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## What Rights Can Add to Good Development Practice

MARY ROBINSON

Let me begin by saying what poverty means to me, and from where I come at it.

While the focus since 9/11 in developed countries has been on state security and combating acts of terrorism, millions of other people on the planet have continued to be at daily risk from violence, disease, and abject poverty. Their insecurity stems from worry about where the next meal will come from, how to acquire medicines for a dying child, how to avoid the criminal with a gun, how to manage the household as a ten year old AIDS' orphan—their is the comprehensive insecurity of the powerless.

For women, gender is itself a risk factor threatening human security: the secret violence of household abuse, the private oppressions of lack of property or inheritance rights, the lifelong deprivations that go with lack of schooling, and the structural problem of political exclusion.

Freedom from want is an empty promise today for more than 800 million people who suffer from undernourishment,<sup>1</sup> for the 30,000 children around the world who die each day of preventable causes,<sup>2</sup> for the thousand million people still without access to clean water supplies or the 2.6 billion who lack access to basic sanitation.<sup>3</sup>

An unprecedented number of countries actually saw their human development indicators slide backwards in the 1990s. In 46 countries people are poorer today than in 1990. In 25 countries more people go hungry than

<sup>1</sup> World Food Programme, 'Fighting the Global War on Hunger From the Frontline', at <http://www.wfp.org/index.asp?section=1> (accessed 23 September 2004).

<sup>2</sup> United Nations Children's Fund, 'Facts on Children: Early Childhood', at [http://www.unicef.org/media/media\\_9475.html](http://www.unicef.org/media/media_9475.html) (accessed 23 September 2004).

<sup>3</sup> World Health Organization, 'World facing "silent emergency" as billions struggle without clean water or basic sanitation, say WHO and UNICEF', at <http://www.who.int/mediacentre/news/releases/2004/pr58/en/> (accessed 23 September 2004).

a decade ago.<sup>4</sup> The picture that emerges is increasingly one of two very different groups of countries: those that have benefited from more open markets, free movement of capital, and new technologies and those that have been left behind.

Of course, the reasons for this situation are many. For example, more and more people are conscious of the intolerable burden of debt on the poorest countries—a debt often incurred over long periods by former dictators which never benefited the general population. What is less appreciated is that poor countries are currently financing the huge deficit here in the United States. A recent World Bank report puts it this way: ‘Since 2000, the developing world has been a net exporter of capital to the advanced economies’.<sup>5</sup> This is one of the global inequities we must bear in mind. Not only is more debt relief for the poorest countries essential but rich countries such as the United States should no longer borrow cheaply from poorer ones who need those resources for development at home.

Statistics give us the numbers we account for in addressing inequalities, but they fail to convey the humiliation, the hopelessness, the lack of dignity involved. Listening to a family living in absolute poverty it is this lack they speak of: the lack of self-respect, the indignity and humiliation of a refugee camp, the invisibility of being homeless, the helplessness in the face of violence, including violence caused by those in uniform who should protect.

This is where I begin. In the rest of this paper, I would like to describe recent progress which I think the international community has made in bringing human rights into discussion of development, and then to discuss in a little more detail some of the reasons why many development and economics specialists still remain critical of human rights as an approach. To end, I will indicate briefly where I believe fuller use of human rights principles and values adds to the best practices of those working in development.

### 3.1 THE CHALLENGE

In December 2001, I was invited to give the World Bank Presidential Lecture in Washington D.C. It was part of a deepening engagement with the Bank, and it was followed by a series of contacts between the staff of the World Bank and the Office of the High Commissioner for Human Rights that have

<sup>4</sup> United Nations Development Programme, *Human Development Report 2004: Cultural Liberty in Today's Diverse World* (New York, UNDP, 2004), available at [http://hdr.undp.org/reports/global/2004/pdf/hdr04\\_complete.pdf](http://hdr.undp.org/reports/global/2004/pdf/hdr04_complete.pdf).

<sup>5</sup> World Bank, *Global Development Finance: Harnessing Cyclical Gains for Development* (Washington DC, World Bank, 2004) 7.

since continued. These contacts informed my own thinking about poverty and rights. In that speech I set out what I still believe to be the key questions: ‘What can human rights offer to development work? How can those who are working for universal observance of human rights impact effectively on poverty—itsself a violation of human rights—powerlessness, and the conflict and human suffering which poverty underpins?’<sup>6</sup>

I went on to discuss a prior question: What has the activity of promoting and protecting human rights got to do with development? Are these not wholly different fields of national and international endeavour? What does it add to try to relate them?

The international human rights documents, including the Declaration on the Right to Development of 1986, are replete with references to the interdependent or mutually reinforcing relationship that exists between all categories of rights within national protection systems. But they go one step further. They assert that these rights must be effectively enjoyed, whether a country is developing or developed, and that a participatory democracy, based on the rule of law, is the only system of government that can ensure the implementation of all rights.

In this, human rights take a holistic approach which is surely not far removed from the approach taken by development NGOs since the 1970s, by OECD donor governments since the 1990s, and by the World Bank today. Yet historically, a distance has always separated those who work on development and those who work on human rights. In the words of the *Human Development Report 2000*, which discussed the relationship: ‘Until the last decade human development and human rights followed parallel paths in both concept and action—the one largely dominated by economists, social scientists and policy-makers, the other by political activists lawyers and philosophers. They promoted divergent strategies of analysis and action—economic and social progress on the one hand, political pressure, law reform and ethical questioning on the other.’<sup>7</sup>

And yet, it is not the case that development and human rights specialists have been separated intellectually by the way they have defined the issue. In its Annual Report 2001, the World Bank talked about poverty in the following terms: ‘Poor people often lack legal rights that would empower them to take advantage of opportunities and protect them from arbitrary and inequitable treatment. They, more than any other group in society, are adversely affected by laws permitting discrimination, deficient laws and institutions that fail to protect individual and property rights, and insufficient enforcement of

<sup>6</sup> Mary Robinson, *Bridging the Gap between Human Rights and Development: From normative principles to operational relevance*, World Bank Presidential Lecture, Washington, 3 December 2001.

<sup>7</sup> UNDP, *Human Development Report 2000: Human Rights and Human Development* (New York, UNDP, 2000) 2.

these laws, as well as other barriers to justice.<sup>8</sup> This assessment of the effects of poverty is little different from the definition which the Office of the High Commissioner adopted at the very end of my term of office in 2002: 'the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights'.<sup>9</sup> The Bank's emphasis on powerlessness and discrimination was even more forcefully articulated in its ground-breaking work on poverty, 'Voices of the Poor'.<sup>10</sup>

While convergence can clearly be seen, however, the challenge remains: How in practical terms are we to make the links useful? How can the affirmation of principles in the Universal Declaration of Human Rights, developed through treaties and legal standards, help to construct operational programmes that contribute practically to development and the elimination of poverty?

We might begin by asking where progress has already occurred. What has already been done to bring convergence closer, make mainstreaming more real, and apply human rights in ways that make some difference to development policy and to the poverty from which so many people suffer?

### 3.2 WHAT HAS BEEN ACHIEVED SO FAR?

When I started my term as High Commissioner in September 1997, the Cold War had ended and I felt there was at last an opportunity to take political and civil, and economic and social, rights equally seriously, as the drafters of the Universal Declaration of Human Rights intended. Several positive steps were taken at the international level in the next five years.

Under new mandates the UN Commission on Human Rights appointed special rapporteurs in areas such as education, food, and the highest attainable standard of health as well as an independent expert on the right

<sup>8</sup> World Bank, *The World Bank Annual Report 2001*, Vol. 1, Year in Review (World Bank, Washington DC, 2002) 58, available at <http://www.worldbank.org/annualreport/2001/pdf/wbarvol1.pdf>.

<sup>9</sup> This definition was adopted by Professors Paul Hunt, Manfred Nowak, and Siddiq Osmani when they prepared draft guidelines on a human rights approach to poverty reduction strategies. The Guidelines were published in September 2003 (United Nations Office of the High Commissioner for Human Rights, *Human Rights and Poverty Reduction: A Conceptual Framework*, Geneva, 2004) and subsequently revised in November 2004.

<sup>10</sup> D. Narayan et al., *Can Anyone Hear Us? Voices From 47 Countries* (Washington DC, World Bank, 1999) 26–51, available at <http://www1.worldbank.org/prem/poverty/voices/reports/canany/vol1.pdf>.

to development—all of whom have made substantial contributions to advancing the agenda on these issues.<sup>11</sup>

Important strides were made after Kofi Annan asked UN agencies and programmes in 1997 to mainstream human rights throughout the UN system. Some of the UN's key bodies, including the UN Development Program, the World Health Organization, and the UN Children's Fund (UNICEF), included human rights within their mandates and started to integrate them in their programming.<sup>12</sup> In 2003, they and a number of UN agencies agreed to a 'Common Understanding' of how they would apply a rights-based approach.<sup>13</sup> The Millennium Declaration, signed by all the world's political leaders, makes specific references to human rights.<sup>14</sup>

Within the Office of the High Commissioner for Human Rights we developed human rights guidelines for poverty reduction strategies,<sup>15</sup> and worked more closely with UN country teams on economic and social issues. In regional meetings, we reviewed national case law and shared experiences of how different national courts and regional systems were addressing international commitments concerning economic, social, and cultural rights.

Not for the first time, bilateral agencies were often ahead of international agencies in this work. The Nordic countries had already applied human rights principles in their programming for many years. The Netherlands, DFID, the Swiss Development Cooperation programme and some other countries were not far behind.<sup>16</sup>

<sup>11</sup> For details of the work of the Special Rapporteurs on the right to education, the right to food, and the right to housing, as well as of the independent expert of the Commission on Human Rights on the right to development see: <http://www.unhchr.ch/>.

<sup>12</sup> WHO has published a series of papers on health and human rights: *Twenty Five Questions and Answers on Health and Human Rights* (2002), *WHO's Contribution to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance: Health and Freedom from Discrimination* (2001), *The Right to Water* (2003), and *International Migration, Health and Human Rights* (2003). See <http://www.who.int/hhr/activities/publications/en/>. For a summary of UNICEF's rights-based approach see: [http://www.unicef.org/publications/index\\_16271.html](http://www.unicef.org/publications/index_16271.html). For UNDP's goals in integrating rights into development see <http://www.undp.org/governance/humanrights.htm>.

<sup>13</sup> 'The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies', 2003, available at <http://www.undp.org/governance/docshurist/030616CommonUnderstanding.doc>.

<sup>14</sup> General Assembly Res. 55/2 (2000) at <http://www.un.org/millennium/declaration/ares552e.htm>.

<sup>15</sup> See above n. 9.  
<sup>16</sup> On the Swedish International Development Corporation Agency's approach to human rights: <http://www.sida.se/Sida/jsp/polopoly.jsp?d=5148&a=9175>. DFID has published several policy documents on their rights-based approach, including *Realising Human Rights for Poor People* (London, DFID, 2000) at [http://62.189.42.51/DFIDstage/Pubs/files/tsp\\_human.pdf](http://62.189.42.51/DFIDstage/Pubs/files/tsp_human.pdf). The Swiss Agency for Development and Cooperation (SDC) lists respect for human rights as a vital piece of their goal 'to promote the sound management of public affairs'. <http://www.sdc.admin.ch/index.php?navID=299&userhash=14402823&cl=e>.

Over the same period, human rights activists and NGOs in every region also turned more actively to the advancement of economic and social rights. Numerous new NGOs formed to work on these rights, and many of the established international NGOs—including both Human Rights Watch and Amnesty International—amended their mandates to permit them to give economic and social rights more attention.<sup>17</sup> My travels as High Commissioner brought me in contact with human rights activists and NGOs in every region who were finding innovative ways to hold their governments accountable for the commitments they had made under the International Covenant on Economic, Social and Cultural Rights, the Convention for the Elimination of Discrimination against Women, and the Convention on the Rights of the Child, each of which also include specific provisions concerning economic, social, and cultural rights.

I recall, for example, the way in which a wide cross-section of Brazilian NGOs prepared an alternative report to the UN Committee on Economic, Social and Cultural Rights in order to bring home the government of Brazil's failure to produce a required report to the Committee within the time allowed under the International Covenant on Economic, Social and Cultural Rights. This effort resulted in more constructive debate on rights throughout Brazil and caused the government to step up efforts to fulfil its international human rights commitments.

Development NGOs also moved towards using human rights. Many chose to integrate human rights within their programmes, a trend that accelerated after the shock of the Rwanda genocide in 1994. One of the first to do so was Oxfam International:<sup>18</sup> the choice of someone with my background to be its president—following in the illustrious footsteps of the economist Amartya Sen—is itself significant. I find it very positive that Amnesty International has launched a campaign to highlight violence against women and that, for the first time, Amnesty and Oxfam have co-operated in a joint campaign (for the control of small arms).

During Jim Wolfensohn's Presidency, the World Bank has greatly increased its attention to the relationship between human rights and development. In his

<sup>17</sup> In August 2003, Amnesty International amended their mandate to 'mak[e] the advancement of ESCR an integral part of the movement's human rights strategy' ([http://www.amnestyusa.org/activist\\_toolkit/amnestyinaction/esc\\_rights.html](http://www.amnestyusa.org/activist_toolkit/amnestyinaction/esc_rights.html)). Human Rights Watch has also increasingly focused on economic, social, and cultural rights (<http://hrw.org/doc/?t=esc>). See K. Roth, 'Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization', 26 *Human Rights Quarterly* 63 (2004). Several NGOs focus predominantly on ESC rights such as the Center for Economic and Social Rights ([www.cesr.org](http://www.cesr.org)) and ESCR-Net (<http://www.escr-net.org/EngGeneral/home.asp>).

<sup>18</sup> See Oxfam International's *Strategic Plan 2001–2004*, available at [http://www.oxfam.org/eng/pdfs/strat\\_plan.pdf](http://www.oxfam.org/eng/pdfs/strat_plan.pdf), and the address given by Oxfam International Policy Director Jeremy Hobbs at the 2004 World Social Forum in Mumbai, India: [http://www.oxfam.org/eng/pdfs/doc040119\\_wsf\\_human\\_rights\\_jeremy\\_speech.pdf](http://www.oxfam.org/eng/pdfs/doc040119_wsf_human_rights_jeremy_speech.pdf).

address to the Board of Governors of the Bank in Dubai, President Wolfensohn noted that we face an immense challenge in creating a new global balance 'Human rights lie at the heart of that global challenge...'. The close links forged with my Office as High Commissioner have been continued with 'Realizing Rights: the Ethical Globalization Initiative'. The participation of President Wolfensohn and his senior colleagues at the Bank in the March 2004 New York Law School conference on 'Human Rights and Development' is a recent manifestation of that relationship. In his address to the Conference, Roberto Danino, Senior Vice-President and General Counsel of the Bank, made clear his view that the economic and political restrictions reflected in the Bank's Articles do not inhibit a proactive and explicit consideration of human rights as part of the Bank's work. Following the conference, President Wolfensohn assigned Mr Danino the task of co-ordinating further thinking on the Bank's approach to human rights. More recently, President Wolfensohn invited me and my colleagues to the Ethical Globalization Initiative to comment on the draft World Bank management Response to the Extractive Industries Review, and I was the keynote speaker at the Bank's Workshop on Gender-based Violence in November 2004. I have every confidence that this very useful dialogue with former President Wolfensohn and the senior officials of the Bank will continue.

In my own view, these developments indicate that a sea change is occurring in the relationship between development and human rights. At the same time, no informed observer can avoid noting that the process of integration has not been an easy one. Whether you consider the UN's difficulties in mainstreaming, the experience of NGOs, or the frustrations felt by many government development officials, we are far from arriving at a position where those working in the human rights tradition and those working in the development tradition feel they speak the same language. If mutual curiosity has increased, confidence is far from being safely established. Let me turn therefore to the reasons why development experts and officials who implement development policies remain somewhat ill at ease with human rights, or at least unconvinced at present that they are helpful.<sup>19</sup>

<sup>19</sup> Interestingly, many of the points I mention were raised in an article by the Executive Director of Human Rights Watch, see Roth, n. 17 above. His aim was to explain why, in certain respects, it remains more difficult to campaign for economic and social rights than civil and political rights. The interest, not to say controversy, which his article generated signals perhaps that the human rights community is beginning to address many of the criticisms of the human rights framework that development specialists and economists have made. Here too I detect progress. See the following exchange: L. Rubenstein, 'How International Human Rights Organizations can Advance Economic, Social, and Cultural Rights: A Response to Kenneth Roth', 26 *Human Rights Quarterly* 845 (2004); Mary Robinson, 'Advancing Economic, Social, and Cultural Rights: The Way Forward', 26 *Human Rights Quarterly* 866 (2004); and K. Roth, 'Response to Leonard S. Rubenstein', 26 *Human Rights Quarterly* 873 (2004).

### 3.3 CRITICISMS OF HUMAN RIGHTS

Three principal criticisms of the human rights approach are made by those who work in the field of development.

#### 3.3.1 Human Rights Are Political

Development experts often feel that human rights are 'political', by which they mean that they are overly focused on the state, and use adversarial and judgemental techniques to monitor state performance that politicize the development process unhelpfully. Connected to this is the complex issue of sovereignty. They argue that, by appealing to international standards, human rights advocates diminish the notion of national sovereignty, irritating national governments and undermining efforts to make them nationally responsible. Without local ownership, critics say, development cannot be achieved.

This claim is worth a more extended discussion than can be had here. I make three remarks. The first is that the human rights framework does focus first and foremost on the responsibilities of states; and it does indeed have an adversarial critical tradition. At the same time, more human rights organizations now also work with states on issues of reform and in doing so they come closer to the methodologies and programmes of development agencies. Human rights organizations are broadening their work to address other actors too, notably business, and this trend can also be observed at every level—international, national, in civil society, and so forth.

My second remark concerns the issue of sovereignty. The human rights approach does put the state at the centre of responsibility. This means that human rights advocates consider national governments, and national societies, to be the key locus of action. It is a misunderstanding to conclude that, because the human rights system draws legitimacy from international standards, it is essentially interested only in the international dimension. The importance of international standards is that they establish an agreed objective, a minimum—rarely a maximum—standard, to ensure that all people are protected in key areas of their lives. There is a benchmark, in other words, for states to attain—but this is not the end goal. The end goal is the creation of a government and a society (and in our existing legal order that means national government) that protects rights because both governments and members of society are adequately accountable.

My third observation is to note that the issue of sovereignty presents itself just as acutely in the work of development agencies. Not surprisingly: in a world of highly unequal nation states, it is not easy to escape. Development

agencies are regularly accused of promoting policies that reflect their cultural traditions or serve their national interests at the expense of smaller and poorer states. They are often accused of failing to address questions of abuse, because they are politically sensitive, even though they undermine the credibility of their development strategies. The merit of the human rights framework in this respect is that it makes judgements on performance in relation to objective standards that have been agreed by the international community as a whole—including, in most cases, the government in question. As a result, the case for arbitrariness and bias, or abuse of unequal power, is that much more difficult to make.

#### 3.3.2 Human Rights Are Unrealistic

A second criticism is that human rights advocates want instant reform, reform by decree. Critics argue that human rights reformers overstate the importance of law and presume the state has a capacity that it often does not have. They are accused of failing to take proper account of underlying social and cultural causes of underdevelopment and failing to understand that development is necessarily a long-term process, extending over several generations. They are accused of ignoring the fact that successful reform processes must cope with numerous failures and political backsliding.

To some extent I think this used to be a fair criticism; however, the situation has been changing rapidly. Many human rights organizations now recognize the need to go beyond 'naming and shaming' alone. They are engaging with government reform processes, in capacity building through human rights technical co-operation programmes, and in working out how to co-operate with government while retaining their critical independence. Their thinking is evolving and they are gaining experience. At the international level, this is also true. I believe the Office of the High Commissioner for Human Rights, for example, is now in a much stronger position to contribute in practical and useful ways to development programmes than it was just a few years ago. We are learning how to contribute to large multi-dimensional development programmes and how to complement the work of other agencies.

The movement is not all one way, of course. Development specialists—from the World Bank outwards—are today much more conscious of the importance of governance than they used to be. The link between transparency, accountability and political inclusion—all values central to human rights—is very widely recognized, as is the frequently devastating impact on development of corrupt and oppressive rule.

With respect to 'unrealism', I would also add that development agencies are not immune from the same charge. They are frequently accused of

failing to co-ordinate their programmes, failing to consider underlying social and economic conditions, preferring simple even faddish fixes to long-term strategic investment and commitment, etc. Though to a less extreme degree than human rights campaigners, they, too, are said to apply conditionality insensitively, and to withdraw aid whenever it is politically expedient to do so. The point is that these are inherently difficult policy questions: I do not have plain answers to any of them. My aim is to point out that development agencies and human rights organizations have here elements of an agenda in common. Neither the fault, nor the virtue, are all on one side.

### 3.3.3 Human Rights Are Abstract, Cannot Be Applied Practically

The third criticism I hear is a rather specific one. It is usually made by economists who say that human rights advocates appeal to high principle but cannot apply themselves to practical decision making. A critic of this sort claims that economists and administrators must regularly choose one 'good' outcome at the expense of another because there is not enough money to go round; accepting such 'real world' constraints, they rationalize their decisions as responsibly as they can. By contrast, it is argued, human rights advocates are not only unable to choose between two 'goods' using their principles; they refuse to do so or to acknowledge the real constraints of scarcity, but say minimum standards must be met immediately, across the board. In this respect, the critic goes on, human rights advocates are irresponsible: they claim too much, they refuse to trade, they will not address the problem of resource limits—in short, they are all norms and no teeth.

This criticism also deserves a more extended answer than I can give here. In fact I agree that human rights advocates often find it difficult to trade—to negotiate, to do deals—but believe this is not (or is not necessarily) because they are unrealistic or 'other worldly' in their thinking. The human rights framework is systemic. Its ambitious aim has been to develop a body of principles that, taken together, provide points of reference for all cases where issues of rights arise. It is the systemic nature of human rights which explains why advocates of rights often speak of their universality and indivisibility. This is not jargon—it highlights the belief that respect for any right cannot be achieved in the absence of respect for other rights.

As a result, however, rights advocates find it difficult to bargain—to set aside protection of one right in favour of protecting another. Unlike development, human rights is not a pragmatic tradition. And since human rights advocates are often unfamiliar with other traditions—just as other traditions are unfamiliar with the systemic nature of human rights thinking—difficulties of communication are almost inevitable.

For at least three reasons, however, I do not accept that the human rights approach is inherently unrealistic. First of all, the human rights standards do take account of resource constraints and were drafted in a quite practical spirit—governments would not have consented to them otherwise. I cannot give you many examples here, but to illustrate I would point to the increasingly skilful way those working for child rights are analysing national budgets to see whether the allocation for education is being progressively implemented, or whether there is new expenditure for example on unnecessary military equipment.

Secondly, I believe that a lot of good work is now being done that in time will enable decision makers to draw upon human rights standards in ways that will help to improve the transparency and accountability and *quality* of their decisions. I do not say that all decisions will be assisted by referring to human rights; but many could be. Taking account of human rights obligations will often suggest indicators that can assist decision making; and evaluating decisions against human rights criteria will often assist decision makers to identify where their policies are likely to produce, or have produced, discriminatory outcomes or outcomes that are otherwise undesirable.

My third remark concerns the claim that human rights is 'too normative'. It is true that the human rights system is based on norms, on values. In my view, so it should be. My comment is really that other systems are also. Let me again be a little provocative and suggest that classical economics is open to a very similar charge. Its notion of economic man, or economic woman, postulates a norm of human behaviour that is highly unrealistic, though useful. I do not believe for one moment (and nor do most economists) that most human beings act in practice in ways that maximize their economic advantage. Altruistic behaviour is commonplace, as indeed are financial incompetence and simple lack of interest in economic matters. In this respect, human rights is not a uniquely normative approach and its strengths and weaknesses should not be judged as if it was.

### 3.3.4 Human Rights Cannot Cope with Time

A related criticism is that the human rights methodology proceeds in a single tense, the present, and is unable to cope with time. The notion of 'progressive realization', for example, seems unilinear: it assumes that progress must be continuous, and that it is never acceptable for policy makers to 'go backwards' at one point in order to go forwards later on. This is important for development economists, who take it for granted that most development programmes cause damage en route, either for a minority or for the majority of long-term beneficiaries. Further, they argue that human rights analysts are often unwilling to deal with differential advantage: when a minority suffer

from the impact of progress, they tend to condemn this, irrespective of the scale of benefits for the majority or the benefits that those who suffer immediately may eventually receive.

My own view is that these are interesting questions; I tend to agree that human rights analysts have not thought enough about them. Their significance can easily be exaggerated, nevertheless. The great merit of the human rights approach is that it draws attention to discrimination and exclusion. It permits policy makers and observers to identify those who do not benefit from development, and refuses to marginalize their interests by reference to benefits that are received by others, or may be received in the future. This is extremely important in this context, precisely because so many development programmes have caused misery and impoverishment inadvertently or out of sight, because planners only looked for macro-scale outcomes and did not consider the consequences for particular communities or groups of people. The ability of human rights to force attention towards those who lose out is a specific contribution they can make to development planning.

### 3.3.5 Law and Poor Don't Mix

A final criticism of human rights organizations is less often made explicitly, at least by development professionals, but is of great relevance for the next phase of work that human rights organizations should prepare for.

In general, protection of human rights is most easily, most successfully, achieved when governments are well resourced, responsible, and respectful of the rule of law. Equally, individual protection is more easily achieved where those whose rights are threatened are well educated, well-connected, and well off. Except in the case of industrialized totalitarian regimes, the worst violations tend to occur where governments are unskilled and lack resources and where those at risk are in the same position. But everywhere, however competent they are, and even if they are committed to protecting rights, governments find it difficult to adequately fulfil their obligations towards the very poor, and those who are most alienated and marginalized.

This is a problem for development activists but much more so for human rights organizations, precisely because human rights law does place explicit emphasis on the responsibility of states, while it is characteristic of many marginalized communities that they don't look towards the state to meet their needs—on the contrary many positively flee in the other direction. Where a relatively small number of people are affected, as in most industrialized societies, the problem should be manageable (though it remains an intellectual challenge that must be worked through). In large areas of the world, however, great numbers of people are poor and their governments clearly lack resources as well. The people in question not only look primarily

to their own communities for support and assistance; in addition they are not aggregated in large organized social units that can be easily reached and, being extremely vulnerable, they cannot afford to confide in, or easily trust, outsiders who claim to want to help them. To create conditions in which the human rights of very poor or marginalized communities can be protected, governments will need to find new ways of reaching into and serving such communities, and human rights organizations will need to find new ways of winning their trust. In my view, these things can probably only be done by building alliances with organizations that have a long-term presence in such communities—religious organizations, community groups, representatives of social movements, development NGOs, etc.<sup>20</sup>

This is a challenge which human rights organizations have only recently understood. It is also a challenge governments need to face. It is another argument in favour of convergence. If we share an interest in ending poverty and creating more inclusive, prosperous, and fairer societies, we all have an interest in working more closely together.

### 3.4 WHERE HUMAN RIGHTS ADDS VALUE

Overall, I suggest there is gathering evidence of *mutual* need. Development agencies have adopted and integrated within their policies some key values and operational terms. Some are explicitly promoted in PRSPs, though they are rooted in an older tradition which first emerged among development NGOs in the 1970s and were subsequently adopted by the OECD in the early 90s. Key terms include:

- inclusion and non-discrimination
- national and local ownership
- accountability and transparency
- participation and empowerment.

These are also values that underpin the fundamental principles of human rights law—as Jim Wolfensohn has pointed out. In his chapter in this volume he notes that he had read through the principal human rights documents beforehand and 'could see that [human rights] could have been the framework which led us to the poverty reduction strategy approach, or the comprehensive development framework'. He went on to emphasize the interconnectedness of rights, observing that 'you need to have all the different elements functional because if you don't, you're going to fail because of inadequate attention to those things which will make the achievement of

<sup>20</sup> International Council on Human Rights Policy, *Enhancing Access to Human Rights* (Geneva, ICHRP, 2004) at <http://www.ichrp.org>.

your objectives on poverty attainable'. 'So,' he went on, 'there are an enormous number of parallels between what we have [in the development community] arrived at over 50 years and the integrated rights-based approach to world development which is so prominent in the human rights literature these days.'<sup>21</sup>

This observation needs to be given attention. As I have suggested, we need to see the system of human rights clearly for what it is in order to understand what it can offer. It is essentially an ordered body of principles, incorporated in international law, which therefore reflects the character of international law (based on states and state sovereignty), that elevates the importance of individual rights (and also responsibilities) in relation to the state, and the state's responsibilities (and by implication rights) vis-à-vis the individual. As I noted in the Presidential Address I gave to the World Bank in 2001:

A rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. The rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations that I have mentioned. The principles in question are: participation, empowerment, accountability, non-discrimination, and express linkages to international human rights norms and standards. But it should be emphasized that at the heart of a human rights approach must be the legal character of the international treaties that creates rights and duties.<sup>22</sup>

Drawing from existing research and development experience, we might say that a human rights approach provides:

- enhanced accountability;
- higher levels of citizens' empowerment, ownership, and free, meaningful, and active participation;
- greater normative clarity and detail;
- easier consensus and increased transparency in national development processes;
- a more complete and rational development framework;
- integrated safeguards against unintentional harm by development projects;
- more effective and complete analysis; and
- a more authoritative basis for advocacy.

Rights lend moral legitimacy and reinforce principles of social justice that already underpin much development thinking. They help shift the focus of analysis to the most deprived and excluded, especially to deprivations caused

<sup>21</sup> J. D. Wolfensohn, Chapter 2 in this volume.

<sup>22</sup> Note 6 above.

by discrimination. They require those involved in development processes to provide information and a political voice for all people. They affirm that civil and political rights need to be exercised in practice as well as theory in the course of successful and legitimate development, and that economic, social, and cultural rights need to be recognized and implemented as human rights, rather than aggregated in a general way or idealized.

There is an answer, I believe, to the important question posed by Jim Wolfensohn.<sup>23</sup> What does recognition of a 'right' to health or education add to the high priority already placed on improvements in health and education as a matter of the Bank's existing development strategy? The recognition of a 'right' to health or education, arising out of treaties and other international commitments, implies corresponding legal obligations of national governments as well as of the international community. As a consequence of that recognition, those who are poor and marginalized are empowered, and their participation rendered effective. Thus, as only one example, the participation of civil society in the PRSP is necessarily enhanced where it can be framed in terms of enforcement of legal obligations.

In my view, the most defining attribute of human rights in development is its focus on accountability. I have in the past called for a more critical approach to the integration of human rights into the work of development—one that asks hard questions about obligations, duties, and action. Adoption of human rights principles and methods will require all partners in the development process—local, national, regional, and international—to accept higher levels of accountability. Establishing ways to operationalize and evaluate institutions and mechanisms for accountability in development programming is therefore a defining challenge in the years ahead. I recognize the important conceptual work produced by the Bank in this area.

Let me recall again why human rights values are considered indivisible and universal. This is not a matter of jargon: advocates emphasize them precisely because they believe that respect for any right cannot be achieved in the absence of respect for other rights. A hungry child cannot successfully educate herself. A sick man cannot exercise his right to work.<sup>24</sup>

Enthusiastic advocates of human rights have perhaps too often thought of themselves as bringing 'good news' to development professionals, however—a 'new and better way' of doing things that, by implication at least, should cause such professionals to sweep aside some of the practices that they have painfully fashioned from long experience. This is significant when we consider the areas of unease that I have described. For, if human rights values really are universal, we should be astonished to discover that good development

<sup>23</sup> Chapter 2 in this volume.

<sup>24</sup> International Council on Human Rights Policy, *Duties sans Frontières: Human Rights and Global Social Justice* (Geneva, ICHRP, 2003) 17–22, available at <http://www.ichrp.org>.



practice did not fairly accurately reflect them. In this sense, I think it is inappropriate to speak of 'the human rights approach' as if it is wholly new or has revolutionary implications. I believe this is a misunderstanding of the situation we are in. Convergence is the better term because essentially it is more accurate. Truly good practice—in government, in development, in other domains—tends everywhere to be consistent with human rights principles and values and, to the extent that this is so, the question we need to ask is: What *additional* benefits can fuller use of human rights principles and methods bring? The question is less one of replacement than enhancement and improvement. One distinct benefit is a 'buy-in' by civil society groups through having tools which empower them.

The Commission on Human Security describes the concept of empowerment, as:

People's ability to act on their own behalf—and on behalf of others... People empowered can demand respect for their dignity when it is violated. They can create new opportunities for work and address many problems locally. And they can mobilize for the security of others.<sup>25</sup>

I saw this for myself in every country I visited as High Commissioner. Human rights groups, women's groups, environmental movements, child advocates, minority groups, those tackling poverty were all increasingly seeing the value of applying their governments' human rights obligations to budget analysis, legislation, and social policies to expose failures to implement progressively rights to the highest standards of health, to education, and adequate housing among others. They were also challenging money spent on unnecessary military equipment or projects benefiting only a small elite. Invariably, the work was under-resourced, undervalued, and often resented by those in power. But change was possible.

Now these groups have additional tools available in the commitments both developed and developing countries have made to achieve the Millennium Development Goals by 2015, which will be reviewed and debated at the General Assembly in 2005.

An opportunity presents itself to reinforce the empowerment of grass-roots organizations in every region by linking two processes that provide them with tools of accountability. We should help them to link their country's undertaking to achieve the Millennium Development Goals, and the country's legal commitments to progressively implement economic and social rights under the relevant international treaties, together with developed countries' commitment to substantial new resources for financing this development.

To date, large parts of civil society have not been actively engaged in promoting the MDGs and mobilizing to pressure their governments to take

<sup>25</sup> Commission on Human Security, *Human Security Now* (New York, United Nations, 2003) 11, available at <http://www.humansecurity-chs.org/finalreport/index.html>.

effective action. Indeed, my experience of speaking to audiences in the United States, including political scientists, sociologists, and economists, is that a substantial majority has never heard of the MDGs! Some human rights groups have expressed concern that the Millennium Goals sideline more pressing issues or ignore previous commitments such as the women's rights platform of the 1990s including violence against women and reproductive rights. Another criticism is that the MDG process is top-down. Civil society was not involved in formulating the MDGs which are seen by some as an attempt at a one-size-fits-all approach.

While I recognize that these are legitimate concerns, we should not forget that the MDGs were placed within the context of commitments that governments reaffirmed in September 2000 in the Millennium Declaration, to promote human rights, democracy, and good governance. These commitments include:

- to respect and fully uphold the Universal Declaration of Human Rights;
- to strengthen the capacity of all countries to implement the practices of democracy and human rights;
- to implement the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- to ensure respect and protection for the rights of migrant workers and their families;
- to work collectively for a more inclusive political process, allowing genuine participation by all citizens in all countries; and
- to ensure the freedom of the media and public access to information, which are vitally important to achieving the development goals and should be given greater prominence.

The assessment of progress on the MDGs to be carried out in 2005, and the debate in the General Assembly in September 2005, provide an ideal context for the further convergence of those working in the fields of human rights and development.