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Human Rights and Private Sector Development: A Discussion Paper

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Abstract

There is a growing consensus that development cooperation activities should promote human rights, and that human rights can promote development. Many donor agencies, including Canada, have adopted human rights policies that guide their development cooperation activities. While there have been several decades of experience by international development agencies with both private sector development (PSD) as a tool for poverty reduction, and with human rights based approaches to poverty reduction, the links between the two in the form of rights based approaches to PSD remain relatively undeveloped.

The study draws on both a literature review and interviews with selected OECD donor agencies (DFID, SIDA, NORAD), the ILO; financial institutions (World Bank, IFC, EDC), and civil society organizations (CARE Canada, Oxfam Great Britain, Rights and Democracy), and finds approaches to both promoting human rights and PSD in developing countries an evolving field. The paper concludes with observations on human rights implications for donors in the areas of monitoring and accountability; opportunities and constraints in approaches that draw from “hard law” and “soft law”, and policy coherence. It offers some suggestions for capacity-building on human rights for donor agencies.

Acronyms

BDS	business development services
BEE	business enabling environment
CAO	Compliance Advisor Ombudsman (IFC)
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEP	CARE Enterprise Partners
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CIDA	Canadian International Development Agency
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CSR	corporate social responsibility
DAC	Development Assistance Committee (OECD)
DCED	Donor Committee for Enterprise Development
DFID	Department for International Development (United Kingdom)
EDC	Export Development Corporation (Canada)
FIAS	Foreign Investment Advisory Service (IFC, WB Group)
FDI	foreign direct investment
FIPA	Foreign Investment Protection Agreement
HR	human rights
HRBA	human rights based approach
HRIA	human rights impact assessment
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit mbH (Germany)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation (WB Group)
ILO	International Labour Organization
MSES	micro and small enterprises
MDGs	Millennium Development Goals
MIGA	Multilateral Investment Guarantee Agency (WB Group)
MNE Declaration	ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
NGO	non-governmental organization
NORAD	Norwegian Agency for Development Cooperation
ODA	Official Development Assistance
ODI	Overseas Development Institute (UK)
OECD	Organization for Economic Co-operation and Development
OVOP	one village one product
PSD	private sector development
RBA	rights based approaches

R & D	Rights and Democracy (International Centre for Human Rights and Democratic Development)
RTD	UN Declaration on the Right to Development
SIDA	Swedish International Development Cooperation Agency
SL	sustainable livelihoods
SME	small and medium size enterprise
UNHCHR	United Nations Office of the High Commissioner for Human Rights
UDHR	Universal Declaration on Human Rights
UNIDO	United Nations Industrial Development Organization
WB	World Bank
WIEGO	Women in Informal Employment: Globalizing and Organizing

Introduction

The year 2008 marks the 60th Anniversary Year of the United Nations Declaration of Human Rights, 10 December 2007 – 10 December 2008. Even before the Universal Declaration of Human Rights was agreed in 1948, however, the founding nations of the United Nations reaffirmed: “faith in fundamental human rights.”¹ They further agreed to promote human rights and to solve international “economic, social, health, and related problems,”² as well as to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” The Universal Declaration of Human Rights (UDHR) elaborates the human rights commitments encapsulated in the Charter, rights that were further clarified in the International Covenants on Economic, Social and Cultural Rights, and on Political and Civil Rights several years later.

While there is often a perception that international development cooperation agencies are, by the very nature of their work, “rights based” agencies, the relationship between “development” and “rights” is complex. This may reflect the very different language and approaches of development economics and human rights law, as well as different views on what constitutes “development” and the best way to achieve poverty reduction goals through economic development. There is a growing consensus, however, that development cooperation activities should promote human rights, and that human rights can promote development. A growing number of donor agencies have adopted human rights policies that guide their cooperation activities. In 2008, the Parliament of Canada adopted legislation that states that Canadian official development assistance (ODA) is to be provided in a way that is consistent with international human rights standards.

This paper, prepared by The North-South Institute with contributions from the Canadian International Development Agency, explores what integrating human rights in donor agencies’ private sector development (PSD) activities might entail. It also raises questions about human rights dimensions of the broader policy framework within which PSD interventions take place. In both bilateral donor agencies and many multilateral development and finance organizations, “human rights” have tended to be viewed as governance issues, concerned with ensuring that projects meet some minimum social, environmental and labour standards that are linked to international conventions and laws. It is only recently that agencies have turned to consider how to integrate human rights in their PSD strategies. Since the rationale for PSD interventions is usually to promote growth, human rights advocates may feel challenged to set out a “business case” for rights based approaches, and to identify entry points in projects through which to promote human rights goals. The purpose of this paper is to encourage broader discussion on opportunities and challenges in integrating human rights principles donor agencies’ PSD activities. A draft was presented at a workshop hosted by the Institute in November 2008, and some of the ideas from that discussion are reflected in this document.

¹ Charter of the United Nations, Second pre-ambular paragraph.

² Charter of the United Nations, Article 55.

The Preamble to the UDHR sets out a principle of broad collective responsibility:³

“Now, therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”

In our study and discussions with practitioners, we found this broad conception of responsibility set out in the Preamble of the UDHR, the inclusion of “every individual and every organ of society”, and encouragement to “strive” to promote respect for human rights, helpful in thinking about why and how to integrate rights based approaches (RBA) in PSD initiatives. We found the literature exploring RBA in the area of PSD quite limited and supplemented our literature review with interviews with selected donor agencies, non-governmental organizations, multilateral agencies and some private sector practitioners. Where we were unable to interview agency spokespersons, we relied on information posted on agency websites.

Approaches to promoting human rights (HR) have evolved as the range of actors has expanded from human rights lawyers to social movements, corporations, and even the World Bank. Donor agencies too have adopted a range of strategies as they experiment with rights based approaches. We begin our discussion by briefly setting out the human rights framework and rights based approaches to development (Section 1). A legalistic perspective on human rights in PSD, and guidance provided by the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, is included as Annex 1. This is followed in Section 2 by a discussion of trends in donor agencies’ thinking about PSD and growth, and the evolution from “charity” to “needs” and “rights” based approaches to development. Section 3 takes a broad look at the main strategies donor agencies have adopted in the area of PSD including initiatives targeting the business environment and provision of business development services. Many donor agencies have begun to engage with their private sector on corporate social responsibility initiatives, and we take a brief look at them and some related questions of policy coherence. Selected donor agency initiatives are presented in Section 4, including the International Labour Organization, and bilateral donor agencies in Norway, Sweden and the UK. Section 5 turns to financial institutions, notably the World Bank, the International Finance Corporation, and the Export Development Corporation, while Section 6 describes approaches by three civil society organizations: CARE, Oxfam Great Britain, and Rights and Democracy. Section 7 sums up our main findings and identifies some areas for further research.

³ Lowell Ewert has drawn attention to the space created by thinking more broadly about “responsibility”. See Lowell Ewert, Consultant’s Trip Report, MEDA/PTE Egypt, April 16 - 27, 2006.

1. Human Rights and Rights Based Approaches to Development

Human rights can be understood as the “basic universal legal or moral guarantees that belong to all human beings, and that protect individuals and/or groups from actions and omissions of the state and some non-state actors that affect fundamental human dignity ... they are, at core, (legal) guarantees against actions and omissions.”⁴ “Core human rights” are usually understood to be those set out in the following international human rights conventions:⁵

- Universal Declaration on Human Rights (UDHR, 1948)
- International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)
- International Covenant on Civil and Political Rights (ICCPR, 1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984)
- Convention on the Rights of the Child (CRC, 1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, 1990), and the International Convention for the Protection of All Persons from Enforced Disappearance
- Convention on the Rights of Persons with Disabilities (2006).

In addition to these core human rights instruments, other universal instruments relating to human rights that are particularly relevant for private sector development initiatives include those relating to rights of Indigenous peoples⁶, the right to health⁷, and workers’ rights as reaffirmed by the international community in the 1998 International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work. The ILO Declaration draws from the conclusions of the 1995 World Summit on Social Development which commit participants to safeguard and promote "basic workers' rights" based on the following eight ILO Conventions:

1. Freedom of association and the effective recognition of the right to collective bargaining:

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)

⁴ Klaus Decker, Siobhán McInerney-Lankford and Caroline Sage, Human Rights and Equitable Development: “ideals”, issues and implications. World Bank Working Paper, 2006, p. 3.
http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1118673432908/Human_Rights_and_Equitable_Development_Ideals_Issues_and_Implications.pdf

⁵ Office of the United Nations High Commissioner for Human Rights, <http://www2.ohchr.org/english/law/>

⁶ ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (1991), and the United Nations Declaration on the Rights of Indigenous Peoples (2007).

⁷ General Comment No. 14, ICESCR.

- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- 2. Elimination of all forms of forced or compulsory labour:
 - Forced or Compulsory Labour Convention, 1930 (No. 29)
 - Abolition of Forced Labour Convention, 1957 (No. 105)
- 3. Effective abolition of child labour:
 - Minimum Age Convention, 1973 (No. 138)
 - Worst Forms of Child Labour Convention, 1999 (No. 182)
- 4. Elimination of discrimination in respect of employment and occupation:
 - Equal Remuneration for Men and Women Workers for Work of Equal Value Convention, 1951 (No. 100)
 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

In Canada, Bill C-293, “the Official Development Assistance Accountability Act” (2008), states that “international human rights standards” means standards that are based on international human rights conventions and on international customary law.

The Right to Development

The centrality of development to human rights, i.e., that implementation of human rights depends on economic and social development, was recognized in 1979 when the UN Commission on Human Rights proclaimed the existence of the right to development.⁸ This was followed in December 1986, by the UN Declaration on Right to Development (RTD), which states that: “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”⁹ In this view, poverty is viewed as a human rights violation, and a rights based development policy “starts from the ethical position that all people are entitled to a certain standard in terms of material and spiritual well-being.”¹⁰

The Declaration on the Right to Development sets out a very broad view of “development” in terms of economic, social, cultural, and political advancement.¹¹ According to Rajeev Malhotra, this broad-based notion of development transformed the

⁸ Philip Alston and Mary Robinson, eds. *Human Rights and Development: Towards Mutual Reinforcement*. Centre for Human Rights and Global Justice, New York University School of Law. Oxford University Press, 2005, p. 1

⁹ Article 1.1

¹⁰ Jakob Kirkemann Boesen and Thomas Martin. *Applying a Rights based Approach: An Inspirational Guide for Civil Society*. Copenhagen: Danish Institute for Human Rights, 2007.

<http://www.humanrights.dk/files/pdf/Publikationer/applying%20a%20rights%20based%20approach.pdf>

¹¹ “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” Declaration on the Right to Development (UN Doc. A/41/128), and the Resolution on the Right to Development (UN Doc. A/41/133), December 4, 1986.

“right to development” from a “mere claim for a supportive international economic order ... to a multi-faceted and a cross-cutting human right.”¹² A 1990 “Global Consultation” on the realization of the Right to Development clarified the content and implementation, elaborated further by the Independent Expert on the Right to Development, Arjun Sengupta. In his interpretation, Sengupta placed importance on a *particular kind of economic growth* to relax the resource constraints on the implementation of the right to development. In his view, economic growth:

- must be consistent with human rights norms and principles
- policies must be equitable, non-discriminatory and participatory¹³
- policies must be pursued with accountability and transparency.¹⁴

The Right to Development is non-binding, and has been viewed with skepticism by many donors and observers. It does not address a key challenge for the development community, namely, how to interpret and apply these human rights covenants and declarations to the development process, nor a key challenge for the human rights community, namely, to understand how the development process can be used both to inform and enable the achievement of human rights.

UN Common Understanding

Donor approaches to integrating human rights have been guided by the United Nations’ Common Understanding (2003), which sets out a human rights mainstreaming approach based on three concepts:

- all programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments
- 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
- programmes of development cooperation contribute to the development of the capacities of duty bearers to meet their obligations and of rights holders to claim their rights.¹⁵

¹² Rajeev Malhotra, “Towards Implementing the Right to Development: A Framework for Indicators and Monitoring Methods”, in Bård A. Andreassen and Stephen P. Marks, eds., *Development as a Human Right: Legal, Political and Economic Dimensions*. Harvard University Press, Cambridge and London, England. 2006, p.199.

¹³ Sengupta specifies the right to effective participation, incorporating representativity and accountability of decision-making bodies ... effectiveness of participation should be assessed from a subjective perspective, ie: based on the opinion of the affected persons (Malhotra, op cit, p. 200).

¹⁴ Ibid, pp. 201-202.

¹⁵ United Nations Development Group, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*. UNDG, May 2003.

A UNIFEM study elaborates how key HR principles under the Common Understanding might be understood at an operational level, as follows:

- universality and inalienability – all persons are entitled to rights
- indivisibility – donors should not proceed as if there were a hierarchy among human rights
- interdependence and interrelatedness – the realization of one right may depend on the realization of others. Donors need to adopt a comprehensive and holistic programming vision; this requires investment in a strong situation analysis
- equality and non-discrimination – people are entitled to the elimination of discrimination
- participation and inclusion – in both the objectives of programming and in programming processes
- accountability and the rule of law – the necessary legal procedures and mechanisms must be in place within a country that will hold duty bearers accountable for their HR obligations. Aggrieved HR holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.¹⁶

Rights Based Approaches

Our survey of donor agencies found considerable diversity in approaches to integrating human rights. Some agencies take a more legalistic approach to “rights based frameworks”, stressing policy advocacy, changing laws or formulation of new laws, and legal education, or focus on strengthening people’s voice and mobilization to demand their rights.¹⁷ Others suggest that applying a human rights framework means prioritizing the needs of the most marginalized.¹⁸ Some agencies use a rights based framework to shape their analysis, and design assessments and checklists to guide their programming and against which to assess interventions. Others advocate for a “human rights mainstreaming” approach, for example, one guide to a HRBA to programming maintains that “almost all aspects of development cooperation will make some contribution to realization of human rights” and that to implement a HRBA, “programming in all sectors must be designed to realize this.”¹⁹ This perspective is reflected in a recent review of European Union development cooperation activities, which emphasizes the legal

¹⁶ Lee Waldorf, CEDAW and the Human Rights Based Approach to Programming: A UNIFEM Guide, undated, http://www.unifem.org/resources/item_detail.php?ProductID=94

¹⁷ Aruna Rao and David Kelleher, Human Rights, Institutions and Social Change, Paper prepared for the Helsinki Conference 2005, Gender at Work, www.genderatwork.org

¹⁸ Explaining the World Bank’s perspective, for example, Vice President Ana Palacio suggested that “the overarching goal of human rights frameworks is the empowerment of the weakest and most marginalized, including the poor. Human rights can help secure and strengthen their ability to claim rights and entitlements and take advantage of opportunities.” Ana Palacio, Senior Vice President and General Counsel, The World Bank Group, The Way Forward: Human Rights and the World Bank. Development Outreach, World Bank Institute, June 2008, <http://www1.worldbank.org/devoutreach/article.asp?id=388>

¹⁹ Waldorf, op cit.

imperative to apply HRBA to development policies.²⁰ Many donor agencies and NGOs target some rights more than others, for example, the Norwegian Agency for Development Cooperation (NORAD) prioritizes social and economic rights, gender equality and children's rights, the rights of the disabled and rights of migrants, and the interests of Indigenous peoples. Recognizing the relevance to its work, the Asian Development Bank has also recently focused on Indigenous peoples' rights.²¹ Most agencies surveyed address gender equality, children's rights and labour rights.

While human rights and civil liberties have been under challenge in the post 9/11 world, others have pointed out how the human rights discourse has been adopted by new actors (for example, the World Bank and multinational corporations; labour standards are now included in some trade agreements): the discourse has evolved. Paul Gready calls this the "globalization-driven second human rights revolution", in which "the concept of human rights has filled out from its central spine of linking the individual and the state, to a fuller body which engages with and is used by a wider range of actors." This "expansionary stream of human rights" is characterized by a diversity of rights based approaches (RBA): "each organization (he writes) appears to understand the term differently, adopting its own policy document and tool kit. RBAs, however, are normally distilled to a few core principles: participation, accountability, equality and non-discrimination, transparency, and empowerment."²² The multiple perspectives found in RBAs contrast with the visionary nature of the Right to Development (the new international economic order) and are seen as "less threatening" than the systematic approach set out in the RTD.²³

2. Private Sector Development, Growth, and Rights Based Approaches

Concepts of poverty have broadened in recent years beyond concerns about income and living standards to reflect a concern with vulnerability and risk, and with powerlessness and lack of voice. Increasingly, major institutions of global governance are moving toward comprehensive, broad-based and inclusive approaches to poverty alleviation that include a focus on rights. At the same time, development organizations are seeking poverty-reducing strategies that recognize the interaction among the various dimensions

²⁰ International Human Rights Network, Human Rights Based Approaches and European Union Development Aid Policies, Terre des Hommes International Federation, Action Aid International, Amnesty International EU Office and International Human Rights Network, 2008.

²¹ The 2007 consultation draft of the Asian Development Bank's Safeguard Policy Statement has several references to "human rights" linked to Indigenous peoples. The consultation draft is posted at: <http://www.adb.org/Documents/Policies/Safeguards/Consultation-Draft.pdf>. See also "Sharing Development with Indigenous Peoples", <http://www.adb.org/IndigenousPeoples/>

²² Paul Gready, Rights based approaches to development: what is the value-added? Development in Practice, Vol. 18, No. 6, November 2008, p. 736. The UN Office of the High Commissioner for Human Rights (UNHCHR) emphasizes there is no single, universally agreed rights based approach, but also notes an emerging consensus on the following core principles: participation, accountability, transparency, equity, and non-discrimination. "Rights based approaches", UNHCHR, <http://www.unhcr.ch/development/approaches.html>

²³ Paul Gready, op cit, p. 744.

of poverty.²⁴ The World Development Report 2000/2001, for example, contrasts the World Bank's 1990 two-part strategy for poverty reduction – labour-intensive growth and broad provision of social services – with the Bank's more recent three-pronged approach – promoting opportunity (expanding economic opportunity for poor people), facilitating empowerment (governance and equity considerations), and enhancing security (reducing vulnerability to illness, economic shocks, natural disasters, and policy-induced-dislocations).²⁵

The focus on the role of the private sector in creating economic growth has increased in the last 20 years, particularly as economic liberalization, increasing foreign direct investment and cross-border financial flows have led to significant changes in the way the world economy is organized and governed. As the ILO notes, “in the context of globalization, the private sector has started to play an increasingly important role in areas of work that were previously considered the preserve of public sector actors and civil society, such as social policy and the environment, thus contributing to the spread of self-regulation practices and public-private partnerships.”²⁶ In this report, we take a broad view of “private sector”, drawing from the 2006 definition in the UK International Development Committee Report on the Department for International Development (DFID) and Private Sector Development: “all private actors engaged in economic activity, from the market stall-holder and family farmer to large domestic and foreign corporations.”²⁷ This definition draws attention to the linkages between macro, meso and micro economies in an increasingly integrated global marketplace.

PSD and growth

There are different perspectives on how private sector development might contribute to poverty reduction and sustainable economic growth. In the 1970s and particularly the 1980s, development agencies and theorists placed considerable emphasis on the importance of economic growth as essential to reducing poverty and the achievement of human development objectives. Within this approach, the private sector was considered to play a critical role, creating opportunities for employment and income generation, with the emphasis then on the policies needed to make markets work. The process of structural adjustment sought to restrain and reorient government intervention in markets to ensure that the private sector – ranging from small farmer cooperatives to larger national and multinational companies – operated more freely.

In the 1990s and 2000s, many governments and donors turned to strategies that would promote small and medium enterprise (SME) development, in the belief that a dynamic formal SME sector is a key contributor to employment and growth. Others have pointed out that micro (in fact, the majority of businesses in developing countries are informal

²⁴ Ravi Kanbur and Lyn Squire, "The Evolution of Thinking About Poverty: Exploring the Interactions". September 1999. http://people.cornell.edu/pages/sk145/papers/evolution_of_thinking_about_poverty.pdf

²⁵ World Bank Development Report 2000/2001: Attacking Poverty, World Bank, 2001.

²⁶ ILO, Italian Ministry of Foreign Affairs, International Instruments and Corporate Social Responsibility: A Booklet to Accompany Training, The Labour Dimension of CSR: from Principles to Practice. 2007, p. 1.

²⁷ UK House of Commons, International Development Committee Report on DFID and Private Sector Development, Fourth Report (PSD and Poverty Reduction), July 15, 2006. <http://www.parliament.the-stationery-office.com/pa/cm200506/cmselect/cmintdev/921/92102.htm>

micro and one-person enterprises) and small businesses in effect constitute the emerging private sector in developing countries, and thus form the base for private sector growth.²⁸ While donors and many developing countries have determined that the private sector is a key driver in the economy, and collaborated in PSD strategies targeting the formal economy (upgrading, increasing competitiveness), these strategies have fallen short of meeting the needs of the local, informal economy. Some initiatives aim to address barriers to formality by reducing transaction costs associated with business registration and providing accessible and affordable business development services. Donors and civil society organizations have also adopted many livelihoods strategies, including micro-credit and micro-enterprise development. Critics have pointed out, however, that these strategies are often insufficient to support the transition to a vibrant formal micro and small enterprise sector.

The relationship between SMEs, economic growth and poverty reduction has undergone much, sometimes conflicting, analysis. While finding that a large SME sector is a characteristic of successful economies, one World Bank study was unable to conclude that there is a causal relationship between SME formation and growth, or that SMEs reduce poverty. While noting that certain types of SMEs might be more conducive to growth, the study suggested, rather, that “policies and institutions that foster a business environment conducive to competition and private commercial transactions promote economic growth, and, through overall growth, lower poverty.”²⁹ The 2004 report of the Commission on the Private Sector and Development also emphasized governance, macro and microeconomic policies, public finances, the financial system and other basic elements of a country’s economic environment as critical for a healthy enabling environment for private sector development. That Commission also called for innovative public-private partnerships, and greater engagement by the private sector in development.³⁰ Building on that study, UNDP’s “Growing Inclusive Markets Initiative” examines business models that include the poor in ways that are both profitable and promote human development.³¹

While it is generally agreed that economic growth is key to poverty reduction, there is considerable discussion on what kind of growth will achieve this goal and the role of social institutions. There is general agreement that growth must be inclusive if it is to be sustainable. The 2008 report of the Commission on Growth and Development, for

²⁸ Kristen Hallberg, A Market-oriented Strategy for Small and Medium-scale Enterprises, IFC Discussion Paper 40, 2001. [http://www.ifc.org/ifcext/economics.nsf/AttachmentsByTitle/dp40/\\$FILE/dp40.pdf](http://www.ifc.org/ifcext/economics.nsf/AttachmentsByTitle/dp40/$FILE/dp40.pdf)

²⁹ Thorsten Beck, Asli Demirgüç-Kunt, and Ross Levine, Small and Medium Enterprises, Growth and Poverty: Cross-Country Evidence. World Bank Policy Research Working Paper 3178, December 2003. http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/01/21/000160016_20040121175349/Rendred/PDF/WPS3178.pdf

³⁰ Commission on the Private Sector and Development, Unleashing Entrepreneurship: Making Business Work for the Poor. Report to the Secretary-General of the United Nations. UNDP, 2004. <http://www.undp.org/cpsd/documents/report/english/foreword.pdf>

³¹ UNDP, Creating Value for All: Strategies for Doing Business with the Poor. New York, 2008. <http://www.undp.org/gimlaunch/>

example, finds instrumental benefits to some human rights principles, concluding that "... growth is a crucial part of poverty reduction and the improvement of people's lives. It is impossible for poor countries to lift large populations out of poverty without growth. Equality of opportunity and a focus on individuals and families, gender inequalities, and economic security, however, is critical to maintaining the support for growth oriented policies."³² UNDP puts more emphasis on the importance of strengthening institutions to empower citizens, noting that "the narrowly tailored financial and technical assistance that was once a mainstay of poverty prescriptions has given way to the recognition that challenges to growth are often larger and more nebulous, requiring long-term, incremental responses."³³

From needs to rights: a shift in thinking about economic growth and poverty

Rights based approaches recognize that economic growth alone doesn't necessarily lead to social development or better outcomes for the poor; growth-centred development has to address more complex and fundamental causes of poverty and inequality, including discrimination, exploitation and abuse. In rights based approaches, poverty is viewed not as a fact of individual circumstances and capacities, but is linked to structures of power and inequity embedded in the local, the national and global context.³⁴

At an operational level, rights based approaches may follow standard program design methodology, but will include a number of key elements:³⁵

- a focus on both duty bearers (governments) to meet their obligations and rights holders to claim their rights, promoting both parties' awareness and capacity. Some take a broader, more inclusive view of "responsibility" in order to engage multiple parties in initiatives to promote rights
- a focus on synergies within and between sectors (for example, PSD and occupation health and safety; PSD and skills training), and the linkages between micro, meso and macro levels
- they create mechanisms to ensure a focus on and inclusion of the poorest and most marginalized
- they ensure ownership and meaningful participation, and
- they include mechanisms for complaint, resolution and redress.

To illustrate, in a program designed to alleviate poverty by addressing immediate needs (access to food, medicine, safe water), a rights based approach would seek to add a focus on the root causes by asking why this group of people does not have these essential services (are there questions of exclusion and discrimination; are public systems not

³² Commission on Growth and Development, The Growth Report: Strategies for Sustained Growth and Inclusive Development. Press Release, May 21, 2008.

http://www.growthcommission.org/index.php?option=com_content&task=view&id=97&Itemid=189

³³ UNDP, Capacity Development: Empowering People and Institutions. Annual Report, 2008.

http://www.undp.org/publications/annualreport2008/pdf/IAR2008_ENG_low.pdf

³⁴ Danish Institute for Human Rights, p. 9.

³⁵ This section draws largely from Danish Institute for Human Rights, Applying a Rights based Approach: An Inspirational Guide for Civil Society, pp.25-27.

functioning; who is responsible; what are they doing to address their responsibility). The program's objectives, then, would envisage both a change in the lives of the vulnerable groups and within the identified duty-bearers in relation to the identified problem.

In another example, a CIDA-supported PSD initiative in Egypt worked with "responsible actors" to improve working conditions for child labourers. A recent study on the impacts of microfinance initiatives³⁶ on children found that children are inadvertently drawn into work within micro-enterprises, with both positive and negative effects for the children. The project, Promoting and Protecting the Interests of Children who Work, has involved the Egyptian Association for Community Initiatives and Development (EACID), Partners in Technology Exchange (PTE Ltd), and the Mennonite Economic Development Associates (MEDA) in a microfinance project that integrates human rights principles. The partners found that rights based approaches, drawing from the Convention on the Rights of the Child as a reference point, offered a different way of looking at the problems of working children. The project did not focus on "duty bearers" or "rights holders"; rather it broadened responsibilities to include all participants as "responsible actors." Working children were engaged in identifying and prioritizing problems to be addressed by the project. Business owners and working children developed a code of conduct that set out minimum standards for children's work and participating businesses were then offered "dual purpose loans", in which extra funding was included in the loan to address workplace problems if the company agreed to look at children's rights. The project worked with occupational health and safety experts to develop and implement training for loan officers and business owners on solving problems identified with children and how businesses could improve conditions. The project also addressed education and ways to improve the quality of learning through the workplace, including gender-related issues in access to training for better jobs. The project created a training manual of good practice, which, along with the code of conduct effectively contributes to new "soft law." While the dual purpose loans do not replace the role of labour inspectors who implement "hard law", the strategy of bundling children's rights through the provision of credit with occupational health and safety has succeeded in achieving improvements in workplace safety, and greater gender equality in access to education and skills training. The project has also found that participating children have gained confidence in demanding workplace improvements as a right.

The chart below summarizes some key differences in "charity", "needs based" and "rights based" approaches to development initiatives.³⁷ These categories are not mutually exclusive; RBAs for example, build on a "needs" approach. A key point is that rights based approaches define "development" as being based on rights, rather than benevolence or "charity" (which characterizes many CSR-type interventions and may not be sustainable), or "needs." RBAs go beyond tackling "problems" and seek to understand and address the structural causes that underpin the problem. The Egypt child labour

³⁶ CIDA, Impacts of Microfinance Initiatives on Children, Overview of the Study Report. Children's Rights and Protection Unit, Human Rights and Participation Division, Policy Branch, CIDA, 2008.

³⁷ Adapted from Danish Institute for Human Rights p. 10, and CIDA's Action Plan on Child Protection, Promoting the Rights of Children Who Need Special Protection Measures, CIDA, June 2001, [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/pdf/\\$file/child_protection.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/pdf/$file/child_protection.pdf)

example, above, drew on the framework provided by the Convention on the Rights of the Child and the Worst Forms of Child Labour Convention. The project tackled some structural causes of child labour by turning to “soft law” for entry points, and broadening concepts of “duties” and “rights” to find opportunities to operationalize “everyone’s responsibility” to promote rights.

Charity Approach

Needs Approach

Rights based Approach

Focus on input not outcome	Focus on input and outcome	Focus on process and outcome
Emphasizes increasing charity	Emphasizes meeting needs, without empowerment	Emphasizes realizing rights; recognizes that rights can only be realized with empowerment
Recognizes moral responsibility of rich towards poor	Recognizes needs as valid claims	Recognizes individual and group rights as claims toward legal and moral duty bearers
Individuals are seen as victims	Individuals are objects of development interventions	Individuals and groups are empowered to claim their rights
Individuals deserve assistance	Individuals deserve assistance	Individuals are entitled to assistance
Focuses on manifestation of problems	Focuses on manifestations of problems and immediate causes of problems; involves narrow sectoral projects	Focuses on structural causes of problems as well as their manifestations and immediate causes of problems; involves inter-sectoral, holistic projects and programs
Focuses on the social context	Focuses on social context with little emphasis on policy	Focuses on social, economic, cultural, civil and political context, and is policy-oriented

As we see in the following sections of the discussion paper, donor agencies are increasingly turning to PSD initiatives that target the “business enabling environment”, that is, regulatory reforms aimed at supporting a flourishing domestic private sector. Rights based approaches to PSD initiatives would seek to identify power relations underlying the existing business environment, and ensure that recommended reforms do not have negative implications for governments’ obligations to respect, protect and fulfill rights.

Value-added of RBAs

We found little research documenting the impacts of rights based approaches to PSD initiatives. One study, an evaluation of Swedish human rights programming in Kenya,

highlights challenges in operationalizing a HRBA, including the importance of HR capacity at the Swedish mission in Kenya. The evaluation found that the extent to which rights perspectives were integrated varied according to administrative structure of the sector concerned, reform processes (or lack thereof), capacities and/or leadership in the different target sectors (agriculture, health, water, urban development, governance and justice, and roads).³⁸ The literature on human rights, assets, and sustainable livelihoods (SL) approaches to poverty reduction offers some perspectives on the value-added that rights based approaches could bring to PSD programs that target individual firms or sectors. The SL approach is a framework that incorporates concepts of assets (material and social resources), capabilities and entitlements. The approach addresses a broad range of policy issues - health, education, access to finance, markets and personal security – but is stronger on micro detail than on micro-macro policy linkages.³⁹ A rights based approach would deepen the analysis. DFID research comparing human rights based approaches to sustainable livelihoods approaches found that adopting a RBA in addition to a SL approach encouraged the use of participatory approaches in planning and helped establish mechanisms for poor people to hold service providers to account, in particular, at the local level.⁴⁰

Another study, of rights based and sustainable livelihoods approaches in South Africa, found that RBAs were more explicit about the importance of changing power relations if poverty is to be addressed, raising the issues of mutual obligations between people and the state, and stressing the need for rights to be accompanied by responsibilities; it was stronger (than SLA) in the expression of equality and issues of social exclusion. The study found, however, that SLA was more explicit about issues of sustainability. At an operational level, the study noted that some of the practical implications of a HRBA share a great deal with what is considered “good practice”: ensuring stakeholder participation, and using domestic systems in the delivery of aid to ensure national ownership.⁴¹

3. Integrating Human Rights in Private Sector Development Strategies

PSD activities by donor agencies are broad and diverse: they range from macroeconomic strategies, governance issues, and policy, legal and regulatory frameworks. Others aim to promote entrepreneurship at the grassroots level, through provision of micro-finance, community-based development initiatives, and social entrepreneurship projects. One study of donor agencies’ support for PSD finds that donors’ different approaches tend to reflect their own national experiences: GTZ draws from Germany’s experience that

³⁸ Swedish Agency for Development Evaluation, Integrating the Rights Perspective in Programming – Lessons Learnt from Swedish-Kenyan Development Cooperation, 2008.
http://www.humanrightsimpact.org/fileadmin/hria_resources/IntegratingTheRightsPerspective_SADEV_Report_2008_2.pdf

³⁹ Caroline Moser and Andy Norton, To Claim our Rights: livelihood security, human rights and sustainable development, ODI, 2001.

⁴⁰ Laure-Hélène Piron with Tammie O’Neil, Integrating Human Rights into Development: A synthesis of donor approaches and experiences. ODI, September 2005

⁴¹ Laure-Hélène Piron, Francis Watkins, DFID Human Rights Review: A review of how DFID has integrated human rights into its work. ODI, July 2004.

grounds PSD in a set of social attitudes and value systems; other organizations focus on support for the enabling environment (ILO, DFID), how innovation and industrial technological development is included (UNIDO), and how the enabling framework is consistent with social norms and attitudes, and economic, social and political institutions (SIDA).⁴² Our survey of primarily English-language literature on donor PSD activities found limited discussion of human rights, or human rights principles, although many include gender equality and improved labour standards (including child labour) as goals, tools to reduce poverty, or as factors to consider in socio-economic impact assessments of PSD interventions. These initiatives to address rights related to gender and labour standards may reflect donors' greater familiarity with gender mainstreaming and high level international promotional campaigns (UN Decades for Women, the ILO's Decent Work campaign). At a practical level, these sets of rights may present more accessible entry points for collaboration with partners - DFID found traction for an initiative on child labour in the cocoa sector in Ghana, for example, when the Ghanaian government recognized its cocoa export markets in the EU and US were under threat.⁴³

OECD donor agencies provide support to private sector development via macro, meso and micro level interventions. Macro level interventions target the overall investment climate (the "business environment", or "business enabling environment" (BEE)); meso interventions aim to improve labour and capital markets ("making markets work for the poor", "pro-poor" development), and micro level interventions target a single business or collective (for example, "business development services (BDS)", including firm specific assistance in value chains⁴⁴). Many donors focus on value chain promotion as an element in their PSD strategies to improve competitiveness of enterprises in developing countries. Studies of donor agencies' PSD activities suggest that most donors intervene at all levels, with both BEE- and BDS-type projects. Not all donor agencies agree on the role of government in enterprise development, with some favouring a "minimalist" role limited to reducing regulatory burdens and the cost of doing business, to more interventionist approaches aimed at producing social, economic and equity outcomes.⁴⁵ More recently, there has been growing interest in a "bottom-of-the-pyramid" approach to business environment reform, where the primary focus for reform is on the markets in which poor women and men purchase goods and services. In this approach, the poor are seen as resilient, creative entrepreneurs and value-demanding consumers.

⁴² Kiyoto Kurokawa, Fletcher Tembo, Dirk Willen te Velde, Donor Support to Private Sector Development in sub-Saharan Africa: Understanding the Japanese OVOP Programme. JICA-ODI Working Paper 290, April 2008.

⁴³ For a description of this project, see Rita Owusu-Amankawah, Update: Elimination of WFCL in Cocoa in Ghana. 24 May 2007. http://www.worldcocoafoundation.org/about/documents/ROwusu-Amankwah_laborupdate.pdf

⁴⁴ Kurokawa, op cit.

⁴⁵ Donor Committee for Enterprise Development (DECD), "Contested Issue 6: What role should government play in enterprise development?" Supporting Business Environment Reforms: Practical Guidance for Development Agencies, DCED, August 2008.

Ibid, "Contested Issue 2: Should business environment reform focus on enterprises that are owned and managed by poor people?"

Business Development Services

A recent analysis⁴⁶ describes how current BDS initiatives have shifted away from the early supply-driven approaches whereby donors and public sector institutions provided business services (training and consultancies) mostly free of charge to enterprises. More recent initiatives have focused on market development, building supply and demand on a sustainable basis, and approaches such as value chain promotion and local and regional economic development. One criticism of BDS approaches has been that they focused too much at the micro-level with too strong an emphasis on strengthening the market for services provided by private providers, rather than addressing the role of the state in creating the conditions for economic growth, and lacked clarity on what constituted “public goods.” Japan’s OVOP (one village one product) is a somewhat different approach to promoting growth. The OVOP approach represents a micro-level intervention that aims at achieving regional economic development by developing products and services using locally available resources and adding value through processing and marketing. A preliminary assessment of an OVOP program in Malawi found the program helped companies become more productive, but noted there could be potential for political abuse.⁴⁷

Value Chains

A value chain describes the full range of activities required to bring a product from its conception, design, its sourced raw materials and intermediate inputs, marketing, delivery to the final consumer, and final disposal after use. One benefit that a value chain approach offers for donor agencies is that it helps to “examine the allocation of value-added across the chain, which has implications for job creation and higher wage employment, and ultimately for poverty reduction.”⁴⁸ Value chain interventions are typically targeted to specific sectors and micro level projects, and care needs to be taken to ensure they are connected with initiatives that target the broader business and investment climate.

⁴⁶ Corinna Küsel, GTZ’s Approach to Supplying PSD in Asia – Underlying Principles and Practical Experience, pp. 354-379, in *The Social and Ecological Market Economy – A Model for Asian Development?* GTZ, May 2008.
http://www.businessenvironment.org/dyn/be/docs/165/Asia_Social%20and%20Ecological%20Market%20Economy_Reader.pdf

⁴⁷ Kurakawa, op cit.

⁴⁸ FIAS, *Moving Toward Competitiveness: A Value Chain Approach*, August 2007, p. 4. The rights focus of this document is solely on employment.

[http://www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/valuechainmanual/\\$FILE/Value+Chain+Manual.pdf](http://www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/valuechainmanual/$FILE/Value+Chain+Manual.pdf)

FIAS is a multi-donor service of IFC, the private sector arm of the World Bank Group; the Multilateral Investment Guarantee Agency (MIGA); and the World Bank. FIAS advises governments of developing and transition countries on how to improve their investment climates for domestic and foreign investors. FIAS focuses on regulatory simplification, industry-specific investment climate issues, and investment policy and promotion; see: <http://www.fias.net/>

A value chain approach is based on assumptions that:

- economic growth is good for the poor
- high rates of economic growth can only be sustained if the national economy, or at least substantial sectors of the economy, is internationally competitive. With increasing openness to trade and foreign direct investment, even domestic markets in developing countries are becoming exposed to global competition
- global integration is increasingly taking place through structured exchange relations – most trade is now based on coordinated forms where one or more actors in the value chain have the capacity to define quantities, produce and process standards, terms of delivery, etc., as preconditions their trading partners have to fulfill.⁴⁹

Value chain analyses can help reveal the complexity of production systems and the risks and opportunities embedded in policy interventions. Studies have drawn attention to the potential for unintended or even undesired side-effects of interventions, and caution that while mapping value chains helps visualize chain linkages, it does not provide much information about the “best available alternatives with regard to social inclusion, income generation, learning and upgrading, distribution of gains and risks, and what needs to be done to ensure long-term competitiveness.”⁵⁰ As a hypothetical example, one analysis of socio-economic impacts of a transition from traditional retail organization to supermarket supply chains identified both positive and negative development impacts, including: loss of both direct and indirect employment in retailing due to crowding out of mom-and-pop stores, but increasing wages for employees as a result of higher productivity; increasing income disparities linked with increasing concentration of retailers and suppliers, but greater stability of remaining suppliers’ income.⁵¹ Fair trade initiatives often seek to improve labour conditions and returns to workers and producers at the lower ends of value chains, however, a recent study of the impacts of ethical and environmental standards on the small-holder coffee systems of Indonesia demonstrates the complexity of chains. The study identified several unintended results of fair trade initiatives in the coffee sector, including increased upstream penetration by multinational trading companies into coffee-producing areas across Indonesia, increased transaction costs along the value chain, and an overall downward pressure on farm-gate prices.⁵²

The ILO’s initiatives on value chains target increasing economic competitiveness of enterprises and their “cluster” (group of geographically proximate and linked enterprises), while at the same time creating a positive impact on the affected workforce,

⁴⁹ Adapted from Tilman Atenburg, Donor Approaches to Supporting Pro-poor Value Chains, Report prepared for the Donor Committee for Enterprise Development, Working Group on Linkages and Value Chains, German Development Institute, July 2006 (rev. 9 July 2007).

⁵⁰ Tilman Altenburg, Governance Patterns in Value Chains and their Development Impact, *The European Journal of Development Research*, Vol. 18, No. 4, December 2006, pp. 498-521.

⁵¹ See Table 2, Socio-economic impacts of a transition from traditional retail organization to supermarket supply chains (hypothetical), T. Atenburg, *op cit*, p. 27.

⁵² Jeff Neilson, Global Private Regulation and Value-Chain Restructuring in Indonesian Smallholder Systems, *World Development*, Vol. 36, No. 9, September, 2008, pp 1607-1622.

community and society at large.⁵³ While some have drawn attention to the potential for dependency and “moral hazard” in donor interventions in value chains for small suppliers, others have suggested how human rights principles could add value to this sort of intervention. In one example, excluding local farmers from a value chain was seen as a liability in terms of sustainability in product quality and social impact: “(exclusion) undermines the farmers’ commitment to supply high-quality products on a reliable basis.” The study also drew attention to how sustainable procurement requires transparency and a fair distribution of power in the chain; here, an impartial “chain facilitator” (an intermediary organization such as an NGO), tasked with coordinating chain development and ensuring equal distribution of costs and benefits, could be key.⁵⁴

Value chain analysis can be a useful tool to identify potential human rights impacts of donor interventions. The methodology can be used to map the location of everyone, including workers in the informal economy, involved in the production of a commodity to identify the distribution of benefits (who gets what: the distribution of wages or profits; distribution of social protection such as medical or pension benefits, for example); who is involved in making decisions about who gets what, and where some promising intervention points might be that would be successful in pushing social protection down the chain to those who get the least.⁵⁵ Women in Informal Employment: Globalizing and Organizing (WIEGO) has conducted detailed value chain studies of the garment sector, the horticulture sector and non-timber forest products sector, broadening value chain analysis to focus on workers, particularly women workers at the lowest levels of value chains.⁵⁶ WIEGO’s approach combines research on the informal economy, initiatives to strengthen member-based organizations of informal workers, and policy dialogues and processes that include informal worker organizations.

Business Enabling Environment

The BEE approach is a “complex of policy, legal, institutional, and regulatory conditions that govern business activities. It ... includes the administration and enforcement mechanisms established to implement government policy, as well as other institutional arrangements that influence the way key actors operate.” It emphasizes that a healthy business environment is essential for growth and poverty reduction. In this view, business environment reform is needed where inappropriate regulation, excessive taxation, lack of fair competition, lack of voice and an unstable policy environment restrict investment and the development of markets, and force many businesses to operate in the informal

⁵³ See ILO Value Chain Development and Cluster Upgrading, http://www.ilo.org/dyn/empent/empent.portal?p_prog=S&p_subprog=MO

⁵⁴ Marije J. Boomsma, Sustainable Procurement from Developing Countries: Practices and Challenges for Business and Support Agencies”, Development and Practice, Bulletin 385, KIT Publishers, Amsterdam, 2008, p. 54-56.

⁵⁵ Heather Gibb, Identifying Levers to Improve Conditions for Workers: What We Can Learn from Value Chains Analysis, Notes to the HomeNet Southeast Asia Workshop on Globalization and Informalization: Responses of Homeworkers in Southeast Asia, September 18-23, 2000, Bangkok.

⁵⁶ See WIEGO, www.wiego.org. For a general description of WIEGO’s work on value chains, see WIEGO, http://wiego.org/program_areas/global_markets/, Sector-Specific Value Chains Analysis.

economy.⁵⁷ A BEE guidance note prepared by the Donor Committee for Enterprise Development (DCED) includes gender equality (but not improvements in human rights or labour standards) as a goal.⁵⁸

The OECD DAC's BEE working group, currently chaired by the World Bank (WB), has produced a guide, "Supporting Business Environment Reforms: Practical Guidance for Development Agencies", intended for development agency staff who work on programs that support business environment reforms.⁵⁹ While documents on the BEE working group website suggest there is a growing interest in and attention to environmental issues, a search of the website found no references to "human rights" in its publications. There is some discussion of social protection issues and informal enterprises (under "assessing the business environment"); a series of country case studies on donors' pro-poor growth initiatives (under "project design"); discussion of the impact of the business environment on women entrepreneurs at one conference (under "impact assessment"), and a reference to social exclusion and gender analysis in a document on integrated impact assessment.⁶⁰

There are lively debates on the relative effectiveness of approaches that focus on improving the "enabling environment" for business as compared with interventions that target specific sectors. The DCED guidance note, for example, draws attention to conflicting views by the WB and others on the link between business environment reforms, economic growth and poverty reduction.⁶¹ A study of donor initiatives to boost private sector development in sub-Saharan Africa, for example, examines the relevance and impact of three regulatory business reform areas emphasized in the "Doing Business Approach" - easing business registration, providing property rights, and simplifying labour regulations - finding no evidence that the recommended reforms were sufficient to unleash private sector dynamism or were pro-poor. Instead, the study suggested a combined approach that both builds on market forces and offers targeted public support schemes.⁶² Some practitioners we spoke with expressed the view that donor agencies should target their interventions to regulatory reforms; business development or capacity-building projects should be left to the private and not-for-profit sectors. Another role for government could be addressing ways to encourage greater and more creative engagement by the private sector in development to achieve Millennium Development Goals (MDGs), including public-private partnerships.⁶³ The UK Prime Minister, for

⁵⁷ DCED, Supporting Business Environment Reforms: Practical Guidance for Development Agencies, August 2008.

⁵⁸ Ibid, p. 1.

⁵⁹ DCED, Business Environment Working Group, Meeting on 23th and 24th May, 2007, DFID, London.

⁶⁰ DFID, Handbook to Accompany Guidelines for Assessing the Impact of Enabling Environment Programmes: An Integrated Impact Assessment Approach, DFID 2005
<http://www.businessenvironment.org/dyn/be/docs/66/BEE-IA-Handbook.pdf>

⁶¹ "Contested Issue No. 1, "Can we measure the extent to which business environment reform contributes to economic growth and poverty reduction?", DCED, Supporting Business Environment Reforms, p. 3.

⁶² GTZ, Creating an enabling environment for private sector development in sub-Saharan Africa. UNIDO, Vienna, 2008, pp ix-x.

⁶³ One caution here would be to ensure that public contributions trigger an additional development impact that goes beyond the impact that the lead firm, in pursuit of its own interests, would have had regardless, or with which it would be legally obliged to comply. For a discussion, see T. Altenburg, Governance Patterns in Value Chains, op cit.

example, has launched a challenge to the British private sector to develop, in collaboration with DFID, new business models that could be scaled up to have a transformative economic impact on the communities affected, in terms of jobs, investment, goods and services.⁶⁴ Others have pointed out how domestic tax mechanisms in developed countries can encourage private foundations to make investments in social enterprises out of both their endowment funds and grant making activities without affecting their charitable status. In the US, for example, foundations are able to do this so long as the primary goal is social return. This sort of provision could facilitate a flow of funds to civil society organizations that are engaged in social entrepreneurship activities in developing countries.⁶⁵

Corporate Social Responsibility (CSR)

As donors increasingly look to the private sector as a key agent for economic growth and employment-creation, some have begun to explore the potential for collaboration with their private sector as partners in sustainable and rights based approaches to development. In addition, some agencies, for example, DFID, have also examined CSR implications for their own activities as purchasers of goods and services.⁶⁶ The Norwegian Agency for International Development (NORAD) has set out rules governing private sector cooperation that is financed from the development assistance budget.⁶⁷

DFID is engaging in public-private partnerships to encourage leading UK multinational businesses to work through their value chains to address the impacts of their products in a local, developing country environment.⁶⁸ The Medicines Transparency Alliance, for example, is a multi-stakeholder initiative aimed at increasing transparency and accountability in the selection, procurement, sale, and distribution of essential medicines in developing countries, with the aim of increasing access to medicines.⁶⁹ In another sector, DFID's Business Alliances Team acts as secretariat for the Extractive Industries Transparency Initiative, an initiative supported by many donors including Canada, and engages multinational mining companies in international development. In 2007, DFID's Business Alliances Team commissioned a series of papers on CSR as inputs to a DFID roundtable held later that year.⁷⁰ The first paper finds considerable variations in governmental approaches to CSR and suggests that more work needs to be done for

⁶⁴ UK Prime Minister Gordon Brown, speech at the Business Call to Action Meeting, May 6, 2008, <http://www.number10.gov.uk/Page15447>

⁶⁵ Interview, Canadian NGO; Paul Martin, "Unleashing the Power of Social Enterprise", November 8, 2007.

⁶⁶ http://europeandcis.undp.org/uploads/public/File/DFID_and_CSR.ppt#261

⁶⁷ http://195.26.0.50/default.asp?V_ITEM_ID=1620

⁶⁸ DFID, Business for Development, 2007, <http://www.dfid.gov.uk/Pubs/files/working-with-business.pdf>

⁶⁹ The Medicines Transparency Alliance: Towards an Equity and Poverty Focus, <http://www.dfidhealthrc.org/meta/documents%5CMeTA%20equity%20meet%20Oct%2007%5CMeTA%20equity%20workshop%20agenda%20final.pdf>

⁷⁰ Framing the Space: How Governments Respond to and Influence Corporate Responsibility; Drivers & Incentives – What are the Real Drivers and Incentives for Effective Corporate Responsibility and How can Government Influence Them? and, Corporate Responsibility & Its Impact on Poverty: The Key to Partnerships under MDG 8. All papers were prepared by John Morrison, Business and Human Rights Associates Ltd., 2007, and are available at <http://www.humanrightsassociates.com/3.html>.

standards to be integrated into both national governments' own internal behaviour, as well as in their trade, development, security and diplomatic interventions overseas.⁷¹

The ILO, whose 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (the MNE Declaration) is an early CSR instrument, identifies the following characteristics of CSR:

- its voluntary nature (unlike human rights obligations of governments; typically a “charity approach”, according to the typology in our chart) – enterprises voluntarily adopt socially responsible conduct by going beyond their legal obligations
- it is an integral part of company management
- CSR actions are systematic, not occasional
- it is explicitly linked with the concept of sustainable development.⁷²

Another key multilateral CSR initiative is the UN Global Compact⁷³, a voluntary network of mainly large multinational corporations that commit to human rights, environmental, labour and anti-corruption principles. The Global Compact describes human rights responsibilities of business leaders, as follows:

- business should support and respect the protection of international human rights
- business must not be complicit in human rights abuses.⁷⁴

CSR is a controversial topic and we heard different views on the question of donor agencies' engagement with these approaches. In the view of one ILO official, for example, “there is confusion in the development community about human rights and poverty – most human rights abuses are in the informal sector, since people have a lack of education and skills. CSR puts the focus on human rights issues in the wrong place – it focuses on the elite. The emphasis should be on giving people education and skills; the private sector should invest in training. We are approaching human rights the wrong way (that is, by giving people rights first). We should be building relationships, productivity and capacity.” Private sector CSR commitments are more limited than human rights obligations of states, and are no substitute for the role of government – the prime objective of the private sector is not international development but making profits. While governments have HR obligations to respect, promote and fulfill human rights, CSR approaches “add on” human rights, in strategies to mitigate HR impacts. However, some, noting inadequacies in traditional approaches to development, have suggested that creative energy might be turned to how public and private sector partners might work

⁷¹ Framing the Space, p. 1.

⁷² ILO, Italian Ministry of Foreign Affairs, International Instruments and Corporate Social Responsibility: A Booklet to Accompany Training, The Labour Dimension of CSR: from Principles to practice. 2007, p. 1

⁷³ See Global Compact, <http://www.unglobalcompact.org/> The Business Leaders Initiative on Human Rights is another private-sector led initiative that aims to “develop practical ways of applying the aspirations of the Universal Declaration of Human Rights within a business context and to inspire other businesses to do likewise.” It has developed a number of toolkits for the private sector. See <http://www.blihr.org/>

⁷⁴ Global Compact.

together. As one person told us, “this bath-water has a lot of baby in it. Many CSR initiatives have clear, positive and palpable results in third countries. The resources available to the private sector, in the aggregate, are immense, and likely to grow. The impact on internal corporate thinking, in many cases, is very positive, and in some cases transforming.”

While the question of governments’ responsibilities for the extraterritorial activities of their private sector is beyond the scope of this paper, some observers have highlighted broader questions of policy coherence, where governments’ trade and foreign investment initiatives, aimed at advancing the international activities of their domestic private sector, may be at odds with their international development cooperation goals. In section 6, we describe Rights and Democracy’s Human Rights Impact Assessment (HRIA) tool that was designed to identify human rights impacts of foreign investment projects. HRIsAs, like CSR, focus on manifestations of problems and their immediate causes. RBAs would take this a step further to address the broader structural framework in which the foreign investment takes place. Some related policy coherence concerns were addressed in the Third Report of the Special Representative of the UN Secretary-General for Business and Human Rights, including human rights implications of export credit financing, and bilateral trade and investment agreements.⁷⁵ The Special Representative’s mandate has been extended for a further three years, and these issues, alongside with questions on human rights and donor agencies’ PSD initiatives, may be taken up in this period.⁷⁶

4. Donor Agencies’ Initiatives on HR and PSD

Sections 4, 5 and 6 describe approaches to integrating human rights principles in PSD activities in three donor agencies (Norway, Sweden and the UK), one multilateral organization (the International Labour Organization), three finance institutions (Canada’s Export Development Corporation, the International Finance Corporation, and the World Bank), and three civil society organizations (CARE Canada, Oxfam Great Britain, and Rights and Democracy). We include some financial institutions because some lending or project funding activities in developing countries have had significant human rights impacts that have prompted considerable debate, internal review and new mechanisms to assess and potentially avoid problems in the future. Many donor agencies also collaborate with these institutions’ PSD activities.

Most donor agencies expressly link their PSD programming with strategies aimed at boosting growth, and three we examined specifically include their own private sector in these strategies. While donor agencies are taking different approaches in their PSD initiatives, most appear to adopt a mixed approach to programming: some projects provide business development services and others aim to support a business enabling environment. CARE and Oxfam described to us their approaches to building sustainable livelihoods: CARE’s social enterprise model seeks to work with existing local businesses so they involve more poor people in their supply chain; Oxfam has found working with

⁷⁵ See Karen Keenan, Export Credit Agencies and the International Law of Human Rights, Halifax Initiative, January 2008, http://www.halifaxinitiative.org/updir/ECAs_and_HR_law.pdf

⁷⁶ Interview, Ruggie Commission Advisor.

value chains useful; it also engaged in a pioneering collaboration with a major UK multinational corporation to understand the company's "poverty footprint" in Indonesia. Rights and Democracy has developed and piloted an innovative human rights impact assessment tool that has attracted interest among the private sector and some development partners.

Many of the spokespersons we interviewed stressed that integrating human rights in PSD programming is a new area and that initiatives are incremental. We noted inconsistencies within organizations, for example, contradictions between World Bank support for core labour standards and, more recently, human rights principles more broadly on the one hand, but anti-labour positions in its influential *Doing Business* reports. This is described further in section 5. At the same time, the World Bank Group has developed new tools to help determine whether they are in compliance with their own standards, and the reports of the IFC Compliance Advisor Ombudsman represent a valuable resource for donor agencies interested in exploring ways to develop their own human rights mechanisms.

Norwegian Agency for Development Cooperation (NORAD)

According to its website, NORAD "seeks to promote respect for human rights in all development cooperation", and, further, "human rights must be taken into account in government-to-government cooperation, private sector cooperation, cultural cooperation, institutional cooperation and cooperation with non-governmental organizations".⁷⁷ In its 1998 "Strategy for Norwegian support of PSD in Developing Countries"⁷⁸, the Ministry of Foreign Affairs notes that "support for private sector development is to be promoted while paying due regard to issues concerning human rights, environmental issues, women, and gender equality, in accordance with the general requirements regarding development projects that receive Norwegian support." A more recent (2004) description of NORAD's PSD goals situates its approach within the "enabling environment" paradigm:

Favourable, stable framework conditions are a precondition for private sector development. Framework conditions are normally defined as national conditions that are directly or indirectly influenced by political decisions. NORAD helps to improve framework conditions, thereby better enabling developing countries to develop their business and industry. In the past few years, there has been more focus on private companies in connection with private sector development. ... The increased focus in NORAD on private sector development has in turn led to greater focus on developing countries' financing of their own development. Efforts to

⁷⁷ NORAD Human rights page: http://195.26.0.50/default.asp?V_ITEM_ID=1620#

⁷⁸ Norway, Strategy for Norwegian Support for Private Sector Development in Developing Countries, Department of Foreign Affairs, 1998.
<http://www.regjeringen.no/nb/dep/ud/dok/rapporter/planer/rapporter/1998/Strategy-for-Norwegian-support-of-private-sector-development-in-developing-countries.html?id=420023>

increase tax revenues, provide savings opportunities for the population and provide possibilities for creating local investment capital have become more central components of development cooperation.⁷⁹

NORAD prioritizes social and economic rights, gender, children's rights, the rights of the disabled and rights of migrants. NORAD puts particular emphasis on promoting workers' rights as set out in ILO conventions. Another priority is promoting the interests of Indigenous peoples in development cooperation, based on ILO Convention No. 169. Here, NORAD states that "... cooperation must promote recognition of the fundamental rights of Indigenous peoples, and strengthen the possibilities and ability of Indigenous peoples to advance and manage their own interests."⁸⁰ Most of the cooperation centres on strengthening the rights of Indigenous people in Latin America, including land titles.

NORAD uses the following "tools" to promote human rights: political dialogue, financial support, and alliances with the NGO sector. NORAD draws from findings and observations by the relevant human rights treaty bodies in discussions with the donor community, NGOs and in some cases, with the authorities. NORAD has developed a number of HR tools, including a "Handbook on Human Rights Assessment: State Obligations, Awareness and Empowerment",⁸¹ which includes a checklist to assist program officials avoid programming that might violate human rights, and a guide to conducting a human rights impact assessments. It states that programs operated by NGOs and the private sector are also subject to requirements with respect to human rights assessments. The partner could use this human rights impact assessment (HRIA) model or NORAD could provide financial support to a partner if a comprehensive HRIA is required.⁸² Norway's efforts to promote human rights is an area identified for possible evaluation in 2009.⁸³

The private sector is a partner in NORAD's PSD activities. In a brief, the Confederation of Norwegian Business and Industry explains that: "The private sector has a social responsibility to help reduce global poverty. Combating poverty depends on a business community that creates value."⁸⁴ NORAD has clarified the rules governing private sector cooperation that is financed from the development assistance budget: NORAD's website explains that "involvement by commerce and industry entails a commitment to show a responsible attitude and to apply the same ethical and commercial principles and view of

⁷⁹ See NORAD, Private Sector Development website: http://195.26.0.50/default.asp?V_ITEM_ID=1588

⁸⁰ NORAD Indigenous peoples site, http://195.26.0.50/default.asp?V_ITEM_ID=1632

⁸¹ Norwegian Institute for Human Rights, Handbook on Human Rights Assessment: State Obligations, Awareness and Empowerment. NORAD and Norwegian Institute for Human Rights, February 2001. <http://www.norad.no/files/Handbook.pdf>

⁸² Handbook, p. 36.

⁸³ See Norad Evaluation Program for 2007-2009, http://195.26.0.50/default.asp?V_ITEM_ID=3507

⁸⁴ Confederation of Norwegian Business and Industry, Norwegian Development Cooperation Policy: Why Should the Private Sector be Involved? 2003. The organization receives funding from NORAD to support a small secretariat. http://www.nho.no/files/norsk_utviklingspolitikk_engelsk.pdf

human rights as at home. In this way, Norwegian enterprises can positively influence developments in the developing countries through practical work in local enterprises.” NORAD has also undertaken a number of studies to assess and map opportunities for private sector development in partner countries, for example, a 2003 study of Vietnam, notes, under “main areas of cooperation”, that “all investments must be based on the fundamental set of values embodied in the concept of human rights and Norway will therefore welcome the continued good dialogue with Vietnam on human rights which started in 2001.”⁸⁵ The document does not elaborate, however.

Swedish International Development Cooperation Agency (SIDA)

Sweden’s Policy for Global Development (adopted in December 2003) emphasizes that the rights perspective should be integrated in Swedish development cooperation. SIDA’s rights perspective includes democracy and gender equality, and places special emphasis on the rights of the child. Its objective is equitable and sustainable global development and it encompasses all policy areas. Among the eight main features that form the framework of the policy, the first is “fundamental values: respect for human rights, democracy and good governance, and gender equality.” “Fundamental to the entire policy are the rights perspective and the perspective of the poor on development. The UN Universal Declaration of Human Rights is the basis; democracy and gender equality strengthen and safeguard these rights.”⁸⁶

Questions to be asked in all policy areas before important decisions are made include:

- Does the decision promote respect for human rights in the long, medium and short term?
- What power do individuals or groups have to influence decision-making processes and how do they obtain important information?

SIDA’s policy guidelines for support to PSD set out four fundamental elements: competitive markets, entrepreneurship, property rights, decent work conditions and environmental sustainability. The main purpose of SIDA’s PSD activities is to contribute to poverty-reducing growth based on three elements: direct inclusion of the poor in economic activities; economic growth as a means to generating resources, and, redistribution so that resources generated in society by growth are invested meaningfully in the poor, especially through human resource development.⁸⁷

According to one SIDA official, the agency’s work on integrating human rights in its PSD programming is still at a preliminary stage, and at times has been incremental, for example, in a project aimed at strengthening the capacity of the private sector to defend

⁸⁵ NORAD, Study on Private Sector Development and Prospects for Norway in Trade and Investment Interests in Vietnam (Phase 1), NORAD Report 6/2003, <http://www.norad.no/items/2395/38/1317100351/Vietnamrapport.doc>

⁸⁶ Sweden’s Policy for Global Development (August 2006) <http://www.regeringen.se/content/1/c6/09/72/90/f51abd73.pdf>

⁸⁷ SIDA, Policy Guidelines for SIDA’s Support to Private Sector Development, SIDA, Department for Infrastructure and Economic Cooperation, 2004 www.sida.se/shared/jsp/download.jsp?f=SIDA4237en+web.pdf&a=3316

its interests to government, SIDA has provided funding to the Addis Ababa Chamber of Commerce to assist it working with the government to modernize the registry of companies. According to SIDA, the registry itself is not as important as the fact of having the private sector working with the government to talk about bottlenecks to growth. Another area of focus is promoting the ILO Decent Work Agenda. SIDA is collaborating with the ILO in Uganda on possible decent work programming. One challenge is to extend this work from the formal to informal sector. SIDA would like to have a comprehensive plan that brings together all organizations working on these issues at the national level as well as donors.⁸⁸

United Kingdom, Department for International Development (DFID)

Since the release of its 2000 policy statement on human rights, DFID has adopted a rights based approach to development, stating that “human rights are a central part of work to achieve International Development Targets because they are a means of empowering all people to make effective decisions about their own lives.” DFID has identified three strategic aims: participation, inclusion, and fulfilling obligations.”⁸⁹ Respect for human rights informs the basis of DFID’s partnership agreements with developing countries (along with commitments to poverty reduction and financial management).⁹⁰

As in many donor agencies, thinking on the relationships between human rights, growth, economic development and private sector development has been evolving. A wide-ranging review of DFID’s PSD activities by a parliamentary committee in 2006 found that DFID’s approach straddled both the “making markets work for the poor” and “investment climate” approaches, with an additional preference for budget support as a major conduit for DFID’s support to PSD. The review recommended that DFID step back and map out a strategic plan to unite its multiple responses to PSD.⁹¹

DFID has now moved away from a business development approach and works with intermediary agencies to build their capacity to provide services, for example, it supports trust funds, rather than micro-finance, to build capacity to make finance markets work for poor people. DFID has supported and participated in continuing research and dialogues at the Overseas Development Institute (ODI), among others, on the links between growth and development and the role of the private sector.⁹² A new PSD strategy, “Prosperity for All: Making Markets Work”, is to be launched in late 2008. At its core, the strategy aims to make markets function better and with greater fairness. DFID’s growth strategy views

⁸⁸ Interview with SIDA official, May 2008.

⁸⁹ DFID, *Realizing Human Rights for Poor People*, October 2000, p. 5.

<http://www.dfid.gov.uk/pubs/files/tsphuman.pdf>

⁹⁰ DFID, *Partnerships for Poverty Reduction: Rethinking Conditionality*, a UK Policy Paper, March 2005 <http://www.dfid.gov.uk/mdg/conditionality.asp>, p 1,

⁹¹ DFID, *DFID and the Private Sector: Working With the Private Sector to Eliminate Poverty*, December 2005. <http://www.dfid.gov.uk/pubs/files/dfid-private-sector.pdf>

⁹² Interview, DFID official. DFID has also contributed to a series of discussions at ODI on the contribution of growth to development, http://www.odi.org.uk/events/growth_series/080331/index.html, and the contribution of the private sector to development, http://www.odi.org.uk/events/business_impact/index.html

wealth creation as the starting point for poverty reduction.⁹³ The strategy considers that private sector development offers more and better jobs, higher incomes, empowerment and economic freedom; higher tax revenues for governments to finance services; better goods and services; and innovation, new approaches, higher productivity and technology diffusion.⁹⁴ The new strategy is aimed at the whole department; all DFID staff are to begin to think about how to incorporate PSD in appropriate areas of their work (as an example, governance experts could examine how the state operates to improve the performance and behaviour of business).

Key elements of the new strategy are:

- working to improve access to economic opportunities by the poor (making markets work for the poor)
- working to develop competitive markets, to encourage private sector development
- engaging with the private sector to help achieve the MDGs in two ways: first, by working with international agencies such as the OECD and ILO to help them set the standards for multilateral businesses who are required to sign up on them as basic principles, and, second, by working directly with businesses to challenge them to develop specific initiatives to help meet the MDGs.⁹⁵

The three themes cut across specific intervention areas:

- working with international and domestic private companies to make the most of the positive impact of their business (encouraging businesses to extend their core business to have a transformative impact, for example, to risk investing in new supply chains, or finding new ways of making their goods and services available to poor people)
- working with developing country governments and international agencies to create an enabling environment for business; to support reforms that allow markets to work with greater efficiency and fairness, and
- investing in research and knowledge management.

Human rights are integrated in all three areas, but not flagged explicitly. Gender equality and child labour issues figure more prominently, since these are areas where, a DFID official explained, a business case for action could be made to partners. The multi-pronged strategy is pragmatic. In Bangladesh, for example, through the Katalyst project,

⁹³ See “Growth at the Heart of Development”, speech by Douglas Alexander, UK Secretary of State for International Development, March 31, 2008, <http://www.dfid.gov.uk/news/files/Speeches/alexander-growth.asp>, <http://www.dfid.gov.uk/news/files/Speeches/alexander-growth-fulltext.asp>, accessed October 10, 2008

⁹⁴ DFID, Prosperity for All: Making Markets Work, Draft DFID Private Sector Development Strategy, 2008.

⁹⁵ One example is a Challenge Fund grant to Vodafone to develop a mobile payments system in Kenya that could be used to deliver social benefits payments to poor families in remote areas. This built on an earlier grant to Vodafone to develop a mobile banking system, and a 2005 participatory process in Kenya and South Africa, where DFID worked with regulators and mobile banking providers to map out what an enabling environment for mobile banking would look like and the issues that needed to be addressed. See DFID’s Assistance to Mobile Phone Banking, February 12 2008, <http://www.dfid.gov.uk/News/files/mobile-banking.asp>

rather than working with government officials, DFID assists skilled service providers who understand labour and health and safety regulations help companies put in place systems that meet national standards - companies begin to see improvements in their profit margins linked to higher standards.

International Labour Organization (ILO)

The ILO is a tri-partite (government, employers, workers as represented by trade unions) UN agency devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Its main aims are to promote rights at work, encourage decent employment opportunities⁹⁶, enhance social protection and strengthen dialogue in handling work-related issues.⁹⁷ Many of its employment creation programs are aimed at creating decent jobs in small and medium size businesses, cooperatives,⁹⁸ and the informal economy. The ILO's business development programs include programming targeting women in very small and medium businesses.⁹⁹

ILO partners with bilateral donors in initiatives aimed at promoting local enterprise development (LED). In one example, the Viet Nam Chamber of Commerce and Industry (VCCI) and ILO are collaborating in a four-year (2005-2009) project, "Poverty Reduction through Integrated Small Enterprise Development (PRISED)", with financial support from SIDA. The project intends to stimulate local economic growth, create decent employment and reduce poverty in rural areas of six provinces in the country, mainly through supporting Vietnam's micro and small enterprises (MSEs). It applies an integrated approach to local economic and small enterprise development, with an emphasis on benefits for the poor, on rights at work and equality between men and women. The target group is owners, managers and employees of micro and small enterprises, including household enterprises and the self-employed. The project pursues a gender-sensitive approach in all areas of work. It assists local authorities in undertaking ongoing dialogue with the business community and other relevant bodies to develop economic strategies tailored to the specific needs and opportunities of their localities, consistent with the provincial socio-economic development plans. It uses a variety of

⁹⁶ In the ILO context, "decent work" "involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men." See ILO, Decent work – the heart of social progress, <http://www.ilo.org/public/english/decent.htm>

⁹⁷ About the ILO, http://www.ilo.org/global/About_the_ILO/lang--en/index.htm

⁹⁸ See ILO Job Creation and Enterprise Development Programme <http://www.ilo.org/dyn/empent/empent.portal>; the ILO Homework Convention, 1997; Decent Work and the Informal Economy, International Labour Conference 2002, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/meetingdocument/wcms_069040.pdf; ILO collaborations with WIEGO on informal sector statistics, extending social protection to women in the informal economy; Richard D. Rinehart, Designing programs to improve working and employment conditions in the informal economy: A literature review, ILO Geneva, 2004.

⁹⁹ Women's Entrepreneurship Development and Gender Equality (WEDGE) http://www.ilo.org/dyn/empent/empent.portal?p_prog=S&p_subprog=WE is a component of the program, Boosting Employment through Small Enterprise Development (SEED) http://www.ilo.org/dyn/empent/empent.portal?p_prog=S

approaches and tools, including: capacity building for improved local policy, regulatory and administrative environment; participatory planning for local enterprise development; public-private partnerships for the procurement of infrastructure and the delivery of basic services with the involvement of MSEs and community groups, and, social marketing campaigns on improving job quality and fighting HIV/AIDS in small enterprises.¹⁰⁰

In addition to its wide-ranging Decent Work campaign, the ILO has engaged in a variety of CSR activities, for example, it was involved in the updating of the IFC Performance Standards, notably those having to do with employment and Indigenous peoples. The ILO's core CSR instrument is the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the MNE Declaration), adopted in 1977 and most recently revised in 2006.¹⁰¹ The ILO emphasizes that the MNE Declaration is the only CSR tool that has been agreed by the three sectors (governments, employers, workers), in contrast to the OECD Guidelines for Multinational Enterprises, which is a set of voluntary recommendations to MNEs on business ethics principles which has been adopted by governments.¹⁰² The MNE Declaration talks directly to companies, providing "guidelines for good practice".

The Multilateral Enterprises Programme at the ILO is mandated to promote the effective use of the MNE Declaration, and is doing this through internal capacity-building, establishing a "help desk" to provide training and materials for ILO staff to better respond to queries from the private sector. The ILO is currently implementing a project, "Sustainable Development through the Global Compact", in collaboration with the Italian Ministry of Foreign Affairs. The project aims to encourage enterprises to contribute to sustainable development by adopting good practices in line with MNE Declaration principles, and by strengthening social dialogue at the enterprise level. The project mainly targets small and medium enterprises, in particular, Italian companies operating in Tunisia, Morocco, and Albania. Lessons learned include: "listen to people and adapt to what they need; organize meetings where people can speak, to get a sense of their priorities and concerns; and, get help from people who have worked in the private sector and know how it works."¹⁰³

5. Financial Institutions

World Bank

The World Bank (WB) has been cautious in accepting any specific role in relation to human rights, for many years citing the political content of human rights and claiming its Articles of Agreement prevent it from engaging in "political" activities.¹⁰⁴ In 2005, the

¹⁰⁰ ILO Poverty Reduction through Integrated Small Enterprise Development (PRISED), http://www.ilo.org/dyn/empent/details.techcoopdetails?p_unique=112331&p_lang=EN&p_tech_coop_id=205, and http://www.sida.org/sida/jsp/sida.jsp?d=613&a=32872&language=en_US

¹⁰¹ See MNE Declaration, <http://www.ilo.org/public/english/employment/multi/tripartite/index.htm>

¹⁰² See OECD Guidelines for Multinational Enterprises (2000 Revision), <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

¹⁰³ Interview, ILO official.

¹⁰⁴ A 2007 World Bank human rights page sets out a cautious explanation of why human rights are important for the WB:

Bank requested a legal opinion on whether more explicit work on human rights would be in compliance with its Articles of Agreement. A June 2006 note, Legal Opinion on Human Rights and the Work of the World Bank, concluded that: “The Articles of Agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities, since it is now evident that human rights are an intrinsic part of the Bank’s mission.” WB Senior Vice President Ana Palacio has explained that “ the opinion expressed is founded ... on a fuller understanding of the types of considerations that the Bank can and should take into account in order to do its due diligence and as part of its decision-making process.”¹⁰⁵ The Bank is moving cautiously in this area, recognizing there is a need for it to address human rights more explicitly than it has in the past. It recognizes the Bank could play a “facilitative role in helping its members realize their human rights obligations.”¹⁰⁶

The Bank has provided considerable intellectual leadership for OECD DAC members’ thinking on BEE approaches to private sector development. Its influential *Doing Business* reports¹⁰⁷, however, have sparked new controversy over the Bank’s commitment to human rights, in particular labour standards. The report includes a contested indicator on “employing workers” for rating the ease of business establishment and operation. The Bank’s own Independent Evaluation Group has challenged this indicator, which gives the best ratings to countries that have the lowest level of labour regulation. The ILO and the International Trade Union Confederation have both expressed concerns about methodological flaws in the reports, particularly with respect to labour standards. Inconsistencies in the WB’s approach to labour rights are reflective of tensions and contradictions in many organizations’ approaches to human rights, and to social and economic policy. The Bank began to take on a promotional role with respect to labour standards (except on freedom of association) in 1995, acknowledging a link between working conditions and economic growth. More recent World Bank studies have found little systematic difference in the economic performance of countries that observe core labour standards and those that do not.¹⁰⁸ The 2006 performance standards of the IFC, a member of the World Bank Group, recognize the value of balancing protection for workers’ rights in economic growth strategies.¹⁰⁹

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,,contentMDK:20749693~pagePK:98400~piPK:98424~theSitePK:95474,00.html>

¹⁰⁵ The Way Forward: Human Rights and the World Bank, Ana Palacio, Senior Vice President and General Counsel, The World Bank Group, in Development Outreach, World Bank Institute, November 2007.

<http://www1.worldbank.org/devoutreach/article.asp?id=388>

¹⁰⁶ World Bank human rights page.

¹⁰⁷ See for example, INFODEV, “World Bank Doing Business 2008 Report Now Available.”

www.infodev.org/en/article.233.html

¹⁰⁸ For example, Toke Aidt and Zafiris Tzannatos, Unions and Collective Bargaining: Economic Effects in a Globalizing World, World Bank, 2002. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2002/09/13/000094946_02083104140023/Rendered/PDF/multi0page.pdf

¹⁰⁹ IFC Performance Standard 2: Labour and Working Conditions, 2006, [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS2/\\$FILE/PS_2_LaborWorkingConditions.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS2/$FILE/PS_2_LaborWorkingConditions.pdf)

In one initiative to address the tension in the Bank between human rights and economic development processes, Sweden and the other Nordic countries set up a trust fund in 2006 to support justice and human rights work in the WB over a five year period. Initially the fund is to finance capacity building for the Bank staff on human rights issues, selected pilot projects linked to the national Poverty Reduction Strategies (PRSP), and the development of indicators for HR and justice programmes. In addition, the fund will contribute to promoting the participation of the WB in donor coherence dialogues and work division between donors in the field.¹¹⁰

International Finance Corporation (IFC)

The IFC is the lending and underwriting affiliate of the World Bank, whose clients are in the private sector. According to its website, “IFC helps companies and financial institutions in emerging markets create jobs, generate tax revenues, improve corporate governance and environmental performance, and contribute to their local communities.”¹¹¹ The IFC has a small staff engaged on human rights issues at the policy level and 50 environmental/social impact specialists with whom human rights staff can link up. IFC has conducted staff training on security forces and on labour standards issues, as part of an ongoing process of raising awareness levels.

Prompted in part by internal critiques (including that it paid inadequate attention to social assessments and labour issues) of the IFC by its ombudsman, the Compliance Advisor Ombudsman, the IFC reviewed its social and environmental policies in 2003. The new policy framework (the IFC Performance Standards on Social and Environmental Sustainability¹¹²) is “risk focused”; if there is no direct risk to the project, human rights don’t get picked up.¹¹³ IFC does not have a human rights *policy*; in its view, there is no *obligation* on the part of the private sector to comply with human rights conventions. Rather, companies receiving support from the IFC must demonstrate compliance with IFC “performance standards.” Projects are required to put together an action plan that states what they will achieve over time and how the company will meet any (human rights) shortfalls. IFC doesn’t require human rights impact assessment for all projects, but a social and environmental impact assessment is required. The action plan is then “covenanted” in a document between the IFC and the company.¹¹⁴ Some observers have drawn attention to how the new Performance Standards represent a shift towards a more flexible system that relies heavily on the discretion of clients and individual decision-makers at the IFC. They also do little to address the CAO’s finding that the IFC has failed to select projects that meet its goal of poverty alleviation – the new Standards fail to

¹¹⁰ “The World Bank Takes on the Human Rights Agenda,”

http://www.humanrights.gov.se/extra/pod/?id=44&module_instance=2&action=pod_show&navid=44

¹¹¹ IFC, What We Do, <http://www.ifc.org/ifcext/about.nsf/Content/WhatWeDo>

¹¹² IFC’s Performance Standards on Social and Environmental Sustainability, April 2006, [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)

¹¹³ Interview with IFC official.

¹¹⁴ Interview with IFC official.

include requirements regarding the identification of a project's anticipated poverty alleviation benefits and to report on the outcomes.¹¹⁵

The IFC finds there is a business case for human rights; according to IFC's Human Rights Factsheet, "the IFC believes that corporate social responsibility – directly linked to human rights – helps clients create value."¹¹⁶ In the view of the IFC, human rights standards are state level obligations; the "universal principles" in the UDHR are obligations for states. IFC considers these obligations are difficult to translate at the local level. Since they are duties of states, the state should set the environment where the private sector can operate in a way that respects human rights. The IFC spokesperson, like other private sector-oriented organizations the research team interviewed, emphasized that the question of the private sector's human rights "responsibilities" and "obligations" was being addressed by the Special Representative of the UN Secretary General on the issue of human rights and transnational corporations and other business enterprises.

IFC deals with what it calls the "most immediate" (for the private sector) human rights: core labour standards, notably child and forced labour. The ILO Conventions, according to an IFC spokesperson, "speak to the private sector." Other "direct issues" for the private sector that IFC addresses in the context of human rights are the use of security forces by the private sector; in addition, there is some consideration on the right to health (health, safety, community health). The IFC is currently "road testing" a "Guide to HR Impact Assessment and Monitoring"¹¹⁷, which offers a detailed "how to" guide to help companies identify human rights at a project level from the perspective of risk assessment. It provides guidance on civil and political, as well as economic, social and cultural rights issues.¹¹⁸ It is intended to be combined with other substantive guides on HR (for example, on labour and working conditions; community health). IFC is also holding regional consultations on proposals for a Business and Human Rights Institute which could pick up on the work of the Business Leaders in Human Rights and the UN Special Representative. The consultations are funded, in part, by DFID.¹¹⁹

The IFC's primary relationship with donor agencies, according to a spokesperson, is a funding relationship and some partnerships. This could introduce questions about whether IFC Performance Standards are adequate to meet donor agencies' human rights criteria. Many donor agencies, including Canada's, collaborate in IFC-led PSD initiatives, for example, the SouthAsia Enterprise Development Facility (SEDF) based in

¹¹⁵ Halifax Initiative Coalition, eds. One Step Forward, One Step Back: An Analysis of the International Finance Corporation's Sustainability Policy, Performance Standards and Disclosure Policy. May 2006. <http://www.halifaxinitiative.org/updir/IFC-Analysis-HI-Final.pdf>

¹¹⁶ IFC, Fact Sheet on Human Rights, n.d., [http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/HumanRights1/\\$FILE/HUMAN+RIGHTS+FACT+SHEET.pdf](http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/HumanRights1/$FILE/HUMAN+RIGHTS+FACT+SHEET.pdf)

¹¹⁷ International Business Leaders Forum and IFC, Guide to Human Rights Impact Assessment and Management, Road-testing draft, June 2007. http://www.unglobalcompact.org/docs/news_events/8.1/HRIA_final.pdf

¹¹⁸ Examples are offered in tables on pages 22 and 23 of the Guide.

¹¹⁹ Institute for Business and Human Rights, <http://www.institutebhr.org/>.

Bangladesh. The IFC's SME website describes a number of joint initiatives (for example, with Japan and Switzerland) and multi-donor-funded initiatives, however, documents describing advisory services or projects do not discuss human rights issues.¹²⁰

The IFC Compliance Advisor Ombudsman (CAO)¹²¹ is the independent recourse mechanism for the private sector arms of the World Bank Group. It responds to complaints on social and environmental issues related to projects supported by the IFC and the Multilateral Investment Guarantee Agency (MIGA). Reporting to the WB Committee on Development Effectiveness, the CAO is limited to reporting on whether IFC/MIGA are out of compliance with their own social and environmental standards. The CAO has taken a broad interpretation of "social impact" to include loss of income in host communities resulting from an IFC or MIGA-supported project.¹²² In its advisory role, the CAO provides advice to the management of IFC and MIGA and the President of the World Bank Group on broader social and environmental issues related to policies, standards, procedures, guidelines, resources, and systems.¹²³ A recent report, for example, recommends ways to improve local development impacts (defined as "a company's or development project's direct and indirect effects on local communities and broader society"¹²⁴) at the project level. It suggests processes, indicators, and recommendations to assess and potentially improve the development impacts of projects.¹²⁵

Export Development Corporation (EDC)

EDC is Canada's export credit agency, offering financing, insurance and risk management support for Canadian exporters and investors to expand their international business. It is a Crown corporation, wholly owned by the Government of Canada.¹²⁶ EDC notes that its mandate is to support Canadian exporters and investors, distinguishing this from CIDA's development mandate.¹²⁷

In 2006, in part in response to civil society pressure and concerns raised by the Auditor-General of Canada on EDC accountability, EDC undertook a benchmarking study on what IFIs were saying on human rights, and how human rights are impacted by investments (including how IFIs treat their own employees). The study recommended that EDC should look at what is happening on human rights as part of its "due diligence." In 2008, the EDC released a "Statement on Human Rights",¹²⁸ which "sets out our responsibility to evaluate potential human rights issues in projects we are asked to

¹²⁰ See IFC SME Publications, <http://www.ifc.org/ifcext/sme.nsf/Content/Publications>

¹²¹ See CAO website at <http://www.cao-ombudsman.org/>

¹²² Discussion with Henrik Linders, CAO, May, 2008.

¹²³ See CAO Advisory Function, <http://www.cao-ombudsman.org/html-english/advisor.htm>

¹²⁴ Office of the Compliance Advisor/Ombudsman Advisory Note, Improving IFC's and MIGA's Local Development Impact at the Project Level, June 2008, p. iv, http://www.cao-ombudsman.org/html-english/documents/DI_final_11.June.2008.pdf

¹²⁵ CAO Advisory Note.

¹²⁶ EDC Factsheet, http://www.edc.ca/english/mediaroom_8960.htm

¹²⁷ Interview, EDC official.

¹²⁸ EDC, New statement sets out EDC's principles for the consideration of Human Rights, April 30, 2008, http://www.edc.ca/english/docs/news/2008/mediaroom_14502.htm

consider.” The Statement notes that the EDC “receives public policy guidance from the Government of Canada with respect to Canada’s international obligations, such as those elaborated in the UN UDHR.” It also receives “intelligence” from the Government on human rights situations for a wide range of countries. The statement does not, however, set out an EDC policy regarding the potential human rights impacts associated with the investments of its prospective clients.¹²⁹ EDC’s Political Risk Assessment Department conducts country- and project-level political risk assessments that include human rights conditions in host countries, as part of its “due diligence.” It also undertakes supplementary analyses for investment projects and countries assessed to have a higher potential for human rights issues. EDC draws from the World Bank’s Country Governance Indicators, among others, in its risk assessments.¹³⁰ EDC doesn’t do the impact assessments of project proposals itself; this is left to companies seeking EDC financing.

Like many organizations, EDC prioritizes some human rights issues over others. While suggesting that gender equality might be difficult to address, the spokesperson acknowledged there could be gender-related impacts affecting ethnic women, women and children, HIV and mining in EDC-supported investments. Among human rights impact assessment “tools”, EDC indicated the IFC’s tools for labour, Indigenous peoples and human security would be the most relevant at the project level.

While EDC has no formal relationship with CIDA, the spokesperson indicated it is interested in informal collaboration, citing as an example a workshop on the Democratic Republic of Congo and social impacts of investment. It also collaborates with civil society organizations, such as CARE, World Vision, Save the Children, and with professional associations such as the Prospectors and Developers Association, and finds sharing examples of “good practice” useful. Regarding recourse for individuals or host communities on alleged human rights violations, the spokesperson suggested strengthening national contact points would be helpful; the spokesperson noted that Canadian investors benefit when CIDA has a strong program on judicial processes in a host country.

¹²⁹ Halifax Initiative, *Export Development Act Legislative Review*, Submission by the Halifax Initiative Coalition, June 30, 2008, <http://www.halifaxinitiative.org/updir/LegislativeReview-HalifaxInitiative.pdf>. The Halifax Initiative prepared a background study on human rights and export development corporations as a contribution to the Special Representative of the United Nations Secretary General on Business and Human Rights. See *Export Credit Agencies and the International Law of Human Rights - January 2008*, http://www.halifaxinitiative.org/index.php/Reports_Analysis/1074

¹³⁰ EDC, New statement, op cit, http://www.edc.ca/english/docs/news/2008/mediaroom_14502.htm

6. Civil Society approaches to human rights and PSD

CARE Canada

CARE Canada takes a rights based approach in its overall programming, particularly in its humanitarian work, where development practitioners tend to have a human rights background. It promotes innovative solutions and advocates for global responsibility.¹³¹ CARE Canada's "Making Markets Work for the Poor" initiatives aim to "create the conditions for successful entrepreneurship in the developing world. In CARE's view, the "first wave of development" (the "charity approach") addressed needs, while the "second wave of development" (the "rights based approach") upheld rights. What is needed now is a "third wave" of development that will "enable the poor to take ownership of their livelihoods and harness the engine of private sector growth for social returns."¹³² A CARE spokesperson stressed that PSD is good development policy, and PSD advances rights: "An unmet need is a right denied – we deal with income first. It is more productive to build up (poor people's) economic capacity and ability to be taken more seriously by people who are duty bearers."

CARE Enterprise Partners (CEP) provides capital and technical assistance to promising small and medium size enterprises to help generate sustainable economic and social returns for poor communities.¹³³ CEP Investments is a social venture capital fund to incubate social enterprises in developing countries. PSD projects aim to build bridges between the poor and the private sector. In this work, CARE is guided by three principles:

- ownership by the poor: small business ownership by the poor is a cornerstone for building a strong economy (in contrast to large infrastructure projects)
- legitimization – bringing small, informal businesses into legal status to reduce risk of exploitation and illicit land grabs, while enhancing opportunities for growth.
- an emphasis on finding existing opportunities for business growth.¹³⁴

CARE's "ladder" approach to access to financial services sees financial services starting with small, informal village savings that create the basis for micro-finance (an underserved area); then moving up to micro-finance, which is relatively well serviced; then to SME finance, which is underserved - CARE CEP operates here, providing "patient capital" (an equivalent might be bonds in Canada) for businesses that are too big for micro-finance, and, finally, the formal sector which is reasonably well served by banks. CARE prefers to separate capacity-building for the local business from the actual business loan, drawing from donors' program based investments. One constraint to CEP fundraising is that at present, Canadian tax law does not recognize such investments for charitable receipt purposes.

¹³¹ See CARE Canada, Who We Are, <http://care.ca/main/?en&whoWeAre>

¹³² CARE Canada, Making Markets Work for the Poor: CARE Canada's Strategy for Helping the Poor through Enterprise, n.d. <http://care.ca/userfiles/file/MMW4P-V1e.pdf>

¹³³ 2007 Annual Report, <http://care.ca/userfiles/file/CAREar2007e.pdf>

¹³⁴ A. John Watson, Submission to the UN Commission on the Private Sector and Development, 2003, , CARE Canada <http://care.ca/userfiles/file/UNDPDec2003e.pdf>

CEP investment criteria include five key principles for developing country enterprises: commercial viability, social impact, entrepreneurship, governance, and corporate conduct. “Human rights” are integrated under “corporate conduct” and include: labour standards, gender equality (included in social indicators), and no child labour. CEP makes sure the enterprise is compliant as part of its due diligence process.¹³⁵ While “rights” are not explicit in its work, a CARE official noted that women’s rights are quite well developed at the village level, for example, in village level savings groups, 3 of 5 executive positions must be filled by women. Village savings groups represent an investment in capacity: women learn the basics of financial literacy, and so are likely to be better credit risks. The longer-term “return” on investment is in future entrepreneurs who will know their rights and have the capacity to deal with financiers.

A CEP spokesperson emphasized that they do not come across human rights issues much, since they work with social enterprises. The business model is one in which the social aspect is part of the core business (in contrast with the “add on” nature of most CSR initiatives). Social enterprise development requires a long-term investment of time and financial resources. The investment approach is cutting edge, and donors may have difficulty justifying the opportunity cost of initiatives that assist micro-enterprises grow into more stable small enterprises.

CEP is currently revising its project monitoring and evaluation tools, including indicators. Social enterprise indicators that it uses include data on number of local suppliers integrated into local value chains, number of communities brought in; increase in employment, access to better services, and gender equality.

Oxfam Great Britain (Oxfam GB)

Oxfam is an international confederation of 13 “like-minded” non-governmental organizations (including Oxfam Canada and Oxfam Quebec). It “work(s) directly with communities and seek(s) to influence the powerful to ensure that poor people can improve their lives and livelihoods and have a say in decisions that affect them.”¹³⁶ It has a strong commitment to promoting human rights, focusing on what it calls “basic human rights”, in particular the rights to sustainable livelihood (food and income security, decent working conditions and protection of natural resources), basic services (basic health care, water, education), life and security (especially for people in war, conflict, natural disasters), be heard (political and civil rights), and, an identity (addressing marginalization because of gender, religion, ethnicity, cultural identity).¹³⁷

Oxfam sees the private sector, and especially large transnational corporations (TNCs), as having a potentially important contribution to achieving poverty reduction, through the creation of jobs and skills, provided their particular policies and practices take into account people’s rights. Specifically, they note the importance of “companies integrating

¹³⁶ Oxfam International, About Us, <http://www.oxfam.org/en/about>

¹³⁷ Oxfam Canada website, <http://www.oxfam.ca/what-we-do/our-approach/basic-human-rights>

their social and environmental responsibilities into their core business operations and decision-making processes.”¹³⁸

Its work on PSD has mostly addressed the right to sustainable livelihoods, though it has also taken into account other rights, notably identity and voice. Relevant themes have been the right to make a living, and ways to ensure that trade contributes to poverty reduction.¹³⁹ Some of this work is captured in their programming and other initiatives in their campaigning, with overlap between both. Research on global trade rules or on conditions for workers producing coffee and clothing, for example, have been used in campaigns to promote fairer trade rules, increase the share of the final price paid to coffee growers, and to eliminate sweatshops. They have argued strongly in favour of states having the capacity to regulate markets (for example, through trade policies) and to implement redistributive measures (through taxation, promotion of worker rights and financing support for poor producers).

In its work on PSD, Oxfam has found that value chain analysis is a helpful tool to achieve a comprehensive, and more dynamic, understanding of the impact of private sector activities. In 2003-04, Oxfam collaborated with Unilever to assess the company’s impact on poverty in Indonesia along its value chain; its “poverty footprint” to use Oxfam’s language. The experience offered many lessons, including the difficulties of capturing both direct and indirect aspects of such a large company’s interactions with poor people. Oxfam found that the process of working with Unilever may have been as important as the findings. There were limitations however, and Oxfam concluded that in future “a stronger rights based approach, more gender-differentiated data, and a more ‘people-centred’ methodology would enhance our findings greatly.”¹⁴⁰ Oxfam has continued with the “poverty footprint” work, both to refine the methodology and to expand the findings. In India, a current study may be used as a tool to influence the company rather than leading to a public report for campaign use. Another, partial, approach may be to address specific aspects of a company’s practices, rather than the comprehensive approach attempted in the Unilever case, for instance by focusing on contribution to taxation, employment, or marketing.

Oxfam GB is focusing on specific sectors, such as finance/investment and banking; agriculture/smallholder farmers; and climate change. For example, it has supported the work of the Bretton Woods Project on the banking sector and whether and how development and project finance supports the Equator Principles¹⁴¹. In May 2008, as part of its campaign work, Oxfam produced a brief on business and the MDGs, in which the private sector’s contribution to basic rights is noted in various ways. In particular the

¹³⁸ see <http://www.oxfam.org.uk/resources/issues/privatesector/introduction.html>

¹³⁹ see <http://www.oxfam.ca/what-we-do/themes-and-issues>.

¹⁴⁰ Barbara Stocking, *Foreword*, in Jason Clay, *Exploring the Links between International Business and Poverty Reduction: A Case Study of Unilever in Indonesia*. Oxfam GB, Novib, Unilever, 2005. <http://www.oxfam.org.uk/resources/policy/trade/downloads/unilever.pdf>

¹⁴¹ The Equator Principles are a set of environmental and social benchmarks for managing environmental and social issues in development project finance globally; see <http://www.equator-principles.com/index.shtml>

brief emphasizes the need for companies to conduct business responsibly and specifically to address abuses of HR, labour and environmental standards.¹⁴²

Rights and Democracy (R&D)

Rights and Democracy (the International Centre for Human Rights and Democratic Development), is a non-partisan organization with an international mandate. It was created by Canada's Parliament in 1988 to encourage and support the universal values of human rights and the promotion of democratic institutions and practices around the world.¹⁴³ R&D's main work on a HRBA to PSD has focused on the development of a guide, or toolkit, to assist local communities and civil society organizations to identify the impacts of foreign investment on communities, and more effectively voice their concerns.¹⁴⁴ The human rights impact assessment (HRIA) involves a ten step process and various questions for use by community groups involved in HRIA. The questions were set out in a research guide and were based on the UDHR and informed by the UN's Human Rights Norms for Transnational Corporations and Other Business Enterprises, for adaption by communities to their specific context.

The toolkit¹⁴⁵ was initially tested with five case studies involving different sectors and countries. A general conclusion was that "it is possible to demonstrate the human rights impacts of foreign investment at the project level. Perhaps more importantly, it has shown that placing the affected communities at the centre of the process enriches the outcomes."¹⁴⁶ The research showed that the impact assessment varied by sector.

Various points emerged in the trial and review of the toolkit.¹⁴⁷ These include:

- The HRIA process can help communities to see that they have options, e.g. to speak out and attract attention. But it often does not go far enough.
- The procedural burden or burden of proof typically falls on weak communities, i.e. they have to prove their human rights have been or will be violated and that they will experience negative impacts, using particular indicators.
- There may be a need for earlier action by companies in response to HRIA, for example, at the project development stage, including possible withdrawal if necessary.
- There also needs to be a commitment to continuous action to support human rights during the lifetime of a project, in particular, to support follow-up by

¹⁴² Oxfam, GB, Briefings for Business: Business and the Millennium Development Goals -Your Call to Action, May 2008,

http://www.oxfam.org.uk/resources/policy/private_sector/downloads/business_mdgs.pdf

¹⁴³ See Rights & Democracy, Who We Are, at http://www.dd-rd.ca/site/who_we_are/index.php?lang=en

¹⁴⁴ Getting it Right: A step-by-step guide to assess the impact of foreign investments on human rights. International Centre for Human Rights and Democratic Development. November 2008. It consists of a plain language booklet and step-by-step guide on a CD. It is also available online at www.dd-rd.ca.

¹⁴⁵ Rights & Democracy, Human Rights Impact Assessments for Foreign Investment: Learning from community experiences in the Philippines, Tibet, Democratic Republic of Congo, Argentina, and Peru, http://www.dd-rd.ca/site/PDF/publications/globalization/hria/full%20report_may_2007.pdf

¹⁴⁶ Ibid, p. 33

¹⁴⁷ Interview with R&D official, May 2008

community groups; associated costs need to be included in HRIA budgets. R&D suggests a 'life-cycle' approach to integrating HR in PSD.

- Communities are now better able to identify processes to claim their rights as a result of HRIA, but the actual achievement of human rights is a difficult and longer term process.
- There is little focus on the next steps, for instance whether there will be a criminal process, i.e. litigation that may happen outside a country as in the Hague or Washington DC, raising questions of national sovereignty, as well as the time and resources taken to achieve results.

Based on the review, the toolkit has been elaborated to include up to 24 steps, including both quantitative and qualitative indicators (this compares with IFC's 8 steps, many of which are somewhat similar to those of R&D). Issues to be considered were divided into three categories – one mandatory, one selective for different sectors, and one providing guidance for use of own indicators. Plans are being developed to test the toolkit with partners such as Oxfam America in Latin America and the International Federation for Human Rights (Fédération internationale des droits de l'homme) in Africa.

The toolkit and these findings have been shared with the donor community through the OECD, and with the private sector at a meeting in Switzerland convened by Novartis and the IFC. That meeting focused on HRIA tools/processes, including consultations with communities, to see how they might be integrated into business management processes. One concern raised by R&D is that "in trying to identify corporate obligations, we were in fact contributing to the 'privatization' of human rights."¹⁴⁸ Another is that HRIAs do not usually address broader, structural issues, such as state-to-state Foreign Investment Protection Agreements that may increase corporate mobility.

7. Summing up

We found in our literature review and in interviews that while there have been several decades of experience by international development agencies with both PSD as a tool for poverty reduction, and with human rights approaches to poverty reduction (particularly in the areas of governance and democratic development), the links between the two in the form of rights based approaches to PSD remain relatively undeveloped. Some agencies have begun to take steps to address this gap through the development of policy frameworks, programming tools and processes for accountability. Many of these initiatives have been taken within both bilateral and multilateral agencies, and in some NGOs.

There have been examples of collaboration among agencies, to share lessons and identify good practices, for example, in the OECD DAC, among multi-stakeholder groups (public-private-NGOs), and to support capacity-building (for example, ILO support to IFC in the review of IFC Performance Standards). A frank exchange of good practice and "lessons learned" on integrating human rights in PSD in the OECD DAC or DCED

¹⁴⁸ Ibid, p. 33.

would be useful to encourage further discussion on tensions in addressing both social and economic implications of growth strategies and PSD programming. This discussion paper has not explored in detail the implications of partnerships between the public and private sectors, although this is an area in which some donors, notably DFID, have been quite active. This could be an area for further research.

There are a number of issues related to rights based approaches to PSD that merit further research and discussion. They include:

- *Monitoring* – Rights based approaches call for attention to and monitoring of both outcomes and process. The international human rights conventions provide for international oversight, with governments being required to submit reports on progress in meeting their human rights obligations. This raises the question of HR monitoring of donor-supported PSD programming – one study suggests that human rights based approaches represent a positive step toward donor governments being prepared to be held accountable by poor people in developing countries. Bilateral aid agencies, in this view, should be accountable to: taxpayers in the donor country; government in the donor country; government in the recipient country; poor people in the recipient country, and, the international human rights framework.¹⁴⁹ UNDP has found that the accountability structure pursued through a HRBA facilitates the development of quantitative and qualitative benchmarks and indicators for measuring.¹⁵⁰ The HRBA focus on both duty bearers (states) as well as rights holders (individuals) means that development agencies also need to increase the capacities of the poor to claim their rights and of duty bearers to meet their obligations.¹⁵¹

In terms of project monitoring and evaluation, indicators for PSD projects could present opportunities to deepen analysis of human rights dimensions of PSD programming. Indicators suggested in a recent DCED guidance note, for example, include increases in additional net income accruing to poor people, and net job creation resulting from projects (presumably projects include collection of sex disaggregated baseline data); these could be expanded to capture a broader range of qualitative changes, including social and environmental impacts.¹⁵²

Enforceability/justiciability – A key characteristic of rights based approaches is that HR goals and processes have a strong legal basis in international treaties and often in national law. The treaties provide scope for their enforcement. However in many countries there may be inadequate resources, institutions and laws to enable poorer, marginalized people to take advantage of their rights. Without such

¹⁴⁹ R. Eyben and C. Ferguson, How Can Donors Become More Accountable to Poor People? 2005. <http://www.gsdc.org/go/display&type=Document&id=2658>.

¹⁵⁰ UNDP, Human Rights in UNDP – Practice Note (April 2005), cited in K. Decker et al, p. 46.

¹⁵¹ K. Decker et al, pp. 44-46.

¹⁵² Donor Committee for Enterprise Development, Quantifying Achievements in Private Sector Development, Control Points and Compliance Criteria Version III, 27 Nov 2008, <http://www.enterprise-development.org/>

resources, a HRBA may not be more effective than other approaches in achieving rights based outcomes. Others have suggested that legalistic approaches may not always be useful at a project level and have found entry points by looking at opportunities in “soft law.” Several workshop participants explained how moving away from legalistic categories of “duty bearer” and “rights holder” to notions of “everyone” has responsibilities, or “obligations to the community” opened up space for collaboration at the local level.

- *Indivisibility* – In principle, all rights are to be treated equally and jointly. There is no hierarchy of rights that suggests a particular sequencing. However, national resource constraints and differing priorities may lead to some rights being addressed ahead of others in different countries. What is important is that there are processes in place which allow poor and marginalized peoples to engage in discussion with policy makers and others about the choice of these priorities and resources made available to plan for achievement of the full set of rights. It is not appropriate for donor agencies or other outsiders to make these choices on their behalf.

Most organizations we reviewed prioritized some human rights over others. While this practice may run counter to principles of indivisibility, rights based approaches do recognize that some rights are more easily achieved than others. The important thing here may be “progressive realization”, (or, as we heard, “you do X first to achieve Y”) and ensuring a process for prioritization. Human rights impact assessments are valuable tools to help identify priority human rights concerns, and can help build capacity in community groups and organizations to voice concerns and participate in decisions that affect them. HRIAs do not in themselves, however, tackle the broader context in which the HR impacts are located.

- *The role of the state and other actors* – Much of the focus in rights based approaches is on the role of the state as “duty bearer” with obligations to ensure the rights of individuals and communities (“rights holders”). The respective obligations and responsibilities of governments and the private sector, and the practical implications of those obligations and responsibilities were often raised in the research team’s interviews. Many of those interviewed drew attention to the importance of the report by John Ruggie, Special Representative of the UN Secretary General on the issue of human rights and transnational corporations and other business enterprises, “Protect, Respect and Remedy: A Framework for Business and Human Rights,”¹⁵³ to clarify these questions. The Ruggie report says little about the human rights obligations of international cooperation agencies, but makes one suggestion, that when a large multinational corporation undertakes a foreign investment that could be expected to have a significant

¹⁵³ John Ruggie, Protect, Respect and Remedy: A Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. April 7, 2008. <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

human rights “footprint”, the investor’s national development cooperation agency could support human rights capacity-building for communities and human rights institutions in the host country. This suggestion, however, raises broader questions of policy coherence across government agencies on human rights.

- *Most agencies are investing in tools to support internal capacity-building* – Most organizations interviewed identified the need for capacity-building on human rights, for both their own organizations and for their “clients” (variously defined). Many agencies are investing in developing tool kits to support HR mainstreaming. Most are in early stages, piloting new approaches, developing “help desks” and toolkits. HRIA models examined by the research team and experiences contributed by workshop participants suggest that there is no “one-size-fits-all” assessment methodology or strategy. We also heard that internal accountability and clarity are key to having an effective human rights policy. Agencies could also apply lessons learned from gender mainstreaming experience when considering the strengths and weaknesses of “mainstreaming” strategies or relegating human rights as a sub-sector of governance issues. As with the discussion on “women in development” and “gender and development”, agencies need to be clear whether the goal is integrating human rights in development, or rights and development.¹⁵⁴

We heard about the importance of leadership within an agency to really advance thinking and action on human rights within the organization. As a DFID official told us: “You need a champion.” At a programming level, we heard similar advice: “Accountability and clarity are key. The organization needs to clearly communicate its human rights policy to staff, and staff needs to perceive there is a real commitment from the top.”

Donor agencies could consider initiatives that would encourage dialogue between their PSD and human rights sectors, to develop greater familiarity with the different “languages” of social and economic development, and to identify do-able entry points to include human rights principles in PSD initiatives. Donor agencies and practitioners working in these two areas could share experiences, evaluations and “good practice”, and explore ways to make their work more complementary.

We heard repeatedly from practitioners that human rights “take time and money;” there are no “cookie cutter” strategies. Human rights issues are “sensitive, controversial and difficult”, requiring careful analysis at the community/grassroots level to know what the situation is. This takes time and money. Donor agencies have to be there for the long haul.

¹⁵⁴ Fraser Reilly-King, personal communication.

Closing voices:

We heard different views on the relative importance of PSD and human rights initiatives in strategies to reduce poverty. In the view of Oxfam GB, “poverty both is, and stems from, a denial of the basic rights to which every human being is entitled.”¹⁵⁵ Others expressed a view that people first need skills and livelihoods – rights come later. Promoting rights can make an important contribution to development. As one spokesperson explained, discussing gender equality rights: “In developing countries the workforce is at least 40% women, often more. But companies are not tapping into women effectively and efficiently. This is a development loss, since the best way to build economic growth is through training.” The key question for donor agencies’ PSD initiatives is: “how can PSD promote human rights?”

¹⁵⁵ Oxfam Unilever report, p. 30

Annex 1. HRBA and PSD: a legalistic approach

In their study of development agencies and human rights based approaches, Nyamu-Musembi and Cornwall¹⁵⁶ argue there is a line of distinction between those agencies which take a more “legalistic” approach, using human rights as standards of assessment and guidance, and those for whom the realization of human rights “underpins the entire development enterprise”, providing a framework for defining intermediate development goals.

It can be argued, first, that human rights as expressed in the UDHR and customary law, in the Covenants and the other treaty level conventions, (CEDAW, CRC, etc.) as well as in ILO conventions provide an overall *vision* for “development” and for ground rules of human society. It informs national legislation and procedure to a greater or lesser extent in both donor and recipient/client countries. This vision in its various dimensions also is embodied in various “soft law” expressions and statements of intent, like the Alma Ata “Health for All” declaration, the Beijing Declaration and Platform for Action, or the Millennium Declaration.

Secondly, this vision is *embodied in law* -- treaty law as well as customary international law -- providing for duties and obligations on all signatories, which largely affect the relations of states with individuals, but increasingly are understood to include “third parties”, including economic actors, employers, corporations, etc. It would follow that development planning and programming guided by a human rights vision would check its objectives against the overall human rights vision, beginning with the Charter and the UDHR and Covenants. It would also check the agreed legal obligations signed on by the donor and the recipient/client countries.

Further, because of the comprehensiveness embodied in the overall expressions of a human rights vision and related international law, the expression of policy and its embodiment in program and process should exert influence on all government policy which could advance or impede the promotion, respect and protection of human rights as well as the particulars of ODA program and project development, implementation and evaluation.

In this context, Nyamu-Musembi and Cornwall identified four broad approaches taken by donors to deploying human rights in a HRBA to development:

- as a set of normative principles to guide the way development is done
- as a set of instruments with which to develop assessments, checklists and indicators
- as a component to be integrated into programming
- as the underlying justification for interventions aimed at strengthening institutions.¹⁵⁷

¹⁵⁶ Celestine Nyamu-Musembi and Andrea Cornwall, What is the “rights based approach” all about? Perspectives from international development agencies, IDS Working Paper 234, November 2004. <http://www.ids.ac.uk/ids/bookshop/wp/wp234.pdf>

¹⁵⁷ Nyamu-Musembi and Cornwall, pp. 45-47

Maastricht Guidelines

Some organizations and private sector representatives interviewed by the research team suggested that the international human rights conventions do not “speak” to the private sector (although ILO conventions, since they represent consensus among governments, employers and workers, do in fact “speak” directly to employers). The Maastricht Guidelines (1997) offer some guidance for donor agencies engaged in PSD programming.

The Maastricht Guidelines elaborate on principles (the “Limburg Principles”) developed by a panel of legal experts to assist in the development and application of ESC rights. They deal with both positive acts by the state and omissions or failures to act. Among the most relevant with regard to private sector development and human rights are:

Para. 14 Violations through acts of commission:

- (c) The active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights
- (d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights.

Para. 15: Violation through acts of omission

- (j) The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.

The Guidelines are notable for moving beyond the state/individual axis into consideration of the role of third parties, most importantly corporations:

Para. 18. Acts by non-state actors:

The obligation to protect includes the State’s responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-State actors.¹⁵⁸

¹⁵⁸ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997, http://www1.umn.edu/humanrts/instate/Maastrichtguidelines_.html

Annex 2: Organizations interviewed, and/or consulted by e-mail

CARE Canada
Department for International Development, UK
Export Development Corporation
Rights and Democracy
International Finance Corporation
International Labour Organization
Kartini International
Lever Enterprises
Norwegian Agency for Development Cooperation
Office of the Compliance Advisor/Ombudsman, IFC, Multilateral Investment Guarantee Agency (MIGA), World Bank Group
Oxfam Canada
Oxfam Great Britain
Research Team, Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises
Swedish International Development Cooperation Agency

We would like to express our appreciation to many people who answered questions and shared perspectives in their individual capacities. Under the terms of our understanding with interviewees, NSI agreed to keep specific comments in confidence, although individual comments might be transcribed verbatim, but without attribution, in the report if they were helpful in making a point.

Annex 3. Workshop on Integrating Human Rights in Donor Agencies' Private Sector Development Initiatives, The North-South Institute, November 5, 2008

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