Global Perspectives on Human Rights

Ved Prakash

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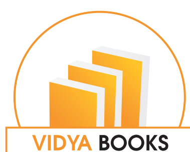

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Issues in Human Rights

Adequate Housing

"The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity". This definition is in line with the core elements of the right to adequate housing as defined by General Comment No. 4 of the United Nations Committee on Economic, Social and Cultural Rights. The Committee, while adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context.

They include the following:

- Legal security of tenure;
- Availability of services, materials, facilities and infrastructure;
- Affordability;
- Habitability;
- Accessibility;
- Location; and
- Cultural adequacy.

The Obligations of States

The legal obligations of Governments concerning the right to housing consist of:

- The duties found in article 2.1 of the Covenant;
- The more specific obligations to recognize, respect, protect and fulfil this and other rights.

Three phrases in article 2.1 are particularly important for understanding the obligations of Governments to realise fully the rights recognized in the Covenant, including the right to adequate housing:

1. *"Undertakes to take steps... by all appropriate means"*: In addition to legislative measures, administrative, judicial, economic, social and educational steps must also be taken. States parties are also obliged to develop policies and set priorities consistent with the Covenant. They are also required to evaluate the progress of such measures and to provide effective legal or other remedies for violations. With specific reference to the right to adequate housing, States parties are required to adopt a national housing strategy.
2. *"To the maximum of its available resources*: The obligation of States is to demonstrate that, in aggregate, the measures being taken are sufficient to

realise the right to adequate housing for every individual in the shortest possible time using the maximum available resources.

3. *"To achieve progressively"*: This obligation "to achieve progressively" of the Covenant, in particular the reference to the right to the "continuous improvement of living conditions". The obligation of progressive realization, moreover, exists independently of any increase in resources.

The four additional obligations that Governments have to fulfill in order to implement the right to adequate housing are: The obligation to *recognize* the human right dimensions of housing and to ensure that no measures are taken with the intention of eroding the legal status of this right. The adoption of measures and appropriate policies geared towards progressive realization of housing rights form part of this obligation.

The obligation to *respect* the right to adequate housing means that Governments must abstain from carrying out or otherwise advocating the forced or arbitrary eviction of persons and groups. States must respect people's rights to build their own dwellings and order their environments in a manner which most effectively suits their culture, skills, needs and wishes.

The obligation to *protect* effectively the housing rights of a population means that Governments must ensure that any possible violations of these rights by "third parties" such as landlords or property developers are prevented. Where such infringements do occur, the relevant public authorities should act to prevent any further deprivations and guarantee to affected persons access to legal remedies of redress for any infringement caused. The obligation to *fulfil* the right to adequate housing is both positive and interventionary. The Committee on Economic, Social and Cultural Rights has asserted that identifiable governmental strategies aimed at securing the right of all persons to live in peace and dignity should be developed.

Children's Rights

Children's rights are the human rights of children with particular attention to the rights of special protection and care afforded to the young, including their right to association with both biological parents, human identity as well as the basic needs for food, universal state-paid education, health care and criminal laws appropriate for the age and development of the child. Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from abuse, though what constitutes "abuse" is a matter of debate.

Other definitions include the rights to care and nurturing. "A child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier." Cornell University, a child is a person, not a subperson, and the parent has absolute interest and possession of the child, but this is very much an American view. The term "child" does not necessarily mean minor but can include adult children as well as adult nondependent children.

There are no definitions of other terms used to describe young people such as "adolescents", "teenagers," or "youth" in international law, but the children's rights movement is considered distinct from the youth rights movement. The field of children's rights spans the fields of law, politics, religion, and morality.

Rationale

As minors by law children do not have autonomy or the right to make decisions on their own for themselves in any known jurisdiction of the world. Instead their adult caregivers, including parents, social workers, teachers, youth workers and others, are vested with that authority, depending on the circumstances.

Some believe that this state of affairs gives children insufficient control over their own lives and causes them to be vulnerable. Louis Althusser has gone so far as describe this legal machinery, as it applies to children, as "repressive state apparatuses".

Structures such as government policy have been held by some commentators to mask the ways adults abuse and exploit children, resulting in child poverty, lack of educational opportunities, and child labour. On this view, children are to be regarded as a minority group towards whom society needs to reconsider the way it behaves. However, there is no evidence that such views are widely shared in society. Researchers have identified children as needing to be recognized as participants in society whose rights and responsibilities need to be recognized at all ages.

Historic Definitions of Children's Rights

Consensus on defining children's rights has become clearer in the last fifty years. A 1973 publication by Hillary Clinton stated that children's rights were a "slogan in need of a definition". Some researchers, the notion of children's rights is still not well defined, with at least one proposing that there is no singularly accepted definition or theory of the rights held by children.

Children's rights law is defined as the point where the law intersects with a child's life. That includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation, and effective rehabilitative services; care and protection for children in state care; ensuring education for all children regardless of their origin, race, gender, disabilities, or abilities, and; health care and advocacy.

Types of Rights

Children's rights are defined in numerous ways, including a wide spectrum of civil, cultural, economic, social and political rights. Rights tend to be of two general types: those advocating for children as autonomous persons under the law and those placing a claim on society for protection from harms perpetrated on children because of their dependency. These have been labeled as the right of empowerment and as the right to protection.

One Canadian organization categorizes children's rights into three categories:

- *Provision*: Children have the right to an adequate standard of living, health care, education and services, and to play. These include a balanced diet, a warm bed to sleep in, and access to schooling.
- *Protection*: Children have the right to protection from abuse, neglect, exploitation and discrimination. This includes the right to safe places for children to play; constructive child rearing behaviour, and acknowledgment of the evolving capacities of children.
- *Participation*: Children have the right to participate in communities and have programmes and services for themselves. This includes children's involvement

in libraries and community programmes, youth voice activities, and involving children as decision-makers.

In a similar fashion, the Child Rights Information Network, or CRIN for short, categorizes rights into two groups:

- Economic, social and cultural rights, related to the conditions necessary to meet basic human needs such as food, shelter, education, health care, and gainful employment. Included are rights to education, adequate housing, food, water, the highest attainable standard of health, the right to work and rights at work, as well as the cultural rights of minorities and indigenous peoples.
- Environmental, cultural and developmental rights, which are sometimes called "third generation rights," and including the right to live in safe and healthy environments and that groups of people have the right to cultural, political, and economic development.

Amnesty International openly advocates four particular children's rights, including the end to juvenile incarceration without parole, an end to the recruitment of military use of children, ending the death penalty for people under 21, and raising awareness of human rights in the classroom. Human Rights Watch, an international advocacy organization, includes child labour, juvenile justice, orphans and abandoned children, refugees, street children and corporal punishment. Scholarly study generally focuses children's rights by identifying individual rights.

The following rights "allow children to grow up healthy and free":

- Freedom of speech.
- Freedom of thought.
- Freedom from fear.
- Freedom of choice and the right to make decisions.
- Ownership over one's body.

Other issues affecting children's rights include the sale of children, child prostitution and child pornography.

Difference between Children's Rights and Youth Rights

"In the majority of jurisdictions, for instance, children are not allowed to vote, to marry, to buy alcohol, to have sex, or to engage in paid employment."

Within the youth rights movement, it is believed that the key difference between children's rights and youth rights is that children's rights supporters generally advocate the establishment and enforcement of protection for children and youths, while youth rights generally advocates the expansion of freedom for children and/or youths and of rights such as suffrage. Also, many people who support youth rights, are concerned with adolescents and not children.

Parental Rights

Parents affect the lives of children in a unique way, and as such their role in children's rights has to be distinguished in a particular way. Particular issues in the child-parent relationship include child neglect, child abuse, freedom of choice, corporal punishment and child custody.

There have been theories offered that provide parents with rights-based practices that resolve the tension between "commonsense parenting" and children's rights. The issue is particularly relevant in legal proceedings that affect the potential emancipation of minors, and in cases where children sue their parents.

A child's rights to a relationship with both their parents is increasingly recognized as an important factor for determining the best interests of the child in divorce and child custody proceedings. Some governments have enacted laws creating a rebuttable presumption that shared parenting is in the best interests of children.

Movement

The Children's Rights Movement is a historical and modern movement committed to the acknowledgment, expansion, and/or regression of the rights of children around the world. While the historical definition of child has varied, the United Nations Convention on the Rights of the Child explains, "A child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier."

There are no definitions of other terms used to describe young people such as "adolescents", "teenagers" or "youth" in international law. Thomas Spence's The Rights of Infants is an early English-language assertion of the natural rights of children. In the USA, the Children's Rights Movement was born in the 1800s with the orphan train. In the big cities, when a child's parents died or were extremely poor, the child frequently had to go to work to support himself and/or his family.

Boys generally became factory or coal workers, and girls became prostitutes or saloon girls, or else went to work in a sweat shop. All of these jobs paid only starvation wages. In 1852, Massachusetts required children to attend school. In 1853, Charles Brace founded the Children's Aid Society, which worked hard to take street children in. The following year, the children were placed on a train headed for the West, where they were adopted, and often given work. By 1929, the orphan train stopped running altogether, but its principles lived on. The National Child Labour Committee, an organization dedicated to the abolition of all child labour, was formed in the 1890s.

It managed to pass one law, which was struck down by the Supreme Court two years later for violating a child's right to contract his work. In 1924, Congress attempted to pass a constitutional amendment that would authorize a national child labour law.

This measure was blocked, and the bill was eventually dropped. It took the Great Depression to end child labour nationwide; adults had become so desperate for jobs that they would work for the same wage as children. In 1938, President Franklin D. Roosevelt signed the Fair Labour Standards Act which, amongst other things, placed limits on many forms of child labour.

Now that child labour had been effectively eradicated in parts of the world, the movement turned to other things, but it again stalled when World War II broke out and children and women began to enter the work force once more. With millions of adults at war, the children were needed to help keep the country running. In Europe, children served as couriers, intelligence collectors, and other underground resistance workers in opposition to Hitler's regime.

In the early twentieth century, moves began to promote the idea of children's rights as distinct from those of adults and as requiring explicit recognition. The Polish educationalist Janusz Korczak wrote of the rights of children in his book How to Love

a Child; a later book was entitled The Child's Right to Respect. In 1917, following the Russian Revolution, the Moscow branch of the organization Proletkult produced a Declaration of Children's Rights. However, the first effective attempt to promote children's rights was the Declaration of the Rights of the Child, drafted by Eglantyne Jebb in 1923 and adopted by the League of Nations in 1924. This was accepted by the United Nations on its formation and updated in 1959, and replaced with a more extensive UN Convention on the Rights of the Child in 1989. From the formation of the United Nations in the 1940s and extending to present day, the Children's Rights Movement has become global in focus.

While the situation of children in the United States has become grave, children around the world have increasingly become engaged in illegal, forced child labour, genital mutilation, military service, and sex trafficking. Several international organizations have rallied to the assistance of children. They include Save the Children, Free the Children, and the Children's Defence Fund.

The Child Rights Information Network, or CRIN, formed in 1983, is the group of 1,600 non-governmental organizations from around the world which advocate for the implementation of the Convention on the Rights of the Child. Organization's report on their countries' progress towards implementation, as do governments that have ratified the Convention. Every 5 years reporting to the United Nations Committee on the Rights of the Child is required for governments.

While there is a long history of children's rights in the U.S., scholars contend that there is no "golden age". Many children's rights advocates in the U.S. today advocate for a smaller agenda than their international peers. Groups predominately focus on child abuse and neglect, child fatalities, foster care, youth aging out of foster care, preventing foster care placement, and adoption.

A longstanding movement promoting youth rights in the United States has made substantial gains in the past.Anti-Children's Rights propagandists often raise the spectre of Rights without Responsibilities. The Children's Rights Movement assert that it is rather the case that children have rights which adults, states and government have a responsibility to uphold.

The UK maintains a position that UNCRC is not legally enforceable and is hence 'aspirational' only - albeit a 2003 ECHR ruling states: "The human rights of children and the standards to which all governments must aspire in realizing these rights for all children are set out in the Convention on the Rights of the Child.". 18 years after ratification, the four Children's Commissioners in the devolved administrations have united in calling for adoption of the Convention into domestic legislation, making children's rights legally enforceable.

Several countries have created an institute of children's rights ombudsman, most notably Sweden, Finland and Ukraine, which is first country worldwide to install children at that post. In Ukraine Ivan Cherevko and Julia Kruk became first children's rights ombudsmen in late 2005.The United Nations Convention on the Rights of the Child has outlined a standard premise for the children's rights movement and has been ratified by all but two nations - the United States and Somalia. Somalia's inability to sign the Convention is attributed to their lack of governmental structure. The US administration under Bush has opposed ratifying the Convention because of "serious political and legal concerns that it conflicts with U.S. policies on the central role of parents, sovereignty, and state and local law." However, the new administration may

be taking another look at it.

International law

The Universal Declaration of Human Rights is seen as a basis for all international legal standards for children's rights today. There are several conventions and laws that address children's rights around the world.

A number of current and historical documents affect those rights, including the 1923 Declaration of the Rights of the Child, drafted by Eglantyne Jebb and her sister Dorothy Buxton in London, England in 1919, endorsed by the League of Nations and adopted by the United Nations in 1946. It later served as the basis for the Convention on the Rights of the Child.

Convention on the Rights of the Child

The United Nations' 1989 Convention on the Rights of the Child, or CRC, is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights. Its implementation is monitored by the Committee on the Rights of the Child.

National governments that ratify it commit themselves to protecting and ensuring children's rights, and agree to hold themselves accountable for this commitment before the international community.

The CRC is the most widely ratified human rights treaty with 190 ratifications. Somalia and USA are the only two countries which have not agreed to the CRC. The CRC is based on four core principles, namely the principle of non discrimination, the best interests of the child, the right to life, survival and development, and considering the views of the child in decisions which affect them. The CRC, along with international criminal accountability mechanisms such as the International Criminal Court, the Yugoslavia and Rwanda Tribunals, and the Special Court for Sierra Leone, is said to have significantly increased the profile of children's rights worldwide.

Enforcement

A variety of enforcement organizations and mechanisms exist to ensure children's rights and the successful implementation of the Union. They include the Child Rights Caucus for the United Nations General Assembly Special Session on Children. It was set up to promote full implementation and compliance with the Convention on the Rights of the Child, and to ensure that child rights were given priority during the UN General Assembly Special Session on Children and its Preparatory process.

The United Nations Human Rights Council was created "with the hope that it could be more objective, credible and efficient in denouncing human rights violations worldwide than the highly politicised Commission on Human Rights." The NGO Group for the Convention on the Rights of the Child is a coalition of international non-governmental organisations originally formed in 1983 to facilitate the implementation of the United Nations Convention on the Rights of the Child.

Many countries around the world have children's rights ombudspeople or children's commissioners whose official, governmental duty is to represent the interests of the public by investigating and addressing complaints reported by individual citizens regarding children's rights. Children's ombudspeople can also work for a corporation, a newspaper, an NGO, or even for the general public.

United States Law

Children are generally afforded the basic rights embodied by the Constitution, as enshrined by the Fourteenth Amendment to the United States Constitution. The Equal Protection Clause of that amendment is to apply to children, born within a marriage or not, but excludes children not yet born. This was reinforced by the landmark US Supreme Court decision of In re Gault. In this trial 15-year-old Gerald Gault of Arizona was taken into custody by local police after being accused of making an obscene telephone call.

He was detained and committed to the Arizona State Industrial School until he reached the age of 21 for making an obscene phone call to an adult neighbour. In an 8–1 decision, the Court ruled that in hearings which could result in commitment to an institution, people under the age of 18 have the right to notice and counsel, to question witnesses, and to protection against self-incrimination. The Court found that the procedures used in Gault's hearing met none of these requirements.

There are other concerns in the United States regarding children's rights. The American Academy of Adoption Attorneys is concerned with children's rights to a safe, supportive and stable family structure. Their position on children's rights in adoption cases states that, "children have a constitutionally based liberty interest in the protection of their established families, rights which are at least equal to, and we believe outweigh, the rights of others who would claim a 'possessory' interest in these children." Other issues raised in American children's rights advocacy include children's rights to inheritance in same-sex marriages and particular rights for youth.

Civil Rights

In contemporary political thought, the term 'civil rights' is indissolubly linked to the struggle for equality of American blacks during the 1950s and 60s. The aim of that struggle was to secure the status of equal citizenship in a liberal democratic state.

Civil rights are the basic legal rights a person must possess in order to have such a status. They are the rights that constitute free and equal citizenship and include personal, political, and economic rights. No contemporary thinker of significance holds that such rights can be legitimately denied to a person on the basis of race, colour, sex, religion, national origin, or disability. Antidiscrimination principles are thus a common ground in contemporary political discussion. However, there is much disagreement in the scholarly literature over the basis and scope of these principles and the ways in which they ought to be implemented in law and policy.

In addition, debate exists over the legitimacy of including sexual orientation among the other categories traditionally protected by civil rights law, and there is an emerging literature examining issues of how best to understand discrimination based on disability.

Rights

The Civil-Political Distinction

Until the middle of the 20th century, civil rights were usually distinguished from 'political rights'. The former included the rights to own property, make and enforce contracts, receive due process of law, and worship one's religion. Civil rights also covered freedom of speech and the press. But they did not include the right to hold public office, vote, or to testify in court. The latter were political rights, reserved to adult males.

The civil-political distinction was conceptually and morally unstable insofar as it was used to sort citizens into different categories. It was part of an ideology that classified women as citizens who were entitled to certain rights but not to the full panoply to which men were entitled. As that ideology broke down, the civil-political distinction began to unravel.

The idea that a certain segment of the adult citizenry could legitimately possess one bundle of rights, while another segment would have to make do with an inferior bundle, became increasingly implausible. In the end, the civil-political distinction could not survive the cogency of the principle that all citizens of a liberal democracy were entitled, in Rawls's words, to "a fully adequate scheme of equal basic liberties". It may be possible to retain the distinction strictly as one for sorting rights, rather than sorting citizens. But it is difficult to give a convincing account of the principles by which the sorting is done.

It seems neater and cleaner simply to think of civil rights as the general category of basic rights needed for free and equal citizenship. Yet, it remains a matter of contention which claims are properly conceived as belonging to the category of civil rights. Analysts have distinguished among "three generations" of civil rights claims and have argued over which claims ought to be treated as true matters of civil rights.

Three Generations of Rights

The claims for which the American civil rights movement initially fought belong to the first generation of civil rights claims. Those claims included the pre-20th century set of civil rights — such as the rights to receive due process and to make and enforce contracts — but covered political rights as well. However, many thinkers and activists argued that these first-generation claims were too narrow to define the scope of free and equal citizenship.

They contended that such citizenship could be realised only by honouring an additional set of claims, including rights to food, shelter, medical care, and employment. This second generation of economic "welfare rights," the argument went, helped to ensure that the political, economic, and legal rights belonging to the first generation could be made effective in protecting the vital interests of citizens and were not simply paper guarantees.

Yet, some scholars have argued that these second-generation rights should not be subsumed under the category of civil rights. Thus, Cranston writes, "The traditional 'political and civil rights' can...be readily secured by legislation. Since the rights are for the most part rights against government interference...the legislation needed had to do no more than restrain the executive's own arm. This is no longer the case when we turn to the 'right to work', the 'right to social security' and so forth". However, Cranston fails to recognize that such first-generation rights as due process and the right to vote also require substantial government action and the investment of considerable public resources. Holmes and Sunstein have made the case that all of the first-generation civil rights require government to do more than simply "restrain the executive's own arm."

It seems problematic to think that a significant distinction can be drawn between first and second-generation rights on the ground that the former, but not the latter, simply require that government refrain from interfering with the actions of persons.

Moreover, even if some viable distinction could be drawn along those lines, it would not follow that second-generation rights should be excluded from the category of civil rights.

The reason is that the relevant standard for inclusion as a civil right is whether a claim is part of the package of rights constitutive of free and equal citizenship. There is no reason to think that only those claims that can be "readily secured by legislation" belong to that package.

And the increasingly dominant view is that welfare rights are essential to adequately satisfying the conditions of free and equal citizenship. In the United States, however, the law does not treat issues of economic well-being per se as civil rights matters. Only insofar as economic inequality or deprivation is linked to race, gender or some other traditional category of antidiscrimination law is it considered to be a question of civil rights.

In legal terms, poverty is not a "suspect classification." On the other hand, welfare rights are protected as a matter of constitutional principle in other democracies. For example, section 75 of the Danish Constitution provides that "any person unable to support himself or his dependents shall, where no other person is responsible for his or their maintenance, be entitled to receive public assistance." And the International Covenant on Economic, Social, and Cultural Rights provides that the state parties to the agreement "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

A third generation of claims has received considerable attention in recent years, what may be broadly termed "rights of cultural membership." These include language rights for members of cultural minorities and the rights of indigenous peoples to preserve their cultural institutions and practices and to exercise some measure of political autonomy. There is some overlap with the first-generation rights, such as that of religious liberty, but rights of cultural membership are broader and more controversial.

Article 27 of the International Covenant on Civil and Political Rights declares that third-generation rights ought to be protected: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Similarly, the Canadian Charter of Rights and Freedoms protects the language rights of minorities and section 27 provides that "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." In the United States, there is no analogous protection of language rights or multiculturalism, although constitutional doctrine does recognize native Indian tribes as "domestic dependent nations" with some attributes of political self-rule, such as sovereign immunity.

There is substantial philosophical controversy over the legitimacy and scope of rights of cultural membership. Kymlicka has argued that the liberal commitment to protect the equal rights of individuals requires society to protect such rights. He argues that "granting special representational rights, land claims, or language rights to a minority....can be seen as putting the various groups on a more equal footing, by

reducing the extent to which the smaller group is vulnerable to the larger". Such special rights do not amount to "group rights," in the sense of granting the group any power or priority over the individual. Rather, the rights "compensate for unequal circumstances which put the members of minority cultures at a systemic disadvantage in the cultural marketplace".

Waldron criticizes Kymlicka for exaggerating the importance for the individual of membership in her particular culture and for underestimating the mutability and interpenetration of cultures. Individual freedom requires some cultural context of choice, but it does not require the preservation of the particular context in which the individual finds herself. Liberal individuals must be free to evaluate their culture and to distance themselves from it.

Kukathas criticizes Kymlicka for implying that the liberal commitment to the protection of individual rights is insufficient to treat the interests of minorities with equal consideration. Kukathas contends that "we need to reassert the importance of individual liberty or individual rights and question the idea that cultural minorities have collective rights".

But the system of uniform legal rules that he endorses would keep the state from intervening even when a minority culture inflicts significant harm on its more vulnerable members, e.g., when cultural norms strongly discourage females from seeking the same educational and career opportunities as males.

Barry asserts that "there are certain rights against oppression, exploitation, and injury, to which every single human being is entitled to lay claim, and...appeals to cultural diversity and pluralism under no circumstances trump the value of basic liberal rights". The legal system should protect those rights by impartially imposing the same rules on all persons, regardless of their cultural or religious membership.

Barry allows for a few exceptions, such as the accommodation of a Sikh boy whose turban violated school dress regulations, but thinks that the conditions under which such exceptions will be justified "are rarely satisfied". Barry's position reflects and elaborates Gitlin's earlier condemnation of views advocating distinctive rights for cultural and ethnic minorities. Gitlin condemned such views on the ground that they represent a "swerve from civil rights, emphasizing a universal condition and universalizable rights, to cultural separatism, emphasizing difference and distinct needs".

At the other end of the spectrum, Taylor argues for a form of communitarianism that attaches intrinsic importance to the survival of cultures. In his view, differential treatment under the law for certain practices is sometimes justifiable on the ground that such treatment is important for keeping a culture alive. Taylor goes as far as to claim that cultural survival can sometimes trump basic individual rights, such as freedom of speech.

He defends legal restrictions on the use of English in Quebec, invoking the survival of Quebec's French culture. However, it is unclear why intrinsic value should attach to cultural survival as such. Following John Dewey, Kymlicka rightly emphasizes that liberty would have little or no value to the individual apart from the life-options and meaningful choices provided by culture. But both thinkers also reasonably contend that human interests are ultimately the interests of individual human beings.

In light of that contention, it would seem that a culture that could not gain the

uncoerced and undeceived adherence of enough individuals to survive would have no moral claim to its continuation. Legal restrictions on basic liberties that are designed to perpetuate a given culture have the cart before the horse: persons should have their basic liberties protected first, as those protections serve the most important human interests.

Only when those interests are protected can we then say that a culture should survive, not because the culture is intrinsically valuable, but rather because it has the uncoerced adherence of a sufficient number of persons.

Blacks and Native Americans

The treatment of blacks under slavery and Jim Crow presents a history of injustice and cultural annihilation that is similar in some respects to the treatment of Native Americans. However, civil rights principles played a very different role in the struggle of Native Americans against the injustices perpetrated against them by whites.

Civil rights principles demand inclusion of the individuals from a disadvantaged group in the major institutions of society on an equal basis with the individuals who are already treated as full citizens. The principles do not require that the disadvantaged group be given a right to govern its own affairs. A right of political self-determination, in contrast, demands that a group have the freedom to order its affairs at it sees fit and, to that extent, political self-determination has a separatist aspect, even if something less than complete sovereignty is involved. The pursuit of civil rights by American blacks overshadowed the pursuit of political self-determination.

The fact that American blacks lacked any territory of their own on which they could rule themselves favoured the civil rights strategy. Moreover, the civil war amendments, and the civil rights laws that accompanied them, were meant to incorporate black Americans into the body politic as free and equal citizens.

Although this effort was defeated by Jim Crow, the principle of citizenship for blacks had been enshrined in law. And so, in their struggle to defeat Jim Crow, blacks could and did repeatedly demand that white Americans live up to their constitutional promise of equality. In contrast, for Native Americans, the pursuit of political-self-determination, in the form of tribal sovereignty, overshadowed the pursuit of civil rights.

Even after the coerced tribal removals and federal efforts to impose regimes of individual land ownership, tribes still retained some territorial basis on which a measure of self-rule was possible. Moreover, a line of Supreme Court decisions dating to the early 1800's held that Indian tribes possessed some — albeit very limited — inherent powers of sovereignty. Pursuit of political self-determination rather than civil-rights protections seemed, in the eyes of many Indians, to be the most reasonable strategy for counteracting white oppression.

During the civil rights movement of the 1950's and 60's, there was some tension between Native Americans and blacks due to their different attitudes towards self-determination and civil rights. Some Native Americans looked askance at the desire of blacks for inclusion and thought the desire hopelessly naïve. And activists emerged from the black power movement who had a similar view of the effort at racial inclusion and who called for a form of political self-determination. Such a call was part of a tradition of black nationalism that can still be found today in the United States. Nonetheless, in the United States, unlike civil rights principles, black nationalist

principles have not become part of the law. In 1968, Congress enacted an Indian Civil Rights Act. The act extended the reach of certain individual constitutional rights against government to intratribal affairs.

Tribal governments would for the first time be bound by constitutional principles concerning free speech, due process, cruel and unusual punishment, and equal protection, among others. Freedom of religion was omitted from the law as a result of the protests of the Pueblo, whose political arrangements were theocratic, but the law was a major incursion on tribal self-determination, nonetheless.

A married pueblo woman brought suit in federal court, claiming that the tribe's marriage ordinances constituted sex discrimination against her and other women of the tribe, thus violating the ICRA. The ordinances excluded from tribal membership the children of a Pueblo woman who married outside of the tribe, while the children of men who married outsiders were counted as members.

Martinez had initially sought relief in tribal forums, to no avail, before turning to the federal courts. The Supreme Court held that federal courts did not have jurisdiction to hear the case: the substantive provisions of the ICRA did apply to the Pueblo, but the inherent sovereign powers of the tribe meant that the tribal government had exclusive jurisdiction in the case. The ruling has been both questioned and defended by feminist legal scholars.

In contrast to the United States, the Canadian Indian Act provides that men and women are to be treated equally when it comes to the band membership of their children. This law and the Santa Clara case raise the general issue of whether and when it is justifiable for a liberal state to impose liberal principles on illiberal political communities that had been involuntary incorporated into the larger state. Addressing this issue, Kymlicka argues that "there is relatively little scope for legitimate coercive interference" because efforts to impose liberal principles tend to be counterproductive, provoking the charge that they amount to "paternalistic colonialism." Moreover, "liberal institutions can only really work if liberal beliefs have been internalized."

Kymlicka concludes, then, that liberals on the outside of an illiberal culture should support the efforts of those insiders who seek reform but should generally stop short of coercively imposing liberal principles. At the same time, Kymlicka acknowledges that there are cases in which a liberal state is clearly permitted to impose its laws, citing with approval the decision in a case that involved the application of Canadian law to a tribe that had kidnapped a member and forced him to undergo an initiation ceremony.

Applying Kymlicka's general line of thinking might prove contentious in many cases. Consider Santa Clara. His arguments could be used to support the decision in that case: the exercise of jurisdiction might be deemed "paternalistic colonialism."

But one might argue, instead, that jurisdiction is needed to vindicate the basic liberal right of gender equality. However, it does seem that, if a wrong akin to kidnapping or worse is required before federal courts can legitimately step in, then the Santa Clara case falls short of meeting such a requirement. The argument might then shift to whether the requirement imposes an excessively high hurdle for the exercise of federal jurisdiction. Kymlicka's approach might not settle the disagreement over Santa Clara, but it does provide a very reasonable normative framework in terms of which liberal thought can address the difficult issues presented by the case and, more generally, by the problem of extending liberal principles to Native American tribes.

Free and Equal Citizenship

Civil rights are those rights that constitute free and equal citizenship in a liberal democracy. Such citizenship has two main dimensions, both tied to the idea of autonomy. Civil rights are essentially connected to securing the autonomy of the citizen.

Public and Private Autonomy

To be a free and equal citizen is, in part, to have those legal guarantees that are essential to fully adequate participation in public discussion and decisionmaking. A citizen has a right to an equal voice and an equal vote. In addition, she has the rights needed to protect her "moral independence," that is, her ability to decide for herself what gives meaning and value to her life and to take responsibility for living in conformity with her values.

Equal citizenship has two main dimensions: "public autonomy," *i.e.*, the individual's freedom to participate in the formation of public opinion and society's collective decisions; and "private autonomy," *i.e.*, the individual's freedom to decide what way of life is most worth pursuing.

The importance of these two dimensions of citizenship stem from what Rawls calls the "two moral powers" of personhood: the capacity for a sense of justice and the capacity for a conception of the good. A person stands as an equal citizen when society and its political system give equal and due weight to the interest each citizen has in the development and exercise of those capacities.

Ancient and Modern Citizenship

The idea of equal citizenship can be traced back to Aristotle's political philosophy and his claim that true citizens take turns ruling and being ruled. In modern society, the idea has been transformed, in part by the development of representative government and its system of elections. For modern liberal thought, by contrast, citizenship is no longer a matter of having a direct and equal share in governance, but rather consists in a legal status that confers a certain package of rights that guarantee to an individual a voice, a vote, and a zone of private autonomy.

The other crucial differences between modern liberalism and earlier political theories concern the range of human beings who are regarded as having the capacity for citizenship and the scope of private autonomy to which each citizen is entitled as a matter of basic right. Modern liberal theory is more expansive on both counts than its ancient and medieval forerunners. It is true that racist and sexist assumptions plagued liberal theory well into the twentieth-century. However, two crucial liberal ideas have made possible an internal critique of racism, sexism, and other illegitimate forms of hierarchy. The first is that society is constructed by humans, a product of human will, and not some preordained natural or God-given order. The second is that social arrangements need to be justified before the court of reason to each individual who lives under them and who is capable of reasoning.

The conjunction of these ideas made possible an egalitarianism that was not available to ancient and medieval political thought, although this liberal egalitarianism emerged slowly out of the racist and sexist presuppositions that infused much liberal thinking until recent decades. Many contemporary theorists have argued that taking liberal egalitarianism to its logical cease requires the liberal state to pursue a

programme of deliberately reconstructing informal social norms and cultural meanings.

They contend that social stigma and denigration still operate powerfully to deny equal citizenship to groups such as blacks, women, and gays. Kernohan has argued that "the egalitarian liberal state should play an activist role in cultural reform", and Koppelman has taken a similar position: "the antidiscrimination project seeks to reconstruct social reality to eliminate or marginalize the shared meanings, practices and institutions that unjustifiably single out certain groups of citizens for stigma and disadvantage".

This position is deeply at odds with at least some of the ideas that lie behind the advocacy of third-generation civil rights. Those rights ground claims of cultural survival, whether or not a culture's meanings, practices and institutions stigmatize and disadvantage the members of some ascriptively-defined group. The egalitarian proponents of cultural reconstruction can be understood as advocating a different kind of "third-generation" for the civil rights movement: one in which the state, having attacked legal, political and economic barriers to equal citizenship, now takes on cultural obstacles.

A cultural-reconstruction phase of the civil rights movement would run contrary to Kukathas's argument that it is too dangerous to license the state to intervene against cultures that engage in social tyranny. It also raises questions about whether state-supported cultural reconstruction would violate basic liberties, such as freedom of private association. The efforts of New Jersey to apply antidiscrimination law to the Boy Scouts, a group which discriminates against gays, emphasizes the potential problems.

The Supreme Court invalidated those efforts on grounds of free association. Nonetheless, it may be necessary to reconceive the scope and limits of some basic liberties if the principle of free and equal citizenship is followed through to its logical ceases.

Discrimination

In liberal democracies, civil rights claims are typically conceptualized in terms of the idea of discrimination. Persons who make such claims assert that they are the victims of discrimination. In order to gain an understanding of current discussion and debate regarding civil rights, it is important to disentangle the various descriptive and normative senses of 'discrimination'.

The Idea of Discrimination

In one of its central descriptive senses, 'discrimination' means the differential treatment of persons, however justifiable or unjustifiable the treatment may be. In a distinct but still primarily descriptive sense, it means the disadvantageous treatment of some persons relative to others. This sense is not purely descriptive in that an evaluative judgment is involved in determining what counts as a disadvantage.

But the sense is descriptive insofar as no evaluative judgment is made regarding the justifiability of the disadvantageous treatment. In addition to its descriptive senses, there are two normative senses of 'discrimination'. In the first, it means any differential treatment of the individual that is morally objectionable. In the second sense, 'discrimination' means the wrongful denial or abridgement of the civil rights of some persons in a context where others enjoy their full set of rights.

The two normative senses are distinct because there can be morally objectionable forms of differential treatment that do not involve the wrongful denial or abridgement of civil rights. If I treat one waiter rudely and another nicely, because one is a New York Yankees fan and the other is a Boston Red Sox fan, then I have acted in a morally objectionable way but have not violated anyone's civil rights.

Discrimination that does deny civil rights is a double wrong against its victims. The denial of civil rights is by itself a wrong, whether or not others have such rights. When others do have such rights, the denial of civil rights to persons who are entitled to them involves the additional wrong of unjustified differential treatment. On the other hand, if everyone is denied his civil rights, then the idea of discrimination would be misapplied to the situation. A despot who oppresses everyone equally is not guilty of discrimination in any of its senses. In contrast, discrimination is a kind of wrong that is found in systems that are liberal democratic but imperfectly so: it is the characteristic injustice of liberal democracy.

The first civil rights law, enacted in 1866, embodied the idea of discrimination as wrongful denial of civil rights to some while others enjoyed their full set of rights. It declared that "all persons" in the United States were to have "the same right…to make and enforce contracts…and to the full and equal benefit of all laws…as is enjoyed by white citizens". The premise was that whites enjoyed a fully adequate scheme of civil rights and that everyone else who was entitled to citizenship was to be legally guaranteed that same set of rights. It is a notable feature of civil rights law that its prohibitions do not protect only citizens. Any person within a given jurisdiction, citizen or not, can claim the protection of the law, at least within certain limits.

Thus, noncitizens are protected by fair housing and equal employment statutes, among other antidiscrimination laws. Noncitizens can also claim the legal protections of due process if charged with a crime. Even illegal aliens have limited due process rights if they are within the legal jurisdiction of the country.

On the other hand, noncitizens cannot claim under U.S. law that the denial of political rights amounts to wrongful discrimination. Noncitizens can vote in local and regional elections in certain countries, but the denial of equal political rights would seem to be central to the very status of noncitizen. The application of much of civil rights law to noncitizens indicates that many of the rights in question are deeper than simply the rights that constitute citizenship.

They are genuine human rights to which every person is entitled, whether she is in a location where she has a right to citizenship or not. And civil rights issues are, for that reason, regarded as broader in scope than issues regarding the treatment of citizens.

Why Discrimination is Unjust

Given the principle of equal citizenship, discrimination in the sense of the denial of civil rights is an injustice that denies certain citizens the rights to which they are entitled. But it is not obvious that the principle entails that discrimination in the sense of differential treatment is unjust, even if the differential treatment disadvantages persons based on their race, sex, or another paradigmatic civil rights category. The common view is that such differential treatment is an injustice that violates the basic rights of the individual. In other words, the view is that it is a civil right to not be treated disadvantageously on account of one's race or sex.

An argument for the soundness of the common view cannot simply invoke existing laws that ban discrimination based on race, sex, and similar categories. The point of the common view is that the injustice of racial and gender discrimination explains why there ought to be those laws. What is required is an account that shows why such discrimination is an injustice. There are two main approaches to providing an account of the injustice of discrimination based on race and sex. The first is "individualistic" in that it seeks to explain the injustice in a way that abstracts from the broader social and political context in which the differential treatment occurs. The second is "systemic" in that it seeks to explain the injustice in a way that links the differential treatment to social patterns that reduce, or threaten to reduce, the members of certain groups to second-class citizenship.

Individualistic Accounts

Kahlenberg asserts the popular view that race discrimination is unjust because it treats a person on the basis of a characteristic that is immutable or beyond her control. But Boxill rejects such a view, arguing that there are many instances in which it is justifiable to treat persons based on features that are beyond their control. Denying blind people a driver's license or persons with little athletic ability a place on the basketball team is not an injustice to such individuals. Moreover, Boxill notes that, if scientists developed a drug that could change a person's skin colour, it would still be unjust to discriminate against people because of their skin colour.

Flew argues that racism is unjust because it treats differently persons who "are *in all relevant respects* the same". The defining characteristics of a race "are strictly superficial and properly irrelevant to all, or almost all, questions of social status and employability". But if 'relevant' means 'rationally related', then it does not appear to be a requirement of justice that a person always treat others only on the basis of relevant characteristics.

The idea that it is such a requirement rests on the false premise that all morally bad treatment is a violation of justice and rights. If I give a waiter a poor tip because he is not a fan of my favourite sports team, then I have behaved badly but have not violated the waiter's rights or committed an injustice against him.

And it is unclear, on Flew's account, why giving a poor tip because of a waiter's race is any different than doing so because of his preferences in sports.

Often people will insist that the injustice of racial or sex discrimination stems from the connection between those forms of discrimination and the reliance on stereotypes. It is not just that race is irrelevant but that those who act on race-based grounds are using inaccurate stereotypes instead of treating a person "as an individual," as the phrase goes. However, if "being treated as an individual" means that others must take into account all of the potentially relevant information about the person in their behaviour towards her, then there is no plausibility to the claim that anyone has a right to such treatment. Life's scarcity of time and resources undermines the idea that there is such a right.

Moreover, in some cases, stereotypical beliefs reflect reliable generalizations about a group. The term 'statistical discrimination' refers to the use of such reliable generalizations. Consider the case of a pregnant job applicant: as a statistical matter, there is a higher antecedent likelihood that she will take more sick days than a nonpregnant applicant during the first year of employment.

Yet, an employer who relies on statistical discrimination in excluding the pregnant applicant is acting illegally under the Pregnancy Discrimination Act. The act was passed because many people quite reasonably thought that it was unjust for a pregnant applicant to be treated in that way. But if the treatment is unjust, then one cannot explain why that is so by invoking the unreliability of the generalization on which the treatment is based.

Garcia provides an account of racial discrimination that loosens the link between it and injustice, but still preserves some connection. On his account, such discrimination against others expresses a character defect, viz., the failure to care enough, or in the right way, for their interests. Such discrimination is a matter of what is "in the heart" of the racist individual: "racially focused ill-will or disregard. This echoes the claim made by Gunnar Myrdal in his classic work, *An American Dilemma*, that "the American Negro problem is a problem in the heart of Americans".

Garcia's account weakens the link between racial discrimination and injustice because not every act expressing racial ill-will or disregard will be an injustice. Garcia writes that racial discrimination against a person "will often offend against justice," but he does not argue that it always so offends. He points out that discrimination against a person based on race may amount to a failure of benevolence, rather than a violation of rights. For example, racial disregard may lead a person to refuse to contribute to a charity organization that works with inner-city youth. In such a case, the person has failed to show benevolence for morally discreditable reasons, and so has behaved badly. But no injustice has been committed.

On the other hand racial ill-will is often expressed in violations of the rights of persons: hate crimes that harm the property or person of an individual on account of race; efforts to prevent members of certain racial groups from voting; charging racial minorities higher prices for the same product than the prices charged to similarly situated whites; denying persons equality of opportunity in the job and housing markets on account of their race. Such actions would count as injustices, not simply failures of benevolence.

Thus, Garcia's approach preserves some link between discrimination and injustice, but it is much more attenuated than the link posited by the popular view that disadvantageous treatment on the basis of race is *ipso facto* an injustice to the person so treated.

Systemic Accounts

Many thinkers reject the idea that the injustice of discrimination stems fundamentally from what is in the mind or heart of the individual. Crespi criticized Myrdal on the ground that the latter's individualistic understanding of racial discrimination entailed that "ethical exhortation" was the remedy for racial injustice.

Crespi argued that what really needed remedy were the social and economic structures that advantage whites. More recently, Steinberg and Bonilla-Silva, among others, have argued that racial discrimination should not be understood as a "moral problem," *i.e.*, as a problem with individual attitudes or actions, but rather as a problem of persistent structural inequality.

And MacKinnon has made a parallel argument when it comes to sex discrimination. For example, she contends that pornography is "not a moral problem" but rather a political one, meaning that it does not pose a problem of the virtue and

vice of individuals and their behaviour but rather one concerning relations of power that subordinate women to men.

On the systemic account of racial and sex discrimination, the injustice of discriminatory acts lies in their connection to broader patterns in society that reduce the members of certain groups to second-class citizenship, or worse. Considered in abstraction from these broader patterns, refusing employment to someone on account of her race might be morally objectionable insofar as it treated a person arbitrarily when some important interest of hers was at stake. But the objectionable treatment amounts to an injustice because such acts are not sporadic but rather systemic and add up to a system in which persons have their entire lives substantially diminished on account of their race or sex. And such a system is what violates the right to equality — the basic civil right. Individual acts of racial or gender discrimination do so only derivatively, by reinforcing the systemic violation.

There are different ways in which a systemic account can be elaborated. For example, in MacKinnon's account of sex discrimination, the system of gender inequality revolves around the sexual subordination of women.

Butler, Brown and other feminists provide accounts which do not share MacKinnon's focus on sexual subordination. On the matter of racial discrimination, Cox focuses on the ways in which racial conflict is rooted in class conflict, while Omi and Winant emphasize "the specificity of race as an autonomous field of social conflict, political organization, and cultural/ideological meaning".

All systemic accounts rest on the premise that women, racial minorities, and other groups are second-class citizens and that they are so because of their group membership. The advocates of systemic accounts typically represent their views as incompatible with individualistic ones.

They do so by insisting that discrimination is "not a moral problem" of the individual's heart or mind, but one concerning group power relations and social patterns of disadvantage. But their insistence rests on a false dichotomy.

Discrimination based on race, sex and other categories can be a problem of the individual's heart and mind, as well as an issue that concerns systemic patterns of disadvantage in society. As Wasserstrom pointed out, discrimination can operate at both the individual and systemic levels.

It is not necessary to deny the existence of patterns of discriminatory treatment that reduce, or threaten to reduce, some persons to second-class citizenship in order to affirm that it is an injustice to deny a person a job because of her sex. And it is not necessary to deny that, apart from social patterns of disadvantage, the individual who is denied a job for such reasons has been treated in an unjust way, in order to affirm that there are such patterns that reduce some to second-class status.

Justifying Antidiscrimination Law

Antidiscrimination laws typically pick out certain categories such as race and sex for legal protection, define certain spheres such as employment and public accommodations in which discrimination based on the protected categories is prohibited, and establish special government agencies, such as the Equal Employment Opportunity Commission, to assist in the laws' enforcement. There are many questions that can be raised concerning the justifiability of such laws.

Some of the central philosophical questions derive from the fact that the laws

restrict freedom of association, including the liberty of employers to decide whom they will hire. Some have argued that the liberal commitment to free association requires the rejection of antidiscrimination laws, including those that ban employment discrimination such as the Civil Rights Act of 1964. Most liberals thinkers reject this view, but any liberal defence of antidiscrimination laws must cite considerations sufficiently strong to override the infringements on freedom of association that the laws involve.

There are two different approaches within liberal thought to the justification of antidiscrimination laws. Both approaches regard as very important the interests people have in the areas protected by the laws, such as employment and public accommodations. And both approaches agree that the disadvantageous treatment of a person in those areas on the basis of race, sex, and the other traditional civil rights categories is morally arbitrary. However, on the first approach, the key to the justification of antidiscrimination laws rests squarely on the fact that the conduct prohibited by the laws is morally arbitrary.

In contrast, the second approach holds that it is not the morally arbitrary conduct as such that justifies the laws but rather the fact that conduct based on those categories has had systemic effects reducing the members of certain groups to second-class citizenship. Thus, the difference between the two approaches tracks the distinction between the individualistic and systemic accounts of why discrimination is wrong. Although many legal theorists endorse the systemic approach to the justification of antidiscrimination law, the U.S. Supreme Court seems to have adopted the individualistic one.

The Existence of Discrimination

Many debates over civil rights issues turn on assumptions about the scope and effects of existing discrimination against particular groups. For example, some thinkers hold that systemic discrimination based on race and gender is largely a thing of the past in contemporary liberal democracies and that the current situation allows persons to participate in society as free and equal citizens, regardless of race or gender.

Many others reject that view, arguing that white skin privilege and patriarchy persist and operate to substantially and unjustifiably diminish the life-prospects of nonwhites and women. These differences drive debates over affirmative action, race-conscious electoral districting, and pornography, among other issues.

Questions about the scope and effects of discrimination are largely but not entirely empirical in character. Such questions concern the degree to which participation in society as a free and equal citizen is hampered by one's race or sex. And addressing that concern presupposes some normative criteria for determining what is needed to possess the status of such a citizen.

Moreover, there are subtle aspects of discrimination that are not captured by thinking strictly in terms of categories such as race, sex, religion, sexual orientation, and so on. Piper analyses "higher-order" forms of discrimination in which certain traits, such as speaking style, come to be arbitrarily disvalued on account of their association with a disvalued race or sex. Determining the presence and effects of such forms of discrimination in society at large would be a very complicated conceptual and empirical task.

Additional complications stem from the fact that different categories of

discrimination might intersect in ways that produce distinctive forms of unjust disadvantage. Thus, some thinkers have asserted that the intersection of race and sex creates a form of discrimination against black women which has not been adequately recognized or addressed by judges or liberal legal theorists.

And other thinkers have begun to argue that our understanding of discrimination must be expanded beyond the white-black paradigm to include the distinctive ways in which Asian-Americans and other minority groups are subjected to discriminatory attitudes and treatment.

Among the most careful empirical studies of discrimination have been those conducted by Ayers. He found evidence of "pervasive discrimination" in several types of markets, including retail car sales, bail-bonding, and kidney-transplantation. Yet, his assessment is that "we still do not know the current ambit of race and gender discrimination in America".

Sexual Orientation

Some civil rights laws in the United States include the category of sexual orientation, but many people contest the legitimacy of the laws. The state of Colorado went so far as to ratify an amendment to its constitution that would prohibit any jurisdiction within the state from enacting a civil rights law that would protect homosexuals.

The amendment was eventually invalidated by the U.S. Supreme Court on the ground that it was the product of simple prejudice and served no legitimate state purpose, thus violating the Equal Protection Clause. But federal courts have upheld the military's "don't ask, don't tell" policy and the U.S. Congress enacted the Defence of Marriage Act, which prohibits courts from ruling that same-sex marriages must be recognized on equal protection grounds.

On the other hand, same-sex marriages are legally recognized in Massachusetts, though there are efforts to rescind the recognition, and marriage laws have also been extended to same-sex couples in the Netherlands, Belgium, Canada and Spain. In addition, several jurisdictions have recognized same-sex partnerships with many, though not all, of the legal rights of marriage. Opponents of same-sex marriage have claimed that it would weaken the commitment of heterosexuals to marriage, but some advocates have presented empirical data that appears to undercut any such claim.

Much of the discussion of "gay rights" involves the question of whether sexual orientation is genetically determined, socially determined, or the product of individual choice. However, it is not clear why the question is relevant. The discussion appears to assume that genetic determination would vindicate the civil rights claims of gays, because sexual orientation would then be like race or sex insofar as it would be biologically fixed and immutable.

But it is a mistake to think that racial or sex discrimination is morally objectionable because of the biological fixity or unchosen nature of race and sex. It is objectionable because it expresses ill-will or indifference, and it is unjust because it treats an individual in a morally arbitrary manner and, under current conditions, reinforces social patterns of disadvantage that seriously diminish the life prospects of many persons. The view that sexual orientation is like race or sex in a morally relevant way should focus on the analogous features of discrimination based on sexual orientation.

Wintermute and Koppelman assert that discrimination based on sexual orientation

is not just analogous to sex discrimination but that it is a form of sex discrimination. If it is legally permissible for Jane to have sex with John, then banning Joe's having sex with John would seem to amount to discrimination against Joe on grounds of his sex.

If Joe were a woman, his having sex with John would be permitted, so he is being treated differently because of his sex. However, Koppelman contends that this formal argument should be supplemented by more substantive ones referring to the systemic patterns of social disadvantage from which gays and lesbians suffer.

In fact, one can argue that the treatment of gays and lesbians is an injustice to them as individuals and amounts to a systemic pattern of unjust disadvantage. The individual injustice arises from the arbitrary nature of denying persons valuable life-opportunities, such as employment and marriage, on the basis of their sexual orientation. The systemic injustice arises from the repeated and widespread acts of individual injustice.

The most controversial civil rights issues regarding sexual orientation concern the principle of equal treatment for same-sex and heterosexual couples. Most scholars endorse such a principle and argue that equal treatment requires that same-sex marriages be legalized. Moreover, it is often argued in the literature that a person's choice of sex partner is central to her life and protected under a right of privacy. In Bowers v. Hardwick, the United States Supreme Court rejected this argument, upholding the criminalization of homosexual sodomy.

The decision was condemned by legal and political thinkers and was overturned by the Court in Lawrence v. Texas. The Court invoked the right of privacy in declaring the state's criminal ban on sodomy between same-sex partners. Nonetheless, some scholars who argue for the equal legal treatment of same-sex relations contend that privacy-based arguments are inadequate. They point out that one can hold the view that adults have a right to engage in same-sex intimacies even as one contends that such intimacies are morally abominable and ought not to receive any encouragement from government.

Such a view would reject equal legal treatment for those in intimate same-sex relationships. Finnis takes such a view, arguing that same-sex relations are "manifestly unworthy of the human being and immoral" and should not be encouraged by the state, but finding that criminalizing same-sex relations violates rights of individual privacy. Lee and George also find such relations to be morally defective and unworthy of equal treatment by the state; though George does not think that any sound *a priori* principle prohibits criminalization. Finnis, Lee and George argue for their condemnation of same-sex relations on the ground of natural law theory.

However, unlike traditional versions of natural law theory, their version does not rest on any explicit theological or metaphysical claims. Rather, it invokes independent principles of practical reasoning that articulate the basic reasons for action. Such reasons are the fundamental goods that action is capable of realizing and, for Finnis, Lee and George, include "marriage, the *conjuntio* of man and woman". Homosexual conduct, masturbation, and all extra-marital sex aim strictly at "individual gratification" and can be no part of any "common good." Such actions "harm the character" of those voluntarily choosing them. In taking the actions, a person becomes a slave to his passions, allowing his reason to be overridden by his raw desire for sensuous pleasure.

On Finnis's account, when consensual sexual conduct is private, government may not outlaw it, but government "can rightly judge that it has a compelling interest in denying that 'gay lifestyles' are a valid and humanly acceptable choice and form of life".

And for Finnis, Lee and George, equal treatment of same-sex and heterosexual relations is out of the question due to the morally defective character of same-sex relations. Macedo responds to Finnis by arguing that "all of the goods that can be shared by sterile heterosexual couples can also be shared by committed homosexual couples". Macedo points out that Finnis does not condemn sexual intercourse by sterile heterosexual couples.

But Finnis replies that there is a relevant difference between homosexual couples and sterile heterosexual ones: the latter but not the former are united "biologically" when they have intercourse. Lee and George make essentially the same point: only heterosexual couples can "truly become one body, one organism".

But Macedo points out that, biologically, it is not the man and woman who unite but the sperm and the egg. It can be added that the "biological unity" argument seems to run contrary to Finnis's claim that his position "does not seek to infer normative ceases from non-normative premises". More importantly, Macedo and Koppelman make the key point that the human good possible through intimate relations is a function of "mutual commitment and stable engagement" and that same-sex couples can achieve "the precise kind of human good" that is available to heterosexual ones. Equal treatment under the law for same-sex couples, including the recognition of same-sex marriage, would remove unjustifiable obstacles faced by same-sex couples to the achievement of that human good.

Disability

During the 1970's and 80's, persons with disabilities increasingly argued that they were second-class citizens. They organized into a civil rights movement that pressed for legislation that would help secure for them the status of equal citizens.

Protection against discrimination based on disability was written into the Canadian Charter of Rights and Freedoms and The Charter of Fundamental Rights of the European Union. The disability rights movement in the U.S. culminated with the passage of the Americans With Disabilities Act of 1990. The ADA has served as a model for legislation in countries such as Australia, India and Israel

The Medical and Social Models

The traditional model for understanding disability is called the "medical model." It is reflected in many pre-ADA laws and in some philosophical discussions of disability which treat it as an issue of the just distribution of health care. The medical model, a disabled person is one who falls below some baseline level that defines normal human functioning. That level is a natural one, on this view, in that it is determined by biological facts about the human species.

Thus, the medical model supposes that the question of who counts as disabled can be answered in a way that is value-free and that abstracts from existing social practices and the physical environment those practices have constructed. It also gives the medical profession a privileged position in determining who is disabled, as the study and treatment of normal and subnormal human functioning is the specialty of that profession.

The consensus among current disability theorists is that the medical model should be rejected. Any determination that a certain level of function is normal for the species will presuppose judgments that do not simply describe biological reality but impose on them some system of evaluation. Moreover, the level of functioning a person can achieve does not depend solely on her own individual abilities: it depends as well on the social practices and the physical environment those practices have shaped.

Disability theorists thus posit an important analogy between the categories of 'race' and 'disability'. As they understand it, neither category refers to any real distinctions in nature.

Just as there is variation in skin colour, there is variation in acuity of vision, physical strength, ability to walk and run and so on. And just as there is no natural line dividing one "race" from another, there is no natural line dividing those who are functionally "abnormal" from those who are not so. The rejection of the medical model has led to a "social model," according to which certain physical or biological properties are turned into dysfunctions by social practices and the socially-constructed physical environment.

For example, lack of mobility for those who are unable to walk is not simply a function of their physical characteristics: it is also a function of building practices that employ stairs instead of ramps and by automotive design practices that require the use of one's legs to drive a car. There is nothing necessary about such practices.

The social model conceives of disability as socially-imposed dysfunction. The social model brings attention to how engineering and design practices can work to the disadvantage of persons with certain physical characteristics. And the idea of dysfunction is certainly a value-laden one. But it seems no more accurate to think that dysfunction is entirely imposed by society than it is to think that it is entirely the product of an individual's physical or mental characteristics. Individual characteristics in the context of the socially-constructed environment determine the level of functioning that a person can achieve.

And some individual characteristics would impair a person's functioning under all or almost all practicable alternatives to current social practices. Moreover, despite the fact that "normal human functioning" is a value-laden concept, it does not follow that it is entirely subjective or that reasonable efforts to specify the elements of some morally acceptable level of human functioning are misguided. Indeed, some defensible understanding of what counts as better or worse human functioning would seem to be necessary to determine when some social practice has turned a physical characteristic into a significant disadvantage for a person.

In addition, the social model's conception of what it is to be a disabled person seems overbroad. The social practice of requiring students to pass courses in order to receive a degree creates a barrier that some persons cannot surmount. It does not seem that such people are, *ipso facto*, disabled. Such examples of "exclusionary" social practices could be multiplied indefinitely. Some thinkers may not be troubled by the implication that everyone is disabled in every respect in which she is excluded or otherwise disadvantaged by some social practice. But it is difficult to see how the idea of disability would then be of much use.

Race, Disability, and Discrimination

The disability rights movement began with the idea that discrimination on the

basis of disability was not different in any morally important way from discrimination based on race. The aim of the movement was to enshrine in law the same kind of antidiscrimination principle that protected persons based on their race. But some theorists have questioned how well the analogy holds. They point out that applying the antidiscrimination norm to disability requires taking account of physical or mental differences among people. This seems to be treatment based on a person's physical features, apparently the exact opposite of the ideal of "colourblindness" behind the traditional antidiscrimination principle.

Even race-based affirmative action does not really seem to be parallel to antidiscrimination policies that take account of disability. Advocates of affirmative action assert that the social ideal is for persons not to be treated on the basis of their race or colour at all. Race-conscious policies are seen as instruments that will move society towards that ideal.

In contrast, policies designed to counter discrimination based on disability are not sensibly understood as temporary measures or steps towards a goal in which people are not treated based on their disabilities. The policies permanently enshrine the idea that in designing buildings or buses or constructing some other aspect of our physical-social environment, we must be responsive to the disabilities people have in order for the disabled to have "fair equality of opportunity". The need for a permanent "accommodation" of persons with disabilities seems to mark an important difference in how the antidiscrimination norm should be understood in the context of disability, as opposed to the context of race.

However, it is important to recognize that, at the level of fundamental principle, the reasons why disability-based discrimination is morally objectionable and even unjust are essentially the same as the reasons why racial discrimination is so. At the individual level, disadvantageous treatment of the disabled is often rooted in ill-will, disregard, and moral arbitrariness.

At the systemic level, such treatment creates a social pattern of disadvantage that reduces the disabled to second-class status. In those two respects, the grounds of civil rights law are no different when it comes to the disabled. Another way in which disability is thought to be fundamentally different from race concerns the special needs that the disabled often have that make life more costly for them. These extra costs would exist even if the socially-constructed physical environment were built to provide the disabled with fair equality of opportunity and their basic civil and political liberties were secured. In order to function effectively, disabled persons may need to buy medications or therapies or other forms of assistance that the able-bodied do not need for their functioning.

And there does not seem to be any parallel in matters of race to the special needs of some of those who are disabled. The driving idea of the civil rights movement was that blacks did not have any special needs: all they needed was to have the burdens of racism lifted from them and, once that was accomplished, they would flourish or fail like everyone else in society.

However, Silvers argues that the parallel between race and disability still holds: all the disabled may claim from society as a matter of justice is that they have fair equality of opportunity and the same basic civil rights as everyone else. Any special needs that the disabled may have do not provide the grounds of any legitimate claims of justice.

On the other hand, Kittay argues that the special needs of the disabled are a matter of basic justice. She focuses on the severely mentally disabled, for whom fair opportunity in the labour markets and political rights in the public sphere will have no significance, and on the families which have the responsibility of caring for the severely disabled. Pogge also questions Silvers' view, suggesting that it is implausible to deny that justice requires that society provide resources for meeting the needs of the severely disabled.

Still, it may be the case that some version of Silvers' approach may be justifiable when it comes to disabled persons who have the capacity "to participate fully in the political and civic institutions of the society and, more broadly, in its public life". In the case of such persons, the basic civil right to equal citizenship would require that they have the equal opportunity to participate in such institutions, regardless of their disability.

Although there may be some aspects of the racial model that cannot be applied to persons with severe forms of mental disability, the principles behind the American civil rights struggles of the 1950's and 60's remain crucial normative resources for understanding and combating forms of unjust discrimination that have only more recently been addressed by philosophers and by society more broadly.

Contractarianism and the Disabled

The emergence of the issue of disability rights has posed an important challenge for versions of liberalism inspired by the social contract tradition. One of the putative advantages of such forms of liberalism is that they better reflect strong and widely held intuitions about justice and individual rights than does utilitarianism.

As Rawls famously wrote, "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override". However, several thinkers have argued that Rawls's own contractarian theory does not make adequate room for the severely disabled. These arguments are not about the rights of the severely disabled, but rather begin from the assumption that those who are so disabled do have robust moral rights and then proceed to the question whether contractarianism can account for those rights.

The problem for Rawls derives from the conception of personhood that accompanies his idea that society should be conceived as a fair system of cooperation among free and equal persons, extending over generations. On that conception, "a person is someone who can be a citizen, that is, a normal and fully cooperating member of society over a complete life." Additionally, persons are represented as having two "moral powers," the capacities for a sense of justice and for a conception of the good. The parties to Rawls's original position choose principles of justice with such a conception of the person in mind.

Critics have argued that Rawls's principles of justice fail to take adequate account of the legitimate claims of the severely disabled and that the heart of the problem is Rawls's contractarianism.

Nussbaum claims that Rawls goes astray in following traditional contractarianism and conceiving of society as a scheme of cooperation for mutual advantage. Yet, Becker defends mutual-advantage theories, arguing that they can incorporate a conception of reciprocity sufficiently rich to underwrite principles that truly do justice to the disabled. Stark and Brighouse argue that Rawls's theory, in particular, can be extended or

modified to take account of disabled, without repudiating its contractarian core.

Kittay agrees with the liberal idea that justice must not be sacrificed for other values, but she doubts that any form of liberalism can make adequate room for the claims of justice made on behalf of the severely disabled. In contrast, Silvers and Francis defend a form of contract theory in which the parties seek to build mutual trust. They argue that the interests of disabled would not be discounted in such a contract.

Legal Cases and Statutes

- Americans With Disabilities Act. 42 U.S.C. §§12101-12213.
- Bowers v. Hardwick 478 U.S. 186.
- Boy Scouts v. Dale, No. 99-699.
- Civil Rights Act of 1866. 42 U.S.C §1981.
- Civil Rights Act of 1964. 42 U.S.C. §§2000e et seq.
- Defence of Marriage Act 28 U.S.C. §1738c.
- Ex Parte Crow Dog 109 U.S. 556.
- Indian Civil Rights Act of 1968. 28 U.S.C. §§1301-1303.
- Oklahoma Tax Commission v. Citizen Band, Potawatomi Indian Tribe 498 U.S. 505.
- Pregnancy Discrimination Act 42 U.S.C. §2000 (e)(k).
- Romer v. Evans 517 U.S. 620.
- Santa Clara Pueblo v. Martinez 436 U.S. 49.
- Thomasson v. Perry 80 F.3d 915

Civil Liberties

Civil liberties are rights and freedoms that protect an individual from the state. Civil liberties set limits on the government so that its agents cannot abuse their power and interfere unduly with the lives of private citizens.

Common civil liberties include the rights of people, freedom of religion, and freedom of speech, and additionally, the right to due process, to a trial, to own property, and to privacy. The formal concept of civil liberties dates back to the English legal charter the Magna Carta 1215, which in turn was based on pre-existing documents namely the English Charter of Liberties, a landmark document in English legal history.

Many contemporary states have a constitution, a bill of rights, or similar constitutional documents that enumerate and seek to guarantee civil liberties. Other states have enacted similar laws through a variety of legal means, including signing and ratifying or otherwise giving effect to key conventions such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights. It might be said that the protection of civil liberties is a key responsibility of all citizens of free states, as distinct from authoritarian states.

The existence of some claimed civil liberties is a matter of dispute, as are the extent of most civil rights. Controversial examples include property rights, reproductive rights, civil marriage, and the right to keep and bear arms. Whether the existence of victimless crimes infringes upon civil liberties is a matter of dispute. Another matter of debate is the suspension or alteration of certain civil liberties in times of war or

state of emergency, including whether and to what extent this should occur. An individual who "actively supports or works for the protection or expansion of civil liberties" is called a civil libertarian.

United States

The United States Constitution, especially its Bill of Rights, protects civil liberties. Human rights within the United States are often called civil rights, which are those rights, privileges and immunities held by all Americans, in distinction to political rights, which are the rights that inhere to those who are entitled to participate in elections, as candidates or voters. Before universal suffrage, this distinction was important, since many people were ineligible to vote but still were considered to have the fundamental freedoms derived from the rights to life, liberty and the pursuit of happiness. This distinction is less important now that Americans enjoy near universal suffrage, and civil liberties are now taken to include the political rights to vote and participate in elections.

Canada

The Constitution of Canada includes the Canadian Charter of Rights and Freedoms which guarantees many of the same rights as the U.S. constitution, with the notable exceptions of protection against establishment of religion. However, the Charter does protect freedom of religion. The Charter also omits any mention of, or protection for, property.

European Convention on Human Rights

The European Convention on Human Rights, to which most European countries, including all of the European Union, belong, enumerates a number of civil liberties and is of varying constitutional force in different European states.

United Kingdom

While the United Kingdom has no codified constitution, relying on a number of legal conventions and pieces of legislation, it is a signatory to the European Convention on Human Rights which covers both human rights and civil liberties. The Human Rights Act 1998 incorporates the great majority of Convention rights directly into UK law.

Britain has what is called an unwritten constitution: centuries of legislation and legal precedent dating back to before the Magna Carta guarantee the rights of her subjects. Recently Shadow Home Secretary David Davies resigned his parliamentary seat over what he described as the "erosion of civil liberties" by the current government, and successfully won re-election on a civil liberties platform. This was in reference to the recent anti-terrorism laws and in particular the extension to pre-trial detention, that is perceived by many to be an infringement of Habeas Corpus established in the Magna Carta in 1215.

China

The Constitution of People's Republic of China, especially its Fundamental Rights and Duties of Citizens, claims to protect many civil liberties, although in practice dissidents may find themselves without the protection of the rule of law.

India

The Fundamental Rights — embodied in Part III of the constitution — guarantee civil liberties such that all Indians can lead their lives in peace as citizens of India. The six fundamental rights are right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies. These include individual rights common to most liberal democracies, incorporated in the fundamental law of the land and are enforceable in a court of law.

Violations of these rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary. These rights are neither absolute nor immune from constitutional amendments. They have been aimed at overturning the inequalities of pre-independence social practises. Specifically, they resulted in abolishment of untouchability and prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They forbid human trafficking and unfree labour.

They protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and administer their own educational institutions. All people, irrespective of race, religion, caste or sex, have the right to approach the High Courts or the Supreme Court for the enforcement of their fundamental rights.

It is not necessary that the aggrieved party has to be the one to do so. In public interest, anyone can initiate litigation in the court on their behalf. This is known as "Public interest litigation". High Court and Supreme Court judges can also act on their own on the basis of media reports.

The Fundamental Rights emphasise equality by guaranteeing to all citizens the access and use of public institutions and protections, irrespective of their background. The rights to life and personal liberty apply for persons of any nationality, while others, such as the freedom of speech and expression are applicable only to the citizens of India. The right to equality in matters of public employment cannot be conferred to overseas citizens of India. Fundamental Rights primarily protect individuals from any arbitrary State actions, but some rights are enforceable against private individuals too. For instance, the constitution abolishes untouchability and prohibits begar.

These provisions act as a check both on State action and actions of private individuals. Fundamental Rights are not absolute and are subject to reasonable restrictions as necessary for the protection of national interest. In the Kesavananda Bharati vs. state of Kerala case, the Supreme Court ruled that all provisions of the constitution, including Fundamental Rights can be amended.

However, the Parliament cannot alter the basic structure of the constitution like secularism, democracy, federalism, separation of powers. Often called the "Basic structure doctrine", this decision is widely regarded as an important part of Indian history. In the 1978 Maneka Gandhi v. Union of India case, the Supreme Court extended the doctrine's importance as superior to any parliamentary legislation. The verdict, no act of parliament can be considered a law if it violated the basic structure of the constitution. This landmark guarantee of Fundamental Rights was regarded as a unique example of judicial independence in preserving the sanctity of Fundamental Rights.

The Fundamental Rights can only be altered by a constitutional amendment, hence their inclusion is a check not only on the executive branch, but also on the Parliament and state legislatures. The imposition of a state of emergency may lead to a temporary

suspension of the rights conferred by Article 19 to preserve national security and public order. The President can, by order, suspend the right to constitutional remedies as well.

Russia

The Constitution of Russian Federation guarantees in theory many of the same rights and civil liberties as the U.S. except to bear arms, *i.e.*: freedom of speech, freedom of religion, freedom of association and assembly, freedom to choose language, to due process, to a fair trial, privacy, freedom to vote, right for education, etc.

However, human rights groups like Amnesty International have warned that Putin has seriously curtailed freedom of expression, freedom of assembly and freedom of association amidst growing authoritarianism.

Business and Human Rights

Non-state actors, particularly multinational or trans-national corporations have become important players throughout the world. As the influence and reach of corporations has grown as a result of globalization and other global developments, there is an increasing debate about the roles and responsibilities of corporate actors with regard to human rights.

International human rights standards have traditionally been the responsibility of governments, aimed at regulating relations between the state and individuals/groups. In view of the increased role played by corporate actors at both the national and international level, the United Nations human rights machinery is considering the scope of business' human rights responsibilities and exploring ways for corporate actors to be accountable for the impact of their activities on human rights. However, the practical meaning of the link between business and human rights remains unclear for many and substantial debates over which human rights can and should apply to business, and in what way are ongoing.

OHCHR's work on the issue of business and human rights is focused on three areas:

1. Advocacy by the High Commissioner;
2. Support to the Special Representative of the Secretary-General on the issue of transnational corporations and other business enterprises;
3. Active involvement in the United Nations Global Compact;

The High Commissioners has expressed support for the development of human right standards applicable to the business sector, while at the same time advocating the implementation of voluntary initiatives towards corporate social responsibility.

OHCHR is providing ongoing support and advice to the work of the Special Representative of the Secretary-General on the issue of transnational corporations and other business enterprises with regard to human rights. The mandate was established by the United Nations Commission on Human Rights in 2005 by resolution 2005/69 and was extended by the Human Rights Council.

In resolution 2005/69, the Commission on Human Rights mandated the High Commissioner, in collaboration with the SRSG, to convene annually a consultation with executives from a particular business sector to discuss the human rights challenges faced by that sector. In November 2005, the High Commissioner convened a

consultation with representatives from the extractive sector. In January 2007, the High Commissioner convened a consultation with representatives from the finance sector. The UN Global Compact is certainly the most prominent voluntary initiative in the field of business and human rights. It is a personal initiative of the United Nations Secretary-General dating from 2000, aimed at getting business leaders to voluntarily promote and apply within their corporate domains 10 principles relating to human rights, labour standards, the environment, and anti-corruption. At present, thousands of companies, many of them large trans-national companies, from all continents have signed on to the Global Compact.

OHCHR is one of now 6 UN agencies which work in partnership with the Secretary-General's Global Compact office. Since the launch of the Global Compact, OHCHR has been requested by the United Nations Secretary-General to serve as "guardian" of the human rights principles and to contribute to efforts made to encourage companies to implement these principles in their core operations and business model.

OHCHR activities have been grouped around the themes of learning and dialogue. OHCHR is involved in Global Compact governance through its membership of the Global Compact Inter-Agency Team which is responsible for ensuring coherent support for the internalization of the principles within the United Nations and among all participants. The 18th of June 2008 the Human Rights Council was unanimous in "welcoming" the policy framework for business and human rights the SRSG proposed in his final report under the 2005 mandate.

The policy framework comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for greater access by victims to effective remedies.

The Human Rights Council has renewed the mandate for a period of 3 years with the new resolution A/HRC/8/L.8 that requests the Special Representative of the Secretary General to operationalize the framework elaborated and specifically:

- To provide views and recommendations on ways to strengthen the fulfillment of the duty of the State to protect all human rights from abuses by transnational corporations and other business enterprises, including through international cooperation;
- To elaborate further on the scope and content of the corporate responsibility to respect all human rights and to provide concrete guidance to business and other stakeholders;
- To explore options and make recommendations, at the national, regional and international levels, for enhancing access to effective remedies available to those whose human rights are impacted by corporate activities;
- To integrate a gender perspective throughout his work and to give special attention to persons belonging to vulnerable groups, in particular children;
- To liaise closely with the efforts of the human rights working group of the Global Compact in order to identify, exchange and promote best practices and sessions learned on the issue of transnational corporations and other business enterprises;

- To work in close coordination with United Nations and other relevant international bodies, offices, departments and specialized agencies, and in particular with other special procedures of the Council;
- To continue to consult on the issues covered by the mandate on an ongoing basis with all stakeholders, including States, national human rights institutions, international and regional organizations, transnational corporations and other business enterprises, and civil society, including academics, employers' organizations, workers' organizations, indigenous and other affected communities and non-governmental organizations, including through joint meetings;
- To report annually to the Council and the General Assembly;

In Resolution 2005/69 The Commission on Human Rights requested the Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises, for an initial period of two years, with the following mandate:

- To identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights; To elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation;
- To research and clarify the implications for transnational corporations and other business enterprises of concepts such as "complicity" and "sphere of influence";
- To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises;
- To compile a compendium of best practices of States and transnational corporations and other business enterprises.

Human Rights and Climate Change

It is becoming apparent that climate change will have implications for the enjoyment of human rights. The United Nations Human Rights Council recognized this in its resolution 7/23 "Human rights and climate change", expressing concern that climate change "poses an immediate and far-reaching threat to people and communities around the word" and requesting the Office of the United Nations High Commissioner to prepare a study on the relationship between climate change and human rights.

The Fourth Assessment Report of the Intergovernmental Panel on Climate Change put it beyond doubt that the global climate system is warming and doing so mainly because of man-made greenhouse gas emissions.

IPCC reports and other studies document how global warming will affect, and already is affecting, the basic elements of life for millions of people around the world. Effects include an increasing frequency of extreme weather events, rising sea levels, droughts, increasing water shortages, and the spread of tropical and vector born diseases.

Viewing the data through a human rights lens, it is clear that projected climate change-related effects threaten the effective enjoyment of a range of human rights, such as the right to safe and adequate water and food, the right to health and adequate housing. Equally, the human rights perspective brings into focus that climate change is set to hit the poorest countries and communities the hardest.

The international human rights standards serve as a guide for measures to tackle climate change, underscoring the fundamental moral and legal obligations to protect and promote full enjoyment of the rights enshrined in the Universal Declaration of Human Rights and in the core universal human rights treaties.

Action by the Human Rights Council

On 28 March 2008, the Human Rights Council adopted its first resolution on "human rights and climate change". In implementation of that resolution, OHCHR prepared and submitted a study on the relationship between climate change and human rights to the tenth session of the Council held in March 2009.

On 25 March 2009, the Council adopted resolution 10/4 "Human rights and climate change" in which it, inter alia, notes that "climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights ..."; recognizes that the effects of climate change "will be felt most acutely by those segments of the population who are already in a vulnerable situation ...", recognizes that "effective international cooperation to enable the full, effective and sustained implementation of the United Nations Framework Convention on Climate Change ... is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts", and affirms that "human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change".

In resolution 10/4, the Council decided to hold a panel discussion on the relationship between climate change and human rights at its eleventh session in order to contribute to the realization of the goals set out in the Bali Action Plan. In implementation of resolutions 7/23 and 10/4, the OHCHR study and a summary of the Council's discussions will be made available to the Conference of Parties to the United Nations Framework Convention on Climate Change for its consideration.

Cultural Rights

The cultural rights movement has provoked attention to protect the rights of groups of people, or their culture, in similar fashion to the manner in which the human rights movement has brought attention to the needs of individuals throughout the world. Cultural rights are different from human rights specifically because they are vested in groups of people, whereas human rights deal with individuals.

Protecting a Culture

Cultural rights focus on groups such as religious and ethnic minorities and indigenous societies that are in danger of disappearing. Cultural rights include a group's ability to preserve its way of life, such as child rearing, continuation of language, and security of its economic base in the nation, which it is located.

The related notion of indigenous intellectual property rights has arisen in attempt to conserve each society's culture base and essentially prevent ethnocide. The cultural rights movement has been popularized because much traditional cultural knowledge

has commercial value, like ethno-medicine, cosmetics, cultivated plants, foods, folklore, arts, crafts, songs, dances, costumes, and rituals. Studying ancient cultures may reveal evidence about the history of the human race and shed more light on our origin and successive cultural development. However, the study, sharing and commercialization of such cultural aspects can be hard to achieve without infringing upon the cultural rights of those who are a part of that culture.

Cultural Bigotry

The notion of cultural rights is not too cultural. Cultural rights has many ways that it can be looked upon. "Cultural rights are vested not in individuals but in groups, such as religious and ethnic minorities and indigenous societies." All cultures are brought up differently, therefore cultural rights include a group's ability to preserve its culture, to raise its children in the ways its forebears, to continue its language, and to not be deprived of its economic base by the nation in which it is located."

Anthropologist sometimes choose not to study some cultures beliefs and rights, because they believe that it may cause misbehaviour, and they choose not to turn against different diversities of cultures. Although anthropologist sometimes do turn away from studying different cultures they still depend a lot on what they study at different archaeological sites.

Democracy

Human rights and democracy have historically been viewed as separate, albeit parallel, concepts. However, understandings of both human rights and democracy are dynamic and varied, and recent re-conceptualizations of both ideas have led to the emergence of a discourse that recognizes their interdependence.

Specifically, definitions of democracy have expanded from the traditional procedural democracy to encompass the ideals of a substantive, liberal democracy. Likewise, the human rights framework has begun to further develop conceptions of social, economic, and cultural rights, in addition to civil and political rights, thus expanding the notion of human rights to include human security, and extending human rights to the collective as well as the individual level. These renewed definitions present opportunities for recognizing the convergence of the theories and fields related to human rights and democracy.

The necessity of acknowledging the interdependence of democracy and human rights is becoming especially important in emerging democracies such as Palestine. In these cases, in which the development and reform of democratic institutions is starting to take place, it is imperative to ensure that such institutions are built on foundations of both human rights and democracy if they are to be sustainable. To be sure, previous attempts at democracy by the Palestinian Authority in the 1990s proved to be ephemeral, largely due to the absence of protection for human rights. Likewise, human rights advocates have found it difficult to affect systemic change in the absence of a legitimate democracy. Thus, as Palestine looks ahead to new opportunities for democracy in the future, it is necessary to integrate the broadened human rights framework, including human security, with the ideals and institutions of a liberal, participatory democracy.

This text begins with a theoretical discussion of the principles of democracy, distinguishing between substantive and procedural democracy and identifying key elements and institutions inherent in a liberal democracy. The emerging re-

conceptualization of the human rights framework, including the human security perspective, which has enhanced the complementarity between human rights and democracy.

The following part discusses the convergence of the democracy and human rights fields and theories, and concludes that the two concepts are not only complementary, but are indeed interdependent. The second half of the text focuses on the application of this theory in the case of Palestine by analysing past and present experiences with democracy and human rights in the Occupied Territories, including obstacles and points of progress, and discussing recommendations for future implementation.

Theoretical Analysis

Defining Democracy: Principles and Institutions

The idea of democracy has been understood and applied in different ways, both temporally and culturally, with democracy taking various forms in different societies. From a historical perspective, the direct democracy of ancient Athens has been transformed into the representative democracy that is common today. Likewise, former restrictions on the political participation of women and other marginalized groups have been challenged in modern times to allow for more inclusive democracies.

Most recently, both theorists and practitioners of democracy are starting to further articulate differences between procedural democracies and substantive, liberal democracies. However, all of these forms of democracy are based to some extent on the original Greek notion of demokratia, that is, "government by the people," from the words demos and kratos.

This core concept still forms the crux of modern definitions of democracy, including the 1993 Vienna Declaration's statement that "democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives."

From this starting point, it is possible to identify several key principles and institutions that are inherent to a sustainable democracy. While historically there has been more emphasis on the political institutions and procedures that comprise democracy, namely elections, political parties, and governmental bodies, increased attention has recently been given to the ideals and principles that underscore those mechanisms. As stated by David Beetham, Director of the Centre for Democratization Studies at the University of Leeds, "to define democracy simply in institutional terms is to elevate means into ends, and to concentrate on the forms without the substance."

Jack Donnelly, International Studies at the University of Denver, agrees, noting that "pure procedural democracy can easily denigrate into non-democratic or even anti-democratic formalism," thus, "substantive conceptions rightly insist that we not lose sight of the core values of popular authority and control over government." However, Donnelly also notes that purely substantive approaches fail to recognize the "idea of the people ruling rather than just benefiting... The term 'democratic' easily slides into an essentially superfluous synonym for 'egalitarian.'"

That is, government for the people is not synonymous with government by the people, and therefore may or may not be democratic. To be sure, substantive conceptions risk being susceptible to normative associations that identify any positive sociopolitical

elements as indicators of democracy. This text takes the position that neither "substantive" nor "procedural" conceptions of democracy should be considered more important than the other; indeed, it is questionable if the two notions can even be separated. Instead, substantive and procedural elements should be viewed as complementary and in fact essential to each other. The principles that underscore substantive democracy will only remain theoretical ideals unless mechanisms are present for translating those ideals into reality, while procedural institutions, however democratic in form, are meaningless if they do not yield ends that reflect democratic values.

For the remainder of this text, the term "substantive democracy" will refer to democracies that embody both the principles and the institutions that form the foundation of democracy, in contrast to "electoral democracies," which may be democratic in name and form but not in practice. The basic elements of a substantive democracy, Beetham, "are that the people have a right to a controlling influence over public decisions and decision makers, and that they should be treated with equal respect and as of equal worth in the context of such decisions."

Beetham refers to these concepts as popular control and popular equality, both of which contribute to the foundation of the principles and institutions that inform democracy. These primary elements, in conjunction with the rule of law, open government, and public participation, form the core of substantive democracies, as reflected in their mechanisms and institutions, and the presence of civil society and citizen rights.

Mechanisms

The primary indicator of democracy is the presence of popular elections. Beetham, "popular authorization is achieved through regular competitive elections according to universal secret ballot, which ensures voters a choice of candidates and policies and gives them the opportunity to dismiss politicians who no longer command their confidence."

As Shadrack Gutto, Director of the Centre for Applied Legal Studies at the University of Witwatersrand in Johannesburg, states however, "for elections to be substantially 'free and fair,' it is imperative that enabling principles and rights be observed," including "the rights to or freedom of association, opinion, expression, and assembly." Gutto also notes the importance of available and adequate material and human resources to educate voters, register voters, monitor the voting process, count election results, and reconcile disputes. Indeed, the democratic nature of an electoral process should be assessed by "the reach, inclusiveness, independence, integrity, and impartiality of elections, as well as how equally the electoral process treats citizens, how much effective choice it offers them, how far the government actually fulfills the electoral choices made, and how many people in practice exercise the right to vote." In addition, political parties function as a mechanism within electoral systems by organizing different policies into cohesive programmes, nominating appropriate candidates, and advocating for the implementation of decisions supported by the electorate.

Institutions

As Beetham articulates, "although elections form a key mechanism for the popular control of government, they are of limited effectiveness on their own without

institutions that secure a government's continuous accountability to the public." Gutto agrees, noting how "elected representatives can play a democratic role only to the extent that enabling institutions of governance with clear systems and procedures that are secured by a normative framework and laws exist."

Open and accountable political institutions depend primarily on the decentralization of governance and the separation of powers between the executive, legislative, and judiciary spheres. These branches should be monitored through a system of checks and balances by each other, through horizontal accountability, and also be answerable to the people as a whole through vertical accountability. These institutions' specific roles and functions can be best understood and implemented when articulated in a constitution or equivalent "rule of law." The constitution should also articulate the financial responsibilities of the legislature, as well as allow for a system of regional and local government.

Civil Society

As Gutto notes, "however effective public institutions and accountability processes may be in any society aspiring to democracy, their effectiveness and impact would nevertheless be diminished in the absence of a vibrant and activist civil society." Civil society, sometimes referred to as "democratic society," creates opportunities for active citizenship and direct involvement in the functioning of a democracy. The key elements of civil society include an independent media, sources of policy expertise independent of the state, and associations that may include organizations dedicated to social services, development, health, education, human rights, women's empowerment, or other issues. An active civil society has the additional benefit of fostering respect for the rights of other citizens by creating environments of diversity and dialogue.

Citizen Rights

Democracy also includes the presence of political and civil rights for citizens, especially freedom of expression, association, and assembly, which require the guarantee of due legal process and liberty and security of person to be effective. There has been recent debate on the necessity of economic, social, and cultural rights as conditions of democracy, however, it is becoming more widely accepted that "for civil and political rights and freedoms to have any value, citizens must possess the capacity to exercise them." The majority of political, civil, economic, social, and cultural rights at the national level relate directly or indirectly to the international human rights framework, as will be discussed further.

The Dynamism of Democracy

It should be noted that, despite these common elements, democracy can take a variety of forms; there is no "one size fits all" democracy. As Beetham explains, "different societies and diverse circumstances require different arrangements if democratic principles are to be effectively realised." Abdul Aziz Said, International Peace and Conflict Resolution at American University, agrees, noting that "the form of democracy is always cast in the mold of the culture of a people;" he thus urges a "more democratic theory of democracy" that recognizes its potential for variation and dynamism.

Relatedly, Said specifically emphasizes that "democracy is not a western product." The principles and institutions that inform substantive democracy are based on tenets that transcend national and political ideologies; thus, democracy is not exclusive to

the West. This point has several implications. First, it implies that there is no fundamental incompatibility between democracy and the Arab world, nor between democracy and Islam.

As Said notes, "the lack of democracy in the Middle East is due more to a lack of preparation for it than to a lack of religious and cultural foundations." Secondly, the idea that democracy is not exclusive to the West can serve to caution superpowers to avoid imposing their models of democracy on other societies, and encourage them to instead assume a supportive role in developing democracy in local contexts. Likewise, superpowers should be cautious of pursuing national interests under the guise of democracy to prevent the association of democracy with western imperialism. At the same time, local democracy advocates are called upon to consider how their social mechanisms, values, and contexts can inform culturally sustainable democracies.

Defining Human Rights: The Human Security Perspective

As Donnelly summarizes, "human rights are, literally, the rights that one has simply as a human being. As such they are equal rights, because we are all equally human beings. They are also inalienable rights, because no matter how inhumanely we act or are treated we cannot become other than human beings."

Human rights are defined in several key documents, namely, the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948; the International Covenant on Civil and Political Rights, adopted in 1966; and the International Covenant on Economic, Social, and Cultural Rights, also adopted in 1966. The Vienna Declaration, adopted at the World Conference on Human Rights in 1993, further expanded the meaning of human rights. Originally, human rights were developed to outline a set of individual rights that states were required to respect or provide for their citizens. The framework not only included the prohibition of certain acts, but also the "imposition of the duty to perform certain obligations in order to promote and protect the enjoyment of certain rights." In other words, abuse of human rights can take the form of both violations and denials. While the full realization of human rights is still an ideal, much has been achieved in the name of human rights.

Anthony Langlois, International Relations at Flinders University in Adelaide, Australia, achievements include "international recognition of human rights as the basic set of norms of human behaviour, the internationalization of human rights institutions of various types, and the development of International Human Rights Law." The notion of human rights has begun to be broadened in recent years.

First, the responsibility of ensuring human rights has been expanded beyond only state governments to include individuals, groups of people, and other non-state actors. Secondly, the common association of human rights law with peacetime has given way to the widespread recognition that human rights law applies in conflict situations, just as it does in periods of stability.

Finally the past ten years have seen increased acknowledgment of the interdependence and indivisibility of human rights. While this has always been true in theory, in the past the two separate Covenants suggested divisions between political and civil rights and economic, social, and cultural rights. While some divisions still exist, the gaps between the two fields of rights were largely bridged in 1993 at Vienna, where it was declared that "human rights are universal, indivisible and interdependent

and interrelated" and that the international community "must treat human rights globally in a fair and equal manner."

In other words, the notion of human rights is expanding to include the concept of human security in a more conscious and deliberate manner. The United Nations Development Report of 1994, "human security can be said to have two main aspects. It means, first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life—whether in homes, in jobs or in communities." This renewed interest in human security and development has accordingly placed increased emphasis on economic and social rights, thus contributing to the re-conceptualization of the human rights framework.

As Beetham summarizes: The idea of economic and social rights as human rights expresses the moral intuition that, in a world rich in resources and the accumulation of human knowledge, everyone ought to be guaranteed the basic means for sustaining life, and that those denied these are victims of a fundamental injustice. Expressing this intuition in the form of human rights both gives the deprived the strongest possible claim to that of which they are deprived and emphasizes the duty of responsible parties to uphold or help them meet their entitlement.

Democracy and Human Rights

Democracy and human rights are clearly different notions; "they are distinct enough for them to be viewed as discreet and differentiated political concepts." Whereas democracy aims to empower "the people" collectively, human rights aims to empower individuals. Similarly, human rights is directly associated with the how of ruling, and not just the who, which may be the case in an electoral democracy, though not in a substantive democracy.

Thus, "democracies" exist that do not necessarily protect human rights, while some non-democratic states are able to ensure some, though not all, human rights. These distinctions have influenced the traditional separation of the theories and fields of human rights and democracy. From the human rights perspective, many have adhered to the separationist theory, which argues that "democracy is not immediately needed for the observation of human rights and that the maintenance of an essential link between human rights and democracy may well have the effect of delaying the implementation of human rights norms in various states." A recent corollary of the separationist theory is the "democracy as neo-imperialism" notion that charges that "democracy is a 'Western-centric' approach to government that is not found indigenously in all societies and is not desirable for all peoples."

These arguments are subject to several key counter arguments that emphasize the interdependence of human rights and democracy. First, in terms of the neo-imperialist argument, it is certainly true that Western superpowers should not impose their particular forms of democracy on other societies and expect them to be accepted and sustainable. However, it is equally culturally insensitive to claim that democracy is only an option in the West, or that it is incompatible with other cultures.

Secondly, in reference to the separationist theory, while it would be unwise to "wait" for democracy to start promoting human rights, it must also be recognized that some human rights are intrinsically linked with institutions and principles of democracy. Furthermore, separating human rights from democracy undermines

opportunities for implementation, in that it reduces human rights to standards or norms; as Langlois states, "human rights amount to little more than charity if they are not functioning in a democratic framework."

Essentially, the inclination to separate human rights from democracy is rooted in the acceptance of their traditional definitions. An electoral democracy that lacks the other institutions and principles of a substantive democracy can function without necessarily guaranteeing human rights, just as some narrowly defined human rights can still be realised in the absence of democracy.

However, the re-conceptualization of democracy as substantive, and of human rights as being more far-reaching and inclusive, underscores the necessity of linking the two. This interdependence occurs on the levels of principle, enforcement, and specific rights. On the conceptual level, as Langlois notes, "both contemporary liberal democracy and human rights are derived from and express the assumptions of liberalism," which include individualism, egalitarianism, and universalism. Furthermore, both democracy and human rights pursue a common agenda, and it is "only within a democracy [that] human rights standards or norms transcended such that the values articulated by these norms or standards are genuine rights." In addition, it is only in a well-functioning democracy that individual citizens have access to mechanisms to ensure the implementation of their rights.

The relationship between human rights and democracy is perhaps most clear through an examination of civil and political rights, especially those articulated in Article 21 of the UDHR and Article 25 of the ICCPR, both of which ensure citizen participation in government through free and fair elections and through direct service and participation. These rights are related to the rights of expression, association, assembly, and movement, which are also interdependent with democracy, as well as the rights to liberty, security of person, and the guarantee of due process of the law.

Economic, social, and cultural rights are also being increasingly recognized as being mutually dependent, if not integral, with democracy. As Gutto writes, "the pursuit of the right to development and socio-economic rights is strongly associated with the social democracy vision of poverty eradication and the equitable distribution of ownership, control, and the benefits of wealth." Indeed, political and civil rights can best be realised by citizens who meet a basic level of physical security in terms of access to shelter, water, sanitation, and food, as well as education, healthcare, and employment or income.

Socially, democracy is interrelated with rights to equality and non-discrimination, especially for marginalized groups including women and minorities. Culturally, the respect for diversity and pluralism inherent to democracy is linked to the protection of rights related to language, religion, or ethnicity. It is thus clear that human rights and democracy are interdependent, especially when defined in the broader conceptualizations of democracy as substantive democracy, and human rights as civil, political, economic, social, and cultural rights. These different kinds of rights cannot be realised in a non-democratic system, and likewise, no democracy is sustainable without the presence of these rights. While this relationship is evident in theory, it is perhaps more useful to consider the interdependence of human rights and democracy through the case study of an emerging democracy.

Human Rights and Democracy in Palestine

The status of democracy in Palestine is somewhat open to interpretation. Many democracy advocates agree that Palestine is moving in the direction of becoming a substantive democracy, but that it still has ways to go. Specifically, the will of the people reflects a keen desire for democracy, but that has yet to translate into viable democratic institutions and principles.As Nathan J. Brown of the Carnegie Endowment for International Peace states, "Palestine is... a model liberal democracy. Its most significant flaw is that it does not exist." That is, democracy in Palestine is evident in theory, but it has not been able to fully manifest itself in practice.

Obstacles to realizing both human rights and democracy are rooted in both external and internal factors. In terms of external factors, the Israeli occupation and the protracted Israeli-Palestinian conflict have posed obvious challenges to the development of democracy and human rights in Palestine. To start with democracy, political reform is difficult in the midst of any ongoing violent conflict.

In the case of Israel-Palestine, the challenge of political reform is further exacerbated by the nature of the occupation, which creates a complicated system of dual authority between Israel and the PA. Indeed, according to democracy advocates interviewed for this report, the occupation remains the most prominent obstacle to Palestinian democracy. Challenges resulting from the external influence of the occupation are interrelated with internal factors as well, most notably corruption in the executive branch of the PA under Arafat and the failure of the security services to be effective.

Indeed, the Oslo Accords "were predicated on the ability of the PA to enhance Israeli security and thus focused on enabling the executive and placing few fetters on the security services in internal matters." In addition to, and perhaps, because of the fact that the PA lacked sovereignty, it also lacked legitimacy. This problem emerged not only from the external fact of the occupation however, but also from internal shortcomings such as centralization of power, lack of accountability and transparency, corruption, and human rights violations. To be sure, human rights, like democracy, have suffered from both internal and external factors.

On the one hand, numerous human rights violations by Israel against Palestinians have been cited, including targeted assassinations, restrictions on movement, collective punishment, and home demolitions. On the other hand, Palestinian security forces under the PA have also been guilty of numerous human rights violations, including detention without trial and/or specific charges, improper trials, torture, maltreatment, and use of the death penalty.

Both human rights and democracy have also been hindered by poverty and the lack of human security in many communities in Palestine. As George Giacaman of Muwatin stated, "the democratic system is not sustainable with rampant poverty. Democracy requires a more equitable economic system based on a fair distribution of wealth." Khalid Nassif of the Civic Forum Institute agreed, noting that democracy regresses in the absence of economic and social rights that ensure human security.

Nassif, "when the economy improves, people have a greater sense of freedom and safety, and they can give more time and attention to joining parties and organizations and taking an interest in democracy." Clearly then, both human rights and democracy in Palestine have been hindered by both internal and external factors, primarily, the conflict with Israel and the limitations of the PA, and also by regional and international influences. Nevertheless, the will for both democracy and human rights in Palestine

is strong on both individual and collective levels, and in fact, both exist to some extent in theory and on paper.

The current key issue before Palestinians at this time is to translate those conceptualizations into realised practices and institutions, which can only be possible through an integrative approach that recognizes the interdependence of human rights and democracy. At the same time, Israel and the international community must acknowledge that a democratic state in Palestine requires the existence of a state, as well as democracy.

Elections

The presidential elections of January 2005 were a major step towards procedural democracy. The elections followed the death of president Yasser Arafat, who had been elected in January 1996, and provided an opportunity for new leaders and parties to emerge. Though the election of Mahmoud Abbas was predicted, the elections saw widespread participation, with 71 per cent of registered voters casting ballots, and were declared free and fair by local and international monitors.

To refer to Beetham's standards for democratic electoral processes, the January elections were deemed successful in terms of their reach, inclusiveness, independence, integrity, and impartiality. The Central Elections Commission was credited with making laudable efforts in registering voters, coordinating the monitoring of the voting process, and counting and implementing results.

While the process was far from flawless, it was considered to be an overall success, and resulted in a smooth transfer of power and authority. The success of the election was largely made possible by pressure on both Israeli and Palestinian officials to protect rights to association, assembly, and expression, and the process itself underscored the procedural rights defined in Article 21 of the UDHR and Article 25 of the ICCPR. The municipal elections of May 2005 were likewise considered to be successful overall. In addition to being another step towards procedural democracy, these elections also affirmed support in the electoral system and thus contributed to the strengthening of substantive democracy.

As journalist Bakr Abu Bakr wrote in the Palestinian daily Al-Hayat Al-Jadidah: It is important…to point out what these elections represent to a Palestinian people still struggling to be free, still fighting Israeli occupation, and exercising democracy… They represent: first, an assertion of a course and a way of life chosen by the Palestinian people exemplified by freedom, dignity, dialogue, responsibility, and respect for the will of the people; second, the will and aspiration of many popular leaderships to serve the people…; third, a demonstration of Palestinian solidarity…; fourth, the continuity of Palestinian political struggle towards common goals; fifth, a renewal of societal leaderships.

Clearly, the elections represented more than simply a procedure; they were a tangible expression of democratic ideals and principles. These ideals were intertwined with human rights, including the rights to dignity, freedom, and political participation. Furthermore, the electoral process, while reflecting human rights, also served to facilitate human rights by functioning as an expression of Palestinian unity. The next phase of elections, for the Palestinian Legislative Council, were originally scheduled for July 2005 but were postponed to allow more time to formalize amendments to the proposed new electoral law.

While most democracy advocates support the adoption of the new law and recognize the need for giving ample time for its passage, most view the indefinite postponement as a setback to democratic processes and momentum. Furthermore, the postponement was interpreted by many as an attempt by Fatah to consolidate its support to secure a victory over Hamas in particular. This widely accepted theory, regardless of its veracity, has unfortunately undermined the apparent commitment to democratic procedures established in the presidential and municipal elections.

Political Parties

Political parties are a mechanism that can facilitate free and fair elections, and thus contribute significantly to a sustainable procedural democracy. Likewise they provide opportunities for citizen participation and expression, and thus contribute to the development of a substantive, liberal democracy as well. As Giacaman stated, "a multi-party system is essential for establishing a sustainable democracy."

In Palestine, there exists some foundation for a pluralist party structure. Although Fatah has remained the dominant party for some time, and has at times been difficult to distinguish from the PLO and the PA, other political parties have always remained in existence, and Islamist parties like Hamas in particular have gained considerable support in the past ten years.

Thus, it is clear that "there is a plurality of parties; the parties are based on ideological differences but still operate within a national consensus; and they generally accept one another's legitimacy. Missing, of course, are the democratic institutions that would induce existing parties to channel their energies towards electioneering and governance." That is, while various groups have long existed in Palestine, until recently they have lacked the electoral processes within which to operate. To be sure, the majority of parties in Palestine have traditionally considered themselves "movements" or "fronts," and thus focus their attention on activities not necessarily related to electoral processes. In addition, the historical dominance of Fatah, and more recently, Hamas, have created challenges for the development of electoral parties in that "Fatah is too indistinguishable from the PA and Hamas too removed from it."

Indeed, while Fatah has traditionally identified itself as the primary force for Palestinian liberation, its loose cohesion has suffered from various fractions, due both to its position as the central party of the PA and to its handling of the second intifada. In contrast, Hamas has distanced itself from the PA, identifying itself as an "alternative to the status quo" and "the main opposition to Fatah and the PA." This contrast was not only established on the conceptual level but on the direct level as well, as Hamas provided numerous social services to communities that Fatah and the PA had been unable to supply. Also, Hamas has distinguished itself from Fatah by intentionally using religious rhetoric, in contrast to Fatah's secular nature.

In the past six months however, the nature of Hamas's political involvement has been shifting from that of an independent movement to a perhaps viable party in that members participated for the first time in municipal elections and plan to participate in PLC elections.

Many democracy advocates are now calling for a "third movement" that would provide an alternative to the so-called "old guard" of Fatah and the PA, and to fundamentalist groups like Hamas. As Mustafa Barghouthi, Director of the Health, Development, Information, and Policy Institute on Palestine commented, "Palestinians

do not have to choose between autocracy and fundamentalism.

There is a democratic alternative. Palestine could be a state that is independent and sovereign." Dr. Lily Feidy of MIFTAH agreed, advocating for a third movement that is secular and democratic. Nassif, who has observed numerous town meetings through the work of the Civic Forum Institute, it is evident that "people want change, and want more participation by political parties. They want real democracy, and they want political parties to function as a fundamental part of that democracy."

It should be noted that electoral party systems can take many forms, and in fact, a strictly organized party system could actually be detrimental in Palestine since many active reformists in the PLC have functioned essentially as independents, in practice at least if not in name. However, it is clear that the development of institutions to support electoral parties is becoming a necessity. Brown suggests three minimal steps to further democratic transition in the area of electoral parties. First, Fatah must be disentangled from the PA, for "when politicization of official positions runs deeply throughout the bureaucracy, and where there is a conflation of roles and ruling bodies… mechanisms of horizontal and vertical accountability begin to break down."

Secondly, parties need to develop clear structures of internal governance and take "significant organizational steps, such as determining their membership, internal procedures, selection of candidates, and decision-making structures." Third, organizations need to re-orient themselves to function in electoral competition, that is, groups need to consciously decide if they are primarily violent movements or if they are electoral parties.

In order for these steps to take place, certain human rights must be ensured. The rights to assembly and movement are inherent to political party organization, and the rights to opinion and expression are necessary for allowing diverse parties to develop and mature. These rights must be protected by both the PA and by Israel. As Barghouthi stated, "[Israeli] suppression of secular democratic forces in Palestine will lead to a polarization… between Hamas fundamentalists and the PA." Indeed, the protection of human rights are essential for the emergence of a third movement.

Separation of Powers

As Hussein Sirriyeh, Arabic and Middle Eastern Studies at the University of Leeds, writes, "the definition of democracy should not merely be restricted to the narrower sense of free elections and a multi-party system. It should also encompass a broader spectrum of ingredients, including government by consent and accountability…" To be sure, in order for political parties to function in effective institutions, especially the legislature, there needs to be a clear separation of power between the executive, legislative, and judiciary branches, with a viable system of checks and balances between them, articulated in a Constitution. This is necessary for ensuring transparency and accountability, and for enabling the different branches to fulfill their respective duties. In Palestine, power was largely concentrated in the executive branch under the leadership of Arafat, who developed a highly personalized system of authority. Under this system, Arafat managed to bypass the majority of institutions to extend his personal influence.

While this strategy was arguably motivated by Arafat's attempt to unite various factions of Palestinians with different opinions and interests, and to bolster his status as the unifying symbol of Palestine, the centralization of power proved detrimental

and only further crippled the already limited legitimacy of the PA.

This centralization manifested itself in various ways. The most measurable indication was evident in the PA budget, in which over one quarter of the PA revenues were placed under the direct and unaccountable control of Arafat by 1997. The executive's domination was also felt strongly by the legislative and judiciary branches. While the PLC had the authority to draft and pass laws, it had no mechanism to ensure that the president would approve them. Thus, numerous bills and laws that were passed by the PLC, including the Basic Law, were subject to interminable waiting for Arafat's approval. Similarly, the executive responded to many court orders from the judiciary by simply ignoring them.

Sirriyeh proposes several theses to explain the authoritarian nature of the PA under Arafat. Some of these reasons include the desire of the PA to make an impression on the Israelis by suppressing anti-Oslo opposition, the issue of internalized PNA insecurity, the "outsider" status of the original PA leadership, the lack of political experience of the PA, and the desire to promote national unity by subordinating divisions within Palestine. Whatever the reason, the failure to separate powers, compounded by widespread corruption within the PA, resulted in a system that lacked transparency, accountability, and ultimately, legitimacy. This crippled the development of democratic institutions in their early stages, and it is only recently that the new PA leadership under Abu Mazen has begun to confront the process of de-centralizing authority.

Judiciary

The branch of government that perhaps requires the most immediate attention is the judiciary. The judiciary was virtually nonexistent during the majority of the post-Oslo period, and it was only in 2002 with the passing of the judicial organizational law that the judiciary began to be managed by an independent judicial council.

However, to date the council has consisted of judges who, while inexperienced in administrative matters, are intent on preserving their autonomy, thus causing them to lose the support of the bar association. The judiciary has also been embroiled in rivalries with the PLC and the executive branch's Ministry of Justice, with disputes occurring most recently over a draft judicial law for reform introduced by a special committee under Abu Mazen and currently referred to the legislature.

Despite these challenges, the fact that an independent judiciary council does exist provides a foundation for starting judicial reform. Although building a strong judiciary is a long, complex process, it is imperative for several reasons. On the conceptual level, judicial reform is symbolically significant because it can address the general lawlessness that directly affected many Palestinian communities during the second intifada and can thus restore confidence in the PA. To be sure, an effective court system has the potential to restore order and thus serve as an indicator to Palestinians of the authenticity of reforms.

Furthermore, "judicial reform is a logical priority because it can be a genuine tool—not simply a symbolic one—in addressing the corruption that is perhaps one of the most corrosive issues for Palestinian governance." Although laws exist regarding hiring for government positions, disclosing personal finances, and monitoring public funds, there have been no mechanisms for implementing them or prosecuting corrupt officials. This problem can be addressed by focusing initial reform efforts on the office

of public prosecution. A strong judiciary can serve other important functions as well, including being a leading force in constitutional reform and the development and application of the Basic Law. It also can function as a key body for placing checks and balances on the executive and legislative branches.

Indeed, Hamdi Shaqqura of the Palestinian Centre for Human Rights, the empowerment of a strong and independent judiciary can alleviate current debates regarding concern over the popularity of Hamas as a political party. Shaqqura suggests that any hypothetical attempts by elected Hamas officials to "Islamicize" the system or re-introduce violence as an acceptable policy would be countered by the judiciary.

Finally, a strong, independent judiciary is necessary for preserving human rights. First, it would provide a legitimate institution for prosecuting cases of human rights abuses. Lamis Alami of the Palestinian Independent Commission for Citizens' Rights, ombudsmen and monitoring groups like PICCR can document human rights violations, but they currently lack effective institutions for addressing them. Furthermore, an effective judiciary branch is necessary for protecting rights to fair and public hearings and trials, as articulated in Articles 10 and 11 of the UDHR.

Security

Closely related to the topic of judicial reform is the issue of security. Indeed, in order to ensure due process and avoid violations such as arbitrary arrests or torture, it is necessary that an effective security apparatus, including a police force, operates with legitimacy. Viable security services are necessary for preserving the rule of law, which is essential in a sustainable democracy.

The issue of security is particularly important in Palestine, as security continues to play a vital role in many aspects of the Israeli-Palestinian conflict. To be sure, "for some external actors—especially Israel—security forms the basic logic of the reform process," and many of Israel's actions and policies are justified by concern for security. In the post-Oslo period however, many Palestinians perceived that the thrust of the so-called security reforms in the Occupied Territories was to protect Israeli security at the expense of Palestinian security. Inside Palestine, security concerns were not only associated with Israel but with internal elements as well, as the security services came to be associated with authoritarianism, corruption, and human rights violations against fellow Palestinians, including illegal detentions, improper trials, torture, and executions.

The failure of the Palestinian security services after Oslo is largely attributable to other flaws within the PA. Primarily, "the absence of an effective control by an identifiable institution led to the excessive manipulation of responsibilities by members and leaders of these organizations."

To be sure, "the security services effectively answered to the president regardless of the content of the Basic Law. When Arafat was president, he encouraged multiple security services but declined to draw clear divisions of responsibilities among them." This resulted in a lack of order and organization, lack of mandate, lack of professionalism, and consequently, lack of legitimacy.

Indeed, over a dozen security organizations were operating under Arafat, and none of them proved effective in providing either internal or external security. As Brown suggests, "the myriad layers of overlapping forces and command structures need to be replaced with a consolidated and transparent organization with clear lines

of command to a democratically accountable official or set of officials." The president should still have some involvement, but other executive branch officials should include members of the Ministry of the Interior.

Furthermore, the PLC should be involved by finishing the draft of the legal framework for the security services' operation, as well as by examining the security budget. In addition to these top-down measures, reforms need to occur directly within the security services, first through consolidation and re-organization, and also through improved trainings. Specifically, security personnel trainings should be infused with human rights training, and ideally, should take place in conjunction with local human rights organizations.

This model is helpful for facilitating a professional ethos within the security services; that is, "their training should focus not only on developing technical expertise but also on fostering a sense of what security services should not do."

Steps should also be taken to establish a multi-level system of monitoring and accountability, including:

- A system for security personnel and officers to report human rights abuses and violations;
- A procedure for families to appeal for investigations;
- A joint investigative body at the local level consisting of senior and junior security officers, human rights activists, and jurists to review cases of abuse allegations;
- A stronger Committee on Human Rights within the PLC;
- A stronger PICCR or similar ombudsman institution. Some reforms have already taken place under Abu Mazen, but the process of security reform will inevitably be long and complex. Nevertheless, "Palestinian reform will clearly be moving forward if the Ministry of Interior exercises real oversight, if the PLC passes a set of laws governing security forces, and if the regular reporting of human rights groups and other NGOs suggests that the security forces are more respectful of the limits to their authority."

Civil Society

Democracy depends largely on the presence of a vibrant civil society. In Palestine, the presence of a strong civil society can be considered one of the most promising assets for the development of a sustainable democracy. Numerous civil organizations have existed since the early years of the occupation, essentially "keeping the country going before the PA, and still very active" after Oslo and during the present period.

Dajani notes that, in Palestine, "in the absence of a state and central government, and without any formal, centrally organized political socialization via schools, the media, religion, friends or family, people began to organize themselves in civil groups—which subsequently became known as NGOs—and took over the role of a government." These organizations have assumed a variety of roles and duties, including the provision of social services, political activism, human rights monitoring, education and advocacy, media and outreach, and others.

Civil society groups have thus taken a number of forms, such as women's groups, media outlets, trade unions, human rights groups, religious groups, etc. While duplication, and at times, competition, are inevitable, many civil society organizations

collaborate with each other and complement each others' work, and over 90 organizations belong to the Palestinian NGO Network, an umbrella group that seeks to support, strengthen, and consolidate Palestinian civil society. Organizations that focus on women's rights and empowerment are especially important for ensuring the viability of a sustainable democracy.

As Feidy explains, a strong Palestinian women's movement has existed since the 1920s, and women have been active in civil society throughout Palestinian history. However, women have been largely marginalized under the PA, with the old guard seeking to limit the participation of both women and youth. Alami, the women's agenda has lagged at times because many active women believe that political activism against the occupation deserves more attention than the women's movement, although one cannot really separate one agenda from the other.

Indeed, if women are to have an impact politically, they need to have the rights and access to participation. As Giacaman stated, "Equality is central to democracy." In addition to political marginalization, women also face challenges related to employment, education, violence, early marriage, and inheritance rights. Many Palestinian Muslim women also confront unique issues related to certain interpretations of Islam.

The range of challenges related to women has resulted in a variety of responses by different civil society groups. Some focus on advocating for legal reform, such as the establishment of a quota to ensure a certain percentage of local or PLC seats are reserved for women, while others focus more on assisting female candidates and encouraging women to run for office or to vote for candidates who are female or who support women's rights.

Other groups focus on making women aware of their civil and political rights through trainings, workshops, and conferences. As Mu'alim explains of his work with PCPD, "We are not speaking for people; rather, we empower people to speak on behalf of themselves. People have listened too long. They need to use their own voices now." This approach is especially important for women's empowerment.

An obvious institution for channeling these voices is the media, and indeed, newspapers and media outlets are important institutions within Palestinian civil society. A strong foundation exists in Palestine for a free press; according to Brown, "the basis for independent media that can facilitate reform [in Palestine] is solid." To be sure, the majority of media outlets in Palestine are privately owned, in contrast to the state-controlled media that dominates in some other parts of the Arab world and elsewhere.

Similarly, despite noted attempts by some PA officials to constrict discourse on certain topics such as Islamist parties, or certain stories, such as internal discord, the PA never fully stifled public expression. Nevertheless, there is still much room for improvement. Palestinian journalists should thus continue to build on their sound foundation of free media institutions to ensure that the media can function as a viable institution in a substantive democracy. Journalists and media outlets are not the only groups focusing on media concerns. Many organizations that advocate for democracy and reform are embracing media issues, as well as women's rights, as key areas of concentration for their work, under the larger goal of promoting democracy and working towards the development of sustainable institutions.

Some of the leading democracy organizations include MIFTAH, which focuses on

democracy, human rights, gender equity, and participatory governance; Muwatin, which initiates intellectual debate on democratic issues and options; PCPD, which promotes human rights, tolerance, participation, accountability, empowerment, and rule of law; and Civic Forum Institute, which aims to increase citizens' awareness of democratic concepts and institutions and develop civil society institutions. This list is not intended to be exhaustive, but rather is meant to provide brief insight into the types of organizations that currently exist in the area of democracy advocacy.

Civil society is just one vital aspect of a participatory democracy, in which citizens are active participants in their government and communities, rather than just passive recipients. It should be noted that democratic participation can take many forms, including voting, holding public office, volunteering a service, writing letters to officials and/or newspapers, participating in marches, protests, and other forms of direct activism, and countless others. It is not the objective of this chapter to evaluate the impact of various forms of participation; rather, it is to recognize the importance of citizen agency.

Perhaps the best indication of the potential for participatory democracy in Palestine was the early years of the first intifada, which saw widespread popular participation of different forms. Though the nonviolent "people power" strategies employed during that time have yet to be duplicated on the same scale, the spirit of that period is evident in the willingness of the people to express their opinions and voice their criticisms of both the PA and Israel.

Participatory democracy, and thus civil society, are both inputs and outputs of human rights. First of all, as an output, the emergence of civil society depends on the rights to freedom of thought, opinion, and expression, the right to assembly and association, and the right to participation and service in government or country.

As an input, many civil society groups adopt missions that help to ensure economic, social, and cultural rights such as access to social services like food, clothing, housing, and medical care, education, and human security and others focus on securing civil and political rights. In addition, human rights organizations in particular, as a part of civil society, play an important role in monitoring and documenting human rights violations and advocating for the protection of rights.

Assessment of Democracy and Human Rights in Palestine

Foundations clearly exist in Palestine for the emergence of a substantive democracy, but the process still has far to go. A helpful way of conceptualizing Palestine's current level of democracy is the transition theory, advocated by Dankwart Rustow.

This theory, democratic development occurs in four main stages: "a stage when a national unity is being established; a preparatory phase of prolonged and inconclusive political struggle; a decision phase when a historical movement of choosing a democratic path is taken; and a habituation phase witnessing a consolidation of democracy." In the case of Palestine, a national unity has long been established, and one might consider the post-Oslo period and second intifada to be periods of prolonged struggle.

It is possible that, at present, Palestine is transitioning into the third stage, embarking upon a path of decision to work deliberately towards democracy. Most democracy advocates interviewed agreed, suggesting that Palestine is in a middle stage,

on the way to democracy. It is thus important at this stage to identify obstacles that prevent Palestine from fully realizing a substantive democracy. First, it should be noted that any transition to democracy is a long, slow process. In the case of Palestine, there have also been additional setbacks in the form of clashes in reform visions, both internally and between internal and external actors.

Another obstacle is the persistence of the old guard, who continue to occupy many key positions. The past six months have seen hope for progress in both of these areas however, with the election of Abu Mazen. The new president has committed himself to reform, and in doing so has reconciled differences between international and domestic agendas, and has opened up the PA and Fatah to be more transparent and accountable.

As Brown notes however, "the primary obstacle to further Palestinian reform lies in the international context: Political reform is difficult in the midst of an ongoing conflict." Specifically, it is not possible to establish a substantive democracy under occupation. Unfortunately, international actors like the United States have to date have "approached diplomacy and reform as sequential rather than interdependent… [though] it is precisely the mutual dependence of reform and peace that make both so difficult achieve."

To be sure, the "peace now, democracy later" philosophy of Oslo proved to be ineffectual and perhaps even detrimental, and it is doubtful that the current logic of "democracy now, peace later" will be any different. As Brown notes, it is futile to build "public institutions that are expected to establish authority and accountability while placing them in a context of extremely limited autonomy."

Perhaps a better way to conceptualize the peace and democracy equation is to integrate the variable of human rights. Democracy is necessary for human rights, and human rights are necessary for democracy. Likewise, a real just peace cannot exist unless peace is integrated with the protection of human rights. Because human rights is thus a common variable to both peace and democracy, it makes sense to focus on the human rights framework when pursuing both diplomacy and institution-building. Only when human rights and democracy are pursued simultaneously will either be achieved, and it is only then that a just peace will be possible.

Cease

Human rights and liberal democracy are not merely complementary, rather, they are interdependent. A democracy that is substantive as well as procedural cannot function without human rights, just as human rights, meaning civil, political, economic, social, and cultural rights, cannot be ensured in the absence of democracy.

In the case of Palestine, a foundation exists for both the realization of human rights and the development of a substantive democracy, but both internal and external factors have hindered the building of viable institutions to actualize those ideals. Greater attention thus needs to be given to the development of mechanisms such as elections, political parties, and separation of powers, and the restructuring of institutions including the judiciary branch and security sector.

Despite the absence of these institutions to date, the will and perseverance of the Palestinian people, through both civil society and direct participation, has continued to push forward the democracy and human rights movements. Thus, attention must be given to these bottom-up efforts of popular participation, in addition to the top-down efforts of institution-building, if a liberal democracy is to be established. To be

sure, no amount of institutional reform will be sustainable if it does not develop in tandem with popular will and public participation.

For this reason, it is necessary for civil society organizations and actors to continue to facilitate political participation and raise public awareness, and it is imperative that individuals and communities seize opportunities to demonstrate their will. Media institutions in particular can play a key role in this process by serving as a means of popular communication, education, and mobilization. The human rights framework can be helpful for developing direction and coordination for these efforts, and can integrate the distinct yet interdependent ideals of peace and justice, and human rights and democracy.

Human Rights and Disability

Until recently, the disabled have constituted a minority in obscurity. Unlike certain other groups that fall victim to discrimination, the disabled do not comprise a self-contained, close-knit social community. Instead, they populate every social sector, every class, every age group, every ethnic and religious community. And at every level, society has tended to ignore them, believing them incapable of participating in the community, or avoiding them as unpleasant reminders of the fragility of our existence.

Fortunately, this situation is beginning to change. Nations and localities are devoting steadily more attention to improving the plight of the disabled. Mr. Despouy's excellent interim report demonstrates the seriousness with which the international community too is finally addressing this important issue. The Bahá'í International Community welcomes the Special Rapporteur's study and would like to take a few minutes to comment on his report and on some of the issues it raises. The plight of the disabled is a mirror reflecting the shortcomings of society. This fundamental observation holds true with respect to three major topics that the Special Rapporteur plans to treat at length in his final report: first, the causes of disability; second, prejudice and discrimination directed towards the disabled; and third, measures to ensure the equal enjoyment of human rights for the disabled.

First, with respect to the causes of disability, the list of injurious practices resulting in disability that the Special Rapporteur has compiled is thought provoking, ranging from amputations to civil war. Disability can be caused by the gamut of inhuman conduct perpetrated by human beings against one another. For that very reason, the international community must take aim at all human rights violations, for they can all result in the permanent mental or physical handicap of human beings. We fully agree with the Special Rapporteur's observation, in paragraph 14 of his report, that any acts contrary to international law and violative of mental or physical integrity should be proscribed, not only those acts that rise to the level of torture or other cruel, inhuman or degrading treatment or punishment.

Secondly, the prejudice and discrimination that disabled people suffer is the product of the more general human tendency to label as "inferior" those who are somehow different. But the ostracism that disabled persons often experience can be even more intense, for it is founded on fear — fear on the part of the ostracizer that he, too, may someday become the victim of disability.

The only way to eradicate this fear is to educate every member of society to see disability for what it really is — a mental or physical condition that may make everyday life more challenging, but that cannot affect the disabled person's soul, spirit, creativity,

imagination or determination — in short, some of the most valuable aspects of life.

At the same time, such an appreciation will enable individuals to see through the outward handicaps of disabled persons, to their inner reality. As we pointed out in our statements to the Sub-Commission last year, the reformation of social stereotypes and prejudices against the disabled requires education aimed at helping individuals to see the disabled as real people and to share in their triumphs. As Bahá'ís, we are working to implement this kind of education in our schools and in Bahá'í homes.

We are pleased to learn from the Special Rapporteur's report that a number of governments have reported that they are pursuing educational programmes with this goal directed towards young persons, teachers and the society as a whole. We hope that the Special Rapporteur will be in a position to elaborate Parts III and V of his final report, and to make specific recommendations on the form and content of educational programmes designed to combat prejudice against the disabled. We now turn to our third topic; ensuring equal rights for the disabled. Like many other groups, the disabled have been stigmatized and victimized by prejudice, preventing them from assuming their rightful places in society.

As pointed out by the Special Rapporteur, the elimination of traditional stereotypes and prejudices against the disabled is a sine qua non for their full enjoyment of fundamental human rights. We agree wholeheartedly with the Special Rapporteur that all sectors of society must work to integrate disabled persons into the life of society and give them equal opportunities in schools, the workplace and the community at large. Society will be the loser if it fails to benefit from the talents of disabled persons. Their resolute determination to overcome problems that most of us will never be forced to deal with should be a shining torch for us all.

We would only suggest that the Special Rapporteur emphasize the ideal of rehabilitation in the family as well as in the community. Family members should be trained, where possible, to help provide the support and encouragement that the disabled person requires to surmount his impairment. Moreover, we would add the right to freedom of religion to the list of those rights especially important for the disabled person. Disabled persons must be free to partake of the inspiration that religious beliefs can provide. We have described in more detail our views on these topics, and on the broad economic, social and cultural rights to which disabled persons are entitled, in our written statementto the current session of the Sub-Commission. Finally, we welcome discussions on the possibility of drafting a convention on disabled persons' rights. Every effort to specify more clearly disabled persons' rights and entrench these rights in the legal order deserves to be commended.

But the problem of finding the proper method for developing and entrenching these standards requires careful study. For this reason, we approve of the suggestion by the Secretary-General that the General Assembly consider forming a Working Group to examine the possibility of elaborating a convention and the steps involved in its preparation.

Thanks in part to the devoted efforts of the Special Rapporteur, disabled persons will no longer have to cope with their handicaps in isolation, hidden behind a veil of intentional ignorance on the part of the society around them.

We applaud efforts worldwide to help them surmount their disabilities and become fully-functioning members of their communities. Indeed, we all have much to learn from the disabled persons. Theirs is often an example worthy of emulation.

Education

The right to education is recognized as a human right by the United Nations and is understood to establish an entitlement to free, compulsory primary education for all children, an obligation to develop secondary education accessible to all children, as well as equitable access to higher education, and a responsibility to provide basic education for individuals who have not completed primary education.

In addition to these access to education provisions the right to education encompasses also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality. The right to education is enshrined in Article 26 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Economic, Social and Cultural Rights.

The right to education has also been reaffirmed in the 1960 UNESCO Convention against Discrimination in Education, 1st Protocol of ECHR and the 1981 Convention on the Elimination of All Forms of Discrimination Against Women.

The right to education may also include the right to freedom of education. Education narrowly refers to formal institutional instructions. Generally, international instruments use the term in this sense and the right to education, as protected by international human rights instruments, refers primarily to education in a narrow sense. The 1960 UNESCO Convention against Discrimination in Education defines education in Article 1(2) as: "all types and levels of education, (including) access to education, the standard and quality of education, and the conditions under which it is given."

In a wider sense education may describe "all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable the group to subsist". In this sense education refers to the transmission to a subsequent generation of those skills needed to perform tasks of daily living, and further passing on the social, cultural, spiritual and philosophical values of the particular community. The wider meaning of education has been recognised in Article 1(a) of UNESCO's 1974 Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms.

The article states that education implies: "the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge."

The European Court of Human Rights has defined education in a narrow sense as "teaching or instructions... in particular to the transmission of knowledge and to intellectual development" and in a wider sense as "the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young."

Fulfilling the Right to Education

The fulfilment of the right to education can be assessed using the 4 As framework, which asserts that for education to be a meaningful right it must be available, accessible, acceptable and adaptable. The 4 As framework was developed by the former UN Special Rapporteur on the Right to Education, Katarina Tomasevski, but is not necessarily the standard used in every international human rights instrument and

hence not a generic guide to how the right to education is treated under national law. The 4 As framework proposes that governments, as the prime duty-bearer, has to respect, protect and fulfil the right to education by making education available, accessible, acceptable and adaptable.

The framework also places duties on other stakeholders in the education process: the child, which as the privileged subject of the right to education has the duty to comply with compulsory education requirements, the parents as the 'first educators', and professional educators, namely teachers.

The 4 As have been further elaborated as follows:

- *Availability*: Education is free and government-funded and there is adequate infrastructure and trained teachers able to support education delivery.
- *Accessibility*: The system is non-discriminatory and accessible to all, and positive steps are taken to include the most marginalised.
- *Acceptability*: The content of education is relevant, non-discriminatory and culturally appropriate, and of quality. The school itself is safe and teachers are professional.
- *Adaptability*: Education can evolve with the changing needs of society and contribute to challenging inequalities, such as gender discrimination, and can be adapted locally to suit specific contexts.

A number of international NGOs and charities work to realise the right to education using a rights-based approach to development.

Development of the Right to Education

In Europe, before the Enlightenment of the eighteenth and nineteenth century, education was the responsibility of parents and the church. With the French and American Revolution education was established also as a public function. It was thought that the state, by assuming a more active role in the sphere of education, could help to make education available and accessible to all. Education had thus far been primarily available to the upper social classes and public education was perceived as a means of realising the egalitarian ideals underlining both revolutions.

However, neither the American Declaration of Independence (1776) nor the French Declaration of the Rights of Man (1789) protected the right to education as the liberal concepts of human rights in the nineteenth century envisaged that parents retained the primary duty for providing education to their children.

It was the states obligation to ensure that parents complied with this duty, and many states enacted legislation making school attendance compulsory. Furthermore child labour laws were enacted to limit the number of hours per day children could be employed, to ensure children would attend school.

States also became involved in the legal regulation of curricula and established minimum educational standards. In On Liberty John Stuart Mill wrote that an "education established and controlled by the State should only exist, if it exists at all, as one among many competing experiments, carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence." Liberal thinkers of the nineteenth century pointed to the dangers to too much state involvement in the sphere of education, but relied on state intervention to reduce the dominance of the

church, and to protect the right to education of children against their own parents.

In the latter half of the nineteenth century, educational rights were included in domestic bills of rights. The 1849 Paulskirchenverfassung, the constitution of the German Empire, strongly influenced subsequent European constitutions and devoted Article 152 to 158 of its bill of rights to education. The constitution recognised education as a function of the state, independent of the church. Remarkable at the time, the constitution proclaimed the right to free education for the poor, but the constitution did not explicitly require the state to set up educational institutions.

Instead the constitution protected the rights of citizens to found and operate schools and to provide home education. The constitution also provided for freedom of science and teaching, and it guaranteed the right of everybody to choose a vocation and train for it.

The nineteenth century also saw the development of socialist theory, which held that the primary task of the state was to ensure the economic and social well-being of the community through government intervention and regulation. Socialist theory recognised that individuals had claims to basic welfare services against the state and education was viewed as one of these welfare entitlements. This was in contrast to liberal theory at the time, which regarded non-state actors as the prime providers of education. Socialist ideals were enshrined in the 1936 Soviet Constitution, which was the first constitution to recognise the right to education with a corresponding obligation of the state to provide such education.

The constitution guaranteed free and compulsory education at all levels, a system of state scholarships and vocational training in state enterprises. Subsequently the right to education featured strongly in the constitutions of socialist states. As a political goal, right to education was declared in F. D. Roosevelt's 1944 speech on the Second Bill of Rights.

Implementation

International law does not protect the right to pre-primary education and international documents generally omit references to education at this level. The Universal Declaration of Human Rights states that "everybody" has the right to education, hence the right accures to all individuals, although children are understood as the main beneficiaries.

The rights to education are separated into three levels:

1. Primary (Elemental or Fundamental) Education. This shall be compulsory and free for any child regardless of their nationality, gender, place of birth, or any other discrimination. Upon ratifying the International Covenant on Economic, Social and Cultural Rights States must provide free primary education within two years.
2. Secondary (or Elementary, Technical and Professional in the UDHR) Education must be generally available and accessible.
3. Higher Education (at the University Level) should be provided according to capacity. That is, anyone who meets the necessary education standards should be able to go to university.

Both secondary and higher education shall be made accessible "by every appropriate means, and in particular by the progressive introduction of free education".

The only country that has declared reservations about introducing free secondary or higher education is Japan.

Role of the State

Today education is considered an important public function and the state is seen as the chief provider of education through the allocation of substantial budgetary resources and regulating the provision of education. The pre-eminent role of the state in fulfilling the right to education is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights. Traditionally, education has been the duty of a child's parents, however with the rise of systems of education, the role of parents has diminished. With regards to realising the right to education the World Declaration on Education for All, adopted at the 1990 World Conference on Education for All states that "partnerships between government and non-governmental organisations, the private sector, local communities, religious groups, and families" are necessary.

Compulsory Education

The realisation of the right to education on a national level may be achieved through compulsory education, or more specifically free compulsory primary education, as stated in both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

Freedom of Speech

Freedom of expression is a cornerstone of democratic rights and freedoms. In its very first session in 1946, before any human rights declarations or treaties had been adopted, the UN General Assembly adopted resolution 59(I) stating "Freedom of information is a fundamental human right and... the touchstone of all the freedoms to which the United Nations is consecrated."

Freedom of expression is essential in enabling democracy to work and public participation in decision-making. Citizens cannot exercise their right to vote effectively or take part in public decision-making if they do not have free access to information and ideas and are not able to express their views freely. Freedom of expression is thus not only important for individual dignity but also to participation, accountability and democracy.

Violations of freedom of expression often go hand in hand with other violations, in particular the right to freedom of association and assembly. Progress has been made in recent years in terms of securing respect for the right to freedom of expression. Efforts have been made to implement this right through specially constructed regional mechanisms. New opportunities are emerging for greater freedom of expression with the internet and worldwide satellite broadcasting.

New threats are emerging too, for example with global media monopolies and pressures on independent media outlets. Concepts of freedom of speech can be found in early human rights documents and the modern concept of freedom of speech emerged gradually during the European Enlightenment. England's Bill of Rights 1689 granted 'freedom of speech in Parliament' and the Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution in 1789, specifically affirmed freedom of speech as an inalienable right. The Declaration provides for freedom of expression in Article 11, which states that: "The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write,

and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law."

Article 19 of the Universal Declaration of Human Rights, adopted in 1948, states that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Today freedom of speech, or the freedom of expression, is recognized in international and regional human rights law.

The right is enshrined in Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on Human and Peoples' Rights. Based on John Stuart Mill's arguments, freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects:

1. The right to seek information and ideas;
2. The right to receive information and ideas;
3. The right to impart information and ideas.

International, regional and national standards also recognize that freedom of speech, as the freedom of expression, includes any medium, be it orally, in written, in print, through the Internet or through art forms. This means that the protection of freedom of speech as a right includes not only the content, but also the means of expression.

Relationship to Other Rights

The right to freedom of speech and expression is closely related to other rights, and may be limited when conflicting with other rights. The right to freedom of expression is also related to the right to a fair trial and court proceeding which may limit access to the search for information or determine the opportunity and means in which freedom of expression is manifested within court proceedings.

As a general principle freedom of expression may not limit the right to privacy, as well as the honour and reputation of others. However greater latitude is given when criticism of public figures is involved. The right to freedom of expression is particularly important for media, which plays a special role as the bearer of the general right to freedom of expression for all. However, freedom of the press is not necessarily enabling freedom of speech. Judith Lichtenberg has outlined conditions in which freedom of the press may constrain freedom of speech, for example where the media suppresses information or stifles the diversity of voices inherent in freedom of speech. Lichtenberg argues that freedom of the press is simply a form of property right summed up by the principle "no money, no voice".

Origins and Academic Freedom

Freedom of speech and expression has a long history that predates modern international human rights instruments. It is thought that ancient Athens' democratic ideology of free speech may have emerged in the late 6th or early 5th century BC. In Islamic ethics, freedom of speech was first declared in the Rashidun period by the caliph Umar in the 7th century AD. In the Abbasid Caliphate period, freedom of speech was also declared by al-Hashimi in a letter to one of the religious opponents he was

attempting to convert through reason. George Makdisi and Hugh Goddard, "the idea of academic freedom" in universities was "modelled on Islamic custom" as practiced in the medieval Madrasah system from the 9th century.

Islamic influence was "certainly discernible in the foundation of the first deliberately-planned university" in Europe, the University of Naples Federico II founded by Frederick II, Holy Roman Emperor in 1224.

Freedom of Speech, Dissent and Truth

Before the invention of the printing press a writing, once created, could only be physically multiplied by the highly labourious and error-prone process of manual copying out and an elaborate system of censorship and control over scribes existed. Printing allowed for multiple exact copies of a work, leading to a more rapid and widespread circulation of ideas and information.

The origins of copyright law in most European countries lie in efforts by the church and governments to regulate and control the output of printers. In 1501 Pope Alexander VI issued a bull against the unlicensed printing of books and in 1559 the Index Expurgatorius, or List of Prohibited Books, was issued for the first time. While governments and church encouraged printing in many ways, which allowed the dissemination of Bibles and government information, works of dissent and criticism could also circulate rapidly. As a consequence, governments established controls over printers across Europe, requiring them to have official licences to trade and produce books.

The notion that the expression of dissent or subversive views should be tolerated, not censured or punished by law, developed alongside the rise of printing and the press. Areopagitica, published in 1644, was John Milton's response to the Parliament of England's re-introduction of government licensing of printers, hence publishers. Milton made an impassioned plea for freedom of expression and toleration of falsehood, stating:

- "Give me the liberty to know, to utter, and to argue freely according to conscience."

Milton's defence of freedom of expression was grounded in a Protestant worldview and he thought that the English people had the mission to work out the truth of the Reformation, which would lead to the enlightenment of all people. But Milton also articulated the main strands of future discussions about freedom of expression. By defining the scope of freedom of expression and of "harmful" speech Milton argued against the principle of pre-censorship and in favour of tolerance for a wide range of views. As the "menace" of printing spread governments established centralised control mechanism. The French crown repressed printing and the printer Etienne Dolet was burned at the stake in 1546.

In 1557 the British Crown thought to stem the flow of seditious and heretical books by chartering the Stationers' Company. The right to print was limited to the members of that guild, and thirty years later the Star Chamber was chartered to curtail the "greate enormities and abuses" of "dyvers contentyous and disorderlye persons professinge the arte or mystere of pryntinge or selling of books."

The right to print was restricted to two universities and to the 21 existing printers in the city of London, which had 53 printing presses. As the British crown took control

of type founding in 1637 printers fled to the Netherlands. Confrontation with authority made printers radical and rebellious, with 800 authors, printers and book dealers being incarcerated in the Bastille in Paris before it was stormed in 1789. A succession of English thinkers developed the idea of a right to freedom of expression, starting with John Milton, then John Locke and culminating in John Stuart Mill.

Locke established the individual as the unit of value and the bearer of rights to life, liberty, property and the pursuit of happiness. It was the role of Government to protect these rights and this belief was first enshrined in the US Constitution, with the First Amendment adding the guarantee that "Congress shall make no law... abridging the freedom of speech, or of the press".

John Stuart Mill argued that human freedom is good and without it there can be no progress in science, law or politics, which according to Mill required free discussion of opinion. Mill's On Liberty, published in 1859 became a classic defence of the right to freedom of expression. Mill argued that truth drives out falsity, therefore the free expression of ideas, true or false, should not be feared. Truth is not stable or fixed, but evolves with time. Mill argued that much of what we once considered true has turned out false. Therefore views should not be prohibited for their apparent falsity. Mill also argued that free discussion is necessary to prevent the "deep slumber of a decided opinion".

Discussion would drive the onwards march of truth and by considering false views the basis of true views could be re-affirmed. In Evelyn Beatrice Hall's biography of Voltaire, she coined the following phrase to emphasize Voltaire's beliefs: "I disapprove of what you say, but I will defend to the death your right to say it." Hall's quote is frequently cited to describe the principle of freedom of speech. In the 20th Century Noam Chomsky states that: "If you believe in freedom of speech, you believe in freedom of speech for views you don't like. Stalin and Hitler, for example, were dictators in favour of freedom of speech for views they liked only. If you're in favour of freedom of speech, that means you're in favour of freedom of speech precisely for views you despise."

Lee Bollinger argues that "the free speech principle involves a special act of carving out one area of social interaction for extraordinary self-restraint, the purpose of which is to develop and demonstrate a social capacity to control feelings evoked by a host of social encounters." Bollinger argues that tolerance is a desirable value, if not essential. However, critics argue that society should be concerned by those who directly deny or advocate, for example, genocide.

Democracy

The notion of freedom of expression is intimately linked to political debate and the concept of democracy. The norms on limiting freedom of expression mean that public debate may not be completely suppressed even in times of emergency.

One of the most notable proponents of the link between freedom of speech and democracy is Alexander Meiklejohn. He argues that the concept of democracy is that of self-government by the people. For such a system to work an informed electorate is necessary. In order to be appropriately knowledgeable, there must be no constraints on the free flow of information and ideas. Meiklejohn, democracy will not be true to its essential ideal if those in power are able to manipulate the electorate by withholding information and stifling criticism.

Meiklejohn acknowledges that the desire to manipulate opinion can stem from the motive of seeking to benefit society. However, he argues, choosing manipulation negates, in its means, the democratic ideal. Eric Barendt has called this defence of free speech on the grounds of democracy "probably the most attractive and certainly the most fashionable free speech theory in modern Western democracies".

Thomas I. Emerson expanded on this defence when he argued that freedom of speech helps to provide a balance between stability and change. Freedom of speech acts as a "safety valve" to let off steam when people might otherwise be bent on revolution.

He argues that "The principle of open discussion is a method of achieving a moral adaptable and at the same time more stable community, of maintaining the precarious balance between healthy cleavage and necessary consensus." Emerson furthermore maintains that "Opposition serves a vital social function in offsetting or ameliorating (the) normal process of bureaucratic decay."

Research undertaken by the Worldwide Governance Indicators project at the World Bank, indicates that freedom of speech, and the process of accountability that follows it, have a significant impact in the quality of governance of a country. "Voice and Accountability" within a country, defined as "the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and free media" is one of the six dimensions of governance that the Worldwide Governance Indicators measure for more than 200 countries.

Social Interaction and Community

Richard Moon has developed the argument that the value of freedom of speech and freedom of expression lies with social interactions. Moon writes that "by communicating an individual forms relationships and associations with others – family, friends, co-workers, church congregation, and countrymen. By entering into discussion with others an individual participates in the development of knowledge and in the direction of the community."

Limitations on Freedom of Speech

The Freedom Forum Organization, legal systems, and society at large, recognize limits on the freedom of speech, particularly when freedom of speech conflicts with other values or rights. Limitations to freedom of speech may follow the "harm principle" or the "offense principle", for example in the case of pornography or "hate speech". Limitations to freedom of speech may occur through legal sanction or social disapprobation, or both.

In "On Liberty" John Stuart Mill argued that "...there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered." Mill argues that the fullest liberty of expression is required to push arguments to their logical limits, rather than the limits of social embarrassment. However, Mill also introduced what is known as the harm principle, in placing the following limitation on free expression: "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.

In 1985 Joel Feinberg introduced what is known as the "offence principle", arguing

that Mill's harm principle does not provide sufficient protection against the wrongful behaviours of others. Feinberg wrote "It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offense to persons other than the actor, and that it is probably a necessary means to that end." Hence Feinberg argues that the harm principle sets the bar too high and that some forms of expression can be legitimately prohibited by law because they are very offensive.

But, as offending someone is less serious than harming someone, the penalties imposed should be higher for causing harm. In contrast Mill does not support legal penalties unless they are based on the harm principle. Because the degree to which people may take offense varies, or may be the result of unjustified prejudice, Feinberg suggests that a number of factors need to be taken into account when applying the offense principle, including: the extent, duration and social value of the speech, the ease with which it can be avoided, the motives of the speaker, the number of people offended, the intensity of the offense, and the general interest of the community at large.

Freedom of Religion or Belief

Defining Religion or Belief

The word "religion," meaning to bind fast, comes from the Western Latin word religare. It is commonly, but not always, associated with traditional majority, minority or new religious beliefs in a transcendent deity or deities. In human rights discourse, however, the use of the term usually also includes support for the right to non-religious beliefs.

In 1993 the Human Rights Committee, an independent body of 18 experts selected through a UN process, described religion or belief as "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief." Religions and other beliefs bring hope and consolation to billions of people, and hold great potential for peace and reconciliation.

They have also, however, been the source of tension and conflict. This complexity, and the difficulty of defining "religion" and "belief," are emphasized by the still developing history of the protection of freedom of religion or belief in the context of international human rights.

A Complex and Contentious Issue

The struggle for religious liberty has been ongoing for centuries, and has led to innumerable, tragic conflicts. The twentieth century has seen the codification of common values related to freedom of religion and belief, though the struggle has not abated.

The United Nations recognized the importance of freedom of religion or belief in the 1948 Universal Declaration of Human Rights, in which Article 18 states that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice."

Since the Universal Declaration, the attempt to develop an enforceable human rights instrument related to freedom of religion and belief has been unsuccessful. In 1966 the UN passed the International Covenant on Civil and Political Rights, expanding its prior statement to address the manifestation of religion or belief.

Article 18 of this Covenant includes four paragraphs related to this issue:

- Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
- Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.
- The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.

Some of the articles of the Covenant on Civil and Political Rights regarding fundamental freedoms have become international conventions, which are legally binding treaties. In contrast, however, because of the complexity of the topic and the political issues involved, Article 18 of the Covenant on Civil and Political Rights has not been elaborated and codified in the same way that more detailed treaties have codified prohibitions against torture, discrimination against women, and race discrimination.

After twenty years of debate, intense struggle and hard work, the General Assembly in 1981 adopted without a vote the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. While the 1981 Declaration lacks any enforcement procedures, it remains the most important contemporary codification of the principle of freedom of religion and belief.

Rights at Stake

The 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief contains eight articles, three of which define specific rights. The remaining articles act in a supportive role by outlining measures to promote tolerance or prevent discrimination.

Taken together, the eight articles constitute a paradigm, an overall concept, to advocate for tolerance and to prevent discrimination based on religion or belief. While human rights are individual rights, the 1981 UN Declaration also identifies certain rights related to states, religious institutions, parents, legal guardians, children, and groups of persons.

Article 1: Legal Definition

This article repeats several rights from the Covenant on Civil and Political Rights's Article 18:

- Right to thought, conscience, and religion or belief;
- Right to have a religion or whatever belief of your choice;
- Right either individually or in community with others, in private or public, to manifest a religion or belief through worship, observance, practice and teaching;

- Right not to suffer coercion that impairs the freedom to choose a religion or belief;
- Right of the State to limit the manifestation of a religion or belief if based in law, and only as necessary to protect public safety, order, health, morals and the fundamental rights and freedoms of others.

Article 2: Classification of Discrimination

This article identifies categories of potential discrimi-nators, affirming the right not to be subject to discrimination on the grounds of religion or belief by:

- States;
- Institutions;
- Groups of persons;
- Persons.

Article 3: Link to Other Rights

This article links the 1981 UN Declaration to other international documents.

Article 3 declares that discrimination based on religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, and enunciated in detail in:

- The International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights.

Article 4: Possible Solutions

Article 4 declares that all States [including all sectors of civil society] shall take effective measures to prevent and eliminate discrimination based on religion or belief through:

- Actions in all fields of civil, economic, political, social, cultural life;
- Enacting or rescinding legislation where necessary to prohibit such discrimination;
- Taking all appropriate measures to combat intolerance based on religion or belief.

Article 5: Parents, Guardians, Children

At stake in the implementation of this article are the following rights:

- Right of parents or legal guardians to bring the child up in their religion or belief;
- Right of the child to education in religion or belief, in accordance with the wishes of parents, and the right not to be compelled to receive education against their wishes;
- Right of the child to protection from discrimination and to education for tolerance;
- Right of the child's wishes when not under the care of parents or legal guardians;

- Right of the State to limit practices injurious to child's development or health.

Article 6: Manifesting Religion or Belief

At stake in the implementation of this article are the following rights:

- Right to worship and assemble, and to establish and maintain places of worship;
- Right to establish and maintain appropriate charitable or humanitarian institutions;
- Right to make, acquire and use materials related to rites and customs;
- Right to write, issue and disseminate relevant publications in these areas;
- Right to teach a religion or belief in places suitable for these purposes;
- Right to solicit and receive voluntary financial and other contributions;
- Right to train, appoint, elect or designate appropriate leaders;
- Right to observe days of rest and celebrate holidays and ceremonies;
- Right to establish and maintain communication with individuals and communities at national and international levels.

Article 7: National Legislation

This article declares that all of the rights at stake in the 1981 UN Declaration need to be accorded in national legislation in such a manner that everyone shall be able to avail themselves of such rights and freedoms in practice.

Article 8: Existing Protections

This article specifies that the 1981 UN Declaration is non-binding on States so as to ensure that the Declaration does not negate existing legal protections on freedom of religion or belief. Article 8 states that nothing in the Declaration shall be construed as restricting or negating any right defined in the Universal Declaration of Human Rights and International Covenants on Human Rights.

The 1981 UN Declaration is a compromise between states after twenty years of complex discussion and debate, and after final passage by the General Assembly.

Several sensitive issues are still in need of further clarification, including:

- Religious or national law versus international law,
- Proselytism,
- Conscientious objection to military service,
- Status of women in religion or belief,
- Claims of superiority or inferiority of religions and beliefs,
- Choosing and changing a religious commitment,
- Religious registration and association laws,
- Public media and religion or belief, and the relationship of religion or belief to the state.

International and Regional Instruments of Protection

International legal instruments take the form of a *treaty* which may be binding on the contracting states. When negotiations are completed, the text of a treaty is established as authentic and definitive and is *signed* by the representatives of states. There are various means by which a state expresses its consent to be bound by a treaty, with the most common being ratification or accession. A new treaty is *ratified* by those states that have negotiated the instrument, while a state that has not participated in the negotiations may, at a later stage, *accede* to the treaty. The treaty enters into force when a pre-determined number of states have ratified or acceded to the treaty.

When a state ratifies or accedes to a treaty, that state may make reservations to one or more articles of the treaty, unless the treaty prohibits this actions. Reservations are exceptions that a state makes to a treaty—provisions that it does not agree to follow—and may normally be withdrawn at any time. In some countries, international treaties take precedence over national law.

In others, a specific law may be required to give an international treaty, although ratified or acceded to, the force of law. Almost all states that have ratified or acceded to an international treaty may issue decrees, amend existing laws or introduce new legislation in order for the treaty to be fully effective on the national territory. While the 1981 Declaration was adopted as a non-binding human rights instrument, several states had reservations. Romania, Poland, Bulgaria, Czechoslovakia and the then U.S.S.R. said that the 1981 UN Declaration did not take sufficient account of atheistic beliefs. Romania, Syria, Czechoslovakia, and the U.S.S.R. made a general reservation regarding provisions not in accordance with their national legislation.

Iraq entered a collective reservation on behalf of the Organization of the Islamic Conference as to the applicability of any provision or wording in the Declaration which might be contrary to Shari'a law or to legislation or acts based on Islamic law, and Syria and Iran endorsed this reservation.

Monitoring Freedom of Religion or Belief

Many international treaties have a mechanism to monitor their implementation. As part of the Covenant on Civil and Political Rights, Article 18 is legally-binding and is monitored by the Human Rights Committee. As of 2002, there were 149 States Parties to this Covenant. Under an Optional Protocol, 102 States Parties recognize the authority of the Human Rights Committee to consider confidential communications from individuals claiming to be victims of violations of any rights proclaimed under the treaty.

The 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is a non-binding declaration, and does not, therefore, have a treaty mechanism. Instead, in what is called an extra-conventional mechanism, the UN Commission on Human Rights appointed a Special Rapporteur for the 1981 UN Declaration. The Special Rapporteur is mandated to report annually to the Commission on the status of freedom of religion or belief worldwide.

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Human Rights in India

Introduction

Emergence of Civil Liberties Movements

In India, the last quarter of the 20th century has been witness to a growing recognition of the place and relevance of human rights. It is axiomatic that this interest in human rights is rooted in the denial of life and liberty that was a pervasive aspect of the Emergency (1975-77). The mass arrests of the leaders of the opposition, and the targeted apprehension of those who could present a challenge to an authoritarian state, are one of the dominant images that have survived.

The involuntary disappearance of Rajan in Kerala is more than a symbol of the excesses of unbridled power. Forced evictions carried out in Delhi in what is known as 'Turkman Gate' conjures up visions of large scale razing of dwellings of those without economic clout, and of their displacement into what were the outlying areas of the city. The catastrophic programme of mass sterilisation is an indelible part of emergency memory. The civil liberties movement was a product of the emergency. Arbitrary detention, custodial violence, prisons and the use of the judicial process were on the agenda of the civil liberties movement.

Women's Movement

The same period also saw the emergence of a nascent women's movement. In December 1974, the Committee on the Status of Women in India submitted its report to the Government of India preceding the heralding in of the International Women's Year in 1975.

The Status Report, in defiance of standard expectations: Set out almost the entire range of issues and contexts as they affected women. Basing their findings, and revising their assumptions about how women live, on the experiences of women and communities that they met, the Committee redrew the contours of women's position, problems and priorities.

Gave a fillip to the re-nascent women's movement. The women's movement has been among the most articulate, and heard, in the public arena. The woman as a victim of dowry, domestic violence, liquor, rape and custodial violence has constituted one discourse.

Located partly in the women's rights movement, and partly in the campaign against AIDS, women in prostitution have acquired visibility. The question of the practice of prostitution being considered as 'sex work' has been variously raised, while there has been a gathering unanimity on protecting the women in prostitution from harassment by the law. The Uniform Civil Code debate, contesting the inequality imposed on women by 'personal' laws has been resurrected, diverted and re-started.

Representation, through reservation, of women in parliament and state legislatures has followed the mandated presence of women in panchayats. Population policies have been contested terrain, with the experience of the emergency acting as a constant backdrop. 'Women's rights are human rights' has demanded a re-construction of the understanding of human rights as being directed against action and inaction of the state and agents of the state. Patriarchy has entered the domain of human rights as nurturing the offender.

Public Interest Litigation

In the late '70s, but more definitively in the early '80s, the Supreme Court devised an institutional mechanism in public interest litigation (PIL). PIL opened up the court to issues concerning violations of rights, and nonrealisation of even bare non-negotiables by diluting the rule of locus standi; any person could move the court on behalf of a class of persons who, due to indigence, illiteracy or incapacity of any other kind were unable to reach out for their rights.

In its attempt to make the court process less intimidating, the procedure was simplified, and even a letter to the court could be converted into a petition. In its early years, PIL was a process which recognised rights and their denial which had been invisibilised in the public domain.

Prisoners, for instance, hidden amidst high walls which confined them, found a space to speak the language of fundamental and human rights led to 'juristic' activism, which expanded the territory of rights of persons. The fundamental rights were elaborated to find within them the right to dignity, to livelihood, to a clean environment, to health, to education, to safety at the workplace....The potential for reading a range of rights into the fundamental rights was explored. Individuals, groups and movements have since used the court as a situs for struggle and contest, with varying effect on the defining of what constitutes human rights, and prioritising when rights appear to be in conflict.

Struggle Against Pervasive Discrimination

Dalit movements have kept caste oppression, and the oppression of caste, in public view. Moving beyond untouchability, which persists in virulent forms, the movement has had to contend with increasing violence against dalits even as dalits refuse to suffer in silence, or as they move beyond the roles allotted to them in traditional caste hierarchy.

The growth of caste armies in Bihar, for instance, is one manifestation. The assassination of dalit panchayat leaders in Melmazhuvur in Tamil Nadu is another. The firing on dalits by the police forces when they were seen to be rising their oppression in the southern tip of Tamil Nadu is a third. The scourge of manual scavenging has been brought into policy and the law campaigns; there have been efforts to break through public obduracy in acknowledging that untouchability exists. In the meantime, there are efforts by groups working on dalit issues to internationalise deep discrimination of caste by influencing the agenda of the World Conference Against Racism.

Resisting Displacement Induced By 'Development' Projects

There has been widespread contestation of project-induced displacement. The recognition of inequity, and of violation of the basic rights of the affected people, has resulted in growing interaction between local communities and activists from beyond the affected region, and the articulation of the rights and the injuries has been moulded in the process of this interaction.

Resource rights were agitated in the early years of protest in the matter of forests; conservation and the right of the people to access forest produce for their subsistence and in acknowledgment of the traditional relationship between forests and dwellers in and around forests.

Environmentalists and those espousing the dwellers' and forest users' causes have spoken together, parted company and found meeting points again, over the years. The right to resources is vigourously contested terrain.

Communalism

The 1980s, but more stridently in the 1990s, communalism has become a part of the fabric of politics. The anti- Sikh riots following Indira Gandhi's assassination was a ghastly reminder that communalism could well lurk just beneath the surface.

The Bhagalpur massacres in 1989 represent another extreme communal manifestation. The demolition of the Babri Masjid on December 6, 1992 is an acknowledged turning point in majoritarian communalism, and impunity. The complicity of the state is undeniable.

The killing of Graham Staines and his sons in Orissa was another gruesome aspect of communalism. The questioning of conversions in this climate is inevitably seen as infected with the communal virus. The forcible 're-conversion' in the Dangs area in Gujarat too has communal overtones. Attacks on Christians are regularly reported in the press, and the theme of impunity is being developed in these contexts.

New Movements and Campaigns

The professionalising of the non-governmental sector has had an impact on finding public space for certain issues and in making work on the issues sustainable. Child labour, AIDS-related work, the area of devolution and aiding women's participation in panchayat institutions, and battling violence against women have found support and sustainability in funding infrastructure development and support. These have existed alongside civil liberties groups and initiatives, grassroots campaigns such as the Campaign for the Right to Information based in Rajasthan, the development struggle which has the Narmada Bachao Andolan at its helm, or the fishworkers' forum that has combated, sometimes successfully, the encroachments by the large-scale and capital-intensive into the livelihoods of traditional fishing communities.

Movements for self-determination, militancy, dissent and the naxalite movement have provoked various extraordinary measures which have, in turn, prompted human rights groups into protest and challenge.

The Terrorist and Disruptive Activities (Prevention) Act (TADA) is an instance. The Armed Forces Special Powers Act (AFSPA) continues. Encounter killings, disappearances and the ineffectiveness of the judicial system in places where 'extraordinary' situations of conflict prevail, characterise the human rights-related scenario. A jurisprudence of human rights has emerged in these contexts.

Networking, and supporting each other through conflicts and campaigns, is not

infrequent. There are glimmerings of the emergence of, or existence of a human rights community in this. This has had groups and movements working on tourism, forest dwellers rights, civil liberties, displacement, women's rights and environment, for instance, finding a common voice in protesting the nuclear blasts in May 1999, or in condemning the attacks on the filming of 'Water' which had undisguised communal overtones.

There has also been a building of bridges across causes and the emergence of an inter-woven community of interests. As the vista of rights has expanded, conflicts between rights have begun to surface. There has been a consequent prioritisation of rights. The determination of priorities has often depended on the agency which engages in setting them- sometimes this has been environmental groups, at others workers, and yet other times, it has been the court, for instance.

In this general setting, we embarked on a mapping of:

- Human rights issues
- Responses – state and non-state – to human rights situations
- Conflicts between rights and prioritisation of rights
- A miscellany of issues including the treatment, and the place of state and non-state violence, and the question of who speaks for whom, and the relationship between the advocate of an interest and the persons or classes of persons affected by the advocacy

The Study

The mapping exercise involved travel to the states of Maharashtra, Andhra Pradesh, Kerala, Karnataka, Rajasthan, West Bengal, Orissa, Tamil Nadu, Uttaranchal and Delhi. We travelled to Mumbai in Maharashtra, Calcutta in West Bengal, Bhubaneshwar and Konarak in Orissa; Ernakulam, Neyyali, Thrissur, Kottayam, Tiruvananthapuram and Calicut in Kerala; Bangalore in Karnataka; Ajmer District in Rajasthan; Hyderabad, Nalgonda District, Puttur, Chittoor and Tirupati in Andhra Pradesh; Chennai, Poonamallee District, Tuticorin, Tiruchendur (Nadunaalumoolai Kinaru village), Madurai and Chingleput in Tamil Nadu; Dehradun, Almora and Nainital in Uttaranchal.

The work done in documenting a human rights network in Orissa in July 1999 by one of us, and visits to Bhopal and Chattisgarh while researching common property resources in Madhya Pradesh in 1998-99 were also drawn upon. On a visit to Dhaka, human rights groups, lawyers and affected people were met with in May 2000, as part of a regional study on human rights.

That experience too has been inducted into interpreting the human rights arena in India. In an attempt to understand the role, and influence, of the courts in the context of human rights, the law reports covering cases from all the High Courts and from the Supreme Court were comprehensively researched from 1994 to 2000. The Annual Reports of the NHRC have also been analysed. We met movement people, campaigners, persons from NGOs, community based groups, civil libertarians, political activists, journalists, academics, government functionaries, panchayat leaders, bureaucrats and lawyers, among others. We also met victims of human rights violations. As far as possible, we did not predetermine the people we would meet in the states we visited, but allowed a flexibility which would take us from lead to lead.

We also attended workshops and conferences which would give us insights into issues, as well as what people thought about them. In Konarak, therefore, one of us attended a Dialogue Among Activists, where arrest, detention and firing on protesters was under discussion among activists working among communities who were resisting their displacement from areas being taken over for projects, particularly mining.

Within a week of the meeting, in December 2000, firing claimed the lives of three tribals in Koraput district when they were protesting mining incursions into their area, standing testimony to the legitimacy of the concern of the activists at the meeting.

Again, one of us attending a planning meeting for conducting a census of the practice of untouchability; this was in January 2001, in Hyderabad, where dalit activists helped a funding agency set the terms of the study. We attended a workshop to discuss how to stall the changes being proposed in the bureaucratic circles, to Schedule V of the Constitution - which would deprive tribal areas of protection from alienation of land to non-tribals.

One of us attended the meeting of the Campaign against Death Penalty where campaigners from across the country participated.

There were, further, meetings on slums and demolitions, the women's movement in the last 25 years, the International Criminal Court (in Mumbai, and in Dhaka, after Bangladesh had signed on to the statute), juvenile justice, proposed changes in labour law and on strategising for participating in the World Conference against racism.

We also organised a discussion-meeting on a Code of Conduct for Corporations, which is in a draft form before a committee set up by the Office of the High Commissioner for Human Rights in Geneva. In the succeeding parts in this report, it will be our endeavour to set out the issues, responses and conflicts that we encountered, especially during the period of enquiry, viz. May 2000 to February 2001.

Extraordinary Laws

These have been one of the means of routinising the enactment of laws that are normally promulgated in an emergency or in extraordinary situations.

The Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA) was contested for:

- Its denial of fair trial standards - e.g., it reduced the tiers of appeal
- The provision regarding making confessions to a police officer admissible in evidence
- The broad contours of the law on what constitutes terrorism, and
- Potential and proven abuse - for e.g., the largest number of TADA detenues were in Gujarat, where militant activity was not present

The public condemnation of TADA, political opposition to it, the NHRC's spirited intervention and the state's assessment that it was no longer necessary, led to the law not being reenacted when it lapsed in 1995. There have, however, been further attempts to revive the law - as in the Prevention of Terrorism Act recommended in 1999 by the Law Commission, for instance.

Further, state laws in Maharashtra, Andhra Pradesh and, more recently, in Madhya Pradesh and Karnataka - as a measure against organised crime- have brought the TADA back into their states under a hardly disguised identity. Tamil Nadu has

also proposed a Prevention of Terrorism Bill along similar lines. The Armed Forces Special Powers Act 1958 (AFSPA) is another law which provides extraordinary powers.

It has been in force in the Northeast for these years. The TADA and the AFSPA survived challenge before the Supreme Court in the '90s. This has caused a serious rethink on the courts as a situs for testing the legitimacy of such extraordinary laws that deny fundamental rights, and breach human rights principles. It is evident that it is only vigilance, and resistance, which is keeping the proliferation of these laws in check. The arrest and detention of civilians under extraordinary laws, like the TADA, also appears to be routine. It has been alleged, for instance, that villagers in the vicinity of Veerappan, the sandalwood smuggler's beat are routinely subjected to harassment, search and detention. In the negotiations for the release of actor Rajkumar who was taken hostage by Veerappan on July 30, 2000, the release of 51 detainees being held under TADA since 1992 on suspicion of having participated in the murder of policemen was in issue.

Human rights activists claim that many of them were local people who had been roped in as being 'associates' of Veerappan. When a civil liberties organisation moved the court for release of those so incarcerated, the petition was not entertained. But during the negotiations, the government of Karnataka showed a readiness to release them in the interests of law and order, and also, significantly, since others released on bail earlier 'have not repeated the offences and they have not involved themselves in any similar offences and terrorist activity have not been noticed recently in the area.'

Sati

The burning of Roop Kanwar on the pyre of her husband in Rajasthan in 1986, has reintroduced sati into mainstream discourse. Questions of volition, custom and communal pride have been raised justifying the practice.

State inaction has been at issue. In 1987, the Commission of Sati (Prevention) Act was enacted making abetment of sati an offence; and the death penalty was introduced as an alternative sentence. The attempt to commit sati was made punishable with imprisonment for a term up to six months or with fine, or both; this has been contested ever since its inception as punishing the victim. The 'glorification' of sati, where a temple is constructed and a dead woman worshipped bringing in money to the family, has also been made punishable.

This last is constantly under contest - as denying the right to practise a religion. Women's groups in Rajasthan see this as a particularly important provision in taking away the material incitement in the commission of sati. The communal violence of much of the protest against this law, and of the practice itself, is a telling statement of the capacity of patriarchy to deny a place for human rights.

Child Marriage

Though a law prohibiting child marriage has been in the statute books since 1929, it is still performed in many parts of India. For instance, the practice of performing child marriages on Akas Teej, it is reported, has not stopped in Rajasthan. It is widely believed that the gang rape of Bhanwari Devi was intended as a session, since she was active in preventing child marriages.

Another aspect of child marriage was revealed when Ameena, a girl of about 12 years, was married to an old man from Saudi Arabia who was to take her out of the country as his bride.

Trafficking

While trafficking in women is rampant in many parts of the country, and also across borders, it is Kerala that the sexual exploitation of women and trafficking has been exposed, and the accused brought to trial and conviction. The Surinelli case, the Ice Cream Parlour case and the Vidhura case are undiluted narratives of sexual exploitation. In the Surinelli case, forty persons, including prominent political figures and persons from the establishment among them, were convicted after a prolonged trial in 2000.

They are now on bail while their appeal is pending. Some women's activists have been studying the issue of migration and trafficking - whether for prostitution, labour in sweat shops, domestic work which is often ill-paid and oppressive, or as mail order brides — while recognising that while migration makes women vulnerable to exploitation - and violence, migration is often not wholly involuntary. Women, for instance, migrate to escape violent domestic situations too. Shorn of its moral content, activists say, the law regarding trafficking could actually help women trafficked into situations for which they did not bargain.

Conflict Among Rights

The expanded assertion and recognition of rights, and the dimensions to rights that are emerging, have given rise to situations of conflicts among rights, and consequently, among rights activists. Choices are being made, and a prioritisation of rights occurring in a range of areas. The neglect of women's rights in the human rights arena for decades after the Universal Declaration on Human Rights (UDHR), and the Constitution of India, has had the women's movement demanding, and acquiring even if partially, recognition of women's rights as human rights.

There were some among our respondents who held that human rights are those which are asserted against state action and inaction. A human rights lawyer, on the other hand, saw human rights as a strategy which ought not to be confined within an inflexible definition. For people in the women's movement, however, human rights are about patriarchy and systemic oppression and violence; domestic violence and death in the matrimonial home could not, clearly, be excluded from the universe of human rights issues.

As a civil liberties' activist told us, in a pamphlet they prepared in 1990 (when the debate about whether violence and death in the home should be on their agenda), she compared statistics in dowry deaths with encounter killings: it was 2000:300. Though it stoked a lot of controversy, the women members of the organisation were very happy that the issue had been raised, she said. The emergence of women's rights in the human rights universe has also brought with it some contradictions which demand to be addressed.

A More just Deal for Women and Fair Trial Standards

In cases of violence against women: registering a case; getting effective investigation underway; the ordeal of trial for the victim, particularly in situations of rape; the difficulty in obtaining evidence in offences within the home, as also in cases of rape; and the low rate of convictions had women's groups, and on occasion, the National Commission for Women, demanding changes in the law to deal with these issues.

Over the years the demand has been for:

- The recognition of certain actions/practices as actionable offences - domestic violence, cruelty in the matrimonial home and 'dowry death'. While the first is under consideration of Parliament, the latter two now find a place in the law. S. 498-A IPC, which makes punishable a 'husband or relative of husband of a woman subjecting her to cruelty' has become contentious. On the one hand the extent of violence in the matrimonial home is undeniable, and restraining the perpetrators and protecting the victim-woman is imperative. On the other hand, the experience of abuses of this provision which defines an offence that is cognisable and nonbailable, which may land families in prison pending bail, is said to have caused resentment against, and distrust of, this provision. Those who would not drop the provision because of the occasional misuse, point out that there are hardly any other protective measures to help a woman battered in her marital home, nor any other deterrent provision to add caution to offending members of the matrimonial family.
- Enhanced punishment for certain offences against women. The introduction into the law of 'minimum sentences', and higher sentences has also happened. Implicit in the demand for prescription of higher penalties is the need to secure deterrence - if the low rate of conviction takes away the possibility of deterrence, it is sought to be reintroduced through a higher penalty where conviction does result. It has also been a measure of the state's, and popular, perception of the seriousness of the offence. The conflict lies in this, that it comes at a time when the virtues of imprisonment are in serious question. It is not evident that the conditions in prisons, and the violations of the rights of prisoners which is now common knowledge, has been reckoned with while asking for enhanced sentences. But the conflict became most apparent when death penalty for the offence of rape was mooted. When it was first suggested in the mid-1990s, there was very little by way of audible objections from women's groups; some women's groups extended it support. It was when the issue was raised again in 1998, that there was an avalanche of protest from women's groups. The NCW too released a report of a study it had done which showed that most of their respondents opposed the prescription of death penalty for rape. For some in the women's movement, the opposition to death penalty for rape appears to have been a pragmatic position - since it would only make the women more vulnerable if the penalty were so severe. For others, the pragmatic argument was a means of opposing the spread of death penalty into areas where it is not, already. What is disturbing is the persistence of the Home Minister in holding out the death penalty as a promise to women, as a statement of seriousness about the problem. In this context the failure to challenge the prescription of the death penalty for offences in the Commission of Sati (Prevention) Act 1987 also becomes an area that needs to be re-visited.
- *Shifting the onus of proof*: This has already been introduced into the Evidence Act 1872 in 1983 and 1986. S. 113 A raises a presumption as to abetment of suicide by a married woman where she commits suicide within seven years

of her marriage, and it is shown that her husband or in-laws or a relative of her husband had subjected her to cruelty. S.113 B raises a presumption of dowry death where it is shown that soon before her death she had been subjected to cruelty or harassment by the accused for, or in connection with, any demand for dowry. S.114 A presumes absence of consent in certain prosecutions for rape. A respondent reasoned that she had opposed this shifting of onus of proof because it would open the gates for the state to extend the shifting of onus to other areas; see what has happened in TADA and such laws, she said. Also, while the violations are certainly heinous, the criminal justice system is structured to require the prosecution to prove guilt; it is often not possible for an accused to rebut an accusation, she said, even where the accused may be innocent. Further it is a dilution of fair trial standards. The contrary position is that there are offences where such a presumption is not necessary if justice is to be done to the woman.

- *A separate criminal code for women*: This was a proposal that emanated from the NCW and was widely discussed in 1995-96. This was intended to make the trial less traumatic for women, speed up the criminal judicial process, and it was expected to raise the conviction rate. There were discussions of making some inroads into the rights given to an accused under the law. This proposal, however, appears to have been shelved. It was suggested to us that child sexual abuse being of an extraordinary nature, there should be a relaxation of fair trial standards in dealing with it.

HIV, AIDS and Disclosure

The two conflicting positions on disclosure by a hospital/doctor about the HIV+ status of a person has been set out supra while mapping human rights issues. To that discussion of the issue may be added that the view on disclosure seems to have been influenced by the context of the proposed marriage of the petitioner in that case.

It may be appropriate to consider the reach of the principle of disclosure while weighing the rights content of the court's decision.

AIDS and High Risk Groups

The AIDS campaign has given visibility to women in prostitution who had so far been unable to requisition public spaces. There are few who deny that women in prostitution need to be empowered to prevent their becoming ready victims of HIV transmission, as also of passing the virus on. However, the programme of intervention to protect from AIDS has re-introduced the idea of high risk groups, and women in prostitution as constituting such a group - a notion that was contested in the 1980s as discriminatory, and with the potential of leading to victimisation of targetted groups.

Abortion in the context of Women's Health and Sex Selective Abortion

When Parliament passed the 1971 law legalising abortion under certain conditions, the statement of objects and reasons listed three reasons for passing the law:

1. As a health measure - when there is danger to the life or risk to the physical or mental health of the woman;
2. On humanitarian grounds - such as when pregnancy arises from a sex crime

like rape or intercourse with a lunatic woman, etc.;

3. Eugenic grounds - where there is substantial risk that the child, if born, would suffer from deformities and diseases.' By 1995, when the Maternity Benefit Act 1961 was amended, the insertion of population control provisions into the law was being acknowledged, and resisted. The 1995 amendment, however, did give a renewed emphasis to placing the onus for family size on the woman when it incorporated 'leave with wages for tubectomy operation' as a 'maternity benefit', even as it gave medical termination of pregnancy the same position in law as miscarriage.

This is a statement of the adoption of abortion as state supported policy. The question of abortion as a right, and abortion as a population control measure may need to be re-visited. There was also a proposal to limit the provision of maternity benefit under the Act to women workers up to the second child; this however seems to have been dropped, perhaps because of the protest that met the proposal at almost every turn.

The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, which was modelled on an earlier Maharashtra law, was enacted expressly 'to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women.'

The punishment for transgressing the prohibition of the law is intended to be deterrent. Yet, in the seven years since the law was enacted, there have been no prosecutions of which any of our respondents made mention. The conflict inherent in asking for abortion as a matter of right, and believing that sex selective abortion needs to be curbed requires to be squarely addressed.

Sexual Harassment in the Workplace

After the Supreme Court's Vishaka guidelines, demands for translating them into policy and practice are being made. The allegations of sexual harassment by persons in positions of leadership within the human rights community, and the lack of procedures prescribed in Vishaka even within the human rights community, has been raised as an area of conflict in the context of human rights.

Freedom of Expression, Privacy and Censorship

The depiction of women, as also of violence against women, has raised difficult questions of censorship and of free speech and expression. The control that capital has over the media has been recognised, and it is not the free speech rights of corporations that is in issue here. Feminists worry that the power to determine what is 'obscene' or 'indecent' could curtail the use of media to interrogate, for instance, rape: for the depiction of rape could be viewed as 'obscene' and explicitly addressing the issue proscribed.

Even as feminists, and women, find public spaces for their speech and expression, the space could get restricted and reconstructed by censorship. The Miss World contest organised in Bangalore in 1996 gave rise to similar, uneasily quietened questions. The responsibility of the researcher, and the impact of publishing research findings,

has been in issue in the Almora case, where research published in September 1999 became a subject of singular controversy in April 2000.

The research, on AIDS and the local community, used the responses from a sample of respondents who spoke about the sexual practices in the area, from where male migration for work is very high. Promiscuity and adultery were spoken of. The protesters were angry at the depiction of the community in the report. That the research was funded by a foreign donor agency added a dimension to the protest. The NGO later apologised, and withdrew the report. By then, three activists had spent 45 days in jail. In the meantime the state had moved in to impose the NSA on them. This last deed was roundly condemned, and much of the human rights community spoke as one to attack the state action. The questions raised by the research and the report, however, continue to hang in the air.

Prostitution

There has been considerable movement in public perception. Most significant though has been the openness with which the practice, proliferation and problems of prostitution are now discussed.

Inevitably, perhaps, there have been conflicts that have surfaced in this area of women's rights. On the one hand is the demand that sex work be recognised as real work. In the mid-'90s this was articulated as sex work being seen as labour. There was also a demand that labour laws be applied to sex work.

That appears to have been gradually amended to the demand that sex work be accepted as labour in terms of the dignity that labour commands. A collective of women in prostitution identified three R's - Respect, Recognition and Reliance. The women in the collective also spoke about the right to say 'No' in the course practice of their profession, and said they had to be given the right of 'self-determination'. While there was no demurring about the need to protect women from exploitation - from the police, the pimp, the madam and the client - there were dissenting voices on recognising prostitution as sexual labour.

As one respondent said it: 'Feminists are being included in a much larger agenda. They are giving patriarchy and sexual exploitation a sugar coating by calling it work. Earlier patriarchy oppressed women by calling them 'mother goddess' and curbing her freedom. Today patriarchy oppresses her by calling her the 'bread winner'. She continued: 'I accept that today the state is doing little to stop trafficking. But the day sex work is seen as work under law, that will be the end of all efforts to stop trafficking.'

A woman from the collective, however, said: 'Trafficking can only be stopped by us. Only we know what is happening in our areas. We are telling the government they should give us the right to act.' She however conceded that not all areas where prostitution is practised and trafficking occurs were yet capable of being so monitored. We see ourselves as workers, she said, and we want a union that will give us a base.

A 'mela' which was organised by the collective in Calcutta in March 2001 reportedly met with stiff resistance from some women activists, while others stood up for the rights of the women to organise themselves. It is sometimes depicted as an issue of 'agency' of the woman as against those who see women in prostitution as victims, and subjects of exploitation.

Six aspects which a woman in the collective adverted to if they were to be considered to be 'labour', and their association recognised, were:

1. Police raids would not happen.
2. Mental torture in the rescue homes would cease. Also, when the girls are released by pimps, they say they have paid huge amounts when they actually pay far less in bond. Bonded labour is therefore rampant in the present dispensation, she said.
3. A self-regulatory examination board, with a multi-sectoral member composition would be able to prevent the entry of minors into prostitution. The two criteria of age and willingness would be applied by them. Now, we don't have even the right to stay where we are, she said.
4. The right to say 'No' would get established.
5. Teasing to demean women in prostitution would reduce.
6. When they retire, they are not even able to go back home; once they are declared to be labour, that will change. That would be real rehabilitation, she said.

There was some conceptual confusion about 'decriminalising' and 'legalising' prostitution. While most of our respondents saw a need to decriminalise to prevent them from being a vulnerable group, the mix up with legalising prostitution - which many among our respondents were unable to accept - dogged our discussion.

A proposal that the travel of single women across political borders be controlled, which was under discussion with the NCW, was dismissed by some respondents as being a prescription for obstructing freedom of movement of women and as likely to serve no other end.

The children of women in prostitution are seen by the law as being potentially in 'moral danger'. The Juvenile Justice Act 1986 and its successor legislation - the Children in Need of Care and Protection Act 2000 - allow for their children to be taken over by the state. A judge of the Supreme Court had even said that the women should be 'coaxed, cajoled or coerced' to give up their children. This clash of a complex of rights and of perceptions needs to be more fully understood.

Environment

In the past fifteen years, environmental concerns have acquired a dominance which, it seems, have re-prioritised, and sometimes dislodged, rights.

Reduced Pollution and Hazards Vs. Workers' Livelihood

The issue was most starkly represented in the Delhi Relocation case. When 168 industries in the first instance, and thereafter all 'hazardous' industry in Delhi, were ordered to be closed or relocated, the conflict between the right to reduced pollution and hazards, and workers' jobs exploded into prominence. The matter arose out of a PIL filed by an environmental lawyer.

The condition in which such an order would leave the workers - whether the industries closed down or relocated - was not considered till after the decision was made. The order, coming from the Supreme Court, has had an effect of finality and narrow negotiability which has pushed workers' rights very low in the hierarchy of rights into a residuary position. In Kerala, the Grasim industries pollution case has engaged the environmentalists since the 1970s, and the workers from even earlier.

Between 1985 and 1988, the industry closed down for reasons unconnected with the pollution. Environmentalists and workers then fought on the same side to have the industry re-started; the loss of jobs was then the primary concern. Since it re-started in 1988, the environmentalists have been gradually moving away from an appreciation of labour's concerns, since they do not see that environmental concerns and workers' jobs can be accommodated in a single solution.

The environmentalists have voted for battling the pollution at all costs, even as they are chagrined at having to leave labour out of the reckoning. In Trivandrum, we heard of people whose livelihoods had been dislocated by the pollution of the coastal waters demanding that either the industry close down, or they be absorbed into the industry in replacement of livelihood lost due to the pollution.

In Tuticorin in Tamil Nadu, among the salt pans is located a chemical industry. A drying pond stands mute testimony to the potent pollution being caused by the industry.

The salt workers' cooperative is maintaining a stoical silence about the pollution, since any protest from them may result in loss of jobs for about 1800 workers employed in the industry.

In Vellore in Tamil Nadu, when the Supreme Court ordered that tanneries be closed, around 8000 workers were reportedly laid off. On the one hand, a labour activist said that it is time that workers developed a position which takes public health, pollution and environmental issues into account.

On the other, the practice of using the court system, in PIL, to project a uni-dimensional view of the issue by environmentalists was attacked.

The present priority accorded to environmental issues was seen as allowing the environmentalists to get away without having to reconcile conflicting concerns.

Shelter Vs. Conservation

The displacement, by court order, of residents of slums bordering, and encroaching in some measure, into the Borivili National Park in Mumbai has raised similar concerns. The clash between environmentalists and those espousing the cause of the slum dwellers has been violent, and the positions apparently irreconcilable.

Shelter Vs. Beautification

A petition asking for garbage disposal in Delhi has allowed the Supreme Court to order demolition of slum dwellings. While doing so, the court has likened giving land for rehabilitation to 'an encroacher' to 'rewarding a pickpocket'. In this vein, there has been a mass-scale illegalising of structures which house the poor. In the same order, the court has directed that garbage disposal being a public purpose, land should be released to the municipal corporation, free of cost.

The court has been re-working priorities, and groups approaching the court increasingly recognise that environment, as expansively defined, is likely to take precedence over other rights such as shelter and workers' livelihood. There has been greater scope for negotiation, however, when the survival of an industry is concerned - clean-up technology (particularly ETPs and CETPs) which, at best, is recognised to be a partial answer, have been accepted as an answer to the charge of pollution.

Tribals Vs. Forests

The presenting of the conflict in these terms, *i.e.*, tribals vs. forests, has tended to marginalise the tribal communities. There has been denudation of the rights of tribals who habitually reside in forests and live off forest produce. The creation of national parks and sanctuaries has led to installing the concept in law of exclusion of the tribal from the forest. Where they are being allowed access, their rights are severely circumscribed - by identity cards, timings, numerous checkpoints and a very limited range of permitted activity - leaving them often at the mercy of the forest officer.

A distinct school of thought has emerged which advocates against the exclusion of tribals, and which sees a role for tribal and forest dependent communities in the conservation of forests. The reconstructing of the rights of tribal communities is, largely, except for the rare exception, being done without the participation of the affected communities.

Anti-smoking Law Vs. Workers

The workers in the tobacco industry have found their jobs threatened by the anti-smoking legislation that has been introduced in some states. Trade unions find themselves impelled to oppose the ban because it will cause reduced sale of beedis and, consequently, reduced employment. They also argued that it was a ploy by large tobacco companies to snuff out the beedi industry since it is the class which smokes beedis which will have difficulty in finding spaces which are not public and where they may smoke legally. Yet, this would present workers as selfcentred and anti-health. The conflict defies easy solution.

Tribal Land Alienation

The law, generally prohibits the transfer of land from a tribal to a non-tribal in agency areas, or scheduled areas, except for reasons recognised by law, and by procedure prescribed therein.

While this is usually respected as fair and legitimate protection extended to scheduled tribes, and to prevent exploitation of the tribal by the non-tribal, the situation in Kerala has been somewhat complicated. In 1975, the state legislature enacted the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act 1975.

The law has had a chequered career, with the government attempting to dilute the effect of the law, by amendment, and the courts demanding its implementation in its 1975 guise. The question of alternative land rather than restoration has also been mooted - but it is not clear that such alternative land exists. While tribal activists have been campaigning for enforcing the 1975 law, others have been muted in their reactions.

The reason, our respondents say, is because the land appears to have been transferred for a price to settlers who are themselves only marginalised populations. It would be unjust and iniquitous to dislodge them from lands for which they have paid as much as they can afford, it was said.

This was represented as a case of conflicting interests, but of two equally, if differently, affected communities. Rehabilitation of the already displaced adivasi community appears to be one way of resolving the issue - a view with which tribal activists do not concur, considering it as an erosion, even a denial of the right against alienation of land.

Dalit Movement and the Caste as Race Representation

The effort by NGOs to get caste on the race agenda at the Conference for the Elimination of Racial Discrimination has been an attempt to internationalise the issue of caste. Some activists and leaders in the dalit movement have also been involved. While some of them have got on board as in Gujarat, the dalit activists/leaders in Andhra Pradesh and Tamil Nadu have been consulted but have chosen not to enter the arena themselves. This is how a dalit activist leader explained it: 'We need international pressure. So far we have treated it as an internal matter.

This will help the issue get focus.... This has been raised by NGOs, not by the movement. I don't know about donor politics. We only tried to get some control by putting some of our academicians in it. But we are not sure what it means.' A Dalit leader who had not heard of this move objected to the caste-as- race representation.

Race is not our politics, he said. Our fight is against brahmanism and casteism, he said. Even if it were to be considered that NGOs may not be able to consult with all affected or concerned persons, groups, organizations or movements before espousing causes, the conflict that could exist where the NGO position and that of movement politics do not converge has to be addressed.

Speedy Disposal of Cases Vs. Open Criminal Justice Process

Overcrowding in prisons has been partly attributed to the problem of transporting undertrials to the courts, and of finding police escort to perform this task. In response there is an emerging practice of magistrates holding court within prison premises.

This reportedly happens in Delhi and in Bangalore, for instance. The prison is patently a closed premise, as also beyond the beat of the persons who make the judicial process an open system, including lawyers, reporters and observers. In a different context, the virtues of in camera trials in cases of rape to protect the interests of the victim of rape has also been debated, inconclusively.

Human Rights Lawyering

In approaching the court, or when an activist is drawn into the judicial process, a question of representation of a political or an ideological position often rises. Illustratively, a feminist litigating for getting custody of her child may be faced with two choices: either to assert the stereotype - the mother as the primary carer of the child, and the child needing the care and attention that only the mother can give - and increase the probability of getting custody, or staying within the politics of feminism and reject such stereotyping which, in turn, may drastically reduce the chances of getting a favourable order from the court.

An instance, again, is in matters of contempt of court, where activists may be advised to tone down their honest opposition to a court order which is patently unjust, even unconstitutional, or perhaps to tender an apology which would serve the requirement of the court, but which may compromise the politics of the contemnor.

Difficulties abound where activists are picked up by the police, and there are apprehensions that they may be subjected to torture, or even be killed in a fake encounter - does politics stop at the doorstep of the courtroom? Is it necessary to get the consent of the activist before taking a position in court, in a habeas corpus petition,

for instance? And what is to be done where the activist is unreachable?

Strategies and Responses

A listing of strategies and responses of state and non-state actors is attempted. Those attempted by non-state actors is inevitably more exhaustive, since a large proportion of our respondents belong to this description of person. Organising People: This may be for effective and informed protest, as has been done by the NBA, for instance.

Or in getting people to re-capturing control over their resources, as in the Aruvari Sansad in Alwar District in Rajasthan.

Or to form collectives, as with the Durbar Mahila Sammanvaya Committee. Working on the Right to Information: Led by the MKSS in Rajasthan, it has caught the imagination of activists across states, and fields of activity. It has also resulted in bureaucratic and political acknowledgment of the right/freedom. One aspect of this right is explored by activists who gain access to 'top secret' documents and share them with grassroot level workers as also with the rest of the interested community.

This happened with the Land Acquisition (Amendment) Bill, for instance, exploding thereby the unsustainable position that proposed legislation of this kind may need to be kept secret from the people it is likely to affect. The use of information technology to gather facts about offending enterprises, for instance, and disseminating them is another facet of the interpretation of this right.

Iconisation: The changing of a victim into a symbol, as in Mathura (custodial rape), Bhanwari Devi (in defiance of rape and oppression), Dominic D'Souza (AIDS), Budhan (denotified tribes) are some instances. Some places where the violations occurred also lend their names to a construction beyond immediate incident: Muzaffarnagar - the scene of killing and molestation of the Uttarakhand agitators; to activists it appears to epitomise the struggle against odds, but also of an isolation of the struggle from the human rights communities in other parts of the country.

Or the 'Stchundur' treatment in Andhra Pradesh, where landlord retaliation against dalit assertion, inadvertent in this case, took place amidst police protection; this is now referred to as a phenomenon.

'Broken People' researched and written by Smita Narula for Human Rights Watch is said to have catalysed dalits into forming a national organisation. There were references to Masanabu Fukuoka's One Star Revolution having helped shape perspective. Bringing in the Media: While press briefings are frequent, taking the press along to witness an event is not unknown, e.g., the Disability Rights Group being accompanied by press persons while doing a disability audit of public buildings in Delhi in April 2001.

The presence of empathetic persons within the press establishment was also said to make a difference, as when dalits were professional journalists.

Fact-finding, People's Tribunals and People's Commissions: This is a process by which a state tactic has been co-opted by non-state actors. Previously human rights activists would demand judicial enquiry into incidents of violations of human rights. The use of judicial inquiry sometimes in the form of Commissions of Inquiry, to diffuse situations, or the inconclusive, or, sometimes, unfairly exculpatory, nature of the findings where judicial enquiry culminated in a report, discredited this state response.

There is also the capacity of the state to scuttle such inquiry once the immediate need to set them up is past. The Srikrishna Commission is a rare instance of a report which commanded credibility, and it too had to go through the vicissitudes of winding up and re-starting. Peoples' Tribunals and Peoples' Commissions of Inquiry have made the shift from legality to legitimacy. With the state privileging retired judges in appointment to commissions of inquiry, People's Tribunals and People's Commissions too have on their panel retired judges, who, in addition, carry the aura of integrity and competence.

The panels may also have other public figures including among them journalists, lawyers, academics and activists. There were two instances of attempts to thwart the functioning of People's Tribunals/Commissions which we encountered. The first was when a panel was constituted to hold public hearings on disappearances in Punjab. In keeping with the demands of 'natural justice', notices were issued to policemen, among others. The state contested the right of the people's tribunal to hold hearings, contending that that is a judicial function which the Tribunal cannot usurp. The activists' position was that this was a process in which participation was voluntary, and this was not an alternative to the judicial process.

The High Court, and later, the Supreme Court, upheld the state view, and the tribunal was not allowed to function. The enquiry into the Srikrishna Commission was similarly threatened by the judge who issued notices for contempt to the People's Tribunal. Extra-mural intervention led him to set aside the notices. The People's Tribunal also explained that their inquiry was intended to facilitate the official inquiry, and was not an act of defiance. Fact-finding missions, which generally follow soon after an episode of violation, are also increasingly used where human rights defenders are subjected to harassment.

The issuing of a statement by persons with credibility in the activist universe and generally after a visit to the site, and after meeting with as many of the actors as is possible, is meant to provide an alternative to self-serving versions that may emerge from the state or its agencies. It is also intended to highlight an event to prevent further violations. It is important to ensure that the accusation of prejudgment which discredits state reports do not taint such non-governmental fact-finding missions.

The report of a lawyer who visited Coimbatore to investigate the anti-Sikh riots in 1984 was the basis of a significant petition in the Madras High Court. This constitutes a turning point when 'culpable inaction' by the state was recognised, where injury to person or property could have been anticipated, but the state did not act to prevent such injury.

Visiting Zones of Conflict and Violence: The cutting off of a free flow of people between areas of conflict and violence and the rest of the country also cuts off the possibility of understanding what the people experience, of information being shared, of extending solidarity and support. The report of the Women's Initiative in 1994, 'Women's Testimonies from Kashmir: The Green of the Valley is Khaki' is testimony and photographic depiction of the women in Kashmir.

Uma Chakravarthi and Nandita Haksar's `Delhi Riots' is a testimony collected even while curfew made it difficult to reach the victims and witnesses of the anti-Sikh riots in Delhi.

People to People Dialogue: This has been held, for instance, in the North East to break the barriers of distance and incomprehension. This also helps in exploring, in

areas where the issue is of self-determination or autonomy, after the conflict, what is to follow. The meeting of Naga women and Kashmiri women, both caught in situations of conflict, organised in Delhi in April 2001 is another instance.

Negotiating Conflict: The efforts of the Committee of Concerned Citizens in Andhra Pradesh to reduce the violence practised by the state and the naxalites is documented in 'Report of the Committee of Concerned Citizens (1997-2000)'. Comprising persons with whom both the state and the PWG would not be unwilling to speak, the CCC started its correspondence with asking the state for a cessation of 'encounter' killings, and asking the PWG to desist from killing its adversaries.

While the state response has been more formal than substantive, the PWG has had the CCC recognise the fundamental nature of land reforms and land re-distribution before violence ceases. The openness of this process of talks and dialogue, and the establishing of credible persons as dialogists, is a significant aspect of this process.

Truth Commission: This was organised in the context of deaths of young women in their matrimonial home in Karnataka. A panel heard the parents and relatives of the murdered woman, giving the victim's version a space that it is not able to find in the systems of the state.

Dissemination: A group of disabled persons working among the disabled in Andhra Pradesh, and producing a newspaper and running a press, said they had printed and disseminated 3000 copies of the 1995 Disabilities Act. The response, they said, was excellent.

They also spoke of sending out 10,000 letters to motivate handicapped people. The CEDAW too has been widely discussed, disseminated and translated and training modules developed for understanding, and using, the CEDAW The widespread use of posters setting out the rights of the accused as ordered in D.K. Basu's case and in Joginder Kumar has been taken into police stations too. This has also been translated into the local language in many states.

Use of information technology, films, reports, magazines and newsletters, both to gather and to share information. Video films and documentaries which assert facts with a perspective - e.g., An Unfinished War on population policies and women's perception of their bodies, Kaise Jeebo Re on the Narmada struggle, Hamara Shehar on demolitions in Bombay.

Peace Committees: This was particularly spoken of where political violence is widespread and routine, especially in West Bengal and Kerala and was also found in Tamil Nadu in the context of caste violence. Human rights groups send out peace committees to bring warring groups to negotiate peace.

Census: The use of 'census' on the practice of untouchability is seen as a way of squarely placing the issue on the table. Disability having been brought on board as a factor to record in the 2001 census, disability groups have been motivating persons with disability to enter their data in the Census as a step towards recognition of their rights in state policy.

Setting the non-negotiable: This establishes the base lines in an issue. For instance, regarding child labour, a non-governmental organisation has set them out like this: All children must attend full-time formal day schools; Any child out of school is child labour; All work/labour is hazardous, and harms the overall growth and development of the child; Any justification perpetuating the existence of child labour must be condemned.

Legislation: Monitoring changes proposed in law, and in policy, which may affect people's rights. This may also involve the critiquing of proposed drafts and preparing alternative drafts which would be people friendly. The forest laws and the laws relating to land acquisition, as well as the rehabilitation policy went through this process. The Bill on domestic violence was prepared by non-governmental effort and has found its way into parliament. The Women's Reservation Bill has survived disinterest and active antagonism in Parliament because of the activists who have battled to keep it on the agenda. In the 1980s, the changes to criminal law which dealt with crimes against women were the result of demand from the women's movement. Participating in state processes, as in presenting memoranda to the Committee to review the working of the Constitution, or intervening with the Law Commission is also practised.

Campaigns: The Campaign against Death Penalty is one instance. Campaigns often accompany other modes of intervention, legislation or recognition of rights (or wrongs), for instance. Campaigns may also take on issues such as opposition to the WTO, or to the manner of opening up of the Indian economy to multinational power companies, for instance.

Resistance and Protest: This may take the form of rallies, padayatras, cycle rallies, processions, dharna, bandh, hartal and roadblocks. Apart from the 23 conditions that the Madras High Court has imposed on processions, the Kerala High Court has declared that bandhs are unconstitutional since they deny freedom of movement and the right to carry on one's avocation.

This stands affirmed by the Supreme Court. Bandh seems to have got devalued as a means of protest because of the indiscriminate use of protest because of the indiscriminate use to which it has been subjected by political parties. This is particularly true in Kerala, where activists broadly supported the court's decision.

This appropriation of non-governmental methods by governments - in power or in the opposition - appears to have robbed it of its legitimacy and meaning.

- Land invasion.
- Seminars, workshops, lectures, preparing of manuals, holding state and national level consultations and conventions, training of activists and grassroot workers and getting a dialogue going among them, pamphlets and posters are usually used.
- The formation of networks has become frequent, as has the induction of issues and the broadening of agenda to accommodate such issues. This has also helped to move towards an understanding of the indivisibility of rights.
- Signature campaigns.
- Alternative election manifesto.
- Participatory methods of decision-making and policy making. The 'Van Gujjars proposal for the Rajaji area' published in 1997 where, through an overtly consultative process among forest-dwelling Van Gujjars, a scheme for community forest management in Protected Areas was drawn up.
- Budget analysis from a range of perspectives, including analysis of what it does for women, children and health.

- Social Development Report.
- Use of PIL in the Supreme Court and the High Court, using the NHRC and the State HRCs and human rights courts. In some states, either the SHRC has not been established, or the SHRC is not a credible institution, and the NHRC is more regularly approached. The National Commission for Women (NCW) has also been used and, in a certain period of its functioning, it was seen as an institution which provided solidarity, by the unqualified acknowledgment of the justness of women's claims.
- Training of judges and police personnel. This has been most commonly on gender sensitisation and or human rights.
- Advocacy on rights of people with the state and agencies of the state.
- *Help lines*: This has been established for street children, lesbians and gays, and for women in distress. While the first and the last mentioned have endorsement in state policy and practice, help lines for lesbians and gays is denied legalised spaces for operation. Help lines have also existed for some years now for those with suicide on their minds.

Trial Observers: This appears to be an underused method of demanding accountability in judicial and quasi-judicial processes. Yet we did hear of its use in two situations: at the Justice Mohan Commission of Inquiry into the Manjolai tea estate incident where 17 people drowned in the Tamaraparani river - 6-7 persons attended the hearings each day of its sitting. And, the Kerala State Commission for women had two lawyers attending as trial observers in the Vidhura case.

The state has adopted strategies, and measures, dealing with human rights violations, and for pre-empting the occurrence of such violations. While some of these strategies and measures are perceived by activists as having supportive potential, others are seen as providing spaces for human rights violations with impunity; this is particularly so in the case of extraordinary laws. The establishing of 'Commissions' including: the NHRC (by Act of 1993), the NCW (by Act of 1990), the National Commission for Backward Classes (by Act of 1992), the National Commission for Safai Karamcharis (by Act of 1993).

It is a widely held opinion that the NHRC was established in response to international pressure. Though the Protection of Human Rights Act says that there shall be 'two members having knowledge, or practical experience in, matters relating to human rights' there has been no person from the human rights community in the NHRC; nor does there seem to be enthusiasm among the members of the human rights community to be appointed to the NHRC. The NHRC has standardised compensation as a response to human rights violations.

It does recommend disciplinary action and prosecution of errant officers, but this is not invariable. There has been an acknowledgment of custody deaths, and there is a direction that all cases of custody deaths be reported to the NHRC within 24 hours of its occurrence. The numbers have been seen to be increasing each year; the NHRC puts it down to increased reporting.

There is a direction that post-mortem of persons who have died in custody be videotaped; it is not apparent that this has made a difference. The NHRC was at one with the human rights community in demanding that TADA be not re-enacted. It also

recommended ratification of the Torture Convention, but the government does not have to heed the NHRC, since its opinion is only recommendatory; and the Torture Convention remains not ratified.

The exclusion of the armed forces from the purview of the NHRC is identified by activists as a grave lacuna in the Act that establishes the institution. This is especially so since human rights violations by the armed forces is a matter of concern and contention in the conflict-torn regions of the country. It is also that this exclusion is viewed in the context of the NHRC's reach over 'terrorism', and, therefore, found anomalous. In defending its human rights record before the Human Rights Committee, the state has used the NHRC, along with PIL, as reason to believe that all human rights violations have avenues for redressal within the state.

The Supreme Court, too, has passed on the burden of PIL cases which deal with human rights issues, included bonded labour, mentally ill in institutions and women in 'protective' homes, to the NHRC. This shift from a binding fundamental rights jurisdiction to an institution with recommendatory powers has been viewed with growing concern by activist lawyers.

The judge-heavy composition of the NHRC has influenced the procedure of 'hearing', setting out of a 'case', and even 'affidavits' and 'arguments'. The Annual Report of the NHRC is to be placed before Parliament, making it a public document. The government is to give an Action Taken Report along with it. In the Annual Report of 1998-99, the NHRC refers to the nontabling of the report of the previous year; the more significant recommendations from the previous year have been reiterated in 1998-99. There has been no challenge to this governmental neglect.

The soft approach, sometimes amounting to a clear negation of rights, as in the Punjab Disappearances case, has been castigated by activists. The impact of directives issuing from the NHRC, on custody deaths for instance, is unclear. Documentation of cases, and the reports of investigations, is not easy of access, and no system has been devised for ensuring such transparency. State Human Rights Commissions (SHRCs) have been set up only in some states. Andhra Pradesh, with its escalating record of encounter killings, has not established a SHRC.

In West Bengal, activists do approach the SHRC, but they explained that they were confronted with popular prejudices - such as judging a victim of custodial torture as not worthy of the energies of human rights activists; and their concern being 'misplaced'.

An orientation to human rights was found missing when such poses were struck, they contended. Activists in other states, such Tamil Nadu, seemed to prefer approaching the NHRC rather than the SHRC; a question of competence and demonstrated seriousness of purpose at the state level, they explained.

Courts

The setting up of human rights courts at the district level has begun, and activists have engaged with the process of establishing rules and guidelines in terms of the procedure to be adopted by these courts.

These don't seem to have become functional yet, and they remain sidelined and hazily constructed within the dominant judicial system. Also, activists in Tamil Nadu said that human rights courts were restricting themselves to civil and political rights; it will lead to a defining of what constitutes human rights in this lexicon, they said.

Mahila Courts, or courts for women, have been set up in some states, including Karnataka. The appointment of women as judges to person Mahila Courts, and the setting up of all women police stations, are measures that are expected to make the system more accessible, and sympathetic, to women. Some respondents said that conscientisation of judges on women's issues was of importance; appointing women as judges was no guarantee that the necessary sensibilities would enter the system, they said.

Compensation

Like the NHRC, the state too uses compensation as a remedial tool. Ex gratia payments made to victims is a response that has got standardised especially in areas of conflict. The state generally provides compensation for victims of 'terrorist violence'. Victims of violence practised by the security forces, or state violence, is not accorded this recognition.

Extraordinary Laws

While using the language of 'law and order', 'public order' and of 'terrorism', the state, at the centre and the states, has enacted extraordinary laws. These represent an assumption of extraordinary powers premised on security and safety of the state and of the population at large. The Indian state is also in the vanguard in negotiating an international law on terrorism. Cross-border terrorism is identified by the state as a major threat to human rights, and more prominently, to the security of the state.

Other Laws

The state has enacted, re-enacted, or amended, laws which deal with rights of populations considered vulnerable. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 is one instance. More recently, the Juvenile Justice Act 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act 2000. Both these laws have been through the process of consultation. In the case of the Persons with Disabilities Act, in 1998, the government set up a committee to review the legislation. The Committee held regional consultations where interested persons could state their position before the committee. No changes have, however, been brought into the legislation since then.

Consultations were sponsored by the government and other agencies when changes to the JJ Act were being considered. A division of opinion on children in conflict with the law was discernible at a stage in the consultation. This was not investigated further, nor resolved. The government instead consulted with a closer group of professionals and the Juvenile Justice (Care and Protection of Children) Act 2000 was enacted as a result.

Counselling

The setting up of Crimes Against Women cells in Delhi, for instance, is intended to provide a place for registering complaints seeking help, providing counselling and, where relevant, reconciliation.

Violence in the home has been the primary target. We also heard of the counselling of the families of naxalites by the police, though we did not get insights into the intent, and techniques employed in counselling.

Census

The inclusion of the category of 'disability' in the 2001 census has been a statement of recognition of persons with disability being persons requiring specific state attention. Apart from providing a basis for asserting their rights, it has also placed persons with disability within the agenda of the Planning Commission.

Women in prostitution have, however, been agitated by their profession being classed with beggars and the unemployed, particularly since it is being done at a time when they are asserting that prostitution be recognised as work.

Samathuvapuram (A Place of Equality)

This is a state-sponsored scheme in Tamil Nadu, expressly intended as an intervention to reduce caste clashes in the state. Envisioned in 1997-98, the scheme is to create a settlement of 100 houses as part of, but some distance from, a village, where contiguous houses will house persons belonging to different castes/religions, even as a large proportion of the houses are allotted to scheduled caste families.

The beneficiaries are selected at the gram sabha, and they are only to be people from the villages immediately in the vicinity of the new settlement. 150 samathuvapurams are planned. The second and the 77th samathuvapuram were visited.

There was a case of a caste clash that broke out in the 2nd samathuvapuram where a dispute over filling water from a common tap resulted in a dalit woman being assaulted by a family belonging to a higher caste. Local political activists explained that the issue had been resolved with the withdrawal of allotment of the house to the higher caste woman and her family, and their being sent back to their abode in the original village. This is an experiment that calls for long term follow up.

National Commission for Women

Established by statute in 1990, this was one of the consequences of the demand of women's groups that women be given a space in intervening on their own behalf.

The NCW has, over the years:

- Intervened where women's rights have been violated, as in the case of custodial rape, or where young women have been kept confined by their families to prevent them from going away with a man they choose to marry and live with;
- Constructed laws, with regard to domestic violence for instance, to be lobbied for acceptance by parliament;
- Held public hearings into the treatment of oustee-women affected by the Maheshwar dam, for instance;
- Conducted surveys, of women's views on the imposition of death penalty for rape, for instance. • held consultations on a separate criminal code for women, for instance, or on the issue of cross-border trafficking;
- Organised meetings to mount pressure on issues such as the reservation of seats for women in parliament and the legislatures;
- Intervened in court cases, as where a woman was awarded the death penalty by the Allahabad High Court, and an appeal was made to the Supreme Court.

The Supreme Court has on occasion, asked the NCW to prepare a scheme for the care of victims of rape. Some states, such as Kerala, have also set up a State Commission for Women.

Public Interest Litigation (PIL)

This is a jurisdiction that was sponsored by the court, but which developed with the participation and enterprise of activists and the press. The 1990s have, however, seen an appropriation of this jurisdiction by judges and by lawyers, often acting at cross-purposes with activist concerns. At its inception, the PIL jurisdiction of the High Courts and the Supreme Court, with a relaxed rule of standing and simplified procedure, where even a postcard sent to the court highlighting human rights violations could be converted into a petition was a means of asserting the court's relevance in the human rights arena.

The court has used:

- Commissioners to do fact finding
- Expert agencies to assist in deciding upon a course of action
- The issuance of directions, and the monitoring of their implementation by the court through report-back methods
- The involvement of all governments, at the state and the centre, since many of the issues have been systemic, and widespread, e.g., the condition of undertrial populations, or the cleaning up of cities. PIL was conceived as a 'non-adversarial' process, though located within an adversarial judicial system

In 1988, the Supreme Court asserted its hold over a case, and the cause, even where a public interest petitioner may seek to withdraw the case from the court. The power of the court to reach issues has expanded with PIL, as has the Supreme Court's exercise of its constitutional power to do what it considers necessary in the 'interests of complete justice'.

The rights orientation of the court has therefore acquired significance. Conflicts among rights have manifested over time. The use of the courts, and the PIL jurisdiction, by activists, and other public interest petitioners, has come into contention particularly since the Delhi Industries Relocation case, Almitra Patel and the proceedings in the Bombay High Court in the Borivili National Park case.

The cradle scheme in Tamil Nadu was initiated by the state government to prevent female infanticide. The midday meal scheme has been a means of reducing malnourishment among children, while bringing them into the schoolroom. Among schemes to improve the status of the girl child, we heard of a government scheme where if a girl child studies up to standard X, the government will pay Rs.10,000 on marriage. In the nature of 'help lines', which are sometimes located within the offices of high-ranking police personnel, we heard of a 'Crime Stopper Control Bureau' in Tamil Nadu. The coopting of NGOs in monitoring and implementing laws, policies and schemes has been routinised in the last decade.

It may take the form of:

- Membership of a commission, such as the Rehabilitation Council of India
- Membership of committees set up by the government to make policies, e.g., in the making of a population policy
- Appointing NGOs as monitoring agencies, e.g. under the Equal Remuneration Act 1976
- Empowering NGOs to take action under the law, e.g., s. 13 of the JJ Act 1986

- Funding NGOs carrying out programmes devised by state agencies, e.g., providing child care facilities for children of women in prostitution
- Participating in training of judicial officers and policemen, for instance, in gender issues, matters of human rights, and child rights

In the Janmabhoomi programme of the Andhra Pradesh government, one example of the process of involvement of the people in reviving, or creating, resources - in desilting tanks lying long in disuse, for instance - is achieved through giving work contracts to collectives such as Mahila Mandals. This, however, is not accompanied by a transfer of rights to the local people.

The impact this has on the panchayat system may need to be studied. The changes in the role, and autonomy, of the NGOs in relation to the state was adverted to by many respondents, and may need a more systematic appraisal.

Commissions of Inquiry

The appointment of judges to constitute commissions of inquiry under the Commissions of Inquiry Act 1952 is a commonly used device to quell immediate protest and agitation, and to provide a veneer of impartiality to the investigation. This process has lost quite significantly in terms of credibility, since most commission reports come long after the event, and all too often gives a clean chit to the government. The Srikrishna Commission of Inquiry into the Bombay riots of 1992-93 following the demolition of the Babri Masjid is held out by activists as an exception.

There is an appropriation by human rights activists of the device of 'Commissions of Inquiry', and this device has been resorted to regularly in the past decade. The legal aid system, now established under the Legal Services Authorities Act 1987, is one potential intervention in the arena of human rights. It however remains litigation-dominated, and is unavailable at the points in the system where human rights violations may occur.

The dearth, near-absence, of legal aid available for the victims of the Union Carbide disaster in Bhopal has been represented as one instance of the incapacity, or neglect, of the legal aid system in responding to counselling, litigative and consultative needs of a victim-population.

Press Freedom

The estimates of Reporters Without Borders, India ranks 105th worldwide in press freedom index (press freedom index for India is 29.33 for 2009). The Indian Constitution, while not mentioning the word "press", provides for "the right to freedom of speech and expression" (Article 19(1) a).

However this right is subject to restrictions under subclause (2), whereby this freedom can be restricted for reasons of "sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt of court, defamation, or incitement to an offence". Laws such as the Official Secrets Act and Prevention of Terrorism Act (POTA) have been used to limit press freedom.

Under POTA, person could be detained for up to six months before the police were required to bring charges on allegations for terrorism-related offenses. POTA was repealed in 2004, but was replaced by amendments to UAPA. The Official Secrets Act 1923 remains in effect. For the first half-century of independence, media control

by the state was the major constraint on press freedom. Indira Gandhi famously stated in 1975 that All India Radio is "a Government organ, it is going to remain a Government organ."

With the liberalization starting in the 1990s, private control of media has burgeoned, leading to increasing independence and greater scrutiny of government. Organizations like Tehelka and NDTV have been particularly influential, e.g. in bringing about the resignation of powerful Haryana minister Venod Sharma. In addition, laws like Prasar Bharati act passed in recent years contribute significantly to reducing the control of the press by the government.

Chronology of Events Regarding Human Rights in India

1829: The practice of sati was formally abolished by Governor General William Bentick after years of campaigning by Hindu reform movements such as the Brahmo Samaj of Ram Mohan Roy against this orthodox Hindu funeral custom of self-immolation of widows after the death of their husbands.

1929: Child Marriage Restraint Act, prohibiting marriage of minors under 14 years of age is passed.

1947: India achieves political independence from the British Raj.

1950: The Constitution of India establishes a sovereign democratic republic with universal adult franchise. Part 3 of the Constitution contains a Bill of Fundamental Rights enforceable by the Supreme Court and the High Courts. It also provides for reservations for previously disadvantaged parts in education, employment and political representation.

1952: Criminal Tribes Acts repealed by government, former "criminal tribes" categorized as "denotified" and Habitual Offenders Act (1952) enacted.

1955: Reform of family law concerning Hindus gives more rights to Hindu women.

1958: Armed Forces (Special Powers) Act, 1958-

1973: Supreme Court of India rules in Kesavananda Bharati case that the basic structure of the Constitution (including many fundamental rights) is unalterable by a constitutional amendment.

1975-77: State of Emergency in India - extensive rights violations take place.

1978: SC rules in Menaka Gandhi v. Union of India that the right to life under Article 21 of the Constitution cannot be suspended even in an emergency.

1978: Jammu and Kashmir Public Safety Act, 1978

1984: Operation Blue Star and the subsequent 1984 Anti-Sikh riots

1985-6: The Shah Bano case, where the Supreme Court recognised the Muslim woman's right to maintenance upon divorce, sparks protests from Muslim clergy. To nullify the decision of the Supreme Court, the Rajiv Gandhi government enacted The Muslim Women (Protection of Rights on Divorce) Act 1986

1989: Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is passed.

1989: Kashmiri insurgency sees ethnic cleansing of present:
Kashmiri Pandits, desecrating Hindu temples, killing of Hindus and Sikhs, and abductions of foreign tourists and government functionaries.

1992: A constitutional amendment establishes Local Self-Government (Panchayati Raj) as a third tier of governance at the village level, with one-third of the seats reserved for women. Reservations were provided for scheduled castes and tribes as well.

1992: Babri Masjid demolished by Hindu mobs, resulting in riots across the country.

1993: National Human Rights Commission is established under the Protection of Human Rights Act.

2001: Supreme Court passes extensive orders to implement the right to food.

2002: Violence in Gujarat, chiefly targeting its Muslim minority, claims many lives.

2005: A powerful Right to Information Act is passed to give citizen's access to information held by public authorities.

2005: National Rural Employment Guarantee Act (NREGA) guarantees universal right to employment.

2006: Supreme Court orders police reforms in response to the poor human rights record of Indian police.

2009: Delhi High Court delcares that Section 377 of the Indian Penal Code, which outlaws a range of unspecified "unnatural" sex acts, is unconstitutional when applied to homosexual acts between private consenting individuals, effectively decriminalising homosexual relationships in India.

Indian Scenario: Domestic Violence and Human Rights Issue

Domestic Violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994, the Beijing Declaration and the Platform for Action (1995) have acknowledged this fact. The Protection of Women from Domestic Violence Bill, 2005 having been passed by the Lok Sabha on 24th August, 2005 and by the Rajya Sabha on 29th August, 2005 received the assent of the President of India on 13th September, 2005 and came on the statute book as the Protection of Women from Domestic Violence Act, 2005 (43 of 2005).

Highlights of the Protection of Women from Domestic Violence Act, 2005 *(*43 *of* 2005*):*

- Any harm, injury to health, safety, life, limb or well-being or any other act or threatening or coercion, etc., by any adult member of the family, constitutes domestic violence.
- Any woman who is, or has been in a domestic or family relationship, if subjected to any act of domestic violence can complain.
- Aggrieved or affected woman can complain to the concerned protection officer, police officer, service provider or Magistrate.
- Aggrieved woman has a right to be informed about the available services and

free legal services, from the protection officer, etc.
- Shelter-home and medical facilities can be provided to aggrieved woman.
- Interim compensation can be available to aggrieved woman.
- Proceedings of the complaint can be held in camera.
- Every aggrieved woman has a right to reside in shared household.
- Protection order by Magistrate can be given in favour of an aggrieved woman.
- Monetary relief can be given to aggrieved woman to meet expenses or losses.
- Appeal can be made to Sessions Court within 30 days from the order of concerned Magistrate.
- Imprisonment up to 1 year or a fine up to `. 20,000 or both for breach of protection order by the opposite party.
- Protection officer can be prosecuted, up to 1 year imprisonment or with a fine up to `. 20,000 or both for the failure of his duties.

The Approach to Domestic Violence in the Act

The present act defined clearly the concepts it works with. The recognition of domestic violence as a crime has resulted in broadening the understanding of what domestic violence is, who may seek protection under the Act, and what type of protection may be sought.

In its understanding of domestic violence itself, the present Act clearly scores over the former Bill. Under section 3 of the 2005 Act, domestic violence is defined in terms of mental, physical, sexual, verbal, emotional and economic abuse. The extent of domestic violence hence extends from physical hurt to emotional and economic blackmail and may be interpreted by courts and lawyers to include and punish marital rape as well.

The 2002 Bill, however, only included habitual assault and 'cruelty', and exempted cases in which the assaulter committed the act in self defence, or in the protection of his property. The Act introduces the concept of a domestic relationship. This has broadened the scope of those who may ask for relief under the Act. Previously, only a woman who could prove a relationship with the respondent—either by blood or marriage—could avail of relief against domestic violence. The present Act requires only the proof of a domestic relationship as the basis for action. This provision goes a long way in recognizing existing social realities in India, where a vast number of marriages are legally invalid due to a number of reasons. The Act now makes it possible for the victims of violence in such relationships to approach the court for redressal.

A concept similar to that of a domestic relationship also exists in the domestic violence legislation in England but which was amended in 2004. In England, co-inhabitants are protected against domestic violence under law. The law in England also moves away from the hetero-normative paradigm and includes within its ambit complaints by same-sex couples. In India, past co-inhabitants are protected as well.

However, the Indian definition doesn't easily provide for domestic violence suffered by members in a family who are not female. Take for example, the domestic violence law in Malaysia known for its progressive domestic violence legislation which includes as aggrieved parties a spouse, for spouse, children, mentally incapacitated adults, and any other family member. the Domestic Violence Act, 2005 does not account for violence

perpetrated against with whom the accused might have shared a relationship in the past or against such person who was employed to work in the household.

The status of a child is hazy in the Act as well. While section 2(b) defines who a child is for the purpose of the Act, it is not clear whether or not a child can be the aggrieved party. The rest of the Act would lead to the same conclusion, as section 2(a) defines an aggrieved person specifically a woman, and in many cases the prescriptions in the Act are not child-friendly. In contrast to this, the status of women and children in the English legislation is unambiguous, and domestic violence law clearly applies to children. Here greater responsibility is placed on such adults who live with children.

The second important advance made by the Act in understanding the nature of domestic violence has been in the combination of civil and criminal remedies. The relief system in the Act clearly shows the attempt on part of the legislature to the accused to have access to a variety of relief measures, to be adapted to different circumstances. The Domestic Violence Act provides monetary compensation Protection Orders and Residence Orders.

A Protection Order is a relief measure that is used in most domestic violence legislation internationally. It is a method by which domestic violence is sought to be curbed by issuing directions to the offender.

Once domestic violence has been proved, a Residence Order details the living arrangements for the offender and the aggrieved in order to make sure that further violence is not perpetrated against the aggrieved.

Implementation of the Act

There has been a significantly through debate during the drafting of this Act that would be easiest to implement. An example of this has been the provision of settlement of domestic violence cases in the Magistrate's courts. The reasoning behind this provision is easy access for the aggrieved. The option of Family Courts wherever they have been was also considered. However, it was noted that the Family Courts, are overcrowded due to the channeling of cases under section 125 CrPC to these courts. Argument that has been brought out against the Family Courts is that they tend to shift cases of domestic violence within the field of family 'disputes'. Thus, in the interest of preserving the family, abuse up to a certain limit is tolerated, the primary purpose of Family Courts being to 'promote conciliation'.

There has been an effort in this Act to simplify and make more effective issues of the method of filing a complaint of domestic violence for obtaining relief. It also simplifies procedural matters for an aggrieved who wishes to file a complaint. For example, the Act allows anyone, perhaps a friend or an NGO, that has witnessed a case of domestic violence, to file a complaint in that regard to the Protection Officer. A further criticism of the Act is with respect to section 14, which may prescribe counselling either of the parties, and delay proceedings up to two months. As has been discussed here, redressal of domestic violence has always tended to focus on conciliation between perpetrator and the victim, even within the criminal justice system.

This is due to the perceptions regarding the importance of preserving the family unity. In recognition of this fact, a provision such as section 14 can be counterproductive in two ways. First, it might jeopardize speedy disposal of the case; secondly, it may also convince the aggrieved to continue in that situation without taking further action.

Conclusion and Suggestions

Practical Problems

Human rights practice is a method of reporting facts to promote change. The influence of nongovernmental human rights organizations is intimately linked to the rigor of their research methodology. One typical method of reporting human rights violations in specific countries is to investigate individual cases of human rights violations through interviews with victims and witnesses, supported by information about the abuse from other credible sources. Analysis of domestic violence as a human rights abuse depends not only on proving a pattern of violence, but also on demonstrating a systematic failure by the state to afford women equal protection of the law against that violence.

Without detailed statistical information concerning both the incidence of wife-murder, battery, and rape, and the criminal justice system's response to those crimes, it can be difficult to make a solid case against a government for its failure to guarantee equal protection of the law. Studies have shown that nearly one-third of Indian women who experience domestic violence have thought about running away from that family but fear of leaving their young children and having nowhere any place to go prevent them to do so.

Community intervention is such a way that could be made to be useful. In some areas of West Bengal, for example, the 'shalishi' is used to deal with cases of domestic violence (and other issues). 'Shalishi' is a word of Persian origin which comprises mediation between the parties involved in a dispute by unbiased but powerful 'shalishidaars'. It has existed since pre-Mughal times and with its informal set up, many people find it more acceptable than formal legal avenues.

It derives its legitimacy from traditional norms and value systems and it attempts to ensure that the family remains intact while it dispenses justice. In doing so, 'Shalishi' may compromise on meeting out a punishment to the culprit as the formal legal system would do but at the end of the day, it seems to help ameliorate the condition of women and that is a kind of their empowerment in itself. A social practice of Indian society, it may be possible to help find progressive ways to enable women to live in peace and dignity and without having to deal with violence and insecurity within their own homes.

The media could go a long way in helping to do so provided it becomes more sensitive to women's rights since fighting for women's rights isn't about obtaining time. Official responses too need to be made more sensitive and progressive to the cause of women's rights. For example, it seems faintly ridiculous to weaken one of the few laws which exist to combat domestic violence.

This, however, is precisely what the The (all male) Malimath Committee suggested in a way by recommending that complaints made under the "heartless provisions" of section 498 (a), IPC be made bailable and compoundable.

The Malimath Committee produced a 600 page report which among other things included 16 research papers but for some reasons excluded not only any discussion on the issue of violence against women but also excluded any inputs either from victims of marital cruelty or from those working in the field.

India needs to develop a comprehensive domestic violence policy so that at least, the institutional response to the issue gives battered women whether or not they choose to remain in relationship with someone who has perpetrated domestic violence, access

to aid in the form of health-care, childcare and shelter if not anything else.

The response to recognize that there are many forms of domestic violence—not restricted to life-threatening situations but also including emotional, physical, sexual, psychological and financial abuse—and it consequently should be flexible enough to be able to deal with the whole spectrum of violence.

The distinction between civil and criminal law is fundamental in the Indian legal system and although, as has been seen earlier, some laws to deal with domestic violence exist, the country does not have any one comprehensive law on the issue although attempts to frame such a law have been made in the past.

Legal advocacy groups such as lawyer's Collective and Breakthrough have suggested that a strategy to deal with cases of domestic violence should:

- Clearly define domestic violence on the basis of the UN Model Code on Domestic violence;
- Ensure that the perpetrator cannot plead that domestic violence was committed in self-defence which was reasonable for his own protection or for the protection of another's property;
- Give each victim of domestic violence the right to stay in the shared household (*e.g.* the marital home) and not be evicted from there except in accordance with the law;
- Enable the victim to seek legal protection after even just one isolated incident and not require that the violence should be habitual for the victim to seek legal protection;
- Ensure that courts have the jurisdiction to pass any order necessary to prohibit the perpetrator from doing anything to further adversely affect the victim;
- Ensure that a victim can seek relief through legal avenues under a 'single window clearance' system instead of having multiple windows which cost more expenses and the amount of time and effort required for a victim to seek relief;
- Make provisions for the temporary custody of the child(ren) to the victim so that there is no possibility of the child(ren) being used by the perpetrator to blackmail the victim;
- Give not only married women the right to remedy but also women related by blood, through a relationship in the nature of marriage (especially in the case of bigamous marriages where the second wife is led to believe that she is the real wife), through adoption or by the fact of living in a joint family.

It is the fundamental right of all Indian citizens to enjoy life and liberty and it is the duty of the state to ensure that they can do so within the framework provided by the Constitution of India and the international obligations such as CEDAW which India has accepted.

Law does not operate in a vacuum and must take into consideration social, economic and cultural factors. Fairness must be the central concern for women even when they are dealing with abusers. A multipronged approach to violence against women will result in far reaching changes, transforming attitudes and practices so that women and men can live a life of equality and dignity.

3

Worldwide Functions of HR Norms

Introduction

Human rights norms are often studied as an independent body of law with tribunals dedicated to interpreting and enforcing those norms. However, human rights norms are also increasingly incorporated into the development of substantive law in fields as diverse as labour law, corporate governance, environmental law, torts, intellectual property, and armed conflict.

The symposium brought together scholars in diverse areas of substantive law to discuss the impact of human rights norms in their fields.

It included the following questions:

- Are human rights norms used to define elements of causes of action, legal responsibility, or defences?
- How are human rights norms taken into account in law reform efforts?
- Have human rights norms been the driving force behind law reform?
- To what extent is the law of human rights balanced with another area of law in judicial decisions? How is that balanced achieved?
- What are the consequences of greater incorporation of human rights norms?
- What happens when national and international institutions adopt conflicting interpretations of human rights norms?
- Is fragmentation necessarily problematic or can it serve useful purposes, such as facilitating experimentation with diverse approaches or providing a check on hegemonic ambitions?
- Alternatively, if harmonization should be a priority in this field, what kinds of processes and institutions are best positioned to advance it?

United Nations Organs

This part outlines the relationship between the Office of the High Commissioner for Human Rights and those other organs having responsibility for human rights. Whilst many United Nations staff members may be familiar with certain structures and mandates of these organs, it is worth reviewing the broader canvas of the United Nations system.

The Charter-based Organ

The United Nations Charter provided for the creation of six principal organs mandated to carry out the overall work of the United Nations. Inasmuch as they were created by the Charter, these bodies are commonly referred to as Charter-based organs. The six principal organs are outlined below, as well as other major bodies resulting

from these organs.

List of Charter-Based Bodies

Organs Under The UN Charter

for th2e formulation, drafing and adoption of instruments, supervision:

- The general assembly
- The economic and social council
  - (1) Commissio on human rights
  - (1a) Sub–commission on the promotion and protection of huma rights (formerly, the Sub–Commission on prevention of discrimination and protection of minorities
  - (2) Commission on the Stauts of women
- The Security council
  - (1) Internationl tribunal for the former yugoslavia
  - (2) International tribunal for Rwanda
  - (3) International criminal court
- The International court of justice
- The Secretariat (Secretary–General)
- The Trusteeship council (suspended 1:11.95)

Each organ was mandated by the Charter to perform varying human rights functions. Naturally, these roles have evolved over time.

The United Nations General Assembly (UNGA)

The United Nations General Assembly is the main deliberative, supervisory and reviewing organ of the United Nations. It is composed of representatives of all Member States, each one having one vote. Most decisions are reached by simple majority. Decisions on important questions such as peace, admission of new members and budgetary matters, require a two-thirds majority.

Powers and Functions

The United Nations Charter sets out the powers and functions of the General Assembly. The main functions of the General Assembly in relation to human rights include the following: initiating studies and making recommendations for promoting international political cooperation; the development and codification of international law; the realization of human rights and fundamental freedoms for all; and international collaboration in the economic, social, cultural, education and health fields.

This work is carried out by a number of committees established by the General Assembly, international conferences called for by the General Assembly and by the Secretariat of the United Nations. Most items relating to human rights are referred to the "Third Committee" (the Social, Humanitarian and Cultural Committee) of the General Assembly.

The General Assembly's competence to explore issues concerning human rights is almost unlimited, in that, under Article 10, it is allowed to.discuss any questions or any matters within the scope of the present Charter. and to make "recommendations" to Member States on these subjects. Decisions of the UNGA are referred to as

resolutions which reflect the will of the majority of Member States. General Assembly resolutions largely determine the work of the United Nations.

Sessions

The General Assembly meets in regular session in New York each year on the third Tuesday of September and continues until mid December. It may also meet in special or emergency sessions at the request of the Security Council or at the request of the majority of the members of the United Nations.

The Economic and Social Council (ECOSOC)

The Economic and Social Council was established by the United Nations Charter as the principal organ to coordinate the economic and social work of the United Nations and the specialized agencies.

The Council has 54 members elected for three-year terms by the General Assembly. Voting is by simple majority, each member having one vote.

Powers and Functions

Some of the main powers and functions of the Economic and Social Council are as follows:

- To serve as the central forum for the discussion of international economic and social issues of a global or an inter-disciplinary nature and the formulation of policy recommendations addressed to Member States and to the United Nations system as a whole;
- To promote respect for, and observance of, human rights and fundamental freedoms for all;
- To make or initiate studies and reports and make recommendations on international economic, social, cultural, educational, health and related matters;
- To call international conferences and prepare draft conventions for submission to the General Assembly on matters falling within its competence;
- To make recommendations and to co-ordinate activities of specialized agencies;
- Co-ordinate, rationalize and, to some extent, programme the activities of the United Nations, its autonomous organs and the specialized agencies in all of these sectors through consultations with and recommendations to the General Assembly and members of the United Nations.

Consultation with Non-Governmental Organizations

A further function of the Economic and Social Council is to consult with non-governmental organizations concerned with matters falling within the Council's competence. The Council recognizes that these organizations should have the opportunity to express their views and that they often possess special experience or technical knowledge of value to the Council and its work. Those NGOs having consultative status may send observers to public meetings and submit written statements relevant to the Council's work. Over 1,500 non-governmental organizations have consultative status with the Council.

They are classified in the following three categories:

1. *General Consultative Status:* For large, international NGOs whose area of

work covers most of the issues on the Council's agenda.

2. *Special Consultative Status:* For NGOs that have special competence in a few fields of the Council's activity.
3. *Inclusion on the Roster:* For NGOs whose competence enables them to make occasional and useful contributions to the work of the United.

Nations and who are available for consultation upon request. NGOs on the Roster may also include organizations having consultative status with a specialized agency or other United Nations body.

Sessions

The Economic and Social Council generally holds one five to six-week substantive session each year, alternating between New York and Geneva, and one organizational session in New York. The substantive session includes a high-level special meeting, attended by Ministers and other high officials, to discuss major economic and social issues. The year-round work of the Council is carried out in its subsidiary bodies. commissions and committees -which meet at regular intervals and report back to the Council.

Commissions of the Economic and Social Council

Between 1946 and 1948, the Council took a number of key institutional decisions concerning human rights. In 1946, pursuant to Article 68 of the Charter, it established the Commission on Human Rights and the Commission on the Status of Women.

Commission on Human Rights (CHR)

When the Commission met for the first time, its prime function was to oversee the drafting of the Universal Declaration of Human Rights. That task was accomplished and the Declaration was adopted by the General Assembly on 10 December 1948. Today, the Commission on Human Rights serves as the main subsidiary organ of the United Nations dealing with human rights matters. The Commission comprises 53 representatives of Member States of the United Nations.

Powers and Functions

The Commission submits proposals, recommendations and reports to the Economic and Social Council regarding: international declarations or conventions; the protection of minorities; the prevention of discrimination on grounds of race, sex, language or religion; and any other matter concerning human rights.

The Commission considers questions relating to the violation of human rights and fundamental freedoms in various countries and territories as well as other human rights situations. If a particular situation is deemed sufficiently serious, the Commission may decide to authorize an investigation by an independent expert or it may appoint experts to assess, in consultation with the Government concerned, the assistance needed to help restore enjoyment of human rights.

The Commission also assists the Council in the co-ordination of activities concerning human rights in the United Nations system. The Commission has increasingly turned its attention in the 1990s to the needs of States to be provided with advisory services and technical assistance to overcome obstacles to the enjoyment of human rights.

At the same time, more emphasis has been placed on the promotion of economic, social and cultural rights, including the right to development and the right to an adequate standard of living.

Increased attention is also being given to the protection of the rights of vulnerable groups in society, including minorities and indigenous people. Protection of the rights of the child and the rights of women, including the eradication of violence against women and the attainment of equal rights for women, falls into this category.

The Commission is authorized to convene ad hoc working groups of experts and the Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on Prevention of Discrimination and Protection of Minorities).

Sessions

The Commission on Human Rights meets once a year in Geneva, for six weeks in the March/April period. It can also meet exceptionally between its regular sessions, if a majority of States members agree. To date, there have been four extra-ordinary sessions.

The Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on Prevention of Discrimination and Protection of Minorities)

The Sub-Commission is the main subsidiary body of the Commission on Human Rights. It was established by the Commission at its first session in 1947 under the authority of the Economic and Social Council. The Sub-Commission is composed of experts acting in their personal capacity, elected by the Commission with due regard for equitable geographical representation.

Half of the members and their alternates are elected every two years and each serves for a term of four years. In addition to the members and alternates, observers attend sessions of the Sub-Commission from States, United Nations bodies and specialized agencies, other intergovernmental organizations and non-governmental organizations having consultative status with the Economic and Social Council.

Powers and Functions

- To undertake studies, particularly in the context of the Universal Declaration;
- To make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms, and the protection of racial, national, religious, and linguistic minorities;
- Tto perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights. Studies prepared by 1members of the Sub-Commission have been undertaken on topics such as harmful practices affecting the health of women and children, discrimination against people infected with HIV/AIDS, freedom of expression, the right to a fair trial, the human rights of detained juveniles, human rights and the environment, the rights of minorities and indigenous peoples, the question of impunity concerning violations of human rights and the right to adequate housing.

Working Groups

The Sub-Commission is assisted by special reporters an individual expert working

on a particular issue and working groups (a group of independent experts working together on a particular issue):

- *Special Rapporteurs on:* Impunity Concerning Economic, Social and Cultural Rights; Impunity Concerning Civil and Political Rights; the Human Rights Dimension of Population Transfers; Human Rights and Income Distribution; Traditional Practices Affecting the Health of Women and the Girl Child; Systematic Rape and Sexual Slavery During Armed Conflict; Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations; Indigenous Peoples and Their Relationship to Land; the Question of Human Rights and States of Emergency; Privatization of Prisons; Freedom of Movement; Terrorism and Human Rights; Scientific Progress and Human Rights.
- *Working Groups on:* Communications Contemporary Forms of Slavery; Indigenous Populations; Minorities.

Sessions

The Sub-Commission meets annually in August for a four-week session in Geneva. The session is attended by observers from Member and nonmember States of the United Nations and from United Nations departments and specialized agencies, other inter-governmental organizations and nongovernmental organizations.

Commission on the Status of Women (CSW)

The Commission on the Status of Women is the principal technical body of the United Nations for the development of substantive policy guidance with regard to the advancement of women. The Commission presently consists of 45 government experts elected by the Economic and Social Council for a period of four years.

Members, who are appointed by Governments, are elected in accordance with the following criteria of geographical representation: thirteen from African States; eleven from Asian States; four from Eastern European States; nine from Latin American and Caribbean States; and eight from Western European and Other States.

Powers and Function

The functions of the Commission are to promote women's rights through:

- The preparation of recommendations and reports to the Economic and Social Council on promoting women's rights in the political, economic, social and educational fields; the formulation of recommendations to the Council on.urgent. problems. The Council has stated that urgent aspects of women's rights should be aimed at achieving de facto observance of the principle of equality between men and women and that the Commission should propose ways of implementing such recommendations. Following the 1995 Fourth World Conference on Women, the General Assembly mandated the Commission on the Status of Women to play a catalytic role, regularly reviewing the critical areas of concern in the Platform for Action adopted by the Conference.

Session

Between 1971 and 1989, the Commission's sessions. each of three weeks duration.

were held every two years in New York or Geneva. However, since 1989, sessions of the Commission are held annually in New York. Sessions are attended by members and alternates and by observers for other Member States of the United Nations, representatives of bodies of the United Nations system, intergovernmental organizations and non-governmental organizations.

The Security Council

The United Nations Charter established the Security Council as one of the principal organs of the United Nations. It comprises 5 permanent members (China, France, Russia, United Kingdom and United States) and 10 nonpermanent members elected for two years by the United Nations General Assembly. Each member has one vote and permanent members have the power to block the adoption of any resolution (known as the veto power). Decisions require a majority of nine votes and the agreement of all five permanent members.

Powers and Functions

In accordance with the United Nations Charter, the Security Council has primary responsibility for:

- The maintenance of peace and international security;
- Investigation of any dispute, or any situation that might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security. By joining the United Nations, all Member States agree to accept and carry out decisions of the Security Council.

Human Rights

The Security Council has the authority to:

- Put human rights mandates into peace-keeping operations or to mandate separate human rights operations;
- Consider gross human rights violations that are threats to peace and security under article 39 of the Charter and recommend enforcement measures;
- Establish international criminal tribunals.

International Criminal Tribunal for Former Yugoslavia

Faced with a situation characterized by widespread violations of international humanitarian and human rights law in the former Yugoslavia, including the existence of concentration camps and the continuance of the practice of.ethnic cleansing., the Security Council initially adopted a series of resolutions requesting that all parties concerned in the conflict comply with the obligations under international law, more particularly under the Geneva Conventions. The Security Council reaffirmed the principle of the individual criminal responsibility of persons who commit or order the commission of grave breaches of the Geneva Conventions or other breaches of international humanitarian law. Owing to a lack of compliance with its early resolutions, the Security Council eventually decided that an international tribunal would be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 and requested the Secretary-General to prepare a report on this matter.

The report of the Secretary-General incorporating the Statute of the International Tribunal was submitted to the Security Council, which, acting under Chapter VII of the Charter of the United Nations, adopted it in its resolution 827 (1993) of 25 May 1993, thereby establishing an international tribunal for the former Yugoslavia in The Hague. The statute defines the Tribunal's authority to prosecute four clusters of offences: grave breaches of the 1949 Geneva Conventions; violations of the laws or customs of war; genocide; and crimes against humanity. From the date of its establishment to January 1999, the Tribunal has handed down indictments against 93 individuals.

International Criminal Tribunal for Rwanda

The scale and severity of gross human rights abuses and ethnic cleansing in Rwanda during 1994, led to the adoption by the Security Council, on 8 November 1994, of resolution 955 (1994) creating the International Criminal Trib0unal for Rwanda, eighteen months after the International Tribunal for the Former Yugoslavia had been established by Security Council resolution 827 of 25 May 1993.

The Security Council resolution decided "to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States" The Statute gives the Tribunal the power to prosecute genocide, crimes against humanity, violations of common Article 3 of the Geneva Conventions and Additional Protocol II.

The Tribunal's jurisdiction covers crimes ommitted by Rwandans in the territory of Rwanda and in the territory of neigh bouring States as well as non-Rwandan citizens for crimes committed in Rwanda between 1 January and 31 December 1994. The Tribunal is based in Arusha, Tanzania As at January 1999, the Tribunal had issued 28 indictments against 45 individuals.

International Criminal Court

An international criminal court is considered the missing link in the international legal system for the reason that the International Court of Justice at The Hague handles only cases between States, not individuals. In the absence of an international criminal court for dealing with individual responsibility as an enforcement mechanism, acts of genocide and egregious violations of human rights often go unpunished. In the last 50 years, there have been many instances of crimes against humanity and war crimes for which no individual has been held accountable.

Following long and intense negotiations, in 1998 the United Nations adopted the.Rome Statute of the International Criminal Court. Following the entry into force of the Statute, the Court will be established as a permanent institution with the power to exercise its jurisdiction over persons for the most serious crimes of international concern. The Court is meant to be complementary to national criminal jurisdictions. According to article 126 of its final clauses, the Statute will "enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations". As at March 2000, 7 States had ratified the Statute.

The International Court of Justice (ICJ)

The International Court of Justice was established by the United Nations Charter as the judicial organ of the United Nations.

It is composed of 15 independent judges elected by the Security Council on the recommendation of the General Assembly. In accordance with the provisions of article 36 of the Statute of the Court annexed to the Charter, only States may be seized before the Court.

This means that individuals, entities having legal personality and international or non-governmental organizations may not be parties in litigation before the Court. International human rights instruments do not specifically provide for adjudication by the Court. However, from time to time, the Court has taken decisions in an adjudicatory or advisory capacity on questions regarding the existence or protection of human rights.

The Court's deliberations on these issues are of considerable interest, since its decisions have played a significant role in defining international human rights law. In this respect, the judicial practice of the ICJ is consistent with the decisions handed down by its predecessor, the Permanent Court of International Justice.

International Human Rights Law

The formal expression of inherent human rights is through international human rights law. A series of international human rights treaties and other instruments have emerged since 1945 conferring legal form on inherent human rights.

The creation of the United Nations provided an ideal forum for the development and adoption of international human rights instruments. Other instruments have been adopted at a regional level reflecting the particular human rights concerns of the region. Most States have also adopted constitutions and other laws which formally protect basic human rights.

Often the language used by States is drawn directly from the international human rights instruments. International human rights law consists mainly of treaties and customs as well as, inter alia, declarations, guidelines and principles.

- *Treaties*: A treaty is an agreement by States to be bound by particular rules. International treaties have different designations such as covenants, charters, protocols, conventions, accords and agreements. A treaty is legally binding on those States which have consented to be bound by the provisions of the treaty -in other words are party to the treaty. A State can become a party to a treaty by ratification, accession or succession. Ratification is a State's formal expression of consent to be bound by a treaty. Only a State that has previously signed the treaty (during the period when the treaty was open for signature) can ratify it. Ratification consists of two procedural acts: on the domestic level, it requires approval by the appropriate constitutional organ (usually the head of State or parliament). On the international level, pursuant to the relevant provision of the treaty in question, the instrument of ratification shall be formally transmitted to the depositary which may be a State or an international organization such as the United Nations. Accession entails the consent to be bound by a State that has not previously signed the instrument.

  States ratify treaties both before and after the treaty has entered into force.

The same applies to accession. A State may also become party to a treaty by succession, which takes place by virtue of a specific treaty provision or by declaration. Most treaties are not self-executing. In some States treaties are superior to domestic law, whereas in other States treaties are given Constitutional status, and in yet others only certain provisions of a treaty are incorporated into domestic law. A State may, in ratifying a treaty, enter reservations to that treaty, indicating that, while it consents to be bound by most of the provisions, it does not agree to be bound by certain specific provisions.

However, a reservation may not defeat the object and purpose of the treaty. Further, even if a State is not a party to a treaty or if it has entered reservations thereto, that State may still be bound by those treaty provisions which have become part of customary international law or constitute peremptory rules of international law, such as the prohibition against torture.

- *Custom*: Customary international law (or simply.custom.) is the term used to describe a general and consistent practice followed by States deriving from a sense of legal obligation. Thus, for example, while the Universal Declaration of Human Rights is not in itself a binding treaty, some of its provisions have the character of customary international law.
- *Declarations, Resolutions etc. Adopted by UN Rgans*: General norms of international law principles and practices that most States would agree are often stated in declarations, proclamations, standard rules, guidelines, recommendations and principles. While no binding legal effect on States ensures they nevertheless represent a broad consensus on the part of the international community and, therefore, have a strong and undeniable moral force on the practice of States in their conduct of international relations. The value of such instruments rests on their recognition and acceptance by a large number of States, and, even without binding legal effect, they may be seen as declaratory of broadly accepted principles within the international community.

The Secretariat of the United Nations

The United Nations Charter provided for the creation of a Secretariat which comprises the Secretary-General as the chief administrative officer of the Organization, and such staff as the Organization may require. More than 25,000 men and women from some 160 countries make up the Secretariat staff.

As international civil servants, they and the Secretary-General answer solely to the United Nations for their activities, and take an oath not to seek or receive instructions from any Government or outside authority. The Secretariat is located at the headquarters of the United Nations in New York and has major duty stations in Addis Ababa, Bangkok, Beirut, Geneva, Nairobi, Santiago and Vienna.

Organization

The Secretariat consists of a number of major organizational units, each headed by an official accountable to the Secretary-General. These include, inter alia, the Executive Office of the Secretary-General; Office for the Coordination of Humanitarian Affairs; Department for General Assembly Affairs and Conference Services;

Department of Peacekeeping Operations; Department of Economic and Social Affairs; Department of Political Affairs, Department for Disarmament and Arms Regulation; Office of Legal Affairs; Department of Management.

Subsequent to the Secretary-General's reform package presented in document available, the work of the Organization falls into four substantive categories: peace and security, development cooperation, international economic and social affairs; and humanitarian affairs. Human rights is designated as a cross-cutting issue in all four categories. Each area is co-ordinate by an Executive Committee which manages common, cross-cutting and overlapping policy concerns. In order to integrate the work of the Executive Committees and address matters affecting the Organization as a whole, a cabinet-style Senior Management Group, comprising the heads of department under the chairmanship of the Secretary-General, has been established.

It meets weekly with members in Geneva, Vienna, Nairobi and Rome participating through tele-conferencing. A Strategic Planning Unit has also been established to enable the Group to consider individual questions on its agenda within broader and longer-term frames of reference. The Office of the High Commissioner for Human Rights forms part of the Secretariat and is responsible for the overall promotion and protection of human rights.

The High Commissioner, entrusted by General Assembly resolution of 20 December 1993 with principal responsibility for United Nations human rights activities, comes under the direction and authority of the Secretary-General and within the framework of the overall competence, authority and decisions of the General Assembly, the Economic and Social Council and the Commission on Human Rights. The High Commissioner is appointed by the Secretary-General with the approval of the General Assembly and is a member of all four Executive Committees.

Powers and Functions

According to the United Nations Charter, the Secretary-General is required to: participate in all meetings and to perform all functions entrusted to him by the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council; report annually to the General Assembly on the work of the Organization; and to bring to the attention of the Security Council any matter which, in his opinion, threatens international peace and security. The Secretary-General therefore functions as both the conscience of the international community and the servant of Member States.

The work carried out by the Secretariat is as varied as the problems dealt with by the United Nations. These range from mediating international disputes to issuing international stamps. The Secretariat's functions are, inter alia, to: provide support to the Secretary-General in fulfilling the functions entrusted to him or her under the Charter; promote the principles of the Charter and build understanding and public support for the objectives of the United Nations; promote economic and social development, development cooperation, human rights and international law; conduct studies, promote standards and provide information in various fields responding to the priority needs of Member States; and organize international conferences and other meetings.

The work of the Secretary-General entails routine daily consultations with world leaders and other individuals, attendance at sessions of various United Nations bodies,

and worldwide travel as part of the overall effort to improve the state of international affairs. The Secretary-General issues an annual report in which he appraises the work of the Organization and presents his views on future priorities.

Good Offices (Article 99 of the Charter)

The Secretary-General may be best known to the general public for using his impartiality to engage and intervene in matters of international concern. This is commonly referred to as his.good offices. and is indicative of the steps taken by the Secretary-General or his senior staff, publicly and in private, to prevent international disputes from arising, escalating or spreading.

The Secretary-General can use his good offices to raise sensitive human rights matters with Governments. His intervention may be at his own discretion or at the request of Member States.

Human Rights Mechanisms

A number of conventional mechanisms and extra-conventional mechanisms are in place to monitor the implementation of international human rights standards and to deal with complaints of human rights violations.

International Human Rights Mechanisms

A *Conventional Mechanisms*: Treaty–Monitoring Bodies:

- Committee on economic, socil and culture right (monitors the implementation of the international covenant on economic, social and culture right)
- Human right committee (monitors the implementation of the international covernant on civil and political right)
- Committee of the international conventional for the elimination of all forms racial discrimination)
- Committee against torture (monitors the implementation of the convention against torture and otber cruel, inbuman or degrading treatment or punishment)
- Committee on the elimination of discrimination against women monitors the implemention of the convention on the elimination of all forms or discrimination against women
- Committee on the right of the child (monitors the implementation of the convention on the rights of the child)

B. *Extra–Conventional Mechanisms*: Special Procedures:

- Special rapporteurs, special representatives, special envoys and Independent experts, working groups–thematic or country (urgent actions)
- Complaints procedure 1503

"Conventional mechanisms" refer to committees of independent experts established to monitor the implementation of international human rights treaties by States parties. By ratifying a treaty, States parties willingly submit their domestic legal system, administrative procedures and other national practices to periodic review by the committees. These committees are often referred to as treaty-monitoring bodies (or "treaty bodies").

In contrast, "extra-conventional mechanisms" refer to those mechanisms established by mandates emanating, not from treaties, but from resolutions of relevant United Nations legislative organs, such as the Commission on Human Rights or the General Assembly. Extra-conventional mechanisms may also be established by expert bodies, such as the Sub-Commission on the Promotion and Protection of Human Rights (formerly the Sub-Commission on Prevention of Discrimination and Protection of Minorities). They normally take the form of an independent expert or a working group and are often referred to as "special procedures".

Conventional Mechanisms

Treaty–Monitoring Bodies

- *Overview of the Conventional Mechanisms*: Conventional mechanisms monitor the implementation of the major international human rights treaties. The different committees established are composed of independent experts acting in their individual capacity and not as representatives of their Governments, although they are elected by representatives of States Parties. The commi-ttees comprise 18 members each, with the exception of the Committee Against Torture and Committee on the Rights of the Child (both 10 members) and Committee against the Elimination of all forms of Discrimination Against Women (23 members). Members are elected according to the principle of equitable geographic representation, thus ensuring a balanced perspective and expertise in the major legal systems.

  The main functions of the treaty bodies are to examine reports submitted by States parties and to consider complaints of human rights violations.

  - *State Reporting:* All States parties to the international treaties are required to submit reports stating progress made and problems encountered in the implementation of the rights under the relevant treaty.
  - *Individual Complaints:* Three of the international treaties currently allow for individuals to lodge complaints about alleged violations of rights. (the Optional Protocol to the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Racial Discrimination and the Convention against Torture and Other Cruel or Inhuman Treatment or Punishment).
  - *State-to-State Complaints:* The same three treaties, in addition to the Convention on the Elimination of All Forms of Discrimination against Women, as listed above, also make provision for States parties to lodge complaints relating to alleged human rights abuses against another State party. This procedure has never been resorted to.

  By virtue of their responsibilities, treaty bodies serve as the most authoritative source of interpretation of the human rights treaties that they monitor. Interpretation of specific treaty provisions can be found in their "views" on complaints and in the "concluding observations" or "concluding comments" which they adopt on State reports. In addition, treaty bodies share their understanding on and experience of various aspects of treaty implementation

through the formulation and adoption of.general comments. or "general recommendations". At present, there is a large body of general comments and recommendations serving as another valuable resource with regard to treaty interpretation. Complaints of human rights violations are technically referred to as "communications".

- *Reporting Procedure*: All treaties require States parties to report on the progress of implementation of the rights set forth in the treaty.

  The common procedure is as follows:

  - Each State party is required to submit periodic reports to the Committee;
  - The reports are examined by the treaty body in light of information received from a variety of sources including non-governmental organizations, United Nations agencies, experts. Some treaty bodies specifically invite NGOs and United Nations agencies to submit information;
  - After considering the information, the treaty body issues concluding observations/comments containing recommendations for action by the State party enabling better implementation of the relevant treaty. The treaty body monitors follow-up action by the State party on the concluding comments/observations during examination of the next report submitted. On several occasions, treaty-body recommendations set out in the concluding comments/observations have served as the basis for new technical cooperation projects.
- *Communications Procedure for Individual Complaints*: The communications procedure set out in the Optional Protocol to the ICCPR -article 22 (CAT) and article 14 (CERD)—is conditional on the following:
  - The individual must first exhaust local remedies. In other words, the individual must have explored available legal remedies in the State concerned including appeal to the highest court, unless:
  - There is no legal process in that country to protect the rights alleged to have been violated;
  - Access to remedies through the local courts has been denied or prevented;
  - There has been an unreasonable delay locally in hearing the complaint;
  - A consistent pattern of gross violations of human rights makes any prospect of remedies meaningless;
  - The remedies are unlikely to bring effective relief to the victim;
  - The communication must not be anonymous or abusive;
  - The communication must allege violations of rights as stipulated in the treaty which the committee oversees;
  - The communication must come from an individual who lives under the jurisdiction of a State which is party to the particular treaty;
  - The communication must not be under current or past investigation in another international procedure;
  - The allegations set out in the communication must be substantiated.

- *How to Contact the Committees*: Five committees are serviced by the Office of the High Commissioner for Human Rights:
  1. The Committee on Economic, Social and Cultural Rights,
  2. The Human Rights Committee,
  3. The Committee against Torture,
  4. The Committee on the Elimination of All Forms of Racial Discrimination and,
  5. The Committee on the Rights of the Child.

Communications, submissions or correspondence for these treaty bodies may be directed to:

(The Relevant Committee)
Support Services Branch
C/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8–14 Avenue de la Paix
1211 Geneva 10• Switzerland
Telephone: +41 22 917 90 00• Fax:+41 22 917 90 22

The Committee for the Elimination of All Forms of Discrimination Against Women is serviced by the Division for the Advancement of Women.

Submissions or correspondence may be directed to:

Committee on the Elimination of Descrimination against Women
c/o Division for the Advancement of Women
Attention Womens's Rights Unit
United Nations Headquarters
DC2
1UN Plaza
New York, NY 10017
Tel: +1 212 963 3764• Fax:+ 1 212 963 3463

Committee on Economic, Social and Cultural Rights (CESCR)

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council with a view to assisting the Council fulfill its responsibilities to the International Covenant on Economic, Social and Cultural Rights.

It is composed of 18 independent experts:

- *Reporting Procedure*: States parties submit their first report within two years of becoming parties to the Covenant. Subsequent reports must be submitted at least every five years thereafter or whenever the Committee so requests.
- *General Discussion Days*: The Committee usually devotes one day of its regular sessions to a general discussion on a specific right or particular article of the Covenant in order to develop a greater depth of understanding on the issue, such as human rights education, the rights of elderly persons, the right to health and the right to housing. The discussion, in which representatives of international organizations and NGOs participate, is normally announced in

advance. The relevant decision of the Committee can be found in its annual report. All interested parties, including NGOs, are invited to make written contributions.

- *Sessions*: The Committee is convened in Geneva twice a year, in May and November; each session is of three weeks. duration. A pre-seasonal working group comprising five members is normally convened for one week immediately following each Committee session to prepare for the different session.

Human Rights Committee (HRC)

The Human Rights Committee was established pursuant to article 28 of the International Covenant on Civil and Political Rights. It is composed of 18 members, acting in their personal capacity, who are nominated and elected by States parties to the Covenant for a term of four years. Its functions are to monitor the Covenant by examining reports submitted by States parties and to receive individual communications concerning alleged violations of the Covenant by States parties to the Optional Protocol to the Covenant.

Communications are examined in a quasi-judicial manner leading to the adoption of.views. which have a similarity to the judgments of international courts and tribunals. Implementation of the Committee.s decision is monitored by a Special Reporters who also conducts field missions:

- *Reporting Procedure*: Under the Covenant, States parties must submit initial reports to the Committee within one year of the entry into force of the Covenant for the State concerned and thereafter whenever the Committee so requests. Other than initial reports, periodic reports are submitted every five years. The Committee regularly established a pre-sessional working group of four Committee members to assist in the drafting of issues to be considered in connection with States reports. Consideration of reports takes place over two or three meetings held in public. After the report is introduced to the Committee, the State representative has an opportunity to respond to written or oral questions raised by members of the Committee. NGOs are permitted to send submissions to the Committee. Following consideration, the Committee adopts its.comments. in a closed meeting making suggestions and recommendations to the State party. Comments are issued as public documents at the end of each session of the Committee and included in the annual report to the General Assembly.
- *Complaints by Individuals*: Under the Optional Protocol to the Covenant, a communication may be submitted by an individual who claims that his or her rights, as set out in the Covenant, have been violated. The Committee considers communications in light of written information made available to it by the individual and by the State party concerned and issues its "views" accordingly. When it appears that the alleged victim cannot submit the communication, the Committee may consider a communication from another person acting on his or her behalf. An unrelated third party having no apparent links with the alleged victim may not submit communications. A follow-up procedure is aimed at monitoring implementation of the Committee's "views".
- *Sessions*: The Committee is convened three times a year for sessions of three

weeks. duration, normally in March, at United Nations headquarters in New York and in July and October/November at the United Nations Office at Geneva. Each session is preceded by a one-week working group session. It reports annually to the General Assembly.

Committee on the Elimination of all Forms of Racial Discrimination (CERD)

The Committee on the Elimination of Racial Discrimination was established under the International Convention on the Elimination of All Forms of Racial Discrimination. It is composed of 18 experts, acting in their personal capacity, who are nominated and elected by States parties to the Convention for a four-year term. The Committee monitors the implementation of the Convention by examining reports submitted by States parties which are due every two years. It also examines individual communications concerning violations of the Convention by States parties which have accepted the optional complaints procedure under article 14 of the Convention.

The Committee can also examine situations under its urgent action and prevention procedure:

- *Reporting Procedure*: Each State report receives the attention of a member designated as Country Reporters. He or she undertakes a detailed analysis of the report for consideration by the Committee and leads the discussion with the representatives of the State party. The Committee has also developed an urgent action and prevention procedure under which situations of particular concern may be examined. In order to prevent long overdue reports, if a report is more than five years overdue, the Committee may examine the country situation in the absence of a report.
- *Individual Communications Procedure*: The procedure concerning communications from individuals or groups claiming to be victims of violations of the Convention came into operation in 1982. Such communications may only be considered if the State concerned is a party to the Convention and has made the declaration under article 14 that it recognizes the competence of CERD to receive such complaints. Where a State party has accepted the competence of the Committee, such communications are confidentially brought to the attention of the State party concerned but the identity of the author is not revealed.
- *Sessions*: The committee meets in two sessions annually in Geneva, in March and August, each of three weeks' duration.

Committee Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

The Committee against Torture was established under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It is composed of 10 experts, acting in their personal capacity, who are nominated and elected by States parties to the Convention for a four- year term. The primary functions of the Committee are to monitor the implementation of the Convention by examining reports submitted by States parties, to receive individual communications concerning violations of the Convention by States parties which have accepted the optional procedure under article 22 of the Convention and to conduct inquiries into the alleged

systematic practice of torture in States which have accepted the procedure under article 20.

- *Reporting Procedure*: Under the Convention, each State Party must submit a report to the Committe on measures taken to give effect to its undertakings under the Convention. The first report must be submitted within one year after the entry into force of the Convention for the State concerned. Thereafter, reports shall be submitted every four years on subsequent developments. The Committee designates a country rapporteur to undertake a detailed analysis of the report for consideration by the Committee. The Committee may also request further Reports and additional information.
- *Enquiry Procedure*: If the Committee receives reliable information which it considers to be based on well-founded indications that "torture is being systematically practiced"in a State, the Committee is empowered to make a confidential inquiry. If the Committee considers that the information gathered "warrants" further examination, it may designate one or more of its members to"make a confidential inquiry and to report to the Committee urgently". The Committee then invites the State party concerned to cooperate in the inquiry. Accordingly, the Committee may request the State party to designate a representative to meet with the members of the Committee in order to provide the necessary information. The enquiry may also include, with the agreement of the State, a visit to the alleged site. After examining the findings of the inquiry, the Committee transmits them together with its comments and recommendation to the State party, inviting it to indicate the action which it intends to take in response. Finally, after consultation with the State Party, the Committee may decide to publish a summary of the proceedings separately or in its annual report.
- *Individual Communication Procedure*: A communication may be submitted directly or, under certain conditions, through representatives, by individuals who claim to be victims of torture by a State which has accepted the competence of the Committee. The function of the Committee is to gather relevant information, consider the admissibility and merits of complaints and to issue its "views". If the alleged victim is not in a position to submit the communication on his or her own behalf, a relative or representative may act in that capacity.
- *Sessions*: The Committee meets in Geneva twice each year in November and in the April-May period for two or three weeks. However, special sessions may be convened by decision of the Committee itself at the request of a majority of its members or of a State party to the Convention. The committee reports annually on its activities to the States parties to the Convention and to the General Assembly.

Committee on the Elimination of Discrimination Against Women

The Committee on the Elimination of Discrimination against Women was established in accordance with the International Convention on the Elimination of All Forms of Discrimination against Women. The Committee is composed of 23 experts acting in their personal capacity, who are nominated and elected by the States parties

to the Convention for a four-years term. The Committee's main function is to monitor the implementation of the Convention based on consideration of reports from States parties.

The new Optional Protocol establishes two procedures: an individual communications procedure which will allow communications to be submitted by or on behalf of individuals or groups of individuals claiming to be victims of a violation of any of the rights set out in the Convention; and a procedure which will allow the Committee to enquire into grave or systematic violations by a State party of those rights. In addition, no reservations are permissible, although any State accepting the Protocol may.opt-out. of the enquiry procedure.

- *Reporting Procedure*: A State party must submit its first report within one year after it has ratified or acceded to the Convention. Subsequent reports must be submitted at least every four years or whenever the Committee so requests. To consider States parties' reports adequately, the Committee established a pre-sessional working group with the mandate to consider periodic reports. The pre-sessional working groups are composed of five members of the Committee who prepare lists of issues and questions to be sent in advance to the reporting Stat.

  This enables reporting States to prepare replies for presentation at the session and thus contribute to a speedier consideration of the second and subsequent reports. The Committee has established two standing working groups which meet during the regular session to consider ways and means of improving the work of the Committee and of implementing article 21 of the Convention under which the Committee may issue suggestions and recommendations on implementation of the Convention. The consideration of reports by the Committee takes place in public session, whereas the adoption of the concluding observations, intended to guide the State Party in the preparation of its next report, is subsequently held in private. State representatives are given the opportunity to introduce the report orally and members then raise questions relating to specific articles of the Convention.

  They focus on the actual position of women in society in an effort to understand the true extent of the problem of discrimination. The Committee will accordingly request specific information on the position of women from a variety of sources. Following consideration of the report in public session, the Committee proceeds to draft and adopt its "Comments" in a series of private sessions. The Comments enter the public domain once adopted. They are immediately sent to the State party and included in the annual report to the General Assembly. The report is also submitted to the Commission on the Status of Women.
- *Sessions*: The Committee meets in New York twice per year for a duration of three weeks. The week following the close of each session is reserved for the Working Group which establishes the agenda for the next meeting. The Committee is serviced by the UN Division for the Advancement of Women which is based in New York.

Committee on the Rights of the Child (CRC)

The Committee on the Rights on the Child was established under the Convention

on the Rights of the Child. It comprises 10 independent members elected for a four-year term. The main function of the Committee is to monitor the implementation of the Convention on the Rights of the Child based on examination of State reports in close cooperation with the United Nations Children's Fund (UNICEF), specialized agencies and other competent bodies (including NGOs).

- *Reporting Procedure*: States parties are required to submit reports to the Committee two years after becoming parties to the Convention, and thereafter every five years, on measures taken to give effect to the rights in the Convention and on the progress made in the enjoyment of children's rights. The pre-sessional working groups comprising all members of the Committee meet in closed meeting at the end of each session to consider reports scheduled for the next session. Its mandate is to identify those areas in the reports which require clarification or raise concerns and to prepare a list of issues for transmission to States parties. States provide written replies to be considered in conjunction with the report.
- *General Discussion*: The Committee devotes one or more meetings of its regular sessions to general discussion on one particular article of the Convention or on specific issues such as the situation of the girl child, the economic exploitation of children and children in the media. Representatives of international organizations and NGOs participate in the Committee discussion which is normally announced in the report of the session immediately preceding that in which the discussion takes place.

  All interested parties including NGOs are invited to make written contributions. Individual complaints There is no procedure outlined in the Convention for individual complaints from children or their representatives. The Committee may, however, request. Further information relevant to the implementation of the Convention.. Such additional information may be requested from Governments if there are indications of serious problems.
- *Sessions*: The Committee hold three annual sessions in Geneva, each of three weeks. duration. It also holds three pre-sessional working groups, each of one week's duration.

Extra-conventional Mechanisms

Special Procedures

- *Thematic and Country Mandates*: The Commission on Human Rights and the Economic and Social Council have, over time, established a number of other extra-conventional mechanisms or special procedures, meaning they were not created either by the United Nations Charter or by an international treaty. Extra-conventional mechanisms also monitor the implementation and enforcement of human rights standards.

  These mechanisms have been entrusted to working groups of experts acting in their individual capacity or individuals designated as Special Rapporteurs, Special Representatives or independent experts. The mandate and tenure of the working group, independent experts and special representatives of the Secretary-General depend on the decision of the Commission on Human Rights

or the Economic and Social Council.

In general, their mandates are to examine, monitor and publicly report on either the human rights situation in a specific country or territory -known as country mandates. or on human rights violations worldwide—known as thematic mechanisms or mandates. A list of country and thematic mandates is at annexes V and VI. The special procedure mechanisms are of paramount importance for monitoring universal human rights standards and address many of the most serious human rights violations in the world. The increase and the evolution of procedures and mechanisms in this area constitute a system of human rights protection.

- *Objectives*: All special procedures have the central objective of making international human rights more operative. Yet each special procedure has its own specific mandate which has, in certain cases, evolved in accordance with specific cir-cumstances and needs. While certain basic principles and criteria are common to all special procedures, the complexities and peculiarities of each individual mandate have at times required special arrangements.
- *Dialogue with Governments*: Each independent expert initiates constructive dialogue with States' Representatives in order to obtain their cooperation as a means of redressing violations of human rights. Their examinations and investigations are carried out in an objective manner so as to identify solutions to States for securing respect for human rights.
- *Individual Complaints Mechanisms*: These mechanisms have no formal complaints procedures even though their activities are based on information received from various sources (the victims or their relatives, local or international NGOs, for example) containing allegations of human rights violations. Information of this kind may be submitted in various forms (*e.g.* letters, faxes, and cables) and may concern individual cases as well as details of situations of alleged violations of human rights.

  In order to pursue a complaint, a number of requirements must be fulfilled:

  a. Identification of the alleged victim(s);
  b. Identification of the Government agents responsible for the violation;
  c. Identification of the person(s) or organization(s) submitting the commun ication;
  d. A detailed description of the circumstances of the incident in which the alleged violation occurred.

In order to be considered admissible, a communication must:

i. Not be anonymous;
ii. Not contain abusive language;
iii. Not convey an overtly political motivation;
iv. Describe the facts of the incident and the relevant details referred to above, clearly and concisely.

- *Urgent Action*: Where information attests to an imminence of a serious

human rights violation (*e.g.* extra-judicial execution, fear that a detained person may be subjected to torture or may die as a result of an untreated disease, for example) the Spe- cial Rapporteur, Representative, Expert or Working Group may address a message to the authorities of the State concerned by tele fax or telegramme, requesting clarifications on the case, appealing to the Government to take the necessary measures to guarantee the rights of the alleged victim. These appeals are meant to be preventive in character and do not prejudge a definitive conclusion.

Once an urgent action is transmitted to the Government in question, the Special.

Rapporteur, Representative, Expert or Working Group undertakes the following action:

a. Appeals to the Governments concerned to ensure effective protection of the alleged victims;
b. Urges the competent authorities to undertake full, independent and impartial investigation and to adopt all necessary measures to prevent further violations and requests to be informed of every step taken in this regard;
c. If no response is received and/or the competent authority takes no remedial measures, the Special Rapporteur, Representative, Expert or Working.

Group reminds the Government concerned of the cases periodically. Cases not clarified are made public through the report of the particular Special Procedures to the Commission on Human Rights or to the competent United Nations bodies.

Specific requests for such urgent intervention may be addressed to:

Postal: (The Special Rapporteur, Representative,
Expert or Working Group Concerned)
c/o Office of the High Commissioer for Human Rights
United Nations Office at Geneva
8–14 Avenue de la Paix
1211 Geneva 10• Switzerland
Tel: (41 22) 917 9000. Fax: (41 22) 917 9003
E–mail: webadmin.hchr@unog.ch

- *The 1503 Procedure*: Each year the United Nations receives thousands of communications alleging the existence of gross and systematic violations of human rights and fundamental freedoms. The Economic and Social Council consequently adopted a procedure for dealing with such communications. This is known as the 1503 procedure pursuant to the adoption of the resolution 1503 of 27 May 1970. It does not deal with individual cases but with situations affecting a large number of people over a protracted period of time.
  - *Procedure for Communications*: A five-member Working Group of the Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on Prevention of Discrimination and Protection of Minorities) receives a monthly list of complaints ("communications") in conjunction with a summary of the evidence. The five-member Working Group meets for two weeks each year immediately prior to the Sub-Commission.s annual session to consider all communications and replies from Governments. In instances where the Working Group identifies reasonable evidence of a consistent pattern of gross violations of human rights, the matter is referred for examination by the Sub-Commission. A majority decision of the Working Group's members is needed for referring a communication to the Sub- Commission. The Sub-Commission then decides whether the situations should be referred to the Commission on Human Rights, through the Commission's Working Group on Situations. Subsequently, the Commission assumes responsibility for making a decision concerning each particular situation brought to its attention. All the initial steps of the process are confidential, except the names of countries which have been under examination. This ensures that a pattern of abuses in a particular country, if not resolved in the early stages of the process, can be brought to the attention of the world community. details referred to above, clearly and concisely.
  - *Admissibility*: The Working Group's decision on the admissibility of a communication is guided by the following criteria.

    The communication should:

    a. Not reflect political motivation of any kind;

    b. Have reasonable grounds for establishing that there is a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms;

    c. Come from individuals or groups claiming to be victims of human rights violations or having direct, reliable knowledge of violations. Anonymous communications are inadmissible, as are those based only on reports in the mass media;

    d. Describe the facts, the purpose and the rights that have been violated. As a rule, communications containing abusive language or insulting

remarks about the State against which the complaint is directed will not be considered;

e. Have first exhausted all domestic remedies, unless it can be shown convincingly that solutions at national level would be ineffective or that they would extend over an unreasonable length of time.

Communications intended for handling under the "1503" procedure may be addressed to:

Support Services Branch
c/o Office of the High Commissioner for Human Rights,
United Nations Office at Geneva
8–14 Avenue de la Paix
1211 Geneva 10. Switzerland
E–mail: webadmin.hchr@unog.ch

4

UN Policies and Accomplishment to Encourage Human Rights

Introduction

The task of promoting and protecting human rights, and thereby preventing human rights violations, is one of the most formidable challenges ahead. Evidence of gross violations of human rights today is a disturbing reminder of the work to be done.

The collective efforts of the largest and most representative number of people must be harnessed in order to develop creative strategies to prevent all forms of human rights violations, both deliberate and inadvertent. Over time, the United Nations has employed various tools to protect and promote human rights.

As the protection of human rights is primarily the responsibility of States, many strategies have been targeted towards strengthening the ability of States to protect persons within their territory, such as technical cooperation activities. Other strategies have been devised to nurture an understanding of human rights in areas such as education and development of publications.

Overall, the main strategies may be defined as follows:

- Integrating human rights into early warning, humanitarian operations, peacekeeping and development,
- Technical cooperation activities,
- Human rights education and campaigns,
- Human rights monitoring,
- Working with civil society,
- Publication of information.

Integrating Human Rights into the Work of the United Nations

Since the Secretary-General launched the Programme of Reform in July 1997, there have been on-going efforts to promote and protect human rights by integrating human rights into all activities and programmes of the United Nations.

This strategy reflects the holistic approach to human rights. It recognizes that human rights are inextricably linked to the work of all United Nations agencies and bodies, including programmes and activities relating to housing, food, education, health, trade, development, security, labour, women, children, indigenous people, refugees, migration, the environment, science and humanitarian aid.

The objectives of the process of integrating human rights are to:

- Increase cooperation and collaboration across the entire United Nations system

for human rights programmes;

- Ensure that human rights issues are incorporated into untapped sectors of the United Nations work;
- Ensure that United Nations activities make respect for human rights a routine, rather than a separate, component of United Nations activities and programmes.

The issue of human rights was, therefore, designated by the Secretary-General as cutting across the four substantive areas of the Secretariat.s work programme (peace and security; economic and social affairs; development cooperation and humanitarian affairs).

Mainstreaming human rights primarily takes the following forms:

- Adoption of a.human rights-based approach. to activities carried out in terms of the respective mandates of components of the United Nations system;
- Development of programmes or projects addressing specific human rights issues;
- Reorientation of existing programmes as a means of focusing adequate attention on human rights concerns;
- Inclusion of human rights components in field operations of the United Nations;
- The presence of human rights programmes in all structural units of the Secretariat responsible for policy development and coordination. The Office of the High Commissioner for Human Rights plays a lead role in the integration of human rights throughout the United Nations system.

Preventive Action and Early Warning

Violations of human rights are very often the root cause of humanitarian disasters, mass exoduses or refugee flows. Therefore, at the first signs of conflict, it is vital to deter the parties involved from committing human rights violations thus defusing situations which may lead to humanitarian disasters. The United Nations has already developed early warning systems to detect potential conflicts. Incorporating human rights into this system by addressing the root causes of potential conflict will contribute to prevention of humanitarian and human rights tragedies and the search for comprehensive solutions.

United Nations human rights procedures and mechanisms such as the special rapporteurs and special representatives, treaty-based bodies, working groups of the Commission on Human Rights and its Sub-Commission and United Nations human rights field officers (experts, including special rapporteurs, special representatives, treaty-body experts and United Nations human rights field offices) constitute a valuable contribution to the early warning mechanisms for impending humanitarian and human rights crises.

When information gathered is shared with other branches of the United Nations, such as the Office of the Coordinator for Humanitarian Affairs (OCHA), the Executive Committee on Peace and Security and Humanitarian Affairs, the Department of Political Affairs (DPA), the Department of Peace-keeping Operations (DPKO)and other conflict assessments are better informed. Based on the results from situation analysis, measures are considered to prevent the occurrence of crises. A human rights analysis contributes to more effective plans for tailoring prevention to the needs of imminent

disasters. The integration of human rights into preventive action and early warning systems is designed to bolster the accuracy of the early warning capacity of the United Nations in the humanitarian field by integrating human rights concerns before crises arise. This prepares the ground for effective cooperation before, during and after crises.

Human Rights and Humanitarian Operations

The link between humanitarian law and human rights law was discussed in the introduction. There is increasing consensus that humanitarian operations must integrate human rights into conflict situations.

Humanitarian operations are established in conflict or complex emergency situations where priorities have traditionally focused on addressing the most immediate needs–the delivery of humanitarian assistance. It is now understood that needs-based operations should also incorporate a human rights-based approach which serves to address both immediate needs and longer-term security.

In conflict and complex emergency situations, identification of human rights violations and efforts to protect those rights are essential, particularly as States may be unwilling or unable to protect human rights. Human rights issues are being integrated into humanitarian operations in various ways. The Executive Committee on Humanitarian Affairs brings together relevant departments of the United Nations thus ensuring a co-ordinated and integrated approach to humanitarian issues. The Office of the High Commissioner for Human Rights is involved in the work of the Committee: this ensures the incorporation of a human rights dimension into the work and policy development in this field.

Steps are being taken to guarantee that humanitarian field staff are trained in methods of basic human rights intervention, standards and procedures; to secure close field cooperation between human rights and humanitarian bodies; to ensure that a human rights dimension is included when developing strategies for major humanitarian efforts; and to encourage human rights monitoring in humanitarian operations.

Human Rights and Peace-keeping

The maintenance of international peace and security is one of the prime functions of the United Nations Organization. The importance of human rights in sustainable conflict resolution and prevention is gaining ground.

Armed civilian conflicts are characterized by large-scale human rights violations which can often be traced to structural inequalities and the resulting imbalances in the accessibility of power and resources. The need for peacekeeping efforts to address human rights issues is apparent.

The guarantee of a comprehensive approach to United Nations strategies for peace and security is conditional on the integration of human rights issues into all peace-keeping operations at the planning and preparatory stage of needs assessments.

To date, human rights mandates have been incorporated into the duties of several peace-keeping operations and predictably, in the years to come, the cooperation between DPA, DPKO and OHCHR will increase. Co-operation has in large part taken the shape of human rights training for peace-keeping personnel, including the military, civilian police and civilian affairs officers.

In some cases, OHCHR has been called upon to ensure the continuation of peace-keeping operations by establishing a human rights presence on conclusion of the peace-

keepers' mandate. With recent developments, cooperation has extended to the creation of joint DPKO/OHCHR human rights components in peace-keeping operations. Under the authority of the Representative/Special Representative of the Secretary-General in charge of the operation, the peace-keeping operation receives substantive human rights guidance from OHCHR.

Integration of Human Rights into Development

As early as 1957, the General Assembly expressed the view that a balanced and integrated economic and social development programme would contribute towards the promotion and maintenance of peace and security, social progress, better standards of living and the observance of and respect for human rights and fundamental freedoms. This approach was given increased prominence by the Teheran World Conference on Human Rights and later recognized as a paramount concern by the second World Conference on Human Rights held in Vienna in June 1993. that genuine and sustainable development requires the protection and promotion of human rights. Development is not restricted to meeting basic human needs; it is, indeed, a right. With a rights-based approach, effective action for development moves from the optional realm of charity, into the mandatory realm of law, with identifiable rights, obligations, claim-holders, and duty-holders.

When development is conceived as a right, the implication is that someone holds a claim, or legal entitlement and a corresponding duty or legal obligation.

The obligation which devolves upon Governments (individually by States vis-a-vis their own people, and collectively by the international community of States) is, in some cases, a positive obligation (to do, or provide something) and, in others, a negative obligation (to refrain from taking action).What is more, embracing the rights framework opens the door to the use of a growing pool of information, analysis and jurisprudence developed in recent years by treaty bodies and other human rights specialists on the requirements of adequate housing, health, food, childhood development, the rule of law, and virtually all other elements of sustainable human development.

The obligation to respond to the inalienable human rights of individuals, and not only in terms of fulfilling human needs, empowers the people to demand justice as a right, and it gives the community a sound moral basis on which to claim international assistance and a world economic order respectful of human rights. The adoption of a rights-based approach enables United Nations organs to draw up their policies and programmes in accordance with internationally recognized human rights norms and standards.

The United Nations Development Assistance Framework (UNDAF) was established as part of the Secretary-General;s Programme of Reform. UNDAF is a common programme and resources framework for all members of the United Nations Development Groups (UNDG) and, wherever possible, for the United Nations system as a whole. The objective of the programme is to maximize the collective and individual development impact of participating entities and programmes of assistance; intensify collaboration in response to national development priorities; and ensure coherence and mutual reinforcement among individual programmes of assistance. The ad hoc Working Group of the Executive Committee of the UNDG is mandated to develop a common UNDG approach for enhancing the human rights dimension in development activities.

In order to facilitate the process of integrating human rights into development, the Administrator of the United Nations Development Programme and OHCHR have signed a memorandum of understanding seeking to increase the efficiency and effectiveness of the activities carried out within their respective mandates through cooperation and coordination. OHCHR will facilitate close cooperation between UNDP and the United Nations human rights organs, bodies and procedures, and will examine, with UNDP, the possibilities of joint initiatives aimed at implementing the human right to development, placing particular emphasis on defining indicators in the area of economic and social rights and devising other relevant methods and tools for their implementation.

Human Rights Technical Cooperation Programme

Technical Cooperation in the Field of Human Rights

The United Nations human rights technical cooperation programme assists countries, at their request, in building and strengthening national capacities and infrastructure which have a direct impact on the overall promotion and protection of human rights, democracy and the rule of law. This is done through technical advice and assistance to Governments and civil society. The objective is to assist in promoting and protecting all human rights at national and regional level, through the incorporation of international human rights standards into domestic legislation, policies and practices. In addition, it facilitates the building of sustainable national infrastructure for implementing these standards and ensuring respect for human rights.

While these activities are carried out throughout the United Nations Organization, OHCHR is the focal point for the technical cooperation programme in the field of human rights. Technical cooperation activities can be a complement to, but never a substitute for the monitoring and investigation activities of the United Nations human rights programme.

How to Access Assistance

In order to benefit from the United Nations Programme of Technical Cooperation in the field of human rights, a Government must submit a request for assistance to the Secretariat. In response, the Secretariat will conduct an assessment of that country.s particular human rights needs, taking into consideration,

Among other factors, the following:

- Specific recommendations made by the United Nations human rights treaty bodies;
- Recommendations by the Commission on Human Rights and its mechanisms, including the representatives of the Secretary-General, the Special Rapporteurs on thematic or country situations and the various working groups;
- The recommendations adopted by the Board of Trustees of the Voluntary Fund for Technical Cooperation in the Field of Human Rights;
- The views and concerns expressed by a wide range of national and international actors including government officials, civil society, national human rights institutions, and national and international NGOs.

The assessment is normally conducted through an international mission to the State

concerned. Based on that assessment, an assistance programme is developed to address the needs identified in a comprehensive and coordinated manner.

Periodic evaluations of the country programme during its implementation are normally followed by a post- implementation evaluation, with a view to measuring the effect of the assistance provided and developing follow-up plans. Countries or regions in transition to democracy are the primary target of the Technical Cooperation Programme. Priority is also given to technical cooperation projects responding to the needs of less developed countries.

Various Technical Cooperation Activities

The programme offers a wide range of human rights assistance projects, some of which are summarized below. It must be stressed, however, that the types of interventions described are merely indicative and not exhaustive. The results of needs assessments determine the type of technical cooperation project to be implemented.

- *National Human Rights Institutions (The Paris Principles)*: A central objective of the Technical Cooperation Programme is to consolidate and strengthen the role which national human rights institutions can play in the promotion and protection of human rights. In this context, the term national human rights institutions refers to bodies whose functions are specifically defined in terms of the promotion and protection of human rights, namely national human rights commissions and ombudsman offices, in accordance with the Paris Principles. OHCHR offers its services to Governments that are considering or in the process of establishing a national human rights institution. The activities relating to national human rights institutions under the programme are aimed at promoting the concept of national human rights institutions and encouraging their development.

  To this end, information material and a practical manual have been developed for those involved in the establishment and administration of national institutions. In addition, a number of seminars and workshops have been conducted to provide government officials, politicians, NGOs and others with information and expertise in the structure and functioning of such bodies. These events have also served as useful forums for the exchange of information and experience concerning the establishment and operation of national human rights institutions.

Administration of Justice

With respect to human rights in the administration of justice, the Technical Cooperation Programme provides training courses for judges, lawyers, prosecutors and penal institutions, as well as law enforcement officers.

Such courses are intended to familiarize participants with international standards for human rights in the administration of justice; to facilitate examination of humane and effective techniques for the performance of penal and judicial functions in a democratic society; and to teach trainer participants to include this information in their own training activities.

Topics offered in courses for judges, lawyers, magistrates and prosecutors include: international sources, systems and standards for human rights in the administration of justice; human rights during criminal investigations, arrest and pre-trial detention;

the independence of judges and lawyers; elements of a fair trial; juvenile justice; protection of the rights of women in the administration of justice; and human rights in a declared state of emergency.

Similarly, the training courses for law enforcement officials cover a broad range of topics, including the following: international sources, systems and standards for human rights in the administration of criminal justice; the duties and guiding principles of ethical police conduct in democracies; the use of force and firearms in law enforcement; the crime of torture; effective methods of legal and ethical interviewing; human rights during arrest and pretrial detention; and the legal status and rights of the accused.

A Manual on Human Rights and Law Enforcement is available. Course topics for prison officials include: minimum standards for facilities for prisoners and detainees; prison health issues, including AIDS and the HIV virus; and special categories of prisoners and detainees, including juveniles and women.

A Handbook on Human Rights and Pre-trial Detention is available. This approach to professional training for human rights in the administration of justice is subject to in-field testing by OHCHR in its technical cooperation activities in a number of countries, and has undergone a series of revisions on the basis of such experience. Other forms of assistance in the area of the administration of justice include assistance in the development of guidelines, procedures and regulations consistent with international standards.

Assistance in Drafting Legislation

The United Nations makes the services of international experts and specialized staff available to assist Governments in the reform of their domestic legislation which has a clear impact on the situation of human rights and fundamental freedoms.

The goal is to bring such laws into conformity with international standards, as identified in United Nations and regional human rights instruments. Drafts provided by a Government requesting such assistance are reviewed and recommendations are subsequently made.

This programme component also includes assistance with respect to penal codes, codes of criminal procedure, prison regulations, laws regarding minority protection, laws affecting freedom of expression, association and assembly, immigration and nationality laws, laws on the judiciary and legal practice, security legislation, and, in general, any law which might have an impact directly, or indirectly, on the realization of internationally protected human rights. Constitutional assistance Under this programme component, OHCHR provides assistance for the incorporation of international human rights norms into national constitutions.

In this regard, the Office can play a facilitating role in encouraging national consensus on those elements to be incorporated into the constitutional reform process utilizing the services of legal exerts. OHCHR assistance may also extend to the provision of human rights information and documentation, or support for public information campaigns to ensure the involvement of all sectors of society. Their task includes legislative drafting as well as the drafting of bills of rights; the provision of justiciable remedies under the law; options for the allocation and separation of governmental powers; the independence of the judiciary; and the role of the judiciary in overseeing the police and prison systems.

National Parliaments

Under the Technical Cooperation Programme, national parliaments may receive direct training and other support to assist them in undertaking their human rights function. This programme component addresses a variety of crucial issues, including the provision of information on national human rights legislation, parliamentary human rights committees, ratifications of and accessions to international human rights instruments, and, in general, the role of parliament in promoting and protecting human rights.

The armed forces It is essential for the good functioning of the rule of law that the armed forces be bound by the Constitution and other laws of the land, that they answer to democratic Government and that they are trained in and committed to the principles of human rights and humanitarian law. The United Nations has carried out a number of training activities for armed forces.

Electoral Assistance

The Technical Cooperation Programme has been providing electoral assistance for more than five years. Specific activities which the OHCHR has undertaken in this regard include the preparation of guidelines for analysis of electoral laws and procedures, publication of a handbook on human rights and elections, development of draft guidelines for human rights assessment of requests for electoral assistance and various public information activities relating to human rights and elections.

Treaty Reporting and Training of Government Officials

The OHCHR organizes training courses at regular intervals to enable government officials to draft reports in keeping with the guidelines establishing the various international human rights treaties to which their State is a party. Courses on reporting obligations may be provided at national or at regional level.

Alternatively, training courses may be organized under the human rights fellowship programme: participants take part in workshops with experts from the various treaty-monitoring committees, as well as with staff from the Office. They are provided with a copy of OHCHR.s Manual on Human Rights Reporting and, whenever possible, are given the opportunity to observe meetings of treaty bodies.

Non-Governmental Organizations and Civil Society

Civil society constitutes an increasingly important factor in the international community. In recent years, the United Nations has found that much of its work, particularly at national level, calls for the involvement of various nongovernmental organizations and groups -whether in economic and social development, humanitarian affairs, public health, or the promotion of human rights.

National and international non-governmental human rights organizations are key actors in the Technical Cooperation Programme, both in the delivery of assistance and as recipients of that assistance. In relation to the programme's aims to strengthen civil society, the United Nations is increasingly being called upon by Governments and others to provide assistance to national NGOs, in the context of its country activities, by soliciting their input, utilizing their services in seminars and training courses, and supporting appropriate projects which have been developed.

Information and Documentation Projects

The Technical Cooperation Programme also provides human rights information and documentation and contributes to building capacity for the effective utilization and management of such material. Activities in this area include direct provision of documentation, translated where necessary into local languages; training in human rights information; and assistance in computerization of national and regional human rights offices.

Assistance is also provided to national libraries in acquiring human rights books and documentation, and support can be lent for the establishment and functioning of national or regional human rights documentation centers. Several manuals, handbooks and modules are being produced to support training and other technical cooperation activities.

Existing or planned material targets specific audiences, such as the police, judges and lawyers, prison personnel, national human rights action plans, the armed forces, teachers and human rights monitors involved in United Nations field operations. The material is adapted specifically to the recipient country in order to facilitate the integration of human rights into existing training programmes and curricula.

Peacekeeping and the Training of International Civil Servants

In accordance with the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in June 1993, the Technical Cooperation Programme has recently expanded the scope of its activities to include human rights support within the United Nations system.

In the area of peacekeeping, for example, the programme has provided various forms of assistance to major United Nations missions in Cambodia, Eritrea, Mozambique, Haiti, South Africa, the countries of the former Yugoslavia, and Angola. Such assistance has included, variously, the provision of human rights information, legislative analysis, training and advisory services.

Human Rights Fellowships

The human rights fellowships scheme was initiated in keeping with General Assembly resolution 926 of 14 December 1955 which officially established the advisory services programme. Under the programme, fellowships are awarded only to candidates nominated by their Governments and are financed under the regular budget for advisory services.

Each year, the Secretary-General invites Member States to submit nominations for fellowships. Governments are requested to nominate persons directly engaged in functions affecting human rights, particularly in the administration of justice.

The Secretary-General draws their attention to concerns expressed by the General Assembly, in many of its resolutions, with regard to the rights of women, and encourages the nomination of women candidates. The principle of equitable geographical distribution is taken into account and priority is given to candidates from States which have never benefitted from the fellowship programme, or which have not done so in recent years. Participants receive intensive training in a variety of human rights issues.

They are encouraged to exchange their experiences and are requested to evaluate the fellowship programme, to present individual oral reports, and to prepare

recommendations for their superiors on the basis of knowledge acquired under the programme.

In accordance with the policy and procedure governing the administration of United Nations fellowships, each participant is required to submit a comprehensive final report to OHCHR on subjects directly related to their field of activity.

Human Rights Education and Campaigns

Human Rights Education

The fundamental role of human rights education is to increase the awareness of individuals in order to defend their rights and those of others. Knowledge of human rights constitutes a forceful means of achieving empowerment. Human rights education needs learners and educators working together to translate the language of human rights into knowledge, skills and behaviour.

This necessitates developing an understanding of the responsibility each individual has in making those rights a reality at the local, national and international levels: the essence of global citizenship and global responsibility. The relevant provisions of international instruments define human rights education as constituting training, dissemination and information efforts aimed at building a universal culture of human rights by imparting knowledge and skills and moulding attitudes.

This entails the strengthening of respect for human rights and fundamental freedoms; the full development of the human personality and a sense of its dignity; the promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups; the enabling of all persons to participate effectively in a free society; and the furtherance of the activities of the United Nations for the maintenance of peace.

Human Rights Education Campaigns

The United Nations has initiated and encouraged human rights awareness campaigns in order to promote particular human rights issues. The activities carried out during these campaigns include the development of publications, studies and programmes with the involvement of United Nations bodies, States, other international, regional and local organizations and civil society. The campaigns are intended to highlight specific human rights issues. It is widely acknowledged that awareness and information are vital to respect for human rights and prevention of human rights violations.

World Public Information Campaign on Human Rights (1988-ongoing)

It was only as recently as 1988 that the first concerted international effort was made to promote human rights. Although efforts had been made in the mid fifties to enhance awareness of the drafting work on the international Covenants, the launching of the World Public Information Campaign on Human Rights by the General Assembly in December 1988 represented the first serious attempt at coordinated effort for developing awareness of international norms. It was launched on the 40th Anniversary of the UDHR and is open ended: once launched, it became part of the United Nations human rights programme.

The Campaign includes the publication and dissemination of human rights

information and reference material, the organization of a fellowship and internship programme, briefings, commemorative events, exhibits and external relations activities. The programme has expanded significantly since 1988. The use of the OHCHR website is an important new development. It is, inter alia, a repository of United Nations human rights information in English, French and Spanish relating to international treaties, treaty-body databases, programmes and activities, United Nations reports, resolutions and human rights issues.

Decade for Human Rights Education (1995-2004)

The 1993 Vienna Declaration and Programme of Action concluded that human rights education, training and public information are essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace. The Conference recommended that States should strive to eradicate illiteracy and direct education towards the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms.

It called on all States and institutions to include human rights, humanitarian law, democracy and the rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings. Pursuant to a suggestion of the World Conference, the UNGA proclaimed the 10-year period beginning on 1 January 1995 the United Nations Decade for Human Rights Education, and welcomed the Plan of Action for the Decade as set out in the report of the Secretary-General. The High Commissioner for Human Rights was called upon to coordinate the implementation of the Plan.

The Plan of Action has five objectives:

1. Assessment of needs and formulation of effective strategies for the furtherance of human rights education;
2. Building and strengthening of programmes and capacities for human rights education at the international, regional, national and local levels;
3. Co-ordinated development of effective human rights education materials;
4. Trengthening the role and capacity of the mass media in the furtherance of human rights education;
5. Global dissemination of the Universal Declaration of Human Rights. The Plan focuses on stimulating and supporting national and local activities and embodies the idea of a partnership between Governments, international organizations, non-governmental organizations, professional associations, various sectors of civil society and individuals.

In the national context, the Plan provides for the establishment of comprehensive (in terms of outreach), effective (in terms of educational strategies) and sustainable (over the long term) national plans of action for human rights education, with the support of international organizations. Those Plans should constitute an integral part of the national development plan (when applicable) and be complementary to other relevant national plans of action already defined (general human rights plans of action or those relating to women, children, minorities, indigenous peoples, etc.).

Specific guidelines have been developed by OHCHR and endorsed by the General Assembly for the development of national plans of action for human rights education.

Third Decade to Combat Racism and Racial Discrimination

By its resolution 48/91 of 20 December 1993, the General Assembly proclaimed the Third Decade to Combat Racism and Racial Discrimination, beginning in 1993, and adopted the Programme of Action proposed for the Decade.

The ultimate goals of the Decade are:

- To promote human rights and fundamental freedoms for all, without distinction of any kind on grounds of race, colour, descent or national or ethnic origin, with particular emphasis on eradicating racial prejudice, racism and racial discrimination;
- To arrest any expansion of racist policies, to eliminate the persistence of racist policies and to counteract the emergence of alliances based on the mutual espousal of racism and racial discrimination;
- To resist any policy and practices which lead to the strengthening of racist regimes and contribute to sustaining racism and racial discrimination;
- To identify, isolate and dispel fallacious and mythical beliefs, policies and practices contributing to racism and racial discrimination;
- To put an end to racist regimes.

In order to achieve these goals, a number of activities are being undertaken including programmes and seminars to ensure respect for the existing standards and instruments to combat racism and xenophobia (including implementation of international instruments and adoption of revised national legislation); sensitization to racism and xenophobia (including appropriate teaching and education, and systematic use of the mass media to combat racial discrimination); to use all international bodies and mechanisms to combat racism and xenophobia; to review political, historical, social, economic and other factors which lead to racism and xenophobia.

The General Assembly decided to convene a World Conference against racism, racial discrimination, xenophobia and related intolerance, to be held not later than the year 2001. The Conference will be action-oriented and focus on practical measures to eradicate racism, including measures of prevention, education and protection and the provision of effective remedies. One of its aims will be to increase the effectiveness of United Nations programmes aimed at eradicating contemporary forms of racism and racial discrimination.

Human Rights Monitoring

Monitoring is a broad term describing the active collection, verification, and immediate use of information to address human rights problems. Human rights monitoring includes gathering information about incidents, observing events (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussions with Government authorities to obtain information and to pursue remedies, and other immediate follow-up. The term includes evaluation activities by the United Nations as well as fact gathering firsthand and other work in the field.

In addition, the drawback to monitoring is that it generally takes place over a protracted period of time. The major focus of United Nations monitoring is on carrying

out investigations and subsequently denouncing human rights violations as a means of fighting impunity.

However, it would be both deceiving and simplistic to identify human rights monitoring as being equivalent to a form of police activity. Human rights monitoring must be seen as the most fool-proof means of assessing a country's situation, and impeding its human rights violations and which, subsequently, could create a basis for institution-building. A stable human rights presence in a given country can be described as an ongoing needs assessment and analysis mission. However, human rights monitoring can also be done on a sporadic basis, as is the case with the so-called fact finding missions.

Some Governments, particularly totalitarian regimes, are reluctant to have an international human rights monitoring presence in their country, as they lack the long-term vision of good governance and see any attempt at cooperation as undue interference in their internal affairs. In such cases, monitoring can be done from a distance, often through the offices of a special rapporteur, which entails a greater effort in information gathering and checking the reliability of available sources.

Working With Civil Society

The direct involvement of people, individually and through nongovernmental organizations and other organs of civil society, is essential to the realization of human rights. The Universal Declaration placed the realization of those rights squarely in the hands of "every individual and every organ of society". Indeed, the history of human rights protection reflects the collective actions of individuals and organizations. The participation and contribution of all sectors of civil society are vital to the advancement of human rights.

NGOs and ECOSOC

Article 71 of the Charter of the United Nations provides for consultations between the Economic and Social Council and non-governmental organizations. Several hundred international non-governmental organizations have received consultative status under this Article, which permits them to attend public meetings of the Council, the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights as observers, and, in accordance with the rules established by the Council, to make oral statements and submit written documents.

NGOs also sit as observers at public working group sessions of these bodies. In their interventions at such meetings, the non-governmental organizations place emphasis on human rights situations requiring action on the part of the United Nations and suggest studies which should be carried out and instruments which should be drafted; they also contribute to the actual drafting of declarations and treaties. Non-governmental organizations may also submit reports alleging violations of human rights, for confidential consideration by the Sub-Commission, treaties bodies and the Commission under the.1503. procedure.

The views of non-governmental organizations are also sought on a wide range of issues where such consultation is appropriate and under decisions taken by the General Assembly, the Economic and Social Council, the Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on Prevention of Discrimination and Protection of Minorities). The views and information they provide are included in the official reports.

Non-governmental organizations also play an important role in promoting respect for human rights and in informing the general public of United Nations activities in the field of human rights through education and public information campaigns.

Indigenous Peoples

The World Conference on Human Rights (June 1993) and the International Decade for the World.s Indigenous People (1995. 2004) proclaimed by the General Assembly a year later set three major objectives for the promotion of the human rights of indigenous peoples.

The first is to adopt a declaration on the rights of indigenous peoples; the second to create an institutional mechanism for the participation of indigenous peoples in the work of the United.

Nations by establishing a permanent forum for indigenous peoples; and the third to strengthen international cooperation for the solution of problems faced by indigenous people in areas such as human rights, the environment, development, education and health.

In the context of the International Decade, current activities are as follows:

- The draft declaration on the rights of indigenous peoples is under consideration by a working group of the Commission on Human Rights. Several hundred governmental and indigenous representatives are taking part.
- The proposed permanent forum for indigenous peoples within the United Nations is under consideration by another working group of the Commission on Human Rights.

The International Decade of the World's Indigenous People is coordinated by the High Commissioner for Human Rights. The theme is "Indigenous people: partnership in action". The challenge to Governments, the United Nations system and non-governmental actors is to develop programmes to bring about improvements in the living conditions of indigenous peoples worldwide.

In most UN agencies there are designated focal points or units undertaking activities benefiting indigenous peoples:

- OHCHR is focusing on capacity-building for indigenous organizations in human rights, strengthening the participation of indigenous peoples in the UN's work, and improving the information flow to indigenous communities.
- The indigenous fellowship programme offers six months training in human rights within OHCHR to indigenous representatives.
- Two voluntary funds provide travel grants to enable indigenous people to participate in human rights meetings and assistance with projects.
- *The Indigenous Media Network:* through a series of workshops and exchanges, OHCHR is using the indigenous media as the linkage between United Nations activities and indigenous communities.
- The Working Group on Indigenous Populations, open to all indigenous peoples, remains the primary international meeting place for the world's indigenous peoples with nearly 1,000 participants.

Voluntary Funds

The United Nations Voluntary Fund for Indigenous Populations is administered by OHCHR on behalf of the Secretary-General, with the advice of a Board of Trustees. The Fund was established pursuant to General Assembly resolutions 40/131 of 13 December 1985, 50/156 of 21 December 1995 and 53/130 of 9 December 1998.

The purpose of the Fund is to assist representatives of indigenous communities and organizations participate in the deliberations of the Working Group on Indigenous Populations, the open-ended inter-sessional Working Group on the.UN Declaration on the Rights of Indigenous Peoples. and the open-ended inter-sessional ad hoc Working Group of the Permanent Forum, by providing them with financial assistance, funded by means of voluntary contributions from Governments, non- governmental organizations and other private or public entities.

The Voluntary Fund for the International Decade of the World's Indigenous People was established pursuant to General Assembly resolutions 48/163 of 21 December 1993, 49/214 of 23 December 1994 and 50/157 of 21 December 1995, all of which concern the International Decade of the World's Indigenous People.

In accordance with resolution 48/163, the Secretary-General was requested to establish a voluntary fund for the Decade and was authorized "to accept and administer voluntary contributions from Governments, inter-governmental and non-governmental organizations and other private institutions and individuals for the purpose of funding projects and programmes during the Decade".

In accordance with paragraph 24 of the annex to General Assembly resolution 50/157, the Coordinator of the Decade, the United Nations High Commissioner for Human Rights, should, "Encourage the development of projects and programmes, in collaboration with Governments and taking into account the views of indigenous people and the appropriate United Nations agencies, for support by the Voluntary Fund for the Decade".

Minorities

In recent years, there has been a heightened interest among members of the international community in issues affecting minorities as ethnic, racial and religious tensions have escalated, threatening the economic, social and political fabric of States, as well as their territorial integrity.

The United Nations approach centres on the need to promote and protect the rights of minorities and encourage harmonious relations among minorities and between minorities and the majority population. In addition to the non-discrimination provisions set out in international human rights instruments, special rights are elaborated for minorities and measures adopted to protect persons belonging to minorities more effectively from discrimination and to promote their identity.

- The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities addresses the special rights of minorities in a separate document.

The Working Group on Minorities was established in 1995 in order to promote the rights set out in the Declaration and, more particularly, to review the promotion and practical realization of the declaration, examine possible solutions to problems involving minorities, and recommend further measures for the promotion and protection of their rights. The working group is open to Governments, United Nations agencies, non- governmental organizations, minority representatives and members of

the academic community and is increasingly becoming a forum for dialogue on minority issues.

- A series of seminars on particular issues have drawn the attention of the international community to specific issues of relevance to the protection of minorities. Seminars have been held on intercultural and multicultural education and the role of the media in protecting minorities.
- Inter-agency cooperation on minority protection has led to an exchange of information on minority-related activities and has focused on specific activities and programmes which could be elaborated and implemented jointly, as a means of pooling financial, material and human resources.

Support for Victims of Torture

On behalf of the Secretary-General of the United Nations, OHCHR administers a Voluntary Fund for Victims of Torture with the advice of a Board of Trustees. The Fund was established by General Assembly resolution 36/151 of 16 December 1981.

It receives voluntary contributions from Governments, non-governmental organizations and individuals for distribution, through established channels of assistance, to non-governmental organizations providing medical, psychological, legal, social, financial, humanitarian or other assistance to victims of torture and members of their families.

If sufficient funding is available, relevant training and seminars for health and other professionals specializing in assisting victims of torture can also be financed. Applications for grants have to be submitted by 31 December for analysis by the secretariat of the Fund. Admissible applications are examined by the Board of Trustees at its annual session in May. The Board adopts recommendations for approval by the High Commissioner for Human Rights on behalf of the Secretary-General.

The grants are paid in the July/August period. Beneficiaries are required to provide satisfactory narrative and financial reports on the use of grants by 31 December. Until satisfactory reports on the use of previous grants are received, no new grants can be considered.

Support for Victims of Contemporary Forms of Slavery

On behalf of the Secretary-General, OHCHR also administers the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery with the advice of a Board of Trustees.

The fund was established pursuant to General Assembly resolution 46/122 of 17 December 1991.

The Purpose is two Fold:

1. To assist representatives of non-governmental organizations, from different regions, dealing with issues of contemporary forms of slavery to participate in the deliberations of the Working Group on Contemporary Forms of Slavery of the Sub-Commission on the Promotion and Protection of Human Rights by providing them with financial assistance (travel grants);
2. By extending, through established channels of assistance such as NGOs, humanitarian, legal and financial aid, to individuals whose human rights have been severely violated as a result of contemporary forms of slavery (project grants).

According to the criteria established by the General Assembly in its resolution 46/122, the only beneficiaries of the Fund's assistance shall be representatives of non-governmental organizations dealing with issues of contemporary forms of slavery:

- Who are so considered by the Board of Trustees;
- Who would not, in the opinion of the Board, be able to attend the sessions of the Working Group without the assistance provided by the Fund;
- Who would be able to contribute to a deeper knowledge on the part of the Working Group of the problems relating to contemporary forms of slavery; as well as;
- Individuals whose human rights have been severely violated as a result of contemporary forms of slavery.

The Private Sector

The increase in the private sector growth rate, the evolving role of Government and economic globalization have led to increased attention being paid to business enterprises as important actors in the human rights domain. In many ways, business decisions can profoundly affect the dignity and rights of individuals and communities.

There is emergent interest on the part of the business community to establish benchmarks, promote best practices and adopt codes of conduct. Governments retain the primary responsibility for human rights and it is not a question of asking business to fulfill the role of Government, but of asking business to promote human rights in its own sphere of competence.

Corporations responsible for human rights violations must also be held to account. The relationship between the United Nations and the business community has been growing in a number of important areas and the Secretary-General has called on the business community. individually through firms and collectively through business associations. to adopt, support and enact a set of core values in the areas of human rights, labour standards and environmental practices.

The Secretary-General has asked the relevant United Nations agencies to be ready to assist the private sector in incorporating those values and principles into mission statements and corporate practice. Each agency has the important task of examining the various ways of responding to corporate concerns for human rights.

United Nations Human Rights Publication

Human rights publications are strategically important to the promotion of human rights. Publications are aimed at: raising awareness about human rights and fundamental freedoms; raising awareness with regard to the existing ways and means at international level for promoting and protecting human rights and fundamental freedoms; encouraging debate on human rights issues under discussion in the various United Nations organs and bodies; serving as a permanent human rights resource for readers.

Below is a list of available human rights publications issued by OHCHR.

Publications are free of charge. Human Rights Fact Sheets, Basic Information Kits on the 50th Anniversary of the Universal Declaration of Human Rights and certain ad hoc publications. and are available from the address below.

Their reproduction in languages other than the official United Nations languages is encouraged provided that no changes are made to the contents and that OHCHR is advised by the reproducing organization and given credit as being the source of the material. Publications issued as United Nations sales publication. the Professional Training Series, the Study Series and certain reference and ad hoc publications can be ordered from the United Nations Bookshops listed below, with offices in Geneva and New York. United Nations sales publications are protected by copyright.

OHCHR Human Rights Fact Sheets

The Human Rights Fact Sheets deal with selected questions of human rights under active consideration or are of particular interest. Human Rights Fact Sheets are intended to facilitate better understanding on the part of a growing audience of basic human rights, the United Nations agenda for promoting and protecting them and the international machinery available for realizing those rights.

The Fact Sheets are free of charge and distributed worldwide. Their reproduction in languages other than the official United Nations languages is encouraged, provided that no changes are made to the contents and that OHCHR is advised by the reproducing organization and given the credit for being the source of the material.

Professional Training Series

The Professional Training series consists of handbooks and manuals intended to increase awareness of international standards and are directed at a specific target audience selected for its ability to influence the human rights situation at the national level. Although primarily designed to provide support to the training activities of the Technical Cooperation Programme of the OHCHR, these publications could also serve as practical tools for those organizations involved in human rights education to professional groups.

The training manuals in the Professional Training Series are adaptable to the particular needs and experience of a range of potential audiences within the target group, in terms of culture, education and history. Where appropriate, information on effective pedagogical techniques is included to assist trainers to use the manuals as effectively as possible. Each manual or handbook is prepared with the assistance of experts in the relevant fields and is subject to extensive external review and appraisal.Where appropriate, manuals or handbooks are tested in training sessions prior to their finalization.

Human Rights Studies Series

The Human Rights Study Series reproduces studies and reports on important human rights issues prepared by experts of the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-commission on Prevention of Discrimination and Protection of Minorities) in accordance with their mandates.

OHCHR ad hoc Publications

The ad hoc publications consist mainly of reports and proceedings of conferences, workshops and other particularly important or innovative events held under the auspices of OHCHR. These publications can be issued free of charge.

Publications for the Fiftieth Anniversary of the Universal Declaration of Human

Rights: Basic Information Kits

The basic information kit series is intended as a working tool for agencies, programmes, non-governmental organizations and national institutions as well as individuals to assist in the commemoration of the 50th Anniversary of the Universal Declaration of Human Rights. Basic information kits are published in French, English and Spanish and are distributed throughout the world free of charge.

Reference Material

OHCHR reference publications are directed to a more specialized audience and often consist of collections or compilations of international instruments. They are issued as United Nations sales publications.

5

Domestic Human Rights NGOs

This stage is an overview and critical analysis of the tactical choices that DNGOs make from the strategies available to them. In order to achieve this a typology of DNGO tactics is firstly put forward to aid the understanding of the material. Then, the tactics of each of the case studies are documented and analysed (mostly from the same points of view) to facilitate useful comparison. Some of the variables that influence the tactical decisions of the case studies are discussed within the exposition of each case study.

The main analysis, however, is at the end of the discussion for each jurisdiction, and in the conclusion. Reitz has argued that true Comparative Law scholarship lies in the tension between the similarities and differences in what is being compared.

In line with this, it is argued below that the case studies show both differences and similarities in their tactics. It is further argued that the differences between the case studies stem from different conceptions of how human rights work should be done, while the similarities are determined both by the common need for DNGOs to gain legitimacy in local cultures, and their need to rationally adapt to the opportunities in their environment. DNGOs, it is argued, are compelled to achieve a balance between these two requirements. Other factors that influence DNGOs, such as the levels and types of resources or the type of structure.

Typology of DNGO Tactics

In the discussion that follows the tactical decisions made by DNGOs are loosely divided into first order, second order and third order tactics. First order tactics concern the framing of a DNGO's mandate and agenda. They are thus about setting goals at the most general level. Second order tactics are used to achieve the goals set out in the mandate or agenda (*e.g.*, litigation or lobbying).

Third order tactics concern the methods used by a DNGO to execute the second order tactics it chooses. This typology is not meant to suggest a chronological sequence: a DNGO might begin by using second and third order tactics and only later clarify its first order tactics.

First Order Tactics

As Weissbrodt pointed out for INGOs, a DNGO needs to ask itself a number of questions when setting its mandate.

These questions are:

- Is the DNGO to have a wide or narrow mandate?
- Should the DNGO focus on particular rights, or on groups that traditionally suffer violations?
- Should the mandate be rigid, or allow flexibility to deal with new issues that arise?

Each choice a DNGO makes in answering these questions creates problems. If the DNGO chooses a narrow mandate, it needs to select an issue that both reflects an objective need, and has enough resonance with the public to draw support. If it chooses a wide mandate, then its task of setting an agenda is complicated by the difficulty of comparing different kinds of human rights violations.

Focusing on particular rights has the advantage of being intellectually satisfying, but might not achieve public support. Focusing on a particular group suffering violations might appear simply to be the claim of an interest group.

A completely flexible mandate might cause the DNGO to be overwhelmed by cases of small overall significance. A flexible mandate, coupled with criteria designed to limit the number of cases and to keep only highly significant ones, may merely shift the problem of first order tactics to one of second order tactics. First order tactical decisions are not necessarily made with finality. They are often open to constant review. Indeed, most DNGOs have to find ways to manage so-called "mandate-creep", where their mandate expands as new issues arise.

Second Order Tactics

The means used to achieve the goals set out in the mandate can be described as part of a spectrum. On the left hand side might be tactics such as litigation (national and international); lobbying; policy work (international and national) and human rights education for officials (mostly national).

In the middle of the spectrum might be tactics such as research; letter writing; networking; trial observation; documentation; publication; publicity work; providing aid to victims and development of new standards and institutions. Lastly, on the right hand might be such tactics as boycotts; peaceful demonstrations; non-violent direct action and civil disobedience.

Using the work of Sarat and Scheingold, one could understand this spectrum as designating the degree of interaction with the state (or international institutions). Those tactics on the left of the spectrum have more interaction with state institutions; those on the right have less.

As suggested by Scoble and Wiseberg, one could also understand this spectrum as describing those who use "tree-topping" (tactics addressing elites and the state) on the left, to those who use "ground-levelling" (tactics addressing the population at large) on the right. The decision a DNGO makes from among the tactics in this spectrum also indicates where it believes the decision-making power lies for the issues it campaigns on.

If it chooses tactics on the left of the spectrum, it believes that state actors are the primary decision-makers. If it chooses tactics on the right, it believes that other actors are primary decision-makers or have decisive influence on primary decision-makers. Almost all the literature on NGO tactics concerns INGOs, and in line with their focus, generally only elaborates tactics on the left of the spectrum.

Tactics in the centre or right of the spectrum, which are often used by DNGOs, have in general been considered from the point of view of political science. This distinction makes less sense once it is seen how actual DNGOs seamlessly combine both 'legal' and 'political' tactics. There is also much discussion in the literature on how to combine second order tactics. In the literature of the Ford Foundation, which funds many DNGOs in the United States, there is much discussion about a 'holistic'

approach to tactics.

This approach is described as one that moves away from reliance on litigation in favour of seeing it as a last resort. In a more sophisticated analysis of how DNGOs can and should conduct second order tactics, Wasby argues that DNGOs should adopt what he calls an 'integrated' tactical stance.

In his discussion of lobbying and litigation by American DNGOs Wasby notes that many DNGOs combine multiple second order tactics and he speculates that they may already have confidential plans for coordinating these tactics.

He then argues that even if DNGOs do not have such plans, they should, because his analysis suggests that such tactical coordination would be more effective than the uncoordinated tactics many of them currently use. The idea of a planned combination of tactics is also integral to the concept of the Comprehensive Tactical Stance. The second order tactical stances in the spectrum above usually exist in typical combinations.

In interpreting these combinations, it is useful to outline what Max Weber called 'ideal types' for human rights DNGO second order tactical stances. An ideal type is a model that does not correspond exactly to any example in the real world, but helps to explain such cases.

They accentuate the features of real cases, so as to pinpoint their essential characteristics and thus aid analysis.

Some ideal types which help to understand the case studies in this work are:

- Tactical Approach A focuses on litigation, with occasional forays into lobbying when litigation dictates.
- Tactical Approach B consists of a near equal combination of lobbying and litigation.
- Tactical Approach C focuses on lobbying with occasional litigation.
- Tactical Approach D focuses solely on lobbying.
- Tactical Approach E consists of lobbying combined with publicity work.
- Tactical Approach F consists of a near equal combination of direct action and publicity/campaigning work.

Third Order Tactics

Third order tactics are the decisions taken as to how to carry out second order tactics. It is beyond the scope of this work to elaborate all of the third order tactics for each of the second order tactics, but to aid understanding some of the major third order tactics that are used by some of the case studies. Litigation can be conducted either as a defensive or offensive tactic.

It can be used defensively to protect those defending human rights from having their rights violated, or it can be used offensively to challenge situations where patterns of human rights violations occur in society generally. For offensive litigation, it is important to clearly state the differences between the test case approach and the use of impact litigation.

The Test Case Approach

The test case approach is the main third order tactic for litigation used by DNGOs

in Britain. It is used by British organizations such as Liberty, MIND and the Joint Council for the Welfare of Immigrants (JCWI). Because British governments have used their legislative power to cancel gains made from successful litigation in British courts, test case litigation in Britain has generally been in the European Court of Human Rights.

The emphasis of the test case approach is not purely legal, but rather combines both legal and media skills. In fact, British DNGOs tend to see the ultimate justification of test cases not as being victory in court but rather the political and press attention they attract.

They thus often mobilize the law in order to mobilize through the law. Generally, DNGO lawyers identify a problem which has the potential to become the subject of a test case in the course of day-to-day casework. They then identify a prospective remedy for the problem they have detected. Next, they consider whether the legal rule concerned can be challenged under the European Convention on Human Rights. If it can, they then consider which case or cases from those they know would be the strongest on the facts, and whether they should pursue one or more cases.

British DNGOs using this tactic generally follow one of two approaches. First, they might support individuals who wish to bring applications. These individuals are usually located through casework, letters, phone calls or referrals from other organizations. Second, they might engage in third party interventions in cases that are already under way in the courts.

The difficulty with the test case approach is that to be effective DNGOs need to be involved in casework. This is necessary in order to have enough throughput of cases to obtain the small number of significant cases that could be the subject of a test case. This means, however, that to a large degree specialisation of DNGO lawyers in test cases is not possible.

Impact Litigation

Impact litigation is the main third order tactic for litigation used by American DNGOs such as LDF, the NAACP and the ACLU. This tactic seeks to use a sequence of individual cases to develop legal principles that are more effective against human rights violations in particular areas. The key to impact litigation is control: litigators try to control the development and sequence of cases in a targeted court, to produce cases involving the issues they want decided at the desired time and place.

The desired cases are sometimes 'found' by networks of cooperating lawyers or branches, sometimes they look for already initiated cases, and sometimes they employ intermediaries as 'case finders'. Litigators then attempt through a series of cases to undermine adverse precedent and build up supporting precedent by consistently framing their cases in ways that are acceptable to the targeted court.

Impact litigation thus differs from test case litigation in that it extends over a series of cases; it requires its litigators to develop expert legal skills but not media skills; it actively subordinates the dictates of individual cases to an overall goal of achieving a precedent on a particular issue and in that it involves a close monitoring of the court concerned to determine the attitudes of the judges and to control the content and sequence of cases that arrive there on particular issues.

The strength of impact litigation is that it allows DNGOs in certain circumstances to determine some of the agenda of the relevant court concerned, so that it focuses on

the weakest and least resourced of those suffering human rights violations. In the opinion of the author, the disadvantage of impact litigation is that the requirements of planning, specialist staff lawyers and the focus on one court can create rigidity and inertia. Furthermore, such plans are difficult to execute given fluid environments, and can end up as devices for 'selling' an organization to funders and supporters.

Responsive Litigation

Another third order tactic for litigation is the 'radical' or responsive tradition of 'people's lawyers' in America. The main tenets of this tradition are: firstly, using courts as a platform to air political grievances about human rights violations; secondly, seeing human rights as identical to progressive politics; thirdly, developing a non-hierarchical relationship with clients which differs from that of mainstream lawyers and lastly, being responsive to clients suffering human rights violations.

In this approach, lawyers obtain their cases from working in tandem with progressive political movements on human rights issues. More like the British test case approach, this approach seeks to mobilize the law so as to be able to mobilize through the law.

Advocacy Networks and the Boomerang Effect

A number of third order tactics are worth highlighting with regard to networking, especially in the international sphere. Firstly, the concept of an "advocacy network" is useful for explaining how DNGOs operate both internationally and domestically.

The ability of these networks to reframe national and international debates by changing their terms, their sites and their participants through the acquisition and use of information is central to the tactics of many DNGOs. Also worth mentioning is the "boomerang" tactic whereby DNGOs, alone or in coalition with INGOs, bypass domestic institutions and directly access international allies to bring pressure on a state from the outside.

The "boomerang" tactic is the usual approach of advocacy networks. As Risse, Ropp and Sikkink have argued, when this tactic is used there is generally a sequence of interaction between the state and international society, which continues until the state is socialised into complying with human rights norms.

Some of the primary third order tactical differences between INGOs and DNGOs arise because DNGOs can collect detailed local information from better local networks. DNGOs then often use that information to activate international networks and begin the socialisation process. This "boomerang" tactic is thus a vital tool for DNGOs that pursue goals internationally.

Civil Disobedience and Non-violent Direct Action

Civil disobedience, as a method of carrying out the second order tactic of political protest, is defined in this work as any act or process of public defiance of the law or policy enforced by established authorities insofar as the action is premeditated, understood by the actor(s) to be illegal or of contested illegality, carried out for limited public ends, and by way of carefully limited means.

These limited means generally exclude violence. Overlapping with this is Non-Violent Direct Action (or NVA), which will be defined here as any action where individuals or groups, without violence to any person, attempt to bring about change directly themselves, rather than asking or expecting others to act on their behalf.

These tactics are quite distinct from violent demonstrations or riots, and require a DNGO to have a capacity to plan. Because they are often associated with radical politics, these tactics are often seen as less legitimate than other tactics on the spectrum. DNGOs, however, have the potential to execute such tactics through their local networks and sometimes do so.

The Comprehensive Tactical Stance

Weissbrodt wrote in 1977 that one of the questions that needed to be asked about an NGO was how it should select its cases. In terms of the schema set out, this question might be rephrased to ask how a DNGO chooses the most effective first, second and third order tactics.

A useful way of assessing this, and of ordering information on tactics, is to develop a model tactical stance with which to compare the data. Similarly to Wasby's 'integrated' tactical stance, this work extrapolates inductively from data gathered from the case studies and other DNGOs in the literature to come to this model tactical stance. Like an 'ideal type', this model accentuates certain features of the process of selection of tactics in the data to pinpoint its essential characteristics.

Unlike a pure Weberian 'ideal type', however, it is used not only as a heuristic device to interpret the data, but also as an ideal in the literal sense of being an embodiment of good DNGO practice that can be used to critically assess decisions that DNGOs make about tactics. This model is intended as a more targeted tool for the critical understanding of human rights DNGOs than the more general models for all types of organizations that might be used in disciplines such as political science.

It is not intended to foreshadow or substitute for the assessment of case study effectiveness using the data undertaken in this work. The model tactical stance in this stage will be designated the Comprehensive Tactical Stance (CTS). Because of their pre-eminent importance in achieving effectiveness the CTS aims to examine the rationality of a case study's tactics in responding to the environment.

It thus does not take account of a DNGO's resource limitations, problems it has in modifying its internal structure or culture, or its need for legitimacy. In the real world, each of these will have some influence on tactics. In particular, a DNGO in the real world must balance the solutions advocated by the model with the amount of legitimacy it might lose if it rationally adapted to its environment. The model thus only examines part of what a DNGO needs to do to be effective overall; although the author believes that the part it examines is the most decisive in aiding understanding of how DNGOs function. In the CTS, setting the mandate as a first order tactic would not just be about presenting a good image to potential supporters. It would be based on a 'needs analysis' of the human rights violations occurring in the DNGO's environment. This needs analysis would include a discussion of which violations are the most severe and require urgent intervention.

The DNGO would then act on this analysis and address the most severe violations within its mandate. For second order tactics, the CTS would require that a DNGO retain a capacity to switch between different tactics on the above spectrum in response to changes in opportunities in the environment. It would also require that the DNGO develop principles or a rational plan to determine when different tactics are to be used, and whether they are to be used simultaneously or in specific sequences, in order to achieve the best effect. A response to the environment is deemed in this work to be

rational when it involves this type of planning.

The advantage of the CTS's second order tactics is that using them would make it difficult for any government or institution to undermine a DNGO's work. Using the CTS, DNGOs could adapt to changes caused by government action aimed at undermining their work by changing tactics to prevent it being successful.

When government action makes one tactic less effective, the CTS advocates that a DNGO switch to other tactics that might potentially be more effective. Under the CTS, DNGOs thus plan and rationally respond to changes in opportunities in their environments. There are significant complications in following the CTS's injunction to change tactics to suit the environment. A loss of legitimacy could result from certain combinations of tactics. A DNGO's litigation, for example, could lose legitimacy if the DNGO also engaged in civil disobedience. Using the CTS to understand good DNGO practice can thus can be undermined by detrimental effects on factors that are not included within it.

The Case Studies

What follows are outlines and analyses of the tactical stances of the case studies. For each case study there is an identification of its first, second and third order tactics. Under each heading there is a discussion of the tactics used, from the most important to the least important. The focus is on the first and second order tactics, because of the outline of third order tactics. Lastly, there is a discussion of the types of networks in which the case study participates, and the degree of planning that it undertakes.

The American Case Studies

First Order Tactics

LDF's first order tactical stance has a dual focus on racial discrimination as a human rights violation and the protection of the African-American community. LDF has a strictly defined mandate and has successfully resisted mandate creep. Dominant Second and Third Order Tactics LDF's most important second order tactic has been litigation, and the third order tactic for executing its litigation has been impact litigation.

LDF has thus identified the Supreme Court as the decision-maker that it wishes to target and that can make the changes it desires. It is thus an almost pure example of Tactical Approach A. LDF was the creator of impact litigation in the 1930s and 1940s. In recent times, it has been put on the defensive in the use of this tactic by a mostly hostile federal judiciary and the proliferation of Public Interest Law organizations that oppose domestic human rights. This has undermined its use of impact litigation, as this requires both that it control court dockets, and that it prevent the creation of adverse precedent.

Organizations using impact litigation to oppose LDF's agenda, and other domestic human rights organizations with similar agendas, have both made each of these tasks less manageable.

LDF's view of its own tactics is that its famous victory in Brown v Board of Education, and those that followed, resulted from a unique conjunction of circumstances and do not show the general efficacy of litigation. This attitude has made LDF litigate less than in the past. Paradoxically, despite litigating less, its primary focus is still on litigation and on waiting for better litigating conditions in the federal courts. Its

fundamental presumption appears to be that litigating conditions there will improve.

Any assessment of LDF's tactical stance thus depends on an assessment of the credibility of this presumption. It may be, however, that LDF has had little choice in the short term but to adopt such a stance as it does not yet have the requisite resources or expertise to switch to other second order tactics. LDF has a specific 'style' of conducting impact litigation that distinguishes it from other civil rights organizations. It not only files amicus curiae briefs, but also begins cases in the lower courts to take to higher courts. Rather than seeing these two tactics as inconsistent, it sees them as mutually reinforcing. It uses amicus briefs to maintain presence in the courts that its impact litigation targets.

If an issue that LDF wants addressed is already before the court, it usually files amicus briefs to try to have the matter resolved in the way it prefers. If there is an issue that LDF believes should be before the court but is not, it often finds a case to use as a vehicle to raise the issue and have it litigated. LDF has an informal and open process of case selection, under which any of its staff lawyers can bring forward ideas for approval by the organization.

The reason for this appears to be a commitment to fostering the creativity of its lawyers, and an emphasis on only taking on cases for which its lawyers already have the necessary expertise. For LDF, resources thus often determine tactical decisions. In terms of subject matter, LDF still litigates in its traditional area of affirmative action in education. It also still pursues traditional desegregation cases in the lower schools, and conducts litigation in housing matters and employment discrimination.

Racial discrimination has also, however, recently been challenged in new spheres such as in transportation, access to health care and environmental protection. The main new areas that have evolved since the 1970s have been the increased emphasis on the voting rights of minorities, and, as a result of law and order and anti-drug campaigns, areas of criminal justice.

Through its cases it attempts to challenge the privileged interpretations of Civil Rights Law with more marginalised interpretations arising predominantly from the African-American community. It refashions standard meanings attached to law within the courts as arenas of struggle. In this way, it attempts to universalise and legitimise the human rights interests of the African-American community, and thereby effect a redistribution of power in its favour. The effect of a largely hostile judiciary has been to change the courts as arenas of struggle so that the power relations there favour LDF less.

Supplementary Second Order Tactics

LDF carries out tactics supplemental to litigation mainly in its Washington DC Office. This Office does most of its lobbying; advises members of Congress on domestic human rights legislation; does policy work; pressures federal administrative agencies to enforce domestic human rights laws; monitors judicial and administrative appointments and does publicity work. LDF has also hired a public relations firm to do its publicity, even though it possesses an in-house communications department.

Networks with other Organizations

LDF is a member of a number of permanent and ad hoc networks. With regard to lobbying, LDF, like most major American DNGOs, is a member of the permanent advocacy network called the Leadership Conference on Civil Rights (LCCR).

It also has permanent relations with foreign DNGOs such as the Legal Resources Centre and the Black Lawyers Organization in South Africa, the Roma Rights Centre in Hungary and Afro-Brazilian groups in Brazil. These links exist mainly because LDF helped establish these organizations.

In conjunction with the Open Society Institute, LDF helped create the Criminal Justice Alliance, a new advocacy group created to set a human rights agenda for criminal justice in the US. It is also a member of Advocates for Consumer Justice, an organization working on practices such as predatory lending and consumer fraud. For litigation, the primary permanent network is the Civil Rights Bar, which informally facilitates information flow between most domestic human rights lawyers in America and allows informal cooperation between DNGOs. LDF also facilitates networking between domestic human rights lawyers through its conferences at Airlie House in Virginia. Besides its permanent networks, LDF is also a member of a number of ad hoc networks.

These ad hoc connections include contacts with DNGOs such as the Mexican American Legal Defence and Education Fund (MALDEF), the Asian American Legal Defence Fund (AALDF) and the National Organization of Women Legal Defence Fund (NOWLDF). Links with these organizations tend to wax and wane just as to the demands of the moment. In addition, LDF also has ad hoc arrangements with INGOs, such as Human Rights Watch (HRW); the Lawyers' Committee for Human Rights (LCHR) and Amnesty International (AI).

These international links have led LDF to attend some international human rights gatherings such as the 2001 World Conference on Racism in Durban, South Africa. With LCHR it has also attended some of the periodic reviews of America's adherence to CERD before the United Nations CERD Committee. Lastly, with HRW it has worked on the impact on human rights standards of the terrorist attack on New York on September 11th, 2001 and on immigration matters, while with AI it has worked on capital punishment cases.

This de facto international work may signal that organizational practice is overtaking LDF's stated scepticism about the use of international institutions. The small volume of this work, however, suggests that it is still marginal to LDF's overall tactical orientation. It also suggests that, while LDF is being affected by Globalisation, it is not consciously adjusting its tactics to its new environment.

Planning

LDF does a lot of planning, not only for impact litigation, but also to coordinate its subsidiary tactics. It plans how to tactically combine its litigation, lobbying and media work to achieve maximum effect. It seems, however, that the small amount of advocacy work done outside of litigation makes such planning relatively straightforward. LDF also plans how litigation, lobbying and media work should be carried out individually. Interestingly, however, it does not plan how to combine its domestic litigation, lobbying and media work with its international work.

This seems to stem from its scepticism about the utility of international law and the small volume of international work it does. LDF's plans tend not so much to be formal documents, but rather informal results of staff discussions. They also appear to vary widely in execution as unexpected events occur. To review its plans and suggest how they could be improved LDF hires outside consultants.

Some of these consultants, however, seem to be closely connected to LDF, and this may cast some doubt on their objectivity. In conclusion, LDF's first order tactics seem to have successfully combined the defence of racial anti-discrimination with protection of the African-American community's human rights. LDF's second order tactics favour litigation in domestic courts. This work shows an equal interest in the use of amicus curiae briefs and direct litigation. Other second order tactics are highly marginalised. In terms of the CTS, LDF deviates from it in favouring legitimacy over rational adaptation to the environment, while it seems to follow the CTS more closely in the comprehensive planning it undertakes. Arguably, the most prominent opportunities in LDF's environment, if one looks at contemporary events in the US from the point of view of the CTS, are not in the federal courts, which have become more resistant, but in tactics such as lobbying, policy work and international work.

The CTS thus throws doubt on the correctness of LDF's assessment that the Supreme Court is the most rational part of the environment to target to achieve the goals in its mandate. To the author, from the point of view of the CTS Congress seems at least as attractive a target as the Courts. LDF's reasons for not pursuing alternate routes to litigation seem unconvincing to the author. They appear to be based on an unspoken assessment that LDF would suffer a large loss of legitimacy and resources if it followed these paths. To the author this view seems exaggerated, and to have been used to avoid confronting the problem of balancing legitimacy and adaptation to the environment.

LCCRUL First Order Tactics

LCCRUL's first order tactics, as at LDF, involve a dual focus on racial anti-discrimination and the human rights of the African-American community.

Dominant Second and Third Order Tactics

LCCRUL's principal second order tactic is impact litigation. However, it has a different 'style' of conducting this litigation than LDF. LDF uses its network of cooperating lawyers, announcements asking for plaintiffs and "case finders" to obtain the plaintiffs it is looking for.

In contrast, LCCRUL's plaintiffs are generally referred to the national Office by its partner firms, by people contacting them, through local lawyers' committees or by staff reading about an ongoing case in their research. Like LDF, LCCRUL plans cases in impact litigation, but the means it uses to implement such plans are different.

In addition, unlike LDF, LCCRUL prefers to initiate its own cases rather than intervene in cases already underway through amicus curiae briefs. In impact litigation as practiced by LCCRUL, once a plaintiff is found the process of case approval is a structured and written process, rather than the informal and open process as at LDF. The process requires levels of investigation and the production of a written memorandum to the Chief Counsel for approval.

Once a case is approved, LCCRUL conducts the case with partner law firms. The case is not handed off to a partner law firm, rather the partner firm and LCCRUL act as co-partners, with LCCRUL supplying specialist legal expertise and advising the partner firm and the partner firm supplying trial lawyers and paying for the case. This is similar to LDF's relationship with individual cooperating lawyers.

Compared to LDF, LCCRUL appears not to have taken as much heed of the current conservative approach of the US judiciary. Even though it faces the same problems as

LDF in this respect, it still believes it can achieve successes through litigation. Paradoxically, LCCRUL thus appears to have a greater faith in the judiciary, despite a greater commitment to substituting other tactics for litigation. The reason for this appears to be the influence of the establishment law firms, for whom the courts have great prestige. In practice LCCRUL also appears to emphasise international work more than LDF. It seems, however, that the combining of litigation with monitoring administrative agency actions; participating in agency proceedings; analysing and drafting legislation; writing research reports and keeping client groups informed of their legal rights rather than international work has been the core of LCCRUL's response to judicial resistance to domestic human rights.

Most areas LCCRUL litigates in are the 'traditional' civil rights areas that LDF also litigates in. LCCRUL has opposed actions against electoral districts designed to enhance African-American electoral participation and has extended the reach of the Voting Rights Act. It has litigated against racial discrimination in employment; sex discrimination in hiring practices; the dumping of toxic waste in poor African-American areas and against air pollution levels in these areas. In the area of housing and community development, it has concentrated on racial desegregation of housing and has also been running racial desegregation actions on other topics.

Several important affirmative action actions have also recently been successful in which LCCRUL, unusually, lodged amicus curiae briefs as an alternative to running the cases itself.

Supplementary Second Order Tactics

In addition to litigation, LCCRUL also engages in lobbying, working with administrative agencies and policy work. In all of its work, LCCRUL's national headquarters coordinates the pro-bono work of approximately one hundred and eighty of America's largest law firms. LCCRUL also organises conferences in the US and has participated in the 2001 World Conference on Racism in Durban, South Africa and the pre-Durban conference in Washington DC. In addition, it publishes newsletters and reports and writes newspaper and journal objects.

LCCRUL does lobbying and policy work similarly to the way it conducts impact litigation. As in its litigation, it first identifies its priorities, and then asks the partner firms for help with tasks such as research or publicity. This work involves not only, as in 2001, writing policy recommendations in 'transition papers' for the new Bush administration, but also meeting with officials, monitoring the Justice Department and monitoring the nominations and confirmations of various officials.

In its lobbying work, LCCRUL prefers, when any sympathy is present, to focus on the President rather than Congress. It had amicable relations with the Clinton administration, which was sympathetic, even if not much legislation was delivered. Support from the Clinton Justice Department, in court and elsewhere, appears to have been an important resource for LCCRUL. However, it has a less cordial relationship with the current Bush administration, and has turned more to Congress. Here it works not only with Democrats, but also with moderate Republicans, in lobbying for domestic human rights.

Networks with Other Organizations

LCCRUL is a member of a number of permanent advocacy networks. Like LDF, it is a member of the Leadership Conference on Civil Rights. It also helped found

Americans for a Fair Chance (AFC), which is a consortium of domestic human rights groups whose aim is to change public perceptions so they are more favourable to affirmative action. In addition, from time to time it works within a plethora of ad hoc networks with other DNGOs on various issues. LCCRUL has no substantial permanent contacts with human rights INGOs, although some ad hoc contacts occur.

Planning

LCCRUL has a strong commitment to tactics outside of litigation, such as lobbying. Although not greater in amount than at LDF, lobbying at LCCRUL is much more important, because it is often integrated with litigation just as to a plan. This plan usually coordinates other types of work with litigation sequentially. The sequence calls for beginning work on an issue through research and policy papers, and then moving to lobbying. It uses research, policy papers and lobbying in this sequence as responses of first resort and leaves litigation as an option of last resort. The sequence is used not only to avoid litigation, but also because LCCRUL believes that these other tactics can be more successful in their own right. It employs what Mnookin and Kornhauser call "bargaining in the shadow of the law" to use the law to strengthen its bargaining position.

For the same reason of preventing litigation, sometimes LCCRUL will give communities information on their rights so that the community can be its own advocate. Because it does this type of work, it sees itself as a ground levelling and not a tree topping organization.

As LCCRUL appears to be involved more in lobbying, research and policy papers than community education, however, this self-belief seems questionable. LCCRUL has formal overall strategic plans that are reviewed every five to ten years. Like LDF, it periodically hires outside consultants to review the strategic plan's effectiveness and advise as to whether it should be changed.

It also has plans on how litigation, lobbying and policy work should be conducted individually. For litigation, this works in tandem with a formal and structured process of case approval that stands in sharp contrast to the laissez-faire approach of LDF.

It appears that the reason that LCCRUL has this more structured process of case approval is both that it lays even greater stress than LDF on planning impact litigation, and because the elite law firms that are its partner firms also do such formal planning and its internal processes must have legitimacy with these firms.

That is, it appears that LCCRUL uses planning not only to improve effectiveness but also to 'sell' itself to its partner firms. In conclusion, LCCRUL has a successful first order tactic of dual concern for the African-American community and racial non-discrimination.

As at LDF its primary second order tactic focuses on litigation in domestic courts, but it has a cultural commitment to other second order tactics. Also as at LDF, the CTS seems to show that LCCRUL's assumption that the primary power to make the decisions it is concerned with lies with the Supreme Court is questionable.

In practice, however, its greater focus on work with Congress and the Presidency appears to show that it recognises that power also lies elsewhere. The CTS thus suggests that LCCRUL is a little more rationally adapted to its environment than LDF.

Lastly, as a third order tactic LCCRUL uses a distinctive style of impact litigation,

and this style has flowed into and influenced the way it approaches third order decisions for other second order tactics such as lobbying. Despite the CTS's conclusion that LCCRUL is somewhat more rationally adapted to its environment than LDF, it still leans overwhelmingly towards legitimacy. As at LDF, it appears that LCCRUL not only experiences strident demands for legitimacy from the local culture but also has a rigid structure and narrow range of resources that further hamper its ability to achieve rational adaptation to its opportunity structure.

With all of the impediments to securing balance between legitimacy and rational adaptation, it is a testament to LCCRUL's capacity for self-evaluation that it has achieved the level of balance that it has. It would appear, however, that still greater levels of performance are possible.

CCR

First Order Tactics

In contrast to both LDF and LCCRUL, CCR has, in terms of rights protected, a much wider first order tactical stance. CCR's mandate enforces both the Universal Declaration of Human Rights and the US Bill of Rights. There is also a sense in which it protects the 'progressive movement' in the same way that LDF and LCCRUL protect the African-American community. Because of CCR's wider mandate, much more emphasis is placed on second order tactics than the mandate to determine which issues will be focused upon.

Dominant Second and Third Order Tactics

CCR's second order tactical stance is focused primarily on using domestic and international law in domestic courts, but also features a cultural commitment to community organising. Its second order tactics are to engage in litigation, lobbying, education and demonstrations/direct action. It thus combines elements of tactical stance A wiThelements of tactical stances B and F in that it combines a focus on litigation with an emphasis on lobbying, publicity work and community organising.

As with the other American case studies, CCR appears to see domestic courts as being where the power lies to influence the decisions it is concerned with. CCR's third order tactical stance is a combination of impact litigation and responsive litigation. For its activist work, it employs demonstrations and civil disobedience as third order tactics. With regard to the primary second order tactic of litigation, CCR sees itself as being on the 'cutting edge' of innovative human rights litigation both domestically and internationally. This self perception has some basis as some of the leading cases in American legal history were initiated by CCR. Litigation conducted by CCR falls into five streams.

The first stream, covering government misconduct and political rights, is similar to traditional American civil liberties litigation.

It covers issues such as police and prison misconduct; freedom of expression; immigrants' rights and racial discrimination. The second stream covers social and economic justice, and includes diverse cases on privatisation; abortion; freedom of speech and poverty. The third stream covers US responses to the terrorist attack on September 11th, 2001. These cases include challenges to the indefinite detention of persons captured during US military action in Afghanistan; the indefinite detention of terrorist suspects in the US and the indefinite detention of persons detained at

Guantanamo Bay, Cuba.

The fourth stream covers corporate accountability for human rights violations. Cases in this stream mainly involve civil actions in US courts against multi-national companies based on violations of international criminal law. The fifth stream covers cases involving international human rights, and includes civil cases using international criminal law in US courts, as well as cases against the US in the Inter-American Commission of Human Rights.

Thus, even though a DNGO, CCR occasionally acts like an INGO in using international law in US courts and occasionally resorting to international fora. Rather than doing amicus curiae briefs, CCR generally provides legal representation for people to begin cases.

This is consistent with the principles of responsive litigation, in that CCR litigates issues raised by clients, rather than using clients or amicus briefs to further its own plan. CCR's litigation is a combination of impact and responsive litigation.

It uses impact litigation in the sense that it values the precedents it achieves through litigation as a resource for advocacy; in that it uses litigation as a political agenda setting tactic, and in that it will occasionally look for clients to litigate a particular issue. CCR also practices responsive litigation in that it believes cases should arise from the concerns of activists and movements and should not be driven by lawyers; in that it values ad hoc tactics so as to be open to respond to events such as September 11th; and in that it uses cases as platforms and organising tools for activist work.

As at LDF and LCCRUL, CCR is aware that because the federal judiciary is generally resistant to domestic human rights arguments this endangers gains it makes through litigation. Its primary answer to this problem has been to try to influence Senate confirmation hearings of judicial appointments more strongly and to use community organising. It has, however, also looked at other fora for litigation, such as the Inter-American Commission on Human Rights and the courts of other countries.

Subsidiary Second Order Tactics

CCR's non-litigating activities can mainly be divided into community organising and lobbying, with a strong organizational bias towards community organising. Interestingly, as with LCCRUL, despite the fact that the volume of community organising that CCR does is actually much smaller than the volume of litigation, it has a strong cultural commitment to community organising.

Community organising is important for CCR because, despite the reality of its legal focus, it sees itself as a human rights activist organization rather than a legal organization. The centre of CCR's activist work is the Movement Support Resource Centre (MSCR).

Through the MSCR, CCR attempts to develop formal and informal relations with activists and social movements. CCR provides its Offices as a meeting place under the auspices of MSCR to grassroots organizations and movements to discuss issues, network and explore possibilities of joint action.

The main focus of MSCR is on police brutality and misconduct, but it also pursues other national and international issues. In this way CCR attempts to be connected to, and work with, social movements. CCR not only facilitates activism through MSCR, it also organises demonstrations in its own right, both on issues raised by activists and those raised by litigation.

CCR has problems obtaining resources for organising work and so few staff work in this area. On the other hand, it is easier for it to find resources for litigation. Ease of resource acquisition thus appears to play an important role in the amounts of different work that CCR does. Like LDF, CCR 'lobbies' in Congress, but only on a limited basis. It prefers not to call this work lobbying because of the penalties for combining litigating and lobbying in US tax law.

The reason for limiting its lobbying is that it is not well connected there, and so, apart from confirmation hearings for judicial appointments, it does not see this work as particularly effective. Rather, it favours media and publication work in preference to lobbying. Like LDF, for its media work CCR hires outside media consultants.

Coalitions with other Organizations

Most of the connections that CCR maintains with other NGOs are ad hoc. It regularly attends meetings of the International Federation of Human Rights (FIDH) and several other INGOs, but this cooperation forms a small part of its overall work. Despite CCR's long record of litigating international human rights law in US courts, its international contacts are sparse and relatively new. It forms networks with other American DNGOs to share the costs of cases and swap ideas, but it does not actively take part in a permanent domestic human rights advocacy network. It seems that the majority of CCR's connections are with small groups and social movements that work on domestic human rights issues.

Planning

While CCR does long term planning, it also values being responsive to its environment and not being limited by fixed plans. Although it talks about having a plan for the coordination of its second order tactics, this is not a document or formula but rather a philosophical approach. This lower level of planning than at LDF or LCCRUL seems to be in line with its commitment to responsive litigation. CCR combines second order tactics both sequentially and, in some cases, simultaneously. Often it will use a sequence of organising and doing educational work in a community before launching a case.

Conversely, sometimes a case itself will lead to organising and education work. When tactics are used simultaneously, CCR tries to coordinate them, but it has found that a shortage of resources for organising often leads to coordination breakdowns. For individual tactics, CCR does not have plans, as it wants flexibility and responsiveness to the environment to be the hallmark of its third order tactics. Internally, it has a formal process for case approval. It does not, however, feel that this detracts from its flexibility. The approach of responsive litigation, which emphasises the ability to react to events, thus infuses virtually all of CCR's tactical approaches.

In conclusion, CCR's first order tactic of having a wide mandate has required it to limit the issues it will take up. The second order tactic of litigation in domestic courts has been successful because it has been innovative in subject matter, fora and legal norms used. This has been combined with a cultural commitment to political activism and community organising. The third order tactic for litigation combines impact and responsive litigation. The main drawback of this impact/responsive litigation as practiced by CCR appears to be its rejection of the planned use of cases to create political agendas.

This tends to cause CCR to simply to follow agendas already existing in social movements. For political activism the main tactic appears to be the organization of demonstrations, although it also appears to use forms of non-violent direct action. In terms of the need for legitimacy, as opposed to rational adaptation to the environment, like the other American case studies CCR shows a bias towards legitimacy. Also like the other American case studies, CCR appears to make the questionable assumption that the domestic courts are the decision-makers which have the principal power to decide the issues it is concerned with.

Unlike the other American case studies, however, CCR seems to have made serious attempts to use international law and fora, and to adopt social movement organising techniques, so as to make use of other environmental opportunities.

It therefore conforms more closely to what the CTS would appear to recommend. It deviates from the CTS in that it has changed tactics to exploit new opportunities in its environment, but only to a limited degree. The reasons for this appear to be limiting factors such as local demands for legitimacy, structural rigidity and a narrow range of available resources. These factors appear to have restrained CCR from making effective use of its innovations in using international law and social movement organising techniques.

The American Case Studies–discussion and Analysis

The overwhelmingly dominant characteristic of the American case studies, which is acknowledged in the literature on American DNGOs, is a common focus on litigation in domestic courts as a second order tactic. The American case studies thus identify the federal judiciary as the primary decision-maker on domestic human rights issues in the American system. This is especially true of LDF, but also applies to LCCRUL and CCR.

The main reason for this focus seems to be the unusual conjunction of forces that led American DNGOs to have relative success in the US Supreme Court in the period between 1940 and 1980.

This appears to have encouraged them to focus on the federal judiciary as if this conjunction of forces was permanent. Availability of resources; established areas of expertise and the need to gain legitimacy with funding sources and the public also seem to have played roles in causing the case studies to focus on the federal judiciary. The American case studies, because of detailed approaches such as impact and responsive litigation that are largely absent in Britain and Germany, in the opinion of the author have the most sophisticated third order tactics for the execution of litigation of all the case studies in this work. This sophistication, however, has not translated into effectiveness in litigation, but rather diminishing returns.

The reasons for this have been the appointment of unsympathetic Supreme Court justices, the proliferation of litigating organizations, public indifference to domestic human rights and the assault on domestic human rights law by conservative litigating organizations. There is less commonality between the first and third order tactics of the case studies.

For first order tactics, LDF and LCCRUL both have a dual focus on the African-American community and racial discrimination, whereas CCR has a wider mandate that covers both the US Bill of Rights and Universal Declaration of Human Rights. Similarly, in the realm of third order tactics, LDF and LCCRUL both practice varieties

of impact litigation, whereas CCR seems to combine elements of impact litigation and responsive litigation.

In addition, LCCRUL appears to use a form of 'impact lobbying', and CCR appears to use forms of direct action in its community organising. The CTS can be used not only to understand, but also to aid constructive critique of the tactics of the American case studies. In this regard it would seem to indicate that American DNGOs do two things to adapt to the current environment. Firstly, it would suggest that they should do a needs analysis of the type and severity of human rights violations occurring within their mandates.

The data available to the author suggests that this does not occur in any meaningful way. CCR appears to perform best in this respect, but paradoxically does this by simply following agendas set by social movements. For LDF and LCCRUL, however, views about domestic human rights violations appear mostly to reflect situations that existed in the 1970s rather than the present. This suggests problems in these case studies that inhibit their adaptation to new patterns of human rights violations. Secondly, because the contemporary situation seems to suggest difficulties in achieving results in the federal courts, the CTS would suggest that the American case studies should place greater focus on tactics other than litigation. The seeming current effectiveness of LCCRUL and CCR, compared to LDF, seems to be related to their greater cultural emphasis on alternatives to litigation. The use of international courts and institutions to put pressure on the US from the outside is one obvious possible response by the case studies to their environment that seems not as yet to have been properly explored.

The doubts expressed about these other tactics by the American case studies do not seem to correlate with the opportunity structure in the United States. Overall, on the basis of the data, the American case studies appear to have a marked preference for gaining legitimacy rather than seeking out new tactics to increase effectiveness in the way the CTS suggests. For domestic tactics, the CTS would suggest a shift to conducting more policy work, lobbying, publication, media work, coalition building with other DNGOs, and community organising.

As the threat of resource loss as a consequence of a DNGO shifting away from litigation seems a major barrier to change in second order tactics for the American case studies, a new attempt to get Congress to change the Internal Revenue Code to allow more lobbying and community organising would seem an obvious initial move.

If successful, the American case studies could then shift from being primarily litigating organizations to true civil rights advocacy organizations, building their tactical sophistication and capacities to execute these new tactics within a favourable legal structure. It might then be easier for the case studies to persuade donors to fund these other activities. The type of non-litigation tactics to which LCCRUL and CCR have a cultural commitment could then become a greater proportion of their work.

The CTS, this in turn should make them more effective. This does not mean that all these tactics should be executed within each DNGO. Coalitions of DNGOs could support the organization in the network which specialises in the tactic that is most useful at a particular time. This type of collaboration may be difficult to achieve in the short term, because it may require greater DNGO cooperation than seems to be generally shown by the American case studies. Nevertheless, such an arrangement may have significant resource and effectiveness advantages.

The British Case Studies

First Order Tactics

JUSTICE's first order tactics are unique in that its mandate is janus-faced. On the one hand the mandate is to reform the law generally, and on the other to promote compliance with human rights standards. The part of the mandate dealing with human rights is very broad, and largely leaves the question of where to intervene to second order tactical decisions.

In the past this mandate appears to have created the problem of JUSTICE taking on more issues than it can successfully handle. Its response has been to consciously rationalise the work it undertakes by creating specialised projects for certain issues, such as discrimination. This resembles CCR's creation of 'streams' of work to address a similar problem.

Dominant Second and Third Order Tactics

JUSTICE's second order tactics focus on lobbying/policy and education work, supplemented by third-party interventions in court cases. It thus appears to see Parliament as the decision-maker that has the power to decide issues it is interested in. JUSTICE is an example of tactical approach C, in that it focuses on lobbying and only occasionally litigates.

Its third order tactic is to use its expertise in international human rights law and the Human Rights Act to make itself an attractive source of legal advice and education for the government and legal profession. In the first of its two primary second order tactics, JUSTICE conducts a law related form of policy work and lobbying. This and education work make up the vast majority of JUSTICE's workload. Like an Attorney-General, it provides expert legal advice to government for use in policy formulation and execution. Thus, JUSTICE audits legislation for human rights compliance; issues briefings; publishes reports; gives evidence to Parliament and commissions legal opinions. The giving of expert legal advice by JUSTICE and the litigation by LCCRUL appear to perform the same 'function', in that both are used to alter the power balance of the bargaining relationship with government so that it favours the DNGO.

For domestic lobbying, JUSTICE does not have a full time lobbyist at Parliament. Consequently, it generally posts or e-mails its briefings etc to the MP or minister concerned. It focuses its efforts on the House of Lords, as, despite the non-democratic nature of the House, it finds that it gets a better reception and more genuine human rights review of legislation there. Similarly, in its European work, it does not have a permanent presence in Brussels or in Strasbourg; it merely presents its reports and briefings to the relevant body.

Areas where it does policy work are: reform of the appointment procedures for English judges; the setting up of an English Human Rights Commission; options for reforms of youth justice and improving human rights protections within the EU. In addition, it also reports to the UN on Britain's human rights compliance.

In the second of its second order tactics, JUSTICE undertakes education to socialise the legal profession and the civil service into human rights compliance. This work mainly consists of organising conferences and publishing information on human rights law. As part of this work, JUSTICE also gives human rights education to organizations such as the Lord Chancellors' Department, the Foreign Office and the Judicial Studies Board.

Supplementary Second Order Tactics

JUSTICE's supplemental second order tactic involves third party interventions in court cases. Until relatively recently JUSTICE was doing casework on miscarriage of justice and privacy cases. However, a decision was made that broad policy work and casework were mutually exclusive, and so casework was limited to third party interventions. JUSTICE favoured third party interventions because it saw them as requiring fewer resources than full court cases. Before JUSTICE began to conduct third party interventions, the Public Law Project, another British DNGO, had been trying to encourage such interventions in English courts. It was largely unsuccessful, but it had done enough work to open the procedure for later use by JUSTICE.

JUSTICE does five or six interventions a year in the higher British courts and the European Court of Human Rights. Formally, it uses the tactic to give objective legal opinions and to clarify the law, not to 'lobby' courts in the way that amicus curiae briefs are often said to be used in the US. In practice, however, JUSTICE appears to use third party interventions to develop the law in a similar manner to the way amicus curiae briefs are used by LDF.

Interventions are often done with the aid of barristers' chambers that JUSTICE collaborates with, or with other DNGOs. This has the benefits of sharing risks, resources and expertise, improving the chances of success and lessening the damage in the event of a loss.

Amongst the issues that it has submitted third party interventions on are criminal sentencing; fair trial rights; privacy rights and immigration. The third party interventions made by JUSTICE appear similar to its advisory work on human rights law with the legal profession and civil service, in that it uses its expertise to influence policy development in the courts.

JUSTICE's use of third party interventions typically comes at the end of a sequence of tactics.

It usually begins this sequence by researching a human rights problem and publishing materials on it. It then issues a report and follows this with a conference. This work is usually in turn followed by lobbying and policy work, third party interventions and, lastly, media work. Sometimes the sequence is varied, however, and third party interventions are made after, or during, the conference.

This sequence suggests a global vision at JUSTICE of coordinating second order tactics to achieve rational adaptation to the environment, as suggested by the Comprehensive Tactical Stance.

Networks with other Organizations

JUSTICE is a member of a number of advocacy networks. Connection to international as opposed to domestic networks is a feature of JUSTICE's networking tactics. JUSTICE is the British section of the International Commission of Jurists (ICJ). The role of the ICJ, however, is mostly limited to providing JUSTICE with access to an international advocacy network.

As with most sections of the ICJ, the link between JUSTICE and the ICJ is more an instance of INGO/DNGO cooperation, than of the domestic presence of an INGO. JUSTICE and the ICJ also have different foci. Although the ICJ focuses on civil and political rights, it includes a significant amount of work on social rights, while JUSTICE does less work on social rights and focuses more on civil and political rights. The other

main contact with an INGO that JUSTICE maintains is with Amnesty International, with whom it does some work on asylum.

Whereas JUSTICE's connections to ICJ and AI are permanent, its connections with DNGOs are ad hoc. JUSTICE has these ad hoc connections to Liberty; AIRE (Advice on Rights in Europe); the 1990 Trust and British Irish Rights Watch. Although its connections to these DNGOs are ad hoc, it does take them into consideration by trying not to duplicate their work. As a result, even without extensive contact with other DNGOs, JUSTICE has created a specialisation for itself in the domestic advocacy network.

Planning

JUSTICE rarely uses plans. No formal plans exist to cover individual tactics or their coordination. The informal practice of using tactics in sequence is the closest that JUSTICE comes to planning.

This may be because planning is not seen by JUSTICE as essential to a policy dominated tactical stance. It may also be that the planning process is informal and merges with the methodology used to coordinate tactics.

In conclusion, JUSTICE's first order tactical stance creates no limit on the human rights issues it could take up. Most of its self-imposed rationalisation of work is a result of second order tactical decisions. The mandate covers general law reform work as well as human rights advocacy.

JUSTICE's second order tactical stance exhibits a combination of educational work within the legal profession and civil service domestically, and policy work and lobbying both domestically and internationally. It appears that its assessment that Parliament and international institutions are where the power lies to influence the decisions it is interested in has been largely correct.

Because its international work is largely seen as legitimate in Britain, JUSTICE has been able to escape many demands for conformity to the local legal and political culture and thereby achieve greater rational adaptation to the environment. JUSTICE conforms to the Comprehensive Tactical Stance in its use of a sequence of tactics as a method of coordination, and in its taking advantage of international opportunities.

It appears to deviate from the CTS in allowing available resources to dictate tactics, rather than adapting resource acquisition to its tactical stance, in the small amount of planning it does, and in its quest for legitimacy sometimes overriding its rational adaptation to its environment. Overall, it would seem that JUSTICE conforms more closely to the CTS than the American case studies.

BIRW First Order Tactics

BIRW's first order tactic is to maintain a narrow mandate of promoting human rights with reference to the conflict in Northern Ireland. The mandate uniquely focuses on the conflict in Northern Ireland as an event, rather than on a geographical area, types of rights or a social group. BIRW's unofficial agenda is to protect civil and political rights, and not social rights.

BIRW's narrow mandate appears to have worked well, in that its work has been kept within defined limits. This mandate has also allowed it to gain the attention and support that a wider mandate may not have allowed.

Dominant Second and Third Order Tactics

BIRW's second order tactical stance focuses on international lobbying and acting as an advisor to lawyers on human rights, but also includes some third party interventions in cases at the European Court of Human Rights. It appears to see international bodies and the legal profession as where the power lies to influence decisions it is concerned with. BIRW thus hovers between tactical approaches C and D, in that it almost exclusively lobbies except for a few third party interventions. BIRW's third order tactic, as for JUSTICE, is to use its human rights law expertise to conduct law related lobbying.

The main difference is that most of BIRW's lobbying is international, because it has little faith in achieving results domestically. With regard to the first of the main second order tactics, BIRW socialises lawyers by giving them human rights legal advice.

To do this, it refers callers to lawyers who have human rights expertise; advises lawyers on how to improve their third order tactics in litigation and encourages lawyers to go to the European Court of Human Rights. It is legal for BIRW to give advice on human rights law because British law allows lay legal advice in certain instances. In the past, British lawyers have not generally seen human rights as a profitable area of practice, and so have not built up an expertise in the area.

BIRW tries to fill that gap for the Northern Ireland conflict. It attempts to alter how the legal profession influences policy development on human rights and Northern Ireland. In Northern Ireland itself, this has translated into work on intimidation and assassination of human rights lawyers, and supporting their role in mobilising law in defence of human rights.

In England, BIRW tries to catalyse the creation of a human rights bar so as to change the legal culture in favour of human rights on the issues it deals with. BIRW's lobbying focuses on international fora. It seems that the British government's traditionally more hostile response to human rights issues concerning Northern Ireland, as opposed to more general human rights issues, has caused BIRW to adopt a more international focus than JUSTICE.

Originally, the British Ministry of Defence was very hostile, the Northern Ireland Department was predominantly Unionist and hostile, and the Lord Chancellor was very conservative in matters of human rights law. A perception existed that because BIRW defended human rights in Northern Ireland, it was pro-Republican.

It thus had few contacts with the UK government and more contacts with the Irish and United States governments. In recent times this has changed to a degree, and the British government recently added BIRW to the government consultation lists on Northern Ireland. BIRW's third order tactic is to employ a form of law related lobbying similar to that of JUSTICE, but primarily at the international level. Part of this involves lobbying foreign governments.

BIRW has testified several times before the US Congress on the conflict in Northern Ireland; it has daily contact with the Irish Department of Foreign Affairs and has influence with the Irish Prime Minister. The other part involves lobbying the United Nations. BIRW makes submissions to the United Nations Human Rights Committee and the United Nations Committee Against Torture when Britain's record is considered. It also makes representations to various special rapporteurs and thematic reporters of the United Nations Human Rights Commission, as well as to the UN High Commissioner for Human Rights.

BIRW does not have consultative status with the UN. Rather, it uses the UN consultative status of the Committee on the Administration of Justice and the International Federation on Human Rights. Currently it does not do much lobbying before the British Parliament or the European Parliament, but it hopes to do more in each as the need arises. BIRW draws heavily on international advocacy networks to mobilize international law from multiple sites and put pressure on the British state from the outside.

Britain is a relatively good target for international pressure because of the extent to which its economy is dependent on international and European trade linked to adherence to human rights standards.

This contrasts with the US, where international trade is less central to its economy. It thus seems more rational for BIRW to focus on international work than it is for the American case studies. The large Irish community in the US also helps BIRW put pressure on the British government through providing access to funds and to the US government.

Supplementary Second Order Tactics

BIRW's supplemental tactic, as for JUSTICE, consists of third party interventions. For BIRW, however, these are exclusively before the European Court of Human Rights. Normally, as with JUSTICE, BIRW conducts such interventions in collaboration with other DNGOs.

It is difficult to determine how BIRW chooses the issues to intervene on, but it is clear that there is no process of identifying issues in advance as occurs with impact litigation in America. Among the issues that BIRW has conducted third party interventions on are the right to life and the right to silence.

Networks with Other Organizations

BIRW maintains permanent contacts with INGOs. It acts as the eyes and ears of INGOs such as Amnesty International on issues in Northern Ireland, and catalyses other INGOs into action on issues when it feels it is necessary.

As at JUSTICE, however, the coalitions BIRW enters into with DNGOs are more ad hoc. It is in daily phone contact with the Committee on the Administration of Justice, but has less contact with the Irish Council for Civil Liberties and Liberty. Overall, because BIRW is enmeshed in international advocacy networks, its links are closest with INGOs or the small number of DNGOs that are also part of such international networks.

Planning

BIRW does little planning, because it sees flexibility as an asset. This is firstly because the Northern Ireland peace process is unpredictable and inhibits long term planning. Secondly, this is because BIRW reacts to requests from others, and these cannot be predicted, and thirdly, it coordinates its work with other NGOs that are larger and more rigid.

It cannot, therefore, demand that cooperation proceed just as to its own internal plans. Lastly, there is little planning because BIRW expects the peace process to succeed, and that at some point in the future it will cease to exist as an organization. One reason that larger NGOs see BIRW as an asset is that it is smaller and less rigid and can therefore react to new situations more quickly and flexibly.

BIRW is also an asset because of its location in London, which gives it proximity to contacts and immunity to the type of intimidation and assassination that human rights lawyers in Belfast have been subject to. In conclusion, in stark contrast to JUSTICE, BIRW has a very narrow mandate. In its second order tactics, it educates the legal profession domestically, and (mostly) lobbies and does policy work internationally.

This approach is different to that of JUSTICE, in that BIRW does not focus on educating the civil service and has a much greater international focus. It seems that BIRW has been largely correct in seeing international bodies as being the decision-makers with the power to change the situation on issues it is concerned with. Lastly, BIRW and JUSTICE have the similar third order tactics of making themselves centres of human rights law expertise. They use this to influence policy and lobby such that they "bargain in the shadow" of the human rights law they expound.

BIRW largely conforms to the CTS, in that it appears to have identified the opportunities in its environment and adapted its tactics to exploit them. It has done this by acting more like an INGO than a DNGO and 'escaping' the domestic jurisdiction into the international sphere. This happened largely because of difficulties it had in gaining legitimacy in local legal and political cultures as a result of the issues it deals with. In the international sphere it has exploited environmental opportunities well and gained legitimacy from international society.

CAJ First Order Tactics

CAJ has a very wide mandate. This mandate, unlike at BIRW, is not focused on the conflict in Northern Ireland, but rather on making the UK government adhere to human rights standards in all of its Northern Ireland policies. Because it has such a wide mandate, CAJ appears to have had some problems with coordinating its work. As at CCR and JUSTICE, CAJ has recently rationalised its somewhat ad hoc agenda into the four specific areas of policing, criminal justice, emergency legislation and the protection of rights and equality.

Dominant Second and Third Order Tactics

As at BIRW, CAJ's overall tactical stance is dominated by international law related lobbying work similar to that of INGOs. It differs from BIRW and JUSTICE in placing a lower emphasis on educating the legal profession in human rights law. CAJ's primary second order tactic of international lobbying can be divided into a number of areas.

- Firstly, it makes statements to foreign governments such as to the US Congress.
- Secondly, it critiques the UK's periodic reports under various treaties before monitoring bodies such as the United Nations Human Rights Committee.
- Thirdly, it hosts visits by INGOs.

An example of this was the Lawyers' Committee for Human Rights' investigation into the deaths of Patrick Finucane and Rosemary Nelson. CAJ has hosted visits by Council of Europe organs such as the European Committee Against Torture as well as visits by various special rapporteurs of the UN Human Rights Commission. Lastly, CAJ has testified before international bodies such as the Organization for Security and Cooperation in Europe (OSCE) and the UN Human Rights Commission. CAJ does less domestic lobbying. This more minor commitment has included lobbying the British government on the implementation of the Good Friday Agreement, British

administrative agencies and the British Prime Minister. Like BIRW, CAJ is able to feed and activate international networks effectively with information it possesses.

It thus seems to identify international bodies and foreign governments as having the power to influence the issues it is interested in. CAJ's lobbying work has also included the brokering of agreements between the British and Irish governments, such as the agreement to appoint international judges to investigate six killings in Northern Ireland.

Supplementary Second Order Tactics

CAJ's most important supplemental tactic is to conduct test cases. It has eschewed the use of third party interventions, as used by JUSTICE, because Northern Ireland courts have been more restrictive than English courts in allowing third party interventions.

Traditionally CAJ has taken an unfavourable view of the British judiciary as lacking openness to human rights arguments. It has thus tried to avoid British courts as much as possible and has preferred the European Court of Human Rights. Even in the European Court of Human Rights, however, it has opted for the greater control offered by test cases compared to third party interventions. Because in the past litigation in domestic courts has led to violent reprisals in Northern Ireland, CAJ also has developed responses for support of staff when it is under threats of violence.

The passing of the Human Rights Act and the recommendations of the Criminal Justice Review for a more representative judiciary have encouraged CAJ to plan to do more domestic litigation. Its domestic cases to date have mainly been miscarriage of justice cases concerning murder trials.

The cases before the European Court of Human Rights have mainly concerned violations of the right to life. CAJ's approach to litigation seems more similar to the American case studies than the other two British case studies, in that it focuses on the litigation of cases, rather than on third party interventions.

Despite this similarity to the American case studies, however, CAJ still uses the standard British third order tactic of test case litigation. In addition to running test cases as a supplementary tactic, CAJ also responds to requests for information; appears on the media and organises lectures, seminars, conferences and events.

Networks with other Organizations

Like BIRW, CAJ maintains permanent connections with INGOs and ad hoc connections with DNGOs. It has regular contacts with the International League for Human Rights, Amnesty International and the Lawyers' Committee for Human Rights. The Lawyers' Committee helps CAJ with lobbying in Washington DC, and Amnesty helps with lobbying in London and Dublin. It also has some contact with Human Rights Watch and the International Commission of Jurists.

Among DNGOs, CAJ is close to Liberty and the Scottish Human Rights Centre, because they are also members of the International League for Human Rights. Under the umbrella of the League, these organizations and CAJ meet regularly to coordinate tactics. CAJ is also a member of a number of networks with other civil society organizations on specific issues. With the trade union UNISON, CAJ heads the Human Rights Consortium that campaigns for a Northern Ireland Bill of Rights and also co-convenes the Equality Coalition that works on combating discrimination. Like CCR,

CAJ seems to have extensive connections with organizations in civil society, such as trade unions.

Planning

CAJ plans extensively. More than once a year the staff, executive and key members meet, often in retreats, to discuss strategy. There are also strategy meetings in each of CAJ's four areas of work approximately once a month. These strategy meetings lead to the production of written plans for future work.

It appears that CAJ has long term formal plans both to coordinate all its second order tactics and for third order tactics. These are regularly updated and deepened in the periodic tactical meetings. Unlike JUSTICE and BIRW, CAJ does not seem to value flexibility as much in the face of unpredictable events, and views lobbying and policy work with INGOs as capable of being planned. In conclusion, CAJ's wide mandate appears to have caused it trouble in the past and has led it to consciously rationalise the work it undertakes. When it uses second order tactic of international lobbying CAJ acts like an INGO in directly accessing international networks.

It seems to have correctly identified these international institutions and foreign governments as having the power to influence decisions concerning human rights in Northern Ireland. CAJ's litigation work focuses on test cases rather than third party interventions, because Northern Ireland law limits the opportunities for such interventions and because it prefers to more fully control cases it is involved in. Overall, despite differences in environmental opportunities in Northern Ireland and England, CAJ seems to have similar responses to its environment as the other British case studies. Also like these case studies it appears to largely conform to the CTS.

This may be because CAJ and the other British case studies share a 'style' of approaching tactics. As with BIRW, CAJ has focused on the most significant violations within its mandate and has adapted its tactics to the opportunities in the environment, which in the cases of boThengland and Northern Ireland are international.

CAJ's extensive planning appears to have contributed to its rational response to the environment and its apparent conformity with the CTS. CAJ suggests that DNGOs in Northern Ireland, like those in England, can successfully focus on international work as a rational response to a relative lack of local opportunities.

The British Case Studies–Discussion and Analysis

Like the American case studies, the British case studies show evidence of a search for both rational adaptation to their environment and legitimacy in their local cultures. They seem to differ from the American ones, however, in that activities that are highly rationally adapted to their environment, such as using international advocacy networks, are also seen as legitimate in the local legal and political cultures. The origins of this different situation for tactical decision-making in Britain appear to be historical and cultural.

The spectacular early success of Amnesty International in mobilising international human rights law seems to have had a profound effect on both the international and domestic human rights networks in Britain. It appears to have made international human rights work legitimate and thus seen as highly 'professional'.

It also seems to have led to greater network building between DNGOs and with INGOs. When coupled with the relatively weak civil liberties discourse in Britain and

the slow 'invasion' of international human rights norms into the domestic jurisdiction, it is not hard to see how international work attracts funding and support. It appears that because of these historical factors the British case studies do not perceive themselves as human rights or civil rights law firms, as the American case studies do, but rather as policy catalysts for the civil service and Parliament.

The British case studies' self-identification thus appears to incline them to make different tactical decisions to those of the American case studies. The parts of the opportunity structure that seem to have influenced the decisions of the British case studies have been the doctrine of parliamentary sovereignty, a legal culture arguably resistant to ideas of legal human rights and a political culture sceptical of human rights. This combination of factors has restricted domestic opportunities for DNGOs.

In contrast, internationally the United Kingdom is a signatory to boTheuropean and global human rights treaties, the former of which can be the subject of binding judgments in the European Court of Human Rights. The United Kingdom generally champions human rights internationally and sits on most human rights bodies. The overall opportunity structure for British DNGOs thus points heavily to international work or, barring international work, to lobbying Parliament. The difference between JUSTICE, with its lobbying and educational work, and BIRW and CAJ with their international work, seem to revolve around the lack of support in the British Parliament for DNGO work on Northern Ireland issues as compared to other human rights issues. In contrast, the Northern Ireland conflict has a high profile in the US because of its Irish community. It also has a higher profile in the rest of the international community.

BIRW and CAJ, compared to JUSTICE, thus appear to have less incentive to lobby Parliament and more incentive to work internationally. The British case studies generally conform to the Comprehensive Tactical Stance. It seems plausible from other British DNGOs that the author is aware of that this conformity reflects the situation of British DNGOs generally. It also suggests that operating in this way may have increased their effectiveness and contributed to the pressure on the British government which led to the passing of the Human Rights Act and the increase in prominence of human rights in British foreign policy.

The only major deviation from the CTS by the British case studies seems to be the limited extent that they make use of the European Court of Justice's human rights jurisdiction. The use of EU law is a significant opportunity in the environment that the British case studies do not regularly exploit. As EU law is directly applicable in Britain this is puzzling. To the author, the answer to this puzzle appears to lie in the success they have had in the European Court of Human Rights; the legitimacy which has accrued to using this Court; and the lack of expertise within British DNGOs for going to the European Court of Justice.

The German Case Studies

HU First Order Tactics

Compared to the case studies, HU has an unusual first order tactical stance. Its mandate is both very abstract, using phrases such as "the free development of the personality", and is stated in different ways such as "democratisation" and "opposition to the authoritarian state". Because of this, its mandate has virtually no restraining effect on the issues it can pursue.

Unlike CCR, its work is not even rationalised into streams. It is essentially the

members in HU's branches that define the agenda of the organization. The de facto effect of this has been to decentralise its first order tactics so that decisions are made by members and not by staff at the national headquarters. It appears to use this tactic because, unlike the US and British case studies, it is primarily a membership organization and thus must be attentive to its members' ideas on tactics.

Dominant Second and Third Order Tactics

HU's second order tactics focus both upon lobbying and an intellectual politics whose purpose is to influence governing elites. Its third order tactics differ extensively from those of the British and American case studies. The lobbying it does differs from that carried out by the British and American case studies in two important ways.

- Firstly, the lobbying uses legal rules less often and less directly.
- Secondly, it often conducts lobbying as part of a large and defined network called the Human Rights Forum (Forum Menschenrechte).

For intellectual politics, the third order tactic is to educate and socialise opinion-forming elites in the German political system. The aim is to alter the symbolic universe of key policy making elites to make them more responsive to human rights arguments.

The hope is that the socialised membership will either end up governing or influencing the government. For socialising opinion-forming and governing elites, a very detailed third order tactical stance has developed.

Local groups often employ small think tanks (Denkarbeit) to do their work and as long as HU as a whole approves, specialise in issues and take action themselves. Sometimes special working groups are also formed on particular topics. Generally, this approach seems to stress flexibility and the education of members.

To do this socialising HU operates like a debating club. Issues are debated within the organization and positions agreed to. Press releases are issued and tracts published with the aim of engaging opinion forming elites and state institutions in debate.

In contrast to the case studies, HU's primary method for influencing the decisions of the Federal Constitutional Court is not through litigation. Rather, it favours public criticism of Court decisions and engaging the President of the Court in public debate.

As a result of German political history and culture, this type of intellectual politics is seen as highly legitimate. Using this approach, HU engages in a wide array of issues including gay equality; the Kosovo War; the War on Terror; democracy on the Internet; discrimination against foreigners and legal rights of due process.

Much of HU's lobbying is done through the Human Rights Forum. It also lobbies Parliament itself through politicians it trusts, politicians who are members or professional lobbyists. In addition, it advises Parliament on human rights questions– this advice, however, is almost exclusively on constitutional law and human rights policy rather than international human rights law.

Supplementary Second Order Tactics

HU's main subsidiary second order tactic is litigation. It becomes involved in such litigation in a number of ways. Firstly, it refers people who are looking for human rights legal advice to lawyers it has connections with. This informal network sometimes also supplies HU with lawyers or plaintiffs. More often, it uses its members in these roles in cases before the Federal Constitutional Court or the Federal Supreme Court (Bundesgerichtshof).

Lastly, under the constitutional methods of access to the Federal Constitutional Court, HU can get members of state parliaments or Federal Parliament who are HU members or sympathisers to bring cases before the Court. HU thus does not use any structure similar to a network of cooperating lawyers, as used by LDF, but rather generally relies on members and sympathisers.

It facilitates not only the bringing of cases before the courts, but also before the Petition Committee of Parliament. This committee can make recommendations to Parliament to change laws and to take action on particular cases.

Overall, HU's selection of cases and their execution seems less sophisticated than in the British or American case studies, as it does not appear to have a coordinated approach to rival planned litigation or test cases. It also appears to bring cases less frequently than they do. HU thus does not appear, in the style of impact litigation, to attempt to change the agenda of the Federal Constitutional Court through litigation. For the most part, litigation by HU is defensive rather than offensive. Where litigation is offensive, it is generally unplanned and focused on random issues.

Two of HU's most recent and prominent victories in the Federal Constitutional Court concerned the, from the point of human rights, minor issues of crucifixes in Bavarian schools, and differences in payment of members of Parliament. In contrast to the British case studies, the overwhelming majority of litigation by HU is domestic. Only occasionally has it taken cases to the European Court of Human Rights. The reason for this appears to be the legitimacy that the Federal Constitutional Court generally has in German legal and political culture compared to international fora. HU has a number of other important supplementary tactics. Every year, with other German DNGOs, it publishes the Basic Rights Report (Grundrechte-Report).

This is the major non-governmental source of information for German citizens on human rights observance within Germany. It is published as a paperback and is available in most large German bookshops.

A lesser subsidiary tactic that it uses is that, in conjunction with the Human Rights Forum, it hosts seminars on various topics. These seminars differ from those of the British case studies in that they are not for the legal profession or civil service, but for the public at large. In addition, HU awards the annual Fritz Bauer Prize to those who have most furthered human rights within Germany.

Networks with other Organizations

In contrast to the British case studies, HU forms ad hoc coalitions with INGOs, and permanent coalitions with DNGOs. It is thus heavily reliant on the domestic human rights network. The major domestic network it is a member of is the Human Rights Forum. The Forum was founded in 1994 as a result of German DNGO meetings in preparation for the 1993 World Conference on Human Rights in Vienna. To implement the Vienna Programme, it was felt that the human rights lobbying effort of DNGOs needed to be continuous, and that this required a new form of organization.

The Forum has forty-one member NGOs and is a lobbyist and a consultant to the German federal government on human rights issues. It is really neither an organization nor a network, but something in between. An example of this consulting work is the recent involvement of a working group of the Forum in the setting up of the German Human Rights Institute (a sort of Human Rights Commission). HU has been a member of the Forum Coordination Committee (which meets four or five times a year) since 1998.

The Forum has not been without controversy, with two of its member NGOs leaving, but has generally improved the ability of German DNGOs to lobby Parliament and the Chancellor. In terms of international and regional coalition building, HU has received some criticism for not involving itself enough in the human rights questions of the European Union.

Recently, it has moved to address this criticism by working harder on connections to various networks in Europe. This work has as its central concern the need for an EU Bill of Rights and the necessity of presenting human rights issues to the Union. Overall, however, HU still has more extensive networks domestically than internationally.

Planning

HU does not do much planning. It has neither a global plan for coordinating second order tactics nor specific plans for third order tactics. The reasons for this are its commitment to decentralisation, allowing branches to take up issues and set the agenda, and its desire to remain flexible enough to deal with new issues.

As with choice of first order tactics, it appears that it is the fact that HU is a membership organization that dominates its attitude to planning. An important change in HU's environment, as the oldest domestic human rights DNGO in Germany, has been the recent proliferation of human rights DNGOs in Germany.

As with the American case studies, this has led to competition for attention, which HU blames for inhibiting the effectiveness of German DNGOs. Its answer to this has been to build organizational structures to further cooperation among DNGOs, creating what it calls a rational information management tactic. The Human Rights Forum exemplifies this sort of structure. The existence of the Forum suggests that HU's approach to this subject may not be atypical of German DNGOs in general.

In conclusion, HU's first order tactics are based on its members' interests. It is thus not constrained by a formal mandate as the British and American case studies are. HU's uniqueness in this regard, however, may be exaggerated by the fact that the major membership human rights DNGOs in Britain and America could not be included as case studies. With regard to second order tactics, the tactic of socialising the German leftliberal political elite appears to perform an identical function, in the sense of the Functionalist School of Comparative Law, to human rights education of lawyers and civil servants by the British case studies. Both try to alter the symbolic universe of elites so as to make them more favourable to human rights.

It seems possible to the author, however, that HU has not correctly identified the left-liberal political elite as being secondary holders of power that can influence the primary decisionmakers on domestic human rights in Germany. In lobbying and policy work, both the use of the Human Rights Forum and the lesser direct use of legal rules in lobbying seem to distinguish HU from the case studies.

As in Britain, HU's litigation is not frequent and is dominated by the policy work agenda. Unlike in Britain, however, HU does more domestic litigation than international litigation. The CTS casts doubt on the correctness of HU's tactics. As for the American case studies, HU often appears not to target the most severe violations in its environment and to privilege legitimacy over rational adaptation to the environment.

An example of the latter is HU failing largely to take advantage of the international and European opportunities in its environment. Germany seems as vulnerable as Britain to international pressure, doing a great deal of international trade and having signed many human rights treaties, yet the lack of legitimacy of international work in the local culture and a lack of expertise in international work appear to have restrained HU from taking advantage of these opportunities. The CTS thus suggests that HU's lack of planning and its failure to exploit major opportunities in its environment means that its effectiveness could be significantly improved.

KGD First Order Tactics

In its literature KGD defines its mandate as being to encourage civil society's engagement in favour of human rights and the tracing of human rights violations to their sources in social structures. As at HU, this mandate is too abstract to constrain the work that can be undertaken and everyday practice hinges on the construction of the agenda. Because KGD does not have branches, its agenda is decided by the membership and staffas a whole.

KGD is unique among the case studies in this work in having a mandate that focuses not on any governmental institution or elite, but on the public at large. However, this tactical stance, despite its democratic credentials, does not seem to be very effective in addressing domestic human rights violations.

Dominant Second and Third Order Tactics

KGD's primary second order tactic is an intellectual politics carried out through publicity, publication and direct action. Generally KGD's work begins within its working groups. These working groups are set up on the request of two or three members and operate semi-independently, even though KGD financially supports them. In 2001 there were five or six working groups and they met two or three times a year, focusing on such issues as biotechnology, refugees and prisoners.

KGD sometimes uses its second order tactics in a rough sequence. When an issue is raised by a working group or by the staff, a policy is laid down (often in conjunction with interested social movements) for the whole organization and a press release issued. It then organises seminars and conferences on the issue that all interested parties can attend, and afterwards publishes appeals and objects in newspapers on the same subject. KGD's publicity tactics focus on the print media, rather than television or the Internet. It appears that this is because the staff 's resources and expertise lie in this area.

As for publication, KGD publishes a wide range of pamphlets and small books. It also cooperates with other DNGOs, such as HU, in publishing the Basic Rights Report. Officially, demonstrations are not organised by KGD itself. This is because of the fear that it will lose the tax-exempt status that it has in German law if it undertakes such activities Instead, KGD's members organise them as individuals. This approach is quite successful, despite the fact that KGD actively advocates the use of civil disobedience and publishes manuals on how to undertake it.

It is not clear whether this success has been because of the sophistication of KGD's legal approach, permissiveness by the authorities, or some combination of the two. Using demonstrations suits KGD's goals, which are to create a humanistic socialist society and to critique capitalist, and especially Neo-Liberal, social relations as structural causes of human rights violations.

This is because using these tactics means that it is not obliged to compromise with what it would see as capitalist laws and political institutions. An example of this orientation is KGD's use of civil disobedience to challenge the expulsion of asylum seekers.

Supplementary Second Order Tactics

Litigation is amongst KGD's most rarely used subsidiary tactics. When it is used, it is almost always used defensively. An example of its use by KGD is the legal representation and fees that it gives to accused persons before the German courts. This activity is an extension of its work to protect the rights of prisoners and reform the criminal law. A rare example of KGD's offensive use of litigation was an action it brought by KGD and other DNGOs against the German government, first in the Federal Constitutional Court and then the European Court of Human Rights, arguing that the participation of Germany in the Kosovo War was a violation of international and constitutional law.

Trial and demonstration observation and reporting are carried out in much the same way as is done by INGOs. KGD often leads campaigns to change laws or practices that these observations lead it to believe are threats to domestic human rights standards. KGD lobbies both domestically and internationally. Domestically, the lobbying is mainly done in Parliament. One example of this was KGD e-mailing members of Parliament urging restraint in response to the terrorist attack in New York on September 11th 2001.

KGD also publishes the findings of, and occasionally lobbies, various UN Human Rights Committees. Overall, however, because it sees itself as an extraparliamentary organization, KGD does not have much to do with the German state or international organizations. KGD sees giving direct aid to victims of human rights violations as effective and an expression of solidarity. An example of this, outside of domestic human rights work, is an international programme KGD runs that takes children from the former Yugoslavia on holidays to the Adriatic coast. This programme also exemplifies the importance KGD places on peace as a human right.

Networks with Other Organizations

KGD has extensive relationships with DNGOs, but no relationships at all with INGOs. KGD was one of two organizations that left the Human Rights Forum. It did so because it felt that the Forum was too close to the state, and that too much work was involved for the advantage it obtained. It still has extensive contacts with the NGOs in the Forum, however, and is involved in collective projects with DNGOs that are members of the Forum such as the Basic Rights Report.

The largest advocacy network that KGD is connected to is that within the social movements, for which it is the 'head organization' on human rights. Connections to the peace movement; environmental movement; unemployed persons' movement; refugee rights movement; social rights movement and anti-Globalisation movement give it an immense network to draw upon outside of links to other DNGOs. On this basis, it is easy to see why KGD sees itself as a people's political organization rather than an NGO in the classic sense.

Although KGD has no links with INGOs, it has links with DNGOs in France and Britain. These links, however, are more personal and ad hoc than official and permanent. KGD is interested in international networking with DNGOs like itself,

but has difficulty locating such organizations.

Planning

Like HU KGD does little planning, and appears to place a great deal of emphasis on flexibility. The closest it comes to such planning is when the Executive, Secretary and working groups combine into a working committee that meets two or three times a year and discusses and sets tactics. The ultimate reason for this lack of planning appears to be the fact that KGD is a membership organization and thus has its tactical decisions largely determined by its members' opinions or by social movements it works with.

Planning must also take account of the fact that the parties in Parliament are receptive to its work to varying degrees. The German Greens are far more receptive to KGD's work than the other parties, while the SPD and PDS lend support less often. KGD's first order tactics, as at HU, are largely determined by its members' interests.

For second order tactics, publicity and publication are undertaken with a distinct emphasis on the traditional intellectual medium of print, with less attention paid to newer media. The focus of second order tactics on civil society as secondary holders of power with the ability to influence the primary decision-makers in government seems questionable to the author. Direct action and organising are undertaken indirectly so as to avoid legal problems. The major supplementary second order tactics are undertaken rarely, and mostly to defend individuals involved in the dominant second order tactics or to support those tactics.

Despite its radical ideological nature, KGD's balance between legitimacy and rational adaptation to the environment is similar to HU's. Like HU it thus shows significant variation from what the CTS would suggest. Even in radical circles in Germany it appears that domestic work (even if it is different domestic work) has greater legitimacy than international work.

This failure to more closely conform to the CTS appears to have put KGD in a position where it is less effective than it could be, because it does not make use of new international and European opportunities within its opportunity structure, or even domestic opportunities such as litigation. This result is surprising given the extensive analysis that KGD has done of the effects of Globalisation on Germany.

GBM

First Order Tactics

GBM's first order tactical stance is simultaneously to protect the human rights of former citizens of East Germany as a minority, and generally to further social human rights within Germany. It thus resembles the dual focus on norms and groups shown by LDF. The main difference between the two approaches lies in the normative focus. GBM is focused on social rights whereas LDF focuses on civil and political rights.

Dominant Second and Third Order Tactics

GBM's dominant second order tactics are publication and lobbying. Its third order tactics for publication and media are to work within Germany, whereas there is a distinct European and international focus in its lobbying and litigation work. GBM appears to have a wide view of where power lies to influence the domestic human rights decisions it is interested in that includes the Federal Constitutional Court, the German Parliament, intellectual opinion in Germany and European and international

courts and institutions.

GBM's publication work is generally carried out in four ways. Firstly, it is carried out through the publication of White Books. These are volumes of documentation of alleged human rights violations in eastern Germany. Secondly, through the publication of "Icarus"–GBM's in-house journal.

Thirdly, through the publication of information leaflets and fourthly, through publication of its web site. GBM's publications, unlike at KGD, focus on those intellectuals likely to read political material, and not on the general public or on decision makers. As at HU, it focuses on elites that construct public opinion and the symbolic universe in which discourse occurs. Although GBM claims to be concerned about the impact of its publications, its de facto focus seems to be on their intellectual quality.

Within Germany GBM lobbies both through the Human Rights Forum, of which it is a member, and in its own right. This lobbying is focused on the issue of pension inequalities between east and West Germany, and prosecutions of former GDR officials.

In Parliament, GBM had some success in lobbying under the previous CDU government, but has had less success with the current SPD/Greens government. GBM will often combine its international and national lobbying. One common method of doing this is to get sympathetic members of Parliament to ask the government questions about international criticism of Germany resulting from GBM's international lobbying. Internationally and in Europe, GBM has successfully lobbied the European Parliament on the Berufsverbot; it has lobbied members of UNESCO; the ILO; the OSCE; as well as the UN Economic and Social Rights Committee during its reviews of Germany's periodic reports.

GBM does not employ professional lobbyists, but because its membership includes former East German academics and diplomats, it has the expertise and time to carry out this work itself.

Supplementary Second Order Tactics

An important supplementary tactic for GBM is litigation. It practices litigation at both the national and international (or European) level, but focuses on the latter. GBM argues that concentration on international law was a tradition in East German law schools (and not West German ones) before unification.

It also appears to trust international or European courts to be more unbiased than domestic courts. Despite this preference GBM (or the Society for Legal and Humanitarian Aid (GRH), which is a member of GBM as an organization), has taken many cases to the Federal Constitutional Court. It does not litigate these cases in its own name, but rather supplies human rights lawyers and money to plaintiffs it wishes to support.

The subjects of these cases cover most of the issues that GBM campaigns on, amongst which was a case brought against the Berufsverbot, and one on the constitutionality of pension laws affecting former East German citizens. GBM, however, has only had mixed success in this domestic litigation.

More commonly, GBM supplies lawyers and money to take cases to the European Court of Human Rights. GBM claims to have been involved in more than fifty cases going to Strasbourg, having directly brought twenty of them. Among the prominent cases that it has been involved in at the European Court of Human Rights have been a case on the Berufsverbot, and the case on the prosecution of former East German

leaders. It has also brought a small number of cases before the European Court of Justice.

Among the other procedures that GBM periodically uses are the Resolution 1503 procedure of the United Nations Human Rights Commission; complaints to the International Labour]Organization (ILO); as well as complaints to UNESCO and the UN Human Rights Committee.

GBM's minor subsidiary tactics consist of awarding an annual human rights prize, organising cultural activities such as art exhibitions; working to establish a library of East German culture; creating an unofficial International War Crimes Tribunal for the War Against Yugoslavia; running study groups on East German culture and creating an alternative East German history forum.

Networks with Other Organizations

GBM is permanently connected to networks both domestically and internationally. Domestically GBM, like HU, is a member of the Human Rights Forum and uses it to aid its lobbying in Parliament. At the time of interview the President of GBM was also the head of the East German Council of Organizations (OKV), which is a network of twenty-three organizations with about half a million members that came together in 1992 to defend the interests of former East Germans.

GBM's network also includes unions, unemployed persons' groups and groups campaigning for social rights. GBM's international network is even more extensive. It includes the European Peace Forum; the International Action Centre in New York; the Race Foundation in the UK; the International Association of Democratic Lawyers; the Slavic League in Russia and the League of Anti-Fascists in the Balkans. It should be noted that GBM's network covers Eastern Europe, and that many of the organizations share its Neo-Marxist view of human rights.

Planning

GBM does a great deal of planning. It creates annual plans that govern how its second order tactics are combined and how third order tactics are conducted. These plans are written and, although there is some deviation from them in practice, they substantially guide activities in that year.

The balance between adherence to the plan and deviation from it seems similar to that examined by Wasby with regard to impact litigation in America. In the future, in the light of the Kosovo War and the wars in Afghanistan and Iraq, GBM wants to focus planning for its work on the collective human right to peace.

GBM's first order tactics resemble those of the American case studies in that there is a focus on both legal norms and a social group. GBM is unusual, however, in focusing on social rights. GBM's second order tactics concentrate on publication and lobbying, with only some attention given to litigation and cultural events etc. This pattern suggests that a combination of intellectual and technical expertise is available amongst GBM's members.

This combination of resources appears to have historical origins as GBM's membership is composed both of members of the GDR intellectual opposition and former GDR government officials.

GBM's activities thus cover the whole spectrum set out in stage one from classic mobilization of law through to the use of the 'constitutive' power of law.

GBM conforms more closely to the CTS than the other German case studies. In terms of the balance between the need for legitimacy and rational adaptation to the environment, it appears to favour rational adaptation to the environment.

The reasons for this appear to be both the greater amount of international work that it does, allowing it to 'escape' domestic pressures for legitimacy to a degree, and the greater legitimacy of international work among its supporters and members. It also appears to do more domestic litigation than HU or KGD. The reason for this appears to be the support it is given by former GDR law professors. Overall, GBM appears to show some similarities to the British case studies in that international work seems to have improved its adaptation to the environment.

The German Case Studies: Discussion and Analysis

The common theme of the German case studies seems to be one of human rights advocacy as the domain of the dissident political intellectual of continental European tradition. Each case study has different intellectual and political standpoints on human rights.

The intellectuals of HU are left-liberal; the intellectuals of KGD are left-libertarian and the intellectuals of GBM are Neo-Marxist. Their criticism of human rights violations thus seems to have been absorbed into traditional forms of political critique to the point that a blurring occurs between human rights criticism of a regime and advocating the change of that regime.

The exception to this generalisation is GBM, as it is not just composed of intellectuals but also former GDR government officials that have technical abilities. This general pattern contrasts strongly with the American and British case studies, where lawyers or those with legal expertise typically fulfil this role. In terms of the analysis of the Functionalist School of Comparative Law, the dissident intellectuals of the German case studies and the lawyers or people with legal expertise in American and British studies appear to perform the same function of being the agents that mobilize the policy demands of human rights law in order to make them part of the internal discourse of governments.

The dominant tactic of the German case studies appears to be to gain superiority in the battle of ideas. Superiority in this battle is achieved through debate, both internally and externally, either in person or through publications. For them the battle is both over what human rights are and what priority they should have in government policy.

This is done through general intellectual debate, rather than in a targeted way through publication or the media as in Britain and the US. Due to a certain culture of intellectual disapproval of technical knowledge and money, lobbying and litigation are not seen as priorities in themselves, but rather as methods of driving home the advantage of a dominance in the world of ideas.

The effect of superiority in the realm of ideas is seen indirectly to be dominance of the makers of public opinion. This is supposed to lead to socialisation of the state and other entities into human rights observance. Applying the Comprehensive Tactical Stance to this general tactical stance is revealing. It would suggest that there may be too great a reliance by the German case studies on elite intellectual opinion leading to better human rights observance.

The German case studies do not appear to target the most promising opportunities in their environment for influencing decisions on domestic human rights. For the most part, other possible strategies such as litigation in the Federal Constitutional Court, which is increasingly important given the growing role that Court has in the German governmental system, are under-utilized. The main exception to this is GBM, which has former GDR officials in its ranks who have the expertise to execute other tactics, such as the diplomacy necessary for international lobbying or the legal expertise necessary for litigation.

To gain influence in Parliament, it is generally necessary to penetrate the party machines and through them gain influence over the committees. Each of the case studies works through specific political parties. For HU it is the SPD and Greens; for KGD the Greens, and for GBM it is the PDS and SPD. This, along with intellectual traditions in political ideology, seems to explain the ideological nature of the German case studies compared to the British and American ones. German political culture also seems to explain the focus of the German case studies on social rights–a focus usually ascribed to third world DNGOs, rather than western DNGOs. In summary, the German case studies (with the exception of GBM) seem constrained as much by aspects of German political and legal tradition as the American case studies were by such forces in America.

6

Human Rights and Communal Responsibility

There is an emerging consensus within the international development and academic communities that development means much more than just the growth of the Gross National Product. Amartya Sen has called for an understanding of development as "a process of expanding the real freedoms that people enjoy" in which both "substantive" freedoms like food, life and health and "instrumental" freedoms like free speech, transparency and protective security are equally important. The United Nations Development Programme has articulated a vision of "sustainable human development" defined as "expanding the choices for all people in society" and including the principles of Empowerment, Co-operation, Equity, Sustainability and Security.

The World Bank's mission of "fighting poverty and improving the living standards of people in the developing world" demonstrates its commitment to understanding development as a multi-faceted and complex process. The United Kingdom Department for International Development also explicitly claims that it is an "investor in the people" whose mission is to "promote sustainable development and eliminate world poverty."

A "rights based approach to development" promises to offer solid ground on which to base these efforts at restructuring the theory and practice of development. DFID defines this approach as "empowering people to take their own decisions, rather than being the passive objects of choices made on their behalf". The Office of the High Commissioner for Human Rights understands it as an approach that "links poverty reduction to questions of obligation, rather than welfare or charity". The World Bank has not explicitly endorsed a human rights approach to development. *Nevertheless, in documents such as Development and Human Rights*: The Role of the World Bank, published in celebration of the 50th anniversary of the Universal Declaration of Human Rights, it has made statements that reveal its general support for the approach. "Creating the conditions for the attainment of human rights is a central and irreducible goal of development. By placing the dignity of every human being—especially the poorest—at the very foundation of its approach to development, the Bank helps people in every part of the world build lives of purpose and hope". In recent years, the World Bank has begun to support a diversity of "social accountability" initiatives.

Such initiatives range from citizen report cards in the Philippines, Albania and Uganda and community scorecards in the Gambia and Malawi, to access to justice programs in Indonesia and the development of a "system of social accountability" in Peru.

One may well look at such projects as building the basic lessons of a rights based approach into the World Bank's lending practices. As a recent World Bank document claims, "social accountability is a right" which is grounded in "a new manifestation of citizenship based on the right to hold governments accountable by expanding people's

responsibility". How exactly are social accountability initiatives linked to human rights?

In what ways are social accountability and a rights based approach complementary and when and where might they come into conflict? How is social accountability linked to the broader international human rights agenda? The second part of the paper presents an overview of both rights based approaches to development and social accountability and explores the possibilities for articulating the two approaches.

The third part then presents four specific cases of social accountability initiatives which have served as models for or are directly supported by the World Bank: the Bangalore Citizen Report Cards implemented by the Public Affairs Centre in India, the Malawi Community Scorecard implemented by CARE, the Justice for the Poor programme supported by the World Bank in Indonesia, and the construction of a "System of Social Accountability" in Peru also supported by the World Bank and other development partners. In this third part the central issue is to explore how these projects are grounded in and constitute a step towards fulfilling a rights based approach to development. Finally, the paper ends with some concluding remarks on how social accountability initiatives can be more closely linked to a human rights approach in the future.

Rights Based Approaches and Social Accountability

This part provides a general introduction both to rights based approaches to development and to social accountability. In addition, it proposes a general framework for exploring the interrelation between these two approaches.

Rights Based Approaches to Development

The promotion and defence of human rights have become increasingly important values in the world today. The vast majority of countries have signed the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. In addition, the Universal Declaration of Human Rights holds sway over national practices and international relations.

Indeed, human rights talk is perhaps even more mainstreamed today than talk about democracy. It is difficult for a country to explicitly defend non-democratic politics, but it is almost impossible for it to affirmatively promote violations of human rights.

People typically think of human rights as involving the defence of what are called civil and political rights, the so-called "first generation" of human rights. This involves rights such as those to life, liberty and security, protection against torture, and freedom of speech and assembly. Nevertheless, just as to the principal of the "indivisibility" of human rights, "whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in hierarchical order".

Therefore, "economic" and "social" rights like the right to work, social security, education and health are just as fundamental as civil and political rights. Upon signing the principle international covenants, states are thereby obliged to defend and promote all of the fundamental human rights of their citizens.

There are always issues of resource scarcity and "justiceability" which complicate this task. This is especially the case in the area of "second generation" rights. Nevertheless, governments who sign these agreements have placed upon themselves

the duty to do all that they can to guarantee a minimum floor of livelihood for the population. The "progressive realization" of rights is sometimes the only possibility.

It is not always possible to fulfill all rights all of the time. Sometimes tough choices need to be made in order to guarantee overall forward progress. Nevertheless, there is a self-obligation to move towards the fulfillment of all rights in the medium to long term. In addition to self-obligation, the international human rights agenda usually implies international pressure and sanction through conditionality or other means. If a country or an international organization has a "human rights policy" this is normally interpreted to mean that it is willing to consider this also as the basis of its foreign policy or development assistance.

This agenda is essentially judgmental. If a country is evaluated as having failed to defend the basic human rights of its inhabitants it is marginalized from the international scene. The World Bank has been hesitant to adopt such a stance since it appears to violate Article IV, Section 10 of its Articles of Agreement which state that "the Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned."

Conditionality based on the human rights record of a country has therefore been interpreted to be equivalent to meddling in "political" affairs.

Nevertheless, the World Bank has found other ways to talk about human rights. On occasion of the fiftieth anniversary of the Universal Declaration of Human Rights the World Bank clearly stated its commitment to promoting human rights. In this document, the World Bank enumerates how it "contributes directly to the fulfillment of many rights articulated in the Universal Declaration. Through its support of primary education, health care and nutrition, sanitation, housing, and the environment, the World Bank has helped hundreds of millions of people attain crucial economic and social rights".

The document also mentions how the World Bank contributes in a "less direct, but perhaps equally significant" manner to the strengthening of human rights. "By helping to fight corruption, improve transparency and accountability in governance, strengthen judicial systems, and modernize financial sectors, the World Bank contributes to building environments in which people are better able to pursue a broad range of human rights". The World Bank's effort to engage with the practice and discourse of human rights in this document and others is clearly a move in the right direction. This is a much more fruitful strategy than simply writing off human rights as a purely "political matter".

The World Bank here implicitly takes the contrasting position that the defence of human rights is a moral or ethical issue intimately linked to the process of economic development. Nevertheless, the perspective offered in this document is a long way from what has come to be considered a "rights based approach to development". This is because the World Bank here envisions human rights as purely an outcome, not a method of intervention.

The World Bank, any action that leads to the fulfillment of basic necessities automatically also helps the realization of human rights precisely because it resolves basic necessities. This argument is circular and it folds economic development and human rights promotion into one. From this perspective, there is no value-added to incorporating human rights into economic development. RBA should therefore be

distinguished both from the application of international pressure and conditionality and from perspectives like those of the World Bank's 1998 text on Development and Human Rights.

The central question for RBA is not so much whether a particular regime does or does not respect the rights of its citizens or what the final result of a development project is with regard to the rights of the population, but how we approach the task of development. Specifically, the core objective of RBA is to invert the power relationships between policy makers, service providers and the poor.

Instead of envisioning development as a process by which governments, foundations or international agencies channel resources to "help" excluded groups overcome poverty and suffering, the human rights approach starts by acknowledging the entitlements of the poor. As a result, just as to this perspective "service providers" and "policy makers" are better conceptualized as "duty-bearers".

It is their obligation, not their choice, to guarantee the human rights of the poor, the "rights-holders". The legal structures which make the claims of the "rights-holders" judicially defensible are not always in place.

Although some countries have constitutional provisions which guarantee citizens right to employment, health care and education, many others simply do not. In addition, even in those countries which do have such legal guarantees, there are few examples in which normal citizens have actually successfully brought legal suits against the government for the failure to fulfill basic economic, social and cultural rights.

Regardless, from the perspective of RBA, development programs should be designed as if these structures were in place. This does not mean that development planners should always be watching their backs, wary of the next potential law suit.

But it does mean that development should be conceptualized as something which originally belongs to the people, not to the government or to international agencies. In practice, this means that development projects should live up to the following five basic principles common to most understandings of RBA:

- First, the poor should be placed at the center of the design, control, oversight and evaluation of the development projects, programs or policies that affect them. Empowerment and active participation of the poor is one of the backbones of RBA. Indeed, just as to authors such as Clare Ferguson and J. Hausermann the right to participation should be seen as the foundational base of the rights approach since it is the prerequisite to claiming all of the rest of the human rights. The very act of demanding the fulfillment of one's rights requires an active subject who is in control of his or her life, a participant in his or her own process of development.
- Second, the institutions responsible for implementing development programs or policies should be fully accountable for their actions. As "duty bearers" they are obliged to behave responsibly, look out for the larger public interest and be open to public scrutiny. From this perspective, corruption, inefficiency and secrecy are more than just unfortunate practices. They are morally wrong and constitute an aggression against humanity.
- Third, non-discrimination, equality and inclusiveness should underlie the practice of development. Development should be understood as a "public good",

similar to public parks or national defence, from which no one can be excluded and the benefits are shared among all. If development is seen to be the privilege of a few or projects are managed in an exclusive fashion favouring only those with "good connections" or from the "right" ethnic group we have departed from the RBA approach. This also means that participation should not be limited to "professional", "well behaved" NGOs. Grassroots and political organizations should also be included.

- Fourth, citizen participation and voices should be "scaled up" and linked with national and international policy processes and international rights frameworks. All too often participation occurs at the local community or neighbourhood level with regard to programme implementation, but citizens are not involved in the broader decisions that have an impact on the structure of national public policy. A human rights approach obliges development programs to constantly be on the look out for the links between the local, the national and the global, between service delivery, public policy and international relations.
- Fifth, RBA encourages the active linkage between development and law. This means at least two different but related things. On the one hand, the citizen participation, accountability and inclusiveness which ground the RBA approach should be institutionalized in law, not left to the good will of public servants or the presence of specific civil society leaders. On the other hand, development projects should use the language of rights explicitly and encourage citizens to pursue the legal defence of their rights at the national and international levels.

RBA therefore gives a very different taste to development. As Andrea Cornwall has argued, instead of talking about "beneficiaries with needs" or "consumers with choices" the human rights approach speaks of "citizens with rights". Citizens are active subjects in the political sphere, not objects of intervention by government programs or passive choosers in the marketplace. This of course does not mean that RBA cannot be applied when working with "consumers" or "beneficiaries".

To the contrary, these areas offer some of the most productive opportunities for applying this approach. For instance, the organization of consumers to evaluate the quality of the goods provided at a local store or the intervention of beneficiaries in the design of government social development programs are both good examples of the RBA approach. RBA draws on the "logic" of political citizenship but it can and should be applied to all areas of human life, including the market, society, and service delivery.

In the end, RBA can be envisioned as the application of the basic principles of the Universal Declaration of Human Rights in the area of development. For instance, the Norwegian government has defined RBA as "a concept that integrates all human rights norms, standards and principles of international human rights systems, including the right to development, into the plans, policies and processes of development".

Social Accountability

An accountable government is one that pro-actively informs about and justifies its plans of action, behaviour and results and is sanctioned accordingly. The core elements of accountability are therefore information, justification and sanction.

A fully accountable government would approach these tasks in a pro-active manner

and do so along all three temporal dimensions. Accountability is one of the most effective ways to combat corruption, clientelism and capture and thereby assure "good governance", but it is not the only strategy.

For instance, democracy, economic development and international pressure are other strategies that may be equally effective depending on the circumstances. Nevertheless, pro-accountability reform is an essential element of any good governance strategy. Accountability reform has traditionally been thought of as an essentially internal governmental affair. For instance, "Weberian reforms" like civil service reform and the improvement of internal auditing, evaluation and surveillance usually have little to do with civil society.

Indeed, the central idea behind such "old" public management reforms is to rationalize and isolate the bureaucracy. Alternative strategies like the creation of independent pro-accountability agencies also usually fail to incorporate society. Most independent agencies are isolated bastions of technocrats. Marketization strategies such as privatization or the implementation of private sector management techniques involve society in an indirect fashion as consumers but are also a far cry from stimulating civic engagement.

"Social accountability" is therefore a relatively new strategy which is distinct from Weberian reform, independent agencies and marketization. It can be defined as "an approach towards building accountability that relies on civic engagement, *i.e.* in which it is ordinary citizens and/or civil society organizations who participate directly or indirectly in exacting accountability". There are a great variety of initiatives that fall under this category. Initiatives as different as participatory budgeting, administrative procedures acts, social audits and citizen report cards all involve citizens in the oversight and control of government and can therefore can be considered social accountability initiatives.

Specifically, there are six different distinctions which can be used to capture the variety of social accountability mechanisms: punishment vs. reward based mechanisms, rule following vs. performance based mechanisms, level of institutionalization, depth of involvement, inclusiveness of participation, and branches of government. In short, social accountability initiatives can be as diverse and multifaceted as society itself.

Elective Affinities

RBA and social accountability initiatives are natural partners. RBA requires citizen participation and government accountability, precisely the central concerns of social accountability. Equality, non-discrimination and inclusion also should find a comfortable home in social accountability initiatives since these initiatives stimulate the participation of common people in the supervision and control of government. Social accountability also scales up participation. Instead of seeing citizens as simple "users" whose participation should be limited to deciding when and where X or Y service should be implemented, social accountability envisions them as "citizens" who can engage in and evaluate the entire planning and evaluation process from beginning to end. As Anne Marie Goetz and Rob Jenkins have argued, There is almost nowhere on earth that citizens or their associations have either been given access and information on, let alone a more substantive role in, formal auditing processes.

Indeed, even in the far less sensitive area of expenditure planning, there is just a handful of experimental cases world-wide encouraging citizen involvement. Citizen

auditing strikes at the heart of practices that preserve the powers of bureaucrats and politicians: the secrecy in public accounts that can mask the use of public funds for personal advantage. Citizen participation in holding government to account breaks with the superficiality of much of "civic participation" discourse and practice. It is one thing to take into account the opinions of the poor or the citizenry in general when planning public policy.

It is quite another to allow the people to watch and evaluate the actions of government as they unfold. The latter is far more effective in stimulating good government and much more empowering for the citizens who participate. Social accountability also easily supports the legal defence of human rights. Once citizens are mobilized in supervising the government it is a small step for them to start demanding and designing new laws as well as using the existing laws to back up their claims against the state.

There is great potential for setting up positive feedback loops between social accountability and the law. In addition, the respect for human rights, in particular basic civil liberties, are a pre-condition for effective social accountability initiatives.

There is, therefore, an "elective affinity" between RBA and social accountability initiatives. Each one has its own distinct identity, neither one is a subset of the other, and there is not a direct link of "causality" between the two. Social accountability does not automatically and mechanically lead to the adoption of RBA or vice versa. Nevertheless, there is a magnetic attraction between the two concepts/practices. Each one needs and significantly strengthens the other in both theory and practice.

There are different forms and degrees by which social accountability initiatives can fulfill the promise of rights based approaches to development. For instance, there is a tendency for social accountability initiatives to come up short on the last two elements of RBA, "scaling-up" and "legal recourse". In addition, there are sometimes problems with the issue of inclusiveness, as when social accountability initiatives are designed in a "top-down" fashion and only involve elite NGOs. In general, when social accountability initiatives break wiThexclusive localism and elitism, are designed in a bottom-up fashion and are legally institutionalized, or otherwise give rise to legal recourse, they can be said to be more fully grounded in a human rights approach.

Strengthening Social Accountability

The implementation of social accountability initiatives is an excellent way to implement the central principles of rights based approaches to development. All four cases examined represent serious efforts towards making citizens participants in their own development.

The Bangalore Citizen Report Card significantly breaks with the inward looking nature of government bureaucracies, the Malawi Community Scorecard involves communities directly in improving public services, the Indonesian Justice for the Poor programme encourages community empowerment and mobilization in making the justice system work, and the emerging System of Social Accountability in Peru brings citizens to the table when deciding national policy.

Nevertheless, it is still possible to strengthen the human rights content of these and other social accountability initiatives. Three challenges appear to be the most important. First, exclusive localism continues to be a problem. With the exception of Peru, all of the cases are local level initiatives that don't clearly or directly engage

with the national or international political spheres.

For instance, in the Indonesia case although links are made to the national level debate on judicial reform and some mention is made of the forces that oppose reform, these seem to be more of an afterthought than a central motivating force for the initiative. In the "Idea Note" on the programme the authors claim that at the national level there are "entrenched interests opposing reform both outside and within the sector, and there is reluctance of the government to challenge such powerful stakeholders during the current phase of the transition" but there is no analysis of exactly what these interests are or of how they have tried to resist reform.

Instead of engaging with the complexities of national reform, the programme seems to turn its back on this issue with the statement that "the same national-level stakeholders who oppose national reform in some sense have a strong interest in local reforms since they wish to retain popular acquiescence or support for the current regime". The "stakeholders" are not mentioned by name and the problem of their resistance is entirely skirted by shifting to the local level. There are no doubt advantages with having the opposing forces on your side.

But there are also disadvantages. Won't their involvement at the local level militate against the possibility of the local reforms "moving the overall national governance agenda forward" as is apparently the intention of the initiative? The absence of a full discussion of who the opposing forces are and of the complexities of the scaling up process puts into doubt the extent to which the Justice for the Poor initiative will truly be able to confront and transform the power structure that maintains so many people without their most basic human rights in Indonesia. Second, "top down" design remains an important challenge. With the exception of Malawi, all of the cases have had difficulties with involving full grassroots participation.

For instance, in the case of Peru while there has been a great deal of success in the consolidation and expansion of the government run Integrated Financial Management System which provides information to the public about government budgets and spending, the citizen side of the equation has lagged behind. One example of this is that the World Bank's Implementation Completion Report for PSRL II reveals that the much touted System of Social Vigilance "has not progressed as intended". The blame for this is placed on the fact that the Defensoría del Pueblo, which was supposed to coordinate the initiative, "has been without a designated chief executive for almost 3 years and appears to have lost the dynamism needed to play its expected role as promoter of transparency and social control".

However, the Defensoría was not the only actor supposedly responsible for designing the SIVISO. The "Task Force" put together for the project was made up of the Defensoría along with the Ministry of Finance, the World Bank and civil society groups. In addition, the Defensoría does not consist only of its chief executive, but employs thousands of Peruvians committed to defending human rights.

If the problem is three years old, why wasn't it dealt wiThearlier? Why weren't alternative partners identified who could push forward this community organization agenda? Overall, it appears that there has been a stronger commitment on the part of the government and the World Bank to strengthening the top-down and technical aspects of the accountability system than to engaging with the messier bottom-up elements of the system. Third, the existing social accountability initiatives still generally fail to link themselves up to the legal structure. With the exception of

Indonesia, all of the cases ignore legal recourse as a central strategy and thereby fail to fully conceive of service providers as duty holders.

For instance, the Bangalore Report Card conceptualizes the problem with public services as one of incentives looks to convince or "nudge" public servants to change their ways. The obligation that service providers have to perform well is not emphasized either in the survey or in the dissemination of the information. In Malawi there is a similar problem.

The LIFH programme does not explicitly understand service providers as duty-holders. Shah admits as much when she claims that "interestingly, the pilot process has led the partners towards a rights-based approach without actually discussing any 'rights' *per se*". This is especially worrisome given the fact that there already exists a charter of citizens´ health rights in Malawi.

Shah has argued that "maybe in the next 6-12 months these will be shared with the service users and providers in this project. This will be done only when the process has matured enough to handle new ideas from outside". Such a perspective seems to hold onto an artificial separation between what is "internal" and what is "external". If the right of citizens to adequate health care is not explicitly mentioned in the process it is difficult to imagine how one can speak of service-providers as duty-holders. The first step towards such a strategy is to inform the citizens of their rights and explicitly help them see public services as obligations which the government has towards them.

Overall, the Citizen Report Card methodology appears to be the social accountability initiative which is the farthest away from the fulfillment of the promise of the human rights perspective. The top-down nature of its organization and its firm commitment to conceptualizing the people as consumers greatly limits its ability to put human rights in action. This does not mean that report cards are ineffective or that they actively violate human rights. To the contrary, experience has shown that citizen scorecards are highly effective at improving government accountability and performance and that they can play an important role in complementing other initiatives which have strong human rights content.

The application of a full human rights perspective should not lead us to abandoning scorecards, or any of the other initiatives, but should encourage us to rethink their design and to go beyond them to implement other initiatives which more fully empower the people as citizens. The most positive case from a human rights perspective is the Justice for the Poor Programme in Indonesia.

The program's solid commitment to engaging citizens in a long term fight for justice and in synthesizing preexisting practices with legal recourse demonstrates that it has its feet solidly planted in the human rights perspective. The Peruvian case is particularly interesting because of the national reach of the programme. The Malawi case is the only one that involves outside agencies directly in the messy process of community organizing and mobilization.

The World Bank has thus far not explicitly endorsed a rights based approach to development. Nevertheless, the recent initiative to support a "Community of Practice on Social Accountability" within the World Bank is a crucial step in the right direction and pushes the institution towards many of the central themes of the human rights approach. Any agency that is interested in allowing such social accountability initiatives to flourish should more wholeheartedly endorse a human rights perspective. In this way social accountability entrepreneurs would be able to tap into a great diversity of

new practices and discourses which would greatly strengthen their initiatives.

Case Studies

This part explores four case studies of social accountability initiatives which have served as models for or are directly supported by the international development community: the Bangalore Citizen Report Card implemented by the Public Affairs Centre in India, the Malawi Community Scorecard implemented by CARE, the Justice for the Poor programme run by the World Bank in Indonesia, and the construction of a "System of Social Accountability" in Peru also supported by the World Bank. For each case we give a brief summary of the initiative and then explore how it can be considered to be an example of RBA.

The Bangalore Citizen Report Card

The use of citizen "report cards" is on the rise throughout the world. In recent years, report cards have been supported by the World Bank in Uganda, the Philippines and Peru. Beyond the World Bank, the methodology has been taken up by municipal residents in the Ukraine and numerous cities in India.

The experience that began this flurry of innovation is the report card originally organized by Samuel Paul in Bangalore, India in 1994, and then repeated in 1999 and 2003 by the Public Affairs Centre. The original motivation for the report card in Bangalore was the deficient provision of public services in the city.

This problem was widespread for most services. Transportation, telephone, electricity, water and waste disposal services were all profoundly unsatisfactory, especially in the poorest areas of the city. The hypothesis grounding the report card methodology is that the reason why the services are so poor is because government agencies are not enmeshed in an effective incentive structure. Many of the services are monopolies that are not exposed to the discipline of the market and all of them are run by an overloaded government that operates in the context of an outdated legal and regulatory system.

The report card methodology was therefore developed in order to expose government agencies to the "consumer feedback" they are lacking. As one report on the application of the methodology in the Philippines states, "The Filipino Report Card reflects a shift in thinking about Filipinos as clients rather than beneficiaries".

Samuel Paul puts the same point in a different manner:

- The 'take it or leave it' attitude one comes across—especially at the lower levels of the bureaucracy—is no doubt due to the fact that the government is the sole supplier of most services. This is in sharp contrast to the practice of seeking 'customer feedback' that is common in the business world, or at least among those who produce and sell goods in the competitive market place.

The guiding idea behind the methodology is to introduce market-type incentives to the functioning of government. Through the report card methodology, agencies can see how their performance changes from year to year as well as compare themselves to other agencies in a comparative, competitive dynamic similar to that imposed by the market.

This occurs through the independent action of a civil society organization and the power of information. As one PAC staff member has written, "the long term significance of [the report card] process is its message to the staff of government agencies that

citizens matter, their voice has to be heard and responded to, and that the process is neither temporary nor reversible".

Report cards have seven key phases:

- Identification of Scope, Actors and Purpose,
- Design of Questionnaires,
- Sampling,
- Execution of Survey,
- Data Analysis,
- Dissemination,
- Institutionalization.

Experience reveals that the three core elements which are most important for a successful initiative are:

- Technical expertise in the design, implementation and analysis of the report card,
- An active civil society that is willing and able to use the information provided in the report card to pressure the government for reform,
- Reform minded top public officials who are willing and able to use the information to implement changes in service provision.

In Bangalore the report card has played a crucial role in reenergizing public services. Specifically, nudged forward by the results of the report card, various agencies like the Bangalore Water Supply and Sewerage Board and the Bangalore Development Authority have initiated training programs to improve customer service skills of their staff.

The Bangalore Municipal Corporation has established a new, more transparent and less corrupt property tax system. The Karnataka Electricity Board has installed a system that facilitates bill collection through the use of mobile counters. In addition, in the year 2000, shortly after the release of the second report card, the Chief Minister of the state government where Bangalore is the capital created the Bangalore Agenda Task Force. This was an innovative effort to improve public services through the participation of civil society. The BATF institutionalized citizen voice by inviting civil society leaders to sit on its board of directors and implementing its own report cards evaluating the quality of public services. This initiative can be credited with much of the improvement in services in Bangalore that has taken place over the past decade.

When the PAC repeated the report card in 2003 it discovered that there had been a radical transformation in the evaluations of public services. While overall satisfaction levels had ranged between 5% and 25% in 1994, and between 16% and 67% in 1999, by 2003 they had skyrocketed to between 64% and 96%. Even the lowest ranking of 64%, given by the poorest households to the police department, is extremely high given the sensitive area it deals with. In addition, scores of 94% for the Bangalore Electric Company and 96% to the Transit Corporation amid middle class households are absolutely phenomenal.

It is difficult to attribute these changes and new programs exclusively to the report card. For instance, the radical change in public services experienced since 1999 occurred when the new minister had a strong majority in the legislature. Nevertheless, it is

clear that the implementation of the report card methodology has had a great deal to do with the improvement of the satisfaction scores registered between the three report cards. Samuel Paul has explained that there are three different ways in which the report card served as an important stimulant to change.

- First, it compensates for weak government selfmonitoring by providing information to agency heads about consumer satisfaction. This information is invaluable to reform minded public servants in so far as it allows them to best orient their efforts at agency re-engineering.
- Second, it creates a "glare effect" which pressures badly performing agencies to improve their performance and introduces competitive pressures into the management of all government agencies as heads constantly compare their performance to others.
- Third, report cards stimulate the organization and mobilization of society. The information gives civil society a solid basis on which to pressure for improved services and obliges government agencies to open themselves up more to the voice of clients. Viewed from a human rights perspective, the report card methodology clearly moves proaccountability reform in the right direction.

By forcing public servants to take into account the opinions of citizens the power relationship between bureaucrats and the people begins to shift. As we saw in the quote by Samuel Paul, report cards put the typical "take it or leave it" attitude of bureaucrats into question by demonstrating that they are not the only ones whose opinions or comfort matters. As citizens, the people have a right to express their opinions on the quality of the services the government provides and a right to know the general opinion of these services. The Bangalore Report card therefore strengthens the peoples' right to information and to freedom of expression.

As Paul has written elsewhere, The relevance of this tool for the poor cannot be overemphasized. It is difficult and costly for poor people to make their voice heard in powerful and large public agencies. Often their voice may not be correctly represented by their leaders or even mediating organizations. The survey methods used by report cards permit the poor to make their voice heard directly an with minimal bias. Report card findings can empower the poor by giving them information that they can use in their interactions with service providers.

It is important to point out that report cards also have some important weaknesses when viewed from a human rights perspective. They do not put citizens directly in charge of their own development; they are designed by NGOs, often applied by market research firms and do not automatically give citizens access to any new government information about how public services are run.

In and of themselves, the use of report cards does not necessarily link up to a human rights approach to development. Nevertheless, the use of citizen report cards can play a crucial role in the implementation of a human rights approach. When report cards are linked up to capacity building initiatives in civil society, widespread dissemination of information and hard nosed advocacy work, the human rights potential of report cards is multiplied a manifold.

When grassroots groups are involved from the very beginning of the process we are even closer to fulfilling the promise of the human rights approach to development. As Paul has written, "though a report card on public services can be conducted as a

technical exercise, the dissemination and advocacy work to follow will benefit a great deal if concerned civil society institutions are involved in the process from the start". The original 1994 Report Card was much more of a "technical exercise" than the following ones.

In 1994 PAC held a press conference and spread the results widely through the media. But in 1999 and 2003, in addition to organizing a large press conference the Centre also presented the results directly to top public officials and organized a series of public meetings at which citizens and bureaucrats could discuss and anlayse the results as well as start to design strategies for change. In addition, in a follow-up report card applied specifically to users of Maternity Homes run by the Bangalore Municipal Corporation, PAC became directly involved in designing possible solutions to the problems uncovered by the survey.

As A. Ravindra writes, "a progression in the influence of the report card can be seen to move from limited impact to more impact to greater impact corresponding to the reactive, proactive and reformist roles of the PAC over a period of time".

Community Scorecards in Malawi

The community scorecard methodology is inspired by the experience of the citizen report cards applied in Bangalore and elsewhere, but includes various new innovations. First, while citizen report cards are run by professional NGOs and consulting firms, community scorecards are developed and applied by the service users and service providers.

Second, while citizen report cards are oriented principally towards providing and disseminating information on public opinion, the central objective of community score cards is to make decisions and develop action plans. The community scorecard methodology was first developed in communities surrounding the Chileka and Nthondo Health Centers in Malawi by CARE through its Local Initiatives for Health project in 2002. In Malawi there is a long history of deficient provision of health care services to the poor.

The central objective of the project is to improve the provision of health services to the rural poor through the empowerment of the user community. Since 2002 the methodology has been expanded to many more health centers as well as "scaled up" to the district level. The model applied in Malawi includes four basic elements. First, facilitators organize community meetings with villages surrounding the specific health center to be evaluated. These meetings are organized and run in close coordination with village leaders and particularly with the members of the Local Health Committees which are made up of citizens concerned about the state of health care in the area.

The meetings in the first villages were facilitated by CARE staff with the idea of training community leaders to run them themselves. Later meetings were run by the trained community leaders with only occasional support from CARE staff. At these meetings the participants are asked to talk about their health problems, their access and use of health services and their opinions of the health center under evaluation. The facilitator then works to help the participants design a list of indicators that can be used to evaluate the health center. In the case of the Chikuzamutu and Ndevu clusters surrounding the Chileka health center the communities together generated a total of 22 indicators.

Finally, the participants are asked to rank the performance of the health center

along each one of the indicators. In this case the communities used a 1-100 scale. Representatives from each village then get together at the "cluster" level of various villages and prepare a collective scorecard which takes into account the concerns of the community as a whole. Second, the staff at the health clinic goes through a similar process. They are asked to discuss the present situation at the clinic, develop a series of indicators and rank their performance along these indicators.

In the Malawi case the indicators and the evaluations of the clinic workers were very similar to the indicators and evaluations developed by the community members. Third, an "interface meeting" is organized where community members and clinic staff present their respective scorecards, compare the outcomes and try to work together to design solutions to the common problems identified.

In the Malawi case the action plans that arose from the interface meetings emphasized various ways in which service could be improved by changing the behaviour of the health center staff, providing information to service users, administrating resources better and increasing the amount of resources available to the health center. Fourth, the action plans need to be implemented and followed-up. In Malawi a second scorecard was implemented six months after the first one in order to see how much of the action plan had been fulfilled and to develop a new plan for the following six months. The central issues included in the second action plan and also indicates which of the elements of the first action plan had already been initiated or accomplished by the time of the second interface meeting.

There is evidence that there was significant improvement in the service of the health center between the two scorecard processes and that most of this improvement can be attributed to the implementation of the community scorecard. Almost all of the indicators received higher scores in the second scorecard and there was quite significant improvement particularly in the areas of "respect for patients", "listening to patients' problems", "honest and transparent staff", "giving priority to serious cases", "no discrimination in providing supplementary nutrition", and "no preferential treatment". From a human rights perspective the Community Scorecard methodology represents a significant improvement over the Citizen Report Card strategy.

Unlike the experience in Bangalore, the Malawi process was truly citizen run and "bottom-up". The community is involved from the beginning to the end of the process and is encouraged to directly participate in the design of solutions and the oversight of compliance. In addition, since the scorecards are designed and implemented by the service users themselves in an open community meeting there is much greater room for them to discuss issues beyond simply their "satisfaction" with a particular service.

There is an opportunity for them to discuss the fundamental right itself, their health, and the reasons for why it is as it is and they are not limited exclusively to evaluating the performance of service providers. Indeed, CARE explicitly claims that the implementation of the community scorecard falls within a "rights based framework" which, for them, implies the principles of "access to information", "participation in decision making process", "accountability", "transparency", "equity", and "shared responsibility".

The strength of the community scorecards in terms of human rights is therefore the area of "bottomup participation". The scorecard methodology builds on previously existing community organizations by working with village leaders and with the

members of the Local Health Committees.

It also encourages the expansion of participation, as evidenced by the differences between the proposals in the first and the second action plans. As Shah writes, "while the first scorecard, and the action plan, stressed the behaviour and attitude of the health centre staff...the second action plan seems to focus more on the quality of services provided by the health centre". She then continues on to argue that the participants "may be testing the process for what it can deliver...Once they gain some confidence in the process, and see some positive outcomes, they may attempt the more difficult and complex issues".

This is an extremely positive outcome indeed and is a clear indicator of community empowerment. In addition, over the past two years the LIFH project has developed a district level model and has even begun to explore possibilities for scaling up the methodology to the national level. At the district level, authorities have now started to involve the local health facilities in the annual planning and budget formulation process. In this way citizen participation and empowerment has begun to filter up to the broader level of policy making.

At present, "local level action plans now feed into the district level planning and monitoring process. Results from the local level scorecards have not only been discussed and used at the health facility level, but there have been opportunities for the different communities and service providers to meet and share experiences at various fora".

This incremental expansion of the project is crucial in so far as it helps overcome the "localism" often present in participatory initiatives. The community scorecard initiative is an excellent example of a rights based approach to development in action. It breaks with many of the problems identified with citizen report cards and promises to lead to the very real empowerment of the users of public services. Indeed, there is no reason why such a strategy should be limited to small rural areas.

Similar mechanisms can be used just as effectively in highly urbanized settings and at the district or national level. This scaling-up as well as the institutionalization that would necessarily go along with it represent the two principal challenges to the future consolidation of the community scorecards as an example to follow.

Justice for the Poor Programme in Indonesia

The Justice for the Poor programme represents a highly innovative effort to make justice work in the developing world. The Indonesian justice system has recently emerged from almost forty years of an "integralist State" under Sukarno's New Order government, where the lack of a true separation of powers severely undermined the autonomy and the strength of the judicial branch.

"The New Order government homogenized, co-opted and corroded many of the informal institutions through which people resolved disputes and defended their interests, putting in their place a powerful, centralized bureaucracy backed by a strong military". As in many places in the world both North and South, the Indonesian people have learned to distrust judges, prosecutors and the police. These figures are thought of as working either in their own personal interests or in the interests of the powerful, instead of justice or the public interest. As one village leader expressed in an interview with World Bank staff, "our legal system is like a spider's web; if it's a little insect that flies past it will be caught, but if it's a bird that comes along, it will just break the web".

The Indonesian government has recently showed some signs of interest in implementing national level reforms that look to professionalize and strengthen the judicial branch, captured in the Supreme Court's recently released "Blueprints for Legal Reform". Such reforms include changing the recruitment, selection, promotion and transfer policies for personnel who work in the justice system, including the police force, the prosecutor's offices and the courts. In addition, the government has talked about increasing salaries, expanding operational funds and improving decaying infrastructure.

Such technical solutions are crucial to strengthening the judicial system and making it more autonomous and effective. Nevertheless, the World Bank's Justice for the Poor initiative is based in the conviction that such reforms are not enough. The "demand side" for justice also needs to be strengthened. Individuals, communities and civil society at large need to be empowered both to use the judicial system to resolve their disputes and to oversee the judicial system to assure that it functions well.

In addition, the initiative looks beyond the formal judicial system to explore how "informal" justice institutions work. These other institutions are "informal" in so far as they are spaces where disputes are resolved outside of the law. Nevertheless, they are often quite structured and effective at reaching definitive solutions to problems. Examples include the local village governments, semi-official forums set up by development projects and the more traditional adat institutions.

The programme therefore takes a multi-dimensional perspective on the situation of access to justice in Indonesia. Its central purpose is "to develop a sub-national justice reform and dispute-resolution strategy to improve poor people's access to justice institutions and the likelihood of a just outcome from them".

The focus is on "the social institutions that underlie a society of law" instead of on the technical aspects of judicial reform. The central conclusion of the program's first major study is that the mobilization of civil society is the most important factor that determines whether disputes are resolved in an effective fashion. This goes for both informal and formal dispute resolution mechanisms.

"The crux of the findings was that although power and institutional history still largely shaped how village communities handled disputes, how justice institutions responded and how cases were resolved, community mobilization and external interventions were able in some circumstances to break the institutional impasse and enable poor communities to defend their interests successfully". Power and empowerment are at the center of this study. Cases are only resolved successfully when power imbalances are explicitly challenged through the use of extra-institutional mobilization.

For instance, it is not enough to simply provide technical legal aid for communities or individuals looking to use the legal system. The most effective legal aid is that which is conceptualized as part of a "broader community advocacy effort". "Legal empowerment efforts should target concrete cases and use them as opportunities for integrated activities: providing legal assistance, mobilizing socially and fostering links to civil society institutions to monitor the legal system". In addition, the study points out that informal mechanisms are most effective when they are backed up by a strong legal system. We should not romanticize the effectiveness of informal, communitybased forms of dispute resolution. "Community leaders in all the cases that were resolved informally employed some threat of legal sanction, whether direct or indirect: the threat

of legal sanction was used as a means to improve informal bargaining power". In other words, "informal negotiations take place in the 'shadow of the law'. In cases where the courts are strong, informal negotiation should be strong.

Where the courts are weak, informal negotiation will often be weak". In sum, this study successfully deconstructs the typical dichotomy between strong states and strong societies. Here we have a clear example of "state-society synergy" in action. State institutions like the justice system are most effective when civil society is mobilized and social institutions such as informal dispute mechanisms are most effective when the state can back them up with credible threats of justice. The study therefore concludes that one of the most effective strategies for reforming the justice system in Indonesia is through bottom up community empowerment.

"Formal legal improvements should focus not just on systemic improvements to the legal system, but on providing the information and facilitation that villagers need to access it, linking them with civil society groups and media, and helping them to monitor it. They should also be conceived as part of a broader effort at community empowerment". This of course does not mean that the national political debate is unimportant. As the World Bank itself points out, "the problems to be tackled through the Justice for the Poor programme are national institutions that operate at the local level, not local problems".

Nevertheless, "building up pressure from the bottom and a track record of using the legal system successfully is expected to move the overall national governance agenda forward". To advocate for justice reform does not necessarily imply taking up a rights based perspective. Indeed, most justice reform programs are designed in an entirely technical, top-down fashion. Although the results of such programs, if successful, almost inevitably imply an improvement in the defence of the rights of the population, this does not mean that the programs themselves are designed from a rights based perspective. Fortunately, the Justice for the Poor programme takes a rights based approach. First, "service providers" are clearly conceptualized as duty-bearers. This applies both to those who are responsible for running development projects and for those who work in the justice system. On the one hand, the initial study focuses on cases of corruption in World Bank funded programs.

Fourteen out of the seventeen cases explored are of this nature. This emphasis on corruption clearly arises out of a rights based approach which emphasizes that development funds are not the property of those who administer them, but of the public at large. The community is therefore within its rights to protest against malfeasance. Legal recourse is eagerly encouraged.

On the other hand, the emphasis is on the duty of the justice system to respond to the public interest. The police, the prosecutors and the judges are not kindly asked to behave in an institutional and objective manner, but are required to do so through the pressure of civil society. Justice is clearly conceptualized as a right, not as a gift that comes down from high. Second, "bottom up" participation is given a high value. The emphasis on taking "informal" village institutions for dispute resolution seriously demonstrates a careful sensitivity to previously existing practices. "Villagers whose lives are so strongly bond by relationships of trust and reciprocity are thus reluctant to solve many kinds of disputes through litigation or criminal prosecution, which are by nature adversarial and deliver win/lose outcomes that are seen to be at odds with the demands of village life".

In addition, proposals like the establishment of village tribunals or "conciliation councils" that would give formal recognition to local organic dispute resolution mechanisms also show a committed interest in building from the ground up. Finally, the recommendation that "one of the most effective ways for donors to ensure that their interventions are made relevant to villagers' interests is to use pre-existing projects at the local level as avenues for legal empowerment interventions" also shows a clear commitment to a bottom-up understanding of participation. The participation envisioned by the programme is also clearly expansive in nature.

The idea is not simply to get some cases resolved, but to mobilize society so that it is able to better resolve its own cases and pressure the judicial system to function better in the long run. For instance, the report argues that "the most successful case leaders were those who were able to build coalitions with civil society organizations to place scrutiny on the legal system while mobilizing a range of institutions—each with its own stake in seeing the cases resolved, such as the World Bank or local government—around the cases at hand".

In general, power is at the center of the Justice for the Poor initiative. The programme looks to compensate for power imbalances both within the formal justice system and within the communities.

"Shame" and social pressure are often not enough. Legal action and social mobilization are key elements in any pro-accountability initiative grounded in a human rights perspective since they are some of the few instruments that actually check the influence of powerful elites. The programme is presently only at the preparatory stage. Nevertheless, the approach being taken in the preparatory studies holds great promise for the future implementation of a full human rights approach to development.

Peru's Social Accountability System

After the fall of the Fujimori government in September 2000 Peruvian society was thirsty for both greater accountability and expanded democracy. The corruption scandals that brought down the president left the population with a profound distrust of government and Fujimori's heavy handed style of rule had limited the democratization of the Peruvian state.

It was therefore natural for Paniagua's transition government, and Toledo's government afterwards, to emphasize accountability and citizen participation in their attempt to reconstruct government legitimacy.

As the World Bank argues, "governance in Peru was long characterized by its lack of popular participation and transparency, either in the design or in the implementation of public programs.

By the end of the 1990s, however, transparency, participation and social control had become strongly asserted priorities of the country's citizens". One of the most important initiatives taken during the transition period in 2001 was the creation of Mesas de Concertación para la Lucha Contra la Pobreza.

These "Round Tables for Attacking Poverty" brought together government officials with representatives of civil society to design social policies to combat poverty. The objective of the Mesas was to "institutionalize the participation of civil society in the design, decision-making and control of poverty-related programs". Half of the Executive Committee of the MCLCP consisted of civil society representatives and a central element of the Carta Social that emerged from the discussions was the active

participation of civil society organizations in the planning and monitoring of local development programs.

These Mesas built on the experience of the national Poverty Forum which had been held each year between 1998 and 2000 in which over 250 representatives from governments, donors, NGOs and the academia participated. Shortly afterwards, in 2002, building on the experience with the Mesas, national development goals were put together and then formalized in a National Agreement. This agreement involved seven national parties, the church, industry, business sector and labour unions committed to the agreement.

The National agreement includes four strategic areas:

- Institutionalization of democracy,
- Social equity and the fight against poverty,
- Competitiveness,
- Anti-corruption.

Beginning in 2001, the government also launched an ambitious decentralization programme. It created regional administrations as a new level of government and began to transfer a significant amount of resources to these sub-national units. Simultaneously, it involved the regions in a participatory budget experiment which led to wide ranging public discussions about the priorities for public investment. As a result, 22 out of the 24 regions formulated "concerted plans" and participatory budgets for 2003. Indeed, "40 per cent of the regions completed participatory budgets with support from all of the public regional administrations, all mayors, and the principal civil society organizations".

Felicio and John-Abraham point out that future plans include:

- Training local and regional authorities to formulate concerted plans and participatory budgets,
- Constructing a legal framework to establish a stable institutional environment and,
- Updating plans and participatory budgets for the upcoming national budgets.

Other initiatives include the strengthening of community participation in the management of local health clinics through the expansion of the Comunidades Locales de Administración de Servicios de Salud. One of the benchmarks for the first stage of the Programmatic Social Reform Loan that the World Bank extended to Peru beginning in 2001 was the expansion of the proportion of the public primary clinics under the CLAS arrangement from 15 to 20%.

In addition, under this loan a "Task Force" was created between the Ministry of Finance and the national Ombudsman to "recommend measures for building the capacity of beneficiaries/grass roots organizations to utilize proactively budget information that will be increasingly available to the general public".

Finally, the Ministry of Education has begun to open itself up more to public participation. On January 13, 2001 the ministry launched a new Comisión para un Acuerdo Nacional por la Educación which includes representatives from civil society, academia, the teachers' union and industry. These "bottom-up" initiatives have been joined with other equally important "top-down" initiatives to form an emerging "system of social accountability" in Peru. For instance, the ministry of finance has updated its

"Integrated Financial Management System" to include budget information on all three levels of government and made its internet site much more user-friendly and easily accessible by civil society organizations.

Indeed, facilitating public access to this information was an important benchmark for the first stage of the World Bank loan and a "trigger" for the second stage of the loan. As the World Bank states, this "information and data will help beneficiaries, NGOs, civil society and others to exercise social control over social programs by allowing them to verify whether programs are actually spending resources in those areas where they claim to be, whether geographic targeting is appropriate, and whether there appears to be any politically-motivated use of social expenditures".

Finally, the National Statistics and Information Institute was granted greater autonomy and strength and questions regarding public perceptions about government transparency have been included in the National Household Survey applied throughout the country.

Jointly with other donors the World Bank has supported the emergence of this system mainly through a Programmatic Social Reform Loan divided into three parts, initiated in 2001 and continuing through today, for which strengthening social accountability mechanisms has been a central element. The objective of the accountability aspect of the loan is the depoliticization of social spending, the elimination of corruption and the improvement of targeting of social programs. "Transparency regarding allocations, expenditures, and the on-the-ground operation of poverty alleviation programs is important to facilitate appropriate targeting, prevent any politicallymotivated use of expenditures, and eliminate corruption".

The other areas of the loan have focused on safeguarding critical social expenditures during a period of economic transition and crisis, improving the articulation and coordination of social policy, facilitating the access of the poor to social programs, and rationalizing of social expenditures. During the second period of the loan these diverse areas were reorganized into three "pillars" of social reform: the "dignity" pillar which shifts government spending towards the basic needs of the poor, the "equity" pillar which expands coverage of health and education programs, and the "institutionality" pillar whose central objective is to improve transparency and social control over resources. In sum, with this loan the World Bank seeks to apply a "partnership approach to policy formulation".

The World Bank explains that this is so important because "at this critical time in Peruvian history, the role of civil society organization in promoting constructive open debate and exercising social control over the use of scarce public resources becomes even more relevant.

New voices and groups are beginning to emerge during this transition period in the country, such as groups led by young professionals, youth organizations, and local committees". People often mistakenly think that social accountability mechanisms are only practical or effective at the local level of communities or neighbourhoods. When we think of such mechanisms the first images that tend to come to mind are small, face to face community meetings in rural areas or, at the very largest, participatory budgeting at the level of city governments.

The Peru case is so important because it shows how social accountability can also be an effective strategy at the national level. The broad based nature of the initiative immediately moves it closer to a human rights perspective.

For instance, one test for whether a project sees the people as citizens, beneficiaries or consumers, is to evaluate whether the participants are encouraged to look beyond localistic and immediate concerns. The Mesas de Concertación and the participatory process for the formulation of the 2003 national budget are national efforts which involved society at large in discussing the future of the country as a whole.

As a result, they necessarily tapped into the full capacities of the population as citizens, not only as beneficiaries or consumers.

The fact that the concept of citizenship and rights as the basis of social policy is explicitly drawn into the Peruvian government's policy framework is also a positive sign. "The main objective of social policy is to generate conditions of equity where the population will have access to more opportunities that will allow them to reach an acceptable standard of living. This implies access to basic goods to satisfy their essential needs, wiTheffectiveness, efficiency and adequate quality, and with the ultimate purpose of raising their productive capacities and assets. This will allow a sustained promotion of economic growth and fostering of human and citizenship rights". The participatory mechanisms also have a healthy dose of "expansiveness".

Participation is not limited only to information provision and protest. The involvement in participatory budgetary processes and the design of a new community based mechanism for social control, the SIVISO, show that there has been a clear commitment to expanding citizen participation beyond just its "watch-dog" function of oversight and towards a more full involvement with decision making as well. For instance, the Peruvian government clearly states that "a fundamental component of the [social development] strategy will be promotion of the population's active participation, not only to exercise control over the direction of social expenditure, but also to involve them gradually in the process of local management of the resources related to the development of social policies and the decentralized provision of basic social services".

Overall, the Peru case is extremely important in so far as it challenges pro-accountability reformers to think about innovative ways to tap into the dynamism of civic engagement at the national level. It obliges us to think about truly expansive participation in which the population is understood as a "partner" to development, as full citizens with a say equal to that of government bureaucrats and politicians.