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Chapter 2

THE PREMISE/PROMISE OF WELL-BEING: HUMAN RIGHTS AND THE CASE FOR EQUALITY IN THE POST-2015 DEVELOPMENT AGENDA

*Alisa Clarke**

Human Rights Officer, UN Office of the High Commissioner for
Human Rights, President, Global Vision Institute

ABSTRACT

There is much talk of inequality. Statistics paint disturbing pictures of growing gaps between the rich and poor. In response, the United Nations has sought to develop an inclusive post-2015 development agenda for poverty eradication and sustainable development. What would the outcome of this global effort look like? What would compel both the privileged and the under-privileged to adopt new behaviours for more even distribution of resources? Fundamentally, the vision is one of happiness, of a life of well-being. One core guidepost is the *Universal Declaration of Human Rights 1948*. This paper affirms the principles of adequacy, duty, and limitations of rights in community. The argument is both rights-founded, invoking accountability under international law on the premise of well-being, as well as utilitarian, demonstrating that the path of adequacy, limitation, duty and community is also a proven path to fulfillment of the promise of human rights and development, that is, individual and collective well-being and happiness.

Keywords: adequacy, community, development, duty, equality, well-being

INTRODUCTION

There is much talk of inequality. National, regional and global statistics paint disturbing pictures of growing gaps between the rich and the poor. Even as we celebrate small victories

* Corresponding author: Email: alisa.clarke@globalvisioninstitute.org.

in the achievement of Millennium Development Goals (MDGs), we are cognizant of the shortcomings of income growth for some at the expense of many. In response, the UN has been working towards an inclusive and people-centered post-2015 development agenda to succeed the MDGs, aimed at poverty eradication and sustainable development. This agenda will further promote peace and security, democratic governance, the rule of law, gender equality and human rights for all. Critically, it will now also be a commitment by all nations, including industrialized and traditional donor nations.

What then would the outcome of this global effort look like? What would compel both the privileged and the under-privileged to adopt new behaviours that would effectively involve a more even distribution of resources? What have we learned from the historical experiences of wealth, poverty, economic doctrines and social contracts that could inform this ideal of the human condition?

Fundamentally, the vision is one of happiness, of a life of well-being. And while certainly the components of this state are highly subjective, there are commonalities that are shared by us all. One potential core guidepost of this common understanding is the framework of human rights, broadly conceived, that is, covering all rights and responsibilities, including economic, social and cultural rights as well as civil and political rights. In this respect, the *Universal Declaration of Human Rights 1948 (UDHR)*, the *International Covenant on Economic, Social and Cultural Rights 1976* and the *International Covenant on Civil and Political Rights 1976*, themselves the outcomes of international negotiations on global aspirations, are useful touchstones for a fuller exploration of what we seek.

In particular, this chapter will affirm the often neglected significance and application of the principles of adequacy, duty, and the limitations of rights in community. It maintains that human rights, thus more comprehensively understood, provides the scaffolding around which a model for well-being can be offered, and corresponding obligations and behaviours elicited.

This chapter thus makes the following arguments:

In section “I: The promise of well-being,” it contends that the principles of well-being fundamentally include those of adequacy, sharing and community.

Section “II: The premise of well-being” demonstrates that the above principles are also enshrined in human rights instruments and jurisprudence.

For section “III: Inequality,” it is asserted that the redistribution of resources engendered through application of the above principles can mean greater equality.

In section “IV: Well-being and development,” the chapter explores how particular policies of the well-being agenda can therefore be usefully included in the post-2015 framework, notably given its espoused focus on reducing inequality, with a view to a truly transformative global agenda.

The chapter concludes with an assessment of the implications of this more comprehensive conceptualization of the human rights framework for achieving well-being and related equality in a new global development agenda.

I. THE PROMISE OF WELL-BEING

As a primary motivator of human behavior, understanding of the mechanics of well-being is fundamental to designing effective and widely acceptable frameworks for action, including action at community, national and global levels.

The State of Well-Being: Factors and Implications

This chapter uses the terms happiness and well-being inter-changeably¹ as descriptions of life satisfaction. The state of happiness has been the subject of growing research, notably since the work of Richard Easterlin in 1974. He used data on subjective measures of happiness in nineteen countries to examine the relationship between income and happiness. His findings yielded a paradox whereby within-country evidence showed that for a given point in time, those in higher income groups were happier on average than those in lower income groups; however, over time and across countries the link between income and happiness weakens. [Easterlin, pp. 89 -121]

More recent research distinguishes between emotional well-being (experiences of joy, stress, sadness, anger, etc.) and life satisfaction (thoughts people have about their life). In one 2010 U.S. study [Kahneman, D. and Deaton, A., pp. 16489–16493], it is determined that life evaluation rises with income, but that for emotional well-being, happiness does not increase beyond an annual income of \$75,000, representing a decreasing marginal utility of income from this income level.

Additional growing research tests assumptions of the economic approach and the understanding of utility in economics, the implications of differences in experienced utility, and possibilities for public policy. [Frey, B. and Stutz, A., p. 679]

Such studies are among those that informed the 2012 World Happiness Report [Helliwell J., Layard R. and Sachs J.], presented on the occasion of the UN High Level Meeting on Well-being and Happiness in 2012. The Report examines the factors facilitating well-being, presents data on happiness levels globally and related methodologies, and suggests directions for policy. Among the key external factors identified are income, work, community, governance, values and religion, and, at the individual level, mental and physical health, family experience, education, gender, and age. The Report contends that:

“raising incomes can raise happiness levels, especially in poor societies, but fostering cooperation and community can do even more, especially in rich societies that have a low marginal utility of income. It is no accident that the happiest countries in the world tend to be high-income countries that also have a high degree of social equality, trust, and quality of governance.” (p. 7)

The document suggests that new indices of a nation’s well-being should be considered beyond Gross Domestic/National Product for economic stability that better capture community cohesion, support to the most vulnerable, ethical standards and environmental sustainability. While securing basic living standards is essential for happiness, beyond this baseline, policy goals should include high employment and decent work; a strong, inclusive and participatory community with high levels of trust; improved physical and mental health; support for family life; and universal good-quality education.

In this vein, one exploration of the relationship between social capital, in the form of social trust, and income inequality, in the case of the U.S., demonstrated considerable evidence of social capital being a significant equalizer. [Ram, R., p. 89]

¹ The Merriam-Webster dictionary defines happiness as ‘a state of well-being or contentment’ <http://www.merriam-webster.com/dictionary/happiness>, accessed on 21 August 2015.

New studies also scientifically validated the principle of human psychology that people are happier when they spend money on others rather than on themselves (as well as on experiences, treats, time and deferred consumption). [Dunn, E. and Norton, M., pp. 105 - 134]

The above findings all underscore the elements of a development model as promoted in this chapter under the human rights rubric, where adequacy and limitations may be equated with a particular income range and related opportunities, goods and services, and where the notion of community and interdependence is emphasized and promoted, with attendant duties and benefits.

II. THE PREMISE OF WELL-BEING - WELL-BEING AND HUMAN RIGHTS

In some of the theoretical literature, human rights and well-being are presented as conflicting philosophical frameworks. This derives from the juxtaposition of welfarist consequentialism or utilitarian perspectives on the one hand, according to which consequences are assessed based on maximizing some measure of overall well-being [Singer, P., pp. 229 - 243], and traditional rights theories on the other hand, which are concerned with choices independent of consequences, and whereby individuals are entitled to exercise a kind of veto over policies aimed at benefitting a majority or achieving overall well-being, so that individual rights are unrelated to well-being, as asserted for instance by Immanuel Kant. [Cronin C. and De Greiff P. Eds., p. 165 - 201]

Several other scholars attempt to demonstrate that human rights may not maximize well-being [Sen, A.] or minimize violations of individual rights [Nozick, R.], to the extent that there are necessary trade-offs in the exercise of individual and collective rights in specific instances when the two cannot readily co-exist. James Griffin [Griffin, J.] concludes that rights cannot be adequately based on deliberations of well-being, but should be understood as being grounded in the requirements of normative agency, while Judith Jarvis Thomson [Thomson, J. J., pp. 149 - 175] refers to the notion that infringements of rights can be justified by considerations of well-being.

William Talbott [Talbott, W.] and others attempt to reconcile the apparent conflict by placing the two types of theories on two different levels. This second-order consequentialism defends first-order rights by redirecting the focus of consequentialist assessment from acts to rules or institutions or social practices. He further contends that there are two ways that consequentialist considerations can play an important role in most non-consequentialist theories of human rights. First, a negative role, in allowing the possibility of making at least minor exceptions to human rights norms because of the bad consequences of not infringing them. Secondly, the positive role of including some sort of right to well-being. In this latter respect, while non-utilitarian in principle, Talbott suggests that the capabilities approach of Amartya Sen [Sen, A.] and Martha Nussbaum, [Nussbaum, M.] notably as applied to UN development indicators, approximate well-being, including as they do “capabilities to lead the kind of life [people] value—and have reason to value” [Sen, A., p. 18] and recognizing the importance of assessing social arrangements by their consequences for well-being. [Sen, A., p. 60]

This chapter presents another perspective, in asserting that the above potential conflict is based on a limited framing of the human rights regime, one which neglects the dimensions of adequacy, duty, community and limitation, as articulated in the *UDHR* and elsewhere. Rights theories *per se* are thus not negated, but viewed as part of a more comprehensive approach. The notion of limitation under this rubric admits as legitimate concern with potential tradeoffs in reconciling individual and collective rights.

The argument being posited here further suggests that there is a false dichotomy between individual and collective well-being, in that individual well-being is shown to be a function of collective well-being, asserted in the section above on the promise of well-being. Utilitarian perspectives are also thus not negated, notably when inclusive of distribution beyond average utility, as accommodated in Parfit's triple theory. [Parfit, D.]

These positions are explored further below, with respect to the premise of well-being. The overall argument is therefore supportive of both rights theories and distributive utilitarianism, and goes some way to eroding the distinction between them.

The Premise of Well-Being in International Human Rights Law

Adequacy

Adequacy in International Law

Article 25 (1) of the *UDHR* states that 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services'

In contrast, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, an international treaty with 161 State Parties, while invoking the *UDHR* in its preamble, makes no specific reference to well-being. Article 11 of the *ICESCR* recognizes 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.' The content of this right under the *ICESCR* is more fully articulated in the general comments (4, 7 and 12; also in 5, 6, 14, 15) on the *ICESCR*, wherein various standards are also established.

However, the key concern here is with the notion of adequacy *per se*. The term necessarily implies the question – 'Adequate for what?'² Since no explicit response to that question is offered in the *ICESCR* but is given in the *UDHR*, invoked in the preamble, and is not available in any other preambular reference, can we not reasonably infer that 'the health and well-being of himself and of his family' is implied? Well-being thus becomes the need or purpose to be satisfied by the desired standard of living.

Further, Article 11 of the *ICESCR* recognizes 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.'(emphasis added). Here the task of

² The Merriam-Webster dictionary defines 'adequate' as 'enough for some need or requirement,' while the Oxford dictionary defines adequate as 'enough in quantity, or good enough in quality, for a particular purpose or need' Merriam-Webster Online Dictionary <http://www.merriam-webster.com/> Accessed 6 March 2014, and Oxford dictionaries <http://www.oxforddictionaries.com/definition/learner/adequate/> Accessed 18 October 2015.

reconciling the *UDHR* and *ICESCR* provisions expands. A coherent reading of Article 25(1) of the *UDHR* could rationally lead one to the conclusion that there is a point at which the satisfaction of certain needs effectively serve a person's well-being. Once these standards are met, the rights of the person are fulfilled. An individual's entitlement beyond that point is not assured within this framework of understanding. It may well be that one can avail oneself of circumstances that surpass these standards, but it is not an explicit entitlement.

What then is meant by 'continuous improvement of living conditions'? The right in question is still the singular right to an adequate standard of living. This is made clear by the sentence immediately following this phrase, such that the whole of Article 11 states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. (emphasis added)

Since reference is being made to the totality of the one right to an adequate standard of living, 'continuous improvement of living conditions' can only mean the ongoing enhancement of living conditions, all of which nonetheless serve the purpose of satisfaction of well-being, which is itself the limiting condition of the entitlement.

Adequacy in International Jurisprudence

The legal obligations of States under the *ICESCR* cover the duty "to take steps, individually and through international assistance and co-operation... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means" (Article 2, 1).

In determining the roles to be played by various State Parties in international co-operation towards fulfilling this duty, the concept of adequacy *per se* is already implicitly being applied. The Concluding Observations of the UN Committee on Economic, Social and Cultural Rights (CESCR) concerning the fourth periodic report by Japan, for example, notes that "The Committee, while acknowledging the contribution of the State party to official development assistance, encourages it to expeditiously increase the level of its contribution with a view to achieving the international standard target of 0.7 per cent." [UN CESCR, para. 32] The same recommendation is made for Austria [UN CESCR, para. 10] and Belgium. [UN CESCR para. 9] No such recommendation is made, however, in the Concluding Observations for Rwanda, [UN CESCR] Ecuador [UN CESCR] or Azerbaijan. [UN CESCR]

The international standard target of 0.7 per cent of Gross National Product referred to by the CESCR derives from the pledges made by high-income countries since 1970 in forums from the UN General Assembly (GA), the Third UN Conference on Least Developed Countries and the 2002 UN International Conference on Financing for Development. The evident criterion for adequacy being applied, through which the duty for official development assistance (ODA) is assessed, is that of national income or GNP.

The nature of State Party obligations, as spelled out in General Comment 3 of the CESCR, also entails the obligation to recognize, respect, protect and fulfill the associated human rights. These duties encompass both negative duties, such as the prevention of

violations by third parties e.g., forced evictions, and positive duties, such as legislative, judicial, institutional, administrative, policy, budgetary, economic, social and educational measures, and associated strategies.

In addition, as noted above, the content of the ICESCR right to an adequate standard of living is more fully elaborated in General Comments 4, 7 and 12 also in 5, 6, 14, and 15 of the CESCR. They provide a broad outline of the contours and substance of the notion of adequacy as it applies to the right to an adequate standard of living.

General comment 4 on the right to adequate housing posits that ‘While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context.’ [UN CESCR, para 8] It further identifies these aspects as legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. General Comment 7 relates to forced evictions.

General Comment 12 [UN CESCR] on the right to adequate food determines that the content of the concept of adequacy implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture, as well as the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

Reference to an adequate standard of living is also made in CESCR General Comment 5 on Persons with Disabilities. Here the right specifically includes access to adequate food, accessible housing, adequate clothing and support services.

Similarly, in General Comment 6 on the economic, social and cultural rights of older persons, the CESCR attaches great importance to the UN Principles for Older Persons, which provides that older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.

CESCR General Comment 15 on the right to water notes that the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. The content of the right entails availability; quality; accessibility in terms of physical accessibility, economic accessibility, and without discrimination; as well as information accessibility.

Community and Duty

Another fundamental principle of human rights is that of community, notably as it relates to duty. Article 29 (1) of the *UDHR* states that ‘everyone has duties to the community in which alone the free and full development of his personality is possible.’ Interdependence and mutuality are thus posited as the primary ground of our very being and subsistence.

The prominence of community in cultural life is reflected in the degree to which this dimension is incorporated into the human rights systems of different geographical regions and corresponding cultures. This is demonstrated with the *African Charter on Human and Peoples’ Rights 1981* [Organization of African Unity] which most comprehensively enshrines communal entitlements. Its Article 27 states that every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community, and that the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest. Its Article 28 further itemizes elements of duty, encompassing, *inter alia*,

- To work for the cohesion and respect of the family;
- To serve his national community by placing his physical and intellectual abilities at its service;
- To pay taxes imposed by law in the interest of the society;
- ... and, in general, to contribute to the promotion of the moral well being of society

The *American Convention on Human Rights 1969* [Organization of American States] in its Chapter V on Personal Responsibilities establishes the relationship between duties and rights, such that every person has responsibilities to his family, his community, and mankind. Importantly, ‘the rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.’ (Article 32, 2.)

For its part, in its Preamble, *the Charter of Fundamental Rights of the European Union 2000* [European Union] declares that enjoyment of the rights so referenced entails responsibilities and duties with regard to other persons, to the human community and to future generations.

In a similar vein, *the Human Rights Declaration 2012* of the Association of South East Asian Nations, while not having the legal status of an international treaty as the charters above, nonetheless upholds that ‘the enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives.’ [ASEAN, para. 6]

Evolving Notions of Duty: Business and the Environment

As the private sector has assumed an increasing role in the global economy, notably with the rise of transnational organizations and globalization from the late 1990s, their impact on the enjoyment of human rights has become the subject of growing attention. Questions of child labour, workers’ rights, land rights, the rights of indigenous persons and of migrants, among others, are ever more viewed as pertinent to the conduct of business. As such, in 2005 the UN Secretary-General appointed a Special Representative with a mandate to identify and clarify international standards and policies regarding business and human rights, culminating in the 2008 framework “Protect, Respect and Remedy: A Framework for Business and Human Rights” and its endorsement in 2011 by the UN Human Rights Council as the *Guiding Principles on Business and Human Rights*.

The *Guiding Principles* outline the duty of States to protect human rights, and go further in establishing the responsibility of companies to respect human rights, encompassing both the legal obligation to comply with national law, as well as the responsibility to respect the of relevant international instruments where national law is absent, inclusive of the *UDHR*, *ICESCR*, *ICCPR* and the eight fundamental International Labour Conventions. The *Guiding Principles* also determine that both states and companies should provide remedies to victims of abuses attributed to companies. Notwithstanding the fact that these guidelines do not have the status of international law, and the distinction between duty and responsibility, this development is illustrative of the widespread acceptance of the concept of duty towards the larger community. This is all the more striking by virtue of the fact that it extends such responsibilities to non-State actors, who are traditionally not cast as duty-holders under international law. While operationalization of the guidelines and growing knowledge on the challenges of its application are ongoing, [Buhman, K., p. 206] its approval as a normative

framework, notably through a process of consultation involving governments, NGOs and businesses alike, gives credence to consideration of its implementation among a number of companies in the future.

The *Guiding Principles* assume particular importance with respect to development concerns and well-being, notably in so far as they intersect with human rights standards. Here considerations regarding the right to health have been especially relevant, drawing attention, for example, to the duties of pharmaceutical companies to ensure access to medicines. [Hunt, P. and Lee, J., p. 220]

Similarly, duties with respect to the environment are gaining ground as a factor in human rights discourse, including through the actions of businesses. One example of this is the right to water and sanitation, affirmed as a legally binding human right by the UN Human Rights Council in 2010. A business may impact on the enjoyment of this right, though, for example, polluting activities, as documented for the Niger Delta. [Gaughran, A., p. 52]

More broadly, the thinking underlying the relationship between the environment and human rights is based on the idea that the enjoyment of human rights is fundamentally dependent on the functioning of our ecosystems, with evident linkages to sustainable development. With respect to climate change, this dependence is expressed through, inter alia, landslides and flooding and corresponding displacement and further marginalization of the poor. [Humphreys, S. pp. 37 - 42, 320 - 330] In this context, the international community is mired in an acceptance of the notion of duty that is articulated in terms of common, but differentiated, responsibilities between developed and developed countries, which has not proven productive to consensus or action in countering these effects, as in the UN *Climate Change Convention* meetings. In response, some scholars point to the customary international law principle of “do no harm,” which requires states to ensure that activities within their jurisdiction or under their control do not cause damage to the environment of other states, and that could thus serve as an obligatory component of multilateral environmental agreements and human rights. While questions have been raised over the effectiveness of litigation [Tully, S., p. 213], at least one study identifies a duty of “due diligence” to ensure that states’ policies, actions, or possible neglect do not impede the realization of human rights elsewhere. [McInerney-Lankford S., Darrow, M.]

Limitation

As ascertained in the *American Convention* mentioned above, and in the theoretical literature previously outlined, an extension of the notion of community and duty is that of limitation. We are more forcefully aware than ever in history of the impact of our individual actions on others, as every kind of media feeds our growing collective awareness. This awareness implies expanded consideration of the implications of our choices on the general welfare of others, and a thoughtful circumscribing of our actions to accommodate that knowledge.

In this respect, and notably in alignment with the assertion of the principle of the indivisibility of human rights, whereby rights cannot be ranked, Article 29 (2) of the *UDHR* claims that ‘everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.’

This concept is more fully articulated, for example, in General Comment 10 of the Committee on Civil and Political Rights regarding the right to freedom of opinion as enshrined in the *International Covenant on Civil and Political Rights*. [UN CCPR] The Committee notes that Article 29 stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. While such restrictions can only be imposed by a State subject to certain conditions (of necessity, as provided by law, for respect of the rights or reputations of others, or for the protection of national security or of public order, or of public health or morals) the premise of limitations in the interest of larger considerations, notably at the individual level, signify that human rights may be exercised only to the degree that they allow for the exercise of human rights by others and the larger community.

Examinations of the challenges and dilemmas posed by these possible tradeoffs point to the need for a heightened appreciation of the specific context, legislative framework, actors, and approaches to determining facts, [Tran, C., p. 257]; concern for the comparative implications of different courses of action [London, L., p. 11]; as well as consideration of the balance of forces of sovereignty and accountability. [Debeliak, J., p. 422]

III. INEQUALITY

Equality is a cornerstone of human rights, enshrined in Article 1 of the *UDHR*. The operationalization of this principle takes myriad forms in, *inter alia*, international, regional and national law, institutions, policies and programmes.

The *Declaration on the Right to Development*, adopted in 1986, is one of the clearest applications of the principle of equality to the international arena. The right to development is a concept that goes some way to addressing the above -mentioned principles of duty and community, where community may be viewed as the community of nations. It is concerned, *inter alia*, with asserting the need for redress of historical human rights violations that have wrought dependence and poverty, especially in former colonies. It further invokes the responsibility for development, in alignment with Article 29 of the *UDHR*, as well as the duty to cooperate to promote observance of human rights by all. Official Development Assistance may be viewed as one facet of fulfillment of the right to development.³

In a similar vein, stronger calls are being made for cooperation between developed and developing countries with the recognition of rising inequality within and between nations. The report of the UN High Level Panel of eminent persons on the post-2015 development agenda, the Open Working Group Proposal for Sustainable Development Goals, [UN General Assembly] and the outcome document of 2015 intergovernmental negotiation “Transforming Our World: The 2030 Agenda For Sustainable Development”[United Nations] make addressing inequality a prominent theme. In this respect, the call is made for the end of

³ “Since 2010, the year it reached its peak, ODA has fallen by 6.0% in real terms. Disregarding 2007, ...the fall in 2012 is the largest since 1997. ...The financial crisis and euro zone turmoil led many governments to implement austerity measures and reduce their ODA budgets. Despite the current fiscal pressures, however, some countries have maintained or increased their ODA budgets in order to reach their set targets.” OECD. (2013). Development Co-operation Report 2013: Ending Poverty OECD Publishing (2013).<http://dx.doi.org/10.1787/dcr-2013-en>.

extreme poverty by 2030, [Un Panel of Eminent Person on the Post-2015 Development Agenda] a goal also adopted by the World Bank. The Panel vision encompasses the end of extreme poverty regardless of status so ‘no one is left behind,’ sustainability, inclusive growth, peace and responsive governance, and, notably, a new global partnership of mutual accountability. The proposed framework thus also brings into play the principles of duty and community. It further tacitly gives a nod to the notion of limitation, in advocating swift reduction in corruption, illicit financial flows, money-laundering, tax evasion, and hidden ownership of assets.

In thus invoking the above principles, the legal authority of human rights and related international instruments can be brought to bear in further ascertaining the nature and degree of entitlements and obligations regarding the right to a standard of living adequate for well-being, both individually and at national and international levels.

While the justiciability of economic, social and cultural rights is in its nascent stages, the evidence base can draw on a growing number of cases and decisions. These include the 2012 Committee on the Elimination of Discrimination Against Women ruling on gender discrimination in the area of employment in Turkey [CEDAW]; the 2012 judgement by the Botswana High Court to overturn a customary law preventing women from inheriting the family home [Botswana/High Court of Botswana]; the 2012 ruling issued by Mexico on the human right to water and sanitation [Second Tribunal Cuernavaca, Morelos, Mexico]; the 2012 judgement by the Durban High Court in South Africa to provide permanent housing for poor families that had been evicted from an informal settlement in order to allow for the construction of a road [Durban High Court]; the 2013 Supreme Court of Justice ruling in Honduras ordering health services for public hospital patients [Honduras, Supreme Court of Justice]; and the 2013 decision of the European Committee of Social Rights against Greece on its failure to mitigate the impact of large-scale pollution on the health of citizens [European Committee of Social Rights]; as well as a body of case law on the right to adequate housing [UN General Assembly, Special Rapporteur on Adequate Housing, paras. 55 - 63].

The entry into force in 2013 of the *Optional Protocol to the ICESCR*, establishing an individual complaints mechanism, also lends enhanced credibility and weight to efforts at justiciability in the realm of economic, social and cultural rights.

In further placing new dimensions of development under the rubric of international law, a new layer of accountability is thus established. This can conceivably add critical new substance, jurisprudence as well as accountability to the post-2015 development architecture and the related quest for equality.

IV. WELL-BEING AND DEVELOPMENT

The concept of development successfully conveys the sense of progress towards a higher level of functioning. For many it is a beacon that lights the way from situations of deprivation to employment, goods and services that more reliably ensure their enjoyment of human rights.

Development suffers, however, from being interpreted as open-ended, and is often a synonym for unchecked wealth accumulation with none of the dimensions of adequacy, interdependence, or limitation identified above as significant for well-being. This may be linked to the more widespread acceptance of the capitalist model of economic growth

following the end of the Cold War and the demise of communism in the east, moving from one extreme to the other as we experimented with the social contract that would best express the optimal equilibrium between our individual and collective identities.

Against this backdrop, the global economic and financial crisis of 2008, that reverberates still, has perhaps compelled us to acknowledge that the pendulum may have swung too far, and that any economic model must admit of a place for other players beyond concentrated privilege, for a sense of sufficiency beyond greed, and for restrictions of the field of play. [Ghent, A., p. 246] It is perhaps in that space of experience of the limitations of economic growth and development that we may find the greatest openness for designing our ideal global development agenda.

The efforts of the Government of Bhutan, and in recent years the Governments of Britain, Canada and France, to make happiness operational in its policy approach has thus spawned and supported a growing body of evidence and practice on this subject.

The Bhutanese Government frames well-being and happiness in terms of ‘integrated material, relational and spiritual development’ and counters the yardstick of Gross Domestic Product with its own Gross National Happiness index. The index covers nine domains – living standards, health, and education, the use of time, good governance and ecological resilience, psychological well-being, community vitality, as well as cultural diversity and resilience.

In France the 2008 Commission on the Measurement of Economic Performance and Social Progress sought, *inter alia*, to identify the limits of GDP as an indicator of economic performance and social progress and to assess the feasibility of alternative measurement tools. Among the recommendations was a shift in emphasis from measuring economic production to measuring people’s well-being. [Stiglitz, J. and Fitoussi, J.P.]

Similarly, the UK government in 2010 requested its Office for National Statistics to develop measures of well-being and progress. [Dolan, P., Layard, R. and Metcalfe, R.]

At the regional level, the Organization for Economic Cooperation and Development (OECD) also undertook an initiative on ‘Measuring the Progress of Societies,’ further publishing an experimental set of measures comparing evidence on well-being in developed countries and several non-member countries. [OECD] Also taking the effort forward are the EU Sponsorship Group on “Measuring progress, well-being and sustainable development” and the European Commission’s “GDP and beyond.”

Internationally, at the UN, Bhutan sponsored the 2011 GA resolution on ‘Happiness: Towards a holistic approach to development’ and the subsequent 2012 Meeting ‘Wellbeing and Happiness: A New Economic Paradigm.’

The meeting promoted a vision of balance among all aspects of national and global wealth including natural, human, economic, social, and cultural wealth. Among the outcomes of the meeting were policy recommendations, whose criteria were ecological sustainability, fair distribution, efficient use of resources and contribution to the well-being of all life and to human happiness. These included removal of fossil fuel subsidies and chemical agricultural inputs, technology transfer, investment in sustainable infrastructure, small-scale local production and consumption, incorporation of traditional knowledge in agriculture and research, creation of common assets such as oceans, regulation of advertising, fair trade systems, increased progressivity of taxation, valuing of non-market natural/social/cultural assets and services through accounting systems and indices such as the GNH index and the UN Human Development index, frameworks to reward sustainable practice and penalize

unsustainable practice, increased financial and fiscal prudence, and working towards international consensus including through the process for determining the post-2015 development agenda. Importantly, recommendations were also made for inclusive societies and governments; for the new economic paradigm to be fully aligned with UN principles and conventions that include human rights, the rule of law and a rights-based approach; and for the promotion of compassion and altruism. [Royal Government of Bhutan]

The concept of development as happiness has also been examined from the perspective of cultural values. The results of a values assessment in Bhutan indicated that although the Bhutanese people have a Gross National Income per capita of less than US \$2,000, the level of anxiety and fear that is present in the culture of Bhutan is extremely low and the level of cultural alignment between the values of the people, and the values they experience in their daily lives in the culture of Bhutan, is high. Additionally, in one 2007 study, [White, A., pp. 17 - 20] Bhutan ranked eighth out of 178 countries in subjective well-being and was the only country in the top twenty happiest nations with a low level of GDP per capita. In remarking on this, and on the Bhutanese ideals largely reflected in the GNH index domains, Barrett [Barrett, R., p. 17] argues that in measuring happiness, consideration must also be given to values, in that people only experience happiness to the degree to which they are able to experience what they value. Surveys and policies should therefore also incorporate measures of values in the population, and acknowledge that the beliefs and values in a person's family, organization, community or nation can either limit or support the person in meeting their needs based on their values. Such an approach would seem a natural corollary to the standards proposed by the CESCR for cultural acceptability. It also responds to concerns raised by other scholars on the limitations of culturally subjective interpretations of happiness. [Duncan, G., p. 16]

Caution is also advised from some quarters regarding the use of happiness as an exclusive measure of progress. In addition to citing concerns with measurement and the short-term nature of data gathered, the point is made that happiness should not be promoted as an indicator at the expense of human rights indicators. [Stewart, F.]

CONCLUSION

A comprehensive application of the human rights framework to development, and more specifically to inequality in development, thus brings to bear civil and political, economic, social and cultural rights, and the right to development. It also calls upon the principles of duty and community, at individual, local, national and international levels. And importantly, this paper argues that new attention can be given to the concepts of adequacy and limitation in the respect, protection and fulfillment of the right to a standard of living adequate for well-being, with implications for the application of international law and justiciability of new principles.

The argument being submitted is in alignment with both rights theories, in invoking obligations and accountability under international law on the premise of well-being, as well as with utilitarianism, in demonstrating that the path of adequacy, limitation, duty and community is also a proven path to fulfillment of the promise and purpose of human rights and development, that is, individual and collective well-being and happiness.

The implications for policy are significant and diverse, and draw upon the significant momentum of well-being approaches in public policy circles at all levels. While specific economic prescriptions are beyond the scope of this paper, among these are conceivably consideration of national well-being indices for both developed and developing countries that incorporate community and the environment in addition to economic growth. Another useful indicator could be the optimal income level for a given society or nation beyond which marginal utility begins to decrease, suggesting the range for adequacy and limitations of income levels. Values assessments would further assure cultural acceptance and adequacy. Greater investment could thereby be made in sustainable infrastructure and technology, development of local markets, traditional knowledge, common assets, fair trade systems, frameworks for participatory decision-making and monitoring of development efforts, and the promotion of compassion and altruism.

Addressing inequality then also becomes a more holistic, dynamic, inter-dependent and mutually satisfying enterprise. We grow to see the task as involving the use of finite resources in keeping with an understanding of the more modest material needs required for our well-being, while also fundamentally reorienting our motivations around how much is to be gained by greater distribution among our neighbours as conceived along local, national and global dimensions. In thus expanding and renewing our understanding and application of human rights, we further energize the impetus towards its universal enjoyment, and its expression in the post-2015 development agenda.

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