

# WORKSHOP ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND THE RIGHT TO DEVELOPMENT IN THE ASIA-PACIFIC REGION

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## BACKGROUND PAPER

*... one of the more important innovations of the UN Declaration [on the Right to Development] is the provision mandating states to remove "obstacles" to development arising from the failure to respect rights and freedoms. This means that the state itself will need to (a) observe and respect rights and freedoms as embodied in the international human rights Covenants and related instruments, and (b) address the need to reform state structures, institutions and policies which are an obstacle to the realization of these rights.<sup>1</sup>*

### Introduction

We are at the dawn of a new century, a century which will see unprecedented opportunities and challenges for humanity. These challenges and opportunities require us to learn from the tragic mistakes of the last, the bloodiest century in human history, and require governments to reassert their responsibilities for and to their peoples.

As a global community, made up of regional communities and national governments, there needs to be renewed emphasis on the ties that bind humanity together and on the need for international cooperation to meet the challenges humanity faces and to fulfill humanity's potential.

These ties that define our humanity and bind us to the earth, these responsibilities of government were eloquently articulated in the Universal Declaration of Human Rights after the bloodiest war of the bloodiest century.

For most of the following fifty years the Cold War and the long shadow of possible nuclear annihilation frustrated international cooperation to meet the more urgent needs of humanity in feeding, clothing and educating itself. Today the biggest threat to human peace and security is not nuclear war but the everyday reality of poverty for half the world's population. The growing gap between rich and poor is a symptom of the failure to make use of the opportunities that the end of the Cold war brought.

Yet today there is growing realization, recognized in the UN Conferences of the nineteen-nineties and in the regional meetings in Tehran and Delhi that the Universal Declaration of Human Rights is much more than eloquent promises. The UDHR

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<sup>1</sup> "A South Asian Perspective" in *Human Rights: the New Consensus*, Dr Neelan Tiruchelvam, Director, International Centre for Ethnic Studies, Law and Society Trust, Sri Lanka

provides the basis for international cooperation and the practical tools for planning and programming sustainable human development.

The challenge in guaranteeing the human rights of millions of people are enormous. In the developing world 507 million people are expected to die before they reach forty, 1.2 billion people have no access to safe water, 842 million adults – two-thirds of them women – are illiterate, one billion do not have adequate housing, 158 million children under five are malnourished, 800 million children do not finish primary school, and 1.3 billion people are living below the income poverty line. For every mother who dies per 1,000 live births in the developed world, 7 to 75 mothers from developing countries die. Infant deaths in developing countries is 4.5 times higher than in the industrial world. As Solita Monsod points out their human rights are violated just as surely as if they had been shot in the head.<sup>2</sup> And it is not only in developing nations that such violations occur. They are the result of poverty, poverty that violates basic human rights, poverty that is itself a denial of human rights, of the right to development. In the words of Mrs. Mary Robinson in her 1999 report to the Economic and Social Council, “the victims of poverty are denied almost all their rights – not only to adequate food, health care and housing but also to participation in the political process; access to information and education; fair legal treatment and the normal benefits of citizenship.”

We need to respond to the challenge of overcoming poverty and the denial of human rights in a constructive, coordinated and non-confrontational manner and in a spirit of genuine cooperation. It is governments who are accountable for the realization of human rights, but the various agencies of the United Nations, bilateral donor agencies, the international financial institutions and the private sector all have a role to play in the promotion of human rights through support for institution-building, human rights planning and human rights programming. These development activities need to be anchored firmly in the specifics of the international human rights framework, not merely as a general principle but in the formulation of programmes by using the tools provided by the International Bill of Rights and the other human rights instruments.

Just ten years after the UN General Assembly approved the Declaration on the Right to Development, the second Working Group on the Right to Development established by the UN Commission on Human Rights in 1993, presented its final report to the Commission on Human Rights. The Commission adopted the report and in doing so emphasized that “the right to development involves more than development itself; it implies a human rights approach to development, which is something new.”

In adopting the recommendations of the Working Group, the Commission<sup>3</sup> urged “states to pursue the promotion and protection of economic, social, cultural, civil and political rights and the implementation of comprehensive development programmes, integrating these rights into development activities.”

While the Working Group’s report is a valuable document which has served to frame the agenda for subsequent debates around the Right to Development it persists in treating the two terms – development and human rights – as separate and independent of each other. This conceptual separation would disappear if there had been greater understanding of the nature of human rights in the international human rights

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<sup>2</sup> Professor Solita Monsod ‘Human Rights and Human Development’, paper presented at the Oslo Symposium, October 1998

<sup>3</sup> UN Document E/CN.4/1996/L.11

framework and, in particular, of the core content of economic, social and cultural rights and their inter-relatedness with civil and political rights.

It is not only among Working Group members that an increased understanding of human rights would clear up the conceptual confusion. One of the challenges confronting those concerned with development is to ensure that what has now been accepted as the human rights approach to development is understood widely by communities and development professionals.

Evidence for an international trend among development and human rights practitioners to accept a human rights-based approach to development can be found in the policies of most donor agencies and those of the UN system. The UN Secretary-General, Kofi Annan himself has called for the integration of human rights within the UN development agencies and Mrs. Mary Robinson, the High Commissioner for Human Rights has made it part of her mission to ensure that the realization of economic, social and cultural rights and the right to development become part and parcel of the promotional work of her office.

With almost universal acceptance of the principle that it is governments that are responsible for the realization of the right to development and thus for the realization of civil, cultural, economic, political and social rights, comes a need to develop human rights indicators to enable human rights programming. This can only come about through the meaningful participation of all sectors of society, especially those whose rights are denied them. The challenge is to generate greater understanding and awareness of the human rights-based approach to development not only in the domestic arena, but also among international development actors such as the international financial institutions, donors and the corporate sector.

However, understanding and awareness is clearly not enough. The realization of human rights calls for cooperative and coordinated action at both the domestic and the international level.

### The Declaration on the Right to Development

*By placing the individual at the centre of development activities and proclaiming an integrated vision of all human rights, the Declaration is a vehicle for the indivisibility and complementarity of different categories of human rights and for recognizing the promotion and protection of all human rights as the basis and measure of sustainable development.<sup>4</sup>*

Since the Right to Development was formally accepted and declared by Governments at the United Nations in 1986, successive UN World Conferences and Summits have strengthened understanding of the Right to Development as a key human right and one that contributes to the realization of the Universal Declaration of Human Rights adopted fifty years ago.

The Right to Development focuses on people as full participants and the beneficiaries of development, and adopts the international human rights framework as the standard by which development is judged.

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<sup>4</sup> 1999 Report of the High Commissioner for Human Rights to ECOSOC, E/1999/ECN/21

The 1996 Working Group report emphasized that “the right to development involves more than development itself; it implies a human rights approach to development, which is something new.”

It outlined what it saw as general obstacles to the realization of the Right to Development

- A reluctance to give the implementation of the Declaration of The Right to Development priority it warrants
- The absence of strategies and programs at the international and national levels to address realization of the right to development
- The social consequences of international economic policies such as structural adjustment and foreign debt
- The lack of democratic participation in the formulation and evaluation of development at both the multilateral level and of civil society
- Insufficient cooperation and coordination together with inadequate resources allocated to realization of the right to development
- Inadequate attention to the environmental impact of development.

The Working Group pointed out that major obstacles within the UN system were the general lack of coordination between UN agencies, an apparent reluctance to adopt the concept of development outlined in the Declaration and the failure to place its implementation on the agenda of the Economic and Social Council. The High Commissioner for Human Rights has since made efforts to remedy this lack of coordination but there is still some way to go to overcome the tendency to separate economic development from social development and macro-economic policies from social objectives.

The Working Group concluded that the full attainment of the right to development can only be achieved by setting targets and objectives to both measure progress made and to induce governments to continue their efforts to realize the right to development.

The Working Group therefore proposed that governments should voluntarily submit reports on the application of the Declaration on the Right to Development,

*... the frame of reference would be the interrelation between development, human rights, democracy, as spelled out in the Vienna Declaration and Program of Action ...*

The Working Group emphasized that the realization of rights depended on knowledge of these rights by states, international and national organizations, communities and the various sectors that constitute civil society. It therefore called for the wide dissemination and promotion of the Declaration of the Right to Development and of the international human rights treaties so that people become aware of their rights.

Awareness, of course, is not enough. All must work towards the realization of rights, cooperatively and in a participatory manner. The Working Group identified the importance of economic, social and cultural rights in the context of the right to development. It made clear that economic rights are not synonymous with economic growth, just as social rights do not mean the same thing as social development. This is why there is such an emphasis on the International Covenants, not because they are legal documents, but because they provide the information from which the core content of each right can be deduced. The Working Group recommended therefore that the search for indicators to measure progress toward the realization of economic, social and cultural rights should be stepped up by states as part of greater efforts to promote these rights.

Taking up the theme of people's participation in decisions that affected their lives the Working Group asserted

*... Popular participation must extend to all aspects of community life, including the definition and formulation of development policies and programs, as well as their implementation, monitoring and supervision.*

The emphasis on popular participation has now come to be reflected in the policies of all of the international organizations active in the field of development. Participation, in fact, is the practical manifestation of the indivisibility of human rights. Wherever peoples' economic, social and cultural rights are denied they will individually and collectively call for their entitlements. Without the right to freely express themselves, people will not be able to call attention to the denial of rights, a situation which inevitably frustrates development itself. In the words of Amartya Sen

*...democracy can serve to enhance the political attention that vulnerable people get. The rulers have to listen to expressions of needs, frustrations, complaints that people may have ...*

*... This is one reason why no substantial famine has ever occurred in a democratic country. For one thing elections are not easy to win after a famine. Famines have, thus been confined to countries governed by colonial rulers, by one-party regimes, or by military dictators.<sup>5</sup>*

Thus the main guiding principles in the search for the full realization of the right to development are

- that the denial of civil, cultural, economic, political or social rights constitutes the major obstacles to development,
- that the human person is the central subject of the development process,
- that development policy should therefore make the human being the main participant and beneficiary of development,
- that while people must be responsible for their own development, the state remains accountable for the respect, protection and fulfilment of human rights,

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<sup>5</sup> Amartya Sen, 'A system that works best for all' from an essay re-published in *The Australian*, January 2000

- that international development actors also have an obligation to strive for the realization of human rights.

Finally, in the context of the economic dimensions of development, the Working Group highlighted the need for greater coordination between the work of different UN agencies and for greater transparency in the working of these agencies. It stressed the need for legislation to regulate transnational corporations and banks and the need to resume negotiations over codes of conduct. Appropriate tax and income-sharing policies need to be implemented to ensure equitable share of the outcomes of development and there should be further examination of a regime of international taxation – perhaps on currency exchange – to finance international cooperation.

### Economic, social and cultural rights

*The near universal acceptance of the Convention [on the Rights of the Child] highlights the fact that some economic, social and cultural rights have already taken the form of legal entitlements for more than half of the world's citizens – its children.<sup>6</sup>*

The Declaration on the Right to Development is one of many declarations and international instruments that stress the indivisibility and interdependence of human rights. There are very few people left nowadays who will argue that one set of rights must precede another because of local conditions or specific stages of development or under-development.

It is a mistake therefore to speak of generations of rights. The foundational document for the international human rights framework is the Universal Declaration of Human Rights whose principles of human dignity and justice are reflected in all cultures and all religions. The Declaration draws no distinction between civil and political or economic, social and cultural rights. It is unfortunate that the notion persists that any right takes precedence over another in any given situation even in the face of the Vienna Declaration and Programme of Action that unequivocally reaffirmed the indivisibility and interdependence of all rights.

The separation of the two 'sets' of rights – economic, social and cultural contrasted with civil and political – has an unfortunate history. The 1948 Universal Declaration of Human Rights makes no distinction among rights and it was only the advent of the Cold War which resulted in the perceived schism. The so-called 'Western' nations chose to put pressure on their adversaries in the Communist block by exposing the violations of civil and political rights by the undemocratic authorities in central and eastern European states, while the latter castigated the West for its neglect and denial of the economic and social rights of its citizens. Indeed, some Western countries still refuse to recognize that economic, social and cultural rights have equal standing in international law as civil and political rights and repeatedly – and wrongly – argue in international forums that the former are merely aspirational in nature rather than having any real content.

Fortunately, the body of literature on rights has been enriched by the work of scholars in both the west and in the developing world so that the perceived division between

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<sup>6</sup> 1999 Report of the High Commissioner for Human Rights to ECOSOC, E/1999/ECN/21

the two sets of rights is increasingly accepted as inappropriate. The jurisprudence on economic, social and cultural rights is developing a greater understanding of the practical obligations of states in the realization of human rights and the evolution of rights-based programming among donor agencies is putting flesh on the bones of international law.

It is important to recognize that the human rights in the International Covenants and Conventions are not merely legal documents that necessitate interpretation by lawyers and that are the purview of legal experts alone. Human rights are about values and principles and, most importantly, about people. Human rights are also about communities holding governments accountable - as they should in any democratic society - and being able to access their entitlements in dignity and honour.

That is why it is crucial for priority to be given to those whose rights are denied them. A relevant example in the context of the Asian economic crisis is the right to social security (Article 9 of the Covenant). This is all too often seen as simply the need to provide charity to the poor, the marginalized and the dispossessed. On the contrary, the provision of social security is an entitlement guaranteed by the Covenant. In the words of former Australian Aboriginal Social Justice Commissioner, Michael Dodson,

*Policies and programs which rest primarily on a perception of need and powerlessness subtly reinforce the powerlessness of the recipients who are seen as being given justice rather than as receiving their rights. The recognition of entitlements is in itself an act of empowerment.<sup>7</sup>*

### Duties of the state

The obligation of states for the realization of human rights is one of the most important guiding principles of the right to development. There is growing acceptance that these obligations fall into three general categories, the obligation to respect human rights, the obligation to protect human rights and the obligation to fulfil human rights.

The obligation to respect requires the state and all its organs and agents to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of individuals or impinging on their access to resources to satisfy their needs. It also requires that legislative and administrative codes take account of guaranteed rights.

The obligation to protect rights obliges the state and its agents to prevent the violation of rights by other individuals and non-state actors. Where violations do occur the state must guarantee access to legal remedies.

The obligation to fulfil rights involves issues of public expenditure, governmental regulation of the economy, the provision of basic services and related infrastructure and redistributive measures. The duty of fulfilment comprises those active measures necessary for guaranteeing opportunities for people to access their entitlements.

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<sup>7</sup> 1994 Report, Michael Dodson, Commissioner, Aboriginal and Torres Strait Islander Social Justice Commission

To put it more simply, the obligation to respect deals with legal and administrative arrangements, the obligation to protect focuses on the duty of government to prevent violations of rights by non-government agents and the obligation to fulfil focuses on government policies and resource allocations.

The provision of development assistance by the bilateral and multi-lateral development community is generally claimed to focus on helping countries with the fulfilment of economic and social rights. This claim is frequently based on a confusion that equates economic growth with economic rights. In the nineties donors added to their programmes ones aimed at human rights capacity and institution building. Regardless of the support provide directly by donors for either purpose, states are not relieved of the obligations to take action to focus on those whose rights are denied them and should tailor their negotiations with donors accordingly.

This increasing interest by international development agencies in human rights is an added argument for developing countries to become parties to the international human rights instruments. This is because the Covenants and Conventions can provide a framework for the negotiation with donors that could dovetail with the priorities of the recipient governments – the Committee on Economic, Social and Cultural Rights has specifically urged donors to provide assistance for the realization of economic, social and cultural rights.

### Human rights benchmarks

State obligations provide a means of identifying benchmarks and indicators for the realization of each right. In order to establish these benchmarks and indicators, development actors need to identify the extent to which each right is addressed in planning and programming and this calls for an understanding of the core content of each. Where expertise or resources are lacking, technical cooperation can provide assistance with the process of analysis as well as with the practical implementation of the human rights objectives that are formulated on the basis of the analysis.

It is important to bear in mind also that these obligations apply equally to states and agencies that provide development assistance. Human rights indicators should therefore be an integral part of the analyses of such bodies as the multi-lateral development banks and should be taken into account by all institutions that have an impact on development.

A human rights analysis should identify

- for each right the relevant existing legislation and bylaws, or legislation and bylaws that should be enacted, that either promote or hinder the realization of the right
- for each right the obstacles to the realization of rights caused by non-state actors and the state of existing enforcement mechanisms for the protection of human rights that are either applied or ignored
- the resources available and the priorities within government policies allocated to the realization of each right

- sectoral and geographic areas of greatest disadvantage in order to enable focus on these areas
- for each right programmes which already exist and those programmes which need to be designed to address the most vulnerable

The table below shows one approach to systematizing the human rights analysis for identifying benchmarks for each of the rights under analysis. While this is useful for the rights in both Covenants, it is particularly relevant to economic and social rights.

	National level	Local and regional level
Legislation		
Administrative regulations		
Enforcement mechanisms		
Resources available		
Policy priorities		
Participation		

### Rights-based programming

Development is only sustainable and realizable when its objective is the realization of all human rights. Accordingly many development actors have begun to speak of the ‘human rights approach to development’. This is not limited to bilateral donors but includes many UN development agencies such as the UNDP with its policy document, *Integrating Human Rights in Sustainable Human Development* and UNICEF that has taken on the Convention on the Rights of the Child as its mission statement.

There are three essential steps to a human rights approach to development:

1. The formulation of goals and implementation processes in human rights terms
2. An agreement by all stakeholders on appropriate performance indicators including
  - the establishment of realistic time frames for achieving objectives
  - concrete measures of progress
3. An evaluation of outcomes based on both human rights and meaningful participation

Development assistance should support governments - regardless of resource constraints - in

- ensuring that they satisfy their minimum obligations relating to each right
- planning strategies and programmes for the eventual fulfilment of all their obligations
- monitoring both the fulfilment and the obstacles to the fulfilment of these obligations over time

Both donors and recipients need to agree on a common approach to realize these aims. The basic essentials are

- a human rights analysis
- objective-setting with clear time lines
- programmes of action that are the responsibility of all levels of government
- effective monitoring of compliance and enforcement that involve all the stakeholders

The tables below outline a framework for setting human rights objectives based on the identified benchmarks for each of the rights in the human rights analysis. Because resources are so often lacking in the immediate term it is important to allocate realistic time lines for the realization of human rights objectives.

This does not relieve the obligation to take immediate action. On the contrary, immediate steps are essential and need to be identified as a matter of priority. The type of immediate action will become clear from the human rights analysis which will identify areas of worst disadvantage, discrimination or denial of rights. A human rights approach will place a premium on development action in these areas. However, the overall framework should guide development programming.

To take the right to education as an example, attention would be given to legislation that discriminates against girls, the provision of separate facilities for girls in schools, state or community bodies that supervise these, the budget allocation to ensure free and compulsory primary education, planning for education and the degree to which communities are encouraged to take responsibility for overseeing education.<sup>8</sup>

#### The setting of human rights objective for each right

	National level		Local and regional level	
	Immediate	Long-term	Immediate	Long-term
Legislation				
Administrative regulations				
Enforcement mechanisms				
Resources available				
Policy priorities				
Participation				

<sup>8</sup> According to Adrianus Mooy, ESCAP Secretary, some 37 million children in the Asia-Pacific region still do not attend school a decade after 155 countries pledged at a UN conference to educate children worldwide. Some countries, including China, have made progress in providing basic education, but the Asia-Pacific region accounts for 70% of the world's illiterate.

## Matrix for the implementation of human rights objectives

	Legislation	Administrative regulations	Enforcement mechanisms	Resources available	Policy priorities	Participation
Advocacy						
Increasing human rights awareness						
Capacity-building						
Resources allocated						
Participation						

The implementation of human rights objectives takes account of the situational analysis and the necessity to consider each right in its turn. It requires a process that is inclusive and based on adequate information and that takes its inspiration from a recognition that the poor are the principal target for development efforts.

Just as with more traditional approaches to development, the human rights approach to development must be based on a situational analysis. Traditional analyses have looked at economic indicators, the state of infrastructure, agricultural output, demographic data and so on. More recently account has been taken of gender equity, child survival, environmental sustainability, the provision of educational services and poverty alleviation.

A human rights approach to development calls for the objectives of development to be formulated in terms of the realization of human rights - civil, cultural, economic, political and social. In many cases the information for the analysis might very well be close to that obtained in more traditional approaches. However, they will be formulated with reference to the state obligations to respect, protect and fulfil rights and will take account of the degree to which these can be and are in fact being met. This information needs to be complemented from other sources including non-state sources.

Of great assistance to a human rights analysis are the comments and observations of the committees appointed to examine the periodic reports of governments under the provisions of the various human rights treaties and the findings of human rights institutions where they exist.

Human rights programming must carefully identify each of the rights concerned and incorporate this in national and local planning. This attention to detail is necessary to develop indicators and benchmarks by which success can be measured. It also enables civil society organizations to judge the direction and success of the development intervention.

Thus, for example, the realization of the right to work including the right of everyone to the opportunity to gain his/her living by work which she/he freely chooses or accepts can be measured to a certain extent in terms of already existing data but when viewed in human rights terms establishes priority areas which need to be addressed. This is the case with the right to an adequate standard of living, the right to the enjoyment of the highest attainable standard of physical and mental health or the right to be free from torture.

One absolute prerequisite is for those responsible for development programming to be better acquainted with the core content of the rights. This also underlines the importance of human rights education and awareness among all stake holders since the participatory process requires this information to be effective.

Finally, while it is a commonplace that some of the human rights cannot be realized immediately for all, there is an imperative to address immediately the plight of those who are most disadvantaged in society and those whose rights are most acutely denied them. Human rights objectives must, therefore prioritize the poorest and those who suffer the worst discrimination. This points to the need to formulate human rights objectives within realistic time frames so as to identify those goals which can be achieved immediately and those which are longer-term goals.

### Participation

The concept of 'meaningful participation' is key in this process. Participation is the manifestation of the inter-relation of economic, social and cultural rights with civil and political rights. Communities need to be able to speak out freely in demanding their entitlements and to express their views on decisions that most directly affect their lives. Only through a process of participation can they hold governments accountable in a free and democratic manner. Since the subject of development is the human person who is entitled to the benefits of development and to participate in the development process, it is clear that all must have the information necessary to make informed decisions and that their voices must be heard.

This participation must be actively promoted by all development actors and at every stage of the development process - including in the ability to lodge complaints, the expectations that these will be heard and the commitment that redress and compensation will be available.

### National Human Rights Plans

National planning very often lacks the time perspective that is demanded by a human rights approach. This is in the main the case with most developing countries which formulate aspirational plans that are often unrealistic. In a human rights approach to development the priority is given to the most disadvantaged and this extends from laws that may be discriminatory (and which can be amended virtually immediately) to the allocation of resources for the delivery of services to the most impoverished regions (which might take longer) and the enforcement of existing laws protecting human rights (which is a matter of political will).

Most countries in the Asia-Pacific region have long-standing processes for development planning whether formulated by specialist departments or simply enunciated in their budget and other central authority documents. These processes provide the economic framework for development within the country and set the priorities of the government of the day which reflects the collective wisdom of each country's leadership.

At the 1993 UN Conference on Human Rights in Vienna the proposal for the drafting of human rights action plans was adopted by consensus and incorporated in the

Vienna Declaration and Programme of Action. National human rights action plans would take account of local particularities, with each country starting from its own actual political, cultural, historical and legal circumstances. There would be no single approach to national human rights planning that would be applied to all countries. Each country would develop proposals suited to its own situation.

Despite the 1993 consensus on the desirability of national human rights action plans, only three countries in the Asia-Pacific region are known to have drafted a human rights plan and only two others have currently embarked on the process towards drafting their own plans. These and the plans from other regions can be of great assistance because they provide alternative models that can be adapted to the local context.

Human rights action plans can directly address the realization of the right to development because, in the words of the conclusions of the Regional Workshop on National Action Plans in 1999<sup>9</sup>, they serve to

1. Promote the universality, interdependence and indivisibility of human rights, including civil, political, economic, social and cultural rights as well as the right to development;
2. Encourage ratification of international human rights instruments;
3. Encourage the treaty reporting by the Governments that have acceded to/ratified international human rights instruments;
4. Strengthening national capacity for the promotion and protection of human rights;
5. Encourage the establishment or strengthening of national human rights institutions;
6. Pay greater attention to particularly vulnerable groups in society and ensure that effective steps are taken to address their situation;
7. Enhance and promote co-operation among government agencies as well as national institutions, national non-governmental organizations, local organizations and other representatives of civil society;
8. Integrate a gender perspective in the design and implementation of the plan;
9. Incorporate human rights education as a component of the plan.

A human rights analysis will be the first step towards the formulation of a national human rights plan. This serves to establish priorities and areas of immediate need. While economic, social and cultural rights will be included in the analysis, it is likely that institutions for the protection of civil and political will feature prominently in any initial plan.

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<sup>9</sup> Conclusions of the inter-sessional workshop on the development of national plans of action for the promotion and protection of human rights in the Asia-Pacific region, July 1999

National human rights plans must be national in fact as well as in name. This requires extensive national consultation to ensure ownership by all elements of society. The process is therefore especially important as it will serve as a human rights education tool that enables the citizens to acquire knowledge about human rights standards while providing an opportunity for the free expression of their views about the priority of the plan.

While national human rights plans must be comprehensive and integrate all the rights in the Universal Declaration of Human Rights, because they are action oriented they must remain realistic within an achievable time frame. This is why the country's development planners must be involved in the formulation of the human rights plan and must feel free to call on the international community, including the UN, for technical assistance in the implementation of the plan. One multi-lateral initiative that has been designed for precisely this purpose is the HURIST project.

### Human Rights Institutional Strengthening (HURIST)

One of the potentially most productive developments with relation to coordination in the UN system is the collaboration between the UN Development Programme and the Office of the High Commissioner for Human Rights (OHCHR). The UNDP's policy document *Integrating Human Rights with Sustainable Human Development* published in 1998 was an important breakthrough for a UN development agency. That document recognized that poverty is a denial of human rights and that the eradication of poverty is the way towards the realization of the right to development. It also recognized that development can only be sustainable through the realization of the full range of human rights – civil, cultural, economic, political and social. This represents an acknowledgment that is the human person that is the subject of development and that without a guarantee of rights, sustainable development is not achievable. The policy also accepts that people must be able to take part in the decision-making process that affects their lives through their involvement in the polity and that the relationship between the state and its citizens must be governed by the rule of law and by guarantees of justice for all.

One of the initiatives arising from the collaboration between UNDP and OHCHR is the Human Rights Strengthening Project (HURIST). This project is designed to identify methods and mechanisms for national capacity building for the promotion and protection of human rights and the application of a human rights approach to development programming at the national level. It offers a range of possibilities for national action and for international cooperation.

The UNDP and OHCHR through HURIST are in the process of piloting the project in a number of countries in the five regions of the world. The outcomes of these pilot are expected to lead to long-term projects which, with the help of international assistance, would serve as examples of best practice for other national circumstances.

The HURIST project is an ambitious move by the UNDP to implement its human rights policy and it aspires to achieve a number of concrete outcomes in its proposed four-year duration. These include

- guidelines and practical examples for national strategic plans on human rights,

- illustrations of means to mainstream human rights in development programming,
- increasing the number of ratifications of human rights treaties world-wide,
- enhancing the understanding of the human rights framework and its implications for action among a wide range of people responsible for human rights programmes,
- capacity-building among the staff of the UN agencies cooperating on the project.

In addition to these practical outcomes, the HURIST project intends to stimulate global dialogue on the social and economic implications of globalization which are “reflected in the ever-widening gap between rich and poor, marginalizing whole populations or groups within them, and in disregard for international standards in employment, the environment and the use of natural resources”.<sup>10</sup>

One of the most positive characteristics of the HURIST project is that it takes a long-term view to human rights capacity-building and programming. It avoids identifying ‘human rights projects’ – the more traditional approach to human rights among bilateral donors – and focuses on the issues of sustainability and institutionalization. HURIST thus makes a commitment to individual projects by building in continuing support from the assessment stage, to the pilot stage and eventually to the implementation stage. In this way there is a commitment to specific projects over time with technical cooperation offered at every stage.

The HURIST project is also an example of international cooperation in which bilateral donors are offered the opportunity to take part in a constructive manner by applying their special expertise to appropriate projects. This includes capacity building for the monitoring and evaluation the realization of rights. Here again national human rights institutions (where they exist) whose mandate includes reporting on the promotion and protection of human rights, would be in a position to play an important role in this monitoring.

### National human rights institutions

The number of independent national human rights institutions has grown in recent years. The Office of the High Commissioner has been active in promoting them and the Asia-Pacific region is fortunate in playing host to the first regional forum for national institutions<sup>11</sup>. This informal forum was brought into being in Manila in 1995 and has continued to grow in numbers and activities throughout the region.

According to the Paris Principles relating to the status of national institutions which outline the competence and responsibilities of national institutions, these should be given ‘a mandate as broad as possible’ and they should – among other tasks – ‘contribute to the reports which states are required to submit to United Nations bodies and committees’. They are therefore in an ideal position to assist with human rights situational analyses which can be made available to development actors in each

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<sup>10</sup> HURIST Programme Document, OHCHR, April 1999

<sup>11</sup> See the *Larrakia Declaration – Conclusions, Recommendations and Decisions*, Darwin July 1996

respective country and they can also provide support with the monitoring and evaluation of the human rights impact of development activities.

There is wide-ranging variation in national institutions depending on their respective charters. However, they are all expected to abide by the Paris Principles. They should be in a position to ‘examine legislative and administrative provisions in force ... and make recommendations ... in order to ensure that these provisions conform to the fundamental principles of human rights’. Since human rights are interdependent and indivisible, the mandate of national human rights institutions ought to ideally cover both the realization of economic, social and cultural rights as well as those of civil and political rights.

In the technical cooperation projects of the Office of the High Commissioner for Human Rights focusing on national human rights institutions, there is currently an emphasis on legislative and legal matters, with legal and administrative training of institution staff the main activity. However, there also exists a need to sensitize this staff to the nature of economic and social rights in order for the national institutions to be able to play a role in support of human rights-based development activities.

The Paris Principles also clarify the need to involve civil society organizations in the functioning of the national institution and stress that the institution should encourage public participation in the work of the organization: ‘the national institution shall ... develop relations with the non-government organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups ...’. This applies equally to the research functions of the institution.

We have seen the importance of human rights analyses in the formulation of development plans and of national human rights actions. This type of analysis is also important in the activities of national human rights institutions and is a prerequisite for the drafting of the UN’s Development Assistance Framework. It would make sense to avoid duplication of effort and resources by better coordinating the research functions of these different projects so that each complements the other to produce a country-specific human rights map.

### The United Nations Development Framework (UNDAF)

The first Expert Group on the right to development recommended that international organizations and UN agencies coordinate their activities in pursuit of the right. The need for better coordination among the UN development agencies was identified by the Secretary-General in his 1997 report ‘Renewing the United Nations: A Programme for Reform’. In that report he proposed a framework that would bring greater coherence, collaboration and effectiveness to United Nations development efforts at the country level in order to improve the well-being of the people served by the organization.

The United Nations Development Framework (UNDAF) is designed to help identify priorities for United Nations action in developing countries. It seeks to avoid duplication and waste, to harmonize the programme cycles of the United Nations funds and

programmes and to formulate common objectives and time frames “in close consultation with governments”.<sup>12</sup>

The UNDAF is based on the Common Country Assessment (CCA) – a country-based process for reviewing and analyzing the national development situation and identifying key issues as a basis for advocacy and policy dialogue. The CCA involves the government, non-governmental organizations, research institutions, local communities, women, the private sector, the donor community and the Bretton Woods Institutions.

The scope of the CCA covers national priorities and needs and the status of the follow-up to UN conferences and the implementation of UN conventions and declarations. Accordingly, the CCA should address, among others, the Declaration on the Right to Development and the implementation of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Since the initial proposal for the UNDAF, the Secretary-General, drawing inspiration from the Charter of the United Nations has also called for the integration of human rights in all of the UN’s activities. In response to this call, the United Nations Development Group has formalized the role of the High Commissioner for Human Rights in its deliberations and a number of UNDAF’s now integrate human rights in their document.

In this way the CCA and the UNDAF are following the major principles upon which a human rights-based approach to development is founded:

- ownership of the process by the government
- participation that includes all sectors of society
- coordination among development actors
- basis on the international human rights framework

This parallels the principles enunciated in the World Bank’s Comprehensive Development Framework (CDF). Indeed, the initiation of dialogue between the Office of the High Commissioner for Human Rights (OHCHR) and the President of the World Bank represents one of the potentially most creative collaborations dealing with development and human rights. The prospect of increased coordination between the UN’s development agencies, OHCHR and the World Bank presents a great opportunity for bringing some coherence in the field of both human rights and development. In solid partnership with governments and civil society such collaborative approaches as the CCA and the UNDAF could provide useful models for other international and intergovernmental institutions.

### International Financial Institutions

The international financial institutions have come under concerted criticism in recent years. Structural adjustment programs are designed to move countries toward outward looking economic development models by emphasizing export-led growth and smaller government and these have resulted in smaller budget deficits and eliminating

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<sup>12</sup> Report of the Secretary-General “Renewing the United Nations” A Programme for Reform” A/53/155

hyperinflation in many developing countries. The criticism from NGOs focus on economic, social, political and environmental problems together with the lack of transparency in negotiations between lenders and the government. Governments on the other hand take issue with the single economic model which is the condition for the granting of loans. Some argue that the impositions of conditions is an interference with national sovereignty. This conditionality now includes good governance criteria aimed at curbing fungibility and straight out corruption.

It is undoubtedly the case that the emphasis on controlling government budget deficits has resulted in the downgrading of basic services in many instances and the criticism has resulted in proposals for better social impact assessment mechanisms of structural adjustment programs. There is some weight to the argument that the imposition of a single economic model by some institutions goes against the principles of self-determination and international cooperation outlined in the International Bill of Rights.

In the face of this mounting criticism, the proposal for relieving the debt of the least developed countries is to be welcomed. However, the international financial institutions must begin to realize that some of the fall-out of their policies do lead directly to a denial of the economic, social and cultural rights of many. It is time that some accountability for the realization of human rights should be better understood and accepted by these institutions.

Another challenge for the structural adjustment approach is one generated by too great a reliance on deregulation associated with 'small government'. This is a similar issue that confronts states that have been decentralizing their services and administration. If it is governments that ultimately stand accountable for the realization of human rights, how will they go about meeting their obligations in situations where they have lesser oversight of service delivery providers because of decentralization or privatization?

*Governments have a legitimate and primary role in the fostering of social and economic equity within our community. Governments cannot ignore or contract out their responsibilities for the maintenance of a fair and inclusive community Markets are no substitutes for government responsibility.<sup>13</sup>*

The UNDP HURIST project proposes to support a dialogue on the effect and impact of globalization and issues such as these will necessarily feature on the agenda of this project. In the meantime the need remains for the international financial institutions to collaborate more closely with the UN's human rights mechanisms. Since these institutions are far more powerful in the delivery of development, this is a challenge that faces human rights organizations as much as recipient governments.

In this context the World Bank-chaired consultative groups that gather together donors to pledge grants and loans for developing countries provide a golden opportunity to engage in a dialogue on the best ways to promote and protect human rights in poorer countries. The Bank has seen a number of changes in its global policies in recent years.

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<sup>13</sup>'Don't Contract Out Responsibility', Robert Fitzgerald former President of the Australian Council for Social Services, *The Australian* January 2000

## The World Bank's Comprehensive Development Framework

“...by emphasizing the interdependence of all elements of development – social, structural, governance, environmental, economic and financial. The CDF approach is anchored in the following key principles: country ownership of the policy agenda; partnerships with all stakeholders; taking a long-term, holistic approach built on national consultations; and treating social and structural concerns equally with macroeconomic and financial issues ... not a blueprint but a compass that reflects the growing convergence of views on an approach to development.”<sup>14</sup>

January 1999 saw a breakthrough in global approaches to development thinking. The President of the World Bank, James Wolfensohn circulated *A Proposal for a Comprehensive Development Framework* for discussion within the Bank. In the CDF as it has become known James Wolfensohn posited a new holistic approach to development and a “better balance in policy-making by highlighting the interdependence of all elements of development – social, structural, human, governance, environmental, economic, and financial”.<sup>15</sup> The document was produced, in part at least, in response to criticism of World Bank policies and projects, not only from NGOs but, increasingly, from economists and government officials in developing countries. The Bank's own Independent Inspection Panel had taken a critical look at some of the Bank's activities and had been recommending changes for some time.

The economic crisis which affected the Asia-Pacific region in the late nineteen-nineties brought home as never before the vulnerability of state economies and the human cost of the structural adjustment policies of the international financial institutions in times of economic upheaval. Many Asian countries whose economies had been climbing suddenly saw the gains of recent years suddenly reversed and poverty skyrocketing.

The effect of these upheavals, as always, have had the greatest effect on the poor and the disadvantaged and this brought home as never before the need for social safety nets through the provision of social security. The Bank was in fact quick to offer support for this purpose to some of the worst affected countries in south-east Asia.

There are a constant themes running through the CDF. These include

- the concept of *partnership* whereby it is essential to include civil society as a means of giving voice to the poor,
- the importance of *coordination* that involves all development actors collaborating on activities based on a common understanding of problems to be addressed,
- the necessity of *ownership* of the development process by each respective country based on decisions that include all stakeholders, especially the poor.

It is amazing but not unexpected that the description of the processes required for the CDF parallel so closely those of human rights development planning. The recognition

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<sup>14</sup> James Wolfensohn, *A proposal for a Comprehensive Development Framework, A Discussion Draft*, January 1999

<sup>15</sup> *Comprehensive Development Framework Questions and Answers*, September 1999

of the need for extensive national consultation, agreement based on negotiation and dialogue, reliance on national priorities, the need for appropriate benchmarks echo the human rights approach as the following quote demonstrates.

*Building country ownership is a time-consuming process that requires mutual trust between the government and domestic stakeholders, and between the country and its external partners. It also calls for an inclusive approach through national consultations to define the national vision or framework and build reasonable consensus around it. It requires dialogue on benchmarking and diagnosis with the aim of increasing the country's room for maneuver.<sup>16</sup>*

#### A note on conditionality

In his report to the Human Rights Commission on the effects of structural adjustment policies on the enjoyment of human rights the Independent Expert, Mr. Fantu Cheru recommended that to ensure that loans to developing countries are used for sustainable growth and poverty reduction, conditions should be placed on recipient governments on how the loan is to be spent. He argued that for greater transparency and accountability on the part of the lenders as well as recipient governments and for monitoring of how loans are spent by representatives of government, donors and civil society.

A number of bilateral donors have also advocated that the provision of development assistance should be linked to the human rights performance of the recipient country. Most often this has been framed exclusively in terms of respect and protection of civil and political rights.

There is no doubt that donor governments and lending institutions have obligations and responsibilities for the development assistance they deliver. If nothing, else they are all accountable in the first instance to their constituencies and political reality dictates that they use assistance wisely. Therefore conditionality has a place in development policy provided it is used responsibly and provided that the process is clear and transparent to the stakeholders in the recipient country. Governments should always retain the option to suspend or withdraw aid.

The principal flaw in current policy is that it lacks a coherent and agreed framework. Consequently it remains susceptible to political manipulation on the part of both donors and recipients and engenders suspicion from the recipients as well. Negative conditionality undermines the notion that development involves a partnership between donor and recipient. For if the donor government can use aid as a condition for ensuring that its own priorities are adhered to, then the unequal footing of the two parties is highlighted. Once the rhetoric of partnership is brought into question, the recipient government is justified in questioning the willingness of donors to give both sides equal weight and the motivation behind the aid is also brought in doubt. Whether or not the rhetoric of partnership is reflected in the reality of other aspects of development assistance, the reliance on conditionality of this sort is inherently inimical to a fuller and more accurate recognition of human rights.

Nevertheless, while many governments decry the imposition or threat of imposition of conditions based on their human rights record, the reality is that conditions are always

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<sup>16</sup> Comprehensive Development Framework Questions and Answers, World Bank, September 1999

present in the donor-recipient relationship. General agreements on development assistance are arrived at through negotiation and the International Monetary Fund is a prime example of an organization which imposes conditions on its activities – conditions that often lead to the denial of the rights of the poor and marginalized who see their rights undermined by the withdrawal of basic services.

The UN Committee on Economic, Social and Cultural Rights has commented that development assistance should be applied toward the realization of human rights and in particular that of economic, social and cultural rights. To ensure that the principles of the Covenant with its emphasis on *cooperation* are followed it is important that donor policies on conditionality

- are explicit to avoid false expectations and arbitrariness,
- are transparent so that they can be monitored,
- clearly state the grounds on which negative conditionality might be invoked.

The Independent Expert on the Right to Development, Arjun Sengupta has suggested that it would be useful ‘to invoke the concept of a development compact once again in working out programmes for implementing the right to development’<sup>17</sup>. Such a compact might include

- the human rights policies of the donor organization and the recipient government
- the specific human rights objectives of the programme – including, of course, economic, social and cultural rights
- a clear and detailed statement on the donor government’s position on conditionality listing conditions under which the assistance would be suspended or withdrawn
- means of monitoring the articles of the compact that would include civil society

The compact would not be legally enforceable but if it is transparent, that is if stakeholders on both sides of the relationship are aware of its terms, then public scrutiny would generate a stronger inclination to abide by the compact’s terms. Here we see once again the benefits to be gained by providing the means for meaningful people’s participation in the development process.

### Concluding observations

The realization of the right to development and of civil, cultural, economic, political and social rights is a major challenge facing the international community in the twenty-first century. Cooperation between governments, United Nations agencies and the Bretton Woods institutions can lead to genuine progress in addressing poverty, inequity and discrimination if it is based on the body of international human rights law.

Development can only be sustainable if all people are brought into the process and when all people can benefit from the fruits of development. This means that governments and

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<sup>17</sup> UN Document E/CN.4/1999/WG.18/2

international development actors have an obligation to provide information and to ensure transparency so that people can be involved in the decisions that affect their lives. The only guarantee for this is respect and protection for civil and political rights.

The state is responsible and accountable for the realization of rights. Where resources are lacking, it is entitled to expect international assistance and technical cooperation. Any conditions placed on assistance should be negotiated in advance, include the views of civil society organizations and be monitored by independent parties.

The obligations of states to respect, protect and fulfil human rights provides mean to establish benchmarks and indicators for the realization of each right. These form the basis for development initiatives by governments, UN agencies, the Bretton-Woods institutions and bilateral donors.

The human rights approach to development requires a human rights situational analysis, the setting of objectives in human rights terms, and monitoring and evaluation based on the analysis. Each of these steps require bringing on board affected communities in a genuinely participatory manner.

The human rights situational analysis should be shared by the agency that drafts it with other development actors. It should take account of national human rights action plans, the views of national human rights institutions, the reports to and comments from the UN Treaty Bodies and the views of civil society organizations.

The United Nations Development Assistance Framework provides a model for other development actors in terms of coordination of efforts. The essence of the framework is collaboration with governments and civil society, and the integration of human rights. This approach should be emulated by other multi-lateral actors in the development field.