

ACKNOWLEDGEMENTS

The Human Rights Council of Australia Inc is a private non-government organization which promotes understanding of and respect for human rights for all persons without discrimination through adherence to the International Bill of Rights and other human rights instruments, internationally and within Australia.

The Council was established in 1978 and has been under the leadership of James Dunn an important link between the Australian human rights movement and human rights activists in other parts of the world. It remains small by intention, confident it can play a significant catalytic role in the human rights field.

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The project would not have been possible without the willingness of many people to provide their time and ideas during the duration of the research. We spoke to more than two hundred people in the space of less than a year and, while we do not have the space to mention them all, we would like to express our deep gratitude to them.

We would like to extend our special thanks to Teresita de Guia from DEVCON Inc who smoothed the way in the Philippines and who made many suggestions on our methodology and our thinking on complex issues.

¹ Since publication of the Rights Way to Development, Australia's official aid agency has been renamed AusAID and has undergone a major policy review that has given it a clearer focus on poverty.

EXECUTIVE SUMMARY

Policies and programs which rest primarily on a perception of need and powerlessness subtly reinforce the powerlessness of the recipients who are seen as being given justice rather than as receiving their rights. The recognition of entitlement is in itself an act of empowerment.

Michael Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner (1993 to 1998), Australian Human Rights And Equal Opportunity Commission

The Rights Way to Development originates from a conviction that governments can develop the relationship between human rights and official development assistance (ODA) and that they, the donor agencies and even development NGOs² have the opportunity to affect the realization of rights through the delivery of aid.

This is not to claim that donors are unaware that human rights have featured only in a minor way on the development assistance agenda. Yet, contrary to what one would have expected and despite many references to the importance of human rights, there has been remarkably little conceptual work devoted to this relationship. The standard approach to the issue is to deal with aid and human rights as two distinct activities or processes.

The considerable resources expended on development over the last fifty years cannot be dismissed lightly. The current development debate would not have been possible even ten years ago and reflects the advance made in defining human rights and the lessons from past development activity. However, the demands remain as great if not greater than ever.

And as the research for the current project progressed, more fundamental problems have also emerged. On the one hand there is no commonly accepted and internationally agreed framework for development assistance and this has led to arbitrary decisions about where aid is directed, how it is delivered and who benefits. This results in difficult to resolve tensions between governments. On the other hand, not only has it become evident that ODA has not been successful in addressing human rights, but serious questions arise about just how successful ODA is in delivering development itself.

²NGOs vary greatly in their mandated concerns. There are also differences between development NGOs in the developed and developing world. Until quite recently there has been a gap between human rights and development NGOs, but this is gap is narrowing.

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This report begins with an exposition of the human rights approach to development. It then deals with the definitional aspects of human rights and development and goes on to discuss some problems associated with established policies as well as raising some further questions about more recent developments in debates on good governance. The report concludes with suggested new directions for development assistance based on the human rights approach and proposes a number of practical steps arising from such an approach.

THE NEW APPROACH

There does exist an agreed international framework which can take the arbitrariness out of aid delivery and which binds governments to immediate action on development. That framework is the human rights regime which has been agreed to by consensus by States and which requires both donor and recipients governments to take specific steps towards the realization of rights.

Our approach is based on the premise that human rights and development are *not* distinct or separate spheres and, therefore, that the question is *not* how to identify points of actual or potential intersection but to accept that development should in fact be properly seen as a subset of human rights where, for practical purposes, “human rights” are accepted as those standards, norms and requirements elaborated in the International Bill of Rights and in associated instruments and decisions of the United Nations.

The realization of the importance of economic and social rights in the development process and the tendency of governments to ignore steps to their full realization, have led us to look closely at the precise actions needed to realize these rights and the implications for both donors and recipients of aid. An essential aspect of the Right to Development is its emphasis on the centrality of the human person as a subject of the development process.

A human rights approach to development must also capture the essentially *active* nature of human rights. The UN Charter places an obligation on governments to provide international assistance and cooperation to support the realization of human rights and this demands action in the here and now.

In our view, one key to the puzzle is to *apply* human rights practices to the aid program itself and not simply attempt to assess the human rights implications of aid’s outcomes.

There is a need as well for clarity as to who the actors in the development field are and the nature of the actions required of them. We address these issues in the report by focusing on the specific responsibilities of governments as well as those of NGOs.

The notion of participation remains central to the evolution of a human rights approach to development assistance and indeed is accepted as a key concept in the development debate.³

The human rights approach to development then insists that participation imposes demands on donor and recipient governments as well as on those involved in the delivery of aid. These demands include not only free access to information but a positive obligation to provide information to enable dynamic interaction. They require, not only a potential for influencing the development process from its inception through to its implementation, but active encouragement of this process. They demand, not only a commitment to address inequity, but active steps to overcome it. In other words participation must be a *process* by which human rights are achieved.

It is internationally accepted that development assistance should target the poor and disadvantaged. The proposed approach, in line with this acceptance, would transform beggars into claimants. Claimants have their dignity and a strength derived from their entitlements. They have a position from which to negotiate.

The human rights approach we propose, therefore, has the potential to build on the core UN principles and the best of existing practice. The recommendations in this report suggest key elements in this new direction. They therefore have much broader implications for development activity and suggest a new direction for it.

EXISTING APPROACHES

For most governments development is causally bound to growth. And for most key players in the development debate the term “growth”, however defined, is reduced to a particular model of *economic* growth, most often equated to the establishment of the free market.

This is such a widely-accepted given that there exists no possibility within donor agencies to even question this economic growth model of development. The result is that it is not possible to see human rights and development as *anything but* two distinct spheres. This is reflected in the existing policy focus on points of intersection and in the terminology which speaks of ‘linkage’ or ‘conditionality’.

Governments in the developing world have accepted this model with more or less enthusiasm in the face of counter-arguments by some NGOs and in many cases by their own citizens. However, all resent any implication that a particular economic model is imposed by governments of the developed world and resent even more the imposition of a specific political model.

The good governance debate that we criticize in the report is one example of the possible tensions which arise from the imposition of certain models by donor governments. It is not too difficult to

³The discussion of ‘participation’ is illustrative and does not imply that participation is the only key concept warranting closer analysis; for example, other issues such as ‘decentralization’ are only touched upon in this report.

see beyond the appeal for better accountability through notions of ‘governance’, a desire to affect political *behaviour* by governments.

So, what struck us very early in our investigations was the arbitrary nature of official development assistance. The leading common denominator in the provision of development assistance seems to be almost exclusively that of national self-interest on the part of the donor. There are, of course, occasions that aid is provided on the simple basis of goodwill or a feeling of largesse, but this too is arbitrary. Aid, therefore, is not grounded on *internationally* agreed priorities or obligations but depends on virtually ad hoc decision-making.

Not only is ODA provided in an arbitrary fashion to individual governments, but because there are no internationally agreed priorities, the types of stipulation imposed on governments within an aid program in exchange for assistance are also arbitrary. This arbitrariness is one cause for the resentment over aid in developing countries.

A human rights approach means that a recipient State has a basis in international law for responding to the arbitrary aspects of donor policies. It would place recipient governments in a position to respond to donor-imposed conditions by pointing to the latter’s own international human rights obligations towards the realizations of rights and resist the imposition of a particular political or economic model.

We deal in the report with three of the problems which we see as having frustrated any advance in the evolution of the relationship between ODA and human rights.

First, there is a general preoccupation with conditionality in its most negative and punitive form. This links the provision of aid to the human rights record of the recipient country. Inevitably, this approach is fixated on questions of the non-provision or withdrawal (suspension or cessation) of aid.

There are cases of gross violations of civil and political rights where governments are not only justified but obligated to suspend aid. The Australian government position of dealing with such instances on a case by case basis, while not always consistent, at least recognizes such obligations.

We argue in the report that the focus on negative conditionality leads to a lack of coherence in aid policy and that it can be – and often is – used to manipulate the process in favour of donor governments.

The second key characteristic of the debate to date on the relationship between development assistance and human rights is conceptual abstraction. The labyrinthine struggles with definition that are associated with this approach have led to frustration and policy paralysis.

The report argues that very clear definitions of the whole range of human rights already exist and that their implementation is possible and obligatory through the development process.

The third characteristic is tied to what we have come to call the “management of aid”. This is the tendency to treat good management as the final outcome of the aid program. One result is for the donor agency to develop a corporatist culture. The operational ethos becomes the efficient disbursement of the maximum available funds within the shortest period with the least risk in order to deliver a visible (and viable) product.

It is argued here that the management model is not an absolute one and that while effectiveness in the delivery of aid is a prerequisite for its success, an over-emphasis on efficiency actually undermines sustainability framed in rights terms.

IN THE FIELD

While we nurtured tentative theories of our own prior to the beginning of the project, we proceeded on the basis that to elaborate some firm views we needed to canvas the opinions of a wide range of people involved in development issues and to try to avoid too many preconceptions.

The informants we met ranged from national politicians to local government officials, from local community bodies and peoples’ organizations to aid bureaucrats, from business people to academics and theorists of development. Needless to say we also talked to many human rights and development NGOs. In all cases we emphasized that we were not a) development experts, b) conducting human rights research or audits, c) evaluating aid projects or programs. In virtually all cases these people were extraordinarily generous with their time and ideas.

PRACTICAL IMPLICATIONS OF THE NEW APPROACH

During the life of this project we have read and been told many things about people-centred development and ODA policies committed to creating an enabling environment, committed to empowering people. And we have observed glimmers of this on the ground.

Yet our observations produced little evidence to support a claim that these commitments are being realized beyond the margins. The commitment lacks force.

The international human rights framework on the other hand provides a solid foundation for practical and effective official development assistance policies and programs.

We believe that there is substantial evidence to support this position. We present in this report some, but by no means all, of that evidence.

At the heart of our conviction is a recognition that official development assistance is not delivering the outcomes it should -even in its own terms. This is due, at least in part, to the constraints imposed by the development theory/models that currently underpin it. It is a recognition that even goodwill and humanitarian concern – well resourced or otherwise – are insufficient in delivering

results. Even the most basic needs are not being met.

Words and actions

The project that we embarked on was designed to formulate policy recommendations for the players in the development game. In this report we have proposed a new approach which is firmly grounded in universally accepted human rights. In the final chapter of the report we put forward recommendations which arise from our findings.

The onus rests on governments to use their official development assistance to devise strategies that directly assist governments in taking actions on the full realization of human rights. These strategies would not be predicated on the negative conditionality approach but rather on one in which both donor and recipient governments reach a negotiated agreement which puts contractual obligations on each based on these actions.

Such strategies depend on a realistic policy dialogue with recipient governments. They also result in priorities for assistance being set within the human rights obligations of donors and recipients. If such an approach is accepted, donors would make it clear to recipient governments that it will focus its programs of assistance on those projects which will contribute most effectively to the fulfilment of their human rights obligations.

Most importantly, this means that a thorough understanding of human rights and the obligations and responsibilities they entail is an essential component of policy formulation. Unless there is an acceptance of, and support for this by key decision makers in government and the bureaucracy, the relationship between human rights and development will remain tenuous at best.

We believe the opportunity exists to apply the commitment of governments and the NGO community to human rights in new and exciting ways to ODA. Donors bring enormous expertise, knowledge and experience essential to the pursuit of such an approach. Of course, it entails difficult challenges: new thinking, greater transparency and a willingness to make change within the organization possible.

The responsibility for these changes should not lie on official donors alone. NGOs too must open their minds to a less technocratic approach to development and a human rights centred one. They will also need to participate in the equivalent of a policy dialogue, not only with their partners but also with the government agencies of the countries in which they operate.

The prerequisites for these changes, of course, are to assimilate the principles and practical implications of the human rights instruments. Only with these moves will actions and words bring about the sustainable development that the world has guaranteed to all.

CHAPTER 1

THE HUMAN RIGHTS APPROACH TO DEVELOPMENT ASSISTANCE

The thesis of *The Rights Way to Development* is that the body of international human rights law is the only agreed international framework which offers a coherent body of principles and practical meaning for development cooperation.

This body of law – which includes international customary law – provides a comprehensive guide for appropriate official development assistance, for the manner in which it should be delivered, for the priorities that it should address, for the obligations of both donor and recipient governments and for the way that official development assistance is evaluated.

Good international citizenship requires that not only are donors responsible for cooperating in the realization of human rights, but that they also remain responsible for the way that their official development assistance is put to use.

This is not to pretend that *everything* is neatly agreed and clearly defined. Clearly this is not so. However, lack of precision at the edges indicates the fact that the enunciation, codification and institutionalisation of human rights is an evolving process. So it should be.

A BASIS IN LAW

We have not sought in this project to provide a strictly legal analysis of human rights. As important as this is, it is not our prime purpose here and the law alone has its limitations in terms of applied policy.

At the same time we do recognise that international law and a commitment by states to the rule of law are the foundations on which human rights programs can be built. At the very least they provide a valid benchmark against which government claims and protestations might be tested.

Moreover, we are conscious that governments themselves assert the importance of the rule of law. The international law on human rights is their law: drafted, debated and adopted by the member states of the United Nations. The consensual nature of international human rights law is very pertinent here. For in the human rights approach to development assistance we expect no more and ask no more of governments than that they do what they have formally committed themselves to do.

For all these reasons we have found ourselves forced back to the actual texts of international

human rights instruments and the legal meaning ascribed to them.

In this we have tended to focus on the International Covenant on Economic, Social and Cultural Rights. We have done so not because we believe it has a status above other rights or treaties but for practical reasons, including the need to address: the contention by governments generally that these rights are “aspirational”; the contention by donor governments that they lack practical definition; the contention by recipient governments that these rights are subject to the availability of resources.

Nor did we forget the conventional wisdom that maintains these are the rights closest to the hearts of governments of the developing world.

a) The Consensual Nature of International Law

The efficacy of international law depends on the consent of states. This is highlighted by the fact that international law generally is not the subject of a supreme law-making authority capable of making enforceable decisions.

State consent can be explicit as in specific agreements, such as treaties. Consent can also be implied from “state practice”, described as the way states habitually behave on the international plane.

The consensual nature of international law is significant for the human rights approach to development assistance. For the fact is that human rights are firmly grounded in international law: they are the subject of existing agreement between states. Government policy that is derived from and consistent with such international agreement is not only an appropriate but an extremely productive basis for relations between states.

Development assistance policies grounded in what we are calling the international human rights framework acquire strength from their reliance on international agreement. They acquire a coherence. They become subject to principles, meanings and practices beyond the particular priorities, interests or values of any one party. The international human rights framework gives renewed emphasis and meaning to the genuinely humanitarian objectives of development assistance.

Such a situation is in marked contrast to the currently accepted models of development assistance. These models do not operate from an agreed international framework. Donors act out of national self-interest or from largesse dependent on ad hoc policy-making: they act arbitrarily. Consequently, policies and programs are subject only to the strength of the negotiating position of the respective parties. The paradox of this is that those countries most in need of assistance are also the most vulnerable to arbitrary and self-interested development practices by donor governments.

At the same time, those donor governments which do seek to promote human rights within their existing development assistance programs find themselves trapped within outmoded and ultimately unworkable development policies and practices. You can not simply graft human rights on to this particular trunk.

b) International Human Rights Law

The international human rights framework referred to throughout this report encompasses two principal sources of international law: treaty law and customary international law.

The foundations for this framework are the major international human rights instruments.

The core instruments are the *Universal Declaration of Human Rights*, the *Covenant on Economic, Social and Cultural Rights* and the *Covenant on Civil and Political Rights* (to which there are two *Optional Protocols*). Collectively these instruments comprise the *International Bill of Rights*.

To these must be added a number of other treaties, including: *The Convention on the Elimination of All Forms of Racial Discrimination (CERD)*, *the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, *the Convention on the Rights of the Child (CROC)*, *the Convention Against Torture (CAT)*.

Whether gauged by the number of states parties to the human rights treaties or by the stated acceptance of human rights principles, the norms of the international human rights framework have become applicable worldwide. They are part and parcel of international relations.

The final statement of the 1993 United Nations World Conference on Human Rights, known as the *Vienna Declaration*, put an end to any lingering doubt in this respect. That Declaration was adopted by consensus without dissent by the 171 States represented.

The *Vienna Declaration* affirmed the International Bill of Rights and other major human rights instruments. It unequivocally endorsed both the universality and indivisibility of all human rights. It reiterates that human rights are an international concern; indeed, human rights are an explicit priority for international cooperation.

GOVERNMENT OBLIGATIONS

The existing international human rights framework imposes discernible and applicable obligations upon governments. The International Covenant on Economic, Social and Cultural Rights⁴ is a case in point.

This Covenant is a treaty, thereby binding on States Parties. However, the rights contained in it are

⁴We have drawn on readily available commentaries for this section. Two of the most useful were: *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (E/CN.4/1987/17); and *The commentaries upon these Principles* and background papers which served as the framework for discussion on the Principles at an experts' symposium at Maastricht, the Netherlands on 2-6 June 1986 (Published in *Human Rights Quarterly*, The Johns Hopkins University Press, Vol. 9, Number 2, May 1987).

derived from the *Universal Declaration on Human Rights*. They are affirmed and elaborated in other human rights instruments. The Covenant as a whole has been affirmed in various declarations, most recently in the *Vienna Declaration*. For these reasons, the Covenant can for all intents and purposes be taken as applicable to all States not simply States Parties.

Put briefly: when it comes to development cooperation, obligations apply to donor and recipient governments and they should have a direct impact on the bilateral aid relationship.

a) **Generally Applicable Treaty Obligations**

Economic, social and cultural rights are a key plank (“an integral part”⁵) of international law. As such, they are the subject of specific treaty obligations in various international instruments, notably the International Covenant on Economic, Social and Cultural Rights.⁶

The importance of this lies in the fact that the law of treaties applies. Consequently, no State Party may invoke the provisions of its internal laws as justification for its failure to perform treaty obligations.⁷ Further to this, applying articles 31 and 32 of the Vienna Convention:

*The International Covenant on Economic, Social and Cultural Rights...should...be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the preparatory work and the relevant practice.*⁸

b) **The implication of “good faith”**

The Covenant on Economic, Social and Cultural Rights is subject to the principle of *pacta sunt servanda*. This is a fundamental principle of the law of treaties. In essence, treaties are binding on the parties and must be performed *in good faith*.

There exists no effective machinery to deal with breaches of the Covenant on Economic, Social and Cultural Rights (or other human rights treaties) that will compel a State to honour its obligations. However, the imperative to act in good faith obliges the State to diligently observe and translate the promise of full human rights and proper standards of treatment articulated by international human rights treaties into effective enjoyment. These principles clearly inform the Limburg Principles.⁹

In effect this “General Observation” means that not only is this Covenant binding but that the rights specified in it are capable of interpretation and implementation.

⁵*Limburg Principles, P. 1.*

⁶The inference here affirms the position argued throughout this project that these rights are not solely dependent upon this particular Covenant for their legitimacy within international human rights law.

⁷Article 27 of the Vienna Convention on the Law of Treaties (Vienna, 1969)

⁸*Limburg Principles, P.4.*

⁹*Limburg Principles, Part 1.A.4 and again at 7: “States parties must at all times act in good faith to fulfil the obligations they have accepted under the treaty”.*

c) The question of “progressive realisation”

Article 2(1) of the Covenant on Economic, Social and Cultural Rights reads:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The question of “progressive realisation” goes to the heart of the issue of obligation. States have used this phrase to argue that while they must deliver the specified rights, they are only obliged to do so at an unspecified future date according to circumstance. This distortion of the intended meaning must be challenged.

In spite of the pretence on the part of some, Article 2(1) offers no escape clause. Its demands are immediate and discernible.

By way of illustration, Principle 8 of the Limburg Principles states:

Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time.

In their commentary on Principle 8 E.V.O. Dankwa and Cees Flinterman tell us:

The expectation that the rights recognized in the Covenant will be fully realized progressively (Article 2.1) is no reason why states parties should not assure some rights with appropriate judicial remedies immediately whenever this can be done. To illustrate, under article 13(2)(a) of the Covenant primary education is compulsory and should be made available to all. If this right can be realized immediately, the concept of progressive achievement should not be used to delay its assurance and realization.¹⁰

The interpretation of Article 2(1) is elaborated further under the Limburg Principles which make it clear that:

- * all States parties have an obligation to begin immediately to take steps towards full realization of the rights contained in the Covenant;¹¹
- * some of the obligations under the Covenant *require* immediate implementation - the

¹⁰E.V.O. Dankwa and Cees Flinterman, “Commentary by the Rapporteurs on the Nature and Scope of States’ Parties Obligations” in *Human Rights Quarterly*, op. cit., p. 137.

¹¹Principles 16 and 21

example given is prohibition of discrimination under article 2(2);¹²

- * appropriate steps are available which governments are obligated to pursue, including legislative, administrative, judicial, economic, social and educational measures, “in order to fulfil their obligations”;¹³
- * where appropriate, governments must provide remedies;¹⁴
- * the rights embodied in the Covenant must be realised “in fact as well as in law”.¹⁵

This last point must be stressed. Too often governments submit the existence of legislation alone as evidence of the fulfilment of their human rights obligations. Any one who has read a State Party’s report to one of the treaty bodies will be all too familiar with this.

Legislation alone is not sufficient. Legislation must be given effect and this will require a range of further initiatives: resources, institutional arrangements, associated social policies, possibly regulatory safeguards and compliance procedures. Human rights must be realized in fact, in the daily lives of the people.

d) **The question of resources**

Several of the principles cited above implicitly limit the claim to inadequate resources as a basis for non-delivery on assurances of the rights provided for under the Covenant.

Significantly, the Limburg Principles explicitly address the claim, leaving no doubt or ambiguity that States Parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.¹⁶

In determining how to meet these obligations the Limburg Principles specify that attention must be paid to the equitable and effective use of and access to the resources that are available.¹⁷ They stress that, recognising this imperative to assure everyone of their subsistence requirements and the provision of essential services, the rights provided for in the Covenant serve to prioritise demands on available resources.¹⁸

The Commentary on the relevant Principles explains that whether a State Party has fulfilled its obligations depends partly on how effectively and equitably it utilizes its resources. Where the

¹²Principle 22

¹³Principle 17

¹⁴Principle 19

¹⁵Principles 16-18, et.al.

¹⁶Principle 25

¹⁷Principle 27

¹⁸Principle 28

State's resources are to be used by the people there should be access by all. Moreover, while States Parties have the right to allocate part of their resources to defence needs and other essential services, *priority attention* should be given to the realization of the rights in the Covenant, especially the satisfaction of subsistence requirements.¹⁹

e) **The question of limitations**

Without elaborating in exhaustive detail, the Limburg Principles and associated scholarship, drawing on accepted treaty law, make it perfectly clear that any "limitation provisions should be considered as exceptional and interpreted narrowly".²⁰

Particularly relevant to this project is the clarification that a State Party can not add any limitation beyond those already contained within the Covenant and that a State Party can not justify a violation or even neglect of one right on the basis that it was either necessary or unavoidable for the promotion of another right (Principle 57).²¹

Any limitation must not only be determined by law but must be compatible with the rights contained in the Covenant²². These restrictions are clearly intended to preserve the integrity of the rights and the obligations accepted by States Parties. Consistent with this is the observation that the burden of proof remains with the government concerned to demonstrate that any proposed limitation is compatible.²³

"NO SINGLE ROAD"

*The achievement of economic, social and cultural rights may be realised in a variety of political settings. There is no single road to their full realisation. Successes and failures have been registered in both market and non-market economies, in both centralised and decentralised political structures.*²⁴

The over-riding presumption of existing economic models of development is that there exists an international economic consensus and even if it is acknowledged that consensus may not actually exist you nevertheless act as if it does.

We are not economists and have not done sufficient work to justify conclusions on the free market as *the* path to development. At the same time we have seen no evidence to support the claims of inextricable links between free markets, freedom and democracy.

¹⁹Dankwa and Flinterman, op. cit., p. 140.

²⁰Dankwa and Flinterman, op. cit., p. 142.

²¹Refer also to commentary, op.cit.

²²ICESCR, article 4.

²³Alston and Quinn, op. cit., p. 201.

²⁴ *Limburg Principles, Principle 6*

What we can say from our observations is that the dominance of this conviction is such that it is effectively precluding options. It denies dissent and the pursuit of alternatives. It allows for no co-existence. To this extent, it rests uneasily with internationally agreed human rights principles.

It is, for example, unacceptable to withhold support for a government's efforts to realise economic, social or cultural rights on the grounds that the government concerned is unwilling to agree to "free its markets". This risks being a coercive practice defined by ideology (or possibly narrow self-interest) rather than a genuine commitment to human rights.

In this respect the commentary on Principle 31 of the Limburg Principles bears repeating:

...Since under both the [UN] Charter and the Covenant [on Economic, Social and Cultural Rights] states have the right to determine their political, economic, and social systems, differences in these areas should not be used to deny assistance and cooperation...²⁵

The point is taken further by Alston and Quinn:

While the debate over the most effective and appropriate means of implementation in any given society is potentially long and complex, it is nevertheless clear from both the text of the Covenant and the preparatory work [to that Covenant] that arguments positing the inherent incompatibility of particular economic and social systems with economic rights cannot be sustained. This conclusion is reinforced by the approach adopted by the ILO's Committee of Experts on the Application of Conventions and Recommendations with respect to standards that are in many respects identical to those contained in the Covenant.²⁶

These issues bear also upon the question of "democracy" given reference in the Covenant (as in other international human rights instruments) to "democratic society".

Given the marked divergence of views on what might constitute a democratic society, it is useful and potentially significant to note that during the drafting of the two Covenants it was recognised that the term "democracy" could assume different meanings in different countries:

One solution that enabled the avoidance of deeply divisive and almost certainly unproductive ideological disputes was to identify a democratic society as one that respected the principles of the UN Charter and the Universal Declaration.²⁷

Interpreting democratic society in such a way reinforces the potential inherent in applying a human rights approach as a practical, agreed framework for the formulation of development assistance

²⁵Dankwa and Flinterman, op. cit., p. 140.

²⁶Alston and Quinn, op.cit., p.183.

²⁷Alston and Quinn, op. cit., p. 203. This approach is reflected in the *Siracusa Principles on the Limitation on the Derogation Provisions in the International Covenant on Civil and Political Rights*.

programs. Though requiring more thorough elaboration, it may offer an acceptable basis for supporting action programs, institutions and structures purposefully supportive of the (Charter and Universal Declaration) principles underpinning democracy as opposed to the tendency to equate democracy with periodic elections or to export particular models of democracy.

CHAPTER 2

DEFINING HUMAN RIGHTS AND DEVELOPMENT

Any consideration of the relationship between development assistance and human rights risks becoming bogged down in the BIG questions: What is development? What are human rights? Is development by its very nature creating dependency? What is the relationship between growth, free markets and sustainable development?

This project confronted an essential dilemma: should we attempt to tackle the fundamental issues underlying such questions and posit potentially far-reaching options; or should we confine ourselves to what exists – the designated framework of official development assistance – thus restricting our observations and suggestions to what is possible within the contemporary matrix of rights and welfare flowing from free market-driven economic growth?

The unifying feature of current development policies is the growth model. We do not see it as our task to challenge the legitimacy of this model. We have not set out to do so. Regardless of the legitimacy of the model, it seems to have gained an unassailable dominance. This has direct repercussions when attempting to examine the relationship between development assistance and human rights.

All development discourse takes place *within* this context. Yet the international human rights framework makes it clear that there is no single road to the realisation of rights. This affirms national economic and political pluralism. Legitimacy is not dependent on the nature of the system but on the particular system's consistency with human rights norms and ultimately its capacity to deliver the obligatory human rights outcomes.

Development assistance which imposes a single economic model is in potential conflict with these internationally agreed human rights principles.

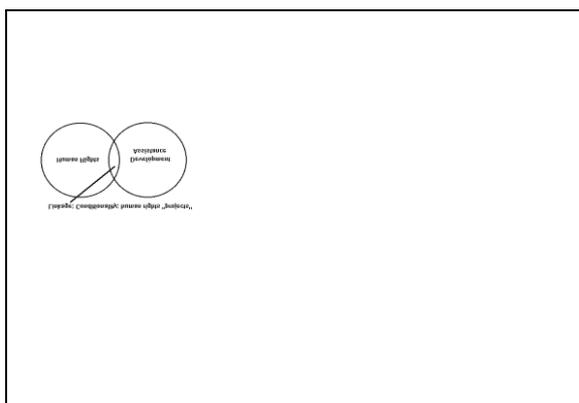
Equally important, is that the exclusively economic model effectively limits the social, political, civil and cultural dimensions of development.

One consequence of this is that development assistance becomes rootless. Absent is a coherent framework grounded in agreed international principles. Consequently the attempts to formulate policies, programs or projects whose purpose is more than the purely economic lack focus, direction and often legitimacy beyond the donor country's own shores. It is in this sense that official development assistance is arbitrary.

It did become apparent early in our work that most government aid is predicated upon a

commitment to a single economic growth model. Nowhere in the hundreds of pages of documents, nor in discussion with government officials, was the possibility allowed that this commitment was subject to discussion with or question by a recipient government (or non-government bodies).

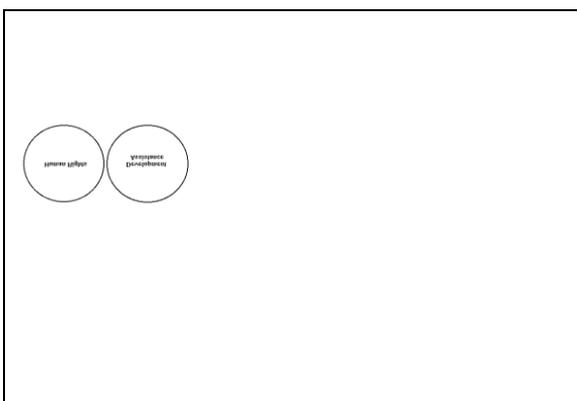
It is *within* this context that the debate takes place. Development assistance *and* human rights are dealt with as two distinct spheres (or activities or processes). This is reflected in the discourse which seeks a point of intersection and speaks of “linkage or “conditionality”.



We too started from this point. However, this position came under sustained challenge: if, for example, development and human rights are two distinct spheres what is the practical meaning (and effect) of the universality and indivisibility of civil and political, and economic, social and cultural rights?

As we describe elsewhere, it was frequently suggested to us by government leaders and aid officials, that all aid promotes human rights – principally economic but also social.

Yet probing this view both in discussion and in observations of aid activity, the inescapable conclusion is that any explicitly human right effect is at best coincidental. Certainly it is the case that government-funded human rights projects are exclusively focused on civil and political rights and seldom part of coherent planning.



The extent of the lack of coincidence between development and human rights is best encapsulated in a phrase such as, “indeed virtually all aid activities have the potential to contribute to the achievement of the right to development, the right to work, and other economic and social rights”.²⁸ The reality that they have not underlines the need for the new approach.

At the same time, the point is taken that it is just too simple to say that what used to be called “development” should now be called “human rights”. We are indebted to those who sounded this warning for it has rung constantly in our ears.

²⁸ *Aid and Human Rights: A Submission to the Sub-Committee on Human Rights of the Joint Committee on Foreign Affairs, Defence and Trade, AIDAB, July 1993.*

In fact, it would be a disaster to pretend for a single minute that what is currently going by the name of “development” is significantly informed by, let alone synonymous with, what we understand as “human rights”.

INDIVISIBILITY

We reject the view that economic, social and cultural rights and the Right to Development are difficult to implement or that there is a priority between these and other rights. We take as our starting point those instruments that are legally binding under international law and that have been adopted by the United Nations. These include the International Bill of Rights comprising the Universal Declaration and the two International Covenants. We also base ourselves firmly in this report on the 1986 UN Declaration on the Right to Development.

International law and a commitment by states to the rule of law are the foundations on which human rights programs can be built. The international human rights instruments clearly recognize that there is an obligation on governments to actively work for the realization of the rights they encompass.

For example, Article 40 of the International Covenant on Civil and Political Rights obliges the government of each State party to submit regular reports to the Human Rights Committee on the measures it has adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights.

The Committee itself has reminded States²⁹ that, in their reporting, they should bear in mind that the obligations under the Covenant include an undertaking by them not just to respect, but also to actively ensure all the enshrined rights to the individuals within their territory. This obligation calls for *affirmative action* by the States to deal with Covenant violations wherever they occur in the public or the private sector.

The International Covenant on Economic Social and Cultural Rights too imposes very precise obligations on governments to act and, here too, the obligation falls not just on governments that have not implemented these rights but also on the international community.

The Committee on Economic, Social and Cultural Rights has indicated what concrete steps governments must take to implement the rights in the Covenant and this provides clear lessons for development assistance programs in the context of the Declaration on the Right to Development.

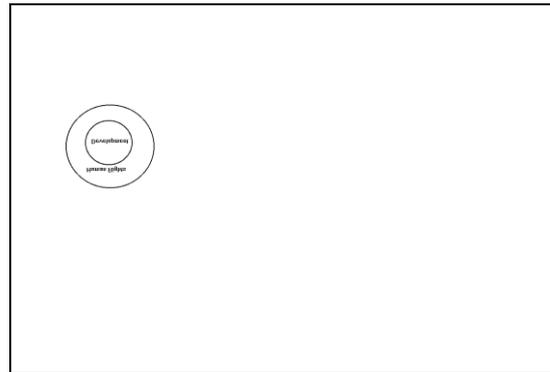
DEVELOPMENT EXISTS WITHIN THE HUMAN RIGHTS FRAMEWORK

The *Vienna Declaration* situates development within the human rights framework. It does this most significantly by explicit endorsement of the *Declaration on the Right to Development*:

²⁹General Guidelines Regarding Form and Contents of Reports, CCPR/5.

The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

This unanimity of view simply did not exist when the Declaration on the Right to Development was adopted by the United Nations General Assembly in 1986.



a) The Right to Development

The international recognition now accorded to the right to development lends weight to the elaboration of that right in the 1986 Declaration.

The Declaration makes a clear distinction between the role of the State and the rights of individuals and peoples.

The right to development is a *human* right and the human person is the central subject of the development process, the main participant and beneficiary of development.³⁰ States on the other hand do not acquire a right to development as such but, like individuals, an entitlement to equality of opportunity for development.³¹

In effect, human rights and development are not distinct or separate spheres. Development should in fact be properly seen as a subset of human rights. This runs counter to the assumptions underlying the current approaches to aid and human rights which treat development and human rights as separate. Therefore, the question is not how to identify points of actual or potential intersection, nor to “link” the two by way of conditionality. The flawed assumption results in fruitless quests.

The Declaration defines development as :

*a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.*³²

³⁰ *Declaration on the Right to Development*, adopted by General Assembly resolution 41/128 of 4 December 1986, preamble also article 1.

³¹ *Ibid.*

³² *Ibid.*, *Preamble*.

This definition makes several significant points: the importance of process but process tied to outcomes; the well-being and participation of both individuals and groups; the centrality of participation but a participation of a certain type – active, free and meaningful; and the proviso that outcomes be equitably distributed. Several of these points are taken up more fully later in this report.

This definition of development offered at the very beginning of the Declaration must then be read and elaborated in human rights terms. The consequences of this are taken up immediately: the centrality of the human person; the exclusion of “lack of development” as an excuse for abridging internationally recognised human rights.

The right to development has practical implications for policy:

Several scholars believe that one of the more important innovations of the UN Declaration is the provision mandating states to remove “obstacles” to development arising from the failure to respect rights and freedoms. This means that the state itself will need to (a) observe and respect the rights and freedoms as embodied in the international human rights covenants and related instruments, and (b) address the need to reform state structures, institutions and policies which are an obstacle to the realisation of these rights³³.

These themes are reinforced in the *Vienna Declaration* which emphasizes the need for states to cooperate “in ensuring development and eliminating obstacles to development”.³⁴ As with the 1986 Declaration this call to cooperate in development clearly exists within the international human rights framework.³⁵

b) Human Rights are Intrinsic to Development

There is a clear distinction between the question of the right to development as such and the particular rights that are intrinsic to development. The latter – such as the rights to housing, education, health, freedom of conscience, religion and belief, freedom of expression and association – are each capable of elaboration in both definitional and practical terms.

Governments have clear obligations with respect to each of these rights. These obligations derive from the range of international human rights instruments, principally but not exclusively from the International Bill of Rights.

There has been significant progress in winning international recognition of the universality of human

³³ Dr Neelan Tiruchelvam, Director, International Centre for Ethnic Studies, and Law and Society Trust, Sri Lanka, “*A South Asian Perspective*” in *Human Rights: the New Consensus*, op. cit., p. 140.

³⁴ Ibid.

³⁵ The *Vienna Declaration* identifies several specific development-related issues demanding attention: the dumping of toxic substances and waste (art. 11); the external debt burden of developing countries (art. 12); the existence of widespread extreme poverty (art. 14).

rights and linked to this of the affirmation that the principal sets of rights – social, economic and cultural rights and the civil and political rights – are indivisible and interdependent.

This recognition of indivisibility and interdependence is rarely evident in development assistance policies or practices whether of donor or recipient governments.

c) **Important Distinctions Inherent in a Human Rights Approach**

During the course of this project almost everyone we met would ask early in discussion what we meant by human rights. This proved a difficult question in large part because the international human rights instruments remain virtually unknown to the vast majority of those development workers we encountered. We ourselves failed to articulate a clear answer. This realisation has given rise to much probing, research and debate.

In response to our early inadequate descriptions many aid officials and project workers suggested that we were simply putting human rights in the place that basic human needs have occupied in development circles. Others, particularly those involved in community organising, chose to describe our concern with human rights as really akin to their own long-standing commitment to social justice.

At first, we ourselves had difficulty in pinpointing the distinction though we felt that a distinction did exist. Community organisers, for example, were fundamentally concerned about participation. We, too, spent considerable time exploring the issue of participation and have been left thinking that “participation” meant very different things to different people. Yet human rights, we knew, impose certain expectations on what constitutes meaningful participation.

Over time certain key distinctions did emerge.³⁶ The human rights approach to development assistance is distinguishable from a social justice, welfare or basic human needs approach.³⁷

Social justice *in its most general sense* posits an ideal society where all are treated with absolute equity and fairness. The ideal nature of such a society suggests that the enjoyment of social justice

³⁶ In a rare moment of serendipity we asked ourselves what relationship, if any, there might be between human rights activity *within* Australia and that within the Australian overseas aid program. In asking this it did not require a blinding flash of light to look first at the most pressing human rights issue in this country, that of indigenous rights. We asked ourselves: what would be the implications if AIDAB implemented one of its development programs for indigenous Australians ?

Even a cursory overview of the indicators for Aboriginal and Torres Strait Islander communities explodes any pretence that development can be reduced to good governance. It also humbles any view that governments might have that they have the answers for developing countries in pursuing development for their peoples.

We have not attempted in any sense a more detailed exploration of this line of thinking. However, the unexpected value of having at least asked the question was the discovery of the emerging “rights” approach to indigenous issues. We are deeply indebted to the work done by Aboriginal and Torres Strait Islander groups.

³⁷ This section draws heavily on: Michael Dodson, *First Report 1993*, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Government Publishing Service, Canberra, 1993.

is largely a matter of aspiration rather than expectation. It consequently lacks meaning and eludes application.

Social justice *more precisely defined* implies a form of social welfare. The associated policies focus on particular areas of need and disadvantage. The redistribution of resources is employed as the mechanism of meeting needs and removing disadvantage by providing fairer access to services.

As applied to the situation of Aboriginal and Torres Strait Islander peoples, Michael Dodson describes this strategy as structured on the government targeting areas of disadvantage and devising beneficial, remedial programs. It is essentially a welfare model based on government discretion being exercised to identify need and redistributing resources to fill the empty cup.³⁸

Social justice defined in this way most resembles the basic human needs approach to development assistance.

Policies and programs which rest primarily on a perception of need and powerlessness subtly reinforce the powerlessness of the recipients who are seen as being given justice rather than as receiving their rights. The recognition of entitlement is in itself an act of empowerment.

The welfare-based model operates in an essentially comparative way. The less fortunate are compared with the more fortunate. Measures are taken to achieve a comparatively fairer outcome. This promotes the view that there are no absolute entitlements, merely comparative entitlements.³⁹

By contrast⁴⁰ a human rights approach is more fundamental. It is not premised upon government largesse. It is not discretionary and it establishes a very different relationship between the individual or group and the state. A right confers power. A human right enables even the most marginalized and ostensibly powerless person or group to make a claim against the State. A claim that under international law and custom is sustainable.

THE ESSENTIALLY ACTIVE NATURE OF HUMAN RIGHTS

One defining characteristic of “human rights” (too often overlooked) is that they are by necessity active (depending upon the participation of individuals and groups) and practical (they must be

³⁸ Op. cit., p. 4.

³⁹ Dodson, op. cit., pp.6-7.

⁴⁰It should be made clear that we do not argue against the struggle for social equity when we talk about the problems with “social justice”. We do not want to suggest that the notion of social justice in itself is inevitably based on a social welfare paradigm. However, when used by governments – as it is in the Australian context – it implies that it is the government that endows justice as opposed to the disadvantaged demanding it, based on their recognized entitlements.

capable of application in the daily lives of people).

If this is so, then in the context of development assistance, it is not simply that human rights should be “promoted”, “protected” or “linked”. Rather they should be *practised* and *experienced*.

Adopting such an approach, aid programs and projects should be concerned both about process and outcomes *in human rights terms*. Otherwise, the inevitable contradictions will not deliver the results. As it is, the aid system is beset by contradictions.

Adopting a human rights framework assists in identifying contradictions and provides a coherent basis for attempting to resolve them. It offers a way forward.

As elaborated in greater detail below, the notion of participation is central to a human rights approach to development assistance.

Within the human rights context participation is given meaning. It is essential to the process of development but is tied to outcomes. For let there be no mistake that, in our view, process must itself be an experience of human rights but it remains a means and not an end in itself.

PARTICIPATION AS A RIGHT

The *Declaration on the Right to Development* features participation in its first article. It stresses that by virtue of their inalienable right to development “every human person and all peoples” are entitled to participate in (and contribute to and enjoy) development.

The Declaration also qualifies the legitimacy of state development policies with reference to participation. It recognises that States have the right and duty to formulate the policies for national development but these policies are predicated upon the “active, free and meaningful participation” of the people.⁴¹

It is also worth noting that Governments themselves have stressed that participation as a right acquires a particular force for those who are currently marginalised:

*...It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.*⁴²

As a right, participation is not an optional extra for governments. Neither do governments have the prerogative to determine the purpose, form and extent of participation without reference to those concerned.

⁴¹ Ibid., article 2(3).

⁴² *The Vienna Declaration*, article 25.

It may well be that the people concerned will decide that they only want to be involved in certain decisions or that they would prefer to have their views represented by chosen members of their community. They may well choose to say to an aid project team: yes, you are the technicians we trust you to decide the type, make and capacity of the water/sanitation/transport system.

The point remains that these decisions are made by those concerned.

CHAPTER 3

SOME PROBLEMS WITH CURRENT APPROACHES

This chapter looks at the context within which donor governments generally have sought to promote human rights through their aid programs.

CURRENT “AID AND HUMAN RIGHTS” POLICIES

Donor governments have been giving increasing attention to the question of “aid and human rights”. Our interest has been to try to identify the foundations on which these current policies are built.

The focus placed on the relationship between human rights and aid comes from a number of sources. Human rights is a feature of international politics as never before. The highly publicized battle over the ‘developing world concept of human rights’ between the north and the south has inflected many debates and looks like continuing to do so. The international financial institutions have been dragged into the discussions and are exploring notions of participation and good governance. The emphasis by the developing world on the right to development – a right which governments deliberately misconstrue – has led to attempts at defining the practical implications of this right.

These international debates have been fuelled by an increasingly well-coordinated human rights NGO lobby, particularly in the Asia-Pacific region. In response, governments are more ready to ask their donor agencies to address human rights in their programming.

The issue is the subject for debate at international conferences and within forums such as the OECD DAC Committee, the World Bank and the U.N. Several donor governments have formulated “aid and human rights” policy statements. Some have developed guidelines. Many incorporate in their aid programs a small number of “human rights” projects. Generally, these will have a legal or para-legal emphasis or be connected in one way or another with the “law and order” institutions: judiciary, police, prisons. More rarely, they will extend to direct support for independent media or human rights NGOs. There has, however, been a definite resurgence and some boldness in donor support for unions and labour rights advocates.

However, as indicated in the Introduction to this report, we believe the three principal characteristics of the current approaches are: the preoccupation with conditionality in its most negative and punitive form; conceptual abstraction; and the need for policy to conform to the donor agency’s corporate responsibility to manage the aid program.

a) **Negative Conditionality**

We argue strongly that donor governments have obligations and responsibilities for the aid they deliver. This means that conditionality has a place in aid policy provided it is used responsibly. Governments should always retain the option to suspend or withdraw aid. The experience of situations such as that of South Africa has shown that conditionality can be useful or appropriate to further human rights. But such situations are the exception.

It is precisely because they are the exception that it is regrettable that debates on the link between human rights and aid have preoccupied the attention of those involved. In the practice of donors there are some major problems about the way that policies on conditionality are applied.

The principal flaw in current practice is that it lacks a coherent and agreed policy framework. Consequently it remains susceptible to manipulation on the part of donors and recipients and engenders suspicion from the recipients as well.

The human rights framework, in fact, removes the opportunity for conditionality to be used as a tool of national interest.

The way that donor agencies approach conditionality presents a number of problems. First, it is weighted towards the identification of human rights as in effect synonymous with civil and political rights. There is no reason to exclude gross violations of economic, social and cultural rights from the suspension of aid in appropriate cases.

This weighting exacerbates long standing tensions between governments of the North and South regarding a hierarchy of rights (and mimics the divergent positions formerly held by the East and West prior to the downfall of the communist bloc).

Not without some justification, it reinforces suspicions on the part of recipient governments that the North (or West) is obsessed with civil and political rights to the neglect – if not exclusion – of other rights. It similarly heightens the perception that the North (or West) will *impose* its world view and as often as not it will do so for reasons that have very little to do with altruism or humanitarian concern.

This model is predicated on a (mostly unstated) view that in less developed countries, civil and political rights are not generally valued: certainly not by their governments but implicitly not by the peoples of those countries either. Respect for civil and political rights therefore necessitates external pressure and, given economic dependence, aid becomes a useful lever. (Some would draw an analogy to indirect racial discrimination).⁴³

⁴³ Yvonne Clerk writes: *...according to the definitions in the Convention against Discrimination in Education, the CERD and the CEDAW, it is not necessary that there be a purpose to discriminate. That is, also the effect of nullifying or impairing equality of treatment qualifies as 'discrimination', often called 'indirect discrimination'.* [Yvonne Clerk, "Working Paper on Article 2(2) and Article 3 of the International Covenant on Economic, Social and Cultural Rights in *Human Rights Quarterly*, op. cit., p. 254]

The corollary is that the use of conditionality in this way strengthens the hand of those governments that doggedly resist change on the pretext that “human rights” are a matter of domestic jurisdiction and that any international attention poses a threat to national sovereignty.

It is also not coincidental that many governments in the developing world are quite at ease in equating human rights with civil and political rights since this stance relieves them from taking action on other rights.

Secondly, negative conditionality unnecessarily limits the potential impact of human rights on the development process.

Preoccupation with conditionality of this nature is diverting the much needed attention of the multilateral banks (MDBs), governments (donor and recipient) and NGOs away from more fundamental and potentially valuable questions.

Finally, negative conditionality undermines the notion that development involves a partnership between donor and recipient. For if the donor government can use aid as a condition for ensuring that its own priorities are adhered to, then the unequal footing of the two parties is highlighted.

Once the rhetoric of partnership is brought into question, the recipient government is justified in questioning the willingness of donors to give both sides equal weight and the motivation behind the aid is also brought in doubt.

Whether or not the rhetoric of partnership is reflected in the reality of other aspects of development assistance, the reliance on conditionality of this sort is inherently inimical to a fuller and more accurate recognition of human rights.

There is another type of conditionality, of course. This is the one which is negotiated between consenting governments (mostly in private). In such negotiations, a donor government can stipulate a number of prerequisites for the provision of official development assistance.

One outstanding example is the way that the Australian government negotiated the shift from budget support to program support in Papua New Guinea in the face of considerable resistance. Another, is the prerequisite for the issue of ‘women in development’ (WID) to feature in aid projects, particularly in those focused on poverty alleviation.

While such stipulation can be more or less coercive, a more accurate term might be ‘contractual obligations’ since they are ultimately accepted by both parties as part of the contract by which a government accepts another’s priorities – even though these may not be its own. Such acceptance, grudging or otherwise, is a distinguishing feature between “conditionality” and “contractual obligations”.

b) The Definition Labyrinth

Efforts to address the relationship between human rights and development assistance through abstract concepts have left policy makers - and development workers - tied in definitional knots.

“What do you mean by human rights?” is a common opener on any occasion when one seeks to broach the subject with government officials (and often enough with development NGOs).

Among more senior staff and those with specific responsibilities for policy development the accompanying comment is invariably, “But everything we do is human rights: education, housing, health... These economic rights are the very purpose for which aid projects are designed.”

Often the near obsession with definitions arises from the very real difficulties stemming from lack of clarity and/or interpretation of particular rights in international law. In this respect the greatest confusion is reserved for the Declaration on the Right to Development itself. Given the foundational nature of the Declaration, this presents a major problem.

As we have seen in Chapter One, this problem is resolved if one goes back to the international instruments and looks at the way that States have pledged themselves to take practical steps towards the realisations of the rights therein.

c) The Management of Aid

The lack of a comprehensive framework for official development assistance and the relatively large amounts involved from the public purse have resulted in a mainly managerial approach to aid.

Aid agencies have developed corporate structures whose main function is the efficient disbursement of funds. In an essentially technocratic mode the role of the agency is to ensure that tax payers' money is accounted for and that the agency can defend itself from accusations of waste.

This is not to say that the agency is not concerned about humanitarian issues nor that there is not a corporate commitment to the realization of human rights. Rather, the structures and processes necessary to manage the aid program have the effect of distorting the priorities of the organization.

The placing of a heavy emphasis on the use and monitoring of funds rather than on the purpose for which they are intended necessarily leads to the treatment of human resources, participation of communities and of NGOs, and policy dialogue as the tools which facilitate the effective delivery of product.

The tendency to approach aid as principally a matter of “good” management manifests itself very clearly in the way in which “human rights” are dealt with in donors' aid programs – the parallel spheres described in the previous Chapter.

Another aspect is the manner in which projects are evaluated. This is most often determined on the basis of the project design document which specifies numbers of houses erected or the achievement

of suggested income levels. These are measurable and tangible. Projects which have less tangible outcomes, as many that focus on rights would have, present real challenges to evaluators.

It is true that few nowadays hold to the approach which saw the erection of a building or of a latrine as the sole measure of success of an aid project. Nevertheless, the managerial ethos is prevalent. The major inadequacy of the method, as with the others we have described, is that it can produce measurable results without necessarily affecting the practices and actions of the governments of the countries where the projects are situated.

THE CURRENT DEVELOPMENT PARADIGM

Development is packaged in many ways. Government policy statements and aid programs most often link development to poverty alleviation, improved living standards, and welfare. Social justice features at times though it is more common to find reference to social development. But essentially governments equate development with economic development. At least development always means economic development first. It often means economic development first and last.

For most governments development is causally bound to growth. And for most economists growth means “free markets”.

A whole lot of baggage arrives when any government accepts – willingly or otherwise – this particular model: tariff reduction; export drives; floating exchange rates; deregulated labour and financial markets; public sector reform.

The dominance of this economic paradigm for development assistance is underwritten by the industrialised countries of the North that are also the principal source countries for development funds.

NGOs for their part have consistently argued that the fundamental purpose of aid should be the reduction of poverty. In this the development NGOs are more focussed and single-minded in their attempts to work “from the bottom up” with an emphasis on localised (community-level aid activity). From this might be read an approach to development which contrasts poverty reduction with wealth creation.

Development NGOs have long conceded that growth is necessary. Their arguments (and to some degree their successes) lie in qualifying growth⁴⁴, This is reflected in the increased emphasis on sustainable growth.

ECONOMIC GROWTH AND SOCIAL DEVELOPMENT

⁴⁴ Conversely, NGOs having accepted the necessity of growth have also adopted the language of and a not dissimilar approach to economic development. [cf. *The Reality of Aid '94*, op. cit.]

A number of approaches have been taken towards the eradication of poverty over recent years. They all have in common a belief that economic growth will directly lead to the alleviation of poverty. They differ mainly over the time scale in which the impact of growth will manifest itself. While detailed discussion of economic arguments are beyond the scope of this study, it should be clear that we question the certainty that growth will always benefit the poor.

A simple growth model was popular in the 1950 and 1960s. It was based on the massive reconstruction of Europe following World War II. This was followed by an approach which combined growth with the targeting of aid aimed at specific disadvantaged groups. The current model blends structural readjustment with welfare measures to offset the negative effects of restructuring.

Yet the evidence challenges the presumption that economic development necessarily leads to social development. Indeed as Stewart MacPherson points out:

An investigation of the relationship between economic growth and social development in 46 countries over a 40-year period found that the impact of social development on later economic growth was much greater than the impact of economic growth on later social improvement. In other words, no support for the 'trickle down' hypothesis; considerable support for the 'trickle up' hypothesis. There is growing evidence about some of the factors which affect the achievement of social development. They include, inter alia: equitable income and asset distribution; structured government social expenditures; increased gender equality and women's status; and political democracy (World Bank 1990).⁴⁵

Not only does economic growth not inevitably lead to social development but without government action to address such issues as poverty, economic growth might actually have the opposite effect in the longer term.

The basic fact is that more than 1.1 billion people live in poverty and deprivation. The gap between rich and poor is widening both within countries and between the richest and poorest countries.⁴⁶ Poverty is not restricted to developing countries either. A growing underclass is found in the cities and rural areas of the developed world.

Advocates of the dominant economic growth model maintain that with economic development comes social development. Liberalization of markets is supposed to ensure political liberalization as a growing educated middle-class will increasingly call for political liberalization.

Governments of the North with support from some academic quarters claim that economic growth based on the free market will inevitably lead to other forms of liberalization - including political liberalization. The Asian "tigers" are often cited as an example of this process.

⁴⁵"Can We Turn Social Science into Social Development Studies?", Stewart Macpherson in *Social Dimensions of Development*, Laksiri Jayasuriya and Michael Lee (eds) Paradigm Books, 1994, p 187

⁴⁶Human Development Report, UNDP 1992

While it is true that the middle-class in the newly industrialising countries have been calling for a greater say in the political process and that they have attacked entrenched corruption (witness Indonesia and Korea), this has meant little in terms of human rights and the social development of the poor and marginalized.

Even in those countries which have posted a marked increase in economic development, the gap between rich and poor has been widening. While GNP and GDP might be growing exponentially and there might be an emerging middle class which could begin to demand greater freedom, the poor are growing poorer and essential services are getting more scarce. And while the emerging middle class may acquire greater freedom, political liberalization seldom accrues to the poor.

A discussion of development and human rights would not be complete without reference to the issue of debt. The large debt burdens of developing countries have directly affected social development and there is little question that they have aggravated the plight of the poor. This has led to calls for debt moratoriums, debt swaps and the cancellation of debt. Various NGO networks have formed in attempts to address the issue. A lot more work needs to be done to investigate the human rights dimensions of debt and debt relief.

Governments from the South and development NGOs frequently stress that on a global basis aid flows are dwarfed by trade. The related evidence demonstrates that improved trading relations are of potentially greater economic benefit to developing countries than increased aid.

Nonetheless, total aid flows are significant. At US\$60.4 billion, ODA represented just over a third of the net flow of resources from DAC countries to developing countries in 1992.⁴⁷ The developmental impact of aid varies considerably from country to country depending on gross national product and the magnitude of the aid⁴⁸.

Development NGOs argue that aid remains the main source of external finance available to fund policies and programs designed to address poverty directly. At the same time, the stated priority donor governments give to poverty alleviation is not apparently matched by the allocation of aid resources. Few governments even maintain the appropriate data. Those that do use different formulas.

The big money goes elsewhere.

a) Poverty eradication, reduction or alleviation

The designated role for development assistance in the “war on poverty” is alleviation: minimise the damage until such time as the benefits of a properly geared economy take effect.

⁴⁷ DAC, 1993.

⁴⁸ For example, aid represents over 90% of GNP in Tanzania and Mozambique; over a third of GNP in Cambodia, Laos and Vietnam as of 1991-92; but less than 1% of GNP in India.

To overcome poverty, governments have developed a two-fold approach. Economic inequality is addressed through attempts to improve economic activity by encouraging communities to engage in commercial activity. The handicaps of poor education, poor health and lack of food and water are tackled through project aid and subsidies.

The two-fold strategy to address poverty is generally accepted by development NGOs as well as government agencies. Both types of donors share the assumption that while there is a need to provide communities with the ability to pull themselves out of the poverty trap through the generation of economic activity, there is a responsibility to provide basic health, education and security.

b) “Participation”

For many development agencies – government and non-government – “participation” has become central to their chosen models of development. It is perhaps the strongest common element in the elaboration of policies by all groups involved in development activity. It features at every level from multilateral programs to micro-projects.

As we argue in the previous and final chapters participation is key to both development and human rights *as a right*. Too often in current practice participation is seen as a tool for delivering project aid rather than as an entitlement guaranteed by international law.

HUMAN RIGHTS AND POVERTY

A consideration of the particular approaches to addressing poverty illuminates the issues.

A human rights approach to development rather than focussing on lack looks at obligations. The failure of the preparatory process leading to the World Summit for Social Development to frame unemployment and under-employment, inequality, social disintegration and lack of participation in terms of human rights and therefore of government obligations has been one of its main disappointments and places in jeopardy some of the limited gains made at the World Conference on Human Rights.

All people are entitled not to starve, not to die from preventable disease, to strive to better their economic condition, to access to knowledge, to participation in the decisions which affect their lives, as guaranteed in the international human rights instruments. Development must start with government actions which can deliver these entitlements.

Two points arise if one steps outside the existing practice. The first is that the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Right to Development quite clearly and very precisely define basic human needs in terms of government obligations. The second is that, as we have argued, economic development “can have a wide impact on the access of poor people” to services but very seldom does in the long term and almost never in

the immediate term.

The market-oriented policies which are aimed at developing outward looking internationally competitive economies have been faulted for their neglect of the adverse social consequences they can have on the poor segments of the population. These policies have shown an inbuilt bias towards reducing the role of the state and restricting the domain of public responsibility. Consequently, the state's responsibility for health, education, social security and poverty alleviation often gets diminished. The social concern and care for the weaker sections of society which was the bedrock of the welfare state of the industrialized economies and which humanise the process of development, finds little or no expression in the new market-oriented ideologies.⁴⁹

If governments were to meet some or all of their obligations under the international human rights instruments, the impact on the poor would be far more wide ranging and far more immediate.

⁴⁹ ADIPA(Association of Development Institutes of the Pacific and Asia)(1993) *Overview of Themes and Issues for 20th Annual Conference of Association of Development Institutes of the Pacific and Asia, Kuala Lumpur* quoted in *Social Dimensions of Development*, Laksiri Jayasuriya and Michael Lee (eds) Paradigm Books, 1994, p 20

CHAPTER 4

GOOD GOVERNANCE AND OTHER NEW APPROACHES

Poverty and inequality have persisted in both the developing and the developed world into the last quarter of the 20th Century. The real or perceived failures of development have encouraged governments to investigate new approaches. Each of these is being closely examined by the development industry and each has evolved a terminology of its own.

They include the current investigation into notions of “good governance”, an increasing focus on “decentralization”, the evolution of “civil society” as a means of ensuring social development, and the promotion of such global concepts as “human dignity”, “human security” and “life claims”.

There are good arguments for the usefulness of each of these concepts. The concern is a potential limit to outcome/effect which we believe lies in the human rights regime.

This may very well prove counter-productive for their proponents as human rights are replaced by vaguer concepts and as once again conditionality is imposed by the governments of the developed world as they promote certain economic or political models.

GOOD GOVERNANCE

There seems to be little agreement about just what precisely the term ‘good governance’ covers. From a narrow technical perspective, it attempts to describe managerial issues: accountability, efficient public service, suppression of corrupt practices and effective financial accounting. These are perfectly desirable ends but do they deserve a whole new conceptual framework and terminology?

A broader view of good governance holds that its basis is in human rights and that it represents an attempt to encourage their realization.

A more suspect motivation for the promotion of good governance is the attempt to impose a certain political model on developing countries. Thus the close linking of democracy is seen as merely the establishment of electoral processes. In this form, good governance reintroduces the possibility of the provision of development assistance based on conditionality.

a) Good Governance and the Human Rights Approach

As many commentators have pointed out, the governance debate is very complex. Our suspicion is that at its core it lacks real significance: it is a red herring.

Landell-Mills and Serageldin, for example, have gone as far as to say that the minimum core characteristics of governance “derive from, or are related to, the Universal Declaration of Human Rights” and include:

- Government officials must be accountable for their actions through clearly formulated and transparent processes, and more particularly the legitimacy of a government must be regularly established through a well-defined open process of public choice (UDHR, Article 21).
- The safety and security of citizens must be assured (Articles 3, 5), the rule of law must prevail, and citizens must be legally protected from arbitrary or capricious actions by public authorities (Articles 7, 8, 9, 10, 11).
- Everyone has a right to an adequate standard of living and the basic necessities of life, which should be provided for the benefit of all citizens in an equitable manner (Articles 22, 23, 24, 25).
- Freedom of association and expression of opinion must be permitted, and information must be readily available to ensure accountability (Articles 19, 20).

We share these conclusions. We suggest further that the logical and practical extension of this is to refocus the attention on human rights explicitly. In other words, go back to basics. Shed the baggage carried by the governance debate. There is much more to be achieved by applying the existing human rights instruments to the problems that have been identified.

b) The Emergence of Good Governance as an Issue

In the recessionary climate of the 1980s donor governments and institutions confronted financial constraint and a lot of questions. Not least among these questions was the one that went to the heart of development assistance: what have we achieved with the billions of dollars that we have invested in assisting these countries to develop?

Out of this emerged the suggestion that many programs failed due to the administrative incapacity of recipient governments to plan, process and deliver programs with the necessary efficiency. This suggestion merged with causal factors such as corruption, political dealing and incompetence to give rise to the need to address questions of “governance” in official development assistance.

Once this lid was opened, the opportunity was quickly seized to re-assess the very purpose of development assistance – particularly by the multilateral development banks such as the World Bank, but also by other economic players such as the OECD.

For some governments, this appears to have been an opportunity to re-orient these institutions in the post Cold War world. Arguments were put forward regarding the correlation between democracy and development under the governance umbrella. For some governments good governance had the potential to legitimate particular political agendas in the domain of economic development.

For NGOs good governance offered the opportunity to validate in development terms issues such as the environment which had made inroads into public debate over the preceding decade.

More recently an argument has been evolving that good governance is indeed crucial to the development process but that it must be understood more broadly than economic efficiency and sound management. In this sense, it is argued, good governance issues of transparency, accountability and equity are based upon proper observance of human rights.

c) What is Governance?

The governance debate has centred on the World Bank. This is reflected in the studies and conferences which have provided the sources for defining governance.⁵⁰ It is also reflected in the articulation of policy on governance by individual donor government agencies.

The World Bank Task Force on *Governance and Development* defined “governance” as “the manner in which power is exercised in the management of a country’s economic and social resources for development”.⁵¹

The task force concluded that “good governance is central to creating and sustaining an environment which fosters strong and equitable development, and is an essential complement to sound economic policies”.⁵² The key dimensions of governance are accountability, a legal framework for development and information and transparency.⁵³

The Lawyers’ Committee for Human Rights stresses that the concept of governance calls into focus the relationship of the state and its institutions to effective development.

Joan Nelson’s comments on the World Bank position reflect this view:

[It] requires efficient and honest institutions staffed with well-trained people,

⁵⁰ In their valuable study published as *The World Bank: Governance and Human Rights*(1993), the Lawyers’ Committee for Human Rights identifies three landmarks in the evolution of this debate at the World Bank: the 1989 study *Sub-Saharan Africa- From Crisis to Sustainable Growth*; the General Counsel’s Memorandum on the Issue of Governance in 1990; and the work of a Bank-wide task force to examine the operational aspects of governance published in 1992 under the title *Governance and Development*.

⁵¹ Ibid cit. p.47.

⁵² *Governance and Development* p 1.

⁵³ Lawyers’ Committee for Human Rights, op. cit. pp. 48-49.

*enforcing the rule of law impartially and effectively. In order to have honest agencies that serve the public interest, transparency is crucial (including collection and dissemination of much fuller information, and a free press). So is accountability (including ways to throw the rascals out). The channels for transparency and accountability require a broad array of vigorous non-government associations. A well-developed civil society, in turn, requires not only strong associations but good communications and channels for conflict resolution and growing trust among the varied groups.*⁵⁴

d) Good Governance and Human Rights Conditionality

David Gillies maintains that there appears to be at least two readings on “governance” at the World Bank. The “narrow” version, which is emerging as de facto Bank policy, focuses on technical criteria connected to efficiency and excludes consideration of most civil and political rights.⁵⁵

Gillies argues that the views of Landell-Mills and Serageldin referred to above are indicative of a broader interpretation of human rights among some Bank staff, which concedes that sovereignty is not sacrosanct and acknowledges that the core characteristics of governance in large measure derive from or are related to the Universal Declaration of Human Rights. On this view the relationship between rulers and the ruled (legitimacy) is as central to good governance as questions of administrative efficiency.

Some human rights groups have taken advantage of this slightly opened window by seeking to exploit the governance debate as an opportunity to have human rights “taken into account” as a relevant factor in good governance.

Although this attempt to co-opt the debate is worthy, it suffers from three problems.

First, the current position adopted by human rights groups – at least those from the North – again seeks to introduce conditionality for determining the suspension or cessation of aid. It has been our contention that this approach is seriously flawed. It is *not* what we have characterised in this report as a “human rights approach to development assistance”.

Second, it reinforces the perception and use of civil and political rights as the totality of “human rights”.

Third, it concedes that good governance is the appropriate policy paradigm. We do not accept this.

⁵⁴ Joan M. Nelson, “Comment on ‘Governance and Development’, by Boeninger”, in *Proceedings of the World Bank Annual Conference on Development Economics 1991* at 292-93 (World Bank 1992). Cited by Lawyers’ Committee for Human Rights, op. cit., pp. 1-2.

⁵⁵ David Gillies, “Human Rights, Governance and Democracy: the World Bank’s Problem Frontiers” in *Netherlands Quarterly of Human Rights*, SIM, Utrecht, Vol. 11 No. 1 1993, p. 13.

Like David Gillies we discern two main streams in the approach to good governance.

The first is the “narrow” interpretation stressing the technical aspects. This approach is consistent with what we have described as the management of aid.

The key characteristic of the second stream is not human rights but rather the promotion of one variety or another of a political/social system.

f) The Implications of the Human Rights Approach

We do not accept good governance as the appropriate paradigm for strengthening an insistence on government responsibility, transparency, accountability, or government commitment to equity and the rule of law.

It is hard to escape the conclusion that the good governance debate is principally a recognition and public airing of the failure of too many Governments to fulfil their responsibilities. And this conclusion strays on the generous side.

Governments should not be corrupt. They should deliver services to their citizens. They should be accountable and financially responsible. The legitimacy of their policies is to be derived from the people’s support. Their responsibilities extend to the full citizenry and not only to some sectors of the population. They should seek the cooperation of other social actors outside of government.

We knew all this well before governance became an issue.

The dilemma facing donor governments and development agencies, including the international financial institutions, is that they cannot change governments but they can influence, and at times even impose, changes in Government policies.

So having decided that the principal impediment to the success of their development programs was failure on the part of recipient governments to do their jobs properly, it becomes necessary to define in their own terms just what was expected of these governments. Hence the particular characteristics of “good governance” as elaborated by the World Bank and donor government agencies.

Having identified that poor – as opposed to good – Governments are the impediment, then defining what they *should* be doing, the logical next step is to design and fund programs geared to re-educating those Governments how to do their job properly.

However, the governance debate does not add to what has already been agreed concerning government or government responsibilities and practices. Ignoring this has created a situation in which governance is being imbued with a significance it does not deserve and is unlikely to be able to support.

Indeed, it concerns us that in seeking to exploit this apparent window of opportunity, such central principles as participation, accountability and equity are being redefined in such a way as to limit the meaning already accorded to them in existing human rights agreements. Moreover, these principles are reduced to tools or an “instrumental role” in meeting the efficiency demands of managing development.⁵⁶

We are not dismissing the need for efficient, well managed and effective institutions. On the contrary, they are crucial. What we *are* saying is that the governance debate has got it back to front: the institutions are the instruments.

DECENTRALIZATION

Decentralization and devolution have the potential to bring increased democracy and genuine community participation. There is considerable support for greater decentralization from communities isolated from the centres of power and deprived of services and benefits that often accrue in capitals but seldom reach the provinces.

At the same time there is cause for some unease about the way governments are relinquishing their responsibilities and obligations through the mechanism of decentralization. This theme recurs in our findings in both the Philippines and Papua New Guinea.

This unease clearly stems from a number of concerns that recur throughout this report:

- a strictly managerial and technocratic approach,
- lack of genuine participation in planning the process,
- a rejection of government responsibility in favour of making communities responsible for their own survival,
- the entrenching of local power elites and the creation of new ones.

It is claimed that the steering of funds to local communities and the practice of community development will enhance democracy at the local level, particularly if the local government is either a partner or is involved in some way. However, this does not necessarily assist in ensuring that the voices of the communities are heard at the central government level.

Moreover, a move to make certain services dependent on local revenue raising might lead to a suspension of these services. It is difficult as it is to ensure that central government meet their obligations. The danger of out of sight, out of mind is a very real one.

More seriously, human rights observance is a national government responsibility and care needs to

⁵⁶ The Lawyers’ Committee for Human Rights notes, for example: “The governance debate looks to human rights not for their intrinsic value but for their instrumental role in creating an environment in which effective and sustainable economic development can occur.” [Op. cit., p. 61.]

be taken that this responsibility is not forsaken in the move to decentralize.

CHAPTER 5

AID PRACTICE

When questioned about their own agency's human rights practice, officials often refer to programming guidelines and manuals. In these human rights is often referred to as another "cross-cutting issue". The term "cross-cutting" is used to refer to an issue deemed to have an impact on many sectors of a development program. The following are six such cross-sectoral issues identified in one agency program guide:

Women in development
Health
Population
Poverty
Human rights
Environment

In the same guide the chapter on human rights is three and a half pages long including a one-page chart defining collective, civil and political and economic, social and cultural rights. The one page of programming issues focuses exclusively on civil and political rights.

Cross-sectoral issues present problems for a bureaucracy intent on efficient management of projects. Firstly, it is difficult to quantify results. This means that evaluation – which is an essential management tool - becomes very difficult. Secondly, cross-sectoral issues are supposed to impact across many sectors. But many projects do not lend themselves to addressing certain issues, despite some imperative to do so. Finally, some of these issues come down to things that *should not be done*. This is a concern for an agency which is supposed to deliver goods, services and money.

The answer by many donors to some of these problems is to have instituted the "marker" system. A management tool, the marker is a metaphorical tick in a box for each project to ensure that the issue has been addressed. There are markers for women in development, for the environment, for poverty alleviation, for health.

The vagueness of purpose of this system is well recognized by donor agency staff. Some deal with the marker system as a necessary imposition to be suffered in silence. Others ignore it. Yet others make genuine efforts to try to give some meaning to it. However, the concern over the effectiveness of markers is reflected in an often heard complaint in relation to human rights, "please, not another marker".

The "please, not another marker" exhortation is an understandable one – indeed, a welcome one. It shows a willing appreciation that genuine action on human rights needs more than ticks in a box.

Human rights and the corporate culture

It is possible to point to a number of difficulties confronting attempts to address human rights issues within donor agencies. The first and foremost is the corporate culture of the organization.

It is clear that there is much confusion and disagreement in donor agencies about what the *programs* to promote and protect human rights should be and thus what information and basic training is required for donor agency staff.

One Australian aid agency staff member put three pertinent questions that needed answers to provide direction for the agency:

1. What needs to be done differently from current practice?
Is it simply a question of presentation? How does the aid problem relate to human rights? Are we talking simply of social development?
2. How do we convey policy to other governments?
Are we to send human rights design and feasibility teams into the field?
3. How do donor agencies and NGOs make human rights rhetoric understandable by everybody?

Another senior staff member divides the human rights “problem” into three areas for which answers are sought: policy, strategy, practice.

1. Policy
 - a) There is a need for clear direction from the top which is able to be implemented, and not simply a repackaging of past policy;
 - b) What are the objectives of the policy, proactive or reactive or both? And if the latter, in what combination - what funding is available to implement the policy?
 - c) The policy must be consistently applied and must avoid self-righteousness.
2. Strategy
 - a) The human rights agenda has been used improperly in the past for strictly political ends. For example the United States has been selective in its human rights approach depending on the politics of the recipient country. Human rights should be a central element in the government’s economic and social development platform and therefore part and parcel of the policy dialogue between governments. However, there needs to be a balance between the long-term (described by this informant as the ‘people focus’) and the short term ‘economic focus’ [sic].
 - b) Funding must be available and this will affect the setting of priorities.

3. Practice

- a) Must be pragmatic and not just tick a box or marker
- b) Must be built into country strategies

This description mirrors to some degree the search for practical means to achieve the objectives of policy when it is established. It focuses on one important aspect, the need for the government to establish policy within the political context. The recognition of this, while still relinquishing the responsibility for policy formulation, acknowledges the complexity of the issues and the strategic implications of stated policies.

There exists a lack of transparency in most agencies. For any organization that prides itself on the emphasis on its 'participatory approach' to development, hesitation to make available what are rather innocuous documents, sits badly with a commitment to participation.

The need for open access to information is recognized internationally:

In general, aid programmes will have to become much more accountable to people in the South. Negotiation, planning and implementation should be much more open - enabling opposition groups, the media and other elements of civil society to insist on strict standards of accountability. Such transparency in aid negotiations is the best way to build public confidence⁵⁷.

Yet, the difficulty of obtaining information from most donors is pervasive.

We have found the following instances:

- groups and individuals who have been informants for feasibility studies and who have not been able to obtain the results of the studies;
- management teams who have not been able to obtain reports of reviews of their projects;
- NGOs that are involved in projects not granted access to design documents;
- NGOs that have not been informed of possible funding sources or of deadlines for applications;
- members of the public denied access to project documents;
- individuals and groups that have found it difficult to obtain inter-government agreements.⁵⁸

It is understandable that obstacles to information flow occur in bureaucracies. There are all kinds of reasons for this. Work priorities mean that staff just do not have the time to chase up such requests for information. Suspicion that the information will be used to criticize the organization, while it may not be openly expressed, can delay the provision of the information. Some information is sensitive and could jeopardize delicate negotiations or reflect adversely on the person seeking the

⁵⁷Human Development Report 1994, p 72, OUP 1994

⁵⁸This is only a selection of accounts of information blockage. We have not sourced any of these allegations as in most cases we were asked to treat the information in confidence.

information.

These attitudes, however, reveal a more fundamental problem. If an agency is genuine about ‘participation’ and ‘empowerment’ then it is the entire approach to information which is brought into question. Not only is information critical to participation, but without it, it is virtually impossible to take part in decisions which affect people’s lives.

PRACTICAL IMPLICATIONS

We did not set out on this project with a view to producing a comprehensive guide or a manual for donor agency practice. It would be presumptuous to imagine that after one year, we would be in a position to advise such agencies on how to carry out their day to day activities.

What we did propose was to examine the relationship between official development assistance and human rights and – in the words of our original funding submission – to attempt to examine such issues as:

- * How do you describe the relationship between human rights and aid meaningfully in policy terms;
- * How would this description be translated into appropriate policy options - proactive and reactive;
- * How is the stated indivisibility of economic, social cultural, civil and political rights recognized in the practice of aid programs;
- * What are the implications for aid programs of defined human rights goals in foreign policy;
- * What practical effect will this have on decision-making regarding aid programs or projects...

We feel that the human rights approach that we outline in the present report comes up with some answers to these questions, provided that the implications are dealt with in good faith. A lot more work needs to be done. We sketch below what we see as the key components of such an approach.

GOOD INTERNATIONAL CITIZENSHIP

The Australian government argues that it is possible to promote Australia’s economic and strategic interests at the same time as addressing humanitarian concerns. The latter is done through poverty eradication programs and emergency relief and the funding of “cross-sectoral” programs.

It is difficult to reject the argument that there should be a clearer distinction between these aims: Why should projects that are designed to generate the greatest return for the donor be included in an aid program rather than a trade promotion department? What is the role of “boomerang aid” – (or tied aid) within a *development* assistance program? Even if economic benefits to the donor are incidental and unsolicited, shouldn't part of donors' responsibility be to ensure that all the benefits accrue to the recipients?

We have avoided dealing at length with these questions as they fall outside the scope of the current project. Our premise has been that for those governments that have an active human rights policy, there is a genuine search for policies which will enable that part of the development assistance program which is not used as trade promotion to address human rights.

Why, nonetheless, it might be asked as a matter of real politik, should governments bother to pursue these rights in an international arena, given that such issues are always likely to be sensitive in the country the subject of attention, and that even their successful pursuit is likely to be marginal to one's own country's strategic, political and economic interests? One answer is that for a country like Australia, human rights policy involves an extension into our foreign relations of the basic values of the Australian community: values at the core of our sense of self, which a democratic community expects its government to pursue. Another is simply that governments like ours believe that a moral obligation is its own justification, and that a commitment to good international citizenship demands no less than acting to help secure universal adherence to universal rights.⁵⁹

In the Vienna Declaration, adopted at the end of the 1993 World Conference on Human Rights, governments explicitly committed themselves to the indivisibility of all rights.

This requires devoting as much energy to the right to development and the economic, social and cultural rights as to civil and political rights. It means more than standard-setting and calls for universal ratification. It also means that policy must address those instances “where obstacles to development arise from the failure to respect rights and freedoms.”⁶⁰

A clear indication from the executive to the bureaucracy is required, not only in terms of development assistance but in the exploration of the means by which these rights can be realized and these obstacles overcome in recipient countries as well as in the donor countries themselves..

There is, for instance, a need for policy makers to acknowledge that development per se is not equivalent to or synonymous with economic, social and cultural rights.

The realization of these rights should be made an *immediate goal* of development assistance in the

⁵⁹Senator Gareth Evans, Minister for Foreign Affairs, at Award of Human Rights Law Prize, Melbourne, 8 September 1994

⁶⁰Dr Neelan Tiruchelvam, Director, International Centre for Ethnic Studies, and Law and Society Trust, Sri Lanka, “A South Asian Perspective” in *Human Rights: the New Consensus*, op. cit., p. 140.

knowledge that their full realization is an ongoing process. An essential component of that process is participation.

PARTICIPATION: THE ESSENTIAL OIL

Very early in this project we were led to recognise the central role accorded to the notion of “participation” in accepted contemporary development models.

We were to hear repeated references to “participatory development” from academics, NGOs and aid workers and in much of the literature. It was clearly presented as a practical extension of “people-centred development” and frequently was linked to “sustainability”. This was almost always associated with the terminology of “empowerment” and “(local) ownership”.

Thus, participation may well be a most productive basis for constructive integration of human rights with development assistance. As our own thinking evolved, we came to reject the idea that looking for points of intersection or integration provided sufficient promise of a way forward.

We became increasingly convinced that the notion of “participation” remains central to the evolution of a human rights approach to development assistance.

It is so for a number of reasons:

- * “participation” is a pivotal concept within the international human rights framework;
- * “participation” has won widespread acceptance within the world of development assistance;
- * there exist sufficient, possibly significant, levels of commonality between the development and human rights interpretations of “participation” to make it a practical question of building on the substantial experience of the aid agencies.

Beyond Participation: the “Decisive Voice”⁶¹

A human rights perspective imbues participation with force and meaning quite distinct from the concepts of participation prevalent in the accepted models of development.

The central distinction is that participation as a right makes definite demands on the states involved – that is both recipient and donor governments – and by extension their development agents – government agencies, consultants, companies and increasingly NGOs.

This distinction flows directly from the position we outlined earlier that a development assistance

⁶¹ The phrase is borrowed from Michael Dodson, *op. cit.*, p. 66.

program which adopts a human rights approach will be essentially concerned with the reasons to meet the need to remedy the injustice and inequity that development seeks to address.

Again the analogy to the experience of indigenous Australians is instructive:

The absence of self determination is experienced by Aboriginal and Torres Strait Islander people in an intimate way. Confinement to mainstream government services relating to health, housing, education and employment is, to many indigenous peoples, reminiscent of the missionary days. When you lined up to be fed and dressed in ill-fitting clothes of stock issue: placing the forms of another society over you. With the food and clothes came religion and education, similarly intended for your benefit, but pushing the spiritual and cultural values of another world: placing the forms of another society within you and within your children. The taking of children is not just physical.

The exercise of self determination by Aboriginal and Torres Strait Islander communities most frequently centres on the provision of community services. The aim is not merely to participate in the delivery of those services, but to penetrate their design and inform them with indigenous cultural values. The result is not merely services which are better structured to reflect the needs and identity of particular communities: there can be a resultant improvement in the effectiveness and efficiency of these services. The assumption of indigenous control has the potential to create benefits which flow to the Aboriginal and Torres Strait Islander community. It can also bring benefit to the wider community.⁶²

The essence of the distinction lies in control.

“Control” is a word meaning: “power of directing”;⁶³ “to exercise authoritative or dominating influence over”⁶⁴ “to exercise restraint or direction over”⁶⁵.

Participation understood as control cannot be easily confused with “involved”, “consulted”, “empowered” or even “ownership”. To ask who has control, authority, direction over a particular aspect of the development program is a much tougher question than to ask who is involved in or empowered by it. It also leads to significantly more meaningful answers.

Understood in this way, participation as a right demands that the intended purpose of participation whether in broad policy terms as in “participatory development”, or in program and project activities be explicitly stated.

As indicated elsewhere in this report, it appeared to us (admittedly as observers) that at times participation was built into aid programs and projects in fulfilment of externally imposed aid specifications. More frequently, participation was embraced as a component for effectively

⁶² Dodson, op. cit., pp. 56-7.

⁶³ *The Concise Oxford Dictionary*, Fifth Edition.

⁶⁴ *The American Heritage Dictionary of the English Language*, Third Edition.

⁶⁵ *The Macquarie Dictionary*, 2nd Revised Edition.

delivering the pre-determined results. We recognise that the latter purpose can be entirely valid. However, it is in our view a restricted understanding of participation robbing the principle of much of its power.

In a human rights approach, participation is both consciously decisive on the part of the participants and inextricably linked to accountability by the governments concerned (recipient and donor) to the people affected.⁶⁶

Participation understood in this way respects the fundamental human rights tenet that people are the subjects, the active players, who determine and freely pursue their economic, social and cultural development.

The principle is recognised in the rhetoric of development assistance but is evident in practice more by reflection than fact. The corollary to asking what is the purpose of participation is to ask who should participate.

Again, adopting a human rights approach creates new ways of looking at the question.

For example, participation, from a human rights perspective, has distinct implications for the rights of both individuals and groups. Recognition of this will in turn have an effect on the shape of the aid program or project.

Law and order issues, for example, will be approached differently according to whether the principal focus is the individual or the group. When individual-focused, the human rights questions are often the classic civil rights questions of humane treatment, freedom from arbitrary arrest, fair and prompt trial etc. By comparison, when the questions are group-focused law and order immediately needs to be addressed in social terms:

The plain fact is that in many Aboriginal communities the imposition, and the techniques of enforcement, of non-Aboriginal law does not achieve the social purposes of the law. Peaceful community living and the means of intervention, protection, enforcement and sanctions, when the peace is broken, are the common social purposes which the law serves. But the forms in which these purposes are expressed, and the cultural values which draw respect for rules of behaviour, are quite distinct within traditional Aboriginal law.

*Police action within Aboriginal communities may not only fail to achieve the purposes of law, it may defeat them.*⁶⁷

Participation, from a human rights perspective, has a systemic dimension: it demands that the processes associated with development assistance from the negotiation of treaties on development cooperation to project-level initiatives provide not simply for consultation or involvement but

⁶⁶ This link is evident in the Limburg Principles which present participation as a bridge between accountability (Principle 10) and the realisation of economic, social and cultural rights (Principle 11).

⁶⁷ Dodson, op. cit., pp. 58-9.

active, free and meaningful participation. This inevitably demands systems which allow for such inclusion.

Participation and the Question of Process

Questions of *process* in the provision of development assistance are crucial in giving effect to human rights:

*The UN Declaration on the Right to Development (1986), in its preamble, describes development as a comprehensive economic, social, cultural and political process that aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of resulting benefits.*⁶⁸

Yet at times the temptation exists, as we have observed, to give such priority to process that all sight is lost of outcomes.

For this reason it is crucial to appreciate the qualifications that accompany a human rights approach to participation; namely, that it is “active, free and meaningful”.

These qualifications suggest first that it cannot be imposed on people. Second, active and meaningful participation requires that the process is going somewhere; its meaning is at least in part derived from what it achieves.

POLICY DIALOGUE

For the human rights approach to have any meaning, it is essential that the international human rights framework be understood by those involved. Mention the words “human rights” and almost everyone (with the possible exception of those whose language does not encompass the concept) will claim to know what is being said. Mention “entitlements” and almost no one comes up with the same answers. Mention economic, social and cultural rights and the almost universal response is, “aspirational”.

For a human rights approach to development assistance to have any meaning, development workers must be familiar with the international human rights framework. They must have an understanding of government obligations and community entitlements and, most importantly, they must be able to translate these into their everyday practice.

Development workers genuinely committed to human rights must be prepared to conceptualize and verbalise their activities within this framework. This is why we call for development discourse to be grounded within the language of human rights. It is not possible to carry out a policy dialogue that takes account of government human rights obligations without doing so.

⁶⁸ Lawyers’ Committee, op. cit., p. 35.

We have described above the shortcomings of the policy dialogue that donor agencies conduct with recipient governments during the negotiations over their aid program.

Contrary to the claim that development assistance is shaped by the priorities of recipient governments, most common practice is to choose those areas which the donor assesses will bring economic or strategic benefits to it. Alternatively, the donor proposes certain programs or projects and actively promotes their acceptance by the recipient government.

A rights based approach affects this process directly. It provides a mechanism for making choices and these become clearer and easier based on the following criteria:

1. Donor policy is clear and transparent to those involved;
2. Recipients are clear that the policy removes the arbitrary nature of donor practice;
3. Project selection is predicated on a participatory process;
4. Projects are assessed according to what rights the project will advance;
5. Project evaluation is based on a guarantee by the recipient government that the human rights gained are not jeopardised by project failure;
6. Projects selection absolutely favours those most deprived of their rights.

Therefore government to government negotiations are not predicated on finding some human rights-specific projects to attach to the overall program but rather looking at what the human rights outcome of each project or program is designed to achieve.

The question arises, of course, what happens if the recipient government either refuses to acknowledge the human rights direction of the donor's policy or if it accepts the project but refuses to follow through on the human rights aspects of the program. For, as Peter Boone of the London School of Economics (as, indeed, many others) have pointed out, "aid money is surprisingly fungible". Governments that receive aid in one area can use elsewhere the money they would have otherwise spent themselves.⁶⁹

This raises once again the issue of conditionality. There should be no mistake: acceptance of the human rights approach to development requires long-term advocacy. This is precisely why policy dialogue is important. Donors must be steadfast in setting human rights programs and projects as *their* priority and insist on continuing to support projects accordingly. Through a growing recognition by communities of their entitlements, pressure will build on governments to deliver the human rights goods.

⁶⁹ P. Boone "Politics and the Effectiveness of Foreign Aid", Centre for Economic Performance, London, quoted in "Down the rathole", *The Economist*, December 1994, p 101

SOME PRACTICAL CONSIDERATIONS

As we state above, we are not in a position to provide a detailed guidebook on how to apply the human rights approach to development. Nevertheless, we would like to point to some practical implications of the approach that can be acted upon immediately.

a) Consultation versus participation

We argue strongly above that participation is the “essential oil”. Yet we would like to sound a word of caution about the tendency to consult people endlessly in an attempt to ensure that participation takes place. This is why we have argued that it is important to define participation within the human rights context and not the management context.

That is not to say that consultation is bad at all times but if participation is to have any human rights meaning, then the possibility must at least exist that the wishes of those consulted may make a difference. During our investigation we were told that all too often consultation entails a donor explaining why something might be desirable and why such and such a project is being funded.

Inevitably, this emphasis on genuine participation might be frustrating to those who ‘want to get on with the job’. However, as we have argued above, the human rights approach is much more likely to generate that sustainability which is at the core of development assistance. Patience and perseverance must be included in project design.

b) Access to information

Proper participation requires an adequate access to information. The obligation on a government to ensure participation demands that it provides the necessary information and that the responsibility lies with it to ensure that it is used in the participatory process.

If during the policy dialogue with the recipient government, it becomes clear that no participation has occurred with the communities designed to benefit from a certain project, the onus remains on the donor to suggest ways that this can be achieved. One of the ways is to work out how relevant information can be provided.

At the same time it is important that information blockage is not built into the system. This requires that transparency is promoted with recipient governments and that there be a readiness to assist with the provision of information by these governments to the interested parties.

c) Human rights awareness

We have touched on the necessity of donor agency staff to be thoroughly familiar with peoples’ entitlements bestowed on them by the international human rights framework.

The same applies to all the agents in the development industry. Responsibility for imparting this rests with the government through its aid arm. Thus, donors should ensure that their consultants, managing agents and NGO partners also are steeped in the human rights culture, so that they do not undermine government policy. This has very direct implications on the delivery of 'development education'.

d) Evaluation and monitoring

As mentioned above, development projects should have inbuilt in their design consideration of what rights the project will advance and a way to clarify this for the beneficiaries. There is a need as well to monitor the progress of the projects according to criteria of participation and the provision of 'basic needs'. This is particularly the case with poverty alleviation projects.

The time frame for evaluation with most projects is relatively short, even granted the necessity to move on to the next project. One way of facilitating the evaluation is to entrust the provision of feedback to the beneficiaries themselves.

If the rights which are to be realized become threatened by the failure of the project, the responsibility should fall back on the government.

e) Policy consistency

In an exact parallel to the view that sees development and human rights as two different streams, there is a tendency to see civil and political rights as the preserves of the Foreign Ministry while development is the preserve of the aid agency.

This is bound to undermine a human rights approach. The problem does not lie with the aid agency alone. In the Australian context, awareness of economic, social and cultural rights and the obligations that governments have to their realization is confined to particular sections within the Department of Foreign Affairs and Trade. It does not permeate the consciousness of most diplomats.

There is also only minimal contact between diplomats and aid workers, except of a most general sort. Without greater understanding of the human rights framework by both parties, any policy on development is bound to lack consistency. That this is exploited by recipient governments is quite apparent.

The human rights approach to development assistance requires the definition of clear policy which is agreed at the highest level and implemented throughout the ministries.

SOME DIFFERENCES FROM CURRENT PRACTICE

The question that a number of people have posed is how would a human rights approach to

development change current practice. What would be done differently.

The Rights Way to Development is a starting point for an elaboration of a human rights approach to development. It is not a detailed manual for implementation. The approach remains to be tested and elaborated in cooperation between interested donors, recipients and human rights and development NGOs.

However, it is possible to provide an indication of the potential differences in development practice.

A human rights approach to a particular project might have the following components:

people involved in the project have a thorough knowledge of the international human rights framework;

initial negotiations with the agency of the receiving government make it clear which right is at issue. This includes the responsibility for the government to provide these services if they are non-existent;

the feasibility study involves communities themselves in the design of the project, not only in its implementation;

communities are provided choices and they are given undertakings regarding the project;

information is provided including the communities' entitlements and their decision-making powers;

the timetable of outcomes includes the provision of penalty clauses;

access is provided to the project decision-makers and to grievance procedures;

guarantees are given in case of project failures to ensure the provision of services;

explicit provision for relevant information and skills regarding entitlements would likely be a *standard* part of any project package which may include, for example, financial provision for communities to provide their own advisers;

at the feasibility study stage, project designers analyse the other rights that are breached (through omission or commission) in the area;

consideration is given to whether the project can address these or how else they can be addressed;

these are referred to in future negotiations with local and national governments;

negotiations with provincial and local government authorities make it clear which right is at issue;

the responsibility for project evaluation and monitoring includes the participation of communities;

the latter are encouraged to advise the donor agency of problems even after the project is terminated;

the donor agency accepts the responsibility of advising the recipient government at local and national level of these problems.