

**A Human Rights
Perspective
on Development**



Omar Grech

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1. STARTING POINTS

1.1.

Purpose of this paper

The purpose of this paper is to describe and explore a human rights perspective on the issue of development. Too often the issue is approached through the 'lens' of charity and voluntary commitment(s) but, in recent years, the legal dimension of the development debate has grown in importance offering a significant challenge to traditional ways of thinking and acting.

The paper is written for use by development and human rights activists in their education work and by educationalists in their development work. Like those others in this series, the paper seeks to bridge the gap between academic and legal thinking and writing and more popular approaches.

1.2

What are Human Rights?

1.2.1. A simple definition

Human rights may be simply but usefully defined as those **rights which every individual possesses simply by virtue of being a human being**. Such a definition clearly centres on the importance, dignity and worth of the human being. I have human rights because I am a human being, not for any other reason. This is, in fact, a revolutionary statement because it considers the individual as a source of rights in himself.

1.2.2 Human rights different from other rights

Human rights are, therefore, different from all other rights that individuals are granted or acquire. If we think of the normal ways in which we acquire or are granted rights in our own national legal systems, we note that **usually it is the state that is the source and**

origin of rights. It is the state that, through the laws it enacts, grants us certain rights and allows us to acquire certain other rights.

Let us look at the ways in which we normally acquire or are granted rights. We usually acquire rights through contracts or agreements. For instance, we acquire rights over property when we buy a book or food or a house. Through the contract (written or oral) we acquire rights of ownership over the book, the food, the house. Therefore, the source of acquired rights is agreement between persons as allowed by the legal system of the state.

If we consider the ways in which we are conferred rights, we note that the state through its legislation gives us certain rights. Other laws may take away the rights given to us by the state. In other words, what the state gives, the state may take away.

If we take a simple example from everyday life, we may perhaps understand this better. In building law, the state may enact a law that says that we may only build up to five storeys on the land which we own. A subsequent law may change this and say that we only have the right to build three storeys on our land. Another example may be taken from inheritance law. A particular law may lay down that in the absence of a will or testament the property of a deceased person shall devolve on his children, if he has any. Later on the state may legislate that the property of a deceased person shall devolve on the wife or the brother. The right to inherit in the absence of a will or to build on our land is granted to us by the state and the same state may alter or revoke such rights.

All rights we have are either acquired by us through agreement or given to us by the state. The only exceptions are human rights, which, as we saw above, are not given to us by the state nor do we buy them. We own these rights as from birth because we are born human.

1.2.3 Inalienable, Universal and Indivisible

Human rights were characterised by the 1986 United Nations World Conference on Human Rights as being inalienable, universal and indivisible. The Conference considered that these three qualities were unique to human rights and that they summarised the nature of these rights.

Inalienable

In Roman law one of the words used to describe sale was alienation. Therefore in Roman law to sell was

also referred to as to alienate. Something which can be sold or transferred is *alienable* i.e. capable of being transferred. Consequently, the opposite of alienable is inalienable. Therefore, inalienable is an adjective that describes something which cannot be sold, transferred or parted with in any way.

If we refer back to the definition of human rights as rights we have simply by virtue of our humanity, the concept of inalienability becomes clearer. If we have human rights simply by virtue of our being human we logically cannot give up or part with these rights as long as we remain human beings.

The rights we acquire from other persons or which we are granted by the state, unlike human rights, may be transferred or given away. For instance, we may sell our rights over property; we may give up our right to an inheritance etc.

The notion of inalienability has important practical aspects for human rights. As a result of the inalienable nature of human rights **no person may give up any part or any one of their human rights.** Therefore, a state which breaches the human rights of any of its citizens may not claim that the citizens or any one of them has agreed to give up the rights breached. For example, if a state fraudulently or forcefully convinces a person to sign a declaration stating that the person is agreeing to allow the state authorities to deny him his right not to be subjected to degrading punishment, such a declaration would have no validity.

Universal

The most well known document in international human rights is the

Universal Declaration of Human Rights (to which we will return later). The title of this declaration incorporates the term universal. This underlines the importance of the notion of universality to human rights.

Dictionary definitions of the word “universal” include the phrase “applicable to all”. This is perhaps the most useful definition of the word universal in so far as it applies to human rights. Once again it is helpful to refer back to the definition of human rights as rights belonging to individuals by virtue of their humanity. If these rights belong to us simply because we are human beings, it follows that **all human beings own these rights to the same extent.**

The notion of universality has been, and continues to be, strongly resisted in some quarters. Some argue that human rights are subject to cultural relativity. This means that human rights are to be interpreted according to the culture in which they exist or operate. This notion is particularly supported in some parts of Asia and Africa.

However, the number of states, which has expressed support for the Universal Declaration of Human

Rights, indicates that there exists very widespread approval for the notion that human rights are universal.

Indivisible

“Human rights” is a general term that encompasses a wide (and widening) range of particular rights that together are termed as human rights. These rights range from the right to life, to the right to freedom of expression, to the right to education, to the right to food.

One of the long-standing issues in human rights revolves around which of the range of rights included in the general term “human rights” should be given priority. It is almost inevitable that since human rights are presented as a list of rights, questions as to which of the listed rights should come first arise.

However, the notion that human rights are indivisible challenges and refutes the idea of a hit parade of rights. Indivisibility means that human rights are one and each of the rights is of equal value. Indivisibility means that **each and every right is of equal importance and deserves equal protection and promotion.**

2. THE DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

2.1

Traditional international law

International law is essentially the law that regulates the interaction between states and was traditionally referred to as the Law of Nations. Until the League of Nations was established, international law dealt exclusively with states and with the relationship between states.

Lawyers writing at the beginning of the 20th century maintained that human rights not only did not, but also could not, enjoy the protection of international law since international law concerned itself solely with states and thus could not confer rights on individuals.

The accepted principle was that the state was absolutely sovereign

within its borders. This meant that **the way a state treated its own citizens was purely a matter of domestic jurisdiction and therefore domestic law**. No other state or international organisation could interfere in how a state treated its own citizens.

Throughout the mid to late 19th century a vigorous campaign at local and international level was waged in order to make slavery and the slave trade illegal. This campaign, which was eventually successful, may be seen as sowing the seeds for the international legal protection of human rights.

2.2

Changes since the League of Nations

The end of the First World War saw the creation of the League of Nations, a precursor to the United Nations. Among its other functions, the League of Nations was concerned with the protection of minorities. The end of the war resulted in the creation of a number of new states, mostly in Europe, with significant ethnic minorities within the borders of these new states.

The League's concern was that there should be no discrimination against these minorities. Therefore, in this regime for the protection of minorities we note an early example of the erosion, albeit very limited, of the absolute sovereignty of states. **States became responsible under international law for the way they treated minorities living within their borders.**

The inter-war period saw another step in the international protection of human rights with the creation of the International Labour Organisation (ILO). The ILO was created in 1919 as an autonomous part of the League of Nations with the task of protecting workers and improving their working conditions. The ILO promoted the adoption of international agreements that set minimum standards for the protection of workers' rights. Thus, states became responsible under international law for the way in

which its workers were treated within their borders.

Notwithstanding this limited progress in international protection of some specific human rights, a real breakthrough was still to be achieved. The way states treated the vast majority of its citizens was still beyond any form of international interference or control. This fact is particularly well illustrated by the way in which Nazi Germany treated its Jewish population and its disabled from 1933 onwards.

2.3

World War 2 and Nuremberg

The terrible atrocities committed during and before the Second World War provided the international community with an opportunity to reflect on whether international action should not be taken to avoid such atrocities in the future. Massive breaches of human and humanitarian rights were very evident and deeply disturbing.

The international community decided to act on two fronts. In fact these two fronts are but two sides of the same coin: human rights and human responsibilities.

As mentioned above, traditionally international law had no place for individuals who had no rights under international law but, equally, no responsibilities. In this context the Nuremberg Tribunals of 1945/6 are of crucial importance, no matter what one thinks about the way they were conducted or about the legitimacy of conducting the trials at all.

The Nuremberg Tribunals admittedly dealt with only a few of the major Nazi politicians and

military commanders but the principles established in the Nuremberg judgments have had a profound effect on the development of international human rights law. The most important principle established in Nuremberg was that **individuals have responsibilities and obligations under international law**. Therefore individuals who commit grave breaches of human rights are responsible under international law for such breaches and they are liable to be punished for them.

The human rights side of the coin was immediately evident in the Preamble to the Charter of the United Nations which points out that one of the aims of the UN is that of "encouraging respect for human rights and for fundamental freedoms". The Charter as a whole contains numerous references to the term human rights but there is no definition or description of the term. There clearly was a need to explain what was meant by the term human rights.

2.4

Universal Declaration of Human Rights

The task of defining human rights fell to the Commission on Human Rights established by the General Assembly of the United Nations. The Commission worked for two years on formulating the Universal Declaration on Human Rights that was adopted on the 10th December 1948.

The Declaration is of special interest in a number of respects. The first point of interest is the Preamble to the Declaration that describes the context, the values and the key ideas that underpin the document. In particular the Preamble refers to the “inherent dignity” of every individual and of “inalienable rights”. These words re-affirm the idea that human rights belong to every individual by virtue of her/his humanity. The Preamble also introduces the notions of gender equality by referring to the “equal rights of men and women”. It also immediately emphasises the equal importance of political and economic rights with phrases such as “freedom of speech and belief and freedom from fear and want”.

The Declaration itself defines the rights and freedoms to which all individuals, without distinction, are entitled. Unlike later human rights documents and instruments, the Declaration brings together both civil and political rights (such as freedom of assembly, of expression and the right to life) as well as economic and social rights (such as the right to work and the right to education).

Briefly summarised, the Declaration contains 30 articles; 19 articles dealing with civil and political rights (from Art. 2-21) and eight articles with economic, social and cultural rights (Art. 21-28). Although under international law Declarations (unlike Conventions, Covenants, Treaties and Protocols) are, in principle, not legally binding, the Universal Declaration has nowadays acquired considerable legal force. It is widely acknowledged that most of the Declaration is now part of international law while some lawyers maintain that the whole Declaration is binding on states under international law.

2.5

The International Human Rights Covenants

Following the adoption of the Declaration, the UN Commission on Human Rights started work on an International Covenant on Human Rights. This Covenant was intended to render the rights listed in the Declaration legally binding on states. The Covenant, unlike the

Declaration, would impose direct legal obligation on states.

Originally, the Covenant was intended to be a single text, including both civil and political rights as well as economic and social rights. This would have continued

the example set in the Declaration with a single document including all human rights. However, by the time the Commission started working in earnest on this document, human rights fell victim to the political requirements of the Cold War. The Western bloc increasingly wanted to give preference to civil and political rights while the Communist bloc insisted on the primacy of economic, social and cultural rights. The notion of the indivisibility of human rights was challenged seriously and persistently.

These political rivalries and Cold War dynamics delayed the drafting of the Covenant and eventually a decision was taken to split the single text into two Covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These two Covenants were adopted in 1966, 18 years after the adoption of the Universal Declaration.

The two Covenants only came into force in 1976, a further 10 years after they were adopted. As already noted, they cover different types of

human rights. However, **both Covenants bind states that become party to them to guarantee the rights listed in the Covenants.** Both Covenants also oblige states to present reports on a periodic basis explaining how the state concerned is complying with its obligations and what steps are being taken to fulfil any obligations which are still pending. These reports are presented to, and considered by, two separate United Nations committees.

The ICCPR also allows for other implementation mechanisms through the so-called 'inter-state complaint'. Through this mechanism, states which are parties to the Covenant and which have specifically accepted this mechanism may make complaints against other states that are likewise parties to the Covenant and have also accepted the same mechanism. This complaint has not been very useful or used. There is also an Optional Protocol that allows citizens of states, which have become parties to this Protocol to complain against their state for breaches of the ICCPR.

2.6

The Conventions on specific issues

The United Nations has promoted these past 50 years the adoption of a number of treaties and conventions dealing with specific human rights issues. This has been important because it has both kept human rights on the agenda of the UN as well as provided legal protection for individuals suffering racial and gender discrimination, torture, as well as for specific categories, such as children.

If we take a chronological look at some of the human rights treaties adopted in the past 50 years we note the following:

- Convention on the Elimination of All Forms of Racial Discrimination 1965
- Convention on the Elimination of Discrimination Against Women 1979

- Convention Against Torture 1984
- Convention on the Rights of the Child 1989

All of these Conventions require states to give legal protection to the rights that they list. States are also required to present reports to the monitoring mechanisms established by the various Conventions. For example, state parties to the Convention on the Rights of the Child must present periodic reports to the Committee on the Rights of the Child, describing the legal and administrative framework within that particular state for protecting the rights of the child and to ensure implementation of the rights mentioned in the same Convention.

A criticism of these Conventions is that the reporting mechanisms they utilise are weak and fail to ensure adequately the implementation of the rights contained in the various Conventions. For instance, none of the Conventions allow for an automatic right of individuals, whose convention rights have been breached, to bring a claim against the state before an international tribunal.

In this context, the developments occurring in certain regional human rights mechanisms are of particular importance. The first such mechanism was the 1950 European Convention on Human Rights (ECHR). This mechanism allows individuals who are within any state party to the Convention and whose rights are breached by that state to bring a case against that state before the European Court of Human Rights. The ECHR created an efficient and effective human rights

court for member states of the Council of Europe that now covers most of the European continent. A limitation of the ECHR is that the rights protected by it are limited to civil and political rights, thus excluding any reference to social and economic rights.

A similar regional system was adopted in the American continent with the Inter-American Convention on Human Rights. This Convention copies the European model with a functioning human rights court.

Another interesting development, insofar as regional systems are concerned, occurred with the adoption of the African Charter on Human and People's Rights 1986. This convention is of interest in a number of respects. It deals both with human rights and human duties and it lists both rights and duties of the individual. It also gives a specific context to the human rights listed with reference to episodes in African history, such as slavery and the slave trade as well as colonialism. Moreover, the Charter not only lists individual rights but also includes 'people's rights'. This is especially remarkable in the context of the right to development since we find references to the equality of all peoples while the right to development is specifically declared in Article 22:

"All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind."

2.7

The International Criminal Court

A final and crucial development in international human rights law occurred in 1998 with the adoption of the Statute of the International Criminal Court (ICC). The Court, which started operating formally in 2003, is intended to try individuals alleged to have committed any one of the following crimes:

- Genocide
- Crimes against humanity
- War crimes

These crimes constitute the most serious breaches of human rights and the establishment of the ICC is a step in the direction of ending impunity for any individual guilty of committing them. Importantly, the Statute of the ICC makes it clear that the official position of the defendant (for example as President of the Republic, Prime Minister, parliamentarian or military commander) may not bar the Court from trying him/her.

Article 27 states:

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

Individuals with political and military power have through history been guilty of massive human rights abuses. **These individuals, with the power of the state at their command, have seldom been punished for their crimes.** The ICC attempts to act as a deterrent as well as to end impunity.

2.8

Conclusion

In this section we gave a brief look at how human rights have gradually attracted more international protection. Until the early 20th century human rights had virtually no international protection. Increasingly, the protection and

observance of human rights has become a matter of legal obligation for states. With the ICC, individuals who commit grave breaches of human rights are liable to be punished by an international tribunal.

3. THE RIGHT TO DEVELOPMENT

3.1

Colonial and post-colonial impact

The UN came into existence at a time when the number of independent states in the world was very limited. The San Francisco Conference, which led to the adoption of the UN Charter, was attended by 50 states. By 2005 the number of member states rose to 191.

The increase in the number of member states is a graphic illustration of how the world has changed over the past 60 years. This change in world politics is owed to a number of factors. A crucial factor was decolonisation. From the 1950s to the late 1960s and beyond, a large number of states, mostly in Africa and Asia, gained their independence from their (mainly) European colonisers.

The UN Charter contains, as we have seen, numerous references to human rights. However, the Charter does contain one - rather oblique - reference to development. Article 56 requires Member States to "take joint and separate action" for the achievement of the aims of the UN as defined in Article 55. Among the aims of the UN in this Article is that of achieving "conditions of economic and social progress and development".

When the UN started operating, the concerns of the UN mirrored the concerns of its member states that were, in effect, European, American and predominantly white. As the

UN became more varied and started welcoming African and Asian states, the Euro-centric debates became, gradually, more pluralistic. The UN had to reflect that more diverse composition.

This post-colonial shift in the UN was evident both in the topics with which the UN dealt as well as the way in which topics were discussed. A key concern of the newly independent states was development. These states were aware that they were economically and socially less developed than their former colonisers. They also felt that the former colonisers had a moral obligation to aid their development, having exploited their resources during the colonial period.

This post-colonial impact at the UN was also felt in the field of human rights. As early as 1957 the General Assembly passed resolution 1161 that stated: "...a balanced and integrated economic and social development would contribute towards the promotion and maintenance of peace and security, social progress and a better standard of living, and the observance of and respect for human rights and fundamental freedoms."

This theme, which linked human rights and development, was again evident in the International Conference on Human Rights held in Teheran in 1968. The Conference

concluded, among other things, “that the enjoyment of economic and social rights is inherently linked with any meaningful enjoyment of civil and political rights and that there is a profound interconnection between the realisation of human rights and economic development”.

These are two of the early attempts at linking human rights and development. The indivisibility and interdependence of human rights are also highlighted. However, the notion of development evident in both is primarily an economic one.

It is significant that, within the UN itself, the notion of development

and its linkage with human rights evolved gradually. From a purely economic notion of development, the UN moved to a more holistic understanding of development to include political and social development and, ultimately, human development. The process of asserting a right to development was given a significant boost in 1977 when the UN Commission on Human Rights, through Resolution 4 (XXXIII), acknowledged development as a right. The culmination of this process occurred with the 1986 UN Declaration on the Right to Development.

3.2

The UN General Assembly Declaration

The UN General Assembly passed a resolution on the 4th December 1986 entitled, The Declaration on the Right to Development (Resolution 41/128). Essentially the declaration recognised development as a human right. It proclaims that every individual has a right to develop politically, economically and socially or, to put this in human rights jargon, every individual has the right to all rights mentioned in the Universal Declaration and not simply to a selection of those rights depending on the whim of her/his state.

The Declaration is, in effect, a bringing together in concise form of

the two Covenants. It unifies or, more precisely, re-unifies the two branches of human rights that had been artificially divided in 1966.

The importance, of the Declaration lies in the explicit statement that development of all human beings is a matter of right: not merely of right but of human rights. We all have the right to fully develop as human beings by virtue of our humanity. This also means that someone has a corresponding duty to ensure that we are able to avail ourselves of this right.

3.3

The value of a declaration

International law has two major sources. The first of these sources are treaties and conventions binding

those states that become parties to them. The second source is referred to as customary international law.

Customary law is a complex issue but it may be briefly defined as a practice adopted with a sense of legal obligation by a sufficient number of states. Once a practice becomes a rule of customary law it is, in general, binding on all states.

Declarations are not treaties and conventions and therefore do not create direct legal obligation on states who vote in favour of a declaration at the UN. However, as we saw when discussing the Universal Declaration, declarations may in time acquire the force of law by becoming part of customary law. If states start to refer to the declaration (or to the principles of the declaration) in their legislation or in court judgments or in its official manuals and correspondence then a practice may start building which in time may evolve into a rule of customary law.

Moreover, if a declaration revolves around a matter of law, the declaration itself may be of evidentiary value. The Declaration may be evidence of what the states believe to be the legal position under international law.

To summarise, while a declaration may not, of itself, create direct legal obligations on states, it is still an important instrument in international law. Insofar as the Declaration on the Right to Development is concerned, it may be argued that it has expressed the belief by a substantial number of states that the right to development is a human right of equal value as the other human rights. As a result of the Declaration and its effect on subsequent UN resolutions, today there can be little doubt that the right to development is a human right recognised by international law.

3.4

What does it say?

The Declaration consists of a Preamble and 10 articles. The Preamble highlights a number of principles that underpin the right to development.

The Preamble focuses on principles that operate at two levels. These levels are (i) the international political level of interstate relations as well as (ii) the level of the individual within his community.

At the interstate level we find references to the right to self-determination as a precondition for peoples to choose their own path to development. This implies that peoples should be able to choose freely the ways and means with which to achieve the full

development of all individuals within the community.

Another important reference is that to the “right of peoples to exercise [...] full sovereignty over all their natural wealth and resources.” This reference is clearly rooted in the colonial past of African and Asian nations where their considerable natural resources were exploited by the colonisers. The implication is that peoples should benefit from the resources present within their national territory and should choose how to utilise these resources freely and independently.

The Preamble also clarifies that the Declaration views human rights as one and indivisible. In fact it

forcefully claims: "...in order to promote development, **equal** attention and urgent consideration should be given to...civil, political, economic, social and cultural rights". Furthermore it emphasises that the "promotion of certain human rights cannot justify the denial of other human rights..."

On the interstate level, the Preamble once again underlines the importance of international peace and security, as preconditions for the realisation of the right to development. A link is also established between disarmament and development. It is argued that the financial resources made available through reduced spending on armaments (both by developed and developing countries) would greatly enhance the development of all peoples.

On the individual level, the Preamble makes a bold and fundamental statement: "...**the human person is the central subject of the development process**". For a long period of time development was seen in terms of national economic growth measured through the GDP. The Declaration challenges this idea and shifts the focus from national economic growth to human development. The Preamble furthers this notion of human development by asserting: "...development policy should...make the human being the main participant and beneficiary of development."

In the final paragraphs of the Preamble, the Declaration attempts to bring together the interstate and individual levels of action. In so doing the Preamble affirms that there should be equal opportunity to develop "for both nations and individuals." This statement

illustrates the basic point that proper development occurs when individuals enjoy all their human rights in a reasonably prosperous and socially just community.

Ten Articles that, in many respects, amplify the principles mentioned in the Preamble follow. In fact, the Articles also make explicit that there are rights and duties that operate at the individual, state and interstate level. Article 1 states that, the right to development is one which individuals and peoples should both enjoy and contribute to. This Article also makes clear that development has economic, social, cultural and political dimensions.

Article 2 (2) makes an interesting point concerning the responsibility for implementing the right to development. "All human beings have a responsibility for development, individually and collectively..." The subsequent Articles also focus on the **primary responsibility of States** to:

- formulate appropriate national and international development policies
- create national and international conditions favourable to development
- cooperate with each other in ensuring development and eliminating obstacles to development
- take all steps to eliminate massive violations of human rights
- cooperate with each other to promote all human rights for everyone without distinction
- promote international peace and security and achieve disarmament

- take all necessary measures to ensure the right to development and ensure equality of opportunity in access to education, health, food, housing etc.
- encourage popular participation in every sphere of activity

Therefore, the Declaration attempts to bring together the individual, the community in which he lives and the international system. All these actors have a role to play in ensuring the implementation of the

right to development. Moreover, it may be argued that while the right to development belongs to every individual, and the individual must be the primary beneficiary of the right, it requires a certain national and international framework within which it may be fully achieved.

Finally, it must be recalled that the Articles also repeatedly emphasise the indivisibility of human rights as well as of all the components of the right to development.

4. DEVELOPMENT PERSPECTIVES ON HUMAN RIGHTS

4.1

Introduction

In this section we will look at ways in which a development perspective on human rights may enrich our understanding of human rights. It should be said at the outset that development, with its inherent connotation of movement, helps to focus on human rights as a process. This challenges a static notion of human rights, of the human person and of society as a whole.

The following quotation emphasises a number of dimensions which development contributes to human rights:

“...truly, sustainable development is possible only when the political, economic and social rights of all

people are fully respected. They help to create the social equilibrium which is vital if a society is to evolve in peace. The right to development is the measure of the respect of all other human rights. That should be our aim: a situation in which all individuals are enabled to maximise their potential and to contribute to the evolution of society as a whole.”¹

The notions of sustainability, of the equal importance of all rights, of a dynamic approach to rights and of the role of the individual in society, are all key aspects in a fuller and richer understanding of human rights.

4.2

The emphasis on civil and political rights

As we have seen, the split in human rights occurring during the Cold War between civil/political rights and economic/social rights has had deeply-felt effects. The proponents of the primacy of civil/political rights have repeatedly insisted that these rights are capable of being enforced more effectively than economic/social rights. Lawyers have referred to civil/political rights as being justiciable i.e. capable of

being enforced in a court of law, while economic/social rights are regarded as non-justiciable.

Let us take a concrete example. If a state authority denies the right to the freedom of expression of a person by banning a book written by that

¹ Van Weerelt P., *The Right to Development: From Rhetoric to Global Strategy*, in *The Human Rights Journal* No. 2, Spring 1998.

person, she/he may apply to the court to allow her/him to publish such a book. The court will consider the matter and, if it results that the banning of the book is a breach of the person's freedom of expression, the court will order that the publication and circulation of the book be allowed. Conversely, if the same person becomes unemployed she/he will not be able to apply to a Court requesting that her right to work be implemented. Those advocating the primacy of civil/political rights have supported their point of view by citing similar examples.

Furthermore, the ICCPR and the ICESCR use different terms to impose legal obligations on states. Whereas the ICCPR requires states to *guarantee* the civil and political rights listed in it, the ICESCR requires states to *progressively implement* the rights contained in it, taking into account the economic resources available to the state.

On the whole, it may be argued that both in legal practice and theory civil and political rights have been taken more seriously.

4.3

Development and its socio-economic connotations

Traditionally, development has been considered and measured in economic terms. GDP per capita was for a long time the only indicator for a country's development. More recently social development, such as the improvement of national infrastructures in transport, health and housing, has also acquired considerable importance. Economic and social factors have become synonymous with development.

When in the 1980s the linkage between human rights and development started to emerge, the socio-economic connotations of development brought a new light to bear on human rights. Starting with the 1986 Declaration (considered above) the indivisibility of human rights and the equal importance of all rights began to be emphasised.

4.4

Restoring the balance

It may be argued that the emphasis on the indivisibility of human rights evident in the 1980s and 1990s was influenced to some extent by the 1986 Declaration. The end of the Cold War was, no doubt, a catalyst in ending the polarisation between political rights and economic rights. However, even before 1990 the

realisation that human rights are all equal, indivisible and interconnected was already emerging. The 1986 Declaration on the Right to Development played an important part in this process.

The influence of development perspectives on human rights may

be demonstrated by looking at the African Charter of Human and People's Rights. The Charter is the last of the regional human rights conventions to be adopted and is quite different from the two regional human rights conventions adopted earlier. The 1977 UN Commission on Human Rights Resolution (mentioned before) surely had a significant impact on the African Charter.

The African Charter is evidently informed by specific African history, culture, values and needs. Development and the right to development play an important role in defining the specificity of the Charter. In the Preamble to the Charter the right to development is

given particular importance:

*“Convinced that it is ... essential to pay particular attention to development and that **civil and political rights cannot be disassociated from economic, social and cultural rights...**”*

The Charter, moreover, includes an article which specifically states that:

“All peoples shall have their right to economic, social and cultural development with due regard to their freedom and identity...”

Incidentally the Charter contains what is, at present, the only legally binding assertion of the right to development within a human rights convention.

4.5

Human Rights between the individual, community and people's rights

The right to development within the African Charter is considered to be a “people's right” rather than an individual right. This gives rise to a number of debates and concerns but, for our purposes, it is important to focus on how development perspectives have influenced these so called “people's rights”. One may argue that development (together with the right of self-determination) has been a catalyst in introducing the notion of people's rights in human rights language. People's rights may be briefly described as those rights persons enjoy as members of their community rather than on a purely individual level.

Development thus provides new perspectives on how human rights work in, and relate to, the state, the

community and the individual.

Development operates at all of these levels and therefore is a link between them all. The human rights of an individual ‘live’ in a community that, in its turn, is rooted in a state.

This debate is also relevant within the context of the right to development itself. Some lawyers have argued that the “beneficiary” of the right to development is communities and not individuals. It may be suggested that the question of who is the beneficiary of the right is wrongly framed. Such a contraposition between the individual and the community in respect of the enjoyment of the right to development presupposes that development is a finite quantity. A

more appropriate proposition could revolve around how we are to ensure development of the individual, the community and the state together. The development of each of these is interdependent and interconnected.

Finally, we ought to reflect that development brings to human rights a more balanced perspective of how human rights function i.e. that rights are not enjoyed by individuals in a vacuum, but within the fabric of society.

4.6

Sustainable development, the environmental perspective and the rights of future generations

Development has, since the late 1980s, acquired an increasingly “green” tinge. The term development is more and more being described and defined in terms of “sustainability”. Sustainable development was defined in 1987 as follows by the World Commission on Environment and Development (also referred to as the Bruntland Commission):

“...economic and social development that meets the needs of the current generation without undermining the ability of future generations to meet their own needs”

The work done by the Bruntland Commission has tied together development with the environment. Environmentally conscious development provides some interesting insights on human rights. Among the insights that we can detect are an **increasing focus**

on the right to a healthy environment as a human right and, also, the criminal responsibility of those who cause grave environmental damage and thus breach the right to environment of others.

The other perspective which development provides to human rights is that of the rights of future generations. One may note that the Bruntland Commission requires development to take account of the rights of future generations. This notion challenges the absoluteness of certain human rights, including the human right to development itself. That human rights have limitations, derived from the need to protect the rights of others, has long been accepted. What sustainable development adds to the debate is the notion that human rights should also be exercised with due regard to the rights of future generations.

5 HUMAN RIGHTS PERSPECTIVES ON DEVELOPMENT

5.1

Introduction

The debate on what development is, how it should be achieved and measured and who should be the beneficiaries of it, has been going on for at least 50 years. It is suggested that human rights provides interesting perspectives to all of these questions. Development is now referred to as human development, the method of measurement is no longer simply GNP per capita but the Human Development Index, and the Declaration on the Right to Development has emphasised the

importance of “the human person [as] the central subject of development”.

Furthermore, and perhaps most significantly, the popular conception of why development is important is gradually changing. Human rights have been crucial in shifting the terms of the development debate from a moral and charity perspective to a rights and thus legal framework. In this section we will give a brief look at each of these developments.

5.2

Focusing on the importance of the individual

When we think of development in the world we tend to think immediately of the wealth of nations. The ideas we associate with development are economic progress, infrastructures and technology. These, to be sure, are all-important considerations and financial and infrastructural resources available to a state are essential components to development. However, the risk associated with these components is that they draw our attention to the development of the state at the

expense of human development.

Some lawyers have also insisted that development is a right pertaining to collectivities (the state or peoples in general) rather than to individuals. This goes against the essential principle of all human rights i.e. that these are rights that belong to individuals simply by their being human. As we noted above, this is not denying that rights have to be exercised within society and community.

Human rights, as their very name implies, always draw attention to the human being. This is why human rights provide us with an essential perspective on development. The **centrality of the human person** to development has already been underlined in the Declaration on the Right to Development.

If we ignore the centrality of the human person we may be pursuing a development that benefits abstract entities such as states and communities. This has its own risks. If we focus on the development of the state, who will really benefit from this development? The state as an abstract entity is made up of individuals who control and govern it. The risk is only too evident. If we focus on the state, the individuals who govern the state may benefit while the great mass of individuals outside the “magic circle” may be left out. One need not conduct extensive research to find examples of such development. States which have considerable financial

resources but whose resources are divided extremely unequally are numerous.

Human rights, with their emphasis on universality, allow us to focus attention on the universal enjoyment of the right to development. Every individual has the right to development.

Human rights have at their foundation the dignity and worth of every human being. From a human rights perspective, therefore, development must, if it is to qualify as a human right, also have at its root a similar belief in the importance of every single individual. The bottom line is that it is the human being that makes development important and not the state or the community. This is not to say that the state and the community are unimportant. The state and the community are important by virtue of the fact that individuals live in communities that are, themselves, located within states.

5.3

Beyond charity... Development as a Right

“The satisfaction of the needs of a people should be perceived as a right and not as an act of charity. It is a right which should be made effective by norms and institutions”²

The quotation above is taken from writings of Mohammed Bedjaoui a distinguished Algerian international lawyer and formerly President of the International Court of Justice. It encapsulates what might be considered as the most crucial

contribution of human rights to development i.e. **the move from considering development as a morally desirable objective to considering development as a right belonging to every person.**

To those brought up in the “developed” world “giving money to charity” is a well-known phrase.

² Bedjaoui Mohammed, *International Law: Achievements and Prospects* (1991)

Images of starving African children are mostly interpreted in terms of moral or religious responsibility. We should do good and thus give of our plenty to those who, in another ubiquitous phrase, happen to be “less fortunate than we”. There is usually no suggestion that the starving child has a right to eat or drink, he is merely unlucky. The underlying assumption is that we are the active subjects of the image. We in the developed world are the ones who are important. The image is asking of us to do something charitable. It is not suggesting that there is an issue of law or rights involved.

Human rights challenge these assumptions. It asks us to look at the image in a different manner. It asks us to look at the image in terms of the law. The child is having her/his rights violated. Legally, when a right is being violated the corollary is that someone is responsible for that breach. The image is therefore changing its

connotations. The image now becomes much more demanding and potentially dangerous for us. The viewer who looks at this photo changes from a potential hero (who by her/his good deeds may save the child) to the potential criminal who perhaps is legally responsible for the breach of the rights of that child.

A rights framework allows us to approach development in a more rigorous fashion. The law requires of us a certain discipline. It requires of us to ask and answer a set of questions. For instance some of these questions are:

- What is the legal basis of the right?
- Who is/are the beneficiary/ies of the right?
- Who is responsible for ensuring that the persons owning the right actually enjoy it?
- How is the right implemented?
- What happens if the right is not implemented?

6. CONCLUSION – LOOKING FORWARD

6.1

Measuring development through human rights

One of the major advances in the debate around development has centred on the method through which development is measured. As mentioned before, the traditional method of measuring development has been limited and limiting. GDP per capita is an important consideration but a purely economic measurement will hide as much as it reveals. For a start, gross inequalities within a country may remain submerged through the “tyranny of averages” which is predominant in the GDP approach.

The newer methods for measuring development, pioneered by the UNDP in its Human Development Index, are a much more valuable guide to obtaining a truer picture of a country’s development. One could suggest that **an even more accurate picture of human development could be achieved through a Human Rights Index**. Such an index while maintaining an

economic component would focus on a wider measurement of human rights implementation in a country.

For instance, apart from GDP per capita, literacy and life expectancy, one could take absence of torture, freedom of conscience and expression, access to secondary education, housing and primary healthcare to give a Human Rights Index. Such an index would give a measurement of how much of basic human rights are being implemented. The adoption of such an index would require an acceptance that human development essentially means the enjoyment of human rights. In brief, it would require us to equate development with human rights. This in some way harks back to Franklin Roosevelt’s world of the four freedoms: freedom of expression and conscience, freedom from want and freedom from fear.

6.2

The legal basis of development

The law requires that rights and duties be clearly defined. That everyone is clear on who owns the right and who has the duty to make sure that right is being enjoyed. One must admit that so far there is some

amount of confusion, within academia and governments, on the issues of who exactly owns the right to development (the state? peoples? the individual?) and who is responsible for the implementation

of the right (the international community as a whole? developed states? individuals - including big corporations?).

The answers to the questions above may not be entirely straightforward. Perhaps all of the answers suggested are equally valid and should be taken together. **The legal basis for development would also benefit from a treaty or convention** (guided by the 1986 Declaration) that would clearly and unequivocally assert the

Right to Development as a legally binding right.

The World Conference on Human Rights held in Vienna in 1993 approved a statement that affirmed the right to development is “a universal and inalienable right and an integral part of fundamental human rights”. However, such statements do little to clarify the practical consequences of the existence of such a right.

6.3

Issues of responsibility and implementation

The practical consequences of the existence of the right to development are of utmost importance. They present the greatest challenge to the right itself. Critics of the right to development hold that there exists no such right because its content and consequences have not been clarified.

Mohammed Bedjaoui states:

“It is clear, however, that a right which is not opposable by the possessor of the right against the person from whom the right is due is not a right in the full legal sense. This constitutes the challenge which the right to development throws down to contemporary international law...”

The future of the right to development relies, to a considerable extent, on whether and how the challenge presented by Bedjaoui is met. The points requiring clarification may be

summarised thus:

- What international norms should be in place stating the exact content of the right to development?
- What international institutions should be established monitoring the implementation of the right?
- What sanction should be imposed on those responsible for breaches of the right?

A number of the questions listed above apply equally to a number of other human rights that are as yet not adequately implemented. Issues of implementation present core difficulties to international law in general and human rights in particular. When the right concerned is still in its infancy and somewhat ill defined, the difficulties multiply.

These difficulties need not discourage us in any way. The story of human rights is a story of very gradual evolution. The idea that

human rights exist has been expressed since ancient times. The Greek dramatist Sophocles was expressing the idea of divine laws that take precedence over man-made law in his tragedy *Antigone* (around 441 B.C.). However, the first international legal instruments to make human rights legally binding on states came after 1945. By the year 1998 the international community had established a Court intended to punish individuals

guilty of grave breaches of human rights.

The scope for progress for human rights and for the right to development in particular, is therefore great. Whether the progress required is made, and the speed with which it is made, depends on the will of states and on how far civil society is determined and effective in pushing states towards the desired goals.

7. REFERENCES

The following is a very short list of instruments and books relating to human rights and development. They may be useful to anyone researching issues relating to human rights and development in international law. Of course there are many other sources (books, articles, reports and internet sites) which may be consulted on these issues.

Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by General Assembly resolution 1514 (XV) of 14 December 1960

Declaration on Social Progress and Development, proclaimed by General Assembly resolution 2542 (XXIV) of 11 December 1969

Declaration on the Right to Development, adopted by General Assembly resolution 41/128 of 4 December 1986

International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966

International Covenant on Economic, Social and Cultural Rights,

adopted by General Assembly resolution 2200A (XXI) of 16 December 1966

International Human Rights in Context, by Henry Steiner and Philip Alston, Oxford University Press, 2000.

International Law: Achievements and Prospects, by Mohammed Bedjaoui, Martinus Nijhoff Publishers, 1991.

International Law and Development, edited by Paul De Waart, Paul Peters and Erik Denters, Martinus Nijhoff Publishers, 1988

The Right to Development: From Rhetoric to Global Strategy, in *The Human Rights Journal*, No. 2 Spring 1998.

The Right to Development in International Law, edited by Subratha Roy Chowdury, Erik Denters and Paul De Waart, Martinus Nijhoff Publishers, 1992

Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

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