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# THE HUMAN RIGHT TO DEVELOPMENT: ITS MEANING & IMPORTANCE

BY JAMES C.N. PAUL\*

There is growing agreement on the need to "democratize" activities carried on in the name of "development" and on the need to make those who engage in these activities more accountable to internationally recognized standards which protect peoples' rights and their environments. Hopefully, these objectives will be reflected in the evolution of international law during the 1990's.

The articulation and application of the Human Right to Development ("HRD") should play a central role in these efforts. The existence of that right as an "inalienable," universal, right of people was asserted in the United Nations General Assembly Declaration of December 1986.<sup>1</sup> Unfortunately, that instrument is hardly a model of clarity, and the instrument has generated a large amount of scholarly comment, some of it confusing, much of it skeptical on whether such rights exist, and if so, what does it mean.

More recently, at the request of the United Nations Commission on Human Rights, the Secretary General convened a "Global Consultation on the Right to Development as a Human Right." Thanks particularly to contributions of Third World rights activists to that enterprise, the Secretary General's Report on the Consultation goes a long way toward clarification of the purpose, content and some of the legal implications of the HRD.<sup>2</sup> The processes of further explicating and applying the HRD should go forward into the

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1. United Nations General Assembly, *Declaration on the Right to Development*, U.N. GAOR, 41st Sess., Resolutions and Decisions, Agenda Item 101, at 3-6, 9th plenary meeting, 4 Dec. 1986 U.N. Doc. A/Res/41/128 [hereinafter United Nations HRD Declaration]. Resolution adopted by the General Assembly [on the report of the 3d Committee (A/41/925 and Corr.1)]

2. Question of the Realization of the Right to Development, *Global Consultation on the Right to Development as a Human Right; Report Prepared by the Secretary-General Pursuant to Comm'n on Human Rights Resolution 1989/45; E/CN.4/1990/9/rev.1* (Sept. 26, 1990) [hereinafter Secretary-General's Report]. For a discussion of the history of this report, see Russell Lawrence

1990's. This paper is intended as a modest contribution to that cause, and to the growing efforts of Third World activists to get governments and international organizations to take the HRD very seriously.

Part I of this paper emphasizes the importance of understanding the HRD in the perspective of past development experience, and understanding how many different kinds of development activities impact adversely on the basic rights of people who are directly and particularly affected by these activities. This experience underscores the need to protect, indeed promote, human rights in and through development process. It is this reality, rather than abstract theorizing about the concept of "development" and its relation to "human rights," which generates an appreciation of the need for the HRD, its content and its many important applications.

Part II focuses on the United Nations Declaration ("Declaration") on the HRD, its central meaning and implications: those who initiate and engage in international "development" activities must protect and promote the rights of those directly affected by the activities undertaken, and the latter may legitimately demand recognition of this basic obligation through the free exercise of rights of "participation." The implications of these propositions, what development-oriented governmental and intergovernmental actors must do to make themselves accountable to human rights law and what people can do to demand and secure that accountability, are both extensive and important, though only briefly explored here.

Part III shows that this interpretation of the content of the HRD (as enunciated in the United Nations Declaration) is simply a logical and (in light of experience) necessary application of existing international human rights law to a very significant sphere of international activities. It has long been a basic norm of the United Nations system that the protection and promotion of human rights should be integral components of "development activities" fostered by states and international development agencies ("IDAs"). In the final analysis, people should be both the objects and creators of "development." Indeed, many IDAs have now recognized the need to incorporate international human rights standards into their policies; a multitude of pronouncements and new practices attest to this awareness. Thus, the human rights obligations of "development actors," state agencies, IDAs and those who act under their auspices should now be treated as binding legal (as well as moral) duties. There is no discretion to ignore this mandate.

Part IV outlines steps which popular organizations, non-governmental organizations ("NGOs"), human rights lawyers and so

cial activists, operating at both national and international levels can take to promote recognition of international human rights as an integral component of international development efforts. This is an important perspective. The realization of the HRD, like the realization of any basic right, depends not simply on benign official action, but on continuing aggressive efforts by, and on behalf of, those whose basic interests are most at stake.

#### I. DEVELOPMENT WRONGS AND HUMAN RIGHTS: THE NEED FOR A HUMAN RIGHT TO DEVELOPMENT

Much of the academic commentary on the HRD discusses "development" and "human rights" in quite abstract terms, ignoring serious human rights lessons now learned from much development experience over past decades, including experiences now recognized as "development tragedies" by both IDAs and others who have studied them.<sup>3</sup>

While it is important, for some purposes, to theorize about "development" as an ideological and intellectual concept, one must also recognize that the business of "doing development" is a reality, a diverse aggregate of activities carried on by a huge international industry driven by a complex mixture of motives and forces. Major actors in this industry include the World Bank institutions, regional development banks, specialized United Nations agencies, bi-lateral aid agencies, large "private" foundations, ministries and parastatals in Third World states, and Transnational Corporations ("TNC's") which act in some kind of collaboration with governmental and sometimes inter-governmental bodies. Most of these actors have so far enjoyed considerable legal and thus political autonomy, notably in respect to their accountability to people, especially those affected by their activities.

"Projects" have been major vehicles of the development industry.<sup>4</sup> However defined, a "project" usually constitutes a deliberate, planned intervention by outside agencies into the lives of people; projects are usually intended to change the behavior of "target" people by altering the social and physical environments in which they live.

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3. For a review of some of the literature on the HRD, see Phillip Alston, *Making Space for New Human Rights: The Case of the Right to Development*, 1 HARV. HUM. RTS. Y.B. 3 (1988). See also I. Browlie, *The Human Right to Development*, Commonwealth Secretariat Human Rights Unit (1989).

4. For a discussion of the importance of project lending in World Bank assistance, see W.C. BAUM & S.M. TOLBERT, *INVESTING IN DEVELOPMENT: LESSONS FROM WORLD BANK EXPERIENCE* (World Bank 1985); James C.N. Paul, *International Development Agencies, Human Rights and Humane Development Projects*, 17 DENV. J. INT'L L. & POL'Y 67, 68 (1988).

Despite lip service to "bottom up" (as opposed to "top down") "development," most projects are essentially products of a collaboration (often uneasy) between officials in IDAs and governments. Between them, these officials have exercised (in most settings) the power to create and impose projects on people. They use some combination of law, money and the promise of gain, co-optation of local elites and (often enough) coercion to impose projects on communities.

It is now notorious that most "development" projects create some risks of (legally cognizable) harm to some categories of project-affected people, and some projects generate many risks of very serious harms to many people.<sup>5</sup> The truth of this proposition can be found in a vast literature generated by IDAs themselves, though the intensity of the anguish of project victims is best revealed by studies which have reached those victims and allowed them to speak for themselves.<sup>6</sup> For purposes of appreciating the importance of the HRD, it is important to understand how different kinds of projects inflict different kinds of harm, and to appreciate that these harms are "proximately caused" or exacerbated by the practices, sins of commission and omission, of official development actors. The following examples may illustrate the point.

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5. For a review of the social impacts of development projects and the harms inflicted on people, see Paul, *supra* note 4, at 91-108. The World Bank's recently published 3 ENVIRONMENTAL ASSESSMENT SOURCEBOOK, World Bank Technical Papers Nos. 139, 140, 154 (1991) contains a detailed survey of the potential "social" as well as environmental impact of virtually every type of World Bank-funded project. See generally 1-3 ENVIRONMENTAL ASSESSMENT SOURCEBOOK (1991), which cites a wealth of literature on the social impact of projects dealing with: "infrastructure" (e.g., dams, roads, airports); industrial zones; agriculture and agri-business; irrigation; mining; timbering; ranching; and, tourism. Dr. Michael M. Cernea, the Bank's Social Science Advisor, has extensively researched and analyzed the social impact of various kinds of World Bank projects. See, e.g., MICHAEL M. CERNEA, PUTTING PEOPLE FIRST, SOCIOLOGICAL VARIABLES IN RURAL DEVELOPMENT (1st ed. 1985); MICHAEL M. CERNEA, PUTTING PEOPLE FIRST, SOCIOLOGICAL VARIABLES IN RURAL DEVELOPMENT (2d ed. 1991); Michael M. Cernea, *Internal Refugees and Development-Caused Population Displacement*, HARVARD INSTITUTE FOR INT'L DEV., Discussion Paper No. 345 (June 1990) (comparing victims of development displacement with refugees from civil wars); MICHAEL M. CERNEA, SOCIAL ISSUES IN INVOLUNTARY RESETTLEMENT PROCESSES (World Bank 1987); MICHAEL M. CERNEA, NON-GOVERNMENTAL ORGANIZATIONS AND LOCAL DEVELOPMENT (World Bank 1988). For a detailed social and legal analysis of displacement-producing projects in India, see INDIAN SOCIAL INSTITUTE, DEVELOPMENT, DISPLACEMENT AND REHABILITATION (W. Fernandez & E.G. Thukal eds., 1989).

6. The following letter eloquently illustrates this point:

Asian Development Bank  
Makati, Rizal

Dear Sir:

We, the T'boli people of Lake Sebu, Suraliah, South Cotabato, after hearing about the forthcoming construction of the Lake Sebu Dam and the subsequent damage and destruction it will bring to our homeland, would

1. Projects to construct large scale dams are notorious producers of large numbers of project victims. Especially in Third World settings, dams produce significant human "displacement." People facing forcible removal from their lands (and the status and security which the land provides) have seldom been provided any official process to protest the economic wisdom, social justice and legality of the intended project, or to have these objections fairly heard (objections which usually center on contentions that the ultimate social and environmental "costs" of the project outweigh the "benefits" claimed). Because these contentions are never properly heard nor carefully considered, these costs are, invariably, underestimated. Of course, those evicted are supposed to be fairly compensated. However, these people are also powerless and lack awareness of their rights and capacities to enforce them. Even where there is the best of will (a problematic occurrence), the goal of providing fair compensation for all harms inflicted is immensely

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like to bring to your attention our strongest opposition to this government project. We would like you to consider the following reasons:

1. The proposed dam will flood our most precious land and destroy our food and source of livelihood which we have worked so hard to produce;

2. If this land is flooded and our food supply destroyed, it will certainly kill us and our children. For where shall we go, since our Visayan brothers have already taken choice lands that God had first given us?

3. This land and these lakes God has given us. We do not want this land to be destroyed by flood, because it is precious to us; our ancestors were born and are buried here. We would rather kill ourselves and our children than to witness the terrible destruction this dam would bring;

4. We have heard that new lands will be set aside for us in distant and foreign places. We would rather be drowned here and be buried with our ancestors than to live far from our homeland;

5. If we lost this agricultural land, no food production will be made, and we can no longer contribute to the national economy;

6. We also have heard that the dam will serve many lowlanders with electric power and irrigation. But, we humbly ask, how will the dam serve and assist we the T'boli people?

7. In all this, we have never been directly approached, advised, or informed regarding the planning of the dam. Do we not have rights? Are we not also Filipino citizens capable of planning for our future? We do think that real development has to be realized with the free participation of the common people no matter how poor they are. We have heard that the Asian Development Bank will be funding a major portion of this project. If this be true, we ask only that [you] reconsider the consequences and moral implications involved in this project.

Very sincerely yours,

T'BOLIS OF LAKE SEBU

(This petition was signed by 2,622 T'Bolis of Lake Sebu.)

Paul, *supra* note 4, at 94-95 n.85 (citing P.L. Bennagen, *Philippine Cultural Minorities: Victims as Victors*, in MORTGAGING THE FUTURE: THE WORLD BANK AND IMF IN THE PHILIPPINES (V.R. Jose ed. 1982)).

difficult.<sup>7</sup>

For example, in the Narmada River Basin project in India, some of the many dams proposed or underway (some enormous) will force the eviction of untold thousands of people (no one knows exactly how many). The victims of forced displacement include hundreds of communities of "tribal," mostly "forest" people, who hold their ancestral lands communally under forms of tenure which allocate rights to use trees, land and water to groups or households according to intricate understandings which probably can never be converted into individual or even group property rights recognized by state law.<sup>8</sup> The "processes" of compensation become extraordinarily difficult where (as is usually the case) the burden is cast on non-literate claimants (who may speak an "alien" language reflecting a very different culture) to prove their landholding "rights" and losses. Where project managers are pressed to speed removals and maintain unrealistic budgets (and thus cut costs) or where the powerful deal with the weak — the process can become a travesty. Further, formulas for compensation which simply treat land as an economic asset are hardly designed to recognize, let alone redress, the serious social harms done when cultures, rooted in ancestral lands, are permanently destroyed by forcible displacement. In India, for a long time, many thousands of "tribals" have suffered these kinds of unredressed harms from dam-building projects. The Indian history is only one illustration.<sup>9</sup>

Dams, of course, produce other harms. The environmental consequences may, ultimately, be more serious than originally envisioned by officials. Ecological changes in downstream areas often cause a loss of water resources and arable land to farmers depen-

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7. See, e.g., DEVELOPMENT, DISPLACEMENT AND REHABILITATION, *supra* note 5, at 104-34. See also Paul, *supra* note 4, at 92-95. The Multiple Action Research Group ("MARG"), a volunteer organization of social scientists and lawyers, conducted extensive interviews in a number of districts destined for flooding when the Sardor Sarovar dam is completed. Reports on five districts have been published during 1992. These depict, at the village level, widespread lack of communication from government sources about the project, widespread ignorance of the future fate of the villages and of official relocation plans, and widespread ignorance on the part of "oustees" of their rights, and widespread anger and anguish. MULTIPLE ACTION RESEARCH GROUP, SARDOR SAROVAR OUSTEES IN MADHYA PRADESH: WHAT DO THEY KNOW? (New Dehli 1992).

8. Kapur Ratna, *The Impact of Large Scale Dam Construction In India On Indigenous People* (presented at the International Bar Association Conference in New York, September, 1990 to be published in a volume of papers on "The World Bank, Development and Human Rights" being prepared by the International Center for Law in Development); James C.N. Paul & Clarence J. Dias, *Developing Legal Strategies to Help Combat Rural Impoverishment: Using Human Rights and Legal Resources*, in THE INTERNATIONAL CONTEXT OF RURAL POVERTY IN THE THIRD WORLD: ISSUES FOR RESEARCH AND SOCIAL ACTION BY GRASSROOTS ORGANIZATIONS AND LEGAL ACTIVISTS 231-67 (D. Dembo et al. eds. 1986) [hereinafter RURAL POVERTY].

9. Kapur Ratna, *supra* note 8; Paul, *supra* note 4, at 92-95.

dent on the historic flow.<sup>10</sup> Behind the dam, as great lakes are created, major land use changes may be introduced, including irrigated farming projects which, in turn, can easily produce the wide range of harms discussed below. Land values suddenly change; new population movements take place; land grabbing follows with more displacement; and, more environmental degradation occurs.<sup>11</sup>

2. Involuntary Resettlement Projects are regular components of projects which produce large "displacement." In the ideal, (according to the World Bank's "Guidelines") involuntary resettlement programs are supposed to be distinct, benign development "projects" in themselves; projects to provide new and better opportunities for the people "involuntarily" resettled. In reality these projects are poorly planned and managed, imposed on people with little consultation, and inadequately financed. Disease, hunger, loss of livelihood, loss of self-reliance and other suffering are regular results. The World Bank's great scholar on displacement and resettlement has likened the fate of these victims to the suffering of transnational refugees produced by war or persecution when people living cohesively in one environment are uprooted, scattered and dumped into alien settings without adequate resources, knowledge and other help. The comparison seems apt.<sup>12</sup>

3. Large scale irrigation projects were once seen as vehicles of agricultural growth, but today it often seems as if the most significant GNP they produce is more "gross national poverty." The World Bank's *Environmental Assessment Sourcebook* notes some of the risks of harm:

Social disruption is inevitable in large irrigation projects covering vast areas. Local people dislocated . . . face the classic resettlement problems . . . the people remaining . . . will have to change their land use practices and agricultural patterns . . . those moving into the area will have to adapt to new conditions. . . . Local people often find they have less access to water, [and] . . . conflicting demands on water resources and inequalities in distribution easily occur . . . altering the distribution of wealth. . . . An increase, sometimes extraordinary, of water-borne or water-related diseases is commonly associated with irrigation. . . . Large areas of irrigated land [soon go] out of production

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10. See *Draft National Policy on Developmental Resettlement of Project Affected People*, in DEVELOPMENT, DISPLACEMENT AND REHABILITATION, *supra* note 5. See also 2 ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 5, at 32-41.

11. Kapur Ratna, *supra* note 8.

12. See Michael M. Cernea, *Internal Refugees and Development-Caused Population Displacement*, Harvard Institute for International Development, Development Discussion Paper No. 345, Note 5 (June 1990); MICHAEL M. CERNEA, SOCIAL ISSUES IN INVOLUNTARY RESETTLEMENT PROCESSES (World Bank 1987); *Draft National Policy on Developmental Resettlement of Project Affected People*, in DEVELOPMENT, DISPLACEMENT AND REHABILITATION, *supra* note 5.



because of soil deterioration.<sup>13</sup>

To this should be added the common finding that it is extraordinarily difficult for project officials to allocate both the control and distribution of water and the labor obligations for repair of channels and gates, and to "manage" the timing and distribution of vital inputs to coincide with growing seasons - a ruinous species of neglect.<sup>14</sup> These and many other official failures (notably failure to consider the impacts of such projects on women) can easily combine to produce the ultimate impoverishment of families who are "voluntarily" or otherwise incorporated into project areas.<sup>15</sup>

4. Large scale commercial farming projects are also risk-prone. For example, World Bank cotton production projects have been encouraged in West Africa. Reading between the lines of a lengthy but rather lax World Bank "evaluation" of these schemes,<sup>16</sup> one wonders how to measure their "success." Pressing thousands of small-scale, marginal, rural households into cotton production creates the following risks: the grower is locked into a cycle of borrowing to secure inputs; the market for the crop can vary and so, too, the output, depending on environmental conditions including forms of pest control; intensive labor is required at particular times, and family illness or other factors may affect its availability within marginal households; the food system of households may be altered (something not made clear in the official reports) as subsistence plots and labor are sacrificed for cash crops; wives become laborers on land controlled by household heads enjoying little control over the income realized while obligated (under customary norms) with the primary responsibility for providing food, household services and child care. Monocropping and intensive cultivation without proper fallowing, a likely result, may exhaust the soil. Trees and forests are cut and fuel sources disappear.<sup>17</sup> As a more recent World Bank assessment puts it, "The rapid growth of cotton production in parts of West Africa is linked with deforestation, erosion and declining soil fertility."<sup>18</sup> This history simply typifies the dangers of forcing large-scale, cash crop production on rural areas, particularly without thought to the risks created and who will bear the risk and the costs. The problematic histories of "Green Revolu-

13. 2 ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 5, at 94-97.

14. See, e.g., Norman Uphoff, *Contrasting Approaches to Water Management*, in THIRD WORLD LEGAL STUDIES 1982: LAW IN ALTERNATIVE STRATEGIES OF RURAL DEVELOPMENT (1982) (discussing the large scale, problem-ridden Gal Oya project in Sri Lanka).

15. 2 ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 5, at 20.

16. COTTON DEV. PROGRAMS IN BURKINA FASO, COTE D'LOIRE AND TOGO, A WORLD BANK EVALUATION STUDY (Operations Evaluation Dept., World Bank 1988).

17. 2 ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 5, at 20.

18. *Id.*

tions" need hardly be repeated here.<sup>19</sup> So, too, histories of the introduction of commercial plantations often reveal a horrendous tale in terms of people displaced (often ruthlessly) and converted into dependent wage workers.<sup>20</sup>

5. Other risk-prone projects should be briefly noted. Ranching (still promoted in many parts of the world) produces displacement or disruption of complex systems of land rights invariably impacting adversely on those with the fewest resources and least power, as well as posing serious environmental threats which again spell the creation of poverty.<sup>21</sup> The construction of large scale roads (an obvious element of "development") creates risks of displacement, population shifts and land-grabbing. As the World Bank's *Environmental Assessment Sourcebook* puts it, "The land tenure of low income landholders and indigenous people may be jeopardized by abrupt increases in local land values."<sup>22</sup> Tourism projects also call for infrastructural projects producing displacement and (in some places) "serious impacts on local cultures" including the "exploitation" of them.<sup>23</sup> Tourism, of course, creates new employment opportunities, but, in many parts of the world, the evidence suggests that these opportunities go to imported labor. A World Bank document warns that local "residents are likely to incur more of the costs and less of the benefits" unless protections are carefully put in place.<sup>24</sup> Industrial zones are notoriously risk prone. Not only are communities and workers put at risk by deplorable environmental degradation, but also by the health hazards inherent in some of the enterprises, and by exploitation of unorganized workers.<sup>25</sup> Resource extraction projects (e.g. timbering and agri-industries associated with it) pose similar risks.<sup>26</sup>

6. There are other categories of ostensibly more benign "development" interventions initiated by the international development industry which can inflict other less visible yet significant harms. Agricultural and rural development projects (notably in Africa) designed to help smallholders by encouraging cash crops (e.g. through provisions of guidance, credit or basic services) have often been flawed for the following reasons: benefits have flowed to the more powerful at a cost to the more vulnerable; local facilities and

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19. C. Espiritu, *Transnational Agribusiness and Plantation Agriculture: The Philippine Experience*, *supra* note 8, at 41-68.

20. *Id.* at 64.

21. 2 ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 5, at 103-08.

22. *Id.* at 169.

23. *Id.* at 225.

24. *Id.*

25. For a good illustration, see Barbara Crossette, *300 Factories Add Up to India's Very Sick Town*, N.Y. TIMES, Feb. 6, 1991, at 4. See also 3 ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 5, at 19.

26. 3 ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 5, at 168-78.

institutions put in place to provide services have withered because they lacked a participatory foundation and were not sustainable; women have often been the victims of exclusion, of discrimination and sometimes of exploitation due to failures to provide for their participation and thus failures to incorporate protections from inequitable treatment.<sup>27</sup>

7. Programs to rehabilitate environments particularly in poverty-stricken areas (e.g., through the imposition of land use regulations to control overgrazing, cultivation practices or through the introduction of tree-planting, wood lots and other schemes) have regularly failed where the full participation of affected people has been lacking so that the burdens and benefits of the measure introduced are unfairly allocated. Programs to train extension agents, health care providers and teachers for local community service have ignored needs to learn techniques of generating community participation, self-reliance and civic empowerment in rural communities as fundamental components of "rural development," and these programs have regularly ignored the needs (and vulnerability) of women in changing, less benign rural communities.<sup>28</sup>

This survey is hardly exhaustive, but the range of projects catalogued typifies activities initiated by the international development industry throughout the developing world. Several further finds should be underscored.

Harms threatened or imposed by projects should not simply be seen as "social costs" to be "ameliorated" where possible. These harms, when inflicted, do damage to those fundamental, universally recognized interests of people which are now protected by international human rights law. So, when the risk of producing these harms is known, or knowable through appropriate investigation,

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27. L. McGlynn, *The World Bank and the Realization of the Rights of Women in Agriculture and Rural Development Projects in Sub-Sahara Africa (SSA)*, THIRD WORLD LEGAL STUD. (forthcoming 1992) (a paper delivered at a Symposium Mar. 12-14, 1992, at Windsor University on Realizing the Rights of Women in Agriculture and Rural Development). This paper reviews numerous World Bank studies including: *World Bank, Women in Development: Issues for Economic and Sector Analysis* (Policy, Planning and Research Work Papers, Women in Development Division, World Bank, 1989); and K.A. Saito, and C.J. Weidman, *Agricultural Extension for Women Farmers in Africa* (Policy, Research and External Affairs, Working Papers, Women in Development Division, World Bank 1990). See also James C.N. Paul, *Rural Development, Human Rights and Constitutional Orders in Sub-Saharan Africa*, in THIRD WORLD LEGAL STUDIES 1989: PLURALISM, PARTICIPATION AND DECENTRALIZATION IN SUB-SAHARAN AFRICA 57-84 (1989) [hereafter Paul, *Rural Development*].

28. See Paul, *Rural Development*, *supra* note 27 (with an extensive annotated bibliography of World Bank and other literature on these subjects). See also P. OAKLEY ET AL., PROJECTS WITH PEOPLE: THE PRACTICE OF PARTICIPATION IN RURAL DEVELOPMENT 34-56, 89-98, 107-18 (International Labour Organization, 1991).

the infliction of these harm becomes a serious legal wrong, a violation of basic rights which can no longer be ignored.

The International Bill of Rights, which is surely binding on international development actors, guarantees protection against displacement without full redress. It guarantees that no one will be impoverished through loss of land, livelihood or imposed changes in economic conditions. The basic human rights to "food" and to "health," however uncertain their parameters, are also guarantees against man-made, imposed interventions that foreseeably cause hunger, malnutrition, disease and other threats to physical well-being. So, too, the destruction or disruption of those basic, but intangible interests which are grouped under the concept of "culture" is a violation of a fundamental human right of both groups and individuals to have their cultures protected by the state. The exclusion of, or discrimination against, women in regard to access to resources and opportunities created by development projects, indeed the failure to promote realization of womens' rights through development processes, is also a violation of international law.<sup>29</sup>

The denial of full and effective rights of participation in project activities constitutes not only a violation of fundamental political rights central to our concepts of human rights, but also leads directly to the violation of other basic rights. Protection of the basic interests of project-affected people requires their informed, self-reliant participation for the following reasons: the varying social impacts and consequences of development interventions can never be determined *a priori*; adequate knowledge of these impacts and of all the steps necessary to prevent harms (or to provide full redress for them where they are determined to be acceptable) can only be

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29. The International Bill of Rights consists of the United Nations Universal Declaration of Human Rights, U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*]; International Covenant on Economic, Social and Cultural Rights, U.N. Doc. A/6316 (1966) [hereinafter *Economic Rights Covenant*]; and the International Covenant on Political and Civil Rights, U.N. Doc. A/6316 (1966) [hereinafter *Political Rights Covenant*]. See also The Convention on the Elimination of All Forms of Discrimination Against Women, U.N. Doc. A/34/36 (1979) (hereinafter *Womens Convention*). For a discussion of displacement, see *Economic Rights Covenant, supra*, at art. 1(2) ("in no case may a people be deprived of its own means of subsistence"). For a discussion of state imposed changes in economic conditions which produce impoverishment, see *id.* art. 5 and art. 11(1). For a discussion of the rights to food and health, see *id.* art. 11(2) and art. 12. For a discussion of culture, see *id.* art. 1(1). For a discussion of women's rights to enjoy equality, see *id.* art. 3, art. 1, art. 2, and art. 14. It should be clear that intergovernmental organizations are bound to respect these basic international human rights instruments. See Paul, *supra* note 4, at 67-9, 73-7, 113-20. The obligation has been explicitly recognized by many bi-lateral aid agencies. *Id.* The UNDP's Human Development Report (UNDP, 1990) explicitly recognized that the promotion of human rights was an integral objective of "development," and the 1991 Report set out a (somewhat problematic) scheme to measure the extent to which human rights were secured in each of the member states of the United Nations. See Paul, *supra* note 4, at 13-21.

generated through full disclosure, open debate and review of project plans and actions proposed.<sup>30</sup>

Lawyers who share these concerns now appreciate the need to convert these principles into human rights mandates. Thus, development actors must not only protect human rights implicated by their activities, they must encourage efforts to enable people affected by these activities to understand, assert and secure their rights. The imposition of these obligations (as a matter of law, not just a discretionary policy objective) goes to the essence of the HRD.

## II. THE MEANING AND IMPLICATIONS OF THE UNITED NATIONS DECLARATION ON THE HRD

Much scholarly commentary on the HRD reflects the confusing text of the 1986 United Nations Declaration ("Declaration"). Several different kinds of propositions are rather indiscriminantly mixed among its ten articles. Thus, a variety of meanings have been attributed to the Declaration, and its central message has sometimes been obfuscated and ignored.<sup>31</sup>

The preparation of the Declaration appears to have been marred by unedifying inputs, an unnecessary politicalization of the deliberations and some hypocrisy.<sup>32</sup> Overall, the resulting text is rather uninspiring; some of it is sloppy, larded with UN-type platitudes, vague abstractions and contentious code words. But persons knowledgeable of the lessons of "development" experience and the lessons these teach portraying the obvious multiple relationships between rights and "development" activities can certainly draw some crucial propositions of human rights law from the instrument.

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30. The *Universal Declaration*, *supra* note 29, at art. 19-22 and art. 27, and the *Economic Rights Covenant*, *supra* note 29, at art. 1(1), art. 8(1) and art. 13(4) and the *Political Rights Covenant*, *supra* note 29, at art. 1(1), art. 18, art. 19, art. 21, art. 22 and art. 27, recognize rights of participation, as do several basic ILO Conventions. See, e.g., ILO Convention 87, ILO Convention 141 and the resolutions of a number of World Congresses on development issues. See Paul, *supra* note 4, at 74-75. The *Womens Convention*, *supra* note 29, at art. 14, recognizes and emphasizes women's rights to participate in all stages of development projects. This article is particularly important in that it explicitly speaks to the development processes. See Paul, *Rural Development*, *supra* note 27 for a detailed discussion and bibliography on the importance of rights of participation, on analysis of the nature of many of these rights, and of their importance in relation to development projects.

31. The author has read through some thirty (unpublished) papers prepared for the January 1991 "Global Consultation on the Human Right to Development." Most of these papers reflect a failure to address and analyze the text of the United Nations HRD Declaration, and, therefore, reflect all kinds of problematic assumptions and interpretations.

32. See Alston, *supra* note 3, at 20-22; R. Rich, *The Right to Development: A Right of Peoples*, in *THE RIGHTS OF PEOPLES* 39-54 (J. Crawford ed. 1988). See also Paul, *supra* note 4, at 88-89.

Disaggregation and categorization of the Declaration's various declarations can help supply this coherence and some degree of closure between its parts. Thus, the Declaration asserts propositions concerning:

(1) *The obligation of states, jointly and severally, to create "conditions favorable to realization" of the HRD.*

(a) *At national levels* states should promote respect for all international human rights (including an "active role" for women in "the development process"); further, states "have the right and duty" to promote equity in peoples' access to resources and in the distribution of the "benefits" of "development."<sup>33</sup>

(b) *At international levels* states should cooperate to promote respect for human rights, development cooperation, disarmament, peace, "friendly relations," and a New International Economic Order ("NIEO") "based on sovereign equality" and "peoples'" rights of "self determination" and "sovereignty" over "their mutual wealth and resources."<sup>34</sup>

(2) *The central purpose of "development."*

The human person is the central subject of "development" and the "beneficiary" of the right to it.<sup>35</sup>

(3) *The realization of Human Rights in development processes as the essence of the HRD.*

In view of (2) above, international human rights must be seen as essential, interdependent ends and means of "development." Thus the right to development is really the right to realize basic rights, both substantive and processual rights, *through* development.<sup>36</sup>

(4) *The Centrality of Rights of Participation*

The enjoyment of rights of participation are essential to secure objectives 2 and 3, presumably, because exercise of rights of participation have always been the means people use to assert and secure protection of other rights.<sup>37</sup>

(5) *The obligation of governmental, inter-governmental and non-governmental development organizations.*

Those who engage in development activities, *i.e.* in deliberate interventions affecting social and physical environments, must promote and protect human rights, and most notably rights of participation. Governments and inter-governmental organizations must enact legal measures to secure this objective.<sup>38</sup>

The first set of objectives, 1(a) and 1(b) above, created much confusion, notably because some of the propositions asserted range far and wide, some may be too vague to be meaningful, some (e.g. the duty of states to create an NIEO) are problematic if read in the context of United Nations history. But the purpose of these propositions was to elaborate "conditions conducive to the realization"

33. United Nations HRD Declaration, *supra* note 1, art. 2(3).

34. *Id.* at art. 3.

35. *Id.* at art. 2(1).

36. *Id.* at art. 1(1).

37. *Id.* at art. 8.

38. *Id.* at art. 10.

of the HRD, *not* to elaborate the content of the right. The propositions need not, and indeed were not intended to, derogate from the central message of the Declaration reflected in the other propositions which are clear and mutually reinforcing.<sup>39</sup>

Thus, while the Declaration is cast in terms of a "Right to Development," it should *not* be read as an assertion of some kind of "right" of states and peoples to enjoy some undefined kind of "development." Rather the right declared is the "inalienable *human* right" of peoples affected by "development processes" to realize existing, universally recognized human rights *in and through* "development processes," and it is the duty of those who control these processes to protect and promote these rights. In this way the doing of development, like the conduct of other public affairs must be made accountable to people.

This understanding of the HRD has now been confirmed, and elaborated, by the Secretary General's Report on the "Global Consultation."<sup>40</sup> Yet some commentators have suggested that if the HRD is essentially a mandate to relevant actors to protect and promote rights in development processes, then the HRD adds nothing to the law because the mandate already existed by virtue of the very existence of a large body of international human rights law which has long been implicated in the processes of development. These commentators suggest the HRD simply restates an important principle which ought to be self-evident. But in light of the lessons of several decades of development experience and the historic lack of accountability on the part of IDAs and states to the participation of people and the protection of their rights in development processes, it hardly seems unnecessary for the international community to assert the values of "people-centered" development and the human rights obligations of those who "do development" and the rights of concerned people to demand recognition of these principles.

Moreover, the Declaration (specifically Article 10) calls upon members of the international community, acting singly and collectively, to take "steps to ensure the full exercise" of the HRD "including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels."<sup>41</sup> The implications of this call to action have often been ignored by commentators. But the implications are profound, and they demonstrate the importance of taking the HRD very seriously.

Consider the HRD from the perspective of those declared to be its primary "beneficiaries," those people whose interests in develop-

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39. See Secretary-General's Report, *supra* note 2, at 22-23, 25-26.

40. *Id.* at 26.

41. United Nations HRD Declaration, *supra* note 1, at art. 10.

ment activities are most at stake. At the grassroots levels, the HRD clearly legitimates the exercise of rights of participation, a very large aggregation of interrelated rights including, e.g. rights to form organizations, and to use them to participate in the planning, management, monitoring regulation and review of state initiated development projects; or to form organizations to initiate self-managed development activities and seek outside support for them.<sup>42</sup> Those people who are potentially exposed to "risk-prone" projects are entitled to demand and receive (from both states and IDAs) all information necessary to calculate the risks for themselves created by the activity proposed;<sup>43</sup> they are entitled to a full and fair review of the question as to whether the alleged benefits of the undertaking proposed outweigh the potential social costs (measured in part by calculating *all* of the potential legal damages threatened) to the people and the environment put at risk, and to demand, if the project goes forward, fair and efficient procedures and standards to redress *all* harms inflicted.

Traditionally vulnerable groups, (e.g. women, children, "indigenous" peoples, migrant workers) are further entitled to demand, through their organizations, the protections that particular international instruments provide to them. For example: Article 14 of the CEDAW Convention ("CEDAW" is the Convention to Eliminate all Forms of Discrimination Against Women) is "development-oriented;" it calls for steps to protect the rights of rural women to equal access to land, credit, services and other resources provided by the state, and for steps to insure their full and equal participation in all phases of development projects.<sup>44</sup> Similarly International Labor Organization ("ILO") Convention 169 entitles indigenous peoples to enjoy rights of "self determination" in regard to the "development" of their lands, environments, societies and culture and to special protections against expropriation of their ancestral lands.<sup>45</sup> Other important ILO Conventions provide indispensable protections to workers in "new industrializing" countries or regions - a category of development affected people who (as noted above) are often vulnerable to many well known forms of

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42. See Paul, *Rural Development*, *supra* note 27, at 65-68 for a discussion of the various rights which constitute "Rights of Participation."

43. *Id.* See also Paul, *supra* note 4, at 80-84. The Bank's ENVIRONMENTAL ASSESSMENT SOURCEBOOK makes it clear that this kind of information should be disclosed. See ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 5, at 191-204.

44. See L. McGlynn, *supra* note 27 (discussing steps which the World Bank can take to implement Article 14 through development projects).

45. See *infra* note 69 on the need for this convention; see also C.R. Escudero, *Sustained Development: An Alienable Right* (Delivered at the Working Group on Development and Indigenous People of the International Bar Association 22d Biennial Conference, Buenos Aires, Argentina Sept. 1988).



exploitation.<sup>46</sup>

In more general terms, the HRD provides, through the exercise of rights of participation, opportunities to all peoples in developing countries to form associations, and to collaborate with other groups, both domestic and transnational, in order to criticize and influence state "development policies," and to "lobby" IDA's, and opportunities to participate in these ways in processes leading to the construction of structural adjustment programs and to demand protections against their more serious social impacts. The HRD, taken seriously, provides a much needed step towards democratizing the business of "development," both at national and international levels.

Consider the implications of the HRD to IDAs (notably to the lawyers who advise them). These agencies must surely now make clear (if they haven't yet done so) their recognition of the central place which human rights must play in the formulation and execution of development policies.<sup>47</sup> At a more basic level, IDA's (like the World Bank) which engage in a wide range of development activities which affect people must develop internal agency law which recognizes and facilitates respect for human rights implicated by their activities. A moment's reflection should suggest that this requirement, taken seriously, imposes tasks requiring much thought and care. For example, what standards and procedures must now be followed if the World Bank (or any other IDA) contemplates financing a large scale dam, irrigation or other kind of "risk-prone" project? What rules must World Bank personnel follow to assure not only protection of women's rights in agricultural development projects, but to promote active exercise of woman's rights through various kinds of participatory activities? What rules must the World Bank follow to assure that NGOs representing people affected by, or specifically interested in, World Bank activities have access to World Bank decision-makers? How can NGOs, as vehicles of participation, be incorporated, in a fair and orderly way, into development processes?<sup>48</sup> Further, and obviously important, IDAs must take appropriate steps to insure that the loan and other international agreements which they make with states to structure their "development" activities must contain covenants which fully guarantee recognition, protection and promotion of the rights of all who may be affected by those activities. These are only illustrations of the extensive work to be done (notably by lawyers) if the HRD is to be respected.<sup>49</sup>

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46. INTERNATIONAL LABOUR OFFICE, SAFETY AND HEALTH PRACTICES OF MULTINATIONAL ENTERPRISES (1984).

47. See Paul, *supra* note 4, at 109-13.

48. *Id.* at 111-13. See *infra* notes 56 and 77.

49. *Id.* at 117-18.

From the perspective of Third World states, there exist analogous legal responsibilities, and the discharge of these responsibilities may well require significant legal reforms which may well touch sensitive political nerves. Notoriously, many governments are not only suspicious, perhaps hostile, to independent peoples' organizations and NGOs, but these governments operate under a regime of laws which permit discretionary, hence arbitrary, and all too often repressive, regulation of this kind of collective activity which reflects a discouraging failure to understand the essences of rights of participation despite much lip service to the term.<sup>50</sup> Changing these national legal environments, and sensitizing officials and agencies to an understanding of how rights must figure in different kinds of "development" activities is a task of major legal proportions with significant political implications. States simply cannot repudiate efforts of IDAs and others to secure specific legal guarantees insuring protection and promotion of rights in development processes. The HRD is plainly directed at both states and IDAs, particularly towards their joint efforts to promote "development." States can no longer invoke anachronistic, magical intonations of "sovereignty" to decide unilaterally whether and how rights may figure in these efforts.<sup>51</sup>

The HRD also creates major implications for specialized agencies operating within the United Nations system such as ILO, the Food Agricultural Organization ("FAO"), the Economic and Social Council ("ECOSOC") the Human Rights Commission and CEDAW. Consider, for example, how the monitoring and reporting processes required by ECOSOC or CEDAW should now incorporate requirements for reports on efforts undertaken by states to realize rights in and through "development processes and policies."<sup>52</sup> Or consider

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50. See, e.g., A. Fowler, *The Role of NGOs In Changing State-Society Relations: Perspectives from Eastern and Southern Africa* (Nov. 1990) (unpublished paper delivered at the Annual Meeting of the African Studies Ass'ns, on file with author).

51. See the provocative analysis set out in R. JACKSON, *QUASI-STATES: SOVEREIGNTY, INTERNATIONAL RELATIONS AND THE THIRD WORLD* 109-63 (1991).

52. For a discussion of the increasingly pro-active role of CEDAW in regard to shaping the reporting process, see ANDREW BYRNES, *CEDAW #10: BUILDING ON A DECADE OF ACHIEVEMENT: REPORT ON THE TENTH SESSION OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN* (International Women's Rights Action Watch, Mar. 1991). For a discussion of ECOSOL's new, more extensive reporting requirements, see *Implementation of the International Covenant on Economic, Social and Cultural Rights, Revised Guidelines*, 5 U.N. ESCOR C12 Supp. No. 3, U.N. Doc. E/C 1990/8 (1991). See also S. Leckie, *An Overview and Appraisal of the UN Committee on Economic, Social and Cultural Rights*, 13 HUM. RTS. Q. 545 (1991). It is generally agreed that human rights NGOs can play more significant roles in helping or pressuring not only ECOSOC but other United Nations monitoring bodies to require reporting governments to show how development programs and projects are being used to promote human rights, notably the rights of women. CEDAW,

what the ILO, with an eye towards the accelerating pace of industrialization in some Third World countries, should do to respond to needs (surely revealed by experience) to strengthen both its instruments and its monitoring processes, with respect to the rights of workers and communities put at risk by hazardous industries. For example, consider the need to develop universal standards of strict legal accountability (either through tort law or insurance) to provide quick, efficient and full redress for harms inflicted when the risks come to pass. Consider the need to promote worker education enabling the assertion of worker (and community) interests in safety, and the need to promote worker and community *participation* in the making, the enforcement and the monitoring of safety measures. These needs seem glaringly apparent in view of tragic experiences such as the Bhopal "development disasters." The duty of the ILO (and states) to respond to these needs is underscored by the HRD.<sup>53</sup>

Finally, the World Bank and the International Monetary Fund ("IMF"), working in collaboration with other concerned United Nations agencies, need to formulate standards and processes which will indeed "democratize" the process and agreements concerned with "restructuring" debt obligations and the management of economies by states.<sup>54</sup>

These are only some suggestive implications of the HRD. Hopefully, they demonstrate that it is now time to move from vague, abstract theorizing about that right towards more concrete efforts to apply it in many spheres. If indeed the peoples of the world are moving and struggling towards some degree of liberation of their societies from the dominance of autonomous, often authoritarian governance, efforts to democratize "development" activities should be at the forefront.

### III. THE HRD AS INTERNATIONAL LAW

The HRD has sometimes been characterized as an "emerging," "Third Generation" human right — as some kind of embryonic, formless, primordial blob of very soft international law not yet to be

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ECOSOC, and other monitoring bodies have overlapping responsibilities, and it may be important for them to share and reinforce each other's concerns.

53. See Clarence J. Dias, *Nothing to Lose But Our Lives*, 29 J. INDIAN L. INST. 330 (1987) (analyzing implications of Bhopal); *NOTHING TO LOSE BUT OUR LIVES: EMPOWERMENT TO OPPOSE INDUSTRIAL HEALTH HAZARDS* (Dembo et al. eds., 1988) (same).

54. For a discussion of the demands of the International Conference of African (development-oriented) NGOs see *African Charter For Popular Participation in Development and Transformation*, U.N. Economic Comm'n for Africa, ECA/CM.16/11 (Feb. 1990).

taken seriously as law commanding recognition and respect.<sup>55</sup>

It is important to dispel this view. There surely exist criteria to determine the legal force to be accorded to an international instrument which declares a "new" right worthy of international recognition, or (more relevant here) which calls for the application of already recognized international rights to new spheres of international activity. Thus, one might ask such (obviously interrelated) questions as the following:<sup>56</sup>

1. Is the content of the rights law asserted (in the instrument) sufficiently clear so that the persons and the interests to be protected and the obligations to protect them (and the actors who have these duties) can be identified?

2. Does the rights law asserted derive from, logically extend, and build on existing law, or does the rights law attempt to identify new, hitherto unrecognized concerns as human interests worthy of universal protection?

3. Is the rights law asserted derived from actual experiences which portray the need for recognition of the rights asserted?

4. Has this need been recognized in the practices of the relevant actors?

5. Is the rights law asserted rooted in a shared, normative consensus already expressed in international instruments — in principles regularly enunciated by the international community?

6. Is the rights law asserted a proper subject for international concern and action at the international level?

7. Can "enforcement machinery" be developed so that beneficiaries of the rights law asserted can claim their rights, and can the law be said to be "justiciable" in the sense that issues regarding its applicability can be resolved by intelligent lawyers using a common framework of reasoning?

Much of the earlier discussion provides the bases for affirmative answers to these questions. But a few more points, especially applicable to questions 4-7, deserve emphasis.

International cooperation to promote development, notably within poverty-afflicted regions of the world, was made a central objective of the international order created in the immediate aftermath of World War II. The HRD Declaration's assertion (Art. 9) that "the human person" should be "the central subject," "active participant" and primary "beneficiary" of "development" is a principle which has been affirmed in international instruments from

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55. See Alston, *supra* note 3, at 3-6. See also Brownlie, *supra* note 3.

56. Cf. Phillip Alston, *Conjuring up New Rights: A Proposal for Quality Control*, 78 AM. J. INT'L L. 607 (1984).

the Philadelphia Declaration of 1944 onwards.<sup>57</sup> Of course the principle has long been in tension with more economic concepts of "development," with policies and strategies continuously pressed by states, major IDA "experts" and political elites. But, at least since Robert McNamara's famous 1972 address to its Board of Governor's, the World Bank has, at the level of rhetoric, repeatedly recognized its obligation to promote poverty-oriented, people-centered development.<sup>58</sup> The World Bank's 1990 World Development Report focusing on "Poverty" is a recent reiteration of this commitment.<sup>59</sup> The United Nations Development Programme's ("UNDP's") innovative, widely acclaimed 1991 *Human Development Report*<sup>60</sup> initiated a new annual survey which declares progress towards "development" (or lack of it) by using criteria which measure and rank the human condition in all countries in a number of critical spheres such as health, education, nutrition and employment. The avowed purpose is to use these measurements to portray, not simply conditions of human deprivation, but the extent to which governments and IDAs are changing them and the progress made over forthcoming years in promoting human dignity in both material and intangible terms.

The multiple relationships between people centered development and human rights were also asserted long ago by the *Universal Declaration*.<sup>61</sup> As international human rights law began to

57. Article II of the Declaration of Philadelphia (1944) (a Declaration Concerning the aims and purposes of the International Labour Organization), states in part:

Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organization that lasting peace can be established only if it is based on social justice, the Conference affirms that:

- a. all human beings, irrespective of race, creed or sex have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity of economic security and equal opportunity;
- b. the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;
- c. all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;

The Philadelphia Declaration is an important international instrument because it was intended to articulate principles which should govern the post-World War II international order.

58. See Paul, *supra* note 4, at 101.

59. *1990 World Development Report: Poverty* (World Bank 1990).

60. United Nations Development Programme, *1991 Human Dev. Rep.* (UNDP 1991).

61. Article 22 of the *Universal Declaration* states:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of

"take off" in the 1970's many of these relationships were made more explicit. The International Covenants explicitly link the realization of rights to food, health and education to the exercise of "political" rights, a proposition which is plainly true if these basic needs guarantees are to be treated as rights which people can assert against indifferent or corrupt governments and irresponsible projects.<sup>62</sup> The need to promote participation in development processes has been asserted (sometimes quite vigorously) in a long line of international instruments.<sup>63</sup> A number of articles of the

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the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

See *Universal Declaration*, *supra* note 29.

Article 28 states, "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." *Id.*

62. The preamble to each Covenant makes this point, but it should be self evident that a central function of "political" rights is to enable people to claim "economic" or "social" or "cultural" rights. It is the political powerlessness of the poor, of minorities, and women, often coupled with discrimination and repression, which prevents more vigorous efforts to articulate these rights. See, e.g., Secretary-General's Report, *supra* note 2. See also Leckie, *supra* note 52, at 568-72 (making various recommendations for ECOSOC monitoring of most of which are designed to "democratize" and, indeed, politicize the reporting process governing the International Covenant on Economic, Social and Cultural rights).

63. See, e.g., ILO 1976 World Employment Conference 4-17 June 1976, Doc. No. WEC/CW/E.1, ILO (Geneva, 1976). See also World Conference on Agrarian Reform and Rural Development (Rome, July 12-20, 1979), National Programmes of Action in Developing Countries, Article III, "People's Participation," which reads in part:

Participation by the people in the institution and systems which govern their lives is a basic human right and also essential for realignment of political power in favour of disadvantaged groups and for social and economic development. Rural development strategies can realize their full potential only through the motivation, active involvement and organization at the grass-roots level of rural people, with special emphasis on the least advantaged, in conceptualizing and designing policies and programmes and in creating administrative, social and economic institutions, including cooperative and other voluntary forms of organization for implementing and evaluating them.

To provide the basis for effective participation by the people, governments should consider action to:

A. *Popular Organization*

- (i) Remove all barriers to the free association of rural people in organizations of their choice and ratify and enforce ILO Conventions Nos. 87 and 141 and Recommendation No. 149 on the role of rural workers' organizations in economic and social development.
- (ii) Encourage the establishment of self-reliant local, regional and national federations of peasant and worker associations and rural cooperatives with positive government support and due regard to their autonomy.
- (iii) Promote the participation of rural people in the activities of rural development agencies and ensure that these agencies work in close cooperation with organizations of the intended beneficiaries of their programmes.

1979 United Nations Women's Convention, provisions which are probably most important to most women in the world, are clearly "development-oriented." For example, Article 14 is concerned with establishing rights of equal access to services, credit and land rights of participation as the essential means by which other rights promised can only be realized through "development."<sup>64</sup> The same propositions apply to many provisions of the United Nations Convention on the Rights of the Child which is also very much intended as a part of an expanding body of human rights governing development.<sup>65</sup>

Other important instruments also focus on those who have so often been wronged by "development" projects. ILO Convention 141 is concerned with "rural workers," a term which includes small farmers (both male and female) as well as rural wage workers; it guarantees rights to organize self-managed associations and use them to pursue economic, social or political goals, free of government interference. Those are rights that go to the heart of participation.<sup>66</sup> ILO Convention 169 is designed not only to protect the individual and collective rights of indigenous people (e.g. in relation to control over their lands and cultures), but to promote a species of "self determination" rights in respect to the character of their "development."<sup>67</sup> The Draft Declaration on the Rights of Cultural and Ethnic Minorities would extend and toughen these guarantees; it dramatically demonstrates the premise that the rights of people should transcend the power of states and IDAs to determine the course of their society.<sup>68</sup> Other important "development-oriented" rights instruments protect rights of industrial workers and

64. See McGlynn *supra* note 27.

65. United Nations Convention on the Rights of the Child (adopted Nov. 20, 1989), 28 I.L.M. 1448. See, e.g., art. 45. A major emphasis of the Convention is on the commitment of parties to take progressive steps (legislative and other) and to recognize and to provide the rights set forth, notably rights concerned with education, health and work conditions.

66. For a discussion of the importance of the ILO Convention 141, see the 1979 World Conference on Agrarian Reform and Rural Development, *supra* note 63. See also Paul, *Rural Development*, *supra* note 27.

67. International Labour Organization, Indigenous and Tribal Populations Conventions (Convention No. 169) (Adopted by the International Labour Congress in 1989 and now open for ratification). For a discussion of the history of this Convention, which is a major revision of ILO Convention No. 107 (1957), see INTERNATIONAL LABOUR CONFERENCE, 76TH SESS., 1989 REPORT IV: PARTIAL REVISION OF THE INDIGENOUS AND TRIBAL POPULATIONS CONVENTIONS, 1957 (No. 107) (Geneva, 1989).

68. See Discrimination Against Indigenous Peoples: First Revised Text of the Draft Universal Declaration on Rights of Indigenous Peoples, prepared by the Chairman Rapporteur of the Working Group on Indigenous Population, Mrs. Erica-Irene Daes, pursuant to Sub-Commission resolution 1988/18 U.N. Doc. E/CN.4/Sub 2/1989/33 (15 June 1989). See also Robert A. Williams, Jr., *Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World*, 1990 DUKE L.J. 660.

"bonded" workers in Third World settings.<sup>69</sup>

The Fourth Lome Convention goes far indeed to make promotion of human rights a central purpose of development. The Fourth Lome Convention spells out this objective through numerous articles dealing with rights of free participation (through unregulated popular organizations and NGOs) in all "stages of development projects and programs," rights of women and youths, rights of workers and rights of self-determined development by distinct cultural and ethnic groups.<sup>70</sup>

A large body of international environmental law pointed at "development" activities has also emerged.<sup>71</sup> Like human rights law, this field must necessarily be seen as one which is continuously evolving to respond to new technologies and new forms of activity in the international economic order, to new knowledge and growing awareness of environmental concerns around the world, and the intensifying pressures of environmentalists working as political lobbyists. As a result, there is now increasing recognition that environmental wrongs almost always produce wrongs to people which constitute violations of internationally protected rights, and, further, the protection of the environment depends significantly on the protection of human rights (notably participation rights).

Much of the driving force behind the growth of international law in the spheres of both environmental and human rights protection lies outside the official international system. At local, national and international levels activists, popular groups, professional organizations and parliamentary bodies have been pressuring IDAs to demand respect for international norms. As a result, most IDAs have now promulgated official statements (of varying degrees of explicitness) which purport to incorporate human rights goals and standards into their policies and programs. Some also operate under legislative mandates to the same effect. These policies are being translated into action in various ways: refusal to assist projects which are too "risk-prone" to the rights of people; increasing reliance on NGOs as both vehicles to incorporate participation

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69. See, e.g., International Labour Organization, *Convention Concerning Occupational Safety and Health and the Working Environment* (ILO Convention No. 155) (Geneva, 1981); International Labour Organization, *Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers* (ILO Convention No. 143) (Geneva, 1975); United Nations Code of Conduct on Transnational Corporations (1988) (especially 38-50, 58-64, 68).

70. See, e.g., 4th Lome Convention, art. 5.

71. See, e.g., *Stockholm Declaration on the Human Environment: Report of the United Nations Conference on the Human Environment*, U.N. Doc. A/Conf. 48/14 (1972); WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (Oxford 1987); *Developments in the Law: International Environmental Law*, 104 HARV. L. REV. 1484 (1991).



in shaping "development" initiatives and vehicles to design and manage development projects; and, cutting off aid to governments which are such "gross abusers" of universal rights that it becomes impossible to protect the rights of people affected by "development programs." Indeed, many IDAs are now funding programs to promote "rule of law," "human rights" and "pluralism" as part of their "development" activities.<sup>72</sup>

The UNDP, in its 1991 *Human Development Report*<sup>73</sup> issued a strong statement to the effect that the progressive enjoyment of all basic human rights is essential to the satisfaction of human needs; the agency issued a tentative human rights index purporting to measure the degree of recognition of important rights within all countries, and the report ranked them accordingly. As part of their rights monitoring operations United Nations International Children's Emergency Fund ("UNICEF") and UN CEDAW have begun to take some first steps toward demanding country reports which focus much more closely on the impact of development activities than upon the progressive realization of rights of children and

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72. See, e.g., United States Agency for International Development (U.S. AID), *Democracy and Governance Policy Paper*, Nov. 6, 1991 at 1-2 (announcing AID's "Democracy Initiative"). This document states:

Democracy does not guarantee successful development, but it can be highly supportive of efforts to address development problems effectively. It helps prevent abuses of power and political systems which retard broadly-based economic growth and social development . . .

The objective of the Democracy Initiative is to support democratic political development, helping to establish enduring political practices, institutions and values which mobilize participation, channel competition, respect basic human rights, and promote open, lawful and accountable governance. The primary areas of focus of the Democracy Initiative include:

- Strengthening Democratic Representation: increase the participation of citizens in the formation and implementation of public policy; support the establishment of peaceful and stable forms of political competition;
- Supporting Respect for Human Rights: help establish a framework of law and legal procedures that protects the integrity of the person and the exercise of basic human rights;
- Promoting Lawful Governance: help establish a formal constraint on the actions of civil servants, the military and police; support legal processes which contribute to peaceful and predictable social and economic interaction . . .

*Id.*

See also Canadian International Development Agency, *Sharing Our Future: Canadian International Development Assistance* (Ottawa, 1988); HUMAN RIGHTS IN DEVELOPING COUNTRIES 1987/1988 (Bard-Anders Andreass and Ashbord Eide eds., 1989). The World Bank's important 1989 study of the "crisis" in "development" in sub-saharen Africa spoke eloquently of the need for reforms in the "governance" of many sub-saharen African countries as a pre-requisite to progress. Good "governance" included systematic efforts to "build . . . respect for the rule of law and vigorous protection of the Freedom of the press and human rights." WORLD BANK, SUB-SAHARAN AFRICA - FROM CRISIS TO SUSTAINABLE GROWTH - A LONG TERM PERSPECTIVE 61 (1989).

73. 1991 *Human Dev. Rep.*, *supra* note 60.

women.<sup>74</sup>

The World Bank has, regrettably, lagged in promulgating a human rights policy, apparently fearing the sensitivity of the subject.<sup>75</sup> But in some ways the World Bank has done more in practice than most other IDAs to recognize human rights concerns *de facto* if not *de jure*; and to incorporate a wide range of substantive standards and procedures into its internal law (i.e., the World Bank's "Operational Directives") which seem designed to protect human rights without saying so. For example:

- The World Bank's environmental policies and law recognizes the need to assess potential human harms as part of the total assessment of an environment impact analysis. Further, NGOs and activists are entitled to participate in the processes of determining the environmental and social impacts of planned projects.<sup>76</sup>

- The World Bank's internal law regarding its relationship with NGOs goes a good distance (albeit not far enough) to recognize the multiple roles which NGOs play (e.g. as vehicles of participation, as managers or as monitors) in relation to development projects. The World Bank's obligation to listen to NGOs which appear to speak for project-affected people is clearly recognized, if not adequately implemented.<sup>77</sup>

- The World Bank's Resettlement Guidelines constitute a quite detailed code designed to protect the rights of those displaced by World Bank financed projects.<sup>78</sup>

- The World Bank's "Women in Development Initiative" is an effort that both protects the interest of women affected by projects and promotes women-oriented initiatives.<sup>79</sup>

74. See United Nations Development Program, HUMAN DEVELOPMENT REPORT 13-21 (UNDP, 1991). See also K. Tomasevski, *Women in Development Cooperation: A Human Rights Perspective*, 6 NETH. HUM. RTS. Q. 50 (1989).

75. See IBRAHIM F.I. SHIHATA, *THE WORLD BANK IN A CHANGING WORLD: SELECTED ESSAYS* 53-96 (1991).

76. See World Bank, Operational Directive No. 4, set out and explained in 1 ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 5, at 27.

77. World Bank, Operational Directive No. 14.70, relating to Non-Governmental Organizations' (NGO) involvement in Bank related activities (World Bank, Aug. 1988); World Bank, *The World Bank and Non Governmental Organizations* (World Bank 1990); M. Qureshi, *The World Bank and NGOs: New Approaches* (The World Bank, Washington, Apr. 22, 1988).

78. MICHAEL CERNEA, SOCIAL ISSUES IN INVOLUNTARY RESETTLEMENT PROCESSES (Policy Guidelines and Operational Papers, Washington, D.C., 1989); S. FORSTER, HISTORY AND DEVELOPMENT OF WORLD BANK POLICY ON INVOLUNTARY RESETTLEMENT, (World Bank, Apr. 15, 1991).

79. See also *Inter-Divisional Thematic Team on Governance and Human Rights: Human Rights Sub Group, Terms of Reference* (memorandum Dec. 11, 1991) (recent memorandum by the organizer of the recently established Human Rights Sub Group). Recently the World Bank has established "thematic teams" comprised of workers from units concerned with African development. One such team is concerned with "Governance, Participation and Human Rights,"

Finally, as noted, a vast amount of World Bank-generated literature, notably studies of various kinds of development projects (e.g. those concerned with health services, agricultural extension, household food production, water resources, irrigation, social forestry, rural roads, land use controls to protect environments), not only demonstrate the need for participation, but suggest the many different forms which participation must take to protect human interests affected by these projects, hence the broad scope of rights necessary to assure effective participation. Similarly, World Bank studies of endogenous group enterprises in production, transportation, marketing, and banking also underscore recognition of the need to promote legal environments which accord rights to people to engage in these activities without the encumbrance of unduly burdensome state regulations such as restrictions which are either too broad or otherwise unjustified to protect people from harmful practices sometimes perpetrated by these enterprises.<sup>80</sup>

These illustrations show more than an acceptance of the "human rights in development" mandate of the HRD at the policy level. They illustrate some of the practices needed to implement it.

Third World states were the driving force behind the United Nations HRD Declaration; and the same right has been guaranteed to all African peoples by the Banjul Charter.<sup>81</sup> Numerous states have ratified many of the more particularized human rights instruments which explicitly apply human rights to development processes. The United Nations Covenant on Economic, Social and Cultural Rights, the United Nations Womens Convention, and the Convention on the Rights of the Child are notable examples.<sup>82</sup> In regional pronouncements, such as the Khartoum Declaration of 1989,<sup>83</sup> officials from African governments strongly supported people centered-development and recognized the relevance of rights to achieving that aspiration. Some heads of state, have also paid elo-

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and a "sub-group" of that team is concerned with Human Rights. The "Terms of Reference and Work Program" of the Human Rights Sub Group, make it clear that women's rights in development projects and programs (as developed in the Women's Conventions) are a concern of the Sub Group.

80. On community-based business enterprises, see S. Paul, *Assessment of the Private Sector, a Case Study and its Methodological Implications* (World Bank Discussion Papers, Washington, D.C. 1990); on participation, see, e.g., *Community Participation, in Development Projects: the World Bank Experience* (World Bank Discussion Papers 1987).

81. The Banjul Charter on Human and Peoples Rights was adopted by the Organization of African Unity (OAU) on June 27, 1981. OAU Doc. CM 1149 (XXXVI) 2 (1981).

82. See *Womens Convention*, *supra* note 29; *Economic Rights Covenant*, *supra* note 29; the *Convention on the Rights of the Child*, *supra* note 65.

83. *The Khartoum Declaration: Towards a Human-Focused Approach to Socio-Economic Development in Africa, International Conference on the Human Dimensions of Africa's Economic Recovery and Development*, U.N. Economic Comm'n for Africa (Mar. 1988).

quent lip service to human rights in development principles. Few would dare deny the validity of these principles in public.

Of course at the level of practice it is far from clear that the HRD exerts much influence on what many governments do. In part this may reflect the fact that the message has not yet penetrated into bureaucracies and the offices of government lawyers (who are so often relegated to highly technical tasks in structuring development transactions, and sometimes blind to the human rights implications). But the constitutional character of some authoritarian regimes, often combined with the structured poverty which exists within the state, means that popular exercise of human rights, notably rights in relation to "development," are a real threat to long entrenched, powerful groups, and indeed to "public services" which control administration, law and its enforcement. It is this kind of situation which makes the HRD highly controversial among some of the very states which helped bring the concept into existence. So the following question exists: must determination of the legal status of the HRD await changes in practice by autonomous, authoritarian regimes in Africa, Asia, and elsewhere?

International human rights law derives its force from the basic constitution and purposes of the international system<sup>84</sup> and, increasingly, from the worldwide efforts of peoples (*not* just states) to use that system to demand respect for rights which are now deemed universal because they are so closely related to evolving concepts of human dignity.<sup>85</sup> The explosion of organized popular demands for human rights within civil society in Third World states, is finally beginning to get the kind of recognition it has long deserved among scholars of human rights. Indeed, in the Third World, wherever space exists (and sometimes where there is none) there are efforts, often costly struggles, to invoke international rights as "legal resources" to legitimate resistance to development which victimizes people, and to promote popularly controlled initiatives. While the efforts of urban elites to free politics from the political controls of ruthless regimes often overshadow less visible grass roots group struggles in the countryside, it is the latter which may ultimately provide a broad based foundation for the freeing of civil society from the grip of autonomous, authoritarian regimes.

Human rights law by its very nature can hardly be made dependent on state practice for its force. Where the rights asserted are rooted in the basic constitutional principles of the international sys-

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84. Cf. LOUIS HENKIN, *INTERNATIONAL LAW; POLITICS, VALUES AND FUNCTIONS* 208-48 (1990).

85. Theo van Boven, *The Role of Non-Governmental Organizations in International Human Rights Standard-Setting: A Prerequisite of Democracy*, 20 CAL. W. INT'L L.J. 207-225 (1990).

tem and based on widely accepted international norms, it is surely the duty of the international community, acting through appropriate international organizations, to insist on recognition of these rights. Of course, it may take time to work out all the implications and applications of the HRD.

#### IV. ENFORCING THE HRD DECLARATION

Some commentators see the HRD Declaration as inchoate law because there are no provisions for "implementing" and "enforcing" it.

But these comments often misconceive the nature of the HRD by envisioning it as some kind of particular right to a particular entitlement. Rather than a right, the HRD is better perceived as a set of international principles of constitutional proportions calling (notably via Article 10 of the Declaration) for creation of an expansive regime of human rights law to be applied to many different sectors and kinds of international "development" activities by many different kinds of international organizations. We have already noted some implications of this mandate and it may be useful to refer to these in order to understand the problems of "implementation" and "enforcement."

Thus:

1. United Nations Agencies already charged with monitoring specific bodies of rights law (e.g. ECOSOC, UNICEF, CEDAW and the U.N. Commission on Human Rights ("UNCHR")) should include, in reports required of states subscribing to the instrument, a showing of steps taken (notably through legislation) to promote and protect rights (secured by the instrument monitored) in respect to different kinds of development activities. For example, UNICEF may seek an accounting of how various programs or projects (that vary from structural adjustment to agricultural development) may affect the prospects of children of the poor, notably girls, for the realization of rights promised by the Childrens' Convention. Thus, the inter-generational implications of things done in the name of "development" can be brought into much sharper focus. In like fashion, CEDAW should monitor impacts of programs and projects on women.

2. All specialized United Nations agencies should consider ways to monitor and develop standards and processes to promote particular rights committed to their care. The proactive efforts of UNDP to measure human rights conditions in all countries as an integral component of human resource development within these countries is both a precedent and an illustration — though a sharper focus should be brought to bear to show the relationships between rights and development activities. The FAO and the

World Health Organization ("WHO") (laggards when it comes to developing content for the many components of the rights to "food" and "health"), should be pressed to develop monitoring and standards which examine the impacts of different kinds of "development" on food and health conditions in affected communities. The UNCHR which spawned, but then seemed to abandon, the HRD should be pressed to assume a much more proactive role in promoting rights of participation in development processes. These are only examples.

3. The basic obligation of IDAs to build human rights standards, processes and monitoring into lending and other aid-giving programs must also be pressed. The steps taken by the World Bank (through its Operational Directives) in respect to requiring environmental assessments and setting environmental standards for projects and opening these processes to participation by concerned groups provide the following suggestive analogies: ways to use agency law to promote human rights impact analyses generated through participation; ways to assure participation in every stage of a project cycle; ways to prevent the doing of things which violate rights, and to redress them fully when violations are judged to be unavoidable but justifiable under appropriate standards which take full account of all interests at stake.

4. In pursuing these kinds of agendas, international organizations must be pressed to make human rights law respond to changing concerns. The "development industry" is (as noted) driven by many forces which are often hostile to the interests of many peoples. Impending technological "revolutions" in plant-breeding biotechnology and other fields, and continuous changes in the character and activities of international firms and their relations with power-wielders in Third World states pose risks to the rights of masses of vulnerable people (as evidenced, for example, by the history of earlier "Green Revolutions" in Asia), and thus impose duties on relevant United Nations agencies and IDAs to develop new protections for existing rights.

5. All of these (and other) implications mean that United Nations agencies must become far more open and responsive to aggressive forms of participation by organizations (national and international) representing segments of people within states as opposed to states acting autonomously. The democratization of the governance of states, notably in relation to "development" activities, may be helped significantly by this kind of opening of the international system. An example is provided by the lobbying (in recent years) of organizations of indigenous peoples in the UNCHR Subcommittee to develop the content of the Draft United Nations Declaration on the Rights of Ethnic, Cultural and Religious Minorities,

which is very much a "development-oriented" instrument. By giving these groups rights of participation in international forums, the UN Subcommittee has enhanced their national status and international concerns.<sup>86</sup>

6. These kinds of actions by international organizations combined with popular efforts within states may help to force reforms in the legal environments governing popular participation in Third World states, most notably legislative and constitutional reforms which recognize, indeed facilitate, the range of rights necessary to enable full and effective interest-based participation in "development" decision-making at all levels and in all sectors.

Some commentators have suggested that some particular United Nations agency should be designated (or created) to "enforce" the HRD (by unspecified methods). But the proposal seems impracticable if not unwise. There is value in having a wide diversity of international institutions, from the UNCHR to the World Bank, with the many different tasks of enforcement, even if some lag at times in meeting tasks now imposed by law. The multiplicity of agencies with responsibilities to implement the HRD provides a diversity of forums for action and vehicles for popular participation. Further, the HRD, as noted, opens up a wide range of different kinds of human rights in development concerns ranging, e.g., from developing protections for workers and communities put at risk by the introduction of dangerous industries and technologies, to the protection of pastoral peoples, to the rehabilitation of urban habitats. No one agency could easily manage such an agenda.

Finally, one can easily put too much emphasis on the importance of international "enforcement machinery" in connection with protecting and promoting international human rights. The driving force really comes from groups outside the official agencies (which so often suffer from various kinds of administrative pathologies which induce inhibited or incompetent action). It is surely a lesson of history that human rights only come into a "real" existence when they are claimed and exercised by the very people who need them most, and, historically, the "big" rights, those most significant in a constitutional sense, are inevitably "group" rights, won by concerted, continuing group efforts. Thus, enforcement of the HRD will depend on the efforts of popular organizations, NGOs, activists, scholars and others *ejusdem generis* acting, more or less along parallel lines, at local, national, and international levels.

The explosive growth in the Third World, of civil society groups and movements, concerned, in various ways, with humanizing development and using human rights as legal resources to press

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86. See Williams, *supra* note 68, at 676-82.

these ends, is a notable phenomenon of the past decade, though still largely neglected by scholars. For these groups the HRD is a potential legal resource of great value. What is immediately needed is a greater consensus on what the HRD means, and an appreciation of its profound implications for so many of the world's poor and powerless, the majority of humankind.

Hence the urgent need for legal scholars and activists to move debate over the HRD from the sterile topics which have so far dominated discourse to discussion of more realistic issues of immediate importance of constituencies which should clearly command our concern if we value people-centered development and human rights.



