

TRICK OR TREATY

I had the pleasure of spending some time in the United States last year and I was in North Carolina both at the time when the hurricanes flooded a great part of that lovely State and during Halloween. For those of you who are not familiar with this festival, it is an opportunity for kids – and adults – to dress up in fancy dress, preferably in some kind of scary costume, and to knock on the doors of the neighbourhood screaming out ‘trick or treat’ when the door is opened, in the expectation that they will be given lollies or sweets in exchange for not frightening their potential victims. The forces of globalization have begun to affect even this odd custom: I was flabbergasted some years ago to witness Parisian kids emulating their American peers, albeit in a very elegant and stylish Parisian mode.

Halloween is of course familiar to most people under thirty who go to the movies. It is the setting of a long series of slasher horror movies that have graced world screens over recent years in which, on Halloween night, the all-powerful anti-hero wipes out legions of teenagers and their parents in rivers of blood and gore until a brave – and usually chaste – teenager turns the tables and dispatches the monster in an even more atrocious manner in the final conflagration.

I want to suggest to you today that this version of Halloween is not an inappropriate metaphor for what is happening to ‘the social and international order in which human rights and freedoms set out in the Declaration of Human Rights can be fully realized’.

To set the background to what follows I want to refer you to the report of the UN Independent Expert on Debt and Structural Adjustment, Mr. Fantu Charu. He tells us that among 4.4 billion people who live in developing countries today, three fifths have no access to basic sanitation; almost one third are without safe drinking water; one quarter lack adequate housing; one fifth live beyond the reach of modern health services; one fifth of the children do not get as far as grade five in school and one fifth are undernourished.

In more concrete figures this means that this year in the developing world 507 million people are expected to die before they reach forty, 1.2 billion people have no access to safe water, 842 million adults – two-thirds of them women – are illiterate, one billion do not have adequate housing, 158 million children under five are malnourished, 800 million children do not finish primary school, and 1.3 billion people are living below the income poverty line. For every mother who dies per 1,000 live births in the developed world, 7 to 75 mothers from developing countries die. Infant deaths in developing countries are 4.5 times higher than in the industrial world.

These are the results of poverty, poverty that violates basic human rights, poverty that is itself a denial of human rights, of the right to development. In the words of Mrs. Mary Robinson, the High Commissioner for Human Rights, in her 1999 report to the UN Economic and Social Council, “the victims of poverty are denied almost all their rights – not only to adequate food, health care and housing but also to participation in the political process; (to) access to information and education; (to) fair legal treatment and (to) the normal benefits of citizenship.”

Mrs. Robinson’s non-inclusive list of rights focuses especially on economic, social and cultural rights. These are rights which are either violated or not respected in the

non-industrialized countries, the so called HIPCs – the highly indebted poor countries. In other words, the countries which are least developed in the traditional sense of the world are those where human rights are denied or under threat.

Let me hasten to add that it is not only in developing countries that this right is denied. We only need to look to our backyard to see the original Australians denied their human rights – to primary health care, to free and universal primary education, to work, to adequate shelter, to freedom from arbitrary detention and so on – as well as rural Australians and the residents of the urban fringes denied these same rights by present government policies.

Although discussion of the right to development dates back to an international labour conference in 1944, it was only in 1986 that the UN adopted the Declaration on the Right to Development and started a debate which has still not been resolved either at the UN or among development professionals. There is no time here to go into the details of the arguments for and against except to say that the difference arises from the claims of governments in the Third World to the redistribution of resources from north to south, versus the interpretation of the Declaration which asserts that development applies to individuals and communities and therefore development is the responsibility of all governments including those of the south.

The Charter of the United Nations states that one of the purposes of the United Nations, together with maintaining peace and security and developing friendly relations among nations, is the achievement of “international cooperation in solving international problems of an economic, social, cultural and humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all ...”

There is no question that development, or more accurately under-development, is a problem of ‘economic, social, cultural and humanitarian character’. And, given that according to the Vienna Declaration and Programme of Action, nations have agreed that the human right to development is – and I quote from the Vienna Declaration – “a universal and inalienable right and an integral part of fundamental human rights”, there is no question that international cooperation is – again in the words of the Charter – essential to promote and encourage respect for human rights and fundamental freedoms for all.

I use the word ‘under-development’ advisedly because there is no good economic, social or other reason in the year 2000 that justifies the continuation of a world in which poverty is rampant, where human rights are denied through lack of access to equal opportunities for people to realize their rights and yet in a world in which there are adequate resources to achieve development for all ... that is, if only justice and equity were to prevail.

Take for example the issue of debt. A UNICEF-UNDP study has shown that 6 heavily indebted poor countries spent more than one third of the national budget on debt servicing but on average less than 10% on basic social services, ranging from 4 to 11 percent. In some African countries twice as much is spent on debt servicing as on primary health care. In Zambia debt servicing claims more of the national budget than health and education combined. That is, the forces of globalization and the policies of multilateral development institutions have forced these countries to deny the rights –

and in particular the economic and social rights – of their citizens. Yet the lifting of the burden of debt could do so much to relieve this great suffering.

The right to development is by now, of course, a constant and recurring item on the agendas of both the UN Human Rights Commission and the UN General Assembly, and the debates in these forums have contributed to our understanding of the right and to our efforts to develop strategies for its realization. It is helpful to acknowledge the conceptual progress made in and the lessons learnt from these debates. In the words of the Commission on Human Rights in 1998 “...Democracy, development and respect for human rights and fundamental freedoms including the right to development, are interdependent and mutually reinforcing”.

That is, development can only be achieved when democracy and respect for human rights and fundamental freedoms become a reality. Development can only become a reality when the civil, cultural, economic, political and social rights of all can be realized.

I would argue that one of the greatest challenges facing us when we consider the realization of the right to development is the lack of focus on the realization of economic, social and cultural rights and the failure of many development actors to not only understanding the core content of these rights but to develop programmes to address them.

The first misconception is that economic growth – economic activity – is synonymous with the realization of economic rights. They are not the same things. When we look at some countries whose economies are doing very well from a statistical or global perspective, they still show increasing levels of poverty and a growing gap between the haves and the have nots. In the context of development it is not enough to look at economic growth; we need to consider issues of equity, of justice and of access.

The emphasis placed on international cooperation in the UN Charter, the Universal Declaration of Human Rights, the International Covenants and in the Declaration on the Right to Development has increased greatly among development agencies in recent times. The expectation is that through loans, grants, technical cooperation and other means, the international community will provide assistance to states to meet their international obligations for the realization of all human rights.

The World Bank itself is moving towards a recognition that development is not simply equivalent to economic growth but that what it calls ‘social development’ is the other side of the coin of economic development. In his proposal for a ‘Comprehensive Development Framework’ the President of the World Bank, James Wolfensohn, makes this point quite forcefully. He says that there needs to be a “better balance in policy-making by highlighting the interdependence of all elements of development – social, structural, human, governance, environmental, economic, and financial”.

I think it is important to remind ourselves that human rights are about people, about the recognition of their dignity, their humanity and their worth. Indeed, an essential aspect of the Declaration of the Right to Development is its emphasis on the centrality of the human person as a subject of the development process. The Declaration in its very first article stresses that by virtue of their inalienable right to development ‘every human person and all peoples’ are entitled to participate in and (and contribute to and

enjoy) development. If we lose sight of this fundamental principle, then we fall into the trap of abstraction and dogma.

Development, therefore, can only be sustainable if all people are brought into the process and when all people can benefit from the fruits of development. This means that governments and international development actors have an obligation to provide information and to ensure transparency so that people can be involved in the decisions that affect their lives. The only guarantee for this is respect and protection for civil and political rights.

I would like to turn briefly to look at what the realization of economic social and cultural rights mean for policy and practice. We all are familiar with the history of the Universal Declaration of Human Rights. The differences over the nature of rights was then already manifest and with the hardening of the Cold War, these differences grew. At that time the politics of human rights were driven by the conflict between the capitalist west and the demand economies of the east. In reply to the western powers emphasis on freedom of speech and from arbitrary arrest, the Communist block promoted the economic and social rights which they claimed socialism was implementing.

This division persists today. Many governments in industrialized countries still maintain that economic, social and cultural rights are not justiciable but simply statements of aspiration for a better life. It is ironic that many governments in our region argue in a similar vein that they are addressing these rights as a priority over civil and political rights. The arguments of the Cold War persist in the politics of the New World order. In actual fact neither side is in a position to claim that they are fulfilling their treaty obligations to either set of rights.

Yet as recently as 1996, governments in our own region re-affirmed at a UN regional workshop in Kathmandu that “the primary responsibility for the promotion and protection of human rights rested with the state”. The obligation of states for the realization of human rights is also one of the most important guiding principles of the right to development.

There is growing acceptance that these obligations fall into three general categories, the obligation to respect human rights, the obligation to protect human rights and the obligation to fulfil human rights.

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

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

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

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

With relation to economic, social and cultural rights, this should not be seen as an imposition when resources are scarce, as they all too often are. Plans to meet these obligations provide a blueprint for development planning and a set of objectives that can be furthered through international cooperation.

The debate on the realization of economic, social and cultural rights has often stumbled over the need and the difficulty of establishing indicators for the realization of these rights. I would like to suggest that the conceptual and practical difficulty can be overcome to a great extent through a systematic approach based on an understanding of these obligations and their implication for each of the rights in the International Covenant.

These indicators would be identified at the analysis stage and lead to the formulation of objectives whose implementation can be monitored based on the indicators. The process should be something like this,

1. For each right in the Covenant relevant legislation which exists or which should be enacted and bylaws which either promote or hinder the realization of rights are identified - this is the obligation to respect rights.
2. For each right in the Covenant the obstacles to the realization of rights caused by non-state actors and the state of enforcement mechanisms that are used or ignored for the protection of rights are identified.
3. There is a need next to determine the resources available for the realization of each right, the policies in place or needed at various levels of government, and the priorities allocated to the realization of the right.
4. Each of these need to be disaggregated according to sectoral and geographic areas of greatest disadvantage in order to enable programme focus on these areas.

A central requirement in all this is an active and consistent emphasis on people's participation. This is a basic principle enunciated in the Declaration on the Right to Development and should be built into each step of the development process. While we need to also heed the principle of subsidiarity – that is, that people only need to be involved at the level of decision-making that most directly affects them – the responsibility for ensuring as much participation as possible should be shared by all development actors ... including the international development agencies and the trans-national corporations.

People at each level of decision-making must be actively provided with the information that will enable them to take part and contribute to positive outcomes. This information must include information about the international human rights framework and the obligations of states to the realization of all human rights. This is not a threat or a challenge but rather as a positive contribution to the involvement of people in their own development and in the forging of national partnerships.

Lowitja O'Donoghue recently said "... It is crucial that we move from a 'welfare approach' to a 'rights approach'. The difference here is that in a welfare approach people hope that their needs will be met. In a rights-based approach, a job, good health, education and housing are rights, which as a citizen ... we are entitled to". I would add that with entitlements come responsibilities and that it is in partnership with all sectors of society that sustainable development can become a reality.

What does this mean for the current international order? It means:

First, that the realization of the right to development and of civil, cultural, economic, political and social rights is a major challenge facing the international community in the twenty-first century and that international cooperation between governments, United Nations agencies, the Bretton Woods institutions, the private sector (the transnational corporations) and civil society organizations can lead to genuine progress in overcoming poverty, inequity and discrimination. This will only come about if the cooperation is based on and takes its inspiration from the International Bill of Rights.

While the state is responsible and accountable for the realization of rights, where resources are lacking, it is entitled to expect international assistance and technical cooperation from outside. Any conditions placed on assistance should be negotiated in advance, include the views of civil society organizations and be monitored by independent parties. Conditions on development assistance should never contribute to the violation of human rights.

Popular participation is neither a luxury to be granted by states nor a privilege to be earned. It is the practical manifestation of the interdependence and indivisibility of human rights and as such is a contribution rather than a hindrance to development. The responsibility lies on national and international development agencies to provide adequate information to make participation a meaningful process. This requires appropriate methods of dissemination, opportunities to freely express views with an expectation that they may be accepted, and ways to learn of outcomes.

Participation must be a feature of any situational analysis, of the setting of development objectives, and of monitoring and evaluation. Since development will only become sustainable when human rights are realized, development objectives must be based on human rights objectives which in turn imply a human rights audit at the outset and monitoring and evaluation in human rights terms.

The obligations of states to respect, protect and fulfil human rights provide the means to establish benchmarks and indicators for the realization of each right. These obligations should be the starting point of development planning and design.

It is not sufficient, in my view, for international development actors to contribute to the efforts of governments in meeting their obligations for the realization of human rights. They also need to abide by human rights standards and norms themselves and this applies to the international financial institutions, to private sector corporations, to bilateral and multilateral donors, to NGOs and to the UN. All of these have an obligation to take account of the local social and political conditions, to ensure that the analysis they base their activities on is participatory. They need to consider the human rights impacts of their programmes and activities on the marginalized and the disadvantaged.

In principle, donors have a good record on the rights of women and minority groups. However, development programmes that increase disparities between various sections of society must be avoided or have in-built a degree of positive discrimination to redress imbalances. Donors must be on the look out that their development practices do not aggravate inequality and discrimination and that those whose rights are denied them, get first priority in these activities.

One important step to achieve this is the voluntary provision of information about the analysis on which development objectives are based and transparency about the processes of implementation. Information to the various stakeholders is essential to safeguard the integrity of projects and to ensure that outcomes are acceptable to them. This implies that if the objectives are not met, there should be methods of redress and appropriate complaint mechanisms to seek redress. The way to ensure that information is readily available, that transparency is a reality and that complaints are heard is to establish independent monitoring agencies.

If we accept the proposition that development agencies – the multilateral banks, multi-national entities, the UN development agencies, bilateral donors, and NGOs that dispense assistance – are also obligated to abide by human rights standards, and if we also accept that the international community is under the obligation by virtue of the Universal Declaration to cooperate in addressing the realization of rights, then it becomes essential to establish benchmarks by which their performance can be measured. However, the reality of global politics, the intrusion of national self interest in development policies, and the rampant isolationist forces in many industrialized countries mean that these institutions have and will continue to be reluctant to measure up to such benchmarks.

For example, the OECD is currently reviewing the guidelines for multi-national entities in the light of globalization. You will not be surprised to hear that the business community is trying to dilute these and to ensure that the corporations police themselves with little international oversight. While such issues as child labour and minimum standards of workers do appear in the revised guidelines, it has taken concerted lobbying by a very few NGOs to call attention to the need for greater transparency and some form of enforcement by way of independent overview.

We need independent institutions that are prepared to hold not only governments to account but also all those privat and multi-national development actors that ought to also be responsible for ensuring the realization of civil, cultural, economic, political and social rights. I suggest to you that the Treaty Bodies and especially the Committees on Economic, Social and Cultural Rights, on the Elimination of All Forms of Discrimination Against Women, and on the Rights of the Child are ideally placed to fulfil this function.

They already review governments' performances and work with them to bring about improvements. We need to strengthen the ability of these institutions to carry out their tasks and responsibilities. We need to rationalize their activities and encourage them to call on non-government entities to also account for the realization of human rights.

Our Prime Minister and his Foreign Minister have joined the voices of the American right that denigrate the functioning of these Committees. It is true that all too often the so called independent experts appointed to the Treaty Bodies have been

inappropriately chosen and have achieved their positions through the political lobbying of their home countries. This situation needs to be addressed. Rather than attacking the integrity of the Committees, their critics would be much better off ensuring the quality of the candidates and providing them with the resources and support so that they can improve their game. And rather than contesting the nature of obligations, they should do more to integrate the international human rights system in their own legislative frameworks if they are to abide by the provisions of the 1969 Vienna Convention on the Law of Treaties which states that 'Every treaty in force is binding upon the parties to it and must be performed good faith' and that 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.

Another criticism levelled at the Treaty Bodies is that they pay too much attention to the words and information provided by NGOs. This has even led to calls for the activities of NGOs being curtailed in UN forums and excluded from participating in the work of UN institutions. The Australian Government has complained that the CERD Committee paid too much attention to criticism of Government policy and practice and too little to its own position. Isn't it ironic that at a time when even the multilateral banks are setting in place consultation processes with civil society organizations, States Parties to the international human rights treaty system are trying to silence these very voices.

The Declaration on the Right to Development and the International bill of Rights makes it quite clear that participation is integral to the realization of human rights. We should be congratulating the Treaty Bodies for ensuring that participation of civil society actually occurs.

Far from these bodies tricking the international community, they stand firm for the establishment of an international order where the human rights of all are protected and where those outcomes of globalization that lead to the violation of human rights can be exposed. The UN Treaty system is not a trick: it treats civil society as an equal partner. By focusing more on holding all development actors accountable to the realization of human rights, it can assist in ensuring that the realization of Article 28 becomes more than simple aspiration.

Rather than being the monsters on Halloween eve, the Treaty bodies are the heroines that can tame development and rescue it for the well-being and benefit of all.

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