

Human Rights in Development: Claims and Controversies

STEPHEN P. MARKS*

Despite recent efforts to integrate the human rights perspective into development thinking, many still view the language of rights as irrelevant, and possibly even inimical, to the cause of development. The plausible reasons for this skepticism and the possible modes of overcoming it constitute the principal theme of this paper. The paper argues that, the claims and counterclaims notwithstanding, a careful scrutiny of the actual behaviour of the principal actors in the global political economy supports the proposition that the process of development requires serious attention to realising human rights. The argument focuses on the policy implications of two claims regarding the introduction of development issues into the human rights agenda and four claims regarding the introduction of human rights into the development agenda. Building on these claims, the paper argues that, in the ultimate analysis, human rights and development share a common finality and a concern with the potential of empowerment, suggesting a more hopeful role for human rights in development, as a vehicle for empowerment and social transformation in which human rights *are* development objectives.

I. INTRODUCTION

The subject “human rights in development” is not a popular one in the literature on economic development, notwithstanding the credibility the topic has received under the pen of world class economists like Amartya Sen, Arjun K. Sengupta, Siddiq Osmani, to name just three, and by major international institutions, such as the United Nations Development Programme, the High Commissioner for Human Rights, and the World Bank, as well as bilateral development agencies (DFID,

*François-Xavier Bagnoud Professor of Health and Human Rights, Harvard School of Public Health; Senior Fellow, Harvard University Committee on Human Rights Studies. This article draws on ideas presented by the author in a keynote address to the Seminar on Human Rights in the Global Economy on 17 March 2006, and at the 8th Annual Shirley and Leonard Goldstein Lecture on Human Rights on 19 October 2006.

CIDA, NORAD, etc.). The plausible reasons for this resistance towards the human rights perspective in the development literature and the possible modes of overcoming this resistance constitute the principal theme of this paper. I propose to address the theme from the perspective of “competing claims and controversies.” The title refers to the contested space of human rights in development in which people of experience, intelligence and power see human rights as—in the milder forms of their skepticism—operating elsewhere than the essentially economic domain of development and—in the harsher forms of skepticism—as an obstacle to achieving development objectives to be resisted.

The hypothesis of this article is that the behaviour of the principal actors in the global political economy supports the claim that the process of development requires serious attention to realising human rights. The method of testing this hypothesis is to examine official statements and secondary literature on the various claims about the relevance of human rights to development. This method is limited to the author’s speculation about the significance of the claims and controversies regarding the hypothesis, without collecting first-hand accounts through interview and quantitative assessments of decision-making processes. Nevertheless, this review focuses on the policy implications of two claims regarding the introduction of development issues into the human rights agenda and four claims regarding the introduction of human rights into the development agenda. Building on these claims, the conclusion argues that, in the last analysis, human rights and development share a common finality and a concern with the potential of empowerment, suggesting a more hopeful role for human rights in development, as a vehicle for empowerment and social transformation in which human rights *are* development objectives.

It is impossible to evoke development today without placing it in the context of the imperative of poverty reduction and the realities of globalisation and I shall begin with a few observations on human rights in the global economy.

II. HUMAN RIGHTS IN THE GLOBAL ECONOMY

The global economy is characterised today by the liberalisation of trade in goods and services; deregulation and privatisation; the trade rules established within the framework of the World Trade Organisation (WTO) Agreement; virtually unrestricted capital flows; the macroeconomic policies of international financial institutions; and the fabulous development of information and communication technologies. These processes are typically referred to as “globalisation,” which also suggests the dominant neo-liberal model of development and weakened national powers to control domestic economies in the face of transnational enterprises and the powerful institutions that drive these processes.

The term “globalisation” is itself highly controversial with ferocious opposition coming from anti-globalisation movements who are outraged by the motivating force of greed behind the behaviour of the economically and militarily powerful and by the allegedly devastating impact of the process in terms of widening economic and social disparities, destruction of non-renewable resources, ecological devastation, and homogenization of culture. The violence of their opposition was felt in Seattle, Geneva, Washington, Hong Kong and Mexico City at ministerial meetings of WTO and annual session of the Bretton Woods Institutions, seen as icons of the harm brought about by globalisation. These iconoclasts target the drivers of the global economy, perhaps best represented by The Group of Twenty (G-20) Finance Ministers and Central Bank Governors,¹ which claims to represent around two-thirds of the world’s population and 90 per cent of world gross domestic product (GDP). The G-20 considers itself “uniquely placed to tackle issues of significance for the international economy and monetary system,” which does not include human rights. This group was established in 1999 to bring together important industrialised and developing economies to discuss key issues in the global economy. At its inaugural meeting in Berlin on 15–16 December 1999, members agreed to the *G-20 Accord for Sustained Growth* (the Accord) and the *G-20 Reform Agenda*, setting out guidelines for economic growth and development, both nationally and globally. The G-20 finance ministers and central bank governors meet once a year. At its meeting in Xianghe in 2005, the ministers of finance and governors of central banks adopted the *G-20 Statement on Global Development Issues*. Neither “human rights” nor “human development” is mentioned in that document and “good governance” is only mentioned in relation to sound economic policies and accountability. The statement does say, “we are committed to strengthening the dialogue on varying development philosophies, strategies, and policies, from which all countries can benefit.” Human rights did not fare any better at its meeting in Melbourne, Australia, on 18–19 November 2006, which adopted a set of country-specific agreed actions to implement the G-20 Accord, none of which mentioned directly or indirectly human rights, equity, human development or good governance.²

¹ The members of the G-20 are the finance ministers and central bank governors of 19 countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom and the United States of America. The European Union is also a member and senior officials of the International Monetary Fund (IMF) and the World Bank participate in G-20 meetings on an *ex-officio* basis.

² With the exception of India, whose reform programme is supposed “to achieve sustained higher growth along with social equity and inclusiveness.” See G-20 (2006).

I mention the G-20, even though the G-8 or the Davos Economic Forum would have been easier targets, because it illustrates an ambiguity regarding human rights in development, specifically that the violent confrontation is not between the morally indignant voices of the poor versus a band of greedy capitalists meeting in some board room in Washington or London. Many in the anti-globalisation movement do indeed claim to speak for the poor but so do the representatives of the G-20 governments, which include India and China, as well as Argentina, Mexico, South Africa, and the European Union. These are not the forces of evil against the forces of good. They are the principal actors in the global economy and they send contradictory messages about the proposition that human rights have anything to do with development. It is little wonder, therefore, that human rights in development is a contested space.

III. THE CONTESTED SPACE OF HUMAN RIGHTS IN DEVELOPMENT

Human rights are claims on those in authority with respect to protection of the dignity and well-being of the human person. *Qualitatively*, such claims respond to a higher order of right than any other legally protected interests in that they have to be considered in a given society—reflected normally in constitutionally established bills of rights or internationally recognised human rights standards—as essential to all humans to reach their full potential. *Quantitatively*, the normative propositions that belong to this category of human rights number a few hundred. In the context of development, these normative propositions claim to determine both the constraints on the social and economic choices within so-called developing societies and the processes of the global economy affecting those choices and the actors who pull the levers of international trade, lending, and aid. To illustrate the contested space of human rights in development—I shall briefly mention six claims regarding the proper role of human rights in development, two relating to the expansion of the human rights agenda in ways that deal with developmental concerns and four providing a human rights response to matters on the international development agenda.

Introduction of Development Concerns into the International Human Rights Agenda

1. *The claim that economic, social and cultural rights should be implemented, in the context of development, as vigorously as civil and political rights*

Outside of the circles of academics, bureaucrats, and government representatives who adhere to the UN dogma, there is considerable confusion

regarding the scope of human rights. Numerous economists still hold the view that the end of development is growth and market efficiency or who place an absolute value on the free market and look with suspicion on any government intervention. For them, human rights is useful only to the extent that it protects the right to property and some civil liberties necessary for transparency and accountability as necessary for economic efficiency. Similarly, some in the human rights field consider that only civil and political rights are properly human rights and that the promotion of economic, social and cultural well-being is a useful agenda for government policy but not for human rights. In sum, both free-enterprise economists and the libertarian rights theorists stress individual freedom and sanctity of property³ and reject the concept of economic, social and cultural rights as undermining human freedom and economic efficiency.

However, every government in the world has formally recognised the comprehensive focus on the Universal Declaration on rights of both categories and the official position of the United Nations regarding the relationship between civil and political rights, on the one hand, and economic, social and cultural rights, on the other, as enshrined in the consensus statement: “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis” (UN 1993, para.5).

The separation during the Cold War between categories of rights was fraught with ideological overtones, most of which have dissipated with the end of East-West ideological confrontation. Even during the Cold War, international experts clarified the nature of the obligations to implement economic social and cultural rights—for example, through the *Limburg Principles* (ICJ 1987). More recently, experts have further defined how to deal with violations of these rights in the *Maastricht Guidelines* (ICJ 1998) and with specific consideration applicable to women, in the *Montreal Principles*.⁴ The *Committee on Economic, Social and Cultural Rights* has deepened the understanding of the nature of the obligations of states parties to the *Covenant on Economic, Social and Cultural Rights* primarily through *General Comments* on specific articles of the Covenant and on more general issues. Nevertheless, the means and methods of implementing these rights

³The argument that pro-growth policies based on economic freedom empowers the poor is made by IMF senior economists (some of whom are University of Chicago-trained); see, for example, Chauffour (2006).

⁴ *Montréal Principles on Women's Economic, Social and Cultural Rights*, adopted by 19 experts meeting in Montréal on December 7-10, 2002. See *Human Rights Quarterly*, vol. 26 (2004), pp. 760-780.

and the role of states and civil society in this process continue to spark debate among leading scholars and practitioners (e.g. Robinson 2004, Roth 2004).

The issues over which arguments about the extent to which the rights in each category are fundamentally different or not concern their permanence (absolute or relative), the pace of implementation (immediate or progressive), the use of judicial remedies (justiciable or programmatic), the allocation of resources (cost free or resource-dependent), and attitudes toward duty-bearers (accusatory or cooperative). Some regard these characteristics as being relative for all human rights while others hold the view that the categories reflect a difference in nature. For example, some claim that civil and political rights are negative because they imply that the state should not interfere with freedoms, while economic, social and cultural rights are positive because they require the action and resources of the state. However, twenty-first century human rights thinking tends to avoid this kind of Cold War divide and observe that each right has a degree of positive and negative obligations and, consequently, the approach to implementing economic, social and cultural rights requires careful rethinking.

What is clear in the policies of most governments⁵ and the practice of international institutions and bilateral aid programmes is that rights in the fields of education, health, social security, work, housing and other domains of economic, social and cultural rights profoundly affect the way development is promoted both in national policy and international cooperation. In this regard, the *Committee on Economic, Social and Cultural Rights* has consistently maintained that “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realisation of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard” (CESCR 1990).

⁵ The sole exception is the United States Government, which “believes that while the progressive realisation of Economic, Social and Cultural rights requires government action, these rights are not an immediate entitlement to a citizen. Sovereign states should determine—through open, participatory debate and democratic processes—the combination of policies and programs they consider will be most effective in progressively realizing the needs of their citizens.” See, Explanation of Vote, Statement Delivered by David Hohman, U.S. Delegation to the 61st Commission on Human Rights, April 15, 2005, available at <http://www.humanrights-usa.net/2005/0415Item10L28.htm>. US NGOs and most academics do not accept this interpretation. See, for example, the work of the Center for Economic and Cultural Rights (<http://www.cesr.org/>) and the Poor People’s Economic Rights Campaign (<http://www.kwru.org/ehrc/ehrc-q1.html>).

The human rights agenda is thus to ensure that the obligations of states in the matter of economic, social and cultural rights are part of their development policies and programmes. This is a major priority of such policies as those set out in the memorandum of understanding between the High Commissioner for Human Rights and the Administrator of UNDP and in “Action2,” the programme of the UN system for implementing human rights at the country level.

2. *The claim that development itself is a human right and that practical means can be implemented to advance this right*

Arjun K. Sengupta, for six years UN Independent Expert on the Right to Development, brought the insights of a leading economist and uncompromising commitment to human rights to the debate and raised the level of understanding considerably. The challenge from the beginning has been to translate the hopeful but ambiguous language of the 1986 Declaration on the Right to Development adopted by the United Nations into concepts that are meaningful to economists and useful to the rethinking of the development process in the current world economy. It must be acknowledged that after 35 years of scholarly writing and diplomatic efforts to understand this right, and 20 years after the Declaration was adopted, the debate remains polarised and confused. Opposition came primarily from the U.S., joined occasionally by several other Western countries and Japan, because they saw the proponents of the right as abusing the concept to make claims on resources from rich countries. Uncritical support came from many developing countries, which saw it as an antidote to perceived marginalisation and exclusion from the benefits of globalisation.

In the middle were many developing and donor states that interpret it as consistent with their adherence to the integrated economic and governance dimensions of sustainable human development strategies. Although a bit more skeptical, international trade, monetary, development and financial institutions participate in discussions in human rights bodies because they are attentive to the priorities of their member states, including support for this right, while maintaining a core concern for macroeconomic stability and market efficiency. Some, like the World Bank, have come a long way from firm opposition to this middle ground. The Bank stated, on the launch of its publication *Development and Human Rights*, “the World Bank believes that creating the conditions for the attainment of human rights is a central and irreducible goal of development.”

These agencies must navigate the shoals between concern of many member states with the negative impact of certain aspects of international trade, unequal access to technology, and the crushing debt burden, on the one hand, and sound economic policy, on the other.

The real test is whether the right to development can help define this middle ground. The right to development embodies six principles: integrated realisation of all human rights, equity, participation, non-discrimination, transparency, and accountability, each of which is reflected in official policy of most international financial and development agencies and, except for the first, these principles do not seem to make economists uncomfortable. Taken with the first, they constitute a framework for a serious dialogue on the implementation of the right to development. Such a dialogue holds the promise of removing RTD from the realm of controversy and allowing the claims on which it is based to inform development practice.

Introduction of Human Rights Concerns into the International Development Agenda

1. The claim that MDGs and poverty reduction strategies must reflect human rights principles and monitoring

The central strategic concern of development is reduction of mass poverty, which affects 2.7 billion people (2.1 billion excluding China), and, in particular, more than one billion people living in extreme poverty (877 million if China is excluded) (World Bank 2005). Following the commitments made by heads of state and government at the Millennium Summit in 2000, all governments and international institutions have set specific targets for poverty reduction in the *Millennium Development Goals* (MDGs). While these goals are important to development planning, they have tended to ignore commitments made by the states to human rights and the rule of law. One scholar has characterised the relation between human rights and the MDGs as “ships passing in the night” (Alston 2005).

It is, therefore, claimed that human rights have a legitimate and neglected role in *Poverty Reduction Strategies* (PRS) and MDGs. The World Conference on Human Rights, in its Vienna Declaration, stated, “The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community” (UN 1993, para. 14). It further affirmed “that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. 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.”

Economists are best equipped to define and analyse poverty in terms of market forces, income distribution, utility, budgeting, and access to resources. Concepts of good governance, the rule of law and human rights have become widely accepted as part of sustainable human development but institutions and governments continue to grapple with defining and implementing the policies that optimise growth, equity and justice. The perspective of other disciplines, however, can contribute towards a more holistic approach to achieving these development objectives. The High Commissioner for Human Rights has focused attention on the relationship between MDGs and human rights by disseminating to governments charts on the intersection between the two and has published a rather exhaustive analysis of how human rights can contribute to MDGs, as have national development agencies.

2. The claim that human rights are relevant to natural disasters affecting population across borders

A significant feature of developing countries is their vulnerability to natural disasters that, by their nature, cross borders without regard to national sovereignty and produce catastrophic effects on the lives of the populations of those countries and on their economies. Such is the case of infectious diseases, natural catastrophes and environmentally hazardous activities. The human rights claim is that these are not merely matters of public health or humanitarian relief but rather have human rights implications that command attention.

With regard to infectious diseases, the human rights perspective has been well brought out by the International Guidelines on HIV/AIDS and Human Rights prepared by the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS. SARS, Malaria and Avian influenza are infectious diseases that seriously affect the developing world in ways that have given rise to human rights claims.⁶

While one might consider that a natural catastrophe will engage national and international agencies in urgent relief efforts without human rights being implicated, human rights issues do indeed arise. Major studies on human rights failings in the tsunami relief effort have concluded that human rights concerns were not paid the attention they deserved. On February 1, 2006, three human rights groups (Habitat International Coalition, the People's Movement for Human Rights Learning, and ActionAid International) criticised the global aid campaign to assist those affected by the 2004 tsunami disaster Sri Lanka, India, Thailand, Indonesia, and the Maldives, claiming it has "trampled" on the human rights of many survivors

⁶ The present author sits on a panel of the World Health Organization: Addressing Ethical Issues in Pandemic Influenza Planning.

through discrimination in aid distributions, arbitrary arrests, and sexual- and gender-based violence. For example, with respect to India, a human rights group said, “India has excellent legislation to prevent caste-based discrimination, but it should implement these laws to avoid adding the problems of caste-discrimination to the misery caused by the tsunami” (HRW 2005).

Environmental harm from human activity is another borderless issue affecting the global economy with respect to which human rights claims are made. For the past 30 years efforts have been made to introduce a human right perspective into a clean and ecologically balanced environment, not only through a draft *Declaration on Human Rights and the Environment* and similar aspirational documents but also through one of the regional human rights treaties, namely the *African Charter on Human and Peoples’ Rights*, which provides (in Article 24) that “all peoples shall have the right to a generally satisfactory environment favourable to their development.” This was tested in the case of *The Ogoni People v. Nigeria*, decided by the *African Commission of Human and Peoples’ Rights* in October 2001 (ACHPR 2001). The human rights claim was that the military government of Nigeria had been directly involved in oil production through the state oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that these operations had caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People. The complaint was in fact expanded to include arbitrary executions, destroying of villages, impunity, and destruction of food resources and farmlands. In the end, the African Commission on Human and Peoples Rights found violations of articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter. In addition to the individual rights to non-discrimination (art. 2), life (art. 4) and property (art. 14), also the right to health (art. 14) and the right to protection of the family (art. 18) were found violated. “Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis. By any measure of standards, its practice falls short of the minimum conduct expected of governments, and therefore, is in violation of [Article 21 of] the African Charter” (ACHPR 2001, para. 59).

So the second claim is that human rights define responsibilities for appropriate responses to harm to developing countries from natural phenomena. In this context, it would not be an exaggeration to include the Gulf States hit by Hurricane Katrina

and belonging to the same category and the same determination of responsibilities for human rights deprivations.⁷

3. *The claim that human rights define in important ways how information and communications technologies and ownership over them should be advanced in the global economy*

The global economy in the 21st century is characterised in large part by the exponential growth of information and communication technology. The *World Summit on the Information Society* (WSIS) has addressed some of the issues but not adequately the human rights claims.

We can agree that the World Wide Web is too expensive for millions of people in developing countries, partly because of the cost of computers and partly because of government restrictions on free access to information and of the trends in the global economy to capture and market information, contrary to the human rights to enjoy cultural products and to benefit from advances in science and technology.

Here controversy looms large: global business concerns specialising in intellectual property rights relating to life-saving medicines and other commodities confront an alliance of advocates of human development—who see knowledge as a public good, and advocates of human rights—who see it as a human right. The recently adopted *General Comment No. 17* on “The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (article 15, paragraph 1 (c), of the Covenant)” expressed the human rights claim in this regard as follows (CESCR 2005):

2. In contrast to human rights, intellectual property rights are generally of a temporary nature, and can be revoked, licensed or assigned to someone else. While under most intellectual property systems, intellectual property rights, often with the exception of moral rights, may be allocated, limited in time and scope, traded, amended and even forfeited, human rights are timeless expressions of fundamental entitlements of the human person. Whereas the human right to benefit from the protection of the moral and material interests resulting from one’s scientific, literary and artistic productions safeguards the personal link between authors and their creations and between peoples, communities, or other groups and their collective cultural heritage, as well as their basic material interests which are necessary to enable authors to enjoy an adequate standard of living, intellectual property regimes primarily protect business and corporate interests and investments. Moreover, the scope of protection of the moral and material interests of the author provided for by the

⁷ See the paper by Arjun Sengupta in this volume.

covenant] does not necessarily coincide with what is referred to as intellectual property rights under national legislation or international agreements.⁸

India and China are significant testing grounds for the proposition that human rights can serve positive guidelines for placing the information society in the service of the people rather than a source of economic advantage for those who dominate the world economy. India offers the technological edge to breaking barriers to Internet access through the efforts of people such as the academics at the Indian Institute of Science and the engineers at the Bangalore-based design company Encore Software, who have designed innovative devices, the intellectual property rights to which have been transferred for free to the non-profit Simputer Trust, which is licensing the technology to manufacturers at a nominal fee (UNDP 2001). China is, as everyone knows, grappling with the need to expand access to ICT as it seeks to reduce inequalities produced by its rapid growth, in contradiction to its habits as a Communist Party State to control citizens' access to information. How China handles this issue will have tremendous repercussions on human rights in the global economy.

4. *The claim that human rights standards apply to trade, foreign direct investment (FDI), and transnational corporations (TNCs)*

The claim here is that human rights involve legal obligations governments should not forget when they negotiate membership for and participate in the treaties adopted under the auspices of organisation like WTO.

This claim was formulated forcefully by the CESCR in its Statement to the Third WTO ministerial meeting, in which it requested all Governments and economic policy forums to take international human rights obligations and principles fully into account in international economic policy formulation (OHCHR 1999).

⁸ Relevant international instruments include, *inter alia*, the *Paris Convention for the Protection of Industrial Property*, 1883, as last revised in 1967; the *Berne Convention for the Protection of Literary and Artistic Works*, 1886, as last revised in 1971; the *International Convention for the Protection of Performers, the Producers of Phonograms and Broadcasting Organizations* ("Rome Convention"), 1961; the *WIPO Copyright Treaty*, 1996; the *WIPO Performances and Phonograms Treaty*, 1996 (which, *inter alia*, provides international protection for performers of "expressions of folklore"); the *Convention on Biological Diversity*, 1992; the *Universal Copyright Convention of UNESCO*, 1952, as last revised in 1971; and the *Agreement on the Trade-related Aspects of Intellectual Property Rights* (the TRIPS Agreement) of the WTO.

The Committee stated its willingness to collaborate with WTO in the realisation of economic, social and cultural rights, which was ignored. The Sub-commission expressed the link between trade and human rights in the following terms:

13. There is an unavoidable link between the international trading regime and the enjoyment of human rights. Economic growth through free trade can increase the resources available for the realization of human rights. However, economic growth does not automatically lead to greater promotion and protection of human rights. From a human rights perspective, questions are raised: does economic growth entail more equitable distribution of income, more and better jobs, rising wages, more gender equality and greater inclusiveness? From a human rights perspective, the challenge posed is how to channel economic growth equitably to ensure the implementation of the right to development and fair and equal promotion of human well-being (OHCHR 2000).

It would seem that nothing could be more removed from human rights than foreign direct investment (FDI), which amounted to \$916 billion in 2005, of which the amount to developing countries rose to the highest level ever recorded – \$334 billion. The total numbers of TNCs is estimated by UNCTAD as representing 77,000 parent companies with over 770,000 foreign affiliates. “In 2005, these foreign affiliates generated an estimated \$4.5 trillion in value added, employed some 62 million workers and exported goods and services valued at more than \$4 trillion” (UNCTAD 2006).

Commercial non-state actors have been the object of efforts to establish guidelines for decades, beginning with the OECD *Guidelines for Multi-lateral Enterprises* of 1976 and the ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy Reform* of 1977. In 1999, the United Nations *Global Compact* was proposed and was officially launched in 2000. Currently the most debated initiative is the Draft Norms and responsibilities of transnational corporations and other business enterprises with regard to human rights (OHCHR 2003).

In January 1999, UN General-Secretary Kofi Annan launched the UN *Global Compact* at the World Economic Forum in Davos calling on private companies to commit themselves to respect nine core principles in relation to human rights, labour rights and the environment. Since the launch, the initiative has been joined by hundreds of private companies throughout the world. The *Global Compact* is a voluntary and self-regulatory mechanism, using an annual reporting procedure based on the *Global Compact Guidelines for Communication on Progress* (COP), which was updated in January 2003.

In 1997, the UN Sub-Commission on the Protection and Promotion of Human Rights set up a Working Group on the *Working Methods and Activities of Transnational Corporations*. In resolution 1997/11, the Senegalese member of the Sub-Commission, El Hadji Guissé, was asked to produce a working document on the subject of human rights and transnational corporations.⁹ Following from the discussions of this report, the Sub-Commission established a three-year Working Group that started drafting a code of conduct for transnational corporations in 1999, based on an initial draft prepared by Sub-Commission member, Professor David Weissbrodt. Revised drafts were discussed in the Sub-Commission sessions in 2000, 2001 and 2002. The 2002 revised draft was discussed in consultation with non-governmental organisations in March 2003, leading to further revisions and submission of a final set of draft Norms for adoption by the Sub-Commission in its session in July/August 2003.¹⁰

The drafting process clarified the scope and nature of non-state actor's responsibilities. According to the document, non-state actors including "transnational and other businesses" have both direct and indirect obligations for human rights respect and protection. As Weissbrodt subsequently concluded: "(t)he Norms draw upon the existing web of international obligations which already apply, either directly or indirectly, to business and pull them together into one document which clearly and directly states the human rights standards applicable to business."¹¹

During the drafting process, ample consideration was given to the compulsory or voluntary nature of the Norms. As adopted in 2003, the Norms are not a voluntary CSR initiative. They entail a number of implementation provisions and allow NGOs and "others" to submit information and reports about firms' compliance with the Norms as soon as a firm "adhere" to them, subject to their being incorporated into a resolution by the Human Rights Commission (now the Human Rights Council). The initial position of the Commission may be a setback to efforts to give legal significance to the Norms, since "The Commission, decided, without a vote, to recommend that the Economic and Social Council: Affirm that [the document containing the norms] has not been requested by the Commission and, as a draft proposal, has no legal standing, and that the Sub-Commission should not perform any monitoring function in this regard."¹²

The Commission also asked the Office of the High Commissioner for Human Rights to compile a report identifying ways to strengthen standards on business'

⁹ For a review of the details of the drafting process, see Weissbrodt and Kruger (2005).

¹⁰ See UN doc. E/CN.4/Sub.2/2003/12/Rev.2 (26 August 2003).

¹¹ *Ibid.*, p.328.

¹² Commission Decision 2004/116, adopted on April 20, 2004.

human rights responsibilities, taking into account the Norms. The report, released in March 2005, analyses existing initiatives and sets out arguments presented for and against the Norms. While most companies do not favour the Norms, some are exploring how to use them through the *Business Leaders Initiative on Human Rights*.¹³ In April 2005, the Commission created the position of Special Representative on the issue of human rights and transnational corporations and other business enterprises, and Secretary-General Kofi Annan appointed John Ruggie to this position in July 2005, a particularly well-qualified choice since he was Special Adviser on the Global Compact and is Professor of International Affairs at Harvard University's Kennedy School of Government and Director of its Centre for Business and Government. In his interim report, Ruggie considers, while acknowledging useful element in the Norms, that "the Norms exercise became engulfed by its own doctrinal excesses" and contains "exaggerated legal claims and conceptual ambiguities" which "created confusion and doubt even among many mainstream international lawyers and other impartial observers" (Ruggie 2006a, para. 59). His principal objections concern the claimed legal authority of the Norms as more than voluntary and yet declaratory of existing law, on the one hand, and the allocation of human rights responsibilities between States and firms, on the other. He concludes that "the divisive debate over the Norms obscures rather than illuminates promising areas of consensus and cooperation among business, civil society, governments and international institutions with respect to human rights" (Ruggie 2006a, para 69).

Indeed, the Norms were not drafted as a binding treaty. They refer, however, to binding provisions, and assume that any corporate entity is bound by the existing laws of a country, including the international legal instruments that the home or host country has ratified. They are, in other words, soft law standards but refer to core human rights conventions that should be upheld by TNCs and other businesses in countries that give support to the Norms. At any rate, the Norms refer to obligations that are binding on non-state actors, relating to the right to equal opportunity and equal treatment, the right to security of persons, the rights of workers, and a general provision for respecting national sovereignty and human rights, as well as consumer and environmental protection. Accordingly, TNCs and other businesses have the obligation to promote, secure the fulfilment of respect, ensure respect of and protect human rights recognised in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

¹³ See <http://www.blihr.org>.

The draft Norms have been met with stout objections and strong support.¹⁴ The main arguments against them have been that they represent a shift away from voluntary adherence to ethical and human rights standards for corporate entities, that the tone of the draft is unduly negative towards business, and the implementation provisions are burdensome and unworkable. It has also been claimed, as discussed above, that only states have and should have obligations under international human rights law, and hence that the draft Norms could shift the focus of state responsibility for human rights abuses to the private sector. On the other hand, supporters of the Norms emphasize that, rather than challenging state responsibilities, they complement them by establishing a balance between the primary obligations of states and secondary responsibilities of non-state actors to respect, protect and promote human rights. They emphasise that the Norms do not duplicate other initiatives of human rights and corporate responsibilities. On the contrary, they set a common set of standard for all businesses, and needed requirements for evaluating current and future performances. Not least the Norms may give opportunities to address human rights in countries where the state is unwilling or unable to secure rights protection.

The Norms are still in process of being discussed, and may be subject to further revisions and adjustments. Until December 2006, they are being tested out in a ‘road-testing’ process by businesses that participate in the Business Leaders’ Initiative on Human Rights. These firms are, on their part, committed to examine what is “essential,” “expected” and “desirable” behaviour for all companies.

IV. CONCLUDING OBSERVATIONS

Human rights advocates and activists advance the six claims mentioned above often to the consternation of many who are entrusted with the economic levers or who see themselves as responsible for keeping the engines of economic growth oiled. There are two reasons why development economists—especially those who stress economic growth as the primary focus of development—resist what they see as well-intentioned but misguided intrusion of human rights into development: The first is the conviction that economic progress suffers as a result of advancing human rights before a sufficient level of prosperity has been reached. The examples of Brazil, Singapore, and South Korea—countries that developed rapidly under conditions of human rights deprivation and liberalised later—are far too complex to be probative and counter examples can be found. The second is that those who have

¹⁴ See the points raised by Ruggie (2006a) above and a wider range of perspectives in the report by the UN High Commissioner for Human Rights to the Human Rights Commission (OHCHR 2005). See also Ruggie (2006b).

responsibility over the economy—ministries of finance, corporate executives, shareholders, and academic economists—assume that human rights are merely legal disputes or strident claims of political opposition to the government with which they have to cooperate. That is an epistemological problem and not a scientific explanation of what works and what does not. Numerous examples exist of development economists reflecting and acting with human rights specialists to define theoretical models and policy options in which the six claims made earlier (and others) have been both viable and practicable.

There are more compelling reasons why human rights are both definitional of and instrumental to development objectives. The first is the common finality of both human rights and development, which specialists in either field rarely articulate. The second is the relationship between human rights and forms of empowerment that makes economic development sustainable and equitable.

Shared Finality

Indeed, a powerful justification for human rights in development relates to the proposition that human rights define the same finality as development. One version of this proposition is related to the capability approach as articulated by Amartya Sen and Martha Nussbaum, among others, that the deepest meaning of development and of human rights relates to increasing the capabilities of individuals to do and to be what they value. This claim has been endorsed by UNDP, which expressed the relationship with human rights in the following language:

...human development shares a common vision with human rights. The goal is human freedom. And in pursuing capabilities and realizing rights, this freedom is vital. People must be free to exercise their choices and to participate in decision-making that affects their lives. Human development and human rights are mutually reinforcing, helping to secure the well-being and dignity of all people, building self-respect and the respect of others (UNDP 2001, p.9).

The claim is fairly self-evident and does not need detailed explanation. From the capability perspective, both development and human rights increase freedom. From the utilitarian perspective, both enhance human welfare. The similarity with respect to finality is diminished, however, whenever development is defined in terms of growth in goods and services, which is the case in particular of the G-20 process mentioned in the introduction.

In launching the *Human Development Report*, the United Nations Development Programme (UNDP) emphasised that human development as a “...way of looking at development differs from the conventional approach to economic growth, human capital formation, human resource development, human welfare or basic human

needs” (UNDP 1990, p.11). The existing literature admits several perspectives on this subject. The common perception and often the practice is that for many economists development is synonymous with economic growth. This perception is not surprising when the central concern of leading economic decision-makers is growth.

However, it is inaccurate to assume that this preoccupation with growth excludes equity considerations. In fact, economists have long been concerned with equality in the distribution of production (the actual location of the society on the production possibility frontier), and with the provision of “basic needs” to specifically deprived populations, typically consisting of food, clothing, shelter and other items which varied depending on the country at hand. Indeed, even back in the 1940s and 1950s, economists and development planners viewed development much more broadly than economic growth, including references to “freedoms.”¹⁵

UNDP defines human development as being “about creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests [and] thus about expanding the choices people have to lead lives that they value” (UNDP 2002, p.9). It is well known that the definition of human development reflects Sen’s approach to human capabilities, all the more so since he had a direct role in its formulation.¹⁶ UNICEF has also embraced the concept of development as freedom and its links to human rights. A program policy documents states: “Sustainable human development means expanding all people’s choices and creating conditions for equality so that they may realize their full potential. This goal is unrealizable if all human rights—economic, social, cultural, civil and political—are not promoted, preserved and defended” (UNICEF 1999, p.1). Similarly, the *Declaration on the Right to Development* also refers to everyone’s right to “enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized” (UN 1986, article 1(1)).

Thus, the first step in clarifying in practical terms the meaning of development in the context of human rights is to note that development, like human rights, is a process enabling choices by people to lead a life they value and thus enhance their well being. Human rights are also about creating an environment in which people

¹⁵ See, for example, Srinivasan (1994). Srinivasan also pointed out that economists’ views on development are broader than a purely narrow conception in terms of economic growth.

¹⁶ Sen served on the panel of consultants for UNDP’s *Human Development Report 1990*, and his mark is particularly noticeable in chapter 1, which defined the concept of human development. See also occasional papers by Amartya Sen and Sudhir Anand contributed to the Human Development Report Office, such as Anand and Sen (nd, 1994).

can develop their full potential and lead creative lives by assuring “the dignity and worth of the human person” and promoting “social progress and better standards of life in larger freedom,” in the words of the *Universal Declaration of Human Rights*. The ultimate objective of both human development and human rights is, therefore, wellbeing as understood in both fields. The greatest obstacle to those choices is poverty, which is both capability deprivation¹⁷ and a denial of human rights (Osmani 2005).

The objective of maximising social welfare as indicated by a social welfare function and the objective of protecting human rights both seek to maximise well-being. The utility objective of economics does not refer to the instrumentalisation of human beings—as some in the human rights field might fear from the word “utility”—but rather to the maximisation of their (self-perceived) well-being. For many economists, utility or well-being may refer to individual satisfaction through consumption of goods and services, but some have sought to go beyond utility, as traditionally defined, and to embrace a holistic notion of human capability. In this sense, economic objectives can be thought to be compatible with the ultimate objectives of human rights. The distinction made by some economists between capability sets and functionings overlaps in many ways with the distinction in human rights theory between guaranteed rights or entitlements (positive law enumerating substantive rights) and the exercise or enjoyment of those rights (practice and empirical evidence of what rights people actually enjoy). Although the adherents to the capabilities approach tend to eschew listing capabilities as a finite and established enumeration, most capabilities are reflected in positive human rights law, which does enumerate rights.

Human Rights for Economic Empowerment

The G-20 *Accord* mentioned above notes—albeit in a sort of afterthought in the final paragraph—“Mobilising all productive forces of a society requires empowering individuals and enhancing economic participation. Equal economic opportunities allow people to better provide for themselves and their families, thus helping to reduce poverty and social tensions.” This proposition was implicitly endorsed by the Norwegian Nobel Committee when it awarded the Nobel Peace Prize for 2006 to Muhammad Yunus and the *Grameen* Bank. This microcredit operation empowers poor people to take charge of their lives, not just for income generation but with a sense of capacity to make their own choices, to meet their

¹⁷ Sen defined poverty as “capability deprivation” or “the failure of basic capabilities to reach certain minimally acceptable levels” (Sen 2000, p.109).

economic and social needs, to be able to take advantage of the civil and political rights guaranteed them constitutionally and in international law. The Nobel Committee explained that it was recognising “their efforts to create economic and social development from below, [as a means] to break out of poverty [and] to advance democracy and human rights.”¹⁸

Although the word is overused, empowerment has a special significance in this context and I would like to conclude with a brief explanation of why and how human rights can be a strategy for social and economic transformation. This transformative strategy sometimes goes by the name of human rights education and learning. The legal empowerment of the poor, the theme of an international commission co-chaired by Hernando de Soto and Madeline Albright,¹⁹ is only a part of empowerment as a vehicle for introducing human rights into development.²⁰ The Universal Declaration was proclaimed “to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive *by teaching and education* to promote respect for these rights...” In 1994 the UN proclaimed the Decade for Human Rights Education (HRE) (1995–2004), and defined human rights education as involving “more than providing information but rather is a comprehensive life-long process by which people at all levels of development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect within a democratic society.” This approach to HRE involves goal-oriented education, which may be understood as involving goals beyond cognitive awareness and embracing crucial understanding, value clarification, attitudinal changes, enhancement of solidarity and eventually behavioural change. When these goals are met, “*empowerment*” occurs, defined as a “process through which people and/or communities increase their control or mastery over their own lives and the decisions that affect their lives” (Claude 1998).

This range of empowerment outcomes of multiple goal oriented human rights education is consistent with the empowerment strategy of the World Bank, insofar as it seeks “the expansion of assets and capabilities of poor people to participate in, negotiate with, influence, control, and hold accountable institutions that affect their lives” (Narayan 2002). As noted by the Gobind Nankani, Vice President, Poverty Reduction and Economic Management, “much of the poverty work of the World Bank and other donors is informed by the same notions of equality and non-discrimination that are central to human rights and empowerment approaches to

¹⁸ http://nobelpeaceprize.org/eng_lau_announce2006.html.

¹⁹ See <http://legalempowerment.undp.org>

²⁰ For an elaboration of the perspective of legal empowerment in the context of human rights and development, see the paper by Bård Andreassen in this volume.

development.”²¹ The economic empowerment of people to be subjects rather than objects of their own history, to know, claim and realise the full range of their human rights is possible; it is necessary; and it is the principal reason why human rights are very much a part of development.

In sum, introducing human rights into development, including taking seriously the claims referred to in the previous section, is not only morally desirable; it is the principal means to realise the right to which the *Universal Declaration of Human Rights* refers in Article 28 to “a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

REFERENCES

- ACHPR (African Commission of Human and Peoples' Rights). 2001. *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*. Communication No. 155/96, October 2001.
- Alston, P. 2005. “Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals.” *Human Rights Quarterly* 27: 755-829.
- Anand, S. and A. K. Sen. 1994. *Human Development Index: Methodology and Measurement*. New York: UNDP Human Development Office.
- _____. n.d. *Sustainable Human Development: Concepts and Priorities*. New York: UNDP Human Development Office.
- Aslop, R., ed. 2004. *Power, Rights, and Poverty: Concepts and Connections*. Washington, D.C. and London: World Bank and DFID.
- CESCR. 1990. *General Comment 3: The Nature of States Parties Obligations (Art. 2, par.1)*. Committee on Economic, Social and Cultural Rights, Geneva. Adopted 14 December 1990. U.N. Doc. E/1991/23 (1990).
- _____. 2005. *General Comment No. 17*. Committee on Economic, Social and Cultural Rights, Geneva. UN Doc. E/C.12/2005/.../..., 25 November 2005.
- Chauffour, J. P. 2006. “Pro-Human Rights Growth Policies.” *Development Outreach*, October.
- Claude, R. P. 1998. *Human Rights Education for the 21st Century*. University of Pennsylvania Press.

²¹ Foreword to Aslop (2004).

- G-20. 2006. *G-20 Reform Agenda 2006, Agreed Actions to Implement the G-20 Accord for Sustained Growth*. Meeting of Ministers and Governors in Melbourne, 18-19 November 2006. Available at <http://www.g20.org/>.
- HRW. 2005. "India: End Caste Bias in Tsunami Relief." New York: Human Rights Watch. Available at: <http://www.hrw.org/en/news/2005/01/13/india-end-caste-bias-tsunami-relief>.
- ICJ. 1987. "The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights." *Human Rights Quarterly* 122-135.
- _____. 1998. "Maastricht Guidelines on Violations of Economic, Social and Cultural Rights." *Human Rights Quarterly* 691-705.
- Narayan, D. 2002. *Empowerment and Poverty Reduction: A Sourcebook*. Washington, D.C.: World Bank.
- OHCHR. 1999. *Trade Liberalization and its Impact on Human Rights*. Sub-Commission on the Promotion and Protection of Human Rights, *Resolution 1999/30*, 51st session, 33rd meeting, August. Geneva: Office of the High Commissioner for Human Rights.
- _____. 2000. *Globalization and its Impact on the Full Enjoyment of all Human Rights*. Preliminary Report of the Secretary-General. UN doc. A/55/342, 31 August. Geneva: Office of the High Commissioner for Human Rights.
- _____. 2003. *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights*. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Geneva. UN doc, E/CN.4/ Sub.2/ 2003/ 12/ Rev.2 26 August 2003. Geneva: Office of the High Commissioner for Human Rights.
- _____. 2005. Report of the Office of the High Commissioner for Human Rights on the Responsibilities of Transnational Corporations and Related Business Enterprises. UN doc. E/CN.4/2005/91, February 15. Geneva: Office of the High Commissioner for Human Rights.
- Osmani, S. R. 2005. "Poverty and Human Rights: Building on the Capability Approach." *Journal of Human Development* 6(2): 204-219.
- Robinson, M. 2004. "Advancing Economic, Social, and Cultural Rights: The Way Forward." *Human Rights Quarterly* 26: 866-872.
- Roth, K. 2004. "Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization." *Human Rights Quarterly*, 26: 63-73.

- Ruggie, J. 2006a. *Interim Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises*. UN Doc. E/CN.4/2006/97, February 22. Geneva.
- _____. 2006b. *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises: Human Rights Impact Assessments - Resolving Key Methodological Questions*. UN Doc. E/CN.4/2006/97, February 22. Geneva.
- Sen, A. K. 2000. *Development as Freedom*. New York: Alfred A. Knopf.
- Srinivasan, T. N. 1994. "Human Development: A New Paradigm or Reinvention of the Wheel?" *American Economic Review*, 84(2):238-43.
- UN. 1986. *Declaration on the Right to Development*. General Assembly Resolution 41/128, adopted 4 December 1986. New York: United Nations.
- _____. 1993. *Vienna Declaration and Programme of Action*. World Conference on Human Rights, Geneva. A/CONF.157/23, 12 July. Geneva: United Nations.
- UNCTAD. 2006. *World Investment Report 2006*, p. xvii. Geneva: United Nations Conference on Trade and Development.
- UNDP. 2001. *Human Development Report 2001*, p. 9. New York: United Nations Development Programme.
- _____. 2002. *Human Development Report 1990*, p. 11. New York: United Nations Development Programme.
- UNICEF. 1999. *Human Rights for Children and Women: How UNICEF Helps Make Them a Reality*. New York: UNICEF Programme Policy Document.
- Weissbrodt, D. and M. Kruger. 2005. "Human Rights Responsibilities of Business as non-State Actors." In Philip Alston, ed., *Non-State Actors and Human Rights*. Oxford: Oxford University Press.
- World Bank. 2005. *World Development Indicators*. Washington, D.C.: The World Bank.