

HUMAN RIGHTS AND DEVELOPMENT: A ROLE FOR THE WORLD BANK?

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Development banks are sometimes criticized for not taking into account the human rights records of prospective borrowers. This article lays out the conceptual and practical issues that frame the debate on whether and how to incorporate concern for human rights into development lending and projects. After discussing the evolution of human rights in international law and the linkages between development and rights (especially—but not only—social and economic rights), the author makes the case that the World Bank's development objectives would benefit from a re-evaluation of the axiomatic relevance of human rights to socio-economic development.

It is becoming increasingly clear that human rights are integral to the development work of the World Bank in a number of ways. Despite widespread resistance within that institution to the dialogue of "human rights" because of its "political" connotations and alleged encroachment on the Bank's Articles of Agreement, there is actually a great deal of overlap between the development mandate of the Bank and the imperative of international respect for and promotion of human rights. Slowly, but steadily, the issue of human rights is being thrust upon the world's development institutions, as it has been upon governments. The reasons

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for this, as will be shown throughout this essay, are not merely normative, but pragmatic — that is, not only respect for international human rights *per se*, but concern for enhancing the effectiveness, efficiency, and sustainability of development itself. Most recently, human rights dialogue entered the development arena at the Consultative Group meetings of Western donors concerning Kenya and Malawi, which were chaired by the World Bank in November 1991 and May 1992, respectively. Responding to events and trends in those countries, bilateral donors collectively decided to suspend new aid to the repressive regimes. Bilateral donors have much more leeway to consider political conditionality for loans than does a multilateral and avowedly non-political institution such as the World Bank. The mandate of the World Bank is to offer economic and technical assistance in order to stimulate development and raise the standard of living of the world's poorest people. Can the World Bank attend to human rights without losing credibility as a non-political entity and without undermining its own mandate?

This essay offers responses to that question. It is first and foremost an inquiry into the inter-relationship between human rights and socio-economic development. Particular attention is focused on Sub-Saharan Africa, where crises of governance have demonstrably affected the pace of development. The purpose of this tract is to determine in what ways the overall effectiveness of the World Bank's development objectives can be strengthened by greater awareness of human rights. Section One presents the concept of human rights, including its origins and legal evolution, in both global and African contexts. Section Two examines the nature of the relationship between human rights and development, emphasizing economic and social rights and the connection between those rights and the accepted goals of socio-economic development. What are the indices of economic and social rights? What are the indices of development? How, if at all, do they coincide? Is there a trade-off between human rights and development or are the two mutually supportive? After laying out the major conceptual framework in Sections One and Two, the third section addresses the changing context within which the World Bank operates and the institutional issues faced by the Bank in addressing human rights concerns in concert with development. Some brief policy recommendations, as well as questions for further study, conclude the essay. The complexities — both theoretical and practical — of applying human rights paradigms to development are daunting. But hopefully, a more comprehensive view of the choices faced by the World Bank in this realm, a view which takes the debate above the level of a single choice between whether "to aid or not to aid" a repressive regime, will make some contribution to this complex field of study.

I. HUMAN RIGHTS

EVOLUTION IN INTERNATIONAL LAW

International Consensus Emerges

In 1948, the UN Universal Declaration of Human Rights (UDHR) granted the rights of the individual a new importance in international law.¹ Human rights have since been codified more specifically in numerous global and regional covenants, treaties, and declarations. In 1966, two documents, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), were signed at the United Nations. The covenants, which entered into force in 1976, made clear the obligation of the state toward the individual. Additionally, some parties signed the Optional Protocol to the ICCPR. This landmark human rights instrument, though signed by only a minority of states, granted the right of the individual in certain circumstances to make a claim to the UN against his or her state if that state party to the Protocol violated the individual's rights. The Universal Declaration, the two covenants, and the Optional Protocol together constitute the "International Bill of Human Rights." Universal acceptance of human rights was advanced over the years as regional charters and national constitutions affirmed these rights or adapted the rights into a framework which was acceptable under their normative systems. Both ratification of the documents and enactment of national legislation giving substance to the rights contained in the international documents should remain a priority for human rights activists worldwide.

In 1975, the culmination of the so-called "Basket Three" provisions of the Helsinki Final Act introduced new and more positive steps toward the universal acceptance of human rights, with the Soviet bloc agreeing in principle to a qualified range of individual civil and political rights lobbied for by the West and submitting to a limited amount of intrusive international monitoring. Prior to that, the Soviets had insisted on interpreting human rights as primarily collective rights of an economic and social nature, while the United States usually preferred to interpret them as individual rights, predominantly civil and political in nature. This ideologically-motivated split may have played a part in crippling the movement for global realization of human rights, especially economic and social rights, during the Cold War. To Cold Warriors in the West, to admit the importance of economic and social rights was to risk legitimizing the totalitarian communist systems allegedly founded on the basis of such rights. America's policy toward Third World regimes under Reagan was tainted by this world-view.

African Human Rights Law Expands

The evolution of human rights instruments in Africa has been some-

what different from that of the global instruments, with domestic jurisdiction of states superseding human rights as a working principle of the Organization of African Unity (OAU). Almost all leaders jealously guard their ability to exercise free reign inside their borders. In that regard, the near obsession of post-colonial African leaders with sovereignty is neither surprising nor unique. Nevertheless, the 1963 OAU Charter had espoused adherence to the UN Charter and to the Universal Declaration of Human Rights. Despite this pretense, it was not until 1981 that the OAU was shamed into adopting an African Charter on Human and People's Rights, after witnessing throughout the 1970s the destructive implications of allowing tyranny to go unchecked in the name of national sovereignty (Welch and Meltzer 1984, Chapter by Edward Kannyo: 128-151).

In Africa, concern for human rights beyond one's borders had long been limited to condemnations of the white South African apartheid regime and Portuguese colonialism. Human rights debacles in Idi Amin's Uganda and Jean-Bedel Bokassa's Central African Empire, among others, finally pushed the OAU heads of state into action. The task, as some people saw it, was to formulate a human rights standard that was more distinctly African and not colonial, emphasizing communal rights and obligations.² In 1979, the OAU convened a human rights conference in Monrovia, Liberia to pursue the idea of an African charter and commission on human rights, almost two decades after African jurists in Lagos first recommended a separate African convention in 1961 (United Nations 1990, preface). The resulting charter enshrined the rights of the individual, the rights of the family and of women, and the rights of peoples before addressing in Chapter II the duties of the individual to family, society, and the State. It has taken another ten years for African heads of state to develop a consensus on implementing more fully the principles of the African Rights Charter.³

HUMAN RIGHTS: AN INTERNATIONAL RESPONSIBILITY

The cumulative effect of these international human rights instruments has been to enhance the probability that human rights may no longer be treated as purely a matter of states' domestic jurisdiction (under Article 2(7) of the UN Charter). Yet even after the creation of these documents, it took much longer for the domestic jurisdiction excuse for inhumanity within sovereign borders to be eroded in practice. In fact, it is only since the end of the Cold War that international practice has had the potential to match international promise as laid out in Article 55 and 56 of the UN Charter regarding international cooperation and responsibility for protection and promotion of human rights.

A Closer Look at the Language of Rights

What does it mean to "have a right?" First, the right may be guaranteed in law, either domestic or international and either written or customary.

The second sense in which one may be said to have a right is the more meaningful one: a right may be "effectively enjoyed," which means it is not only professed, but protected, fulfilled, and enforced. What if one is guaranteed the right by law, but in practice the right is denied or unfulfilled? Some would argue that to have a right is meaningless if one cannot also enjoy it in practice. But others have countered insightfully that the establishment of the right in law or in declarations is a valuable *step toward* fulfillment of the right in practice. That is, declaring something as a "right" instead of merely as a "good" gives it an enhanced legitimacy and creates a legal obligation on the part of the state and international community to fulfill it. The UN Universal Declaration and Covenants on human rights were crafted to confer legitimacy on the rights contained in them and to help ensure the eventual (not necessarily immediate) enjoyment of those rights in practice.

A list of some of the standard threats or obstacles to effective enjoyment of human rights might include: government actions, government inaction, laws, lack of laws or inadequate enforcement of the law, actions of private entities (such as corporations or rebel groups), local customs and traditions (especially in the case of women's and children's rights), and abject poverty.

Categories of Human Rights

Human rights have somewhat arbitrarily been separated into three categories, despite the obvious connections between them: 1) civil and political rights, sometimes dubbed "first generation" rights, 2) economic, social, and cultural rights, or "second generation" rights, and 3) collective/solidarity rights, or "third generation" rights to aspirational or collective goods such as peace (UN Declaration, 1984), a clean environment, and development (UN Declaration, 1986).

How are the first two sets of rights related? The African Charter on Human and Peoples' Rights states that "civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality." Similarly, the Preamble to the 1986 UN Declaration on the Right to Development asserts that "all human rights and fundamental freedoms are *indivisible and inter-dependent*." A useful way to think about the two categories of rights is presented by Rhoda Howard (1983). Howard suggests that the rights are "interactive, not sequential"; that it is inappropriate to think one set will automatically follow once the first set of rights is realized. "The 'full-belly' thesis," she writes, "is that a man's belly must be full before he can indulge in the 'luxury' of worrying about his political freedoms. Yet there is an alternate view that human dignity, or perhaps 'self-respect,' is a fundamental requirement of human nature." (Howard 1983, 469) In other words, liberty and rights may in fact be

construed as basic human needs just as food and shelter are. Economic rights such as the right to food and an adequate standard of living *serve and are served by* the development of the individual's civil and political rights.

Howard and others warn that the emphasis placed by certain African elites or governments on *first* achieving economic advancement "may well be merely a cover for denial of those basic civil and political liberties which will allow the dispossessed masses to act in their own interest." (Howard 1983, 478) Another analyst, Shridath Ramphal, has said of the symbiotic relationship between rights: "Only if criticism is seen as fundamental to a healthy society—rather than as being subversive of it—are decisions likely to be taken that are *so sufficiently informed by the public will as to be supportive of the public interest.*" (International Commission of Jurists 1981, 22) "In this context," writes James Paul, "the alleged dichotomy between 'economic' and 'political' rights should be seen as mischievous jurisprudence." (Paul 1988, 80) That insight into the relationship between socio-economic rights and civil-political rights proves invaluable in the assessment of the place of universal human rights in socio-economic development discussed in Section Two.

Positive versus Negative Rights: International Responsibility Reconsidered

A distinction is sometimes drawn between those rights which require positive action for their fulfillment ("positive" rights) and those which merely require avoidance of action ("negative" rights). Generally, civil and political rights are considered "negative" rights, requiring only that the government not interfere with individual freedoms such as speech and assembly, or that the government refrain from certain actions like torture, extrajudicial execution, "disappearances," arbitrary detentions, etc. Economic, social and cultural rights, on the other hand, are generally considered "positive" rights since they entail obligations on the part of the state to actively protect and promote the individual's right to work, to an adequate standard of living, to education, to health, and to equal pay for equal work, etc.

It is comparatively easy to determine whether civil and political rights are not being respected in a given country. Though the scale of violations is normally difficult to measure (due to official secrecy and restriction of information), the facts of torture, killing, genocide, or denial of due process and the culpability of the government in these activities is often discernible once procedures for complaint and remedy have been clearly established. But how does one determine whether economic and social rights are being respected? Furthermore, which party or parties have a binding obligation to ensure that these rights are realized? Much work remains to be done on this troublesome question; however, there are some preliminary guidelines in international human rights law. For instance, the 1948 Universal

Declaration of Human Rights (Article 22) states:

Everyone, as a member of society, has the right to social security and is entitled to realization, *through national effort and international cooperation* and in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality (emphasis added).

Building upon that theme, the 1966 economic and social rights covenant posits in Article 2:

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

The operative phrase in defining the scope of national obligation is "to the maximum of its available resources." This, alas, has proven to be a decidedly political determination.

Who, then, bears the primary responsibility for a country's lack of jobs or food? Does the responsibility for famine belong to government policy, to nature, or to international economic conditions? Of course, all of these factors often contribute in varying measure to the severity of famine. But equally often, local laws, customs and practices determine the scope of the crisis and dictate which societal groups will suffer first and most from famine (i.e., rural communities, women and children).⁴ It should be noted that the entire international community not just the individual state, under Articles 55 and 56 of the UN Charter, has a duty to "promote universal respect for, and observance of, human rights and fundamental freedoms for all." From the above discussion it follows that some of the responsibility for realizing rights belongs to people other than the government of the nation experiencing the deficiencies in satisfaction of human rights. On that basis, let us turn in Section Two to a discussion of human rights as they relate to development.

II. THE LINKAGE BETWEEN HUMAN RIGHTS AND DEVELOPMENT

DEVELOPMENT: WHO IS IT FOR?

The individual has come to be accepted as the ultimate subject and the primary beneficiary of development. Broadly stated, the goal of development is improvement in the quality of life. How does one measure that? A concern for the rights of each individual illuminates the importance of paying attention to the distribution of costs and benefits of development. For instance, if the introduction of a new technology turns what was once a woman's task into a man's task (because of prevailing culture or because the new technology is prohibitively expensive or not made available to women), and, therefore, deprives those women of their livelihood and subsistence, is the new technology worth introducing? The answer is not obvious. It depends on the severity of the harms versus the reach of the benefits, as well as on the alternatives. But in the absence of concern for the individual, there would be no reason to ask the question; the aggregate growth in output would speak for itself.

In the 1970s, the shift in the development community's emphasis from growth-centered development to "human development" and poverty-reduction revealed the interconnection between development and the satisfaction of human needs. Then World Bank President Robert McNamara was influential in advancing this basic needs approach. The 1990 *Human Development Report* issued by the UN Development Programme (UNDP) added further weight to the idea that development entails many aspects of the human condition besides aggregate measures of economic well-being, thereby establishing new "human development indicators." (Carstairs 1990, 40-46) Some targets of human development for the year 2000 include universal basic education for men and women, primary health care and safe water for all, elimination of serious malnutrition, expansion of job opportunities, and a 50 percent reduction of absolute poverty.⁵

Development and Human Rights: Separate Evolution

Development work and human rights advocacy have to a large extent developed autonomously, with separate institutions for each at both the national and international level. For instance, in the United Nations framework there is the UN Development Programme, quite separate from the Commission on Human Rights and the Committee on Economic, Social and Cultural Rights. There have been prominent conferences exploring the linkages between trade and development and between environment and development, but for many decades there was little concerted movement for *human rights and development*. At the national level, there is in the United States an Agency for International Development and

a State Department Bureau of Human Rights and Humanitarian Affairs. Separate institutions and bureaucracies with separate mandates have tended to obscure the links between the two. In fact, the mandates and goals of human rights advocates and development agencies were conceived by many to be conflicting or even mutually exclusive. As it turns out, this was probably due to a narrow conception of human rights as purely civil and political rights, and of development as purely economic development.

Once the conceptual parameters of both approaches are sufficiently broadened, the "trade-off" appears a little less dramatic. With the emergence of the "Right to Development," the lines between the two fields were effectively blurred (for the worse, according to Jack Donnelly, who articulates his views in Welch and Meltzer's 1984 text). The preamble to the 1986 UN Declaration on the Right to Development asserts that "*in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.*" Substantial endeavors, both conceptual and practical, must be undertaken to understand the complex relationship that exists between promoting development and human rights establishment.

Far from being mutually exclusive and inherently irreconcilable, the human rights and development approaches to the advancement of human well-being actually share many of the same objectives and targets.⁶ That message was clear in a 1974 United Nations Special Report on the question of the realization of economic, social and cultural rights in developing countries. Emphasizing the importance of incorporating social objectives such as societal justice and equality with economic objectives in national development planning (the so-called "Unified Development Approach"), the Special Rapporteur wrote:

A unified national development plan should, therefore, provide for all a purposeful and continuous education, an acceptable standard of health and nutrition, proper housing, social insurance and social welfare and the right of individuals to participate in social, cultural and political activities. These desiderata should be considered not as the by-products of economic growth to be postponed for later stages of development but as the basic policy tools for mobilizing human resources, a type of resource that the less developed countries have in abundance but utilize the least (Ganji 1974, 299).

The model of some newly industrialized countries (NICs), such as the "Asian Tigers," which reached remarkable rates of economic growth while continuing to deny basic civil and political liberties, might seem to contradict this argument about the centrality of civil and political rights to development success. But there are problems with drawing from the NICs

the lesson that denial of rights advances the cause of development. First, economic growth is by no means the only measure of development progress. Moreover, decades of denial by other developing countries of both human rights and broad political participation have not brought those countries anywhere near the NICs economically. With the slow realization of the conceptual convergence of human rights and development approaches comes the recognition that fulfillment of basic human rights should be seen as an end and a means of development, not its antithesis. There remain differences in emphasis, to be sure. For example, the majority of the international human rights community continues to focus on quite limited conceptions of human rights as civil and political rights. Likewise, recognition by the development community of the political determinants of socio-economic development, "the governance dimension," was late in coming.⁷

Nevertheless, widespread institutional barriers between human rights and development show signs of crumbling. The U.S. Agency for International Development, for instance, created a "Democracy and Governance Program" under the aegis of its Africa Bureau. Canada's development agency, meanwhile, now defines promotion of human rights as part of its mandate and prescribes an impressive human rights training course for its staff. Encouragingly, one of the objectives of the 1993 UN World Conference on Human Rights is to examine the relation between development and the enjoyment of all the rights enumerated in the International Covenants on Human Rights. What does not yet exist is a consensus about the best way to link the two concerns in practice without compromising the achievement of either.

The World Bank's General Counsel Ibrahim F. Shihata implicitly addresses both the complementarity and contradiction of the human rights and the development focuses in a 1988 article on the World Bank and human rights. On the one hand, he suggests that the Bank's development work has "played a leading role in the promotion" of human rights, particularly universal economic and social rights such as the right to education, the right to the highest attainable standard of health, and the right to an adequate standard of living (Shihata 1988, 39). "The World Bank Group, the International Development Association (IDA), and the International Finance Corporation (IFC)," he states, "have financed efforts to fulfill the universal right to economic development and a broad range of human rights associated therewith in the amount of 203 billion dollars." (Shihata 1988, 39)

Highlighting the interconnection between poverty-reduction and fulfillment of human rights, he acknowledges that some basic human rights, such as the right to an adequate living standard, education, nutrition, and health, are closely interwoven with the problem of the alleviation of poverty itself. His study concludes with the observation that "[no] bal-

anced development can be achieved without the realization of a minimum degree of all human rights, material or otherwise, in an environment that allows each people to preserve their culture while continuously improving their living standards." (Shihata, 66)

On the other hand, if human rights are construed to mean primarily civil and political rights, the situation at first glance seems to be reversed. The General Counsel reports that far from "playing a leading role" in the civil and political rights sphere, the Bank is severely limited in its ability to address this category of rights because of its Articles of Agreement. According to General Counsel Shihata's 1987 legal opinion, violations of human rights (*qua* civil and political rights, according to my reading of his interpretation) may become a matter of concern for the Bank if such violations have preponderant effects on the country's economy or on the feasibility of project implementation. "But," he writes, "the degree of respect paid by a government to human rights cannot *by itself* be considered an appropriate basis for the Bank's decision to make loans to that government or for the voting of its Executive Directors." (Shihata, 46-47)

It is worth quoting a portion of Shihata's article in order to understand the conception of human rights on which his legal opinion is based:

As Professor Reisman observed, "There is a limit to 'institutional elasticity,' i.e., the extent to which institutions are created and still used for other purposes can be 'stretched' in order to get them to perform human rights functions, especially when those functions are accomplished *at the expense* of their manifest functions." Ignoring the limitations to this "institutional elasticity" could only be detrimental to the Bank and its members as a whole. This is especially true in matters where the views differ sharply and political prejudice often colors the judgment of governments. While a loan to an authoritarian government may be seen as a form of support to that government, a development loan from the World Bank which is made to finance or facilitate investments and, thereby, improve the people's standards of living casts a different light. Arguably, if a loan is rejected, solely on the basis of the authoritarian and suppressive character of the government involved, the result may only add another injury to the country's population who [are] already the victims of actions of their own government and the *inaction* by the Bank. Further, such a decision would violate the Articles. [emphasis added] (Shihata, 47)

Several aspects of this argument merit closer attention. The implications in the above passage are that concern for human rights (if viewed only as civil and political rights) interferes with development aims, and that development loans inherently foster human advancement. Implicit in such an argument is the assumption that the Bank has only two options when facing a repressive government: (1) continue to make the loans, thereby

advancing the cause of economic and social rights for the population; or (2) cut off assistance to the country, thereby setting back the fulfillment of economic rights. The passage begs the question: is development only consistent with economic and social rights, while concern for civil and political rights is somehow inimical to development? In order to assess the overlap between human rights and development, we should compare the indices used to measure the performance of both. What does "progress" look like to the developmentalist and the right-ist? What trends should one look for in measuring this progress?

MEETING BASIC NEEDS, PROMOTING BASIC RIGHTS

Developmentalists, generally speaking, are concerned with meeting basic needs, while human rights advocates strive for realization of basic rights. Are basic needs and basic rights the same?⁸ Human rights have their origin in human needs and in obstacles to satisfaction of those needs (Shue 1980). The language of human rights, it will be remembered, is used to define that which is essential to a dignified existence. The "essentials" include both material needs, such as food, water, and shelter (a group of rights that Henry Shue labels "subsistence") and non-material needs such as the right to physical integrity and to freedom of thought. Fundamental rights are designated as such because they are meant to empower people to meet basic human needs.⁹

Measuring Human Rights

Some of the indications that human rights are being met in a particular country are, in the field of *Civil and Political Rights*: constitutional-legal guarantees, protection of, and practice of rights to assembly and association, freedom of expression, freedom of the press, the right to vote, the right to leave and return, the rights to citizenship, equal protection of the law, a fair open trial, and personal integrity and security rights. All of these can be monitored and measured by looking at constitutional provisions and signatures on international human rights instruments, and by examining enforcement of written and customary law. The number or rate of executions, cases of mistreatment and torture of prisoners, or prosecutions for exercising guaranteed rights gives one side of this picture.

In the field of *Socio-economic rights*, indices of human rights performance are less clear and standards less uniform. But a good place to start in measuring a nation's success in meeting this category of rights is to examine disaggregated statistics which reveal possible discrimination in enforcement of rights such as the right to education, access to the highest attainable standard of health care, and access to food across the gender divide, the urban/rural split, and regional or ethnic divisions. Some quantifiable measures include national data on the number of children—

both boys and girls—in school, rates of inoculation against disease and malnutrition, and provision of social security. In addition to discrimination at the national level, measurement would also have to take into account differential enjoyment of rights within the household, including especially access to food and free choice of work, where women and children may require special protection.

Measuring Development

Measuring development is also an evolving and imprecise science. Some *economic indicators* are: growth of gross national product, growth in per capita income, employment trends, and equity considerations such as distribution of income. *Social indicators* of development are captured by various “quality of life” measurements such as, data indicating the incidence and depth of poverty (with special emphasis on bringing the absolute worst off up to some minimum level), increase in life expectancy, literacy and education rates, a calorie intake/nutrition index, trends in maternal, infant, and child mortality rates, access to food, water, and housing, and the ratio of medically trained personnel to population. Spanning all these indices, fairness should be seen as a key element of development, with progress pursued for all without differentiation on basis of sex, race, ethnic group, religion, language, place of birth, or national or social origin (UNDP 1992; Ganji 1974). Finally, a relatively new measure of development performance includes *good governance indices* such as an objective and efficient judiciary (the rule of law), bureaucratic accountability and efficiency, and freedom of information and expression (Landell-Mills and Serageldin 1992).

Are development indicators adequately attentive to considerations of equity? Can they address distribution of the costs and benefits of development across gender, race, ethnic, age, and regional lines? Can they address intra-household distributional equity? With those questions in mind, we can attempt to determine how human rights standards can illuminate the decisions of development policy-makers.

WHAT CAN A HUMAN RIGHTS PERSPECTIVE ADD TO DEVELOPMENT?

In what ways can the overall effectiveness of the World Bank’s development work (from analysis and statistical modeling to project design, appraisal, and review) be strengthened by awareness of the human rights dimension? Some possibilities, deduced from the analysis above, are:

1. *Increased attention to distribution of costs and benefits of development* (equity) and, more specifically, possible *discrimination in project design and implementation*. Attention to the discriminatory intent or effect of development programs is not just a normative matter of promoting social justice.

Rather, non-discriminatory development "sets the basis for national integration and consolidation, which is in turn fundamental for national independence and development." (Ganji 1974, 299)

2. *New focus on the human rights aspect of reducing poverty* and meeting "basic needs rights" to food, health, education, and security in land (Paul 1988, 80 and 98). Henry Shue addresses the reason for employing the term "rights" even if basic needs could theoretically be provided without bringing up the notion of rights: "Simply to provide something is not the same as to provide it as a *right*. To provide something as a right means to provide social guarantees for its enjoyment against standard threats, and these guarantees must include adequate arrangements for the effective performance of all three types of correlative duties." (Shue 1980, 76) According to Shue's analysis, every basic right has three correlative duties: (1) duties to avoid depriving, (2) duties to protect from deprivation, and (3) duties to aid the deprived (Shue, 52). He continues, "[To] enjoy something only at the discretion of someone else, especially someone powerful enough to deprive you of it at will, is precisely *not* to enjoy a *right* to it." (Shue, 78)

3. Recognition of the human right to participation and its centrality to sustainable development.¹⁰ The UN Economic Commission for Africa (UNECA) views participation in development as a way to "encourage the people to increase their development effort and to accept whatever sacrifices that may be implied by the programs, thereby consolidating and deepening the process for national self-reliance" (Skogly 1991, sec. by UNECA: 24). Only if people are aware of their rights can they become *self-reliant* in working for improved access to the material goods and services necessary for their survival and in promoting a more equitable distribution of the fruits of development. Development projects should not be envisaged as perpetual handouts. If development has an endpoint, it is the time when people of developing nations become empowered to sustain the means of their own survival. This involves not only fostering productive technologies, institutional development, sound infrastructure, and renewable resources, but the *building of human resources*. To summarize, supplying the disadvantaged with basic goods helps them meet their needs for today; securing recognition of their *rights* to those goods empowers them to provide for themselves.

Regarding the Bank's studies on promoting participation, James Paul comments that "[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" [emphasis added] (Paul 1988, 76). If participation was addressed as a human right instead of as a good, what changes would be brought about in the Bank's attitude toward popular participation in development?

Following a line of analysis similar to Shue's, Sigrun Skogly argues:

When it comes to the practical implication of dealing with human rights in a development perspective, this recognition of the nature of rights [as entailing duties and claims] may be painful and difficult to deal with both for development workers and for financial institutions. Not only are they "helping" out in a difficult situation, but the population they are dealing with would have some *entitlement* to assistance, and in addition, be entitled to make specific demands and to participate in the decision-making process. Indeed, looking at these issues from the perspective of rights is to take it out of the realm of charity and into the realm of entitlement, in which the beneficiaries have the *right* to be heard. (Skogly 1991, 31)

III. INSTITUTIONAL ISSUES FOR THE WORLD BANK

EXTERNAL PRESSURES

Pressures from outside the Bank brought the human rights debate to the fore. The issue of human rights was first systematically addressed in the development context by bilateral development agencies such as USAID, the Canadian International Development Agency, and the Nordic development agencies. In the multilateral context, the EC's Lomé II Convention and the mandate of the European Bank for Reconstruction and Development have been instrumental in making human rights concerns central to the decision to provide development assistance. In the 1970s, the United States Congress passed legislation conditioning U.S. economic assistance on the human rights performance of recipient countries. Moreover, Section 701 of the U.S. International Financial Institutions Act stipulated that the United States would use its voice and vote in IFIs to advance the cause of human rights.

As mentioned at the outset of this paper, it was the bilateral donors that raised overt human rights considerations in the Consultative Group meetings which the World Bank chaired in November 1991 in the case of Kenya and May 1992 in the case of Malawi. Donors from industrialized countries demanded progress on the human rights front in Kenya and Malawi before they would consider providing new loans. In the case of Kenya, the Bank itself also suspended new lending.¹¹

The Bank's Articles of Agreement explicitly prohibit it from interfering in the political affairs of any member, an injunction meant to ensure the legitimacy of the Bank across the ideological spectrum. The Articles were thorough. Among other rules, (a) loans cannot be influenced by the borrower's political character, (b) decisions must not be influenced by

political interests of donors, and (c) only economic considerations are relevant to the Bank's decisions (Shihata 1988, 46; and Paul 1988, 115). At first glance, the scope for consideration of "political" human rights factors seems narrow, but there are definitely openings.

First of all, what constitutes "political"? The Articles were intended to preclude ideological, partisan, and special-interest considerations from tainting the Bank's role as an impartial economic development agency. Violations of universally recognized human rights—especially, but not only, when the abusing state is a signator of the Human Rights Covenants—hardly count as elements of "political character" which must be categorically ignored. Like the domestic jurisdiction argument for state impunity in violations of citizens' rights, the interpretation of "political character" is in need of modification based on the evolution of universal principles. The World Bank, as an inter-governmental body, certainly faces a delicate balancing act in promoting human rights without blatantly overstepping the lines of national sovereignty. Third World countries have been quick to sound alarm when they feel that the affluent North is attempting to dictate internal policy through political conditionality. But many have already accepted a role for outside interference in internal *economic* policy as the price of continued development assistance, most overtly in their acceptance of structural adjustment programs (SAPs).¹² In the Final Document of the Tenth Non-Aligned Summit in Jakarta, Third World nations emphasized their belief that the promotion of human rights must be based on the principles of "non-selectivity, objectivity, and impartiality." (Lang 1992, 4). Devising a de-politicized human rights policy is no small task and, with the waning of the Cold War, human rights considerations are less likely to reflect the "political interests of the donor" in the manner envisaged by the drafters of the Articles.

Arising precisely from such a re-evaluation of what is political is the recognition that sustainable development requires good governance. The Bank's Long Term Perspective Study on Sub-Saharan Africa, *From Crisis to Sustainable Growth* (1989), illuminated the linkage between legitimate, accountable government and a country's development prospects. Openness, accountability, and the rule of law are essentials of good governance which lead to more efficiency in government and a more effective use of development assistance. These aspects of the management of a nation's resources for development, though labeled as "technical", not political, components of governance (and therefore legitimate areas of concern for the Bank), are, nevertheless, acknowledged to be derived from or related to the Universal Declaration of Human Right (Landell-Mills and Serageldin 1992).

The World Bank could choose, if it wanted, to treat human rights issues only indirectly, as a matter that affects the legitimacy or credit-worthiness

of a borrower. That would be the case, for example, if it was found that a certain level of human rights abuses would lead to instability or civil war, and thus that such abuses made the offending state a bad credit risk. Indeed, to the extent that human rights considerations have a preponderant economic effect on the country, the Bank is already allowed to take them into account when making loan decisions (Shihata 1988, 46-47). What remains in this scenario is to identify the threshold level of human rights violations where one might discern a preponderant economic effect, and, moreover, to identify appropriate methods of sensitizing Bank policies and procedures to human rights concerns.

What Role for the World Bank?

The conceptual linkages presented in Section One of this paper and the changing international context facing the World Bank as briefly outlined above point to the necessity of taking a comprehensive look at how human rights bear upon development and how development work affects the satisfaction of human rights. The policy choices are decidedly more complex than whether to aid or not to aid offending governments. What is envisioned here is a pro-active, positive effort to promote socio-economic rights through Bank dialogue and projects, as well as through genuine participatory development. Unfortunately, many human rights advocacy groups have not developed very comprehensive recommendations for what specific changes in World Bank procedures would help promote rights. However, there seem to be at least three aspects of the Bank's role in the promotion of human rights.

1. Positive promotion of human rights, especially economic and social rights and the right to development.
2. Avoidance of violating human rights directly or indirectly through repercussions of Bank policy- and project-lending.
3. Reaction to widespread violation of human rights.

It is in the first area, positive promotion, that the World Bank enjoys the greatest comparative advantage. Beyond the progressive realization of economic and social rights targeted in the Bank's everyday operations (poverty reduction, increased lending to the world's poorest nations, satisfaction of basic human needs—rights to health, education, and an increasing standard of living), there exist other elements of a pro-active strategy that would help to ensure the equity and sustainability of development:

i) *Data Collection*: Insufficient data, especially disaggregated data, is one factor inhibiting the full implementation of economic and social rights. The Bank is a widely respected source of reliable statistics on those areas covered by the economic rights covenant. Other groups who might be

charged with reporting on the progressive achievement of socio-economic rights, such as NGOs or state signatories to the ICESCR, may be either less capable of collecting adequate data or less objective.

ii) *Technical Assistance*: The Bank's knowledge on issues such as public sector management, judicial/legal reform, institutional development, capacity-building, and governance could be used in addressing the accountability of the government to its people, restructuring of governments to eliminate waste and corruption, and prioritization of spending to maximize gains in the enjoyment of human rights. Such efforts would create an environment capable of sustainable development, a first step toward the effective realization of economic and social rights. At the same time, those efforts will create an enabling environment for the realization of civil and political rights by promoting the need for openness (which entails freedom of expression, freedom of the press, and freedom of association).

iii) *Private Dialogue With Borrower Governments*: This is an arena where the Bank can influence recipient governments by emphasizing the importance of protecting the most disadvantaged elements of society such as women or minorities and the methods of incorporating their needs into a country's development projects.

None of this has to take on the overtones of "conditionality," but might instead be considered as a way of using the Bank's leverage and expertise to advance sustainable development and empower people with the means to secure their own survival.

The second role in advancing rights is negative: avoidance of violating or assisting in the violation of human rights in the execution of the Bank's operations. This means giving adequate consideration to the human rights repercussions of Bank policy and project lending (Paul 1988). Do the policies advocated in technical assistance programs advance the welfare of some at the expense of others? If so, are adequate and enforceable remedies available for those left worse off? Were these costs properly budgeted for? Concern for human rights can reinforce project design and implementation by promoting the inclusion of women (through affirmative action if necessary) in development decisions and implementation. The rights most likely to be affected by Bank programs are the rights to food, land, clean water, health, work, and participation, as well as environmental claims. Special consideration should be focused on the implications of each project for forced resettlement and the rights of indigenous or tribal peoples.

Some preliminary recommendations are to (1) include project-affected people in planning, design, and implementation or provide adequate information to project-affected people in a timely manner, (2) budget for prompt and adequate compensation for those harmed by development undertakings, and (3) establish rule of law (either in international law relating to development agencies' obligations or as part of each project's legal agreement) that makes the development process more open and

accountable.

Finally, the Bank can react to a country's poor human rights record. There are several ways of doing this, some more feasible than others. We have already mentioned the idea of suspending development assistance. The debate over this option essentially amounts to a replay of the controversy surrounding the merits of constructive engagement. But, constructive engagement (in this case, continuation of development loans) is not a unidimensional act. Instead of reacting to an abysmal human rights situation by denying economic assistance, one might target assistance to particular objectives while cutting non-essential programs. It must not be forgotten that money donated or lent for development purposes frees up funds elsewhere in the national budget that the government can use to wage its campaign of destruction. Funding legal reform projects or increasing contacts with private entities, NGOs, and community groups are some avenues already being considered, though not yet in the explicit context of promoting human rights.

Even assuming there were no statutory limitations on possible Bank responses to tyranny, troubling questions persist. What standard of human rights are we talking about? How serious must the abuses be before it would be legitimate and uncontroversial for the Bank to respond? More fundamentally, will the cause of human rights be advanced by curtailing aid? Under the circumstances, does the prospect of reduced outside aid stand a chance of influencing the offending government? Or is the action symbolic without being substantive? When will assistance be reinstated? This returns us full circle to the question of which human rights criteria are relevant. All of these questions would be useful areas for further study.

CONCLUSION

It is hoped that this essay has dispelled four common illusions. The first involves the misconceptions that "human rights" are just political and civil liberties which fall completely outside the Bank's mandate. The second illusion is that human rights are merely vague ideals, and no nation or international organization has any legal obligation to respect or promote them. A third misunderstanding is the concern that human rights would drastically interfere with or undermine the Bank's development objectives. The final commonly held belief is that regardless of the utility or desirability of human rights, the World Bank has no authority or expertise to contribute to their promotion or protection and, therefore, should remain out of the fray.

Human rights, it is clear, are economic and social as well as civil and political. Rights are interdependent and mutually reinforcing, as well as being linked closely with socio-economic development. Both human rights and development advocates aim at improving the quality and conditions of human life. Advancement of human rights improves the

prospects for long-term development, while socio-economic development, in its broadest sense, lays the groundwork for effective enjoyment of human rights. Grassroots participation, poverty-reduction, empowerment of the disadvantaged, universal literacy and access to health care are not only desired end products of economic growth but are actually critical *inputs into* growth and sustainable development. The World Bank's development agenda would be well served by a fresh look at the axiomatic relevance of human rights. The institution and the nations which comprise it have a multiplicity of tools at their disposal for addressing human rights, even within the current legal strictures of the Articles of Agreement. Furthermore, international conditions are ripe for a new, non-conflictual approach to human rights.

Notes

1. The UDHR was passed unanimously by the UN General Assembly with eight abstentions, including South Africa, Saudi Arabia, and several Soviet bloc states. Although the Declaration was not, when adopted, a binding legal document, it has now acquired the status of customary international law.
2. For a good discussion of the tension between "traditional" African models of human rights and obligations and Western liberal models, see Rhoda Howard, "Is there an African Concept of Human Rights?" in R.J. Vincent, (ed.) *Foreign Policy and Human Rights* Cambridge, Mass.: Cambridge University Press, 1986, pp. 11-32.
3. A current analysis of the state of the African Commission on Human and People's Rights is in Nana K.A. Busia, "Improving Human Rights," *West Africa*, October 12-18, 1992, pp. 1713-15.
4. On the subject of government responsibility and the right to food, see Paul, pp. 85-6.
5. A good summary of the UNDP's 1992 *Human Development Report* can be found in *Africa Research Bulletin*, vol. 29, no. 4, pp. 10797-8.
6. For a good discussion of this subject, see Ibrahim Shihata, "The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements." in *Denver Journal of International Law and Policy* vol. 17, no. 1 (Fall): 39-66.
7. The World Bank's Long Term Perspective Study *Sub-Saharan Africa: From Crisis to Sustainable Growth* Washington, D.C.: World Bank, 1989 made a substantial contribution to the debate.
8. Consult Stewart 1989; Streeten 1980; and Green 1980-1981.
9. "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 protection by declaration of the general right" (Paul, 80).
10. For component rights deemed necessary to guarantee meaningful participation, see Paul, pp. 81-2.

11. One viewpoint on this issue is offered in Joseph Eldridge, 1992, "World Bank Catching on to Democracy, Human Rights." *The Los Angeles Times* (22 September): A11.
12. The social costs associated with SAPs—a separate issue which deserves further attention—are addressed by Cornia et. al., 1984, and Khan, 1990.

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