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## International Development Agencies, Human Rights and Humane Development Projects

### Keywords

Human Rights Law, Foreign Aid, International Law: History

# International Development Agencies, Human Rights and Humane Development Projects\*

JAMES C.N. PAUL\*\*

There is growing recognition that International Development Agencies (IDAs), both multilateral and bilateral, must promote as well as protect "universal" human rights when (in collaboration with governments) they engage in "development projects"<sup>1</sup> which affect the basic interests of

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\* In the preparation of the paper, I owe a very large, continuing debt to my colleague Dr. Clarence Diaz who is President of the ICLD. Kathryn Harlow and Christine Brautigan, two young lawyers who participated in the 1986 Columbia University seminar on "Law, Development and Human Rights in Africa," rendered very valuable assistance in examining various issues concerned with earlier studies of the World Bank's human rights obligations.

This paper also grows out of my association with the ICLD, notably a series of workshops and meetings which focused on the diverse impacts of various kinds of international "development projects" on the rights of people peculiarly affected and often "victimized" by these projects.

For a discussion of NGO strategies to help project-affected people use human rights law to "fight back" and to promote people centered development see C. Dias and J. Paul, *Developing Legal Strategies to Help Combat Rural Impoverishment: Using Human Rights and Legal Resources*, in *THE INTERNATIONAL CONTEXT OF RURAL POVERTY IN THE THIRD WORLD: ISSUES FOR RESEARCH AND ACTION BY GRASSROOTS ORGANIZATIONS AND LEGAL ACTIVISTS*, 231-67 (D. Dembo ed.)

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1. The term "development project" is probably a word of art in development circles, but it is difficult to define. The International Bank of Reconstruction and Development (i.e. World Bank) was established to make loans "for the purpose of specific projects of reconstruction and development." See Article III section 4 (vii) of the Articles of the International Bank for Reconstruction and Development (The World Bank's Charter), 60 Stat. 1440 (1945). T.I.A.S. 1502; 2 U.N.T.S. 134. See also W.C. BAUM AND S.M. TOLBERT, *INVESTING IN DEVELOPMENT: LESSONS OF WORLD BANK EXPERIENCE* 6-10 (1985). It appears that a project is an undertaking which is planned carefully and has specific objectives and a specific life span. Projects entail specific sets and sequences of activities and are often planned to benefit particular groups of people in certain geographic areas, or other identifiable groups in specific ways.

A project may be directed towards development of infrastructure, services, production and marketing, (e.g., of new crops) or training. World Bank projects are initiated, planned, negotiated, implemented, monitored, evaluated, and audited in accordance with an elaborate set of procedures built around the concept of a "project cycle," which consumes years, often at least ten.

It is now recognized, more than in earlier decades, that many development projects: (i) entail deliberate external interventions into the physical and social environments and lives and affairs of particular communities and groups which are politically vulnerable; (ii) impact quite differently on particular groups and often adversely in social and economic terms and (iii) often create or exacerbate serious environmental problems which in turn adversely af-

particular people and groups. Indeed, policy statements recently promulgated by a significant group of IDAs clearly set forth the object of advancing human rights as part of their mission.<sup>2</sup> The time has come to gear performance to these aspirations.

The duty to protect and promote rights must now be seen as a mandatory obligation imposed by law; it cannot be ignored. It should also be assumed by IDAs as a matter of sound policy and based on both lessons of experience and a general international consensus regarding both

fect people. The World Bank has recently developed both a "social" and an "environmental" analysis as a required component of project planning and design. See BAUM AND TOLBERT, *supra* chapters 22, 24. Recognition of an obligation to make these kinds of analyses are large steps towards a recognition that all of the processes involved in a project cycle must be put under a regime of law designed to assure the protection and full exercise of human rights by project-affected people.

2. Beginning in the early 1970s, some western governments announced their intention to impose human rights standards on their international development programs. In 1975, for example the Ministry of Development Cooperation of the Netherlands declared that it would apply human rights standards to its foreign aid policies. In 1977, its Minister wrote:

Development aid must set in motion processes through which the poor and the oppressed can achieve freedom and the right to a say in their own affairs. . . .

Development aid should be concerned with the rights of peoples and individuals, and not with the interests of states. We must try to use channels which reach the people directly." See Jan P. Pronk, *Human Rights and Development Aid*, in REVIEW OF INTERNATIONAL COMMISSION OF JURISTS, 36-37 June 1977.

See K. Tomasevski, "Human Rights Standards in Development Aid: Donor Policies" (prepared for the ICLD - University of Windsor Seminar on "International Development Agencies, Human Rights, and Humane Development," June 1988).

In 1975, the U.S. Congress enacted the Harkin Amendment to the Development Assistance Act which prohibits "assistance" to any "government" which "engages in a consistent pattern of gross violations of internationally recognized human rights." See Pub. Law 94-161, Dec. 20, 1975, 89 Stat. 860 (codified as amended 22 U.S.C. § 2151N(a)). In 1977 this prescription was extended to the IDRB and other international banks supported, in part, by U.S. contributions. Pub. Law 95-118 (1977), 91 Stat. 1067, section 701. U.S. directors were instructed to "advance the cause of human rights" and to oppose loans to governments which engaged in a "pattern of gross violations."

In subsequent enactments, Congress has appropriated foreign assistance funds to "promote increased adherence to civil and political rights as set forth in the Universal Declaration of Human Rights. . ." See Pub. L. 97-113 (1981) (Title III, § 306), 95 Stat. 1533, (codified as 22 U.S.C. 2151N(e)). See also, *e.g.*, 22 U.S.C. 2151K (a) and (b) promoting participation of women in development processes) and 22 U.S.C. 2304(a)(1) and (2) (deals with security assistance and also contains declaration that "a principal goal" of "foreign policy" is to "promote the increased observance of internationally recognized human rights).

More recently, donor governments (Canada, Netherlands, and the Scandinavian countries) have made clear their intentions to promote human rights through their development programs. See generally, Tomasevski, *supra* and Human Rights in Developing Countries 1987/1988: Yearbook on Human Rights in Countries Receiving Nordic Aid 11-21 (1988) A notable statement is the Norwegian White Paper No. 36 of 1984/1985. See also H. Kjekshus, "Development Aid and Human Rights: Some Observations by the Norwegian Ministry of Development Cooperation." In Canada, the celebrated "Winegard Report," For Whose Benefit? Report of the Standing Committee on External Affairs and International Trade on Canada's Official Development Assistance Policies and Programs, May 1987, has explicitly urged CIDA (Canadian International Development Agency) to make human rights and poverty-centered development programs priorities.

the ends and means of "development." This paper explores: the legal bases for the obligation; relationships between particular kinds of development projects and particular rights, the kinds of harms caused when these rights are ignored, strategies which IDAs can adopt to meet their duties to protect and promote them and, finally, the question whether assumption of these obligations by IDAs, would constitute an illegal "political interference" in the affairs of countries which they seek to assist. These issues are just beginning to receive the attention they deserve. The analyses presented here are meant to be suggestive to help stimulate the kinds of more carefully focused, action-oriented debates and studies which the subject clearly warrants in view of its great importance to so many people in the Third World.

#### INTRODUCTION: A MAP OF THE PAPER

*Part I* discusses the legal context. The institutions and processes of the United Nations (U.N.) system have now been used to declare the existence of a broad range of "inalienable" and "universal" human rights which are the common heritage of all people. Many of these rights are often affected by development projects, which, by design, often impact adversely on particular communities and groups of people, notably those most vulnerable. Because these projects usually entail deliberate interventions into the affairs and welfare of communities, they regularly implicate rights of participation; they often affect rights to food, health, or education and the rights of self-provisioning smallholders to security in their lands and, thus, their rights to livelihood. Many projects also affect rights of equality now guaranteed to women. Development projects affect workplace rights of agrarian laborers of all ages and both genders. All of these rights can be protected and promoted by those who design, manage, and monitor development projects. When they are ignored, then people are wronged, often seriously.

International law now holds that the promotion of "universal" human rights must be treated as *an essential means* as well as essential end of development activities. Thus, these rights not only express values which must inform the concept of development, they mandate the imposition of duties on officials who manage the development. These duties require the incorporation of new processes into the law governing development projects which enable participation and empower affected people to assert their rights and provide means of redress for people harmed by official failures to protect rights. These processes impose accountability on those who ignore this responsibility. Unless IDAs operate within this framework of law, they incur the patent risks of inflicting the very wrongs which human rights law seeks to prevent. Indeed, as international agencies, IDAs should be peculiarly obliged to promote the humanitarian goals of "government" now mandated by international law.

*Part II* discusses empirical and policy bases to support the legal propositions just set forth. Abundant experience documented by IDAs teaches that when basic rights are ignored, when they are not incorpo-

rated as goals, standards of accountability, and processes of a project, poor people are sometimes seriously harmed. The harms inflicted may include displacement and landlessness, new forms of indebtedness and impoverishment, disease and hunger, discrimination, and continuing political exclusion. Failure to identify potential victims threatened with these wrongs, and failure to protect their rights at every stage of a project cycle, not only increases risks that these harms will occur and that the "social costs" and other undesired economic outcomes of the project will be seriously underestimated, it also increases the risk that, when these harms do occur, the victims of them will receive inadequate relief. Failure to take rights seriously at every stage of a project cycle, especially rights of participation, has also meant that the planning, administration, and evaluation of countless people and poverty-centered projects have been flawed. Notorious examples of this neglect are revealed in studies portraying the adverse impact of agricultural projects on women and other vulnerable groups. Indeed, it is now recognized by many IDA "experts" that effective, self-reliant participation is essential to the design as well as the implementation, monitoring, and regulation of all development projects which affect particular groups of people in particular ways. But "participation" has remained an elusive, amorphous goal, because development planners tend to treat it as something desired, but discretionary, rather than an aggregate of rights which impose duties. Once these rights are understood, the tasks of IDAs to secure participation will become more apparent, less debatable.

*Part III* examines ways by which IDA can meet their legal obligations. A number of approaches are discussed: (1) developing research, education, and a human rights orientation of staff (a very important consideration in view of entrenched patterns of behavior and the common "mind set" of "professional" practitioners of "development"); (2) developing a clear body of law (e.g., via legislation, regulations, and operations manuals) which imposes duties on those responsible for each phase of a project cycle to discover all categories of people directly affected by a proposed project and to create standards, processes, and institutions which assure their informed, self-reliant participation and protection of their basic rights; (3) developing particular bodies of law for each project (e.g., by appropriate provisions in loan agreements) to secure the above objectives; (4) encouraging project-affected people to form self-reliant, self-managed organizations and encouraging other NGOs to assist these processes and, where necessary, (5) helping these groups to develop their own "legal resources" (i.e., knowledge of relevant law and group capacity to use it) to enable them to identify and assert rights necessary to promote and protect their shared interests; (6) developing legal standards through both international instruments and agency law which prohibit development activities that negligently expose people to foreseeable physical and economic harm; (7) developing rules of accountability and sanctions to enforce these duties, and (8) encouraging NGOs (both international and national) to monitor development activities and help protect

the interests of those affected by the project.

These requirements are analogous to those now being undertaken by many IDAs to make sure that their projects protect environments and promote "sustainable" development. Indeed, if development efforts are to be "sustainable" in both human and environmental terms, then they must be put under a new "rule of law" which respects the rights of people as well as the laws of nature.

*Part IV* addresses the question whether the assumption of any of these human rights obligations by IDAs would constitute an illegal political interference in the affairs of sovereign states. The answer is "no," in view of the development of international human rights law, the present international understanding of the concept and central purposes of "development," and in view of the proactive roles which IDAs have long played in determining policies governing the design and implementation of the development projects they fund. Those who "do development" through international collaboration must now operate under a regime of law which empowers project-affected people to exercise and protect rights deemed basic by the overwhelming consensus of the world's community of states.

This paper focuses on "development projects," *not* on other kinds of lending, nor on problems raised by IDA roles in the "restructuring" of and aid to the economies of debt and recession-plagued countries. Neither does it focus on the difficult question of how to determine whether and when the record of human rights abuses of some governments (e.g., Haiti) has become so egregious that all international aid should be curtailed, or the related problems of how to structure development projects in countries ruled by authoritarian regimes which lack both popular legitimacy and a credible commitment to respect rights. These and other problems are obviously important, but they raise different and more difficult legal and policy issues.<sup>3</sup>

Despite present concern over the debt crises afflicting many Third World countries, shifts in World Bank lending priorities, and the need to reform economic policies governing north-south relations, development

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3. Some of the problems involved in "adjustment," "restructuring," and in developing human rights standards to govern these concerns are discussed in K. TOMASEVSKI, *TOWARDS HUMAN RIGHTS CONSIDERATIONS IN DEVELOPMENT ASSISTANCE* (to be published by the Danish Center of Human Rights in December 1988). See also *ADJUSTMENT WITH A HUMAN FACE: PROTECTING THE VULNERABLE AND PROMOTING GROWTH* (G.A. Cornes, R. Jolly, F. Stewart eds. 1988) (collection of papers, primarily case studies, dealing with the impacts of "economic adjustment" and "structural reforms" on various categories of the poor. Special attention is paid to health and child care services, food supplies and prices and nutrition, basic educational programs and related concerns).

In March 1988, the U.N. Economic Commission for Africa sponsored a meeting of African development and financial experts to emphasize "the human dimension of Africa's recovery and development." See, e.g. R.H. Green, *The Human Dimension as a Test and Means of Achieving Africa's Recovery and Development*, (paper presented to the above conference emphasizing the need to link the "human dimension" to human rights standards).

projects consume much of the money loaned and most of the other forms of assistance provided to the poorer countries. The World Bank is constituted to aid projects, and so are many other IDAs. These projects are seen as a critical means of addressing conditions which constrain productivity, growth, and betterment of people's lives. Of course, projects can vary greatly in purpose and scale<sup>4</sup>, but the impacts of many of them on the human rights of identifiable groups are often foreseeable, and when this relationship between project and people exists, so does the duty to protect and promote rights of affected people. Establishment of rules and policies to meet this obligation will also make it easier for IDAs to analyze human rights issues arising in connection with other kinds of activities and in other areas of concern.

Moreover, lawyers and others interested in the role of "Human Rights in Development" must focus much more clearly and explicitly on ways development projects can, and so often do, inflict cognizable harms on discrete groups of people<sup>5</sup>. These harms are "proximately caused" by official practices which ignore, usually by dint of insensitivity and negligence (and sometimes through advertent disregard) the basic rights of project-affected people. These harms are the product of "wrongdoing," for an essential purpose of rights law is to impose duties on powerwielders to protect those basic interests which underlie basic rights. The more a "development" undertaking may impact on those interests, the more the need to put it under a "rule of law" sensitive to the rights of those affected. Unfortunately, too many lawyers, both those who counsel IDAs and those who write as scholars of "human rights law" or of "law and development," have ignored these concerns.

Too many development projects have been uninformed about human rights and unaccountable to the human "targets" of their activities. The law governing these projects has often been determined *ex parte* and often treated as an "official secret" even as it has been unilaterally imposed on communities and "target" peoples. In that sense, development projects have been lawless activities, capable of engendering mischief and

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4. See, e.g. BAUM AND TOLBERT, *supra* note 1.

5. Much of the literature on "human rights and development" is too abstract to be very useful. It often fails to focus on: rights which are particularly relevant to development processes; the way these rights are implicated by development programs; the legal wrongs inflicted when they are ignored and the processes whereby abstractly defined rights gain content and social significance when particular victim groups seek to demand the protections and measures to secure the basic interests underlying the rights asserted. It is, perhaps, impossible to develop useful dialogue about human rights without focusing on concrete cases which illuminate these and other aspects of the problem. See, e.g., C.J. Diaz and J.C.N. Paul, *Developing Human Rights to Food as a Legal Resource for the Rural Poor: Some Strategies for the Rural Poor*, in THE RIGHT TO FOOD, 203-213 (P. Alston and K. Tomasevski eds. 1984); Diaz and Paul, *Developing Legal Strategies to Help Combat Rural Impoverishment: Using Human Rights and Legal Resources in THE INTERNATIONAL CONTEXT OF RURAL POVERTY IN THE THIRD WORLD: ISSUES FOR RESEARCH AND SOCIAL ACTION BY GRASSROOTS ORGANIZATIONS AND LEGAL ACTIVITIES* 231-267 (Dembo ed. 1986) [hereinafter Dembo]



shocking injustices.

### PART I

## INTERNATIONAL HUMAN RIGHTS LAW: ITS SOURCES, CONTENT, AND RELEVANCE TO THE PROCESSES OF DEVELOPMENT

Human Rights law is a new, perhaps "revolutionary," component of international law<sup>6</sup> which has emerged over the past four decades, but particularly the last two. Human rights have evolved from a set of vague, "soft," aspirational pronouncements of the international community to a body of "hard" law principles which not transcend state law and empower people everywhere to demand their recognition.

The original source and first great step to create this growing body of law was the U.N. Charter which imposes the *obligation* on all member states, individually and through collaboration, to "promote" the "development" and "recognition" of "human rights," everywhere<sup>7</sup>. This obligation reflects an essential purpose of the U.N. system and the law which it is supposed to create. It is an obligation which should be assumed by all international agencies which operate within that system.<sup>8</sup>

The next step was adoption of the Universal Declaration of Human Rights of 1948 which declared the "universal" rights to be developed and set forth a "common standard of [human rights] achievement" for "all peoples" as well as "all nations."<sup>9</sup> This Declaration has been accepted and repeatedly affirmed by the U.N. community of states in a wide variety of international instruments. For example, in Africa, all OAU states "reaffirmed" their "allegiance" to the Universal Declaration when they adopted the OAU charter; and, once again they "reaffirmed their adherence to its principles" when they adopted the Banjul African Charter.<sup>10</sup>

6. For an extensive historical treatment of the evolution of human rights as a major dimension of international law, see L.B. SOHN AND T. BURGENTHAL, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* (1973). Compare L.B. Sohn, *The New International Law: Protection of Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1 (1982).

7. See, e.g., the U.N. CHARTER, arts. 1, 55, 56.

8. See J. Humphrey, *The International Bill of Rights: Scope and Implementation*, 17 WM. AND MARY L. REV. 527 (1976) ("References to human rights run through the Charter like a golden thread"). Many of the major U.N. agencies, have become vehicles for promoting human rights conventions or resolutions. On the roles played by ILO, FAO, WHO and UNESCO in the drafting of Covenants, see P. Alston, *The United Nations' Specialized Agencies and the Implementation of the International Covenant on Economic, Social and Cultural Rights*, 18 COLUM. J. TRANSNAT'L. L. 79 (1979). Compare T. MERON, *HUMAN RIGHTS LAW MAKING IN THE UNITED NATIONS* (1986) and A.G. MOURER, *INTERNATIONAL COOPERATION FOR SOCIAL JUSTICE* (1985). For some examples relevant to the problems reviewed here, see *infra* notes 15, 16, and 21. The World Bank was not created as an institution within the U.N. system (it was a product of the Bretton Woods Conference which pre-dated the U.N.) See E.S. MORGAN AND R.E. ASHER, *THE WORLD BANK SINCE BRETTON WOODS* 11-23 (1973).

9. G.A. Res. 217A, U.N. Doc. A/810 (1948). The quoted language is from the Preamble.

10. See Article 2 of the Charter of the Organization of African Unity and the Preamble to The African Charter on Human and Peoples Rights adopted June 27, 1981, OAU Doc.

Indeed, the human rights "principles" asserted in the Universal Declaration are now recognized as part of the "customary law of all nations" and enforceable as international law.<sup>11</sup>

The third step was the adoption (in 1966 by the U. N. General Assembly) of the International Covenant on Civil and Political Rights (Political Rights Covenant) and the Covenant on Economic, Social, and Cultural Rights (Economic Rights Covenant).<sup>12</sup> These covenants were products of a deliberate effort to convert the "inalienable rights" previously set out in the Universal Declaration into more explicit treaty obligations. Even though the covenants have not been universally ratified and incorporated into all national systems of law, and may never be, they are now treated as statements of rights which are universal, deserving of respect everywhere.<sup>13</sup> They reflect "hard" international law, because they are, in effect, simply more elaborate assertions of the earlier Declaration.

A fourth, very important step has been the development of rights guaranteed by the covenants through various international conventions promulgated by the U.N. Assembly and by the world congresses of the ILO and other U.N. agencies. Many of these conventions, notably Article 14 of the U.N. Convention on the "Elimination of All Forms of Discrimination Against Women"<sup>14</sup> and a number of conventions of the ILO, such as the Convention on Rural Workers<sup>15</sup> which is discussed below add content to those universal rights which are most relevant to development processes; they have been drafted by Third World actors with third-world, rural contexts in mind. They are quite specifically addressed to the needs of peasants and other kinds of rural workers, male and female; they are very relevant to the work of IDAs, because they spell out rights to be

CAB/LEG/67/3, reprinted in Report of the Secretary General on the Draft African Charter on Human and Peoples Rights, OAU Doc. CM/1149 (XXXII) (Annex II) (1981).

11. See, e.g., the materials in INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW AND POLICY 56-57 (R.B. Lillich and F.C. Newman eds. 1979). See also, Humphrey, *supra* note 8 and Szabo, *Foundations of Human Rights and Subsequent Developments* in 1 THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS (K. Vasak, ed. 1982).

12. See, International Covenant on Economic, Social, Cultural Rights (adopted Dec. 16, 1966), G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/ 6316 (1966) and International Covenant on Civil and Political Rights adopted Dec. 16, 1966, G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966). These covenants entered into force on Jan. 3, 1976 and March 23, 1976, respectively.

13. Over 80 nations have ratified both covenants; see L. HENKIN, R. PUGH, O SCHACTER, AND H. SMIT, INTERNATIONAL LAW: CASES AND MATERIALS 524 (1986). The Covenants and the Universal Declaration are often described as the "International Bill of Rights." For discussions of their status, see, Szabo *supra* note 11.

14. See G.A. Res. 34/180, 34 GAOR Supp. (No. 46) at 193 entered into force Sept. 3, 1981, U.N. Doc. A/34/46 (1979). Over 80 states have ratified this.

15. ILO Convention No. 141 (Rural Workers' Organizations Convention) adopted at the 60th (1975) session of the International Labour Conference. Rural Workers' Organizations Convention, ILO Convention No. 141 adopted 1975, at the 60th session of the International Labour Conference. This Convention is essentially an extension of Convention No. 87 (Freedom of Association and Protection of the Right to Organize) adopted by the International Labour Conference of 1948.

protected and promoted through development processes.<sup>16</sup>

A fifth step has been the repeated reaffirmation, incorporation, and elaboration of these basic rights in resolutions and declarations of the General Assembly. For example, the long-debated, Third World-sponsored Resolution 32/130 of 1977<sup>17</sup> reaffirmed the "indivisibility" and "interdependence" of the political and economic covenants and the "inalienable" character of the rights they set out. The 1986 declaration on the "inalienable Human Right to Development" is a significant further step. This declaration, adopted by an overwhelming vote (all Third World countries in favor) asserts, in effect, that international human rights are indispensable, interdependent ends and means of "development" and international development agencies are bound to promote them.<sup>18</sup>

A sixth step has been the reaffirmation of allegiance to these various instruments and to this lawmaking process in the several regional covenants on human rights, such as the Banjul "African Charter on Human and People's Rights," drawn up within the OAU system.<sup>19</sup>

A seventh important step has been the repeated linking of these rights to "development" policies and strategies in the reports and resolutions of U.N.-sponsored World Congresses which have focused on particular kinds of "development" issues. One example is the famous 1976 International Labor Organization (ILO)-sponsored Congress on World Employment which formulated the "basic needs" approach to development, an approach which proclaimed the primacy of food, health, and education in development planning and the role of "participation" in the realization of basic needs.<sup>20</sup> Another example is the centerpiece resolution of the 1979 FAO-sponsored World Congress on Agrarian Reform and Rural Development which reaffirmed the central importance of the "basic" right of "participation" in development processes and the rights of rural workers to form their own organizations as vehicles of participation.<sup>21</sup>

A final development has been a growing awareness among IDAs of

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16. See ILO Organizations of Rural Workers and Their Role in Economic and Social Development, Report IV(1), International Labour Conference, 59th Session (Geneva 1974). A number of other ILO conventions are very important, *e.g.*, the Plantations Convention adopted in 1958 No. 110, reprinted in *THE RIGHT TO FOOD: GUIDE THROUGH APPLICABLE INSTRUMENTS* (K. Tomasevski ed.1987), an extremely valuable collection of international instruments relevant not only to "right to food," but more generally to the role of rights in development.

17. G.A. Res. 32/130 art. 1, (adopted December 16, 1977).

18. G.A. Res. 41/128, arts. 1,2,6,8, and 9 (adopted December 4, 1986).

19. The Banjul Charter cited Note 10. Article 22 of this charter also guarantees to "all peoples" the "rights to their social and cultural development."

20. See International Labor Organization Meeting Basic Needs: Strategies for Eradicating Mass Poverty and Unemployment. Conclusions of the World Employment Conference of 1976 (ILO 1976).

21. Declaration of Principles and Program of Action. Report of the World Conference on Agrarian Reform and Rural Development (FAO 1979) reprinted in *THE RIGHT TO FOOD supra* note 16 (Doc. No. 32) See Article III of the Program of Action entitled, "People's Participation."

their obligations to build more explicit human rights policies and "law" into their activities. This awareness has evolved from concerns about the wisdom and legality of providing development assistance to lawless governments which systematically and notoriously violate the rights of their people.<sup>22</sup> In part, this awareness has evolved from angry public reactions in many parts of the world to the harms wrought by those more notorious, IDA-financed projects which have produced environmental destruction, human displacement, and other rights violations.<sup>23</sup> Responding to critics of these "development disasters," the World Bank has promulgated new policies and "internal law" designed to secure adequate protections against harms inflicted on both environments and people by projects which provide extensive changes in physical and social environments.<sup>24</sup> Continuing controversy over these projects, with more emphasis on the need to help victims of "development disasters" to fight back, is forcing more focus on the place of rights in law governing development projects.

There is also a growing awareness that rights must be *promoted* as well as protected. Several years ago, the World Bank, conscious of a need to develop better social analysis of its projects, initiated a series of studies concerned with the role of participation in development projects.<sup>25</sup> If the "sociological" conclusions of these important studies can be merged with a legal understanding of rights of participation, one may hope for significant changes in the Bank's operating procedures. The now-celebrated 1987 "Winegard Report" of a select committee of the Canadian Parliament emphasized poverty-focused projects as the first priority and, as a corollary, the need to use projects to advance respect for human rights.<sup>26</sup> The Canadian Human Rights Foundation (CIDA) is now studying ways to respond to this command. Similarly, the Scandinavian aid agencies have initiated a series of consultations to explore the subject.<sup>27</sup>

Thus, the role of human rights in law governing development assistance is no longer a subject for abstract, academic debate. The problem for IDAs is to develop new, explicit policies and rules which will translate their avowed human rights commitments into action; that task calls, in part, for a more sensitive understanding of relationships between particular kinds of basic rights and various kinds of development activities.

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22. TOMASEVSKI *supra* note 2, (especially the review of the development of human rights concerns within various IDAs).

23. For studies of some of these projects see *infra* notes 71-74. For discussion of recent developments, see Hunger Notes, Newsletter of the World Hunger Educational Service, Vol. 13, Nos. 9 and 10, 1988.

24. See *infra* note 73.

25. See PUTTING PEOPLE FIRST: SOCIOLOGICAL VARIABLES IN RURAL DEVELOPMENT (M. Cernea ed.1985).

26. See *supra* note 2.

27. See *supra* note 2

### A GENERAL APPROACH TO UNDERSTANDING THE IMPORTANCE OF RIGHTS IN RURAL DEVELOPMENT

It is sometimes asserted that the rights now declared to be "universal" are foreign to the cultural and political traditions of many peoples in the Third World, notably in Asia and Africa. We are occasionally told that, when people are not "educated" enough to understand their rights, at least rights of a "political" character, then they must be denied those rights until some specified time. We are even sometimes told that rights (notably those of the poor and powerless) must be "traded off" in order to realize the benefits of "economic growth" (however inequitably distributed) or "political stability" under a current political regime (however autonomous and authoritarian).<sup>28</sup>

Invariably, these claims are made by political or intellectual elites, often in the context of efforts to justify forcible imposition of policies and decisions or an alien ideology upon "the masses." There is little evidence that those who preach those messages do so as authentic surrogates of the people they would make rightless, and even less evidence that the poor would *knowingly* entrust all their rights to those who would rule them in these ways.<sup>29</sup>

The problem is that poor people, notably rural people, may know very little about legal concepts of human rights and how to use them. Furthermore, they may presently lack the "legal resources" (i.e., the capacity to use law) and experience necessary to assert their rights. From historical perspectives, it may be that notions of "rights" are alien to

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28. For a good review of the "trade off" arguments, see R.E. Goodin, *The Development-Rights Trade-Off: Some Unwarranted Economical Political Assumptions*, 1 *UNIVERSAL HUMAN RIGHTS* 32 (1979). It was certainly fashionable in the 1960s and early 1970s to express skepticism over the role of "western" human rights in the processes of development-emphasized "growth" and "modernization" strategies, planning, and efficient "development administration." See e.g., C.J. Dias and J.C.N. Paul, "Lawyers, Legal Professions, Modernization and Development" in *LAWYERS IN THE THIRD WORLD: COMPARATIVE AND DEVELOPMENTAL PERSPECTIVES* 11-25 (Dias, Luckham, Lynch and Paul eds. 1981). The cultural context of rights development in Third World countries will be subjected to analyses in a forthcoming volume of papers edited by Francis Deng and Md. Abdul An-'Naim, originally presented at a seminar held at the Woodrow Wilson Center (Washington, D.C.) in June 1988 [hereinafter seminar].

29. Compare., M. Haile, *Human Rights, Stability, and Development in Africa: Some Observations on Concept and Reality*, 24 *VA. J. OF INT'L LAW* 575 (1984) which reviews some of the debates, including those within the U.N. system on this point. See also, Md. A. Rahman, *The Roles of and Significance of Participatory Organizations of the Rural Poor in Alternative Strategies of Development* (to be published in a forthcoming ICLD volume on the roles of Participatory Organizations of the rural poor as vehicles for self-reliant development). In this essay, Rahman (a sociologist who studied grass-roots organizations in Asia for the ILO) discusses the importance of generating knowledge of law — notably of rights guaranteed by law — within organizations of the rural poor; when such knowledge helps people to understand how law can be used to legitimate specific claims or demands, it leads to empowerment in both psychological and political terms and leads groups to challenge official practices which are now deemed wrong and harmful by the group.

many of the diverse religions, cultures, and structures which are the heritage of many different peoples in the Third World. One seldom finds "western" (or "socialist") rights doctrine embedded in the language or political and legal structures of "traditional" societies, but one certainly does find deep commitments to the basic concerns, values, and needs which underlie the concept of rights. Traditional societies used different means (e.g., reconciliation, peer pressure) to secure respect for these interests.<sup>30</sup>

But the imposition of the "modern" state, "modern law" and language, and the imposition of "modern" monetarized economies (and the cultures which attend them) forces the issue of rights. The "modern" state, in virtually all Third World countries, has penetrated into and impacted heavily upon rural people: it imposes taxation and other means to appropriate surplus; it expropriates land; it imposes a local, usually autonomous officialdom, including authoritarian police and courts; all too often, it imposes coercion and systems of corruption. The imposition of the "modern" state without protection of rights may indeed have characterized history of state formation everywhere at earlier times, but it is a condition which the world community, organized through the U.N. system, now condemns. People in the Third World countries have the right to know that they have basic rights and to struggle to assert and adapt these very broad guarantees to their circumstances and concerns.<sup>31</sup>

The imposition of "development" forces the issue even more. Development activities are usually financed, in part, by IDAs and multinational firms. Development may mean decisions to relocate people away from their ancestral lands in order to build dams, airports, plantations, and industrial or urbanized areas, or decisions to convert traditional farmers into commercial producers for world markets, or decisions to convert traditional tenants into wage laborers. Even the most benign, "poverty-centered" development projects entail some forcible external intervention into people's lives which may produce adverse impacts.<sup>32</sup>

In this context, it seems misleading to suggest that rights are some-

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30. See, e.g., K. Wirada, *Human Rights: An Akan Perspective*, an essay to be published in Deng and An Naim, in seminar *supra* note 28. My own essay for this volume elaborates the points made here.

31. The Human Right to Education guaranteed by Article 13(1) of the U.N. Convention on Social, Economic, and Cultural Rights is, in part, a guarantee of access to that kind of knowledge which people particularly need in order to satisfy basic needs and become self-reliant members of their polity, capable of demanding protection of their rights. The imposition of the law and structures and "development" programs of the modern state make knowledge of the rights discussed in this paper essential to rural people. See *supra* note 12. The case for demanding that "modern" states respect "universal" human rights becomes especially clear when one considers the position of ethnic and cultural minorities and the growing movement to formulate more detailed, tougher international rights instruments in this sphere. For a collection of essays and international materials see *THE RIGHTS OF PEOPLES* (J. Crawford ed. 1988).

32. See *infra* text accompanying notes 108-110.

how irrelevant because people seem to lack the knowledge and means to assert them. A starting point may be to understand several propositions about the nature of basic human rights and the processes which bring them into a real existence in quite different social settings.

1. *Interests.*<sup>33</sup> Rights are legal devices which have been conceived and created within "modern" systems of law to protect local interests: "basic" rights are concerned with securing widely shared, deeply felt needs, values, and concerns. The basic interests of the rural poor in Third World countries are different than those of urban elite and, often enough, rural elites. The basic interests of a self-provisioning family in the land they use, in the food system on which they rely, in access to essential knowledge and resources are unique to people in that situation.

Similarly, the basic interests of rural women may differ in part from those of men. Rural communities may not only compete with cities for essential services; they may also require very different forms of services and structures to provide them. Rural workers may suffer when they are forced by government regulation or unconscionable contracts imposed by state enterprises to sell their produce or labor for ruinous returns. They are often denied rights to bargain for better terms. The identification of the particular interests of a particular rural group or community obviously calls for their participation, their articulation of their interests.

2. *Empowerment.*<sup>34</sup> Rights legitimate the efforts of people, acting collectively to identify and articulate interests. Rights give people the power to demand appropriate protections when they are threatened and to demand redress sufficient to restore an interest when it has been harmed. A rich literature on participation teaches that, when people gain knowledge of the legitimacy of these efforts, they become empowered in psychological terms, hence more capable of self-reliant involvement in their polity, more capable of developing human rights geared to local needs and more capable of making democratic structures work over the long run.

3. *Component Rights.*<sup>35</sup> Basic rights guaranteed by constitutions or

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33. The "rights-interests" analysis discussed in this paragraph is elaborated in Diaz and Paul, *supra* note 28. See also M. Haile, *supra* note 29.

34. On rights as laws which legitimate the exercise of power (e.g., to protect, assert demands, claims in courts, etc.) to demand protections for the fundamental interests protected by the "basic" right, see C. Dias and J. Paul, *Developing Legal Strategies to Help Combat Rural Impoverishment: Using Human Rights and Legal Resources* in *THE INTERNATIONAL CONTEXT OF RURAL POVERTY IN THE THIRD WORLD: ISSUES FOR RESEARCH AND SOCIAL ACTION BY GRASSROOTS ORGANIZATIONS AND LEGAL ACTIVISTS* 231-267 (Dembo ed. 1986). The "empowerment" perspective is often neglected in international discourse (among U.N. "elites" and scholars) on human rights; it is often assumed that rights create established "standards" which become known and respected or enforced by responsible governments. This assumption defies everyday experience and neglects the history of rights development in different times and places. See also, *supra* note 30.

35. The concept of "component rights" developed here is explored in Dias and Paul, *supra* note 34. See also, C. Dias and J. Paul, *Developing the Human Right to Food as a Legal Resource for the Rural Poor: Some Strategies for NGOs* in *THE RIGHT TO FOOD* (P. Alston and K. Tomasevski eds. 1984).

the "International Bill of Rights" are usually stated in very general terms. These rights can only gain meaning when people who believe that their basic interests are threatened demand protections appropriate to the threat. The process of rights development is, in part, a process of developing particular components rights geared to the context of specific needs of particular groups for particular forms of protection of those basic interests which are promised protections by declaration of the general right. The right of rural women and children to food, may, in a particular community, force our focus on the need to protect their access to land sufficient to supply family needs, or on problems of environmental degradation, or on needs for better storage or distribution systems, or on other practices which threaten their supply of or access to food, water, health care, and other necessities. The causes of hunger help us to understand the component protections (or rights) which give meaningful content to the right to food in particular social and physical environments.

4. *The Symbiotic Relations Between Basic Rights.*<sup>36</sup> All basic rights seem grounded in a belief that they may help one to live a life befitting the dignity we now ascribe to the human person. Rights to "food," "equality," and "participation" are simply extensions of that principle, and the enjoyment of each of those rights requires enjoyment of others. The right to food (e.g., the protection of local, rural food systems) can only be protected through exercise of rights of participation. The central purpose of participation is to promote and protect enjoyment of social and economic rights. In this context, the alleged dichotomy between "economic" and "political rights" should be seen as mischievous jurisprudence.

5. *The Content of Some Rights Particularly Relevant to Development.* For the Third World, rural poor and protagonists of *their* very real, but regularly neglected interests and needs, four basic, "universal" rights seem important. They are: (1) "rights of participation," (2) "basic needs rights" to food, health education, and security in land, (3) "rights of equality," and (4) the emerging "human right to development."

(1) *Rights of Participation.*<sup>37</sup>

These rights are guaranteed by the Universal Declaration, the U.N. Covenant on Politics, numerous ILO conventions, and other international

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36. See, e.g. the preambles to both of the U.N. covenants (paragraphs 1, 2, and 3) and the U.N. Declaration on the Human Right to Development, arts. 1, 2, and 9 *supra* note 59, for official recognition of this view. See also, G.A. Res 32/130 of Dec. 16, 1977, par. 1, discussed in Nanda, *supra* note 2.

37. While various, broadly stated rights of participation (e.g., in politics and governance, in worker associations) are set out in international instruments (see *infra* note 38), rights of participation in relation to rural development only began to receive the emphasis they deserved (within the U.N. system) after an international consensus was achieved by the 1976 World Employment Conference regarding the importance of "people," "poverty," and "basic needs" to focus on development. See for a summary of this history and a collection post 1976, important U.N. sources on participation and development, Nanda, *supra* note 2. See also *infra* note 123.



legal instruments.<sup>38</sup> On many occasions, the U.N. General Assembly and world congresses sponsored by U.N. agencies have declared these rights to be essential to the processes of development.<sup>39</sup> Indeed they are, for, unless people can exercise rights of participation, they are powerless to assert and secure other rights.

Yet, participation is also an elusive concept; the term is often used ambiguously in development literature. Participation can be promoted to perform many functions from seducing and co-opting to more authentic power-sharing, and from imposing the will of some majority to achieving consensus, and "due process" for those whose interests are most at stake. Additionally, there are many forms of participation from voicing opinions and voting to protest and strike, and from challenging decisions in tribunals of review to sharing power to make the decisions. Participation can come at many stages of an activity from initiation and planning a project through implementation to review, regulation, and evaluation of its management.<sup>40</sup>

Thus, rights of participation can vary in purpose and scope; they must be adapted to the occasion. The more a particular group's basic interests are especially affected by a proposed development activity, the more they must be capacitated and empowered to identify, assert, and protect their interests in relation to that activity. This goal, mandated by law, can only be realized by according a broad array of rights, such as rights of project-affected people to enjoy:<sup>41</sup>

a) *Timely notification of the project proposal and access to information about it.* These rights which are frustrated by rules and policies of both IDAs and governments which regularly treat development plans, decisions, reports, and operating rules as state "secrets."

b) *Access to "legal resources".* This right is frustrated by failures to

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38. See, e.g., arts. 19, 20, 21, 22, and 27 of the Declaration; arts. 1(1), 8(1), and 13(4) of the U.N. Covenant on Social, Economic, and Cultural Rights; arts. 1(1), 18, 19, 21, 22, and 27 of the Covenant on Civil and Political Rights. The ILO conventions are cited *supra* notes 15, 16.

39. See, e.g., G.A. Res. No. 32/130 (Dec. 16, 1977); See also the U.N. Declaration on the Human Right to Development, *infra* note 59 and sources cited, *supra* notes 43, 44.

40. For a valuable discussion of these problems and the forms and roles of participation in the context of rural "development" and analysis of some of the legal and political implications, see R. Green, *Procedures and Professionalism and/versus Participation and Popular Organizations: Some Problems of Accountability and Community Action in THIRD WORLD LEGAL STUDIES 1982 - LAW IN ALTERNATIVE STRATEGIES OF RURAL DEVELOPMENT* 11-33 (1982).

41. Despite all the rhetoric on participation, comparatively little attention has been paid to detailed analysis of the many component rights needed to guarantee *meaningful* participation. Compare Green, *supra* note 40. See a number of the essays in *THIRD WORLD LEGAL STUDIES 1982* in the nature of "case study" and "overview" contributions designed to expose and explore the *legal* implications of the development of "participation" in different developmental contexts. A forthcoming ICLD volume ("Law, Participation, and People-Centered Development" (1989)) will explore component rights of participation in the context of development.

provide rural people with knowledge of their legal rights and capacities to exercise them.

c) *Power to form their own self-managed associations and engage in collective activities.* These rights are regularly frustrated by national regimes of law and practice regulating formation of associations, and by practices of local officials which deter formation of "unauthorized" groups and collective action, and by deliberate efforts of development agencies to co-opt and manipulate grass roots collective activities.

d) *Freedom of communication.* This right is regularly suppressed by oppressive enforcement of laws dealing with public demonstrations and protest; often the only means of expression available to poor people.

e) *Access to the media.* This right is regularly frustrated by government monopolization of the media, or by social gaps which separate the independent press from rural communities, notably the concerns of the rural poor.

f) *Access to officials and agencies.* This right is frustrated by the absence of regimes of law requiring public hearings on measures proposed and due process for people who claim to be harmed by official actions.

g) *Access to institutions (courts or other agencies) which can redress legal harms and impose accountability.* These rights regularly are frustrated by the absence of legal resources for project-affected people, by the insensitivity of courts to the interests of project-affected people, by legal doctrines such as "immunity," "standing," and "justiciability" which can be used to insulate agencies and officials.

Thus, the human rights concept of participation is much more "tough" and explicit than the "soft" notion often propounded by development "experts" who, insensitive to rights law, discuss participation as if it was a sociological variable to be manipulated at the discretion of those who control projects. Perhaps the most important of the component rights which must be promoted are rights of association and collective action. Since, individually, poor people are usually uninformed, powerless, and historically excluded, their participation can only be developed and exercised through the formation of endogenous, self-managed organizations. Rights of project-affected people to form such groups and engage in collective activities have been clearly recognized and emphasized in many international instruments. For example, the 1979 FAO-sponsored World Conference on Agrarian Reform and Rural Development declared, in its centerpiece resolution, that:

Participation of the people in the institutions and systems which govern their lives is a basic human right and also essential for realignment of political power in favor of disadvantaged groups and for social and economic development.

Rural development strategies can realize their full potential only through the motivation, active involvement, and organization at the grassroots level of rural people with special emphasis on the least-advantaged strata, in conceptualizing and designing policies and pro-

grams and in creating administrative, social and economic institutions, including cooperative and other voluntary forms of organization for implementing and evaluating them.<sup>42</sup>

The resolution then went on to demand that all governments *ratify* and promote recognition of ILO Convention 141.<sup>43</sup> This convention, overwhelmingly adopted by the International Labor Conference of 1975 (and now ratified by a large number of Third World countries), calls for legal recognition of a universal right of all "rural workers" to form rural organizations "of their own choice," free from state interference. The term "rural workers" includes smallholders, tenants, laborers, sharecroppers, and rural women in their multiple roles. The Convention declares in Article 3 (with emphasis added):

1. All categories of rural workers, whether they are wage earners or self-employed, shall *have the right to establish and to join organizations of their own choosing without previous authorization.*
2. The principles of freedom of association shall be fully respected; rural workers' *organizations* shall be independent and voluntary in character and shall *remain free from all interference, coercion, or repression.*
3. The *acquisition of legal personality* by organizations of rural workers shall not be made subject to conditions of such a character as to restrict the application of the provisions of the preceding paragraphs of this Article.
4. In exercising the rights provided for in this Article, *rural workers* and their respective organizations, *like other persons or organized collectives, shall respect the law of the land.*
5. The *law of the land shall not be such as to impair*, nor shall it be so applied as to impair, *the guarantees* provided for in this Article.

A "recommendation" enacted by the same conference,<sup>44</sup> in effect, sets out some assumptions explaining the intended scope of these guarantees. Rural organizations are envisioned as vehicles to generate knowledge and awareness, to "defend" the "interests of rural workers," and enable more effective "participation" in state structures. This includes participation in the "formulation and implementation" of "programs of rural development" and participation in the "evaluation" and determination of accountability of those who manage them. Furthermore, rural worker organizations are vehicles to secure direct access to goods and services controlled by the state. They are also vehicles for initiating local, self-

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42. This is Article III of the "Programme of Action" adopted by the Conference. For a full text of the Declaration and Programme approved by the Conference, see Tomasevski (ed.), *supra* note 16, at 90.

43. *Id.* Article III(A)(1) of the "Programme of Action," The entire texts of Arts. III(A), (B) and (C) contain a list of steps to be taken to promote "people's participation" in agricultural and rural development.

44. The entire text of the 1975 Rural Workers Convention, No. 141 and Recommendation No. 149, which unanimously adopted to accompany it is set out in Tomasevski, *supra* note 16, at 173-180.

managed, self-help projects and group-managed businesses.

Convention 141 is an exact counterpart of the much-celebrated Conventions 14 and 87 which deal with industrial workers. A great deal of "law" has been developed by the ILO through specific interpretations of these earlier conventions on worker organizations including interpretations requested when workers' organizations have alleged that particular laws or practices violate their rights. Most of this jurisprudence can be carried over by analogy to 141.<sup>45</sup> Convention 141, like 14 and 87, could become an international Magna Carta for rural workers if they can become empowered to use it in the same way that industrial unions have used these conventions over the years.<sup>46</sup>

Indeed, the state's role as facilitator of these activities, rather than regulator, must be stressed. Clearly, the intention of Convention 141 was that the state, and obviously IDAs which work with states to "develop" rural areas, should assume *affirmative* obligations to foster, not frustrate, autonomous rural workers' structures free from official manipulation, in order to foster free participation. States and IDAs which initiate projects have a *legal obligation* to assure that this is done and done at a point in time, and in ways, which enable participation in every stage of a project cycle.

(2) *Rights to food, health, education, and security in land*

The U.N. Covenant on Economic Rights, and many, later important international legal instruments<sup>47</sup>, have declared the existence of the "universal" rights of "all people" to "food," "health," "education," and other necessities of life.

Of course, it is sometimes said that "social and economic" rights, such as the right to food, are not really "rights" at all, because:

a) these rights are expressed in such broad terms that they lack any operative meaning (e.g., what specific entitlements are guaranteed by a right to "food"?), and b) there exist no "legal" remedies to "enforce" these rights (e.g., courts and other forums lack power to enforce demands for food or to mandate remedies for food shortages).

Thus, it is said, these rights are really only affirmations of the moral obligation of governments to provide for basic needs to the best of their capacities. Indeed, some discussions of basic needs rights proceed on this assumption—sometimes even viewing "rights" as justifications for authorization measures which violate other rights.<sup>48</sup>

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45. See *supra* note 16

46. The importance of Convention No. 141 and critique of its coverage (e.g., its failure to address the need to protect people and groups who seek help, generate knowledge and catalyze rural workers, and help them organize and provide other support [information] and advocacy in otherwise inaccessible forums) is discussed in various essays in ICLD's forthcoming volume, "Law, Participation and People-Centered Development," *supra* note 41.

47. See articles 11, 12, and 13 of the Covenant. See generally, Tomasevski (ed.), *supra* note 16.

48. For references to these claims and discussion of them, see M. Haile, *supra* note 28;

Of course, any government worthy of legitimacy must recognize its moral obligations to promote satisfaction of basic needs. But that hardly ends the matter. The covenants declare that rights to food, health, and education are "human" rights of people which transcend and limit the powers of government and *empower people* to impose accountability on those who abuse these limits. This proposition is crucial when viewed in the context of development projects, because a great many of these activities run roughshod over peoples' interests in health, food, land, and education (i.e., access to knowledge which "enables" one to "participate effectively" in development processes).

Basic needs rights, like the other universal rights in the U.N. Declaration and Covenants, are obvious corollaries to one's right to life and to live that life in ways befitting dignity we now ascribe to human beings.<sup>49</sup> Just as these core values are protected by various civil and political rights (e.g., to the "equal protection" and "due process" of the laws), they are also protected by rights which empower people to demand equitable access to resources essential to a life with dignity. Thus, each of the basic needs rights (like rights of "participation" and "equality") are aggregations of component rights which entitle people threatened or victimized by hunger, disease, and ignorance of essential knowledge to identify, protect, and redress man-made conditions and practices which plainly contribute to those evils.

The challenge is to develop, in very different social contexts, the component rights which enable particular, victimized, or threatened communities to protect and enjoy conditions which enable realization of basic needs. The task is to identify, in particular settings, those particular practices which contribute to impermissible deprivations of basic needs; and it is a task which requires the participation of those affected, for participation rights and basic needs rights are "indivisible and interdependent." This is a self-evident proposition which negates any assertion that there is a dichotomy between "economic" and "political" rights.

The right to food provides an example. While, of course, the causes of food shortages and malnutrition are multiple and complex, it is notorious that rural communities, notably smallholders such as women and children, are usually the first and major victims of a food crisis. It is equally notorious that these crises are, in part, the product of some combination of man-made practices, such as:

- the degradation of physical environments;
- the withdrawal of fertile land from production of basic food crops;
- population increases and shifts;
- poorly planned resettlement schemes;

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R. Howard, *The Full-Belly Thesis: Should Economic Rights Take Priority Over Civil and Political Rights? Evidence from Sub-Sahara Africa*, 5 HUM. RTS. Q. 467 (1983).

49. See *supra* note 36, H. SHUE, BASIC RIGHTS: SUBSISTENCE AND AFFLUENCE IN U.S. FOREIGN POLICY (1980).

- neglect of smallholders and subversion of indigenous subsistence agriculture and indigenous food systems;
- neglect of infrastructure for local food storage and distribution and the effective working of rural "food systems;"
- unfair terms of trade and discriminatory subsidies which deter production of surpluses or distort their distribution;
- lack of research, credit, extension, and inputs directed towards self-provisioning farmers;
- discriminations against and neglect of women farmers.<sup>50</sup>

These kinds of practices *can* be identified and then remedied by corrective measures; but it is clear from an abundance of studies that those who are threatened or victimized must be parties to the processes of identifying wrongs, wrongdoers, and remedies. Similarly, it is clear that most rural development projects have some impact, or multiple impacts, on the "food systems" of communities to which they are directed. But, quite often, these consequences cannot be adequately understood and estimated without the participation of the very people who will be affected in different ways by the project, who will be the victims of official mistakes or neglect.<sup>51</sup>

### (3) *Rights to Equality.*

These rights empower people to prevent or redress discriminatory practices which affect allocation of essential resources, services and opportunity. They are guaranteed by the U.N. Declaration, the Covenants, and (particularly important for present purposes) by the 1979 U.N. Convention on the Elimination of All Forms of Discrimination Against Women (commonly labelled the "Women's Convention.")<sup>52</sup>

Historically, discriminations based on class, ethnicity, sex, and other identities have been built into the political economies of "development" in most countries of the world. In Asia and Africa, these inequalities are legacies entrenched not only by history and culture, but by geography and the social structure of post-colonial states. Much has been written to portray the kinds of discriminations which have been practiced in many countries against peasants and rural workers, regions and cultural or ethnic groups, and depressed castes and rural women. The reform of national law to change these historic patterns is obviously an important subject, but it is one in which the responsibilities and role of IDAs may be, at best, attenuated.

Here, our focus centers on the responsibilities and role of IDAs to empower vulnerable groups to prevent discriminations and promote equality of opportunity *in the context of development projects*, notably

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50. The analysis here is presented in more detail in Dias and Paul, *Developing the Human Right to Food as a Legal Resource for the Rural Poor; Some Strategies for NGOs*, *supra* note 5.

51. *See infra* notes 116, 117.

52. *See supra* note 14.

projects which allocate goods, services, and opportunities.

Article 14 of the 1979 U.N. "Womens' Convention," which should certainly figure largely in the design of IDAs projects, provides a useful approach, because it focuses closely on those rights which are particularly important to rural women in relation to their roles and opportunities in development processes and projects.<sup>53</sup> Note also, that this Convention empowers not only women but all other identifiable groups victimized by discriminatory practices which frustrate opportunities for development.

These practices include:

- discrimination in the allocation of credit, inputs, and other agricultural services;
- discrimination in commodity price-fixing by the government;
- discrimination in identifying needs of particular groups for particular resources or services essential to their needs;
- discrimination in the allocation of services and resources essential to the food production and storage needs of self-provisioning households;
- discrimination against family food-producers (or condonation of discriminations) in regard to rights to control land which they cultivate;
- discrimination in regard to opportunities to form or enjoy membership and equal rights of participation in cooperatives and other structures which provide access to market services and resources;
- discrimination in the relations and dealings between officials and women, or members of others historically vulnerable or dependent groups.

Of course, enactment of formal, generalized legal protections (e.g., via national legislation) is one way to try to prevent these harms. But experience surely teaches that legislating change must be accompanied - perhaps preceded, by grass roots efforts to educate and empower victims of discrimination to understand their rights to equality of treatment.<sup>54</sup> In that way, the victims of discrimination may decide for themselves, in light of their culture, needs, and other factors, what particular practices they need to resist and change, here and now. The function of IDAs is not to impose their model of equality, but to help empower victims of discrimination to articulate and assert their rights as they perceive them. In this perspective, the development of endogenous, self-reliant structures of participation is, again, essential. Agencies which design and administer development projects are often in a position to encourage these processes, just as they are positioned to discourage acts of discrimination by other agencies or officials. It should be the obligation of IDAs to help project-

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53. This article was first drafted by Dr. Natalie Hahn, then a specialist in agricultural development and women farmers at the FAO, who took leave in the latter '1970s to study law. (Dr. Hahn is also the only foreigner I know to be made an Honorary Chief in Nigeria.) The honor reflects her many efforts to help women and the development of cassava cultivation while based at the International Tropical Agricultural Institute at Ibadon.

54. See S.W. YUDELMAN, *HOPEFUL OPENINGS: A STUDY OF FIVE WOMEN'S DEVELOPMENT ORGANIZATIONS IN LATIN AMERICA AND THE CARIBBEAN* (M. Schiver ed. 1987), *EMPOWERMENT AND THE LAW: STRATEGIES OF THIRD WORLD WOMEN* (1986).

affected people to understand their rights to equality and to insist that there be processes and remedies enabling them to vindicate those rights.

(4) *The Right to Development*. This a new, inadequately understood addition to the array of rights developed through the U.N. system. Some of its content must be clarified, and some is problematic. But insofar as the right proclaimed is a *human* right, which is explicitly concerned with the role of other well-recognized rights in the processes of development, it must certainly be taken seriously by those who engage in development activities.

The idea of "development" as a *human* right owes much to the distinguished African jurist, Keba Mbaye. His influential advocacy in the 1970s inspired others to help formulate the concept and move U.N. agencies (e.g., the Commission on Human Rights) into action.<sup>55</sup> A significant step was taken when, in 1979, the Secretary General of the U.N. (responding to a request from the Commission) issued a report on the "existence" of the right.<sup>56</sup> Despite its verbosity, incomprehensibility in various places, and other flaws, that Report conveyed an important message. The Secretary has declared, "a general consensus exists as to the elements of the concept of development." The "elements" were:

1. The realization of the potentialities of the human person in harmony with the community should be seen as the central purpose of development.
2. The human person should be regarded as the active subject, not the passive object, of development processes.
3. Development requires the satisfaction of both material and nonmaterial basic needs as a basic priority.
4. Respect for human rights and redress of historic discriminations are fundamental to the development process.
5. People must be able to participate fully in shaping change in their social and physical environments; they have a basic right to do so.
6. The achievement of individual and collective self-reliance must be an integral part of these processes.

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55. See for an instructive but brief history, P. Alston, *Development and the Rule of Law: Prevention vs. Cure as a Human Rights Strategy*, in *Development, Human Rights, and the Rule of Law* 31 (International Commission of Jurists 1981). See also K. Mbay, *Le Droit au Développement comme un Droit de L'homme*, 5 REVUE DES DROITS DE L'HOMME 503-534 (1973).

56. The 1979 Report of the Secretary General was issued under a title containing about 45 words, arranged in a highly problematic syntax, which probably says something about the intellectual rigor of the U.N. "experts" who prepared it. Nevertheless, the 1979 Report has become a significant foundation for an understanding of the human right to development, see, e.g., the International Dimensions of the Right to Development as a Human Right, U.N. Doc. E/EN4/1334 (1979). Karal Vasak then UNESCO's legal adviser, helped to stress the importance of understanding the evolution of human rights concepts and paradigms (i.e., "generations of rights and the growing importance of international cooperation in promoting human rights through development efforts. See, e.g., K. Vasak, *A Thirty Year Struggle — the Sustained Efforts to Give Force of Law to the Universal Declaration*, UNESCO Courier, Nov. 1977, at 24.



With this concept of people-centered development as a major premise, the Report declared that the exercise of rights already guaranteed "by the International Bill of Human Rights," by states acting individually and collectively through international organizations, was basic to the processes of planning and producing "development." No doubt, many proponents of the "new" right also saw it as a "right" of states, a "right" which imposed duties on affluent states to aid poorer ones.<sup>57</sup> The formulation of those (state-centered) "rights" and the means to realize them remains a problematic and controversial, albeit important, subject of internal law. But, from the beginning, the right to development was also seen as a *human right*, one which *empowered people*. Development, as conceived above, was a *process*, and, the right to development (analogous to the right to "due process of law") entitled those people to *processes of development which respect and promote their rights*, notably rights of participation.

The right to development as a "right of people" was incorporated albeit without definition in Article 22 of the Banjul African Charter.<sup>58</sup> A further, very significant step, has been the drafting and enactment of the U.N. Declaration on the Right to Development.<sup>59</sup> It was submitted to the General Assembly in 1986 and approved by a vote of 146-to-1 (the U.S. stood alone in opposition, and eight western governments abstained). The Declaration is hardly a model of clarity<sup>60</sup>, but some essential propositions

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57. For the politicized history of the evolution of the Human Right to Development, see e.g., R. Rich, *The Right to Development: A Right of Peoples*, in *THE RIGHTS OF PEOPLES*, 39-54 (J. Crawford ed.1988).

58. See *supra* note 19. The article speaks of the "right of peoples" to "social, economic, and cultural development."

59. U.N. A/Res/41/128 adopted on December 4, 1986.

60. Part of the difficulty with the human right development is that some see it as a "new" right, not one clearly rooted in the Universal Declaration and the Covenants nor a right which has evolved over time from experience and thus has become rooted in a well established consensus as to both content and existence nor a right rooted in any basic, universal human "interest." Compare. P. Alston, *Conjuring up Human Rights: A Proposal for Quality Control*, 78 AM. J. INT'L L. 607 (1984). Parts of the U.N. Declaration may certainly be subject to this criticism. These parts reiterate familiar but unclear propositions of earlier assembly resolutions. They speak of "rights" of states (Art. 2,3) and impose "duties" on states to promote international "conditions favorable to development" and "a new international economic order." (art. 3). There is a demand for action against "apartheid," "racism," "colonialism" and threats against national sovereignty, threats of war (art. 4) and a demand that all states "promote the establishment of international peace and security." (art 7). These and similar propositions, e.g. the duty of all states to promote disarmament (art. 7), are said to be "indivisible and interdependent" aspects of the right to development. (art. 9). (Note the absence of the word "human" before "right." Whatever may be the merit of these propositions, they seem to be cast in the form of "rights" and "duties" of states to promote or protect state interests or collective interests which historically have been protected by states, by not human rights as these have been identified in many previous instruments. Other articles in the Declaration deal with the notion of "development" as an "inalienable human right" (Art. 1 (1)) rooted in and a logical extension of the "International Bill of Rights" and the U.N. Charter's command that the U.N. system be used to promote human rights.

seem quite clear; and *on these points there may be little disagreement* about the validity of the Declaration:

-It affirms the concept of "people-centered" development articulated by the Secretary General by declaring that "the human person is the central subject of development,"<sup>61</sup>

-It confirms the principle that human rights are means as well as ends of this kind of development,<sup>62</sup>

-It underscores (as have many other Assembly Resolutions) the central importance of "participation" as both a right (or bundle of rights) and a means to realize other rights in people-centered development,<sup>63</sup>

-It imposes the obligation on national and international development agencies to respect and promote human rights in the processes of development<sup>64</sup>

-It empowers people, notably the intended beneficiaries of development activities to demand accountability to these principles.<sup>65</sup>

A U.N. "Declaration" is a pronouncement which is supposed to carry more significance than an ordinary Assembly resolution, particularly when it embodies an overwhelming consensus, conveys a clear message in regard to the application of established principles of international law to the conduct of existing international practices, and imposes reasonably clear and manageable duties on those who engage in these practices. The Declaration on the Human Right to Development has been criticized because it fails to meet these and related criteria.<sup>66</sup> The criticisms may be understandable insofar as the Declaration asserts the "rights" of states to "peace," "security," development assistance, and a more equitable international order. These conditions may be necessary to the realization of people-centered development, but, when prescribed as "rights," as they are in the Declaration, the prescription may become problematic if the criteria noted above are applied. At the very least, that explains why most major "donor" governments abstained, or in the case of the U.S., opposed the resolution.<sup>67</sup>

But the criticisms are quite misplaced insofar as the fundamental *human* rights message of the Declaration is concerned. The importance of defining "development" in terms of people who are the victims of underdevelopment and maldevelopment and the need to promote *their*

61. Art. 2(1). Note the use of the word "subject," not object.

62. This proposition is not stated as such, but it is clearly implied. Compare, arts. 1(1), 2(3), 3(2), 6(2), 6(3), 8(2), and 9(2).

63. Arts. 1(1), 2(1), 2(3), and 8(2).

64. Arts. 4(1), 6(1), and especially art. 10.

65. Compare, Art. 8(1) and 8(2).

66. See I. Brownlie, *The Rights of Peoples in Modern International Law*, THE RIGHT OF PEOPLES 1-16 (Crawford ed. 1988). Compare, P. Alston, *supra* note 60.

67. See, R. Rich, *supra* note 57. See U.N. Doc. A/C/3/41/SR61 (1986) (assembly discussion).

rights through *their* participation in development processes has been a central goal of advocates of the Human Right to Development.<sup>68</sup> In the muddled deliberations leading to that instrument, there has been a consensus on this theme.<sup>69</sup> No one has gainsaid it, and many of the western governments which objected to the Declaration on other grounds, have officially espoused these principles.<sup>70</sup>

Thus, the Declaration conveys a clear message regarding the role of human rights. It speaks to those who do development through long-established international structures and practices; it tells these actors to promote rights, notably through provision for participation, in the design, management and control of development programs. In regard to development projects which impact on people, the import of the command is especially clear. The "law" governing international development projects (e.g., the agreements, operating procedures, and usages) must impose duties to protect and promote the rights of those affected by project activities. This is hardly the assertion of a new right. Rather, it is a logical application of the mandates of existing universal rights law.

## PART II

### POLICY IMPLICATIONS AND LESSONS OF EXPERIENCE: THE CONSEQUENCES OF IGNORING RIGHTS

Experience with development projects vindicates the normative propositions asserted above:<sup>71</sup>

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68. The International Commission of Jurists was active in organizing efforts to bring together NGO activists concerned with people-centered "development" and "human rights in development" in order to draft a statement on the content of a Human Right to Development to submit to the 1981 Working Group of the U.N. Commission on Human Rights charged with the task of formulating the right. (See E/CN.4-Ac.34/WP 10 of 16, November 1981). This statement was later expanded and adopted by an Asian group of NGO experts and is set out in ICJ Newsletter, No. 11 (October-December, 1981), 56-62.

69. See Rich, *supra* note 57. See also P. Alston, *Making Sapce for New Human Rights: The Case of the Right to Development*, 1 HARV. HUM. RTS. Y.B. 3 (1988).

70. See *supra* note 2.

71. A vast literature (including material published by IDAs) now exists which documents or purports to document the harms to people which result from those kinds of development projects which, by their very nature, inevitably affect the interests of discrete groups of people in discrete ways. Only recently have lawyers and legal scholars begun to pay attention to the need to help those whose interests are seriously threatened or harmed by such projects use law (notably, human rights law in combination with tort, criminal, and other kinds of remedial law) as one means to fight back. Human rights law can have no meaningful existence, unless the victims of rights violation can use law to fight back. Precisely because the countless victims of project wrongs are poor, "ignorant", and often understandably hostile to law and lawyers, they lack "legal resources" (i.e., the capacity to use law) to defend their interests. See *supra* note 5. This may help to explain (but not justify) the relative failure of legal scholars and jurists to participate meaningfully in the processes of developments projects. These themes are developed in International Commission of Jurists, Report of Seminars on Legal Services for the Rural Poor and Disadvantaged Groups in South-East Asia (January 1987) and South Asia (December 1987) (published by the ICJ in 1988). The seminars were devoted to developing strategies to resist those kinds of development projects which impoverish and degrade project-affected peoples. See the "keynote ad-

(1) *failure to build enforceable human rights protections* into all stages of "risk-prone" development projects often contributes to the infliction of serious, unredressed harms on vulnerable people;

(2) *failure to promote awareness and exercise of human rights*, notably rights of participation, in all stages of poverty-oriented projects frequently contributes to their failure to reach and benefit intended beneficiaries and, often, to a worsening of their condition.

*Risk-prone Projects: The Need to Protect Rights.* Certain kinds of development projects are fraught with risks of harms, especially to those who are already vulnerable in economic and political terms. It seems inexcusable that these projects could be initiated and put into motion without according any meaningful participation and due process to those put at risk. When the risks materialize into devastating human harms, it seems even more unjust to proceed through the project phases while denying the victims prompt, full and fair redress. Yet, the history of "development" abounds with illustrations of these wrongful practices.

*Infrastructure projects.* Projects to construct large dams, major transport and other facilities have been a major source of harms inflicted upon vulnerable people. The environmental consequences of many of these projects are now notorious.<sup>72</sup> Usually, they also produce human displacement and impoverishment. Families are stripped of their means of livelihood. These projects may create new classes of landless workers or new communities of squatters, tenants or resettled people who face continuing risks of further eviction. While attempts are sometimes made to "compensate" victims of displacement, there is considerable evidence to suggest that these programs, at best, fail to provide adequate reparation for all the losses inflicted. Similarly, efforts to "resettle" displaced people are all too often flawed, in both planning and administration, by practices which violate rights and inflict economic and other tangible harms.<sup>73</sup> For

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dress" by Clarence Dias (in the Report).

72. The literature on dams is extensive. See, e.g., E. GOLDSMITH AND N. HILYARD, *THE SOCIAL AND ENVIRONMENTAL EFFECTS OF LARGE DAMS* (2 vols.) (1984, 1986) and C. ALVARES AND R. BILLOREY, *DAMMING THE NARMADA: INDIA'S GREATEST ENVIRONMENTAL DISASTER* (1988). "The World Bank financed nearly \$6 billion for hydro projects in 1980-82 and nearly \$1 billion for irrigation and drainage in 1982 alone," B. Rich, *Multilateral Development Banks, Environmental Policy, and The United States*, 12 *ECOLOGY L.Q.* 681 (1985), at 701, n. 42. For an "inside" review of some of the World Bank's experience, see, e.g., G. E. Schuh, et al., *Social and Environmental Impacts of Dams*, WORLD BANK AGRICULTURAL AND RURAL DEVELOPMENT DEPT. (1987).

73. On some of the difficulties experienced in involuntary resettlement, see M. Cernea, *Social Issues in Involuntary Resettlement Processes: Policy Guidelines and Operational Procedures in World Bank-Financed Projects*, WORLD BANK TECHNICAL PAPER NO. 80 1988. C. Escudero, *Involuntary Resettlement in Bank-Assisted Projects: An Introduction to Legal Issues*, WORLD BANK, LEGAL DEPARTMENT (1988). (These are recent studies by the Bank's now-well known sociologist and a concerned member of the legal department which attempt to alert Bank staff (and others) to the kinds of problems revealed by Bank experience and discussed here. On experiences in involuntary resettlement programs, see, e.g., *IN-VOLUNTARY MIGRATION AND RESETTLEMENT* A Hansen and A. Oliver-Smith (eds.) (1982) (con-

example, involuntary resettlement projects often use such coercive means as separating communities; families often suffer losses of animals and unharvested crops — and hunger, disease and other hardships naturally follow.<sup>74</sup> They are often relocated into unsuitable environments in terms of health, security and self-provisioning agriculture. They are sometimes victimized by corrupt officials and speculators who arrange “sales” of lands for relocation at exorbitant prices. The ultimate outcome of these and other abuses is often further displacement.<sup>75</sup>

Displacement produces political and cultural harms as well as economic damage. Poor people who lose possession of ancestral family land usually lose status and dignity; links to a past, a way of life and security are destroyed. On a larger scale, communities and cultures are dissolved. Displaced people become “refugees,” even though they never cross national boundaries; they are peculiarly powerless and, thus, vulnerable to all kinds of other human rights violations. Dependent on officials or others for satisfaction of essential needs, they are often easily deterred from engaging in any meaningful processes of political participation; at the same time, they sometimes become political pawns of those on whom they have become dependent.<sup>76</sup>

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tains many case studies).

74. See Studies in Hansen and Oliver-Smith, *supra*; P.L. Bennagen, *Philippine Cultural Minorities: Victims as Victors in MORTGAGING THE FUTURE: THE WORLD BANK AND IMF IN THE PHILIPPINES* V.R. Vose (ed.) (1982). See also, Rich, *supra* note 72, at 702 (summarizing testimony on behalf of resettlement victims at Hearings before the Sub-Committee on International Institutions of the House Committee on Banking, Finance and Urban Affairs, 98th Cong., 1st Sess. (1983), entitled Environmental Impact of Multilateral Development Bank-Funded Projects. This Committee has held many hearings on the environmental and social impacts of World Bank projects, sometimes providing a public forum to Third World activists attempting to portray harms done to victims of these projects. See Statement of Smith Kothari on Behalf of Lokayan [a network of victim-oriented human rights activists in India] and National Working Group on Displacement Concerning the Environmental Performance of the World Bank in India (to the above committee), May 24, 1988. (Focusing on the Singrauli Thermal Power project, the Bodghant Hydroelectric, the notorious Sardau Sarovan Dam, and the Narmada project; detailed description of effects of displacement).

75. Official corruption and extortion have been widely reported in the Indian press in connection with government dealings with many of the “ousters” of the Narmada project. See also, S. Kothari’s “Statement,” *supra*, and S. Sarangi and R. Billorey, “*The Nightmare Begins: Oustees of the India Sagar Project*” in *ECONOMIC AND POLITICAL WEEKLY*, April 23, 1988.

76. See, e.g., sources cited *supra* note 74. ILO Convention 107 of 1957 (ratified by many countries) requires recognition of “the collective right of ownership” of indigenous and other distinct ethnic minorities or “peoples” to “lands” which they have “traditionally occupied” under their own customary law (Art. 11) and provides that they “shall not be removed from their habitual territories without their free consent” except for “reasons relating to . . . national economic development,” in which case, they must be “provided with lands of quality at least equal to that of the lands previously occupied,” plus full compensation for “any resulting loss or injury.” Indian NGOs have attempted (so far, without success) to use the ILO enforcement machinery for this Convention to have the ILO declare, in effect, that the procedures for removal, resettlement, and compensation were in violation of the Convention — a position which appears to have been upheld by the Indian Supreme

Sometimes victims of these wrongs search desperately for review and redress. A World Bank project officer reported the anguish and anger of the victims of a dam project in the Philippines: "A whole municipality was going under water. [We] were drowning a whole municipality, even its mayor. . . . They wrote to McNamara, to the Pope, to everybody . . . . There is no doubt that OED [i.e., the project evaluators] will kill us on this one."<sup>77</sup>

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Court in another displacement case. See H.O. AGARWAL, IMPLEMENTATION OF HUMAN RIGHTS COVENANTS WITH SPECIAL REFERENCE TO INDIA 74 (1983) (citing an unpublished decision and opinion). The ILO is presently redrafting its much-criticized Convention 107 to strengthen the rights of indigenous groups to retain possession of traditional lands. See ILO, Partial Revision of the Indigenous and Tribal Populations Convention (No. 107), Report IV, Part 1 of the International Labor Conference, 76th Session (1988). The right of ethnic, religious, and linguistic (not just "indigenous") "minorities" to "enjoy" their "culture" is protected by article 27 of the U.N. Convention on Civil and Political Rights. By virtue of the history and the pluralistic social context of some countries, some of these groups clearly see their long-occupied, group-held ancestral lands as a basic, integral element of their culture, a social fact which is clearly recognized by both scholars and those who are struggling to provide more expansive protections to the cultural rights of distinct peoples. See *infra* note 77 and various essays in THE RIGHTS OF PEOPLES J. Crawford (ed.) (1988) (which also contains a useful bibliography on this subject); S.H. DAVIS, LAND RIGHTS AND INDIGENOUS PEOPLES: THE ROLE OF THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS (1988) and various essays in A. Hansen and A. Oliver-Smith, *supra* note 73.

77. See R. Ayres, Banking on the Poor: The World Bank and World Poverty (1985) at 113.

The following is eloquent testimony illustrating our point:

"Asian Development Bank

Makati, Rizal

Dear Sir:

We, the T'boli people of Lake Sebu, Suraliah, South Cotabato, after hearing about the forthcoming construction of the Lake Sebu Dam and the subsequent damage and destruction it will bring to our homeland, would like to bring to your attention our strongest opposition to this government project. We would like you to consider the following reasons:

1. The proposed dam will flood our most precious land and destroy our food and source of livelihood which we have worked so hard to produce.

2. If this land is flooded and our food supply destroyed, it will certainly kill us and our children. For where shall we go, since our Visayan brothers have already taken the choice lands that God had first given us?

3. This land and these lakes God has given us. We do not want this land to be destroyed by flood, because it is precious to us; our ancestors were born and were buried here. We would rather kill ourselves and our children than to witness the terrible destruction this dam would bring.

4. We have heard that new lands will be set aside for us in distant and foreign places. We would rather be drowned here and be buried with our ancestors than to live far from our homeland.

5. If we lost this agricultural land, no food production will be made, and we can no longer contribute to the national economy.

6. We also have heard that the dam will serve many lowlanders with electric power and irrigation. But, we humbly ask, how will the dam serve and assist we T'boli people?

7. In all this, we have never been directly approached, advised, or informed regarding the planning of the dam. Do we not have rights? Are we not

Reports from groups in India displaced by large-scale dam-building projects have revealed the kinds of serious flaws in the legal regimes and practices which government agencies follow when they purport to provide compensation to families whose lands are expropriated.<sup>78</sup>

When expropriation is undertaken, governmental bodies charged with implementation often find themselves under heavy pressure to reduce costs and expedite timetables. Usually, there is little effort to investigate and understand the position of occupants and their system of land tenure. Their objections to the project are rarely heard in any formal, arbitral sense; indeed, they are often suppressed. The lands in question, or large portions, may be declared "unoccupied" and "public trust" lands and evictions ordered. Where compensation is promised, the process all too often lacks any system rules essential to assure fair reparation for those convicted. The burden is cast upon occupants to prove the existence of their holdings, and the proof required is difficult, at best, to produce, particularly when officials demand written evidence from illiterate people who speak a different language and hold under customary systems of tenure peculiar to their district. The formulae for determining compensation are set unilaterally. The fund set aside to defray awards is often woefully inadequate to pay for all the costs inflicted. In essence, the process is lawless: the absence of clear, published procedures to protect occupants enables government to run roughshod over them.<sup>79</sup>

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also Filipino citizens capable of planning for our future? We do think that real development has to be realized with the free participation of the common people no matter how poor they are. We have heard that the Asian Development Bank will be funding a major portion of this project. If this be true, we ask only that reconsider the consequences and moral implications involved in this project.

Very sincerely yours,  
T'BOLIS OF LAKE SEBU

(This petition was signed by 2,622 T'Bolis of Lake Sebu.)"

P.L. Bennagen, *Philippine Cultural Minorities: Victims as Victors*, in V.R. JOSE, *MORTGAGING THE FUTURE: THE WORLD BANK AND IMF IN THE PHILIPPINES* (V.R. Jose ed. 1982).

The following is from a petition filed in the Supreme Court of India by two Adivasis — leaders of a group threatened with eviction by a dam project:

The attempt of the [government] to resort to violence [to prevent protest meetings] . . . smacks of the fact that they [government] consider the tribal communities as secondary citizens and in the way of so-called development. [The government] feels that the tribals are not a part of development of this nation, but a hindrance. The tribals of the area have a deep-rooted culture and economic life associated with land and to tear them off from their land is to separate the blood from their body.

Quoted in S. Kothari, *Ecology v. Development: The struggle for Survival*, DEMBO, *supra* note 5, at 214.

78. The ICLD has an extensive file of materials relating to problems confronting NGO's working with groups of "oustees" and other victims of the Narmada project. The file includes news reports, reports and communications of NGOs and legal activists, and reports of World Bank consultants. These materials were used as a basis for the quote which follows. In January 1988, ICCD helped ICJ organize a workshop of activist groups at Rajpipla where strategies to defend rights of victim groups were discussed. *See supra* note 71.

79. *See* C. Dias and J. Paul, *supra* note 5, at 237. For other material reflecting the

*Modernization of Agriculture* is an oft-used label for a second, notoriously risk-prone category of projects. They usually entail deliberate, external, often expensive interventions to produce changes in the crops farmers produce and in the organization, methods and technologies of production. The goals of these projects may include: increasing the output of commercial (often export) crops, developing state-fostered agribusinesses, and producing food for government corporations to sell to urban populations. Modernization projects appear in various forms: e.g., the development of plantations or ranches, the introduction of irrigated farming, the conversion of peasants into cash-crop producers through various forms of contracts between producers and those who supply inputs and purchase the crop, and the channeling of resources for research, extension, credit, inputs, feeder roads, and marketing to support these ventures. The promoters of "modernization" projects are often an alliance of local commercial farmers and agribusinesses, parastatal and other government agencies — sometimes all too readily aided and abetted by IDAs.<sup>80</sup> They are usually the primary beneficiaries, but many of the farmers who become the producers for these projects are often victims of risks which have long been well known, widely documented.<sup>81</sup> They include:

- a. *Landlessness.* Modernization often calls for large-scale, capital-intensive farmers. This may be achieved by the extraction of land (through coerced sales or expropriation) from smallholders, by firms (often parastatals) which create plantations. In other project contexts, wealthier, "progressive" farmers may first use various methods (notably moneylending) to gain control over the lands of their marginal neighbors.<sup>82</sup>

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complexity of these problems, see C. Escudero, *supra* note 73. Compare, R. Noronha and F.J. Lefham, *Traditional Land Tenure and Land Use Systems in the Design of Agricultural Projects*, WORLD BANK WORKING PAPER No. 511 (1983).

80. The working links between private enterprises and public agencies (notably, state corporations) and IDAS, and the role of private actors in the processes of initiating, planning, and management of projects (or elements of projects) and accountability for outcomes deserve more attention than they have received in this paper, notably, the role often delegated to private firms (often working as joint enterprises with state companies) in IDA-financed "modernization of agriculture projects." For some suggestive studies of joint enterprise agribusiness schemes financed by IDA loans, see, e.g., B. DINHAM AND C. HINES, *AGRIBUSINESS IN AFRICA* (1984). Compare, *THE POLITICS OF AGRICULTURE IN TROPICAL AFRICA*, (J. Barker ed. 1984). The CDC-financed, Philippines palm oil plantation scheme discussed below is a stark illustration of the need to hold IDAs legally accountable for activities of private firms which receive IDA loans or management contracts.

81. There are a number of highly critical reviews of the World Bank "modernization of agriculture" policies and programs. See, e.g., C. PAYER, *THE WORLD BANK: A CRITICAL ANALYSIS* (1982); S. GEORGE, *ILL FARES THE LAND* (1984).

82. See C. HEWITT DE ALCANTARA, *MODERNIZING MEXICAN AGRICULTURE: SOCIOECONOMIC IMPLICATIONS OF TECHNOLOGICAL CHANGE 1940-1970* (1976). (Impacts of various kinds of projects). On plantations and landlessness, see, A. DUBS AND C. MOYNIHAN, *THE CDC AND MINDINAO: REPORT TO THE PARLIAMENTARY HUMAN RIGHTS GROUP* (1983) which is a good case study of the many kinds of harms. Large-scale irrigation schemes pose clear threats of landlessness. See, e.g., *IRRIGATION IN TROPICAL AFRICA: PROBLEMS AND PROBLEM SOLVING* (W.M. Adams and A.T. Grove eds 1984) (Cambridge African Monographs, No. 3). Escudero,



b. *Indebtedness.* Small farmers drawn into schemes for the production of cash crops, requiring purchase of new seeds, inputs, and other factors from agribusiness, are unusually vulnerable to impoverishing indebtedness which leads to loss of control of lands and income and to malnutrition.<sup>83</sup>

c. *Worker exploitation.* Landless (or land-poor), rural workers are often forced, by circumstances, to become wage-workers for agribusiness. The terms of employment and physical conditions under which they work are often exploitative. Agribusinesses often monopolize both markets for cash crops and the sale of inputs needed to produce new crops — with the result, again, that producers are exploited.<sup>84</sup>

d. *Loss of market, crop loss, and crop displacement.* There is always the risk, all too frequently realized, that the market for the new “modern” crops (on which producers must now depend for their livelihood) will deteriorate. There is the further risk that new seeds and plant varieties prescribed by “engineers” of development projects will prove vulnerable to local ecological conditions. Seldom are producers insured against these outcomes; yet, they are the primary losers.<sup>85</sup>

*supra* note 73 at 18-22, notes that, during 1986 the Bank was supporting at least 15 such projects. The Bank claims to have put into place policies and procedures to secure protections for those subjected to risk; the regional development banks (e.g., the African Development Bank) have none. For studies of some irrigation projects and displacement, see, C. JACKSON, KANO RIVER IRRIGATION PROJECT (1985); P. Clough and G. Williams, *Decoding Berg: The World Bank in Rural Northern Nigeria*, in STATE, OIL, AND AGRICULTURE IN NIGERIA (M. Watts ed. 1987). “Area development” and “integrated rural development” projects have often been designed and managed, albeit unintentionally, to provide resources and services utilized by landlords and affluent farmers to develop new systems of production which lead to evictions of tenants and efforts to gain control of the lands of marginal “small farmers.” The history of the Chilalo project in Ethiopia is an instructive case study. See, e.g., J.M. Cohen and N.T. Uphoff, *Rural Development Participation: Concepts and Measures for Project Design and Evaluation*, Cornell University. Rural Development committee Monograph No. 2 (1978). See generally Noronha and Lethman, *supra* note 79.

83. See e.g., R.H. Green, *Law, Tradition, Contract, and Impoverishment* (unpublished paper prepared for a 1986 workshop on the effects of “modernization of agriculture,” cosponsored by the University of Windsor, Faculty of Law and ICLD) (analyzing the “contract” and other arrangements imposed on farmer producers who were incorporated into various Sahel-region irrigation schemes). See also, H. Umehera, *Green Revolution for Whom?* in A SECOND VIEW FROM THE PADDY: MORE EMPIRICAL STUDIES ON PHILIPPINE RICE FARMING, INSTITUTE OF PHILIPPINE CULTURE (A.J. Ledesama ed. 1983). See generally, R. CHAMBERS, RURAL DEVELOPMENT: PUTTING THE LAST FIRST (1984), for a vivid view of the problems of credit and debt for marginal rural households.

84. See Green, L.P. REYES-MAKIL AND P.M. FERMIN, LANDLESS RURAL WORKERS IN THE PHILIPPINES: A DOCUMENTARY SURVEY (1983); ILO, PROBLEMS OF RURAL WORKERS IN ASIA AND THE PACIFIC (Report III of the ILO Asian Regional Conference of 1980).

85. For a review of these problems and some experience, see C. Dias, *Reaping the Whirlwind: Some Third World Perspectives on the Green Revolution and the Seed Revolution*, in DEMBO, *supra* note 5, at 79-102. For an interesting recognition of these kinds of problems within the context of some major projects, see COTTON DEVELOPMENT PROGRAMS IN BURKINA FASO, COTE D'IVOIRE AND TOGO, A WORLD BANK EVALUATION STUDY (Operations Evaluation Department, World Bank) (1988) (project hurt by 1986 cotton-price drops; problems of setting up a “stabilization fund;” need for farmer participation in its management). On the environmental problems and risks of cotton, see Rich, *supra* note 72, at 698 (decline in yields due to pests; dangerous overuse of insecticides).

e. *Environmental degradation.* The depletion of soil resources is often the result of mono-cropping and other practices introduced by modernization. Another threat, serious over the long run, is the loss of valuable, genetic resources when traditional plants are replaced by new foreign varieties.<sup>86</sup>

f. *Food shortages, hunger, and disease.* Modernization often means loss of land needed to maintain local self-sufficiency in food production; the result is that economically marginal families become increasingly dependent on other producers and on uncertain markets to purchase food supplies. Irrigation projects often produce dangers of malaria and bilharzia.<sup>87</sup>

g. *Exclusion.* Smallholders, rural workers, and women are regularly excluded from any form of meaningful participation in the planning and management of modernization projects. Denied rights of participation and access to decisionmakers, they are usually unable to secure protections or redress against the wrongs noted above.<sup>88</sup>

A 1983 World Bank report, *Focus on Poverty*, admitted (albeit with little sensitivity to the human rights implications) that these kinds of harms occur. The report (prepared by a blue-ribbon, task force) notes that some "modernization" projects "have made the landless worse off. In some instances, financing for [mechanization] . . . and modern rice mills has reduced employment, thereby adding to rural poverty. Mechanization has also encouraged landlords to evict tenants. In the Muda project, the introduction of combine harvesters also encouraged landlords to evict tenants. . . . In one East African project, inadequate attention to the social and political context helped create a system of absentee landlords. . . . Other projects have ignored the role of women in the production processes . . . and have adversely affected women's income and earning

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86. See Rich, *supra* note 72, at 688-703, for an excellent survey of the environmental effects of unsustainable modernization projects, cattle-ranching projects, promotion of chemical-intensive farming, and irrigation. The environmental dangers of these and other kinds of projects is now well recognized. On the introduction of new plants and biotechnologies, see the several papers by D. Dembo, C. Dias, and W. Morehouse *supra* note 5, at 70-142.

87. See, e.g., S. REUTLINGER, THE NUTRITIONAL IMPACT OF AGRICULTURAL PROJECTS IN J.P. GITTINGER, J. LESLIE, AND C. HOISINGTON, FOOD POLICY: INTEGRATING SUPPLY, DISTRIBUTION, AND CONSUMPTION (1987) (a World Bank study). There are many excellent papers in this volume. For analysis of the impact of cotton projects on foodcrop production, see THE WORLD BANK EVALUATION STUDY, *supra* note 85, at 8-9.

88. See, THE WORLD BANK'S SUPPORT FOR THE ALLEVIATION OF POVERTY (WORLD BANK, 1988). This is a report which supplements the 1983 report, *Focus on Poverty*, note 89 *infra*. It is designed to reaffirm the Bank's commitment to alleviation of, especially, rural poverty. The effects of non-participation are noted throughout. The Report candidly admits: "The evidence to date, however, suggests that [intended] beneficiary participation has played a very limited role in implementing Bank-financed rural development projects and virtually no role in designing projects." The exclusion of women from participation, even in "the benefits" of modernization projects has been repeatedly documented, as the above reports note). For an excellent current review of the phenomena, see THE WORLD BANK EVALUATION STUDY OF THE WEST AFRICAN COTTON PROJECTS, *supra* note 85, at 30-38.

capacity.”<sup>89</sup>

IDA-financed projects to build dams and promote irrigated farming and commercial agriculture in Northern Nigeria (and elsewhere in SSA) have produced a conversion of small farms into big ones and small farmers into tenants (usually of absentee, often civil-service landlords); displacement of traditional food crops, mechanization and unemployment, and malaria and bilharzia.<sup>90</sup> Some of the dams and irrigation schemes have so reduced the downstream river flow that the fertility of adjacent lands has been destroyed and, thus, the livelihood of downstream farmers who, of course, are uncompensated for their losses.<sup>91</sup>

Irrigated farming projects (to produce cash crops) have been urged as a development strategy in some regions. But experience suggests that these schemes often impose serious risks on the farmer-producers drawn into them. Recent reviews by the Bank of its “irrigation portfolio” reported that “environmental risks are a frequent problem” (e.g., salinization, waterlogging).<sup>92</sup> Often, too, there are health hazards (bilharzia, malaria). In many of these projects, subsistence-peasant families (women and children included) are converted into “tenant” producers of a state company (the operator of the system). The operator of the bureaucracy determines what crops will be grown, what quotas will be set, the provision of supplies and inputs (on credit), allocation of water, and the management of maintenance and repair of the system. Where producers lack full participation in these kinds of decisions as well as in the management of crop-marketing, they are obviously put at risk. The project may even be depicted as a “success” for the government, while producer-tenants are driven into debt and hunger.<sup>93</sup>

IDA financing to support the introduction of plantations is often accompanied by widespread human rights violations. A few years ago, two British MPs (Messrs. Dubs and Moynihan) investigated human rights grievances associated with plantation projects on Mindanao which were financed by the Commonwealth Development Corporation, the CDC. Their report<sup>94</sup> presents a shocking record of land-grabbing through re-

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89. *Focus on Poverty: A Report by a Task Force of the World Bank* 11 (1983).

90. B. Beckman, *Public Investment and Agrarian Transformation in Northern Nigeria*, in *STATE, OIL AND AGRICULTURE IN NIGERIA*, *supra* note 82.

91. See P.G. Pilon and R.A. Bullock, “*Monitoring Land Use Change in the Sokoto-Rima Basin, Nigeria*” (paper presented to the Annual Meeting of Canadian Association of African Studies, Edmonton, 1987) (using a sequence of “before and after” satellite earthscan photos of effects of a dam project shows how downstream farmers were affected by the drying up of the downstream river.)

92. See *WORLD BANK OPERATIONS EVALUATION DEPARTMENT, RURAL DEVELOPMENT: WORLD BANK EXPERIENCE, 1965-86*, at 44. (Hereafter cited as *OED Rural Development Report 98*).

93. See R.H. Green, *supra* note 83.

94. A. Dubs and C. Moynihan, *The CDC and Mindanao* (Report to the Parliamentary Human Rights Group 1983) (this was a bipartisan report). See also, C. Espiritu, *Transnational Agriculture and Philippine Agriculture: The Philippine Experience*, in *DEMBO*,

course to murder and other violence, displacement and conversion of peasants into landless workers, depletion of local food sources, corrupt and exploitative employment practices coupled with patently illegal efforts to frustrate formations of unions and collective bargaining. It seems almost incredible that an international agency could allow its funds to be used for a project which, at the outset, contained high risks that these very wrongs would occur. The reason, of course, is clear. The CDC, along with its partners (a TNC and a Philippine state corporation),<sup>95</sup> simply failed to recognize the risks to people inherent in plantation projects; they failed to impose protections of rights and promotion of participation as part of the law of the project; they produced a lawless project (e.g., in the loan agreements); and, to this date, no agency has been held legally accountable to the victims for the dreadful consequences. The Dubs-Moy-nihan report, one might add, is simply a meticulously documented history of phenomena which commonly occur when IDAs promote large-scale agriculture.<sup>96</sup>

Perhaps the CDC, World Bank and other IDAs are now far more aware of the consequences of high-risk projects of the kind described above. Certainly (as the Bank's own publications now reveal)<sup>97</sup> many hard lessons have been taught. The task is to act on these lessons. The following are some suggestive propositions:

(1) The full range of harms to people, the social costs of "modernization" and "large-scale infrastructure" projects, can never be adequately estimated without first enlisting the meaningful participation of all categories of project-affected people.

(2) Unless all of these potential harms and costs are assessed, it is hardly possible to determine whether the project is justified in spite of its cost.

(3) Criteria must be developed to determine when such projects are justified; the ultimate determination must entail a legal judgment based, of course, on a showing that economic and other social evidence support the criteria for justification. Projects which inflict irreparable harms (eco-

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*supra* note 5, at 41-68.

95. IDAs, particularly some kinds of IDAs (e.g., the CDC, the International Finance Corporation of the World Bank group, and, at times, the IBRD itself), have wanted to work with state corporations. Indeed, the Bank has encouraged borrower governments to create autonomous agencies as vehicles to receive funds and "implement" projects. A.A. Fatourous, *The World Bank, THE IMPACT OF INTERNATIONAL ORGANIZATIONS ON LEGAL AND INSTITUTIONAL CHANGE IN DEVELOPING COUNTRIES*, 52-61 (J. Howard ed. 1977). State corporations and agencies garbed in similar legal clothes are notoriously unaccountable. See, e.g., Y. Ghai, *Law and Public Enterprise*, in V.V. RAHANDHAM, *PUBLIC ENTERPRISE IN THE DEVELOPING WORLD* (1984). This is probably particularly true in relation to state enterprises in the agricultural sector.

96. See *supra* note 82 and *infra* note 94.

97. See, e.g., M. Cernea, and C. Escudero *supra* note 73. See also the semiofficial descriptions of Bank policies BAUM AND TOLBERT, *supra* note 1, at 471 (need for careful "social analysis" of projects).

conomic, social, environmental and cultural) on distinct and large groups of the population, should be deemed illegal *per se*.

(4) The burden of justification of all risk-prone projects must always lie with the promoters of the project.

(5) Those whose rights are threatened must enjoy full rights and legal resources enabling them to dispute the legality of proposed projects.

(6) Such projects should never go forward unless and until procedures are put into place which assure that those threatened with harm will be fairly compensated for all losses and that those displaced will be resettled in situations which provide new opportunities for sustainable development; resettlement projects must be seen as people-centered, "development" projects, not as dumping grounds.

(7) Law must be put into place to secure these kinds of objectives.

(8) IDAs must be independently satisfied that these requirements are met; they cannot absolve themselves of that responsibility by delegating it to other agencies.

Some of these propositions are reflected in new (or suggested) guidelines recently developed within the World Bank in response to harsh lessons of experience.<sup>98</sup> All of them suggest questions which lawyers must confront if the human rights of the victims of "development" projects are finally to be taken seriously.

#### *Poverty and People-Centered Development Projects: The Need to Promote Rights*

Over 15 years ago, Robert McNamara delivered his stirring Nairobi speech describing the worsening conditions of the Third World poor, pledging the Bank's help to relieve them.<sup>99</sup> In 1976, the international community formally endorsed this commitment in the carefully orchestrated, much publicized resolution of the ILO-sponsored World Employment Congress which declared that "meeting the basic needs of the poor" (notably rural poor) should take priority in international development assistance.<sup>100</sup>

Addressing the "basic needs" of impoverished rural communities through development projects is no easy task, as a decade of checkered experience now teaches.<sup>101</sup> In the first place, the social and physical environments of rural poverty vary significantly. They may be characterized by harsh or uncertain climatic conditions, by marginal, fragile soil fertil-

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98. *Id.*

99. President's Address to the Board of Governors, Nairobi, September 1973. For the history of this interesting period in the Bank, see, e.g., Ayres, *supra* note 77. For a review of the many difficulties encountered, see OED Rural Development Report, *supra* note 92.

100. See International Labor Organization, *Meeting Basic Needs: Strategies for Eradicating Mass Poverty and Unemployment*. Conclusions of the World Employment Conference of 1976 (ILO, 1976).

101. See Ayres, *supra* note 72, and sources cited *infra* note 102.

ity, by deteriorating environments, by historic lack of infrastructure and services and by official neglect and disinterest. They are often characterized by social relations which maintain stratification, segmentation, dependency, civic ignorance, and impoverishment by systems of land tenure, credit, employment, trade and local politics controlled by some combination of elites or dominant classes. Thus, the tasks of "people-centered" rural development are often profoundly difficult. They may be addressed to finding ways to help smallholders improve production of cash crops. But, local agronomy, land tenancy, credit relations, household and labor cycles and needs for improved staple food production can hardly be ignored. They may be addressed to rehabilitating and protecting lands from deforestation, overgrazing, or other uses, but, again, the needs of people for food, fuel, and water and, above all, the need to enlist full, local support for any land use controls to be put into place must be addressed. There may be urgent needs to improve local services, but then the problems of creating and maintaining effective local administration and official commitment regularly become apparent. The introduction of new, cash crops may be proposed, but then the land tenure system, problems of credit and indebtedness, gender roles, and community power relations need to be understood. These, of course, are only illustrative examples.<sup>102</sup>

Rural development programs can hardly be initiated overnight. Indeed, it takes years to negotiate, plan and "implement" them and then many more months to "evaluate" the results<sup>103</sup> (an exercise which becomes arcane if purely economic criteria are used and more problematic if simplistic social criteria are used).<sup>104</sup> It is doubtful, for example, that the "benefits" of a project can be sustained unless the intended beneficiaries have not only realized tangible gains, but have somehow become more able to exercise greater power over the future "development" of their community; but that was not so readily apparent to the official in IDAs and governments who were charged in the 1970s, through the ringing rhetoric of resolutions, plans, and speeches, with the job of doing rural

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102. See OED, RURAL DEVELOPMENT REPORT, *supra* note 92. Michael Cernea's project to survey the Bank's experiences with many types of projects in many areas is a most instructive contribution towards providing some understanding of these problems. See PUTTING PEOPLE FIRST: SOCIOLOGICAL VARIABLES IN RURAL DEVELOPMENT, (Cernea ed. 1985). Goran Hyden's *No Shortcuts to Progress: African Development Management in Perspective* (1983) (and many of Hyden's later papers) contain highly regarded, instructive insights on the difficulties experienced by African projects. See also, IMPLEMENTING RURAL DEVELOPMENT PROJECTS: LESSONS FROM AID AND WORLD BANK EXPERIENCE (E.R. Morss and D.D. Gow eds. 1985) (Reports on three-year evaluation study of administration of AID and Bank projects).

103. See OED, RURAL DEVELOPMENT REPORT, *Id.* (reviewing a number of projects over the past 15 years).

104. See Baum and Tolbert, *supra* note 1, at 419-445, for a guide (by two senior bank officials) for laypeople into the economic analysis (costs and benefits to borrower) or projects, and *Id.* at 449-466 for the financial analysis (costs and returns to the lender).

development.<sup>105</sup>

Indeed, it seems probable that many of these crucial actors (e.g., officials and "experts" in the Bank who did project work and their counterparts in host-government ministries) were neither enthusiastic nor well equipped to design projects to "meet the basic needs" of the rural poor.<sup>106</sup> Most projects proved more difficult than anticipated. All too often they were less than successful and often harmful enough in their impacts on at least some groups (notably women) in "target communities." That is, the teaching of a large literature, including the literature of IDAs themselves, notably that of the Bank, which, on this score, is often (not always) rather candid about the results of its labors.<sup>107</sup>

The reasons for failures are, of course, rooted in many systemic problems and practices. But some themes stand out. It is repeatedly reported that projects are designed on flawed and inadequate knowledge bases, like, an inadequate understanding of soil and climate phenomena, or farmers practicing "traditional" farming methods. Lack of understanding of household farming systems and labor cycles and gender roles and "rights" in relation to crops; lack of understanding of local land tenure and power relationships; local experience with official (state-regulated) cooperatives; lack of knowledge of ethnic cleavages, or of political concerns and ignorance of many other phenomenon evidence a poor project design. Often, it seems apparent that some "target" peoples (e.g., the poorest farmers) never understood the goals of projects and, for various reasons (e.g., lack of consultation and confidence in government officials, fear of losing ground in their crucial struggles to "survive" through traditional farming), never cooperated in project activities (e.g., by refusing to adopt proposed new crops, inputs, or production methods).<sup>108</sup> Women, as both farmers and providers of essential household services, were regularly ignored and often excluded from participation in cash-crop schemes, cooperatives, and the planning of community facilities.<sup>109</sup>

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105. See *Id.* at 469-471 (discussing Bank's recently recognized need for "social analysis" of proposed projects). *Cf.*, Operations Evaluation Department, Project Performance Results for 1986 36 (World Bank, 1988) (reporting evaluations of 52 "implemented" projects: "The relative economic success of these projects does not necessarily mean that they have been successful in reaching target poverty groups.")

106. See Ayres, *supra* note 77 (chapter 9).

107. See e.g., THE WORLD BANK'S SUPPORT FOR THE ALLEVIATION OF POVERTY (WORLD BANK, 1988) (contains a summary review of difficulties experienced by projects in various sectors).

108. See, e.g., the case studies reported in Cernea, *supra* note 25. For an elaborate study of poor-people perspective and the types of problems they encounter as project-affected people, see R. CHAMBERS, RURAL DEVELOPMENT: PUTTING THE LAST FIRST (1984). Compare, I. IMAN, PEASANT PERCEPTIONS: FAMINE IN D.C. KORLEN AND R. KLAUSS, PEOPLE-CENTERED DEVELOPMENT: CONTRIBUTIONS TOWARD THEORY AND PLANNING FRAMEWORKS (1984).

109. A theme readily acknowledged in the World Bank report, FOCUS ON POVERTY (1983), see *supra* note 89, and the 1988 supplement *supra* note 107 and a theme which regularly recurs in project evaluations. See also, OED, REPORT ON PROJECT PERFORMANCE,

The processes of administering projects have regularly been flawed. Administration in Third World countries tends to be centralized, hierarchical, and stratified. Incentives, like opportunities for the promotion of key lower-level people, are often weak, and so are incentives for upper-level staff posted to the more remote countryside. Social gaps, indifference, and often distrust or disdain characterize relations between officials and poor people. Structures for imposing accountability are weak at best and opportunities for corruption are strong. Higher officials are wary of raising community expectations and of creating more politically active constituencies. The processes for monitoring the programs of projects and regulating or reforming their management are also weak, and they rarely entail much independent participation from intended beneficiaries.<sup>110</sup>

These are some of the findings and problems common to the enterprise of world development which repeatedly appear in studies of projects. The pathologies combine not only to frustrate the achievement of goals, but all to often they end up inflicting harms, skewing distribution of benefits, and creating a lack of sustainable services, increased dependence of the rural poor on the state or local elites, and cynicism and apathy.<sup>111</sup>

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*supra* note 105 ("Little or no attention is usually given" to the "role" of women of the "effects" of projects on women.

110. There is an extensive literature on these problems, including many World Bank publications. The World Bank Development Report 1983 (World Bank, 1983) contains an elaborate review. An excellent critique of project design, management, and accountability methods — and the underlying assumptions and norms of project decision-takers is set out in R.C.J. LACROIX, *INTEGRATED RURAL DEVELOPMENT IN LABOR AMERICA*. World Bank Staff Working Paper, No. 716 (1985). For a general critique of national legal regimes governing the administration of projects and delivery of services and resources in rural areas, see J.C.N. PAUL AND C.J. DIAS, *STAGE-MANAGED DEVELOPMENT: A LEGAL CRITIQUE*, *THIRD WORLD LEGAL STUDIES*, 1982; *LAW IN ALTERNATIVE STRATEGIES OF DEVELOPMENT* 35-58 (1982).

111. See Ayres, *supra* note 77, at 137-442, for a discussion of these kinds of problems in the context of various types of projects. It is well known, but perhaps often overlooked, that rural communities which appear to be "poor" are frequently (despite physical appearance) socially stratified and sometimes segmented into different socio-economic groups reflecting differences in power and access. As long ago as 1975, this was recognized in the World Bank's still-important Rural Development Sector Policy Paper (World Bank, 1975). A well known passage (p 21) declared:

In most cases, the poor are found living alongside the prosperous. They sometimes suffer from limited access to natural resources, but, more frequently, they suffer because they have little access to technology and services. . . . In many cases, vested interests operate to ensure not only that the benefits of productive activity are distributed inequitably, but that the poor are denied access to the inputs, services, and organization which would allow them to increase their productivity. Thus, the socioeconomic system operating in the rural areas is often hostile to the objectives of rural development, serving to reinforce rural poverty and to frustrate the efforts of the poor to move up.

For discussion of the legal implications, see C.J. Dias and J.C.N Paul, *Lawyers in Development and Underdevelopment* in C.J. DIAS, *LAWYERS IN THE THIRD WORLD: COMPARATIVE AND DEVELOPMENTAL PERSPECTIVES* 349-354 (1981).

Of course, it is often extremely difficult to "reach" and organize the "poorest of the



Notable in much of this literature is the absence of efforts to enable meaningful participation by those designated as "targets" or "clients" of proposed development strategies at the crucial phases of design and planning. Rarely does one read a study reflecting any systematic effort by project designers to generate genuine, free, grassroots dialogue and use that dialogue as a means to generate knowledge of the needs, grievances and proposals of the rural poor; their perceptions of what should and can be done. Notable, too, is the absence of much development-focused literature which takes seriously the fact that the rural poor have rights to engage in that kind of dialogue.

Of course, there is no claim here that the rural poor, by dint of experiencing their poverty, know all that needs to be known to define their problems and the solutions to them. Rather, the claim is that the development of full understanding of these problems, and of effective measures to address them, can only come through a sharing of knowledge which generates a new knowledge. That knowledge can only be created through multilateral, interactive dialogue among all concerned. Problems must first be conceptualized; there must be a *shared* understanding of the conditions and needs to be addressed. Then, the measures adopted must be understood, supported, and, indeed, often implemented by those primarily concerned.<sup>112</sup>

Unless rural people are provided with both incentives and means to make changes which *they* identify as necessary, it is doubtful that development projects initiated from the outside can achieve the results desired by the initiators. These lessons have been writ largely in scores of reports, but they are hard to learn because the agencies which design and manage

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poor" and, often, women in many communities. See M. Lipton, *The Poor and the Poorest* (World Bank Discussion Paper No. 25) (World Bank 1988). The role of NGOs in helping to catalyze and organize participation by these groups in rural development projects is probably crucial. See *infra* note 112. See also, D.D. Gow and J. Van Sant, "Decentralization and Participation: Concepts in Need of Implementation Strategies" in MORSS AND GOW, *supra* note 102, at 107-147.

112. "Indigenous knowledge" — e.g., of local agronomy, labor requirements, land tenure problems and other subjects is often extensive, but it may not be reduced into a systematic form which makes its readily available to outsiders. It must be generated by participatory processes. See, e.g., *Indigenous Knowledge Systems Development* (D.W. Broshenka ed. 1986). Similarly, rural poor people may be able to provide indispensable knowledge of their needs," but that knowledge must be discovered through interaction. See, e.g., Chamber, *supra* note 83. On these processes, see, Md. A. Rahman, *A Methodology of Research with the Rural Poor*, published in UNICEF's journal, *Assignment Children*, No. 41 (1978) and also Rahman and Sarilakus: *A Pilot Project for Stimulating Grassroots Participation in the Philippines* (ILO Technical Cooperation Evaluation Report. Rural Employment Policies Branch, Employment, and Development Dept (ILP, 1983). For a World Bank study of a foundation-funded project thought to embody these kinds of grassroots participatory development of project goals and strategies — i.e., stimulating the community to work out a series of interrelated project activities, see WORLD BANK OPERATIONS EVALUATION STUDY, THE AGA KHAN RURAL SUPPORT PROGRAM: AN EVALUATION (WORLD BANK, 1987). COMPARE, A.D. HISCHMAN, *GETTING AHEAD COLLECTIVELY: GRASS ROOTS EXPERIENCES IN LATIN AMERICA* (1984).

projects lack procedures and law mandating self-reliant participation by the rural poor.<sup>113</sup>

Just as the exercise of rights and participation are essential in understanding problems to be addressed, so they are usually essential in all later stages of the project. Once again, evaluation studies and case histories sponsored by IDAs makes a compelling case. Thus, a Bank-sponsored study of rural-roads projects documents the need for participation in planning, in mobilizing local labor and technologies, in providing for maintenance and in providing against the risk of landgrabbing by elites. "Strengthening the legal structures" that enable "participatory projects" was the central lesson but, unfortunately, these "legal structures" are seldom put into place.<sup>114</sup> A number of studies of credit for the rural poor document the need to work through endogenous, self-managed organizations of "intended beneficiaries" in order to avoid elite domination and develop understanding and enforcement of rules which will make the project sustainable.<sup>115</sup> The food implications of many agricultural projects (e.g., those which introduce new crops or affect existing labor cycles) can only be understood and mitigated through participatory research and action.<sup>116</sup> A World Bank report on the need to develop agricultural research for women farmers underscores the need for similar measures.<sup>117</sup> Other studies dealing with problems related to the creation of wells and pumps to provide potable water supplies for poor communities urges the need to develop self-managed community services through participatory processes.<sup>118</sup>

A Bank study concerned with strategies to confront environmental degradation and decertification in Africa emphasizes the need for a myriad of micro, "grassroots" projects concerned both with regulating land

113. See, e.g., the quote from Cernea, *infra* note 120, summarizing case studies.

114. See, e.g., C. Cook, et al., *Institutional Considerations in Rural Roads Projects*, World Bank Staff Working Paper No. 748 (1985).

115. See, e.g., INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD), *THE POOR ARE BANKABLE: RURAL CREDIT THE IFAD WAY* (IFAD 1988); IFAD, *THE ROLE OF RURAL CREDIT PROJECTS IN READING THE POOR*. IFAD'S SPECIAL STUDIES SERIES (1985); D.K. Leonard, *Putting the Farmer in Control: Agricultural Institutions in Strategies for African Development 191-196* (R.J. Berg and J.S. Whitaker eds. 1986); S. DUMOUCHEL AND N. THEDE, *WOMEN SAVINGS AND CREDIT IN THE SAHEL: TOWARDS INDEPENDENT DEVELOPMENT. A REPORT OF SOLIDARITY CANADA-SAHEL*. (Study financed by CIDA, 1987); J.M. Lieberson, *A Synthesis of AID Experiences: Small Farmer Credit 1973-1985* (AID Evaluation Special Study No. 41, 1985).

116. See, e.g., S. REUTLINGER, *supra* note 87. (World Bank expert outlines various kinds of adverse food and nutrition impacts to be ascertained in advance; plain implication is that the necessary knowledge can only be generated by participatory processes.) See C.J. DIAS AND J.C.N. PAUL, *Developing the Human Right to Food as a Legal Resource for the Rural Poor: Some Strategies for NGOs* in *THE RIGHT TO FOOD* (P. Alston and K. Tomasevski eds. 1984).

117. See, e.g., J. Jiggins, *Gender-Related Impacts and the Work of International Agricultural Research Centers*. CGIAR Study Paper No. 17 (published by World Bank, 1986).

118. See, e.g., J. Briscoe and D. deFerranti, *Water for Rural Communities: Helping Poor People Help Themselves* (World Bank, 1988).

uses and promoting rehabilitation projects. The only viable approach is to help communities understand the forces contributing to the degradation and ultimate destruction of environments and to help them identify steps which can be taken to halt and reverse the processes. In this approach, participatory community structures become the critical agencies to design and implement projects and empower the critical strategy. "Laws concerning social organization should be examined to . . . reduce barriers to the setting up and recognition of *genuine* grassroots organizations empowered to make and enforce rules, raise revenue [and engage in] collective resource management."<sup>119</sup>

Dr. Michael Cernea has been retained by the World Bank to study needs and strategies for participation. With a number of other colleagues, he has reviewed in detail many case histories of projects reflecting a broad spectrum of Bank activities including roadbuilding, resettlement, forestry, aid for small fishermen, and others. He concludes that the only way to make these (and most other) rural development projects successful and sustainable is to "put people first" *in every stage of the project cycle*. That means "empowering people to mobilize their own capacities . . . manage resources, make decisions, and *control activities that affect their lives*. What actually happens when people do *not* come first has been shown convincingly by analysis of many development programs."<sup>120</sup> Another Bank specialist has confirmed this doctrine. Indeed, the problem is not whether to promote participation, but how to develop procedural guidelines which can be adapted to different settings in order to produce the elements of community empowerment which enables participation.<sup>121</sup>

International development agencies are usually in a position to promote popular participation. They initiate their own studies and other activities leading to the conceptualization and design of projects. They extend loans through elaborate agreements which may be the product of much negotiation. But local people are never made parties to these negotiations. IDAs often help to design the management of projects and monitor implementation of them, and they often conduct their own extensive evaluations. But project-affected people have little input into these processes. Though the evaluators often expound the rhetoric of "participation;" they repeatedly find that projects have been flawed, because it was lacking. The practice of participation remains an elusive goal.

Failure to provide for participation leads to the tragedies of failure to calculate all the human costs of projects, failure to reduce the risks inherent in the projects and failure to compensate victims fully and fairly. Lack of participation also leads to failure to develop alternative, local, self-managed structures as vehicles for administering many kinds of rural

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119. See J. Gorse and D. Steeds, *Decertification in the Sahelian and Sudanian Zone of West Africa* (World Bank Technical Paper No. 61, 1987).

120. Cernea, *supra* note 25, at 13 (emphasis added).

121. S. Paul, *Community Participation in Development Projects: The World Bank Experience*, World Bank Discussion Paper (1987).

development projects, and the absence of these structures prevents effective administration of the project. The economic losses imposed on the poor as a result of denial of rights of participation are often serious enough. Perhaps even more serious, over the long haul, is the continuous fostering of governmental lawlessness and lack of accountability; the undermining of basic conditions necessary to promote an understanding, assertion, and exercise of other basic human rights of the rural poor throughout the Third World.<sup>122</sup>

### PART III

#### DEVELOPING LAW GOVERNING THE HUMAN RIGHTS OBLIGATIONS OF IDAs

Over the past two decades, the IDAs have broadened their official concept of "development" and their roles in promoting "it."<sup>123</sup> Many have recently avowed their intention to address environmental concerns, the needs of women, human rights, and the promotion of local "participation." Special offices have been established within IDAs and "experts" recruited to promote these objectives.<sup>124</sup>

Experience suggests however, that in large, "professionalized" and

122. For discussions of these empowerment themes from a variety of "development" perspectives, see, PEOPLE-CENTERED DEVELOPMENT: CONTRIBUTIONS TOWARDS THEORY AND PLANNING FRAMEWORKS (D.C. Korten and R. Klauss eds. 1986). See also, G. GRAN, DEVELOPMENT BY PEOPLE: CITIZEN CONSTRUCTION OF A JUST WORLD (1983) (contains extensive bibliography of material relevant to this approach).

123. For some significant illustrations, see, R.S. McNamara, *Address to the Board of Governors* (Nairobi, 1973) (signaling a fundamental shift in Bank efforts towards poverty alleviation, with special emphasis on rural poverty) the 1975 Dag Hammarskjold Foundation Report entitled *What Now: Another Development?* published in *Development Dialogue* Nos. 1 and 2, 1975, (and succeeding issues of that journal dealing with "Another Development" approaches during the 1970s) (influential among Scandinavia IDAs); the ILO, "Basic Needs" Report of 1976, *supra* note 20 (signaling an international consensus favoring basic needs approaches); the "Alma Ata Report," Report of the International Conference on Primary Health Care, Alma Ata, USSR, September 1978) (Geneva, World Health Organization, 1978) (prescribing new, community-based strategies, again, very influential, at least in normative terms); the 1979 FAO World Congress Report on "Agrarian Reform and Rural Development," *supra* note 21; the various conferences on Women in Development, e.g., *Report of the World Conference of the United Nations Decade for Women: Equality, Development, and Peace*, Copenhagen, 14-30 July, 1980. U.N. Doc. A/Conf. 99/35. See also, E.R. MORSS AND V.A. MORSS, U.S. FOREIGN AID: AN ASSESSMENT OF NEW AND TRADITIONAL STRATEGIES (1982) (changes in U.S. aid priorities; the "New Directions" policies of the late 1970s). For a general discussion of these trends, see J.A. MATHIESON, BASIC NEEDS AND THE NEW INTERNATIONAL ECONOMIC ORDER" AN OPENING FOR NORTH-SOUTH COLLABORATION IN THE 1980s (1981).

124. It is common for a large organization, e.g., AID, various U.N. organizations and the World Bank, to recognize a neglected problem by creating a new, advisory office to make studies and formulate policies to deal with the concern. When nothing else happens within the agency, that is, in the internal law governing the duties and accountability of the inevitably segmented units which operate according to well established procedures, the efforts of the new office are likely to be marginal. J. Horberry, *The Accountability of Development Assistance Agencies: The Case of Environmental Policy*, 12 *ECOLOGY L.Q.* 817 (1985).

compartmentalized organizations, there are often significant delays between announced changes in policy and actual changes in performance. As well, it is often very difficult to formulate internal procedures to implement new goals. Scholars who have studied the problems encountered in attempts to change the orientation and practices of large, multi-purpose IDAs seem to suggest the need to develop three kinds of reform-oriented activities:<sup>125</sup> 1) education and research; 2) new standards, processes and accountability systems and 3) external pressures.

A. *Education and research* are independent starting points. Experience suggests lack of serious attention has been devoted, within many IDAs, to the implications of human rights law and particularly to the impacts of project activities on the basic rights of those people directly affected. Lawyers probably paid little attention to the task of protecting rights through agency rules and procedures. Little attention is also paid by "experts" and scholars or even members of the international human rights community. It is hardly surprising that project planners, managers, and evaluators have shown so little sensitivity to rights issues, even when these are obviously raised by the reports they prepare.

Today, the leaders of most IDAs would probably recognize, at least at some abstract level, an agency obligation to protect and promote rights. The real task is for agency staff to learn how to translate that obligation into new practices. One obvious way to do this is to review the rights implications of different kinds of projects which typify agency experience. A good place to begin would be the examination of those kinds which are more obviously "risk-prone." Just as agency staff who work on dam or other large-scale infrastructure projects must, *as a matter of professional competence*, learn about the environmental consequences of such programs, so they *must* know about human rights law to be able to inform themselves about the rights implications of the physical and social changes they propose. The World Bank staff studies by Carlos Escudero<sup>126</sup> (dealing with landholders' rights) and Michael Cernea (dealing with the rights of those involuntarily resettled)<sup>127</sup> are illustrations of the kinds of project-oriented human rights knowledge which can be generated within agencies. But others are urgently needed, notably studies which focus on ways to provide participation and due process at a much earlier point in time in a project cycle, so that, before any detailed planning goes forward, the people whose rights are put at risk may challenge the very legality of the proposal in accordance with procedures and standards previously suggested. They have fundamental rights to do so.

The rights implication of all kinds of projects should be examined. What, for example, are the implications of a project to train community

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125. Some of these problems are reviewed in Morss and Gow, *supra* note 73, in studies which tie them to the literature of administration and organization theory.

126. See Escudero, *supra* note 73.

127. See Cernea, *supra* note 73.

development workers in Honduras?<sup>128</sup> Or, to introduce new varieties of rice, requiring more expensive inputs, into a Philippine village?<sup>129</sup> Or, to introduce new technologies and new forms of marketing into a "small fisherman" community?<sup>130</sup> The World Bank's constant lament, that its project planners, managers, and minorities constantly discriminate against women by ignoring them,<sup>131</sup> is a confession that these staff people are ignorant of both their legal obligation in regard to the *rights* of women and ways to assure their promotion as well as protection.

*B. Standards, Processes, and Accountability.* Studies of the kind suggested enable a second approach: the development of agency law. This law could be developed through external legislation or, more importantly, internal codes governing responsible staff. This "agency law" would spell out the agency's commitments to human rights and establish mandatory standards and procedures by which to achieve them.

The World Bank's recent statement on "Environmental Policies and Procedures" may provide a suggestive, though incomplete, analogue.<sup>132</sup> In these documents, the Bank first showed the linkage between environmental protection and sustainable development. The report then identified the broad spectrum of harms produced by different kinds of development activities, noting that "projects in most sectors" have "significant environmental implications." It is argued that this proposition is equally valid when applied to human rights. The statement further noted that the damage done by environmental "wrongs" (and consequently similar to the harms caused by human rights violations) may not be immediately apparent, for planners must focus on long, as well as short-term, outcomes.

The bank's statement then proposes various principles and guidelines to govern all Bank project operations at all stages of the project cycle. These require, *inter alia*, country-oriented, sectoral studies of environmental concerns and the development of an "environmental component"

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128. See Ayres, *supra* note 71, at 225. Ayres suggests that this rural education project, (in Honduras, at that time) would "have about as much larger meaning as . . . a poverty-oriented project in some favored ward of Mayor Daley's Chicago. . . ." In fact, depending on various factors, such a project could (a) have a decidedly adverse impact on the exercise of rights by the rural poor, or (b) it could be designed to enhance capacities of different groups in rural communities to participate and to assert their rights in relation to projects.

129. See, e.g., A.J. LEDESMA, *SECOND VIEW FROM THE PADDY* (Institute of Philippine Culture, 1983). (Empirical studies of impacts of introduction of new technologies, seeds, and other changes into rice-farming villages in various regions.

130. See R. Polnac, *SOCIAL AND CULTURAL CONSIDERATIONS IN SMALL-SCALE FISHERIES DEVELOPMENT*, in World Bank Technical Paper, *supra* note 73.

131. See *supra* note 109. Compare, I PALMER, *THE IMPACT OF AGRARIAN REFORM ON WOMEN* (1985).

132. See *WORLD BANK ENVIRONMENT AND DEVELOPMENT: IMPLEMENTING THE WORLD BANK'S NEW POLICIES*, ENVIRONMENTAL DEPARTMENT POLICY COMMITTEE (1988). For the original policies and processes, see *Environmental Policies and Procedures of the World Bank*. (Office of Environmental and Scientific Affairs, Projects Policy Department World Bank. May 1984); see also Baum and Tolbert, *supra* note 1, at 521-539; Rich, *supra* note 72.

for every project. This component must, through appropriate processes, identify and then spell out the steps to be taken to secure rehabilitation and the protection of environments from the consequences of a wide variety of harmful practices. The development of the "environmental component" is seen as a continuing process, from the initiation stages to "post-audit." A supervisory office (of unspecified strength) is charged with these responsibilities.

A human rights approach follows from the above. Internal agency law must: (1) lay down human rights policies and guidelines, (2) mandate operating principles to apply these policies and guidelines to the particular needs of each project and (3) develop a corpus of "project-specific law" for each undertaking. The task of generating a human rights component to the law governing each project must be seen as a continuing process.

The starting point should be the use of participatory, action-oriented research efforts to help mobilize groups of affected people and to generate knowledge of their perceptions of their interests in relation to the proposed project and to generate knowledge of their rights in relation to those needs in reporting on various studies of ways to mobilize rural participation, Mr. Anisur Rahman of the ILO has shown how the creation of this functional kind of legal knowledge within groups can significantly influence the dynamics of their participation. Participation "empowers" people psychologically by helping them understand the legitimacy of their role and their claims. It helps them focus on concrete problems and specific, community-based strategies to address them. As well, participation enhances group capacity to deal with outside agencies. All of these kinds of changes which must be promoted by development agencies must happen, if the process of creating specific rights law is to move forward.<sup>133</sup>

Numerous studies, including many important IDA reports, attest to the critical role which appropriate, outside NGOs can play in helping to catalyze grassroots groups and center attention on problems to be addressed.<sup>134</sup> It seems clear, though perhaps quite controversial in some countries, that there must at the outset be recognition of rights of NGOs to operate as catalysts, to help communities engage effectively in "participation." The rights of these NGOs are an inherent component of rights of community participation. They are guaranteed as a necessary corollary of ILO rural workers' conventions guaranteeing rights of association at grass roots levels.<sup>135</sup>

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133. Md. A. Rahman, "The Roles and Significance of Participatory Organizations of the Poor in Alternative Strategies of Development." (To be published in the 1987 volume of *Third World Legal Studies*).

134. See, e.g., M. CERNEA, *NONGOVERNMENTAL ORGANIZATIONS AND LOCAL DEVELOPMENT*. (Paper presented at International Symposium on Social Development, Yokohama, March 1988). For its influence within the World Bank, see *THE WORLD BANK'S SUPPORT FOR THE ALLEVIATION OF POVERTY*, *supra* note 107, at 27-28.

135. On this argument, see J.C.N. Paul and C.J. Dias, *ALTERNATIVE DEVELOPMENT: A LEGAL PROSPECTUS*, *THIRD WORLD LEGAL STUDIES*, 1982: *LAW IN ALTERNATIVE STRATEGIES OF*

The tasks of including participation in the design of projects is, perhaps, the crucial stage of developing a dynamic body of project-specific, human rights law. The Bank's environmental statement suggests how this law can be formalized: as the project plan takes shape, so, too, will steps be taken to promote and protect environmental interests. When these measures are understood, the Bank will then insist on "covenants" with borrowers as well as administrative rules and legislative changes, if necessary to assure achievement of measures agreed upon. Ordinarily, all this "law of the project" must be put into place before loan agreements are sent to directors for approval.<sup>136</sup>

Of course, development of these kinds of processes may entail controversial changes in practices long followed by IDAs and governments with which they deal. A policy of informing project-affected people at all stages must replace customs enjoining pervasive secrecy. Encouragement of grassroots mobilization must replace practices of repression or manipulation. The role of outside NGOs working with and for the rural poor must be respected rather than suspected. The need to help project-affected people secure legal resources must be appreciated. Access to decisionmakers must replace exclusion. Conflict must be expected. Negotiation must be the norm. IDAs must play new, proactive roles in promoting these kinds of changes and in making sure that they are confirmed in agreements constituting the law of the project.

Further, it should be recognized that additional, stringent requirements must be established to govern "high-risk" projects, i.e. those projects which will cause widespread displacement or other foreseeable damage to many people. The issues to be confronted here have already been suggested. Certainly, no project of this sort should ever go forward until the full range of human costs, the damages, have been calculated and measures put into place to assure full and prompt compensation. But experience suggests that, where projects are fraught with these risks, it may be impossible to secure adequate redress to victims. A heavy burden should lie with the promoters of such undertakings. The IDAs have the obligation to judge along with the full participation of endangered people when the price of "progress" is too high.

Obligations to protect and promote rights are non-delegable. These obligations cannot be absolved simply by asking for promises from other official agencies of host governments or private actors such as corporations which participate in agricultural "modernization" projects.<sup>137</sup> The actual operations of these agencies must be monitored to assure compliance with rights requirements previously fixed.

Finally, structures must be put into place to secure accountability to agency law. Perhaps a proactive "human rights ombudsman" should be

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RURAL DEVELOPMENT 289, *et seq* (1983).

136. See Baum and Tolbert, *supra* note 1.

137. See *supra* note 95.



established. Perhaps agencies and agency officials should reconsider their immunity from tort liability to the victims of rights abuses caused in part by agency neglect.<sup>138</sup> Perhaps penalties of various sorts should be explicit. As one scholar of the pathologies of large-scale aid organizations has put it: "an agency's accountability system shapes the incentives and penalties facing staff members responsible for the implementation of [new] development policies."<sup>139</sup> Thus, developing accountability is of the essence.

*C. External pressure.* The "incentives" for implementation of new obligations and policies can obviously be sharpened if concerned groups and their surrogates are able to play a more vigorous role in monitoring agency activities.

Until recently, very few NGOs have been positioned to play these roles. But the environmental crises precipitated by a number of large projects has led to the mobilization of a number of international NGOs and to vigorous activities on their part. They have publicized grievances, "lobbied" the World Bank, and brought pressure on legislative bodies which vote its appropriations. Thus the NGOs have been effective, perhaps indispensable, vehicles to force reforms.<sup>140</sup>

Human rights NGOs are now beginning to play similar roles.<sup>141</sup> So far, because their concerns have been less understood and their voices weak, they have exerted too little influence. But it seems clear that the potential role of NGOs and human rights activists is significant and deserving encouragement from foundations and, indeed, from IDAs themselves.

#### PART IV

#### THE HUMAN RIGHTS OBLIGATIONS OF IDAs AND THE PROBLEM OF POLITICAL INTERFERENCE IN THE AFFAIRS OF STATES

The obligations described above mean that, in projects which affect people, IDAs must insist (through negotiation of covenants and other law governing the projects) that processes will be put into place to encourage authentic participation through autonomous collective action of project-affected people. They must also insist that rules will be established to assure the flow of information to them and the generation within groups of a functional knowledge of their rights in relation to interests which may be affected, that claims and grievances will be fairly heard by rights-

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138. Compare, Horberry, *supra* note 124, at 840. Compare, R. Blake, AIDING THE ENVIRONMENT: A STUDY OF THE ENVIRONMENTAL POLICIES, PROCEDURES, AND PERFORMANCE OF THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT 30, *et seq* (1980). (Response of agency to lawsuits by environmentalists.)

139. Horberry, *supra* at 818.

140. *Id.* See Blake, *supra* note 138.

141. See *supra* note 2. (Scandinavian consultations with Third World Human Rights NGOs.) See C. Dias, *Human Rights and Developmental Assistance: Influencing the Policies of the World Bank and the International Monetary Fund* (ICLD, 1988) (paper prepared for a Nordic country seminar on Human Rights and Development aid.)

sensitive arbiters enjoined to be fair, that protections against risks to basic interests will be established, that there will be timely redress for harms done, and that accountability will be imposed (by some appropriate arbiter) on all officials responsible for assuring adherence to these standards and processes. The involvement of "NGOs," both of the grass roots and of the "support" and "social action" varieties, should be seen as essential in projects where interests may be affected, notably to promote and protect rights of women.<sup>142</sup> NGOs must be entitled to and encouraged to develop "legal resources." How else can affected interests be protected? They must participate in the creation of law for the project and in the processes of enforcing it.<sup>143</sup> Of course, the human rights law established for a project may vary considerably in scope and intensity depending on the purposes of the undertaking, the groups and interests directly and particularly affected, and the scale of activities envisioned. Again, the involvement of NGOs in examining these problems seems essential.

In most Third World countries, these prescriptions may be viewed by power-wielders as hostile invasions of their "sovereignty," and, in many countries, such conditions may be seen as plainly subversive, threatening well established systems of law and administration grounded in deeply entrenched norms of official behavior which hold that government information is government property. It is also held that participation must be managed when sanctioned, that autonomous NGOs are suspect, if not illegal, and that group activities must be licensed and made subject to restraints so vaguely defined as to repose unlimited discretion in officials responsible for security and governance. In these systems, official accountability runs not to people, nor to a body of autonomous administrative law incorporating rights, but to the discretion of superior officials in the hierarchy of command.

Further, even if the prescriptions proposed here were acceptable in official circles, it may be difficult to realize them in some, and perhaps many, contexts. Among poor people, official law is often conceived as an extension of an official's power — the means he uses to articulate and justify commands and sanctions. The notion that people can use law to assert *their* claims and impose accountability on officials — the notion that law empowers people — may seem contradictory to all common experience. Where rights have seldom been taken seriously, and popular understanding is lacking, there is usually a widespread aversion to the recourse to law.

Precisely because the *exercise* of rights has to do with stimulating popular action, redistributing power and disturbing patterns of behavior thought to be rooted in "culture," attempts to bring them into the

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142. See e.g., M. Cernea, "Nongovernmental Organizations and Local Development," World Bank discussion of paper (1988).

143. For an interesting analysis of this subject by a renowned Indian jurist and legal activist, see U. Baxi, "Law, Struggle, and Change in India: An Agenda for Activists," a chapter in Dembo, (eds.) *supra* note 5, at 7-27.

processes of development may be vigorously resisted in development circles, as "illegal." Presumably, too, IDAs, like the U.N. itself, are constrained by the U.N. Charter (Art. 46), as well as other precepts of international law, from intervening "in matters which are essentially within the domestic jurisdiction" of states. The World Bank's Charter is even more pointed: Article IV, section 10, declares that the Bank "shall not interfere in the political affairs of any member, and "only economic considerations shall be relevant to its decisions."<sup>144</sup>

A focus on Article IV(10), and the question whether it negates the essential argument offered in this paper and enjoins the prescriptions urged, may provide an appropriate vehicle to analyze the "political interference" problem. The Bank is the wealthiest and most influential IDA. Article IV(10) of its Charter must indeed be properly interpreted to resolve the issues posed here; and, its distinguished Vice President and General Counsel seems to be telling us, albeit unofficially, that Article IV(10) prohibits the Bank from using its lending powers to require borrowers to protect and promote "political and civil rights" in relation to projects.<sup>145</sup>

Is this the "law" which should govern the Bank? A number of arguments weigh against that unhappy, perhaps overly rigid — hence, unrealistic, conclusion.

1. *Historical perspectives.* We must remember that, when the Charter was written and the Bank created in 1945, the dominant concern was to deal with the devastation of World War II.<sup>146</sup> The clause, which is now Article IV (10), was drafted to assure the USSR and other socialist states (e.g., Yugoslavia) that the Bank would not meddle with their political systems.<sup>147</sup> That pledge remains binding today in respect to all member governments.

When article IV (10) was written, the Bank's role in Asia, Africa, and even Latin America, was dimly perceived at best. The Third World had hardly come into a political existence. The concept of a "development project" and the Bank's role in relation to "projects" was quite differently conceived, because its task was to revive "developed" economies, not minister to "undeveloped" one in very different settings.<sup>148</sup>

144. The World Bank's Charter, *i.e.*, The Articles of Agreement of the International Bank for Reconstruction and Development, cited in Baum and Tolbert, *supra* note 1.

145. See Shihata, *The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements*, 17 DEN J. INT'L L. AND POL'Y 39 (1988). It seems fair to say that he acknowledges the Bank's obligation to protect people who are to be evicted and involuntarily resettled by project activities, and he does seem to be saying that the Bank, through projects, should protect and promote "social and economic" rights. I believe, for reasons hopefully made clear in Part 1, that the protection of these rights can never be secured without protecting "political and civil" rights, notably rights of participation.

146. See Morgan & Asher, *supra* note 1, at 23. See also art. III, Section 1(a) and, especially, 1(b) of the Bank's Charter.

147. See Morgan & Asher, *supra* note 1, at 27-28.

148. *Id.* Most of the Bank's early lending centered on European countries. Its Latin

When article IV (10) was drafted, the U.N. was more an aspiration than a reality. There was no body of international human rights law, no corpus of "universal" rights. The Charter obligations of members of the U.N. to promote, collectively, human rights were inchoate. The questions which trouble us here — whether and how international development assistance should be linked to human rights — were never envisioned. So, it can hardly be said that article IV (10) was written to resolve them. Rather that language, just like other provisions of the Bank's Charter, should be interpreted to make sense today in the light of four decades of subsequent history which have witnessed the emergence of a very different Bank, operating in a very different international legal order for very different purposes and in very different ways.

Particularly during the past two decades, the Bank's perception of its role in promoting "development" and its concept of a "development project" have expanded significantly. In the 1960's, the Bank emphasized "growth-oriented" projects and often pressured Third World governments to establish autonomous state corporations to administer in order to "de-politicize" its projects.<sup>149</sup> In 1973, Robert McNamara's famous Nairobi address signalled a significant change from "growth" to "distribution" and "redistribution." He talked about the need for both IDAs and Third World governments to "reorient [their] development policies" to conform to new Bank priorities. He talked about the imperative of "land reform" in some countries, reminding his audience that "land reform is not exclusively about land, but it is about the uses and abuses of power, and the social structures through which it is exercised." He talked about new forms of project administration to make credit, services, and water available to "small farmers." He talked about the need for "popular participation, local leadership, and decentralization." He reminded his intended audience, Third World governments, that realization of these very new objectives would require new policies often requiring "courageous political leadership."<sup>150</sup>

McNamara's policies were certainly *not* initiated by Third World governments, nor by the Bank's operational staff. Rather, they were pressed upon both.<sup>151</sup>

In the 1970s, the Bank became proactive in conceptualizing and initiating rural development and other poverty-oriented projects. Its rhetoric anticipated and legitimized "Basic Needs" approaches to "development." The Bank also began making elaborate studies of country economies, us-

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American members pressed for "development" lending, but this was a lesser priority until European recovery proceeded.

149. *Id.* at 189-90, 151-52. See also, Ayres, *supra* note 77, at 1-4, quoting a well known excerpt from A.D. HIRSCHMAN, DEVELOPMENT PROJECTS OBSERVED (1967) which questioned the theory that development projects could ever escape "politics" and suggesting the importance of promoting "political accountability" to intended beneficiaries and others affected.

150. See *supra* note 123.

151. *Id.* at 4-11, and Chapter 9.

ing this exercise to engage in continuing "dialogues" with national policy-makers. It initiated extensive lending for "social overhead" projects concerned with rural education, health, and population controls. It designed complex "integrated development" and "area" projects. It published "Policy Papers" concerned with "Rural Development," "Land Reform," "Health," and other sectors, which were quite candid in recognizing that many of the problems to be addressed in these "sectors" had more to do with politics than economics.<sup>152</sup>

Indeed, the business of designing and negotiating poverty-oriented development projects was often charged with politics. One area of controversy was in the definition of project goals. Another was the determination of the appropriate organizational form and powers of the agency (or agencies) in the recipient country which would actually administer the project and spend the Bank's loan. The Bank was often aggressive in demanding loan agreements which satisfied its aspirations.<sup>153</sup>

In the 1980s, the Bank has continued to play a proactive role in defining the ends and means of its lending. Its much discussed 1981 report, *Accelerated Development in Sub-Saharan Africa: An Agenda for Action*,<sup>154</sup> in effect, prescribed a package of reforms (presumably as a precondition for sustained Bank help in the future) which had direct, controversial political implications. It has also played a much more active role in helping countries to deal with debt crises and IMF conditions. More recently, the Bank's environmental policy statements have made it clear (at least, in theory) that projects must meet more rigorously defined standards and adhere to Bank-prescribed standards and processes. A number of other Bank statements have also made clear an aspiration to promote participation — notably, of women — in projects.<sup>155</sup> Further, its announced guidelines (designed to protect the interests of project-affected people who are evicted from their lands and involuntarily resettled) reflect a recognition that the Bank cannot ignore the more obvious human rights implications of its "risk-prone" projects.<sup>156</sup>

Indeed, the development of an international corpus of "universal" human rights law has paralleled the Bank's evolution in the 1970s and, now, conjoined with the very concept of development. It is worth recalling that the "International Bill of Rights" only came into force in the latter 1970s, as the Covenants came to be ratified in sufficient number to take effect and as other basic instruments (e.g., the 1979 U.N. Women's Convention) were promulgated. The application of human rights to develop-

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152. See, e.g., the Bank's 1975 Rural Development paper cited and quoted, *supra* note 111.

153. Ayres, *supra* note 77, at Chapter 9 (entitled, "The Politics of Poverty-Oriented Projects").

154. Published by the World Bank in 1981.

155. See, e.g., *The World Bank's Support for the Alleviation of Poverty*, *supra* note 88.

156. See *supra* note 78.

ment processes through various international instruments is an even more recent historical phenomenon. But there is surely now an international consensus that rights must be seen as means as well as ends of "development."

Lawyers in IDAs — notably, the Bank — cannot ignore this history and the forces behind it, when, today, they address questions relating to their agency's legal responsibilities to people whose basic interests are affected by activities the agency promotes.

2. *Political perspectives.* The Bank and all IDAs, violate law when they advertently finance activities, or engage in practices, which violate universally recognized rights. And, in the context of projects, rights can only be protected where their exercise is promoted.

Indeed, the U.N. Charter *obligates* both IDAs and member states to promote rights which have become well established within the U.N. system.<sup>157</sup> It is this clear obligation, rather than the feeble processes of U.N. enforcement machinery, which gives "force" to human rights law and legitimizes demands that it be obeyed by governments. No member state can legitimately refuse or avoid this obligation, and it is hardly coercive to insist that the duty be respected.<sup>158</sup>

So, while the subject is obviously "political," it cannot be said to be unlawful "political interference" for an IDA to insist, as a condition of a project loan, that project-oriented law be put into place to secure recognized rights of project-affected people. Indeed, it should be unlawful to fail to insist on such protections.

Of course, the processes for negotiating components of human rights law governing a project may entail demands for controversial changes in patterns of administrative behavior. There may be disagreements among lawyers over particular interpretations and applications of human rights to particular situations, or over the appropriate means of protection. These, like other legal stipulations in loan agreements and covenants, can be matters for negotiation — but always subject to a "bottom line": that the IDA's legal arbiters be satisfied, themselves, that rights implicated will indeed be protected by the agreement negotiated.

3. *Economic perspectives.* The Bank's Charter, Article IV(10), also commands directors and officers to employ "economic considerations" exclusively in making "decisions." The clause is obviously a corollary, reinforcing the "political interference" injunction. It, too, must be interpreted in light of its original purpose, subsequent historical experience, and relevant legal developments.

The clause was intended to enjoin use of "non-economic" (e.g., ideological) criteria as grounds to determine eligibility for Bank membership

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157. *Supra* note 7.

158. See Schachter, *International Law Implications of U.S. Human Rights Policies*, 24 N.Y.L. SCH. L. REV. 63 (1978).

or for loans, and, presumably, it commands that Bank loans must be confined to the promotion of "economic development." None of these mandates preclude use of human rights standards in the analysis and structuring of "development" projects, and both contemporary law and the lessons of experience now obligate that task.

From the 1970s onward, the Bank has recognized that economic growth and related criteria cannot be the sole test of a project's acceptability. Indeed, projects to provide services, including benefits not easily quantifiable for the poor, are presumably legal, even where their relation to growth may be problematic.<sup>159</sup> Further, the Bank's internal law commands analysis of the social, as well as environmental, impact and "costs" of a project to determine acceptability. Projects which produce unredressed impoverishment as well as growth are now unacceptable.<sup>160</sup>

Indeed, experience has taught that human rights should be factored into "costs" and "social" analyses. The lesson is implicit in the Bank's own literature. Thus, "participation" and doing equity to women have become major concerns.<sup>161</sup> Plainly, the full "social costs" of "risk-prone" projects can never be estimated properly, unless rights are used to measure "costs." In lawful societies, law is used to quantify damages for wrongs done (including privileged wrongs such as expropriations), and the assessment of wrongs done depends on whose rights have been violated and in what ways. Similarly, the Bank's own extensive literature is a ready source to demonstrate the need to promote rights as both ends and means of poverty-oriented projects if these are to be sustainable as well as successful on other counts.

Obviously, the "economic considerations only" clause was never intended to immunize the Bank from accountability to law. No doubt, the drafters of the Charter would have readily agreed that no project could be financed, no matter what its contribution to a country's "economic growth," if slaves were to be used for the work of the enterprise, nor even if laborers were to be worked under conditions which violated existing ILO standards. The Charter implies exactly the contrary.<sup>162</sup> While "economic considerations" (now quite liberally defined) have always been used to determine what kinds of projects shall be financed, these considerations (however defined) can never preclude use of human rights standards to determine the legality of the project's design, how its real costs shall be determined, and how it shall be administered.

4. *Cultural perspectives.* It has sometimes been argued that the position taken here would mean that IDAs would have to start forcing "western" concepts of rights and "western" remedial law on "non-western"

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159. See Baum & Tolbert, *supra* note 1, at 417, *et seq.* Compare The World Bank's World Development Report 1984 (World Bank, 1985) (discussing problems of developing population policies).

160. Baum & Tolbert, *supra* note 1, at 471.

161. See *supra* note 155.

162. Compare art. I(iii) of the Bank's Charter.

peoples and cultures. Not only would this constitute "political interference" in a country's affairs, it would produce the anomalous result that rights principles would be invoked to force unwanted law and alien values and structures on communities.

The argument seriously misconceives the role of IDAs and the function and character of international human rights law in relation to development processes.

The central thrust of the Human Right to Development is simply that people must be enabled to participate in development decisions which directly and peculiarly affect their basic interests, their security in land, their habitat and food systems, their access to basic services, their physical and economic well-being, and their culture. Only through full exercise of rights of participation can people protect these interests.<sup>163</sup> Participation enables them to identify and claim, in their terms, the protections necessary to secure those interests. This participatory approach to the identification, assertion, and development of human rights in relation to development processes can hardly be characterized as "cultural imperialism."

On the contrary, it is the *ex parte*, unilateral imposition of development projects, designed, and managed by "western" elites and bureaucracies, backed up by the full force of the "modern" (but alien, "western") state which constitutes a form of cultural imperialism, as well as a source of dangers inflicted on vulnerable project-affected people. It reflects a species of paternalism and arrogance for elites in charge of planning and administering development projects to say that local "culture" requires the exclusion of project-affected people from decisions which may impact so heavily on their interests.

IDAs can insist on protection of these interests without requiring any importation of western legal forms. What is required is assurance of endogenous structures and processes which make endogenous, effective participation and protection of basic interests possible. The development of these protections must be a participatory process, so that the protections promised can be consonant with local language, culture, and ways of resolving conflict to be effective.

This participatory approach to the development of human rights in development processes enables affected people to determine themselves how the broad commands of international human rights law should be interpreted and applied within their social context. It entails a conjuncture of efforts by rights-sensitive officials and the very people whose rights are affected. That is, perhaps, the most significant way that human rights can be brought into a living existence and become "legal resources" for the vast majority of the Third World's poor.

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163. See *supra* note 112-118, and accompanying text.