

The Human Rights Framework for Development: Five Approaches

Stephen P. Marks

Stephen P. Marks is the François-Xavier Bagnoud Professor at the Harvard School Public Health and the director of the François-Xavier Bagnoud Center for Health and Human Rights. This is a revised and expanded version of a talk delivered at the UNDP-sponsored Second Global Forum on World Development, held in Rio de Janeiro, Brazil on October 9–10, 2000; this version was updated in April 2001. Please address correspondence to the author at the François-Xavier Bagnoud Center for Health and Human Rights, 651 Huntington Avenue, 7th Floor, Boston, MA 02115 USA.

Contents

Introduction	1
1. The Holistic Approach to Human Rights.....	2
2. The Capabilities Approach to Human Rights	4
3. The Right to Development Approach.....	7
4. The Responsibilities Approach.....	11
5. The Human Rights Education Approach.....	16
Conclusion: Challenges to the Development Practitioner.....	19

Introduction

The “human rights discourse” and the “human development discourse” are major features of international affairs and have been for a half-century. Their intersection has been only recently acknowledged and has been little studied in the literature of either field or in policy documents. The connection between human rights and development is sometimes expressed in terms of “conditionality,” that is restricting aid or trade unless and until certain human rights performance criteria are met. It is also sometimes expressed as the need for good governance in terms of accountability and transparency of public institutions operating under conditions of the rule of law as necessary dimensions of proper management, without which donors and lenders cannot trust the recipient state to utilize resources properly. The international community has moved beyond these limited interpretations of the human rights-development linkage.

To affirm that development should be pursued in a “human rights way” has a definite appeal to people who consider development as a matter of justice, but it does not provide an agenda for action, or even general guidance for professional work in international development. In the area of development assistance,

efforts have been made to provide practical guidance.¹ To affirm that human rights must “be integrated into sustainable human development” is equally appealing, but very little has been done to explain what is meant by “human rights” in this context, nor how this integration is to be done. It is possible to advance development—that is, to “ensure freedom, dignity and well-being for all people everywhere,” to borrow from UNDP’s *Human Development Report 2000 (HDR2000)*—without invoking human rights. It is possible to promote and protect civil, cultural, economic, political, and social rights—to use the current enumeration of categories of human rights—without becoming engaged in the traditional planning and resource allocation process of development. At the conceptual level, one can define development and human rights with a sufficient degree of abstraction as to be virtually identical and essentially unimpeachable. Ideally, these two societal projects should be mutually reinforcing. For that to happen, we need more theoretical reflection on how they relate and more practical experience in projects applying the linkage.

This paper will focus on the relevance of the human rights framework to human development by highlighting five approaches that apply human rights thinking to development: the *holistic approach*, the *capabilities approach*, the *right to development approach*, the *responsibilities approach*, and the *human rights education approach*. It will conclude with a set of challenges to the development practitioner.

1. 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.”² What is meant by the holistic approach?

We are considering human rights and development after 50 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 for 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, are 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. The holistic approach connects all human rights, dispensing with many of the traditional distinctions between categories of rights. *HDR2000* also dispels four myths about the two categories of rights by clarifying that both categories include positive and negative rights, involve immediate and progressive implementation, require resources, and require quantitative and qualitative indicators.³

The following table lists the main basis on which the two categories have been distinguished and which are progressively being challenged.

¹ The “right way to development” is the shorthand expression for “the human rights approach to development assistance,” as articulated by the Human Rights Council of Australia. The essential definition of this approach is “that a body of international human rights law is the only agreed international framework which offers a coherent body of principles and practical meaning for development cooperation, [which] provides a comprehensive guide for appropriate official development assistance, for the manner in which it should be delivered, for the priorities that it should address, for the obligations of both donor and recipient governments and for the way that official development assistance is evaluated.” The Human Rights Council of Australia, Inc., *The Rights Way to Development: A Human Rights Approach to Development Assistance*, Sydney, Australia, 1995. The same organization has produced a manual on the subject. See André Frankovits and Patrick Earle, *The Rights Way to Development: Manual For a Human Rights Approach to Development Assistance*, Marrickville, Australia, 1998.

² UNDP, *Integrating Human Rights with Sustainable Human Development*. UNDP policy document, New York, January 1998, p. 16.

³ *HDR2000*, p. 93, Box 5.5.

Table 1.
**Elements Traditionally Used to Distinguish Civil and Political
from Economic, Social, and Cultural Rights**

Traditional characteristic of civil and political rights (CPR)	Traditional characteristic of economic, social, and cultural rights (ESCR)	Rationale for challenging the distinction
Absolute, immutable	Relative, responsive to changing conditions	All rights take on priority status when affirmed as human rights
Objective is to ensure freedom	Objective is to ensure equality	Freedom requires both types of rights, and equality must be assured in both
Immediate implementation	Progressive implementation	Elements of immediate and of progressive implementation apply to all rights in varying degrees
Justiciable	Political or programmatic	All rights eventually become justiciable as legal redress is provided
Negative (freedom from = <i>droit attribut</i>)	Positive (right to = <i>droit créance</i>)	Varying degrees of the duties to respect, protect, and fulfill apply to all rights
Cost-free (individual freedom)	Resources required (welfare)	Resources are needed for realization of CPR, and most ESCR can be realized with minimum investment
Based on Western economic liberalism	Based on model of centrally planned socialist system or Eastern enlightened king	All political systems are based on constitutionally guaranteed rights of people or citizens
Violations can be identified and denounced	Violations are unsuitable to cooperation mode	Both violations and cooperation modes may be appropriate for all rights, depending on circumstances

The holistic approach, therefore, requires avoiding misleading categorization of human rights, although the two covenants remain the standard reference documents. The Universal Declaration and several more recent formal texts support this 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 on the basis of social structures conducive to the realization of rights that cover the civil, cultural, economic, political, and social domains. It implies a holistic framework in which the cumulative effect of realizing all types of human rights is a structural change in both national societies and international society.
- The Declaration on the Right to Development (1986) stresses the holistic approach in Article 6, paragraph 2: “All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.”⁴
- The Vienna Declaration and Programme of Action (June 1993) affirms in paragraph 5: “All human rights are universal, indivisible and interdependent and interrelated. The international community

⁴ Declaration on the Right to Development, GA Res. 41/128 (Annex), adopted Dec. 4, 1986.

must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”⁵

- In creating the mandate of the High Commissioner for Human Rights in 1993, the UN General Assembly decided that this official “shall: . . . (b) Be guided by the recognition that all human rights—civil, cultural, economic, political and social—are universal, indivisible, interdependent and interrelated and that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. . . .”⁶
- The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, adopted by a team of experts in 1997, note: “It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.”⁷

Beyond the reaffirmation that all human rights are interdependent and interrelated, the holistic approach also 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. *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. In the context of development, the holistic approach means that all human rights, not just the right that appears most relevant to the task at hand, must be considered. In urban planning, for example, it is not enough to consider that the allocation of resources to affordable housing is a contribution to the right to shelter; the planner must ask what the plan will do for the residents’ enjoyment of rights to food, education, information, work, effective remedies, and health, to mention only the most obvious ones.

2. The Capabilities Approach to Human Rights

The Nobel Prize–winning economist 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*,⁸ he argues 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 he 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.”⁹ He uses three focal features of deprivation of basic capability—premature mortality, undernourishment, and illiteracy—to compare and contrast these two regions, although he is the first to admit that these indicators do not “provide a comprehensive picture of capability-poverty in these regions.”¹⁰

⁵ World Conference on Human Rights, Vienna Declaration and Programme of Action, June 1993, DPI/1394–39399, August 1993, p. 30.

⁶ GA Res. 48/141 of 20 December 1993, operative paragraph 3.

⁷ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Guideline 4, *Human Rights Quarterly* 1998, 20: 692.

⁸ Amartya Sen, *Development as Freedom*, New York: Knopf, 1998, pp. 87–110.

⁹ Id., p. 99.

¹⁰ Id., p. 103.

In the capabilities discourse, “capability” is the option available to the individual to partake of some valued dimension of life; “functioning” is the exercise of that option.¹¹ Martha Nussbaum is more explicit than Sen in linking capabilities and functionings to human rights. Capability relative to 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.”¹² Public policy tends to focus on functioning. Sen and Nussbaum propose that public policy should instead focus on capabilities.

Table 2 reproduces Nussbaum’s table of capabilities and corresponding rights in the UDHR. The left-hand column lists ten “capabilities” which define, according to Nussbaum, the elements of a good life. The right-hand column lists the corresponding human rights as they appear in the UDHR, translating, as it were, the philosophically posited elements of the good life into the language of the international standard-setting process. The aim of this juxtaposition of lists of capabilities and of rights—each list derived from quite different processes—is to underscore how human rights norms address, at least in part, similar concerns to those of the philosopher considering the good life and, we could add, those of the policymaker advocating human development.

Table 2.
Capabilities and Human Rights¹³

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.

¹¹ A more technical analysis of capabilities and functioning in relation to personal well-being and advantage is provided in Amartya Sen, *Commodities and Capabilities*, Oxford University Press, 1999.

¹² Martha Nussbaum, “Capabilities, Human Right, and the Universal Declaration,” in Weston & Marks, *The Future of International Human Rights*, Transnational Publishers, 1999, p. 48

¹³ Reproduced from Nussbaum, op. cit. pp. 44–46.

<p>5. Emotions. 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.</p>	<p>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.</p>
<p>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.</p>	<p>Article 18 on freedom of thought, conscience, and religion.</p>
<p>7. Affiliation. A. Friendship. 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 and political speech. B. Respect. 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.</p>	<p>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.” Article 1 on equality in dignity and rights; Article 2 on non-discrimination.</p>
<p>8. Other Species. Being able to live with concern for and in relation to animals, plants, and the world of nature.</p>	<p>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.</p>
<p>9. Play. Being able to laugh, to play, and to enjoy recreational activities.</p>	<p>Article 24 relative to rest and leisure.</p>
<p>10. Control Over One’s Environment. A. Political. 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. Material. Being able to hold property (both land and movable goods); having the right to employment; having freedom from unwarranted search and seizure.</p>	<p>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.</p>

For the development practitioner, this table offers a rich terrain for reflection. Bodily integrity, for example, is an essential public health concern calling for appropriate resources and policies in the Ministry of Health and related offices, whereas the problems of physical assault and acts of violence fall more within the purview of the Ministries of Justice and the Interior. Only the concerted efforts of public health and law enforcement will ensure capabilities of bodily integrity. The definitions and mechanisms for monitoring state

action contained in the Torture Convention and similar provisions of the International Covenant on Civil and Political Rights and related instruments, such as the texts relating to conduct of law enforcement officials and treatment of detainees, become tools for realizing this capability. These standards barely scratch the surface of what Nussbaum lists under bodily integrity. Freedom of movement is included, which raises the vast range of issues of residence, immigration, asylum, the right to leave any country including one's own and to return to one's country, and legitimate restrictions on freedom of movement and residence, for example, to prevent the spread of an epidemic. She includes sexual and domestic violence, which bring to mind the Declaration and Special Rapporteur on violence against women, as well as "opportunities for sexual satisfaction" and reproductive choice, on which traditional human rights texts are typically silent.

The concept of "respect" in capability 7 involves the major human rights principle of nondiscrimination. The implications of this principle for development planning and practice are considerable. It is a major challenge to ensure that development efforts do not discriminate, but failure to do so would in most cases result in the denial of the capabilities necessary for human development to the presumed beneficiaries of development.

Because the capabilities approach links development concerns to freedom, and because freedom implies the widening of choices in the civil, political, social, economic, and cultural spheres, each of the capabilities in Nussbaum's list may be contemplated as a starting point for a human rights understanding of the development process.

3. The Right to Development Approach

A third human rights approach to human development is to consider development itself as a human right. When the idea of the right to development emerged in the early 1970s, it had 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, nondiscrimination, 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 as a means of allowing majority decisions of the General Assembly 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, which explicitly mentions NIEO, 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 favor of developing countries.

The UN General Assembly proclaimed development as a human right to in its 1986 Declaration on the Right to Development.¹⁴ 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 legal and human rights publications,¹⁵ but critical and skeptical views have also emerged in legal and political writings.¹⁶

¹⁴ UN GA Res. 41/128. The Commission referred to the right to development in resolutions before the General Assembly adopted the Declaration. See, for example, Commissions resolutions 4 (XXXIII) of 21 February 1977, 4 (XXXV) of 2 March 1979, 36 (XXXVII) of 11 March 1981, and 1985/44 of 14 March 1985.

¹⁵ In this abundant literature, the following are particularly useful: George Abi-Saab, "The Legal Formulation of a Right to Development," in *The Right to Development at the International Level*, Hague Academy of International Law, 1980, p. 163 ff; Philip Alston, "Revitalizing United Nations World on Human Rights and Development," *Melbourne Univ. Law Review*, vol. 18 (1991), p. 216 ff; P. Alston, "Making Space for Human Rights: The Case of the Rights to Development," *Harvard Human Rights Yearbook*, vol. 1, (1988) p. 1 ff.; Upendra Baxi, "The Development of the Right to Development," in Baxi, *Mambrino's Helmet?: Human Rights for a Changing World*, Har-Anand Publication, New Delhi, 1994, p. 22 ff (reproduced in Janusz Symonides, *Human Rights: New Dimensions and Challenges*, Ashgate and Unesco, 1998, pp. 99-116); I. Brownlie, *The Human Right to Development*, Commonwealth Secretariat, 1989; Y. Ghai and Y. R. Rao, *Whose Human Right to Development*,

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.”¹⁷ 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.”¹⁸ 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 Office of the High Commissioner for Human Rights (OHCHR), and the annual resolutions of the General Assembly and the Commission on Human Rights. 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 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 several other Western countries, has been frustrated by the determination 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,¹⁹ 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 (OEWG) 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,²⁰ as has the Secretary General.²¹ Dr. Arjun Sengupta, a highly experienced economist from India, was appointed as independent expert and submitted a provisional work program²² to the Commission at its 55th session (1999), a study on progress in implementing this right in July 1999,²³ and a second report in 2000.²⁴ The Working Group was unable to meet in 1999 due to wrangling over the presidency. The matter was eventually settled, and the Open-Ended Working Group on the Right to Development met twice in 2000 under the presidency of the Algerian ambassador to the UN.²⁵ The Independent Expert presented his third report²⁶ to the OEWG, which was

Commonwealth Secretariat, 1989; M. Bedjaoui, “The Right to Development,” in Bedjaoui, *International Law: Achievements and Prospects*, UNESCO, 1991, p. 1177 ff; Subrata Roy Chowdhury, Erik M. G. Denters, and Paul J. I. M. de Waart, *The Right to Development in International Law*, Nijhoff, 1992; Ahmed Mahiou, “Le droit au développement,” in *International Law on the Eve of the Twenty-first Century: Views from the International Law Commission*, United Nations, 1997, pp. 217–36; Kéba M’Baye, “Le droit au développement comme un droit de l’homme,” *Revue internationale des droits de l’homme*, vol. 5, p. 505 ff (1972); Alain Pellet, “Note sur quelques aspects juridiques de la notion de droit au développement,” in Flory, Mahiou, and Henry, *La formation des normes en droit international du développement*, 1984, p. 71 ff; James C. N. Paul, “The Human Right to Development: Its Meaning and Importance,” *The John Marshall Law Review*, vol. 25, pp. 235–64.

¹⁶ See, for example, J. Donnelly, “In Search for the Unicorn: The Jurisprudence and Politics of the Right to Development,” *Calif. Western International Law Journal*, vol. 15 (1985), p. 4723 ff.

¹⁷ A/Res/50/214, para. 37.

¹⁸ Vienna Declaration and Programme of Action (see note 3), Part I, para. 10.

¹⁹ Commission on Human Rights Resolution 1998/72.

²⁰ E/CN.4.1999/19.

²¹ E/CN.4.1999/20.

²² E/CN.4/1999/118.

²³ E/CN.4/1999/WG.18/2 of 27 July 1999.

²⁴ E/CH.4/2000/WG.18/CRP.1 of 11 September 2000.

²⁵ Its meetings were on September 18–22, 2000, and January 29–February 2, 2001.

unable to complete its work on time and had to extend its session due to tensions between three groups: (1) the former NAM countries, Egypt and Cuba being the most vocal members, which were generally favorable to the proposals of the Independent Expert; (2) the EU, represented by Sweden, which was generally favorable but cautious about some NAM proposals; and (3) a handful of countries—the U.S., Canada, Australia, New Zealand, and Japan—with serious reservations about the Independent Expert’s ideas about a new development compact and the implications of his approach to international cooperation.²⁷ By a vote of 48 in favor, two against (U.S. and Japan), and three abstentions (Canada, Korea, and the U.K.), the Commission in 2001 expressed its appreciation for Sengupta’s reports and his clarification of the development compact, which it noted “would be of a voluntary nature for all parties involved” and which “the Independent Expert should clarify further” through such concepts as “an operational model.” It decided to extend the mandate of the OEWG for one year and that of the Independent Expert for three years, enumerating for him a wide range of issues to study and institutions to consult.²⁸

The challenge from the beginning has been to translate the hopeful but ambiguous language of the Declaration into concepts that are meaningful to economists and useful to the rethinking of the development process. The Independent Expert has been doing both. To illustrate how he has attempted to make economic sense out of the legal and political language of the Declaration, consider his use of symbolic representation of the essence of the concept.²⁹ In his report, Sengupta described the right to development as a vector,³⁰ represented symbolically as

$$R_D = (g, R_1, R_2, \dots, R_n)$$

Thus, the right to development R_D consists in an undefined relationship between growth in gross domestic product (g) and the realization of “ n ” number of human rights. The concept of a vector is only a starting point; he then sets out to identify the nature of the relationship between growth and all human rights. While the human rights specialist might be content to say that all human rights are interrelated and must be pursued in application of the Declaration, without sacrificing any of them in order to achieve growth, Sengupta explains that any given right is a function of growth and all other human rights under certain conditions. Any individual right is represented by R_i , where “ i ” is the set of human rights ($i = 1, 2, \dots, n$). To describe this set of rights as a function of growth in relation to all other rights (R_j), he uses the formula:

$$R_i = f(g, R_j), j \neq i$$

These representations are designed to underscore for the economist what is meant by states’ commitment to improving or at least avoiding decline in available goods and services ($g \geq 0$) while ensuring that any change over time (d/dt) of any right (R_j , $j \neq i$) results in an increase or at least no decrease in enjoyment of that right. Thus, if the enjoyment of any right declines, that is, if $dR_i/dt < 0$, then the right to development is violated, or $dR_{ID}/dt < 0$.³¹

²⁶ E/CN.4/2001/WG.18/2.

²⁷ The Right to Development: Report of the Open-Ended Working Group on the Right to Development, UN Doc. E/CN.4/2001/26, 20 March 2001, Annex III (containing comments by the Latin American and Caribbean Group, the EU, the U.S., New Zealand, Canada, Australia, Japan, and Switzerland).

²⁸ E/CN.4/2001/L.15.

²⁹ E/CN.4/2001/WG.18/2, Annex.

³⁰ E/CN.4/2001/WG.18/2, para. 14-15.

³¹ Sengupta goes further in translating the concept of the right to development into economic symbols by explaining that a small increment of positive growth (δg) must produce either an improvement or no change in the enjoyment of any given right (R_i) and of all other rights (R_j):

$$\frac{\delta R_i}{\delta g} \geq 0 \text{ and } \frac{\delta R_j}{\delta R_i} \geq 0, j \neq i$$

Sengupta's basic approach is to consider development as a process in which developing countries integrate human rights, and development partners (donor governments, international financial institutions, and Specialized Agencies) provide enhanced resources to assist them in this effort. The World Bank, the IMF, UNCTAD, ILO, UNDP, UNESCO, and several donor governments, especially the Netherlands, have expressed interest in participating in such a new approach to implementing the right to development, and the Independent Expert is working on a series of pilot projects to illustrate what the right to development means in practice with respect to health, 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."³² Nevertheless, the effort to move from political rhetoric to development practice is one of the most welcome trends since the declaration was adopted in 1986. It is unfortunate indeed that after 30 years of scholarly writing and diplomatic efforts to understand the right to development, and 14 years after the Declaration was adopted, the debate remains polarized and confused.

On the positive side, one thing is clear today: any claim that development takes priority over respect for human rights, and that the realization of human rights must await a certain level of development, is contrary to the principle that all human rights, including civil and political rights, must be respected in development planning and implementation.³³ It is less well understood that the Declaration precludes states from determining whatever development policy suits them. In fact, the Declaration 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 individuals, on the basis of their active, free and meaningful participation in development and the fair distribution of the benefits resulting therefrom."³⁴ The right to development thus implies that development policies should be revised to meet the human-centered and participatory elements of the definition contained in the Declaration.

Moreover, "fair distribution of the benefits" of development³⁵ and nondiscrimination in development³⁶ 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. Further, the development process is not the sole responsibility of government leaders and officials of ministries and intergovernmental agencies, since states have a duty to ensure "active, free, and meaningful participation"³⁷ and "encourage popular participation in all spheres as an important factor in development."³⁸ National development policy and programs of development agencies should thus become instruments of democratization and the empowerment of civil society rather than perpetuate technocratic approaches to development.

Even on the question of human rights violations, there is a common misconception that the promotional approach to human rights in the context of development excludes any reference to violations. In fact, the Declaration on the Right to Development specifies that "states shall 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," and other violations.³⁹ 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

He expresses the additive function of the right to development, that is, the sum of all rights in all individuals, as $R_D = \sum_i R_i$. Further, each $R_i = \sum_j r_{ij}$, where r_{ij} is the i^{th} right of the j^{th} individual. He summarizes this formulation as stating that "all individuals and all rights are given equal weights." E/CN.4/2001/WG.18/2, Annex.

³² 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.

³³ Declaration on the Right to Development (DRD), Article 6(3).

³⁴ DRD, Article 8(1).

³⁵ DRD, Article 2(3).

³⁶ DRD, Articles 6(1) and 8(1).

³⁷ DRD, Article 2(3).

³⁸ DRD, Article 8(2).

³⁹ DRD, Article 5. Note that this article does not use the more hortatory "should" found elsewhere in the Declaration, but the more forceful "shall."

rights.”⁴⁰ Thus, the Declaration makes clear that violations of civil and political rights are obstacles to development and that the removal of such violations is a necessary part of 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, by stressing “the human person [as] the central subject of development,” defines the essence of “human” in sustainable human development. Little attention has been given to identifying the extent to which the concept of the right to development and a human rights–based approach to development overlap or differ. The Working Group on the Right to Development stated in 1994: “The right to development is more than development itself; it implies a human rights approach to development, which is something new.”⁴¹ That statement expresses only part of the overlap. Expressed simply, the right to development is broader than the human rights–based approach, encompassing a critical examination of the overall development process, including planning, participation, allocation of resources, and priorities in international development cooperation. The human rights–based approach to development should be applied as part of the right to development, but it may also involve isolating a particular issue, such as health, and applying to that issue a clear understanding of the state’s obligations under the relevant international human rights instruments and the insights applicable to project implementation derived from authorized interpretations of those obligations, such as General Comment 14 adopted by the Committee on Economic, Social and Cultural Rights on the right to health.⁴² Thus, the right to development implies both a critical review of the development process in a given country and a program of action to integrate a human rights approach within all aspects of that process.

4. The Responsibilities Approach

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. In the context of development, as well as in the political sphere, there is considerable confusion about whether and to what extent duties or responsibilities constitute an alternative to human rights. Some assert that duties to the community are the essence of the role of the individual in society, and that such duties should prevail over any attempts by individuals to use human rights to challenge the cultural foundations of society. This argument is often heard in the context of the “Asian values” debate, according to which prosperity and well-being of societies in Asia are the result of discipline and a sense of duty to the community, which Western notions of democracy and human rights would threaten. 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.”⁴³ 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.”⁴⁴

In addition to the failure of the Asian values argument to acknowledge the diversity of values and the importance of community in all societies, it also misses the point that concepts of duties and responsibilities are part of the human rights discourse, not in opposition to it. Understanding the legitimate role that duties and responsibilities have in the realization of human rights is essential to understanding the relevance of human rights to development.

⁴⁰ DRD, Article 6(3).

⁴¹ E/CN.4/1995/11, 4 September 1994, para. 44.

⁴² General Comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12 of the International Covenant on Economic, Social and Cultural Rights), E/2000/22-E/C.12/1999/11, annex IX.

⁴³ Kim Dae Jung, “Is Culture Destiny? The Myth of Asia’s Anti-Democratic Values,” *Foreign Affairs* 1994, 73: 190.

⁴⁴ *Id.*, at 194.

There are three types of duties under international human rights standards that establish direct and indirect responsibilities.⁴⁵ First is the general proposition that for every right there is a corresponding duty of the state or other duty-holder. The second is the social contractarian concept of duties owed by every individual to the community in exchange for the individual freedoms and security protected by society. The third is the recognition in the major international human rights texts that legitimate limitations on and derogations from certain rights may be made in certain circumstances, thus tempering the absolute character of those rights by the constraints of governance. I will say a few words about each.

The *correlation of rights and duties* is a traditional notion of moral philosophy. Immanuel Kant explained that “we know our own freedom (from which all moral laws and hence all rights as well as duties are derived) only through the moral imperative, which is a proposition commanding duties; the capacity to obligate others to a duty, that is, the concept of a right, can be subsequently derived from this imperative.”⁴⁶ Translating Kant’s conceptions of rights and duties into current human rights discourse can be problematic in light of his distinction between “duties of justice” and “duties of virtue.” Among the former are “perfect duties,” the non-performance of which constitutes a wrong sanctioned by external legislation. Other duties are based on ethics. This distinction is sometimes made with reference to “perfect obligations” and “imperfect obligations” or, in Ronald Dworkin’s terminology, between “concrete rights” and “abstract rights.” The difficulty lies in the notion that human rights are only rights properly speaking if they involve “perfect obligations” on an identified duty-holder to perform a specific act or abstain from certain acts vis-à-vis the right-holder, as in the performance of a contract or in not committing an assault.

Contemporary human rights standards allow a broader and nonetheless legal valid understanding of “imperfect obligations,” the fulfillment of which may take a variety of forms not necessarily in direct correlation to each individual’s right. Some clarification of the validity of imperfect obligations beyond the ethical realm may be provided by consequential evaluation. That term is defined as “the requirement that any choice of actions (or rules, or strategies, or whatever) be based on selecting an alternative that produces not worse an overall outcome than any other available alternative.”⁴⁷ In an essay that introduces human rights into the framework of consequential evaluation, Sen proposes a “rights-inclusive consequentialism” that has advantages over “rights-independent consequential evaluation” of utilitarianism and over libertarianism.⁴⁸ Turning to “human rights that individuals are supposed to have...because of their status as human beings,” Sen acknowledges “the responsibilities that others have—irrespective of citizenship, nationality, and other denominations—to help this person to attain these freedoms. If others can help, then there is a responsibility that goes with it.”⁴⁹ What is important for our purpose is that “[s]ome of these obligations tend to be more fully specified than others” and that “even the fulfillment or violation of precisely specified obligations can go with imperfect obligations of others to help in a general way.”⁵⁰ This general duty to help, he continues, “through a consequential link, may be rather inexactly specified (telling us neither who must particularly take the initiative, nor how far he should go in doing this general duty), but this loosely formulated obligation—Immanuel Kant would call it an “imperfect obligation”—to help may nevertheless be seriously considered by (and be influential with) responsible people.”⁵¹ The essential point from our perspective of the responsibilities approach to human rights in development is this:

It is important to see that in linking human rights to both perfect and imperfect obligations, there is no suggestion that the right-duty correspondence be denied. Indeed, the binary relation between rights and obligations can be quite important, and it is precisely this binary relation which separates out human rights

⁴⁵ 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.

⁴⁶ Immanuel Kant, *The Metaphysical Elements of Justice. Part I of the Metaphysics of Morals*, originally published in 1798, Bobbs-Merrill Company, 1965, p. 45.

⁴⁷ Amartya Sen, “Consequential Evaluation and Practical Reason,” *The Journal of Philosophy*, vol. xvii, No. 9, September 2000, p. 478.

⁴⁸ Id. pp. 493–94.

⁴⁹ Id. p. 494.

⁵⁰ Id.

⁵¹ Id., p. 495.

from the general valuing of freedom (without a correlated obligation of others to help bring about a greater realization of human freedom). The question that remains is whether it is adequate for this binary relation to allow *imperfect* obligations to correspond to human rights, without demanding an exact specification of who will have to do what, as in the case of legal rights and specified perfect obligations.⁵²

Sen quite correctly observes that “[i]n the absence of such perfect obligations, demands for human rights are often seen just as loose talk.”⁵³ He responds to this challenge with two questions “Why insist on the absolute necessity of co-specified perfect obligation for a putative right to qualify as a real right? Certainly, a perfect obligation would help a great deal toward the realization of rights, but why cannot there be *unrealized* rights, even rights that are hard to realize?”⁵⁴ He answers by explaining that he “would resist the claim that any use of rights except with co-linked perfect obligations must lack cogency.... Human rights are seen as rights shared by all—irrespective of citizenship—and the benefits of which everyone *should* have. The claims are addressed generally—in Kant’s language “imperfectly”—to anyone who can help. Even though no particular person or agency has been charged with bringing about the fulfillment of the rights involved, they can still be very influential.”⁵⁵

This argument can be applied to the international human rights standards of special relevance to development. Indeed, the language of the main human rights treaties does not lack cogency because it refers, taking the example of Article 2 of the ICESCR, to the obligation of states parties “to take steps, individually and through international assistance and co-operation, ...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” That text is a catalogue of imperfect obligations and nevertheless subject to specification as to what steps, when, what forms of assistance, by whom, with what allocation of resources, with what pace of progressive realization, through what means, etc. The general comments adopted by the various treaty bodies have sought to clarify these “imperfect obligations of others to help in a general way” not only by providing guidelines on specific steps but by outlining distinctions between obligations to respect, protect, and fulfill, sometimes extending this list to respect, protect, promote, and provide.⁵⁶

It is thus possible to group the obligations contained in human rights treaties into two general types:

1. **Perfect obligations.** These are immediate obligations that can be enforced through judicial process. In other words, 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’s communicating 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. At the international level, multinational corporations and international financial institutions may contribute to the deprivation of rights, such as the right to health. The Maastricht Guidelines refer to the corresponding obligation of States parties to the International Covenant on Economic, Social and Cultural Rights to “ensure that violations do not result from the programmes

⁵² Id.

⁵³ Id.

⁵⁴ Id., p. 496.

⁵⁵ Id., p. 497.

⁵⁶ In a comment on types of state duties imposed by human rights treaties, Steiner and Alston extend this list to five obligations: “respect the rights of others,” “create institutional machinery essential to realization of rights,” “protect rights/prevent violations,” “provide goods and services to satisfy rights,” and “promote rights.” Steiner and Alston, *International Human Rights in Context: Law, Politics, Morals*, 2d ed., 2000, pp. 182–84.

and policies of the organizations of which they are members [including international financial institutions].”⁵⁷

2. **Imperfect obligations.** These are general commitments to pursue a certain policy or achieve certain results. They are typically not justiciable; that is, immediate individual remedies through the courts 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.⁵⁸ Into this category fall most state responsibilities to
 - c. **Promote**, i.e., undertake campaigns to alter attitudes and behavior of the population in such areas as lifestyles, nutrition, and harmful traditional practices. 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....” A related responsibility is to **facilitate**, that is, to intervene in ways that create an enabling environment for the realization of the right, for example, by state-sponsored research and production and dissemination of information, especially with regard to available services, and training of health care staff to respect the dignity and rights of people they are serving, especially vulnerable or marginalized groups.
 - d. **Fulfill** or **provide**, i.e., allocate resources to enable people to enjoy the right. This obligation refers to the national budgets, effectiveness of service delivery, emergency assistance to the needy, and similar state functions that are necessary to meet the needs of the population unmet in other ways. Some of these functions, like establishing a police force to ensure personal safety, or hiring judges to dispense equal justice, are normally exclusive functions of the state. Others, like providing shelter for the homeless, are appropriate when the normal functioning of the market and other institutions fails. Citing the example of providing primary health care, the Maastricht Guidelines note that states are required “to take appropriate legislative, administrative, budgetary, judicial and other measures toward the full realization of [economic, social, and cultural] rights.”⁵⁹

The second type of duty with is part of human rights discourse concerns the *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 of all people, 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*, that is, a society in which each member is conscious that respect for others’ rights is a condition for obtaining the respect of one’s own rights.

These duties are commonly incorporated into basic human rights texts. Table 3 contains a partial enumeration of duties contained in human rights texts.

⁵⁷ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (see note 6), para. 19.

⁵⁸ Id., para. 8–9, pp. 694–95.

⁵⁹ Id., para. 6, p. 694.

Table 3.
Human Rights Texts Enumerating Duties and Responsibilities

Reference document	Text affirming a duty
1. <i>Universal Declaration of Human Rights</i> (1948), Article 29(1)	“Everyone has duties to the community in which alone the free and full development of his personality is possible.”
2. <i>International Covenants on Human Rights</i> (1966), Preamble	“...[T]he 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. <i>Declaration on the Right to Development</i> (1986), Article 2(2)	“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.”
4. <i>Declaration on Human Rights Defenders</i> (1998), Article 18	“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....”
5. <i>American Convention on Human Rights</i> (1969), Article 32(1). See also American Declaration on the Rights and Duties of Man (1948).	“Every person has responsibilities to his family, his community, and mankind. 2. The right of each person are limited only by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.”
6. <i>African Charter of Human and Peoples’ Rights</i> (1961), Article 27. See also Preamble and Articles 28–29.	“Every individual shall have duties towards his family and society, the State and other legally recognized communities in the international community. 1 The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.”
7. <i>Convention on the Rights of the Child</i> (1989), Article 5. See also Articles 18(1) and 27(2).	“States Parties shall respect the responsibilities, rights, and duties of parents...or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

To these general human rights texts should be added a set of normative instruments applying to professions. With respect to health practitioners, the World Medical Association adopted the Declaration of Helsinki to guide doctors,⁶⁰ and the UN has adopted 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.⁶¹ The UN has also adopted numerous texts

⁶⁰ Declaration of Helsinki I (Helsinki, 1964), II (Tokyo, 1975), III (Venice, 1983), and IV (Hong Kong, 1989). The texts are reproduced in George J. Annas and Michael A. Grodin, *The Nazi Doctors and the Nuremberg Code: Human Rights in Human Experimentation*, Oxford University Press, 1992, pp. 331–42.

⁶¹ General Assembly Resolution 37/194 of 18 December 1982.

dealing with the duties of law enforcement officials, the judiciary, lawyers, prosecutors, and other professions involved in the administration of justice.⁶²

The third type of duty already recognized in international human rights law is 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 incite violent acts. Nor should freedom of movement and residence allow individuals to disregard 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. 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 Human Rights Education Approach

A fifth approach to including human rights in the practice of development is that of human rights education (HRE). As understood here, HRE is close to the concept of community-based development work or participatory action research (PAR). The essence of these ideas is that the most effective means of enhancing people’s capabilities is to facilitate their own social transformation through participation in the decisions that affect development.

The commitment of governments and international institutions to HRE may be traced back to of the Universal Declaration, which 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....”⁶³ When the United Nations General Assembly proclaimed the UN Decade for Human Rights Education (1995–2004) in 1994, it gave an acceptable definition of human rights education in acknowledging that it “involves 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.”⁶⁴ Government acceptance of HRE is further reflected in the Declaration on Human Rights Defenders, which was adopted on the occasion of the 50th anniversary of the Universal Declaration of Human Rights.⁶⁵ That Declaration covers human rights training and education, including the duty to facilitate human rights education at all levels of schooling, and in particular in the training of lawyers, law enforcement officials, members of armed forces, and public

⁶² United Nations, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, ST/CSDHA/16, New York, 1992.

⁶³ Universal Declaration of Human Rights, Preamble, emphasis added.

⁶⁴ GA Res. 48/127, 48th Sess. Supp No.49 at 246 UN Doc. A/48/49 (vol.1) (1993).

⁶⁵ The Declaration is officially known as the “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.” See General Assembly resolution 53/144 of 9 December 1998.

officials.⁶⁶ The Declaration recalls various human rights treaties establishing the duty of States parties to adopt measures to promote human rights through teaching, education, and training; to ensure the widespread dissemination of information about national and international human rights laws; to report to UN treaty bodies; and to encourage states to support the establishment of independent human rights institutions, such as human rights commissions and ombudspersons. These are useful commitments on which development practitioners can build when working with governments on integrating the HRE approach into their human rights agenda.

Governments tend to perceive HRE as innocuous, and many activists see it as weak-kneed. Yet the concept and practice of a transformative pedagogy of human rights holds the potential for altering the power structure behind most forms of oppression and repression. Indeed, if people everywhere commit to building a political culture based on the right and responsibility of everyone to respect, ensure, and fulfill human rights for all, the space for abuse of public trust, violence against the physical and mental integrity of others, and exploitation of the vulnerable will contract. Clarence Dias has listed five ways HRE contributes to development: by helping monitor development activities; by mobilizing support for victims' struggles for rehabilitation, redress, and justice; by promoting understanding of the rationale for development; by securing more effective participation in the development process; and by securing accountability for those responsible for misuse of public resources.⁶⁷

Human rights education, as promoted by NGOs such as People's Decade for Human Rights Education⁶⁸ and Human Rights Education Associates,⁶⁹ draws in part upon the community-based development work of Paulo Freire. It focuses on developing people's awareness of the structural nature of their situation of repression and oppression and the means and methods of transforming those structures.

While structural transformation sounds ambitious and perhaps threatening to governments, the truth is that governments tend to see human rights education as non-threatening. Moreover, support by international agencies like UNDP for international and local NGO projects based on such an approach is consistent with the resolutions and plan of action of the UN Decade for Human Rights Education, which governments have accepted. HRE also enables people to participate in follow-ups to the international conferences in Copenhagen on poverty alleviation, in Beijing on violence against women and political participation, and in Vienna on the right to development.⁷⁰ The technical approach of those agencies reassures governments while dealing with issues that are fundamentally political. Extensive information is available on the various approaches to conducting HRE activities in a wide range of settings⁷¹ and on resources and contacts.⁷²

The basic precepts of HRE give content to the participation concept in development. In practical terms, HRE as a development strategy focuses on non-formal human rights education in which the human rights educator's role is that of "facilitator" rather than "teacher." More specifically, it is "goal-oriented non-formal

⁶⁶ See Declaration cited in note 46, Articles 14 and 15. A similar provision can be found in the Convention on Torture: "Each State party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of individuals subjected to any form of arrest, detention or imprisonment." Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 39/46 of 10 December 1984, Article 10.

⁶⁷ Clarence Dias, "Human Rights Education as a Strategy for Development," in Andreopoulos and Claude, *Human Rights Education for the Twenty-First Century*, University of Pennsylvania Press, 1997, pp. 52–53.

⁶⁸ See its website at www.pdhre.org.

⁶⁹ See its website at www.hrea.org.

⁷⁰ An example was the leadership training initiative, conducted by the FXB Center in partnership with the World Health Organization and the Women's Health Project, University of the Witwatersrand, South Africa, called "Operationalizing Cairo and Beijing: A Training Initiative in Gender and Reproductive Health." The project resulted in a written curriculum, titled "Gender and Rights: Transforming Health Systems."

⁷¹ See, in particular, George J. Andreopoulos and Richard Pierre Claude, *Human Rights Education for the Twenty-First Century*, University of Pennsylvania Press, 1997. PDHRE is planning to publish a world report on human rights education containing many more examples and theories of HRE.

⁷² Frank Elbers, *Human Rights Education Resourcebook*, Human Rights Education Associates, Cambridge, MA, 2000. Available online at <http://www.hrea.org/pubs/HREresourcebook/resourcebook.pdf>.

education,” that is, organized, systematic educational activity outside the school system that is designed to reach any of the following six goals⁷³:

- enhance knowledge
- develop critical understanding
- clarify values
- change attitudes
- promote solidarity
- alter behavior or practice

When all six are met, the most important goal can be achieved: *empowerment*, which Richard Claude defines 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.”⁷⁴

A constant concern of the human rights educator is to make the learners aware of their right to know their rights and especially their right to claim them. It is in this sense that we refer to human rights education as transforming beggars into claimants, that is, shifting from development as charity to development as the realization of capabilities. It is therefore essential that HRE apply “participatory methodologies” to provide an experiential foundation for learning. The learning process, according to this methodology, is not memorization of information communicated by the instructor, but an experience through which learners acquire understanding by doing. “Experiential” or “hands-on learning” is a particularly valid methodology because it allows participants to become totally involved in the activity. All the senses are implicated, making the learning curve steeper. It also offers a democratizing element. In more traditional methodologies the highly educated elite tend to dominate, thus maintaining social hierarchies. In experiential work there exists a leveling mechanism, which assures greater democratic participation. Finally, experiential methods are open-ended. While the facilitator may have a predetermined goal, the exercises emphasize process; therefore, the participants determine the practice to a great extent.

Participants and facilitators at each step must become aware that “you learn the way you have been taught”; i.e., participants in a HRE learning experience will bring back the “message” in the way they have heard it. Care must be taken so that these future trainers do not see the future trainees as objectified. No one can speak for those not present. Thus, a HRE activity should not include statements about what rural women think or what monks do when neither rural women nor monks are present in the training group.

The principles of HRE can be applied in the context of development in a six-step strategy of community-based HRE:

1. The group, after leaning to work democratically, engages in its own analysis of their situation of repression or oppression.
2. The group begins to develop a strategy to change that situation.
3. The facilitator provides information on relevant human rights means and methods.
4. The group, with the facilitator’s help if needed, implements first phase of action plan to change reality.
5. The group assesses the impact of its action and moves to higher level of intervention, dealing with structures of oppression and repression.
6. The group carries out higher-level intervention and evaluates the results with a view to enlarging the process of claiming human rights.

The HRE approach can take many forms, from small-group community task forces to the creation of human rights communities. The concept of human rights communities, as promoted by the People’s Decade

⁷³ These goals of HRE were articulated in Richard Claude’s *Methodologies for Human Rights Education*.

⁷⁴ *Popular Education for Human Rights: 24 Participatory Exercises for Facilitators and Teachers*, Human Rights Education Associates, 2000, p. 6.

of Human Rights Education (PDHRE), 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 agreeing to 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.⁷⁵ The strategy has been applied in several cities, including Rosario, Argentina; Graz, Austria; Thies, Senegal; Nagpur, India; and Kati, Mali.

Conclusion: Challenges to the Development Practitioner

The five approaches to applying human rights to development discussed above (although others could be cited as well) illustrate in various ways the relevance of human rights to human development. Drawing on them, I would like to suggest, in conclusion, five skills the development practitioner needs to acquire in order to apply the rights-based approach to sustainable human development:

1. Identify the elements of a rights-based approach:

a. Define 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 the 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.⁷⁶ 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.”⁷⁷

c. Refer to treaty obligations of 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, for example, to draw a government’s attention to a project that acquiesces to or results in some form of 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 appearance of Asbjørn Eide’s 1989 report by on the right to food, which have been adapted by most other special

⁷⁵ The four-step strategy for creating human rights communities is set out in that organization’s web site: <http://www.pdhre.org/projects/hrcommun.html>.

⁷⁶ They are available on the web site of the UN High Commissioner for Human Rights; see <http://www.unhchr.ch/tbs/doc.nsf>.

⁷⁷ See, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990), UN Doc. E/1991/23, Annex III, para. 10.

rapporteurs and in the General Comments, regarding 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. *Apply the 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 right to development approach provides a normative basis for making participation an essential dimension of development planning, which the human rights education approach offers an in-depth model for ensuring effective participation at the community level. The Declaration on Human Rights Defenders, the resolutions on the UN Decade for Human Rights Education, and the Declaration on the Right to Development provide useful reference points for advocating participation.

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 the like are often more effective than threats of publicity or prosecution.

Once development partners have practice in this cooperative mode with the government, it becomes possible to gauge when and how to draw attention to violations. In exceptional situations, a development practitioner familiar with human rights may alert the government that, unless it corrects some development practice that constitutes a human 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. Understanding the nature of government responsibilities, as well as those of individuals and non-state actors, is essential to knowing when and how to shift from the cooperation to the accountability mode.

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 either an enlightened policy and practice in the

field of economic, social, and cultural rights or a repressive set of measures that violate 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. The capabilities approach enhances sensitivity to the more subtle determinants of human rights realization in the context of development. However, that approach does not provide a formula for the best use of indicators. Further, the holistic approach teaches that indicators of progress regarding a specific right must be complemented by data on the realization of all the other related rights.

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 such as human rights. 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.

It should also be noted that the Common Country Assessment (CCA) and UN Development Assistance Framework (UNDAF) guidelines 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. Each of the five approaches discussed in this paper can enrich the human rights content of those planning documents.

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 DFID, NORAD, DANIDA, SIDA, and 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 identify 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 of resolutions adopted in New York and Geneva into practice that affects people's lives.