



HUMAN RIGHTS COUNCIL OF AUSTRALIA

Symposium Papers - A Human Rights Approach to Development

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[The Rights Way to Development](#)

André Frankovits, Executive Director, Human Rights Council of Australia Inc

The global context

At a time of globalization in every field, donor governments around the world are increasingly being asked to account for their aid policies by recipient governments as well as by a wide variety of non-government organizations, community groups and academic experts.

While the ideology of the free market reigns supreme, the gap between rich and poor is growing and the plight of the very poor and the dispossessed has led to national and regional instability.

The World Summit for Social Development was asked to consider how the aid from developed countries can best be used to assist social development and governments from the developing world were requested to establish specific targets for social development. This they failed to do.

This is also a period in which the international financial institutions are beginning to have to confront the effects of their own policies and practices on development and to debate the challenges of how to promote "good governance" and the evolution of "civil society".

The Rights Way to Development

The Human Rights Council of Australia in its report, *The Rights Way to Development*, has formulated what one human rights worker in the Philippines has called 'a radical re-conceptualising of the relationship between official development assistance and human rights'.

This posits that development and human rights are not two separate spheres, that human rights are not simply one program component alongside others in the development process, but rather that development is a subset of human rights. Moreover, [the right to development](#) and the economic, social and cultural rights have universal legitimacy and this has very practical implications for action by both donor and recipient governments.

Human rights principles and standards have been formally codified by governments through consensus and this has been reaffirmed at the World Conference on Human Rights in Vienna. Since the basis of all treaties is that the parties enter them in good faith and make a commitment to uphold their provisions, there is therefore a binding obligations on governments to abide by the terms of the human rights instruments.

The International Covenants and the Vienna Declaration call on governments to work for the realization of all rights through a process of cooperation. Cooperation based on the rights framework will mean a move away from a punitive conditionality approach towards one of mutual interest. Accordingly, *The Rights Way to Development* proposes a system of negotiations between government that will lead to contracts based on the human rights instruments and the realization of rights.

This is not to say that conditionality should not be retained as a mechanism of international pressure on those governments that refuse to abide by their human rights obligations. However, the human rights framework provides a defence for governments against the arbitrary imposition of conditions, be they economic or political. Donor governments as well as recipient governments are bound by international law.

The human rights approach to development also needs to encompass the active nature of human rights. We have gone past the notion of rights as placing only negative obligations on governments. On the contrary, the UN Charter places an obligation on governments to provide international cooperation and assistance to support the realization of rights and this means taking action in the here and now.

Practical implications

What will it mean for an aid program to base it on the international human rights framework? First it requires a clear statement of that very fact. Thus an aid agency needs to make clear publicly that the purpose of the program is to achieve the realization of economic and social rights as well as civil and political rights. This requires close familiarity with the nature of rights and of international human rights law. And this, of course, applies to NGOs as well.

Second, it means that donor agencies need to make explicit the human rights aims of programs and projects. Such a process means that recipient governments cannot but be clear about donor's objectives which are thereby endowed with a consistency that has been lacking to date. The process also enables recipient governments to formulate their own objectives in human rights terms.

Third, it allows donor agencies to encourage that participation that is so clearly called for in the Declaration on the Right to Development and that was reaffirmed in the Vienna Declaration. Participation is not simply equivalent with consultation. As defined in human rights terms it is a mechanism for ensuring that people have a say in the decision that affect their lives and that they become aware of their entitlements so that they can claim them.

This means that not only do donors have to make their human rights policies explicit, but they must also begin to use the language of rights. For it is through the use of this language that recipient governments will begin to accept the nature of their obligations, that direct beneficiaries will have a standard by which their own government can be measured and that an evaluation of the progress towards the realization of rights can be carried out.

This is why the Council is critical of attempts to find new terminologies to what are essentially human rights concepts. Notions of good governance, human dignity, human security and others, all have in mind introducing the notion of government obligation by the back door. This is a dangerous tactic for two reasons. First, it inevitably leads to a dilution of human rights standards. More importantly, it undermines the validity of the consensus on rights which is reflected in the International Bill of Rights and other instruments.

Challenges

Aid agencies have begun exploring ways in which human rights can be incorporated into official development assistance programs. There is at the same time a growing tendency to use aid as a way to further donor governments' commercial and trade interest and development is all too often equated with economic growth. The resultant increase in disadvantage is addressed through welfare programs all too often delivered by NGOs alone.

Non-government organizations have been in the forefront of the debates over the environment, social development and human rights. Yet development debates still focus on how to mitigate the effects of the dominant economic growth model rather than to address the issue in a more strategic way.

The Human Rights Approach to Development avoids the welfare model of development in favour of an entitlements approach. It does not as yet provide a blueprint for how aid should be

delivered and this is the challenge presented to donor agencies, whether government or non-government. Working out what proposed contracts between donor and recipient governments would look like is one practical step to further the debate.

This challenge will not be met by any one country alone. It needs a coordinated approach from agencies in the major donor countries and - eventually - from the international financial institutions. The Human Rights Council of Australia seeks to explore ways in which this approach can be elaborated.

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The Rights Framework and Development Assistance

Professor Phillip Alston, Chair, United Nations Committee on Economic, Social and Cultural Rights

The Australian International Development Assistance Bureau (AIDAB) is an organization which is the focus of much of the report before you. For that reason, I will orient myself to what I perceive to be the implications for a national cooperation agency of adopting a "human rights approach". I have to say, however, that most of the comments that I make will be directed at national development agencies in general, rather than at AIDAB itself.

My starting proposition is that the nature of the international human rights debate has changed radically over the last five years. In relation to both sets of rights, and their relevance to the broader development debate, the possibilities for open discussion and effective promotion are dramatically improved from the position five years ago.

This becomes apparent when we recall, as a starting point, that none of the international development agencies talked about human rights at all up until the early 1990s. The United Nations Development Program (UNDP) was not prepared to have anything to do with human rights prior to 1990. This is illustrated by the fact that you will almost certainly not find human rights mentioned in any UNDP statement prior to 1990.

The situation in relation to the World Bank was very similar. In the late 1970s the Bank engaged in a little bit of jousting within the overall human rights debate, but it did not engage seriously. Indeed its assertion that, while it could not do anything in relation to civil and political rights but that it was the great champion of economic and social rights, got it into considerable difficulties. The implication of the Bank's position was that respect for the latter set of rights would flow from the former, as a result of which it was accused of using a Marxist approach. But it refused to rise to this provocation and never seriously addressed the human rights debate.

The OECD was every bit as reluctant. This is evidenced by the fact that you will not find the words 'human rights' in the organization's Development Assistance Committee reports prior to about 1990.

In considering the opportunities that exist today and tomorrow, we have to bear that background in mind. There has been a fundamental sea change in the last five years, particularly in terms of the acceptability of human rights terminology in international debate and that makes a big difference. If we can never talk about human rights, if we must always do so on the basis of surrogate terms, just as the development arena did for so many years, then we do not end up talking about human rights. In that respect the end of the Cold War made all the difference, and the departure of the Reagan Administration helped further to de-politicise the debate.

Nevertheless, the progress that has been achieved is still far from complete and we need to recognize that fact as well. Someone referred this morning to the UN Secretary-General's Agenda for Development. I thought that the actual report itself was extremely mushy and unhelpful - in fact pathetic. It was only when various actors within the UN system realised how unhelpful it was that what the Secretary-General was prompted to come up with a set of recommendations which are infinitely more interesting and worth looking at. Nevertheless, in human rights terms even these recommendations are very unsatisfactory.

In the same vein, and for very much the same reasons, the UN Committee on Economic, Social and Cultural Rights became thoroughly exasperated with the draft declaration for the Social Summit. Thus, at its session in December 1994 it simply said that it was absolutely outrageous that human rights were barely mentioned in the entire document and economic and social rights were not even mentioned once per se. I gather that at the final Preparatory Committee meeting in January this was remedied somewhat but the final result is most unlikely to represent more than a cosmetic change. While cosmetic changes can be important, in this case they certainly do not represent a fundamental change of heart.

Having detailed the pusillanimity of governments in relation to economic and social rights, it is important to ask where non-governmental organisations stand in relation to the same issue. It is important, especially in a gathering such as this which is significantly composed of NGO representatives to acknowledge how backward the various NGOs are. If we look at the development NGOs, most of them have become pre-occupied with the provision of humanitarian relief and other such activities in relation to which there are lots of consultancies and funds available. They generally do not seek to promote awareness of, or respect for, human rights in that sort of work; you will not find World Vision, CARE and most of the other key agencies talking about human rights as the foundation for their work. While they are not human rights NGOs, they could nevertheless relate to the human rights framework in what they are doing. For the most part, however, they chose not to.

Even the key umbrella group, the Australian Council for Overseas Aid, which does not have the same type of excuses that individual NGOs would seek to invoke, has had a very ambivalent stance on human rights. Unlike some of the other organisations, one can point to a number of important token statements coming from ACFOA about the importance of human rights in the general development context, but most of these statements are confined to the good work of its specialist human rights arm, while not being reflected in any significant way in the mainstream work of the Council. Within ACFOA the old-fashioned development thinking, which seeks to suppress or play down these sorts of issues because they might upset some of the constituencies often alleged to be the Third World, continue to predominate. In relation to discussions on

Australia's position at the Social Summit, ACFOA representatives sometimes spoke as though they were representing the Malaysian Government rather than the oppressed and downtrodden.

I should also mention OXFAM in this context because its approach has been quite different. It is one of the very few international development NGOs that has taken human rights on board to a significant extent. It has not gone as far as a single-minded blinkered individual like myself would want, but it is moving in that direction.

Among human rights NGOs, Amnesty International pays only the most formal lip service to economic and social rights in its educational awareness activities. Human Rights Watch has still not shown any evidence that it is prepared to address these rights in any meaningful way and its former Executive Director's characterisation of these values as not being rights has done an enormous amount of damage to the cause of universality.

This leads to an important point in relation to AIDAB. There is a pretence which of course the Minister has to maintain, as does the bureaucracy, that what is involved when we talk about "human rights and AIDAB" is the continuing unfolding of policies and programs, a gradual evolution. I believe that sort of characterisation is just fundamentally wrong, and that AIDAB has not been neanderthal by comparison with its counterparts at the international level, with the recent approaches of some of the UN agencies, with its direct national counterparts in other countries and with some of the NGOs.

In AIDAB's defence it must be said that it was, at least up until 1990, acting fairly much in tune with the approach of its peers. In that sense, it is a little unfair to criticise AIDAB's performance, at least until several years ago. While the AIDAB of those years was clearly not human rights conscious, no-one else was either and we would not have expected AIDAB to be at the cutting edge.

The most important issue therefore is not an assessment of AIDAB's performance in years past but rather what it can do from now on to respond to what I believe are fundamentally changed circumstances stemming from the new-found acceptability of the language of human rights and the increasing acceptability of the concept of economic and social rights. But it is only if both the agency and its critics recognise the magnitude of the challenge that it must confront, that we will have a constructive debate.

The Minister said something this morning that reminded me of the situation in relation to the World Bank when he said that he was 'very pleased to say I have a staff of highly skilled professionals'. I am sure he is right but one of the biggest problems identified in changing the approach of the World Bank, especially in relation to environmental matters, is that those very same "highly skilled professionals" have both a "professional" and other biases against radical. In addition there is a strong and "natural" reticence to embrace values such as human rights given the difficulty of quantifying such matters in a way in which economists can cope with them.

Any such engagement is automatically suspected of taking these professionals away from their objectivity and neutrality into the political domain which they have always sought to stay out of in the past. Indeed, it is their very professionalism which, at least in some respects, is going to be

an obstacle. Those who hope that the existing professional staff in such an organization is simply going to develop a greater sensitivity to, or awareness of, human rights matters by osmosis are in for a great disappointment. Such organizations need specialist human rights expertise, and those experts need to have vested in them the mandate to be working within the organisation to promote the relevant values.

In practical terms, what would the adoption of an international human rights framework mean for a development agency such as AIDAB? Well the first and most important element is the use and promotion of an appropriate normative framework. What would that entail? First of all, as already noted, it means that the acquisition of expertise within the agency is indispensable. That means human rights specialists, which in the vast majority of cases will mean someone from outside the agency.

Having acquired the expertise within the agency there is a need for training. AIDAB has embarked upon that with some enthusiasm and that is a very important first step. It is certainly something the World Bank, for example, has not done. As far as I know there is no human rights training within the World Bank. The Minister asked this morning, "Should we [AIDAB] have a charter?" His response was something along the lines that "we probably do not need that, since actions and words are more important". He seemed to be implying that ministerial statements are sufficient, or perhaps, even more important. With respect, that proposition cannot be sustained. I think there needs to be a clear and unequivocal statement made by the agency at the highest level.

The principal reason for needing a clear statement is so that an attachment to human rights values is not simply something wheeled out on an ad hoc basis. It is not something which should emerge for the first time in a negative or adversarial context in which certain aid recipients are suddenly accused of violating human rights. A strong Australian commitment to the promotion of human rights needs to be a starting point, adopted and explained right from the outset and not only after difficulties have emerged. It needs to be understood by all concerned that if AIDAB is providing assistance, it is based on the charter which requires the taking into account of human rights matters, as appropriate. The challenge is to make human rights into a routine background issue, not a foreground issue, not something which is going to be controversial as soon as it is raised. Unless there is that sort of statement, an agency cannot begin to promote human rights effectively. The European Union discovered that fact long ago; even Japan has acknowledged it and is now, in my view, significantly ahead of Australia in terms of the formalities of including human rights in its overseas development aid guidelines. Its officials recognized that it could not talk credibly or effectively about these matters until such time as it had first signalled its values and priorities to the government concerned well in advance.

The next element in an effective pro-human rights policy is to encourage all governments, including our own, to ratify and take seriously the various international human rights instruments. I think a development agency has a capacity to do that in ways which are both sensitive and acceptable as well as helpful. The extraordinarily assertive and successful way in which UNICEF has marketed the Convention on the Rights of the Child to governments stands as an example of what a development agency can do.

It follows logically that having laid the normative groundwork, the next step is to begin to use human rights terminology, explicitly, deliberately and in a way that is meaningful. This requires, in particular, rejection of the euphemisms which constantly afflict this field: terms such as "human development", "human well-being", "human security", "basic needs" and "good governance", to name but a few. Such terms all reflect a desire to avoid human rights terminology. The reason for that - and this is terribly important - is that human rights, unlike any of the euphemisms or surrogate terms, is empowering. It has the potential to empower people at the grassroots level to believe that they have a right to education, to health care or to any of the other rights proclaimed in the international instruments. This does not mean that they have a vague and undefined entitlement to a favour of some kind to be bestowed upon them by a benevolent government if and when they can afford it. Rather it empowers them to begin demanding the satisfaction of their basic and inalienable rights.

Participation - in my view - has always been a euphemism for civil and political rights and it has always troubled me because it has never been given any precise content by those who use it with reckless abandon in the development debate. The problem that I have with it, and this is also reflected in the report that is before us, is that very often it is applied only to the micro level, to the project level. But it is quite unrealistic to pretend that, in a country which is fundamentally authoritarian, an agency is going to come in and be able to run a project in a totally participatory manner. This would guarantee a draconian response from the government. Additionally, the communities with which we are often concerned in these contexts are the very ones which have limited capacity to participate.

There is thus an air of unreality about a lot of the encouragement which is given to popular participation at the project level. That leads us back to the need to undertake traditional human rights activities if anything is to be done in order to support those groups at the national and local levels which are seeking to promote development and the often major changes which it requires. It gets us back to the need to support and perhaps protect those groups which begin to acquire the power and influence to, not oppose, but to act as counter-weights to the otherwise unchecked power of government. As part of any serious attempt to promote development which is sustainable, not only in the ecological sense but also in terms of its future viability and effectiveness, funding ought to be going from development assistance budgets into those sorts of activities, quite directly and unashamedly.

How might this be achieved? One key element is more open-ended support for human rights and development NGOs. This is not something that comes easily to a development agency. Most agencies like AIDAB have very sophisticated technical support personnel in the field, but they are often people who would feel very uncomfortable if they were told to go out and make contact with a range of NGOs to develop funding for the general activities of those NGOs as opposed to their project activities for which those NGOs might be asked to act as executing agents. This is similar to the transition that diplomats had to make some 10 or 15 years ago when suddenly it became accepted that, if they were to do their world effectively, they had to go out and start talking to opposition groups and others. But I doubt that many development agency people have yet done it in a sustained way that is also reflected significantly in the nature and direction of funding.

One of the very good parts of the report we are examining is the emphasis on an information policy. It is very important to look at the World Bank's new approach. It has moved ostensibly from a policy of complete secrecy to a policy which says that in principle we should release as much documentation as possible. One would like to see national development agencies, such as AIDAB, adopting a similar sort of approach.

A key issue which always arises in relation to the human rights and development debate concerns the role of sanctions. In my view, there needs to be much less emphasis on sanctions in this type of debate. NGOs and others need to stop talking constantly - at least to AIDAB - about the need to sanction various countries, usually by pulling out all aid. Such an approach is, for the most part, neither viable nor sustainable. There is a point at which sanctions just do not work and I think we turn much too often to development agencies and ask them to sanction when in fact what we want is a much more subtle and progressive form of quid pro quo. Conditionality is an appropriate term, in my view, although we have permitted it to accumulate a lot of baggage which gives it unpalatable connotations. They need not be part of its proper meaning, however. We need to have a form of conditionality which is transparent, equitable and in some ways reciprocal, that so that we are identifying certain fundamental requirements which apply equally to ourselves as to others. If they cannot be met, then it should be accepted that a particular project or country program cannot be maintained.

If a situation is sufficiently hostile in terms of the general human rights background, then it will not be economically viable either. There is therefore no point in undertaking a major project, whether it is building a dam or constructing an irrigation system, in a context where sooner or later the whole framework is going to be subverted because it is so patently undemocratic and there is no prospect of popular participation. These assumptions should be built into funding guidelines which indicate that when the agency feels that the context is not sufficiently conducive to the realization of rights further projects would be most unlikely to be funded.

Finally, we come to economic and social rights. The first point is to recognise the complexity of the issue. Most groups have not done anything much to come to grips with the problem of how really to implement economic and social rights. That is probably one reason why the Minister had very little ideas this morning in response to the question about the role of these rights in Australian aid policy. To understand economic and social rights we need to recall what human rights are all about. They are about two things. One is values which are defined in reasonably precise ways. Thus we should affirm not that there should be "democracy" and "development", but that a range of quite specific values must be promoted and that those values, taken as a whole, will enable the realization of meta-norms of democracy and development. The second thing that human rights is about is accountability. The first element concerns the philosophical framework while the second, encapsulated in the concept of accountability, provides the procedural and institutional framework. Where there is no accountability in relation to rights, you do not really have a rights framework.

What then are the implications for an economic and social rights-conscious policy? First of all, if we purport to be talking about economic and social rights, we have to affirm that fact explicitly rather than arguing, disingenuously, that everything done in a given social sector is in pursuance of a social rights.

Second, there is a need to set benchmarks. If there is no way of measuring the extent to which a right has been promoted, it is not possible to work effectively within a rights framework. Thus if a government cannot be persuaded to say, for example, 'We undertake that within five years we will achieve near universal primary education' (in contrast to many existing policies that exclude very large percentages of girls from schools) then there is unlikely to be any foundation for accountability. As a result it cannot be said that education policy is operating in any real sense within a human rights framework. Pumping money into the education sector of such a country is highly unlikely to promote the right to education in any meaningful, sustained manner.

Thirdly, it is necessary to develop some accountability mechanism within the country. This implies the need for some way in which groups and individuals whose economic rights are not being respected, can bring that fact to the attention of the authorities. The relevant procedure or mechanism does not need to be in the form of a judicial remedy of the type of which human rights lawyers are so fond. It can be an administrative or other sort of remedy but there needs to be some way of complaining if the rights in question are not being respected. Those three elements are essential for an economic and social rights framework which is serious.

The principal stumbling block to achieving such a framework is that most people, including those working in development agencies, do not really think that economic rights are human rights. They do not believe that people in developing countries really have a human right, in the proper sense of that term, to matters such as primary education, primary health care etc. They believe rather that, in so far as any such rights do exist, they do so only to the extent that there are clearly enough resources readily available, subject to the exigencies of various situations, subject to other national priorities (however arbitrarily established or applied) which must also be taken fully into account, subject to the vesting of a large degree of discretion in the government, and so on. In other words they do not believe that there is an absolute and immediate human right to these things, to be accorded absolute priority over other non-rights related goals.

We believe that there is a right to free speech and we say to a government, "Don't give us excuses, don't tell us about development, don't tell us about national security, we want free speech now." Until we start saying the same thing in relation to economic rights, we are not really treating them as rights.

What we are talking about here is the identification of a minimum level of decency in relation to access to food, access to health care, to education to housing, etc. One can identify a minimum level of satisfaction of the right, albeit one which might sustain no more than a rather miserable existence, but it might be a reasonable level to aim for in a country which is still enormously far away from even that level. But that very basic level of entitlement needs to be treated as an absolutely urgent priority goal with a timetable put on its realization and the government standing accused before its own people if at the end of, say five years, it has not achieved that absolute minimum level in relation to each of these economic rights.

We have yet to approach things in that way, but until we do, we are not talking about economic and social human rights.

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The Human Rights Approach to Development Assistance: the indigenous perspective

Ms Patricia Turner, Chief Executive Officer of Aboriginal and Torres Strait Islander Commission

Introduction

I welcome the opportunity to participate in this forum and to speak from the perspective of indigenous Australians. In doing so I offer some comments on the application of human rights to Australian policy initiatives in Aboriginal Affairs within the framework of international indigenous rights. I am not in a position to engage in debate on Australia's overseas aid policies and programs. Your paper *The Rights Way to Development* canvasses this issue and others are more competent to comment on it. Whereas your paper looks at Australian external aid programs, I am involved in assistance to a specific group of people within Australia. The politics of development is an important area of study and when you combine it with the politics of dispossession, you are indeed, entering complex and difficult territory. Like the Human Rights Council, we see the development of indigenous communities and human rights as inseparable. This must be seen against the background of significant development within Australia in relation to its indigenous peoples. In the short time available, I can do no more than touch the surface of a quite fundamental issue.

Native Title and Rights - the Transformation

A major transformation in the status of Australia's indigenous peoples occurred as a result of the High Court's decision on native title. The High Court's landmark decision, as we all know, confirmed what Aboriginal people already knew: they were the original occupiers and owners of this land. The concept of terra nullius and the notion that on European settlement the land belonged to no-one has been removed from our legal system. Now the common law recognizes a form of native title and the Native Title Act provides the legal framework for giving effect to the High Court's decision. Unfortunately to date no native title has been registered under the act.

Even so, the removal of the fiction of terra nullius has been significant for Aboriginal people. In particular, the High Court's decision brings about a whole new dimension in the relationship between indigenous people and Government, strengthening recognition of our status as indigenous people and providing a better basis of negotiation with Governments and the Commonwealth Government in particular because of its special Constitutional responsibility for Aboriginal and Torres Strait Islander people. In practical policy terms, one significant consequence has been a movement away from a welfare approach to a rights and entitlements approach. Welfarism does not enable people to benefit from development and decision-making in the way they should. They are seen as recipients of what Government wants to give them and Governments can change along with political priorities.

Self-determination

The rights and entitlements approach has important implications for the machinery of Aboriginal Affairs administration and the funding of programs. The underlying theme of Aboriginal development is self-determination. The right of self-determination is of crucial importance to Aboriginal and Torres Strait Islander people. We view the right to self-determination as a mechanism to enable us to negotiate our political status and to consent to the terms of our future relationships with Governments. Self-determination is a collective right exercised by peoples rather than individuals. The right to self-determination is an inherent right of distinct peoples. It is Australia's position in international forums that self-determination should embrace not only "external" self-determination but also "internal" self-determination, the right of distinct peoples within a state to make decisions on and administer their own affairs. Australia has sought to confer on its indigenous communities real control over their own lives and future and thus allow them to exercise in a meaningful sense, consistent with national sovereignty, their right to self-determination.

Empowerment

Another important element in indigenous aspirations is empowerment. Aboriginal and Torres Strait Islander people must be given the capacity, resources and opportunity to make their own decisions. The creation of the Aboriginal and Torres Strait Islander Commission has led to the empowerment of Aboriginal and Torres Strait Islander people at the national and regional level. ATSIC has an important representational and advocacy role reinforced by its elective base and accountability to its indigenous constituency. ATSIC is in a position to take a national leadership role to foster reform within itself and of Australia's political institutions to further secure the rights of indigenous peoples. Through its coordination role as specified by the enabling legislation, its 35 regional councils, and the regional planning process (again a legislative requirement), it is also in a position to influence the provision of services and to negotiate with service providers to ensure equity of outcomes for Australia's indigenous peoples. Its political advocacy is enhanced by being part of government while at the same time having both a statutory and representative independence.

That is one side of the equation. ATSIC's programs are delivered through some 2000 self-managing organisations. While the funding of these organisations is based on applications related to specific projects and program outcomes, within the framework of their agreed budgets they have full discretion in the way those programs are delivered. These organisations - along with other statutory bodies such as Land Councils constituted under the Northern Territory Land Rights Act - are significant instruments of empowerment for Aboriginal and Torres Strait Islander people.

While ATSIC's budget of close to \$1 billion is constructed on formulations of need and disadvantage, it underpins the empowerment of Aboriginal and Torres Strait Islander people by providing the necessary resources and capacity to the organisations to which they belong and where decisions on projects are made. The rights-based approach will be an increasingly significant factor in the annual budget negotiations with the Commonwealth Government,

especially in relation to the identification of gaps in the citizen entitlements of indigenous peoples.

International Framework

For more than a decade now, Aboriginal and Torres Strait Islander people have been participating in the international human rights forums and certainly see the achievement of their aspirations within the broad perspective of the development of instruments of indigenous rights that underpin their self-determination goals. This framework has now been encapsulated in the draft declaration of indigenous rights which has been the subject of negotiations within the UN Working Group on Indigenous Peoples since 1985. The declaration covers a wide range of rights and freedoms of fundamental importance to indigenous peoples. When it is finalised it will be the second international instrument which deals specifically with the rights of indigenous peoples. Unlike the International Labor Organisation Convention 169, the draft declaration will not have the legal standing of a convention but it will be a resolution enunciating principles and standards for observance by all states. It is a step in the implementation of minimum human rights standards for indigenous peoples and will serve as a manual of conduct for Governments.

Outstanding issues

The agenda of indigenous aspirations in Australia is far from having been achieved. I would like to make some comments about the outstanding issues, given the developments that have occurred in the past decade.

The 1967 Constitutional referendum which provided for a national approach to Aboriginal affairs, the Royal Commission into Aboriginal Deaths in Custody which examined the fundamental causes of Aboriginal disadvantage and led to increased funding of Aboriginal programs, the Native Title Act, and the proposed indigenous land fund have all changed the political landscape for Aboriginal and Torres Strait Islander people. A new basis has been established for empowering Aboriginal and Torres Strait Islander people economically, socially and culturally. Within this context, I would identify two major outstanding issues still requiring resolution and which will focus on the rights and entitlements of Aboriginal and Torres Strait Islander people at two very different levels - the primary and the tertiary. These are:

* the provision of basic essential services in Aboriginal and Torres Strait Islander communities based on a recognition of their rights and entitlements in line with services provided as a matter of course - indeed, right - to mainstream communities; and

* constitutional recognition, which will clarify and embed those rights which are special to indigenous peoples

Constitutional recognition will, of course, take time to achieve. But there is no reason why the recognition of rights and entitlements cannot be underpinned politically. The provision of essential services in Aboriginal communities to improve their living conditions and their quality of life is a case in point. On any evidence, from an infrastructural point of view, Aboriginal people are an under-developed world within Australia, a situation which can no longer continue

to be tolerated in a society which professes and espouses high principles of social justice. A recent needs assessment established that an investment of \$1.5 billion was necessary to improve living conditions in Aboriginal communities. This would require an investment of some \$300 million a year between now and the year 2000 to achieve some kind of health equity and improved living conditions for Aboriginal and Torres Strait Islander people. That sounds a lot of money and the political system might balk at it. But we are talking about 200 years of neglect of these communities and their marginalisation from mainstream development.

The provision of infrastructure is a shared responsibility between the Commonwealth, State and Local Government. The Commonwealth appropriates to ATSIC something in the order of \$200 million a year to accelerate the provision of housing and community services. In addition, through the Commonwealth-State Housing Agreement, the Commonwealth ear-marks some \$90 million for Aboriginal housing. Through financial assistance grants and special purpose payments, the States and local government are funded to provide essential services for all their citizens. Clearly, under existing Commonwealth-State financial arrangements, Aboriginal and Torres Strait Islander people are missing out on their entitlements to these services. Not even the negotiation of a National Commitment to improved outcomes for Aboriginal and Torres Strait Islander people, endorsed by the Council of Australian Governments, has been able to improve the situation.

The recent report of the evaluation of the National Aboriginal Health Strategy pointed to the need for a huge increase in the financial investment in the living environment of Aboriginal and Torres Strait Islander people and the political will necessary to achieve it. It called for a bold and comprehensive national initiative to turn around the public health conditions of Australia's indigenous peoples. It went on to say that the unanimous commitment of the national Parliament and of the State and Territory Governments to the reconciliation process recognises that the nation must address the human rights of Aboriginal and Torres Strait Islander peoples by the Centenary of Australia's Federation. Without the recognition of these rights, there can be no social justice.

Thus the similarities between development in overseas countries and development WITHIN Australia are obvious, which is why issues of economic development and rights and entitlements are of paramount concern to Aboriginal and Torres Strait Islander people and why the international framework is also important to us in securing these rights. It has long been a goal of Aboriginal and Torres Strait Islander people to reduce their dependency on welfare. Economic development is one way of reducing this dependency and giving them greater discretion over how to use the resources available to them.

Framework for the future

Against this background there is a need in the context of the recognition of the rights of indigenous peoples and their access to and participation in development to develop a framework for the future. Among the considerations are:

- Recognition of the principles of self-determination
- Constitutional change

- The need for bi-partisanship
- An understanding of the process of reconciliation and its outcomes
- The negotiations of autonomy rights, including proper consideration of forms of self government
- The achievement of a better basis of cooperation between Commonwealth, State and Local Government based on the national commitment as the framework agreement in indigenous affairs between Commonwealth and State Governments
- A commitment to improving the living conditions of Aboriginal and Torres Strait Islander people in rural and remote communities as an essential investment in improving their health generally as the pre-eminent outstanding issue in indigenous affairs

Conclusion

Clearly then social justice is not a matter of aspiration -- BUT OF RIGHTS. For Aboriginal and Torres Strait Islander people, there are two major aspects to these rights:

- Inherent rights based on their status as indigenous people
- Rights ultimately embedded in the Constitution

In the tragic history of indigenous people in this country, there were no treaties, no formal settlements, no compacts. We were dispossessed of our land, taken from our families, moved to new locations to meet Government policy objectives at the time. Against this background, and the achievements of Aboriginal people demonstrated through their survival, we have taken a leading role in international forums to articulate indigenous rights. Reassuringly there has been an increasing recognition of the significant place and unique contribution of indigenous peoples within a range of national development agendas. Aboriginal and Torres Strait Islander people will draw new strength from notions of justice and human rights which underpin equity and participation in national life. All human beings have the right to a reasonable quality of life and to the fulfilment of their basic needs. Governments have the responsibility to ensure the achievement of these objectives for their peoples. Only through the enunciation of our rights will indigenous people participate fully in the economic, political and social life of the country, and particularly in the basic rights of health, employment, education and well-being. We now have a strong voice - nationally and internationally - and we will build on that visibility. The outcome we seek is recognition and protection of the unique place of Australia's indigenous peoples in the history and life of the nation. The principles of human rights in the end provides the most powerful protection and basis for that recognition. Lack of adequate access to health, housing, education, clean water, sanitation is more than a Government responsibility. It is a direct denial of human rights which, in this International Decade of the World's Indigenous Peoples, with the Olympic Games being held in Australia in the year 2000, and with the Centenary of Federation offering a celebration of national unity and identity cannot be tolerated. If we want to speak of national renewal, indigenous people can tell you where to begin.

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Development and Aid in Situations of Ethnic Conflict

Charles Abeysekera, Movement for Inter-Racial Justice and Equality Sri Lanka

The genesis of ethnic conflict in Sri Lanka started with the denial of basic human rights of minority ethnic groups - their linguistic rights, their right to education, their right to employment, their right to land, the right to some kind of political expression as a people.

This denial ultimately led around 1978 to the beginnings of an armed conflict and insurrection by the Tamil people, who thought that their interests and their rights could only be preserved within a state of their own.

The ethnic conflict has become worse since 1983. It has claimed an enormous number of lives - maybe 20,000 or 30,000 people over the last 10 years. It has resulted in the destruction of economic potential of nearly a third of Sri Lanka. It has resulted in a vast destruction of property. And it has spurred the government on to take what one can only call ruthless and draconian measures to contain the insurrection.

Under the guise of fighting the insurrection, there has been rule by emergency regulations for the last 25 or 30 years and the imposition of new laws like the Prevention of Terrorism Act which do away with the normal safeguards enshrined in law. Today, the situation in Sri Lanka is such that the results of this ethnic conflict in the civil war, while it may be confined only to the north and east, makes its effect felt all over the country.

The war today costs the government 23 per cent of its budget. It has resulted in an enormous decrease of production in rice, fish and various other products. Over the past five years the annual expenditure on the war effort has been over 20 per cent and now it is 23 per cent. That is one dimension of the ethnic conflict.

Of course, the war has resulted in total negation or denial of the rights of these people. One has to look also at what has been happening in the economy of Sri Lanka as a whole. Up to 1977 - from 1948 when Sri Lanka gained independence - the general economic policy had been one of inward orientation, state regulation of the economy, increasing economic control by the public sector, the nationalisation of certain private enterprises like plantations etc.

This kind of economic growth or economic development model, what we used to call in those days a non-capitalist path of development, prevailed from 1948 to 1977. The result of this non-capitalist path of development was increasing unemployment, very slow growth and eventually in 1977 the election of a government that promised to go back on those policies.

However, alongside this increase in unemployment, stagnation, and so on there were also positive features. These was an enormous increase in what is generally called the "physical quality of life". We had free education since the beginnings of this period. In 1930 or 1940, there was free education right up to university level. We had free health services. We had a reasonably successful welfare system which delivered health, education, even subsidised food to the poor. So this 30-year period of economic development or growth saw on the one hand some slowing down of the growth of productive forces, stagnation, unemployment, etc but on the other the

availability of access to education and health for all sectors of the people, irrespective of income, and consequently a high standard of literacy and reasonably good health standards.

In 1977 this was turned upside down. We adopted what are called open market policies, there was a reduction in welfare expenditure, removal of subsidies, opening up other market to foreign capital, foreign investment, foreign technology. In 1978 we embarked on a World Bank Stabilisation Package and in 1985 the Structural Adjustment Package.

In line with these, we moved into some kind of integration with the world market and became subject to the market forces that now control the global economy. The way this works is interesting and it has some relevance to what we were discussing yesterday. The World Bank, the IMF, the Government, sit down together and decide on what the economic programs and plans should be. This is not totally dictated to by the World Bank because it is a joint exercise - a joint exercise in which our ruling elites and governments, participate, consciously and deliberately.

They work out economic programs and policies which are then put out for funding every year at the Paris Aid Consortium. This consortium comprises the World, the IMF, the ADB and other multilateral agencies as well as all the donor countries and meets to work out plans for economic development.

The donor countries follow the dictates of the World Bank. The World Bank gives us a certificate of credit worthiness and decides - supposedly in consultation with the government - which projects they think should be implemented during the next year. Then all the donor countries pick up whatever they like, or whatever it is in their interest to pick up. Investors follow the same pattern. The donor countries fall in line, the private investors fall in line.

While spending 23 per cent of its budget on a war designed to suppress an ethnic group, the government is also able to have a savings rate of about 26 per cent annually. Around three quarters of this investment derives from foreign loans, donations and investments. Because it has been able to maintain this level of investment over the past seven or eight years the government has also been able to achieve around four per cent economic growth annually. The Structural Adjustment Package itself has led to various consequences. Groups of people have been marginalised and the poverty group remains still around 25 or 26 per cent.

Last year the World Bank did a poverty assessment in Sri Lanka, taking as their base \$1 per day for the individual and found that 26 per cent of the people were below this base. The removal of subsidies and welfare schemes have affected people adversely. Sri Lanka had been able to afford a reasonably low wage system, precisely because education, health and various other services were available free to the public. Now this wages system, this low wage structure itself, attracts the foreign investor. But the low wage structure is no longer tenable because the benefits that were available to supplement that wage structure earlier are now no longer present.

It is interesting to see what has happened to our medical services. The free state hospitals still continue to exist and continue to deliver a service, but alongside them has grown up an enormous private sector, with private doctors, private hospitals, private dispensaries, a whole parallel

private sector. The notion that what you pay for is better than what you get free means more people move into the private health sector. This leads to the deterioration in the public sector and is a continuing vicious cycle. The same thing has happened to schools as well.

What this implies is that the development assistance that has been given to Sri Lanka over the past seven or eight years, by the multilateral UN agencies and private capital which flows into the country has really enabled the government to use its own funds for a war that had been totally destructive of human and other rights of one of our ethnic groups.

It is not that the foreign community did not see this, they saw the connection. Every Paris Aid Club meeting begins with a well-meaning sermon. "You could do better if you stopped the war. If you can divert the resources that are now going into the war into your own development effort you could do much better. Your polity will be much more stable, more investors will come." But in spite of the sermon, aid continues to flow. When the World Bank tells the assembled donors that Sri Lanka, for its program next year, needs \$800 million, the total number of pledges will come to \$900 million, even more than is asked for.

The international community, at other gatherings, like the United Nations or the UN Human Rights Commission meeting in Geneva, again lectures the Sri Lankan government and says, 'We heard that you are committing human rights violations. Why don't you stop it? The war is the beginning and end of most of these violations so stop the war, divert those resources to other ends.' This preaching goes on at the aid club meetings, at UN meetings, at UNCHR meetings. But it does not lead in any way to meaningful action. Aid continues to flow, the World Bank continues to grant its assistance.

Thus, the international community is aware of the violation of rights but nevertheless tolerates, and in an indirect way, helps the government to continue with the structures that violate human rights. Yesterday we were talking about what leverage Australia can have through its development policy. I am here asking a different question: what kind of leverage did a combination of all the donor countries have on Sri Lanka?

The answer would be none at all, because the use of such leverage in favour of human rights was not an imperative on their agenda. What was more imperative were the needs of the market, the growth of world markets and the integration of one more economy into that world market. This was far more imperative than any attention to the human rights that had been violated.

I must not appear totally churlish. I must also say that the kind of pressure, influence, that foreign countries, brought to Sri Lanka in this period primarily through the UN Human Rights Commission did result in some measures in lessening certain kinds of violence, in improving the situation in certain ways. But basically, what I would maintain is that here was a country that was blatantly violating the human rights of its inhabitants. In the international community, the UN agencies, the donor countries, all assisted in this process, even indirectly, by making these flows of assistance available which enabled the government, in a sense, to continue the war.

There is one more thing that I would like to emphasize and that is that in this context global economics becomes global politics. The development process is controlled by political

processes. Those political processes do not pay very much attention to the notion of human rights in developing countries. If I find one thing to criticise in the approach of the Human Rights Council of Australia it is that this political element, the extent to which development policies are controlled by politics, is not apparent in its report.

The other criticism that I would like to make - rather diffidently - is that there is an assumption in this report and in all our discussions that the economic and social rights elaborated in the Covenant can be realised or are actually achievable under the existing economic and social structures. What I am suggesting is that within the existing social and economic structures, the full range of rights are in fact unachievable. We have to move towards a transformation of the current economic and social structures, not only by appeal to standards, appeal to covenants, appeal to legislation, but there are also other measures necessary.

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A Philippines Experience: The Wrong Way to Development

Evelyn Balais-Serrano Director, Philippines Alliance of Human Rights Advocates

The May election in the Philippines is seen as the final stage of the Ramos government's political consolidation. A major part of the program of President Ramos to achieve political stability or even just a perception of political stability is to eliminate some of the obstacles to the enactment and full implementation of the Medium Term Philippine Development Plan, or MTPDP, which is the Ramos government's formula for reaching new industrialising country status by the year 2000.

And after two years in office, despite claims of 4.8 per cent GNP growth in the first quarter of 1994, and the armed forces claim of strategic victory over the new people's army by the second quarter of the same year, the human rights and development community continues to be sceptical and alarmed by the situation in the Philippines.

Though violations of human rights have diminished compared to the previous Marcos and Aquino administrations, the abuses have continued unabated, this time in a more discreet and calculated manner, in contrast to the open, brutal way violations were committed in the past.

Over the past two years Task Force Detainees of the Philippines, the pioneer human rights organisation in the country has documented and verified 1,651 people arrested and detained, more than 95 per cent of whom had no warrants of arrest. Fifteen persons disappeared involuntarily, eight of whom are reported arrested, but only six surfaced in detention. More than 2,000 had disappeared in the past years. One hundred and four had been summarily killed or 'salvaged' as we term it. Thirty six attempted 'salvagings' took place. More than 600 had been killed in the past years.

Although there has been an alarming increase in the crime rate - bank robberies, kidnappings and rape involving the police and the military - some of those implicated are known to have links with the President and his men. Eight massacres and thirty attempted massacres which killed 57

persons and wounded 62 were reported. Around 211,000 persons were forced to evacuate. There were ten cases of hamletting in which evacuated persons were forcibly settled in militarised villages. Five cases of food blockades. One thousand, one hundred and fifty two persons physically assaulted and 382 cases of harassment. One hundred and seven persons lost their property through looting, usually during military operations. Seventy three cases of destruction of property through house burnings or killing of animals.

Going into the third year of its six-year term, the Ramos regime now boasts of having both political stability and economic recovery. In the last quarter of 1994 it announced a 5.46 per cent increase in GNP, an achievement it has desperately aspired for to the extent of changing the indicators of GNP, so it would appear that indeed the government is reaching its target.

For more than three decades the Philippine economy has been characterised by short spurts of growth, followed by periods of stagnation and recession or what is commonly known as the boom and bust cycle. The 1980s have been a particularly terrible decade with average growth rate of 1.6 per cent of GNP. In the first three years of the 1990s, real GNP dropped to as low as 0.6 per cent in 1992. In 1993 it managed to climb up to 2.4 per cent.

The Philippine economy has been known to be aid dependent. The massive flow of aid, dating back to the martial laws years under Marcos and which substantially increased under Mrs Aquino's so called new democracy. Reaching astronomical proportion compared to the dictatorship's time, the Philippines became a major venue for perpetuating further dependency and further intrusion of developed countries into our economy. What we see now in the Philippines is living evidence of how development aid can bring about under development rather than development, abject poverty rather than prosperity, massive and gross violations of human rights, rather than more respect for human and people's rights.

The long time promises of justice for the thousands of direct victims of human rights violations, of peace and security for the war-torn cities and countryside and prosperity for the majority who have been long denied their basic rights, have remained elusive as the Ramos regime gets more and more obsessed with attaining NIC status within six years.

While it may be true that GNP has risen to 5.46 per cent in the latter part of 1994, negative indicators threaten to undercut sustained growth. The balance of trade deficit hit \$5.17 billion in January to August 1994. Up by 31 per cent from the 1993 level, the high level of trade and budgetary deficits are a perennial problem. The problem of an appreciating peso against the dollar and the hovering problem of inflation have also been perennial headaches for monetary and fiscal authorities.

Against reports of rising levels of investment in the Board of Investment's approved projects to \$420.97 billion in the first nine months of 1994, reports of increasing business failures continue to come in. Ninety one big firms closed shop in the first half of 1994, compared to 74 in the equivalent period in 1993. Calarbazon is a case in point. Conceptualised and planned by the Japanese in 1989, the Calarbazon project funded mainly by the World Bank and the Japanese JICA and their Overseas Economic Cooperation Fund is one of the most ambitious projects, covering one-tenth of the country's land area.

The National Statistics Office noted a loss of 41,000 jobs in the area between July 1993 and July 1994. The unemployment rate has been steadily increasing from October 1993 onwards. To date the official average unemployment rate in the country is 9.5 per cent, but no doubt it is more. In Metro Manila and Central Luzon it reached a peak of 17 per cent and 12 per cent respectively. Moreover, of the total labour population, 33 per cent are under employed.

As a policy in this area as well as in other free trade zones and regional industrial sites, the workers are being systematically deprived of their jobs and their right to strike and to form trade unions. Under the practice of labour only contracting, workers have no job security. As casual employees they are paid as low as between \$2.50 and \$4.00 a day. In another area the wage is \$3.35 for a 12-hour shift with only one 15-minute break. This is now the common practice and it is seen by the government as an added incentive to foreign investors. Consider these other realities: the Philippines was ranked 80th in 1993, based on the UN Human Development Index. But by 1994 it was ranked 99.

The government claims that 63 million Filipinos, 40.7 per cent, live below the poverty line in 1991. Other sources estimate it was 80 per cent or 47 million. There is widespread occurrence of easily curable diseases such as cholera, tuberculosis, H-fever, pneumonia and others. In a recent study the functional illiteracy rate is 37 per cent. One out of every four municipalities have no elementary schools.

The state-run Food and Nutrition Research Institute gave the following statistics: three out of every 10 Filipinos are anaemic. Including 50 per cent of all infants, 40 per cent of pregnant and lactating women and 40 per cent of those aged 60 and above. From 1987 to 1993 there is a marked rise in the incidence of goitre and thiamine and riboflavin deficiencies. The report also shows that food production has failed to catch up with the annual 2.4 population growth over the years, causing an imbalance between food supply and demand. While the population grew by 4.7 million from 1986 to 1990, rice production grew by only 70,000 metric tonnes, from 9.25 million tonnes in 1991.

The Philippines is supposed to be a major rice producing country, yet we cannot even produce enough to feed our population. Worse, with the massive land conversions going on, reducing the area planted to rice, the shortage will be used to justify import of rice from other countries as part of the GATT arrangements. The recent signing of the GATT has threatened further the food security of the country. With GATT more emphasis on export winners like cut flowers and asparagus, will result in lesser allocations of resources like land to essential products like rice. The department of agriculture has limited to 1.9 million hectares for rice to give way to export crops.

Starting this year an estimated 500 rice farmers, 62,000 corn farmers, more than 450 sugar farmers and 40,000 vegetable growers will be dislocated when GATT is implemented. The conversion per year of 10,000 hectares of agricultural land is also expected. If the trend continues we will face very serious food shortage, worse than what the country is experiencing now. This provides a rationale for the entry of imported food at the expense of the majority of our local producers. To top it all, the Ramos regime has maintained the Marcos regime policy on foreign debt service and reliance on foreign loans.

Today, nearly 50 per cent of our total budget automatically goes to debt servicing. Practically nothing is left for the people's welfare, health and education, especially when the huge budget for defence is taken out. Our foreign debt stands at \$US35 billion, an amount beyond our capacity and even our imagination to pay. The only solution the government resorts to is more borrowing and more taxes.

There have been massive forced displacements of communities, the majority of whom belong to indigenous peoples and minority groups, comprising mostly women and children. This displacement happens in almost all parts of the country, especially those identified as growth areas. Massive conversion of agricultural land for other uses like construction of power plants, dams, airports, commercial plans, even golf courses, have resulted in massive migration to the urban centres.

The Ramos government has a policy which deploys overseas contract workers, not only to ease unemployment pressure but to raise the much needed foreign exchange. More than 50 per cent of the 5.46 GNP growth comes from the remittances of our overseas workers. These, despite increasing reports of abuses, that have led to questionable deaths and other tragic incidents, involving overseas workers.

A quick glance at the impact both actual and potential on the rights of various sectors which comprise the majority of our population will raise the question: development for whom? It is in this very context of development aggression and the government's counter insurgency programs that most of the civil and political as well as economic, social and cultural rights, are being violated. All in the name of development.

Yet the Philippines ranks as one of the countries that have signed the most number of international covenants and treaties. It is believed to be one of the countries with the best written constitutions in the world, with its own Bill of Rights. Its Commission on Human Rights has been offered as a model for national institutions in the international human rights community. Environmental policy and legislation in the Philippines are probably comparable to the best in the world.

Yet all this has proved to be no guarantee for the protection of the people's rights, much less for the improvement of our people's quality of life. It is easy to say that all the government has to do is implement all the covenants and treaties as ratified and keep true to its own constitution and Bill of Rights.

My young son is 15-years-old. He says if he has a chance to talk with the President he will tell him the agonies of a child who grew up inside prison with his father. Maybe the President will have second thoughts about detaining and disappearing fathers and even mothers. His father was in prison for seven years. After he came out from prison he was hardly the same person because of the severe torture and the long detention. Rehabilitation in the Philippines for the torture survivors and the children and women traumatised by the long war has not been possible because the same atmosphere of fear, the threat of rearrest, the threat of disappearances and threat of killing are still very much around.

I see no hope in the kind of government that we have now. The same gut feelings I had with Marcos and Aquino remains. We in the human rights and development non-governmental organisations in the Philippines, see the situation as getting from bad to worse, given the government's obsession for rapid results and the continuing deterioration of our society and our environment as a result of this.

The only concrete guarantee we see, our only hope, lies in our people's continuing struggle for survival, in asserting our claim to the rights that are due us as individuals and as people. Our long history of resistance and struggle attests to our people's refusal to be cast into subservience and slavery, for we are not only victims of neglect and actual violations of rights, but of deceit and trickery, which is a worse violation of our human dignity. We say our government has not only sold our bodies, but has mortgaged even our souls.

The freedoms we enjoy now, if any, are products of our collective efforts, of the sweat and blood of our heroes who have given their lives so that we may live today freer than before. Our hope lies in governments and other peoples who believe in us. Given the chance and the much needed support we can deliver ourselves from the trap our very own government has set for us.

As a conclusion let me quote from our publication, Philippines 2000 and Human Rights:

"The hard lesson of our time is that behind the economic miracles lie too many human tragedies. Very often in the journey towards economic progress, human rights are shunted to the sidelines or trampled under foot ... What is most important is to ensure that economic growth promotes better human society ... People enjoying the freedom to chart their course of development. It is the pursuit of economic growth by an empowered people which guarantees genuine development. Only under conditions of freedom and full enjoyment of human rights in all their aspects, can our people release their vast energies and manifold initiatives to accomplish the work of building a strong and prosperous nation".

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THE RIGHTS WAY TO DEVELOPMENT: Challenges and Opportunities

Clarence J. Dias President, International Centre for Law in Development

On the night of December 3, in Bhopal, India, a young man by the name of Kailash Panwar awoke to consciousness at about 2:00 in the night to find himself in the back of a truck, buried under some 30 human bodies. An explosion in the Union Carbide pesticide plant had released 40 tonnes of lethal MIC gas into the atmosphere which, within 24 hours left more than 2,000 people dead and now, 10 years later, leaves close to half a million people suffering permanent disability.

Kailash Panwar spent the next eight years of his life going from one hospital bed to another. No medical treatment was capable of doing anything, even to alleviate the pain and suffering. He

was visited by a number of politicians who promised him and his wife a great deal: nothing happened.

Bhopal was not just the world's worst industrial disaster, it epitomises the combination of a variety of development policies which have failed, both individually and collectively.

The approaches to development that we have been turning a blind eye to for much too long are epitomised by a two line verse in a children's book of poems by Shel Silverstein. It goes something like this:

Oh, if you are the bird, be the early bird
And catch the worm for your breakfast plate.
If you are a worm, Sleep late.

The world of development today seems peopled by development predators and development victims. There is tremendous pressure for collusion among all those involved in the doing of development as a very highly profitable business. To break this collusion, there is a need to appreciate that there are victims, there are violators and there are bystanders.

I want to go back to the very elaborate normative framework of development that has been worked out by the UN system from the very day the UN Charter came into existence. When the Charter came into existence there were three vitally interdependent, interrelated activities that constituted the rationale for We, the Peoples of the United Nations coming together. They were human rights, development and peace. The notion was very clear in the Charter that you cannot get peace unless you have respect for human rights and unless you have development. Now, peace has gone off on its own and you have the oxymoron of the UN guns for peace.

Development has similarly gone off on its own and is no longer seen as a means to the end of realising human rights and producing enduring peace. Development itself has got perverted into what it all too often is not. I think one needs to go back to the existing international regime and the existing commitments that our governments have made - maybe hypocritically - but that they have made over the years in respect of human rights and development.

There is a wonderful document called " Review of International Commitments" that was produced by the UN Secretariat for the World Summit for Social Development which has 55 pages listing commitments, benchmarks, targets, etc ranging from International Covenants through UN meetings like Alma Ata, Vienna and others. Before the end of the first week of the first Preparatory Committee Meeting for the World Summit, that document had been already relegated to the dustbin of history. There is no memory whatsoever in the Summit process at the moment of that document.

Milan Kundera reminds us that the struggle of man over power is the struggle of memory over forgetting. The United Nations system and bilateral and national development assistance agencies have a built-in institutional amnesia which we need to overcome.

The report prepared by the Human Rights Council of Australia and the present symposium reviewing the report, can catalyse a much-needed process directed to the entire range of development actors: donor governments and agencies, recipient governments and agencies, development professions and NGOs, and people and communities needing or affected by development.

I would like to identify nine areas which pose challenges as well as offer opportunities for possible change in development practices.

1. Principles

Development must be principled. We must not forget the principles contained in the various human rights instruments and in the UN Declaration on the Human Right to Development which asserts that there is an inalienable right to development, as a human right; that the promotion of the realisation of human rights is the end all and be all of development; and that participation is both an interdependent means and end of development.

All those who do development must be accountable to themselves and to those whom they impact upon, to these principles.

All too often, developing country governments plead lack of resources as a justification for their lack of progressive realization of economic, social and cultural rights. In some, perhaps many, cases such a plea may indeed be justified. But it is vital to recall that State obligations in respect of human rights are manifold: the duty to RESPECT, to PROTECT and to PROMOTE. Hence, lack of resources, or the manner in which resources are deployed through development, cannot negate State obligations to respect and protect.

2. Perceptions

It is essential, if meaningful change is to take place, that there be a genuine change in the manner in which both donor and recipient countries view development. If donor governments continue to view development assistance essentially as a vehicle for perpetuating their geopolitical sphere of influence or for maintaining and strengthening their international comparative advantage and international competitive edge in respect of trade and investment, there can be little hope of securing human rights through development. Similarly, developing countries must change their hand-out, dependent mentalities and cease to regard development assistance as a divine right owed because of historical wrongs suffered during the colonial era.

3. Practices

Here I would like to focus only on two types of practices. The first is the whole question of conditionalities.

I tend to agree with a number of speakers who have talked about conditionalities as a fact of life. I think we must work towards an appreciation that just as there is good cholesterol discovered much later than the bad, after a lot of bad conditionalities, we can have good conditionalities by

going back to international human rights principles. There are core concepts in international human rights principles, substantive as well as procedural, that will ensure that conditionalities do not become disguised double standards, whimsically imposed but rather are conditions to prevent turning a blind eye to human rights abuses.

The second aspect of development practice that I want to call attention to relates to what I see as a very positive shift away from multilateralism back to bilateralism in development assistance. Those of us who work in our own countries find it much easier to lobby and try to influence individual donors or a specific number of donors in a donor consortium. As compared with this, the IMF, the World Bank and the World Trade Organisation have an enormous capacity to absorb every good idea or every cry of outrage and transmit it into nice, sanitary reports or policies or cooptation. Policies that mean little. It is mainly the international bureaucracy that is complaining about the move back from multilateralism to bilateralism. And of course I think some abuser governments, because it is easier to get away with abuse in a multilateral than in a bilateral system.

4. Processes

Development is supposed to be about doing good. If development is supposed to be doing good, and maybe doing well by doing good in the process, why is it conducted in such a covert and clandestine fashion? Why is it that concepts of good governance do not start at home? Why is it that the very process of development discriminates against women or excludes indigenous peoples, minorities or other sectors?

The International Centre for Law in Development, over the years has attempted to look at specific development projects in different parts of Asia and the process through which they were administered. From these and from the international human rights instruments and documents we have tried to derive a series of process-related rights which already exist and have been affirmed in those instruments but which have been violated in the actual conduct of development whether at national, bilateral, or multilateral level. The list includes: * rights of participation; * rights to non-discrimination; * access to information and right to know; * rights of transparency; * donor responsibility (eg of oversight); * recipient government agency accountability; * rights to prevention and protection; * rights to equitable distribution of the benefits and burdens of development.

5. Participation

I just want to mention a couple of ideas and concepts which could help participation break out of the managerial mode that the World Bank uses into a more meaningful form. One arises from the environmental conference in Rio and the principle of subsidiarity. This is the principle that decisions take place as close as possible to the level at which they impact. How to reorganise institutions and bureaucracies is another matter. But the principle is a principle which has gained consensus agreement in Rio and it is a principle that from a human rights perspective we should be taking seriously.

Secondly, in the World Summit for Social Development process at Copenhagen, there is an emerging principle which could be of a great deal of use which is the principle of exclusion or rather non-exclusion. One of the issues being raised in participation that we might well want to focus on from a human rights perspective is participation of those who are systematically excluded: not just participation of those who could better implement the project, but participation of those whom the very development project seeks to exclude and therefore needs to include.

6. Publicity and openness

All too often there is too much diplomacy surrounding development. As a result, development tends to get conducted in an overly-covert and clandestine manner. Bilateral donor agencies can and should go public in respect of their human rights policies. The promotion and protection of human rights is not a clandestine activity. The Canadian Weingarten Report on human rights and development led to constructive change precisely because it was made public.

7. Oversight

Here one needs to stress oversight as a particular responsibility of donor agencies. They make things happen whether it is good or bad. They have the right of oversight and a duty of oversight. But all too often this duty of oversight degenerates into a practice of overlook, whether it is at multilateral level or at bilateral level. This must be corrected, if human rights policies are to be taken seriously.

8. Development victims

There is a need to look at development-displaced peoples. A present World Bank report projects how many hundreds of thousands of people will be displaced, just through their own development projects, over the next years.

A second aspect to this is what emerged in the Other Economic Summit at Houston, Texas, some years ago: a notion of peoples' conditionalities. The World Bank itself has some very nice euphemistic phrases: "risk prone projects", which create "project-affected peoples". In these risk prone projects it is possible to learn from project-affected peoples. Claims of protection and conditionalities should come to determine if that particular kind of highly dangerous pesticide producing plant in Bopal is to be set in motion or not.

9. Remediation

Development victims are usually expected to seek relief, rehabilitation and redress at national level from their own governments. There are obvious practical reasons why this must be the case. But donor agencies must not totally abdicate their responsibility to ensure that justice for development victims is real and not just illusory. Setting up processes for the mediation of development disputes would also offer significant opportunities of averting and minimizing conflicts that hereafter get pursued mainly through confrontational and adversarial proceedings which entail enormous (and avoidable) human and economic costs to all.

To go back to Kailash Panwar, after eight years of suffering he committed suicide by setting fire to himself. I think that should be the most damning indictment of the lack of redress, rehabilitation and remediation in the present development processes.

In concluding, let me just go back to the notion of the meanest of mean seasons for development cooperation, which I see epitomised by the paradigm shift in development through trade and investment. Development which is consumer driven. Development which can only be sustained through the systemic promotion of selfish over-consumption. Development perhaps as epitomised in the acronym of GATT, which some of us in Asia have come to describe as greed, aggression and theft through trade.

If I can end by going back to the birds and worms and look at ways in which perhaps earlier development and human rights practices have tried to deal with the problems:

Militant NGO efforts would have the worms organise, organise and become ornithological carnivores.

Non-violent Gandhian responses would seek to preach to the birds in an honest but futile effort to convert them to vegetarianism.

Current liberal economic approaches to development emphasising development through trade and investment in a globalized economy (rather than through aid) are premised on a pernicious social Darwinism which seeks, by contract, to determine which birds will devour which worms, in what quantities and along what time frames.

I think the human rights approach to development is needed now more than ever, reiterating basic values of fairness, pluralism, non-discrimination and justice. Only such a human rights approach to development would enable the worms of the world to go about their prosaic but vital tasks ensuring the fertility of the soil. While the birds of the world, like Shelley's skylark, could "ever-soaring sing and ever-singing soar".

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Challenges and opportunities

Ma Socorro Diokno, Secretary-General, Free Legal Assistance Group, The Philippines

In 1994 an independent review of aid, *The Reality of Aid 1994* was conducted by NGOs in 21 country members of the OECD. The review concluded that the reality of aid in 1994 was depressing. It stated, "With a few exceptions, donors appear to be failing to live up to their commitments. Notwithstanding public statements by donors that poverty focus is a priority, there is very little hard evidence to support the contention that the rhetoric has in fact been put to practice".

Among politicians and commentators there appears to be a lack of confidence in aid. Business interests are becoming more and more assertive and their influence on the shape of aid and the

countries it goes to, appears to be increasing. Not once did the review consider aid in human rights terms, not once. Even worse, the review exposes an attitude towards human rights which is apparently shared not only by the donor agencies and governments but also by those who conducted the review itself.

We heard from some speakers yesterday that a certain level of economic development must first be achieved before human rights can be enjoyed or guaranteed. This is very similar to the assertion of Asian governments that economic growth is the essential foundation of human rights. I would like to quote a couple of statements from these Asian governments.

"Economic progress facilitates the growing trend towards democracy and promotion and protection of human rights." and, "The only liberating force is economic development. It shakes up societies and value systems. It paves the way for progress. It unleashes popular demands for participation. The West must help Asia in its economic development if it really wants to change Asian value systems and improve Asian standards of human rights."

This view brings into question two related myths regarding human rights. First, that human rights is equivalent only to civil and political rights; second, that certain kinds of rights take precedence over the others. Those who ascribe to these statements fail to comprehend that the lack of economic progress or what is termed 'backward development' can never justify violations of fundamental human rights and freedoms.

This morning we heard about the wrong way to development, two ways, wrong ways both. The Philippine situation shows exactly the disastrous effects of viewing growth alone as the object of policy and the criterion of success. A bias towards economic growth, rather than towards human rights, leads to the adoption of policies and programs that are skewed towards the commerce and industry interests of donor countries. The aid in many cases helps sustain existing social structures which have concomitant deleterious effects on the human rights of the peoples of the recipient countries who live and die in societies marred by massive poverty, malnutrition, growth inequality, unemployment and homelessness.

This brings us to the first disturbing point, or pattern, regarding development aid. This is the increasing influence of commercial interests on the shape of the aid program. This is accomplished generally by the practice of mixed credits and tied aid. Aid tied to procurement in donor countries has at least two consequences for the recipient country. First, it holds back the development of a range of industries in developing countries which would otherwise be able to compete for aid-funded projects. Second, it can result in funding projects that reflect the capacity of a donor country's industry rather than what is actually needed by the recipient countries.

In many cases aid is also used to promote enterprise and investment in recipient countries. While this may provide some benefits, it does nonetheless raise a valid concern that aid could be used to grant industries in the donor countries easy access to the markets of developing countries. The conflict that exists between promoting the interests of developing countries and those of donor industry are unfortunately inadequately addressed by most donors. The realities are all too often that commercial considerations take precedence in decisions on aid. This completely ignores any notion of respect for promotion of human rights.

The second pattern that bothers me is the militarisation of aid. In highly militarised societies such as those of many Asian countries, aid is often used or misused by governments precisely to stifle dissent and to disempower the people. I would like to cite a couple of examples taken from an experience very close to me, martial law in the Philippines.

At the height of martial law the Marcos government undertook massive infrastructure construction - building of roads, bridges, etc. A lot of this was funded with foreign ODA and the ostensible purpose was to provide access for farm-to-market access roads. The reality is that in many parts of the country, particularly in the most rural areas of Mindanao, these roads were used to ferry soldiers so that they would be able to enter into areas where they felt the people were sympathetic with opposition to the government. These roads were actually used to bring in arms, to build camps and to control the people in the area.

Another example is the World Bank-financed dam project in the Cordillera region. The ostensible purpose was to provide electrification, not even for the indigenous peoples where the dam was going to be built, but for the lowland non-indigenous Filipino population. The indigenous peoples responded by mobilising and organising opposition since they were in danger of losing their ancestral homes. Their cemeteries would have been completely overrun and flooded. As a result, the martial law government responded by executing their leader.

Although the Philippines is arguably not as militarised as it was in the martial law times, there are quite a number of development projects which are geared towards energy production. Most of these energy projects are funded from aid funds and these projects have resulted in the displacement of thousands of families that has brought along homelessness, loss of livelihood, starvation and malnutrition.

Another phenomenon relating to the militarisation of aid, has occurred in the last five years. We all know that the volume of aid spent on relief and humanitarian assistance has increased dramatically while the nature of the emergencies has shifted from natural disasters to man-made disasters in the form of armed conflicts. Now it is very common to see relief operations conducted in the context of open conflict.

These involve not just the provision of humanitarian assistance but also military activity, including air drops of essential supplies, escort of aid convoys through war zones etc. For me a more insidious consequence of this is the increasing involvement of the military in relief, humanitarian and peacekeeping operations. This involvement has very clear benefits for the defence establishment. It blurs any distinctions that may exist between emergency, military and development activity. It may also serve to sabotage the underlying principle of humanitarian aid, which should be to enable people to free themselves from their own situations on their own terms.

I have major concerns about humanitarian assistance based on force because this could actually prolong a conflict and inflict more suffering as it takes away primary responsibility for solving the conflict from local leaders. Even worse, we are seeing many influential policy makers who are beginning to believe that aid should be aimed at promoting the economic and political transformation of societies in order to deal with, prevent and manage a conflict. Needless to say,

political, economic and social transformation of any society, whether in conflict or not, is and should be, generated on the basis of the articulated needs, plans and policies drawn up by the very members of that society and should not be based on the dictates of donor countries.

The growing links between defence, diplomacy and development cooperation have led to the adoption by some donor agencies of what is called 'political' aid. An American policy maker has in fact stated that, "Developing nations need assistance in politics, just as much as building infrastructure, industry or institutions such as universities, cooperatives and trade unions. Without political aid, their political systems may lack behind development in the economic and institutional sectors with a resulting political instability." What arrogance. It displays a profound contempt for the capacity of people in developing nations to fashion their own future. It also belies the real interests behind the provision of this form of assistance which is actually naked intervention in and control of the political, social and economic life of developing nations that erodes the sovereignty of these nations and have dire consequences on the human rights of the people.

Yesterday, Dr Ware asked us what we wanted or expected from official development aid. I think first, donor countries with both implicit and explicit mandates, vis a vis the realisation of human rights, should recognise the direct applicability of their work to the issue of human rights. Second, they should ensure that policies, projects, perspectives, programs pursued, do not harm the prospect of human rights being realised, nor the capacity of a government or a state to fulfil its own legal responsibility. Third, what we seek is not merely aid but cooperation and responsibility.

I agree with Charles Abeysekera when he expresses his concern about economic, social and cultural rights. There are so many issues regarding these rights that the real entitlements or the core content of these rights has not been made explicit.

Take the right to housing, for example. When we speak about housing, what do we mean? Does government provide us with a house? Where do we build it? A whole range of issues need to be resolved: land ownership structures and related land issues; balance between land ownership rights and private good; private versus public ownership of land; right of the state to expropriate land to fulfil housing rights; construction and maintenance of housing; private versus public initiatives; pricing; subsidised versus market-priced housing; security of tenure and non-discrimination; the role of government; the role of women, especially including title to land, inheritance rights, decision making; specialised housing needs for the elderly, disabled, terminally ill children and women.

You are talking about peoples' control over their housing. About the role of the informal housing sector. About health and housing rights. About the impact of armed conflict on housing rights. About environmental issues. You are talking about a whole range of issues when you deal with just the one right. Unless these issues are adequately addressed within a human rights, holistic, interdependent framework and viewed from a national not a project perspective, I find it difficult to believe that economic, social and cultural rights can be realized.

This is the challenge I pose to NGOs. It is time that we seriously looked into these rights to determine what entitlements they imply, what their core contents are. There is the issue of justiciability: How you can make rights justiciable. How you can make them enforceable. How you can make governments accountable. There is also the need to look into the role of international financial institutions, the WTO, the IMF, the World Bank, the donor agencies, structural adjustment programs. When you speak about one right you need to look at everything within its context.

I would like to end by saying that any step we take within a human rights framework is for me a step in the right directions. Perhaps the very biggest challenge falls to every one of us right now to take that very first step towards actually adopting an integrated, indivisible, holistic human rights approach towards development and development aid.

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Human Rights and Aid: An Australian Parliamentary Perspective

Senator Stephen Loosley Chair, Joint Committee on Foreign Affairs, Defence and Trade

I thought perhaps, before taking the specific question of aid and human rights to hand, I might say a few words about the Human Rights Subcommittee of the Joint Committee on Foreign Affairs, Defence and Trade of the Australian Parliament. I thought it might be of interest to our visitors from overseas especially in its terms of reference. The Human Rights Subcommittee tends to be something of an unusual phenomenon, judging by our contacts with other parliaments around the world.

The Sub-committee was established in 1991 and its terms of reference are for each parliament to review Australia's international efforts to promote and to protect human rights based on the Annual Report to the committee from the Australian Department of Foreign Affairs and Trade.

The committee is very effective in terms of attracting representation from both the Chambers and from all the parties represented in the Australian Parliament. It has produced two reports to the Parliament, in 1992 and 1994.

The Sub-committee itself has really become the focus of an extensive human rights discussion, not only in the Parliament but in the broader community. We receive constant submissions on virtually all matters which could come within the framework of human rights ranging from reform of the United Nations through peacekeeping, indigenous rights, labour rights, children's rights, minority rights and of course aid, trade and human rights. We see it as the Committee's role to raise the debate on the place of human rights in policy making within the Australian government and within the Parliament, to inform and to scrutinise and to make recommendations.

What has emerged in terms of our deliberations over the past two or three years? Our first conclusion is that human rights in the most general sense and in terms of the international human rights system of the UN is undoubtedly given a high priority and sincere attention in Australia within our policy making process. Australia ratifies and has ratified, usually without reservation I am pleased to say, most of the human rights treaties. A number of those ratifications have taken place at the direct urging of the Human Rights Subcommittee. Australia does take seriously its obligations and we do endeavour to seek implementation.

Secondly, the Committee has concluded, and we affirm, that human rights are universal. We do not accept the cultural relativist argument when it comes to basic human rights as defined in the various international covenants and instruments and accepted by the international community. Moreover, we affirm that human rights are indivisible. The economic and social rights so long and so damagingly confined to the eastern blocks sphere of interest during the Cold War are as significant as civil and political rights.

But more than that, our argument is that they are inextricably linked to each other and the achievement of one set of rights should never await the achievement of the other. To quote from our report of December 1994:

Human rights standards are aimed at improving the quality of life for ordinary people. They should be the central driving force of all governments' policies...Governments are often the perpetrators of abuses and they hide behind the concept of national sovereignty whenever criticised, despite the fact that they have often previously acknowledged the universality of the rights in question. A Canute-like adherence to isolationist nationalism is futile in any aspect of modern life, but especially on questions of human rights abuses as they are so intricately linked to national and international security. Respect for human rights inhibits mass refugee flows, makes states less inclined to go to war with each other and alleviates the poverty and inequality which breed terrorism.

I must say since that was written I have taken a delegation to Rwanda at the request of the Australian Minister for Defence and seen in real and absolute form just how important those words are in terms of dealing with the scourge which humanity inflicts upon itself from time to time.

There are consistent themes that run through the Human Rights Committee's various reviews and recommendations. I might add that we are currently embarked upon a review of the Australian relationship with Burma, with a particular focus on human rights.

But the themes on which we work might best be characterised by the words information, involvement and integration. Those words apply with equal weight to both domestic and foreign policies with respect to human rights. The Committee has recommended Australian support for the reform of the UN:

to improve its ability to implement the Charter;

to prevent conflict by monitoring abuse and intervening before conflict develops to the stage we have seen in countries such as Somalia and Rwanda of very recent times;

to encourage international support for human rights systems through acceptance of and adherence to the Covenants and conventions and through much better financial and administrative support for the bodies charged with underpinning those conventions;

to place human rights at the centre rather than at the periphery of the UN system (we see the continuation of human rights matters at the margin of the UN system as being something akin to an indictment);

to further assist in the broadly based and equitable development of poor states, of impoverished states.

I might add I was very pleased to see that our report provided some of the basic background work used by James Michel who is the Chair of the Development Assistance Committee of the OECD in a very recent speech. He told me that in Malawi at the Southern Africa Development Community Conference just a week or so ago. It is very pleasing when we do some work in this area, that it can have a resonance far beyond what you might anticipate.

Lest anyone think that our committee simply works on the basis of making points for the globe and not for ourselves, we have recommended in respect to Australian domestic circumstances greater integration and coordination of human rights policy. There has been a haphazard and ad hoc arrangement from time to time involving both the Commonwealth and the states.

Government departments and agencies have been asked how they implement and monitor Australia's obligations under the treaties we have signed. That is a new experience for most of them. An interdepartmental committee has been established to coordinate government policy on human rights. We have paid particular attention to the circumstances that confront Australia's Aboriginal people. Heaven alone knows, they are entitled to nothing less.

We have also recommended a greater involvement of the legislature in the treaty system within the Australian context in respect of both the stage at which treaties are signed and which treaties are ratified and then looking beyond that to the monitoring stage.

In terms of the implications for aid, the Human Rights Committee's view of aid is informed by the principles of the UN Covenants. We are committed very clearly to the inter-relationship of human rights with development and with security; security of the individual as well as of the nation. The Committee believes there is a linkage between aid and human rights and it should be a positive and proactive one, rather than a punitive one.

Human rights, as defined in the Covenants must be an integral part of aid programs. Just as we have asked that it be made integral to our foreign policy, to our defence policy, to policy with respect to Australian Aborigines and Torres Strait Islanders; to our legal system; to our education and social welfare systems and so on.

Therefore, in relation to Australia's aid policy the Committee has called for an integration of aid with human rights by firstly, the application of a human rights impact statement in all development assistance proposals; secondly, a recommitment to the United Nations target of 0.7 per cent official development assistance balanced against the GNP ratio; third, for the consider of UNICEF and others' proposal-for-discussion known as the 20/20 initiative; fourth, for an inquiry into the implications for human rights of the World Trade Organisation, and finally, a requirement that the Department of Foreign Affairs ensure that defence exports are consistent with our human rights policies, our obligations and our undertakings.

In respect of the document, *The Rights Way to Development*, there is no doubt that it takes the debate on aid and human rights further - the understanding of the nature of the linkages and of delivery systems even further. I think the authors are to be congratulated for their very thoughtful and deliberate approach, for the breadth of their approach, for their careful research and the comprehensive nature of the document itself. Having worked with the authors before I know the quality of their product. They have extended the ideas and they have detailed the means by which human rights can be seen as both the aims and the means of development. I have no doubt that the Committee across the board would commend them for that.

But I would like to make a comment, in particular on the notion of good governance. I understand there has been some debate on the terminology here over the last couple of days. Good governance has a particular impact upon me at the moment. As I mentioned a short while ago I headed an Australian delegation at the Southern Africa Development Community Conference in Malawi. The conference itself met in one of the six, possibly seven palaces, which had been constructed by the former President for life, Hastings Banda of Malawi. It had cost at least 195 million American dollars to build. At least some of it is believed to have been skimmed from aid money.

Looking at this 400-room palace, in all its obscenity, with a summer house down the back and an amphitheatre off to one side where the women of the Banda entourage danced and sang for him, you could not necessarily conclude that it was an infringement of the human rights of the people of Malawi that this had been built. But you could certainly say it could not represent in the wildest stroke of the imagination, good governance.

Ladies and gentlemen, I favour, favour strongly, the broad definition of human rights, economic, social, cultural, civil and political, as I mentioned at the outset. There has been a lot of point scoring, far too much point scoring during the Cold War over what represents the more important set of rights. Frankly, I believe that point scoring should have ended with the Cold War but it tends to linger in the current north-south debate, which is actually far more significant. It certainly appears in the debate over cultural relativity. In this continuing polarisation of thought it exhibits itself in the arguments between those who concentrate on economic growth as a driving force of development and those who have appeared to favour political reform, democratisation, reflected in civil and political rights. The term 'good governance' then can actually bridge the gap. I think it is an artificial gap, good governance can bridge that gap.

Good governance involves concepts of equity, accountability and transparency, which are far from universally exercised in countries whose systems are decaying under the weight of endemic

corruption. That is far too frequent a phenomenon, of course. In these situations there is a danger of the dissipation of people's social, economic and political rights. Thus, we can conclude that Banda's profligacy, the profligacy of his administration, was unquestionably a breach of human rights.

I would conclude by making reference again to the work of the authors, to commend them for the work they have done and particularly in creating the opportunity for this seminar. It is an opportunity - I think a vital opportunity - to move the debate a step forward.

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A test for the Rights Way to Development

Sidney Jones Director, Human Rights Watch, Asia

If we are going to make any kind of effort to take the rights way to development seriously, we have to talk about how the model gets actually tested. I have a couple of suggestions. They all relate to different ways of trying to draw up draft contracts between a donor agency and a recipient government or NGO involved in the process.

It is critically important to do two things. One is to keep your expectations scaled down. You have to start from the assumption that you are not going to change the social structure. You have to start from the assumption that you cannot transform any kind of agency overnight, nor can you transform ways of thinking overnight. You also have to start from the assumption that the more concrete you can get, the more effective your thinking is going to become.

One way to draw up a model contract for a development program or project would be to choose one or two countries - in some ways this is addressed to any development agency, although I must say I cannot conceive of USAID or an aid agency in the United States ever even getting to the point where this could be discussed. So Australia has already got one leg up over the US.

One would take a country like, say, the Philippines or Vietnam and look through the whole range of aid projects that are currently being funded through AIDAB, or whatever agency is under discussion, then try to draw up a contract between Australia and the recipient country, in terms of the rights outlined in the Covenant on Economic and Social Rights.

This would involve seeing whether you could take programs and firstly express them in terms of rights and entitlements to see if you could also try to develop a clear statement of what it was you were trying to achieve in the fulfilment or exercise of those rights. In other words to outline some of the benchmarks that we talked about but never really pinned down on paper.

You would need to get through what would happen if either the recipient government or some other factor caused either a precipitous decline in the rights or caused those benchmarks not to be met. This might show the way towards a mechanism involved in holding either the recipient or the donor governments accountable. I do not think there has been enough thought to how such a mechanism gets developed. Whether you call it a complaints or grievance procedure on the part

of people in that country, so that there can be some accountability both on the part of the donor government as well as the recipient government, or whether you call it accountability procedures, it has to be discussed and there has got to be some way of addressing failure to exercise those rights.

You also have to have a very clear idea of outcomes in terms of rights. The purpose of trying to draw up this contract would be to see whether you came out anywhere differently than you would have if you had used your normal approach without thinking it through in terms of basic rights.

1. Existing program model

The first contract that you would try to draw up would be for the overall programming. In some ways it would be your strategy paper but it would involve rethinking an existing program with all of the grants that were already approved.

2. Existing project model

The second exercise would be to look at a specific project. The proposed bridge in Vietnam would be enlightening. A number of questions arise from such a project. One question would be how you rationalise the project in the first place in terms of rights outlined in the Covenant on Economic and Social Rights. Even more important, because it is an infrastructure project, would be trying to think through what other rights needed to be protected in order for that project to be fulfilled. For example, if there were people displaced in the context of building the bridge, how to ensure that those people maintain an adequate standard of living, maintain a right to housing and so on.

The usual rationale for such a bridge is put in terms of increasing access of a disadvantaged part of the population to markets. What often happens in constructing roads or bridges or any of these other major infrastructure projects, is that people who used river transport or some other form of travel - especially women, for example women traders in south-east Asia - find themselves displaced by mechanised vehicles when the bridge across the river or a major road is built. It would be interesting to think through whether there were other sorts of rights deprivations that would occur in the course of building this bridge, that would have to be addressed through the same project which provided the aid for construction.

It would also be important to think through whether the people who were involved in the construction of the bridge, had their right to just and favourable conditions of work maintained throughout. So, if you took the one project which already existed and tried to think through all the rights implications and also what players needed to be involved, you might come up with insights which you would not have otherwise have had.

3. A model that starts from scratch

The third exercise would be to draw up a contract as well but would be a much more difficult one because it would be looking at a program in a particular recipient country starting from absolute

scratch, and thinking through what the priorities should be in order to put forth a list of projects which would comprise the overall program.

This exercise should take place on a couple of different levels. It could take place in the form of a workshop where you would have the development agency people in one room coming up with their idea of what a contract would look like between the host and recipient government. You would have NGOs - assuming that you were dealing with a country where NGOs were allowed and there was some modicum of freedom of association and freedom of expression - also coming up with their own idea of a bilateral government-to-government contract with obligations and rights on the part of both parties involved in it.

Finally, you would have people from the recipient government. You could do this in a country like the Philippines, you could not do it in a country like Vietnam. One of the issues that we have not resolved is what limitations are placed on an aid agency in countries where you do not have NGOs and you do not have the capacity to discuss some of these issues with those affected.

It is absolutely critical to make the differentiation very clear and frank. I do not think, however, that you would face the problem raised by AIDAB that a government like Vietnam or Indonesia would be utterly opposed to a discussion of rights and entitlements at the outset. That would be the case if you were saying 'you only get aid if you are going to have free elections', or if you tied it to political and civil rights. Once you are talking in terms of social and economic rights and the right to health, the right to food or the right to education, you will get more receptivity initially, even if you are going to face major limitations in how you bring about participation of those affected afterwards.

Once these three model contracts would be drawn up there would be a basis for discussion on how to proceed to a next step. First, you would know whether it was worth going forward at all, and whether there was enough difference between the old approach and the new approach to make it worthwhile.

Any rights-based approach to development, would inevitably have to deal with other branches of government. I said earlier that such an approach was completely unthinkable in the United States. In the US whatever the development agency decided to do, or even the executive branch of government decided to do, there is a good chance that it would now be undercut by the Congress. Keeping in mind what the political realities are, as has been said so often, is absolutely critical. For the US government one of the things that would be critical would be to have a human rights orientation program for freshmen Congress people. Perhaps you could have the same thing in Australia, just to acclimatise people.

If there are going to be right specialists in the development agency - a great idea - you are also going to have to get some kind of expertise in a wide range of other branches of government.

The trade issue will need to be dealt with somehow because aid is in fact an infinitesimal part of the whole development world. The amounts involved in development assistance are minuscule compared to the amounts involved in investment and trade in the private sector. It is equally important to try and think through what a rights approach to trade, investment and business

practices would be and to see whether or not one could get representatives of the Department of Foreign Affairs and Trade or in the US the Congress Department, involved in some of the discussions on how to actually implement the basic social and economic rights guaranteed in the Covenant.

You also need to deal with the international financial institutions and if you have a right-based approach on a bilateral basis, it will carry through into implications for any donor government's policy in the World Bank, in various multilateral lending institutions and in donor meetings.

The donor meetings could be an extremely useful way of trying to push a rights agenda because at least the majority of countries that are involved have ratified the Covenants. Phillip Alston has mentioned the way UNICEF has taken the rights of the child approach and pushed it through very aggressively. Such an approach could be translated into an aggressive push on ratification for the Covenant on Economic and Social Rights. But this is probably best done in one of these multilateral settings, rather than one government alone trying to push the approach in various fora.

Here the question arises as to whether an aid agency could offer some kind of an incentive to recipient governments to ratify the Covenants - but that might get you into some difficulty. It is critically important for Asia to engage Japan in a very concrete dialogue on the rights approach - assuming that Australia is prepared to take the lead on this whole approach.

To gain some idea of how far thinking on this needs to come, there was an article in the Sydney Morning Herald of 10 February 1995 about how Japan had proposed a new program of development assistance through APEC, the Asia Pacific Economic Cooperation Forum for a certain amount of aid to be set aside to help very poor governments, and the US government has even resisted this proposal.

In conclusion I think that it would be a very useful to test the model and to use funds to try to hold workshops to think through how the rights approach model would work with relation to specific countries. It is important to devote a specific amount of time and attention and resources to an accountability mechanism. In doing this, it will be important to involve different parties, including the NGO community, the donor countries and the recipient countries. Finally there is a need for specific benchmarks to measure progress towards the achievement of a particular right. Here again, a country-specific workshop with a rights approach might be the most productive way to go.

We, in the human rights community have just as much of a long road to go as the aid agencies do. The tongue lashing we got from Phillip Alston is probably indicative of the amount of time it is going to take to get some kind of change in our own minds because we do not think about social and economic rights very much, even when we pay lip service to the need to do so.

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