



**O.P. Jindal Global University**  
*A Private University Promoting Public Service*

**SUMMER SCHOOL ON |  
HUMAN RIGHTS AND  
DEVELOPMENT  
JULY 2 – 20, 2018**



**HARVARD  
T.H. CHAN**

**SCHOOL OF PUBLIC HEALTH**  
Department of Global Health  
and Population

---

# **Basic Concepts of Human Rights and Development**

**Stephen P. Marks, Harvard University  
Spencer Henson, University of Guelph**

**Thursday, July 5, 2018  
10:30 am – 12:00 pm**



The Rajagopal family  
cordially invites you and your family to the  
Bharatanatyam Rangapravesham  
(Classical Indian dance debut performance) of

*Mekala Rajagopal*

Disciple of Smt. Meena Telikicherla  
Nrityanjali Inc., Gaithersburg, Maryland

**ON**

**Saturday June 30th, 2018**  
7:00 pm (Seating at 6:30)

**AT**

**Robert E. Parilla Performing Arts  
Center, Montgomery College**  
51 Manakee St., Rockville MD 20850

**RSVP**

[mekaladance@gmail.com](mailto:mekaladance@gmail.com)  
by June 24th (regrets only)







## n I. Meaning of human rights

# Review of human rights: norms and processes

---

Modes of discourse: What is human rights talk?

Origin and sources of human rights: Where do they really come from?

How do human rights norms emerge in international law and politics?

What can be done to move from norm-creation to norm-enforcement?



# **Human Rights: A Brief Introduction**

Stephen P. Marks  
Harvard University

## Amartya Sen: Law as “a further fact”



“The invoking of human rights tends to come mostly from those who are concerned with **changing the world** rather than interpreting it...The colossal appeal of the idea of human rights [has provided comfort to those suffering] intense oppression or great misery, without having to wait for the theoretical air to clear.”

“Even though human rights can, and often do, inspire legislation, this is a **further fact**, rather than a constitutive characteristic of human rights.”

# Modes of human rights discourse: Does the Death Penalty Violate Human Rights?

Mode of discourse	Example	Source
<b>Aspirational/ advocacy</b>	“The death penalty is the ultimate denial of human rights” AI	Human rights activism
<b>Ethical/ philosophical/religious</b>	Fails as deterrent, costly to the state and morally repugnant; required for security of citizens, rights of victims and moral law of retribution, Hud in the Qur’an	Ethics, values clarification, rights theory, theories of justice, religious doctrine
<b>Legal/ political</b>	Not prohibited in UDHR or the ICCPR (life, torture), but 2d OP to ICCPR, Prot. 6 ECHR, Proto. ACHR, statute ICTR, ICTY, ICC	International human rights law, humanitarian law

## A thought from Baxi...



“Still, though **not radically ameliorative of here-and-now suffering**, international human rights standards and norms empower peoples’ movements and conscientious policy-makers everywhere **to question political practices**. That, to my mind, is an inestimable potential of human rights language, not readily available in previous centuries. Human rights languages are perhaps all that we have to interrogate the **barbarism of power**, even when these remain inadequate to humanize fully the barbaric practices of politics.”





Social protest  
and mobilization

Regime  
change

Social  
action

### REGIME CHANGE LOOP

People's suffering  
and needs

Human rights  
awareness

Claims based on human  
rights and justice

Political  
Process

### RULE OF LAW/ DEMOCRACY LOOP

Effective redress  
and protection

Legislative  
process

Human rights norms  
in positive law



# Natural and positive law

---

## **Moral/Natural law**

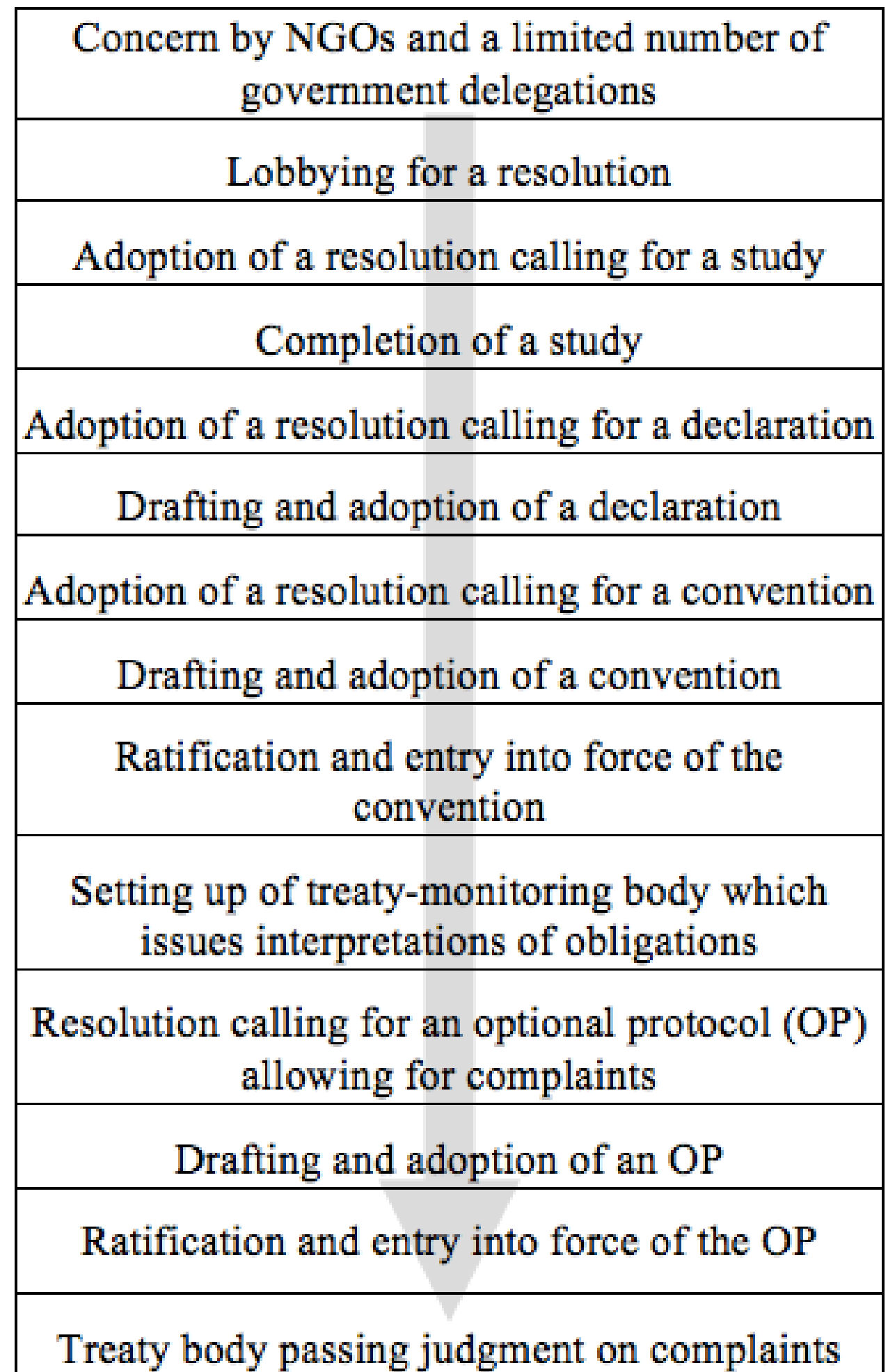
- Authority from divine will or metaphysical absolutes
- Appeal to a higher authority against realities of naked power
- BUT no empirical basis of claim to permanence or universality

## **Legal/Positive law**

- Authority from norm-creating process
- Content of rights empirically discoverable
- Appeals to formal agreement over subjective judgment
- BUT must rely on officials to implement, overlooks structural injustice

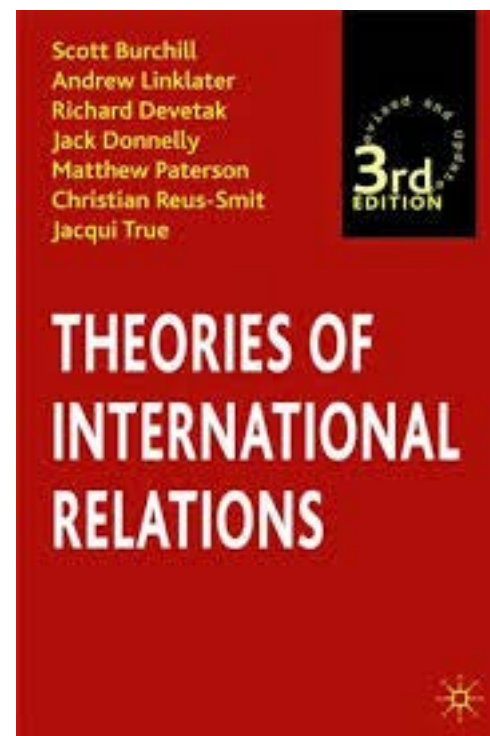
## ***Norm-creating process:***

**From informal expression of concern to formal determination of human rights violation**





## The international system in IR



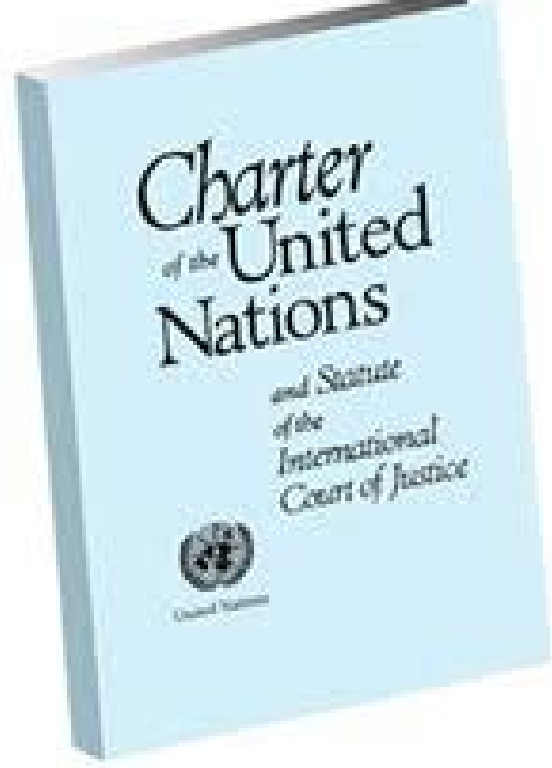


# Sovereignty

---

Exclusive jurisdiction to legislate, adjudicate and enforce within territory and over its permanent population.





# Ambiguous visions: Sovereignty, human rights and the UN

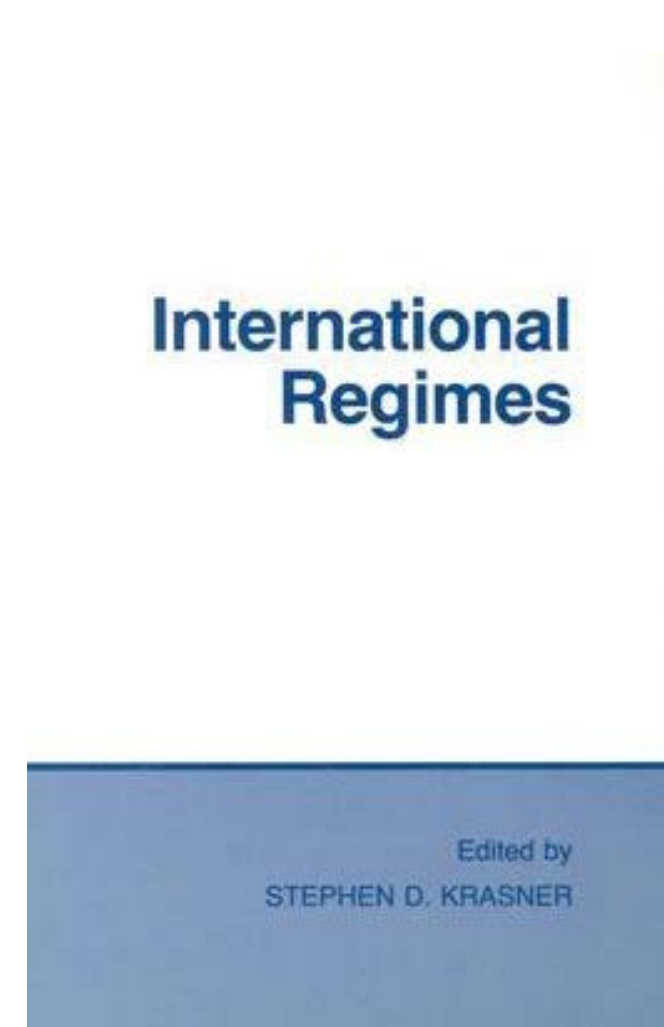
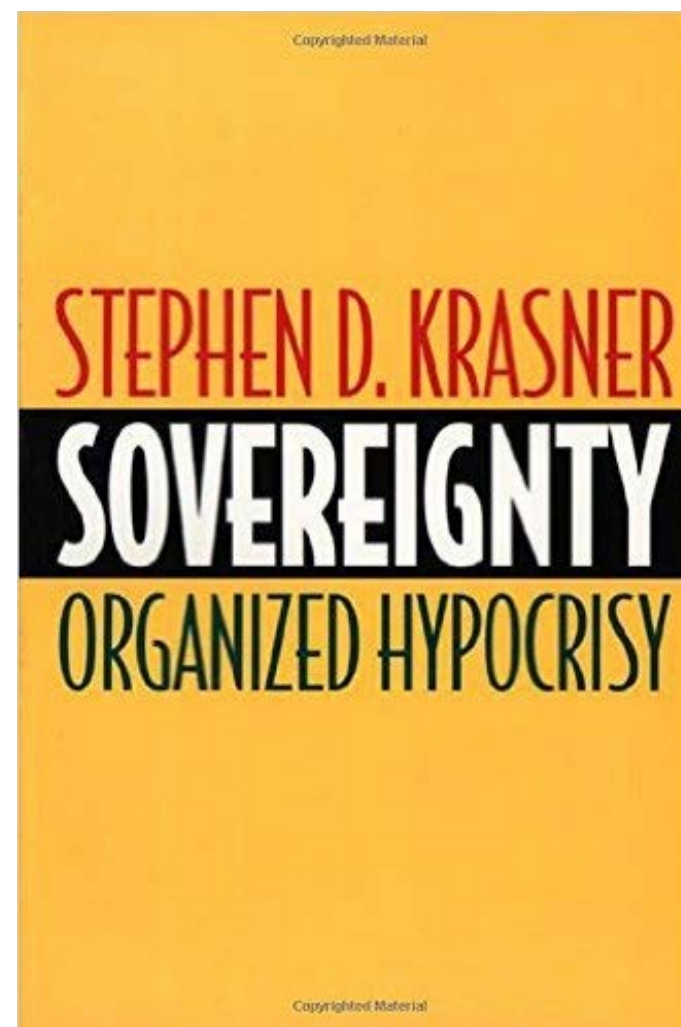
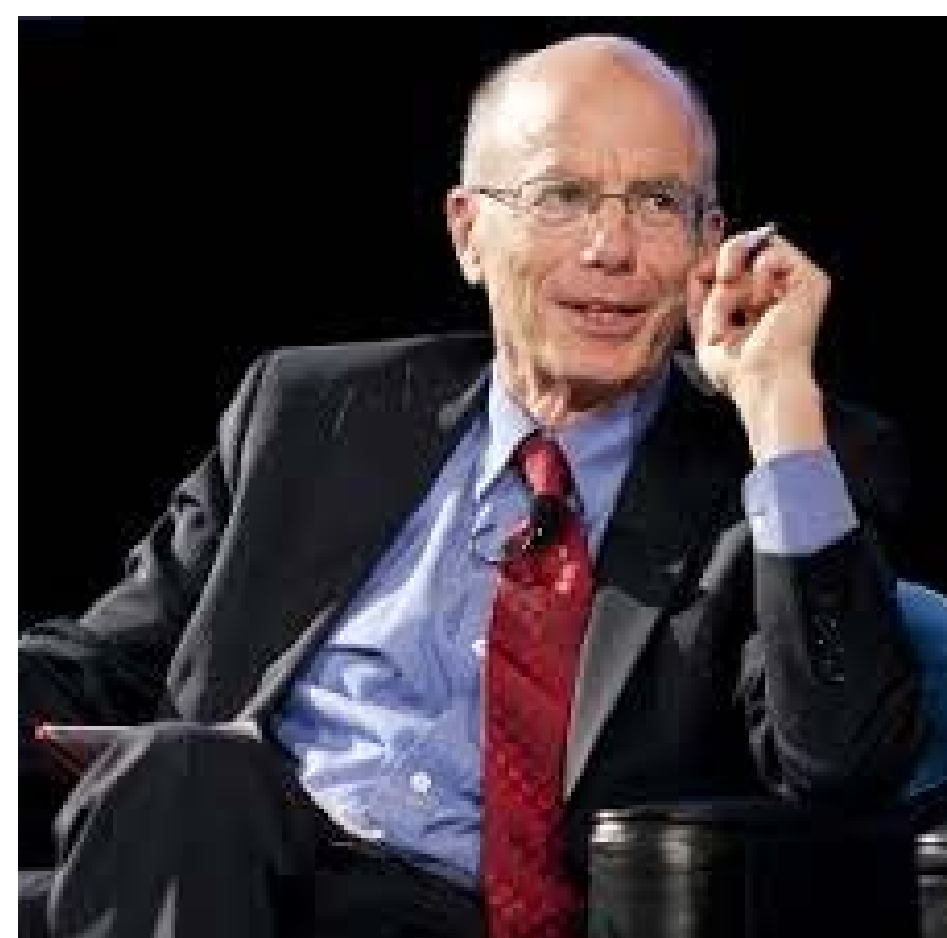
---

## DOMESTIC JURISDICTION

- Charter, Article 2(1): The Organization is based on the principle of the sovereign equality of all its Members.
- Article 2(7): Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.
- Article 1 (3): The Purposes of the United Nations are:...To achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
- Articles 55-56: All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55. [including] ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

# Human rights as contradictory to sovereignty

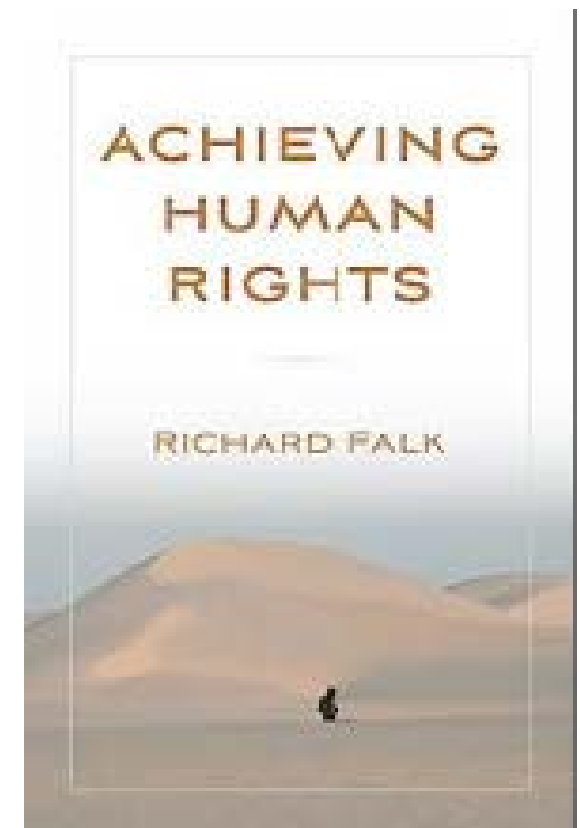
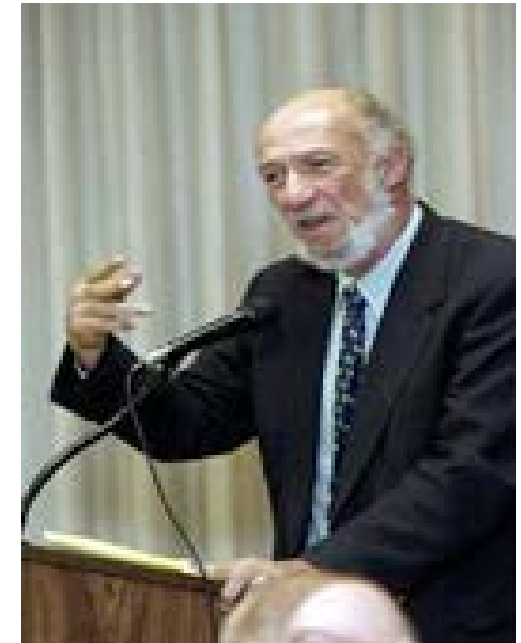
- Human right law is “revolutionary because it contradicts the notion of national sovereignty—that is, that a state can do as it pleases in its on jurisdiction.” (Forsythe)
- But sovereignty has always been violated: “Westphalian and international legal sovereignty are best understood as examples of organized hypocrisy.” (Krasner p.24)



# Richard Falk: “Responsible sovereignty”

---

- “Sovereignty can no longer be reduced to territoriality; it now includes elements of normatively (human rights, humane governance, human dignity) and functionality (nonterritorial centers of authority and control).”
- “Sovereignty ... needs to be conceptualized ... as deference to established governmental authority in a state and .. as a possible basis for endorsing or repudiating intervention ... to serv[e] humanitarian goals.”





# NATURE OF THE INTERNATIONAL SYSTEM



**Norms:** rules governing what states and other actors can do

**Processes:** the structure of interactions among states and other entities

**Actors:** the individuals and entities that influence the outcomes

# The International Trade Regime

---

**Norms:** National treatment, most-favored nation (MFN), reciprocity, etc.

**Institutions:** WTO, Min. Trade, TNCs

**Processes:** investment agreements, trade agreements, dispute settlement procedures



# International human rights regime

---

- **Norms:** universal norms in UDHR, ICCPR, ICESCR; regional norms
- **Institutions:** OHCHR, IACHR, ECHR, AfCHR, SAs, INGOs, NHRIs
- **Processes:** standard-setting, investigation, adjudication,

EVERY

HUMAN

HAS

RIGHTS

# Five phases of socialization in PoHR

---

1. Repression
2. Denial
3. Tactical concession
4. Prescriptive Status
5. Rule-consistent behavior







# The United Nations System



## UN Principal Organs

General Assembly

Security Council

Economic and Social Council

Secretariat

International Court of Justice

Trusteeship Council

### Subsidiary Organs

Main and other sessional committees  
Disarmament Commission  
Human Rights Council  
International Law Commission  
Standing committees and ad hoc bodies

### Funds and Programmes<sup>1</sup>

**UNDP** United Nations Development Programme  
• **UNCDF** United Nations Capital Development Fund  
• **UNV** United Nations Volunteers  
**UNEP**<sup>8</sup> United Nations Environment Programme  
**UNFPA** United Nations Population Fund  
**UN-HABITAT**<sup>8</sup> United Nations Human Settlements Programme  
**UNICEF** United Nations Children's Fund  
**WFP** World Food Programme (UN/FAO)

### Research and Training

**UNIDIR** United Nations Institute for Disarmament Research  
**UNITAR** United Nations Institute for Training and Research  
**UNSSC** United Nations System Staff College  
**UNU** United Nations University

### Other Entities

**ITC** International Trade Centre (UN/WTO)  
**UNCTAD**<sup>1,8</sup> United Nations Conference on Trade and Development  
**UNHCR**<sup>1</sup> Office of the United Nations High Commissioner for Refugees  
**UNOPS** United Nations Office for Project Services  
**UNRWA**<sup>1</sup> United Nations Relief and Works Agency for Palestine Refugees in the Near East  
**UN-Women**<sup>1</sup> United Nations Entity for Gender Equality and the Empowerment of Women

### Related Organizations

**CTBTO Preparatory Commission** Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization  
**IAEA**<sup>1,3</sup> International Atomic Energy Agency  
**ICC** International Criminal Court  
**ISA** International Seabed Authority  
**ITLOS** International Tribunal for the Law of the Sea  
**OPCW**<sup>2</sup> Organisation for the Prohibition of Chemical Weapons  
**WTO**<sup>1,4</sup> World Trade Organization

### Subsidiary Organs

Counter-terrorism committees  
International Criminal Tribunal for Rwanda (ICTR)

International Criminal Tribunal for the former Yugoslavia (ICTY)  
Mechanism for International Criminal Tribunals (MICT)  
Military Staff Committee

Peacekeeping operations and political missions  
Sanctions committees (ad hoc)  
Standing committees and ad hoc bodies

### Advisory Subsidiary Body

Peacebuilding Commission

### HLPF

High-level Political Forum on sustainable development

### Functional Commissions

Crime Prevention and Criminal Justice  
Narcotic Drugs  
Population and Development  
Science and Technology for Development  
Social Development  
Statistics  
Status of Women  
United Nations Forum on Forests

### Regional Commissions<sup>8</sup>

**ECA** Economic Commission for Africa  
**ECE** Economic Commission for Europe  
**ECLAC** Economic Commission for Latin America and the Caribbean  
**ESCAP** Economic and Social Commission for Asia and the Pacific  
**ESCWA** Economic and Social Commission for Western Asia

### Other Bodies

Committee for Development Policy  
Committee of Experts on Public Administration  
Committee on Non-Governmental Organizations  
Permanent Forum on Indigenous Issues  
**UNAIDS** Joint United Nations Programme on HIV/AIDS  
**UNGEFN** United Nations Group of Experts on Geographical Names

### Research and Training

**UNICRI** United Nations Interregional Crime and Justice Research Institute  
**UNRISD** United Nations Research Institute for Social Development

### Departments and Offices

**EOSG** Executive Office of the Secretary-General  
**DESA** Department of Economic and Social Affairs  
**DFS** Department of Field Support  
**DGACM** Department for General Assembly and Conference Management  
**DM** Department of Management  
**DPA** Department of Political Affairs  
**DPI** Department of Public Information  
**DPKO** Department of Peacekeeping Operations  
**DSS** Department of Safety and Security  
**OCHA** Office for the Coordination of Humanitarian Affairs

**OHCHR** Office of the United Nations High Commissioner for Human Rights  
**OIOS** Office of Internal Oversight Services  
**OLA** Office of Legal Affairs  
**OSAA** Office of the Special Adviser on Africa  
**PBSO** Peacebuilding Support Office  
**SRSG/CAAC** Office of the Special Representative of the Secretary-General for Children and Armed Conflict  
**SRSG/SVC** Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict  
**UNISDR** United Nations Office for Disaster Risk Reduction

**UNODA** United Nations Office for Disarmament Affairs  
**UNODC**<sup>1</sup> United Nations Office on Drugs and Crime  
**UNOG** United Nations Office at Geneva  
**UN-OHRLS** Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States  
**UNON** United Nations Office at Nairobi  
**UNOP**<sup>2</sup> United Nations Office for Partnerships  
**UNOV** United Nations Office at Vienna

### Specialized Agencies<sup>1,5</sup>

**FAO** Food and Agriculture Organization of the United Nations  
**ICAO** International Civil Aviation Organization  
**IFAD** International Fund for Agricultural Development  
**ILO** International Labour Organization  
**IMF** International Monetary Fund  
**IMO** International Maritime Organization  
**ITU** International Telecommunication Union  
**UNESCO** United Nations Educational, Scientific and Cultural Organization

**UNIDO** United Nations Industrial Development Organization  
**UNWTO** World Tourism Organization  
**UPU** Universal Postal Union  
**WHO** World Health Organization  
**WIPO** World Intellectual Property Organization  
**WMO** World Meteorological Organization  
**World Bank Group**<sup>7</sup>  
• **IBRD** International Bank for Reconstruction and Development  
• **IDA** International Development Association  
• **IFC** International Finance Corporation

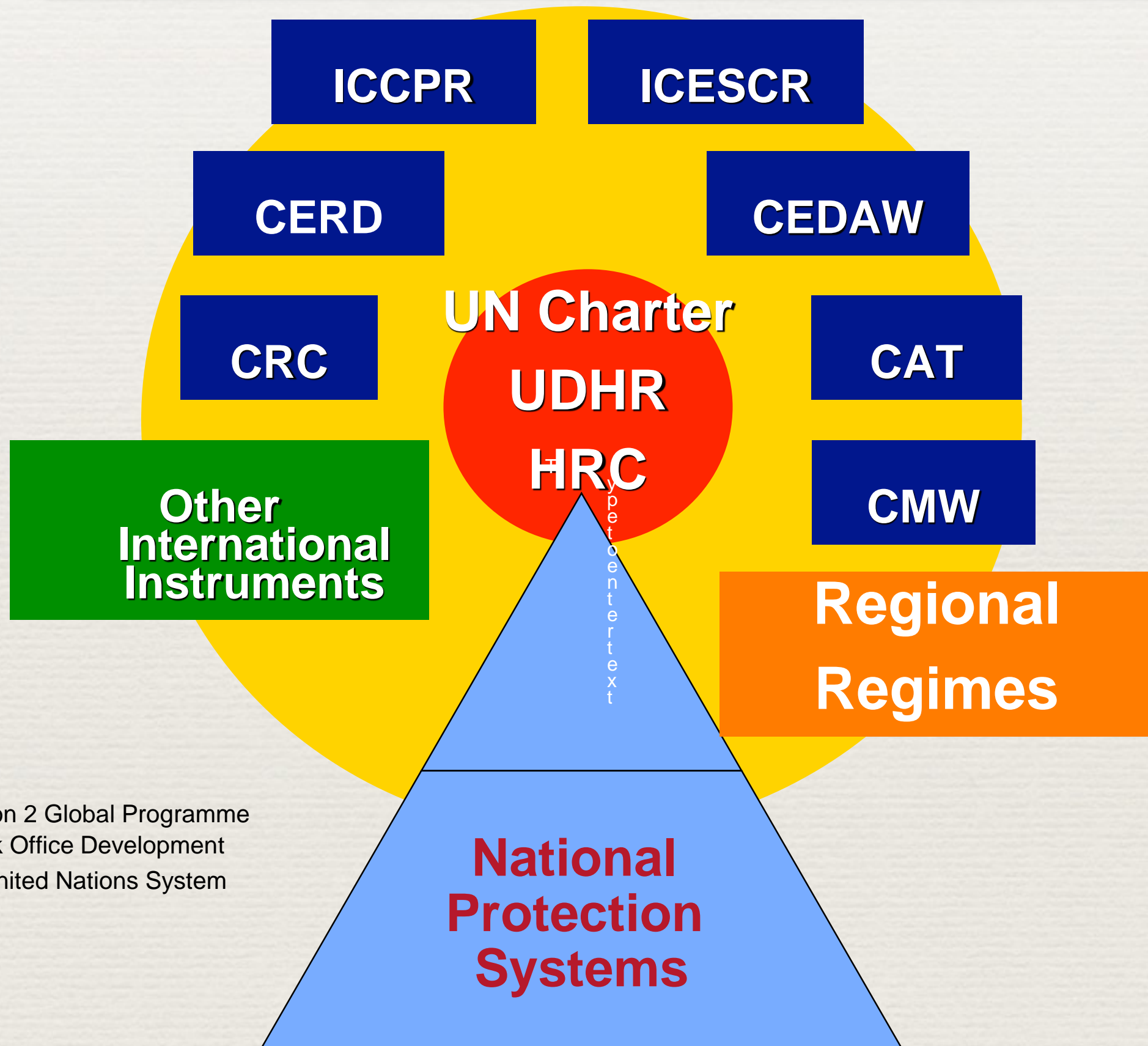
### Notes:

- <sup>1</sup> All members of the United Nations System Chief Executives Board for Coordination (CEB).
- <sup>2</sup> UN Office for Partnerships (UNOP) is the UN's focal point vis-a-vis the United Nations Foundation, Inc.
- <sup>3</sup> IAEA and OPCW report to the Security Council and the GA.
- <sup>4</sup> WTO has no reporting obligation to the GA, but contributes on an ad hoc basis to GA and Economic and Social Council (ECOSOC) work on, inter alia, finance and development issues.
- <sup>5</sup> Specialized agencies are autonomous organizations whose work is coordinated through ECOSOC (intergovernmental level) and CEB (inter-secretariat level).
- <sup>6</sup> The Trusteeship Council suspended operation on 1 November 1994, as on 1 October 1994 Palau, the last United Nations Trust Territory, became independent.
- <sup>7</sup> International Centre for Settlement of Investment Disputes (ICSID) and Multilateral Investment Guarantee Agency (MIGA) are not specialized agencies but are part of the World Bank Group in accordance with Articles 57 and 63 of the Charter.
- <sup>8</sup> The secretariats of these organs are part of the UN Secretariat.

This Chart is a reflection of the functional organisation of the United Nations System and for informational purposes only. It does not include all offices or entities of the United Nations System.



# I. Human Rights Systems



# Regional Human Rights Systems

From: UN Common Learning package on the Human Rights-Based approach

## Instruments

### Europe:

European Convention for the Protection of human Rights and fundamental freedoms and European Social Charter

### Americas:

American Convention on Human Rights and San Jose pact on Economic, Social and Cultural Rights

### Africa:

African Charter on Human and People's Rights

### Arab States:

Arab Charter on Human Rights

### ASEAN

ASEAN Charter

## Mechanisms

European Court of Human Rights,  
European Committee on Social Rights

Inter-American Commission of  
HR

Inter-American Court of Human  
Rights

African Commission on Human and  
People's Rights

African Court on Human and  
People's Rights

Arab Expert Human Rights Committee

ASEAN Intergovernmental Commission  
on Human Rights



## n II. Meaning of development



# The Right to Development

---

“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.”

Article 1.1 UN Declaration on the Right to Development

# What is development?

---

”Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.”

Preamble UN Declaration on the Right to  
Development

# What is development?

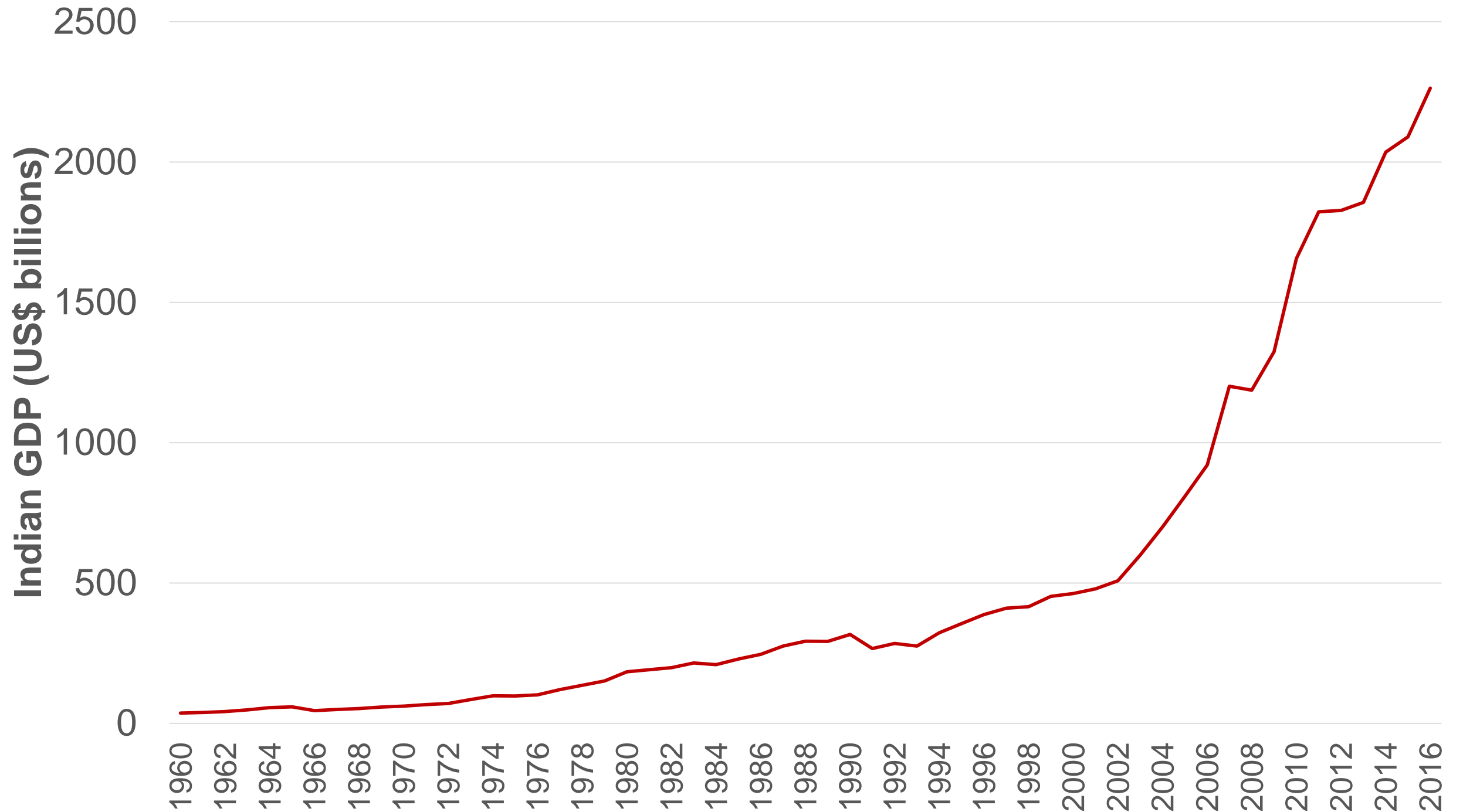
---

”Development is a comprehensive **economic, social, cultural and political process**, which **aims** at the **constant improvement of the well-being** of the **entire population** and of **all individuals** on the basis of their active, free and meaningful participation in development and in the **fair distribution of benefits** resulting therefrom.”

Preamble UN Declaration on the Right to  
Development

# Is this development?

---

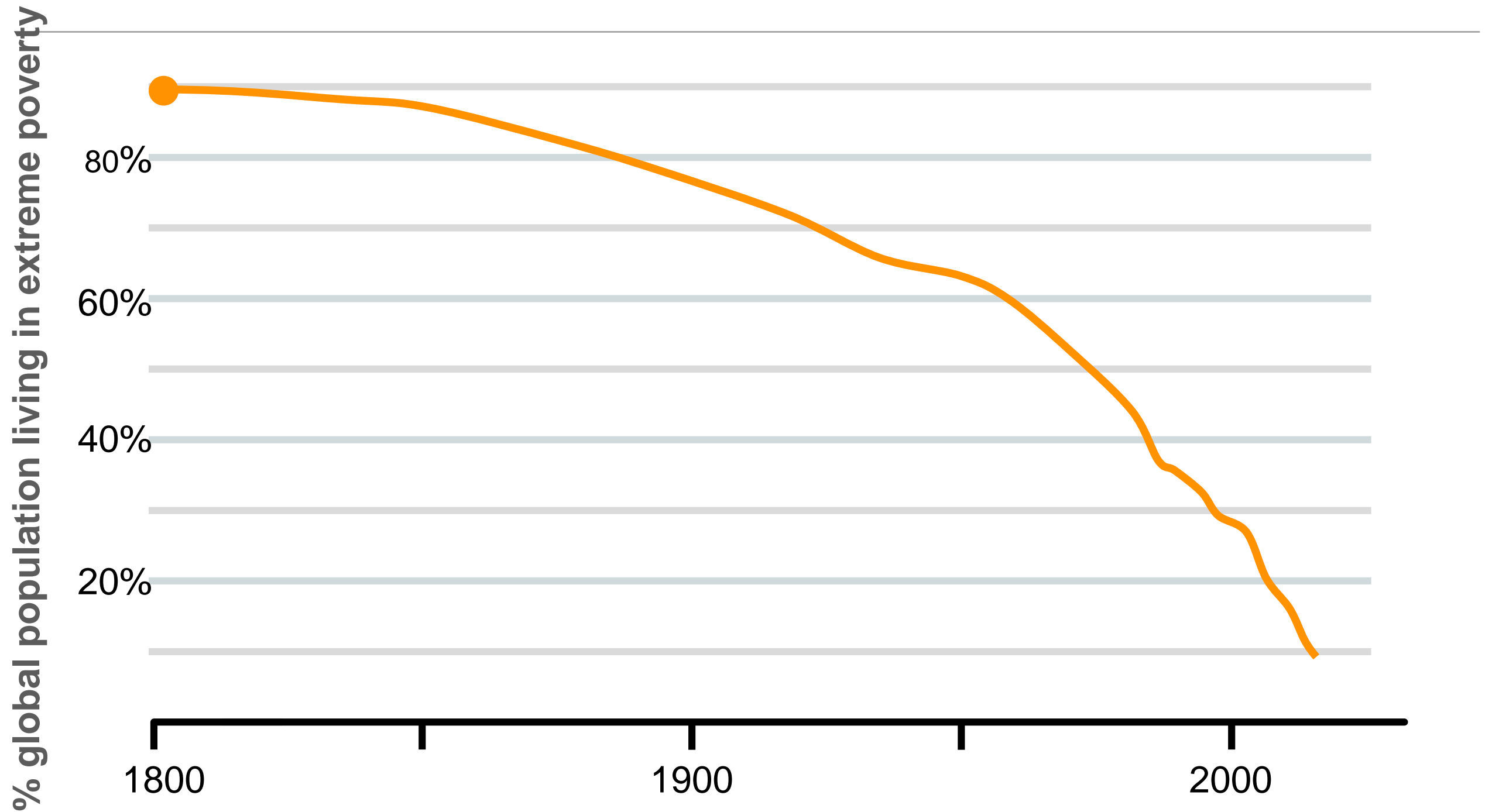


# Is this development?

---

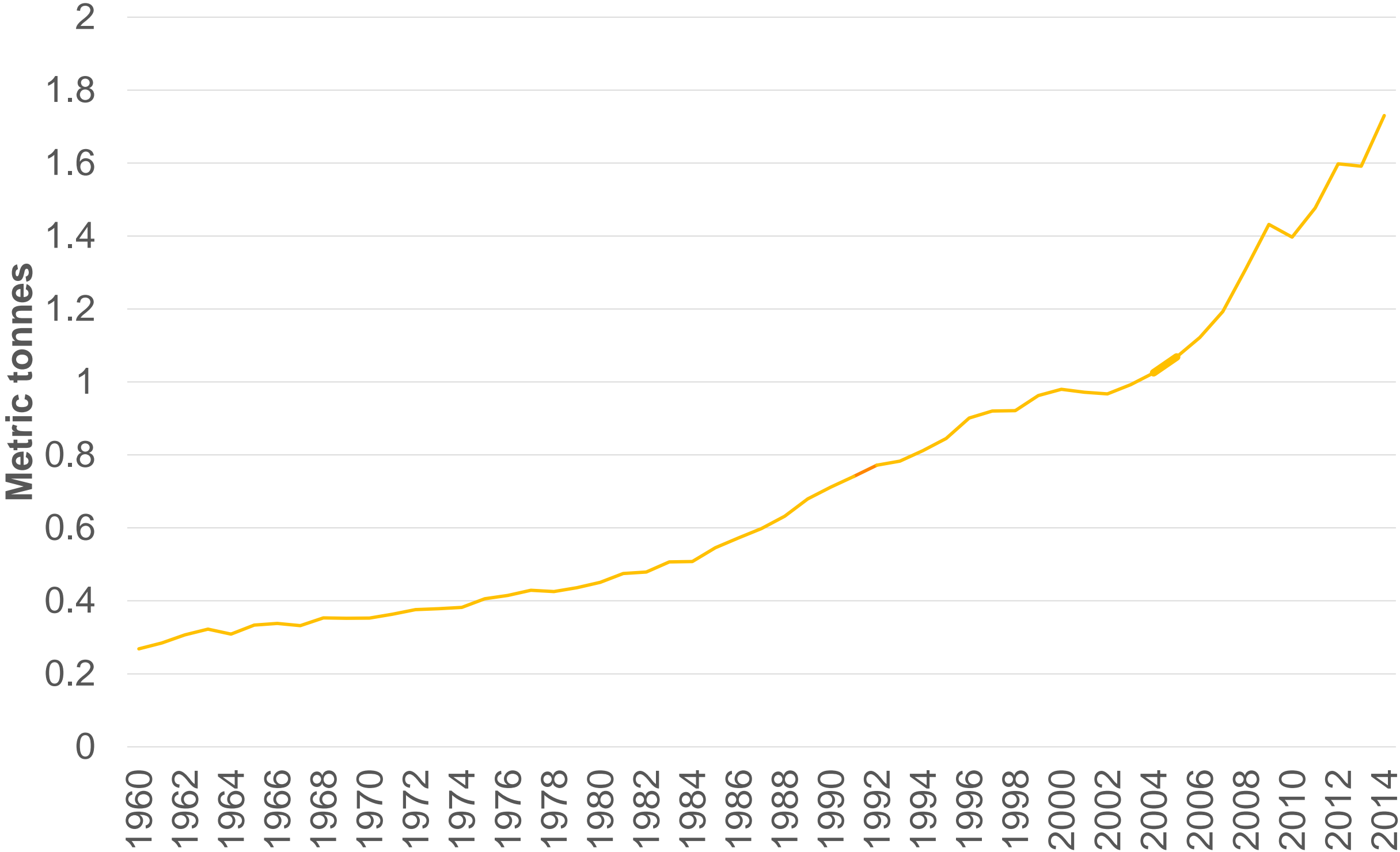


# Is this development?





# Indian CO2 emissions per capita, 1960-2014

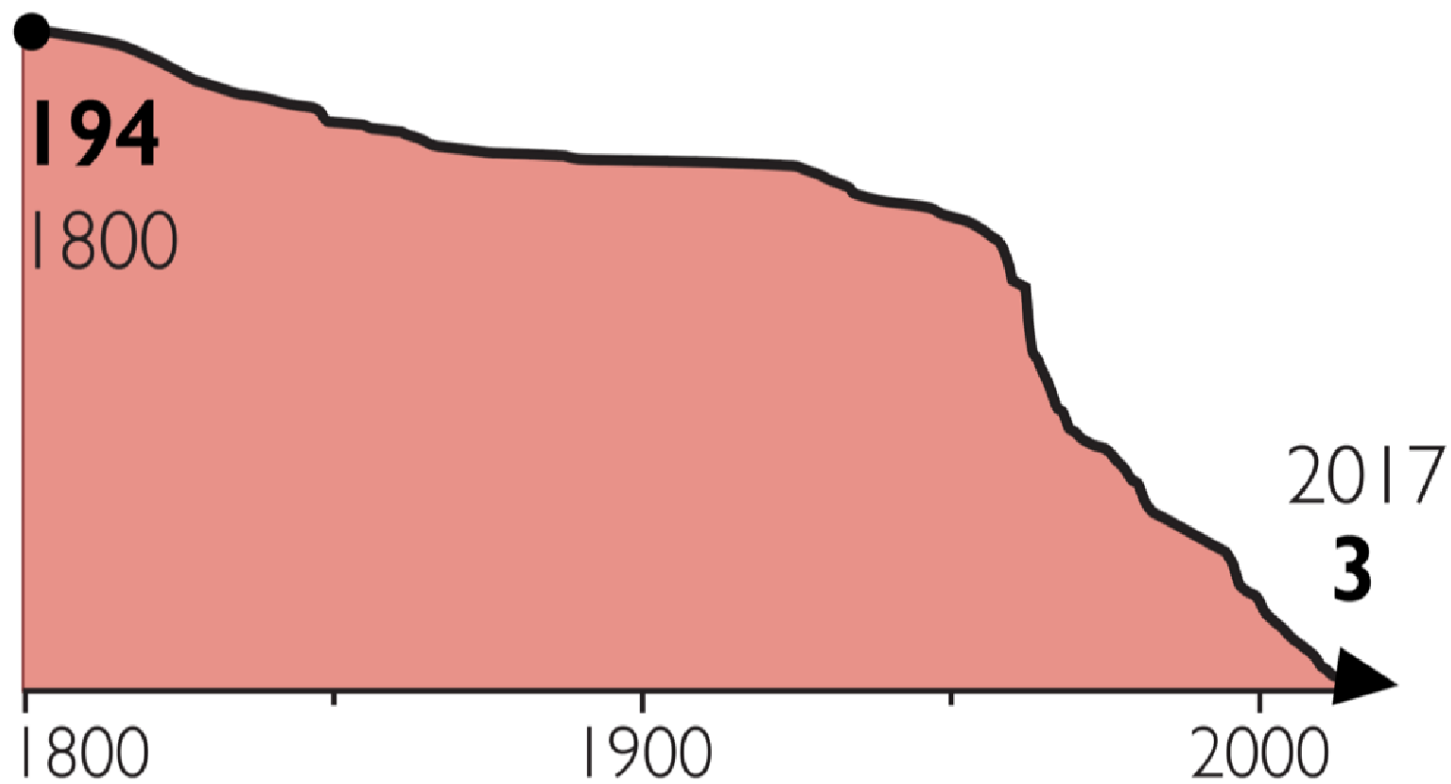


# Is this development?

---

## LEGAL SLAVERY

Countries where forced labor is legal or practised by the state (out of 195)



Sources: Gapminder[12], Pinker (2011), ILO[1-5] & SDL.

# What is development?

---

- Development as process
- Development as outcomes

# Development as process

---

- Economic, social and political restructuring
- Increased economic integration
- Growing formalization:
  - Organizationally
  - Legally
- Growth in productivity
- Growth in production and consumption

# Development as process

---



# Development as outcomes

---

- Economic growth
- Poverty
- Equality



# Economic growth and development

---

- Economic growth reflects the growth in production and consumption of goods and services
- Consumption a key source of utility to consumers where utility is a reflection of self-assessed well-being
- Welfare measured in terms of utility
- Is this compatible with the concept of human rights?
- What about sustainability and intergenerational welfare?

# What is poverty?

---

“A human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.”

CESCR, 2001

# What is poverty?

---

“A human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an **adequate** standard of living and other civil, cultural, economic, political and social rights.”

CESCR, 2001

# Poverty as basic needs

---

- “‘minimum essential levels’ of the rights to food, education and health.”
- “core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights.”
- “the core obligations establish an international minimum threshold that all developmental policies should be designed to respect.”

CESCR, 2001

# International Covenant on Economic, Social and Cultural Rights

---

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

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

# Multidimensional poverty index

---

## Multidimensional Poverty Index (MPI)

DIMENSIONS

Health

Education

Standard of living

INDICATORS

Nutrition Child mortality

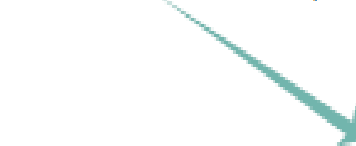
Years of schooling Children enrolled

Cooking fuel Toilet Water Electricity Floor Assets

POVERTY MEASURES

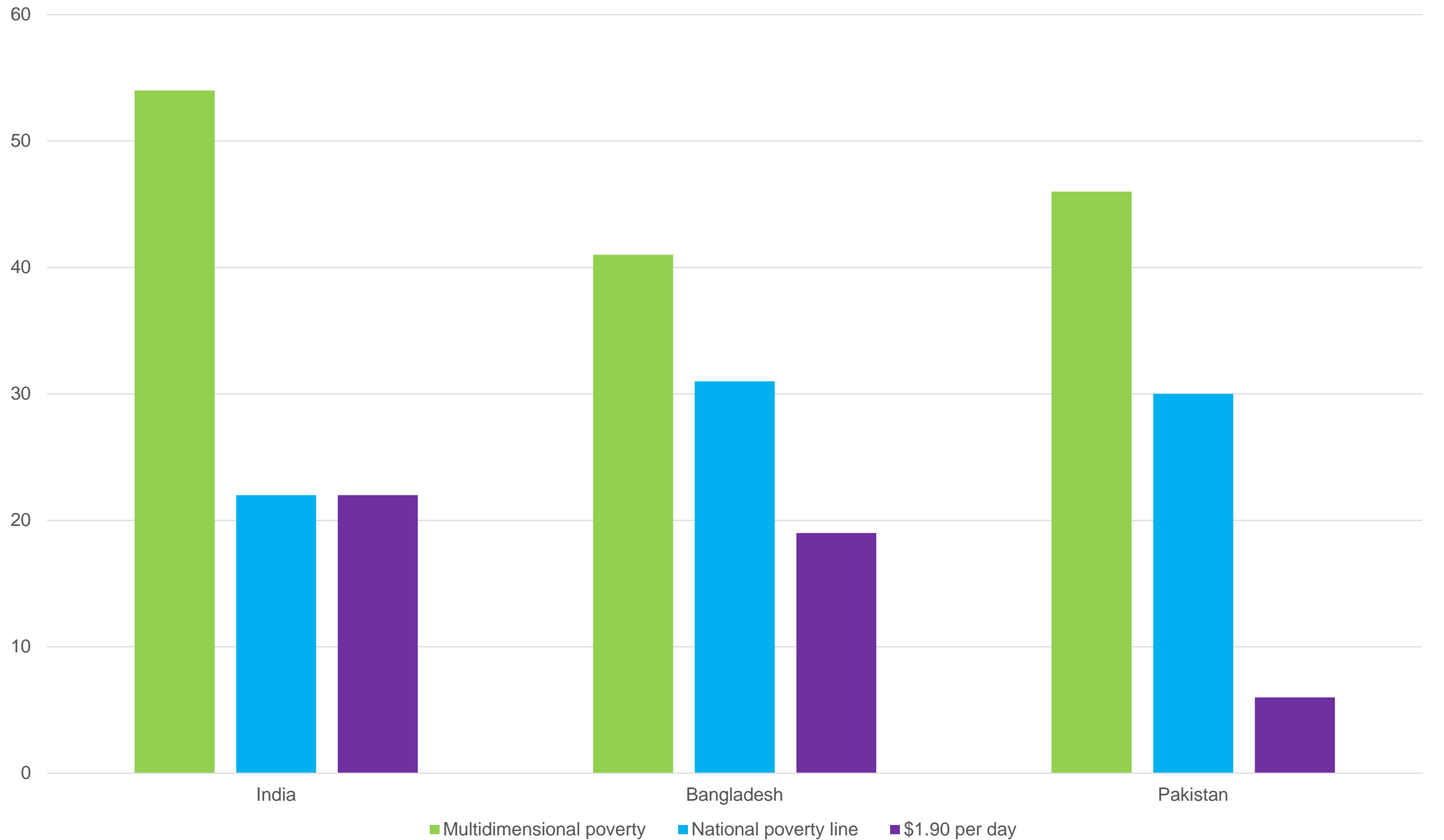
Intensity of poverty Headcount ratio

Multidimensional Poverty Index (MPI)





# Alternative measures of poverty, 2016



# Development as more than basic needs

---

- Poverty as a relative concept:
  - Social norms
  - Standard of living
  - Societal participation
- Importance of resilience
- Poverty in the context of inequality

# Development as more than outcomes

---

- Human development
- Capabilities
- Happiness

# Human Development

---

“Human Development is a process of enlarging people’s choices. The most critical ones are to lead a long and healthy life, to be educated, and to enjoy a decent standard of living. Additional choices include political freedom, guaranteed human rights, and self-respect.”

Human Development Report (2010)

# Capabilities

---

“The focus here is on the freedom that a person actually has to do this or be that – things that he or she may value doing or being.”

Sen (2009)

# Development in practice

---

- Seen as deliberative and purposeful process
- Elaborated in terms of defined goals
- Requires measurement:
  - Definition of goals
  - Definition of indicators
  - Measurement of indicators
- Goals often include processes and outcomes

# Sustainable Development Goals (SDGs)

---





# Bringing human rights and development together

---

- Economic growth....?
- Poverty....?
- Basic needs....?
- Human development....?
- Capabilities....?