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THE HUMAN RIGHT TO DEVELOPMENT: ITS MEANING AND IMPORTANCE

James C.N. Paul*

There is growing recognition of the need to “democratize” activities carried on in the name of “development” and of 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 ‘90s. 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 all people was asserted in the UN General Assembly’s Declaration of December 1986.¹ Unfortunately, that instrument is hardly a model of clarity, and it has generated a large amount of scholarly comment, some of it confusing or skeptical, on whether such a right exists — and if so, what it means.

More recently, at the request of the UN 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 has considerably clarified the purpose, content and

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1. United Nations General Assembly, *Declaration on the Right to Development*, G.A. Res. 41/128, arts. 1, 2, 6, 8 and 9 (adopted December 4, 1986) (hereafter UN HRD Declaration).

legal implications of the (HRD).² The processes of further explicating the HRD — and applying it — should go forward into the '90s. This paper is intended as a modest contribution to that cause, and to the growing efforts of Third World rights activists to get governments and international organizations to take the HRD very seriously.

Part 1 emphasizes the importance of understanding the HRD in the light of past development experience: understanding how many different kinds of development activities impact adversely on the basic rights of people who are directly affected by these activities, experience which underscores the need to bring human rights into development processes. 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 implications and applications.

Part 2 focuses on the UN Declaration — 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 these activities, and those affected may legitimately demand recognition of this basic obligation through the free exercise of rights of "participation." The implications of these propositions — what development actors governmental and intergovernmental must do to make themselves accountable to human rights law, what people can do to demand and secure that accountability — are explored here.

Part 3 shows that this interpretation of the content of the HRD (as enunciated in the UN Declaration) is simply a logical and 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 UN system that the protection and

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 *Commission on Human Rights Resolution 1989/45*: E/CN.4/1990/9/Rev. (26 Sep. 1990) (hereafter "Secretary-General's report"). For a discussion of the history of this report see Barsh, R.L., "The Right to Development as a Human Right: Results of the Global Consultation," 13 *Human Rights Quarterly* 322 (Aug. 1991).

promotion of human rights must be integral components of “development activities” fostered by international development agencies (IDAs) and states, for 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 4 outlines some steps which popular organizations, NGOs, human rights lawyers and social activists, operating at local, national and international levels, might 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. The Need for a Human Right to Development

Much of the academic commentary on the HRD talks about “development” and “human rights” in quite abstract terms, ignoring serious human rights lessons now learned from much development experience over past decades — including projects now reckoned as “development tragedies” by both IDAs and others who have studied them.³

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

3. For a review of some of the literature on the HRD, see Alston, P., “Making Space for New Human Rights: The Case of the Right to Development,” 1 *Harvard Human Rights Yearbook* 3 (1988). For an example of some of the confusion, see, e.g., Ian Brownlie, *The Human Right to Development*, Commonwealth Secretariat Human Rights Unit (1989).

reality: a diverse aggregate of activities carried on by a huge international industry, a vast number of bureaucracies, driven by a complex mixture of motives and forces, including the bureaucracies, to reproduce themselves. Major actors in this industry include the World Bank institutions, regional development banks, specialized UN agencies, bilateral aid agencies, large "private" foundations, academic programs and ministries and parastatals in Third World states — plus TNC's and other organizations which act in some kind of collaboration with governmental or 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 affected by their activities.

"Projects" have been major vehicles of the development industry.⁴ However defined, a "project" constitutes a deliberate, planned intervention by outside agencies into the lives of people: Most projects are intended to change the behaviour of "target" peoples by altering their social and physical environments.

Despite lip service to "bottom up" (vs. "top down") "development," most projects are usually products of a collaboration (often uneasy) between officials in IDAs and governments. Between them they exercise (in most settings) the power to create and impose projects on people by using some combination of law, money and the promise of gain, cooptation of local elites and (often enough) coercion to impose projects or communities.

It is now notorious that most "development" projects create some risks of legally cognizable harms to some categories of project-affected people; and some kinds of projects generate many risks of very serious harms to many people.⁵ The truth of this

4. For a discussion of the importance of project lending in World Bank assistance, see Paul, "International Development Agencies, Human Rights and Humane Development Projects," 17 *Denver Journal of International Law and Policy* 67, 68 (Fall, 1988).

5. For a review of the social impacts of development projects and the harms inflicted on people, see Paul, *op. cit.* note 4, especially pp. 91-108. The World Bank's recently published 3 volume *Environmental Assessment Sourcebook* (hereinafter "EAS") (World Bank Technical Papers No 139, 140, 154 (1991), (prepared by a team within the Bank's Environmental

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.⁶ For purposes of

Department) contains, in Volumes 2 and 3 (Technical papers #140 and #154), a detailed survey of the potential "social" as well as environmental impacts of virtually every type of Bank-funded project. The *Sourcebook* in turn, 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; tourism, etc. Dr. Michael M. Cernea, the Bank's Social Science advisor, has researched and analyzed extensively the social impacts of various kinds of Bank projects. See, e.g., Cernea (ed), *Putting People First: Sociological Variables in Rural Development* (1985) and *ibid.* (second edition) (1991) (analyzing more recent projects); Cernea, *Internal Refugees and Development Population Displacement*, Harvard Institute for International Development, Discussion Paper No. 345, June 1990 (comparing victims of development displacement with refugees from civil wars); Cernea, *Social Issues in Involuntary Resettlement Processes* (World Bank, 1987); Cernea, *Non-Governmental Organizations and Local Development* (World Bank, 1988). For a detailed social and legal analysis of displacement-producing projects in India, see W. Fernandez and E.G. Thukal (eds.), *Development, Displacement and Rehabilitation* (Indian Social Institute, New Delhi, 1989).

6. The following letter to the "Asian Development Bank Makati, Rizal eloquently illustrates this point —

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 our homeland, would 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 were 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

appreciating the importance of the HRD, it is important to understand how different kinds of projects inflict different kinds of harms, and to appreciate that these harms are “proximately caused” or exacerbated by the practices — sins of commission and omission of official development actors. Some examples may illustrate the point.

1. *Projects to construct large scale dams* are notorious producers of large numbers of victims. Especially in Third World settings dams produce significant human “displacement.” People facing forcible removal from their lands (and the status and security which land provides) have seldom been provided any official process to protest the economic wisdom, social justice and legality of the intended project and 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 heard and carefully considered, those costs are, invariably, underestimated. Of course, those evicted are supposed to be fairly compensated. But they are also powerless — lacking rights, and even where there is the best of will (a problematic occurrence), the goal of providing fair compensation for all harms inflicted is immensely difficult.⁷

we 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.)

See P.L. Bennagen, “Philippine Cultural Minorities: Victims as Victors,” in V.R. Jose (ed.), *Mortgaging the Future: The World Bank and IMF in the Philippines* (V.R. Jose ed. 1982).

7. See, e.g., the “Draft National Policy on Developmental Resettlement of Projects Affected People,” prepared by the National Working Group on Displacement in India reproduced in Fernandez and Thukal (eds.) *op. cit.* note 5, pp. 104-134. See also Paul, *op. cit.* note 4, at 92-95. The Multiple Action Research Group (MARG), a volunteer organization

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 recognised by state law.⁸ 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) — 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 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 from government sources about the project, widespread ignorance of the village's future fate 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 Delhi, 1992).

8. Kapur, Ratna, *The Impact of Large Scale Dam Construction in India on Indigenous Peoples* (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); Paul, J. and Dias, C., "Developing Legal Strategies to Help Combat Rural Impoverishment: Using Human Rights and Legal Resources," in D. Dembo et al. (eds.), *The International Context of Rural Poverty in the Third World, Issues for Research and Action by Grassroots Organizations and Legal Activists* (International Center for Law in Development, 1986), pp. 231-267. As is now well known, after an exhaustive review of the project by a team of external consultants, and growing political opposition, the Bank has withdrawn from this project.

of unredressed harms from dam-building projects. And the Indian history is only illustrative.⁹

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 loss of water resources and arable land to farmers dependent on the historic flow.¹⁰ 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 a 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.¹¹

2. *Involuntary resettlement projects* are regular components of projects which produce large “displacements.” 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 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.¹²

9. Kapur, *op. cit.* note 7; Paul, *op. cit.* note 4.

10. See “Draft National Policy on Developmental Resettlement of Project affected People,” *op. cit.* note 6; See also EAS, vol. 2 at pp. 32-41.

11. Kapur, Ratna, *op. cit.* note 7.

12. Cernea, Michael M., *Internal Refugees and Development-Caused Population Displacement*, Harvard Institute for International Development, Development Discussion Paper No. 345, note 5 (June 1990); Cernea, Michael N., *Social Issues in Voluntary Resettlement Processes* (World Bank 1987); “Draft National Policy on Developmental Resettlement of Project Affected People,” cited *supra* at note 6.

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, and large areas of irrigated land [soon go] out of production because of soil deterioration.” 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. 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 “voluntarily” or otherwise incorporated into project areas.¹³

4. *Large scale commercial farming projects* are also risk prone. For example, World Bank cotton production projects have been pushed in West Africa. Reading between the lines of a lengthy but rather lax Bank “evaluation” of these schemes,¹⁴ one wonders how to measure their “success.” Pressing thousands of small-scale, marginal rural households into cotton production creates many 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

13. EAS, vol. 11 at pp. 94-97.

14. Paul, *op. cit.* note 4, at pp. 98-99.

pest control; intensive labor is required at particular times, and family illness or other factors may affect its availability among marginal households; the food system of households may be altered (something not made clear in 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 being obligated (under customary norms) with 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. 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."¹⁵ 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 them — and the costs. The problematic histories of "Green Revolutions" need hardly be repeated here. 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.¹⁶

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 least resources and power — as well as serious environmental threats which again spell the creation of poverty.¹⁷ The construction of large scale roads (an obvious element of "development") creates risks of displacement, population shifts, and land-grabbing. As the Bank's *Environmental Assessment Sourcebook* puts it: "The land tenure of

15. EAS, vol. 11 at p. 20.

16. Espiritu, C., "Transnational Agribusiness and Plantation Agriculture: The Philippine Experience," in Dembo et. al. *op. cit.* note 7 at 41-68.

17. Noronha, Raymond and Lethem, Francis, *Traditional Land Tenures and Land Use Systems in the Design of Agricultural Projects*, World Bank Staff Working Papers No. 561, 1983.

low income landholders and indigenous people may be jeopardized by abrupt increases in local land values.”¹⁸ Tourism projects also call for infrastructural projects producing displacement and (in some places) “serious impacts on local cultures” including the “exploitation” of them. Tourism, of course, creates new employment opportunities, but in many parts of the world the evidence suggests that these go to imported labor. A Bank document warns: local “residents are likely to incur more of the costs and less of the benefits” unless protections are carefully put in place.¹⁹ 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.²⁰ Resource extraction projects (e.g., timbering and agroindustries associated with it) pose similar risks.²¹

6. *Rural development projects.* There are other categories of ostensibly more benign “development” interventions which can inflict less visible yet significant harms. Agricultural and rural development projects (notably in Africa) designed to help smallholders by encouraging increased cash crop production have often been flawed: benefits have flowed to the more powerful at cost to the more vulnerable; local facilities and 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, discrimination and sometimes exploitation due to failures to provide for their participation and thus failures to incorporate protections from inequitable treatment.²²

18. EAS, vol. 11 at 169.

19. EAS, vol. 11 at 225.

20. EAS, vol. 11 at 223-25.

21. For a good illustration see New York Times, Feb 6, 1991, at 4, col. 1 (Crossette, Barbara, “300 Factories Add Up to India’s Very Sick Town.”); see also EAS, vol. 111 at p. 19 *et. seq.*

22. L. McGlynn, “The World Bank and the Realization of the Rights of Women in Agriculture and Rural Development Projects in Sub-Sahara Africa (SSA),” a paper delivered at a Symposium at Windsor University on “Realizing the Rights of Women in Agriculture and Rural Development,” to be published in a forthcoming volume of *Third World Legal Studies*.

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 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 measures 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 they have regularly ignored the needs (and vulnerability) of women in changing, less benign rural communities.²³

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 findings 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, the infliction of them becomes a serious legal wrong — a violation of basic rights which can no longer be ignored.

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 Saito, K.A. and Weidman, C.J., *Agricultural Extension for Women Farmers in Africa* (Policy, Research and External Affairs, Working Papers, Women in Development Division, World Bank 1990). See also J.C.N. Paul, "Rural Development, Human Rights and Constitutional Orders in Sub-Saharan Africa," *Third World Legal Studies — 1989: Pluralism, Participation and Decentralization in Sub-Saharan Africa*, at pp. 57-84 (hereafter cited as Paul, "Rural Development").

23. See (with an extensive annotated bibliography some of the literature) Paul, "Rural Development," *supra*. See also for a review of experience, P. Oakley et al., *Projects With People: The Practice of Participation in Rural Development* (International Labour Organization, 1991) especially pp. 34-56, 89-98, 107-118.

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 women's rights through development processes, is also a violation of international law.²⁴

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, it leads directly to the violation of other basic rights. Protection of the

24. The International Bill of Rights consists of the United Nations Universal Declaration of Human Rights, UN Doc A/810 (1948) (hereafter "Universal Declaration"); the International Covenant on Economic, Social and Cultural Rights, UN Doc A/6316 (1966) (hereafter "Economic Rights Covenant") and the International Covenant in Political and Civil Rights, UN Doc A/6316 (1966) (hereafter "Political Rights Covenant"). See also The Convention on the Elimination of All Forms of Discrimination Against Women, UN Doc. A134136 (1979) (hereafter "Women's Convention"). On displacement, see e.g. Economic Rights Covenant, Article 1(2) ("in no case may a people be deprived of its own means of subsistence"); on state imposed changes in economic conditions which produce impoverishment for some see, e.g., *ibid.* Art. 5, Art 11(1). On the rights to food and health, see *ibid.* Arts. 11(2) and Art. 12. On culture see *ibid.* Art 1(1). On womens' rights to enjoy equality in relation to the above, see *ibid.* Art 3 and the Womens Convention, especially Arts. 1, 2, and 14. It should be clear that intergovernmental organizations are bound to respect these basic international human rights instruments, see Paul, *op. cit.* note 4 at 67-69, 73-77, 113-120. The obligation has been explicitly recognized by many bilateral aid agencies. E.g., 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 UN. *Ibid.* pp. 13-21.

basic interests of project-affected people requires their informed, self-reliant participation: 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 generated through full disclosure, and open debate and review of project plans and actions proposed.²⁵

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 as a discretionary policy objective) goes to the essence of the HRD.

II. The Meaning and Implications of the UN Declaration on the HRD

Much scholarly commentary on the HRD reflects the confusing text of the 1986 UN Declaration. Several different kinds of propositions are rather indiscriminately mixed among its ten articles. Thus, a variety of meanings have been attributed to the

25. The Universal Declaration Arts. 19-22 and 27, the Economic Rights Covenant Arts. 1(1), 8(1) and 13(4) and the Political Rights Covenant Arts. 1(1), 18 19, 21, 22 and 27, recognize rights of participation, as do several basic ILO Conventions: e.g., ILO Convention 87, ILO Convention 141 and the resolutions of a number of World Congresses on development issues. See Paul, *op. cit.* note 4 at pp. 74-75. The Womens Convention Art. 14 recognizes and emphasizes womens' rights to participate in all stages of development projects. This article is particularly important in that it explicitly speaks to development processes. A detailed discussion and bibliography on the importance of rights of participation, and an analysis of the nature of many of these rights, and of their importance in relation to development projects appears in J.C.N. Paul, "Rural Development," note 21, *supra*, and Oakely, *supra* note 21.

Declaration, and its central message has sometimes been obfuscated and ignored.²⁶

The preparation of the Declaration appears to have been marred by unedifying inputs, an unnecessary politicization of the deliberations and some hypocrisy.²⁷ 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. 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."²⁸ (b) *At international levels* states should cooperate to promote respect for human rights, development cooperation, disarmament, peace, "friendly relations," an NIEO "based on sovereign equality" and

26. See note 3, *supra*. 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 reflect a failure to address and analyze the text of the UN HRD Decl. and therefore reflect all kinds of problematic assumptions and interpretations.

27. See Alston, *supra* note 3 at pp. 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, *op. cit.* note 4, pp. 88-89.

28. UN HRD Decl. art. 2(3).

“peoples” rights of “self determination” and “sovereignty” over “their mutual wealth and resources.”²⁹

(2) *The Central Purpose of Development.*

“The human person is the central subject of development” and the “beneficiary” of the right to it.³⁰

(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.³¹

(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 has always been the means people use to assert and secure protection of other rights.³²

(5) *The Obligations 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, notably rights of participation.

29. UN HRD Decl. art. 3.

30. UN HRD Decl. art. 2(1).

31. UN HRD Decl. art. 1(1).

32. UN HRD Decl. art. 8.

Governments and inter-governmental organizations must enact legal measures to secure this objective.³³

The first set of objectives, 1 (a) and (b) above, has created much of the confusion, notably because some of the propositions asserted range far and wide, and because some may be too vague to be meaningful, and because some (e.g., the duty of states to create an NIEO) are problematic if read in the context of UN history. But the purpose of these propositions was to elaborate "conditions conducive to the realization" of the HRD, *not* the content of the right; and 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 mutually reinforcing.³⁴

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 those 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."³⁵ 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 it 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. In some ways the mandate of the HRD may, indeed, be redundant: it simply

33. UN HRD Decl. art. 10.

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

35. *Ibid.* at pp. 26.

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 protection of their rights in development processes, it hardly seems unnecessary for the international community to assert the values of "people-centered" development, the human rights obligations of those who "do development," and the rights of concerned people to demand recognition of these principles.

Moreover, the Declaration (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." The implications of this call to action have often been ignored by commentators. But they 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 development activities are most at stake. At grassroots levels, the HRD clearly legitimates exercise of rights of participation: a very large aggregation of interrelated rights including, e.g., rights to form organizations and 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.³⁶

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 to themselves created by the activity proposed;³⁷ they are entitled to

36. UN HRD Decl. Arts 8, 10. The "right" of everyone to take part in public affairs is of course grounded in the Universal Declaration of Human Rights Art 21(1). See for a discussion of the various rights which constitute "Rights of Participation, Paul, "Rural Development," *op. cit.* note 21, *supra*, at pp. 65-68.

37. *Ibid.* See also Paul, *op. cit.* note 4, *supra*, at pp. 80-84.

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 people and environments 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 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.³⁸ Similarly, 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.³⁹ 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 exploitation.⁴⁰

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, domestic and transnational, in order to criticize and influence state "development policies," and to "lobby" IDAs, 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,

38. L. McGlynn, *op. cit.* note 21.

39. See C.R. Escudero, *Sustained Development: An Alienable Right* (Delivered at the Working Group on Development and Indigenous People of the International Bar Association 22nd Biennial Conference, Buenos Aires, Argentina, 1989).

40. International Labour Office, Geneva, 1984, *Safety and Health Practices of Multinational Enterprises*.

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 for IDAs (notably for 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.⁴¹ At a more basic level, IDAs (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 Bank (or any other IDA) contemplates financing a large scale dam, irrigation or other kind of “risk-prone” project? What rules must Bank personnel follow to assure not only protection of women’s rights in agricultural development projects, but to promote their active exercise through various kinds of participatory activities?

What rules must the Bank follow to assure that NGOs representing people affected by, or specifically interested in, Bank activities have access to Bank decision-makers — how can NGOs as vehicles of participation be incorporated, in a fair and orderly way, into development processes?⁴² Further, and obviously important, IDAs must take appropriate steps to insure that the loan and other international agreements which they make with states to further “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.⁴³

41. Paul, *op. cit.* note 4, at pp. 109-113.

42. *Ibid.* at pp. 111-113.

43. *Ibid.* at pp. 117-118.

From the perspective of Third World states, there exist analogous legal responsibilities. The discharge of these 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 they operate under a regime of laws which permit discretionary, hence arbitrary and all too often repressive, regulation of this kind of collective activity, and which reflect a discouraging failure to understand the essences of rights of participation despite much lip service to the concept.⁴⁴ 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. Nor can states simply 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.⁴⁵

The HRD also creates major implications for specialized agencies operating within the UN system — agencies like the ILO, FAO, 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."⁴⁶

44. See, e.g., A. Fowler, *The Role of NGOs In Changing State Society Relations: Perspectives from Eastern and Southern Africa* (July, 1990).

45. The ICLD has prepared a *Draft Charter of Human Rights and the Duties of Development Agencies in Development Processes* (1992) which can be made available to anyone interested in these issues.

46. On the increasingly proactive 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. March, 1991). On ECOSOC's new, more extensive reporting requirements see, e.g., "Implementation of the International Covenant on

Or consider 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 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, enforcement and monitoring of safety measures — needs which seem glaringly apparent in view of tragic experiences such as Bhopal “development disasters.” The duty of the ILO (and states) to respond to these needs is underscored by the HRD.⁴⁷

Finally, the World Bank and the IMF, working in collaboration with other concerned UN 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.⁴⁸

Economic, Social and Cultural Rights, Revised Guidelines.” Adopted by the Committee on Economic, Social and Cultural Rights at its Fifth Session, (26 November-14 December 1990), 5 UN ESCOR C125supp (No. 3); UN Doc E/C 1990/8 (1991). See S. Leckie, “An Overview and Appraisal of the UN Committee on Economic, Social and Cultural Rights,” 13 HUMAN RIGHTS QUARTERLY 545 (1991). It is generally agreed that Human Rights NGOs can play more significant roles in helping or pressuring not only ECOSOC but other UN monitoring bodies to require reporting governments to show how development programs and projects are being used to promote human rights, notably rights of women. CEDAW, ECOSOC and other monitoring bodies have overlapping responsibilities, and it may be important for them to share and reinforce each other's concerns.

47. See C. Dias, “Nothing to Lose but Our Lives,” 29 *Journal of the Indian Law Institute* 330 (1987) (analyzing implications of Bhopal); Dembo et al (eds), *Nothing to lose but our lives, Empowerment to Oppose Industrial Health Hazards* (N.Y.: New Horizons 1988).

48. See, e.g., the demands of an international conference of African development-oriented NGO's in *African Charter For Popular Participation in Development and Transformation*, adopted by acclamation by the participants of the International Conference on Popular Participation in the Recovery and Development in Africa, Arusha (Feb. 1990). UNECA, ECA/CM.16/1 1.

These are only some of the suggestive implications of the HRD. Hopefully they demonstrate that it is now time to move from vague, abstract theorizing about that right and towards more concrete efforts to apply it in many spheres. If indeed the peoples of the world are moving — 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 has sometimes been characterized as an “emerging,” “Third Generation” human right — and as some kind of embryonic, formless, primordial blob of very soft international law — not yet to be taken seriously as law commanding recognition and respect.⁴⁹

It is important to dispel this view. There surely exist criteria to determine the legal force to be accorded 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 activity. Thus, one might ask such (obviously interrelated) questions as the following:⁵⁰

(1) Is the content of the rights law asserted (in the instrument) sufficiently clear so that the persons and 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 it attempt to identify new, hitherto unrecognized concerns as human interests worthy of universal protection?

49. See Alston, *supra* note 3 at pp. 3-6. See also Brownlie, *supra* note 3, at 49. Cf. P. Alston, “Conjuring Up New Rights: A Proposal for Quality Control,” 73 AM. J. INT. L. 607 (1984).

50. *Ibid.*

(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 the Philadelphia Declaration of 1944 onwards.⁵¹ Of course the principle has long

51. Article 11 of the Declaration of Philadelphia (1944) (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;

been in tension with more economic concepts of “development” — with policies and strategies continuously pressed by states, major IDA “experts” and political elites.

The “development industry” is (as noted) driven by many forces — 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 — these and other continuous changes — pose risks to rights of masses of vulnerable people, as evidenced, for example, by the history of earlier “Green Revolutions” in Asia, and thus duties on relevant UN agencies and IDAs to develop new protections for existing rights.

All of these (and other) implications mean that UN 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 up 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 UN 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 visibility.

At least since Robert McNamara’s famous 1972 address to its Board of Governor’s, the World Bank has, at the level of rhetoric,

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. See Article 55 of the UN Charter.

repeatedly recognized its obligation to promote poverty-oriented, people-centered development.⁵² The Bank's 1990 World Development Report focusing on "Poverty" is a recent reiteration of the commitment.⁵³ The UNDP's innovative, widely acclaimed 1990 *Human Development Report*⁵⁴ initiated a new annual survey which declares that 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 — 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.⁵⁵ As international human rights law began to "take off" in the 1970s, 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.⁵⁶ The need to promote participation in development processes has been asserted (sometimes quite vigorously) in a long

52. See Paul *op. cit.* note 4 at pp. 101.

53. World Bank's 1990 *World Development Report: Poverty* (World Bank 1990).

54. See note 23 *supra*.

55. Article 22 of the Universal Declaration states: "Everyone, as a member of society, has the right to social security and is entitled to the realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

56. Article 28 of the Universal Declaration 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. The Preamble to the Covenant on Economic, Social and Cultural Right notes that: "...In accordance with the Universal Declaration of Human Rights, the ideal of Freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy...his civil and political rights."

line of international instruments.⁵⁷ A number of articles of the 1979 UN 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, and rights of participation as the essential means by which other rights promised can be realized through development.⁵⁸ The same propositions apply to many provisions of the UN Convention on the Rights of the Child; it, too, is very much intended as a part of an expanding body of human rights law governing development.⁵⁹

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 (and their spouses) 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 — rights which go to the heart of participation.⁶⁰ ILO Convention 169 is designed not only to protect the individual and collective rights of indigenous people

57. See, e.g., ILO 1976 World Employment Conference 4-17 June 1976, Doc. No. WEC/CW/E.I, ILO (Geneva, 1976). See also World Conference on Agrarian Reform and Rural Development, (Rome, 12-20 July, 1979), National Programmes of Action in Developing Countries, Article 111, "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 conceptualising 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."

58. See McGlynn *op. cit.* note 21.

59. United Nations Convention on the Rights of the Child (adopted Nov. 20, 1989), 28 I.L.M. 1448 (1990). See, e.g., Art. 45: A major emphasis of the Convention is on the commitment of parties to it to take progressive steps (legislative and other) to recognize and provide the rights set forth, notably rights concerned with education, health and work conditions.

60. On the importance of this Convention, see e.g. the resolutions of the 1979 World Conference on Agrarian Reforms, *op. cit.* note 56, *supra*. See also the discussion in Paul, "Rural Development," *op. cit.* note 21, *supra*.

(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.⁶¹ The Draft Declaration of 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 development.⁶²

Other important "development-oriented" rights instruments protect rights of industrial workers and "bonded" workers in Third World settings.⁶³

The Fourth Lome Convention goes far indeed to make promotion of human rights a central purpose of development, and it 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 youth, rights of workers' rights of self-determined development by distinct cultural and ethnic groups.⁶⁴

61. International Labour Organization, *Indigenous and Tribal Populations Conventions* (Convention No. 169) (Adopted by the International Labour Congress in 1989 and now open for ratification). On the history of this Convention, which is a major revision of ILO Convention No. 107 (1957), see International Labour Conference, 76th Session, 1989 *Report IV: Partial Revision of the Indigenous and Tribal Populations Conventions*, 1957 (No. 107) (Geneva 1989).

62. See *Discrimination Against Indigenous Peoples: First Revised Text of the Draft Universal Declaration on Rights of Indigenous Peoples*, UN Doc E/CN.4/5ub 2/1989/33 (1989). See R.S. Williams, "Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World," 1990 *Duke L Journal* 660 (1990).

63. See, e.g., International Labour Organization, *Convention Concerning Occupational Safety and Health and the Working Environment* (ILO Convention No. 155) (Geneva, 1981); *ibid.*, *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 Centre on Transnational Corporations, *Draft of the United Nations Code of Conduct on Transnational Corporations* (1988) (especially Articles 38-50, 58-64, 68).

64. Fourth ACP-EEC (Lome) Convention, Dec. 15, 1989. See especially Art. 5, Art. 20. See M. Addo, "A Critical Analysis of the Perennial International Economic Law Problems of the EEC-AC," 33 *German Yearbook of International Law* 37 (1990).

A large body of international environmental law pointed at "development" activities has also emerged.⁶⁵ 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 lobbies. 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 environments 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: refusal to assist projects which are too "risk prone" to the rights of people; increasing reliance on NGOs as both vehicles to incorporate participation in shaping "development" initiatives and as vehicles

65. See, e.g., *Stockholm Declaration on the Human Environment: Report of the United Nations Conference on the Human Environment*, UN Doc A/Conf. 48/14 (1972); *World Commission on Environment and Development: Our Common Future* (Oxford, 1987); "Development in the law: International Environmental Law," 104 *Harvard L. Rev.* 1484 (1991). See, e.g., World Bank, *Striking a Balance: The Environmental Challenge of Development* (1989); J. Warford and R. Ackerman, "Environment and Development: Implementing the World Bank's New Policies" (World Bank, 1990). See for detailed discussion the Bank's *Environmental Assessment Sourcebook*, *op. cit.* note 5, *supra*.

to design and manage development projects; and cutting off aid to governments which are “gross abusers” of universal rights.⁶⁶

The UNDP, in its 1991 *Human Development Report* 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 it ranked them accordingly. As part of their rights — monitoring operations, UNICEF and UN CEDAW have begun to take some first steps towards demanding country reports which focus much more closely on the impact of development activities

66. See, e.g., United States Agency for International Development (U.S. AID), *Democracy and Governance Policy Paper*, Nov. 6, 1991 at pp. 1-2, announcing AID's “Democracy Initiative” and stating:

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 constraints on the actions of civil servants, the military and police; support legal processes which contribute to peaceful and predictable social and economic interaction. . . .

See also Canadian International Development Agency, *Sharing Our Future: Canadian International Development Assistance* (Ottawa, 1988); Bard-Anders Andreass and Asbord Eide (eds), *Human Rights in Developing Countries 1987/1988* (1989) which is jointly published for the Christian Michelsen Institute (Norway), the Danish Center of Human Rights and the Norwegian Institute of Human Rights. The “Introduction” (pp. 11-21) reviews the evolution of DANIDA and NORAD's human rights policies; Sigrun I. Skogly, “Human Rights Reporting: The Nordic Experience,” 12 *Human Rights Q.* 513 (1990); K. Tomasevski, *The Case for Human Rights Criteria in Development Assistance* (April, 1988); Paul, *op. cit.* note 4 at pp. 68, note 2, 75-76.

on the progressive realization of rights of children and women.⁶⁷ The World Bank has, regrettably, lagged in promulgating a human rights policy, apparently fearing the sensitivity of the subject. But in some ways the 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., its "Operational Directives") which seem designed to protect human rights without saying so. For example: The Bank's environmental policies and law recognizes the need to assess potential human harms as part of the total assessment of an environmental impact analysis; further, NGOs and activists are entitled to participate in the processes of determining the environmental and social impacts of planned projects.⁶⁸

The 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 monitors) in relation to development projects; the Bank's obligation to listen to NGOs which appear to speak for project affected people is clearly recognized, if not adequately implemented.⁶⁹

The Bank's Resettlement Guidelines constitute, in effect, quite a detailed code designed to protect the rights of those displaced by Bank-financed projects;⁷⁰

67. See United Nations Development Program, *Human Development Report* (UNDP, 1991) at pp. 13-21. See note 23, *supra*; K. Romasevski, "Women in Development Cooperation: A Human Rights Perspective," 6 *Netherlands Human Rights Quar.* 50 (1989).

68. See World Bank, Operational Directive No. 4, set out and explained in the Bank's Environmental Assessment Sourcebook 1, at p. 27 *et seq.*, *op cit.* note 5, *supra*.

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

70. M. Cernea, *Social Issues in Involuntary Resettlement Processes* (Policy Guidelines and Operational Papers, Washington, 3.C., 1989). S. Forster, *History and Development of World Bank Policy on Involuntary Resettlement* (World Bank, April 15, 1991).

The Bank's "Women in Development Initiative" is an effort both to protect the interest of women affected by projects and to promote women-oriented initiatives.⁷¹

Finally, as noted a vast amount of 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 demonstrates the need for participation, but suggests 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, Bank studies of indigenous group enterprises in production, transport, 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 — restrictions which are either too broad or otherwise unjustified to protect people from harmful practices sometimes perpetrated by these enterprises.⁷²

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

Third World states were the driving force behind the UN HRD Declaration; and the same right has been guaranteed to all

71. See note 21, *supra*. See also the recent memorandum by the convener of the recently established Human Rights Sub Group. Recently the Bank has established "thematic teams" comprised of staff from units concerned with African development. One such team is concerned with "Governance, Participation and Human Rights," 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, as set out in memorandum dated December 11, 1991, make it clear that women's rights in development projects and programs (as developed in the Womens' Conventions) are a concern of the Sub Group. The memorandum is entitled *Inter-Divisional Thematic Team on Governance and Human Rights Human Rights Sub Group: Terms of Reference*.

72. See notes and *supra*. See also 5. Paul, Assessment of the Private Sector. A Case Study and its Methodological Implications (World Bank Discussion Papers, Washington, D.C.).

African peoples by the Banjul Charter.⁷³ Many states have ratified many of the more particularized human rights instruments which explicitly apply human rights to development processes. The UN Covenant on Economic, Social and Cultural Rights, the UN Womens Convention, and the Convention on the Rights of the Child are notable examples.⁷⁴ In regional pronouncements, such as the Khartoum Declaration of 1989,⁷⁵ officials from African governments came down strongly for people centered development and recognized the relevance of rights to achieving that aspiration. Some heads of state, have also paid eloquent lip service to human rights in development principles. Few would dare deny the validity of the 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 of them). 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 question: must determination of the legal status of the HRD await

73. The Banjul Charter on Human and Peoples Rights, adopted by the Organization of African Unity (OAU) on June 27, 1981. OAU Document CM-1149 (XXXVI) 2 (1981) Art 22.

74. The Womens Convention and the Convention on the Rights of the Child, *op. cit.* note 23, have each been ratified by over 100 states.

75. 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 (United Nations Economic Commission for Africa. Khartoum, March, 1988).

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 *and*, increasingly, from the worldwide efforts of peoples (*not* just states) to use that system⁷⁶ to demand respect for rights which are now deemed universal because they are so closely related to evolving concepts of human dignity. 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 system 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 them. Of course, it may take time to work out all the implications and applications of the HRD in diverse, often difficult Third World situations and to secure consensus in practice. But the legitimacy of these efforts can hardly be denied.

Thus, the “legal status” of the HRD really depends, not so much on a legal analysis as on a political analysis: the question is

76. Cf. Henkin, *International Law: Politics, Values and Functions* (1990) at pp. 208-248.

not whether it should be implemented in a normative, legal sense, but can it be implemented — and if so, by whom?

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 — 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. We have already noted some implications of this mandate and it may be useful to recur to these in order to understand the problems of “implementation” and “enforcement.”

Thus:

(1) UN Agencies already charged with monitoring specific bodies of rights law (e.g. ECOSOL, UNICEF, CEDAW and 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 — varying from structural adjustment to agricultural development — 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.

(2) All specialized UN agencies should consider ways to monitor and develop standards and processes to promote 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 them is both a precedent and an illustration. The FAO and 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 active role in promoting rights of participation in development processes. These are only examples.⁷⁷

(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 some 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; and 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 interest at that stage.

(4) In pursuing these kinds of agendas, international organisations must be pressed to respond to changing human rights concerns generated by changing patterns and policies of development and the introduction of new technologies.

(5) 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 — notably legislative and constitutional reforms which recognize, indeed facilitate, the range of rights necessary to enable full and effective and interest-based participation in “development” decision-making at all levels and in all sectors. Some commentators have suggested that some particular UN 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

77. See R.S. Williams, *op. cit.*, note 61, 676-682. See also the ICLD's Draft Charter of Human Rights in Development discussed at note 45.

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. Further, 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 — these 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 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 discussion and debate over the HRD from the sterile topics which have so far dominated discourse to a more

realistic issue of immediate importance to constituencies which should clearly command our concern if we value human rights. Hopefully, some of that agenda has been sketched here.