as an opportunity to, not just limit itself in strengthening country systems directly connected to social security provisioning, but also strengthen overall institutions and systems for human rights.
- Human rights and gender equality indicators should be developed and adopted, especially structure and process indicators in all aspects of the project cycle. This includes selection, country assessments, implementation, monitoring and evaluation and mid-term course correction. Include these indicators in results-based management frameworks to ensure capacity at national level is also enhanced to collect disaggregated data.
- The EU should go beyond a 'do no harm' approach to have a more transformative approach towards human rights and gender justice.
- Commitment to gender parity should be stated within the programme design. It must be included as indicators that will enhance the accountability of all concerned departments, not only in terms of coverage but also the quality of coverage. Programmes should treat women as rights-holders and outcome documents should monitor how SPS support are freeing women from their stereotypical role and ensuring inclusiveness. The EU should consider including gender policy experts in all their development teams.
- The project focuses on building capacity of relevant government units and also of social workers to deliver social protection floor benefits efficiently. The project should also build capacity of human rights institutions and CSOs in general to hold government accountable to the right to social security obligations.
- The targeted approach should be replaced by a universalized approach to do justice to the commitments on HRBA. Likewise the altruist approach needs to be replaced by social protection for all. Even though the same is reflected as a guiding principle, when it comes to programme design the approach becomes a targeted one. The EU SPS programme needs to adapt this approach while advising on system strengthening.
- There is a need to emphasise State provisions for services like water, sanitation, food security, health, education and childcare. Privatisation of the social protection is against the spirit of "equal opportunity for all" principle. In this regard it is important to address the ever-increasing gap between the formal and informal sector entitlements. The SPS needs to guide the States so that the gap between the entitlements and quality of access related to contributory and social assistance are narrowed and gradually wiped out.
- The SPS should advise the Governments to expand the tax base so that the programmes can be financed by the State.

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Part 4

HRBA and Infrastructure Development

Human Rights Based Approach in Energy Sector Development: A Comparative View of the Visayas Base-Load Power Project in the Philippines and the Combined Heat and Power Plant Number 5 in Mongolia

Council for People's Development and Governance (CPDG)

The Asian Development Bank (ADB) has made significant efforts to support energy sector development projects in its developing member countries (DMCs) all over Asia and the Pacific. With its unique financial capacity for large industrial infrastructure development, ADB's contributions generally consist of loans and technical assistance in their DMCs based on national development plans aligned with international development goals.

In support of the Paris Climate Agreement, the ADB has pledged to "deliver climate finance, improve climate technology, and increase climate know how," according to ADB President Nakao's statement (ADB, 2015). In addition, the Bank is said to double its annual climate finance from USD3 billion to USD6 billion by the year 2020, in which USD4 billion will be allotted to climate change and USD2 billion to climate change adaptation. The ADB has also pledged to help track climate finance and greenhouse gas emissions.

One area which the ADB focuses on is energy sector development in rural and urban areas where communities need more access to a reliable supply of electricity. Access to energy has increasingly become important as world economies evolve and demand faster lifestyles. At the household level alone, access to energy is essential in increasing efficiency of household maintenance and economic activities. Families without access to electricity spend more time in activities for survival such as fetching water, cooking, and making preparations for daily economic activities. At a community level, if facilities are available, electricity allows for access to better healthcare, education, efficient logistical business operations, and communications, among others. However, while energy sector development has progressed towards finding sustainable and renewable means to mitigate the effects of climate change, the ADB, along with some other development funding agencies, continue to build coal-based energy sources (Guay & Imhof, 2014).

As a development bank, the ADB has expressed a commitment to poverty reduction and human-rights protection as it assists its DMCs in infrastructure development. This chapter examines the ADB's considerations for a human rights-based approach (HRBA) as interpreted in the United Nations Development Group's (UNDG) Common Understanding of HRBA in two cases: 1) the Visayas Base-Load Power Project in Naga, Cebu, Philippines, and 2) the Combined Heat and Power Plant Number 5 (CHP5) in Ulaanbaatar, Mongolia, both of which the Bank co-financed.

Project Information

Visayas Base-Load Power Project, Naga City, Cebu

The ADB funded Visayas Base-Load Power Project in Naga City, Cebu, Philippines is a 200 Megawatt coal-fired power plant implemented by KEPCO SPC Power Corporation, a joint

venture of KEPHILCO and SPC Power Corporation under a Build-Operate-Own (BOO) scheme ("Energizing Lives, Powering Communities" n.d.). It was completed and has been operational since 2011 (ADB, 2009).

The fourth largest in the country with a total cost of USD451 million, the ADB provided a USD100 million loan for its construction and operation in 2009 (Davis, 2011). According to KEPCO, the coal plant addresses power shortage in the region until the government can afford more renewable energy sources (Davis, 2011). The company, known for its coal dealings, prides itself with an "environment-friendly technology which uses circulating fluidized bed combustion boilers," which they describe as "the next best solution to pulverized coal technology" (ADB, 2009).

Combined Heat and Power Plant Number 5 (CHP5), Ulaanbaatar, Mongolia

The CHP5 is a proposed USD 400 million loan for 463.5MW electricity and 587 thermal heat and power generation facility on 45 hectares of land in the Khullin Valley in Ulaanbaatar (ADB, 2013). The project requires the construction of other facilities including a 220 kilovolt transmission line, a district heating network, railway sidings for coal transportation, a water supply line, a water discharge pipeline, and an electricity substation, all to be under government operation (ADB, 2013). The CHP5 is only among several other coal plants of which construction is closely supported by the Mongolian government in the hopes of another economic boom (Seman, 2017). The Mongolian government experienced a short-lived yet steep economic boom between 2010 to 2012 from capitalizing on their mineral resources (Seman, 2017). Additional power plants were meant to support the area's mining operations as well as allow the country to export energy to China (Seman, 2017).

According to the ADB, the creation of the CHP5 aims to foster "energy security by encouraging the provision of reliable, adequate, and affordable energy for inclusive growth in a socially, economically, and environmentally sustainable manner" (ADB, n.d.).

Human Rights-Based Approach

The two projects described were meant to provide communities access to energy, a cause which would otherwise be unaffordable to many including governments of developing countries. Unfortunately, both the Visayas Base-Load Power Project and the CHP5 caused severe damages in terms of people's displacement, environmental destruction, health hazards, and the loss of livelihood opportunities, among others.

In Naga, the Visayas Base-Load Power Project was estimated to have generated about 250 tons of ash a day (Pedrosa, 2010). Cebu-based Council for People's Development and Governance (CPDG)[1] member organizations Farmers Development Center (FARDEC), Fisherfolk Development Center (FIDEC), Pinaghugpong ng mga Gagmayng Managat sa Sugbo (PAMANA Sugbo), and the Philippine Earth Justice Center (PEJC) commissioned the Philippine Institute for Physics and Applied Chemistry (PIPAC) to perform tests on coal

1 The Council for People's Development and Governance is a broad and diverse national network of ten national-sectoral and regional networks of non-government organizations (NGOs) and peoples organizations (PO) engaged in development work in the Philippines. CPDG and its network members are active throughout the country and span different sectors and areas of endeavors such as poverty alleviation, democratic and corruption-free governance, environmental protection and preservation, gender equality and empowerment of women, aid effectiveness, protection of children's rights and welfare and community-based disaster risk reduction.

ash samples gathered from surrounding sites of the project area, which revealed significant amounts of arsenic, cadmium, and mercury (Pedrosa, 2014). Yet, operations proceeded without a proper disposal facility while coal was transported from one area to another (Apuya & Pernes, 2010). This led to serious respiratory health issues documented during medical missions held between 2010 and 2011 conducted by Community Empowerment Resource Network (CERNET) and FARDEC. The Naga City Health office also reported a rise in deaths caused by upper respiratory tract infection as well as cancer between years 2009-2012 (Pedrosa, 2014). Residents of the area were either initially displaced to make room for the construction of energy facilities or were forced to leave due to worsening fatal health conditions and poor access to livelihood as a result of heavy coal ash pollution.

Residents of Ulaanbaatar were also exposed to health hazards as a result of the construction of the CHP5 and power plants built before it. In addition, coal deposits contaminated their already scarce water sources. Agricultural lands were destroyed causing the death of much of the communities' livestock (Seman, 2017). Operations of open-cast mines continue as the Mongolian government makes its futile attempts to save its economy through the extraction of coal and minerals which have a very erratic monetary value, thus, an unpredictable return of investment which proves to be an unreliable source of profit (Stephens, 2017). Of many whose lives were affected, the gers, a nomadic population which relies heavily on ground water and pasture land, were left most vulnerable as a result of great biodiversity loss and pasture land destruction (Seman, 2017).

As in many other cases in favor of large long-term infrastructure development projects, residents of both project areas were caught unprepared to face life-changing project impacts. Ideally, employing a human rights-based approach would have ensured the protection of each resident's human rights. Unfortunately, consideration for a human rights-based approach was inadequate in the planning and implementation of both the Visayas Base-Load Power Project and the CHP5.

First, while there was no explicit or accurate use of an international human rights framework in both projects, ADB has a clear mandate as well as policies which cover the protection of human rights in the implementation of their projects (ADB, n.d.). For instance, all their projects are to follow regulations under the ADB Safeguards Policy Statement which has provisions and mitigation strategy requirements protecting indigenous peoples against environmental destruction and involuntary resettlement, among others (ADB, 2009). ADB also has a Policy on Gender and Development, which seeks to ensure equal opportunities for women across all projects, providing half the population access to basic needs and economic opportunities that their male counterparts have access to (ADB, 2003).

The ADB's well-written policies were not enacted in the implementation of both the Visayas Base-Load Power Project and the CHP5. Project officers did not integrate throughout the project phases their institution's policies. Otherwise, the two projects would not have resulted to irreparable human rights violations. Instead, there would be serious considerations for preventing resettlement or better, there would be safe and clean systems for energy provisions. It would have even been possible to consider building cleaner energy sources such as those which use solar or wind technology.

Second, in both projects, efforts to provide opportunities for community consultation and participation were absent throughout any action undertaken for the preparations and initial project implementation activities. In depth consultation was only between ADB, contractors, and local government. While the CHP5 was strongly supported by the Mongolian government

(Seman, 2017), along with other coal plants in the country, local communities were not consulted for their consent or future plans in anticipation of project impacts. The lack of community participation was a major complaint in Naga, along with other irregularities, prompting religious leaders and some local government allies to speak up, says Owen Migraso, then FIDEC Executive Director. Along with FIDEC, PAMANA Sugbo mobilized against the coal plant as early as 2003. The ADB proceeded with their operations, despite long campaigns for demands to stop the plant's construction, yielding to pressures for the project team to revamp the Visayas Base-Load Power Project.

Third, there was no provision for empowerment as a precondition for effective participation in either project. In both projects, local residents only had the opportunity to participate through short-term construction work being part of ADB's requirement for contractors' operations (ADB, 2009). There were no initiatives for community participation in decision-making processes for both projects. Instead, priority seems to rest on the construction and operation of power plants over people's well being. Government agencies involved in both the Visayas Base-Load Power Project and the CHP5 simply approved the projects without the consent of the communities they should be responsible for.

Fourth, no priority was given to groups foreseen to be most vulnerable. In the CHP5 alone, the nomadic nature and daily practices of the gers were not considered so they were not given ways to connect to thermal energy channels (ADB, 2015) despite ADB's project goal of ensuring community access to energy and heat especially during the cold season. If part of the plan was to attend to needs of vulnerable groups in Naga, health impacts would have been a priority consideration in finding a suitable means of energy source in the first place.

Fifth, both the Visayas Base-Load Power Project and the CHP5 are categorized based on the ADB Policy on Gender (2003) to have "No Gender Elements." As in other Asian countries, women are traditionally responsible for care and household work. Displacement, environmental destruction, health hazards, and the loss of livelihood opportunities – all impacts of the two cases being discussed – generally burden women more than their male counterparts. The domains of the household, health, and environment, are usually traditionally areas of women's expertise. Involving women residents and integrating gender equality measures to ensure the protection of human rights in policies, strategies, and provisions in the two projects, then, could have very well helped mitigate negative project impacts. If women from affected communities were engaged in the planning stages, strategies and processes undertaken for project implementation could have better suited community needs. That both the Naga Coal Plant and the CHP5 were planned with no gender consideration at all despite putting women's lives at risk shows a major gap in ensuring inclusivity in the two projects.

Lastly, despite that families experienced crisis resulting from the implementation of a project they had no say in, no action has been made from the duty bearers' end to demonstrate accountability to rights holders.

Conclusion and Recommendations

A human rights-based approach to development ensures, most importantly, every person's fulfilment of human rights. The modern era provides an abundance of opportunities for partnerships between financing institutions, governments, civil society groups, and local communities. While there are many varying views on achieving worldwide development, at the core of any movement towards development should be the benefit of the people.

Unfortunately, many development initiatives involving large institutions continue to use a top-down approach to development, where the same people to whom development should be intended for become the same people left behind. The Visayas Base-Load Power Project and the CHP5 both exemplify this as earlier discussed. Under the two projects, still in their preparatory and initial phases, the ADB's vision of environmentally sustainable growth and inclusive economic growth as strategic impacts remain unfulfilled. The achievement of the development goal to give access to energy seems to have stopped somewhere and has yet to end up with the people. On top of the projects' negative life-changing impacts, it remains to be seen if residents of project areas would at project completion gain access to a consistent and sustainable energy supply, as stated in both the Visayas Base-Load Power project and CHP5 project documents (ADB, 2009; 2013).

If affected communities were engaged in the planning stages, elements of the project could have better suited community needs. In other words, impacts experienced by communities living in the project areas were just as expected if people's development and well-being were never part of both the projects' development priority. However, the ADB is mandated to provide governments assistance in improving lives of economically underprivileged communities in their DMCs. The Bank, then, having the capacity to finance large infrastructure projects to achieve their vision of development, needs to reassess the partnerships they make as well as the process they undertake in working for their goals. More urgently, they need to reassess who their envisioned development is for in order that they produce strategies which would only serve and improve lives of the people they wish to serve.

The integration of a human rights-based approach to development initiatives in policies of financing institutions like ADB would make a huge difference in ensuring that processes are humanitarian in energy sector development, let alone any infrastructure development pursuit. Recommendations to ensure the protection of human rights in policies, strategies, and provisions, for energy sector development follow:

1. It is imperative that funding agencies include a specific human rights framework in their policies to ensure that none of their projects violate any person's human rights. Their policies should include the protection of the environment where people in their project sites live.

2. Local communities in project sites should be involved in making decisions from processes of project design to the implementation activities to ensure that impact mitigation strategies benefit them.

3. Financing institutions should be more strategic in having contractors comply with international standards of human rights. Project contractors for infrastructure should be required to integrate in their work plans a strategy which ensures the safety and benefits of local communities of their project sites.

4. As part of the project design, project management teams should organize activities geared towards empowering communities in project areas. These activities could focus on helping households attain sustainable living through livelihood, education, and other skills programs. Close coordination with local governments should ensure the sustainability of programs that will develop from planned activities.

5. There should be a system for close monitoring of the state of human rights in project sites as well as a system to attend to victims of violations, especially if violations

occurred during project implementation, even after the projects have closed. This system should be regulated by country missions in cooperation with local government and local communities.

6. Funding agencies must be diligent in choosing infrastructure projects which would maximize benefits for local communities with minimal negative impact. Apart from encouraging close community cooperation, human rights, gender, and social development experts should be consulted in ensuring that the right choices are made in each project phase.

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South-South Cooperation Human Rights Inclinations: Progress and limitations in Sino-Cameroon and Sino-Zimbabwe cooperation within the Agenda 2030 Landscape*

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Executive Summary

Our study is an assessment of the current level of alignment of Chinese Official Development Assistance (ODA) with the Human Rights Based Approach (HRBA) to development in Africa with a special focus on Cameroon and Zimbabwe.

The outcome of the study is analysed and segmented thus:

- Chinese development cooperation regarding HRBA;
- Chinese ODA and Decent Work;
- Civil Society and community participation in Chinese ODA projects;
- Compliance with Environmental and Social Management Plan (ESIMP);
- Parliamentary and citizen oversight over Chinese ODA;

The study concludes with recommendations for evidence-based advocacy with key stakeholders.

Courtesy of the Cameroon, Yaounde-Douala Express highway project[1]

Introduction

Since independence to date, Chinese aid to Africa is based on the "one China principle", designed to secure trade and long term access to strategic resources, (minerals, timber, petroleum, etc.) and Chinese job exportation overseas. Sino-African cooperation was revamped in the year 2000 through the creation of the Forum on China-Africa Cooperation (FOCAC). FOCAC now convenes every three years, alternating between China and Africa (2003- Addis Ababa; 2006-Beijing; 2009-Egypt; 2012-Beijing; and 2015-South Africa). Wenran Jiang, a political scientist from the University of Alberta, underscored the significance of the November 2006 FOCAC in Beijing: "no major power had accomplished what China,

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1 http://www.cameroon-info.net/article/cameroun-autoroute-yaounde-douala-le-gouvernement-se-prononce-enfin-sur-la-mise-en-conge-technique-290469.html

a developing country with big power ambitions had done that month; to bring 48 out of 53 African Presidents to Beijing for an aid conclave. I do not see any parallel in history; neither the US nor Russia ever did this"[2].

With growing globalization and interdependence, African countries are seeking additional funds for major projects and have taken advantage of complimentary resources from South-South Development Cooperation (SSDC) from China. China's non-interference policy that ignores human rights in Africa has fuelled widespread criticisms. For instance, China's support and non-interference policy were said to have 'emboldened Sudan and undermined international efforts to stop the continuing atrocities in Darfur' (Wang 2006)[3] and even ongoing conflict in South Sudan. China's aid delivered as infrastructural investment is highly attractive to many African countries. Chinese ODA funded projects are seen all over Africa from infrastructural projects, manufacturing, trading to agriculture, among others. Indeed, China's 'economic incursion' in Africa is irrespective of whether the state is democratic or undemocratic[4].

Concerning our focus, China is currently funding world class infrastructural projects in Cameroon and Zimbabwe including roads, sporting facilities, ports, renewable energy and telecommunications sectors worth tens of millions of US dollars. Our research is an assessment of the progress and limitations in Sino-Cameroon and Sino-Zimbabwe cooperation in terms of the impact of these flagship infrastructural projects on youth and women with a special focus on SDG 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all) and SDG 9 (Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation).

Study Outcome

Chinese Development Cooperation Human Rights Inclinations Overseas

One implication of China's policy of non-interference and respect for sovereignty is that it pays very little attention to the negative externalities that arise from Chinese ODA such as human rights abuses and corruption[5]. Economically, the "tied aid" that combines Chinese foreign aid, investment, and development assistance helps China promote Chinese exports and service contracts[6].

In China, Overseas Development Assistance (ODA) is disbursed in three forms: as grants, as interest-free loans or as concessional loans. The China Development Bank (CDB), the Agricultural Development Bank of China (ADBC) and the Export-Import (EXIM) Bank of China are responsible for implementing state policies in industry, foreign trade and economic diplomacy[7].

The Chinese EXIM Bank was founded in 1994 and adopted voluntary environmental guidelines in 2004 that went operational in 2007. They state that projects that are harmful

2 Adaora Osondu-Oti; China and Africa: Human Rights Perspective, 2016, p. 54
3 Ibid, pp. 52 – 53.
4 Ibid, p. 51.
5 China in Africa: What the Policy of Nonintervention Adds to the Western Development Dilemma by Madison Condon, VOLUME XXVII – 2012, page 3, http://fletcher.tufts.edu/~/media/Fletcher/Microsites/praxis/xxvii/2CondonChinaAfrica.pdf
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to the environment will not be funded. If there are unacceptable environmental impacts during project implementation, the EXIM Bank requires immediate remedial action or will discontinue financial support[8].

Furthermore, according to the Beijing Declaration of the FOCAC (2000) "the imposition of human rights conditionalities on Chinese ODA should be vigorously opposed[9]." But China is gradually developing some human rights-friendly policies. For instance, China also introduced a "green credit" guideline for commercial lenders in 2012 to ease economic restructuring in an environment friendly manner.

Concerning transparency, China EXIM bank does not publish figures for overseas loans. However, U.S. officials estimate that it finances more than the total export financing of the Group of Seven industrialized nations combined. *The Financial Times* estimates that in 2009 and 2010, China EXIM bank and China Development Bank (CDB) together signed loans amounting to at least $110 billion with other developing country governments and companies – more than the World Bank lent over the same period[10].

The CDB was established in 1994 as a commercial bank to provide development financing for government projects of national priority and to grow Chinese companies abroad. The CDB is the world's largest development financial institution with more assets than the World Bank Group, the Asian Development Bank, and the African Development Bank. The CDB does not have stringent requirements for human rights compliance. Its Special Loan for the Development of African SMEs is one of the Eight New Measures of the Chinese government to strengthen FOCAC. The Special Loan covers 31 African countries and supports projects that have directly and indirectly created 11,020 and over 390,000 local jobs for youth and women. It has also boosted China-Africa trade volume over US$ 311 million[11].

The Chinese EXIM Bank and the CDB both align their funding resources according to the National Development Plan of their host countries as required by the Nairobi Outcome Document. The Chinese Official Development Assistance (ODA) is aligned according to the development priorities of the host countries. For instance Cameroon, like Zimbabwe, prepares development projects in collaboration with the resident Chinese Embassies according to their respective development priorities anchored on the SDGs prior to submitting an official request for funding to the Chinese EXIM Bank[12].

Chinese ODA and decent work

To date, Africa is host to more than 10,000 Chinese companies[13] resulting from both Chinese ODA and private investments. These have generated millions of jobs for youth and women.

8 David H. Shinn; China in Africa: Environmental implications and the law, INTERNATIONAL pOLICY dIGEST, https://intpolicydigest.org/2015/10/25/china-in-africa-environmental-implications-and-the-law/ , 25 OCT 2015, p.8
9 Ibid, Tarigul Islam; p.6.
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12 https://www.google.cm/search?q=chinese+exim+bank&oq=chinese+exim+bank&aqs=chrome..69i57.11274j0j1&sourceid=chrome&ie=UTF-8#q=chinese+exim+bank+compliance+towards+human+rights+in+Africa
13 McKinsey; Jeune Afrique,10 000 entreprises chinoises opèrent sur le continent, http://www.jeuneafrique.com/451769/economie/10-000-entreprises-chinoises-operent-continent-selon mckinsey/?utm_source=Newsletter_JA_Eco&utm_medium=Email&utm_campaign=Newsletter_JA_Eco_28_06_17, 28 juin 2017 à 13h03 — Mis à jour le 29 juin 2017 à 11h57

However, they have limited adherence to universal human rights and labour standards. Around 89% of workers in Chinese companies operating in Africa are local workers including youth and women mostly hired as casual workers[14]. Two-thirds of Chinese companies in Africa provide minimal training to local workers. Most jobs created through Chinese ODA in infrastructure projects are unskilled jobs while the skilled positions are reserved for the Chinese.[15]. Training of specialized local human resources is rare and most repairs are done by Chinese experts.

Chinese ODA funded companies have limited respect for human rights and domestic labour laws in Africa. Domestic workers hired by Chinese companies are recurrent victims of human rights abuse in Zimbabwe[16], Cameroon and Zambia[17] that includes shabby treatment, poor lodging conditions, low minimum wages, corporal punishment, nonpayment of social security protection, disrespect for collective labour bargaining principles, disrespect for weekends and even deaths resulting from torture.

In Zimbabwe, it is alleged that Chinese workers have "nice homes inside" while domestic workers live in shacks outside. The Zimbabweans and Chinese rarely mix. " The Chinese eat off plates, and then give the leftovers to Zimbabweans"[18] In most cases, attempts to resolve the labour issues by government authorities lead to diplomatic skirmishes and temporary suspension of work.[19] But many or most of these Chinese companies resume operations later without providing sustainable solutions.

A Zambian construction worker at China Luanshya Mine[20]

14 Ibid.
15 Charles Linjap; Report on community- company dispute- Lom- Pangar hydropower project, January 2014.
16 Claude Kabemba; Hard Labour - Poor Conditions at Chinese Firms, http://www.osisa.org/books/regional/hard-labour-poor-conditions-chinese-firms, October 10, 1012.
17 Human Rights Watch's report on 'Zambia: Workers Detail Abuse in Chinese-Owned Mines: Enforce Health, Safety, and Labor Laws in Copper Mining Industry", https://www.hrw.org/news/2011/11/03/zambia-workers-detail-abuse-chinese-owned-mines , November 3, 2011 2:45AM EDT
18 The Guardian; Workers claim abuse as China adds Zimbabwe to its scramble for Africa, https://www.theguardian.com/world/2012/jan/02/china-zimbabwe-workers-abuse , 2012
19 Otric Ngon ; Cameroun - Autoroute Yaoundé-Douala: Le Gouvernement se prononce (enfin) sur la mise en congé technique d'une bonne partie des ouvriers, Cameroon-Info.Net http://www.cameroon-info.net/article/cameroun-autoroute-yaounde-douala-le-gouvernement-se-prononce-enfin-sur-la-mise-en-conge-technique-290469.html, Yaounde, June 05,-2017 - 16h13 211,
20 https://www.hrw.org/news/2011/11/03/zambia-workers-detail-abuse-chinese-owned-mines

Anhui Foreign Economic Construction Company (AFECC) is one example of a Chinese ODA-funded construction company in Zimbabwe. In June 2010, construction workers at a Military College which the AFECC was building went on strike over low pay (US$ 4 per day), reporting regular beatings by their managers[21]. Another investor is Anjin Investments (AI) Ltd which is owned by AFECC and the Zimbabwe Mining Development Corporation (ZMDC). AI dismissed a total of 1,500 workers in a day after the workers engaged in a legal strike for higher pay and better working conditions. These malpractices can be attributed to political complicity of Zimbabwe's government and to China's lack of respect for democratic rights of workers.

In Cameroon, the Lom Pangar and Memve'ele hydropower projects are executed by Chinese companies Sinohydro and *China* International *Water* & Electric *Corporation* (CWE) through Chinese ODA. Both projects employed a large number of local workers (approximately 2,300) and both projects were faced with labor protests. Workers at Memve'ele protested in June 2015 against poor working conditions, unfair dismissals, harassment, and assaults. CWE at Lom Pangar also experienced three labor strikes in 2012, which focused on low pay and poor working conditions, including grievances against discrimination between Chinese and local workers[22].

Cameroon, like Zimbabwe, has witnessed regular worker strikes and human rights abuses in Chinese ODA-funded projects without an independent complaint redressal mechanism for affected individuals and grassroots communities. Both countries only differ in terms of domestic labour laws and institutional arrangements for implementing Chinese ODA-funded projects. For instance in Zimbabwe, the Presidency grants special status to Chinese ODA expatriates by offering a presidential pass to ease domestic transactions and a special entry visa alongside a work permit[23]; whereas in Cameroon the work permit is solely granted to the Chinese by the Minister of Labour and Social Security.

Civil Society and community participation in Chinese ODA projects

There is a very limited level of civil society and community participation in Chinese funded projects in Cameroon and Zimbabwe which is further complicated by limited transparency and accountability. Chinese funded projects do not bother to involve civil society and the community during the entire project cycle (from conception to completion of the project) as required by the Busan development effectiveness commitments. On rare cases communities are involved only at the level of land expropriation and resettlement or some aspects of Environmental and Social Impact Assessment (ESIA) of the project. For instance the Chinese funded Kribi deep sea port project of Cameroon is characterized by rampant corruption and violation of the economic rights of affected communities.

Compliance with Environmental and Social Management Plan

Chinese funding agencies have set up basic minimum voluntary social and environmental safeguards without mandatory obligations during project implementation. For instance the

21 Chinese Investments in Zimbabwe and Namibia A Comparative Legal Analysis by Clever Mapaure ,September 2014, Center for Chinese Studies-Stellenbosch-South Africa, page 18, https://www.researchgate.net/profile/Clever_Mapaure/publication/311875115_Chinese_Investments_in_Zimbabwe_and_Namibia_A_Comparative_Legal_Analysis/links/585ea58808ae8fce49017bee/Chinese-Investments-in-Zimbabwe-and-Namibia-A-Comparative-Legal-Analysis.pdf

22 Yunnan Chen and David G. Landry; Capturing the rains: A comparative study of Chinese involvement in Cameroon's hydropower sector, Chinese Africa Research Initiative and John Hopkins University –School of Advanced University Studies , working paper 5 august 2016, p 15, https://static1.squarespace.com/static/5652847de4b033f56d2bdc29/t/57ff9ca8e3df28f75af06913/1476369580891/cameroon+final+draft+6.pdf

23 Program Manager for Central Africa, African Capacity Building Foundation September 30, 2017

Lom-Pangar hydro power dam project had earmarked more than 30 million US Dollars for the implementation of the Environmental and Social Management Plan (ESIMP) which was never disclosed to the public. Moreover, the real impact of this plan could not be felt even seven years after implementation.

Parliamentary and citizen oversight over Chinese ODA

To date there is no parliamentary oversight over Chinese ODA in either Cameroon or Zimbabwe. This is a similar trend in almost all African countries and, therefore, it is absolutely necessary to create a pan-African parliamentary forum to monitor Chinese ODA.

Concerning civil society, a minute proportion of CSOs are involved in monitoring the development effectiveness of Chinese ODA in Africa in terms of human rights compliance and value for money. Hence, it is absolutely necessary to create a special initiative to monitor the development effectiveness and human rights situation of Chinese ODA in Africa.

Recommendations

To the Chinese government:

- The Chinese government should pass into law a "Foreign Corrupt Practices and Environmental Act" to deter its companies abroad from corrupt practices and breach of environmental laws.

To the Chinese donor agencies:

- Chinese ODA agencies should set up and operationalize a grievance redressal mechanism.
- Make the ESIA a mandatory, participatory and independent process.
- Disclose the credibility rating and performance profile of the contracting companies to the host country.
- Conduct regular consultations with civil society groups including women and young people for greater project impact.
- Develop a transparency and accountability model for the management of ESIM plan.

To the host governments:

- The recipient country should have the data base of black-listed Chinese companies with weak performance.
- Strengthen ESIA laws to hold violators accountable.
- Create and operationalize a Pan-African parliamentary forum to exercise oversight over Chinese ODA.

- Undertake regular consultations with youth and women in the negotiation, implementation and outcome of Chinese ODA projects.
- Guarantee effective technology transfer in Chinese ODA as a means to guarantee decent jobs for youth and women.

To executing Chinese companies:

- Strengthen the capacity of Chinese corporations to be more human rights friendly.

To civil society:

- Develop a human rights monitoring and accountability framework for Chinese ODA in Africa.
- Strengthen the capacity of affected communities to participate in ESIMPs and assert their fundamental human rights.
- Advocate for Chinese companies to pay social security contributions for their workers.

Conclusion

Sino-Africa development cooperation is highly deficient in terms of protecting and promoting fundamental human rights as part of their core development objectives. Failure to integrate a people friendly human rights safeguard principles in Sino-Africa development cooperation will further exacerbate the degrading human rights situation perpetrated by Chinese companies in Africa. Building a compliant redressal mechanism for Chinese ODA coupled with legally binding funding arrangements is highly necessary to improve on the human rights situation in Africa for the future

Human Rights Based Approach in Projects Involving the Initiative for the Integration of Regional Infrastructure in South America (IIRSA)

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Introduction: From Commercial Integration to the Integration for Development

The Initiative for the Integration of Regional Infrastructure in South America (IIRSA) (Iniciativa para la Integración de la Infraestructura Regional Suramericana) was born through an agreement reached by twelve South American Presidents during the first South American Presidential Summit held in Brasilia (Brazil) in the year 2000. Its aim is to advance regional integration through transportation, communication and energy infrastructure projects to promote economic and social development of countries in the region. In 2009, after the creation of the Union of South American Nations (USAN; Spanish: *Unión de Naciones Suramericanas*, UNASUR), the infrastructure projects were managed by the South American Council on Infrastructure and Planning (COSIPLAN) - a political and strategic body within UNASUR- which incorporate IIRSA as a technical advisor (Molina, 2015).

Ever since, IIRSA's actions and plans have been articulated within UNASUR as a "multi-stakeholder and multi-level" partnership model in view of the fact that it operates with a variety of States, International Financial Institutions (IFIs) and private sectors associated to design and implement infrastructure projects for regional integration and development. This departs from previous regional integration initiatives such as the Southern Common Market (MERCOSUR) or the Community of Andean Nations (CAN) (CEDLA, 2012) which are underpinned by "commercial integration" principles (ILSA, 2013). From our perspective, this type of partnership is a distinct condition of the integration model of the framework of UNASUR and COSIPLAN.

Seventeen years after its implementation, despite its attempt to abide by the regional integration and holistic development principles to differentiate itself from the commercial integration model, IIRSA has nevertheless promoted liberalization and privatization of common goods. It has also contributed to the spread of socio-environmental conflicts in communities and regions within the zones where its projects are implemented[1]. These impacts are evident in the transformation of traditional territories and the economic dynamics of the region, the creation of new production areas, the re-primarization of dependent economies, the intensification of extractive activities and geographical fragmentation. All these are affecting the configuration of space, landscape, actors, livelihoods as well as social interaction (Hidalgo, 2015).

Through three regional cases, this paper describes public-private partnerships (PPP) for development – a flourishing model in South American States when implementing IIRSA projects as well as its main aspects, results and impacts in various political, social and economic contexts. Based on this reflection, we seek to discuss possibilities and limitations

1 For instance, the case of San Antonio y Jirau Dams.

of these partnership models in order to contribute to the implementation of the Sustainable Development Agenda 2030 with full respect for human rights.

IIRSA Characteristics: A Multi-Stakeholder and Multi-Level Partnership

Although a single definition does not exist, the World Bank (WB) establishes that a Public-Private Partnership (PPP) is: *"an agreement between public and private sector in which part of the services or tasks usually performed by the public sector are provided by the private sector under a clear agreement of shared objectives for the delivery of a public service or public infrastructure" (WB, 2016).* PPPs are being promoted as innovative agreements that allow more efficient mobilization of resources to solve public sector issues when implementing infrastructure projects, giving emphasis to the private sector participation delivering public assets and services in the long term.

Common tasks now delegated to private companies in public infrastructure and services projects include: design, development or rehabilitation, financing, maintenance and operation of public goods and services (WB, BAsD and IDB, 2014).

Furthermore, PPP's performance-based payment mechanism serves as motivation for private companies to fulfill their commitments. The companies may also receive their fees from the users of services, the Government, or from a combination of both. These payments can be duty, availability, or results-based[2].

IFIs have been promoting PPPs for three decades in developed countries and more recently in developing countries through concessional loans and technical consultancy for the implementation of infrastructure projects.

IFIs have also propagated the view that the infrastructure deficit cannot be solved by the public sector. Due to this limitation, participation of the private sector is promoted in investments on public goods that can guarantee a better quality of service delivery (CAF, 2012 in Cruz, 2016).

On the other hand, Hall (2015) argues that a PPP, as any form of loan, does not reduce the global cost of projects - it only delays them. Throughout the implementation of the project During the currency period of a project, a PPP will always entail a greater public investment than traditional projects, owing to higher capital costs and higher fees that users must pay to private operators who have a monopoly on a service.

In this context, diverse Latin American civil society organizations and local social movements question the execution of projects promoted by IIRSA, operating under the PPP model. Civil society claims those projects tend to ignore prior consultation processes, national legislations, international agreements and treaties, as well environmental and human rights standards.

A description and analysis of the dynamics and main dimensions of PPPs in three specific IIRSA projects in Bolivia, Peru and Brazil respectively, is presented below in an effort to evaluate their compliance with international human rights standards and norms.

2 When payment depends on private party duties, profit will be received when users pay for the service. This is the case in toll roads. These fees (rates or tolls) can be supplemented by means of subsidized payments by the Government. When the government is the only source of income of the private party, payments can depend on whether the assets or the service are available with a degree of quality defined in the agreement ("availability payments"). They can also be result-based payments, for example a road with "shadow tolls", free of charge for users but where the Government pays a fee per driver (BM, BAsD and IDB, 2014).

CASE I. The Interoceánica Sur Highway, Peru

The Interoceánico Sur Roadway Corridor (CVIS, in Spanish), is one of the three main projects of IIRSA's Peru-Brazil-Bolivia Axis3. It was conceived to allow a greater integration with Brazil and Bolivia to promote greater commercial exchange between these countries and to enhance Peru's role as a maritime hub for world-wide exports.

According to the Andean Development Corporation (ADC, Corporación Andina de Fomento in spanish) (CAF, 2013), the CVIS project incorporated many innovations, both financial, contractual and in public management, that have served as an example for several national and international projects. Nevertheless, others criticize this PPP venture due to a series of wrongdoings since the beginning of the project. Among the objections to this project, some point to the economic valuation of the costs and associated public interest damage while others question the actual need for a highway in view of the fact that five years after its inauguration it still does not meet the expected volume of traffic.

Political component: the State

Since 1991, Peruvian legislation was modified several times in certain aspects linked to concession processes in order to adapt them to CVIS' road section design needs. The trend was to generate opportunities in the PPP to facilitate private investors' access to new sources of financing under similar conditions to those of capital markets, without financial brokers and intermediation. When seeking financing, norms and audit procedures were softened.

The concession was granted with only a Feasibility Study. It did not comply with the National System of Public Investment (SNIP in spanish)[4] and it did not submit an Environmental Impact Study. Consequently, investment costs were underestimated and the budget dramatically increased (Salazar, 2016).

Table 1. Norm. Type of Contract and Scope of CVIS Project

Norm	Type of Contract	Scope
PPP Framework Law 2008	Granting of five tranches with BOT standard contracts, (Build, Operate and Transfer)	Minimum duration: 25 years and shall be renewable

Financial component: the IFIs

The project was co-financed, which laid down the possibility of guarantees from the State to facilitate the financing and to ensure its viability as a project of "national interest". The project had CAF´s technical support and financing of pre-feasibility and feasibility studies, as well as consulting services for funding scheme.

3 It traverses seven departments of southern Peru (Tacna, Moquegua, Arequipa, Cusco, Apurímac, Puno and Madre de Dios) in diverse coastal, mountain and Amazonian geologic environments.

4 This was noted by the Comptroller of the Republic due to its lack of adherence to indispensable norms of public procurement, that actually led to the avoidance of designed mechanisms to prove social and financial profitability of this project (El Comercio, 2015).

Its financial structure was innovative: it pursued financial instruments that simultaneously allowed a return on the investment and mobilized resources to finance the project5: The Certificate of Progress of Works (CAO, in Spanish) and the Certificate of Recognition of Annual Payment for Works (CRPAO, in Spanish), achieved wide acceptance in the capital market and acceded to a long-term financing with better financial conditions. It is considered that this financial instrument, based on annual indebtedness, affects the country's macroeconomic profile (CAF, 2013).

This scheme has favored an excessive increase of investment amounts with regard to the Annual Works Payment (PAO, in Spanish) of the initial contract[6]. Companies assured that this increase had to do with the difficult geography of the regions through which the highway passes, but this manner of doing business appeared to be the pattern in many infrastructure projects in Peru[7]. Civil Society Organizations (CSOs) in Peru denounced the lack of transparency in these negotiations and the initial management of monies.

Also, this type of works enabled corporate "innovations" in sectors previously closed to private capital, whereas the risks were assigned "to the party which is better able to manage such risk". According to CAF (2013), given the geographical constraints and political pressure to initiate this project, the State took over part of the construction risks. Among the contractual mechanisms of mitigation of constructive risks are adjustments by measurement variation, differences in earthwork batches, technical solutions and execution of additional sub-patches.

Table 2. Tax Requirements and CVIS Project Risks

Tax Requirements
Obligation of the State to pay the concessionaire an amount covering the execution of investments and exploitation (maintenance and operation), in two payments:
Annual Payment for Works (Pago Anual por Obras - PAO)
Annual Payment for maintenance and operation (Pago Anual por Mantenimiento y Operación - PAMO)
For a period of fifteen years, the concessionaire receives payments for PAO + PAMO in exchange of service delivery.
Moreover, the collection of tolls paid by users of the route was established, aiming at reducing State contributions.

Source: CAF, 2013

Private component: the companies

The project was divided into sections and were granted as follows:

- Section 2 and 3: Concessionaire Interoceánica Sur, made up by Odebrecht, Graña and Montero and JJC Contractors, Civil Engineers and General Contractors.
- Section 4: Another partnership, Intersur, led by Andrade Gutierrez, Construcoes e Camargo Corrêa S.A. and Constructora Queiroz Galvão S.A.

5 This PPP model is characterized by its application in projects with important levels of investment requiring sophisticated financing schemes which include multilateral guarantees. Financing sources are more and more diverse, because they include commercial banks, capital market, pension funds and specialized companies (CAF, 2013).

6 The introduction of 22 addenda (renegotiations) almost tripled the initial budget for highway's sections 2, 3 and 4, all in favor of the concessionaire, which led to a millionaire budget increase (Campodónico, 2017).

7 According to Jose Luis Gálvez, no study of the final cost of these addenda has been carried out. What does exist, however, is an estimate of addenda to different PPPs made by Odebrecht, for example, in all IIRSA highways, running to several million dollars. It is important, but difficult, to determine the fiscal cost (Gálves, 2017).

Companies in section 2 and 3 are currently under investigation for overvaluation of costs and for being involved in a corruption scandal where they are accused of paying bribes to win projects. Such is the CVIS case that involves Odebrecht and the former President of Peru, Alejandro Toledo (currently at large) and many other actors[8]. The Prosecutor's Office indicted Graña y Montero, JJC Contratistas Generales S.A. e Ingenieros Civiles y Contratistas Generales S.A. for conspiracy in offense of the State due to bribes paid by Odebrecht to illegally benefit Concessionaire South Interoceánica - Tramo II S.A. y Tramo III S.A. in the infrastructure project.

On the other hand, the Brazilian group Camargo Corrêa faces corruption charges in Brazil.

Panel

Participation

The highway construction did not contemplate the participation of affected local communities. It caused disorderly immigrations and served as breeding ground for illicit activities such as illegal mining and human trafficking. It also increased the illegal deforestation rates, loss of biodiversity and invasion of protected areas (Dourojeanni, 2006). There was no prior consultation, nor a prior Environmental Impact Study. This was only carried out *ex post* once the project was already ongoing (CAF, 2013).

Accountability

The way of implementing the PPP project has been extremely irregular, to the point that one of the concessionaire companies, an ex- president of the Republic and a great number of people are under investigation for money laundering, inflated costs, corruption, bribes for the award of concessions and damages to the State. Other national construction companies were affected, experiencing unfair competition.

Non-discrimination

Despite warnings from social organizations of the southern towns of Peru where the highway passes, this road has worsened social and economic issues faced by the local population, affecting specifically those living in traditional territories. Project management did not respect the rights of the indigenous peoples and peasants of the Peruvian Amazon.

Empowerment

Invasion of these territories by groups engaged in illegal activities generate insecurity and forced migrations, negatively affecting grassroots organizations, reducing their capacity for action, decision, access and use of natural resources in their territory.

Linkage with Human Rights Standards

CAF's safeguards umbrella was used as framework for this project. Nevertheless, as in the case of environmental and social protection legislation, it was utilized after the project started rather than before.

8 The Office of the Public Prosecutor has requested 18 months of pre-trial detention against Alejandro Toledo. Former president Odebrecht is accused of having received a bribe of US$20 million from the Brazilian company, in exchange for granting two sections of highway Interoceánica (Spanish CNN, 2017)
More information: https://cnnespanol.cnn.com/2017/05/26/cara-a-cara-con-alejandro-toledo-el-expresidente-da-su-version-sobre-los-casos-en-su-contra/#more-413819

Synthesis of the Case

- In this case, both the State and the financial Institution (CAF) have established the conditions to prioritize private interests in this public-private relationship.
- PPP did not ensure a participative project; on the contrary, with CAF's endorsement, norms and processes were ignored with the purpose of accelerating a road infrastructure project that was in the "national interest", yet today it is completely underutilized.
- Regulatory relaxation of CVIS' contractual processes triggered a greater focus on profit by concessionary companies, undermining transparency and accountability.
- This PPP undertook the project without compliance with environmental and social legislations, and even without financial viability.
- None of the involved parties was able to ensure the fulfillment of human rights standards and safeguards.
- They have failed to respect specific rights of indigenous peoples and peasants. Tambopata National Reserve has been adversely affected (illegal deforestation and mining in the Madre de Dios Region).
- The Peruvian economic model is widely neoliberal, open to private investment and prone to deepen the use of PPP.

CASE II. The Complejo Madeira: San Antonio and Jirau Dams, Brazil

Complejo Madeira is IIRSA's energetic matrix[9] in the Brazilian Amazon. It seeks to develop energy projects to generate income so as to pursue national economic expansion plans[10]. One of the most important projects of the Complejo are the San Antonio and Jirau Hydroelectric Dams in the state of Rondonia, and the creation of a private monopoly of public services.

Since 2007, when the dams began to be built, risks of possible environmental impacts were already noted. Environmental technical teams in Brazil, local social organizations and branches of the Bolivian government perceived the threats posed by these infrastructure projects, which were subsequently ignored by Brazilian governmental authorities (Garzon, 2009). In 2014, floods affected thousands of people who were injured, displaced and even deceased. In March, a court decision condemned the dam-building companies for "underestimating" the size of the reservoirs, forcing them to redo their respective environmental impact studies (Galindo, 2014).

Political Component

The Brazilian State had an active role articulating efforts between PPP stakeholders of the Madeira River Dams and other projects in the Amazon. The government partnered with

9 It belongs to the third group of the Axis Peru, Brazil, and Bolivia. The objective of this project is the installation of 4 hydroelectric plants for the exploitation of the Madera River.

10 It is closely related to the Programa de Aceleración del Crecimiento (PAC) whose central objective is to accelerate economic growth, employment growth and to improve the living conditions of Brazilian population. The program consists of a set of measures aimed to stimulate private investment, increase public investment in infrastructure and to remove obstacles - bureaucratic, administrative, normative, legal and legislative - to growth (BNDES, 2011). no cuentan con garantías. queen estructura de las ia mas vomo la v, VOLUME AND ISSUE NUMBER, DATE OF PUBLICATION AND WEB URL. no cuentan con garantías. queen estructura de las ia mas vomo la v, VOLUME AND ISSUE NUMBER, DATE OF PUBLICATION AND WEB URL. no cuentan con garantías. queen estructura de las ia mas vomo la v, VOLUME AND ISSUE NUMBER, DATE OF PUBLICATION AND WEB URL.

certain companies – those responsible for financing political campaigns - by awarding them the public contracts (Mais Democracia Institute, 2015).

In the case of the Hydroelectric sites, the State was actively involved in actions that set aside environmental protection law; and environmental and social impact recommendations voiced by the Brazilian Institute of Environment and Renewable and Natural Resources (IBAMA, in Portuguese)[11]. The government officials also found ways to reformulate certain norms with the aim of making these projects viable (Mais Democracy, 2015; Garzon, 2009).

PPPs were notable in the lucrative power sector. As a matter of fact, it enabled privileged access by concessionary companies to territories of great strategic value for Brazil) with important public financing, and operational and technological support by public companies. It was a political decision to accede to pressures from corporations and accept them as permanent allies, leading to a progressive loss of State control of the electrical sector and water resources of the Amazon (Garzón, 2009).

Table 3. Norms, Type of Contract and Scope of San Antonio and Jirau Projects

Norm	Type of Contract	Scope
National PPP Law, Law 11.079	• Administrative concessions • Sponsored concessions	• Contracts of a minimum value of R 20 millions, for a period of 5-35 years.

Source: (Cruz, 2016)

Financial component: the IFIs

The particularity of the Brazilian case lies in the fact that the State is the main financial source of PPPs through the National Bank for Economic and Social Development (BNDES in Portuguese), granting the following amounts in 2013[12]:

- 6.1 billion (R$) to the project of San Antonio, undertaken by Empresa San Antonio Energía (SAE)
- 8.7 billion (R$) to the project Energía Sustentable Brazil (ESB).

Furthermore, BNDES[13] had a major role as main developer for regional infrastructure integration (IIRSA) through project financing during the last 10 years and internationalization of great Brazilian engineering and civil construction companies all over the region (Molina, 2010)[14].

11 "In March 2007, IBAMA releases a paper condemning the Complejo Madera hydroelectric projects, alleging that Jirau and San Antonio did not have to be built based on the anticipated environmental impacts. Nevertheless, both this body and the Ministry were pressured by the business sectors and some governmental segments who felt to be losing power thanks to this paper. The governmental agenda was to set the foundation for PAC's expected expansions, and to keep the power in the hands of the Partido de los Trabajadores. This authoritarian implementation model was the norm in the majority of concession processes in the Amazonian region. The State did not respect environmental protection legislation and it even eliminated legal barriers to these projects, regardless of the costs and consequences (Mais Democracia, 2015, pp.25).

12 Máis Democracia, 2015

13 In 2004, BNDES had an investment portfolio together with CAF of US$ 654 million in ongoing projects, US$ 314 million in projects under procurement process, US$ 585 million under analysis process and US$ 2,395 million in projects under initial phase of consultation (Bristles, 2015).

14 The purchase of goods and services by regional governments from public loans fed into the idea that the expansion of national markets and trade between countries is fundamental for accelerating economic development with social justice (BNDES, 2004 in Bristles, 2015).

The private component: the companies

Companies such as Odebrecht and Camargo Correa[15] head all the great partnerships that monopolize PPP projects in the Amazon region. They have expanded and diversified their activities to such extent that they extend from civil construction to energy, mining, petrochemistry, among others. These companies ensured their profits by operating concessions so that they could get cheap energy for their own manufacturing lines, enabling them to have privileged knowledge of and invest in expanding sectors. With this in mind, beyond the power sector, companies seek to occupy strategic territories in the Amazon that allowed them to control other sectors likely to be exploited in the future (Mais Democracia, 2015).

In addition, these companies created corporate chains through diverse subsidiary companies, managing to lower their tax burden along with legal and social responsibility.

Table 4. Tax Requirements and risks of San Antonio and Jirau Projects

Project	Tax Requirements	Risk
San Antonio[1]	Partnership conformed by Brazilian companies, "leaders" in implementation and operation of hydroelectric plants	Public participation through companies FURNAS and CEMIG reaches 49%. Odebrecht has a share of 18.5% of direct participation; it is owner of 50% of the Amazonian Participation Fund (Fondo de Participaciones Amazonia) and 20% of the operating partnership. Most operation profits go to the private sector extending their participation into the operating partnership and the Amazonian participation fund, allowing them a great control of operations.
Jirau[2]	Energia Sustentable Brazil ESBR is a Specific Purpose company S.A. In 2008, it was granted the exploitation of the public good's power potential for 35 years.	GDF Suez holds 50.1% of the operation, therefore it has great control.

Source: Mais Democracia (2015)

The definition of these projects, specifically Complejo Madeira, depends on the profitability of the companies controlling public services and not on the actual needs and loss of control over the quality of service by the State.

15 "The enormous construction company Camargo Corrêa has reimbursed R 700 million (USD 175 million) to the public funds in recognition of its crimes, the greatest payment of its kind ever made in Brazil. Several executive directors of these construction firms are under arrest. In December, Marcelo Odebrecht, grandson of the founder of Brazil's biggest construction firm -arrested since June- resigned as president of the company. Measures were also taken to withstand the corruption flow. The Supreme Court has now prohibited corporative donors from making contributions to political parties or candidates, although it is still soon for us to know whether the new decision will be effective" (Brandford, 2016). Available at: https://es.mongabay.com/2016/04/contratos-grandes-represas-brasil-alimentados-la-corrupcion/

PANEL

Participation:

As mentioned, the Hydroelectric San Antonio and Jirau projects by no means respond to prior and informed consultation processes, nor to participative public planning with local authorities.

Accountability

In spite of having a developed PPP legal framework, poor governance and oversight processes have been observed This means weak institutional frameworks, incapable of ensuring transparency in public procurement, little public consultation and accountability, which lead to losses in public services and finances.

Non discrimination

The aforementioned dams have placed a great part of the population of the Brazilian States of Rondonia and Acre, and the Bolivian north amazon region in a situation of vulnerability to floods, damages and displacement, epidemics, loss of biodiversity, the deterioration of River Madeira's water quality, loss of forest resources and other negative impacts on their livelihoods.

Empowerment

Confidence and capacity building by indigenous organizations, grassroots organizations, and movements as well as peasants and fishermen affected by the dams on both sides of the border exist in opposition to this PPP. They express the resistance initiative against private planning. However, the strong prosecution and criminalization of protests, social leaders and human rights advocates is quite alarming.

Linkage with Human Rights Standards

Both Public and Private sectors have tried to avoid the fulfillment of obligations under international human rights standards such as the ILO Covenant 169 on planning and construction processes of mega projects in these territories. The lack of a human rights-based approach in the design, implementation and operation of the hydroelectric plants has been noted.

Synthesis of the Case

- Regarding the hydroelectric sector of the Madeira River, all the measures proposed and implemented in the credit, normative and operational fields are oriented to make hydroelectric exploitation concessions as attractive as possible to the private sector.
- Companies have established corporate networks to benefit from the energy production in several projects through subsidiary companies to the detriment of public services.
- Financing to companies was granted to develop projects in breach of environmental and social legislation. No full responsibility has been taken for damages.
- A great number of people have been exposed to diverse risks affecting them in the short and long term.
- The scope of PPP agreements (the excessive length of contracts and the scale of investments), contrasts with weak institutional frameworks that allow room for corruption.
- PPPs have severely affected public service quality and prices, the environment and workers conditions, due to the distorted selection of projects to satisfy company's need for profitability.

- None of the involved parties of this PPP model was able to ensure the fulfillment of human rights standards and safeguards within the context of a high risk activity with many potential negative impacts.
- The Brazilian State has given way to national and transnational private companies specialized in energy and civil engineering for the construction, operation, and quest for profit.
- Companies' interests, beyond the power sector, lie in the control of natural resources. Infrastructure projects allow them strategic territorial occupation in the Amazon region, where they operate a variety of extractive industries.
- The Brazilian State has made strategic alliances with great enterprise conglomerates through a PPP scheme focused mainly on economic infrastructure. At this time, the trend also focuses on social infrastructure, financed or subsidized by the government.

CASE III. The San Buenaventura Highway - Corredor Ixiamas West – North, Bolivia

The San Buenaventura-Tumupasa- Ixiamas highway is framed in IIRSA's Corredor North project (La Paz - Guayaramerín – Cobija - Branco River)[16], whose strategic function is to provide an alternative way of bi-oceanic integration between the Atlantic and Pacific ports, connecting economically less developed territories between the Brazilian west Amazonian and the Bolivian northeast Andean regions.

According to the strategic environmental evaluation of the Corredor Norte (SNC, IADB 2004), its area of indirect influence runs along the department of La Paz, the municipalities of San Buenaventura[17], the Indigenous Territory (Tierra Comunitaria de Orígen, in Spanish) Tacana 1, and the municipality of Rurrenabaque in the Beni department, among others. In this area, the more significant indirect and induced impacts of the highway will be the social and economic transformations that are to modify the dynamics of use of natural resources and livelihoods of local populations such as the Tacana indigenous people living in the Bolivian Amazon.

Hereinafter the so called "Complejo San Buenaventura" has become an economic enclave where projects and mega-projects with different financing and implementation modalities (public and private) come together as a result of the projection of the Corredor Norte of IIRSA [18]. These projects do not fulfill all the characteristics of PPP's but there are interesting similarities stemming from the relation between IIRSA and the Bolivian State.

Political Component: the State

The Bolivian State, as a political actor, has the role of engaging actors in this project to facilitate the implementation of the project, while also ensuring that a legal framework and scenarios for private participation are established.

16 The project belongs to the Axis Peru Brazil Bolivia, whose objective is to physically unite that region with Pacific ports and the great commercial hubs of these three countries by means of road and fluvial infrastructures so as to connect Integration and Development Axes such as the Inter-oceanic and Andean Axis. More information at: http://www.iirsa.org/admin_iirsa_web/Uploads/Documents/mer_baires04_presentacion_eje_peru_brasil_bolivia.pdf

17 The Municipal Development Plan of San Buenaventura 2015-2019, identified 15 urban OTBs and 33 rural communities (GAMSB, 2015). Almost 32% of San Buenaventura municipality's territory has been classified as National Park and Natural Area of Integrated Management (PN ANMI) Madidi, identified as a priority area of high preservation value (SERNAP 2005 in GAMSB, 2015).

18 In the case of Complejo San Buenaventura, projects closely related to the highway are the following: Sugar Cane Complex (Ingenio Azucarero) San Buenaventura, El Bala and Chepete dams, hydrocarbon exploration, another road infrastructure including the Bridge San Buenaventura - Rurrenabaque; all widely challenged for irregularities of varying nature.

Table 4. Norms, Type of Contract and Scope of Project

Norm	Type of Contract	Scope
DS. 181		
Ministerial resolution 115 - MPD.	Turn-key tendering procedure with Company CORSAN CORVIAM for Final Design, Execution of the Construction and Implementation of the Project.	In accordance with Basic Regulation on Prior Investment, a "turn-key" tendering procedure requires the project to be justified in terms of: high degree of technical complexity, requiring specialty, limited number of suppliers, it anticipates technology and capacity building or innovating technology.
"Turn-key tendering procedure"	Service delivery of projects financed by: tax revenue paid by Bolivian citizens (TGN), by the Central bank of Bolivia (BCB) to grant loans to strategic public companies, multilateral sources of loans, cooperation agreements.	These Design-Construction contracts, as shorter fixed-term contracts, do not generate the same long-term performance incentives than previously analyzed PPPs.

Source: Prepared by the authors in database DS. 181; Ministerial resolution 115 Ministry of Planning of Development PMD

The contractual agreement between the World Bank (WB) and the Government of Bolivia implies the adherence to the WB's Internal Policies, whereby the Government of Bolivia must guarantee the implementation of funds complying with the Bank's Social and Environmental Safeguards Policies19 during the implementation phase, as well as with relevant Bolivian legislation and existing international agreements. Project implementation was managed by the Bolivian Administrator of Highways (ABC).

The normative and institutional framework for this type of contract is marked by a strong state presence in the control and management of public companies; in natural resources management; and control of productive circles and industrialization processes20. Before the decline in oil and mineral prices in recent years, the Bolivian government relied on external credit to encourage investments in transport, energy, communications and industry megaprojects (CEDLA, 2016). After the oil price dropped, the Bolivian government had to face the predicament of maintaining the actions of private and external companies in national public services limited to an operative role and to ensure the conditions for the use of transnational capital21promoting the PPP schemes. The case of the Inter-oceanic train that is also part of the IIRSA portfolio seemed to be the solution.22

Financial component: the IFIs

According to the World Bank Group, its intervention in transport infrastructure in Bolivia tries to respond to the country's difficult connectivity and limited access to markets and services that adversely affect the goal of inclusive growth. The Bank argues that transport infrastructure

19 More information about the updated WB safeguards framework, 2016: http://www.bancomundial.org/es/news/feature/2016/08/05/the-new-environmental-and-social-framework

20 N° 466 Public Companies Act, 27 December 2013

21 In the new normative institutional framework for public procurement with private participation under the Promotion of Investments Act (Law N° 516), instruments are being developed to implement a new regime of Publi,c Enterprise Management and to boost national and foreign investment, by means of "strategic public-private partnerships"(MPD, Biennial Report 2015.

22 Tren bioceánico. Bolivia plantea crear asociación pública privada de inversores. El Deber 15 de septiembre de 2017. http://www.eldeber.com.bo/bolivia/Bolivia-plantea-crear-asociacion-publica-privada-de-inversores--20170915-0040.html

improvement, reduction of transport costs and creation of links between isolated communities is a fundamental requisite for Bolivia's development in the long run. In its last review (2015) it was noted that the project's implementation suffered delays due to "problems in each one of its components" (GBM, 2015) and established some actions to "strengthen institutional capacity" of the ABC.

Table 5. Tax requirements and risks of San Buenaventura – Ixiamas Project

Tax Requirements	Risk
Payment of 49 million dollars to the private company Corsán Corviam by the State. Direct liabilities Result-based project	In theory, the construction company incurs a greater risk, since after receiving the funds it must fulfill the works and timeline. Risks assumption entails a greater remuneration than other type of contracts.
Assurance of compliance: Assurance of compliance is translated into a Performance Fund of contract fulfillment. Performance bonds were collected when works were abandoned and the company left the country on March 2017, accomplishing 25% of the works only.	

Source: Own elaboration with the Contract as basis ABC Nº857/14 GLP-ORB-BM; VM, BAD, I.A.D.B. 2014, CEDLA, 2016

Private component: the companies

It is usually argued that the main advantage of PPPs in infrastructure projects reside in the projects' building phase. The claim is that PPP projects usually finish in an efficient manner in terms of time and budget if we compare them with traditional public sector projects. This was not the case in this project.

After the award of the project, the Spanish construction company Corsan Corviam (currently bankrupt and facing lawsuits in several countries)[23], abandoned works and fled the country in 2017 with only 25% of the project completed.

According to the company, abandonment of works was due to lack of payment by the National Electricity Company (ENDE) and ABC. The company left a debt of 60 million Bolivianos to 120 contractors and workers for service delivery costs, and abandoned other ongoing projects[24]. In view of this situation, the Government decided to terminate the contract and execute the performance bonds.

In this case, the private sector was inefficient as it failed to fulfill its obligations and generated damages, not only to the State but to the workers and local contractors who were exposed to a situation of vulnerability and labor force precariousness. The Bolivian State and the World Bank have demonstrated their inability to control and monitor irregular performance by companies operating in the country, as well as a lack in consideration of companies' lack of transparency and historically bad performance in other countries.

23 It is one of the six companies comprising the group Isolux Corsán, a global concession, industrial energy, construction and services company. It operates in 35 countries. In 2017, the Group claims bankruptcy and goes under investigation for a vast network of kickbacks to win concessions in Africa and South America. More information in: http://www.elmundo.es/economia/2017/07/04/595a8ddc22601d60188b459e.html; http://www.elmundo.es/economia/2017/02/27/58a978fee5fdeaba448b45d6.html

24 In Bolivia, Corsan-Corviam, branch of Isolux, was questioned for the abandonment of the highway Ixiamas-San Buenaventura works and the hydroelectric project Miguillas, the maintenance of the Yucumo-Quiquibey highway and the La Paz-Oruro double road (Pagina Siete, 2017)

PANEL - Human Rights Perspective

Participation

Even though participation mechanisms existed and local populations in the area were willing to engage, the processes of consultation, the social and environmental impact studies, as well as other safeguards, were not seriously implemented in this project. The participation of affected populations in the planning, and their right to decide on their priorities for development were sidelined in the design and execution of the project[25].

Accountability and Transparency

The project operated by Corsan Corviam is an example of the lack of transparency and oversight, as well as the diffuse allocation of responsibilities within the framework of State-WB-Private company relations. As a result of the company's desertion, the responsibility for consequential liabilities has not been assumed by any of the actors involved.

Non-discrimination:

The participation of local communities in consultation processes was not respected. In the same way, subcontracted companies and their employees in Bolivia were not given preventive measures from the State and the financier to protect their rights and interests when Corsan Corviam breached the agreement.

Empowerment:

The Tacana people identified in their Plan of Indigenous Territorial Management that the Complejo San Buenaventura, where the highway project is implemented, is risky in terms of the legal security of their territory. The implementation of great projects is considered a great risk in terms of cultural loss and dislocation which, instead of generating an atmosphere of capacity, confidence and empowerment-building, tend to generate alarm, distrust and internal division[26]. The state's political management to obtain support by communities entails mechanisms of cooptation of grassroots organizations, and weaken decision-making and representation structures.

Linkage with Human Rights Standards:

Although the highway construction project had an Environmental Impact Study and an Impact Mitigation Plan, its multiplier effects, such as the Sugar Cane Complex, close to TCO Tacana, do not have, to our knowledge, an Environmental Impact Study. Also, projects linked to the highway – the Rurrenabaque bridge, San Buenaventura and El Bala Hydroelectric projects – cause diverse conflicts among local populations, not only because of the consequences and transformations in the territory, but due to the lack of adherence to human rights standards

25 Document "Resettlement and remedy to the affected population plan (PRIPA) of Road San Buenaventura - Ixiamas Improvement Project" (June, 2016) by ABC and WB (pp. 67), reads as follows: "PRIPA 2011 implementation report, has allowed to identify i) the lack of precise information; II) incomplete application of social Safeguards OP 4,12; III) inadequate categorization of PAP, described in very general terms without consideration of current social and financial specificities of families affected".

26 Whithin the protection, control and monitoring of the TCO Tacana I, the CIPTA identifies the following risks: Legal insecurity of TCO and risk of division within indigenous organizations; possible impacts by the implementation of great projects, such as the San Buenaventura-Ixiamas project, implementation of the Sugar Cane Complex (Ingenio Azucarero) San Buenaventura, construction of Beni River bridge, construction of the Bala dam and hydrocarbon plant, giving rise immigration, pressures and invasions of TCO, obstruction, contamination and erosion of water bodies and soil, extinction of animals and fish, increase of wood trafficking, as well as delinquency and prostitution (CIPTA, CIMTA and WCS, 2014). no cuentan con garantías. Que en estructura de las ia mas vomo la v, VOLUME AND ISSUE NUMBER, DATE OF PUBLICATION AND WEB URL.

during prior consultations and indigenous participation processes. All the aforementioned occur within the framework of Projects promoted and financed by IFIs such as the WB and the IADB (Molina, 2014)

Synthesis of the Case

- Although it is not strictly a PPP case, San Buenaventura - Ixiamas project has utilized the same justification mechanisms IFIs apply to public-private partnerships; nevertheless, a high level of risk and bad practices by private companies that prioritize their profit over quality and service delivery was noted.
- Legal framework seeks to facilitate the completion of the projects rather than risk mitigation.
- High standards within solid environmental and social safeguards framework to ensure sustainability in the long and middle term are not established from the beginning of the project.
- Mechanisms of participation, consultation and safeguards, get pushed into the background (they are encouraged after the approval of projects, and become just formal requirements rather than true advocacy instruments under the diffuse argument of "national interest" and "economic growth for development").
- Private companies incur a series of irregularities, labor flexibility, and relaxation of environmental and social standards, leading to flourishing of corruption networks affecting local populations.
- Little monitoring and control of hired private companies by the State and the IFIs and lack of transparency of information management and accountability measures.
- Neither the IFI nor the State accepts liability for private sector's poor performance.
- Bolivia has a pro-state approach, but is slowly opening towards PPP mechanisms.

Conclusions

(In) adequateness of Projects from a Sustainable Development Approach

The current Development Agenda on Sustainable Development Goals (SDG) defines sustainable development priorities across the world and its aspirations towards 2030 and seeks to mobilize efforts at a global level around a set of common objectives and goals[27]. Furthermore, the Partnerships SDGs initiative has registered near four thousand initiatives and partnership commitments[28], including some of the aforementioned private actors and IFIs. From this perspective, the Global Compact platform[29] proposes a Development Partnership to engage private companies for the objective of promoting sustainable social,

27 31 Within the framework of goal 17, its respective goals and indicators reliance is placed in public-private partnerships as a means to generate resources to finance development goals. It is striking that the initial wording of indicator 17.16.1 which underscored "accountability" between cooperation actors by means of inclusive reviews (p.42) has been changed to only mention the number of countries reporting progress in the development of monitoring frameworks on effectiveness so as to support SDGs, thus downplaying the importance of "accountability" which implies greater degrees of public responsibility than the mere design of monitoring frameworks in terms of effectiveness.
See: E/CN.3/2016/2 Commission of Statistics, 47° session 8 to 11 March 2016 https://unstats.un.org/unsd/statcom/47th-session/documents/2016-2-IAEG-SDGs-Rev1-S.pdf and Annex III. Revised list of global Sustainable Development Goal indicators: https://unstats.un.org/sdgs/indicators/Official%20Revised%20List%20of%20global%20SDG%20indicators.pdf

28 https://sustainabledevelopment.un.org/partnership. Last visit 16/08/2017. 16:28 hrs.

29 https://www.unglobalcompact.org/what-is-gc. https://sustainabledevelopment.un.org/partnership. Last visit 16/08/2017. 16:28 hrs.

environmental and economic development on a large scale even when their corporate interests may not be coherent with these goals. In this way, the private sector is urged to participate in a responsible manner, aligning their business strategies towards recognition of their responsibility and compliance with relevant national legislation, international standards and to address with due priority all the negative impacts on human rights.

However, given the cases described in this paper it's important to consider to what extent do the described PPPs fulfill relevant normative frameworks established by IFIs, multilateral banks, national regulatory frameworks and human rights standards? To what extent do they quantify environmental and social impacts? In practice, as already mentioned, large corporations have defined their actions motivated by the quest for profit and private benefit. These processes have been marked by a lack of transparency and deliberate actions seeking to ignore and avoid the fulfillment of operational safeguards and standards. PPPs lead to processes through which the public sector often assumes the risks while private companies seek to maximize their profit, at the expense of the public resources, the environment and society, as well as the communities or territories, where they operate.

In this respect, just as private companies are urged to take greater responsibilities for the fulfillment of human rights norms and standards, IFIs must assume more responsibility for those projects they promote and fund. Furthermore, more attention must be paid to the fact that most of investments occur in controversial and high impact sectors such as the extractive and infrastructure sectors (Yuan and Gallagher, 2015 in Cruz, 2015).

Nowadays, due to IFIs' influence, the PPP model is promoted to articulate "development effectiveness" principles and SDGs on the grounds of the ability to reduce capital costs and risks for the public sector and the society, specifically the most vulnerable groups.

The excessive support for the merits of PPPs for SDG implementation and financing shows a tendency towards the birth of a "new panacea" in the international political arena and in development approaches. Here, the role of the private sector and its financing, investment and management schemes are presented as "role models" on the grounds of economic, efficiency and effectiveness; in a very similar manner to that one used by neoliberalism to promote the privatization or capitalization of public sectors under "joint venture" or "risk sharing" contractual schemes, for instance.

The aforementioned PPP cases, despite the different political, social and normative context in which each one operates, indicate that there is no great novelty in relation to past schemes. If we compare them, they do not show great differences regarding adverse outcomes and negative fiscal, social and environmental effects.

From a sustainable development perspective, these outcomes,and not the partnership form itself, should be the key criteria to evaluate any project's performance and its contribution to such an ambitious global agenda as the one contemplated in the SDGs.
The partnership concept, in the context of the sustainable development, should go beyond a typical financing, partnership or business scheme so as to adhere to ethical principles, standards and social practices that prove to be environmentally and economically coherent. If the States, IFIs and private sector do not set the grounds for the implementation of these principles, PPPs will just mean another way of pursuing "*business as usual*".

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Part 5

HRBA and Multistakeholder Partnerships

Social Dialogue: Multistakeholder Partnerships for a Human Rights-Based Approach in the Era of the SDGs

Trade Union Development Cooperation Network (TUDCN)

Workers have historically fought for their rights and joined efforts, by organising trade unions, to collectively tackle basic issues such as long working hours, unhealthy and dangerous working conditions and low wages. The different forms of struggle have been changing depending on the specific socio-economic context and democratic setting at country level, going from varied ways of protest to more developed forms of dialogue, both at enterprise level and with institutional entities.

The spectrum of rights that trade unions tackle has been broadened over time to include other issues that affect workers and their families. Many of these rights are currently reflected in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and especially in the International Labour Organisation's (ILO) different Declarations, Conventions and Recommendations. These are discussed and decided upon within the ILO which is a tripartite organisation constituted of rights holders and duty bearers[1].

The ILO is therefore a fundamental institution that has contributed to an international regulatory framework to support workers' rights. However, the ratification of particular Conventions and their effective implementation in practice varies from country to country, and it is the role of social partners (workers' and employers' representative organisations) and governments to ensure that these are effectively applied at country level. It is in this particular context that social dialogue becomes a fundamental tool to guarantee the application of a Human Rights Based-Approach, which is especially relevant in the era of the Sustainable Development Goals (SDGs).

Social dialogue as a Human Rights Based-Approach

Social dialogue, is defined by the ILO as all types of negotiation, consultation or information sharing among representatives of governments, employers and workers on issues of common interests in economic, labour and social policy. It can be bipartite, between workers and employers, or tripartite, including government, and can take place at national, sectoral and enterprise level. "Social dialogue constitutes the ILO's governance paradigm for promoting social justice, fair workplace relations, sustainable development and social and political stability".[2]

Social dialogue is therefore a development partnership that has a human rights-based approach at its core: it brings together rights holders and duty bearers to discuss and establish policies that will contribute to more inclusive development processes. It is guided by the principle of participation. It allows for the social partners, through their representative membership-based organisations, to participate in and influence policies that affect them

1 The ILO is the only tripartite United Nations agency that is composed of workers' representatives (25%), employers' representatives (25%) and Government representatives (50%),

2 ILO 2013, Report VI: Social Dialogue, Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalizations. International Labour Conference 102nd Session. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_205955.pdf p.5

directly or indirectly. This in turn ensures democratic ownership linked to their representative nature and their democratic structures. In this sense it can make important contributions to governance, which itself reinforces the application of human rights. Social dialogue is therefore "both a means to achieve social and economic policy and an objective in itself, as it gives people a voice and stake in their societies and workplaces."[3]

In its tripartite form, social dialogue builds the relation between workers, employers and government to bridge gaps and reach common positions. An important element in the implementation of policies that ensue from social dialogue is the creation of tripartite bodies or institutions[4]. These tripartite bodies are put in place as a way to institutionalise the participation of the social partners in the elaboration, implementation, monitoring and assessment of socio-economic policies. This contributes to another important principle that guides social dialogue, which is that of transparency and accountability.

Social dialogue in the context of the 2030 Agenda for Sustainable Development – A human rights-based multistakeholder partnership for development

The 2030 Agenda for Sustainable Development acknowledges the relevance of multstakeholder partnerships in its implementation. In this sense, social dialogue plays an important role as a means of implementation, given its contributions to a human rights-based approach to the issues that are taken up in the SDGs, and the lessons learned from decades of social dialogue.

Looking at trade union experiences on social dialogue around the world, an ILO-ITUC research[5] highlighted the contributions of social dialogue to the implementation of many of the Sustainable Development Goals. The research showed how negotiations between workers, employers and governments extended social protection, led to increases in wages and other benefits, and to the promotion of a minimum living wage in many countries (Goals 1 and 10). It also highlighted how Gender Equality (Goal 5) was addressed through social dialogue, putting forward efforts to contribute to reducing the gender wage gap and to include a gender perspective in social protection and social security schemes, as well as to recognise and value unpaid care and domestic work.

The contributions of social dialogue to decent work and sustainable economic growth (Goal 8) are self-explanatory, as social dialogue is one of the four pillars of the ILO's Decent Work Agenda[6] together with rights at work, employment creation and social protection. It has enhanced the respect of workers' rights, through collective bargaining, and the creation of jobs through negotiations on employment policy, but has also thrived for sustainable economic growth promoting demand side policies that avoid a race to the bottom.

Social dialogue also has an important role to play in the fight against climate change (Goal 13), paving the path for a just transition to a carbon free economy, by gathering the key actors at stake to promote green jobs. Its contributions to peace, justice and strong institutions

3 *Ibid*. p.5
4 Tripartite bodies and institutions can include Economic and Social Councils, National Wage Councils, National Employment Councils, Social Security Boards, etc.
5 ILO-ITUC Issue paper: Research Institute for Work & Society, HIVA - KU Leuven - Hermans, M., Huyse, H., Van Ongevalle, J. 2017, Social dialogue as a driver and governance instrument for sustainable development. http://www.ituc-csi.org/IMG/pdf/tudcn_issue_paper_-_social_dialogue_development_en.pdf
6 http://www.ilo.org/global/topics/decent-work/lang--en/index.htm

(Goal 16) are also notable, as social dialogue is also a governance instrument which has contributed to political transition.

These are just some of the many ways in which social dialogue can contribute to the different SDGs. The following section, focuses on two concrete cases that show how social dialogue contributed to improving and extending social protection and social security rights in Uruguay and Indonesia. This is directly related to specific targets in Goals 1, 5 and 10 (ending poverty, gender equality and reducing inequalities) among others.

Social dialogue and the extension of the rights to social protection and social security: the cases of Uruguay and Indonesia

Specific research undertaken by the ITUC and the CPDE[7] put forward case studies on social dialogue that showed how it has guaranteed that the principles of participation and inclusion, non-discrimination and equality, and accountability guided policy development and implementation in Uruguay and Indonesia. This was done by engaging trade unions in the elaboration and implementation of social protection and social security policies.

In Uruguay[8], since 2005, new reforms were introduced and new participative spaces were opened for the design and implementation of public policies. These spaces gave a privileged position to trade unions, which were already participating in certain tripartite spaces, for their role as social partners. One such space was the National Economic Council with an established contractual relationship with the government. Trade unions also participated in other dialogue spaces amongst which was the National Dialogue on Social Security (NDSS). The NDSS was first convened in 2007 to institutionalise the participation in the discussions on the social security system, it took place over a number of years in various stages. The NDSS was a tripartite plus dialogue which included representatives of workers, employers and government institutions, as well as other stakeholders. In this dialogue trade unions participated together with other actors in the drafting of laws and the implementation of social security policies. Through their participation, trade unions put forward specific inputs focused primarily on increasing access to pensions, recognising time women spent on family care in the calculation of their pensions, including social assistance programmes for the most vulnerable, and increasing unemployment benefits.

The abovementioned inputs were largely taken into account in the first phase of this dialogue. Some of the key outcomes of this NDSS were: the reduction in the requirements (in terms of years of contribution to the system) to access pensions, the recognition of unpaid care work in the pension system (by adding one year of recognised service to access pensions to women for each child they had, until a maximum of five years), the easing of requirements to access pensions in case of disabilities and the extension of unemployment benefits in certain cases of older aged unemployed persos (extension of the number of months of benefits for those aged over 50).

7 ITUC-CPDE 2016, various authors, Social Dialogue for Sustainable Development in Uruguay, Ghana and Indonesia http://www.ituc-csi.org/IMG/pdf/tudcn-socila_dialogue_uk_web_v1.pdf

8 Cuesta Duarte Institute 2015, The Impact of Social Dialogue on Development and Social Inclusion in Uruguay, in ITUC-CPDE 2016, various authors, Social Dialogue for Sustainable Development in Uruguay, Ghana and Indonesia http://www.ituc-csi.org/IMG/pdf/tudcn-socila_dialogue_uk_web_v1.pdf pp.9-24

In Indonesia[9], after trade unions and civil society exerted pressures on the government to reform the social security law, the government acceded to discuss the elaboration and implementation of a new law that would extend social security coverage to the whole population in a set period, thus contributing to universalise this right. This was done through a tripartite supervisory body in charge of elaborating and implementing the social security system in which trade unions participated. Prior to this, social security coverage was limited to a small portion of the population working in the formal economy. In Indonesia, majority of workers are in the informal sector and many of those in the formal sector do not have contracts for their jobs.

In reforming the social security system the main elements that were pushed for were: the extension of health coverage to the entire population, a new pension scheme for workers in the private sector and the extension of social security to informal workers. The formulation phase took three years and the National Social Security Law was finally introduced in 2004. The new law established National Social Security Programmes in terms of health, work injuries, provident fund, pension fund and death of a breadwinner. It transformed the institutions in charge of social security into public non-profit institutions managed by workers' and employers' representatives and governments. It established the National Social Security Council, a new tripartite body with the mandate to formulate general policies and synchronise the implementation of the National Social Security System. It combined the management of all health coverage into one National Social Security Corporation/ Pension Service.

Although the actual implementation of the elements related to the extension of health insurance to the whole population were postponed for many years, the approval of the Law on Health Social Security Providers of 2011, elaborated on the implementation of the Social Security System. This law stipulated that the universal health insurance should start in 2014. Different programmes were set in place that year on a step-by-step basis, starting with the plans for universal health insurance coverage and moving to old age, work injury and death insurance in 2015. Health insurance coverage is expected to gradually be extended and reach the whole population in 2019. This extension will include employer and voluntary contributions and will be partly subsidised.

Conclusion and Recommendations

The discussed shows how social dialogue can contribute to a human rights-based approach to development. There are many successful examples of this, some of which have been highlighted above, but there have also been more challenging cases in which outcomes have not been as fruitful or in which agreements have been broken. A brief illustration of this brings us back to Indonesia, but with respect to the minimum wage setting process. Whereas before October 2015 the minimum wage was established through a social dialogue process that led to substantial increases[10], following the introduction of a new law to adjust minimum wages automatically, negotiations were undermined and the agreement was breeched. This shows how, even after considerable achievements, a unilateral decision can put dialogue at stake.

9 Labor Institute Indonesia, Examples of Social Dialogue in Indonesia (2004-2015) and its Contribution to Development, in ITUC-CPDE 2016, various authors, Social Dialogue for Sustainable Development in Uruguay, Ghana and Indonesia http://www.ituc-csi.org/IMG/pdf/tudcn-socila_dialogue_uk_web_v1.pdf pp.39-59

10 Between 2012 and 2015 minimum wages increased by nearly 100% *Ibid.* p.49

The limitations of this chapter do not allow for an in depth analysis of more challenging cases of social dialogue. However, documented years of experience have allowed us to draw the following recommendations that can help bridge gaps and enhance a meaningful social dialogue that effectively contributes to a rights-based approach to development:

First of all social dialogue requires a conducive and enabling environment and in turn contribute to sustaining one. The international framework established at the ILO is the core support for social dialogue, but Conventions need to be ratified by governments and be effectively applied in national legislation. For workers to engage in social dialogue as a way to promote their rights, the different ILO Conventions and particularly its Fundamental Conventions[11] guarantee that they can defend these rights through the democratic organisations in which they take part. In this sense, Conventions 87, on Freedom of Association and Protection of the Right to Organise, and 98, on the Right to Organise and Collective Bargaining, uphold the very basic rights for social dialogue to take place. However, over half of the world's population live in countries that have not ratified either of them[12], so important efforts are needed to address their ratification and implementation.

Nevertheless, an enabling environment per se is not enough for social dialogue to work. Together with the need for an enabling environment, we need to add the element of trust amongst the parties that engage in social dialogue. Trust leads to greater levels of transparency and to a positive and constructive attitude from all partners. This is especially important from the government's end, given their role as primary duty bearers.

The good will of governments to engage in social dialogue can be manifested in terms of the institutionalisation of the dialogue process. Going beyond information sharing or ad-hoc consultations calls for the creation of tripartite bodies that will, not only design the policies. but also implement, monitor, and assess them. This requires clear mandates in which each part's rights and responsibilities are acknowledged in light of sustainability when changes in government occur.

Finally, the strengthening of the capacities of rights holders to make their claims and duty bearers to meet their obligations is also crucial. The social partners that engage in social dialogue need to be representative and have the capacities to engage in dialogue with adequate knowledge and analysis in order to make their demands and comply with their obligations.

The above-mentioned conditions will only be met if there is true recognition of the usefulness of social dialogue and therefore a concrete interest that will guide efforts to apply it.

11 The ILO's eight Fundamental Conventions are: 1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); 2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98); 3. Forced Labour Convention, 1930 (No. 29); 4. Abolition of Forced Labour Convention, 1957 (No. 105); 5. Minimum Age Convention, 1973 (No. 138); 6. Worst Forms of Child Labour Convention, 1999 (No. 182); 7. Equal Remuneration Convention, 1951 (No. 100); 8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm

12 ILO 2013, Report VI: Social Dialogue, Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalizations. International Labour Conference 102nd Session. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_205955.pdf p.2

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Advancing Migrants' Human Rights Through Development Partnership:

A Research on the Experience of the APMM in Implementing HRBA through Partnerships with Migrant Organizations in South Korea and Hong Kong

Asia Pacific Mission for Migrants

Background

The Asia Pacific Mission for Migrants (APMM) is a non-governmental organization working closely with migrants as well as advocates and other civil society in Asia and the Pacific to pursue the advancement and protection of rights, welfare and dignity of migrants in the region through research, advocacy and organizing.

It started out as the Asia Pacific Mission for Migrant Filipinos (APMMF) in 1984 as a response to the growing need to address the human rights situation of Filipino migrant workers in various parts of Asia and the Pacific, including countries in the Arab region.

The Philippine government adopted a labor export policy in the 1970s and has since then systematically facilitated the growing number of Filipinos finding work abroad. As of 2013, the number of Filipinos living and working abroad is estimated at 10.2 million (Philippine Overseas Employment Administration, 2013).

The staff of APMMF travelled to different migrant-destination countries in the region and established cooperation primarily with church institutions as well as members of the local civil society in order to: a) extend support to distressed migrant Filipinos; b) provide space for them to gather and organize activities; and c) lobby for policy recommendations to concerned governments that benefit migrants.

Towards realization of human rights of migrants

As the partnerships helped in the formation of migrant desks in some church institutions and encouraged local partners to form migrant-serving institutions in migrant-destination countries, the APMMF in cooperation with civil society and the migrant community worked toward the empowerment of migrant Filipinos and supported migrants' initiatives of forming organizations and unions. Eventually, in 1996, Migrante International, the first ever global alliance of overseas Filipinos, was formed.

The APMMF saw the phenomenon of labor migration extending to other nationalities and decided to expand their work to include them. Hence in 2002, the APMMF became APMM.

With its experience in the formation of Migrante International, APMM sees empowerment of migrants and migrant workers as an effective way for the migrant sector to advance their human rights. Hence, all the institution's work, including research, advocacy and campaign, was geared towards capacitating migrants and engendering an enabling environment for their organizing.

The APMM uses the Universal Declaration of Human Rights (UDHR) as minimum standard for advancing and asserting migrants' rights because for APMM, human rights are essentially migrants' rights. This declaration provides the ground for asserting and protecting the rights, welfare and dignity of various sections of the migrant sector, among them domestic workers, marriage migrants, undocumented migrants, and migrant children.

International conventions such as the UN Convention for the Protection of the Rights of Migrant Workers and Members of Their Families as well as the ILO Convention on Decent Work for Domestic Workers (ILO C189) are also rooted in the UDHR and add to the instruments that guide APMM in its work. While the APMM and its partners see the importance of international engagements, they see the limits of such conventions as they are not legally-binding and there is no accountability of governments to implement and realize them at the national level.

Thus, the APMM prioritizes the development of partnerships with civil society and especially migrant organizations at the national and local levels to realize the human rights of migrants. Such partnerships include initiating capacity-building for migrants, both organized and unorganized; conducting campaigns to assert concrete resolutions to urgent demands and concerns of migrants; and pressing governments to ratify and implement international conventions such as the ILO C189, to name a few.

Purpose of the Paper

This paper aims to describe the involvement of the APMM in the establishment of two migrant platforms, namely the Asian Migrants Coordinating Body (AMCB) based in Hong Kong and the *Katipunan ng mga Samahan ng Migranteng Manggagawa sa Korea* or Unity of Filipino Migrant Workers in Korea (KASAMMAKO) based in Seoul, South Korea.

It reviews the experience of APMM in:

1. implementing a human rights based approach in the formation of these two migrant groups;
2. previous and current cooperation it has established with them; and
3. the engagement they have jointly conducted with another stakeholder, the host country government.

Asian Migrants Coordinating Body (Hong Kong)

Establishment of AMCB

In partnership with migrant organizations and migrant-serving institutions, the APMM helped in the establishment of the Asian Migrants Coordinating Body, or AMCB.

It was established in 1996 as a network of grassroots migrant organizations of various nationalities in Hong Kong. Its formation was a result of a series of cultural festivals in 1994 and 1995 to strengthen cultural exchange among the various nationalities and to foster solidarity. Cultural dances, songs and food festivals characterized these festivals. The 1995 cultural festival with the theme "Migrants Rights are Human Rights" was conducted on December 10, in commemoration of the International Human Rights Day and participated in by 2,000 migrants and local individuals.

The APMM cooperated with migrant organizations and then the Mission for Filipino Migrant Workers, a local institution providing assistance to overseas Filipino workers (OFWs) in Hong Kong, to help form the AMCB. On December 10, 1996, during the 3rd Asian Migrants Festival, the AMCB was formally launched.

Even at the onset, the advancement of human rights of migrant workers, together with social justice, people's empowerment, democratic ownership and participation, equitable partnerships and solidarity, transparency and accountability, and commitment to realizing

positive sustainable change (Istanbul principles) have been at the core of AMCB. In its declaration of unity, the AMCB states:

> We share the belief that only through step by step organizing and educating our ranks, engaging ourselves in worthwhile mass actions, shall we address our homesickness and ensure the protection of our rights, welfare and dignity. We share the belief that migrant rights are human rights too, hence must be respected.
>
> We share the dream of every migrant worker to return home for good to join our families in our homeland. We share the following aspirations:
>
> 1. To have stable decent jobs;
> 2. To be able to clothe and educate our children and kin;
> 3. To live with no fear of where to stay and where to get food for our families;
> 4. To live with no fear of the huge cost of hospitalization and medication in times of sickness;
> 5. To live with no fear of political persecution because of our beliefs; and
> 6. To live in a society where we can participate to achieve real economic progress, serve justice, attain long lasting peace and genuine national democracy.
>
> We share these beliefs, common experiences and our commitment to assert and uphold the interests of migrant workers and our people and uniting ourselves beyond cultural boundaries.

The current members of the AMCB are the United Filipinos in Hong Kong (founding member), Thai Regional Alliance (TRA), Association of Indonesian Migrant Workers (ATKI-HK), Overseas Nepalese Workers Association (ONWA), Filipino Migrant Workers Union (FMWU-HK), Association of Sri Lankans (ASL-HK), Indonesian Migrant Workers Union (IMWU-HK), United Indonesians Against Overcharging (PILAR-HK) and Gabungan Migran Muslim Indonesia di Hong Kong (GAMMI-HK).

Cooperation and partnership with AMCB

Since the AMCB's establishment, the AMCB and APMM have cooperated on several initiatives for the advancement of migrants rights.

The APMM has supported all of AMCB's campaigns to uphold and protect the rights, welfare and dignity of migrant domestic workers in Hong Kong. Some of these campaigns include the call for wage increase for all migrant domestic workers (MDWs), stopping the elimination of maternity protection for all MDWs (who are mostly women), and abrogation of government policies that put MDWs in a vulnerable state.

Both APMM and AMCB have collaborated in the campaign calling on all governments to ratify the ILO Convention on Decent Work for Domestic Workers, or ILO C189. To do this, both groups have conducted public awareness among MDWs in Hong Kong on ILO C189 and encouraged mass participation through a poster-making contest, in which the posters reflect the issues and demands of MDWs in Hong Kong in relation to the ILO C189. All submissions were transformed into postcards that were included in a campaign toolkit that APMM released several weeks after. They also conducted dialogues with various consulates in Hong Kong with the objective of pressuring governments to ratify the said ILO convention. Some of the consulates they visited were the consulate generals of the United Kingdom, the Philippines and Indonesia.

The establishment of the International Migrants Alliance (IMA) can also be attributed to the ongoing cooperation between APMM and AMCB. Established in 2008, the IMA is the first-ever global alliance of grassroots organizations of migrants, refugees and displaced peoples. The lessons gathered in the formation of AMCB helped in developing the plan for the eventual formation of the IMA. Convenors of the AMCB were already participating in region-wide activities relating to migration in Asia and the Pacific and both AMCB and APMM coordinated efforts in reaching out to migrant organizations in other countries.

The IMA has conducted several international conferences parallel to international intergovernmental activities such as the United Nations High Level Dialogue on International Migration and Development and even mobilized migrants to participate in these activities. The current president of the IMA is Eni Lestari, one of the spokespeople of the AMCB.

Development outcomes

Both APMM and AMCB have worked together in seeking dialogues with Hong Kong government agencies as well as consulate offices of Indonesia, the Philippines and Thailand, to name a few, to address urgent migrant concerns.

Through these multi-stakeholder meetings, both APMM and AMCB have laid down their analysis and positions on migrant-relevant issues, such as wages, rights protection, racism and discrimination, and social exclusion. The Hong Kong government, for example, has been forthcoming in their relation and consultation with MDW groups and has constantly coordinated with AMCB as well as APMM regarding government propositions on related issues.

Recently, the exclusion of cleaning window exteriors from the list of allowable tasks of MDWs' is a result of such a development partnership. Member organizations of AMCB, together with APMM and MFMW, have expressed concerns on this to the Hong Kong Labour Department in several consultations held by the latter. Both APMM and AMCB pointed to a number of cases involving migrant domestics falling off the window from high-rise residential buildings as a result of fulfilling the said task. They argued that the said task puts migrant domestics in danger and that the Hong Kong government should take this out of the migrant domestics' list of tasks and regulate the employment contracts for migrant domestics with regard to window cleaning. However, this proposition to prohibit the cleaning of window exteriors by MDWs was not deemed plausible by the said government agency.

One of the AMCB's member organizations, the UNIFIL, incorporated this demand in their migrants' agenda, a list of OFW demands, that they submitted to the then newly-elected Philippine president in mid-2016. The Philippine president took notice of this specific demand, and through the Department of Labor and Employment, relayed the demand to the HK government. The Hong Kong government acceded to the demand and in early 2017 released a revised employment contract for MDWs with clear regulations regarding window cleaning.

KASAMMAKO (South Korea)

Establishment of KASAMMAKO

The *Katipunan ng mga Samahan ng Migranteng Manggagawa sa Korea*, or Unity of Filipino Migrant Workers in Korea (KASAMMAKO) was formed in March 8, 1998 as a result of a victorious campaign to uphold and protect Filipino migrant workers' rights in South Korea.

During this period, migrant workers in South Korea were confronted with problems. Unemployment among migrant workers soared when the Asian Financial Crisis of 1997 hit the country. The then-existing Industrial Trainee System (ITS) made the situation all the more difficult as salaries of migrant workers under this system were much lower than the salaries of local workers and many were forced to run away and become undocumented.

On January 22, 1998, the APMM through its country coordinator in South Korea coordinated with five Filipino migrant workers' organizations to seek dialogue with representatives of the Philippine Embassy to discuss these issues confronting OFWs.

They developed several demands for the Philippine government to address, namely: a) lower the fee for issuing the Philippine passport; b) temporary shelter for unemployed Filipino migrant workers; c) and free ticket for those who wish to go back to the Philippines. The Philippine Embassy agreed to the first two demands while subjecting the third to further discussion. In a succeeding dialogue (March 18), the Philippine ambassador agreed to issue free tickets for Filipino migrant workers who wished to be repatriated.

These developments inspired five organizations to form a coordinating body that would follow through the demands and actions from the Philippine Embassy. Later on, this coordinating body would develop into an alliance called KASAMMAKO. Its founding member organizations were New Era Foundation, Bicol Association, Hyewa Dong Filipino Community, Association of Filipino Workers of Kwangju (AFILWOK) and Federation of Filipino Migrant Workers in Korea (FFWK).

Cooperation and partnership with KASAMMAKO

Through the country coordinator, the APMM has worked closely with KASAMMAKO in many campaigns and initiatives.

The campaigns led by KASAMMAKO centered on upholding the rights of Filipino migrant workers and engaged primarily with the Philippine Embassy to act on demands. Some of the successful campaigns led by KASAMMAKO included the lowering of the Philippine passport's cost, opening of the Philippine Embassy on Sundays when most migrant Filipino workers are off from work (2002), and providing full financial assistance to repatriation of deceased Filipino migrant workers.

Both APMM and KASAMMAKO also worked on the issues of undocumented migrants and marriage migrants. Both organizations have cooperated with church institutions like the Presbyterian Church of the Republic of Korea (PROK), Presbyterian Church of Korea (PCK), and various civil society organizations who were part of the Joint Committee for Migrants in Korea (JCMK), a loose network addressing issues and concerns of migrant workers in South Korea.
In 2010, an international conference of service providers on the conditions of undocumented migrants was organized by APMM and KASAMMAKO in Seoul and attended by more than 100 participants from South Korea and other countries. Discussions focused on the conditions that push migrants to become undocumented, challenging existing government policies that deny migrants their rights, and developing mechanisms to provide assistance to undocumented migrants.

APMM and KASAMMAKO have developed agreements and cooperation with local civil society, especially churches, who could provide both refuge and assistance to distressed undocumented migrants.

Development outcomes

KASAMMAKO and APMM drummed up the campaign challenging the Industrial Trainee System stating that migrant workers received subhuman wages or denied payment of wages and were confronted with dangerous working conditions. Instead of helping migrant workers, the system pushed many of them to run away and become undocumented. In 2000, 64% of 223,000 migrant workers in South Korea were deemed undocumented.

This campaign was supported by current partner organizations in South Korea who also conducted separate actions to pressure the South Korean government to change the current system for migrant workers.

When then Philippine president Joseph Ejercito Estrada visited South Korea, KASAMMAKO and APMM sought dialogue with him through Philippine Labour Secretary Bienvenido Laguesma calling for the scrapping of the ITS. They reported Filipino migrant workers' experienced vulnerability to abuse under the ITS, forcing many to run away and become undocumented. This issue became part of dialogues between the South Korean and Philippine governments.

Such a campaign calling for the repeal of the ITS gathered broad support from local organizations in South Korea. In 2001, the South Korean government eventually took out ITS and later on introduced a bill that would later develop into the Employment Permit System, (EPS), which raised the status of migrant workers from trainee to worker and extended the number of years of stay for migrant workers in South Korea.

KASAMMAKO and APMM, together with JCMK and various advocacy groups for migrants' rights, campaigned to stop the crackdown on undocumented migrants and instead develop an amnesty program for all undocumented migrants. The Korean Confederation of Trade Unions also expressed support to the cause of migrant workers and later helped form the Migrant Trade Union.

Lessons and Challenges

From our experience of working with migrant organizations in South Korea and Hong Kong, we can draw the following lessons:

1. That human rights of migrants are and should be at the core of any development discourse.

As international labor migration increases further, upholding and protecting the rights and freedoms of migrants is imperative. Migrants, especially temporary migrant workers, continue to be vulnerable to abuse and exploitation. Human labour trafficking is on the rise.
The formulation and passage of international conventions related to migration, such as the UN Convention for the Protection of the Rights of Migrant Workers and All Members of Their Families, and the ongoing United Nations process to develop the Global Compact on Migration, all confirm the recognition of migrant rights and the need to protect and assert the rights of migrants all over the world.

2. People's empowerment lead to people claiming rights.

From the formation of both the Asian Migrants Coordinating Body in Hong Kong and KASAMMAKO in South Korea, to the joint actions and engagements that they and APMM have conducted, one can conclude that only through organizing, educating and mobilizing people, in this case migrants, can they collectively realize and claim their rights.
Through capacity building, migrants develop their skills to understand their situation, to address and devise means to resolve their concerns, and to confidently engage with other actors, such as governments. Through empowerment migrants are able to realize their full potential as development actors.

3. Government policies on migrants need to be challenged.

Current policies of the Hong Kong and South Korean governments on migration and migrant workers are lacking in terms of championing rights of migrants and ensuring their capacity to engage in policy advocacy.

The campaigns and engagements of both AMCB and KASAMMAKO in cooperation with APMM are focused on amending and challenging existing policies that either limit the rights of migrants or make them more vulnerable to abuse or danger.

It is important then to challenge governments of both migrant-sending and migrant-destination countries to ensure comprehensive protection of the rights and welfare of migrants.

Recommendations

We make the following recommendations:

1. For governments of both migrant-sending and migrant-destination countries to recognize migrants as development actors and create an enabling environment for their meaningful participation and engagement. In the current development discourse, migration is perceived as a tool for development although conversations around ensuring and protecting the rights of migrants are limited, to say the least.

We also recommend the full recognition and protection of rights of all migrants, regardless of their status, condition or age.

2. For donors to ensure a human rights based approach in all cooperation and joint initiatives they conduct with governments and other stakeholders that center on migration and/or involve migrants.
3. For all civil society organizations to advocate and initiate actions that will aid in the empowerment of all migrants, especially those in vulnerable conditions such as undocumented migrants.

Contributing Organisations

Africaine de Recherche et de Coopération pour l'Appui au Développement Endogène (ARCADE)

African Forum and Network on Debt and Development (AFRODAD)

AidWatch-Canada

Asia Pacific Mission for Migrants (APMM)

Cameroon Youths and Students Forum for Peace (CAMYOSFOP)

Council for People's Development and Governance (CPDG)

Institute of Development Research and Corresponding Capabilities (IDRAC)

International Indigenous Peoples Movement for Self-Determination and Liberation (IPMSDL)

NGO Collective for Food Security and Rural Development (COSADER)

People's Coalition on Food Sovereignty (PCFS)

Programme on Women's Economic, Social and Cultural Rights (PWESCR)

The Arab Group for the Protection of Nature (APN)

Trade Union Development Cooperation Network (TUDCN)

Union Nacional de Instituciones para el Trabajo de Accion Social (UNITAS)

Policy Research on the Implementation of a Human Rights-Based Approach in Development Partnerships

This Policy Research on the Implementation of a Human Rights-Based Approach in Development Partnerships is a collection of critical papers written by 14 member organizations of the CSO Partnership for Development Effectiveness (CPDE). Guided by the United Nations Development Group's Common Understanding of the Human Rights-Based Approach (HRBA), contributions examine HRBA in development partnerships for sustainable development, covering 25 countries around the globe.