

SECOND GLOBAL FORUM ON HUMAN DEVELOPMENT
PANEL ON LEGITIMIZING HUMAN RIGHTS WITHIN DEVELOPMENT

**The Human Rights Framework:
Its relevance for development**

Notes for a presentation by
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9 October 2000
16:30-18:00

Outline

- 1. A human rights based approach to human development**
- 2. The “holistic” approach to human rights**
- 3. The “capabilities” approach to human rights**
- 4. The scope and meaning of the Declaration on the Right to Development**
- 5. The relation between rights and responsibilities**
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The relevance of “human rights discourse” to human development needs to be clarified in order for human rights to be integrated into sustainable human development, which is UNDP’s policy but not yet fully its practice or that of the Member States. At the conceptual level, one can define development and human rights with a sufficient degree of abstraction to be virtually identical and virtually unimpeachable. But it does not provide an agenda for action, or even guidance for professional work as an international development worker.

This presentation will begin by underscoring the essential distinction between pursuing well-being through development without a human rights approach and pursuing it through a

human rights based approach Applying a human rights approach takes the concept of “people’s priority” seriously and avoids the impression or the reality of development as charity. Human rights “transforms beggars into claimants.”

The presentation will highlight four approaches to understanding the human rights framework of human development: the holistic approach, the capabilities approach, the right to development approach, and the responsibilities approach. It will conclude with a set of challenges to the development practitioner.

1. A human rights based approach to human development

My task is to introduce you to that realm of “human rights discourse” and to relate it to human development. One can “ensure freedom, dignity and well-being for all people everywhere”—to borrow from HDR2000—or “enlarge people’s choices to leave a long and healthy life, to acquire knowledge and to have access to the resources needed for a decent standard of living”—to borrow the language of the human development index—without invoking human rights.

At the conceptual level, one can define development or human rights with a sufficient degree of abstraction to be virtually identical and virtually unimpeachable. So what? Does a commitment to doing good provide an agenda for action, or even guidance for professional work as an international civil servant? The question that is constantly asked is: What is to be gained by adding the human rights dimension? And more important: How should human development be implemented in a human rights way?

Mark Malloch Brown and Zephirin Diabré both refer to “people’s priority.” That concept is another way of stating the essential distinction between pursuing well-being through development without a human rights approach and pursuing it through a human rights based

approach. By applying a human rights approach you take the concept of peoples' priority seriously and avoid the impression or the reality of development as charity. Human rights transforms beggars into claimants. People no longer hold out a hopeful hand to the outsider but rather learn the ways and means of claiming what is their due.

The four approaches I will address as a starting point for a general understanding of the human rights framework are the holistic approach, the capabilities approach, the right to development approach, and the responsibilities approach. I will then conclude with a set of challenges to the development practitioner.

2. The “holistic” approach to human rights

A UNDP policy paper has outlined UNDP's strategy for integrating human rights into sustainable human development and called for a “universal and holistic [approach], stressing the indivisibility and interrelatedness of all human rights—economic, social, cultural, civil and political.”¹ What is meant by the “holistic approach”?

We are considering human rights and development after fifty years of distinguishing between civil and political rights, on the one hand, and economic, social and cultural rights, on the other. It has been argued that the former are “freedoms from” or “droits-attribut,” whereas the latter are “rights to” or “droits-créance.” The former are absolute or of immediate applicability, whereas the latter are relative or of progressive realization. The former are characterized by violations that must be redressed regardless of resources, while the latter are programmatic, calling for cooperation and utilization of resources. These neat distinctions, which developed throughout the cold war, although they have philosophical underpinnings, are

¹ UNDP, *Integrating Human Rights with Sustainable Human Development*. UNDP policy document, New York, January 1998, p. 16.

disappearing in theory and practice. This is one of the most promising achievements of the post-Cold War period: there is no longer an ideological rationale for favoring one category of rights over another.

Following are some milestones in the evolution of a holistic approach:

- The Universal Declaration of Human Rights (1948), in Article 28, refers to the right to “a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” Such an order can only be conceived as involved rights and social structures conducive to the realization of rights that cover the civil, cultural, economic, political and social domains.
- Declaration on the Right to Development (1986)
- Vienna Declaration and Programme of Action 1993
- Mandate of HCHR
- Maastricht Guidelines 1997
- *Human Development Report 2000* (HDR2000)

The holistic approach recognizes that both categories require resources, both can involve violations, both require adaptation and often transformation of institutions and practices, and both are essential for human dignity. Even more interesting is the synergistic relations: Box 4.3 on p. 75 of HDR2000 gives examples of how in practice the exercise of civil and political rights has been instrumental in empowering poor people and advancing economic, social and cultural rights. Box 5.5 on p. 93 of HRD2000 dispels five myths about the two categories of rights. A careful reading of 5.5 will clarify a great deal about the holistic approach.

2. The “capabilities” approach to human rights

Nobel economist and Harvard School of Public Health faculty member Amartya Sen has articulated an approach to human rights and development that is original and of particular relevance to health. In his chapter called “Poverty as Capability Deprivation,” in *Development as Freedom*² he develops the thesis is that development is not the acquisition of more goods and services but the enhanced freedom to choose, to lead the kind of life one values. These enhanced choices are called capabilities. Poverty, he explains, is the deprivation of basic capabilities, and urges that attention be focused on aspects of life other than income to understand what poverty is and how to respond to it in places like South Asia and sub-Saharan Africa, where extreme poverty is concentrated. These two regions “stand out as the regions where short and precarious lives [measured in terms of life expectancy] are concentrated in the contemporary world.”³ He uses three focal features of deprivation of basic capability to compare and contrast these two regions and notes variations within them in premature mortality, undernourishment and illiteracy, although he is the first to admit that they do not “provide a comprehensive picture of capability-poverty in these regions.”

Capability is the option available to the individual; functioning is the exercise of that option. Martha Nussbaum is more explicit in linking capabilities and functionings to human rights. Figure 1 shows a table of capabilities and corresponding rights in the UDHR.⁴ The capability of food means that food is available, accessible affordable, and culturally appropriate. Functioning refers to the consumption of the food. However, “a deeply religious person may prefer not to be well-nourished, but instead prefer to engage in strenuous fasting.” (Nussbaum,

² Amartya Sen, *Development as Freedom*, New York: Knopf, 1998, pp. 87–110.

³ *Id.*, p. 99.

⁴ This table may be consulted in Martha Nussbaum, “Capabilities, Human Right, and the Universal Declaration,” in Weston & Marks, *The Future of International Human Rights*, Transnational Publishers, 1999, pp. 44-46.

48) Public policy tends to focus on functioning. Sen and Nussbaum propose that public policy should instead focus on capabilities.

Figure 1. CAPABILITIES AND HUMAN RIGHTS

Table reproduced from Martha Nussbaum,
 “Capabilities, Human Rights and the Universal Declaration,” in Weston & Marks,
The Future of International Human Rights, Transnational Publishers, 1999, pp. 44–46

1. <i>Life</i> . Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living.	Article 3 on right to life.
2. <i>Bodily Health</i> . Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.	Article 25, further defined in Article 12 of the ICESCR as the “highest attainable level of physical and mental health.”
3. <i>Bodily Integrity</i> . Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.	Articles 3, 4, 5 and 13, although domestic violence, sexual satisfaction, and reproductive choice were not sufficiently well-established in 1948 for the overwhelmingly male drafters to include them.
4. <i>Senses, Imagination, and Thought</i> . Being able to use the senses; being able to imagine, to think, and to reason, and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing expressive works and events of one’s own choice, religious, literary, musical, and so forth. Being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non-beneficial pain.	Article 18 on freedom of thought, conscience, and religion; Article 19 on freedom of opinion and expression; Article 26 on the right to education, which “shall be directed to the full development of the human personality”; Article 27 on participation in cultural life.
5. <i>Emotions</i> . Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one’s emotional development blighted by fear and anxiety. Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.	Articles 12 and 16, although privacy, non-interference with family and the right to marry and found a family are manifestations of a much broader idea of capabilities regarding emotions.
6. Being able to form a conception of the good and to engage in critical reflection about the planning of one’s life. This entails protection for the liberty of conscience and religious observance.	Article 18 on freedom of thought, conscience, and religion.
7. <i>Affiliation</i> . A. <i>Friendship</i> . Being able to live for and to others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship. Protecting this capability means, once again, protecting institutions that constitute such forms of affiliation, and also protecting the freedoms of assembly	Article 1, mentioning “spirit of brotherhood [sic.]”; Article 18 on thought and conscience; Article 19 on opinion and expression; Article 20 on peaceful assembly and association; Article 29 on duties to the community and respect for the rights of others and “just requirements of morality, public order and general welfare in a democratic society.”

and political speech. B. <i>Respect</i> . Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on the basis of race, sex, ethnicity, caste, religion, and national origin.	Article 1 on equality in dignity and rights; Article 2 on non-discrimination.
8. <i>Other Species</i> . Being able to live with concern for and in relation to animals, plants, and the world of nature.	This concern is found in international environmental instruments and in several draft texts on human rights and the environment, but not in the Universal Declaration, except by implication in Article 28.
9. <i>Play</i> . Being able to laugh, to play, and to enjoy recreational activities.	Article 24 relative to rest and leisure.
10. <i>Control Over One's Environment</i> . A. <i>Political</i> . Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association. B. <i>Material</i> . Being able to hold property (both land and movable goods); having the right to employment; having freedom from unwarranted search and seizure.	Article 21 on political participation; Article 19 on speech; Article 20 on association. Article 17 on property; Article 23 on right to work and free choice of employment; Article 12 on non-interference in privacy, family, home or correspondence.

3. The scope and meaning of the Declaration on the Right to Development

The idea of the right to development emerged in the early seventies with a double motivation. First, the Commission on Human Rights had become highly charged with ideological positioning on practically every issue. Socialist countries were pushing for peace and disarmament; developing countries were pushing for development, non-discrimination and anti-apartheid struggle; and Western countries were exercising damage control or favoring machinery to scrutinize violations of civil and political rights. As the socialist countries launched the idea of the right of societies to live in peace, the Non-Aligned Movement (NAM) countries picked up on the idea of declaring development itself a human right. Second, the momentum for the New International Economic Order (NIEO) and the Charter on the Economic Rights and Duties of States (CERDS) had not been lost yet, and NAM countries continued to have faith in the UN system. They favored allowing majority decisions of the GA to establish the normative basis and the blueprint for the creation of a more just international economic order. The hope was that the Declaration on the Right to Development would use the categorical imperatives of human rights

to oblige those countries that dominate the international economy to accept greater responsibility for eliminating the causes of poverty and maldevelopment, pay more for raw materials extracted from developing countries, provide more aid, and improve the terms of trade in favour of developing countries.

The UN General Assembly proclaimed the human right to development in 1986 in a Declaration on the Right to Development.⁵ The United States cast the only negative vote; eight other countries abstained. A considerable body of commentary has appeared in support of the declaration, mainly in human rights publications, but critical and sceptical views have also emerged in legal and political writings.

The NAM systematically used the right to development to try to influence the entire human rights program of the UN. In its consensus resolution on the 1996–97 program budget, the General Assembly added a requirement—that the High Commissioner establish “a new Branch, the primary responsibilities of which would include the promotion and protection of the right to development.”⁶ The Vienna Declaration and Programme of Action called the right to development “a universal and inalienable right and an integral part of fundamental human rights.”⁷ The right to development has also been given prominence in the mandate of the High Commissioner, the international conferences and summits, the structure of the OHCHR, and the annual resolutions of the Assembly and the Commission. However, all these decisions seem to be based on the misguided assumption that the proclamation of the Declaration on the Right to Development must constitute a victory for the poor countries, a seemingly precious surviving feature of the NIEO. The Declaration does mention that “states should realize their rights and fulfil their duties in such a manner as to promote a new international economic order,” which is

⁵ UN GA Res. 41/128.

⁶ A/Res/50/214, para. 37.

then rendered rather vague insofar as it is “based on sovereign equality, interdependence, mutual interest and co-operation among all states, as well as to encourage the observance and realization of human rights.” That compromise language is rather far removed from mandating an altered international division of labor or terms of trade or aid. Nevertheless, the right to development is used rhetorically to amplify Third World demands on the industrialized world for a transfer of resources, in the form of foreign aid or debt forgiveness.

The U.S., joined by many other Western countries, has been frustrated by the insistence of NAM countries to force their interpretation of this right on what is essentially the group of donor states. In the end, a breakthrough occurred on 22 April 1998, when the Commission adopted by consensus a resolution on the right to development (1998/72), recommending to the Economic and Social Council the establishment of a follow-up mechanism on the subject, initially for a period of three years. This mechanism set up an open-ended working group to meet for five working days each year with a mandate to monitor and review progress, review reports and other information, and present a sessional report to the Commission. It also required the Chairman of the Commission to appoint an independent expert to present to the working group at each of its sessions a study on the current state of progress in implementation of the right to development. The High Commissioner for Human Rights has reported several times on this right,⁸ as has the Secretary General.⁹ Dr. Arjun Sengupta was appointed as independent expert and submitted a provisional work program¹⁰ to the Commission at its 55th session (1999) and a study on progress in implementing this right in July 1999.¹¹ The Working Group was unable to meet in 1999 due to wrangling over the presidency. The matter has been settled, and the Open-

⁷ Vienna Declaration and Programme of Action, Part I, para. 10.

⁸ E/CN.4.1999/19.

⁹ E/CN.4.1999/20.

¹⁰ E/CN.4/1999/118.

¹¹ E/CN.4/1999/WG.18/2.

Ended Working Group on the Right to Development will meet twice in 2000.

Dr. Sengupta is working on his report in Geneva as this workshop is taking place. In cooperation with UNDP, the OHCHR and the Dutch government, he is also developing a series of pilot projects to illustrate what the right to development means in practice with respect to health care, food and education. It is important to note, as did the Committee on Economic Social and Cultural Rights, that the Declaration is “not designed to be operational.”¹²

Practitioners of human development must work with local partners in developing strategies to make it operational.

When discussing with governments and development practitioners how to operationalize the Declaration, you may find it helpful to be aware of five myths commonly believed by even the staunchest supporters of the Declaration:

Myth 1. Development takes priority over respect for human rights.

In fact, the right, as defined in the 1986 Declaration, supports the opposite position. All human rights, including civil and political rights, must be respected in development planning and implementation. Consequently, **underdevelopment and lack of resources cannot be a pretext for violation of human rights.**¹³

Myth 2. States determine whatever development policy suits them.

In fact, the Declaration implies a limitation on states’ determination of their development policy in that it establishes the duty of states “to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all

¹² The Incorporation of Economic, Social and Cultural Rights into the United Nations Development Assistance Framework (UNDAF) Process. Comments adopted by the Committee on Economic, Social and Cultural Rights, 15 May 1998.

¹³ Declaration on the Right to Development (hereafter DRD), Article 6(3).

individuals, on the basis of their active, free and meaningful participation in development and the fair distribution of the benefits resulting therefrom.”¹⁴ The right to development could thus be interpreted to mean that development policies should be revised to meet the **human-centered and participatory** elements of the definition contained in the Declaration.

Myth 3. Support for development is a separate issue from human rights violations.

It is a common misconception that the promotional approach to human rights in the context of development is more appropriate than the violations approach. In fact, the Declaration on the Right to Development specifies that “states shall [not the more hortatory “should” used elsewhere in the Declaration] take resolute steps to eliminate the massive and flagrant violations of human rights of peoples and human beings affected by situations such as apartheid, racism,” etc.¹⁵ Moreover, “states should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights.”¹⁶ Thus, the Declaration makes clear that violations of civil and political rights **are an obstacle to development** and that the removal of such violations are a necessary part of development.

Myth 4. Equity and distributive justice are not a necessary part of development.

In fact, reference to “**fair distribution of the benefits**” of development¹⁷ and **nondiscrimination in development**¹⁸ are part of the right and, if taken seriously, could be invoked to block or reduce support for projects that fail on either of these grounds.

Myth 5. The development process is the sole responsibility of government leaders and officials of ministries and intergovernmental agencies.

¹⁴ DRD, Article 8(1).

¹⁵ DRD, Article 5.

¹⁶ DRD, Article 6(3).

¹⁷ DRD, Article 2(3).

¹⁸ DRD, Articles 6(1) and 8(1).

In fact, the duty of states to ensure “**active, free, and meaningful participation**”¹⁹ and “encourage popular participation in all spheres as an important factor in development”²⁰ could have a profound effect on democratization and the empowerment of civil society. If national policy and development agencies took these principles seriously, they would be an instrument of democratization, rather than the continuation of technocratic approaches to development.

In short, the Declaration is a more balanced text than the politicized debate would suggest. It is not neutral on the model of development but defines the essence of the “human” in sustainable human development. As the High Commissioner concluded her statement to the Commission on 19 March 1998, the right to development if taken seriously “might just result in the accordance of the human rights programme with its rightful place in the United Nations development agenda. An agenda in which all human rights will figure.” Her position echoes the recommendation of the Working Group on the Right to Development in 1994 that “the right to development is more than development itself; it implies a human rights approach to development, which is something new.”²¹

4. The relation between rights and responsibilities

Human rights in the law and practice of international relations are not merely abstract ethical principles but legal norms implying obligations by states to respect, protect, promote and fulfill the rights in question and duties on individuals and other non-state actors to contribute to the realization of those rights.

Particular responsibilities fall directly to governments and indirectly to transnational

¹⁹ DRD, Article 2(3).

²⁰ DRD, Article 8(2).

²¹ E/CN.4/1995/11, 4 September 1994, para. 44.

corporations, individuals and international agencies to apply human rights based approaches to meet the health needs of vulnerable populations. There are three types of duties under international human rights standards that establish these direct and indirect responsibilities.²²

First is the general proposition that for every right there is a **corresponding duty of the state**, e.g., if everyone has the right to the highest available standard of physical and mental health, then there is a duty primarily on the state and secondarily on international agencies to create an enabling environment for the enjoyment of that right. The obligations in question are of two sorts:

1. *Perfect obligations*, in the terminology of Emmanuel Kant dear to economist-philosopher Amartya Sen, corresponding to what Ronald Dworkin called “concrete rights.” These are immediate obligations that can be enforced through judicial process. These are the areas in which accountability takes the form of enforceable remedies. In this category one can include most state undertakings to

- a. **Respect**, i.e., prevent state agents from denying a right and punish them for acts of commission and omission, such as refusing treatment for a person with AIDS because of that person’s sexual orientation.
- b. **Ensure or protect**, i.e., prevent private actors from violating a right and punish them for prohibited acts, such as a domestic partner who communicates an infectious disease through forced sex and threats or use of violence. This is also the level of responsibility obliging the state to ensure, through domestic regulatory mechanisms, that corporations do not engage in practices that result in violations of human rights or to apply the “polluter must pay” rule, of which

²² This analysis draws in part on that provided by the International Council on Human Rights Policy in *Taking Duties Seriously: Individual Duties in International Human Rights Law. A Commentary*, 1999.

Clarence Dias has reminded us. At the international level, the Maastricht Guidelines call upon states parties to the International Covenant on Economic, Social and Cultural Rights to “ensure that violations do not result from the programmes and policies of the organizations of which they are members [including international financial institutions].”²³

2. *Imperfect obligations*, again in the Kantian vocabulary, corresponding to Dworkin’s concept of “abstract rights.” These are general commitments to pursue a certain policy or achieve certain results. They are typically not justiciable; that is, immediate individual remedies are not normally provided where the state falls short of its responsibilities with respect to these obligations, although they are still legal obligations. Thus states are required to take certain steps immediately in the direction of sound progressive realization of the right to health—for example, to avoid discrimination and to provide a core minimum level of realization.²⁴ Into this category fall most state responsibilities to

- c. **Promote**, i.e., undertake campaigns to alter attitudes and behaviour of the population. This obligation is already contained in the UN Charter and is implicitly or explicitly contained in every human rights treaty. It is the essence of the admonition of the Universal Declaration of Human Rights 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...”

²³ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, paragraph 19, reproduced in *Human Rights Quarterly*, vol. 20 (1998), p. 698.

²⁴ *Id.*, para. 8-9, pp. 694-695.

- d. **Fulfill**, i.e., allocate resources to enable people to enjoy the right. In the words of the Maastricht Guidelines, which cite the example of providing primary health care, states are required “to take appropriate legislative, administrative, budgetary, judicial and other measure toward the full realization of [economic, social and cultural] rights.”²⁵

Second, there are **duties individuals have to others and to the community**. This is the essential element of the social contractarian theory of human rights, according to which every citizen benefits from official recognition and protection of his or her rights and freedoms in exchange for respecting the rights and freedoms of others and contributing to the community in ways that are normally set out in the national constitution.

These duties that all people have, to respect the rights of others and contribute to the community, are not necessarily burdens imposed on unwilling individuals forced to abandon their rights; they are rather culturally grounded means of creating a human rights community, or, as Kamal Hossain urged, “empowering civil society.” The concept of **human rights communities**, as promoted by the People’s Decade of Human Rights Education, is based on the idea of members of a community accepting human rights obligations in all aspects of community life, whether in the family (for example, agreeing to respect the rights of women and children as defined in CEDAW and CRC regardless of contrary traditional practices), in professional life (for example, judges must apply national and international human rights law in their courts), and in sum in all the contexts of social life. In so doing they enhance respect for their own rights.

A wide range of international instruments affirms these duties. Here is a partial enumeration:

²⁵ Id., para. 6, p. 694.

1. **Universal Declaration** of Human Rights (1948), Article 29(1): “Everyone has duties to the community in which alone the free and full development of his personality is possible.”
2. Preamble to both **Covenants** (1966): “...the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.”
3. Declaration on the **Right to Development** (1986): “All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development” (article 2(2)).
4. Declaration on Human Rights **Defenders** (1998): “Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible....Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in...promoting human rights...” (article 18).
5. **Regional instruments**: American Declaration on the Rights and Duties of Man (1948); American Convention on Human Rights (1969), Article 32(1); African Charter of Human and Peoples’ Rights (1961), Preamble and Articles 27–29.
6. **Convention** on the Rights of the **Child** (1989), duties of parents (Articles 5, 18(1), 27(2)).

7. Normative instruments applying to professions: Principles of Medical Ethics Relevant to the Role of **Health Personnel**, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982); Basic Principles on the Role of **Lawyers** (1990); UN Guidelines on the Role of **Prosecutors** (1990).

The third type of duties already recognized in international human rights law is reflected in the **limitations** based on the **duty to exercise rights responsibly**. Human rights texts regularly contain limitation clauses that allow the state to restrict the enjoyment of certain rights in order to ensure that they are exercised responsibly. Freedom of expression should not mean that anyone can circulate false information that defames the reputation of others or incites violent acts. Nor should freedom of movement and residence allow individuals to overlook emergency health measures designed to halt the spread of an epidemic. The principal general text on this principle is Article 29(2) of the Universal Declaration, which reads: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.”

The best example of these limitation clauses is contained in the ICCPR with respect to six rights: Article 12(3) (movement), Article 14(1) (public trial), Article 18(3) (religion), Article 19(3) (opinion), Article 21 (assembly), and Article 22(2) (association). They allow the rights in question to be limited as long as they are prescribed by law and necessary in a democratic society to protect public order, public health, public morals, national security, public safety, or the rights and freedoms of others.

Thus the development practitioner seeking to apply a human rights approach to human development needs to be aware of both the political manipulation of the relationship between responsibilities and rights and the technical and valid use of the concept. Insistence on duties may disguise unwillingness to acknowledge the well-founded claims of citizens to respect for their internationally recognized human rights. Kim Dae Jung, a former human rights activist and now the president of South Korea, rejected the “Asian values” argument, which he found “not only insupportable but self-serving.”²⁶ Kim considered that “[t]he biggest obstacle [to establishing democracy and strengthening human rights in Asia] is not its cultural heritage but the resistance of authoritarian rulers and their apologists.”²⁷ The obligations in the human rights field are primarily those of governments. However, individuals and non-state entities have obligations as well, and governments have a duty to ensure that these non-state actors do not violate human rights in their relations with others. Finally legitimate limitations may be placed on rights so that they may be exercised responsibly, but these limitations are not a license to governments to evade their duties.

5. The challenges to the development practitioner

By way of conclusion, let me suggest that there are at least five skills the development practitioner needs to acquire in order to apply the rights based approach to sustainable human development:

1. Be able to **identify the elements** of a rights-based approach:

²⁶ Kim Dae Jung, *Is Culture Destiny? The Myth of Asia's Anti-Democratic Values*, 73 FOREIGN AFFAIRS, 189 (November/December 1994), p. 190.

²⁷ *Id.*, at 194

a. Definition of socioeconomic issues in terms of rights

Issues of health, education, food, shelter, labor, vulnerability, marginalization, equity, gender and similar matters are constant concerns of the development practitioner. The International Covenant on Economic, Social and Cultural Rights has formulated them all in normative terms. The challenge is to learn the similarities and differences in the understanding of these issues in the contexts of development planning and implementation, on the one hand, and human rights, on the other.

b. Use of General Comments by the treaty bodies

The treaty monitoring committees, especially the Committee on Economic, Social and Cultural Rights, have issued thoughtful interpretations of the content of specific rights, with examples of what they expect states parties to do to fulfill their obligations with respect to those rights.²⁸ The development practitioner would benefit from a careful reading of these General Comments and discussion of their implications with colleagues. It is especially important to reflect on the concepts of “core minimum obligations.”²⁹

c. Reference to treaty obligations in the main human rights treaties

The six main human rights treaties contain commitments that states parties have made in areas directly affecting development. It is appropriate—and even mandated by the Memorandum of Understanding between the High Commissioner for Human Rights and the Administrator in the case of UNDP—to draw on these obligations in discussion with governments regarding their development plans and priorities. One need not consider it too political or controversial to draw a government’s attention, for example, to a project that acquiesces to or results in some form of

²⁸ They are available on the web site of the UN High Commissioner for Human Rights; see <http://www.unhchr.ch/tbs/doc.nsf>.

²⁹ See, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990), UN Doc. E/1991/23, Annex III, para. 10.

discrimination against women. In that case, explicit reference to that government's obligations under CEDAW should be part of the discussion.

d. Focus on obligations to respect, protect, promote, facilitate and provide

Development practitioners would gain from using the ideas developed since the 1989 report by Asbjørn Eide on the right to food, which have been adapted by most other special rapporteurs and in the General Comments, on the different types of obligations implied by governmental agreement to realize fully the treaty rights. It is sometimes useful to make a table indicating what the state should do to respect, to protect, to promote, to facilitate and to provide for each issue or sub-issue (e.g., free primary education or healthy development of the child, to take two specific rights in the CRC).

e. Participatory method

Participation is part of most development strategies. The human rights framework enhances this dimension of development and surrounds it with certain guarantees, such as freedom of association and expression, the right to information, and protection from arbitrary treatment of persons who express critical views. The Declaration on Human Rights Defenders and the Declaration on the Right to Development provide additional standards by which participation can be ensured.

2. Balance the necessary **cooperation** model with the occasional need to use a **violations** approach to human rights.

Development practitioners tend to shy away from human rights because the human rights approach conjures up a confrontational “naming and shaming” approach used by organizations like Amnesty International and Human Rights Watch. While these organizations do use pressure

on states by calling attention to their shortcomings, human rights advocacy is not at all limited to that mode of interaction. The cooperative mode, often readily observed in the practice of the treaty monitoring bodies, offers ample opportunity for both foreign development partners (bilateral and multilateral) and domestic civil society organizations to interact productively with ministerial officials and other government agents of development. Explanations, information, indications of best practices, and so on are often more effective than threats of publicity or prosecution.

Once this cooperative mode has been practiced, it becomes possible to gauge when and how to draw attention to violations. A development practitioner familiar with human rights should be able to allude to violations in exceptional situations in which it may help to alert the government that, unless it corrects some development practice that constitutes a rights violation, one of the treaty bodies may find it necessary to draw attention to the violation. In the extreme case of a flagrant violation where the government manifests indifference or defiance toward its human rights obligations, the development practitioner should know how to communicate critical information to the Office of the High Commissioner or to special rapporteurs. Therefore, for the development practitioner, the balance normally tilts in the direction of the cooperation mode, but the application of the violations mode may be necessary in extreme cases.

3. Apply relevant **indicators** and benchmarks.

It is a natural tendency among development practitioners to assume that the development indicators with which they are familiar provide the best answer to whether rights to education, health, food and the like are being fulfilled. There are serious methodological problems with this

assumption, and there are no easy answers. Sometimes some typical development indicators are relevant; other times they are not relevant, or only partially so. These methodological problems are addressed in Chapter 5 of HDR2000. The development practitioner needs to understand the limitations of indicators and contribute to the ongoing discussion within the agencies and the treaty monitoring bodies on how this situation can be improved.

It is also sometimes assumed that high human development indicators (HDI) indicate an absence of human rights problems. In fact, high HDI may correlate with both an enlightened policy and practice in the field of economic, social and cultural rights and a repressive set of measures that constitute violations of civil and political rights. The Declaration on the Right to Development and the policies of such agencies as the Office of the High Commissioner for Human Rights and UNDP require simultaneous respect for all human rights. Sensitivity to this basic policy is critical to effectively integrating human rights into the work of the development practitioner.

4. Apply the human rights approach within the process of development **planning**.

For the development practitioner, the rubber hits the road when a new policy consideration like the human rights approach becomes part of discussions within the Ministry of Planning or its equivalent. This policy may be completely new to the partners with which the practitioner is used to working. It may be contrary to expectations of bilateral donors, IFIs and other funding partners who continue planning that excludes the human rights approach. No one is comfortable standing out on a limb while all the partners politely (or not so politely) draw attention to the importance of sticking to the agenda and the economic aspects without bringing in extraneous political factors. The development practitioner needs to acquire a solid background in the human

rights approach to convince the partners that it is legitimate and even helpful to development planning to bring in such considerations.

The same may be said for the Common Country Assessment (CCA) and UN Development Assistance Framework (UNDAF) guidelines, which may be inadequate in terms of references to key human rights texts. These guidelines have been improved, but more work is needed for the systematic integration of human rights into the analysis.

5. Be attentive to the habits of development partners during project **implementation**.

It is equally important to monitor implementation of development projects for compliance with the human rights criteria identified during the planning phase and to correct unanticipated human rights problems that may arise. This vigilance requires sensitivity to local government inexperience with the human rights approach.

Bilateral donors (especially DIFID, NORAD, DANIDA, SIDA, CIDA) have explicit mandates for human rights in development. Their experience can be valuable in developing the skills needed for human rights monitoring of development projects.

Other UN agencies may be slower than UNDP in integrating human rights into development, especially the international financial institutions (IFIs) and the specialized agencies. Working within those agencies to provide such monitoring is more difficult, but effective application of the human rights framework includes working with them to develop progressively the habits that both reflect and generate a common commitment to the official policy, which comes with experience with integrating human rights into human development across the UN system..

Habits of local NGOs and other elements of civil society, such as traditional practices, may impede or help with integrating human rights into sustainable human development. The development practitioner should find the human rights constituency within the civil society that can take the lead in dealing with traditional practices. Most intractable among these is entrenched corruption in government and civil society, which runs directly counter to attention to equity concerns and participatory aspects of the human rights approach.

In meeting these challenges, the development practitioner stands at the front lines of the effort to transform the human rights approach to development—from the rhetoric that governments and NGOs insert into resolutions adopted in New York and Geneva into practice that affects people's lives.