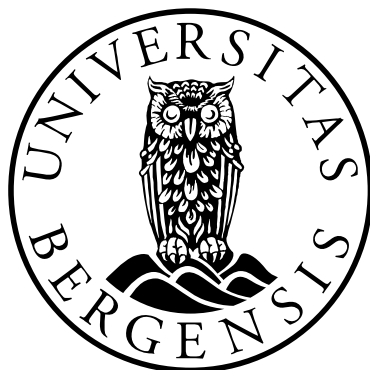


**Can Resource-Poor Countries Bear any
Obligations for Global Distributive Justice? A
Reflection on the Distribution of Global health
Opportunities**

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Dedication

To Maria Gorret K. Katabaazi&Kankunda Mary

Abstract

Can resource-poor countries bear any stringent obligations in the pursuit of equity in the distribution of global health opportunities between individuals globally? Distributive justice is primarily about resource transfer from those who have more than enough to those who are suffering severe scarcity. In the particular case of distributive justice in global health, given that most health opportunities cost money and given that the idea of ‘resource-poor countries’ entails that such countries lack sufficient resources in general and in particular health resources, the question of this work may seem a rhetorical one, seeking “no” as an obvious answer. On the contrary, however, despite the reality of severe resource scarcity among poor countries, the main thesis defended in this work is that poor countries (and in fact all countries whose economic situations qualify them for a *moral right* to external economic assistance) ought to bear certain stringent obligations in the pursuit of global distributive justice in general. This obligation applies even in the specific case of the pursuit of justice in the global distribution of certain basic health opportunities among individuals globally.

This work is based on a general claim that in efforts to ensure distributive justice it is not enough to look at what amounts of resources should flow from the global haves to the global have-nots. The work demonstrates that even though resource flow from the global rich to the global poor is a *necessary condition* for achieving distributive justice in the current global circumstances, there is evidence which suggests that this may not be a *sufficient condition* for the achievement of global distributive justice; or at least reducing the current global inequities. Bearing in mind that global injustice, in this case, means *unjust distribution* of global resources and opportunities rather than global inequality per se, this work suggests that potential beneficiaries of redistribution (governments and citizens of Low and Middle Income Countries) need to behave in ways which confirm that current inequalities in global distribution of life chances and all opportunities for survival and human well-being are unjust in a sense that the current global maldistribution of resources cannot be attributed to their (victims) moral fault. If the current global inequalities can be attributed to their moral fault, then they ought to bear morally binding obligations to their (LMIC governments) citizens and those whose resources are to be redistributed. Short of this

proviso it will not be possible to achieve global distributive justice in the strict sense of the word. It is this proviso that leads to an enquiry into possible obligations of poor countries in ensuring global distributive justice. This reasoning about what it may necessarily take to achieve global distributive justice is motivated by an insight that ignoring the victims' (LMICs) obligations may lead to further injustice especially if affluent countries are morally required (with potential enforcement) to transfer their resources to cover deficits in victim countries, which deficits arise out of the moral fault of those governments. The insight also extends to the possibility that current efforts might fail to achieve the desired global threshold distribution of material and social well-being for poor country citizens especially if their governments behave like economic 'black holes.'

The first chapter of this work examines existing literature on global justice, particularly global distributive justice, ultimately focusing on justice in the distribution of global health opportunities. The analysis confirms the existence of morally binding and potentially enforceable obligations of all countries in ensuring justice in global resource distribution. Using the case of efforts towards fair distribution of global health opportunities, the analysis shows how failure to think about resource-poor country obligations makes it extremely difficult both in theory and practice to achieve global health equity. The second chapter asks and attempts to answer a critical question regarding why the efforts of mutually reinforcing discourses on 'global justice' and 'human rights' have not succeeded in achieving justice in the global distribution of health opportunities. The analysis of this question leads to a conclusion that the futility of countries' obligations for global distributive justice, which are mainly framed as human rights obligations, is due to their constrained specificity and stringency which is inherent in current obligations. The analysis leads to a proposal that in order to eschew this futility or at least reduce it significantly, morally binding obligations of countries to contribute to global distributive justice should be specified in terms of how much resources should be contributed by poor countries on the one hand, and affluent countries on the other in order to cover a certain minimum level of health resource distribution to all individuals globally. The third chapter uses the case of Uganda to demonstrate the nature of reasoning about the practical and moral necessity of thinking about potential obligations of poor countries in ensuring global distributive justice in general. The major insight demonstrated in

this chapter is that if global justice is to be achieved, then poor country governments should not be seen merely as victims of unethical global politics and economics but also as agents who can avoid and mitigate some external harms and who, therefore, bear morally binding obligations to their citizens and to those whose resources are to be redistributed. Chapter four makes use of the special case of efforts to ensure justice in the global distribution of health opportunities to propose and demonstrate a mechanism which can be used to achieve justice in global health resource distribution. This proposal is based on the conception of obligations of poor countries as a *necessary complement* to those (obligations) of affluent countries in the pursuit of justice in the global distribution of health opportunities. The proposal is also based on the claim that distributive justice requires proportionate allocation of burdens between all the actors involved in the process of redistribution towards a certain threshold of distribution. That is, justice in this case *requires* that there ought to be equitable burden-sharing between the beneficiaries of redistribution and those whose resources are to be redistributed. This chapter proposes that a certain minimum level of health opportunities for all individuals be specified in form of the minimum health expenditure per capita (for each country) and the cost of guaranteeing these minimum health opportunities should be covered entirely using pooled public resources contributed by both external actors (donor country governments) and domestic actors (poor country governments). This proposal demonstrates the ethical and practical importance of obligations of poor countries in ensuring global justice, particularly justice in ensuring equitable distribution of health opportunities globally.

Chapter 1

Understanding the Context and Challenges in Conceiving Obligations for Global distributive Justice: The Case of Equity in Health Opportunities

1.0 Introduction

Discussions regarding obligations of countries to contribute to efforts to ensure justice in global health take place within the broader context of obligations for global justice, particularly obligations of country governments in ensuring global distributive justice. Therefore in order to make intelligible the challenges and/or gaps in discussions and practical efforts to ensure justice in global health, it is important to place the discussions of obligations of countries to contribute to the achievement of justice in global health (equity in global health) in the broader context of the general obligations of countries for global distributive justice. There are two major ideas raised in this chapter and they run through the whole work. The first idea is the concept of the *complementarity* of obligations of rich and poor country governments to contribute to efforts towards global distributive justice. In this work this idea is taken as a *necessary* condition for the achievement of global distributive justice, otherwise it will remain extremely difficult to achieve global distributive justice. The idea of complementarity is that obligations of High Income Country (HIC) governments on the one hand, and those of Low Income Country (LIC) governments, or Low and Middle Income Countries (LMICs) on the other, must all be fulfilled in order to achieve global distributive justice. It is this idea of the complementarity of HIC and LIMC governments' obligations that is the basis of the conception of poor country obligations for global distributive justice. The second major idea is that of *equitable sharing of burdens/costs* of achieving a certain global minimum distribution of goods and services, particularly health goods and services (or health opportunities).

The discussions in this chapter indicate that on-going discussions and practical efforts to ensure global justice, and in particular justice in global health, fall short of the ideas of the 'complementarity of obligations' and at the same time they do not guarantee proportionate (equitable) sharing of burdens or costs of ensuring a certain global minimum distribution of goods and service between the various global actors. The

line of reasoning underlying these two ideas is that it is very difficult to achieve global justice unless the ideas of ‘complementarity of obligations’ and ‘equitable sharing of burdens/costs’ are reflected in practical efforts towards global distributive justice in general and, in particular, justice in global health. In turn this line of reasoning is based on a claim that global distributive justice requires equal access, by all individuals globally, to basic means of survival and well-being and equitable sharing of the burdens/costs of guaranteeing to all individuals these relevant (or requisite) goods and services. From the two major ideas mentioned above (Complementarity and Equity), the general position defended in this chapter and demonstrated in the rest of the chapters, is the need to identify and implement obligations of poor countries’ (or LMICs)¹ governments in the pursuit of global distributive justice with particular focus on justice in global health.

In the first part of this chapter I provide a brief description of the key and general issues of concern in discussions concerning global justice with particular emphasis on global distributive justice. In the second part I present and examine the claims made in theories and systematic views on global distributive justice, particularly views regarding the question of whether there are, or ought to be, *morally binding* transnational obligations for global distributive justice. A critical analysis of these views affirms the existence of these obligations which are not necessarily of the same category as those defended by liberal cosmopolitans. I conclude this part by observing that even though affirming and fulfilling these obligations (of international resource transfers) is a *necessary* condition for the achievement of global distributive justice in the current global circumstances, these obligations need to be *complemented* by obligations of developing countries, which are currently ignored in mainstream discussions. In part III I explain the major concepts involved in the discussions that follow and at the same time I define the conceptual scope of the discussion. Part IV is dedicated to the examination of the specific issue of justice in global health. In this part I show that the challenges or gaps identified in debates about general obligations

¹In this work the focus is on obligations of countries which are potential recipients of external aid if individuals in such countries are to achieve a certain (globally accepted) threshold distribution of basic goods and services. These countries are obviously poor or Low Income Countries and probably some Middle Income Countries. Therefore, in my arguments for obligations of poor countries I will be using terms LICs and LMICs interchangeably to refer to all, and only, those countries that potentially need external assistance in order for their citizens to achieve the targeted minimum distribution of goods and services.

of global distributive justice are the same gaps found in the discussions and practical efforts towards justice in global health. Using the case of global health financing I go ahead to demonstrate how failure to identify and implement obligations of developing country (or LMICs) governments in the pursuit of global distributive justice leads to falling short of the idea of *complementarity* of HIC and LIC governments' obligations as a *necessary* condition for achieving justice in global health. I also show that without identifying and implementing developing country governments' obligations it is not possible to achieve equity in global health financing and, therefore, it is extremely difficult to achieve justice in global health.²

Part 1

1.1 An Overview of Key Issues in Discussions on Global Justice

The concept 'Global Justice' is broad and intricate particularly with regard to which actions and/or inactions are *required* for the achievement of what it entails. A critical analysis of literature on the *required* actions and/or inactions reveals at least three categories of country governments' obligations and these categories represent three major dimensions of global justice. All these three dimensions of global justice and the three categories of obligations they give rise to *must* be fulfilled if global justice is to be achieved. That is, all the three categories of countries' obligations identified below are *necessary conditions* for the achievement of global justice in the present global socio-economic circumstances. The three dimensions of global justice are: international legal justice; global political (or institutional) justice; and, global distributive justice. The latter two are fondly treated by most authors as one under the heading of 'social justice', but as I will show later there are good reasons to treat them separately. Further, a deeper analysis of the various contributions to literature on global justice reveals that some works on global justice emphasize only two out of these three categories in different combinations, while some emphasize only one.

² The underlying claim here is that equity in global health financing is a *necessary* condition for justice in global health. Later I illustrate the validity of this claim by arguing that global 'distributive justice' requires equitable access to certain minimum amount of goods and services for all individuals and ensuring that the cost of ensuring such minimum distribution is proportionately shared by all actors involved.

Regarding the categories of countries' obligations for global justice, the United Nations Organization (UN) has emphasized that the achievement of global justice requires fulfilling obligations of *international law* as well as obligations of *global distributive justice* between individuals globally (UN 2006). In the view of the UN, the relevant obligations for international justice arise from "the principles of sovereign equality, non-intervention, and equal voting rights constituting the *legal aspects of international justice*" (emphasis in original) (UN 2006, 11). On the other hand obligations of global distributive justice arise from, "equality of rights for all peoples and the possibility for all human beings, without discrimination, to benefit from the economic and social progress disseminated and secured through international cooperation" (UN 2006). On the same issue regarding the requirements of global justice and the categories of obligations they impose on all countries, Charles Beitz has distinguished between "*global political justice*" and *global distributive justice*. According to Beitz, whereas global political justice is concerned with the fairness of global institutions, the latter is concerned with redistribution of resources necessitated by market failures and other sources of vulnerability (Beitz 2005). Thomas Pogge too emphasizes two kinds of obligations: those of designing and implementing fair (and/or harmless) global institutions and obligations relating to global resource redistribution (if "we" harm the poor) (Pogge 2008). On the other hand John Rawls defends international law obligations (international legal justice) as the only *required* obligations for global justice (Rawls 1993).

In the current discussion of requirements of global justice, there is no dispute about the necessity of countries' respect for international law and everyone agrees with the need to design and implement just global institutions. However, there is no general agreement regarding stringent obligations pertaining to global resource redistribution. Since obligations relating to global resource redistribution are more controversial than the rest of the requirements, this work is concerned with analyzing this category of obligations, with specific interest in global health-resource distribution as a key step (or requirement) towards justice in global health. The choice of this dimension of global justice (global distributive justice) is based on two reasons or claims: one is that 'unless obligations of global resource redistribution are divested of their current controversies and later implemented along other requirements, it will remain extremely difficult to achieve global justice in the current global socio-economic

circumstances.’ This claim implies that in the current global socio-economic realities obligation of global resource redistribution is a *necessary* condition for the achievement of global justice.

The second and major reason/claim underlying my choice to examine obligations of distributive justice is that an intellectual position which simply affirms obligations of external actors (governments) to assist developing country governments identifies and affirms just one of the *necessary* conditions for achieving global distributive justice but this alone is not a *sufficient condition* for achieving the desired end. It is this particular category of reasoning which is missed in the trend of current discussions and practical efforts towards global justice. It is this latter reason that leads to the major concern of this work – an attempt at identifying, defending and illustrating both the practical and moral necessity of obligations of resource-poor country (or LMIC) governments in the pursuit of justice in global health, with particular illustrations from the case of global health financing. But before I address the major question of the necessity of resource-poor country governments’ obligations in the pursuit of justice in global health I want to pursue the first claim I have made above (the claim about necessity of resource redistribution) in order to make it more intelligible. It is this claim that will set a background for better understanding of the specific and major issue of justice in global health. Even though the claim that obligations of distributive justice, particularly international resource transfers, as a necessary condition for the achievement of global justice should be self-evident, there are a number of views which deny this way of reasoning about *requirements* of global justice. Therefore, it is important to show briefly how all the three dimensions of global justice mentioned above are *necessary* complements for the achievement of global justice.

Generally in the literature about requirements of global justice, it is common for some contributors, such as John Rawls (Rawls 1993) to claim that global justice requires fulfilment of only one (or two in case of other authors) of the three categories of obligations mentioned above. Such views can be regarded as false if they claim that *only* one or two of the of the above categories of obligations is/are enough for the achievement of global justice; while they are partially correct if they state one or two of these requirements *simply* as what they believe global justice *requires* without excluding the possibility of other requirements. On the other hand, such views are correct if they claim that one or two of these requirements are just *one or two of the*

requirements of global justice, thus leaving open lines of enquiry into other possible obligations. However, this would still be an incomplete account of what global justice requires until *all the necessary* (sufficient) categories of obligations have been identified. In other words, global justice requires fulfilment of international legal duties and obligations; it also requires fair inter- or transnational social/political institutions and processes; and, most importantly, global justice also requires a mechanism for addressing other sources of *avoidable* global destitution which cannot be morally blamed on the victims. Such causes are market failures and other natural causes of human vulnerability which lie beyond the victims' control.

Those who argue that only one or two of the above three requirements are adequate to achieve global justice fail to see how each of these three categories of obligations is *a necessary condition* for the achievement of global justice in the current global socio-economic circumstances and yet, by itself, an insufficient condition. For instance, as I argue later, in the current global circumstances it is possible to imagine a situation in which all countries have fulfilled their international legal obligations and, political/social institutions have reformed their rules to give every global individual *formal equality of opportunity*³ and yet, remain with *avoidable destitution* in many countries which (destitution) is *beyond the control of the victims*. To describe such a world as unjust is to make an axiomatic claim. This reasoning is widely reflected in views about social justice at a national level and, particularly, in actual governments' redistributive policies and programs, even in non-welfare economies, especially affluent countries. Therefore, intuitively it can be accepted that an account of obligations of global justice that ignores any of these dimensions is incomplete. Such an account would imply a wrong assumption that in the current global circumstances sources of injustice are limited to those of a legal nature and unjust rules governing present global institutions of governance. Such an account implicitly denies the validity of other sources of destitution such as market failures, historical factors etc. as sources of injustices from which morally valid claims to distributive justice can be

³ There is need to distinguish between 'formal equality of opportunity' and 'substantive equality of opportunity'. The implementation of institutions which operate on fair or impartial rules simply guarantees 'formal equality of opportunity' rather than 'substantive equality of opportunity' except, if such rules provide for resource redistribution. Otherwise 'Substantive equality of opportunity' requires more than just fair play guaranteed by a just institutional regime. In the current global circumstances of unequal distribution of capital, technology, historical factors, quality of governance among others, it means that the fairness of global institutions' rules does not guarantee elimination of avoidable destitution, and which destitution cannot be morally blamed on the victims.

made by the victims or their agents. Therefore, actions which are based on such an account do not guarantee global justice. That is to say, since global justice is a three-pronged concept in terms of what it takes to achieve it, then it means that an account of global justice that excludes any of these three categories of obligations leaves other ground(s) or sources of injustice intact, hence the persistence of global injustice.

1. 2 From Global Justice to Global Distributive Justice

There are a number of unresolved issues about countries' obligations for global distributive justice. I earlier mentioned that of all the three categories of obligations of global justice, countries' obligations for ensuring global distributive justice are the most controversial. Even among those who accept this category of obligations as one of the *moral requirements* of global justice, there are divergent views regarding where the focus should be: that is, whether more effort should be dedicated to the justification of the moral 'bindingness' of this category of obligations upon external actors; demonstrating the importance (utility) of these obligations to the global poor; or whether focus should be on the appropriate ways or channels through which these obligations (to assist) can be fulfilled. For example, with specific regards to achieving justice in global health, James Dwyer has recommends that "Rather than debating, in general terms, the justification and importance (utility) of the duty to assist, we focus more attention on the aims of this duty and the various ways of fulfilling it" (Dwyer 2005, 473). Hence in his view, the most fundamental questions are not 'whether to assist' but rather *why*⁴ and *how* to assist.⁵ The importance of the question regarding how to assist has been widely implied especially among those who are concerned about the ineffectiveness of foreign aid in developing countries (Easterly and Easterly 2006, Collier 2008, Terry 2013). Therefore, Dwyer and some of these contributors in the discussion of global justice seem to imply that the major problem facing the duty to assist is the manner in which assistance is delivered to those who are entitled to it. Certainly this is one among the grand challenges in current efforts to ensure global distributive justice. However, as I will argue in part II, the major problem facing obligations of global justice is *not how* to assist. It is not even the issue of what utility

⁴ In this case, "why" asks about the utility of assistance to those who receive it, rather than the why external agents should be morally required to assist.

⁵ In his view the essence of the duty to assist "is to help societies to create and maintain just (or decent) basic institutions so that the assisted societies [eventually] become autonomous and good members of a just federation of peoples" (Dwyer 2005:474).

the assistance in question will give to those assisted. Rather the real question is, according to the dominant debate, *whether* the assistance in question is, or ought to be, a stringent obligation of justice which is potentially enforceable.

My major concern in this work is not any of these questions (above) which have been widely researched. Even though in part II below I dedicate some effort to examining views on whether transnational obligations of distributive justice are morally binding, this is for the purpose of setting a background that will help understand the special question I want to answer. For this reason in my later discussion and specific illustrations I will treat all the above questions as settled with positive results. But even more importantly it is from this analysis that I intend to show how global action based on the positive answer to this question (of whether) by itself misses the two major ideas of *complementarity of obligations* and *equitable distribution of burdens* and, therefore cannot global distributive justice. These two major ideas (complementarity and equity) suggest an essential question: that is, 'If obligations of rich and resource-poor countries are supposed to be complementary in the pursuit of global justice, how much (or what proportion) should each set of actors (HICs versus LICs) and eventually individual actors (countries) contribute in order to achieve an equitable distribution of the burdens/costs of achieving global distributive justice? In this work I will be majorly concerned with the following question: *How much* assistance should constitute a moral requirement on the part of external actors (donors) in the name of global distributive justice and how should it be determined if equity is to be achieved in the allocation of obligations (burdens/costs) for global distributive justice to different global actors? It is the second part of this question which points to the need to identify and implement obligations of resource-poor country (or LMICs') governments as a necessary complement to HIC government obligations in the pursuit of global distributive justice. In answering this question later, a specific mechanism will be proposed with particular focus on LIC government obligations in global health financing.

Part II

1.3 Making Sense of Contemporary Debate on Obligations for Global Distributive Justice

Earlier I mentioned that the achievement of global justice requires fulfilment of at least three categories of obligations: 1) observing requirements of international law/justice; 2) (re)designing and implementing global political institutions which fairly distribute opportunities to all individuals and countries globally and, 3) global resource redistribution necessitated by market failures and other sources of human vulnerability which are beyond the victims' control. I emphasised that whereas there is limited controversy about the necessity of the first two categories; that is, if there is any controversy at all, there is a deep disagreement surrounding the third category of these obligations. There are a number of competing views on the issue of global distributive justice. The widely discussed views relate to moral responsibility for the existing global injustice; the moral legitimacy of countries' stringent transnational obligations for global (re)distributive justice; the effectiveness of foreign aid in alleviating global destitution; the means through which aid should be transferred from the global rich to the global poor etc. In all these, the deepest part of the controversy concerns the question of whether there are any morally binding (and potentially enforceable) transnational obligations for global distributive justice. My examination of this controversy aims at two outcomes: being able to take a position in this debate, and later being able to demonstrate how an answer to the question of *whether* (these obligations exist or ought to exist) does not guarantee justice (equity) unless another question has been posed and answered. The second question whose answer guarantees equity arises from the claim I made earlier: that is, 'the achievement of distributive justice requires that beneficiaries of redistribution also bear certain obligations.' The justification of resource-poor country obligations will consist in successfully demonstrating the validity of this claim. In this part, I will start by summarizing the nature and ideological basis of the controversy regarding the moral 'bindingness' of transnational obligations of countries for global distributive justice; I will then present the two major and conflicting views on the scope of robust principles and obligations of distributive justice and, next I will examine these views in light of the current global socio-economic realities (globalization) and take a position on the

question of whether there are, or ought to be, morally binding transnational obligations of countries for global distributive justice. Finally I will identify the gaps left by the current discussion on global distributive justice.

1.3.1 The Controversy

In contemporary discussions of global justice the mainly contested question is ‘whether robust principles of distributive justice and their consequent obligations go beyond national borders.’ The relevant facts for justifying the various claims in this debate seem to be rooted in a contention regarding ‘whether the conditions which justify robust principles of distributive at a national level exist at a global level to warrant an extension of the same principles and consequent obligations to all global citizens.’ This question became even more deeply divisive in the wake of John Rawls’ work called *A theory of justice*. Whereas the principles of distributive justice he developed in this work were theoretically appealing to many, Rawls’ refusal to extend the same principles beyond the domestic to the global arena intensified debates regarding the legitimate scope of robust principles of distributive justice and the kind of obligations they give rise to.

John Rawls is unequivocal regarding the limits of the principles of distributive justice developed in *A theory of justice*. These principles apply only at a domestic or national level. In his work *The Law of Peoples* which is the work he intended to be a contribution to issues of global justice, John Rawls categorically clarifies that “By the law of peoples I mean a political conception of right and justice that *applies to the principles and norms of international law and practice*” (emphasis added) (Rawls 1993, 36). To emphasize his point he refers to section 58 of his work, *A Theory of Justice*, in which he indicates “how from ‘justice as fairness’ the law of peoples might be developed *for the limited purpose of addressing several questions of a just war*” (emphasis added) (Rawls 1993, 36) as opposed to global resource (re)distribution. The only distinction between international law and the law of peoples he makes is that the law of peoples is what provides moral legitimacy to international law, rather than being international law itself (Rawls 1993, 43). This is seen in his key objective for the elaboration of the law of peoples. With reference to the changes in international law that took place after World War II; that is, a tendency to restrict a state’s right to wage war to cases of self-defense and to limit its right to internal sovereignty, he

emphasizes that “What is essential is that our elaboration of the law of peoples should fit – as it turns out to do – these two basic changes and give them a suitable rationale” (Rawls 1993, 42).

Therefore, whereas John Rawls’ *The Law of Peoples* is an important contribution to the requirements of global justice it does not address other necessary conditions for global justice, one of which is distributive justice. With regards to global resource redistribution, it is important to underscore that whereas Rawls endorses duties of international assistance, he firmly states that these are not obligations of justice (Rawls 1993) which are potentially enforceable. Hence according to Rawls the conditions that justify robust principles of distributive justice at a state/national level do not exist at a global level to justify the extension of the liberal principles of justice for the sake of justifying transnational obligations of resource (re)distribution. This tendency to limit robust principles of distributive justice and their consequent obligations to a state/national level has been described as “Statism” by Charles Beitz (Beitz 2005) or what has been understood as ‘compatriot favoritism’ or ‘patriotic priority thesis.’ These latter phrases are mainly associated with the works of Michael Blake and Richard Miller (Miller 1998, Blake 2001). Thomas Nagel has described this conception of distributive justices as “a political conception of global justice” (Nagel 2005).

Alternative views regarding the scope of principles and obligations of distributive justice fall under what is popularly known as ‘liberal cosmopolitanism’. Unlike Statists who defend state-circumscribed principles and obligations of distributive justice, liberal cosmopolitans claim that conditions that justify the application of liberal principles of justice at a national level also exist at a global level and, therefore, the same distributive principles which apply at a domestic level should be extended to a global level. In order to examine these two views it is important to identify the conditions that justify robust principles of distributive justice and their consequent obligations at a national level, and then try to see if the same conditions, or at least conditions that closely imitate them, exist at a global level to justify a transnational application of these principles and consequent obligations to which they give rise. The significance of examining this controversy is that if the scope of principles and obligations of distributive justice does not go beyond national borders, then the concept of global justice is limited to only two requirements – observance of

international law and the political obligation to design and implement a fair global institutional order. Below I examine both of these positions (Statism and Liberal Cosmopolitanism) with a goal of establishing the ‘*consistency and feasibility*’⁶ of each in the present global socio-economic circumstances.

1.3.1.1 Ideological Influences on views on Global Justice

Contemporary views regarding the scope of distributive justice are not spontaneous. They reflect certain ideologies. The ideologies are: Cosmopolitanism and Statism. Traditional theories of social justice whether in communitarian, liberal or libertarian traditions, were all conceived in the context of a nation-state as a *sovereign commonwealth* with (perceived) few and highly restricted interactions with other similarly independent commonwealths. It is for this reason that principles and obligations of distributive justice, despite their many differences in different theories, are commonly understood to apply exclusively to compatriots. I will call this tendency of thinking about social justice *Statism* as an ideology.⁷ On the other hand, with the popularity of the concept of globalization there is another ideology, though not new, which has lately gained prominence in explaining the meaning, basis and scope of distributive justice; that is, *Cosmopolitanism*. Cosmopolitanism is starkly opposed to most of the claims made by Statism particularly regarding the *basis* (justification) and *scope* of obligations of global justice.

1.3.2 Statism-based Theories and Views on Distributive Justice

By *Statism* I mean a predisposition to think about the notion of social/distributive justice as being possible *only* within state or national borders and, therefore, robust principles and morally binding obligations of distributive justice being nationally circumscribed. Traditional theories of distributive justice reflect a *Statist*

⁶ The relevant questions to be answered here are: One, Given the specific conditions which justify the application of robust principles of distributive justice at a national level, is it rational (consistent) to limit such principles to a national level in the current global socio-economic realities (globalization)? Two, ‘Is it practically feasible to apply perfectly similar principles of distributive justice at both national and global level?’

⁷ Statism and Cosmopolitanism are treated as ideologies because these two are the major sources (or mindsets) that *shape and guide ideas* (theories and systematic points of view) regarding the basis, nature and scope of obligations of global (or social) justice.

outlook.⁸ Examples of such theories include Robert Nozick's *Entitlement theory of justice* (Nozick 1974, 149-182); *Hayekian theory of social justice* derived from Friedrich Hayek's views (Morison 2005); *A theory of justice* (Rawls 1999) (1971); views in Utilitarian and Welfare Economics; the Classical Marxist theories such as *The Labour theory of value* (Meek 1956, Cohen 1979); *The theory of exploitation* (Roemer 1982) among others. Despite all their differences in their assertions regarding the nature and requirements of distributive (or social⁹) justice, they all share one thing in common: that is, whatever obligations of justice these theories defend, they are limited to within state boundaries. What is crucial to note here is that even if all these theorists had no concept of 'the global' by virtue of the socio-economic realities of the times they were developed; their influence is reflected in some contemporary systematic views about global justice. What some contemporary (Statist) views share with the theories outlined above is that the idea of social or distributive justice is possible only within state borders. All views with such a tendency are hereinafter referred to as 'Statist' views while those who hold and defend these views are referred to as 'Statists'.

In contemporary discussion on global justice, there are many systematic views that reflect a Statist mindset. Some of these views include: *In Defense of Nationality* (Miller 1993); *The Law of Peoples* (Rawls 1993); *Distributive Justice, State Coercion, and Autonomy* (Blake 2001); *The problem of Global justice* (Nagel 2005); *National responsibility and Global justice* (Miller 2007); *Just Health* (Daniels 2008) among others. In all these views and more others the central claim is that robust principles and obligations of distributive justice apply and, are limited, to the national level. All they accept at a global level are 'duties of humanity' rather than morally binding obligations of justice. According to Statists the conception of justice, distributive justice is possible *if, and only if*, concerned parties are subject to the same sovereign coercive regime. For lack of space it is not possible to outline all the nitty-gritty details of the specific claims made by each theory or view, but a few examples will be enough to summarize the most important claims shared by these views.

⁸ The interest at this point is *not* examining the relevance or accuracy of these theories in their temporal and spatial circumstances, but simply to assert that they all reflect a Statist character in their scope – they were concerned with distributive justice between individuals within a sovereign nation state.

⁹ Hayek in particular does not believe in the concept of 'social justice' howsoever defined because he does not believe in the concept of 'the social,' in the first place.

The central claim shared by all Statist views on global distributive justice is that “we must give priority to helping less needy compatriots over more needy non-compatriots” (Gillian and Moellendorf 2001:5). In particular, Micheal Blake categorically states a position that is representative of Statist views about global distributive justice. In his view:

“[...] a globally impartial theory is not incompatible with distinct principles of distributive justice applicable only within the national context. [...]. A concern with relative economic shares is a plausible interpretation of liberal principles only when those principles are applied to individuals who share liability to the coercive network of state governance. Such a concern is not demanded by liberal principles when individuals do not share such links of citizenship” (Blake 2001 , 258).

In the same vein, Thomas Nagel’s view is that there is no possibility of global distributive justice in theory or practice in a world organized the way it is today (Nagel 2005). Statists do not deny the existence of global injustice nor do they deny the need to achieve global justice. However, what they consider to be global justice is a kind of fair play between sovereign states rather than the redistribution of resources between individuals globally. Such is the spirit of Rawls’ views in *The Law of peoples* referred to earlier. In the same spirit as Rawls, Nagel argues that global justice “requires us to pursue our ends with boundaries that leave them free to pursue theirs, and to relieve them from extreme threats and obstacles to such freedom if we can do so *without serious sacrifice of our own ends*” (emphasis added) (Nagel 2005, 131). The question of the basis, nature and scope of obligations of global justice according to Statists can be answered by looking at the material circumstances necessary for the conception of distributive justice.

1.3.2.1 Material Basis of Statist Views on Distributive Justice

The reason for Statists’ circumscription of stringent obligations of distributive justice to compatriots is based on the ‘Associative Duties’ account which is central to their conception of justice. The ‘Associative Duties’ account is explained and defended using two arguments: the *Cooperation argument* and the *Coercion argument*. The cooperation argument is that whereas all human beings have some universal *obligations of humanity* to one another, associative duties arise whenever members

are *cooperating* in some joint venture (Ypi, Goodin et al. 2009, 119). In this way associative duties imply or lead to special mutual duties among cooperating members, in this case compatriots. These views reflect Ronald Dworkin's idea of special duties. Dworkin's claim is that generally, people who are members of the same association owe things to one another that they do not owe to people who are not members of the association (Dworkin 1986, 195-206). Such special obligations do not extend beyond national borders because Statists do not believe that there is any significant level of cooperation between individuals at a global level. In other words, what gives rise to associative duties is the fact that people are mutually engaged with others within the association in a dense network of cooperative relations of a certain sort (Ypi, Goodin et al. 2009, 106).

On the coercion argument "Associative Duties" are rooted in the fact that members of the association are all *subject to the same coercive authority*" (emphasis added (Ypi, Goodin et al. 2009, 119) . Here the underlying reasoning is that since coercion threatens the liberal idea of autonomy, it is often claimed that citizens can authorize the use of force by the state only if such force is paired with an institutional concern for relative deprivation among fellow associates (Blake 2001 275 – 296, Nagel 2005). The general position offered by the Associative Duties account is that robust principles distributive justice are only required within the context of a domestic legal system because such principles become relevant only in the context of certain forms of coercion or certain forms of cooperation and those forms of cooperation are not found outside the domestic arena (Ypi, Goodin et al. 2009, 107).

According to this political conception of distributive justice, therefore, the presumption against arbitrary inequality which is the core of justice "comes from a special involvement of agency or the will that is inseparable from membership in a political society [...] (Nagel 2005, 28). The basic argument is that the rules of society that determine its basic structure are coercively imposed rather than a voluntary association. It is this fact that creates a special presumption against arbitrary inequalities in the way systems treat us (Nagel 2005, 128-129). Therefore, special duties and obligations are based on a claim that citizens of a state are not given a choice to belong or no to belong to a given state. They are simply assigned a role in the collective life of a particular society in which they find themselves, and society

makes them responsible for its acts which are taken in their name. The people accept its norms in virtue of the fact that they give support to the institutions through which its advantages and disadvantages are created and distributed (Nagel 2005, 128-129). It is these special circumstances, according to Nagel, that justify special obligations between co-nationals in a way that is [allegedly] absent between individuals at a global scale which lacks such characteristics that justify perfectly uniform obligations for global citizens. He concludes thus:

In short, the state makes unique demands on the will of its members—or the members make unique demands on one another through the institutions of the state—and those exceptional demands bring with them exceptional obligations, the positive obligations of justice. Those obligations reach no farther than the demands do and that explains the special character of the political conception [of distributive justice] (Nagel 2005, 30).

Hence from the Statists' conception of distributive justice some key claims can be outlined: **1)** Belonging to the same association is what justifies special duties and obligations to fellow members of the association and, a state is one of such category. **2)** *Social Cooperation* and being subject to the same coercion are the two necessary and sufficient features that confirm the existence of an association. **3)** Conceived as such, Statists *imply* that obligations of distributive justice are stringent in a sense of being morally binding and potentially enforceable within the state (or association); and, **4)** obligations of distributive justice apply to *all* members of the association (or compatriots/citizens).

1.3.2.2 Implications of Statist Claims about the scope of Distributive Justice

From the claims made and implied by Statists regarding the basis and scope of principles of distributive justice, what is implied is that if there is to be any conception of global justice, such a conception must avoid concerns about global resource (re)distribution which imposes a *moral requirement* on states to transfer their resources to other people who are not citizens of that state. On this account Statism implies that global justice *requires* the fulfilment of only two of the three categories of obligations out of the three categories identified earlier: that is, obligations imposed by international law and, obligations to design and implement just global institutions which distribute opportunities equally among states. Therefore, the statist account of the scope of justice does not allow a discussion of any reliable transnational

mechanisms for off-setting the effects of global market failures on human survival and well-being or any other sources of global destitution. It does not allow a discussion of morally binding or potentially enforceable transnational obligations to alleviate global destitution which arises out of circumstances beyond the victims' control as long as such victims are no citizens of certain states. As seen above, the reasoning behind this Statist position is unambiguous: 'outsiders (non-compatriots) have *no moral right* to resources beyond those in their country's borders.' According to Statists, outsiders are not members of their association; global individuals are not involved in any kind of *cooperation* with those outside their national borders, and they are not under any common (global) coercion. Whereas Statists obviously agree to assist external members to achieve distributive justice within their own states, they think that international or global inequalities in access to resources, howsoever gross, should not justify morally binding and potentially enforceable transnational obligations of equitable global resource distribution.

Therefore, since the achievement of global justice requires the third category of obligations, then a Statist account of global justice remains incomplete until it integrates in its views a mechanism for off-setting global market failures and other causes of destitution which causes are beyond the control of the global poor citizens. But since Statists give very clear reasons for limiting principles and obligations of distributive justice to a national level, the strategy for the possibility of extending these principles to the global arena is to examine the consistency in limiting these reasons (conditions) to the domestic arena in the era of globalization. What is implied by this strategy is that a move-away from a discussion of justice at a national level to a global level is necessitated by the phenomenon of globalization and its defining socio-economic realities. However, before undertaking the task of examining the limits of Statist views on the scope of justice, I will first present competing views against of Statism. The importance of presenting these views is to examine them to see if they give sufficient and uncontroversial reason(s) to expand the scope of justice from a national to a global level.

1. 3.3 Cosmopolitanism and Requirements of Distributive Justice

The important question in examining cosmopolitan views on global justice is whether cosmopolitanism's claims provide sufficient and uncontroversial justification for imposing on governments *morally binding* transnational obligations for distributive justice, and also the feasibility of applying perfectly similar obligations at the national and global level. Generally, Cosmopolitanism is 'a philosophy' (Brock and Brighouse 2005) (to some a 'doctrine' (Tan 2010), yet to some others an 'ideology' (Schwarzmantel 2008)) which sees the world as a single society, implying that all human beings are citizens of this same and one unit (Ribeiro 2001, 19). At present cosmopolitanism is expressed in a number of versions – Moral cosmopolitanism, political cosmopolitanism and cultural cosmopolitanism. I will distinguish between only the first two of these versions because it is these that have direct bearing on the conception of global justice. "Moral cosmopolitanism is the philosophical perspective which posits that all human beings ought to be morally committed to an essential humanity above and beyond the reality of one's particularistic attachments (such as nationality, kinship, religion) (Nowicka and Rovisco 2012, 3). On the other hand, political cosmopolitanism is "an ethico-political ideal that seeks to respond to limitations of the nation-state unit in addressing global challenges and problems" (Nowicka and Rovisco 2012, 4). Political cosmopolitanism fosters new forms of *supranational* and *transnational* governance as well as the emergence of a robust global civil society (emphasis added) (Held 1995). This conception is what Thomas Pogge called 'legal cosmopolitanism' – a commitment to "a concrete political ideal of a global order under which all persons have equivalent legal rights and duties, that is, are fellow citizens of the universal republic" (Pogge 1992, 49).

According to Charles Beitz, the idea of cosmopolitanism can be clearly understood by contrasting it with its opposite – Statism. He explains that cosmopolitanism is "a perspective that seeks to encompass the whole world" (2005:15), while Statism is an idea with three related elements: "the principal bearers of rights and duties are states rather than persons; they [states] are obliged to follow a system of norms analogous to those that apply to individuals in the state of nature; the value of equality is expressed in a principle requiring to treat each other [states] as equal moral persons" (Beitz 2005:16). He adds that "If one takes the morality of states to posit that state boundaries are limits to the scope of justifications, then cosmopolitanism is not

compatible with it” (Beitz 2005:17). Cosmopolitans imply that the basis of political cosmopolitanism is moral cosmopolitanism; that is, political cosmopolitanism seeks to organise the world in a manner that is consistent with a universally accepted metaphysical belief in the moral equality of all human being.

Regarding the history cosmopolitanism, other than the Stoics who perceived themselves as global citizens and to whom the whole idea of cosmopolitan politics is attributed (Brown 2006), the conception of a cosmopolitan doctrine in the governance of the universe is, among others, traced from Kant’s third law for achieving world peace as well as from his *Idea of a Universal History*. In the *Idea of a Universal History* Kant provides a teleological account of cosmopolitanism. He argues that the greatest problem of human species, the solution of which nature compels him to seek, is that of attaining a civil society which can administer justice universally (Kant 1784). In his cosmopolitan law Kant is concerned with the status of *individuals as human beings rather than citizens of certain states* (Kleingeld 1998, 72). He grounds the justification of the cosmopolitan law in the 'original community of the land' and the inevitability of human interactions globally. In *Towards Perpetual Peace* (PP) Kant says that before any particular acquisition of property, the earth is in common possession. After such acquisition, others no longer have a rightful claim to use or occupy what is mine [...]. But all parts of the earth, Kant argues, continue to be thought of as parts of the whole to which everyone had an original right. This implies that all nations stand in a community of possible physical interaction (Kant 1996, Art. 3). Hence, it would be an injustice, Thomas Pogge argues, to exclude some people from the use of these natural resources without compensating them for this loss (Pogge 2008, 207-209). Generally contemporary conceptions of cosmopolitanism can be seen in the works of Charles Beitz (Beitz 1975, Beitz 1979); Thomas Pogge (Pogge 2010); (Nussbaum 2010); Simon Caney (Caney 2001); and (Tan 2010) among others.

1.3.3.1 *Cosmopolitanism’s claims about the scope of justice*

Regarding particular views of cosmopolitanism about social justice the starting point can be Charles Beitz’s claims about the force of moral cosmopolitanism;

[...] the force of moral cosmopolitanism is clearest when we consider what it rules out: cosmopolitanism stands as opposed to any view that limits the scope of justification [of principles and obligations of distributive justice] to the members of

particular types of groups, whether identified by shared political values, communal histories, or ethnic characteristics. It also stands opposed to any view that allows the justification of choices to terminate in considerations about the non-derivative interests of collective entities such as states or social groups (2005:17).

In other words Beitz is opposed to a view of national or state interests if those interests are not understood to be interests of individuals who compose such states. This is a direct attack against the implication of the Statists' negation of individuals' interests in preference to those of states in discussions of global politics. That is, Beitz is starkly opposed to this conception of 'state interests' which fails to recognise that individuals within such states are the ultimate holders of whatever state or national interests or rights may exist. Therefore, Statists' negation of individuals' interests in global politics is inconsistent with the very idea of a state or a nation since it is impossible to construe a state without individuals. State or national interests are simply a sum of individual interests.

In Beitz's view, the challenges that face cosmopolitanism appear "when we ask, not what cosmopolitanism rules out, but what it requires, for then the view seems to be far less determinate." In his view, "moral cosmopolitanism is agnostic about the content of global political justice: it does not commit itself for or against the proposition that there should be a sovereign global authority. There is no automatic inference from cosmopolitanism to cosmopolitanism about institutions" (2005:18). He explains that the initial importance of cosmopolitanism "is to provide a moral framework that ought to guide individuals in different sovereign states in thinking about other individuals in other sovereign states." In summary, Beitz understands as pivotal to cosmopolitanism the assertion that: "... we live in a shared world and humanity is uniform hence, the exploitation and allocation of resources at a national level should take into account the needs of other human beings of equal human worth, but who reside outside their national borders" (Beitz 1999).

In general, the cosmopolitan conception of distributive justice, which is synonymous with global justice, is based on the metaphysical belief in the moral equality of all human beings. From this belief cosmopolitans posit two normative claims with direct implications for distributive justice: one is that "every human being has a global stature as the ultimate unit of moral concern" (Pogge 1992, 169). Secondly, individuals command equal moral concern wherever they may be as a requirement of

justice, to the extent that state boundaries should not guarantee any exclusive or primary obligations of justice between co-nationals per se (Jones 2001). Hence political justice has a global character. It is individuals qua individuals that are owed justice rather than states or nations per se. Basing on this understanding Tan argues that the cosmopolitan doctrine about justice holds that:

The baseline distribution of material goods and resources among individuals should be decided *independently* of the national and state boundaries within which individuals happen to be. Such contingencies ought not to affect one's legitimate entitlements and the purpose of justice, accordingly, is precisely to mitigate the biased effects of such arbitrary factors on people's life chances (emphasis in original) (Brown and Held 2010, 183-184).

1.3.3.2 Implications of Cosmopolitanism in Relation to Statism

As opposed to the Statists who allocate moral privilege to citizenship *as such* in determining the weight of moral claims individuals have for help, Cosmopolitan views imply that citizenship is an ethically irrelevant consideration in evaluating the relative weight of claims of individuals for help. On this view obligations of global distributive justice are not, or ought not to be, limited to the domestic arena. Obligations of distributive justice ought to transcend state boundaries to the consideration of the needs of individuals wherever they may be. What is most important to note is that according to cosmopolitanism stringent obligations of global justice are *sufficiently* derived from the concept of *moral equality* that characterises humanity rather than anything like the 'Associative Duties' account of distributive justice presented by the Statists. The source of disagreement between Statism and cosmopolitanism is that whereas Statists accept moral equality of all human beings, their arguments imply that this is *not a sufficient* reason or condition for justifying robust principles and obligations of distributive justice on a global level. It is for this reason that according to Statists even though there exists moral equality between all human beings globally, morally binding claims of distributive justice can be possible between people who are engaged in some kind of 'association' an analogue of which is a sovereign state or nation. It is in this association that costs and benefits occur that require just distribution among compatriots. Hence, unless there is evidence that there is anything like social cooperation and coercion at a global level, Statists would argue, cosmopolitans are not warranted to impose stringent globally-sweeping obligations of

distributive justice. This claim casts doubt on the cosmopolitan views regarding the scope of obligations of distributive justice.

A critical question which arises out of the Statists' denial of the sufficiency of humanity *as such* in justifying robust transnational principles of distributive justice: If the moral equality of human beings is not a sufficient basis for morally binding transnational obligations of distributive justice, why should Statists' beliefs or claims about the *scope* of obligations of social justice change to extend to all individuals globally? For clarity it needs to be noted that the doubt about the views of liberal cosmopolitanism is not based on the doubt of the relevance of individuals' moral equality in moral reasoning about how resources and opportunities ought to be distributed. Rather the doubt comes from a possibility that this may turn out to be an insufficient condition for applying perfectly uniform obligations to all individuals globally.

Whereas the cosmopolitan justification of the application of uniform obligations of (and entitlements to) global distributive justice may be theoretically appealing it seems to be based on a flawed moral psychology which can be known intuitively. Just like it may not be reasonable to expect that all things being equal (especially need in this case) individuals will toss a coin in order to decide who to help between a distant stranger and a close neighbour, liberal cosmopolitans may not be entitled to expect that all things being equal robust principles of distributive justice and their resulting obligations can be applied in a perfectly uniform way to all individuals globally without any further qualification be mere humanity. Instead what is reasonable to expect is that all things being equal, in the distribution of assistance individuals will give priority to their neighbours or those they are more connected to economically, socially or otherwise. On this account, therefore, it is reasonable to give Statists a temporary benefit of doubt if they claim that robust principles of distributive justice which give rise to potentially enforceable obligations are justified, on top of the moral equality of individuals, by social cooperation (and coercion). It is indeed unintelligible to claim that enforceable obligations of distributive justice arise naturally except in very few exceptional cases such as parenthood (obligations of parents to their children). Otherwise Statists come close to being convincing if they claim that potentially enforceable obligations of distributive justice arise out of human

interactions such as what they describe as an association. The two major problems with Statism is an outright denial of differences in human needs as a ground for affirming priority to non-compatriots and an attempt to limit human interactions (cooperation and coercion) to a domestic arena.

Given that it is disputable whether the ‘moral equality’ of all human beings is a sufficient justification for morally binding transnational obligations of distributive justice, I will now turn to examining Statists’ own conditions which they claim justify robust principles of distributive justice at a domestic level, for the purpose of deciding whether Statists’ position of circumscribing these principles to a national level in the era of globalization is rational (or consistent). For the purpose of this argument, I will hypothetically accept the Statist claim that ‘on top of moral equality of all human beings, robust principles of distributive justice and their attendant obligations are justified by the existence of a kind of association which depends for its existence on two conditions: social cooperation for mutual benefit and being subjected to common coercion.’ After this hypothetical acceptance I will take up a challenge set by Charles Beitz: the challenge is that “The real task of liberal cosmopolitanism is either to successfully deny that this kind of structure (Statist) is “not” (*sic*) a necessary condition for the conception of global social justice but some other reason, or accept that these conditions of coercion are necessary for the conception of social justice and then go ahead to show that there are analogues of these at a global level” (Beitz 1999). Out of this challenge, I will take the latter option; that is, accepting that coercion and cooperation are necessary to justify potentially enforceable obligations of distributive justice. Hence, my examination of the consistency of the Statists’ views regarding the scope of robust principles and obligations of distributive justice in the era of globalisation will involve adducing evidence to the effect that the phenomenon of globalisation presents something that can be called, even though loosely, a global association, characterised by a global cooperation and global coercion.

1.3.4 Whether Statist Views on the scope of Distributive Justice are Consistent in the Current Global Realities

From the above description of the Statist material circumstances that justify the application of robust principles of distributive justice, it has emerged that they are two conditions: social cooperation for mutual benefit and being subject to the same

coercion, both of these conditions form what Statists call an association to which a state is an analogue. Therefore, in order to legitimately claim that there exists, or ought to exist, a global association and coercion (global association) it is important, first of all, to enquire into the relevant nature of association (cooperation and coercion) which should be looked up in the current global socio-economic realities.

1.3.4.1 What is the Relevant Nature of Association that Justifies the Application of Robust Principles of Distributive Justice?

Martha Nussbaum has convincingly shown that in thinking about global justice all Statists subscribe to a social contract theory of a state (Nussbaum* 2004). It is for this reason that they understand obligations of justice within a nation state as contractual obligations between compatriots. In summary, Statists claims about justice in a state imitate Thomas Hobbes' reasoning that due to the circumstances in the state of nature (where might made right), all people surrender their freedom to the 'Leviathan' (sovereign government) so that the 'Leviathan' can administer justice between them all (Hobbes 1991). Therefore, the nature of *Association* implied by the Statist account of social justice is *an unwritten and involuntary* social contract based on the tacit consent of the so-called citizens regarding whether they want to be part of this or that association. It is a kind of an association in which people simply find themselves (by birth or other conditions beyond their control – most cases) and there is very little they can do to get out of that association. Further, as seen earlier, another qualification for the existence of that association is that group members affect, and are affected by, others in many socio-economic ways by this contract.

The importance of analysing the nature of an association referred to by Statists is to advance an argument that 'a global association does not have to be a written contract between all global citizens but rather a global association should be understood in terms of some global socio-economic circumstances in which all individuals are finding themselves without having consciously chosen so nor can they easily escape them'. The difficulty to escape such realities is clear coercion.

Therefore, by *Social Cooperation* Statists imply that people in the same state undertake various joint ventures – whether consciously or unconsciously – for their mutual benefit, which cooperation produces costs and benefits in a manner that is

likely to put certain members of the association at a social-economic disadvantage in relation to their fellow members. In other words, social cooperation refers to the mechanisms in which the natural, human, financial and other kinds of resources are jointly owned and managed for the benefit of all citizens of a given state. But taking into account the reality of human vulnerability, differences in capacities of human beings, natural factors etc., Statists realize, by implication, that the benefits and costs of the cooperation cannot automatically distribute themselves fairly. Hence, justice requires deliberate redistribution of these costs and benefits in a fair manner to all members of the association. Therefore, one of the two things that an argument for morally binding transnational obligations of distributive justice needs to show is that the global economy is organised in a way that confirms a significant level of cooperation between all individuals globally.

Regarding *Coercion*, the Statists imply that since all states have rules and institutions that coerce individuals against their autonomy, these rules and institutions should treat them equally as a compensation for the lost freedom. Coercion in this case can be understood in terms of *overt* coercion manifest in explicit legal rules of the state and also *covert* coercion involved in a number of things such as unequal bargaining powers in transactions between individuals and the resulting vulnerabilities; diffuse social pressure to tolerate certain forms of behaviour for the purpose of ‘fitting-in’, among others. Therefore, another fact that needs to be proved in order to assert the existence of a global association is that globalisation involves a significant level of coercive influence upon countries (and individuals therein), whether this coercion is *overt* or *covert*. Once a significant level of global cooperation and coercion has been proved, then this will constitute a reasonable justification for the extension of the scope of robust principles of distributive and obligations they impose from a domestic to a global level.

1.3.4.2 Whether ‘Globalisation’ Entails a ‘Global Association’

Generally the phenomenon of ‘Globalization’ is highly controversial to define with precision especially when it is approached as a *term* rather than a *concept*.¹⁰ However,

¹⁰ The controversies arising from the various attempts to define ‘globalization, are due to failure to distinguish ‘globalization as a term’ from ‘globalization as a concept’. A term is a word or an expression with special, fixed, precise and concrete meaning, usually used in a particular activity, or profession. On the other hand, however, a concept is a general, pervasive or fundamental idea

looking at how different attempts to define it as a *term* treat it gives an idea of what the *concept* essentially entails. To preempt my point, the gist of these definitions combined seems to be consistent with the idea of a ‘global association’. In order to explicate the meaning of the *term* ‘globalisation’ Scholte (Robertson and Scholte 2007) has surveyed four usages of globalisation as a term: that is, globalization as *Internationalisation*, globalization as *Liberalisation*, globalization as *Universalisation* and globalization as *Planetarisation*.

According to Scholte, when understood as *Internationalisation*, “globalization refers to a growth of transactions and interconnectedness among countries.” He adds that the impact of internationalisation is that “A rise in the number, range and frequency of transactions between countries also increases the impacts the events and conditions in one land can have on circumstances in others” (Scholte 2007, 527). In a related sense, when defined as *Liberalisation*, “globalization entails the removal of officially imposed restrictions on cross-border flows among countries” (Scholte 2007, 527). In this sense globalisation entails a significant reduction in the restrictions imposed by national borders and rules in all aspects of economic life – foreign exchange restriction, trade [and investment] barriers, capital controls, [labour migration] among others. On the other hand, when globalisation is understood as *Universalisation* it “depict[s] a process whereby increasing numbers of objects and experiences are dispersed to all people in habitable locations across the earth” (Scholte 2007, 527). Finally, as *Planetarisation*, globalisation is regarded as “a trend whereby social relations increasingly unfold on the scale of the earth as a whole” (Scholte 2007, 527). In this way globalisation is shown to be characterised by trans-planetary linkages in all spheres of life between people, and, therefore, creates a reconfiguration of social geography. As a result,

[...] the planet becomes a social location in its own right, more than and distinct from territorial places. Indeed, inasmuch as planetary social relations are less defined by territorial places, territorial distances and territorial borders than are local, national and regional frameworks, some analysts associate globalization-as-planetarization with processes of deterritorialization” (Scholte 2007, 527).

concerning many similar things derived from a study of particular instances. This paper is interested in ‘globalization as a concept’ rather than a term.

What can be quickly inferred with certainty from these definitions is that since economic and other kinds of transactions are a category of those features that characterise life in a state and, therefore, partly justify the application of principles and obligations of distributive justice at a domestic level; and the truth about globalisation being that the same transactions and their impact on individual lives are geographically unlimited, this is one of the reasons why principles and obligations of distributive justice which apply at the national level may legitimately be extended to a global level.

Further, David Held (Held 1999, 1-28) has also surveyed an array of views about the existence and nature of globalisation all of them confirm what the Statists would call a global association. He examines these views under three theses: the *hyperglobalist* thesis, the *sceptical* thesis and the *transformationalist* thesis. The most important thing to note about the views expressed in these theses is that none of them denies the existence of the current global socio-economic features from which the existence of a 'global association' can be inferred. In summary, according to Held, "Hyperglobalizers argue that economic globalization is bringing about a 'denationalization' of economies through the establishment of transnational networks of production, trade and finance." The consequence of globalization, according to Held's presentation of the hyperglobalist thesis is that "many hyperglobalizers share a conviction that economic globalisation is constructing new forms of social organisation that are supplanting, or will eventually supplant, traditional nation-states as the primary economic and political units of world society" (Held 1999, 3). To hyperglobalizers, "Since the national economy is increasingly a site of transnational and global flows, as opposed to the primary container of national socio-economic activity, the authority and legitimacy of the nation-state are challenged: national governments become increasingly unable to either control what transpires within their own borders or to fulfill by themselves the demands of their own citizens" (Held 1999, 4-5). This inability of states to fully control what transpires within their own borders is a confirmation of another condition for the existence of a global association; that is, global coercion.

On Held's reading of *globalisation sceptics'* views, they do not deny the existence of economic interdependence as it exists in the world today. Rather they claim that

contemporary levels of economic interdependence are not unprecedented, and are not as ideal [intense] as they are portrayed to be. In comparison with the classical Gold Standard era, some globalisation sceptics argue that the world economy is significantly less integrated than it was during the Gold Standard era (Boyer, Drache et al. 1996). In other words, globalisation sceptics are simply denying that internationalisation is bringing about a profound or even significant restructuring of global economic relations (Held 1999, 6). However despite their internal differences, all sceptics agree that “internationalization has not been accompanied by an erosion of North-South inequalities but, on the contrary, by growing economic marginalisation of many ‘Third world’ states as trade and investment flows within the rich North intensify to the exclusion of much of the globe (Hirst and Thompson 1996) as quoted by Held (Held 1999, 6).

Finally, according to *Transformationalists*, globalisation is a process of transformation of how the world is organised in all spheres of life, and no one knows where it is leading or can predict what its end-state will look like. What globalisation requires is that “governments and societies across the globe are having to adjust to a world in which there is no longer a clear distinction between international and domestic, external and internal affairs.” Held interprets these views, (Castells 1996) and (Ruggie 1996), as arguing that in this era of transformation (globalisation) “national economies are being reorganised by a process of economic globalisation such that *national economic space no longer coincides with national territorial borders* (emphasis added) (Held 1999, 8). While they recognise the legal supremacy of a nation-state over what occurs in its territory, transformationalists also point at the expanding jurisdiction of institutions of international governance and the obligations derived from international law. Examples cited in this case include the EU and WTO and their impact on life in national jurisdictions. Other institutions that exert significant coercive influence on nations, especially poor nations, are the World Bank (WB) and International Monetary Fund (IMF).

Generally, the various definitions and points of view about globalisation are supplemented by many other views such as those of Habermas (Habermas and Pinsky

2001, 58-112)¹¹ in proving the existence of a ‘Global Association’, in a sense of an *association* described by the Statist account of distributive justice. As seen above, according to ‘globalisation sceptics’ these interactions which imply the existence of a ‘global association’ exist except that at one point in time the intensity of these interactions was stronger than now. Most importantly ‘globalisation sceptics’ recognise that these interactions have perpetuated and entrenched global inequalities through marginalisation of certain parts of the world – specifically the so-called ‘Third World’ countries.

Further, there cannot be any reasonable doubt that almost everything that used to be regarded as public goods at a domestic level have inevitably become “*Global Public Goods*”(Kaul, Grunberg et al. 1999). For example, “The control of infectious diseases has been a staple of international diplomacy for more than a hundred years” (Kaul, Grunberg et al. 1999, 264). Again there is no doubt that all concerns about, and efforts to ensure, global peace and security, global climate, global health, stable global finance, secure global trade and investment, human rights et cetera, attest to the existence of a ‘global association’ howsoever it is governed. In other words no single view on globalisation seems to imply a denial of the existence of a ‘global association’. However, many controversies are potential about its intensity, impact, driving force, moral acceptability etc. or how to respond to its existence, especially with regard to its implication for principles and obligations of distributive justice. Hence, even though David Held politely defines globalisation as a mere “widespread *perception* that the world is rapidly being moulded into a shared social space by economic and technological forces and the developments in one region of the world can have profound consequences for the life chances of individuals or communities on the other side of the globe;” (emphasis added) (Held 1999, 1) this is not a mere perception but a reality. Hence, there exists a ‘global association.’

¹¹ In his work *The Postnational Constellation and the Future of Democracy*, Habermas presents the realities in globalisation as posing a dilemma to a national constellation and he is concerned with how and whether a postnational constellation can be democratically governed. So, Habermas would agree that a global association as described by the Statist account of social justice already exists but it faces problems of democratic governance.

1.3.4.3 Historical evidence of Global Cooperation and Coercion

Apart from what can be sieved from the current views on globalisation in proving the existence of a 'global association' there have been attempts to assert and prove the existence of global cooperation and coercion from an historical point of view (Ypi, Goodin et al. 2009). Ypi, Goodin and others argue that colonial history ties all individuals of the world, whether directly or indirectly, in a web of cooperation and common coercion. They argue that as long as the colonial masters coercively interfered in, and influenced, the affairs of the colonies, this interference gave rise to indelible associations between the colonies and their masters. The ventures they jointly engaged in and the ground institutions they jointly brought into existence continue to bear on what goes on in each of these territories, much less the former colonies. Hence, since the present socio-economic institutions, particularly in former colonies, were established through the cooperation of the colonies and their masters, and the same institutions continue to influence the affairs of these colonies, then their resulting benefits and costs should be equitably shared between those through whose cooperation the institutions were established.

Ypi, Goodin and others further argue that the colonies whether under direct or indirect rule were subjected to the same coercive rule as citizens of their masters and even then, they were never treated equally as justice would have demanded based on the common coercion account. Even though there might have been mutual benefit between the colonies and their masters as it may be argued, this would add to the body of evidence that they are connected in some way, and that what takes place in each territory is partly influenced by that history. Ypi, Goodin and others add that if the essence of the argument from the Associative Duties account is that individuals should significantly influence each other's lives and that is what is needed to ground robust principles and obligations of distributive justice, then facts from colonial history are enough to justify the application of such principles at a global level. From this historical account of a global association, one of the three duties identified by Ypi, Goodin and others is "A duty to share fairly the benefits of any cooperative good or venture created during the period of association to which all parties (coloniser and colonised) contributed and to recompense for the continuing damage done by arrangements instituted during that period but persisting afterwards" (Ypi, Goodin et al. 2009, 124).

1.3.4.4 General Position from the Analysis

From the above analysis it can be seen that if the existence of an association between individuals characterised by social cooperation and coercion are the basis for stringent obligations of distributive justice, then in the face of the concept of globalisation and the socio-economic realities it entails, Statists' circumscription of morally binding obligations of distributive justice to states and nations in the era of globalisation is not consistent with their claim regarding the basis of robust principles of distributive justice and consequent obligations. That is, if we accept that principles of distributive justice are justified by socio-economic cooperation between individuals and coercion, then it means that in the era of globalisation a claim that 'morally binding obligations of distributive justice are nationally circumscribed is irrational (self-contradictory)'. Hence, if the Statist conception of distributive justice is to be rational in the era of globalisation, they need to integrate the concept of globalisation and its socio-economic realities into their theories or systematic views about distributive justice. Once this has been done then Statists will have to accept its logical implications for the scope of principles and obligations of distributive justice. So far such a consequence is that 'there exists morally binding transnational obligations for global distributive justice'. This means that affluent countries are *morally required* to transfer some of their resources to resource-poor countries as a matter of justice.

1.3.4.5 Potential Objection

Given the overwhelming evidence of socio-economic cooperation and coercion entailed in the phenomenon of globalisation, the Statists' objection to the above argument is not likely to be a denial of the existence of globalisation or any of its socio-economic features. Instead, in response to the proof of the existence of a 'global association' as a justification for extending the principles of distributive justice and resulting obligations from a domestic to a global level, Statists can argue that the phenomenon of globalisation and the socio-economic features it entails are not as intense as those at a domestic level to prove the existence of a "global association." For this reason they might insist that the loose cooperation and coercion (association) entailed in the socio-economic realities of globalisation are not strong enough to justify the application of perfectly similar principles of distributive justice at both arenas. There are two ways to respond to this objection.

First, if Statists argue in this manner, then they should bear the burden of proof that unlike an association entailed in life at a national level, the kind of an ‘association’ at a global level is not strong enough to justify the application of principles of distributive justice at a global level. They need to solve the ‘*sorites dilemma*’ by defining with objectivity and precision the degree of intensity of cooperation and coercion that is *sufficient* to justify the application of robust principles of distributive justice and consequent obligations whether at a national or a global level. If they cannot convincingly do this, then their rejection of the extension of the scope of distributive justice to a global level in the current global socio-economic circumstances is arbitrary and, therefore, should be rejected.

The second way to respond to this objection is to make a partial concession to it. The concession consists in admitting that the intensity of cooperation and coercion at a national level is stronger than one at a global level. Therefore, a national association is stronger than a global association. From this point it can be reasonably agreed that all things being equal (especially need), domestic governments owe more to their citizens, as a matter of right, than they owe to outsiders. However, this is not to say that domestic governments (of affluent countries) owe nothing at all, as a matter of a moral right, to the citizens of other (developing) countries. A concession of this kind leads to a position which says that ‘there are, or ought to be, certain minimum obligations for transnational distributive justice which are morally binding upon all individuals globally, albeit, through the agency of their national governments’. If it were possible to quantify the intensity of global cooperation and coercion, it could as well be required that such morally binding transnational obligations of distributive justice be directly proportional to the intensity of global cooperation and coercion. But this being a very tedious and impossible task, we should settle for a position which simply confirms the legitimacy of morally binding obligations of all countries to contribute to guaranteeing a certain minimum distribution of goods and services to all individuals globally, and this obligation includes obligations of affluent countries to assist developing countries. Once this position has been reached the next step is to design a mechanism which will distribute equitably the burden of ensuring that all individuals globally have access to a certain minimum share of goods and services sufficient for their survival and achieving a certain minimum level of well-being. Further, given the extreme difficulty of quantifying the intensity of the current global

association as mentioned above, the allocation of obligations to countries should depend on the *amount of resources needed* to achieve the minimum distribution of goods and services and the *resource capacity* of different actors (governments). This position is consistent with the two major ideas of ‘complementarity of HIC and LIC government obligations and ‘equitable distribution of burdens’.

1.3.4.6 Summary of the Debate

There is no significant disagreement, if any at all, regarding the fact that principles of distributive justice are robust and impose morally binding obligations upon all individuals covered by the relevant (geographical) scope of distributive justice. Rather in this era what is debatable is the geographical scope of these principles and their consequent obligations. This is the centre of the debate between Statism and Cosmopolitanism in debates about global distributive justice. From the Statist account of what justifies morally binding obligations of distributive justice, it is the existence of an ‘association’ characterised by social cooperation between, and coercion of, all the members in the association, analogous to which is a nation state. On the other hand cosmopolitans argue that the mere partaking in humanity by all individuals globally is a sufficient reason to justify the application of the same principles of distributive justice and obligations at a national and global level. Since these two positions are starkly opposed to each other, for purposes of argument I have accepted the Statist argument that in addition to the moral equality of all human beings, robust principles of distributive justice and the resulting obligations are justified by the existence of an association between the individuals concerned, characterised by socio-economic cooperation and coercion. I have further argued that the socio-economic realities of globalisation prove the existence of a global association, howsoever weak or loose this association may be, and howsoever it is governed (with no single recognised sovereign). I have come to a position that even if Statists were allowed to argue that the intensity of a national association is stronger than a global association; it is still possible to affirm the existence of morally binding transnational obligations of global distributive justice. These obligations should be limited to ensuring that all individuals globally get access to a certain minimum amount of goods and services that can enable each of them to attain a certain minimum level of well-being rather than obligations that seek to achieve a perfectly equal distribution.

1.3.5 Gaps in the Debate and the Way Forward

The centre of current debates about global distributive justice is entirely on obligations of affluent countries to transfer resources to Low and Middle Income Countries as the discussion above has shown. In these discussions the major question is whether citizens and governments of one country (HICs) are *morally required* to transfer some of their resources to citizens in other countries, particularly Middle and Low Income Countries. The attempts to justify stringent obligations of transnational resources transfer as a *moral requirement* is crucial because, even though Statists such as John Rawls agree that it is a good thing for such transfers to take place, they argue that this is *not* a moral requirement and, therefore, it does not impose morally binding obligations of global distributive justice. Secondly, the position I have reached above purports to settle this question of ‘whether’ in affirmative – that is, in the pursuit of global justice affluent countries are *morally required* to transfer some of their resources to poor countries.

However, even if the position reached above were to be implemented to the letter this in itself does not guarantee global distributive justice. This is because the achievement of equity, as a necessary condition for justice, requires that the costs and benefits in the process of achieving a certain desirable end be shared proportionately between all parties concerned, taking into account the resource capacity of each actor. In this case the aim of the global justice agenda, particularly global distributive justice, is to guarantee a certain minimum amount of goods and services to all individuals globally if such individuals are to survive long enough and have an opportunity of achieving a certain minimum level of well-being. So the emerging question which is not answered by the position I have reached above is this: *How much* of their resources should the affluent countries be *morally required* to transfer to developing countries and what does *equity* demand in determining the size of this obligation? The moral reasoning involved here and which is missed in the current mainstream discussions is that injustice would persist if affluent countries were required to contribute more than (what would turn out to be) their proportionate share of the burden for the sake of guaranteeing to all individuals globally a certain minimum distribution of material and social goods. This is a looming obstacle to the achievement of global distributive justice and it is not solved by the position reached above. The position reached above simply says that transnational obligations of resource transfers exist. This position

neither addresses the issue regarding the *size* of these obligations, nor on *how* to determine the size of such obligations in order to achieve equitable sharing of burdens.¹²

Therefore, the lurking danger of injustice persisting in global resource (re)distribution emanates from a tendency of the mainstream discussions about global distributive justice as shown above to be exclusively concerned with obligations of resource transfers from affluent to developing countries without daring to explore the question of how proportionately the burden of achieving a globally acceptable minimum distribution of goods and services should be shared between the affluent and developing countries. This question can be answered by looking at obligations of ensuring global distributive justice from a developing country perspective. That is to say, if affluent countries have morally binding obligations of ensuring global distributive justice, what are the corresponding (or complementary) obligations of developing countries? Therefore, the idea of the ‘complementarity of obligations’ of HICs and LMICs as well as the idea of ‘equitable sharing of burdens’ can be taken care of by an enquiry into possible obligations of resource-poor countries in ensuring global distributive justice.

In part VI, I will illustrate how the current trend of discussion of obligations of countries for global justice with its two major weaknesses are reflected in discussion and practical efforts towards justice in global health. I will go ahead to show (in part VI) how a conception and implementation of poor country (or LMIC) government obligations are necessary in order to overcome these two weaknesses, thus providing better chances of achieving justice in global health. Before I proceed to use the above understanding of issues in global distributive justice to examine issues of justice in global health, I will first take time to explain some of the major concepts in the on-going discussion as well as to define the conceptual limits of the on-going discussion.

¹² The 1969 Pearson Report recommended the Official Development Assistance (ODA) of 0.7 per cent of GNP (later GNI) of OECD – DAC. However, the Report justified this target from the point of view of what the Pearson Commission thought was the shortfall of finances among the developing countries rather than justifying this target from the point of view of equitable sharing of burdens.

Part III

1.4 Conceptual Analysis and Scope of the Discussion

For a better understanding of the arguments being made in this work, there are some key concepts that need to be analysed and distinguished from each other. This exercise is also intended to define the scope for the discussion. These concepts are ‘justice’ and ‘distributive justice’; ‘global justice’ and ‘global distributive justice’; ‘obligations of justice’ and ‘duties of humanity’; ‘global inequalities’ and ‘global inequities’ and their relation to Global Justice; and, a distinction between ‘global distributive Justice’ and ‘global Egalitarianism’. Even though none of these concepts is new in the literature about global justice, sometimes they are used in a manner that obscures the arguments made in the discourse; while some of them, such as “global distributive justice” versus “global egalitarianism” are sometimes exploited to advance straw man’s arguments against certain positions. Further, an analysis of, and distinction between, these concepts will be useful in setting the conceptual scope of this work and set a background for a better interpretation of the arguments advanced.

1.4.1 ‘Justice’ and ‘Distributive Justice’

In order to clearly understand the necessity of the three categories of obligations for global justice outlined earlier, it is important to make a distinction between the concepts ‘justice’ and ‘distributive justice’ and how they relate to each other. In the history of philosophy the concept of justice has never been uncontroversial and because of these controversies it has evolved radically from its original usage by classical philosophers to its contemporary usage. Failure to appreciate this evolution leads to a misconception of what dimensions of human endeavours affect justice among individuals and groups of individuals – whether local communities, nations or global regions. It is from these dimensions of human endeavours that the various categories of obligations for ensuring justice can be sifted.

In the classical usage of the term ‘justice’ there is no distinction between ‘justice’ and ‘social or distributive justice.’ Whereas the common usage of the concept among classical philosophers was general – without explicit distinction between legal, political/institutional and distributive justice – its usage had stronger connotations of political and distributive justice. In the view of classical philosophers justice had more

to do with the legislator's duty to ensure socio-economic 'fairness' between and within social classes. For instance, according to Plato (380 BC) justice required that each individual received *goods and services* they deserved on the basis of their prescribed position in the social strata (emphasis added) (Grube 1974). On the view of his student, Aristotle (384-322 BC), justice is a principle which guaranteed social order by *regulating the distribution of economic and social benefits* (emphasis added) (Aristotle 1980). In other words, the classical view of justice, notwithstanding the controversy of what constitutes "fairness" or "desert," is primarily a political virtue that requires fairness in the distribution of social and economic goods and services. People are morally entitled to what they 'deserve' as members of certain social classes. The major weakness in the classical conceptions of justice is to limit the application of this principle of fairness only to individuals who occupied the same stratum of hierarchical social order. According to classical ideas of justice, *unequals* in the social hierarchy are to be treated *unequally*. These ideas did not challenge the social structures of society, but worked within them.¹³ However, with the influence of some civilisations such as the Roman civilisation (law) and later with the increasing prominence of the French revolutionary ideals of 'Equality, Liberty and Fraternity' from ca.1789, there came an increase in popularity of legal justice as a separate requirement of justice distinct from social and distributive justice.¹⁴ Ultimately for this reason legal justice became closely connected with ideals of human equality and liberty, while fraternity is reflected in social and distributive justice movements (Karl Marx & Angels Frederick 1888).

What is most important for this work is to recognise that in its current usage the concept of justice evolved into a clearly three-pronged concept with each dimension imposing different kinds of obligations, all which *must* be fulfilled if the concept (or virtue) of justice is to be satisfied. Another improvement from the classical conception of justice is that the current conception of justice is based on a belief in the metaphysical equality of all human beings and, therefore, it makes a distinction

¹³ There is evidence that in classical Greece there was a system of legal justice, although this was more limited to a system of criminal justice. The mainstream discussion of the concept justice, for example in the *The Republic*, does not emphasize any distinction between the various components of justice as they exist now; that is, legal justice, institutional justice and distributive justice.

¹⁴ There is evidence that in classical Greece there was a system of legal justice, although this was more limited to a system of criminal justice. The mainstream discussion of the concept justice, for example in the *The Republic*, does not emphasize any distinction between the various components of justice as they exist today; that is, legal justice, institutional justice and distributive justice.

between *privileges* and *moral rights or entitlements* of individuals *qua* individuals without any distinction based on contingent features such as nationality, sex, race etc. Current conceptions of justice reflect a clear distinction between legal rights based on political values of equality and liberty; and institutional justice achieved through just social institutions which fairly distribute power and opportunities; and a mechanism for deliberate redistribution of resources to the benefit of those whose material and social well-being falls below a certain threshold through no (moral) fault of their own. Both of the latter categories of obligations are based on the ideal of ‘fraternity.’ It is a combination of these three dimensions of justice (legal, institutional and redistribution) which define the meaning and requirements of global justice. The outcome of this distinction is that any of these three dimensions of justice, including distributive justice, is an *essential* component of the concept of justice. At a more general and fundamental level this work is concerned with distributive justice as one of the *necessary* conditions for the achievement of justice.

1.4.2 ‘Global Justice’ and ‘Global Distributive Justice’

The importance of distinguishing between ‘global justice’ from ‘global distributive justice’ is to emphasise the claim that global justice is a much broader concept than requirements of international law and ‘formal equality of opportunity’, promised by a hope for just global institutions. The distinction is meant to corroborate the point made above regarding ‘global distributive justice’ as a *necessary* component of the whole concept of global justice. Therefore, the distinction and relationship between ‘global justice’ and ‘global distributive justice’ is a corollary of the above distinction between ‘justice’ and ‘distributive justice’. The concern of this work, with due regard to other requirements of global justice, is limited to a discussion of global distributive justice with particular focus on the global distribution of health opportunities in form of health goods and services.

1.4.3 ‘Obligations of Justice’ and ‘Duties of Humanity’

The analysis in part II above (on the existence of potentially enforceable transnational obligations of distributive justice) has been mainly necessitated by a tendency to mix up ‘obligations of (distributive) justice with ‘duties of humanity.’ In discussions of distributive justice in a global context virtually all contributors agree about the need to transfer some of their resources to those that suffer severe scarcity of these resources.

However, the discussion becomes divisive on the question of whether the need for global resource redistribution imposes ‘obligations of justice’ or ‘duties of humanity.’ From a philosophical point of view, ‘obligations of justice’ are *moral requirements* on the part of the agent addressed (to act or not to act in certain ways) in respect of the *moral rights* of the agent for whose benefit such obligations are borne and fulfilled. So it means that ‘obligations of justice’ are potentially enforceable, and so are the obligations for global distributive justice. On the converse, however, ‘duties of humanity’ are simply *morally praiseworthy* actions performed by one agent for the benefit of another who has *no moral claim/right* to such beneficent action from the acting agent. Charity and benevolence are typical examples of duties of humanity. A distinction between obligations of justice and duties of humanity can be made immediately intelligible by looking at what David Hume calls circumstances of justice on the one hand, and the concept of moral rights. According to David Hume, ‘obligations of justice’ are contrasted with acts of benevolence or charity. On Hume’s account benevolence is a human sentiment which is possible only in circumstances of unlimited abundance. On the other hand, justice which imposes enforceable obligations arises because of scarcity of resources which inhibits the sentiment of benevolence and, therefore, makes enforcement necessary (Hume 1777). On this view, therefore, whereas duties of humanity are not morally binding and, unenforceable, obligations of justice are morally binding and potentially enforceable.

Further, from the philosophical understanding of justice as mentioned above, justice arises from specific *moral rights* held by all individuals. Since the concept of rights is synonymous with entitlements, it means that justice spells out what human beings are *morally entitled to* which *must* be granted to them. In the global context this moral right imposes morally binding and potentially enforceable transnational obligations on the agent who is addressed or who is said to bear such obligation. Therefore, in discussions of global distributive justice there is need to emphasise the distinction between ‘obligations of global distributive justice’ and ‘duties of humanity’. Whereas there is no dispute about the approval of ‘duties of humanity’, what is clearly disputable in the pursuit of global justice is whether there are, or ought to be, transnational obligations of global distributive justice as the analysis in part II above revealed. With due regard to the importance of duties of humanity in global resource redistribution, the analysis in this work is limited to a category of ‘morally binding

obligations of countries for global distributive justice' as a necessary complement of the other two categories of international law, and transnational political/institutional justice in order to achieve global justice.

1.4.4 Global 'Inequalities' and 'Inequities' in Relation to the Global Justice

Agenda

In this work global social 'inequalities' refer to differences in access to goods and services necessary for human survival and well-being, and the resulting differences in human well-being among individuals between and within countries. On the other hand global social 'inequities' refer to *undeserved*¹⁵ and *avoidable* inequalities in access to goods and services and consequent material and social well-being. Therefore, whereas the concept of global social *inequalities* is ethically neutral in a sense that inequality per se is not a moral wrong, global social *inequities* are ethically reprehensible and can be approved under *no* circumstances. In moral philosophy, and in this particular analysis of obligations of countries to ensure global justice, the ultimate concern is on *global inequities* in access to material and social goods and services between individuals globally and the resulting inequalities in human well-being on the one hand, and equity in the allocation of responsibilities to countries for alleviating such inequities.

The distinction between 'inequalities' and 'inequities' in the discussion of global distributive justice is necessary in order to emphasise the point that global justice does not aim at eliminating inequalities *as such or in-themselves*. Instead, the ultimate goal of global distributive justice is, or ought to be, equity in access to a certain threshold amount of goods and services and equity in the allocation of costs and burdens for guaranteeing such a threshold. This means that any effort to eliminate or reduce global inequalities of whatever category must not be blind to concerns of equity. One of the implications of this distinction is, as I argued earlier, that whereas the current trend in the discussion of obligations of countries has the capacity to guarantee to all individuals globally *equal access* to a certain minimum of goods and services, this

¹⁵ As I show later the qualification 'undeserved' implies that potential beneficiaries of redistribution bear certain obligations which, if fulfilled, might prevent or mitigate the destitution. In other words, it may not be an injustice if victims of are not assisted to overcome destitution for which they are morally responsible.

does not guarantee that there will be global equity. I showed that the concept of equity requires that the burden of achieving the targeted minimum be shared proportionately between all concerned global actors, and it is for this reason that an enquiry into obligations of beneficiaries of global justice (resource-poor countries) becomes very crucial. In summary, since this work is ultimately concerned with equity, the main issue in the discussion pertains to ‘how to share in a proportionate manner between affluent countries and resource-poor countries, the burden of guaranteeing to all individuals globally a certain minimum of health goods and services necessary for their survival and basic well-being’.

1.4.5 ‘Global Justice’, ‘Global Egalitarianism’ and the “Minimal Conception of Justice”

Generally pessimism has been cast on the aspiration of global justice, particularly global distributive justice as seen from a liberal cosmopolitan perspective. This is on grounds that it is aiming at ‘global egalitarianism’(Brock 2013). Brock argues that “What characterises the cosmopolitan position, at any rate, is a broad commitment to global egalitarianism understood as a demand of justice, stemming from the moral equality of persons” (Brock 2013, 44). Unfortunately Simon Caney too portrays the quest for global justice as a global egalitarian agenda due to his cosmopolitan sympathies (Caney 2000, Caney 2001, Caney 2008, Caney 2011). Generally since the concept of global distributive justice is mostly associated with the idea of liberal cosmopolitanism, critics of cosmopolitanism sometimes tend to employ a straw-man’s argument against global distributive justice by purporting that it is synonymous with ‘global egalitarianism’, a political view that may sound quite utopian and absurd to many as Brock argues above. In reaction to this way of arguing against global distributive justice Charles Beitz has thus warned about the tendency in discussions of global justice to frame the debate “as if the most important practical consequence of taking justice seriously would be a requirement to advocate large increases in inter-country transfer payments” on a model of foreign development assistance or as no-strings-attached grants to poor country governments (Beitz 2005). On the contrary however, the concept of global distributive justice as used in this work evades any egalitarian connotations. It is limited to guaranteeing to all individuals globally a certain *minimum* share of socio-economic opportunities and well-being rather than perfect equality of distribution or opportunity suggest by global egalitarianism.

On the basis of Martha Nussbaum's "minimal conception of social justice" it ought to be understood that global distributive justice aims at achieving "a list of entitlements that have to be secured to citizens if the society in question is a minimally just one" (Nussbaum* 2004, 13). Therefore, the concept of global justice as used in this work is defined by its ultimate goal of distributive justice which represents "a belief that there are (is a minimum of) some things which people should have, that there are basic needs that should be fulfilled, that burdens and rewards should not be spread too divergently across the community, and that policy should be directed with impartiality, fairness and justice towards these ends (Falk, Hampton et al. 1993)". The capabilities approach to global justice as proposed by Martha Nussbaum is a proposal for guaranteeing to all individuals a certain minimum of opportunities for well-being. Nussbaum describes these as fundamental capabilities (Nussbaum* 2004). Therefore, if criticisms against efforts towards global justice as conceived in this manner are to be successful they ought to look elsewhere for levers to pull rather than wrongly equating 'global distributive justice' to 'global egalitarianism'.

1.4.6 Achieving the Global Minimum Fairly

In the first and second part I emphasized two major ideas and these ideas must be emphasised all through. These are the ideas of *complementarity* of obligations of two sets of global actors (rich and resource-poor countries) and the idea of *equitable* distribution of burdens/costs. It is by taking these two ideas into consideration that it can be possible to achieve a certain global minimum distribution of goods and services and achieve it through a fair process. For instance, the idea of *undeserved* inequalities in the definition of 'global inequities' (above) implies that obligations of distributive justice, especially those of external actors, are based on a presumption that 'potential beneficiaries of redistribution are suffering significantly from avoidable harms arising from *circumstances beyond their control*.' The emphasis of the proviso of *circumstances beyond their control* is crucial because it entails that the virtue of redistributive justice ought not to be abused (or engender further injustice) by requiring external agents to reward recklessness among potential beneficiaries of redistribution or their agents (governments). This intuition suggests that obligations of redistributive justice are two-pronged, operating in a complementary relationship as I emphasized earlier: that is, obligations of potential beneficiaries of redistribution

and/or their agents on the one hand, and obligations of those required to redistribute part of their resources to the benefit of the victims. Failure to take this intuition into account in discussions of distributive justice whether at domestic or global level has high potential for engendering injustice against those whose resources are to be redistributed.

The tendency to ignore obligations of potential beneficiaries of redistribution is also prone to a slippery-slope danger of never achieving the targeted impact of redistribution as I argue later. For example unless aid-recipient governments fulfil certain obligations relating to the external resources received such resources cannot have the desired impact on the level of resource distribution among citizens of the country in question. Hence a discussion of obligations of global justice that ignores possible obligations of potential beneficiaries of global redistributive justice is incomplete, while one that gives too much prominence to one of these sets of obligations risks complacency among the other obligation bearers.

Further, since an argument for global distributive justice is based on a presumption that the victims' lack of the minimum opportunities for well-being is *beyond their control*, potential external obligation bearers for remedying such global destitution do not necessarily have to be either *morally or causally responsible* for the suffering of the potential beneficiaries of redistribution. For obligations of redistributive justice to be morally binding upon external agents it only needs to be shown that avoidable destitution exists and the victims cannot be blamed for their destitution, while external agents have sufficient means to address such destitution. In other words whereas, as Thomas Pogge has rightly argued that obligations of global justice are automatically justified by the moral responsibility of the rich for the suffering of the poor, (Pogge 2008) the arguments in this work are based on a claim that there are additional grounds for affirming obligations of global distributive justice even if there were fair play between the victims and beneficiaries of global injustice. This insight is based on David Miller's discussion of the ground for assigning remedial responsibility (Miller 2007, 81-109).

Part IV

1.5 Leanings in Discussions and Actions on Justice in Global Health

In this section I will illustrate that the trend in the discussions regarding justice in global health imitates the above trend in the discussion of obligations of global distributive justice in general. I will also go ahead to show how an outcome based on this trend (which merely affirms HIC obligations of resource transfer) does not in itself guarantee *equity* in global health. The reasoning is the same as one I emphasised earlier which, in this case, is that the burdens (costs) for ensuring justice in global health (a certain minimum level of health opportunities for all) is proportionately or equitably shared by all the actors involved. In particular I will demonstrate the need to emphasise the ‘complementarity of obligations’ of two sets of actors: donor governments and aid-recipient governments. It is in this way that I hope to show the *necessity* of obligations of poor countries in facilitating the achievement of global health equity. Without undermining the importance of other types of obligations which must be fulfilled to ensure justice in global health, I will use the case of global health financing to illustrate my argument.

Even though in general discussions of global justice the question of whether affluent countries are morally obliged to transfer resources to developing countries is still deeply divisive, in the specific discussion of justice in global health this question is for the most part treated as settled with an affirmative answer. Most contributors to the discussions regarding justice in global health reflect a firmly held belief that there are morally binding obligations borne by affluent countries to transfer health resources to resource-poor country settings. The tendency to treat this question as settled is seen in the practical measures at a global level for ensuring justice in the global distribution of health opportunities. However, at a theoretical level there is evidence of a lurking persistence of the controversy about the existence of morally binding transnational obligations for global health justice, as exemplified by some of Norman Daniels’s arguments in his book *Just Health* (Daniels 2008). But since I am treating this question as having been settled in part II, and settled elsewhere in the specific case of justice in global health (Ooms and Hammonds 2010), in this part I want to concentrate on illustrating how the practical suggestions regarding global health financing in developing countries focus exclusively on obligations of the

affluent countries to transfer health resources to developing countries without daring to specify stringent obligations of potential recipients of health-aid (LIC governments). I will then show how failure to integrate obligations of developing countries in health financing misses the two major ideas of ‘complementarity of obligations’ and ‘equitable sharing of burden/costs, thus making it extremely difficult to achieve global health equity. I will go ahead to propose and explain three important issues that ought to guide discussions and other steps towards justice in global health. I will start by asking and answering a general question regarding what justice in global health requires. I will then emphasise the role of national governments as primary obligation bearers to ensure justice in global health. I will also show the sources of concern about justice in global health by providing a brief background which explains the lop-sidedness of discussions and actions on injustice in global health.

1.5.1 What Does Justice in Global Health Require?

In an effort to answer the question of what justice in global health requires James Dwyer has rightly argued that unlike individual health, population health depends on political justice. His argument is that whereas “health depends on susceptibility to illness, exposure to risks, access to resources and care, the social consequences of ill health and many other factors,” all these factors are influenced by the justice of the social environment (Dwyer 2005, 463). He outlines three types of duties necessary for the achievement of global justice in health, especially improving living conditions of the world’s poor populations. The three duties are Duty not to harm, Duty to reconstruct and Duty to assist (Dwyer 2005, 469 - 474). Whereas he correctly treats the first two as straightforward (needing no justification), he treats the duty to assist in a manner that is debatable. Given his endorsement of Rawlsian political conception of global justice, Dwyer’s duty to assist seems to fall under the category of *duties of humanity* rather than an *obligations of justice*. Again since this issue has been addressed in part III above, I will not go back to it here. Secondly, Dwyer recommends, as mentioned earlier, that “Rather than debating, in general terms, the justification and importance of the duty to assist, we focus more attention on the aims of this duty and the various ways of fulfilling it” (2005, 473). Hence in his view, the most fundamental question is, as I mentioned in part II, not *whether* but *how* to assist.

He therefore seems to imply that the major problem facing the duty to assist is the manner in which assistance is delivered to those in need of it. However, the current practices in ODA, both health-specific and general ODA indicate that the *major* problem is *not how* to assist but rather *whether* the assistance in question is a stringent obligation of justice. In this part I am not concerned with any of these questions but the question regarding *how much* health-aid should be a moral requirement and what equity requires in the process of determining its size.

My analysis of what justice in global health requires is guided by the answer regarding what global justice in general requires. Given the minimal conception of justice adopted in this work, the answer to the question at hand can be given in two sentences. On top of observing all aspects of international law relating to health and other social determinants of health, and ensuring that global institutions are designed in a manner that distributes health opportunities equitably on a global scale, justice in global health requires that all global health actors contribute to efforts that guarantee to all individuals globally a certain minimum of health goods and services. Secondly and most importantly, justice in global health requires that the burden of guaranteeing a certain minimum level of health opportunities to all individuals globally be shared proportionately by all actors in global health, primarily national governments as the major actors. The major contention of this work is that even if the first (of the above two) requirement is part of the rhetoric in discussions of responsibility for global health, the latter has not gained as much prominence as it deserves.

1.5.2 Obligations of National Governments towards Global Health Justice

With regards to responsibility for global health, there is no doubt that national governments are the major (political) actors. Therefore, since the distribution of health opportunities such as medical and general health care and other social determinants of health depend on public policy and its implementation, with due regard to the role played by a multiplicity of non-governmental actors in global health, the primary responsibility for ensuring justice in global health falls on national governments. It is for this reason that my concern is to examine issues in the complementary obligations of national governments of both developed and developing countries rather than those of other global actors such as civil society organization, pharmaceutical companies etc.

In examining the nature of responsibility for ensuring justice in global health the World Health Organization (WHO) recognises that in global health social justice is “a matter of life and death. It affects the way people live, their consequent chance of illness, and their risk of premature death.” But most importantly the WHO goes ahead to note that inequities in health “arise because of the circumstances in which people grow, live, work, and age, and the system put in place to deal with illness.” All this is the *primary* responsibility of national governments. As a remedy, the WHO advises that, “It is essential that governments, civil society and other global organisations now come together in taking action to improve the lives of the world’s citizens” (Marmot, Friel et al. 2008, iii).

Prioritising the responsibility of national governments in ensuring global health equity within and between countries is appropriate for two reasons. One is that formally, national governments bear the primary responsibility for the health of their people through the four key functions of service delivery, input production, health financing and the stewardship role for health sectors (WHO 2000). Secondly, as stewards of the health sectors, national governments have the ultimate authority in regulating, directing and coordinating the activities of other actors such as the civil society (local and international), bilateral and multilateral activities, industry, and all ministries and sectors that impact population health. Even though the primary position occupied by national governments suggests that they have many duties and obligations to fulfil in order to ensure equity in health domestically and globally, I will limit my scope of analysis to obligations of countries in *health financing* that would, among other obligations, facilitate global health equity.

The analysis that follows takes as axiomatic a claim that inequities in global health are a consequence of “unequal distribution of power, income, goods and services, globally and nationally [and] this unequal distribution of health-damaging experiences is not in any case a ‘natural’ phenomenon but is the result of a toxic combination of poor social policies and programmes, unfair economic arrangements and bad politics” (Marmot, Friel et al. 2008, 1). It is important to emphasise the point that despite the rapidly growing power of multinational companies and other global health actors, national governments still wield the political power for the final say in international health policy and politics. It is for this reason that the WHO has insisted that in

tackling inequitable distribution of power, money and other resources there is need to “place responsibility for action on health and health equity at the highest level of government and ensure its coherent consideration across all policies; make health and health equity corporate issues for the whole government ...” (Marmot, Friel et al. 2008, 11). In the case of low income countries this means that despite real scarcity of resources at the disposal of governments, domestic governments are still the major actors in efforts towards global health equity domestically and globally. The rejection of resource scarcity as a potential excuse for governments to evade their responsibility for the health of their people partly justifies an enquiry into developing country obligations in facilitating the achievement of justice in global health, despite their severe scarcity of resources.

Given this understanding my analysis of countries’ obligations for global health equity is based on the reasoning that obligations for global health justice take place at two levels. One is a domestic level while the second is a transnational or global level. These two levels are *complementary* to the extent that it would be impossible to achieve global health *equity* without giving due regard to each of them. What this means, as I argue later, is that even if external obligation bearers fulfil their obligations by transferring health resources to LIC governments, if such governments do not fulfil specific obligations it will not be possible for the transferred international health resources to achieve the targeted health improvements. Further, bearing in mind what equity requires, if recipient governments are unwilling to allocate “the maximum of their available resources” to the health sector to fulfil people’s right to health (ICESCR, General Comment 14) and, for the sake of guaranteeing the minimum health good and services to all individuals such governments end up imposing a disproportionate burden onto citizens and governments of high income countries, this situation engenders injustice against external obligation bearers.

1.5.3 Source of Concern about Justice in Global health

The source of concern about justice in global health is the gross avoidable inequalities in the health status within countries, but most importantly between countries. This concern is strengthened by the trend of these inequalities which has been deepening over the years and is deepening further. Other than inequalities in health statuses between individuals globally, the concern about justice in global health is due to the

steep gradient in health opportunities also within and between countries. Generally the concern is that poor populations both within and between countries have very poor health statuses and at the same time they have very unequal access to health care and other social determinants of health, a situation that is a kin to that described by Julian Tudor Hart using what he termed as “the Inverse care law”¹⁶(Hart 1971). Since this situation is known to be changeable by human efforts, it follows that if nothing is done about it, and those who have the means to do so are morally required to mitigate such a situation, then if they do not do so they can be blamed for tolerating injustice or even doing injustice.

My intention in examining the source of concern about injustice in global health is not to provide comparative statistics of the health statuses of the global poor versus the rich. Instead I want to concern myself with the distribution of health opportunities. But still since health opportunities are quite many, I will be concerned with health financing which is I believe is pivotal for all other health opportunities. Of course this is not to say that health financing directly affects *all* other social determinants of health – such as education, religious and cultural beliefs, neighbourhood, among others. My choice to focus on health financing is because all immediate responses to ill-health (all health interventions) cost money, whether directly or indirectly.

1.5.3.1 Disproportionate Distribution of Global Health Resources

Globally the allocation of health resources between countries is disproportionate. By proportionality here I mean the allocation of health resources to specific population groups basing on the global distribution of the global burden of disease and the estimated cost of addressing such causes of ill-health. This (proportionality) is far from being the case in current trends in the distribution of health resources on the globe. Health financing for medical and general health care services, health Research and Development (R&) as well as other social determinants of health are distributed in a manner that is not consistent with idea of a proportionate distribution as defined above. This trend in the distribution of health opportunities has perpetuated injustice

¹⁶ With specific reference to the distribution of medical services within pupations, according to Hart, the Inverse care Law is that “The availability of good medical care tends to vary inversely with the need for it in the population served” Hart adds that “The inverse care law operates more completely where medical care is mostly exposed to market forces, and less so where such exposure is reduced”.

by imposing a disproportionate burden on the global poor in an effort to guarantee to all individuals a certain minimum level of health opportunities.

With regards to the distribution of health opportunities, the summary of the World Health Expenditure Atlas (2012) will be useful. Even though the global total health expenditure per capital is US\$948, it has been shown that in 34 WHO member states the actual total health expenditure per person is less than US\$50. In at least seven member states it is less than US\$20. In this report the WHO further shows in what has been referred to as the “20/80 syndrome”, that 84 per cent of the world’s health resources are consumed by only 18 per cent of the world’s population. The WHO’s examination of these figures which links them to the distribution of global morbidity and mortality has revealed that global allocation of health resources is highly disproportionate. In summary, the analysis revealed that:

[...] though the poorer WHO regions like AFR [Africa Region] and SEAR [South East Asia Region] account for the largest share of the global burden of disease (over 50% of global disability-adjusted life years lost) and 38% of the world's population, they spend only 2.5% of global health resources. The Western Pacific (WPR) region without the four OECD Member States, Australia, Japan, New Zealand, and Republic of Korea, accounts for 24% of the world's population (dominated by China), about 16% of the global burden of disease but only 4.8% of the world's health resources. The region of the Americas (AMR) and Europe (EUR), excluding the OECD countries, account for 12.7% of the world's population, 11% of the global burden of disease and spend only 7% of health resources. Richer countries with smaller populations and lower disease burden use more health resources than poorer countries with larger populations and higher disease burden (WHO 2012, 3).

Further, the 2014 global health expenditure report indicates that whereas the global average total expenditure for health per person per year is US\$ 1008, the average amount spent per person on health in countries belonging to the Organization for Economic Co-operation and Development (OECD) is US\$ 4584. At the same time, whereas the WHO estimates of minimum spending per person per year needed to provide basic, life-saving services is US\$ 44, in 26 WHO Member States where health spending – including spending by government, households and the private sector and funds provided by external donors – is lower than US\$ 44 per person per year. The same report shows that the Eritrea has the lowest per capita expenditure on health with US\$ 12 per person per year, while Norway, the country with the highest per

capita expenditure on health spends US\$ 8436 per person per year (WHO 2014). This means that the amount of health resources which are allocated to one individual in Norway is equal to that allocated to 703 people in Eritrea.

1.5.4 Contemporary Responses to Injustice in Global Health

Against the backdrop of the above experience, on-going response to the existing injustices in the global distribution of health opportunities, particularly health resources, there has been a tendency to emphasise the need for affluent countries to increase the size of health-resources transfers to LMICs in order to reduce the current disparities both in health financing and, consequently, in health outcomes. There are a number of recommendations being made and actions being taken to improve health in the developing countries and here I will only provide a summary of these efforts. These efforts are by both government and non-governmental actors. However, what is noteworthy about the various efforts (recommendations and practical measures already being implemented) is that they all focus on how to increase health resource transfers from affluent to poor countries and no significant effort has been made to enquire whether there is anything developing countries (or LMICs) *must* do themselves in order to ensure that their citizens achieve certain levels of well-being. The assumption that can be inferred from this attitude is that poor health outcomes in poor countries is due *only* to lack of sufficient resources to the extent that resource transfers from rich to poor countries will automatically translate into health opportunities. This assumption is false. It can be true only if health-aid recipient country governments fulfill certain obligations.

Therefore, the essence of presenting the summary of these efforts is not to criticise them for being wrong or unnecessary, but to prove a point that they all focus exclusively on health resource transfer from the affluent to the developing countries. It is from this evidence that I want to make a case for the need to also focus on potential obligations of developing countries in health financing and other efforts in order to ensure that the burden of guaranteeing the targeted minimum of health opportunities to all individuals is proportionately shared between the developed and developing countries on the one hand, and between the developing countries themselves.

1.5.4.1 Proposals and Actions against Inequitable Distribution of Health Opportunities

With specific reference to health-specific ODA, the Commission on Social Determinants of Health has observed that despite the importance of aid, its volume is appallingly low. “It is low in absolute terms (both generic and health specific); relative to wealth in donor countries; relative to commitment to a level of aid approximating 0.7% of gross domestic product (GDP) made by donors in 1969; and relative to amounts required for sustainable impact on the MDGs. [...] “A step-shift increase [in ODA] is required” (Marmot, Friel et al. 2008, 12). Further, in view of the current global inequalities in wealth and health, there have been numerous calls on donor countries to increase their general as well as health-specific Official Development assistance (ODA) (OECD 2014, Pielbags 2014, UN 2015).

Some practical efforts to ensure fair distribution of health opportunities, particularly monetary resources, have been undertaken through a number of initiatives, most of which involved partnerships between the public and private sector. All these major initiatives aim at raising extra resources from the affluent countries to the developing countries. One of these initiatives is the Global Fund. The Global Fund which was founded in 2002 is one of the typical examples of the current efforts to ensure justice in global health by advocating and actualising extra resource transfers from the affluent countries (individuals, governments, civil society, Foundations etc.) to developing countries. The Global Fund which is a partnership between governments, civil society, the private sector and the people affected by diseases, relies for its funding on voluntary financial contributions from rich country governments, social sector enterprises, philanthropic foundations and rich individuals, all from the developed countries (Global Fund 2015).

The second effort is the United States’ ‘President’s Emergency Plan for AIDS Relief’ (PEPFAR) which is also another major global health actor in health financing among poor countries. This is a US government initiative started in 2003 “to help save lives of those suffering from HIV/AIDS around the world” (PEPFAR 2015). It relies for all its funding on the US citizens and government. Another major source of finance for health in the developing world is the Global Vaccine Alliance Initiative – GAVI. Since 2002 GAVI has been instrumental in bringing together the public and private

sectors “with the shared goal of creating equal access to new and underused vaccines for children living in the world’s poorest countries. What is even more important to note is that GAVI relies for its funding on the governments and other agencies of the developed countries with the five leading contributors being United Kingdom, Bill and Melinda Gates Foundation, USA, Norway and Italy (GAVI 2015). However, GAVI is slightly different from other organisations with regards to its attitude towards the responsibility of developing countries in health financing. GAVI has a co-funding policy which requires benefiting countries to contribute to the cost of vaccines they receive (GAVI 2015). This is likely to encourage developing countries to increase their budgets towards health. But it can as well be asked: given the severity of resource scarcity among developing countries how much should they be required to contribute if they are to benefit from GAVI funds and by what criteria should it be determined. Further still, fundraising campaigns for health R&D to meet special health challenges in developing countries are primarily concerned with how to raise extra resources for health R&D which is relevant to the special health needs of developing countries (WHO 2012).

It is important to reiterate and emphasise the disclaimer that the various recommendations by governments and all other global health actors that gave rise to these efforts are by no means wrong. It is true that in the wake of the current global inequalities in the distribution of health opportunities, especially health resources, and in virtue of real scarcity of health resources among the developing countries, the affluent countries need to increase their resource transfers to the developing countries. As a matter of fact, the general poor performance of countries with regards to ODA disbursements is a legitimate cause of worry in its own right and, therefore, it is a worthwhile endeavour to enquire into why this is the case and devise the ways and means to increase affluent countries compliance with ODA. Later I enquire into this question of why obligations of countries have been largely futile.

However, this trend which emphasises obligations of affluent countries and ignores the potential obligations of developing countries is another cause of worry. My own worry about this trend is different from the one expressed by the UN. The UN’s concern is with the sustainability of progress towards the achievement of the Millennium Development Goals (MDGs) if the responsibility of developing countries

is not addressed, and instead the efforts continue to rely almost entirely on donor resources. The UN has cautioned that “A dependence on aid is akin to ‘putting all one’s eggs in the same basket’ and leaves countries exposed to sharp fluctuations in the overall volume of aid as well as donor preferences in terms of the purposes to which aid is put” (UNDP 2011, 146). The UNDP has observed that “The recent slowdown in development cooperation funds from the so-called ‘traditional’ donors is indicative of the fragility of international aid and of internationally agreed promises to increase it” (UNDP 2011, 150). However, my major concern is that the above trend misses the ideas of ‘complementarity of obligations’ and ‘equitable distribution of burdens and, therefore, *does not guarantee equity* in global health financing as I demonstrate later.

1.5.4.2 Towards Equity in Global Health Financing

From the point of view of the crucial importance of the concept of the *complementarity* of HIC and LIC government obligations in the pursuit of justice in global health, it is important to note that while the above strategies for health financing in developing countries and calls to increase ODA continue, there is need to explore possible obligations of LICs. Since the idea of equitable distribution of burdens implies that obligations of external actors (affluent countries) are not unlimited, there is an additional question that needs to be posed and answered. *How much*, or, *what proportion* (of what is needed) should high income countries be *morally required* to transfer to the developing countries and how should it be *determined* given that equity requires a proportionate distribution of burdens towards a given end? Put differently, given that the obligations of affluent countries are not unlimited as to how much they can be morally required to transfer to developing countries ‘below what point in terms of amounts of resources transferred to the developing countries should affluent countries be *morally blamed* for acting unjustly and how should this level be determined if equity in global health financing is to be achieved’? The same question could as well be posed from a poor country perspective. That is to say: ‘In view of the levels of resource scarcity among developing countries, how much can they be *morally required* to contribute towards meeting the cost of guaranteeing their citizens a globally accepted minimum level of health opportunities?’

The latter version of the question recognises the reality of resource scarcity among LICs, but at the same time the question implies that there ought to be a level of health financing which should be a stringent moral requirement for developing countries and, of course taking into account their resource capacities. Further, these questions emphasise the point that in an effort to achieve justice in global health, particularly equity in global health financing, it is necessary that the burden of contributing resources to cover the minimum health opportunities be shared proportionately between donor country governments and aid-recipient country governments. In this case proportionality consists taking into account the different resource capacities of different governmental actors in the allocation of the burden of global health financing.

The question regarding how much resources ought resource-poor countries to contribute is undertaken in agreement with WHO's Commission on Social Determinants of Health which observed that "For countries at all levels of economic development, increasing public finance to fund actions across the social determinants of health [...] is fundamental to welfare and health equity [...]" (Marmot, Friel et al. 2008, 12). But still, in the same spirit as the trend in discussion of general obligations has shown above, with regard to health the WHO has emphasised that "In the case of poorer countries, it implies much greater international financial assistance" (Marmot, Friel et al. 2008,12). However, still in this case as in the case of general obligations of countries for global justice, the WHO does not specify how much or what proportion each set of actors (donors and aid-recipient country governments) should contribute if equity in health financing is to be achieved. Before answering this question it is important to first examine the impact of the present health financing practices among developing countries on the possibility of achieving global health equity, particularly financial equity.

1.5.5 Health Financing among LICs and the Possibility of Equity in Global Health Financing

The above analysis of the requirements of global distributive justice with particular regards to health is based on a claim that on top of achieving a certain minimum of health opportunities in form of health goods and services for all individuals globally, the task of achieving this minimum ought *not* to impose disproportionate burdens on

any of the parties involved. In this case the parties concerned are all individuals globally, albeit, through the agency of their national governments. In the case of health financing this means that health financing burden (in a global context) should be shared equitably at three levels: within LICs (between individuals/households); all health-aid recipient country governments; and, between aid-recipients' (LIC) governments and donor (HIC) governments.

Since the thesis of this work is that resource-poor countries should bear certain stringent obligations in ensuring equity in global health, it is necessary to show how inequity between poor countries themselves would persist if this they were to be exempted from fulfilling certain uniform minimum obligations for global health financing. In order to examine the current health financing practices between LICs themselves and the possible impact of the practices on the possibility of achieving global health equity, I will use the statistics provided by the 2012 Global Health Expenditure Atlas (WHO) 2012, particularly those for the WHO Africa Region.

1.5.5.1 Inequities in Health Financing within and between Countries

The WHO has recommended that all national governments need to increase the amount of resources they allocate to health (WHO 2010). This recommendation is mostly relevant to developing countries (both low and middle income countries) where health expenditure per capita is still much lower than the global average. The recommendation that LMICs increase their domestically generated resources to health is derived from a claim that LMICs give low priority to their health sectors in national budgets, yet the health sectors play a crucial role in ensuring well-being as well as speeding up economic growth (WHO 2001). However, my concern about health financing among LMICs is that on top of most LMICs giving a comparatively low priority to the health sectors, there are wide divergences in priorities different countries give to health as reflected in their national budgets. What I intend to show below is that these divergences (within LMICs) *in themselves* are an obstacle to ensuring equity in global health financing.

What needs to be emphasised again is the claim which I will demonstrate later that global health equity, especially equity in health financing, requires equity within and between countries. With regards to LMICs alone, equity ought to be understood at

two levels: equity *within* a country and equity *between* those who compete for external resources (LMICs) to the extent that if different countries claim different amounts of resources from external actors, each country's claim should be proportionate to the claims of other countries by virtue of each country's resource capacity. I will use the table below (Table 1) to highlight the moral necessity of focusing on obligations of aid-recipient countries in ensuring equity in global health, particularly global health financing.

The table below and the discussion that follows are intended to give a rough picture of the inequities in health financing within the WHO African region. What is mostly crucial to note about the table below is the wide inter-country divergence regarding 'Who Pays What Per cent of THE (Total Health Expenditure) for health'. This is the basis of the discussion of the inequity in health financing between and within low and middle income countries.

Table 1: Health Financing in WHO Africa Region, 2010

WHO Member State	GDP per capita (US\$)	GINI Coefficient*	THE per capita (US\$)	Who Pays what Per cent of THE ^{†1} for Health?		
				House-holds	Government (Domestic Resources)	Other
Algeria	5 310	-	178	21	78	1
Angola	4 322	42.7	123	18	82	0
Benin	753	38.6	31	47	50	3
Botswana	7 403	-	190	8	73	19
Burkina Faso	590	39.8	40	36	51	13
Burundi	179	33.3	21	38	38	24
Cameroon	195	38.9	61	66	30	4
Cape Verde	780	50.5	155	27	75	0
Central African Republic	457	56.3	18	61	35	3
Chad	676	39.8	31	73	25	2
Comoros	736	64.4	33	33	67	0
Congo	2 943	47.3	72	53	47	0
Democratic Republic of Congo	199	44.4	16	38	43	22
Equatorial	19 998	-	896	22	76	2

Guinea						
Eritrea	448	-	12	52	48	0
Ethiopia	321	33.6	16	37	54	9
Gabon	8 643	41.5	302	47	53	0
Gambia	459	47.3	26	24	51	25
Ghana	1 283	42.8	67	27	59	14
Guinea	467	39.4	23	88	11	1
Guinea-Bissau	551	35.5	47	66	10	24
Ivory Cost	1 127	41.5	60	77	22	1
Kenya	775	47.7	37	43	44	13
Lesotho	982	52.5	109	16	76	7
Liberia	246	38.2	29	35	33	32
Madagascar	422	44.1	16	27	60	13
Malawi	389	43.9	26	11	60	29
Mali	636	33.0	32	53	47	0
Mauritania	967	40.5	43	44	53	3
Mauritius	7 485	-	449	62	42	7
Mozambique	410	45.7	21	14	72	15
Namibia	5 330	63.9	361	7	58	34
Niger	354	34.6	18	41	51	8
Nigeria	1 239	48.8	63	59	38	3
Rwanda	530	50.8	56	22	50	28
Sao tome & Principe	1 256	50.8	90	54	38	8
Senegal	1 033	40.2	59	35	55	10
Seychelles	10 826	65.8	368	6	92	2
Sierra Leon	325	35.4	43	76	11	9
South Africa	7 255	63.1	649	17	44	39
Swaziland	3 073	51.5	203	15	64	21
Togo	531	39.3	41	47	44	9
Uganda	519	44.3	47	50	22	28
United Republic of Tanzania	514	37.6	31	14	67	19
Zambia	1 237	57.5	73	26	60	13
Zimbabwe	-	-	-	-	-	-

Source: Constructed using 2010 Health Financing statistics provided in the WHO Global Health Expenditure Atlas 2012. GINI Coefficients are from the World Bank (2013).

*GINI Coefficient is a "Measure of the deviation of the distribution of income among individuals or households within a country from a perfectly equal distribution. A value of 0 represents absolute

equality, a value of 100 absolute inequality” (World Bank 2013). Therefore, the higher the GINI Coefficient in a given country, the higher the income inequality and vice versa.

*1 means Total Health Expenditure of a given country.

For better understanding of the impact of the nature of health financing among countries (as shown in Table 1) on the possibility on equity in global health, it should be recalled that the major source of inequities in health and health financing is reliance on Private Health Expenditure (PHE) for health, particularly Out-of-Pocket Payments (OPP) by households and, or individuals. Note should also be taken that the size of household expenditure as a proportion of Total Health Expenditure (THE) in turn depends on the contribution of the public sector and other external sources of health finances to THE for a given country in a given year. This means that the lower the contribution from the public sector (a combination of domestic and external sources) to THE, the higher the contribution of household expenditure to THE and, therefore, the deeper the inequities in health financing and access to health services. Therefore, that is why in this analysis the main attention is on “who pays what per cent of THE for health” and the GINI Coefficient (income inequality) of different countries in the Table 1. Probably it is not obviously intelligible to most people how PHE on health determines equity in health financing and access to health services and how GINI Coefficient is another additional factor to consider in the whole process. Below I give a brief highlight on how PHE impacts on equity in both health financing and access to health services.

1.5.5.2 How Does PHE Impact on Equity Within Countries?

Within a single country, PHE leads to inequity in both health financing and access to health services. This is because different individuals and/or households have very unequal incomes as reflected in GINI coefficient column in Table 1. In addition to wide income disparities, individuals and household are exposed to very unequal health risks and actual morbidities, all of which mean that some households/individuals need to pay more than others in order to have equal chances of survival and well-being like everybody else. In both of these cases (unequal incomes and health risks/needs) poor individuals and households are the disadvantaged group. It might be asked whether PHE for health in *itself* leads to inequity in health financing. From an ideal point of view, PHE for health in itself does not lead to

inequities in health financing or access to health services. However, the *only* circumstances under which PHE (household expenditure) would not lead to inequities in health would be in a kind of ‘utopia situation’ where every individual in a country has exactly the same income, exactly equal health needs, exactly equal geographical distance and transport costs to health facilities among other health-related costs. Hence, given the real socio-economic circumstances as we know them, PHE for health services, especially among LMICs, automatically leads to deeper inequities in health financing as well as access to health services.

For the purpose of illustrating how the obvious impossibility of this ‘utopia situation’ automatically leads to deeper health inequities within developing countries, especially those shown in Table 1, I will hold two false assumptions one at a time. These assumptions are false because for each of them one of its conjuncts is false. The first assumption is that all ‘individuals in a country have exactly the same level of income and/but unequal health needs.’ The second assumption is that ‘all individuals/households have exactly the same health needs and/but unequal incomes.’

In the first case (equal income but unequal health needs) high reliance on PHE implies that even though people have exactly the same income they will spend different proportions of that income on health because they have unequal (more) health needs. Those with high health needs will make a disproportionately higher contribution to general health financing (THE) in relation to those with low/few health needs. In the second case too (unequal incomes but equal health needs), even if people have exactly the same health needs, reliance on PHE means that those with low incomes will spend a much higher proportion of this income if they are to have equal access to the health services they need as everybody does. The same explanation would go for all other relevant assumptions such as ‘all things being equal *except* distance and transport costs to health facilities and other health expenditures’. In short, inequality in any of these relevant variables and the extent of that inequality contributes to inequity in health financing and access to health services when there is PHE for health services. It is important to emphasise that within developing countries, these inequities are extreme in number and depth.

As shown in Table 1, within WHO Africa Region there is a very high reliance on household expenditure (PHE) on health, yet income inequalities (GINI Coefficients)

are also very high. For example, with regard to PHE as a proportion of THE, in at least twenty-seven countries PHE is 30% and above. In thirteen countries it is above 50%, while in Guinea, a country with the highest PHE in the region (in the year considered), household expenditure on health contributes as high as is 88% of THE, while the GINI for the same country stands at a high rate of 39.4 per cent.

Further, inequities in health financing and access to health services within most developing countries are worsened by the fact that health priority setting mechanisms (allocation of the available meagre resources) in most of these countries favour the rich (Peters, Garg et al. 2008). This further means that unless developing countries fulfill certain obligations, for instance obligations relating to equity in health resource allocation, even the funds raised from the current efforts to increase ODA will not guarantee for most LMIC citizen access to the targeted minimum health opportunities. Hence, within the developing countries alone equity in health financing should be reflected in resource mobilisation as well as the allocation of those resources.

Therefore, since justice in global health aims at *guaranteeing* a certain minimum of health opportunities, and given that there cannot be any ‘utopia country’ as hypothesised above, inequities in health financing at a domestic level can only be avoided or at least significantly reduced by ensuring that there is *no PHE* for the minimum health opportunities targeted by justice in global health. That is to say, if any part of the minimum health opportunities is left to be financed by PHE, then the idea of *guaranteeing* this minimum will be defeated and it will, therefore, remain extremely difficult to achieve justice in the global distribution of minimum health opportunities. This means that in order to avoid the current inequities in health financing (and resulting inequities in access to health services) in countries which have not yet achieved a certain minimum health expenditure per capita (or health opportunities), the whole cost for minimum health opportunities must be covered by public funds; that is, domestically generated public funds plus external funds (from obligations of HICs).

1.5.5.3 Inequity between Developing Countries

The concern about equity in health financing between developing countries (or all health-aid recipient countries) arises from the fact that ultimately all these countries

compete for limited external resources in order to cover their deficits towards the global minimum. And given the limited nature of these (international resources) it means that if country 'A' gets it (resources) then country 'B' must miss it. Again, as mentioned earlier, the moral reasoning here is that given the differences in resource capacities of different potential aid-recipient countries, each country's size of claim to external resources should be proportionate in relation to the claims of other countries. That is to say, countries with higher resource capacities (higher GDP per capita) should not claim as much health-aid per capita as those with poor resource capacities (lower GDP per capita).

For instance Table 1 indicates that some governments with high GDP per capita contribute negligible proportions to their THEs on health. This means that such governments and their citizens bear a relatively light burden of health financing than their counterparts with lower GDP per capita since the latter have to contribute bigger proportions of their incomes in order to achieve the same health opportunities like those in better-off poor countries. This further means that each LIMC governments' decision regarding what percentage of its domestically generated resources it should allocate to health has a direct impact (strain) on the limited international health resources. Hence, a country which allocates to its health sector less than an *optimal* of its available resources imposes part of what it should have been its responsibility to other global health actors. This is because the rest of the global actors must work to ensure that they *guarantee* a certain minimum level of health opportunities to individuals in that country. Of course it is not clear here what constitutes the *optimal* or how to determine the optimal amount of the available resources. However, there can be a level of health financing as a proportion of the total budget expenditure which can be regarded as an optimal allocation to health. I will return to the issue of optimal resource allocation later (see the article in chapter four) on "Obligations of low income countries in ensuring equity in global health financing"(Barugahare and Lie 2015)). Therefore, there is need for a mechanism for allocating obligations for health financing between countries in a manner that is consistent with the ideas of 'complementarity of HIC and LIC obligations' and 'equitable distribution of burdens/costs, between individuals globally, although through the agency of their governments.

1.5.6 Summary

What can be inferred from the above analysis so far is that whereas it is necessary to increase health resource transfers from the affluent to resource-poor countries in order to guarantee LIC citizens' access to the minimum health opportunities, the achievement of equity requires that this campaign also be looked at from the perspective of developing country obligations. It could be true, as indeed most views suggest, that affluent countries are not doing enough in terms of health resource transfers to the developing countries, but the concept of *equity* suggests that their (HICs) responsibility is not unlimited. At the same time, it could also be true that LMICs are not doing what is optimal within their specific resource contexts and, therefore, they need to increase their own investment in health. But given the severity of resource scarcity in most of these countries, still the concept of equity in a global context suggests that they can only do so much. However, so far there is no agreed mechanism for determining the size of each actor's (national governments) financial responsibility in efforts to guarantee to all individuals the required minimum level of health opportunities. For that matter, the trend in discussions regarding how to achieve justice in global health needs to take certain issues seriously. I will briefly explain at least three of these issues or questions below and these questions form the basis of my further enquiry in the chapters which follow.

1.5.7 The Way Forward with Global Justice in Health

On the question regarding 'whether closing the health gap between and within countries in a generation is feasible' the WHO's Commission on Social Determinants of Health has cautioned that:

“If we continue as we are, there is no chance at all. If there is a genuine desire to change, if there is a vision to create a better and fairer world where people's life chances and their health will no longer be blighted by the accident of where they happen to be born, the colour of their skin, or the lack of opportunities afforded to their parents, then the answer is: we could go a long way towards it” (2008, 23).

This caution can be interpreted to imply that all efforts made for achieving global health equity (or global social justice in general) are dependent on a presumption of “a genuine desire to change” both at domestic and international levels. This genuine

desire to change is the fundamental condition that must be fulfilled if there is to be any hope for global health equity. This desire can be interpreted as the *actors' collective political will* at both domestic and international levels to fulfil specific obligations necessary for the achievement of global health equity or global social justice.

In this regard, therefore, since there is a lot of evidence that most countries are not fully complying with their obligations to ensure global justice, effort should be made at exploring countries' obligations for global distributive justice have for the most part remained futile despite wide political recognition of these obligations and what ought to be done about it.

Secondly since the ideas of 'complementarity of obligations' and 'equitable sharing of costs' suggest that that LIC obligations are inevitable in the pursuit of global justice, I dedicate one chapter to exploring general the general nature of obligations of poor countries in the pursuit of global justice. My most important concern in this regard (chapter) is not to provide a list of specific poor country obligations which are uncontroversial, although I attempt to do so in specific reference to Uganda. Rather my major aim is to provide the kind moral and practical reasoning which should guide an enquiry into such possible obligations.

Thirdly, with specific regards to global health (financing), the most relevant and urgent question is 'how should domestic obligations of developing countries be understood in relation of external actors, specifically obligations of external country governments?' More specifically, how should the obligation of financing global health be shared between high income countries and low income countries if equity in global health is to be achieved?

Chapter2

Introduction

The whole project towards guaranteeing to all global individuals a certain minimum share of goods and services in the name of global justice must take recognise the fact there are already certain obligations that seem to enjoy wide political recognition. At the same time it is crucial to note that despite this wide political recognition of these obligations, these obligations have for the most part remained ineffective. Both affluent and resource poor-countries flout these flout these rules and yet no sanctions or even threats of sanctions follow such defiance. The consequence of this futility of these obligations is that the success of the project of global justice continues to hang in balance. This issue of great importance because the practical impact of whatever obligations defended in this work and related works depend on the possibility of a successful implementation or fulfilment of these obligations. Therefore, unless we come close to an understanding of why current obligations of countries towards global justice have for the most part remained ineffective, then the understanding of countries' obligations aimed at in this and several related works will not have the expected impact. For that matter, therefore, in this chapter I attempt to provide an understanding of the futility of countries' obligations in ensuring global justice. This discussion takes into consideration the fact that obligations of countries for global distributive justice are mainly framed as human rights obligations, specifically countries' obligations relating to the respect, protection and promotion of Economic, Social and Cultural Rights (ESCR). Given that ESCR are broad, it is not possible to make reference to all ESCR. I will limit my discussion on the futility of countries' obligations to obligations with respect to the health rights of low income country citizens or obligations of countries to ensure justice in the distribution of global health opportunities. Further, since health opportunities are broad in their number and scope I will draw my illustrations from health financing as one of the key determinants of the health opportunities available to any population group. Further still, the following disclaimer regarding my attempt at providing an understanding of the futility of these obligations should be taken seriously: even though my account might be no fully convincing to some, it makes a crucial point. The crucial and undeniable point is that

there is a deep problem with the level of countries' compliance with their obligations and this stands in the way of all efforts towards global justice and in the particular case of this work, this futility stands in the way towards justice in the way health opportunities are distributed globally. Hence, the emphasis of this chapter is that it is necessary to enquire into the ultimate explanation behind the futility of countries' obligations towards global distributive justice.

Understanding the futility of countries' obligations for health rights: realising justice for the global poor

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Abstract

Background: Although health is a right of all individuals without any distinction, the realisation of this right has remained very difficult for the marginalised populations of poor countries. Inequitable distribution of health opportunities globally is a major factor in explaining why this is the case. Whereas the Protection, Promotion and Fulfilment of the health rights of developing country citizens are a joint responsibility of both domestic and external governments, most governments flout their obligations. Even though a lot of effort has been dedicated to reaffirming and interpreting these obligations the fundamental questions regarding *why* these obligations have nevertheless remained largely unfulfilled, as well the normative question of *what ought to be done* about it, have been largely ignored.

Discussion: We treat issues of ‘health rights’ and ‘justice in global health’ as having unity of purpose – *guaranteeing* basic health opportunities to the marginalised populations. We identify two sets of reasons for the failure of obligations for global distributive justice in general: a set of ‘superficial reasons’ and a set of ‘fundamental reasons’ which account for the superficial reasons. In order to overcome these reasons we propose a strategy which consists in *specifying* a number of *minimum* and less-demanding obligations for both external and domestic governments to guarantee to all individuals a certain threshold of material and social well-being particularly health goods and services. We argue that these *minimum* obligations can be freely accepted and fully complied with or enforced with “a thin system of enforcement” if the minimum is to be *guaranteed*. We envisage that once the initial global minimum has been achieved, further obligations can be allocated in the same manner, if necessary, and the health rights of the marginalised populations and global justice in general can be achieved in such an incremental manner.

Conclusion: The futility of countries’ obligations for the health rights of the global poor as is the case for global distributive injustice is because of political will to *specify* and *enforce* such obligations. Minimum obligations should be specified and enforced with a “thin system” which is consistent with principles of national sovereignty and autonomy.

Key Words: Health opportunities; Marginalised populations; Right to health; Global distributive justice; Obligations; Low Income Countries; Developing countries

Background

Although health is a right of all individuals without any distinction, the realisation of this right has remained extremely problematic for most citizens of developing countries. Inequitable global distribution of health opportunities in form of health resources (and other social determinants of health) is one of the major impediments to the realisation of health rights of globally marginalised populations, and majority of whom live in Low Income Countries (LICs) and some many more in Middle Income Countries (MICs). The problem of unfilled health rights of these populations has a moral dimension because it is a typical case of global distributive injustice. But important to note is that this problem is bound to persist given the current practices in the global distribution of health opportunities particularly health resources. Therefore, given the close connection between fairness in the distribution of health resources and the realisation of health rights, we place our discussion of the futility of countries' obligations for health rights in the broader context of global distributive justice and countries' domestic and extraterritorial obligations to ensure justice in the global distribution of opportunities for survival and well-being. On the basis of principles 55 and 56 of the UN Charter (CHAPTER 1945); the wide recognition of Official Development Assistance (ODA) target of 0.7 of GNP (Assembly 1970); the nature and scope of countries obligations for the realisation of Economic, Social and Cultural Rights (ESCR) as interpreted by The Limburg principles (Principles 2004) especially paragraph 26, our discussion naturally covers both domestic and extraterritorial obligations for global distributive justice which are for the most part are framed in a human rights language. Our point of departure is a key note that despite the current wide political recognition of countries' joint responsibility to ensure global distributive justice of which health is one dimension, most countries do not fully comply with their obligations and, consequently, global distributive injustice has continued to deepen. Whereas this fact and its consequences for the current status and trend in the distribution of global health opportunities and consequently health rights of LIC citizens are well known, the hard question regarding *why* most countries do not fully comply with their obligations has been largely avoided. This paper examines the reasons *why*, to a larger extent, most countries' obligations have remained futile. After accounting for this futility, we go ahead to propose what ought to be done about this situation in order to achieve justice in global health with positive impact on the

realisation of the health rights of LIC citizens and, ultimately in other dimensions of human well-being.

In this analysis our major concern is with the dimension of global justice which has been labeled as “global social justice” by the United Nations (UN)(UN 2006), and more specifically labeled “global distributive justice” by Charles Beitz(Beitz 2005) and, how the latter affects the realisation of the health rights of marginalised populations of developing countries. Our discussion is based on the thinking that “social justice derives from *equality of rights for all peoples* and the possibility for all human beings, without discrimination, to benefit from the economic and social progress disseminated and secured through international cooperation” (emphasis added) (UN 2006). The discussion also reflects a recognition that “[...] The international human rights system is an important way of advocating for or enforcing fairer distribution of resources in the world” (UN 2006). Hence, we are here treating human rights obligations and obligations defended in philosophical debates about global social justice as flip sides of a coin in pursuit of global distributive justice and/or in particular the realisation of the health rights of the marginalised populations. We shall examine the question we have posed above at two levels: the first level consists of reasons that can be regarded as ‘superficial reasons’. These reasons arise from the lack of precision and rigour, deficiencies that are evident in current obligations as well as their lack of an enforcement mechanism. The second level is a set of ‘fundamental reasons’ which account for the superficial reasons. The analysis ends with a normative case for a piecemeal strategy that will ensure an incremental achievement of global distributive justice leading to consistent progress in the realisation of the health rights of marginalised populations in the long-run. Central to the strategy we propose is the adoption of Martha Nussbaum’s “minimal conception of social justice” (Nussbaum* 2004) as key to understanding the requirements of global distributive justice and showing how it can be used to achieve global distributive justice in a piecemeal manner. In particular the extrapolation of Nussbaum’s concept of the “minimum” is more relevant in discussion of the right to health in light of the concept of “Core obligations” of States Parties outlined in paragraphs 43-45 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) General Comment number 14. In our discussion we shall draw our

specific examples and illustrations from literature regarding efforts to fulfill the health rights of LIC citizens and global health in general.

Preliminaries

Our discussion focusses on the basic health rights of the 'global poor' not the world's population at large. Since our discussion is grounded in social justice and the basic rights of the marginalised populations, we need to focus on the rights of the global poor who suffer most from current global distributive injustices and hence cannot realise their right to even basic health services. In our analysis we will not be concerned with the question of *whether* there are morally binding transnational obligations for distributive justice (or for the fulfillment of Economic Social and Cultural Rights (ESCR)). This issue is a background question for the kind of analysis we are engaged in here. Although there still persist some theoretical controversies on this question, we treat this question as settled with an affirmative answer. We base our enquiry on the implied acceptance of these obligations by countries as reflected in their various political commitments, such as Official Development Assistance (ODA), ratification of the relevant human rights instruments among others by almost all countries. Our view is that these political commitments can be interpreted as *promises* made by countries to implement obligations suggested by those documents and instruments. There are several views that have convincingly demonstrated that such promises give rise to morally binding obligations on the promisor because they confer (moral) rights to the promisee (Raz 1986, Goodin and Pettit 2006, Goldman 2015). There are a number of financial and other kinds of promises by developed countries to developing countries in the spirit of international cooperation with a view of ensuring global distributive justice, and these are expressed in various ways (1970, Pearson 1970, 2005). However, despite these political commitments by virtually all countries in the world, global distributive injustice seems to deepen even further and it is this situation that leads us to the question of *why* this is the case.

To illustrate briefly the extent of the futility of extraterritorial obligations we can turn to a summary of countries' compliance with ODA targets. With respect to High Income Countries (HICs), most of them have largely not fully fulfilled their obligations emanating from ODA promises. In its 1969 Report, the Pearson Commission recommended in reference to HICs that "... Public or government

assistance in the form of grants, or low or interest-free loans should make up 0.70 per cent of the gross national product by 1975 and in no case later than 1980 (Pearson 1970). The UN General Assembly adopted a Resolution confirming this target as the minimum of ODA as early as 1970 (Assembly 1970). Although this target was initially controversial in the opinion of some countries, it eventually gained wider acceptance by a majority of member countries (Assembly 1970). Whereas the acceptance of this target constituted a *promise* to the developing countries, very few developed countries that accepted this target thereby making a promise to LIC citizens have ever reached this target. By 2009 the highest ever registered ODA as an average percentage of Gross National Incomes (GNIs) of the Organisation for Economic Co-Operation and Development (OECD) Development Assistance Committee (DAC) was 0.33% in 2005 (DAC 2010), while the lowest went as low as 0.22% in 1997 (OECD 1998). The fact that the highest percentage of ODA disbursement ever registered is less than half of the one recommended or promised (0.70%) is evidence that these obligations have failed to a large extent. The consequence of this situation has been shown to be the continuously deepening global inequities in the global distribution of wealth, health as well as general quality of life (well-being) (Pogge 2010). This extent of futility of countries' obligations for global distributive justice partly explains the persisting difficulty in fulfilling the health rights of developing country citizens and other marginalised populations.

Discussion

Even though there are many categories of human rights obligations under the two major categories – so-categorised as positive and negative obligations – our discussion is exclusively concerned with the 'positive obligations' and in particular the joint obligation of all countries to contribute health resources sufficient to *guarantee* a certain minimum level of health opportunities to all individuals globally. We emphasise the concepts of '*guaranteeing*' and the '*minimum*' as key in demonstrating the futility of current obligations. In this regard, our account for the futility of current obligations consists in identifying reasons why existing obligations and their various interpretations do not, in practice; and cannot, in principle, *guarantee* to the global poor access to a certain minimum level of health goods and

services and, why it is extremely difficult to judge States Parties as having made negligible or no effort towards that end.

Reasons for the futility of current obligations

A critical examination of the various attempts to explain the futility of current obligations of countries for global distributive justice or fulfilment of ECSR (Eide, Krause et al. 1995, Schachter and Joyner 1995) reveals two levels or categories of reasons which can explain why most of these obligations go unfulfilled. One category of these reasons is read directly from the manner in which current obligations are framed. We call these reasons ‘superficial reasons’. However, a deeper analysis reveals that there are other reasons which explain the existence of these ‘superficial reasons’. We call these reasons ‘fundamental reasons’. With regard to superficial reasons one finds that by way of their phrasing and various attempts at interpreting them, current obligations are deficient in precision and rigour regarding specific actions that both domestic and external governments *must* take to ensure the realisation of global distributive justice and consequently the health rights of LIC citizens (or ESCR in general). The second superficial reason is the absence of an enforcement mechanism for these obligations. These two factors or reasons constrain the stringency of these obligations as we shall illustrate shortly with a specific case of the right to health, hence their failure to *guarantee* to the global poor certain *minimum* level health goods and services. With regard to fundamental reasons, we offer two explanations: lack of political will to *specify* and *enforce morally binding* obligations of global distributive justice and pessimism about the *desirability and feasibility* of a coercive global enforcement mechanism for these obligations.

Superficial reasons for the futility of current obligations

As mentioned above there are two superficial reasons that explain the futility of current obligations for global distributive justice as well as human rights obligations particularly those relating ESCR: lack of *precision* or *specificity* of these obligations on the one hand, and lack of an *enforcement* mechanism on the other. We shall take lack of enforcement as self-evident and at the same time treat its consequence for countries’ compliance with their obligations as self-explanatory. That is to say, lack of any perceived threat in case of non-compliance with these obligations provides a

strong temptation for governments to do as little as they wish or nothing at all with regard to their obligations, particularly domestic resource allocations (in the case of LICs) and international resource transfers (in the case of HICs). Therefore, a detailed analysis of the superficial reasons will be on, first, illustrating how *vagueness* (lack of precision and specificity) and *lack of rigour* in current obligations of countries to fulfill the health rights of citizens of developing countries make it easy for countries, whether HIC or LIC governments, to defy their obligations. Secondly, apart from lack of any perceived threat in cases of non-compliance (because of no enforcement), what makes this breach quite tempting and easy is the *lack of specific and objective grounds* for holding countries morally blameworthy if they do not fulfil their obligations.

To begin with, an examination of obligations of external parties (HICs) relating to health financing in Low and Middle Income Countries (LMICs) (obligation to assist) reveals that the *promises* embedded in acts of countries' ratifying the various human rights instruments are vague promises; vague enough to deny the purported obligations the rigour expected of obligations of justice. Current obligations are characterised by a number of exception clauses which leave these obligations open for interpretation as to what countries are *morally required* to do in respect of the health rights of people outside their countries. It is this challenge that makes it difficult to objectively judge any external governments as *morally guilty* of not fulfilling its obligations whenever they either do too little or nothing at all to ensure that individual outside their countries realise their health rights as social justice requires. First, with regard to constrained rigour of these obligations it is important to see how these obligations have been interpreted. External obligations (to assist) have been interpreted as follows:

For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly *incumbent on* States Parties and other actors *in a position to assist*, to provide international assistance and cooperation, especially economic and technical which enable developing countries to fulfil their core and other obligations (emphasis added) (UN).

Whereas the use of expression “incumbent on” seems to make this obligation rigorous enough, its stringency is severely diminished by an addition of a proviso “those *in a position to assist*”, yet, without going ahead to *specify* how, in case of non-compliance, it could be objectively determined whether a given State Party *was in position to assist* or not. Even if the reasoning which grounds these obligations in promises might allow the promisor (HIC) to be automatically released from her obligations if it is established that she is genuinely *unable* to fulfil her promise, in this case there is no objective mechanism by which to make such determinations. Therefore, even if there were an enforcement mechanism for this obligation it would be practically impossible to *objectively* claim that a State Party has *refused* to honour its obligation. It is left to the State Party to decide whether it is *in position to assist* or not. For this reason the gist of the status quo is that HICs *can, or may,* transfer some of their resources to any of the LMICs or even a fellow HIC whenever they feel they want to do so. Therefore, it can be inferred that if “obligations to assist” are understood as obligations of justice which are meant to be stringent (and potentially enforceable), then the human rights discourse does not effectively impose on HIC governments any *obligations of justice* which can *guarantee* to citizens of developing countries the realisation of their right to basic health opportunities. That is, given the framing of current obligations to assist, external actors (HICs) bear no *obligation* (in a strict sense of obligations of justice which are potentially enforceable) relating to international resource transfers to LMICs and this partly explains why most of these obligations have remained futile while at best international resource transfers are treated as charity.

It is not only the HICs which have flouted their obligations for global distributive justice particularly for the fulfilment of LIC citizens’ right to health. Most LIC governments can be implicated in what may count as injustice in health care and a violation of health rights of their own citizens. The futility of LIC governments’ obligations particularly human rights obligations to their citizens can also be attributed the vagueness and lack of rigour which characterise them.

In the case of LIC obligations to ensure social justice through the Promotion, Protection and Fulfilment of Economic, Social and Cultural Rights particularly the right to health (UN), Article 2 (1) of the ICESCR obligates each State Party to take

the necessary steps “*to the maximum of its available resources*” to the realisation of these rights (emphasis added). This has been interpreted to mean that:

In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must *demonstrate* that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations (UN).

In addition the World Health Organisation (WHO) has emphasised that in determining the violations of the right to health “it is important to distinguish the *inability* from *unwillingness* of a State Party to comply with its obligations under article 12 [of the ICESCR]” (WHO). A further proviso is that “If resource constraints render it impossible for a State Party to comply fully with its Covenant obligations, *it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal* [...]” (emphasis added) (UN). This interpretation is reproduced in the Maastricht Guidelines on violations of ESCR (par. 13) (van Boven, Flinterman et al. 1998), where the burden of proof of *inability* falls on the State Party. It is important to bear in mind that this clause also applies to HIC obligations to assist. Further, regarding the determination of violations of obligation to *fulfil*, it has been interpreted that violations of obligation to *fulfil* occur through, among other things, a state’s “*insufficient expenditure or misallocation of public resources*; [...]” (emphasis added) (UN). What is crucial to note is that the essence of providing these various interpretations of these obligations is that they should be neither vague nor ambiguous as to what they *require* of State Parties with a hope that such clarity will induce wide compliance with these obligations. However, these obligations as interpreted in General Comment 14 of ICESCR and other Principles and Guidelines ((van Boven, Flinterman et al. 1998, Principles 2004) still fail to overcome their vagueness, lack of stringency and some of these interpretations have produced contradictions as their critical examination shows below.

Whereas at first reading the above statements of obligations *seem* precise and rigorous enough, a critical examination of these phrases reveals serious problems with regards to their precision and rigour. In the first place, how much, or what percentage, of a country’s resources (GDP or annual budget) allocated to health shall be accepted as

the *maximum* of resources available at its disposal to fulfil the right to health? On this fundamental issue of “*to the maximum of its available resources*”, paragraph 26 of the Limburg Principles clarifies that “Its available resources refers to resources within a state and those available from international community through international co-operation and assistance”. However, still there is no suggestion as to how much of such external resources LICs are entitled to or how to determine such amounts of resources. At present it is up to each State Party to decide what constitutes this maximum. This discretion is directly implied by paragraph 71 of the Limburg Principles. However, the limit of the ‘margin of discretion’ given to States Parties in the above-mentioned paragraph (in determining violations) is indeterminate; this limit is a sort of thing about which reasonable people can disagree. For example, in Uganda, whereas there has been wide public and expert protest against the government’s neglect of the health sector in budget allocations, there is no authoritative point of reference as to what minimum percentage of the national budget *must* be allocated to health (Odaga and Lochoro 2006, Mugerwa 2010, Mugerwa 2012, Naturinda 2012). Further, even though the WHO has observed and recommended that all health-aid recipient countries (in the WHO Africa region) need to increase percentages of their domestically generated annual budget resources to health, there is no specific level (percentage of GDP or annual budget) recommended (WHO 2011). Therefore, current obligations of countries do not place any country under any *obligation* to allocate a certain minimum of their financial resources to the health of their people and this partly explains why it has remained very difficult for citizens of LICs (such as those of Uganda) to realise their basic health rights.

Further, instead of clarifying obligations, some efforts at interpreting these obligations have produced contradictions with some of the key principles for implementation of these obligations. One glaring contradiction pertains to the essence of distinguishing between *inability* and *unwillingness* to fulfill obligations. By making reference to paragraphs 25 – 28 of the Limburg Principles, Paragraphs 9 and 10 of the Maastricht Guidelines on violations categorically exclude ‘lack of resources’ as a valid excuse for failure of a State Party to fulfil its obligations. So, if the essence of determining violations is either that a State Party be reprimanded or be made to suffer sanctions, how morally justified would the international community be in reprimanding or punishing a State Party which is, because of resource scarcity, *unable*, rather than

unwilling, to fulfil its core minimum obligations ? Is the negation of ‘resource scarcity’ as an excuse limited to determining violations relating to obligations of ‘non-discrimination’ and ‘equity in resource allocation’ and the like? In literature there is nothing to suggest this limit.

Secondly, regarding the need to distinguish *inability* from *unwillingness* of States Parties to comply with their obligations in the process of determining violations of health rights, this requirement calls for *precision* in judging countries on their performances in order to be able to objectively say that country ‘A’ is *able but unwilling* or country ‘B’ is *willing but unable* to fulfill their obligations, particularly health financing. The required precision in distinguishing between *inability* and *unwillingness* presumes the existence of a mechanism by which to make this precise distinction, yet, such a mechanism does not exist. Therefore, with regard to resource allocations it is technically impossible to *objectively* judge any country as *unwilling* or *unable* to comply with its obligations. Hence, the seeming stringency of this obligation again vanishes with the impossibility of *objectively* judging any government as either *unwilling* or *unable* to guarantee certain levels of health or health opportunities to its citizens.

In the case of HICs, it becomes impossible to objectively claim that a country has flouted its obligation by transferring low or no amounts of health resources to LMICs. The question here would be: ‘how much is such a State Party *morally required* (or legally obliged) to transfer to LICs and how should it be determined’? In the existing literature, particularly on obligations and their various interpretations (with exception of ODA targets), it is extremely difficult, if possible at all, to find an answer to this question. The consequence of this is that lack of an impartial basis for assigning moral blame to governments for their *unwillingness* to ensure a just level of health opportunities for individuals globally which is in line with their right to health, leads to complacency among most governments. Even if the ODA target mentioned earlier were to be accepted as the actual size of positive extraterritorial obligations, current lack of coordination in international resource transfers implies that still inequitable distribution of global health resources would persist with its consequence on the realisation of the health rights of most LIC citizens. Generally, even if there were to be an enforcement mechanism for this obligation, this lack of precision as to how to

distinguish between countries' *inabilities* and *unwillingness* to comply with their obligations would make it extremely difficult to hold any government accountable.

Another attempt at précising LIC government obligations to ensure the realisation of the right to health by guaranteeing a certain minimum level of health to their citizens has been through the definition of "Core obligations" of States parties as listed in the ICESCR, General Comment 14, Paragraphs 43 to 45. But still these core obligations in general simply specify what types of services people *must* have access to while remaining noncommittal on how much resources or what percentage of national budget (or even what percentage of external resources) ought to be committed to such services, below which the governments can be objectively regarded as unwilling to fulfil its obligations. The "minimum core obligations" as interpreted by Maastricht Guidelines on violations still do not define the minimum in, for example, Nussbaum's terms of "some appropriate *threshold* level" in her idea of the "minimal account of social justice" (Nussbaum* 2004). This kind of minimum which makes reference to a specific threshold would be a determinate level of, for example, a minimum global health-resource per capita which must be fulfilled through domestic and extraterritorial obligations. We return to this issue later.

What is noteworthy about core obligations is the addition of "the right to health indicators and benchmarks" as operationalised in specifying targets for health-related Millennium Development Goals (MDGs Four to Six). We can see, of course, how health indicators come close to a definition of a specific threshold, albeit at the level of population health. However, in order to see how these core obligations and health indicators and benchmarks fail to guarantee precision which is necessary in order to objectively hold governments accountable, it is important to look at health indicators in relation to their resource/financial implications.

Bearing in mind that "the right to health does NOT imply *the right to being healthy*" (emphasis in original) (WHO), specific health indicators and benchmarks in themselves are neither a sufficient nor necessary criterion for judging a government's performance on its obligations. This is because the above disclaimer (what the right to health does NOT imply) entails that poor population health outcomes do not constitute conclusive evidence that a State Party has not done the best it can in its

specific resource context; nor would it be automatically inferred from improvements in these indicators that a State Party is performing to the best of its efforts in its specific resource context. With reference to the latter case what is implied is that the concept of “progressive realisation” of the right to health (ICESCR Art.1 (2)) towards “the highest attainable standard of health” (Organization 1989) entails that even if a country has achieved the prescribed health indicators by investing *less than the maximum* of its available resources (assuming it is possible to objectively determine the maximum), such a country will still be violating the health rights of its citizens (because it is *unwilling* to give them more health opportunities towards the highest attainable standard of health), and this also counts as a social injustice by such a government. Even though setting population health indicator targets is very important for health policy and program evaluations and appraisals etc., without specifying the precise level of investment in health for each country especially LICs, the idea of “the right to health indicators” in itself does not help in objectively judging governments’ performance. This situation makes futile mainly obligations of LIC governments to us their citizens (like the Uganda example has shown) who have no influence on our governments’ decisions including budget allocations.

Finally, the recognition by the UN Committee on ESCR of extraterritorial obligations relating to ESCR promises hope with regard to countries’ compliance with their obligations. However, the impact of this recognition, especially on international resource transfer, will largely depend on the precision regarding who (State Party) should transfer how much resources to whom; or on the recognition and implementation of a mechanism such as that we proposed elsewhere (Barugahare and Lie 2015). However, this explicit recognition is crucial for the negative obligations of countries and their international companies (not to violate ESCR of citizens where they operate), and to provide clear complaint mechanisms for those who think that their rights have been (positively) violated as reflected in the Committee’s concluding observations on the second periodic report of China (UN 2014).

In summary, the above examination reveals that current obligations of countries to fulfil the health rights of LIC citizens and thereby ensure justice in global health are not yet obligations in the real sense of obligations of justice which specify *moral requirements* on the part of obligation bearers and *moral rights* on the part of those for

whose benefit such obligations are borne. The lack of specificity in current obligations means that there are no objective grounds for judging any State Party as having flouted its positive obligation particularly relating to resource allocation or transfer. This situation is worsened by the fact that there is no enforcement mechanism for these obligations. But as the analysis above has shown, it would still be pointless to have an enforcement mechanism if it is still impossible, as it is now, to objectively and precisely judge any country as having flouted its obligations. The ultimate consequence of these two weaknesses is that currently governments perceive no impending threat whenever they contemplate flouting their obligations, whether the threat would be in form of moral blame or a number of sanctions. At best current international resource transfers are treated as charity which falls under the category of duties of humanity rather than obligations of justice and, therefore, cannot *guarantee* the fulfilment of the relevant basic rights. This further implies that LIC citizens have no way of actively claiming any external resources as their entitlement to which they formally have a *moral right* because the sizes of such claims are currently indeterminate. On the other hand, domestic governments of LICs as the Uganda example has shown, are reluctant to allocate extra resources to health even though the experts, policy makers and the general public claim that the government has such capacity. Therefore, at a superficial level these can be said to be some of the reasons, and arguably major ones, that account for the futility of current obligations of countries for global distributive justice, particularly the fulfilment of health rights of marginalised populations such as most citizens of developing countries. But as said earlier there are underlying reasons which explain lack of precision and rigour in current obligations as well as lack of any enforcement mechanism in case of non-compliance with these obligations. This is the category of reasons which we have called ‘fundamental reasons’.

Fundamental reasons for the futility of obligations for global distributive justice

The superficial reasons for the futility of countries’ obligations for justice in global health have been shown to consist in evident lack of precision, stringency and enforcement. However, these weaknesses are not spontaneous. The futility of general obligations of countries for global distributive justice and fulfilment of ECSR for that matter, is systematic. At a fundamental level, lack of specificity, rigour and enforcement of these obligations is a symptom of general *lack of political will* on the

part of countries (or State Parties) to specify and enforce these obligations. This means that these obligations are as vague, open (for interpretation), and unenforceable as they are intended to be. The second fundamental reason, and specifically a reason for lack of an enforcement mechanism, is general pessimism regarding both the desirability and feasibility of coercive enforcement of these obligations. We later show that these fundamental reasons are not insurmountable and that there are good reasons to reject or circumvent them if we want to gain any hope for realising the health rights of LIC citizens and global distributive justice in general.

There is general lack of political will on the part of States Parties to specify and enforce obligations of global distributive justice and this directly and negatively affects the realisation of the health rights of marginalised populations in LMICs. The evidence for the general *lack of political will to specify* actions which countries *must* take as a *moral requirement* (especially domestic resource allocations or international resource transfers) on their part to fulfill their obligations for global distributive justice can be seen in the common theoretical denial that such obligations do exist at all. In discussions of obligations of countries for global distributive justice there is a widely shared claim that robust principles of distributive justice and their consequent obligations do not go beyond national borders (Dworkin 1986, Miller 1993, Rawls 1993, Blake 2001, Nagel 2005, Daniels 2008). Among these authors Norman Daniels in particular imports this way of thinking into discussions regarding justice in global health. In consideration of the spirited arguments that these authors have put up in defense of this position on the one hand, and the current attitude towards ODA as reflected in the practice of treating international resource transfers as charity on the other, it is not unreasonable to assert that these views have significantly influenced politics and policy, especially among external obligations bearers (donor countries). So it is very difficult to claim that reluctance to propose and implement an enforcement mechanism is an oversight, nor is it lack of cognitive capacity to state these obligations in a more specific and stringent manner, yet, this is necessary if basic health rights of LMIC citizens are to be *guaranteed*. Rather it is due to lack of political will that obligations are not framed and treated as real obligations of justice are supposed to be; that is, precise and potentially enforceable.

For our purpose, however, since we have taken it for granted that such obligations exist then there should be other reasons why those who believe that such obligations exist have not succeeded (or are also unwilling) in specifying and enforcing such obligations. These reasons can be traced from the importance all countries attach to the political values of national sovereignty and autonomy. Therefore, another fundamental reason for the futility of current obligations is that bearing in mind the political values of national sovereignty and autonomy, countries are unwilling to give up their freedom of deciding how to manage their affairs domestically, such as budget allocations in the case of LIC governments; and how much of their resources they *must* give out in ODA or any other forms of bilateral or multilateral assistance in the case of HIC governments. In this case the worry is that by specifying what countries *must* do in terms of domestic budget allocations and international resource transfers with a possibility of enforcing such decisions, countries are robbed of their sovereignty and autonomy in deciding for themselves on these matters. Therefore, the current phrasing – vagueness and constrained rigour – of obligations of distributive justice as well as those relating to ESCR particularly international resource transfers as well as reluctance to propose and implement an enforcement mechanism is a politically cautious way of going about transnational requirements for global distributive justice. Countries are generally not willing to dispense with their freedom to decide at their convenience (and bearing in mind their special political interests) what they can do as their contribution towards global distributive justice or what they must give out in respect of the ESCR of people who are not their citizens in case of HICs; or how to manage domestic affairs in the case of LICs.

The other fundamental reason for the futility of current obligations is a corollary or an extension of the one above. It has more to do with the desirability and feasibility of enforcement of these obligations against principles of national autonomy and sovereignty. In light of the reason given above in respect to unwillingness to specify what countries *must* do in respect of global distributive justice – the desire to maintain their sovereignty and autonomy – a global enforcement mechanism of obligations becomes *undesirable*. But further, the reluctance to propose and implement an enforcement mechanism for transnational obligations of global distributive justice can also be attributed to pessimism regarding its feasibility. In the view of the UN, for example:

[...] there is an *inherent futility* in working to achieve greater equality between States in terms of development when there is no authority able to enforce measures that would ensure the realization of such an objective. The United Nations does not possess such authority. International organizations with greater power and influence in economic and financial matters, in particular the World Trade Organization (WTO), the World Bank and the International Monetary Fund (IMF), have different mandates. A world government with an enforceable mandate to ensure equality and justice between its constituents is not on the immediate horizon (UN 2006).

This lack of effective (and legitimate) institution to enforce transnational obligations seems to be one of the major sources of pessimism about the feasibility of enforcing obligations of global distributive justice in the same manner as it happens at a national level (through taxation and redistribution). But it can as well be said that the required institution or agency for enforcement can be created only if there is general, or at least a widely shared, political will to do so. Therefore, for as long as such an enforcement agency does not exist, then it is because there is not yet willingness to create it.

But apart from lack of an existing authority to enforce obligations of global distributive justice, the undesirability of such an institution has something to do with the strong desire for political sovereignty and autonomy. There are serious doubts regarding whether it can be possible to have a truly democratic and fair global institution to do the enforcement. There are some views that there is particularly fear of the threat of imperialism especially against weaker states (Nagel 2005, Dahl 2010, Kymilcka 2010). Nagel in particular points to a dilemma stemming from ‘the need for effective institutions and the threat of expanding tyranny’. In his view “fortunate nations” fear such developments. “They therefore face the problem of how to create a global order that will have its own legitimacy, but not the kind of legitimacy that undermines strict limits on their responsibilities [for the well-being of non-compatriots]” (Nagel 2005). In a footnote he adds that “The *undemocratic rulers* of many poor nations have strong reasons of a different kind to protect their sovereign authority against international encroachment (emphasis added)” (Nagel 2005). This is an emphasis of the importance all countries attach to national autonomy and sovereignty which, most countries believe, will be eroded to some great extent by way of specifying and enforcing transnational obligations of distributive justice to which

obligations for the health rights of LIC citizens belong. It is these political circumstances that account for the general lack of specificity and rigour in obligations of global distributive justice as well as reluctance to propose and implement an enforcement mechanism which might guarantee wider compliance with these obligations.

Therefore, whereas there is intellectual capacity to develop mechanisms for specifying and enforcing obligations of countries for global distributive justice, there are deeper reasons why the current obligations are vague and unenforceable. It is due to a combination of these superficial and fundamental reasons that obligations of countries for the health rights of most marginalised populations have remained futile for the most part. But the question arises: if current obligations are not divested of the conditions that cause their futility, what is the future of global distributive justice? Can the marginalised populations hope to realise even their basic health rights in these circumstances which do not *guarantee* anything to them? Judging from the current daunting performances of most countries on their obligations and the consequent trend in global distributive justice particularly the global mal-distribution of health opportunities as seen in the current trends in global health resource allocation (WHO 2012, WHO 2014) it is obvious that unless the current conditions or reasons which explain the futility of current obligations are circumvented, there is no hope that either the marginalised populations will realise their health rights or global justice in general can ever be achieved.

The way forward

Given the above account for the futility of current obligations for global distributive justice, and given that it negatively affects the realisation of the health rights of marginalised populations such as the majority of citizens in poor countries, the natural thing to do as a way forward is to provide a way of reasoning that evades the current reasons for the futility of these obligations. In the first place, from the above discussion it has been shown that all fundamental reasons for the futility of current obligations of countries for global distributive justice have something to do with fear of potential erosion of national sovereignty and autonomy. However, in her response to the unwillingness to specify and enforce obligations of global distributive justice stemming from a desire to maintain national autonomy and sovereignty, Martha

Nussbaum has convincingly argued that “[...] there is not any reason why a *thin system* of global governance, with at least some coercive powers, should not be compatible with the sovereignty and freedom of individual nations” (emphasis added) (Nussbaum* 2004). However, in her view the enforcement is supposed to apply to a broader spectrum of all relevant actions as may be required for the achievement of global justice in general, rather than immediate redistribution of resources or health resources in particular. She espouses a very simple, democratic, and yet potentially feasible model of enforcement like one suggested by Thomas Pogge for enforcing his Global Resource Dividend (GRD) proposal (Pogge 2008). In respect of this view it ought to be added that not only is it possible to enforce obligations of global distributive justice without jeopardising national sovereignty and autonomy, there are also good reasons for moving away from relying on charity (or perfectly voluntary ODA disbursements), to specific and enforceable obligations of distributive justice among all global actors, particularly national governments.

The first reason for shifting from charity or perfectly voluntary ODA disbursements has been offered by Nussbaum in her agreement with Liam Murphy (Murphy 2000). Nussbaum’s view is that exclusive reliance on voluntary philanthropy has a problem of failing to equitably distribute the burden of alleviating poverty and suffering especially if only a few have to contribute all that is necessary to solve the problem and she rightly observes that “Any system of voluntary philanthropy has this problem”(Nussbaum* 2004). The second reason is David Hume’s view regarding why we must move away from *benevolence* to *justice*. In his view benevolence is inspired by moral impulse and circumstances of unlimited abundance and, is therefore, unreliable [especially in the current global scarcity of resources] (Hume and Beauchamp 2006). Thirdly, and extrapolating Hume’s view, our view is that a system of global philanthropy cannot *guarantee* the realisation of the basic health rights of marginalised populations or a fair global distribution of the basic means of survival and well-being. Lastly we hope that it is possible to agree on certain minimum obligations, enforcement of which can be readily accepted by virtue of the *minimal burden* they impose on external actors. This is especially possible if it could be demonstrated that these obligations impose a proportionate or fair burden on external actors ^a and also such obligations lie within the resource limits of individual LICs. We

can arrive at such obligations through the adoption of what has been termed “a minimal conception of social justice” (Nussbaum 2003).

One of the major reasons (not mentioned above) for the futility obligations for the health rights of marginalised populations is that all ESCR require resources (positive steps) and given the reality of resource scarcity in the world it would be a slippery-slope choice to make ESCR rights justiciable rights or any measures aimed at *guaranteeing* their fulfilment. This excuse can be overcome by the extrapolating Nussbaum’s “minimal conception of social justice” into reasoning about the feasibility of *guaranteeing* basic health rights for the marginalised populations. The gist of the idea of “a minimal account of social justice” in Nussbaum’s view is that “a society that does not guarantee these [fundamental entitlements/capabilities] to all its citizens, at some appropriate threshold level, falls short of being a fully just society, whatever its level of opulence” (Nussbaum 2003). Notwithstanding the ‘possible overstatement of this position with regard to judging a society as unjust’^b, particularly due to genuine and severe resource constraints among most developing countries, Nussbaum’s view is still very crucial in understanding the goals and limits of global distributive justice, particularly the idea of *basic* health goods and services which are supposed to be guaranteed to all individuals as a matter of right. When applied to global distributive justice, “a minimal conception of distributive justice” means that global justice does not aim at achieving a perfectly equal distribution of resources between the global rich and the global poor. Rather, global distributive justice on this account asks for a guarantee to all global citizens “some appropriate threshold level of capabilities” [56]. The concept of the minimum has been variously implied as what is *morally required* for a just level of material and social well-being – for example, the concept of “minimum core obligations” used the human rights discourse; the Millennium Declaration, particularly MDGs targets and the WHO’s concept of the minimum health care by targeting everybody’s access to an “Essential Health Package” (Nussbaum* 2004) especially in low income countries, among others. The implication we draw from the “minimal conception of social justice” is that external obligations do not have to be as demanding as they are currently thought to be by those who are skeptical about morally binding transnational obligations for global distributive justice. The various views against such obligations usually seem to imply that such obligations are too much to ask. Therefore, the power of the concept of the

“minimum” is that these obligations can reasonably be accepted and fulfilled with “a thin system” of enforcement and in some cases no enforcement at all.

Therefore, with specific regards to justice in global health with special reference to health financing in order to fulfil t health rights of marginalised populations of LICs, what needs to be done is to *specify* obligations for each set of actors, that is, donor and recipient countries. Our discussion has been intended to demonstrate that this specificity (and potential enforcement) is critical step if a certain minimum is to be *guaranteed*. The task of specifying these obligations requires first of all establishing the total cost of ensuring a minimum distribution of health goods and services in each country (to which all individuals should have a right) and ultimately the total cost for all countries. It is this total cost that should be equitably shared by the two sets of actors by *specifying* exactly what portions external and domestic governments are jointly *morally required* to contribute in order to cover the cost of the minimum health opportunities which constitute the basic health rights of marginalised populations. After this step, each set of actors should find a mechanism for equitably sharing their quota of the burden, taking into consideration differences in resource capacities of different actors within each set of actors.

This can be briefly illustrated. Even though the WHO provides an estimate of US\$ 44 as a minimum health expenditure per capita needed by citizens of LICs to achieve the initial minimum or just health opportunities (basic life-saving services), so far there is no suggestion as to how the burden of raising this amount for each individual should be divided between LIC and HIC governments. We have proposed and elaborated such a mechanism elsewhere (Barugahare and Lie 2015). Once such specification has been made in a manner that is acceptable as equitable between HIC and LIC governments, it is reasonable to expect that each party will fully comply with its obligations without coercion or with the most minimum coercion. But even in the absence of enforcement, it will moreover be possible to objectively identify and assign moral blame to States Parties that flout their very specific obligations. Once the initial minimum of health opportunities or health rights has been achieved in this manner, more incremental obligations can be agreed upon and implemented in a similar manner. Therefore, “a minimal conception of justice” which yields potentially less demanding obligations, especially extraterritorial obligations, along with “a thin

system” of global enforcement, it is possible to significantly reduce global health injustice by being able to fulfil the basic health rights of marginalised populations of LICs in an *incremental* manner while bypassing the deeply controversial theoretical and technical difficulties.

Lastly it is crucial to caution that in order to guarantee the legitimacy of these obligations; they cannot be determined arbitrarily and simply imposed on States Parties. The process of determining specific obligations of each country or State Party has to be democratic (involving country representatives); evidence-based especially regarding the optimum resource-capacities of different countries; multidisciplinary in nature involving economists; health economists; human rights lawyers; professional ethicists and all relevant experts.

Conclusion

Current obligations of countries for global distributive justice have been largely futile and this explains why it has remained difficult for LIC citizens to realise their health rights. This futility affects both domestic and extraterritorial obligations. At a superficial level the futility of countries’ obligations for global distributive justice can be attributed to the vagueness and lack of rigour that characterise them as well as their lack of enforcement. However, a deeper examination of these reasons reveals that the weaknesses within these obligations are not spontaneous. They are due to lack of political will to specify and enforce obligations. Further, reluctance to propose and implement an enforcement mechanism for these obligations is due to pessimism about the desirability and feasibility of a global enforcement system which is feared to erode countries’ national sovereignty and autonomy, and at worst lead to imperialism. However, in the current global political circumstances there is a lot evidence that there can be “a thin” and yet effective system of enforcement which is consistent with countries’ rights to national autonomy and sovereignty. Given the “minimal conception of social justice” we should agree on less-demanding obligations which *guarantee*, for example, a certain minimum amount of health goods and services (expressed as minimum health expenditure per capita per country) to all marginalised populations. We envisage that such obligations will be easily fulfilled with minimum or no enforcement at all. With regards to health financing, since it is possible to know

the required minimum health expenditure per capita of citizens in LICs, the obligation to meet these costs should be equitably apportioned between LIC and HIC governments by *specifying exactly* what portion each actor should contribute, taking into account the optimal resource capacity of each set of actors and individual actors within each set. Other obligations, especially of LIC governments should also be specified which, if fulfilled, would ensure efficient and equitable health systems domestically and globally. Such a strategy will go a long way towards fulfilment of the health rights of LIC citizens.

Endnotes

^aIn this case proportionality (fairness) of the burden takes into the optimal resources available to each set of actors (i.e. HIC Vs LICs). Our view is that once it can be demonstrated that LICs have already borne the maximum burden they can by using the maximum of their available resources to fulfill their citizens' health rights, then it most likely that HIC governments will be morally compelled to fulfill their quota of obligation.

^bNussbaum's categorical disregard for "the level of opulence" of a society can be controversial if it is stated without further qualification. This is especially so if she means that to qualify as just all societies *must*, with or without foreign assistance; ensure a certain threshold level of material and non-material entitlements to all citizens. Levels of poverty (at a national level) in most poor countries may make it difficult to achieve a certain minimum level of material well-being without external assistance even though their internal arrangements are just. In such a case it might be problematic to judge such a society as unjust for the mere reason that they cannot afford the threshold for all their citizens.

List of Abbreviations

DAC – Development Assistance Committee

ESCR – Economic Social and Cultural Rights

GDP – Gross National Product

GNI – Gross National Income

GRD – Global Resource Dividend

HIC – High Income Country

ICESCR – International Covenant on Economic Social and Cultural Rights

IMF – International Monetary Fund

LIC – Low Income Country

LMIC – Low and Middle Income Country

MDGs – Millennium Development Goals

ODA – Official Development Assistance

WHO – World Health Organisation

WTO – World Trade Organisation

Competing interests

The authors declare no competing interests.

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Authors Contributions

JB originated the idea and shared it with RL for guidance. JB went ahead to draft the manuscript and the RL provided critical comments regarding how the manuscript can be improved by suggesting new ideas which were integrated in the manuscript. The manuscript moved back and forth between the two with a number of discussions until both authors agreed on the final version of the manuscript.

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Chapter 3

Obligations of low income countries to facilitate the achievement of global distributive justice

Earlier I proposed that at a general level distributive justice *requires* that potential beneficiaries of redistribution to bear and fulfil certain obligations. For that matter the discussion in this chapter shows that there can be very good reasons to specify and implement poor country obligations in ensuring global distributive justice. These reasons are both of moral and practical categories. As the reasoning given earlier goes, the potential impact of the contribution of developing countries in facilitating the achievement of global distributive justice depends on what goes on within developing countries, specifically regarding the management of the external resources they receive (on behalf of their citizens). One of the major insights of this chapter is that whatever goes on in poor country governments regarding the management of external contributions either *facilitates* or frustrates efforts towards global distributive justice. Further the concept of equitable distribution of burdens, as it has been privileged in this work as a requirement in the pursuit of distributive justice, suggests that the discourse on global distributive justice needs to ask whether there can be things poor (or LMIC) governments can, or ought to, be morally required to do, or not to do in order to *contribute* in the pursuit of global distributive justice. Hence, here we can explain at least two major reasons for an enquiry into possible obligations of resource-poor countries in the pursuit of global distributive justice.

The first reason for enquiring into possible obligations of resource-poor countries in efforts to ensure global distributive justice is to ensure that the fulfilment of external obligations will have the desired impact on the lives of those for whom such resources are intended (ordinary citizens of LICs); that is to say, requiring resource-poor country governments – agencies through which external actors attempt to improve distributive justice – to make it possible for such external assistance to tilt the scale of global distributive justice in favour of poor country citizens. In this consideration, and basing on some evidence from Uganda (and a few more poor countries), the discussion in this chapter proposes an obligation relating to countries' moral duty to deliver external aid to its intended beneficiaries. So far there is evidence that most of them (poor country governments) do not do so. Basing on the same idea of facilitating

the achievement of global distributive justice, this chapter proposes that developing country governments ought to be morally required to manage external resources in a manner that enables external actors' efforts to tilt the scale of distributive justice. Such an obligation relates to the moral requirement on the part of resource-poor country governments to ensure due diligence.

Secondly, other than being morally required to take actions that have the potential to maximise possible improvements in global distributive justice from external efforts (resources), this chapter also propose that resource-poor country governments should bear stringent obligations relating to the principle of non-maleficence in dealing with fellow poor countries and indeed all other countries. As the discussion will show, the argument of this obligation does not imply that high income countries are exempted from this obligation, nor should the argument be interpreted to mean that this obligation implies that poor countries are currently not under such an obligation. Rather, the concern about this obligation is that when poor countries, as the example of Uganda versus the Democratic Republic of the Congo will show, act in economically harmful ways towards other poor countries the burden of fixing the damage usually falls back to those who did not cause the harm, but those who have the means to fix the destitution arising from the damage done by a poor country. So the essence of this obligation is that whereas this obligation is incumbent on all countries, since poor countries cannot afford reparations to the benefit of their victims then the global community should be more proactive in enforcing such an obligation upon poor countries.

Obligations of Poor Countries in Ensuring Global Justice: The Case of Uganda

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Abstract

Obligations of global justice rest mainly on the global rich but also to a lesser extent on the global poor. The governments of poor countries are obliged to fulfil requirements of non-aggression, good governance and decency and all other requirements which will make it easy to achieve global justice. So far obligations of poor countries seem to be taken as given yet the behaviours of governments in poor countries and occurrences therein attest to the contrary and this suggests a need to mainstream these obligations in discussions about global justice. If poor countries do not live up to these requirements they are obstacles to the realization of global justice and act unjustly in relation to citizens of rich countries which provide them with aid. Uganda is taken as a case in point.

Key words: Global Justice; obligations; poor countries; Uganda.

Introduction and Background

The existing literature on global justice reflects the dominant attention given to what the rich countries should do in order to alleviate poverty and suffering among the global poor. This discussion has proceeded at the expense of debates about potential obligations of poor countries themselves. Some of the contributors to the global justice debate such as Fiona Terry (2000), William Easterly (2006) and Paul Collier (2008), among others, have hinted at the need to explore obligations of poor countries. In their works they allude to something along the lines of, “part of the solution for

poverty in poor countries lies within the poor countries themselves.” However, the conclusions reached by each of them do not explicitly emphasize the obligations of poor countries in global justice. This trend risks encouraging complacency among resource-poor countries like Uganda in the implementation of global justice. In this paper, the argument is not that the contents of present works on global justice are wrong regarding obligations of rich countries; nor is it that some of these contributors would deny the importance of obligations of poor countries in ensuring global justice. Rather the argument of this paper is that the current debate focuses on what rich countries should do while this alone is unlikely to result in global justice. Therefore, for practical and moral reasons, in addition to the obligations of rich countries, the debate needs to mainstream reflections on possible obligations of poor countries and on what should be done if they do not fulfill these obligations. The trend of thinking beyond obligations of rich countries in ensuring global justice is not unprecedented. Recently, using South Africa as a case study Nicola Barsdorf argued that middle income countries have moral obligations to help solve some of the problems afflicting poorer countries (2012). Drawing on this background, this paper argues for three kinds of obligations of poor countries in ensuring global justice: 1) Obligations of international justice (non-aggression); 2) The obligation of effective management of aid resources; and 3) The obligation to exercise due diligence (decency). We will begin by giving a brief survey of the ongoing discussion about obligations for global justice with the intention to show that, despite wide recognition of the importance of poor country obligations, these obligations have continuously failed to reach the same level of prominence as those of rich countries.

The On Going Debate

To begin with, Peter Singer in two essays: *Famine, Affluence and Morality* (1972) and *The Singer Solution to World Poverty* (1999); and in his book *One World: The Ethics of Globalization* (2000), is primarily concerned with justifying the moral obligations of rich countries to give aid to the global poor. Singer discusses at length *what citizens and governments of affluent countries can do in order to ensure global justice*. At the same time, however, he recognizes the importance of obligations of poor countries for utility reasons yet he does not pursue this subject at length.

On the other hand Thomas Pogge portrays global justice mainly in terms of the negative duties of affluent countries in ensuring global justice. He argues that:

[...] we [the rich] share responsibility not only for the damage authoritarian rulers[in poor countries] can do to the interests of “their” people, [...] our governments have instigated violent installation of many oppressive rulers in poor countries [...] and have fostered a culture of corruption [...]” (2008: 29).

In Pogge’s view, “it is quite possible that within a different global order national factors[in poor countries] that tend to undermine the fulfillment of human rights would occur much less often or not at all” (2005: 22). Like Singer, Pogge hints at the obligations of poor countries, in particular the duty of governments in poor countries to oppose the global institutional order that is sustained by powerful governments in the North and global organizations such as the World Trade Organization (WTO) and the International Monetary Fund (IMF). However, he does not dedicate sufficient space to this subject.

David Miller is also concerned with the issue of “what responsibilities do we have towards the global poor? What must we do for them as a matter of justice?” (2007: 231). As an allusion to the obligations of poor countries, Miller cautions that human beings should be treated “*both* as agents capable of taking responsibility for the outcomes of their actions *and* as vulnerable and needy creatures who may not be able to lead decent lives without the help of others” (2007: 237, (italics in original text)). By emphasizing their agency Miller clearly says that citizens of poor countries have the capacity to take decisions and assume responsibility for their outcomes. This is a clear indication that he believes that obligations of poor countries are an important complement to those of rich countries for the achievement of global justice. Yet Miller does not mainstream this subject in his work either.

Further, in *The problem of Global Justice*, Thomas Nagel castigates the current unjust international order, which he rightly blames on the affluent countries. His arguments that “[t]he global economy, within which the familiar inequalities are now generated, requires a stable international system of property rights and contractual obligations that provide the conditions for international commerce” (2005: 137). In Nagel’s view it is a duty of affluent countries to reform the rules of international trade to the benefit of poor countries.

Further suggestions regarding the need to explore obligations of poor countries in global justice can be found in the works of Terry (2000), Easterly (2006), and Collier (2008). From her experience of how aid to refugees in poor countries is

mismanaged, Fiona Terry, in *Condemned to Repeat? The paradox of humanitarian action*, concludes that “[i]f international agencies [and all donors] are to meet the needs of the populations in crisis, their[donors] organizational behavior must adjust to the wider political and socio-economic contexts in which aid occurs.” Yet, from her research findings which led her to draw this conclusion, a complementary conclusion can also be drawn: If international agencies are to meet the needs of populations in crisis in poor countries, *poor countries must bear astringent obligation not to mismanage aid resource*. Hence, even though Terry does not explicitly suggest the need for poor countries to bear some obligations, her findings clearly suggest this need.

Furthermore, in *The White Man’s Burden*, Easterly sets out to investigate “[w]hy the West’s efforts to aid the rest have done so much ill and so little good,” (2006: 115) and comes to the conclusion that “[i]t is all about [bad] politics” in poor countries; and this blame is shared by International Financial Institutions (IFIs), which he accuses of “coddling awful gangsters who just call themselves a government” in poor countries (Easterly2006: 152–153). His point concerns the complicity between government bureaucrats of poor countries, multinational corporations and IFIs. The implication being that in order to break down the complicity between the representatives of rich countries and government bureaucrats of poor countries it is important that, for example, Pogge’s argument for negative duties on the part of rich countries be supplemented with duties imposed on poor country governments to desist from complicity.

Further still, even though Collier’s *The Bottom Billion: Why are poor countries failing and what can be done about it* (2008) does not deal with explicit obligations of poor countries and these obligations are not given any direct or considerable attention, on many occasions he does allude to something along those lines, however. For example, while he believes that one of the challenges for Africa’s development is bad governance which needs external help in the form of technical assistance, he cautions that this kind of aid can only be effective if the political conditions in the benefiting country are favorable(Collier 2008: 108–115). In other words, if any kind of aid to poor countries is to be effective, governments of poor countries have a duty to create favorable conditions for such aid.

Generally, there is a great deal of evidence that most contributors to the debate about global justice recognize, in the back of their mind, the importance of obligations

of poor countries in ensuring global justice. Yet at the same time it is also evident that a discussion of these obligations is far less developed than that of the obligations of rich countries. Since, like those sampled above, most contributors imply that obligations of poor countries are also important for purposes of effectiveness and yet then fail to dedicate sufficient attention to such obligations, there is a need to bridge this gap. Accordingly, this work should be seen as supplementary to their contribution to the debate rather than as a criticism of their work.

Poor Countries' Obligations Relating to International Justice

Obligations of international justice are understood here as treaty obligations and prohibition of interventions in legitimate internal affairs of other countries. In principle they apply equally to both poor and rich countries. For this reason it may be tempting to take these obligations for granted in relation to poor countries and negate the need for special discussion. However, this would only ring true under international law. As international law is quite complex and difficult to implement, these obligations would benefit from being integrated into debates about global justice founded on diffuse pressure to secure compliance. Hence, the obligations of poor countries in international justice need to be emphasized and made more stringent than they currently are in discussion of global justice — as illustrated below using the duty of non-aggression.

The popular discussion on international justice concentrates on demonstrating and castigating the guilt of rich countries in international justice. As shown above, this has been the primary concern of key contributors to the global justice debate (Miller 2007; Nagel 2005; Pogge 2001, 2005, 2008, among others). Don Scheid has argued that “A great part of global justice must concern itself with the use of force, especially the aggressive use of force. In the quest for global justice and international governance, one strategy is to impose legal constraints on the use of force by outlawing acts and wars of aggression”(2003). But even for a case as clear as the prohibition of aggression, the popular debate about global (social) justice is silent when it comes to obligations of poor countries in cases of non-aggression. In this section we want to show that even though poor countries are victims of global social injustice, they are also at times perpetrators of injustice against other poor nations and states. Therefore, in the pursuit of global justice, there is a need to seriously evaluate

the moral dilemma of dealing with *harmful victims*.²We will use Uganda as a case to illustrate this point.

Poor Countries, Armed Aggression and Global Justice

In considering the case of armed aggression in a paper discussing issues related to the ethics of underdevelopment, mal-development and associated injustices, it is important to concede that issues of social justice are often treated separately than those of conflict and post-conflict situations. However, a country that engages in destructive armed aggression against another deprives its victim of material livelihoods and socially afflicts its citizens, thus affecting their material and social well-being, which are key indicators on their Human Development Index (HDI). The comparison of inter-country HDI is the most important criterion in assessing the status of global justice. Hence, if the focus of debates about social justice is the analysis and assessment of the causes and solutions of global inequalities in material and social well-being, then all relevant factors that directly affect economic and social well-being ought to be accounted for and examined. One major factor in this category is armed aggression.

The Uganda-Democratic Republic of Congo Case

Between 1997 and 2003, the Ugandan army (Uganda People's Defense Forces – UPDF), invaded the Democratic republic of Congo (DRC), ostensibly to fight the Allied Democratic Forces (ADF) who were rebelling against the Ugandan government. But contrary to their claimed excuse the army looted minerals, timber and other resources, destroyed the livelihoods of the local citizens, conscripted children into the army, as well other crimes including rape. They also committed other offenses including facilitating rebel activities in the regions they invaded (International Court of Justice (ICJ) 2005).

According to the findings of the ICJ, “THE COURT,” by sixteen votes to one, Finds that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention; (ICJ 2005: 280).

Further, by the same vote (16:1) it was agreed that:

The Republic of Uganda, by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings [...] violated its obligations under international human rights law and international humanitarian law (ICJ 2005:280).

In addition, the international Court of Justice found that:

[...] the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law; (ICJ 2005: 280-281).

Uganda was found guilty of so many counts of injustice that they cannot all be listed here. Ultimately, the International Court of Justice in the vote of sixteen to one unanimously, “[f]inds that the Republic of Uganda is under obligation to make reparation to the Democratic Republic of the Congo for the injury caused; [...]” (ICJ 2005: 281). The reparation was set at \$10 billion USD; this implies that as a result of the invasion by Uganda, DRC loss of property, life, and well-being was valued at \$10 billion USD. While of course this seems to be an issue which can be addressed purely by International Law, it is important to show how incorporating this subject in discussions about global justice would be instrumental in efforts towards achieving global justice.

As mentioned above, the issue of armed aggression becomes of interest in the debate about global justice due to its direct effect on material and non-material well-being of the victims. Since this issue was left purely to the realm of international law it may have been considered a settled question, yet no justice has been achieved thus far as long as Uganda lacks the capacity, or is unwilling, to pay the reparation. However, if this had been stated in advance as a stringent obligation of social justice upon Uganda, social pressure exerted through diplomacy would very likely have, to a large extent, played a preventive role in the first place. Therefore, regarding the characterization of the specific obligations of poor countries in ensuring global justice, it can be said that since the level of material and nonmaterial well-being are key proxies for global justice, it is important that poor countries’ obligation to desist from armed aggression against other nations and states should be made more stringent because such aggression directly tilts the balance of global justice against victims. Of course this obligation is borne by the rich countries too, but the point here is that since

there is evidence that through the violation of this obligation some poor countries have exacerbated the material and social well-being of others, hence in the discussion of the obligations of poor countries this obligation warrants special emphasis.

The implication of the above case is that failure to fulfill obligations of international justice (for example of non-aggression) and the consequent damage leads to injustice against those who must repair the damage through relief and development aid. For example, since Uganda could not alleviate the deprivation in the DRC as it lacked the requisite resource capacity to do that, then, following David Miller's criteria for assigning remedial responsibility in global justice (2007), the natural place to look is the agent with the capacity to alleviate the harm – the governments and citizens of affluent countries. However, if the citizens of affluent countries are subjected to enforceable obligations to provide aid for alleviating harm inflicted by other countries in this way, it constitutes a clear injustice, especially if no sanctions are meted out against perpetrators for flouting their obligations. It is for this reason that when thinking about global justice, poor countries must bear the positive as well as negative obligations of international justice. If poor countries fail on these counts then they ought to suffer the sanctions attached to corresponding obligations.

However, in dealing with *harmful victims* like Uganda, sanctions imposed for failure on their obligations are likely to engender moral dilemmas. It raises other issues pertaining to the relations between the citizens of poor countries and their governments. Ordinarily, when one speaks of the duties and responsibilities of poor countries, these should be duties and responsibilities of the governments and the citizens jointly. However, this would only be the case if governments of poor countries were as representative as those of the democratic and affluent countries, such that the actions and inactions of governments are influenced, and therefore owned by their citizens. This dilemma does not only arise in the implementation of international justice obligations, but also in many other instances. We will return to this and other challenges towards the conclusion.

Obligation Pertaining to Aid

In discussing strategies for global justice, obligation to aid is dominant. However, aid can be a double-edged sword for and against poor countries. Whereas aid can provide immediate relief to the global poor, it can also be abused by aid-givers to create an

exploitative dependency relationship between the poor and the rich and in this way uphold global injustices. However each of these two possibilities depends on how aid is conceived. If aid is conceived as *charity*, it can easily be abused to uphold global injustices. But on the other hand if it is understood as *a right* of needy people worldwide and is organized in the form of, for example, Pogge's concept of the Global Resource Dividend (GRD) (Pogge 2008), then it would be very difficult to abuse. In this paper, aid is understood in the latter sense. Besides, giving aid is just one of the duties and obligations of rich countries and these other duties and obligations should forestall the misuse of aid by its givers in this way.

Whereas generally the economics of "Trade not Aid" is based on valid arguments in relation to the sustainability of development of poor countries, aid may still be an inevitable obligation in global justice. In order to understand the inevitability of aid in efforts to achieve global justice, Miller's point about *vulnerability* mentioned above needs to be taken seriously. This is because it is a self-evident truth that even if all countries observed requirements of international justice, fair trade regimes and so forth, many people around the world would still remain below the material and social threshold needed for ensuring the level of well-being that is considered just. Local conditions – natural and those amenable to human efforts, market failures, technical and technological deficits etc. – would still render citizens of some countries socially and economically vulnerable, especially those in low-income countries. This fact leads to a moral requirement on those who have surplus resources to transfer some of these to those who are in need. To emphasize the importance of aid in global justice David Miller emphasizes that in order to determine the extent of global liabilities on nations and states, "we need the idea of a global minimum – a set of basic human rights which must be protected for people everywhere regardless of circumstances" (2007: 266). Charles Jones too defends basic human rights as the "moral minimum" required for the implementation of global justice (1999: 50–84). All these imply the stringency of the obligation to give aid as a matter of right of the poor.

Conversely, however, Terry (2000), Easterly (2006), Collier (2008) and many others have been concerned with the effectiveness of aid in poor countries and are all highly skeptical. Their analyses indicate that, for aid to be effective, certain conditions must exist within poor countries; or to put it differently, for such aid to be effective, governments of poor countries ought to bear and fulfill some relevant obligations.

This point serves to reemphasizes the main point of this paper; that is, the obligations of poor countries and discussions about them are important supplements to those of rich countries if the mission of global justice is to be achieved and be achieved justly. Hence, drawing on evidence-based skepticism about the effectiveness of aid in poor countries, the point of this argument is that when governments of poor countries receive aid they incur obligations pertaining to the effectiveness with which such aid is managed; and that failure to meet such obligations ought to attract all sanctions available against governments. But there also lingers a question regarding whether or not rich countries should withhold aid to poor countries should the governments of the latter fail to fulfill their obligations. We will come back to this question later.

Obligation of Effective Management of Aid

In conceiving the obligations of poor countries, one of the relevant (hypothetical) questions to ask is: “What if the aid they receive from affluent countries as a result of rich countries fulfilling their obligation to aid, never trickles down to its intended beneficiaries or is never converted into the desired well-being for ordinary citizens?” The implication here is that governments of poor countries are representatives or *agents*³ of their citizens who bear an obligation to deliver aid to the citizens who are the intended beneficiaries as effectively as possible. In other words, the right to aid resides in the citizens not their agents (governments). This implies that even if governments of poor countries fail when it comes to this obligation, this does not exempt the affluent countries from giving aid to those they owe it to – the ordinary poor citizens in poor countries. Instead, the failure of poor country governments to fulfill this obligation adds another duty to aid givers: that is, to find other feasible channels through which to fulfill their obligations.

The obligation to effectively manage aid is important for both practical and moral reasons. From a practical point of view, this is necessary as a complement to that of rich countries giving aid. In other words, for aid to make any impact on the lives of the poor, the governments concerned must be able and willing to convert it into desired well-being. From a moral point of view, if governments of poor countries behave as economic ‘black holes’ by way of mismanaging aid resources, then this will impose an unjust magnitude of burden on those who bear the obligation to give aid. (This point will be given more emphasis in arguing for the next obligation below.) It

is these two reasons that would justify sanctions against poor country governments that fail to meet this obligation.

But, again here, there is a lurking dilemma involved in imposing obligations on poor countries, particularly sanctions in the case of failure to meet their obligations. For example, Pogge raises the issue of autocracy in poor countries and complicity of the elite therein with representatives of affluent nations harming the interests of the citizens in poor countries. In other words, Pogge would rightly argue that “the poor countries that perpetrate harms such as aggression or may fail on any obligations are not the same as the poor countries that are the intended beneficiaries of global justice”. The former refers to the governments (the elite and bureaucrats), while the latter are the ordinary citizens, and these two should not be treated as one entity in the conception and implementation of obligations of poor countries. This means that it would be an injustice for the citizens of poor countries to be made to suffer any sanctions arising from their governments’ failure to fulfill their obligations. Therefore, in thinking about poor countries’ obligations for international justice, the primary focus ought to be the governments of poor countries. This means that if there are any sanctions to be imposed on poor countries for failure to fulfill their obligations then care must be taken to limit the effects of such sanctions to governments and not the poor citizens.

Contributory Negligence and the Duty of Due Diligence

The Principle of Contributory Negligence

Contributory or comparative negligence is a juridical principle. It means carelessness or lack of vigilance on the part of the plaintiff which (carelessness) has contributed to, and is in whole or in part the cause of the injury or harm he [or she] complains of, as having been caused to him [or her] by the defendant’s fault. Contributory negligence is one’s failure to avoid getting hurt by the defendant or it is the fault of the claimant in the very occurrence of the accident (GLH 1982: 587). The principle implies that failure by a person to exercise *reasonable care* for the safety of either himself [or herself] or his [or her] property so that he [or she] becomes blameworthy in part or in whole as *an author of his [or her] own harm* does not impose liability on the defendant. Therefore, under the principle of contributory negligence, justice demands that before the potential obligation bearer (defendant) is assigned the duty to

compensate the victim, it should be inquired into to establish whether there was anything the victim of harm could have been reasonably expected to do in order to avoid harm suffered or mitigate its severity. On this account, the potential victims of injustice are believed to have a duty to exercise due diligence or *reasonable care* in order to avoid or mitigate harm to themselves. The implication of this principle is that it would be an injustice to assign a hundred percent obligation to rectify the harm to the obligation bearer (defendant), although part of the harm can be attributed to the negligence of the victim.

The principle of contributory negligence, sometimes called comparative negligence, arises in debates about global justice out of the following hypothetical question: “Is there anything poor countries can do or avoid in their governance to reduce their suffering so that they require less or no aid at all?” If this question is answered in the affirmative, then there should be an obligation of poor countries to exercise *reasonable care*⁴ or due diligence; that is, given evidence of rampant contributory negligence in poor countries, the specific obligations of poor countries arising from the question posed above would be that governments in poor countries have a duty and obligation to ensure due diligence in managing the economies of these countries. The relevance of this obligation or duty in relation to poor countries is based on the assumption (to be proved below) that governments of poor countries display what would constitute avoidable negligence or recklessness in the management of their affairs.

It is important to note that a discussion of this principle and its arising duty takes into account the fact that factors that cause and worsen global injustice are both local and international or global in nature; these being both natural and those amenable to human efforts. Hence, the argument being advanced here is that irrespective of whether the causes of global injustice are local or international; natural or purely dependent of human efforts, the exercise of reasonable care by the poor countries in the management of their affairs can facilitate efforts to mitigate them, eventually leading to global justice.

Extrapolating the Principle into Global Justice Debate

Charles Jones accepts that the rich should have an enforceable obligation in implementing social justice. However, he argues that “[i]n addition, avoidable activities which make it less likely that poor countries can meet their own citizens rights-claims could be disallowed, thus enabling those states to fulfill their obligations with less positive aid from other states” (1999: 70). By arguing that certain activities be disallowed in developing countries, Jones implies that in poor countries there are activities which can be regarded as reckless or not prudent enough to the extent that they stand in the way of ensuring that their citizens enjoy material and social conditions comparable to those which global justice intends to achieve for them. But in addition to Jones’ negative requirement of refraining from harmful activities, poor countries can also be required to take certain prudent positive steps (activities) with diligence, incumbent in their obligations in ensuring global justice. Both these positive and negative steps should be those that, if taken, would forestall most of the causes of global injustice, whether these be domestic or international; artificial or natural. This argument implies that governments who flout these obligations would henceforth be liable to corresponding sanctions. Therefore, the principle of contributory or comparative negligence and its arising duty of exercising due diligence can be legitimately extrapolated into the debates of global justice.

Should Poor Countries Bear Duties of Due Diligence?

Looking at the argument raised by Jones above through the lens of the principle of contributory negligence, the answer to the question above depends on whether there is evidence that governments in poor countries are not diligent (decent) enough by way of what might be called recklessness in their governance systems. Should this issue prove to be the case, then at least two negative outcomes would arise: the first one is that, even if obligations of rich countries are met, they would not achieve global justice; secondly, it would be an injustice to coerce citizens of the rich countries to transfer resources to governments of poor countries in what may seem like rewarding recklessness. In light of the above question, the quality of governance in poor countries seems to point directly to the need to emphasize their duty to ensure due diligence.

To begin with, O’Neill raises the issue of population explosion in poor countries and argues that this worsens their already dire situation (O’Neill 1986: 158).

O'Neill's claim is corroborated by population growth statistics in poor countries, which show that globally the highest population growth rates are recorded in poor countries. For example, according to population growth statistics for 2011, Uganda has the fifth highest population growth rate globally at 3.2 % per annum, after the United Arab Emirates (UAE) (4.9 %); Bahrain (4.8 %); Zambia (4.2 %) and Niger (3.5 %) (World Bank 2013). Elsewhere, Uganda is ranked third globally with an annual population growth rate of 3.576 % after Zimbabwe (4.31 %) and Niger (3.643 %). Generally, African countries which are most burdened by poverty and disease top population growth rate rankings (NationMaster2013). O'Neill's argument is based on the assumption that population explosion has a negative impact on the socio-economic well-being of people (in terms of income, savings, health etc.). If this assumption is correct then in order to improve socio-economic conditions in poor countries (such as household savings and health conditions) poor countries should bear the obligation of reducing their population growth rates.

However, the argument about population control as presented by O'Neill above can arguably suffers from two potential doubts: One is that it appears to put the cart before the horse. This is because in some cases population growth seems to be dependent on economic and social development and therefore very difficult to control in itself; that is, low birth-rates being regarded as a consequence of improved socio-economic conditions especially health care and education. However, at the same time it is possible that low population growth rates are a precondition for improvement in standards of living. It is plausible to argue that a poor country that prioritizes population control in its resource allocation and public policy will quickly reduce both government and household expenditures and at the same time reduce pressure on the limited social services. The second potential problem may arise from the legitimacy of authoritarian and corrupt governments in poor countries to enforce population control. But since such enforcement would be in the best interest of the citizens, then this could be allowed for and count as at least one credit to such governments.

Further, some of the practices in poor countries, especially those pertaining to governance, justify the imposition of the duty to exercise due diligence. Drawing from the general criticism against aid raised by Terry, Easterly and Collier among others as pointed out above, the factors which undermine the effectiveness of aid can be exemplified in specific countries. These factors count as failure to exercise due diligence among poor countries. For example, Uganda which relies heavily on the

Global Fund and other external aid sources for the health sector has several times been implicated in what can count as negligence. This is evidenced by very high levels of corruption with impunity. In this case, high levels of corruption with impunity constitutes clear failure of the principle of due diligence on the part of government. There are some particular popular cases that confirm this failure: In 2007 it was discovered that “[a]s thousands of Ugandans die every day of HIV/Aids and malaria, drugs worth about UGX 4 billion [around \$1.6 million USD] are rotting [have expired] in the National Medical Stores Entebbe” (Nandutu 2007). It was also revealed that “[s]tolen government drugs [are] repackaged and resold to National Medical Stores” (Ayebazibwe 2012). Other poor countries have been found guilty too and they have also been either asked to refund the Global Fund money or forfeit subsequent rounds of funding. These include Pakistan, Ukraine, Myanmar, Senegal, Chad, Nigeria, Kenya, Zimbabwe, Namibia, and Togo, to mention but a few (IRIN 2009).

To further illustrate the point, one can look at a sample of Uganda’s “*Nine Corruption Scandals to Look Back at*” (New Vision, 2014). According to this research, in only nine corruption cases, at least \$0.42 billion USD was lost in the hands of different public officials; the majority of these were politically exempt from liability resulting in no hope of recovering the money. Generally, according to the results of the Corruption Perception Index (CPI) for countries over the years, there is a high correlation between being a corrupt country and being a poor country. Even if it is arguable whether corruption at a national level is a cause or an effect of poverty, it seems to make better sense to argue that corruption is an obstacle to social, economic and political development and it takes political will to successfully fight corruption.

In light of these and potentially more pieces of evidence, the principle of contributory negligence points to the need for poor countries to bear a moral obligation to exercise due diligence in managing their affairs. The pragmatic value of this obligation is that it would make concerned obligation bearers more vigilant and prudent in managing their affairs. This will in turn reduce their chances of being harmed by other agents’ behaviors or natural factors. Furthermore, from a moral point of view it would be an injustice to ask other obligation bearers, particularly citizens of rich countries, to incur costs which are a result of avoidable omissions and commissions on the part of governments of poor countries, if there are no efforts to hold perpetrators accountable. By and large, ignoring the principle of contributory

negligence and its arising duty to exercise due diligence in global justice debate would lead to complacency, and more recklessness on the part of the governments of poor countries, making it more difficult to achieve global justice. Therefore, poor countries ought to bear an obligation/duty to exercise due diligence in order to mitigate the level of injustice they suffer and also reduce the liability of other agents.

Some Potentially Persistent Challenges

The question of obligations of poor countries in global justice is quite complex and this paper does not claim to provide an exhaustive and uncontroversial account of them. But certainly from the above discussion it has transpired that there is a need to mainstream a discussion of these obligations into debates about obligations of global justice. In this effort, however, challenges lurk that need critical attention. Most of the challenges will potentially arise in the implementation of these obligations. One of these is how to hold governments of poor countries accountable should they flout these obligations, without harming the interests of their needy citizens. We have treated governments and citizens of poor countries as two different entities as most of these governments lack legitimacy in the sense of not being truly representative of the interests of their citizens. Hence, since obligations of poor countries need to be enforceable in order to be effective, the mode of their enforcement ought to draw a clear line between the obligation bearer (governments) and the intended beneficiaries of global justice. This in turn implies that even if poor country governments flout their obligations, rich countries retain their obligations to the citizens of poor countries.

From the above, another challenge in the conception and enforcement of obligations of poor countries arises in the case of their governments failing to fulfill their obligations: that is, how can the rich countries fulfill their obligations to the global poor without doing so through the agency of their governments? Could this be done through Civil Society Organizations (CSOs)? However, whereas the community of civil society would promise an effective channel, the successful operation of civil society in any country still to a great extent depends on the smooth relations between the two. But since some CSOs (such as the UN and Red Cross) have immunity against government interference, it would be possible to bypass potential sabotage from uncooperative governments.

One may well wonder: How can one assign obligations to countries like Uganda that do not fulfill any, or at least most, of the requirements of good governance? Would it not be a waste of time? Yes, it may appear so, especially if there are no means to enforce such obligations internationally. But since obligations of justice are (here) meant to be enforceable and all obligations of poor countries argued for above point to the requirements of good governance, assigning governments of poor countries related obligations seems not to be in vain.

Finally, from our arguments above, the ordinary citizens of poor countries seem to be completely exempt from bearing any obligations. This exemption is also potentially controversial. From the point of view of the importance of human agency, it can be interpreted as an assault on the autonomy of citizens in poor countries. It is therefore a worthwhile exercise to consider the possibility of such obligations (for citizens). These obligations might relate, for example, to their vigilance and support for the civil society and their compliance with the positive and negative prescriptions to them relating to actions that are aimed at improving their conditions, hence making it easier for them to approach the material threshold which global justice aims at. But since the performance of individual citizens depends on the effectiveness of public institutions, it is proper to prioritise discussion of obligations of their governments. All these issues (and probably more) are unsettled questions in the conception and implementation of obligations of poor countries in ensuring global justice; however, they cannot be sufficiently adjudicated in the limited space of this paper. Accordingly these challenges need to be born in mind in the discussions of obligations of poor countries in global justice.

Conclusion

The obligations of poor countries are crucial for the achievement of global justice, yet these obligations are largely side-stepped in current discussion. At best, as is the case with many authors, these obligations are simply alluded to and this can reduce their stringency. In the first place, by engaging in aggression against other states, poor countries deprive their victims' material livelihoods and social well-being – both of which have serious ramifications on a global justice scale. Secondly, although not the most important condition for the development of poor countries, obligation to aid is crucial in global justice, yet experience shows that its effectiveness is not guaranteed

due to moral weaknesses in poor country governments. For this reason, when governments of poor countries receive aid, they ought to incur stringent obligations to effectively manage such resources to the benefit of its intended beneficiaries. Thirdly, given the available evidence about the poor quality of governance in most poor countries it has been shown that poor countries are morally liable to bear the duty of exercising due diligence in the management of their affairs. Finally, it is important to emphasize the point that, the discussion in this paper does not constitute a denial of the importance of the obligations of rich countries; rather it is an emphasis of the additional obligations of the governments of poor countries. If we emphasize the obligations of the governments of rich countries and neglect those of poor countries, it will not be possible for the citizens in poor countries to benefit from the efforts of rich countries and it will engender injustice against citizens of affluent countries.

1. Rich countries too, may, or actually do, engage in armed aggression, but the concern of this paper is the obligations of poor countries.
2. By harmful victims, we mean victims of global injustice (poor countries), but whose domestic and international behavior is harmful to their citizens and other countries, as we illustrate using the case of Uganda. This creates a dilemma as to whether such harmful victims deserve positive actions such as aid from the affluent countries.
3. By saying that governments of poor countries act as *agents* of their citizens, we are not committed to saying that such governments are representative in a truly democratic sense. Rather, we mean that whatever such governments receive or do is all purportedly done in the name of their citizens.
4. According to Gerald N. Hill and Kathleen T. Hill (1981–2005), ‘Reasonable Care’ refers to the degree of caution and concern for the safety of oneself and others that an ordinarily prudent and rational person would apply in the circumstances.

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Chapter 4

Implementing Low Income Country Obligations: an illustrative case from global health financing

The discussion above (chapter three) and in the preceding chapter (two) suggest and defend both the moral and practical necessity of poor country obligations in the pursuit of global distributive justice. The major point of chapter two was that countries' obligations (both rich and poor) have remained futile for the most part and this poses a threat to all efforts towards global distributive justice. This futility has been attributed to lack of enough specificity in the manner such obligations are framed. These obligations do not state with precision what each global actor (in this case national governments) is *morally required* to contribute (especially in terms of resources) towards the achievement of global distributive justice, and/or the fulfilment of some basic economic and social rights. But most importantly in chapter two it has been argued that if this futility of obligations is to be avoided by specifying each actor's contribution, then there is need for an elaborate mechanism which can be used to proportionately distribute the burden of guaranteeing all individuals a certain threshold share of global resources. On the other hand, chapter three has demonstrated the reasoning which ought to underline an enquiry into poor country governments' obligations in facilitating and contributing to the achievement of global distributive justice. However, this chapter too has not proposed how some or any of these obligations should be specified and operationalised. On the other hand, the major conclusion of chapter one was simply an affirmation of morally binding (and potentially enforceable) transnational obligations of distributive justice upon all individuals globally through the agency of their governments. Chapter one too did not make any concrete proposal as to how these obligations should be specified and implemented.

On the basis of this background, and in regard to the two major concepts that have been proposed to guide thinking about poor country obligations in the pursuit of global distributive justice – that is, the *complementarity* of obligations of both rich and poor country governments on the one hand and, *equitable distribution of burdens* on the other – this chapter proposes a mechanism by which these two concepts can be operationalised. The major idea of this chapter is that operationalising these two

concepts starts with an affirmation of the moral and practical necessity of stringent resource-poor country obligations in the pursuit of global distributive justice. This chapter uses the case of current efforts towards justice in the global distribution of health opportunities (and by extension global distributive justice in general) to demonstrate how the two concepts proposed can be operationalised. Specifically this chapter proposes that the starting point is to agree on the global minimum distribution of health opportunities (in form minimum health expenditure per capita for each country) which should be guaranteed to all individuals as a matter of right. Secondly, the chapter proposes that the cost of this minimum should be divided equitably between the poor and rich country governments. For the purpose of emphasising poor country governments' obligations, the division of the burden of contributing such resources should begin with specifying the *optimal* contribution which can *reasonably* be expected from each of the poor country governments in contributing towards meeting the minimum health needs of its citizens. In this case, it is proposed that the reasonableness of expectation should be determined by the resource capacity of each country. According to the mechanism proposed in this chapter, the amount of resources which go beyond each poor country government's resource capacity should be the ones that constitute morally binding obligation of external actors, specifically affluent country governments.

Obligations of low income countries in ensuring equity in global health financing

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Abstract

Background: Despite common recognition of joint responsibility for global health by all countries particularly to ensure justice in global health, current discussions of countries' obligations for global health largely ignore obligations of developing countries. This is especially the case with regards to obligations relating to health financing. Bearing in mind that it is not possible to achieve justice in global health without achieving equity in health financing at both domestic and global levels, our aim is to show how fulfilling the obligation we propose will make it easy to achieve equity in health financing at both domestic and international levels.

Discussion: Achieving equity in global health financing is a crucial step towards achieving justice in global health. Our general view is that current discussions on global health equity largely ignore obligations of Low Income Country (LIC) governments and we recommend that these obligations should be mainstreamed in current discussions. While we recognise that various obligations need to be fulfilled in order to ultimately achieve justice in global health, for lack of space we prioritise obligations for health financing. Basing on the evidence that in most LICs health is not given priority in annual budget allocations, we propose that LIC governments should bear an obligation to allocate a certain minimum percent of their annual domestic budget resources to health, while they await external resources to supplement domestic ones. We recommend and demonstrate a mechanism for coordinating this obligation so that if the resulting obligations are fulfilled by both LIC and HIC governments it will be easy to achieve equity in global health financing.

Conclusion: Although achieving justice in global health will depend on fulfilment of different categories of obligations, ensuring inter- and intra-country equity in health financing is pivotal. This can be achieved by requiring all LIC governments to allocate a certain optimal per cent of their domestic budget resources to health while they await external resources to top up in order to cover the whole cost of the minimum health opportunities for LIC citizens.

Key Words: Obligations; Low Income Countries; Global health; Equity; Justice; Developing countries.

Background

The Alma Ata Declaration (1978) categorically stated that “the existing gross inequality in the health status of the people particularly between developed and developing countries as well as within countries is politically, socially and economically unacceptable and is, therefore, of common concern to *all* countries” (emphasis added) [1]. Following this declaration there has been wide recognition of *shared responsibilities for global health* implying that all countries – High Income Countries (HICs), Middle Income Countries (MICs) as well as LICs – have a joint responsibility for improving global health with equity as one of the overarching goals. However, currently the actual proposals regarding obligations of countries to contribute to efforts towards global health equity largely ignore specific obligations of LIC governments, particularly obligations relating to health financing ^a. The negligible attention given to LIC governments’ obligations is evident in a number of global initiatives aiming at improving health opportunities of citizens in poor countries. Some of these initiatives include the proposed Framework Convention on global health [2]; the Global plan to combat neglected tropical diseases [3]; and the Global strategy and plan of action on public health, innovation and intellectual property [4]. Further, the findings and recommendations of the Commission on intellectual property rights, innovation and public health [5]; the Report of the consultative expert working group on *Research and Development: Financing and Coordination* [6] among others are all concerned with international health resource transfer from HICs to LICs. So far it seems to be taken for granted that LIC governments are doing everything possible within their limited resource contexts to fulfill the health needs of their citizens. But whereas it is necessary to mobilize external resources to fill the health-resource-gaps in LICs, a lot of evidence has suggested that there is need to think about possible obligations of LICs themselves in health financing [7-13]. All these authors point at various weaknesses in health financing within LICs which cause health inequities within those countries. It is also important to note that these domestic inequities are usually reproduced in the general global health picture whenever international health comparisons are made. With very good reasons all the above authors strongly imply that most LIC governments behave as if they are *unwilling* rather than *unable* to equitably fulfil the health needs (or rights) of their citizens through, among other things, equitable health financing. Drawing from these views our argument is that these weaknesses in health financing

within LICs can be significantly reduced if LIC governments fulfill certain obligations relating to health financing. We argue and recommend that LICs should bear an obligation to allocate a certain minimum percentage of their domestic resources to health, while external resources should be used to top up whatever shortfall remains in order to achieve a certain minimum level of health opportunities for all individuals. For the purpose of implementing the obligation we are proposing we will recommend a specific mechanism for reducing intra-country inequities and show that this will at the same time reduce inequities in inter-country health financing.

After some conceptual clarifications we begin by providing evidence of low priority given to health sectors in LICs' budget allocations, and we later use this evidence as a basis for defending the view that in the pursuit of global health equity LIC governments should fulfill the obligation we are proposing. We then begin our main discussion by stating and explaining the obligation of LICs which we are advocating. We go ahead to recommend a mechanism which helps to reveal, understand and mitigate the existing inequities in health financing between and within LICs as well as between all countries rich and poor. We demonstrate the effectiveness of this mechanism in determining LIC and HIC governments' fair and optimal financial obligations for health financing and go ahead to show how fulfilling the resulting obligations by each country will lead to equity in global health financing as one of the steps towards global health justice.

Underlying concepts

In this paper we shall understand *health inequity* in general as undeserved inequalities in health status or access to health services which can be reduced by human efforts. By *global health inequity* we mean health inequity among individuals irrespective of national borders, or health inequities between and within countries. *Equity in global health financing* will be understood *here* as an inter- and intra-country proportionate distribution of the financing burden for *a certain minimum* level of health opportunities for all individuals globally by taking into account differences in resource capacities of different countries. By *Global Minimum Health Expenditure (GMHE) per capita* we mean the average cost of financing an 'Essential Health Package' per person per year in each country, or as we call it, 'a certain minimum level of health opportunities per capita'. Our concept of the "minimum" follows from

the WHO concept of an ‘Essential Health Package’ which is supposed to be a *guaranteed minimum* of “a limited list of public and clinical interventions which will be provided at primary and/or secondary level care” for citizens of LICs (emphasis in original) [14]. Other ideas which point to the concept of the “minimum” include “Universal Coverage” for all people which “does not necessarily mean coverage for everything ...” [15]; the ‘progressive realization of the right to health’; ‘Essential Medicines/Drugs’ among others. All these concepts imply that there is a certain minimum of health opportunities that should be seen as a *right* of every individual globally as recommended by the Alma Ata Declaration’s concept of Primary Health Care [16]. The reasoning in our discussion reflects a view that if individuals are not assisted to realise this moral right yet it is within the means of obligation bearers (both HIC and LIC governments), then such obligation bearers are acting unjustly. Since we propose that the cost of covering this minimum be shared equitably between HICs and LICs (taking into account the resource capacity of each of them) then if such a minimum is not covered, then it will be possible to identify the source of injustice by looking at which actor(s) refused to fulfill their quota of obligation. But most importantly our concern in this paper is that the minimum health opportunities should be fully and equitably financed by *public resources* from both LICs and HICs without any private health expenditure (PHE). Therefore, in our discussion *Global Health Justice* is, or consists in, guaranteeing a certain minimum level of health opportunities to all individuals globally and ensuring an inter- and intra-country equitable sharing of the burden to that effect.

Evidence of low priority given to health sectors in LIC budgets

There are suggestions that LIC governments allocate a lesser percentage of their annual domestically generated budget resources to health than they should, and could afford. For instance, considering the World Health Organisation (WHO) Africa Region, Africa’s annual average budget allocation to health as a percentage of total government budgets is 8.7 per cent compared with Europe’s 14.8 per cent and the Americas’ 16.8 per cent [17]. By the year 2001 the African Heads of States and Governments of African Union member states had realised that they were allocating negligible percentages of their budgets to health amidst increasing amounts of resources needed to respond to the HIV/AIDS epidemic, Tuberculosis and other

communicable diseases. Having realised these financing gaps in the health sectors across Africa due to low priority given to health budgets, they all committed themselves to allocating at least 15 per cent of their annual budgets to health in what they called the *Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Infectious Diseases* [18]. However, since 2001 few African countries have reached this target; and currently the trend is regressing. For example, the WHO revealed that “19 of the countries in the region who signed the declaration allocate less now than they did in 2001” [19]. Only four countries (Rwanda, Botswana, Zambia and Togo) fulfilled their commitment to the Abuja declaration’s 15 per cent [20].

In reaction to this relapsing trend, there is a view that Africa needs to improve on the laudable Abuja commitment and progress from “just 15% to ‘15% plus’” by doubling per capita investment in health, and also more in crucial social determinants and pillars of health [21]. Further, the WHO has recommended that increased priority should be given to health from the general budget and/or debt relief funds. From the analysis undertaken for the World Health Report of 2011, “it is clear that some countries need to increase their own investments in health either through reallocation within their own general budgets or by making larger claims on their funds from debt relief which are to be preferentially allocated to social spending” [22]. For example, in Uganda it has been observed that the health sector is unnecessarily neglected and as a consequence the Uganda health sector has been found to be in a very sorry state, unnecessarily [23-25]. But despite repeated pleas with the government to increase resources to the health sector, “the government has continuously shown unwillingness to make the health sector its priority in budget allocations” [26].

This alleged avoidable lack of sufficient funding for health within developing countries by the LICs themselves is the background for our argument that in addition to discussing obligations of HIC governments to, among other things, transfer health resources to LMICs, complementary obligations of the latter should also be emphasised. This is because from the point of view of fairness – as it has been argued in the case of human rights obligations – “a sound case for transnational obligations cannot be made, intellectually or politically ” [and in this case morally], without eventually defining the scope and limits of national obligations” [27]. But most

importantly as our view is that it will remain extremely difficult to achieve justice in global health unless obligations of LICs are identified and implemented.

Discussion

LICs' minimum financial obligation for health

The obligation of LIC governments we are arguing for is that all LICs should allocate a certain uniform minimum percentage of their domestic budget resources to their health sectors as their contribution to cover part of the cost of the minimum health opportunities for each of their citizens. In this paper we do not intend to recommend the *actual* percentage of domestic budgets which all LICs should allocate to their health sectors. This is because such a recommendation will have to be evidence-based taking into account the resource capacities of different countries and other relevant factors, all of which are beyond the means and resources of this paper. However, we will use a hypothetical percentage and then proceed to recommend and demonstrate a mechanism for dividing proportionately between HIC and LIC governments, the total cost (financing burden) of meeting these minimum health opportunities and this mechanism takes as its point of departure the optimal size of LIC governments' obligation.

In order to get to the root of the obligation we are proposing for LIC governments and how it will ensure equity in global health financing, we will take as our point of departure the estimate provided by the WHO of the cost of resources needed to provide basic life-saving services (health opportunities) per person per year in developing countries which is US\$ 44 per person per year [28]. The obligations of LIC governments and external governments should be specified in terms of percentages of this cost, beginning with an optimal size of LIC governments' obligations. This implies that all countries which need external health resources in order to achieve the targeted minimum of health opportunities (expressed as GMHE per capita) should allocate a certain specific optimal percentage of their domestically generated annual budget resources to their health sectors in order to fulfill their quota of health financing obligation. Basing on the deficits that will remain after fulfilling

this (LIC) obligation it will make it easy to determine the exact size of the obligations of external governments.

For its effectiveness, this obligation presumes and recommends coordination in global health financing especially in international health resource transfers. Coordination is crucial because it has been observed that uncoordinated health financing between countries has no capacity to achieve global health equity and at the same time it has a high potential of deepening the existing inequities [29]. However, coordination in financing global health partly requires a mechanism for determining international obligations owed to each country, particularly those in need of external resources to cover the minimum health opportunities per capita. But again as a point of emphasis, in order to determine the needed resources from HICs to LICs it is important first of all to determine an optimal level of health financing that can be reasonably expected from LICs by virtue of their resource capacities. It is this level that should constitute their (LICs) obligation, while the deficit that remains constitutes the size of external obligations. Fulfilling these obligations will lead, *at least in principle*, to inter- and intra-country equity in financing the global minimum of health opportunities that should be guaranteed to all individuals globally as a matter of right. For the purpose of implementing this obligation we recommend and illustrate a mechanism proposed by Ooms and Hammonds [30] for determining the size of HIC obligations in fulfilling the right to health for citizens in LMICs. We will later illustrate how fulfilling the resulting obligations leads to equity in financing global health.

A mechanism for achieving equitable burden-sharing in global health financing

The point of departure for Ooms and Hammonds is a challenge set by Norman Daniels in his book *Just Health* [31]. After defending the ethical appropriateness of shared responsibilities for health at a national level, Daniels expresses pessimism at the possibility of extending the ethical principles he used to a global level [30] and sets this as challenge for those interested in global health justice. In *Taking up Daniels' Challenge*, Ooms and Hammonds propose a mechanism for determining the amount of financial resources HICs should transfer to LMICs in order to realise the right to health^b. It should be noted that whereas Ooms and Hammonds' emphasis is on HIC obligations to ensure the fulfilment of the right to health in LMICs, our emphasis is on the obligations of LICs themselves in ensuring global health justice,

particularly equity in global health financing. Their mechanism *implies* that determining a reasonable size of financial obligations of LIC governments entails that what remains is a fair size of HIC obligation. Hence, whereas Ooms and Hammonds use this mechanism in their argument for, and illustration of how to determine *HIC obligations to ensure the right to health*, we will adopt this mechanism in our argument for, and illustration of, how determining and implementing LIC obligations will ensure equity in global health financing.

Ooms and Hammonds show that given that the amount of resources needed for each individual to ensure a just level of health [opportunities] is known, if all LICs allocated a certain minimum percentage of their GDP to health, it would be easy to determine the deficit for each individual in that country in order to reach the targeted minimum of such health opportunities in form of GMHE per capita'. In turn the total of these individual deficits would constitute the size of international health assistance owed to each poor country. Their hypothetical illustration is summarised as follows:

If [poor] Country A has a GDP per capita of about US\$333 and commits 3% of this amount, or US\$10 per person per year on the distribution of health related goods, then the global obligation towards country A is limited to ensuring that it can achieve health-related goods distribution worth US\$40 per person per year, assuming that this financing level [US\$40] is what it takes to realize the core content of the right to health. Hence the international obligation to such a country would be an equivalent of US\$30 per person per year. And if Country B has a GDP per capita of US\$1,000, and commits 3% of that amount (or US\$30 per person per year) on health-related goods, the global responsibility towards B would be the equivalent of US\$ 10 per person per year. Then, if Country C has a GDP per capita of US\$2,000, and allocates 3% of that amount (or US\$60 per person per year) on the distribution of Health-related goods, then there would be no global responsibility towards C [30].

This mechanism implies that once the obligations of LICs we are proposing are fulfilled, the size of each LIC's claim on international health resources will be directly proportional to its level of poverty. That is to say, poorer countries will be morally entitled to more health-aid per capita compared to countries which are better-off (such as MICs). This will ensure proportionate sharing of the burden of financing the targeted level of health opportunities for all individuals globally. It will mean that this minimum level of health opportunities is one-hundred percent publicly financed from

contributions of domestic governments and external governments. At this point there will be no financial barriers to such minimum health opportunities at the point of service delivery as well as financial inequities between individuals which normally arise from private health expenditures and more especially Out of Pocket Payment (OPP).

Generally, what Ooms and Hammonds have done is to show that it is possible to provide a reasonable way of specifying and coordinating international obligations to provide health aid. Below we show how, basing on our proposed obligation, this framework can be used to identify lack of equity in health financing between LICs themselves and between HICs and LICs in their effort to meet the health needs of LIC citizens.

Some preliminary points

First, whereas Ooms and Hammonds use the percentage of GDP in illustrating the mechanism for determining the size of HIC obligations, in our illustrations we will use the percentage of *domestically generated annual budget resources*. This is because the percentage of GDP devoted to health is much broader. GDP does not usually indicate the actual public resources available for health spending in a given financial year, and it also includes private contributions (PHE) which we seek to avoid in financing the targeted minimum of health opportunities. Therefore, since our concern is with the actual amount of public resources that can be made available from a certain percentage of the budget, instead of using '*GDP per capita*' we will use '*domestic annual budget per capita*'. We will exemplify our illustrations by considering health financing in two countries from the WHO Africa region – Uganda and Kenya. In subsequent examples we will use a few more countries in the same region that receive external health resources. Secondly, whereas the WHO estimates the average cost of basic life-saving services per person per year at US\$44, the actual cost in different countries will obviously vary depending on the specific needs of each country, local costs of services among others. This means that in some countries the actual cost will be less than, and in some others above, US\$44. In our illustrations we use a higher *hypothetical* figure of US\$60 in order to account for these variabilities and the potential need for the minimum health opportunities to go beyond simply life-saving services. But whatever the actual cost per country may turn out to be, it should

depend on evidence from country-specific studies. And in order to ease our illustrations we shall use a uniform cost of the minimum services (US\$60) in all our examples since this does not affect the validity of the obligation we are proposing and the mechanism we are recommending.

Current inequities in health financing between countries

Table 1 demonstrates the current inequity in health financing between Uganda and Kenya as a result of the different percentages of their domestically generated annual budget resources allocated to health.

Table 2: Inequitable health financing due to unequal budget allocations to health between Uganda and Kenya

Country	Total domestic budget per capita (US\$)	Health expenditure as % of total budget per capita	Absolute health expenditure per capita (US\$)	Global Minimum Health Exp. (GMHE) (US\$)	Deficit to Reach GMHE per capita (US\$)
Uganda	152	7.4	11.25	60	48.75
Kenya	226	5.4	12.20	60	47.80

Source: Constructed on the basis of figures from Uganda’s Health Sector Performance Report, 2012/13 and Kenya National Health Accounts 2009/10.

□ *Total Budget Per Capita has been calculated using Actual Health Expenditure (from public domestic resources) for each country as a percentage of total domestic budgets (without external funds).*

Table 1 shows that Kenya’s Total Budget per capita for 2009/10 (excluding aid) was around US\$226 and only 5.4 per cent of it was allocated to health, generating US\$12.20 per person. In the case of Uganda the domestic budget was around US\$152 per person, and 7.4% of this was allocated to health leading to US\$11.20 per person. This means that if we *assume* the average cost of the minimum health opportunities to be US\$60 in both countries, it means that in order to reach this target Kenya will need extra US\$47.80, while Uganda’s deficit will be US\$48.80. But since Kenya is wealthier (higher GDP/budget per capita) than Uganda, Kenya can allocate to health a smaller percentage of its budget than Uganda to reach the same absolute per capita

contribution or even higher as table 1 shows. This implies that these two countries are carrying disproportionate burdens in financing the global minimum health opportunities. This is an example of inter-LIC inequity in global health financing.

Hence, in order to equalise the financing burden between the two countries there is need to specify an optimal percentage of domestic budget resources which all LICs should allocate to their health sectors and then proceed to calculate the shortfall for each of them needed from external health resources. This will ensure that each country's size of claim on external resources is proportionate to its level of poverty and in relation to claims of other health-aid seekers. For example, if LIC financing obligation was to be set at Kenya's 5.4 per cent (in table 1) the whole of the current shortfalls for both countries (and even more) would become a HIC obligation. If it were set at Uganda's 7.4 per cent, Uganda would receive the whole of her current shortfall from external resources, while Kenya would be entitled to less than it could claim if the minimum were set at 5.4 per cent. Yet, if the Abuja Declaration's target of 15per cent referred to earlier *were* to be accepted as an optimal financial obligation for LIC governments, then the resulting lower deficits to reach the GMHE per capita would entail that both countries would have to contribute additional resources to cover part of their current shortfalls, but Kenya would have to contribute proportionally more compared to Uganda given her higher GDP. In other words, by equalising these countries' burden of health financing, their current relative claims on international resources change in favour of Uganda which currently bears a disproportionate burden in relation to Kenya. The moral essence of this point is that since justice requires proportionate distribution of burdens/costs, this change in relative claims which is in favour of Uganda is morally justified and necessary.

Earlier we mentioned that there is a widely shared view that most LIC governments allocate negligible percentages of their annual domestic budgets to health. Therefore, if this is true, then it implies that if the whole of LICs' current shortfalls is demanded from HICs, there will be disproportionate burden sharing between LICs and HICs because LICs are imposing part of their obligation onto HICs. Hence in our next illustration we shall use a higher percentage which was recommended by the African Heads of States and governments. In the view of the African Heads of States and Governments as expressed in the Abuja Declaration of 2001, arguably, African

countries have the capacity to allocate at least 15 per cent of their annual budgets to improving health. So, for the purpose of this illustration we will *assume* 15 per cent of domestically generated annual budget resources as the optimal financial obligation for LIC governments. We will use it to demonstrate how fulfilling our proposed LIC government obligation leads to inter-LIC equity in global health financing^c and equity between HICs and LICs. However, there are a few important points to note about the Abuja target of 15 per cent. First, the Abuja Declaration does not specify whether 15 per cent is of the total government budget including external resources, or if it is a percentage of domestically generated resources only. Secondly, in the Declaration there is no independent justification of 15 per cent from the point of view of resource capacities of countries. Failure to take into count resource capacity might explain why most African countries have not lived up to their commitments, hence suggesting the need for an evidence-based financing target. But despite all these issues, for the *limited purpose* of our illustration we shall take this 15 per cent as a percent of domestically generated budget resources agreed upon by all actors.

Table 3: The effect of standardising financing obligation at Abuja’s 15% on inter-country financing equity

Country	Total Budget per capita (US\$)	Current domestic % of budget and resulting absolute per capita US\$ (X% = US\$)	Absolute US\$ from 15 % of domestic resources per country	GMHE per capita (US\$)	Deficit (US\$) per capita to reach GMHE (US\$ 60)
Uganda	152	7.4% = 11.2	22.8	60	37.2
Kenya	226	5.4 % = 12.2	33.9	60	26.1
Rwanda	130	23.3% = 30	19.5	60	40.5
Equatorial Guinea	6943	7.0% = 486	1041	60	No Deficit
Tanzania	126	11.1% =14	18.9	60	41.1
Namibia	2400	6.5% = 156	360	60	No Deficit

Source: Constructed from National Health Expenditure Statistics for Uganda and Kenya (table1); and Estimates for the rest of the countries’ Annual domestic budget per capita has been calculated basing on the 2010 Health Expenditure Per Capita as percentage of Annual health budget (without foreign resources) Provided by Afri-Dev. Info. 2013. (Post Abuja+12) 2013 Africa Health Financing Scorecard – Featuring Year 2000 to 2010 Indicative Progress Summary.

Table 2 shows how much health aid would need to be contributed by international donors if one sets a uniform obligatory level (obligation) of health financing for LIC

governments as percentage of their domestic annual budget at 15 per cent. For the two countries considered earlier (Uganda and Kenya) for example, their deficits will fall. In the case of Uganda it will decline from US\$48.8 (in Table 1) to US\$37.2 (Table 2); while for Kenya it will reduce from US\$47.80 (Table 1) to US\$26.1 (Table 2). This shows that the two countries would increase their respective domestic contributions by different absolute amounts as a result of increasing their budget percentages to health. Kenya would contribute an additional 21.7 US\$ (US\$ 33.9 – 12.2) and Uganda 11.6 US\$ (US\$ 22.8 – 11.2). The impact of this obligation on justice is that by doing their best in health financing, LICs will reduce the burden of health financing currently borne (or expected to be borne) by HIC citizens. In other words, on top of all LICs bearing an equal burden of financing the minimum health opportunities per capita, the resulting deficits will be a fair size of obligation for HICs since LICs will have reached a level where they are *unable*, rather than *unwilling*, to allocate more resources to health.

Further, given that LIC governments need to increase their domestic contribution to health [15], it will be possible to save external resources that are now going to countries (LMICs) ^d that have the capacity to afford the global minimum of health opportunities per capita without international resources if such countries fulfilled their 15 per cent or whatever the size is of this minimum obligation will turn out to be. Such countries would be, for example, Equatorial Guinea and Namibia in Table 2, since they would have “No Deficit”. With the possibility of coordinated global health financing, especially external health financing to cover the GMHE per capita, it would be possible to redirect some of the external resources currently going to countries like Equatorial Guinea and Namibia to countries which, even after allocating 15 per cent or more of their domestic budgets to health, such as Rwanda, cannot raise the needed GMHE per capita estimated at US\$60. The underlying moral reasoning here is that it is unjust to give assistance to countries which are, or can be, above the targeted threshold of health-opportunities without assistance before sufficient assistance is given to others which have not yet reached, and cannot reach, the same threshold without extra assistance by virtue of their more constrained resource capacities. In other words among LMICs there are some countries which are capable of fully financing the minimum health opportunities for their citizens without external assistance yet such countries are currently receiving health aid before poorer ones get

what they need. Our view is that when such countries claim external resources before worse-off countries get enough to cover their minimum health opportunities, then such claims (by better-off countries) are unjust. So far this category of moral reasoning is evidently lacking in the current manner in which global health is financed, particularly international health resource transfers. This poses a serious threat to the efforts and hope of achieving global health equity.

Presently, if we go by actual health financing statistics among WHO African region Member States, in 2010 Equatorial Guinea and Namibia allocated only 7 per cent and 6.5 per cent respectively of their annual domestic budgets' resources to health and they were able to raise as high as US\$486 and US\$156 per person respectively; yet at the same time, between 2000 and 2010 Equatorial Guinea received a cumulative total of US\$30.50 million from the Global Fund alone; while Namibia received US\$187.72 million [20]. Hence, from the point of view of what constitutes just or unjust claims on external resources as described above, the amount of Global Fund resources claimed and received by Namibia and Equatorial Guinea constituted *unjust claims* on international health resources. This is especially the case because there are some economically worse-off countries which could not raise the GMHE per capita even if they allocated as high as 23 per cent of their annual budgets to health (Rwanda); and also the amount of health aid they received could not enable them reach the GMHE per capita of US\$60. Therefore, since equitable distribution of burdens is a relevant factor in the pursuit of justice in global health, our mechanism implies that Namibia and Equatorial Guinea should not have received external health resources before Rwanda received what it needed to reach the US\$60 target. In this case Rwanda and all countries which our mechanism places in a Rwanda-like situation bore a disproportionate burden compared to Namibia and Equatorial Guinea in attempting to cover the cost of the global minimum level of health opportunities. Further since the GMHE per capita for each country is expected to cover the basic life-saving services it means that citizens of Rwanda on one hand, and those of Namibia and Equatorial Guinea on the other, had unequal access to these life-saving services. This illustrates the kind of financing inequities that would be avoided if all LMIC governments were required to allocate a specific optimal percentage of their annual (domestic) budgets to health as we are proposing in respect to LICs.

Again, going by the figures provided by the *2013 African Health Financing Scorecard*, it would have been possible to save and redirect Global Funds totaling to at least US\$1.02 billion from just 12 of these (African) countries. It should also be noted that this amount would have been saved at the current health financing levels (below 15 per cent) of these 12 countries. This implies further that instead of asking the entire deficit for the rest of LICs from the HICs, if a mechanism like this had been followed in resource fundraising and disbursement, the burden of HIC citizens could have been reduced even further and would be even fairer. At this point it is important to reiterate our disclaimer that the 15 per cent which we have used in this illustration does not have to be the actual size of LIC governments' financing obligation. Rather, it has been used to show how the obligation of LIC governments to allocate a certain uniform percentage of their domestically generated budget resources to health along with mechanism we have recommended have the capacity to lead to equity in global health financing.

One objection to our argument could be that HICs should not reduce their transfers to better-off poor countries which do not fulfill their obligations in order to be able to increase their (HICs) transfers to poorer countries that are in greater need. Rather, it may be recommended in this objection that HICs should continue to support the non-compliant better-off countries and at the same time increase their transfers to poorer countries. However, this objection ignores the fact this strategy rewards non-compliance and, therefore, maintains inequities in international health financing. This is so because there is evidence that for each dollar they receive in form of health aid, some LIC governments reduce their health expenditure from their domestic resources [28, 32]. This is corroborated by the evidence provided by the *2010 African Financing Scorecard* which shows that between the year 2000 and 2010, presumably due to the Global Fund and GAVI funds effect, health financing as percentage of domestic budget resources declined in 12 African countries [20]. It is important to note, however, that the decline in domestic funding in the wake of increased external resources could also be attributed to a number of macro-economic goals especially IMF budget ceilings in LICs [33]. However, IMF recommends ceilings for general social sector spending implying that if health is prioritised within social sector budget allocations there will be no need for extra fiscal space to accommodate an increase in health budgets. But even if we work within an IMF imposed budget ceiling, this does

not refute our general claim that we should agree on a level of domestic health spending, whatever that is, and use that level to work out an equitable distribution of international transfers of aid.

By and large, the illustrations above show, by the specific examples of Uganda and Kenya, that even though the burden borne by Uganda in financing health is higher than that of Kenya, Uganda still has lower health expenditure per capita from public funds than Kenya yet both countries compete for the limited external health resources without any assurance that Uganda will be given priority to Kenya in external resource (per capita) disbursements. This situation obtains between majority of LMICs. This means that the size of Kenya's claim on international health resources is unfair in relation to that of Uganda. In relation to HICs it is an unfair claim because Kenya is doing less than it can by virtue of its resource potential for health financing. To put it differently, when LICs allocate less than what might turn out to be their optimal obligation and then claim the entire deficit from HICs they (LICs) end up unfairly imposing part of their justified burden to citizens of both HICs and other LMICs. The whole problem of lack of uniform and stringent obligations of LIC governments in financing health leads to a disproportionate sharing of the burden of financing global health leading to inequity in global health financing. However, fulfilling LIC governments' minimum financial obligations for global health as proposed here along with the mechanism we have recommended will lead to equity in financing global health, in particular the essential (minimum) health package for all individuals globally; that is, financing equity between LMICs themselves, and between LMICs and HICs.

LICs' financing obligation and intra-LIC equity

In the discussion above we have illustrated how the obligation of LIC governments to allocate a certain uniform minimum percentage of their domestic budget resources to health can be effective as a mechanism for guiding equitable health resource contributions and disbursements globally, leading to inter-country equity. Now we will illustrate how, *in principle*, this obligation leads to equity in domestic health-financing and then suggest additional obligations that would make such equity a reality.

There is ample evidence that in nearly all LICs public spending on health disproportionately benefits wealthier citizens and also that health financing is very disproportionate in favor of the rich [7, 9, 10]. This is inequity in health financing and it strongly determines how much PHE as a financing mechanism is relied on in such health systems. In some LMIC health systems PHE as a percentage of Total Health Expenditure (THE) surpasses the total contributed by both public and donor contributions to health spending^e. This situation obtains in the financing of all health services even beyond the minimum health packages. And given the very high income inequalities in most LICs, the obvious consequence of high dependency on PHE, especially out of pocket payments, is that poorer individuals carry a disproportionate burden of financing the minimum health opportunities and, at the same time, they have very unequal access to these basic life-saving services.

In this illustration an important reiteration is that in order to *guarantee* the targeted minimum of health opportunities to all individuals, the whole cost for this minimum should be covered by public resources (contributed by both HIC and LIC governments) so that there will be no PHE for such services, at least at the point of service delivery. With regards to the impact of private health expenditure on health equity, the picture among most LICs is grim. In Uganda, for instance, PHE contributes about 50 per cent of THE, against 22 per cent and 28 per cent from domestic public and donor sources respectively [28, 34]. For Rwanda in 2006 these figures were 28 per cent, 19 per cent and 53 per cent respectively [35]; while for Kenya the same figures were around 36.7 per cent, 28.8 per cent and 34.5 per cent for private, public and donor funding respectively for the financial year 2009/10 [36]. Hence, with GINI co-efficiencies as high as 50.8 per cent for Rwanda in 2011 [37]; 42.5 and 44.3 for Kenya in 2008 and Uganda in 2009 [38] respectively, it means that the higher the PHE as percentage of national THE, the deeper the inequity in health financing. And as long as these domestic inequities remain within LICs, the consequence will remain – as Amouzou and others have discovered – that “economic inequalities with respect to health [U5MR] within developing countries contribute much more to the global health gap than might appear to be the case at first glance; [...]” [39]. In this regard it is important to note that reducing health disparities by *economic status* in LICs primarily requires intra-country equity in health financing which reduces the health costs of the poor through cross-subsidies and, therefore,

facilitates equal financial access to health services for all. This will be possible if LICs fulfil their minimum financing obligation.

In this paper we have been concerned with global health equity defined as access by everyone to a minimum level of health services. We recommend that the whole cost of the global minimum health opportunities per capita for each country be covered by pooled public resources (domestic plus external resources). Once this has happened there will be no PHE for this minimum, at least at the point of service delivery. Since our current concept of ‘global health equity’ neither targets equality in access to the highest health opportunities globally, nor the same health opportunities for LIC citizens as those of HIC citizens but a rather significantly lower minimum of health opportunities for all individuals, then as long as this minimum is financed equitably there will have existed global health equity as we have defined it.

Certainly there are other health costs other than those at the point of service delivery such as transport costs, time lost in caring for a family member, hours of work lost by patients etc. But all the same the obligation we have proposed will at least ensure equity in health financing at the point of service delivery which mostly hinders access to health services within LICs. With due regard to other sources of health inequities at a domestic level, given that most of these inequities have a financial implications we envisage that promoting and ensuring equity in health financing within LICs is the first necessary step in the right direction which should be followed by other domestic measures. Such measures may include ensuring efficiency, reducing geographical inequities, equitable priority-setting between health interventions (for diseases that mostly affect the poor versus those that affect the rich, or by sex, age etc.) etc., all of which will finally remedy the ills of inequity in global health which arise from domestic contexts. Therefore, given that an argument for this obligation presumes efficiency and equitable mechanism in health resource allocation among others and all of which are not true in most LICs, these two along with other requirements would constitute additional obligations for LIC governments as we have argued elsewhere with respect to general obligations for global justice[40].

In summary, if all LICs are required to allocate a uniform optimal percentage of their domestic budgets to health, fulfilling the resulting obligation by each country and

using the resulting deficits to determine the sizes of HIC governments' obligations to each LIC will have two kinds of effects: the pragmatic effect and fairness effect. From a pragmatic point of view, it will facilitate coordination in global health financing which is necessary to avoid the current duplications arising from uncoordinated international health resource transfers. It will ensure easy monitoring of international health resource flows so that health resources are directed to where they are mostly needed. Its fairness effect consists in ensuring equitable health financing between all countries and within countries for a certain minimum levels of health opportunities for all individuals globally.

Potential controversies

One of the potential controversies likely to emerge in implementing LIC obligations in health financing is how to deal with cases where poor countries do not to fulfil their obligations. The first issue is: what should be done if LICs *refuse*[41] to fulfill their obligations? Should the deficits resulting from this refusal be added to HIC obligation for the sake guaranteeing the targeted minimum? We believe that the answer should be no, for at least two reasons. First, it would encourage complacency among LIC governments if there is an automatic mechanism for covering deficits arising from *refusal* to fulfill their obligations. There will be no motivation for LIC governments to increase their domestic budget allocations to health. Instead the motivation might be in the opposite direction since the lesser the domestic resources they allocate to health, the more they would get in international health resource assistance. Rather, what needs to be emphasised here is that the argument for this obligation is based on the WHO premise that "Every country could raise additional domestic funds for health or diversify their funding sources *if they wished to*" (emphasis added), for example, by giving higher priority to health in their domestic budget allocations [15]. Following this premise we hope that it is possible to persuade LIC governments to do so even if it might require some minimum diplomatic nudging. On the other hand, if failure to fulfil their obligations is due to genuine scarcity of resources (*inability*) – say, due to deteriorating economy, unexpected epidemic such as the recent Ebola or war situations etc. which limit the capacity of countries to meet their obligations, then whatever deficits arise from such situations would justly be shared by all parties, or be responded to as a humanitarian situation. The second reason is that requiring HICs to cover deficits which arise out of LIC governments' *refusal* to fulfill their obligation

constitutes injustice against citizens of HICs and will, therefore, make global equity in health financing impossible since HIC citizens would have to contribute more than their proportionate percentage.

The second controversial issue is whether HICs should continue to fulfil their obligations of assistance even if LIC governments refuse to fulfil theirs or, whether international health resource transfers should be construed as rewards to those LICs whose governments fulfil their obligations. We want to emphasise that fulfilling obligations of HICs should not depend on whether LIC governments fulfil their own obligation, nor should international health funds to LICs be seen as a reward for fulfilling their obligations. This is because of at least three reasons: one, whenever they fulfil their obligations, LIC governments are performing their duty for which they do not have to be rewarded. Secondly, international health resources are owed to citizens rather than governments of LICs yet citizens in LICs have no significant influence, if any at all, on budget allocations of their countries like the Uganda example has revealed. Hence, even though governments in LICs refuse to fulfil this obligation their citizens would retain their right to international health resources. The third reason why HICs should continue to fulfil their obligations to LIC citizens even if LIC governments refuse to fulfil their quota of obligations arises from the crucial importance of health in protecting the sanctity of human life and its dignity as well as the centrality of health in ensuring other dimensions of human well-being. Hence, if HICs refuse to fulfil their obligations to the citizens of LICs in such circumstances they would be subjecting the citizens of LICs to a 'double-jeopardy'. For these reasons, HIC obligations to citizens of LICs should remain morally binding even if LIC governments refuse or fail to fulfil their financing obligations.

Conclusion

Achieving justice in global health requires different categories of obligations both by LICs, MICs and HICs. But given that financial resources are pivotal in fulfilling most of these obligations, without overlooking other potential categories of obligations our view is that in order to achieve global health equity it is important to start with ensuring equity in financing global health. Having realised that the current proposals and strategies to raise sufficient resources to that effect largely ignore LIC governments' obligations, we have proposed, defended and demonstrated the

importance of obligations of LIC governments, in particular their obligations regarding minimum health financing. All LICs should allocate to health a certain minimum percentage of their domestically generated annual budget resources as their quota of a global obligation to guarantee to all individuals globally a certain minimum level of health opportunities. The mechanism we have recommended for determining each country's obligation in covering the cost of minimum health opportunities along with the fulfilment of the resulting obligations will ease coordination in global health fundraising and resource disbursements. This will ultimately lead to global equity in financing a certain minimum level of health opportunities for all individuals globally. However, this obligation can be exploited to wrongly justify withholding international health resources to very poor countries, especially to those which are potential beneficiaries of redistribution but refuse to fulfill their obligations. But given that the obligation to contribute to international health resources is owed to the citizens of LICs not governments per se; and given the special nature and value of health in protecting the sanctity of human life and its dignity among others, the failure of governments of LICs to fulfill their obligations should not exempt HIC governments from fulfilling their share of obligations to LIC citizens.

End notes

^aWe recognise that there are many obligations that are necessary to achieve equity in global health but for lack of space we are limiting our current discussion to one of them – equity in financing global health.

^bEven though Ooms and Hammonds are primarily concerned with HIC obligations to give health aid, their analysis implies a belief that LIC governments ought to bear obligations too.

^cWhat we have done here is a hypothetical illustration. We presume (and recommend) that the process of determining the actual optimal financial obligation of countries and their possible enforcement measures will be evidence-based (especially regarding LICs' resource capacities), participatory and democratic involving all concerned countries in respect of the principles of national autonomy and sovereignty (and the possible limits of these principles).

^dEven though this argument is centred on obligations of LICs, the mechanism suggested implies that this obligation ought to be borne by all countries that rely on, or need, external resources to reach the GMHE per capita.

^e According to the 2012 *WHO Global health expenditure atlas*, in 2010, within the WHO African region alone, in at least 13 countries PHE for health is more than 50 per cent of THE with the highest at 88 per cent in Guinea.

List of abbreviations

GAVI – Global Alliance for Vaccines and Immunisation; GDP – Growth National Product; GMHE – Global Minimum Health Expenditure; HIC – High Income Country; IMF – International Monetary Fund; LIC – Low Income Country; LMIC – Low and Middle Income Country; OPP – Out of Pocket Payment; PHE – Private Health Expenditure; THE – Total Health Expenditure; U5MR – Under-Five Mortality Rate; WHO – World Health Organisation

Competing interests

The authors declare no competing interests.

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Authors Contributions

JB originated the idea and shared it with RL for guidance. JB went ahead to draft the manuscript and the RL provided critical comments regarding how the manuscript can be improved by suggesting new ideas which were integrated in the manuscript. The manuscript moved back and forth between the two with a number of discussions until both authors agreed on the final version of the manuscript.

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Chapter 5

General Conclusion

5.1 General Claim and Nature of Reasoning

The major contribution of this work is the argument for, and demonstration of, a claim that ‘in the pursuit of global justice, particularly justice in global health, there is need to identify and implement obligations of resource-poor country (or LMICs) governments as *necessary complements* of those of high income country governments in an effort to achieve a global minimum distribution of goods and services. Particular concern has been on what it takes to achieve a global minimum distribution of health opportunities in form of health of goods and services expressed as the Global Minimum Health Expenditure (GMHE) per capita without losing sight of equity. Bearing in mind the ethical requirement of ‘proportionate distributions of burdens/costs’; and using the case of equity in global health financing as a key step towards equity in global health, this work has argued for an obligation of poor countries to allocate a certain minimum and uniform percentage of their domestically-generated annual budget resources to health as they (LICs) await external (donor) resources to cover their shortfalls. The key moral reasoning at the heart of this work is that in the pursuit of justice, particularly distributive justice, it is not enough to simply enquire into what the destitute needs in order to be restored (or lifted) to the desired threshold distribution of material and social well-being; but it also *requires* an enquiry into what the victim could have done or can do in order to avoid or mitigate harm the gravity of destitution, and, at the same time, make it easy for the system of distributive justice to help them reach a position which is regarded as just. This form of reasoning about distributive justice entails a presumption against moral responsibility on the part of the potential beneficiaries of redistribution in the way such destitution arose and, or persists. Any effort towards distributive justice which does not reflect this mode of reasoning does not guarantee justice. So, the argument for obligation of poor countries (or LMICs) in the pursuit of global justice, particularly justice in global health, is based on the claim that current efforts to ensure global justice are for the most part silent on stringent obligations of the victims of global injustice (LMICs) or what I have called the potential beneficiaries of a global redistribution.

5.2 Nature and Scope of Discussion

In this work I have been primarily concerned with what it will take to achieve global justice, particularly justice in global health. In order to arrive at what it will take to achieve justice in global health, I have placed the pursuit of justice in global health in the broader context of global justice. I have started by noting that global justice in general requires three categories of obligations: obligations relating to international law, obligations relating to the need for (re)designing and implementing a global institutional regime which distributes power and opportunities to countries and individuals therein equally and, thirdly, obligations necessary in order to offset global market failures and other unavoidable factors that cause destitution in the world. I have called the latter category ‘obligations of countries for global distributive justice’. My position on these categories of obligations has been that *all* of them *must* be fulfilled if the idea of global justice is to be complete and its aspirations achieved. For that matter I have observed that any account of justice that ignores the importance of any of these categories (of obligations) remains incomplete, while one that explicitly denies the necessity of any of these categories is out rightly flawed. This position applies to obligations to ensure justice in all aspects of human life including health. That is, the achievement of justice in global health requires that all countries adhere to whatever contents of international law relevant to health, ensure that all global political/social institutions distribute opportunities for survival and good health to all individuals in all countries in a just manner and, finally, all countries bear *morally binding obligations* to contribute to the achievement of the global minimum distribution of health goods and services (health opportunities).

Out of these three categories of obligations I have been primarily concerned with the third category of obligations which I have called ‘obligations of countries for global redistributive justice.’ I have noted that the weaknesses within the debates about general obligations for global distributive justice are reflected in the current efforts to achieve justice in global health. Therefore, in order to understand issues (strengths and weaknesses) in efforts towards justice in global health, these issues need to be understood against the backdrop of the discussion of the general obligations of countries for ensuring global distributive justice. The weaknesses identified in the current debates about countries obligations for global distributive justice point to the necessity of an enquiry into, and implementation of, obligations of resource- poor

countries (or LMICs) in ensuring or facilitating the achievement of global justice, particularly justice in global health. Within the broader subject of justice in global health I have limited my illustrations to obligations relating to equity in global health financing as one of the key obligations which must be fulfilled in order to achieve justice in global health. Therefore, the particular argument of this work has been on obligations of poor countries in ensuring justice in global health, particularly equity in global health financing.

5.3 Issues in Debates on General Obligations for Global Distributive Justice

Given the nature of the discussion in this work as explained above, the point of departure has been an examination of the general trend in discussions about global justice, particularly global distributive justice. There have been two concerns about the current discussions of general obligations of countries for global distributive justice: One has been a *tendency to deny* the existence of *morally binding* transnational obligations for global distributive justice. The second and major concern has been an observation that even though the debate about the existence of these obligations were to be concluded with an affirmative answer, as I have argued, the implementation of this affirmed position in itself does not guarantee the achievement of global distributive justice. This is because it ignores corresponding obligations of potential beneficiaries of redistribution, a practice that misses the key concepts that underlie this work – *complementarity* of obligations and *equitable* distribution of burdens.

The dominant issue in these discussions is a debate regarding whether there exist morally binding obligations of countries to ensure global distributive justice. Liberal cosmopolitans affirm these obligations on the sole basis of our shared humanity. On the other hand, without attempting to deny this universally shared metaphysical attribute (shared humanity and moral equality), Statists argue that in addition to this shared attribute, robust principles of distributive justice and obligations which follow from such principles are justified by what is has been called ‘associative duties account’. The associative duties account regards a country or a state as an association in which people engage in cooperation for mutual benefit and also and where those individuals are subjected to the same coercion. According to Statists it is this ‘cooperation’ and ‘coercion’ in the association that justify the application of robust

principles of distributive justice. Their arguments directly imply that there is nothing like a global association which might justify the application of the liberal principles of justice and the resulting obligations at a global level. However, an examination of this debate has revealed that the Statists account for the existence of morally binding (and potentially enforceable) obligations of distributive justice at a national level can be consistent with morally binding transnational obligations for distributive justice, although such obligations may not be as demanding as those at a national level. This position has been claimed to fit well with Nussbaum's "minimal conception of social justice" once this conception has been extrapolated to explain the nature and scope of current claims of global distributive justice. However, having made some observations in the process of affirming this position, one thing has emerged clearly: the current trend in discussions of global justice are for the most part blind at what it *necessarily* takes to achieve global justice with *equity as the ultimate concern*. In short, by concentrating almost exclusively on arguments for resource transfers from HICs to LICs without enquiring into and enforcing obligations of LIC governments themselves, the trend does not guarantee the achievement of global distributive justice. It is for this reason that I have found it practically and morally necessary to attempt an enquiry into possible obligations of developing countries in ensuring global justice, in particular, justice in global health using the illustrations from current efforts in global health financing.

As a matter of emphasis, my arguments in this work should not be interpreted to mean that those who are arguing for international resource transfers from HIC to LICs are wrong or that their undertaking is unnecessary. It would also be a wrong interpretation of my arguments if they are construed to mean that my own undertaking is more superior to those who argue for resource transfers from developed to developing countries. Instead, my arguments are intended to emphasise the *complementary nature* of HIC obligations and obligations of LIC governments to the extent that this complementarity is a *necessary* condition for the achievement of global distributive justice. I acknowledge that arguments for international resource transfers are a necessary step towards global distributive justice. My recognition of the necessity to undertake the task of defending the necessity of resource transfers from the global rich to the global poor is based on the real scarcity of resources in developing countries. It is also based on the evidence of the historical and current global circumstances of

unequal distribution of power (both political and economic), unequal distribution opportunities such as trade and finance, the coercive regime of some institutions of global and regional governance such the International Financial Institutions (IFIs), regional trade blocs etc. There is no doubt that all these global socio-economic circumstances which existed from times of slavery and slave trade, to colonialism and the current integration of the global economy impact, mostly negatively, LIC governments' capacity to benefit from their own resources or even undertake certain economically productive projects and yet, these same circumstances operate(d) to the benefit of HIC citizens whether directly through HIC governments or through multinational companies and corporations. I have acknowledged that indeed this undertaking is worth pursuing even more vigorously because despite the wide political recognition of countries' joint obligation for global distributive justice through international cooperation by almost all wealthy countries, most of them do not fully comply with this obligation and the consequence has been the deepening of global injustices. It is in this regard that I have attempted to account for the futility of obligations of countries for global distributive justice. In this endeavour I have attempted to show why both domestic and external obligations have been futile and what ought to be done about it if there is to remain hope for global distributive justice. Bearing in mind the above global circumstances I have recommended that since these circumstances affirm the existence of morally binding obligations of countries for global distributive justice, and given the reasons for the futility of these obligations, these obligations should be precisely specified and where necessary enforced in order to secure wide compliance with them.

5.4 Major Concern

The major concern in this work has been an attempt to justify, with illustrations, both the *moral* and *practical necessity* of conceiving and implementing obligations of poor countries (or all countries which need assistance to reach a certain minimum level of material and social well-being) in ensuring global justice and in particular global distributive justice with the ultimate focus on possible obligations of developing countries in the pursuit of justice in global health. The necessity of enquiring into poor country obligations has been reflected in in two key ideas: The first idea is the 'complementarity of obligations of HICs and (LMICs)' as a practical necessity if

global justice is to be achieved. That is to say that whatever obligations of high income countries might be, they *must* be conceived as complements to those of LIC governments. The major reason has been that since external obligations are primarily fulfilled through the agency of LIC governments, then it means that unless such governments fulfil certain obligations, external efforts cannot improve the life opportunities and well-being of the citizens of LICs. With respect to Uganda for example, the argument is that given the evidence of, and extent of corruption and bad governance and the manner in which these make it impossible for external resources to benefit the citizens, poor countries in a Uganda-like situation ought to bear obligations for ensuring that external resources trickle down to the poor citizens for whom such resources are primarily intended. It should be easy to see how such an obligation is a *necessary* complement to obligation of HICs to transfer resources to Uganda if the fulfilment of the latter obligation is to have the intended effect of improving the lives of poor Ugandans. The idea of the complementarity of obligations of HIC and LIC governments is more of a *practical necessity* though it has some moral connotations.

On the other hand, the *moral necessity* of identifying and implementing obligations of LICs in the pursuit of global distributive justice arises from the conception of *justice as equity* or the claim that equity is a *necessary* condition for the existence of distributive justice. In this case the concern with equity is two-pronged: equity in access to a certain threshold distribution of goods and services (or opportunities for survival and well-being) and equity in sharing the burdens, especially costs, of achieving the targeted minimum distribution of such goods and services. The emphasis of ‘equitable access’ rather than simply ‘equal access’ is a recognition of the fact that different people in different contexts (social, economic, geographical etc.) need different types and amounts of goods and services to achieve equal levels of well-being.¹⁷

Further, the concern for *equitable distribution of the burdens/costs* of ensuring a minimum distribution of goods and services for all individuals globally has been the most central issue. The key argument has been that ‘on top of ensuring that every individual has *equal access* to the minimum goods and services *they need in their*

¹⁷ See Amartya Sen’s discussion of the relationship between goods the achievement of functioning (beings and doings).

special circumstances in order to ensure basic well-being, the costs or burdens to that effect *must* be proportionately shared between all the actors involved'. In this case the actors are national governments of all countries as agents of their citizens. The idea of proportionality of sharing the burdens in this case is a requirement to take into account the resource capacities of different sets of actors (HICs and LMICs) as well as differences in resource capacities within each set of actors. It is these two major ideas – 'complementarity of obligations' and 'equitable distribution of burdens', which justify the claim of the necessity of obligations of poor countries in ensuring global justice, in particular global distributive justice.

5.5 The case of Global Health Equity

In order to divest my arguments of abstractions, I have attempted to illustrate my argument for obligations of poor countries in ensuring global distributive justice by examining current global efforts to ensure justice in global health. I have not provided any special justification for choosing health because of two reasons. One is that I have taken it for granted that health is pivotal in affecting the survival of human beings as well as their well-being. Besides I have taken it as common knowledge that good population health has a direct and huge impact on 'economic growth' and 'human development'. Other implicit justifications for giving priority to health are the sanctity of human life and its dignity all of which are primarily threatened by ill-health.

Following the above background as the context in which to understand current issues in efforts to achieve global distributive justice, I have shown how current strategies in terms of proposals and actions aimed at achieving justice in global health suffer from the same fate as those in current efforts (debates) for general obligations of global distributive justice. In both of these cases the strategies are lop-sided in a sense of focusing the whole attention on arguing for resource transfers from high income countries to low and middle income countries. I acknowledge the real scarcity of health resources among developing countries and I have also pointed at the current disproportionate allocation (distribution) of health opportunities globally, particularly financial resources, to the disadvantage of the global poor. From this point I emphasized the necessity of health resource transfer from the global rich to the global poor. However, and most importantly, I noted and went ahead to demonstrate how this trend (health resource transfer from the global rich to the global poor)

alone and in itself cannot succeed in achieving justice in global health. The emphasis of ‘alone’ and ‘in itself’ implies that health resource transfer from the global rich to the global poor is a *necessary but not sufficient condition* for the achievement of justice in global health. In other words, this is an emphasis of the need to treat obligations of rich countries and those poor countries as *necessary complements* in the pursuit of justice in global health – both HIC and LICs must fulfil certain obligations if justice in global health is to be achieved.

The centrality of ‘equity’ in the concept of justice has been pivotal in the specific illustration regarding obligations of poor (or LMIC) countries in the pursuit justice in global health. Using the case of equity in global health financing, I have demonstrated that global justice, understood as guaranteeing for every individual a certain minimum of health opportunities expressed as GMHE per capita, requires that the cost for covering this minimum be distributed equitably between the potential health resource donor countries and health-aid recipient countries. The moral reasoning involved in this requirement is that even though external actors bear certain obligations to transfer resources to the poor countries, such obligations are not unlimited. Justice in this case requires that obligations of each set of actors ought to be proportionate in terms of each actor’s resource capacity as well as the comparative burdens borne by each actor and set of actors. It is in virtue of this insight that a mechanism for ensuring equity in global health financing has been proposed. In summary, the mechanism requires that all poor (or all potential health-aid recipient) countries bear a stringent obligations to allocate a certain minimum and uniform percentage of their domestically generated resources to health. Given that it is possible to establish for each country the total cost of the minimum health opportunities (whatever the content of this may be), whatever deficit remains to cover this total after the absolute figure (US\$) from each LIC government has been known (from the minimum percentage of its domestically generated resources), this specific amount of shortfall should constitute a morally binding and potentially enforceable obligations for the external actors (HICs). From the argument following the futility of obligations of countries for global distributive justice, it is this specificity (precision) of the moral requirements on each actor and set of actors with the possibility of enforcement for these obligations that will increase the possibility of guaranteeing to all individuals globally a certain minimum level of health opportunities expressed as GMHE per capita.

I have gone ahead to argue that ‘on top of poor countries being required to act in ways that will achieve inter-country equity in health financing, they have another obligation to ensure internal or domestic equity in health financing between individuals and/or households. This same obligation is achieved through the same mechanism which requires all potential health-aid recipient countries to allocate a certain minimum percentage of their domestically generated annual budget resources to health. This has been shown to work in the following way: bearing in mind that inequities in health are majorly associated with health costs, particularly PHE, the whole cost of the minimum health opportunities ought to be covered by pooled public resources; that is, a combination of domestic resources and external resources. The reason for this has been that given the extent of income inequalities in most poor countries accompanied by very unequal health needs, any reliance on PHE, however small it is, will lead to deep inequities in both access to the targeted minimum health opportunities as well as the burden of financing those opportunities. And further, unless domestic equity in access to health and health financing is achieved, then it is impossible to achieve justice in global health. This is another way of emphasising the complementarity of obligations of HIC governments and LIC governments in the pursuit of justice in global health.

5.6 Further Remarks and Recommendations for Further Enquiry

5.6.1 *Going beyond the Hypothetical*

In our illustration of LIC governments’ obligations for contributing to or facilitating equity in global health we argued that LIC governments should increase the percentage of their domestically generated resources to health as a starting point. This illustration has been primarily hypothetical intended to show how specifying specific uniform targets (percentage of budget) for health financing for all potential health-aid recipient governments is necessary to ensure inter-country equity in global health financing. The choice of a hypothetical increase in LIC domestic budget allocations is informed by the view by expressed by the World Health Organization that LIC governments need to increase the amount of their domestically generated resources to health as shown earlier. With respect to Africa, the same view (regarding increased resource allocations to health) is reflected in the 2001 Abuja Declaration in which the African Head of States and Governments observed and recommended that each member state should increase their health budgets to health to 15 per cent of their

GDP. Further with reference to the sustainability of progress in MDGs, the UNDP has cautioned about the danger of poor countries' overdependence on external resources and has therefore suggested that countries need to increase their own investment in health as they look elsewhere forward to external assistance. What should be noted about all these views and recommendations is that, except the Abuja Declaration, none of the rest specifies the actual amount of resources or proportion of annual budget that should be allocated to health. Secondly, none of these recommendations, including the Abuja Declaration, justifies its recommendations from the point of view of countries' resource capacities. Therefore my recommendation is that as the first step towards implementing low income countries' obligations in health financing, an enquiry should be made to establish the actual optimal percentage of domestically generated resources within those countries that should be allocated to health. Once this optimal level has been agreed upon after taking into consideration the resource capacities of LICs, then it will be easy for each country to fulfill its obligations, and there will be good reasons for diplomatic nudging against those who will display unwillingness to fulfill their quota of obligations.

Further our illustration used a hypothetical amount of resources necessary to guarantee the minimum health opportunities. We have used an arbitrary GMHE per capita of US\$60; others have used (also hypothetically) US\$40, while the WHO estimates the "minimum spending per person per year needed to provide basic, life-saving services" to be US\$44. Since the WHO states one figure (US\$ 44), it means that this is an average cost rather than country-specific cost. Therefore, since the mechanism proposed requires establishing the actual cost of providing basic or minimum health goods and services and yet these costs differ in many countries or regions, there is need to enquire into country-specific, or at least WHO region-specific, health needs and their costs per person. It is this actual cost per person that should be used to determine the total cost required by each country to achieve the minimum health opportunities for all individuals in that country. In turn it is this total that must be fully covered from the pool of public resources contributed by both domestic governments and external governments.

5.6.2 Obligations beyond Health Resource Contributions

Within health systems, whether domestically or globally, there are many factors that impact on health equity other than health financing. One of these is health resource allocation. It is one thing to have the requisite resources in the public pool and it is another for such resources to be allocated in a manner that will ensure *equity in access* to the target health services. Therefore, all things being equal (such as efficiency in allocation) governments should bear an obligation to devise and implement health resource allocation mechanisms that will *guarantee* equitable access to the targeted minimum health opportunities. Within the concern about equitable access, governments should take into account geographical access of health services. Generally, since it has emerged clearly that in the pursuit for justice in global health it is necessary to specify poor country (or LMIC) government obligations, more studies are necessary in order to identify all the relevant obligations of LMIC governments which when fulfilled would facilitate the achievement of justice in global health.

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