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RIGHT TO DEVELOPMENT? NOTES TOWARD AN OPERATIONAL APPROACH

Reginald Herbold Green

Words mean what I say they mean

- Alice in Wonderland  
(The Red Queen)

Aye, but a man's reach much exceed his grasp or what's a heaven for?

- W. B. Browning

This is the way the world ends  
Not with a bang, but with a whimper.

- T. S. Eliot

Do not go silent into that good night,  
But rage, rage against the dying of the light.

- Dylan Thomas

Toward Definitional Ground Clearing (Synthesis?)

Discussion of the right to development has regularly become embroiled in attempts to create a series of rather unreal dichotomies between traditional political human rights and subsequently articulated socio-and politico- economic rights. This pseudo cartesian (or pseudo dialectic) approach tends to obscure a great deal more than it reveals; except perhaps about some of the participants in the debates. Its origins - and much of its rhetoric - flow narrowly from the Cold War and more broadly from entrenched versus excluded individual, community and sub-class interests. In fact many politico-or socio-economic rights have been formulated - or even legally embodied for millenia. Consider, for example, the land reform, debt forgiveness and bond labour manumission provisions of the Jewish Jubilee year as set out in the Old Testament.

Individual rights cannot in general be separated either from communal rights or from a social context. A Lockean social contract and a parliamentary democracy both posit a social context and a right of communities (or at least majorities grouping individuals) to decide as necessary prerequisites for the existence and exercise of individual rights to vote or to stand for election. Conversely the right to freedom from hunger or to an adequate diet (most rights can be formulated either

positively or negatively) is usually seen as collective, but in practice necessarily involves actual individuals' access to actual food.

Similarly the debate over individual, group, peoples' and state (national) rights is a confused one if it is perceived to be about types of rights as opposed to ways of exercising and enforcing them. The right to development is ultimately (basically) a right of human beings. It can in large measure be exercised only by people interacting and acting communally (socially) - in some cases primarily (and in all cases partly) in conflict with existing state institutions and power structures. At the same time, its exercise in any country is constrained by global political economic, military and other power structures. At the global level, therefore, the right to development must be struggled for/enforced by states as representatives (trustees?) of the human beings and peoples of the states. "Peoples' rights" in this context is somewhat ambiguous - it has meant the right of colonial peoples to struggle to win a state of their own, of oppressed peoples to struggle against a state which systematically denied their exercise of rights and of peoples acting through their state to seek change at global or regional level. However, none of these is really outside the individual - communal/social - state continuum nor does any suggest that the basis of rights lies elsewhere than in persons (human beings).

Absolute or conditional is a distinction which may have some validity. However, the absolute are mostly negative formulations of rights, e.g. freedom from torture (including perhaps freedom from starvation?). Most rights are conditional, e.g. freedom of speech is conditioned by "clear and present danger" doctrines both in respect to shouting "fire" in a crowded theatre and "Carib-Paki bastards go home" in Brixton. Even more "a fair return to labour" is conditioned both by personal productivity and, even more, by the average level of production per person in the economy. The arguments turn on what rights should be conditioned to what degree to protect what other rights, and how fully the total package of rights can be achieved within objective material constraints. There is no very evident correlation with whether the right is "traditional" (e.g. freedom of speech) or socio political (e.g. to enjoy the fruits of ones labour). If either is employed in a way leading to a clear and present danger to the rights of others then a case for limitations arises.

Costless versus costly is a recent - and singularly unfortunate - dichotomy. Freedom of speech, or organisation, or ability to remove officials by majority (community) decision would not be costless to the rulers of Poland or the Philippines, occupied Kampuchea or Zaire, Afghanistan or El Salvador. It would cost them their power in each case and their lives in several. (Indeed in these cases accepting on a right of freedom from malnutrition would be less costly for the present rulers). It is rare that those denying the validity - or simply refusing to allow the enjoyment - of a right perceive its exercise to be costless to them. Idi Amin did not view torture as a pastime, but as a means to

consolidate and maintain power, nor kill those who spoke of talking tortoises from petty irritation, but because - by calling up a well known historic (if legendary) precedent - they "envisaged the death of the king" (Kabaka Mutesa in the original case).

Even if one is talking purely of material resource costs the distinction is less than clear. Freedom from hunger/right to an adequate diet clearly requires real resources and objectively may well be only partially attainable in the short term with freedom from starvation the only practicable immediate target. But police and court abuse of personal (and sub-class or communal) rights in respect to arbitrary arrest, torture, fair trial often flows in part from ill paid, ill equipped, ill trained and inadequately staffed police, prison and court services. Willingness to release an "under trial" on bail is greater in countries in which it is possible to find him again at the time for trial. To overcome this set of factors contributing to the denial of rights also requires scarce resources and in that sense objectively competes - as to full achievement - with the full achievement of other rights.

Unifying versus conflictual is a division overlapping the two previous ones. Almost any right is in some circumstances and from some perspectives unifying. (Any genuine right genuinely propounded aspires to universality which is a different point. Presumably few would argue that freedom from torture did not have a claim to universality - and unconditionality. But states, groups and individuals - who are far more widely distributed and numerous than we like to admit even to ourselves do oppose it, rendering it conflictual). In different contexts and from different perspectives almost any right is conflictual. The right to an adequate diet in some contexts means restraints on landlords, money lenders, food merchants, tax collectors, etc. - consider both the prophets in the Old Testament and medieval bourgeois laws on regrating, engrossing and forestalling for recognition of such conflict far older than, and different ideological traditions from, Marxism. The right to free speech is equally conflictual in most contexts with the those whose interests would be served (are served) by monopolies of knowledge and absence of dialogue.

Pragmatic or principled tends to relate to the case put more than to the right considered. Milton's stirring defence of free speech in Aereopagitica was basically pragmatic - suppressing the false led to suppressing much of the true, in open debate the true would usually win out (and by true Milton meant normative Truth as well as objective fact). Similarly the Brandt Commission's case against mass poverty at global level is that the poor are poor producers, customers, payers and upholders of the peace. But most ardent proponents either of freedom of speech or of the right to act believe there is a normative as well as a pragmatic basis. Both Locke and Rawls tend in assuming a type of value calculus which is utilitarian in the narrow sense to cut themselves off from the way most real people live and act out value judgments or choices

or struggles. Despite criticism about muddling self interest and morality - a perfectly real danger - it is (as Willy Brandt argues in the introduction to Struggle for Survival) important to make the moral and the "common interest" cases for the right to development march together.

As the pairs of the right to a decent diet/not to starve and the right to freedom of person/from slavery illustrates, almost any valid right can be argued in pragmatic as well as normative grounds. Bishop Wilberforce and the other normatively based opponents of the slave trade would not have secured British legislation against it had they not had very pragmatic commercial and financial allies whose interests were damaged by the trade's continuation. Nor would action have been taken by several continental European states at the end of the Napoleonic wars except for British diplomatic pressures flowing from that country's perception of its own self-interest.

Immediately possible rights can - to some degree - be separated from those attainable only over time. However, which is which depends both on contexts and on perceptions. The right to an adequate diet is globally immediately possible on technical and real resource grounds albeit not on political commitment and power structure ones. At country level the same is true of India, the reverse in Tanzania and neither the technical/real resource nor political basis exists in Zaire. But India is again different from Zaire in respect to the narrowed form of the right - freedom from starvation. The central government and a fortiori some state governments and decision takers do place high importance on fulfilling it. This is distinctly less the case in Zaire. As a result freedom from starvation has since independence been an effective right in Tanzania, largely so in India but often not so in Zaire. Similarly the right to free speech is possible now - at a somewhat limited level - anywhere if the political cost is acceptable to those in power, but if it is read to mean the right of all and each to be able to communicate effectively to any who are interested in hearing it is not fully achieved anywhere because of very real technical, institutional and real resource constraints. Phased movement toward fuller exercise of rights is not unknown, for example apertura in Brazil, and the Humphrey-Hawkins Act on employment in U.S.A. Indeed it is the normal historic pattern both cyclically and secularly.

Dividing rights into legally enforceable and not legally enforceable has a tendency to be a debater's trick. If the definition of legally enforceable is that there is a law requiring or forbidding certain acts with sanctions for its violation, then to argue that an asserted right is not a right because no such law exists invites the answer "then pass an Act"! If the point at issue is actual enforcement (or protection of exercise) of the right, this applies to almost every right in almost every country whatever legal protection it enjoys - the variations of degree are very wide but perfection is very rare.

In any event, protection/enforcement very often does not ultimately

depend on statute law, for example non-acceptance by the United States of Central America/Caribbean refugees, where interpretation by officials (systematically for refugees from "Communist" and against those from nearby "friendly authoritarian" states) is the dominant factor, and the ending in Zimbabwe of segregated health/education facilities 18 months before Acts requiring them were repealed.

Internationally the problems of enforceability of rights are the standard ones of international law more generally. Because it has sources beyond and in addition to statutes and because fora for adjudication and - a fortiori - means of enforcement are limited and often extra (or para) judicial, the global is not simply a blowup of the national. But operationality and enforceability are related to whether a right is broadly recognized to be valid, its gross violation widely condemned and continued massive violation often followed by sanctions (usually extra-judicial) by a significant number of members of the international community and per contra whether national attempts to broaden the ability of its people to exercise a right does in fact lead to international solidarity in the form of practical as well as moral support.

None of this should be taken to mean that legal formulations, laws and fora do not matter. Laws do influence both conduct and perception of norms, legal fora and decisions do give justification for parallel enforcement or effectuation when purely judicial means are by themselves incomplete (e.g. actually getting food to starving people) or inadequate (e.g. stopping great - and especially lesser - powers from arbitrary imprisonment of those who seek to exercise freedom of speech or equally arbitrary arming of the 'victims' of land reform and broader political participation to stage a counter revolution). It is easy - especially for lawyers - to be too cynical and reductionist about the law and legal processes. Historically both have been seen to have - and often have had - something to do with justice, the evolution of its conceptualisation and struggles to give these aspirations some objective reality.

New or synthesis is more a question than a dichotomy. Evidently, numerous aspects of the right to development are embodied in more traditional rights. Whether all are is much less certain - the interaction of "packages" of rights may be catalytic and need to be seen as an interwoven whole (by no means a novel view in the civil rights tradition). Further the formulation of rights - even if not necessarily their basic nature - varies over time and space. The question about formulations (even if ultimately not about rights) is whether they are appropriate and useful not about whether they are "truly new" or regroup elements already contained in different formulations. A ground clearing that takes up over a third of a paper may seem a singularly inappropriate formulation! In the case of the right to development that may not be the case. Both its proponents and opponents have managed to create vast clouds of smoke and sparks which prevent generation either of much light for those people who would wish to see or of much heat for those human

beings who are - literally - left "out in the cold" (or hot or wet or dry as the case may be).

### Elements in an Operational Definition

One difficulty in framing a definition of a right to development is that development itself is not easy to define. Especially for the purpose of formulating a right, the cataloguing of artefacts - e.g. airports, universities, doctors of law - is not very helpful. Nor is heavy reliance on certain symbolic or real proxies - e.g. gross domestic product and its growth - which conceal critical issues of organisation and distribution. Nor can total specificity be achieved - the right to a decent burial in one's home community is seen as crucial by many people and in many societies and fuller ability to exercise it as development, but at that level universality is lost because this concern is clearly not true of all people and societies. It may well be seen as a part of a more generally formulated right (for example, 4 below) but by itself it and other "special formulations" are very much context specific.

The elements noted below have some claim to universality. However, they are formulated from the perspective (if not in the rather more concrete case and struggle oriented vocabulary) of the poor (or excluded, exploited and oppressed). This is a deliberate choice as well as a concession to spatial limits which prevents multiple phrasings. Rights need to be (and historically are) formulated primarily in terms of those who need to enjoy them and are barred from doing so by forces beyond their control. In the case of the right to development those human beings, communities, sub-classes are primarily the poor even if, arguably, some of the rich are also constrained as well.

Six elements seem central:

1. participation (direct or indirect but in either case effective) in decision taking;
2. participation in enforcement of decisions (whether via the courts, elections or some form of withdrawal of support);
3. participation in production - to have a direct claim on its fruits (and a direct power to reduce or halt production if that claim is denied/thwarted);
4. effective access to basic individual/household consumer goods (including food, shelter, clothing, etc.) primarily from adequately productive and fairly remunerated employment/self employment;
5. effective access to basic public services - especially health, education, water.

6. ability to engage in self-organisation to implement/enforce/protect the other elements of the right to development.

This bears a family resemblance to the ILO definition of Basic Needs - and more to its earlier draft on Basic Human Needs which proved politically unacceptable. It has little resemblance to minimum material needs approaches whether those with substantial platonic goodwill - for example,, Robert MacNamara's - or those which were overtly manipulative - for example, Nero's bread and circuses.

This formulation and its variants are apparently deceptive to most readers in two different respects. The first is as to its feasibility (at least over a twenty year period) on technical and real resource grounds - which is absolute globally and fairly high in all but a handful of states given moderate, targeted increases in real resource transfers. The second is in assuming that it is either politically easy or per se politically naive. A fairer criticism would be that it is politically explosive and may in many countries amount to a commitment to a course of struggle likely to lead to not insubstantial levels of violence.

The cost in terms of real material resources - especially for the third, fourth and fifth elements is absolutely - and relative to total resources of poor countries - high. Taken seriously at global level, the right to development would require substantially greater real resource transfers.

The costs in terms of power distribution (inevitably leading to some - in certain cases massive - absolute real material resource losses for certain persons, interest groups, sub-classes and perhaps states) are even greater. This is especially true of the sixth element (and often the third) without which enforceability of the right for those most in need of ability to exercise it more fully will ultimately remain dependent on the goodwill, moral perceptions, or calculations of self-interest of those who have already been able to exercise it and may well see reasons why its universal exercise will not suit their interests. This is true locally, nationally and globally. It is not true that distribution of power is necessarily a zero sum game - if the redistributed power within a system allows it to produce greater results (e.g. land reform leading to/making possible much higher output, international regulation/management of commodity price gyrations reducing total costs of instability) then almost all participants can be gainers. It is true that power redistribution often entails absolute losses for some and - as exemplified in the 1974-1984 international economic dialogue of the deaf - is always perceived as entailing the risk of such losses by many of the dominant power holders.



### Toward Programmatic Operationality

Any right can be defined generally/globally. For any programme at a concrete place, at a specific time to move toward making that right effective for particular communities of human beings and the individuals belonging to them will vary in verbal formulation, specific targets, priorities, sequences, tactics and time frame. Effective ability to communicate now usually requires building up "informal" or "open access" channels but to suppose the Village Voice in Manhattan and state/foundation funded open access time on North American television are relevant to Tanzanian villages is about as plausible as to think wall newspapers and meetings of the residents together are relevant to Manhattan.

Some priority items of personal/household consumption are fully culturally bound - for example, the minimum acceptable form of decent burial which in China and probably much of Africa would appear in the top five items most poor households would list as basic needs/rights to be secured. Others are more malleable but by no means either simply "objective" nor totally fluid, for example, an adequate diet is almost never defined by actual human beings (including one fancies nutritionists when eating) solely in terms of technical nutritional standards. Similarly the form and coding (as partially distinct from content) of free speech is often culture and context specific, (e.g. British "parliamentary language" is far from identical to normal standards of non-slandorous usage both as to inclusion and exclusion).

If participation is taken seriously, initial targets (and struggles and tactics) must turn in large part on how poor people and their groups perceive reality. This is not to claim that a leader should initiate a mirror perambulating down a highway nor to say that consciousness raising is merely a slogan for manipulation. It is to say that a peasant community may, and may validly, see the initial barriers to an effective right to development as baboons eating their crops because they have no say in district government use of funds and lack of pure water because central government allocations go only to towns. If that is the case in a specific context, to argue that the "real" problems are rich peasant exploitation of poor and World Bank lending patterns which entrench the rich and marginalize the poor peasant will not, no matter whether valid, do much to further either peasant consciousness or concrete action - and is not consistent with the self-determination strand in the right to development. (A strict Platonist whose model came from The Republic - like a reductionist Marxist - would not accept this because he does not accept problem identification and programme decisions as properly participatory by and of the poor rather than handled "for" them by Guardians - whether Platonic or Politbureaucratic).

However, there are objective considerations which point to the same conclusion. These overlap the previous category. The poor often do have better understanding of many objective realities confronting them than

most of their unpoor champions. What the starting point is and what human, institutional, legal and real resource availabilities are must influence immediate targets, sequences and priorities. To propose air conditioners as a basic need of the poor in Africa need not be ill intentioned (highland Africans often find coastal climates more oppressive than Europeans) but it is either soft headed or wrong headed on objective resource limitation and priority grounds.

Similarly, acting for people/groups as opposed to assisting them to act themselves is usually more costly, slower and more accident prone. To build and maintain a national network of boreholes can certainly make good the right of access to pure water near household residences and can - assuming adequate finance, personnel, equipment, geological data and knowledge of settlement patterns - be done with next to no participation. But in practice material resource constraints will slow down the implementation (and even more jeopardise the maintenance) of such a systematic approach in contrast with one utilising inputs of local labour, materials, techniques, management and maintenance. That - lower cost, lower risk of failure to maintain - approach does require local people's participation and organisation.

A slightly different consideration is that actual programmes, projects, organisations and institutions remain strong and advance if and, with few exceptions, only if their beneficiaries have a sustained, strong voice in decisions and in implementation plus the ability to enforce sanctions (whether legal, political, economic or other) on those who seek to thwart "their" programmes-projects-organisations-institutions. Therefore, participation and organisation by the beneficiaries of fuller articulation, enforcement and exercise of the right to development is not an optional extra but a 'real politik' necessity.

Further - while one hesitates to describe access to, exercise of and protection for a right as ever fully attained - the time needed to reach full implementation of rights must vary with starting points, costs of achieving them and resources available. To achieve freedom from malnutrition in Sweden is a shorter term goal than in the U.S.A. or - a fortiori - Mali. To attain freedom of speech (in a functional not a formal sense) in Kenya is a longer term goal than in - say Denmark, with both Algeria and Tanzania arguably in between and Vietnam even longer. A continuing process requires a built in dynamic and the most obvious one in the case of the right to development is the organised participation of those whose ability to exercise it remains severely limited.

#### Toward Access and Enforceability

A right - if one accepts that rights have a normative base - does not cease to exist because it is violated even if the violation is legally

allowed or enforced. Both apartheid and Amin's executions are seen as gross violations of rights - both have had the backing of law in their basic thrust if not in each individual case. However, in talking of rights except in the most abstracted or radical chic senses, it is necessary to focus on human beings, singly and socially, having effective access to them and to some means to enforce the continuation and expansion of that access to (enjoyment of) their rights.

In any particular case this probably should include (after at least broadly defining the nature of the right and the concrete embodiments of first steps toward making it effective) several steps:

- a. identifying who already enjoys access to the right - individually, communally, as members of a sub-class (e.g. all members of most seminars on the right to development presumably have effective access to the right to an adequate diet) - and why they have that access as well as how secure it is;
- b. identifying who does not have effective access (e.g. most "location" residents in Zambia, most refugees), why and how permanent the denial is (in the two examples both the why and - perhaps - the how permanently questions have different answers);
- c. in the cases of those with access what powers to enforce the right (legally, politically, religiously, by social sanctions, economically) exist and how strong are they?
- d. in the cases of those without effective access why do they not have (or conceivably have but do not use - probably a rare case) powers to enforce the right?
- e. what routes, measures are in fact identifiable to deal with exclusion from access and power (possibly separable - Rwanda refugees in Tanzania have had access to basic services and self-employment opportunities but their power to enforce them - citizenship - is both subsequent to enjoyment of access and is granted as a privilege rather than a right)?
- f. What duties and what limitations (e.g. on the non-poor) need to be imposed to ensure effective and sustainable access for those who do not now enjoy it? How can these be structured to do the least harm to other rights and to have some chance of operationality? Freedom to preach racism can deny any chance for effective equality of opportunity to minority communities and individuals and freedom to amass land can require near starvation of rural new landless, but the ways of preventing either are varied and have quite varied impact on freedom of speech and freedom to enjoy the proceeds of one's labour (and to pursue one's occupation) more generally.

. It is not always necessary to ask these questions prior to acting - leaping into action is sometimes appropriate, e.g. when massive violations of the right to life (whether from legal or paralegal execution or from starvation) are occurring or likely to occur unless deterrence is brought to bear. However, it is usually desirable to do so as a prelude to (not a substitute for) action. To ask the right questions - especially as to practicable means - is very often half way to finding the right answers and a quarter of the way to initial implementation.

Organisational and tactical issues relate partly to contexts and partly to levels. At the global level the main actors will be states; simply because states are the most powerful actors at that level which are (potentially and in part actually) positively concerned with the cluster of issues embodied in the right to development. On the one side states are the relevant representatives of their peoples in seeking global level changes and ways to exercise/enforce the right to development. On the other hand states are actual or potential imposers of costs/sanctions on other states which grossly violate the right to development internally. However, because states are not monoliths led by individual omnipotent dictators or platonic guardians, actions by local, regional and crossnational peoples groups and other non-governmental organisations (ngo's) are relevant in educating, convincing, pressuring states to include the formulation, 'enactment', exercise and enforcement of the right to development, and of components and cases under that rubric, on their agendas and to increase the priority given to them. How broad front and how state linked such action should be is usually a tactical question. Amnesty is not state-linked in the sense of seeking state support; it puts moral and publicity pressure on states and similarly it acts on a specific sub-range of human rights primarily on a case by case basis. Given its record of success there is no evident reason to urge Amnesty to change. But other ngo's acting through different channels (including getting governmental backing), on a wider (or a different select) range of rights and with emphasis on broader (using cases as symbols and entry points) fronts with equal effectiveness could increase Amnesty's impact in its own sphere as well as build up a more effective de facto right to development coalition.

Similar considerations apply domestically. Whether the right to development can be exercised primarily through the state or must be struggled for against it is an empirical question. The answer is rarely 100% one or 100% the other - at the best tensions exist among sub-classes in the determination of state policy and between them and the operation of that policy; at the worst there is usually some leeway via certain government instrumentalities including but not only courts to limit some abuses and to gain some freedom to exercise certain rights. But there are strategic and tactical approaches:

- a. organising at local level (perhaps with regional and national links with similar 'basic' groups and support groups whose

members are sympathetic and have useful skills or accesses to publicity and power) to take advantage of interstices within the structures of a basically hostile or indifferent state;

- b. similar organisations acting to oppose specific abuses or win specific opportunities and/or state support on issues of vital interest to the 'basic' organisations but individually peripheral to state institutions or important sub-classes;
- c. more nationally organised groups or coalitions confronting state institutions and/or dominant sub-classes on issues basic to both sides;
- d. similar organisations/coalitions struggling to win a share in (domination over) the sub-class decision taking coalitions nationally.

While action at several levels at once is quite likely, logically these are also sequential elements both in the sense of building up broader understanding of constraints on self-organisation/action, experience in working together and knowledge of how the state institutions and opposing sub-classes operate and in that of having enough power base to press on to the next stage.

### Law and Enforceability

Law - at least statute law - is neither the only nor the ultimate source of enforceability. This is probably particularly true of the right to development and of many aspects of it. The right not to starve has very considerable moral, emotional, cultural and - sometimes - political force but is rarely legislated directly (it is embodied in many laws from the Old Testament Jubilee Year to U.S. food stamp legislation), nor indeed would it be made readily enforceable solely by that means.

Nor does law provide an inclusive or basic definition of rights even in principle. (In practice the correspondence is even less - legally validated rights are often flagrantly violated and rights on which there are no laws at all more widely enjoyed and honoured). While a body of Law (as contracted with individual laws) which is organically related to a society's values, practices, traditions, culture may (and usually does) influence how rights are perceived and enforced, even if it is less than fully definitive, it is always less than the totality of perception and enforcement and may well conflict with other strands in both (especially so in periods when perceptions and/or power structures shift).

However, this is not the same thing as saying that in general law has no relationship with (or a negative relationship to, as in laws entrenching exclusion from rights, e.g. apartheid enforcement legislation

and a not insubstantial number of property 'rights' protection laws) rights even though that may be true in some cases. Laws are often more than a simple recapitulation of what exists. They can play a target setting and norm presenting role as well as providing one avenue toward enforceability. How fully they can do this depends partly on how much change, how fast they require, how widely the norms embodied in them are accepted as having moral validity (including by those who violate them) and how many holders of how much power put what priority on enforcing them. The very different effectiveness of U.S.A. and U.K. anti-discrimination legislation relates in part to such considerations (especially to a much higher personal acceptance that discrimination is wrong in the U.S.A., a perception only partly related to education by legislation and its enforcement) as well as to the very evident greater technical legal weaknesses of the U.K. legislation.

Law - broadly defined - has several roles in respect to establishing any right, the right to development included:

- a. as an educational tool (in the hands of the would be beneficiaries of the right);
- b. as a defence mechanism (against those who violate the right protected by existing law even when state initiated enforcement is unlikely and the state is among the violators who need to be restrained. This is not so unreal a use as might be supposed. The tradition of the rechstadt has partial echoes surprisingly widely as, for example, some - even if not most - South African, Philippine and Indian cases suggest);
- c. as a limitation on actions by the State or by other actors (either because the state really does accept and will enforce the law or because it and other actors see a non-legal cost in breaking the law);
- d. as a lever or pressure point (for example, broad declarations on the right to development embodied in law may form a platform for criticizing actions/practices/resource allocations which frustrate their implementation);
- e. as a tool for - and a defence of - self-organisation and participation in respect not only of formal constitutional law but also of administrative law (including general regulations whatever their formal status) and of the organisational embodiment and self-defence of groups seeking access to the right to development.
- f. as a means of imposing a sanction (cost) or erecting an injunction (barrier surmountable only at a cost) against a violator of some embodiment or aspect of a right.

The basic problems with the use of law in these ways are at least fourfold:

1. access to the law - both intellectual and financial - is often easiest for those who already enjoy effective rights and/or wish to deny them to others;
2. use of laws to bind a state which does not in practice agree with them has distinct limitations beyond individual cases or secondary issues - i.e. one can hope to gain a few degrees of freedom sometimes but not to challenge the basic interests of dominant decision takers who will ultimately respond by coercing the courts/lawyers or changing the law;
3. laws in a broad - and sometimes loose - way do represent the values, goals and interests of those (individuals, sub-classes, corporate bodies) in power whereas the right to development is primarily concerned with altering access to - inter alia - power and therefore requires changes in the laws before it can depend on their enforcement as a generally positive force;
4. the majority of lawyers (including judges) in most countries are not poor and do - personally and as a profession or sub-class - have fairly effective access to the right of development. Thus both "what we have we hold" and especially "invisibility" (or non-comprehension) of the poor and their assertion of a right to development are more often the rule than the exception in legal circles.

Again, these limitations apply locally, nationally and internationally/locally in somewhat different ways. Locally the immediate conflict is likely to be primarily with particular members of domestic sub-classes (for example, landlords, money lenders), particular state institutional branches (for example, police, courts, foresters, land registration offices) and particular foreign enterprises which exploit (for example, plantations, especially expanding land engrossing ones) or exclude (for example, foreign fishery fleets which de facto monopolize marine resources). At that level the overall state structure and the overall dominant sub-class coalition are usually at one remove from the perceived cutting edge and the global political economic system at a second remove. Nationally the national structures and coalitions are the immediate sources of the obstacles and the global at one remove while at the international level it is at the cutting edge. This not incidentally explains a paradox - at the global level states which are domestically by no means champions of the right to development of their own people may very well be quite genuine proponents of global level changes necessary (but evidently not sufficient) for the right to development to be achieved in their countries.

None of these limitations is either absolute or insoluble.

Collectively they can be formidable. However, considerations 2 and 3, once portions of the right to development have adequate power bases to have been enacted as law and to have substantial institutional/political backing toward enforcement/effective exercise begin to operate in the inverse (pro-right to development) way. At that point the last problem may be eroded - with a more diversified group of entrants into the legal and paralegal professions - or become greater with lawyers the guardians of the last ditch against more effective access to the right to development what ever lawmakers and the poor may say or legislate. Or they may play a mixed role upholding certain aspects of the right to development (e.g. freedom of speech and of independent organisation, right to a fair trial with defence advisers of ones own choosing) which they see as particularly critical, at least partly because they see them as at risk for themselves, but opposing others (e.g. greater access to ability to produce enough to live or greater access to non-traditional judicial fora) which they perceive as threatening their own interests or simply feel to be irrelevant (as they may be to themselves in their personal and sub-class capacities). Ghana in recent years would appear to exemplify such a process. It is not accidental that revolutions fairly generally take a dim view of individual lawyers, judges and laws; and not uncommonly of the existing legal profession and legal system as a whole and sometimes of the rule and role of law generally. This may be not accidental, but it is not desirable either, since laws and especially "law" are among the least bad and least ineffective ways of creating and maintaining institutional and procedural frameworks within which effective access to all rights (including the right to development) can be enjoyed.