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# DEVELOPMENT Outreach

PUTTING KNOWLEDGE TO WORK FOR DEVELOPMENT  OCTOBER 2006

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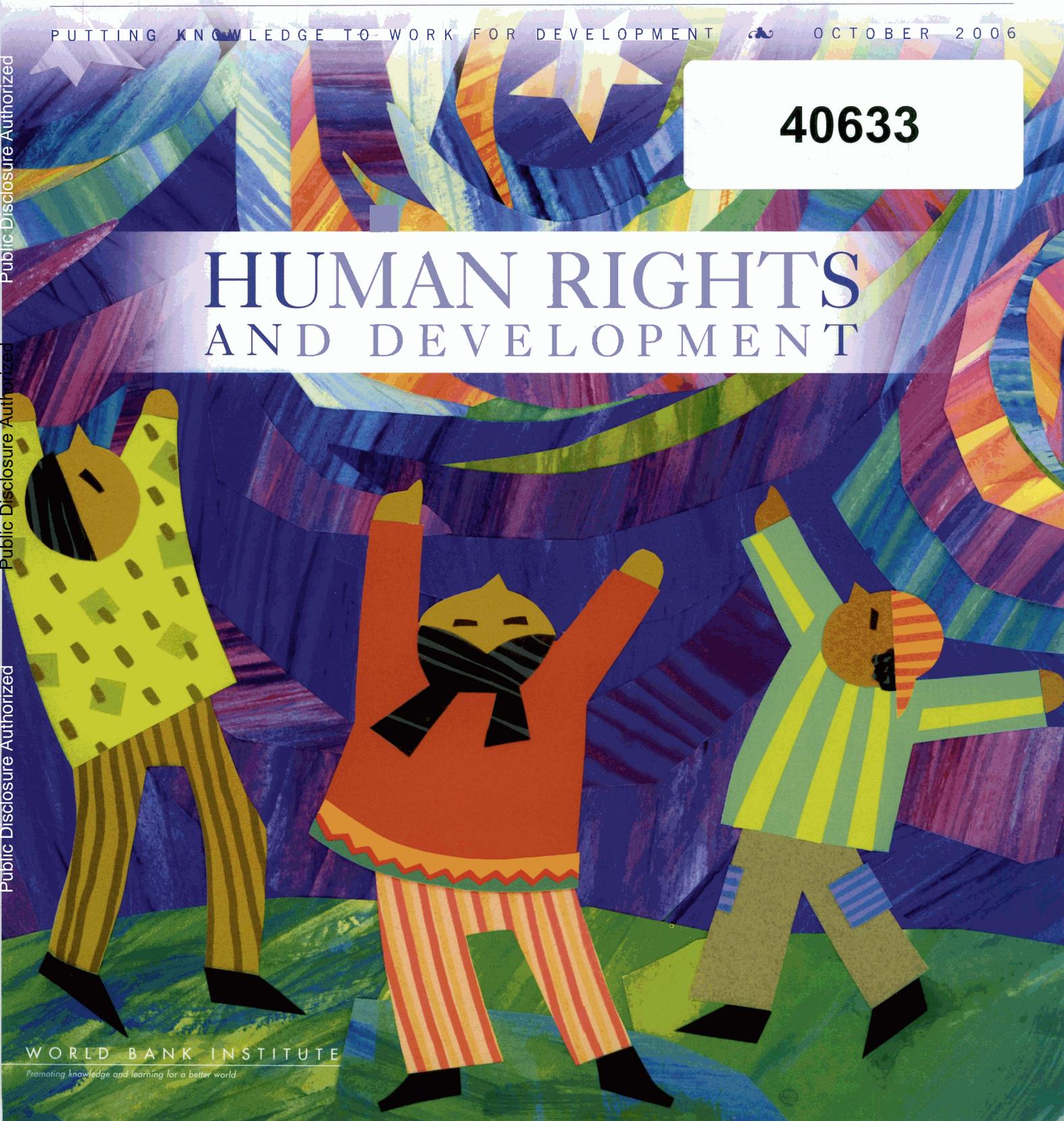
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## HUMAN RIGHTS AND DEVELOPMENT

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## ABOUT THIS ISSUE

As the World Bank places renewed emphasis on understanding the relationship between human rights and economic development, *Development Outreach* features a special report aimed at raising debate and sharing perspectives on this important topic. *Development Outreach* does not claim to provide answers to all the complex issues related to human rights nor does it attempt to formulate policy; rather, it seeks to raise awareness of the current thinking on the subject.

Human rights experts and development practitioners worldwide have contributed articles to this special report, expressing their views from different vantage points. These articles highlight the significance of human rights in supporting equity, defined in the *World Development Report 2006* as both equality of opportunity and avoidance of extreme deprivation in outcomes. They also discuss aspects of human rights related to economic growth, governance, health policies and services, and the role of donors and governments.

Although a number of authors offer solutions to some of the more pressing problems, many challenges still remain. First and foremost, we need to find suitable ways of operationalizing the concept of human rights and turning it into concrete action that promotes economic and social well-being. Second, now that the connection between human rights and development is widely recognized, it is time to include human rights considerations in development processes and programs. Although human rights are a recent inclusion in the World Bank agenda, the Bank has been involved for some time in developing governance indicators that take into account such factors as voice and accountability, rule of law, control of corruption, and so forth. The Bank is now actively promoting good governance and anti-corruption measures, which are directly related to human rights. Respect for these rights results in better health, education, and other social outcomes, which underlie sustainable development. However, as several authors point out, the Bank should not be an enforcer of human rights, but rather a facilitator, working together with the UN family, other donors, and civil society organizations.

*Development Outreach* provides a forum for open and constructive debate. We hope you find this special report challenging and thought-provoking, and invite you to send us your comments.



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THE WORLD BANK

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# DEVELOPMENT

## Guest Editorial

BY JOSEPH K. INGRAM AND DAVID FREESTONE

THIS ISSUE OF *Development Outreach* is a particularly timely and appropriate sequel to February's edition, which demonstrated that greater equity—defined in the *WDR 2006* as both equality of opportunity and avoidance of extreme deprivation in outcomes—is a key contributor to long-term prosperity and development. What this issue seeks to showcase is the significance of human rights in supporting equity through contributing to improvements in the well being of the poor.

It is still the fact that many in the development community have only a general appreciation of human rights and of their specific impact on economic, social, and human development; furthermore human rights mean different things to different people. By presenting a more comprehensive and coherent, perhaps even a more accurate view of human rights, the articles contained in this edition of *Development Outreach* endeavor to highlight the important contributions that human rights can make to our work as development professionals.

Human rights have continued to grow in importance within the United Nations system and have gained increasing prominence in international development policy and programming. A first notable step toward formally recognizing human rights as an important instrument in UN development assistance was made in May 2003, when a number of core UN agencies issued a "Common Understanding on a Human Rights-based Approach to Development Cooperation." It was subsequently incorporated by the United Nations Development Group (UNDG) into operational guidelines for UN country teams in preparing both country assessments and UN development assistance frameworks. Similar efforts were also mirrored in the resolution of the 2005 World Summit, which recommended that human rights be mainstreamed into

national development policies. Another important initiative has been OHCHR's developing of the Draft Guidelines on a Human Rights Approach to PRS, which are set to be finalized in the coming year. These developments were particularly significant in laying the groundwork for the recent creation of a UN Human Rights Council, which for the first time in history sets human rights on an equal footing with security and development as a third key institutional pillar of the UN system.

Today's international human rights regime recognizes a range of basic universal standards which states hold as essential for people to live meaningful and dignified lives—including civil and political rights, as well as economic, social, and cultural rights. Yet many development practitioners—including World Bank staff—typically think of human rights abuses in terms of violations of civil or political rights, actions not necessarily associated with economic development and often perceived as neutral in terms of their impact on economic growth. Many would even argue that the provision of civil and political liberties generally follow from sustained economic growth or is a by-product of growing prosperity, a view that has tended to dominate the World Bank's own institutional thinking about human rights. Moreover, actions by the Bank in support of political and civil rights have been constrained by a long-established interpretation of its Articles of Agreement. That interpretation, however, is now the subject of internal review and has in recent years evolved in line with the Bank's broadening understanding of development.

This new thinking about human rights is reflected in the views of an increasing number of development experts who acknowledge that economic and social rights are necessary instruments for successful poverty reduction and more equi-

table development. However, what is not yet widely appreciated in the development community is the fact that many of these economic and social rights are enshrined in a growing body of international treaties to which an overwhelming majority of states are parties. As such, they not only place a legally binding obligation on governments to ensure the provision of these rights, but can also give rise to legal claims by citizens against governments which fail to do so.

The key questions are then: Do human rights, as enshrined in legal obligations, embody something more than an intrinsic value defined in moral or ethical terms? Does their obligatory nature endow them with an unexploited instrumental power that conventional development tools do not possess?

In the lead article, Louise Arbour argues that poverty reduction strategies have much to gain from sustained actions to promote human rights entitlements and corresponding obligations. While national governments hold primary responsibility for guaranteeing respect for human rights within their borders, other states and international actors also have a responsibility to act in accordance with international human rights norms and standards. The protection of human rights and the elimination of poverty are therefore not just interrelated objectives, but a shared responsibility. Elaborating further on the links between human rights and poverty eradication, Stephen Marks sheds light on the right to development as a concept and makes a compelling case for its practical contributions to a more equitable and fair distribution of the benefits of development. According to Arjun Sengupta, a rights-based approach to development which defines poverty as a denial of basic human rights would also promote greater accountability on the part of policymakers and responsible agents by reminding them of their international obligations as duty bearers.

Jean-Pierre Chauffour compares and contrasts two different views on the causal relationship between economic development and the provision of human rights. He takes a critical look at a rights-based approach to economic growth and concludes that ensuring economic freedom, rather than promoting positive economic and social rights, is the most central element to successful development strategies. In contrast, based on empirical research, Daniel Kaufmann notes that corruption and misrule of law are associated with an absence of civil and political rights, which in turn obstructs the attainment of economic, social, and cultural rights. He argues that since improved governance and civil liberties are not an automatic result of economic growth, active interventions to promote human rights are necessary to achieve positive development results.

Paul Hunt observes that development practitioners have largely neglected using human rights as effective tools in the fight against poverty. Referring to the example of the right to health, he illustrates how a more explicit policy approach to human rights could strengthen the PRS process and enhance the impact of national development strategies on the poor. With a broader focus on the social impact of economic reforms, Bernard Mudho stresses the special need to protect the vulnerable during times of economic transition and structural adjustment. A human rights-based approach that emphasizes country ownership, guides the cycle of budgeting processes, and enhances the accountability of all actors is, he argues, the most effective way to ensure pro-poor reform policies.

Margot Salomon captures the historical significance of the UN High-Level Task Force on the Right to Development, an independent expert body which for the first time brought together human rights experts with representatives of the International Financial Institutions in a successful effort to begin integrating human rights concepts into development instruments. Specifically, the Task Force devised a set of evaluation criteria that will be used in a pilot to assess the extent to which global partnerships apply human rights in different areas of development.

A recent OECD study showcases current efforts by different donor agencies at integrating human rights into their development programs. Summarized in the last box of this edition, the OECD identifies a number of lessons derived from initial donor experiences and highlights the positive contributions of human rights in the areas of governance, poverty reduction and aid effectiveness.

Opening the door to a more active support of human rights by the Bank, Roberto Dañino argues that a more explicit approach to human rights which takes into account their economic impacts, is not only consistent with the Bank's Articles of Agreement, but is indeed essential if the institution is to fulfill its poverty reduction mission of economic growth and social equity in a changing world. Kenneth Roth discusses the World Bank's present challenge to implement a more comprehensive and systematic approach to human rights, in accordance with its poverty reduction mandate. He concludes that in order for the Bank to effectively integrate such an approach, it must begin by providing clear guidance to its staff and its partners on the links between human rights and long-term development. Finally, Ana Palacio, the new World Bank Group General Counsel, expresses her support for the incorporation of human rights concepts into the work of the Bank, but stresses the importance of maintaining a firm conceptual framework for these as legal rights, and not falling into the trap of what has been called the "rhetorical repackaging" of existing activities as if they were designed to promote human rights when that was not their intent. She also discusses the way forward—including the importance of learning and of pilot activities working with development partners among client governments, the donor community, and human rights organizations.

These contributions to this issue of *Development Outreach* from eminent development practitioners and human rights experts seek to provide us with some answers to the very important questions raised earlier in this editorial. Because the important connections between human rights and development have only recently begun to enjoy wider recognition, much more empirical research and in-depth analysis will need to be done before any definitive answers to these questions can be attempted. We hope that this edition will serve to raise greater awareness on the links between human rights and development, and stimulate debate among the different perspectives presented herein.

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# Using Human Rights to Reduce Poverty

BY LOUISE ARBOUR

POVERTY IS THE greatest human rights scourge of our time. Human rights violations are both a cause and consequence of poverty. Human rights are increasingly accepted as part of the definition of what it is to be poor, as well as offering pathways out of poverty. In other words, human rights serve both a constitutive and instrumental function insofar as poverty and poverty reduction are concerned. While my focus here is on the instrumental dimensions of the issue, this should not obscure the fundamental fact that human rights are of intrinsic importance in their own right, an expression of universally shared values enshrined in the UN Charter and international law.

How do human rights serve the goals of poverty reduction? Firstly, a human rights-sensitive understanding of poverty

gives due attention to the critical vulnerability and assaults on human dignity that accompany poverty. It looks not just at resources but also at the capabilities, choices, security and power needed for the enjoyment of the rights proclaimed in the Universal Declaration on Human Rights and international human rights treaties to which all countries to varying degrees have subscribed. This multi-dimensional understanding accords with the conclusions of the World Bank's "Voices of the Poor" surveys. It requires us to look beyond money-metric definitions of poverty towards the root causes of deprivation, focusing particular attention upon those most discriminated against and the people and institutions which—under human rights law—have an obligation to respond.

This is not to suggest that "law is the answer" in all situations, nor to deny the influential role played by informal and



customary rule-making systems in many if not most countries. Equally importantly, human rights standards of themselves should not necessarily be expected to reveal clear answers to complex policy trade-offs. However, linking poverty reduction strategies to systems of entitlement and corresponding obligation, grounded in international and national laws and institutions, promises much for the sustainability of poverty reduction efforts. And even if human rights standards themselves will not likely resolve difficult prioritization and policy dilemmas, they at least help to establish a minimum level of social and economic entitlements below which nobody should be allowed to fall. Human rights standards buttress the case for more inclusive and participatory development processes, non-discrimination, transparency in policy-making, and strengthened accountability, including impact assessment, monitoring, and redress when rights are violated.

## Theory and practice

HOW THEN DOES THE THEORY PLAY OUT in practice? There are a great many ways in which human rights entitlements are being "claimed" in practice, through social mobilization, public interest litigation, political action, "legal empowerment" strategies focused on enlivening administrative action, alone or in combination. The World Bank is itself carrying out very timely research on the empirical importance of "claiming" human rights, and on the similarities and differences between "economic" and human rights approaches to basic services such as health and education (Gauri 2005). The World Bank Institute's research on the instrumental importance of civil and political rights (Kaufmann et al. 2000; Kaufmann 2005) contributes importantly to the human rights and development debate, as, in my view, does the *World Development Report 2006* on equity and development.

The human rights framework places an obligation on States to protect their populations against situations of poverty and social exclusion, including by ensuring an enabling environment that protects human rights standards. The enforcement of human rights through the courts is one example of how human rights law can alleviate situations of poverty. Courts can of course be hard to access even for the relatively well-off in many countries, let alone the most marginalized. Decisions as to whether to litigate rights must be made strategically. Positive measures, including legal aid programs for low-income groups, are required to ensure that poverty does not bar people from claiming their rights and accessing effective remedies. Informal justice systems, paralegals, "alternative law groups" and community organizations all have potentially vital roles to play in ensuring access to justice for the poorest.

Among the human rights principles to which the international community has universally subscribed is the principle that all individuals should enjoy a basic level of social and economic rights necessary for a life in dignity. Most societies today recog-

nize a right of access to adequate housing, basic education, social security, health care and nourishment, and right to work and adequate conditions of work, as provided for variously in the Universal Declaration of Human Rights, International Covenant of Economic, Social and Cultural Rights, the Convention on the Rights of the Child, regional treaties, and national constitutional arrangements. Courts the world over have been playing an increasingly important role in breathing life into these legal guarantees, helping people to escape the poverty trap.

The Supreme Court of India has interpreted the right to life to include nutrition, clothing, and shelter in considering whether the denial of emergency medical treatment at a government-run hospital violated an individual's right to life (*Paschim Banga Khet Mazdoor Samity v State of West Bengal* [1996], SOL Case No. 169, 4 SCC 25, 3 SCJ 25, 2 CHRLD 109). In another case concerning the issues of inadequate drought relief and chronic hunger and undernutrition, the Supreme Court has issued a series of interim orders directing the government to implement food relief programs to halt starvation, provide mid-day meals in schools, and provide subsidized grain to millions of destitute households (*PUCL v Union of India and Others*, Writ Petition [Civil] 196 of 2001).

In South Africa, in a case involving children's rights to minimum shelter, the Constitutional Court held that the realization of socio-economic rights, including access to housing, health care, sufficient food and water, and social security, is necessary to ensure human dignity, freedom and equality of all individuals. The failure of the government to make any provision at all for the housing needs of the poorest was a violation of the South African constitution (*Government of the Republic of South Africa and Others v Grootboom*, 2001 [1] SA 46 [CC], 2000 [11] BCLR 1169 [CC].)

In another case the Constitutional Court directed the government to provide HIV treatments to reduce mother-to-child transmission, leading to the development of one of the largest mother-to-child treatment programs in the world and saving potentially thousands of lives (*Treatment Action Campaign & Ors. v Minister of Health & Ors.*).

Equally, courts in Argentina have on several occasions held that constitutional provisions on the right to health include an obligation to ensure access to essential medicines, decisions with major human development dividends (*Viceconte, Mariela v Estado Nacional—Ministerio de Salud y Ministerio de Economía de la Nación* [1998]). And in the case of *International Commission of Jurists v Portugal* Complaint No. 1/1998, the European Commission for Social Rights found that Portugal's failure to enforce its child labor legislation constituted a breach of its obligations under the European Social Charter. In response to this, Portugal implemented a range a legislative and policy reforms and strengthened the working methods of its Labor Inspectorate, which in the assessment of the European Trade Union Council has had a major impact on the child labor problem (Governmental Committee 2001). While among the better known examples, these cases are the tip of the iceberg.

**"Poverty is the  
greatest  
human rights  
scourge  
of our time."**

## Shared responsibility

NATURALLY, THE JUDICIAL ENFORCEMENT of human rights claims is but one dimension of overarching strategies to reduce poverty. Equally obviously, to effectively tackle the root causes of poverty calls for action at the international as well as national levels. In this respect, the human rights framework makes it clear that the protection of human rights and the elimination of poverty is a shared responsibility. While the primary responsibility to protect human rights rests with national governments, other states and non-state actors also have a responsibility to act in accordance with international human rights norms and standards (UN Charter; and International Council on Human Rights Policy 1999). A state which lacks the means to effectively protect basic human rights for its people has an obligation to actively seek international assistance and cooperation. Equally, states which are in a position to assist have a responsibility to support other states to enable them to ensure adequate protection of rights to their populations. Granted, identifying specific lines of legal accountability at this level can be problematic, although international law may well be evolving to meet such demands (Alston 2005; and Open Ended Working Group 2006). The recent acceptance by the international community of a 'duty to protect' populations from crimes against humanity, war crimes, genocide and ethnic cleansing—where their governments fail to act—is cause for optimism for those advocating for strengthened international rule of law (Arbour 2005a).

However, the *Human Development Report 2005* (UNDP 2005) provides a sobering and timely insight into the dereliction of duty-bearers on the international plane in fulfilling their responsibilities. The report notes that the lack of level playing fields in international trade, and especially agricultural trade, remains a serious impediment to the elimination of mass poverty. The Doha Round of WTO negotiations provides an opportunity to remedy this problem, aligning trade and aid to the realization of the Millennium Development Goals (MDGs), but the political commitments agreed upon so far still seem to fall far short of the human rights demands of the poorest countries.

States' human rights obligations should be a foremost priority and concern in these international trade negotiations as well as in the formulation of multilateral development policies. International cooperation for development, including with respect to aid, trade, and debt relief, should aim at creating an enabling international environment in which people living in developing States can lift themselves out of poverty. Aid pledges have increased in recent years, but problems concerning overall quantum, predictability, harmonization, and tied aid remain. Agricultural subsidies remain a particular source of concern, skewed towards the commercial interests of agribusiness and landowners rather than the human rights of small-scale farmers. As noted in the *Human Development Report 2005* (p. 129), "it would be hard to design a more regressive—or less efficient—system of financial transfer than currently provided through agricultural subsidies." The interests underlying all such policies and practices must be

brought to the surface and exposed. Strengthened reform coalitions are needed at national and international levels, as a counterweight to those perpetuating such injustices.

## Some lessons

SO WHAT ARE SOME OF THE LESSONS that the human rights field brings to poverty reduction? (See Arbour 2005b). Firstly, social mobilization, judicial review and political action can together vindicate rights, with potentially life-saving impacts. The realization of economic and social rights is in some respects an inherently a political undertaking, involving negotiation, disagreement, trade-offs, and compromise. But political processes do not serve all equally. Equality of opportunity requires that the most disadvantaged be empowered to participate meaningfully in all spheres of life, including in political and legal processes. The *World Development Report 2006* supports the view that empowering people to claim their rights—helping them realize their "capacity to aspire"—is indispensable for enabling them to transcend inter-generational patterns of inequity and escape the poverty trap.

Secondly, and self-evidently, there is no basis for artificial distinctions between the validity and justiciability of human rights of different kinds (civil, social, economic, political and cultural). Both theory and practice bear out that rights of all kinds have justiciable elements, and "freedoms" as well as "entitlements." Whatever historical or ideological biases might continue to privilege some human rights over others, this is a diminishing barrier to the potential of human rights as a vocabulary and vehicle for people's empowerment.

Thirdly, securing implementation of court orders in human rights cases often proves a challenge, but such challenges only underscore the importance of seeing litigation strategies as part of broad, participatory movement for social change. In this, we see how all human rights are indivisible and interrelated. Economic, social and cultural rights claims cannot be vindicated in the absence of minimum civil and political rights guarantees: freedom to organize, access to information on the entitlements in question, access to the judicial system. And the same applies vice versa.

Fourthly, a human rights framework of analysis can help to disclose underlying agendas and policy preferences that perpetuate social exclusion and poverty, including those linked to unqualified faith in the market. The real issue, of course, is not regulation or public action in and of itself: but rather, *what* is being regulated, and in the interests of *whom*: the market, national or international elites, the aggregate interest of the majority, or the disadvantaged and the vulnerable. Poverty and exclusion is too readily accepted by majorities as regrettably accidental, or natural or inevitable, or perhaps even the fault of the poor, rather than the outcome of conscious policy choices. All competing interests must be brought to the surface if development efforts are genuinely to serve the goal of poverty reduction. Human rights laws and institutions can serve a valuable function in mediating and channeling the conflicting interests and claims that inevitably arise as development policies and programs are negotiated and implemented.

Fifthly, the human rights framework compels us to look at the MDGs within a broader, integrated system of human rights entitlements and obligations, as reflected in the Millennium Declaration itself. The MDGs themselves are, to a great extent, backed by obligations under international law (Alston 2005). Spurred by *World Development Report 2006* and the *Human Development Report 2005*, issues of discrimination, inequality, and distribution must be brought to the front and centre of poverty reduction strategies. Empowering people to claim their rights against duty-bearers at the national and international levels is surely the most principled, logical, and sustainable means through which the MDGs might still be realized.

Finally, the examples that I've surveyed earlier indicate an encouraging trend in human rights claiming at the national level, with potentially significant implications for poverty reduction. No doubt the challenges in holding decision-makers to account at the international level are far greater still. However if accountability mechanisms do not work well in practice, then the solution must be to strengthen them, within overarching policy frameworks for poverty reduction. With a purposive interpretation of its Articles of Agreement, backed by research and experiences such as those I've outlined, I believe that the World Bank has much to contribute to international efforts to redress such shortcomings. 

**Louise Arbour is United Nations High Commissioner for Human Rights**

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## A RIGHTS-BASED APPROACH TO REMOVING POVERTY

BY ARJUN SENGUPTA

Poverty, especially extreme poverty, is the worst form of degradation of human dignity, a denial of the most basic human rights—economic, social, cultural, civil, and political rights. The international community has recognized these rights in a number of international legal instruments: the United Nations Charter, the Universal Declaration of Human Rights, the Covenants of Civil and Political Rights and Economic, Social and Cultural Rights, and other international agreements. By viewing poverty as the deprivation of basic human rights and fundamental freedoms enshrined in international law, an important link becomes apparent between the existence of poverty and the failure of states to fulfill their legal human rights obligations. This relationship should remind states, as primary duty bearers, of their responsibility to ensure that the rights of those who hold them are not violated, in particular the rights of the poor and disadvantaged.

In order to be successful, poverty eradication must involve more than legal protection. A rights-based approach to poverty eradication calls for a program of positive actions which are credible, transparent, and workable, as well as mechanisms of implementation which make all actors involved fully accountable, both at the national and international level. Poverty continues to be pervasive today in many parts of the world precisely because responsible agents have not been held accountable for their inaction and misguided policies. An understanding of poverty as a denial of human rights would be an important contribution to ensuring greater accountability on the part of duty bearers. If poverty eradication is raised to the status of fulfilling human rights obligations, through national and international public action, perhaps the world will have a better chance of abolishing the scourge of human dignity.

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For more on these issues, see Arjun Sengupta, *The Human Right to Development*. Prepared for the Nobel Foundation Oslo Symposium, 13-15 October 2003.

# Misconceptions About the Right to Development

BY STEPHEN P. MARKS

IT IS WIDELY ACCEPTED that human rights can help create the legal and political environment conducive to development; however, why call development itself a human right, since human rights are normally understood as belonging to individuals as moral agents? For many, the idea of a human right to development brings to mind corrupt and inefficient governments claiming trade advantages, foreign aid, or debt forgiveness as a matter of "right," unrelated to their economic performance. And yet in the early 1970s the "right to development" was officially proposed as a human right, and in 1986 the UN General Assembly proclaimed it as such in the Declaration on the Right to Development. The United States cast the only

negative vote; eight other countries abstained. The UN High Commissioner for Human Rights established a branch within the secretariat with responsibilities for its promotion and protection; the 1993 World Conference on Human Rights called it "a universal and inalienable right and an integral part of fundamental human rights;" and the heads of state and government meeting at the 2000 Millennium Summit committed themselves "to making the right to development a reality for all." It was even mentioned in the 2002 Monterrey Consensus on financing for development and the 2005 Summit Outcome.

The challenge from the beginning has been to translate the hopeful but ambiguous language of the 1986 Declaration into concepts that are meaningful to economists and useful to the rethinking of the development process. It must be acknowledged



that after 35 years of scholarly writing and diplomatic efforts to understand this right, and 20 years after the Declaration was adopted, the debate remains polarized and confused. Opposition came primarily from the U.S., joined occasionally by several other Western countries and Japan, because they saw the proponents of the right as abusing the concept to make claims on resources from rich countries. Uncritical support came from many developing countries, which saw it as an antidote to perceived marginalization and exclusion from the benefits of globalization. In the middle were many developing and donor states that interpret it as consistent with their adherence to the integrated economic and governance dimensions of sustainable human development strategies. Although a bit more skeptical, international trade, monetary, development and financial institutions participate in discussions in human rights bodies because they are attentive to the priorities of their member states, including support for this right, while maintaining a core concern for macroeconomic stability and market efficiency. These agencies must navigate the shoals between concern of many member states with the negative impact of certain aspects of international trade, unequal access to technology, and the crushing debt burden, on the one hand, and sound economic policy, on the other. The real test is whether the right to development can help define this middle ground. Perhaps the best way to begin is by dispelling certain misconceptions.

**The right to development justifies the position that human rights need not be respected until an adequate level of prosperity is reached.**

The claim that development takes priority over respect for human rights, or that failure to respect human rights is an unfortunate price to be paid until countries reach a sufficient level of prosperity to afford the luxury of human rights is contrary to Article 6 of the Declaration, which establishes the principle that all human rights, including civil and political rights, must be respected as part of development. Specifically, "states should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights." Discrimination is also mentioned as incompatible with this right and the Declaration calls for effective measures "to ensure that women have an active role in the development."

This misconception was put to rest by the 1993 Vienna Declaration and Programme of Action—approved by all governments—which reiterated, in the context of the right to development, that "the lack of development may not be invoked to justify the abridgement of internationally recognized human rights."

Thus, the Declaration makes clear that violation of civil and political rights is an obstacle to development and that eliminating violations of human rights is a necessary part of development. There are two implications of these propositions for development decision-makers. The first is that it may be necessary to refuse benefits to repressive and corrupt regimes not only to avoid the criticism of past lending and aid policies that benefited Mobutu's Zaire, Marcos' Philippines, Samoz'a's Nicaragua, Ceausescu's Romania, but also because the human

rights performance directly affects development objectives and, consequently, is not the sort of "political or other non-economic influences or considerations," which the Bank's Articles of Agreement enjoin its officers from introducing into lending decisions. The European Investment Bank, for its part, has a policy not to disburse funds in developing countries declared "off-limits" by EU political organs, including on human rights grounds. The second implication is the proactive engagement with partner governments to support national institutions (human rights commissions, ombudspersons, independent judiciary, etc.) and accountability mechanism to prevent and punish human rights violations as a legitimate dimension of development spending.

**The right to development protects the absolute prerogative of states to set their development objectives and policies.**

The Declaration does indeed affirm that "States have the right and the duty to formulate appropriate national development policies" but it immediately qualifies those policies as being those "that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and the fair distribution of the benefits resulting therefrom." The right to development thus implies that development policies should be revised to meet the human-centered and participatory elements of the definition contained in the Declaration.

More significantly, human rights realization is part and parcel of the development process according to the core definition of the right to development, set out in Article 1, namely, the right of every person and all peoples "to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." This means that development objectives and policies must be pursued in such a way as to advance all human rights. Infrastructure projects that deprive people of their right to adequate housing or financing an enterprise that discriminates against women would be unacceptable.

Moreover, "fair distribution of the benefits" of development and nondiscrimination in development, as set out in Articles 2, 6 and 8, if taken seriously, require a significant redistributive impact of development objectives and policies. This requirement of equity in development was a core message of the *World Development Report 2006*, which was spot on it affirming "Perhaps the foremost example of the development of international principles of equity is the international human rights regime."

**The right to development may be invoked by corrupt regimes to direct the resources provided for development or generated by the economy to benefit cronies, favor elites and ethnic groups affiliated with the leadership, or to spend huge sums on military expenditure and lavish projects.**

Passages already quoted stress that the right to development, properly understood, requires that the entire population benefit from development according to a "fair distribution." This principle challenges the excessive and corrupt

practices of many countries. It also challenges IFIs to focus on more than currency stability, growth, and market efficiency. A recent IMF study, for example, showed that social safety nets and pro-poor spending are important in time of financial crisis and "the aim should be to have safety nets as permanent institutions to be deployed as needed" to protect the poor from income loss during crises. The Declaration also calls for "equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income." Redistribution to meet the needs of the poor makes economic sense, in addition to being a requirement of the right to development.

Although the terms "accountability" and "transparency" do not appear in the Declaration, the consistent interpretation of its meaning has included these elements of good governance and elimination of corruption. This dimension is also implied by the requirement that "Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices." Anti-corruption, which has such a high priority for many financial and development institutions, is an essential component of the right to development.

#### **The right to development grants officials of government exclusive authority to make decisions regarding economic policy and development strategies.**

The development process is not the sole responsibility of government leaders and officials of ministries and intergovernmental agencies, since states have a duty to ensure "active, free, and meaningful participation" and "encourage popular participation in all spheres as an important factor in development." A role for civil society—admittedly expressed in general terms—is required. The problem is to know what "active, free, and meaningful participation" means.

Many financial and development institutions have implemented their version of meaningful participation, which the World Bank defines as "a process through which stakeholders influence and share control over development initiatives and the decisions and resources which affect them." In the context of social analysis, this "includes participation of beneficiaries in project design and implementation as well as participation in the opportunities created by the project." An obvious terrain for considering participation from the right to development perspective is the Bank's social assessment and its support for Local Economic Development (LED) and Community-Based and -Driven Development (CBD/CDD). The evaluation of these approaches provides lessons on how the participatory dimension of the right to development has been implemented, although without explicit reference to human rights. A valuable contribution to the right to development would be to introduce into the Bank's operations, beginning with the planning, implementation, monitoring and evaluation of LED and CBD/CDD operations, the human rights commitments and interests of the governments and communities involved.

The right to development—once liberated from the above four misconceptions—may be distilled into five principles: integrated realization of human rights, equity, participation,

non-discrimination, transparency, and accountability, each of which is reflected in official policy of most international financial and development agencies and, except for the first, these principles do not seem to make economists uncomfortable. Taken with the first, they constitute a framework for a serious dialogue on the implementation of the right to development.

## Current dialogue on implementation

MANY ECONOMISTS and financial decision-makers have a natural aversion to introducing human rights thinking into development because the expression brings to mind either exaggerated aspirations that ignore the scarcity of resources or hostile accusations of human rights violations, which are likely to impinge on the necessary dialogue and partnership with governments. However, the most relevant human rights are subject to progressive realization in accordance with available resources and evoking them in the dialogue with governments should normally be in the cooperation—rather than the confrontational—mode. Nor should considering them be contrary to the Articles of Agreement. Indeed, the Bank has come a long way since it interpreted the Articles as excluding any reference to human rights and now, as it said in launching its 1999 publication *Development and Human Rights*, "the World Bank believes that creating the conditions for the attainment of human rights is a central and irreducible goal of development."

Our task force has benefited from the active participation of the Bretton Woods Institutions, WTO, UNCTAD, and development agencies. They have become aware of the concern in the human rights community with ensuring policy coherence between a State's international human rights obligations and its multilateral and bilateral trade and development engagements. The Working Group adopted the 15 criteria we worked out for assessing the extent to which global partnerships advance human rights in the areas of development assistance, trade, debt, technology transfer, foreign direct investment, and the role of the private sector, especially transnational corporations. The constructive input to our deliberations of those who are responsible for financing development is a remarkable first step in moving the right to development agenda from political rhetoric to development practice. The most difficult step will be to make the ideas underlying this right reverberate in the policies and practices of governments and their international development partners. ▀

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Note from the author: Last November, I had the pleasure of chairing the UN's high-level task force on the implementation of the right to development in Geneva. Along with other individual experts from Mali, Germany, and Costa Rica, and experts from the United Nations Development Programme (UNDP), United Nations Conference on Trade and Development (UNCTAD), International Monetary Fund (IMF), World Bank and World Trade Organization (WTO), we focused on global partnerships for development, as defined in Millennium Development Goal #8, and suggested criteria for the periodic evaluation of the effectiveness of these partnerships in furthering the right to development. Our conclusion and recommendations were endorsed by the parent Open-ended Working Group at its meeting in January 2006. Since the decision of the Working Group was taken by consensus—a rare occurrence—it seems an appropriate time to clarify what this so-called right to development means and what the prospects are for putting the concept to productive use.

# Pro-Human Rights Growth Policies

BY JEAN-PIERRE CHAUFFOUR

ONE CAN THINK OF two different definitions of what constitutes a pro-human rights growth policy. It could be defined as a growth-oriented policy that contributes, to the extent possible, to the realization of human rights. As economies grow and resources become more abundant, societal trade-offs become easier to make and countries can progressively afford the full realization of human rights, especially the more costly economic, social, and cultural ones. It is a well-established fact

that more advanced economies have higher standards of living, including access to food, clothing, housing, medical care, social services, and so on. Alternatively, a pro-human rights growth policy could be defined as a policy-based approach to human rights to promote economic growth. According to this definition, human rights, especially economic, social, and cultural ones, are not progressively achieved as a result of the development process, but rather as a result of deliberate policies, notably by empowering the poor with core economic rights. This definition is, in turn, based on the empirical evi-



dence that countries with a record of human rights violations, notably of economic rights, are usually mired in a poverty trap.

Those two definitions would, *a priori*, call for different development strategies and different sets of macroeconomic policies. The first definition would tend to emphasize the importance of promoting highly sustainable *pro-poor economic growth* that would contribute to the progressive realization of human rights. Since the adoption of the Poverty Reduction Strategy Paper (PRSP) process, the Millennium Development Goals (MDGs) and the Monterrey consensus, this first approach is relatively well-known territory for the development community. The second definition would stress the importance of empowering people with rights—that is, with entitlements that give rise to legal obligations—as the main engine of economic development. While elements of a *rights-based approach to development* resonate with the PRSP process, notably the participatory element, this approach is more familiar to the human rights community. The rest of this article will briefly elaborate on these approaches and the different interpretations and policy recommendations that they can lead to.

## Pro-poor economic growth

EVER SINCE KUZNETS (1955), scholars have been arguing about what constitutes pro-poor economic policies. It has been perceived that the fruits of economic growth are not always fairly distributed, that they tend to be confined to, and concentrated in, some groups and areas, and that the so-called trickle-down effect too often fails to improve the conditions of the poor and needy, even in the long run. In other words, growth and equity are not always perceived to go hand in hand. Historically, this perception has generated two types of policy response: one aimed at expanding the role of states, and the other aimed at expanding the role of markets.

The state-oriented policy response stems from the existence of public goods and from the perception that markets, especially in developing countries, are not always efficient, in that they are subject to failures and externalities that can lead to undesirable distributional outcomes. In order to address these market deficiencies, countries have experimented with varying degrees of government control on the production, distribution, and consumption of goods and services. For instance, price controls are introduced on basic foodstuffs and other goods deemed important to the poor, on housing rents, or on public utilities. A minimum wage, unemployment benefits, and other legislation for the protection of employment are introduced to increase the poorest workers' standard of living. Tariff and non-tariff barriers, such as quotas, are imposed on imports to encourage local production, import substitution, and employment. Current and capital account transactions, including foreign direct investment (FDI), are made subject to restrictions to control the use of foreign exchange. I could give more examples. However, notwithstanding the good intention of protecting the poor, it is fair to say that these and other government interventions have often failed to deliver the results intended and, at times, have even had the opposite effect, thereby confirming over and over

again Merton's (1936) law of unintended consequences of policy actions.

In contrast, a market-oriented policy response will recognize that developing countries' various market failures, notably in the markets for credit, insurance, land, and human capital, may simply result from state regulations or institutional imperfections. Instead of expanding the scope of the state to deal with these imperfections, it would be preferable to address them at their source. For instance, as pointed out by Balcerowicz (2004), regulations aimed at controlling prices, wages, rents, interest rates, and so on can lead to shortages and the rationing of goods, employment, housing, and credit, which, in turn, prompt public intervention to fill the void and correct a so-called market failure. However, in these instances, the void does not precede the public intervention; it is created by it. Typical examples are housing, where rent controls generate demand for social housing, or employment, where ill-designed labor market regulations generate structural unemployment.

While recognition of the superiority of market-based solutions to the development problems facing the poor may have greatly increased over the last few decades, this is no magic bullet, particularly as regards the realization of the panoply of economic, social, and cultural rights. The truth may be that we still know too little about what constitutes pro-poor economic growth and that given this lack of understanding, following the classical doctor's dictum "first, do no harm" is in order.

After investigating the link between income of the poor and overall income for 80 countries covering four decades, the World Bank (Dollar and Kraay, 2002) came to the conclusion that, contrary to popular myth, standard pro-growth macroeconomic policies were good for the poor, as they increased the poor's income to the same extent as they increased the income of other households in society, with no significant adverse effect on the distribution of income. The basic policy package of such standard pro-growth macroeconomic policies would include: (1) expanding access to productive assets through the protection of private property rights; (2) delivering the public good of macroeconomic stability; (3) promoting fairness in markets, reducing barriers to entry, and ensuring that the rule of law applies equally to all participants; and (4) ensuring openness to trade. In contrast, the authors found no evidence that a large degree of government spending on social services has any effect on the income of the poor. Furthermore, they found that this growth-poverty relationship had not changed over time, did not vary during crises, and was much the same in both rich and poor countries.

## Rights-based economic growth

TURNING TO THE RIGHTS-BASED APPROACH to economic growth, I would suggest that a debate similar to that on the role of states and markets in the promotion of pro-poor economic growth is taking place as to the nature of the rights with which to empower people, including the poor, in a rights-based approach to development. While most scholars would have no difficulty in including the panoply of civil and political rights

from the International Bill of Human Rights, including the important elements of participation, non-discrimination, and transparency, they may argue about the exact nature and scope of economic rights to consider. In particular, should a rights-based approach to development emphasize the positive rights identified in the International Covenant on Economic, Social, and Cultural Rights, or should it embrace the concept of economic freedom?

It is certainly legitimate for the UN to embrace a rights-based approach based on the instruments of international human rights norms that have acquired the highest level of global legitimacy, in particular the Universal Declaration of Human Rights and the two International Covenants on Civil and Political Rights, and on Economic, Social, and Cultural Rights. However, to the extent that such a rights-based approach relies on positive rights—that is, claims on third parties enforced by government coercion—for instance, through regulation and taxation, it is unlikely to provide a new development paradigm. For instance, there is no doubt that providing everyone with the panoply of economic, social, and cultural rights, including the right to food, clothing, housing, health, education, and other social services, would make poverty history and solve the development puzzle. However, there is something tautological in this approach that offers little guidance on how to bring about the development process and the resources needed to fulfill these rights in the first place.

Furthermore, a rights-based approach based on the realization of positive economic rights raises a number of conceptual issues ranging from the notion of a positive list of rights (how do we reconcile differing views on what such a list should include?), to the scope of those rights (what, exactly, is “adequate housing?”), the enforcement of such rights (who is the duty-bearer?) and to the broader logical issues related to the progressive realization and indivisibility and interdependence of such rights. At the more philosophical level, a number of critically demanding scholars still considers that the only genuine human rights are negative rights, i.e., rights that impose only negative duties on individuals and states. Hayek (1976) has elaborated on this traditional distinction between negative rights and positive rights and concluded that positive rights are fundamentally incompatible with a free society in which individuals determine their own positions according to their own goals and means.

Yet, a rights-based approach that would empower the poor and make them the true subject of their own development has a lot to offer to the development community. Looking at the economic rights that would be relevant from an economic development perspective (as opposed to a humanitarian assistance perspective) would lead one to highlight a completely different set of rights than the economic, social, and cultural rights usually discussed in UN debates. In the same way that civil and political rights are about civil and political liberties, economic, social, and cultural rights ought to focus, first and foremost, on the protection of economic, social, and cultural freedom. The key ingredients of economic freedom would include personal choice, voluntary exchange (both domestically and internationally), freedom to compete, and

protection of person and property. Economic freedom has also to do with the extent to which a market economy is in place—that is, the degree to which it is possible to enter into voluntary contracts within the framework of a stable and predictable rule of law. Such a framework should uphold contracts and protect private property, with a limited degree of interventionism in the form of government ownership, regulations, and taxation. Although the concept of economic freedom is difficult to measure, empirical evidence generally shows that economic freedom is closely associated with economic development in a positive causal relationship.

## In conclusion

FAR FROM BEING INCONSISTENT, there is a potentially strong congruence between the development and human rights “frameworks” in the promotion of pro-human rights growth policies. There are versions of the development and human rights approaches to economic growth and poverty reduction that are mutually supportive and internally consistent as regards the respective role of states, markets, and individual rights in the development process. Notwithstanding the complex cause-and-effect chains, the maintenance over a lengthy period of institutions and policies consistent with civil, political, and economic liberties is a major determinant of current cross-country differences in per capita GDP. In terms of social achievements, according to Economic Freedom of the World (2004), countries with more economic freedom have substantially higher per capita incomes, including for the poorest 10 percent of these populations; longer life expectancy; higher adult literacy; lower infant mortality; lower incidence of child labor; better access to water sources; and greater overall human development achievement as measured by the UN.

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Jean-Pierre Chauffour is IMF representative in Geneva.

The views expressed in these remarks are those of the author and should not be attributed to the International Monetary Fund, its Executive Board, or its management.

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# Human Rights, Governance, and Development

## *An empirical perspective*

BY DANIEL KAUFMANN

IT IS NO SECRET THAT HUMAN RIGHTS, governance, and development may all be linked to each other. Yet the nature and extent of these links have barely been explored empirically, in partly due to the paucity of measurement in the human rights field. Based on recently available data, we embarked on an investigation, focusing on the links between what is often labeled as first generation human rights (political and civil rights, including women's rights and press freedoms, for instance), and second and third generation human rights (socio-economic and development rights).

Indeed, over the past few decades increasing importance has been given to socio-economic and development rights issues. Implicit was the presumption that dramatic progress had already been attained on political and civil rights issues, yet the increasing importance given to socio-economic and development rights also arose because of the increasing emphasis given to socio-economic development by the global community. While the latter is indeed warranted, this research suggests that if insufficient emphasis is being paid to political and civil rights issues, then the pendulum may have swung a bit too far. First, this is because the evidence suggests that protection of political and civil rights (and life protection) remains a major challenge in many countries. Indeed, various indicators show checkered progress at best, since major violations in fundamental physical (and life) protection, as well as in political and civil rights and media freedoms, still prevail in many settings (see Figure 1). And second, as importantly, our analysis also suggests that media freedoms and political and civil rights matter significantly for the attainment of socio-economic developmental rights.

Consequently, a narrow focus on socio-economic developmental rights *per se* may not suffice; instead substantial emphasis in the political and civil rights will also be needed—not only because of its own intrinsic value, but also to further progress in achieving second generation human rights and related developmental objectives.

We also find evidence on the links between rule of law, corruption, and corporate ethics, on the one hand, and civil liberties and related human rights variables, on the other. Through this empirical investigation, we suggest that governance is a central mediating link between political/civil rights issues and socio-economic/development issues, and a significant determinant of development outcomes (see Figure 2). These empirical findings, if corroborated through further research, have important operational implications—summarized at the end of this article—in the areas of human rights and of governance for the donor aid community and emerging economies alike.

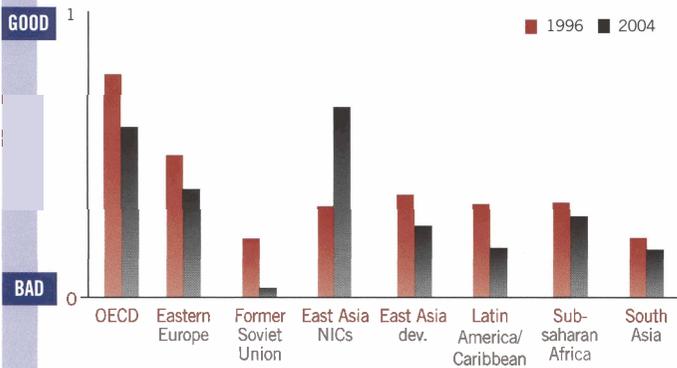
### The macro dimension of governance

THE RESEARCH CARRIED OUT with the WBI worldwide governance indicators (part of a comprehensive research program) shows that there are three possible explanations for the strong positive correlation we find between incomes and governance (civil liberties, rule of law, etc): (1) better civil liberties/governance exerts a powerful effect on per capita incomes; (2) higher incomes lead to improvements in governance; and (3) there are other factors that both make countries richer and also are associated with better governance. Consequently, we need a good understanding of the effects of governance on incomes as well as of any feedback mechanisms from incomes to governance that might exist—simply observing a strong correlation between income growth and governance does not suffice.

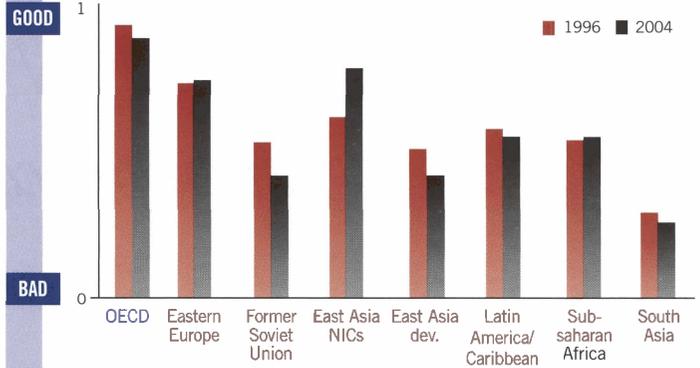
Our work finds that there is a very strong and causal link from improved governance to higher incomes, which is summarized by the “300 percent development dividend”: a country that improves governance by one standard deviation—which is a realistic improvement where political will exists—can expect to more or less triple its annual per capita income in the long run. Conversely, we do not find evidence that there is significant causation in the opposite direction, from per capita income to the quality of governance. Merely acquiring higher incomes (say, due to higher oil prices, or infusion of aid), *per se* will not automatically result in improved governance (Kaufmann and Kraay 2002).

**FIGURE 1: HUMAN RIGHTS, POLITICAL/CIVIL RIGHTS DATA TRENDS**

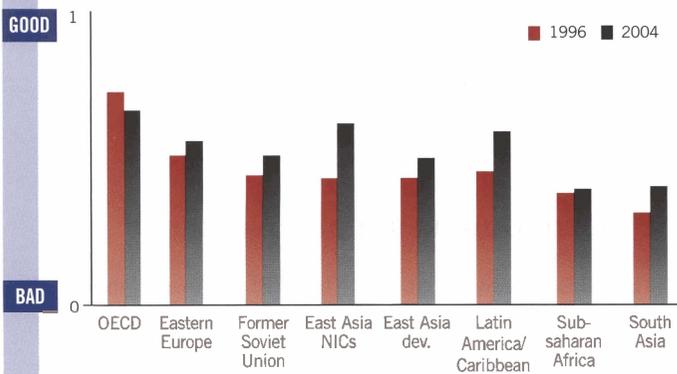
**PANEL A: ABSENCE OF TORTURE**



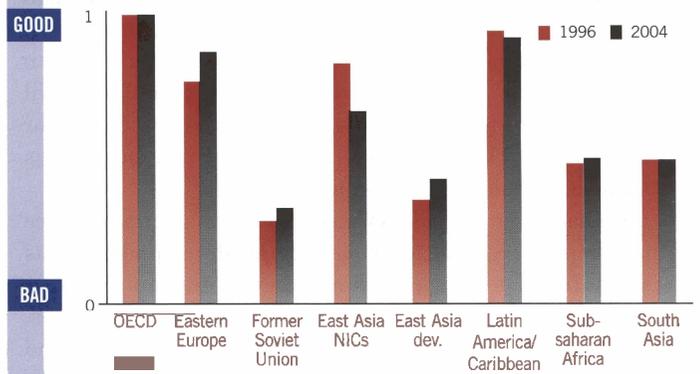
**PANEL B: LIFE PROTECTION (COMPOSITE OF ABSENCE OF KILLINGS, ABSENCE OF DISAPPEARANCES, ABSENCE OF TORTURE, AND ABSENCE OF IMPRISONMENTS)**



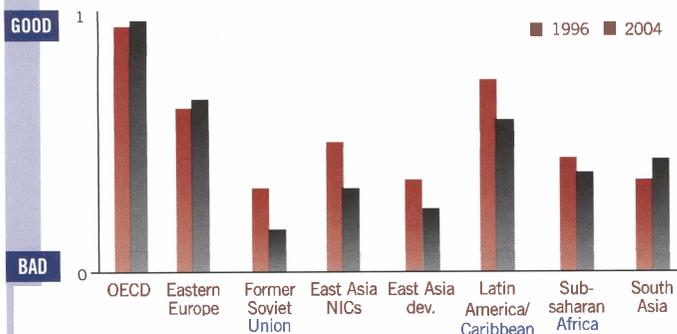
**PANEL C: WOMEN'S RIGHTS (COMPOSITE OF ECONOMIC, SOCIAL AND POLITICAL RIGHTS)**



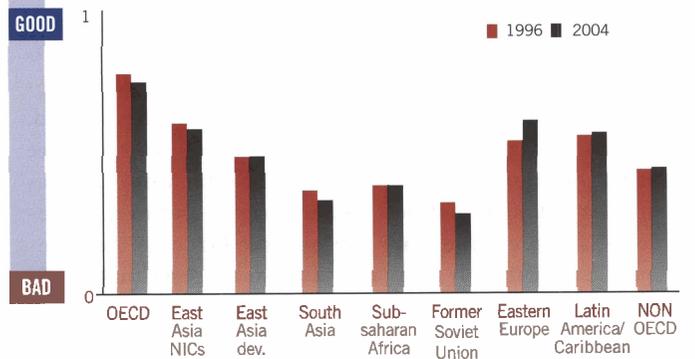
**PANEL D: POLITICAL PARTICIPATION**



**PANEL E: GOVERNMENT CENSORSHIP**



**PANEL F: VOICE AND ACCOUNTABILITY, 1996/2004**

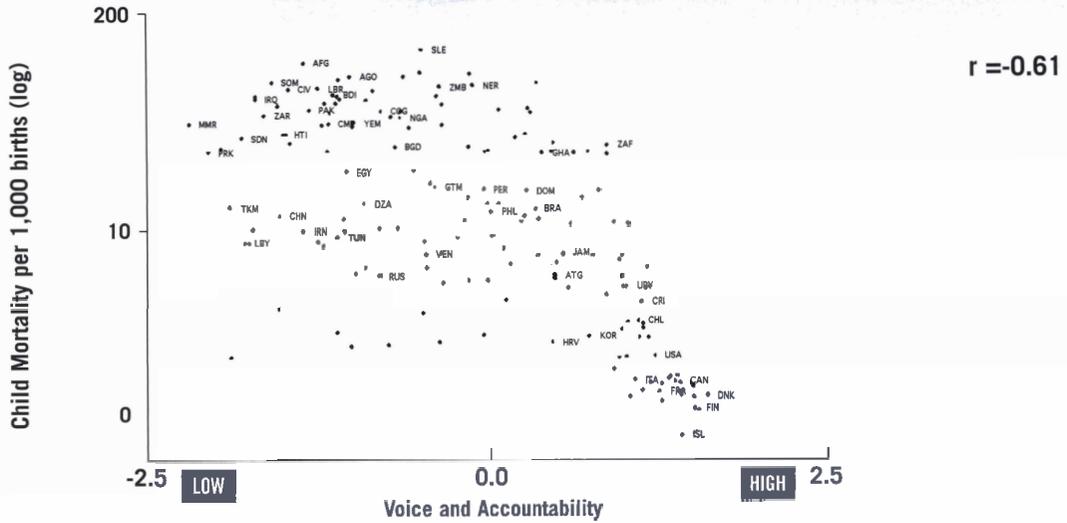


Source for Panels A-E: Cingranelli-Richards dataset—<http://www.humanrightsdata.com>. A high value reflects respect for human rights. Source for Panel F: Kaufmann, Kraay, and Mastruzzi, *Governance Matters IV* (2005), <http://www.worldbank.org/wbi/governance/pubs/govmatters4.html>. Please note the values are rescaled from the original to 0-1. However, they are not strictly comparable with the other 5 indicators in panels A-E because they are from a different source.

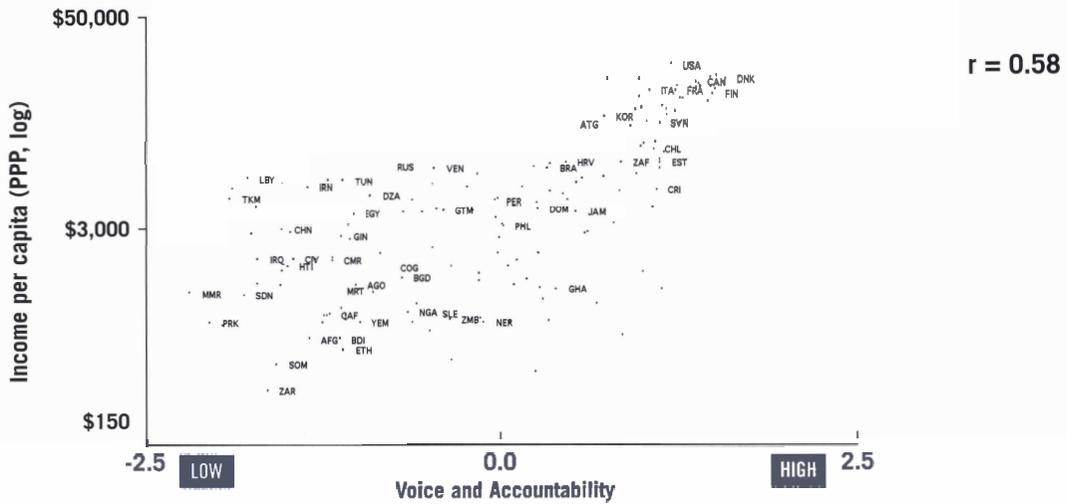
Note that East Asia NIC refers to the Newly Industrialized Countries of East Asia ('tigers'), distinguishing them from the developing countries in East Asia. Similarly, OECD stands for the ('old') industrialized countries of the OECD.

**FIGURE 2: POLITICAL/CIVIL RIGHTS AND SOCIO-ECONOMIC/DEVELOPMENT RIGHTS ARE HIGHLY CORRELATED**

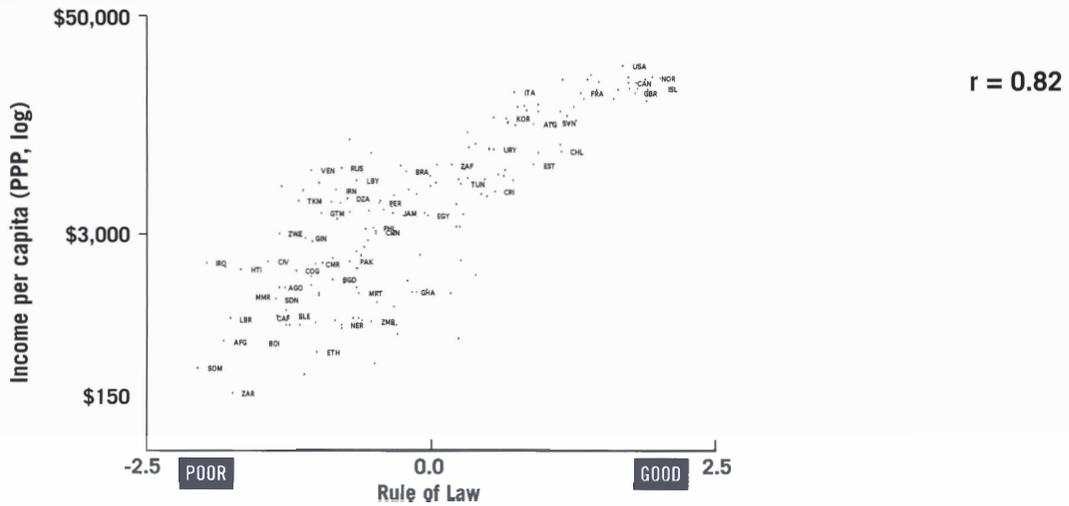
**PANEL A: CHILD MORTALITY VS. VOICE AND ACCOUNTABILITY, 2004**



**PANEL B: INCOME PER CAPITA VS. VOICE & ACCOUNTABILITY, 2004**



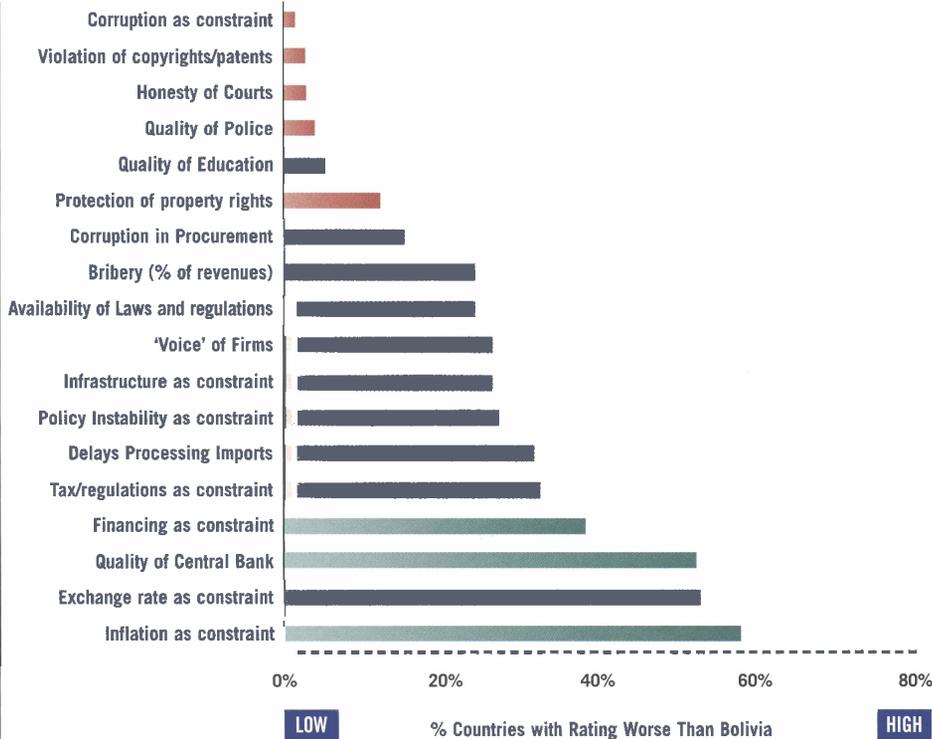
**PANEL C: INCOME PER CAPITA VS. RULE OF LAW, 2004**



Source for Panel A: KK 2004. WDI 2002. Sources for Panel B and C: KK 2004, Heston-Summers & CIA World Factbook.

**FIGURE 3: BOLIVIA IN-DEPTH ASSESSMENT—THE PERSPECTIVE OF THE FIRM AND OF THE PUBLIC OFFICIAL**

**PANEL A: INSTITUTIONAL AND GOVERNANCE ASSESSMENTS BY FIRMS**  
(% Countries Rating Worse Than Bolivia—WBES)

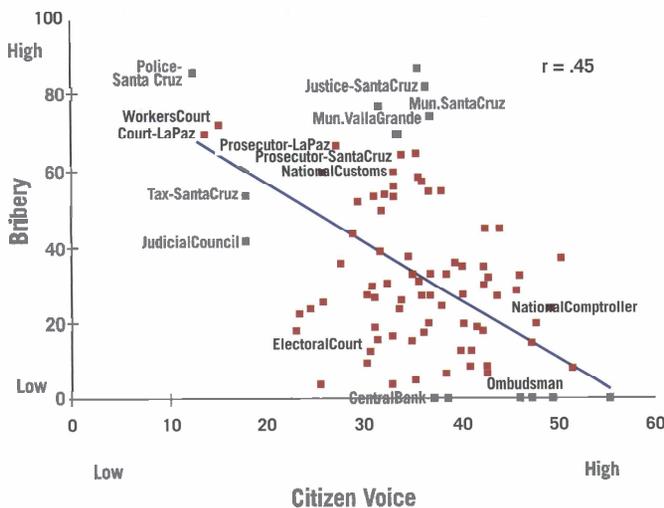


Source: WBES (2000). Based on survey of enterprises in 80 countries.

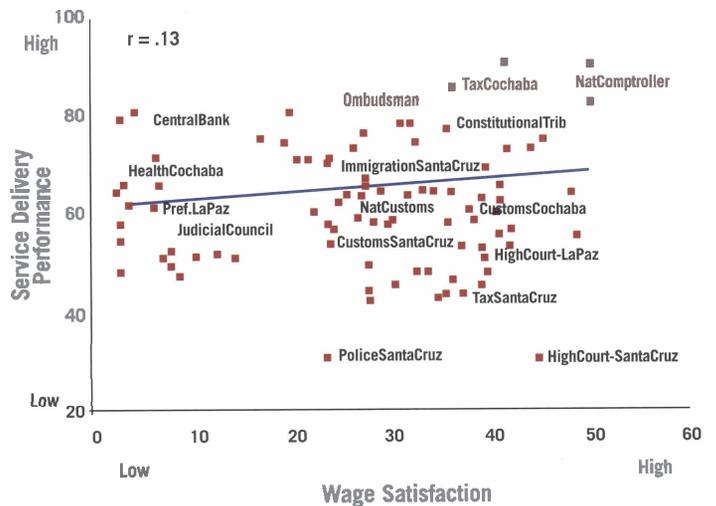
## The micro evidence

AS A CONCRETE ILLUSTRATION at a more 'micro' level of the evidence, we have explored in the past the link between civil liberties and the performance of World Bank funded projects. We found that the extent of a country's civil liberties has a substantial impact on the successful implementation of government investment projects financed by the World Bank. This impact of civil liberties may in fact be as substantial as the well known impact of economic distortions on project returns. Given that participatory citizen voice is an important precondition for government accountability and, not coincidentally, that voice is suppressed in the absence of civil rights, this result is perhaps not surprising. This result adds to the evidence for the view that increasing citizen voice and public accountability—through both participation and better governance—can lead to greater efficacy in government action. In fact this line of research challenged the notion that there is a trade-off between liberties and development, since we found the opposite evidence, namely that suppressing liberties is likely to be

**PANEL B: BRIBERY AND CITIZEN VOICE IN BOLIVIA'S PUBLIC INSTITUTIONS**



**PANEL C: SERVICE DELIVERY AND WAGE SATISFACTION IN BOLIVIA'S PUBLIC INSTITUTIONS**



Source: Kaufmann, Mehrez, Gurgur (2001). Based on survey of public officials in Bolivia.

inimical to government performance (Isham, Kaufmann, and Pritchett 1997).

## The link between corruption and human rights

FURTHER, WE EXPLORED and found evidence about the link between the prevalence of corruption in a country and the absence of political and civil rights. This finding applies to corporate ethics as well as misgovernance on the part of public institutions. Some powerful elite firms engage in grand forms of corruption such as capture of the laws, regulations, and policies of the state for their benefit. We find that such capture of the state, in turn, appears to be the result of low levels of political contestability and 'voice'—often the result of the violation of political and civil rights by government.

Such a situation works to the detriment of socio-economic and development rights and becomes an impediment to the implementation of sound economic policies and socio-economic rights. Yet, despite this evidence, the covenants and declarations on Human Rights do not include freedom from corruption (and the new anticorruption conventions do not explicitly encompass human rights either). This implies that a key mechanism bridging first and second generation issues—namely corruption as a mediating link—is explicitly omitted from coverage by human right conventions, declarations, and, often in the human rights field generally. While there may be legal reasons for such omission, it does have significant implications in terms of strategies and prospects for progress on human rights.

## An empirical case study: Bolivia

CIVIL LIBERTIES, voice, and participation mechanisms are thus not only very important because of their fundamental value, but also due to their instrumental value as key to socio-economic development outcomes. This finding also applies in general at the project level (the 'micro' dimension, as suggested above), as well as in concrete in-depth country case studies, as illustrated by the case of Bolivia.

Following half a century of acute political instability and numerous autocratic governments coupled with economic mismanagement, Bolivia embarked on a radical macro-economic reform program in the mid-eighties—at a time of restoration and electoral democracy. A semblance of democratic political stability was then in place for about fifteen years, during which time Bolivia also stayed the course in the implementation of economic reforms, implementing trade liberalization, and an ambitious privatization program, while maintaining macro-economic stability. Yet, economic growth was disappointing, poverty alleviation was scant, and social indicators did not improve significantly. Consequently, Bolivia, at an estimated per capita income of about US\$ 1,000, continued to be one of the poorest countries in the hemisphere.

In our studies we utilized in-depth country diagnostic tools in order to address the question of why such disappointing developmental results (and thus socio-economic and development rights) have taken place in Bolivia. In addition to the

long-standing challenge of ethnic exclusion, we found that 'voice' and governance factors (including corruption in particular) have been a weak link in Bolivia's development (see Figure 3). Patronage, 'clientelism,' corruption, and political capture have played an important role in shaping the institutional framework under which many public institutions operate. And for improving the effectiveness and integrity of public agencies in Bolivia, we found that citizen 'voice' is more important than traditional public sector management measures. In fact, as this country study illustrates, similar results are suggested from studies for other countries.

## Some conclusions

SEVERAL CONCLUSIONS can be drawn from this preliminary discussion. First, success in socio-economic development is dependent in great measure on an environment where there is control of corruption, transparency, rule of law, and corporate ethics. Therefore, it requires particular focus on governance and integrity issues. These issues, in turn, are dependent in part on voice and civil liberties, as well as on domestic politics. Future analysis and diagnosis for successful program design ought to integrate a better understanding, within a deeper and more integrated framework, of these political and civil liberty issues, including women rights and press freedoms, for instance—not only because they are important rights on their own, but also for enhancing aid effectiveness.

Second, it is misplaced to wait for governance and civil liberties improvements to come automatically when a country has an income windfall or an infusion of aid. Good governance is not a "luxury good," to which a country automatically graduates into when it becomes wealthier. Instead, the focus ought to be on sustained interventions to improve governance and civil liberties in countries where there are lacking, which in turn would be expected to help improve socio-economic and development rights.

Third, we now know that increased attention to the 'demand side' of governance and accountability (civil liberties, voice, media freedoms, etc.) is crucial for controlling corruption, which in turn would help socio-economic and development rights. Thus, focus on political and civil rights is important for enhancing the demand side of governance, for corruption control, and socio-economic and development rights.

Fourth, it would be tantamount to a virtual 'fig leaf' for any institution to claim that much is being contributed to enhancing human rights in a country simply because development projects—such as on water or rural roads—are being funded. Traditional development projects, say in enhancing access to safe water, are obviously of high importance, and may in fact further the attainment of socio-economic and development rights. However, successful execution of such projects in particular, and attainment of socio-economic and development objectives in general, may in large measure be dependent on paying attention to the improvement of some key dimensions of political and civil rights and governance. Thus, emphasizing these political and civil rights and governance issues is paramount for development effectiveness and for socio-economic and development rights.

COMMENTS ON THE EMPIRICAL LINK  
BETWEEN HUMAN RIGHTS AND DEVELOPMENT

Presented at  
The Conference on Human Rights and Development  
New York University  
March 2004

BY MORTON WINSTON

"... It is very nice to find there is empirical evidence to support the argument that good governance does not somehow magically arise from economic development.

It would be very useful if the World Bank Group, particularly the IFC, were to adopt a policy that required all of the companies receiving loans to adhere to the Publish What You Pay guidelines and enforce compliance with them through their loan Covenants, and it would also be useful to study the results of the Government Accountability Project's analysis of "whistle-blower" protection policies at the Multilateral Development Banks, which have rated them . . .

The preliminary conclusions Kaufmann reaches certainly do deserve further study and confirmation, particularly additional country-specific case studies that will provide nuance and detail to the causal linkages that his work has revealed. It seems to me that his data confirm the view of the 1993 Vienna World Congress on Human Rights Declaration and Programme of Action which held in Article 5 that both first generation and second generation human rights are equally important."

*Morton Winston is Chairman of the Board of Directors (Emeritus), Amnesty International USA and Professor of Philosophy, The College of New Jersey. He delivered his comments (excerpted here) on Daniel Kaufman's paper that served as the basis for the present article at the NYU Conference: "Human Rights and Development: Towards Mutual Reinforcement," March 1, 2004.*

Prof. Winston's full comments are at:  
[www.worldbank.org/wbi/governance/pdf/winstoncomments.pdf](http://www.worldbank.org/wbi/governance/pdf/winstoncomments.pdf)

Fifth, there are implications, both for the corporate and public sectors, for further integration between the fields of governance, rule of law, and corruption, on the one hand, and human rights, on the other. Contrasting the independent tracks that the respective fields (and their international conferences and conventions) have taken in human rights, in corporate governance, and in corruption, instead we find evidence of close links between these three important strands. This link therefore requires further analytical and operational attention, and challenging the 'silo' approaches that these fields have taken so far. It also relates to the paramount importance of promoting transparency initiatives for improving governance and corruption control.

Finally, there are implications on the 'power of data' for the field of human rights. Insufficient attention has been given to the development of reliable and periodic databases on human rights worldwide, in contrast with other governance areas. Nowadays, thanks to rigorous statistical tools, improved survey techniques, and in-depth empirical analysis, countries and institutions are regularly monitored on many dimensions of governance and investment climate, including corruption. Such data monitoring has become a potent tool for activism by civil society and for reformists in governments worldwide.

Indeed, similar progress is feasible and warranted in the human rights field. Investing in further empirical work in the human rights field would help validate, challenge, or expand upon the initial findings reported here. Further, potential synergies can be exploited between the existing in-depth country diagnostic tools for governance and corruption, integrating relevant and measurable human right dimensions into these ongoing surveys and indicators. Measurement empowers and furthers evidence-based decision-making on policy and institutional reforms. The power of data would also enable monitoring the differences in progress between types of human rights (civil/political vs socio-economic development) and also deepen our understanding of which dimensions are crucial determinants of development outcomes. ♣

**Daniel Kaufmann is Director of Global Programs, The World Bank Institute.**

This updated article is based on a longer paper presented at the Conference on Human Rights and Development, New York University, March 2004. The paper has subsequently been published in the volume *Human Rights and Development: Towards Mutual Reinforcement*, edited by Philip Alston and Mary Robinson, Oxford University Press, 2005.

The full paper, as well as the presentation given at the Human Rights Conference in Copenhagen on June 26, 2006, are available at:  
[www.worldbank.org/wbi/governance/pubs/humanrights.html](http://www.worldbank.org/wbi/governance/pubs/humanrights.html)

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# Using All the Tools at Our Disposal

## *Poverty Reduction and the Right to the Highest Attainable Standard of Health*

BY PAUL HUNT

FACED WITH A CAR THAT DOES NOT WORK, mechanics would be criticized for failing to use all the tools at their disposal to get it on the road. Why leave some tools unused on the workshop bench when they can help to get the job done?

For the most part, development practitioners fail to use the human rights tools at their disposal in the struggle against poverty. Of course, neither human rights nor anything else provide a magic solution to the immensely complex problem of global poverty. Nonetheless, human rights have a constructive contribution to make and a failure to use them is a missed opportunity of major proportions. There has been some progress at the policy level, much less progress at the operational level (see Piron and O'Neil 2005).

The human rights community has to shoulder some of the responsibility for the failure of development practitioners to consistently use human rights. Too often, the arguments in favor of human rights have been stronger on slogans than practical measures. But, in recent years, this has begun to change. The human rights community has made—and continues to make—concerted efforts to engage with national and international policy making in a practical, balanced and constructive manner. To do this it has been compelled to confront difficult issues, such as the impact of finite resources on policy choices, which has led to work on human rights tools, such as indicators, benchmarks, impact assessments and budget analysis (see Humanist Committee on Human Rights 2006; Fundar and Ford Foundation 2002; Hunt 2006). Although this remains work in progress, there is a growing maturity about the human rights movement that development practitioners should not ignore (see UN Committee on Economic 2001; UNDP 2000; OHCHR 2004; Yamin 2005).

### The “judicial” and “policy” approaches

BROADLY SPEAKING, there are two ways of vindicating human rights, including economic, social, and cultural rights, such as the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” often shortened to the “right to the highest attainable standard of health” or the “right to health.”

One way is via the courts, tribunals and other judicial and quasi-judicial processes (the “judicial” approach). Another approach is by bringing human rights to bear upon policy-making processes so that policies and programs are put in place that promote and protect human rights (the “policy” approach). Of course, the two approaches are intimately related and mutually reinforcing. Nonetheless, the distinction between them is important because the “policy” approach opens up challenging interdisciplinary possibilities for the operationalization of human rights.

Lawyers have played an indispensable role in developing the norms and standards that today constitute international human rights law. Naturally, when it comes to the “judicial” and “policy” approaches, some lawyers are professionally drawn to the “judicial” approach. Indeed in the context of the right to health, this approach has a vital role to play. As the UN High Commissioner for Human Rights, Louise Arbour, explains elsewhere in this volume, the courts have made a crucial contribution to the implementation of the right to health and it is very important that this contribution deepens and becomes more widespread.

In addition to the “judicial” approach, however, it is also vital that the right to health is brought to bear upon all relevant local, national and international policy-making processes,

including those for the reduction and elimination of poverty. It is this approach that is the focus of this article, drawing upon some of my experiences in the UN human rights system (see also WHO, 2002 and WHO 2005).

Briefly, three elementary points about the “policy” approach require emphasis. First, it depends upon techniques and tools that are not usually in a lawyer’s brief case or repertoire. Second, it demands close cooperation amongst a range of disciplines and policy experts. Third, the “policy” approach demands vigilant monitoring and accountability, but the accountability does not have to be judicial. It could, for example, take the form of publicly available rigorous human rights impact assessments that check whether or not the relevant policy has delivered positive human rights outcomes consistent with the state’s national and international commitments.

## The right to the highest attainable standard of health

AS UN SPECIAL RAPPORTEUR on the right to the highest attainable standard of health, my task is to help States, and others, better honor their right to health responsibilities arising from national and international human rights law (see Hunt’s UN reports, statements and other interventions at [www2.essex.ac.uk/human\\_rights\\_centre/rth](http://www2.essex.ac.uk/human_rights_centre/rth)).

The right to health is enshrined in numerous national constitutions, as well as binding international human rights law. According to international law, the right to health encompasses

both the right to health care and the underlying determinants of health, such as adequate sanitation and safe drinking water. Moreover, the right to health is closely related to the enjoyment of a number of other human rights and fundamental freedoms, including the rights to food, housing, education, participation and access to information. In my work, I have sought to apply the right to health, understood in this broad and interrelated manner, to the problem of poverty reduction.

### Niger’s Poverty Reduction Strategy

One of my reports to the UN Commission on Human Rights briefly considers Niger’s Poverty Reduction Strategy (PRS) through the prism of the right to health (E/CN.4/2004/49, paras 57-75).

The report commends a number of the public health features of the PRS, such as the objective of ensuring that essential, high-quality medicines are available at affordable prices, a goal that reflects Niger’s international right to health obligations.

Additionally, however, the report draws attention to some issues in the PRS that, had the right to health been taken into account when the PRS was prepared, would have been addressed somewhat differently. From a right to health perspective, for example, a pro-poor health policy should include education and information campaigns concerning the main health problems in local communities, including methods of prevention and control. Also, explicit attention should be given to the health situation of all marginal groups in the jurisdiction, including racial and ethnic minorities. Further, the right to



health requires that transparent, accessible and effective monitoring and accountability mechanisms be established, providing rights-holders (e.g. individuals) with an opportunity to understand how duty-bearers (e.g. ministers and officials) have discharged their obligations in relation to the PRS.

Although a commendable poverty reduction strategy, from the right to health perspective, Niger's PRS did not give sufficient attention to these (and some other) issues.

### Uganda's neglected diseases

In 2004, I was invited by the Government of Uganda to visit and prepare a report on neglected diseases and the right to health (E/CN.4/2006/48/Add.2). Also known as tropical or poverty-related diseases, they are mainly suffered by poor people in poor countries. In Uganda these diseases include river blindness, sleeping sickness and lymphatic filariasis. These appalling diseases attract little health research and development because those afflicted invariably have negligible purchasing power. The market fails them.

Examining Uganda's neglected diseases through the lens of the right to health underlines the importance of a number of policy responses. First, it underscores the imperative of developing an *integrated* health system responsive to local priorities. Vertical interventions that focus on one particular disease can actually weaken the broader health system. While there might be a place for some vertical interventions, they must be designed to strengthen, not undermine, an integrated health system. Second, village health teams are urgently needed to identify local health priorities. Their local knowledge about the prevalence of disease in the community will enhance the perspectives provided by a health official from the regional or national capital. Third, of course more health professionals are essential, but also incentives are needed to ensure that the health workers are willing to serve these remote neglected communities. Fourth, there are myths and misconceptions about the causes of neglected diseases: these can be dispelled by accessible public information campaigns. Fifth, some of those suffering from neglected diseases are stigmatized and discriminated against: this, too, can be tackled by evidence-based information and education. Sixth, the international community and pharmaceutical companies also have responsibilities to provide needs-based research and development on neglected diseases, as well as other assistance. Seventh, effective monitoring and accountability devices must be established. Existing parliamentary and judicial accountability mechanisms are not enough in relation to those diseases mainly affecting the most disadvantaged. In my Ugandan report I suggest a way of enhancing accountability in relation to neglected diseases.

Neglected diseases mainly afflict neglected communities. It was the right to health analysis—and its preoccupation with disadvantage—that led, in the first place, to the identification of this neglected issue as a serious right to health problem demanding much greater attention.

## Conclusion

A RIGHT TO HEALTH APPROACH to poverty reduction does not imply a radically new departure. Rather, it is likely to reinforce and enhance elements already existing in many anti-poverty strategies. The Government of Uganda, for example, already has a number of policies and programs that will help to tackle neglected diseases. Nonetheless, an examination of the problem through the right to health lens can provide insights, and signal measures, that sharpen and deepen existing initiatives (see also Hunt's reports on Peru, E/CN.4/2005/51/Add.2; Mozambique, E/CN.4/2005/51/Add.3; and Romania, E/CN.4/2005/51/Add.4).

Confronted with such a complex and colossal challenge as global poverty, it is extremely important that development practitioners use all the tools available in their workshop, including the national and international human rights commitments of developing and developed states. 

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# Structural Adjustment to Human Rights

BY BERNARDS A. N. MUDHO

SIXTY-FIVE YEARS AGO, in January 1941, Franklin D. Roosevelt delivered his famous “Four Freedoms” address to the U.S. Congress that foreshadowed the historic groundwork for the establishment of the United Nations, the World Bank, and the International Monetary Fund, as well as the Universal Declaration of Human Rights. “Freedom from want” that was later to find its place in the preambles of the United Nations Charter was amongst those rights envisioned by President Roosevelt and he made it clear then that by it he meant “economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world.”

In his message to the United Nations on the occasion of the fiftieth anniversary of the Universal Declaration, Nelson Mandela reminded the assembled world leaders that: “The very right to be human is denied every day to hundreds of millions of people as a result of poverty and the unavailability of basic necessities such as food, jobs, water and shelter, education, health care, and a healthy environment. The failure to achieve the vision contained in the Universal Declaration of Human Rights (UDHR) finds dramatic expression in the contrast between wealth and poverty, which characterizes the divide between the countries of the North and the countries of the South, and within individual countries in all hemispheres.”

Mandela’s reminder of the struggle for the alleviation of poverty and fulfillment of all human rights, including economic, social and cultural rights still rings vividly today as a poignant re-affirmation of the axiom that all human beings are born free and equal in dignity and rights. In 1948, the United Nations General Assembly adopted and enshrined these fundamental freedoms and human rights in the UDHR as “a common standard of achievement for all peoples and all nations.” Consequently, Article 2 of the Universal Declaration declares that everyone is entitled to all the rights and freedoms—including the rights to life, liberty, security of person, education, public service and an adequate standard of living for the health and well-being for himself and his family.

## Rights under threat

UNDER INTERNATIONAL HUMAN RIGHTS instruments they have freely ratified in the exercise of their sovereign powers,

States assume primary and internationally binding legal obligations to protect and promote all the human rights of their citizenry. Unhappily, today these rights are still often under threat, particularly in the least developed and heavily indebted poor countries, which lack adequate financial means or political and economic conditions to ensure minimum living conditions for their citizens.

As Nelson Mandela observed in his message quoted above, both the wealthy and poor countries alike have so far failed to reach the vision contained in the Universal Declaration for Human Rights, which requires not only individual actions but also international cooperation based on mutual respect.

For most developing countries, external financial assistance provides an important means to finance their development. If properly managed, external financing such as through concessional loans can contribute to development and enhance the enjoyment of human rights. In reality, however, many heavily indebted developing countries have had to spend significant amounts of their revenues to service external debts, including imprudent borrowings from the past, at the expense of providing more basic services and protection that would otherwise enable their people to develop and attain their human rights.

The cruel irony is that, despite such payments, the debt stock of the least developed and middle-income countries has quadrupled during the last two decades. The resulting alarming fact is that otherwise direly needed financial resources have been steadily drained from developing countries, and this trend has been on the increase since 1997.

Invariably, countries try to avoid a sovereign default, since the costs of the economic turmoil that typically follows default are enormous. A sovereign default undermines domestic and foreign investor confidence in the Government and invariably results in massive exodus of capital which in turn plunges the country into deep economic recession and crisis, and ultimately affects the realization of human rights.

In order to avoid such unenviable situations, and to qualify for much needed debt relief while attracting additional assistance and investment, most developing countries have been implementing a series of reforms under IMF programs. These policies, aimed at securing macroeconomic stability, have typically forced these nations to reduce public spending, accelerate market liberalization and open up their economies to foreign competition.

While for other countries, such reforms have brought improved economic efficiencies, in most cases they have been accompanied by painful measures and large social costs, resulting in a denial of rights. In certain cases, structural adjustment policies have culminated in human rights violations, for example, when governmental authorities react violently to public protests and riots against these policies.

## Examples of structural adjustment

NEARLY TWENTY YEARS AGO, the United Nations Children's Fund (UNICEF) published a study it entitled: "Adjustment with a Human Face." The survey drew upon ten (10) country case studies and on the UNICEF experience to illustrate the severity of the debt crisis and underscored the fact that policies to protect the vulnerable can and must become part of the national planning even when the economy is in difficulty.

Since then, structural adjustment programmes have been the subject of continuous debate, criticism and review. The Structural Adjustment Policy Review Initiative—SAPRI—jointly launched by the World Bank and a network of NGOs in 1997 emphasized, among other things, the imperatives for a country's "ownership" of its adjustment programmes to ensure their success and underscored the need to provide adequate safety nets to the most vulnerable as well as to safeguard social expenditures and maintaining access to health care and education.

A notable example is Uganda, one of the first countries to benefit from the HIPC initiatives, where an extensive national consultation process led to the elaboration of its own national comprehensive strategy for fighting poverty and the reorientation of their policies from structural adjustment to country-driven, pro-poor and participatory policies. To that end, the Uganda Government established the Poverty Action Fund (PAF) to channel proceeds from HIPC relief to protect social expenditures. For its part, the Bank recently overhauled its adjustment lending into more streamlined development policy lending instruments that emphasize the importance of country ownership.

Such encouraging developments offer entry points for collaboration between development and human rights practitioners. The concept of ownership and participation—now advocated strongly in the current development discourse—finds legal and moral grounds in human rights. The underlying assumption of country ownership is that policies, when

nationally "owned", will be more effective and sustainable because national commitment to reforms is considered a prerequisite for success.

These considerations resonate closely with the 1986 Declaration on the Right to Development which proclaimed that "the human person as the central subject of development should be the active participant and beneficiary of the right to development" and that "States have the right and the duty to formulate appropriate national development policies that aim



at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free, and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.”

In today’s globalized world, however, it is not only national policies that influence development outcomes. This is clear when one looks at the complex interplay of issues related to trade, aid, debt and other exogenous factors such as natural disasters. These are all beyond the control of one sovereign nation, but have significant impact on a nation’s economy as well as its development and human rights prospects.

## The debt issue

SHARING THE RESPONSIBILITY between the debtors and creditors for preventing and resolving unsustainable debt situations is a centrepiece of the Monterrey Consensus. The Monterrey Consensus is a remarkable achievement in the efforts by the international community to address a wide range of such challenges faced by developing countries, as a shared responsibility. The Consensus follows logically from the Millennium Declaration, in which all Member States resolved to respect and fully uphold the Universal Declaration on Human Rights, and also expressed their determination to deal comprehensively and effectively with the debt problems of low- and middle-income developing countries.

International cooperation and assistance for development and thus for economic, social, and cultural rights is an obligation for all States, as enshrined in Articles 55 and 56 of the Charter of the United Nations, coupled with well-established principles of international law, and with the provisions of the International Covenant on Economic, Social and Cultural Rights. Article 28 of the Universal Declaration proclaimed that everyone is entitled to a “social and international order” in which the rights and freedoms set forth in the Declaration can be fully realized. The interrelationship between global economic and social conditions and human rights is a fundamental principle of the Charter of the United Nations, affirmed in its Preamble and reiterated in Articles 1 and 55.

## The holistic approach

EXAMINATION OF THE CHALLENGES of debt and structural reforms from the human rights perspective reveals the need to adopt a more holistic approach to the challenges faced by developing countries. Serious thought and consideration are required with a view to creating an enabling environment for developing countries to formulate and implement national development policies that aim to improve the economic, social and cultural rights of their citizens. There is equal, if not more compelling, need for alternative approaches to debt sustainability, and increasing systemic coherence among governments and global institutions that shape the world economy.

A human rights-based approach would place an emphasis on enhancing the accountability of all actors—both the national and international community—in working to improve the life chances of the poor. To date, there is no binding, compre-

hensive and transparent mechanism to ensure the accountability of all States and international institutions involved in debt relief efforts and other areas of international cooperation. In the absence of such a mechanism, which will allow both active participation of, and benchmarks for, all stakeholders in assessing targets for resource flows, monitoring debt relief expenditures and collaborating on plans for future lending, debt relief initiatives including the HIPC Initiative will be of limited value to many developing countries.

Such an approach, in turn, requires more support to highly indebted countries to strengthen the national budgeting processes and debt management capacity. Human rights principles and considerations should guide the overall cycle of national budgeting processes including participation by stakeholders in decision-making and oversight by the legislature. Monitoring of performance of loan agreements should be a joint debtor/creditor responsibility. In this regard, the role of independent institutions in monitoring the impact of public expenditures on human rights, in particular economic, social and cultural rights, would be of major importance.

Mainstreaming human rights within the whole process of development is fundamentally important. Human rights should not be viewed merely as “add-ons” or luxuries to be provided once a certain level of economic development has taken place. Human rights empower people to achieve their development goals and emancipate developing nations from a position of pleading for small amounts of aid, thereby maintaining external dependence and acting in accordance with externally formulated conditionality; or access to world markets based on unequal terms of trade, and unequal access to decision-making and markets; or minimal debt relief on the terms of the creditors. It is time that equitable global economic relationships be built on the basis of a shared responsibility, accountability and participation while redress for past abuses and fair demands are addressed through international law and the human rights system.

For too long now, development practitioners and the human rights community have worked in parallel, within the confines of their own narrower communities. Today, at the sixtieth anniversary of the United Nations, human rights, development, and peace and security meet again at a crossroads, just as they did when the UN and the Bretton Woods institutions, were founded. We cannot afford to continue business as usual. We must speak in one voice in convincing our leaders to fashion a world order in which all human beings would have decent life chances and the opportunity to grow and develop in freedom, with equality of opportunity and to the fullness of their potential. 

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# The Significance of the UN Task Force on the Right to Development

BY MARGOT E. SALOMON

THE UNITED NATIONS HIGH-LEVEL TASK FORCE on the Right to Development was established in 2004 to act as an advisory body to the intergovernmental Working Group on the Right to Development. The Task Force is an independent expert body with semi-operational responsibilities. The significance of the Task Force lies first in its ability to bring together human rights experts with the representatives of the international development, finance and trade institutions,

including the World Bank, IMF, WTO, UNDP and UNCTAD, with NEPAD and the UN Economic Commission for Africa contributing to its most recent session. The recommendations adopted at its annual sessions reflect an emerging consensus on the positioning of human rights in relation to international economics—among often ideologically divergent camps—and provide proposals for seeing them implemented through the existing structures and modalities of aid, trade, debt relief, technology transfer, the private sector and global governance.

The World Bank and IMF in particular have been consistently



engaged with the Task Force. A conclusion to emerge from its first session, and actively advanced by the World Bank, is illustrative of this collaboration. The Task Force agreed that a number of principles underlying the Declaration on the Right to Development guide the work of international development and financial institutions including the indivisibility and interdependence of all human rights; a holistic view of human rights and development; and the importance of empowering people as active agents in the development process. It further recognizes the role and responsibilities of the state and of the international community with respect to the development process (Task Force 2004, 1st session, para. 30).

A second significance of the Task Force lies in its suggestions for operationalizing the right to development. At its 2005 session, the Task Force elaborated right to development criteria for the evaluation of Millennium Goal 8 on Global Partnerships for Development. The Working Group adopted its recommendations which apply to bilateral, multilateral and private sector partnerships. The criteria address a range of elements, including the implementation of the principles of transparency, participation and accountability; and the promotion of good governance and democracy at the national, as well as international, levels (Task Force 2005, 2nd session, para. 82; Working Group 2006, 7th session, paras. 67e and g).

The third significant element of the Task Force lies in its relationship with the Working Group on the Right to Development. The Task Force's policy recommendations, adopted by the Working Group (which is an intergovernmental body of UN member states), should be seriously promoted and applied. Importantly, the recommendations for furthering the right to development need also to be given effect outside of the United Nations.

## The right to development

THE 1986 UN DECLARATION on the Right to Development articulates the various components of this human right at the centre of which lies a comprehensive process of development aimed at human well-being, meaningful participation in development and the fair distribution of its benefits (DRD, art. 2.3). The process suitable to the delivery of these objectives requires conducive national and international environments (DRD, arts. 3.1; 4.1; 10).

## A rights-based globalization

THE TASK FORCE is concerned with the disregard for human rights inherent in most global strategies for the creation and distribution of wealth. Its consensus on the matter asserts that the *primary* utility of growth is as an instrument in ensuring the right to development, thus the search for economic growth is approached from a distinctly different angle to that prevailing in most international development institutions. The notion that human rights exist to serve instrumental functions in the achievement of economic ends is now being subordinated (Salomon 2005, pp. 427-428). The conclusions of both the Task Force and the Working Group are unequivocal:

“development has to be grounded in sound economic policies that foster growth with equity...” (Task Force 2005, 1st session, para. 31) and “... has to be grounded in economic policies that foster growth with social justice” (Working Group 2005, 6th session, para. 42).

The implications are that respect for civil, political, economic, social and cultural rights, as well as rights codified to protect women, indigenous peoples, minorities, children, and other marginalized groups, must increasingly determine the strategies for growth as well as guide its distribution. This approach would also require that decision-makers in developing countries be sufficiently autonomous so as to be in a position to prioritize their national and international human rights obligations. Currently, the concern is that they are bound to respond to the demands of the market, requiring the sacrifice of their public obligations in the expectation of being rewarded in the future (Orford 2005, p. 198).

## Accountability

THE WORKING GROUP endorsed the Task Force's position that “States, while adopting agreements and making commitments in international fora, such as in the context of the WTO... remain accountable for their human rights obligations” (Task Force 2005, 2nd session, para. 55; Working Group 2006, 7th session, para. 41). This would normally require policy coherence between a state's international human rights obligations and its multilateral and bilateral trade and development engagements; something that so far has been largely absent.

Policy coherence would also be essential to ensure that trade liberalization does not result in the denial of rights (Task Force 2005, 2nd session, para. 55). So for example, under the intellectual property regime both within the WTO under TRIPS and within bilateral and regional trade agreements (TRIPS Plus) the Task Force noted that the right to health (access to essential medicines and safeguarding public health), education (access to information and knowledge), and the rights of indigenous peoples (culture, traditional knowledge) are being impeded. (Task Force 2005, 2nd session, paras. 64-67). And while welcoming the recent WTO decision that is meant to facilitate access to medicines in developing countries (Working Group 2006, 7th session, para. 53), the Working Group included in its criteria for evaluating MDG 8 an appraisal of the extent to which partnerships apply human rights impact assessments (Working Group 2006, 7th session, para. 67i).

In its work on MDG 8 and advancing accountability the Task Force and Working Group also addressed the need for periodic evaluation towards modifying the institutional asymmetries in global governance and reform of the international financial architecture. Both bodies voiced their concerns regarding decision-making and norm-setting in international trade and finance that heavily favors the interests of developed countries (Task Force 2005, 2nd session, para. 74; Working Group 2006, 7th session, paras. 60 and 75).

## Conclusion

AS A NEW STEP in this process, the Working Group has mandated the Task Force to pilot its right to development criteria for assessing global partnerships by selecting several prominent partnerships for evaluation (Working Group 2006, 7th session, para. 77). Given the World Bank's willingness to engage constructively in relation to these critical issues within the UN, and due to its impact on global development, it would be a significant next step to have the Bank evaluated at all levels. Of greater import, though, would be for the findings of any such evaluation to give way to policy and operational changes more consistent with international human rights. ▀

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## A STUDY BY THE OECD DEVELOPMENT ASSISTANCE COMMITTEE

During 2005, the World Bank participated in the new Human Rights and Development Task Team of the OECD Development Assistance Committee (DAC) Governance Network. With a view towards preparing a DAC action-oriented policy statement on human rights, the Task Team commissioned a study reviewing the current state of development cooperation. Task Team members, including the Bank, actively contributed to the conceptual framework and provided a wealth of policy, tools and practical illustrations. Prepared by the Overseas Development Institute, *Integrating Human Rights into Development: A Synthesis of Donor Approaches and Experiences* is the most up to date and comprehensive analysis of donor policies and efforts at operationalization.

Recognizing agencies' different mandates and comparative advantages, the study proposes a five-part typology of how human rights have been integrated into development assistance: from "implicit" approaches to the more common human rights projects or mainstreaming efforts, it also examines the politically sensitive issues surrounding dialogue and conditionality, and presents the components of what are described as "human rights-based approaches." It then surveys efforts at integrating human rights in agencies' actual programs: while there has been traditionally more investment in civil and political rights interventions, donors now have a very wide set of experiences—in economic, social and human development.

Drawing on these practical experiences, the study identifies a number of lessons derived from the integration of human rights, with positive contributions in the areas of governance, poverty reduction and aid effectiveness—for example as a result of a greater focus on equality and non-discrimination, or more explicit understandings of the politics of development when the nature of state-society relations are understood through the lens of rights, entitlements and obligations. The study concludes with three main challenges for the donor community: continued investment in the institutionalization of existing human rights policies; making clear the links between human rights and fragile states; responding to the new aid consensus as expressed in the 2005 Paris Declaration—where the place of human rights remain under-examined.

The study, written by Laure-Hélène Piron and Tammie O'Neil, will be published as a book in 2006 by the OECD DAC Secretariat.

# The Legal Aspects of the World Bank's Work on Human Rights

BY ROBERTO DAÑINO\*

HUMAN RIGHTS ARE AT THE VERY CORE of the World Bank's mandate. Because of this, one of my first acts on assuming my position at the World Bank was to establish a Work Group on Human Rights within the Legal Vice-Presidency. I did this, not only because of my personal conviction that work in this area is a moral imperative, but also because of my sense that human rights are progressively becoming an explicit and integral part of the Bank's work, just as has happened over the last twenty years with the environment (World Bank 2001) and in the last five years with anti-corruption.

After two years of hard work by many in the Legal Vice-Presidency and intense consultations inside and outside the Bank, I am pleased that one of my last acts as Senior Vice President and General Counsel was to provide my legal opinion to management on the work of the Bank and human rights.

This article reflects my thoughts on the nature of the Bank's legal boundaries, and addresses three broad aspects of the issue: the Articles, the evolution of the Bank's role, and the way forward. A longer version of this analysis was published in *Human Rights and Development: Towards Mutual Reinforcement* (Alston 2005).

## Articles of Agreement (see References)

### Purposes

ARTICLE I SETS OUT the purposes of the institution. Drafted as it was 60 years ago, its provisions have stood the test of time. Nevertheless, as the challenges of development have changed the Bank's mission has also evolved to serve a broader concept of development. The Bank's mission as currently defined consists of the alleviation of poverty (*WDR 2000/2001*) through economic growth and social equity (*WDR 2006*)—this conception of the alleviation of poverty has an especially strong human rights dimension.

This approach understands poverty as multidimensional and relational. As Nobel Laureate, Amartya Sen has argued, we

must view development in terms of freedom and the removal of obstacles to it, including poverty, tyranny, poor economic opportunities, systemic social deprivation, the neglect of public facilities as well as intolerance (Sen 1999).

Social equity, at the heart of my conception of poverty alleviation, includes fighting inequality, giving the poor and marginalized a voice (i.e., empowerment), freedom from hunger and fear, as well as access to justice. Social equity has, therefore, an obvious human rights content. In our interpretation of the Articles of Agreement, we must therefore maintain a focus on the purposes of Article I and the overall mission of the Bank.

### Economic considerations

The Articles provide that only economic considerations of economy and efficiency shall be relevant to the decisions of the Bank and its officers, and these must be weighed impartially. What then constitute economic considerations for these purposes?

Let me start by reminding ourselves that the World Bank, although a development institution, is primarily a financial institution. In making decisions about the investment of limited public resources available, the Bank—like its private sector equivalents—needs to evaluate the wisdom of its proposed investments. It must rely upon analysis of all the factors that can affect the investment. And, these must include the “investment climate” in the recipient country. The Bank has already accepted the fact that issues of governance (World Bank 1990, and Kaufmann et al. 1999 and 1999b) are relevant for purposes of the economic analysis but, in my view, it goes further than this—it is now widely recognized that there are a host of political and institutional factors which may affect economic growth (Alessina and Perotti 1994, and Aron 2000). Research has shown that substantial violations of political and civil rights are related to lower economic growth (Barro 1997).

Similarly, it has long been recognized in the Bank that political considerations can have direct economic effects. For instance, in making the judgment of country creditworthiness that the Articles require, the Bank has to consider the degree of political stability of the government. In my opinion, therefore, it

is consistent with the Articles that the decision making processes of the Bank incorporate social, political and any other relevant input which may have an impact on its economic decisions.

This same line of analysis applies to the discussion of which human rights are relevant for the making of economic decisions. Some assert that only economic rights are relevant, not the political ones. In my view there is no stark distinction between economic and political considerations: there is similarly an interconnection among economic, social and cultural rights on the one hand, and civil and political rights on the other. Indeed, it is generally accepted at the political level that "all human rights are universal, indivisible, interdependent and interrelated" (Proclamation of Teheran 1968; see also UN World Conference 1993).

### Political prohibitions

The other limitations in the Articles relate to politics. There are two general political prohibitions in the Articles which must also be respected. First, Bank interference in a country's political affairs is barred—this applies to both domestic and foreign partisan politics. Second, Bank decisions cannot be influenced by the political character of the member country. But neither of these limitations would prevent the Bank from considering political issues that have economic consequences or implications—so long as this is done in a non-partisan, non-ideological and neutral manner. Thus, these prohibitions do not bar all political considerations, since not all such considerations amount to interference in the political affairs of a member, or relate to the political character of a member (Yokota 1976).

As with the way that the prevailing understanding of what can constitute economic considerations has evolved over the last 60 years, it is clear that the concept of interference in the sovereign affairs of a country has also evolved (Steiner 1991). International law now recognizes that there are issues which traverse national boundaries. The examples abound: corporate or financial crimes, money laundering, corruption, environmental hazards, the work of the International Criminal Court, the work of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for

Rwanda, and, the special jurisdictional rules for crimes against humanity.

The significance of this for the Bank is that, in my opinion, it can and should take into account human rights because, given the way international law has evolved with respect to concepts of sovereignty and interference, the Bank would not fall foul of the political prohibitions of the Articles. Globalization has forced us to broaden the range of issues that are of global concern. Human rights lie at the heart of that global challenge.

## The Bank's practice

OPERATING WITHIN the legal framework that I have described, it is clear that the work of the Bank, as well as our concept of development, will continue reflecting trends and changes in the world at large.

Overall, there has been a marked shift in emphasis from infrastructure lending to human development. Thirty years ago, the Bank had 58 percent of its portfolio in infrastructure, today it is reduced to 22 percent while human development and law and institutional reform represent 52 percent of its total lending.

Another dimension of the evolving mandate of the Bank is embodied in the world community's commitment towards realizing the Millennium Development Goals. The Bank has joined other global partners to pledge the attainment of major targets: the eradication of extreme hunger, the achievement of universal education, the promotion of gender equality, reduction of child mortality, improving maternal health, combating HIV/AIDS, ensuring environmental stability and developing a global partnership for development.

All eight MDGs involve more than one human right. One concept that the Bank has taken a leading role in developing is governance. Governance itself has a strong human rights content; indeed, this is an area in which our research has found a rich set of connections in charting the work of the Bank to key international human rights provisions. Governance incorporates transparency, accountability, and a predictable legal framework (Shihata 1995).

All of these principles are clearly linked to the "rule of law"



with its inherent notions of fairness and social justice. However, the rule of law must also be supported by a number of other indispensable factors, such as, public participation, a free press and a voice for civil society. These too relate to important provisions of a number of international human rights instruments, particularly those of the International Covenant on Civil and Political Rights.

## The way forward

I STRONGLY BELIEVE that an objective assessment of the work of the Bank leads inevitably to the conclusion that it has made a substantial positive contribution to the realization of human rights, and that it will increasingly continue to do so. In particular it has fulfilled and will continue to fulfill an important role in assisting its Members to progressively realize their human rights commitments.

However, there are limits that must be respected. We need to interpret them in a way that is consistent with the purposes of the Bank, in a dynamic way and in a contemporary context; but the limits do exist. We must work within the legal framework that I have described to tackle the challenges presented by human rights issues as they evolve.

There are also institutional limits. The Bank is a specialized financial agency. We cannot lose sight of the specificity of its function as a financial institution in the development context. We also have finite capacity and limited resources. For now at least, I believe we should embrace the centrality of human rights to our work instead of being divided by the issue of whether to adopt a "rights-based approach" to development.

As a development institution, we must also ensure that we work in a manner that does not inflict a "double punishment" on the people of our client countries by turning our backs on them because of the human rights record of their governments. It should also be clear that the Bank's role is not that of enforcer. Enforcement belongs primarily to the mandate of the member countries, and other, non-financial entities. Our role is a collaborative one in the implementation of our member countries human rights obligations. It is also a complementary one to that of our UN partners entrusted with the job of respecting, protecting, promoting and fulfilling human rights globally.

**Roberto Dañino, Former Senior Vice President and General Counsel, The World Bank 2003-2006.**

\* I would like to acknowledge the research and substantive contributions of Siobhan McNerney-Lankford, Counsel, to the LEGVPU's work on human rights, and to this article in particular.

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# Operationalizing Human Rights

## *The Challenge for Development Organizations*

BY KENNETH ROTH

TODAY THERE IS BROAD CONSENSUS within the World Bank that democracy, transparency, good governance and human rights are essential for effective poverty reduction. A major step forward has been the drafting of a legal opinion by the previous General Counsel of the World Bank on how the Bank's mandate permits a role for human rights. Now, the challenge for the Bank is implementation. Effective implementation depends on serious efforts to redress the uneven

understanding about the links between human rights and development that exists among members of the Bank's staff.

### Good initiatives

THE BANK HAS ALREADY internalized many human rights principles. Its approach to empowerment, reflecting the 2000 *World Development Report: "Attacking Poverty,"* shows how the Bank can enhance development and growth by promoting freedom of expression and association, the availability of information, collective bargaining, political participation, and access to justice. Acting on these insights, the Bank has encouraged local communities and non-governmental stakeholders to participate along with governments in policy and project discussions. Interesting initiatives in this regard include participatory budgeting, accountability to local stakeholders for service delivery programs, and efforts to enhance the voice of marginalized groups.

Similarly, Bank support for primary education and health care can be seen as part of an effort to help governments progressively implement economic and social rights. The Bank also pursues a human rights agenda when it works to end child labor, combat corruption, improve transparency and accountability in governance, and strengthen judicial systems.

In some cases, the Bank has protested privately and publicly when local authorities have attacked NGOs, which play a central role in many Bank strategies. For example, in response to a recent crackdown on human rights activists and NGOs in Cambodia, the



Bank issued a statement condemning the adverse impact on governance. The Bank has spoken out strongly on women's rights in Afghanistan. Addressing the tsunami reconstruction in Aceh, the Bank sought to include in the reconstruction plan provisions on transparency in the use of funds. The Bank's Country Gender Assessments provide astute analysis of issues relating to women's rights as well as recommendations for gender-sensitive strategies for poverty reduction.

## Remaining problems

LAUDABLE AS ALL THESE EFFORTS ARE, they have largely been *ad hoc*. The Gender Assessments recommendations, for example, are rarely mainstreamed into Country Assistance strategies, as the case of Kenya illustrates. In other countries, such as Nepal, the Bank has been reluctant to address how human rights abuses committed in the course of armed conflict prevent local communities from participating in development. The Bank has also remained silent in the face of Nepal's as well as Russia's restrictive NGO laws, which undermine transparency, impede the exposure of corruption, and weaken other rights related to development. A Bank study of rural factor markets in the Pakistani Punjab failed to acknowledge how military repression of local farmers impedes production.

The Bank's approach on Uzbekistan, where government repression has reached unprecedented levels since the massacre of hundreds of unarmed protesters in Andijan in May 2005, is a telling example of the Bank's unwillingness to truly integrate a rights approach to development. Earlier this spring, the Bank rightly decided to halt all further lending to Uzbekistan, but by refusing to publicly link this decision to ongoing repression in the country, it squandered an important opportunity to recognize the linkage between governance and development.

Some of the Bank's human rights commitments, such as those in the Extractive Industries Review, are also not well understood or implemented by the staff. A recent Compliance Advisor and Ombudsman (CAO) report showed that the Multilateral Investment Guarantee Agency (MIGA) did not do enough to ensure that a mining company client pursuing a project in the Democratic Republic of Congo properly follow the Voluntary Principles on Security and Human Rights, as Bank management had insisted.

The lack of clarity about the Bank's role regarding such human rights standards stifles initiative and leads to inconsistent programming decisions. At best, these uneven approaches undermine the Bank's development efforts. At worst, the Bank appears complicit in human rights abuses. The time has come to adopt a more explicit and consistent approach to human rights that builds on the positive initiatives already underway and integrates them more fully and consistently into the Bank's work.

## Proposed improvements

A CLEARER HUMAN RIGHTS FRAMEWORK could help to ensure that development strategies fully address issues of inequality and discrimination. It would reinforce the right of those affected by key development decisions to participate in the process leading to those decisions, as envisaged in the Poverty Reduction Strategy processes. The accountability of recipient governments could be strengthened by invoking their obligations under international human rights law rather than seemingly more arbitrary forms of conditionality. A human rights approach could give greater legitimacy to difficult and contested policy choices, and strengthen policy coherence and coordination among donors.

One practical way forward would be for the Bank to make human rights analysis the starting point for framing Country Assistance Strategies, Development Policy Loans and sector priorities. That would be a natural extension of the approach the Bank has taken in acknowledging the Millennium Development Goals as a basis for development strategies. The Bank also needs guidelines on whether and, if so, how to continue a lending program when there is a human rights crisis or crackdown in a country.

Success will also depend on the Bank having the courage of its convictions. For example, when the Bank confronts grave human rights abuses, it and other donors must frankly acknowledge that these abuses pose major impediments to development and thus present an obstacle for deeper financial engagement. Only such a principled approach will make clear that the Bank through its presence seeks to create conditions that are most conducive to development, not to fill government coffers regardless of government behavior. There may be ways to continue meeting legitimate development needs in the short term, but they should not occur at the expense of supporting repressive governments or becoming complicit in abuses, since, quite apart from

harming the Bank's reputation, such actions undermine development in the long term.

Even though the Bank has moved from defensiveness to open engagement on human rights, it still needs to make the case for human rights as a development objective. The Bank is not an enforcer of human rights in their own right, but it also should not take steps that undermine development simply because the alternative is to insist on respect for human rights. The time has come to adopt a more comprehensive and systematic approach, addressing the full spectrum of human rights and integrating them more fully into the Bank's development strategies, project design and programming.

**Kenneth Roth is the Executive Director of Human Rights Watch, which investigates, reports on, and seeks to curb human rights abuses in some 70 countries.**

**"The time has come to adopt a more explicit and consistent approach to human rights that builds on the positive initiatives already underway."**

# The Way Forward

## *Human Rights and the World Bank*

BY ANA PALACIO\*

### Introduction

HUMAN RIGHTS now constitute defined legal standards of the international constitutional order. Seven core international human rights treaties have been ratified by the majority of the world's countries.<sup>1</sup> A significant body of international legal obligations and jurisprudence now exists with respect to a core of civil and political as well as economic, social and cultural rights.

How this body of law and principle relates to the World Bank is an issue ripe for analysis, in light of the evolving connection between human rights and development in the international context, in international law, and in the World Bank.

It is now widely recognized that human rights have relevance for several other international goals, including development.<sup>2</sup> These linkages are evident in 2003 *UN Common Understanding on a Human Rights-Based Approach to Development Cooperation*<sup>3</sup>, in the 2005 *UN Millennium Project Report*<sup>4</sup> and more recently, in the Secretary General's 2005 Report *In Larger Freedom*<sup>5</sup>. Each of these highlighted the relevance of human rights to development, and the latter affirmed the connections between these two areas and security.

For the World Bank, several dimensions of human rights and development create the need for a careful approach. Human rights have an unavoidable political content and embody value commitments which are not uniformly interpreted,<sup>6</sup> yet the World Bank has limitations on strictly political activities. Furthermore, the concept of universality underpinning the international human rights framework is a complex one,<sup>7</sup> which must be assessed in progressive terms, and



interpreted according to its current legal, political and historical context.<sup>8</sup> World Bank Members have diverse views about how human rights should be integrated into development approaches<sup>9</sup> that could lead to diverse views about the role for an international financial institution like the World Bank. Political human rights in particular have traditionally been considered to lie beyond the permitted range of considerations under the Articles of Agreement,<sup>10</sup> which bar decisions based on political considerations or political systems, as well as interference in domestic political affairs of its members.<sup>11</sup> The World Bank's role is a facilitative one, in helping our members realize their human rights obligations. In this sense, human rights would not be the basis for an increase in Bank conditionalities, nor should they be seen as an agenda that could present an obstacle for disbursement or increase the cost of doing business.

## Developments within the World Bank relevant to Human Rights

SEVERAL RECENT DEVELOPMENTS *within* the Bank also make this examination apposite. As early as 1998, the Bank had issued statements indicating that the Bank supported the realization of human rights, and that it believed that "creating the conditions for the attainment of human rights is a central and irreducible goal of development."<sup>12</sup> Although the Bank's pronouncements on human rights have always been broadly supportive, they never affirmed in concrete terms that the Bank had a specific role to play in relation to human rights as legal principles, or as legal obligations.

In 2005, the Bank's senior management asked the then General Counsel for a reflection as to whether more explicit work on human rights would be in compliance with the Bank's Articles of Agreement. This review resulted in a January 2006 note entitled *Legal Opinion on Human Rights and the Work of the World Bank*, which concluded that "The Articles of Agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities, since it is now evident that human rights are an intrinsic part of the Bank's mission."

This document marks a clear evolution from the pre-existing restrictive legal interpretation of the Bank's explicit consideration of human rights. It is "permissive": allowing, but not mandating, action on the part of the Bank in relation to human rights. It clarifies "the state of the law," and gives the Bank the necessary leeway to explore its proper role in relation to human rights, updating the legal stance adopted internally to accord with the Bank's practice and the current international legal context. It facilitates a more comprehensive understanding of human rights in development, and enables the Bank to take these issues into account where they are relevant. Finally, it represents a point of departure for future legal analysis on human rights by the Legal Vice-Presidency as well as my own thinking on this matter as General Counsel of the World Bank Group.

The Articles of Agreement, like any legal text or treaty, must be interpreted purposefully and contextually, according to the demands and values of their times.<sup>13</sup> Consistent with this, the

opinion expressed is founded on a mainstream interpretation of the concepts of legitimate global concerns, and the notion of "interference" under international law. It is now well established that human rights rely on collective monitoring and enforcement, against which the concept of state sovereignty is no longer an absolute shield.<sup>14</sup> The opinion expressed is founded also on a fuller understanding of the types of considerations that the Bank can and should take into account in order to do its due diligence and as part of its decision-making process.

## The Bank's Legal Framework for Human Rights: the Way Forward

THE WORLD BANK has a significant role in helping its Members in the substantive realization of their human rights obligations in areas that fall within its mandate, and where development activities and human rights are interrelated. However, in fulfilling this role, the Bank must also respect the legal limits imposed by its Articles of Agreement.

It is now clear that the Bank can and sometimes should take human rights into consideration as part of its decision-making process. The challenge we now face is to clarify *how* these legal concepts should be specifically incorporated into the work of the Bank in order to further its mission of sustainable and equitable development, taking into account the following general considerations:

First, many areas of Bank activity have a *human rights dimension*. There are wide zones of overlap between substantive areas covered by core human rights treaties and areas in which the Bank operates. The Bank contributes to the realization of human rights in these different areas, even though its policies, programs and projects have never been explicitly or deliberately aimed towards the realization of human rights.

Second, there is a need for recognition of the role of human rights as *legal principles*, which may inform a broad range of activities, and which may enrich the quality and rationale of development interventions, and provide a normative baseline against which to assess development policies and programming.

Third, there should be a clear understanding that in certain cases and under certain circumstances, human rights generate *actionable legal obligations*. Such obligations may arise from international treaties, or from rights enshrined in national laws. Here the Bank's role is to support its Members to fulfill those obligations where they relate to Bank projects and policies.

From an internal perspective, the Bank's analytical work can benefit from a systematic inclusion of human rights considerations and the broadened range of legal analysis these require. Areas such as governance or the legal empowerment of the poor are particularly relevant in this respect.

The concept of governance is widely acknowledged to be indispensable to sustainable development. That focus would be significantly strengthened by anchoring it in the international human rights framework. Human rights offer a clear conceptual and legal framework for connecting the supply and demand sides of governance in terms of its basic correlative

notions of rights and duties. Acknowledging the relevance of human rights to the Bank and integrating human rights into its work is an important element in our efforts to step up the Bank's promotion of good governance and its global fight against corruption. Indeed, in substantive terms, these areas share common legal principles.

As an institution focused on fighting poverty and helping the poor, the legal empowerment of the poor must be addressed at a number of levels: international, regional, domestic; formal and informal. Human rights provide an indispensable framework for achieving this. The overarching goal of human rights frameworks is the empowerment of the weakest and most marginalized, including the poor. Human rights can help secure and strengthen their ability to claim rights and entitlements and take advantage of opportunities. From the perspective of the Bank's mandate, the international human rights framework can help inform a broad and comprehensive interpretation of legal empowerment of the poor that encapsulates both poverty reduction and governance initiatives.

From an external perspective, this approach requires us to strengthen collaboration with our partners in the broader UN family and with other international actors who have a comparative advantage in this area. Unlike the World Bank, many of these have mandates that contain explicit commitments to human rights, including, in some cases, monitoring and enforcement roles and capabilities. We have been working with the Office of the High Commissioner of Human Rights on several initiatives; we regularly engage in dialogue with other UN agencies to learn from their experience and we collaborate under the aegis of the OECD on human rights.

Finally, many donors already incorporate human rights considerations into their development programs and we may be able to learn a great deal also from their experience. These are all partnerships we should continue and strengthen. 🐾

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**Ana Palacio is Senior Vice President and General Counsel of the World Bank Group.**

\* Although it goes without saying that responsibility for the content is entirely mine, my sincere gratitude goes to Siobhan McInerney-Lankford.

#### Endnotes

<sup>1</sup> For the purposes of this discussion of human rights, the primary frame of reference is the international human rights framework. Beyond the Universal Declaration of Human Rights, that framework comprises seven "core" instruments: the International Covenant on Civil and Political Rights (156 Parties) ( and its Optional Protocol (105 Parties)); the International Covenant on Economic Social and Cultural Rights (153 Parties); Convention on the Rights of the Child (192 Parties); Convention on the Elimination of All Forms of Discrimination Against Women (184 Parties); International Convention on the Elimination of All Forms of Race Discrimination (170 Parties); International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families (34 Parties); the Convention Against Torture (141 Parties), in addition to which there are two other significant instruments: the Genocide Convention (138 Parties) and the Convention on the Rights of Refugees (140 Parties).

<sup>2</sup> See for instance the report of the Secretary-General entitled *Strengthening of the United Nations: an agenda for further change* (A/57/387 of 9 September 2002). In that report, the Secretary General stated that "The promotion and protection of human rights is a bedrock requirement for the real-

ization of the Charter's vision of a just and peaceful world". Since that report, the strengthening and mainstreaming of human rights in the UN has come to be known as "Action 2" after Action 2 of the report, which related to Strengthening UN Support for the Promotion and Protection of Human Rights Worldwide.

<sup>3</sup> [http://portal.unesco.org/shs/en/ev.php-URL\\_ID=7733&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/shs/en/ev.php-URL_ID=7733&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>4</sup> <http://www.unmillenniumproject.org/> (the "Sachs Report")

<sup>5</sup> [www.un.org/largerfreedom/](http://www.un.org/largerfreedom/)

<sup>6</sup> M. Nowak, *Introduction to the International Human Rights Regime* (2003) discussing the philosophical foundations of human rights held "The Value system manifested in human rights is not a specifically European one, but is found in all major cultures and regions worldwide."

<sup>7</sup> United Nations World Conference on Human Rights (Vienna 14-25 June 1993) issued the Vienna Declaration and Programme of Action (A/CONF.157/23)12 July 1993, Section 5 of which provides: "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." M. Nowak, supra, note 6 at pages 12, 14, 24-26. M. Cranston, *What are Human Rights?* (Taplinger Publishing Co. 1973); J. Donnelly, *The Concept of Human Rights* (Croom Helm, 1985); J. Donnelly, *Universal Human Rights in Theory and Practice* Cornell University Press (2003).

<sup>8</sup> See S. Marks and A. Clapham, *International Human Rights Lexicon* (Oxford, 2005) who describe an approach to reconciling universality and diversity as follows: "one way of summarizing this approach [...] is to refer to a distinction that has been drawn between 'universalism' and 'universality'. For this purpose universalism is the attempt to eliminate particularity and achieve uniformity at the global level; 'universality' is the attempt to bring out and develop the global resonance of particular ideas. [...] the universal significance of human rights is a case of universality, not universalism. We speak not of uniformity but of generality, not of doctrine but of critique, and not of the demise of particularity but of its future in relation to the global circulation of human rights ideas," p.398.

<sup>9</sup> The diversity of approaches to human rights in development cooperation is vividly illustrated in recent study commission by the OECD entitled *Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges* (2006) OECD, Paris.

<sup>10</sup> I. Shihata, 'Political Activities Prohibited' in *World Bank Legal Papers* 222 (2000) Martinus Nijhoff.

<sup>11</sup> Article IV, Section 10 provides: "Political Activity Prohibited. The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I." Similarly, Article III, Section 5 (b) restricts political considerations in Bank financing: (b) The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

<sup>12</sup> *Development and Human Rights: the Role of the World Bank* (1998) World Bank, Washington DC.

<sup>13</sup> This interpretative approach has been espoused by successive General Counsel of the World Bank, see e.g., I. Shihata, "Interpretation as Practiced at the World Bank", Introductory Chapter, *World Bank Legal Papers* (2000) XLIV.

<sup>14</sup> "At its very threshold and to this day, the human rights movement has inevitably confronted antagonistic claims based on conceptions of sovereignty. How could its premises coexist with the then reigning concepts of state sovereignty? Or have the nature of the state, and the concept of that protean concept as well as of allied concepts like domestic jurisdiction and autonomy, themselves undergone substantial change over the half century of this movement?" H.J. Steiner and P. Alston, *International Human Rights: Law, Politics and Morals* (2ed.) 573. See also 1993 Vienna Declaration and Programme of Action. See e.g. *Proceedings of the Eighty Eighth Annual Meeting of the American Society of International Law* (1994) "The Transformation of Sovereignty".



**CIVIL SOCIETY** is a website of the World Bank. It contains five sections: Background on the history and current status of World Bank civil society relations; Approach of the Bank's work

with civil society; evolution, definition, and characteristics of Civil Society worldwide; Staff which work with civil society; and Frequently Asked Questions about the Bank's work with civil society. The growth of civil society has been one of the most significant trends in international development. Here the visitor finds information and materials on the World Bank's evolving relationship with CSOs worldwide.

Multilingual Civil Society Websites are available in 4 languages (see below). This is in line with the Bank's efforts to communicate more actively with the civil society community around the world.

[www.worldbank.org/civilsociety](http://www.worldbank.org/civilsociety)

Arabic—[www.albankaldawli.org/civilsociety](http://www.albankaldawli.org/civilsociety)

French—[www.banquemoniale.org/societecivile](http://www.banquemoniale.org/societecivile)

Spanish—[www.bancomundial.org/osc](http://www.bancomundial.org/osc)



**ACTIONAID** is an international development agency whose aim is to fight poverty worldwide. It works with local partners to make the most of their knowledge and experience, reaching over 13 million of the poorest

and most vulnerable people over the last year alone. It helps them fight for and gain their rights to food, shelter, work, education, healthcare and a voice in the decisions that affect their lives. Actionaid's partners range from small community support groups to national alliances and international networks seeking education for all, trade justice and action against HIV/AIDS.

[www.actionaid.org](http://www.actionaid.org)



**HUMAN RIGHTS WATCH** is an independent, nongovernmental organization, supported by contributions from private individuals and foundations worldwide. HRW is dedicated

to protecting the human rights of people around the world. It stands with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. It investigates and exposes human rights violations and holds abusers accountable. It challenges governments and those who hold power to end abusive practices and respect international human rights law, and enlists the public and the international community to support the cause of human rights for all.

[www.hrw.org](http://www.hrw.org)



**MAKER** is the WHO website dedicated to operational health service managers in resource scarce settings. The website provides: a) concepts, guidance and

tools to help you decide how best to use resources, or to solve problems concerning working with staff, budgeting and monitoring expenditure, obtaining and managing drugs and equipment, interacting with the community and other stakeholders; b) contributions from managers such as Health Managers' Diary, sharing experiences of management successes and problems, sharing materials such as policies, procedures, standards or guidelines, sharing more formal reports on some aspect of management; links to other useful websites.

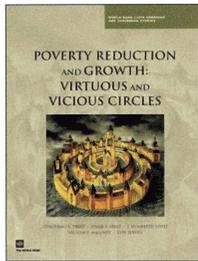
[www.who.int/management](http://www.who.int/management)



**LAW AND JUSTICE INSTITUTIONS** is a website of the World Bank, which provides a wealth of information about law and justice reform in

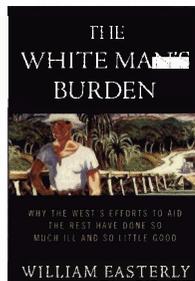
developing and transition countries. It gives insight into various approaches to reform and analyzes experience with different reform components. Fair and efficient courts, clearly written, coherent laws and the other attributes of a well-functioning legal system are widely regarded as integral to sustainable development and the reduction of poverty.

[www.worldbank.org/lji](http://www.worldbank.org/lji)



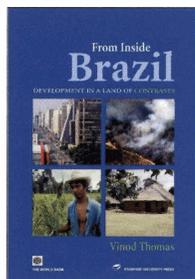
**POVERTY REDUCTION AND GROWTH: VIRTUOUS AND VICIOUS CIRCLES (Latin American and Caribbean Studies)**, by *Guillermo E. Perry, J. Humberto Lopez, William F. Maloney, World Bank 2006.*

It is well known that raising income levels alleviates poverty, and that economic growth can be more or less effective in doing so. This notion has received renewed attention in the search for pro-poor growth. Less well explored is the reverse channel: that poverty may, in fact, be part of the reason for a country's poor growth performance. This more elaborated view of the development process opens the door to the existence of vicious circles in which low growth results in high poverty and high poverty in turn results in low growth. This book describes the existence of these vicious circles in Latin America and the Caribbean.



**THE WHITE MAN'S BURDEN: WHY THE WEST'S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD**, by *William Easterly, Penguin Press HC 2006.*

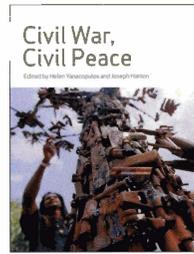
In the last five decades, the rich countries of the West have spent over \$2.3 trillion on foreign aid—and William Easterly argues that there is little to show for it. He identifies the two major approaches to foreign aid: the method of large organizations, or “planners,” which applies broad formulaic solutions to all aid situations, versus, that of “searchers,” which assesses each region and culture, devising problem-specific, practical initiatives. *The White Man's Burden* calls for a more constructive approach to foreign aid, in which searchers concentrate on implementing targeted, piecemeal improvements that are tailored to each given situation, instead of focusing on a one-size-fits-all plan.



**FROM INSIDE BRAZIL: DEVELOPMENT IN A LAND OF CONTRASTS (Latin American Development Forum)**, by *Vinod Thomas, Stanford University Press 2006.*

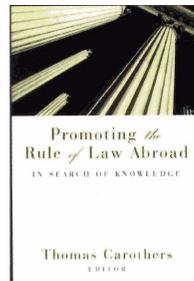
This book presents a strong agenda and action plan to achieve for Brazil both economic growth as well as improved welfare for its citizens. The book examines the welfare of the Brazilians, including the differences in welfare that exist between people in rural areas and people in cities; issues related to productivity; sustainability of Brazil's growth and

development; its use and conservation of natural resources; the structure and effectiveness of its institutions; and finally, it compares and contrasts the priorities of these agendas, coming up with both quantitative and qualitative targets that can guide those setting down policy.



**CIVIL WAR, CIVIL PEACE**, edited by *Helen Yanacopulos and Joseph Hanlon, Ohio University press 2006.*

After a peace agreement half of all civil wars start again. Outside help is essential, but too often well-meaning interveners do more harm than good. This book is the first aimed at practitioners and policy-makers to help give interventions a more peacebuilding focus, to ensure their actions encourage peace rather than exacerbate the divisions that provoke a return to war.



**PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE**, edited by *Thomas Carothers, Carnegie Endowment for International Peace 2006.*

Promoting the rule of law has become a major part of Western efforts to spread democracy and market economics around the world. Yet, although programs to foster the rule of law abroad have mushroomed, well-grounded knowledge about what factors ensure success, and why, remains scarce. In this book, leading practitioners and policy-oriented scholars draw on years of experience to critically assess the rationale, methods, and goals of rule-of-law policies and programs.

**ASSESSING WORLD BANK SUPPORT FOR TRADE, 1987-2004: AN IEG EVALUATION**, by *Yvonne Manu Tsikata, World Bank 2006.*

This is an independent evaluation of the World Bank's extensive support to developing countries on trade issues between 1987 and 2004. The study assesses the development effectiveness of World Bank trade-related advocacy, capacity-building, lending and research. It examines the extent to which the Bank's policies and assistance have met its stated objectives in the area of trade and makes recommendations to strengthen the effectiveness of future Bank trade assistance.

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