

Human Rights and Development

Human Rights and Development

Towards Mutual Reinforcement

Edited by

PHILIP ALSTON
and
MARY ROBINSON

This volume was prepared in collaboration with the
Center for Human Rights and Global Justice
New York University School of Law

OXFORD
UNIVERSITY PRESS

OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi
Kuala Lumpur Madrid Melbourne Mexico City Nairobi
New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece
Guatemala Hungary Italy Japan Poland Portugal Singapore
South Korea Switzerland Thailand Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press
in the UK and in certain other countries

Published in the United States
by Oxford University Press Inc., New York

© The Various Contributors, 2005

The moral rights of the authors have been asserted
Database right Oxford University Press (maker)

Crown copyright material is reproduced under Class Licence
Number C01P0000148 with the permission of OPSI
and the Queen's Printer for Scotland

First published 2005

All rights reserved. No part of this publication may be reproduced,
stored in a retrieval system, or transmitted, in any form or by any means,
without the prior permission in writing of Oxford University Press,
or as expressly permitted by law, or under terms agreed with the appropriate
reprographics rights organization. Enquiries concerning reproduction
outside the scope of the above should be sent to the Rights Department,
Oxford University Press, at the address above

You must not circulate this book in any other binding or cover
and you must impose the same condition on any acquirer

British Library Cataloguing in Publication Data
Data available

Library of Congress Cataloging in Publication Data

Human rights and development: towards mutual reinforcement / edited
by Philip Alston and Mary Robinson; Center for Human Rights and Global Justice,
New York University School of Law.
p. cm.

"Results from a conference held at New York University Law School in 2004,
at which drafts of most of the chapters were first presented"—Pref.

Includes bibliographical references and index.

ISBN 0-19-928461-X (hardback: alk. paper)—ISBN 0-19-928462-8 (pbk.: alk. paper)

1. Human rights—Developing countries—Congresses. 2. Social rights—Developing
countries—Congresses. 3. Economic development—Congresses. I. Alston, Philip. II. Robinson,
Mary, 1944— III. New York University. Center for Human Rights and Global Justice.

JC599.D44H82 2005

323'.09172'4—dc22

2005018242

Typeset by Newgen Imaging Systems (P) Ltd., Chennai, India
Printed in Great Britain
on acid-free paper by
Biddles Ltd., King's Lynn

ISBN 0-19-928461-X 978-0-19-928461-0 (Hbk.)
ISBN 0-19-928462-8 978-0-19-928462-7 (Pbk.)

1 3 5 7 9 10 8 6 4 2

Preface

This book results from a conference held at New York University Law School in 2004, at which drafts of most of the chapters were first presented. The conference was the result of a joint initiative by two co-sponsors. The first was Realizing Rights: The Ethical Globalization Initiative (EGI), founded by Mary Robinson, and devoted to promoting a more ethical and equitable globalization process through dialogue, research, and concerted action. The second co-sponsor was the Center for Human Rights and Global Justice at New York University Law School, one of the principal aims of which is to generate high quality research into the relationship between human rights and the global economic system.

In preparation for the conference Mary Robinson consulted with James Wolfensohn, President of the World Bank group, who was extremely supportive and agreed that it would be helpful if a significant number of senior Bank officials could contribute papers, and participate in the discussions. One of the Bank's Managing Directors, Mamphela Ramphele, and her adviser, Alfredo Sfeir-Younis, then joined Mary Robinson and Philip Alston in identifying the topics and the speakers who were invited to present papers to the conference. Speakers included a range of leading scholars, as well as representatives from key international organizations including UNICEF, the International Monetary Fund, the Office of the High Commissioner for Human Rights, and the Inter-American Development Bank. NGO participants included speakers from Human Rights Watch, Amnesty International, and World Vision International. Participants from the World Bank, in addition to James Wolfensohn and Mamphela Ramphele, included Peter Woicke, Executive Vice-President of the International Finance Corporation, Jean-Luis Sarbib and Roberto Dañino, both senior Vice-Presidents, and Gobind Nankani, Ian Goldin, and Meg Taylor, all of whom are Vice-Presidents of the Bank. The Chairperson of the Bank's independent Inspection Panel, Edith Brown Weiss, and the Compliance Advisor/Ombudsman from the International Finance Corporation, Meg Taylor, also participated.

We are grateful to NYU Law School, and especially its Dean, Richard Revesz, for financial and other support for the conference. In addition the World Bank facilitated the participation of a number of participants from developing countries. In the design of the conference, Scott Jerbi and Françoise Torchiana, both from EGI, and Tish Armstrong from NYU all provided very helpful advice, as did Alan Whaites of World Vision International.

The organization of the conference was undertaken almost entirely by Tish Armstrong, of the Center for Human Rights and Global Justice, who did a superb job. Smita Narula, Executive Director of the Center, and

Meg Satterthwaite, its Research Director, also contributed a great deal to the successful outcome of the conference.

Finally, we owe a debt of gratitude to Nehal Bhuta for his first-rate work in preparing the papers for publication.

Philip Alston and Mary Robinson
New York, January 2005

Contents

<i>Notes on Contributors</i>	x
<i>List of Tables</i>	xiii
<i>List of Figures</i>	xv
<i>Abbreviations</i>	xvi

1 The Challenges of Ensuring the Mutuality of Human Rights and Development Endeavours <i>Philip Alston and Mary Robinson</i>	1
2 Some Reflections on Human Rights and Development <i>James D. Wolfensohn</i>	19
3 What Rights Can Add to Good Development Practice <i>Mary Robinson</i>	25

A. The Economics of Social Rights

4 Democracy and the Right to Food <i>Jean Drèze</i>	45
5 Social Rights and Economics: Claims to Health Care and Education in Developing Countries <i>Varun Gauri</i>	65

B. Land Rights and Women's Empowerment

6 The Properties of Gender Equality <i>Kerry Rittich</i>	87
7 The Development Impact of Gender Equality in Land Rights <i>Karen O. Mason and Helene M. Carlsson</i>	114
8 Women's Property Rights Violations in Kenya <i>Janet Walsh</i>	133

C. Child Labour and Access to Education

9 Child Labor, Education, and Children's Rights <i>Gordon Betcherman, Jean Fares, Amy Luinstra, and Robert Prouty</i>	173
--	-----

-
- | | | |
|----|--|-----|
| 10 | Child Labour, Education, and the Principle of Non-Discrimination
<i>Elizabeth D. Gibbons, Friedrich Huebler, and Edilberto Loaiza</i> | 201 |
| 11 | Human Rights and Public Goods: Education as a Fundamental Right in India
<i>Philip Alston and Nehal Bhuta</i> | 242 |

D. Reform of Legal and Judicial Systems

- | | | |
|----|--|-----|
| 12 | The Impact of Human Rights Principles on Justice Reform in the Inter-American Development Bank
<i>Christina Biebesheimer</i> | 269 |
| 13 | Less Law and Reform, More Politics and Enforcement: A Civil Society Approach to Integrating Rights and Development
<i>Stephen Golub</i> | 297 |

E. The Role of the Private Sector in Promoting Human Rights

- | | | |
|----|---|-----|
| 14 | Putting Human Rights Principles into Development Practice through Finance: The Experience of the International Finance Corporation
<i>Peter Woicke</i> | 327 |
| 15 | Human Rights and Governance: The Empirical Challenge
<i>Daniel Kaufmann</i> | 352 |
| 16 | Transnational Corporations as Instruments of Human Development
<i>Olivier de Schutter</i> | 403 |

F. Building Human Rights into Development Planning Processes: The PRSP Exercise

- | | | |
|----|---|-----|
| 17 | Poverty Reduction Strategy Papers within the Human Rights Perspective
<i>Frances Stewart and Michael Wang</i> | 447 |
| 18 | Human Rights and Poverty Reduction Strategies: Moving Towards Convergence?
<i>Gobind Nankani, John Page, and Lindsay Judge</i> | 475 |

-
- 19 Human Rights, Poverty Reduction Strategies, and the Role of
the International Monetary Fund 498
Mark W. Plant

G. The World Bank and Human Rights

- 20 The Legal Aspects of the World Bank's Work on Human
Rights: Some Preliminary Thoughts 509
Roberto Dañino

- Index* 525

Notes on Contributors

Philip Alston is Professor of Law at New York University Law School and Faculty Director of its Center for Human Rights and Global Justice. Since 2002 he has been Special Adviser to the UN High Commissioner for Human Rights on the Millennium Development Goals.

Gordon Betcherman is a Senior Economist in the Social Protection Team at the World Bank working on areas including industrial relations, core labor standards, labor law, active labor market policies, and support for unemployed workers.

Nehal Bhuta was educated at the University of Melbourne and holds graduate degrees from NYU School of Law and the New School for Social Research, New York. He is currently working for Human Rights Watch in New York.

Christina Biebesheimer is Principal Specialist in the State, Governance and Civil Society Division of the Sustainable Development Department of the Inter-American Development Bank.

Helene M. Carlsson is a Gender Specialist in the World Bank's Gender & Development Group where she is involved in an array of issues associated with mainstreaming gender into the World Bank.

Roberto Dañino, a former Prime Minister of Peru, has been senior Vice-President and General Counsel of the World Bank and Secretary-General of the International Centre for Settlement of Investment Disputes since 2003.

Jean Drèze is Professor at the Centre for Development Economics, at the Delhi School of Economics.

Jean Fares is an economist in the Labor Markets group of the World Bank's Social Protection Team. He previously taught at the American University of Beirut.

Varun Gauri is an Economist in the Development Research Group (Public Services Team) at the World Bank.

Elizabeth D. Gibbons is Chief of Global Policy at UNICEF, working on human rights approaches to poverty reduction, and analytical tools and

advocacy strategies for placing children at the centre of social, economic, and juridical policies.

Stephen Golub teaches International Development and Law at Boalt Hall Law School of the University of California at Berkeley; serves as External Advisor to the UK Department for International Development on the portion of its governance website concerning Safety, Security and Accessible Justice; and consults for foundations, bilateral donors, multilateral agencies, and NGOs.

Friedrich Huebler works for the Strategic Information Section of UNICEF's Division of Policy and Planning. He specializes in the areas of education and child labor, with an emphasis on the analysis of data from household surveys.

Lindsay Judge is Consultant on PRSPs, Poverty Reduction Group, Poverty Reduction and Economic Management (PREM), at the World Bank.

Daniel Kaufmann is the Director of Global Governance at the World Bank Institute (WBI).

Edilberto Loaiza is a programme officer in the Strategic Information Section of the Division of Policy and Planning at UNICEF, New York. His work is mainly focused on education, child protection, and child mortality.

Amy Luinstra is a member of the Social Protection Team at the World Bank and specializes in labour issues.

Karen O. Mason is Director of Gender and Development of Poverty Reduction and Economic Management (PREM) at the World Bank and is the Bank's senior spokesperson on gender and development issues.

Gobind Nankani is Vice-President for Poverty Reduction and Economic Management (PREM), at the World Bank.

John Page is Director of the Poverty Reduction Group, Poverty Reduction and Economic Management (PREM), at the World Bank.

Mark W. Plant is Assistant Director, Policy Development and Review Department, at the International Monetary Fund.

Robert Prouty is a member of the Social Protection Team at the World Bank and specializes in education issues.

Kerry Rittich is Associate Professor at the Faculty of Law and the Institute for Women's Studies and Gender Studies at the University of Toronto.

Mary Robinson founded Realizing Rights: The Ethical Globalization Initiative in 2002. Previously she was President of Ireland (1990–1997), and UN High Commissioner for Human Rights (1997–2002).

Olivier de Schutter is Director of the Research Unit on Fundamental Rights (CRIDHO) at the Centre for Philosophy of Law, and Professor at the Law Faculty, at the Catholic University of Louvain.

Frances Stewart is Professor of Development Economics and Director, Centre for Research on Inequality, Human Security and Ethnicity at the International Development Centre, Queen Elizabeth House, Oxford University.

Janet Walsh is deputy director of the Women's Rights Division of Human Rights Watch. Previously she practised law at several international law firms and in the Legal Office of the United Nations in New York.

Michael Wang teaches in the Department of Economics at Oxford University.

Peter Woicke is the Executive Vice-President of the International Finance Corporation and a Managing Director of the World Bank Group.

James D. Wolfensohn was President of the World Bank for ten years until June 2005.

List of Tables

7.1	Distribution of landowners by gender, various countries, and years	119
7.2	Percentage change in selected household outcomes associated with a 10 per cent increase in borrowing: Bangladesh microcredit programs	129
9.1	International human rights instruments related to education and child labor	177
9.2	Children in economic activities, 2000	181
9.3	Gender distribution of child labor, children aged 5–14 years old, 2000	183
9.4	Distribution of children in Africa, by category of activity	184
9.5	Examples of policy approaches to address child labor and school attendance	188
9.6	Examples of managing risks that can lead to child labor	193
10.1	Adjusting child labour definitions for household chores	208
10.2	Child labour in sub-Saharan Africa, 25 countries, children 5–14 years	208
10.3	Data sources and country population	210
10.4	School attendance and child labour in sub-Saharan Africa (%), children 7–14 years	211
10.5	School attendance and child labour by background characteristics (%), 18 countries in sub-Saharan Africa, children 7–14 years	214
10.6	Variables in assessing school attendance	216
10.7	Summary of multivariate analysis in Table 10.A1: determinants of school attendance, children 7–14 years	216
10.8	School attendance in sub-Saharan Africa by gender (%), children 7–14 years	219
10.9	Summary of multivariate analysis in Table 10.A2: determinants of school attendance, girls 7–14 years	220
10.10	Summary of multivariate analysis in Table 10.A3: determinants of school attendance, boys 7–14 years	220
10.11	Levels of school attendance, repetition, and drop-out in sub-Saharan Africa (%), children 7–14 years	221
10.12	School attendance, repetition, and drop-out for 18 countries in sub-Saharan Africa (%), children 7–14 years	223
10.13	Variables for repetition or drop-out	224
10.14	Summary of multivariate analysis in Table 10.A4: determinants of grade repetition, children 7–14 years	224

10.15	Summary of multivariate analysis in Table 10.A5: determinants of dropping out of school, children 7–14 years	225
10.A1	Multivariate analysis (probit regression): marginal effects of the determinants of school attendance in 18 sub-Saharan countries, children 7–14 years	232
10.A2	Multivariate analysis (probit regression): marginal effects of the determinants of school attendance in 18 sub-Saharan countries, girls 7–14 years	234
10.A3	Multivariate analysis (probit regression): marginal effects of the determinants of school attendance in 18 sub-Saharan countries, boys 7–14 years	236
10.A4	Multivariate analysis (probit regression): marginal effects of the determinants of grade repetition in 18 sub-Saharan countries, children 7–14 years	238
10.A5	Multivariate analysis (probit regression): marginal effects of the determinants of dropping out in 18 sub-Saharan countries, children 7–14 years	240
15.1	Impact of civil liberties on project socio-economic rates of return: specification on independent variables	366
Annex 1:	Table A1 Cingranelli, Richards, and Webster's main variables	384
Annex 2:	Table B1 Voice and accountability	386
Annex 2:	Table B2 Political stability	388
Annex 2:	Table B3 Government effectiveness	390
Annex 2:	Table B4 Regulatory quality	392
Annex 2:	Table B5 Rule of law	395
Annex 2:	Table B6 Control of corruption	398
Annex 3:	Table C1 Simple word count of selected concepts in key human rights covenants and declarations	400
17.1	Countries in the PRSP process (April 2004)	451
17.A1	Checklist of reforms contained in PRSPs	472
17.A2	Poverty and macro-reform linkages	474
18.1	Participation in PRSPs (shown as percentage)	487

List of Figures

4.1 Average weight of Indian children at different ages	49
9.1 Child labor incidence and GDP per capita	185
9.2 High enrollments may not produce high completion rates	190
9.3 Distance and school attendance	190
9.4 GER and PCR annual growth: 1990–2002 (or most recent year)	192
10.1 Activity status, children 7–14 years	212
10.2 Child labour and school attendance in sub-Saharan Africa, children 7–14 years	213
10.3 Child labour and school attendance in sub-Saharan Africa, by household wealth, children 7–14 years	228
12.1 Confidence in the judiciary	275
12.2 Percentage of the public victimized by any crime in urban areas, by region, 1989–1996	277
12.3 Percentage of men and women victimized by violent crimes over five years in urban areas, 1991–1996	277
15.1 Human rights, first generation data trends	358
15.2 1GHR and 2GHR are highly correlated	362
15.3 Bolivia in-depth assessment—the perspective of the firm and of the public officials	368
15.4 Linking governance, corruption, and human rights	370
15.5 Governance matters for 2GHR	375
15.6 1GHR matters for controlling corruption and corporate ethics—civil liberties, rights of women, and control of corruption/ethics	377
15.7 Relating AIDS to other variables	380
18.1 Poverty diagnostics in full PRSPs	490

Abbreviations

ACIT	Academic Consortium on International Trade
ADB	Asian Development Bank
ADR	alternative dispute resolution
ALGs	Alternative Law Groups
APL	above poverty line
BITs	bilateral investment treaties
BMI	body mass index
BP	British Petroleum
BPL	below poverty line
BTC	Baku-Tbilisi-Ceyhan
CAO	Compliance Advisor/Ombudsman
CBO	community-based organization
CDC	Center for Disease Control and Prevention
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEE	Central and Eastern Europe
CEO	Chief Executive Officer
CESCR	Committee on Economic, Social and Cultural Rights
CFOs	Chief Finance Officers
CLE	clinical legal education
CRC	Convention on the Rights of the Child
CRS	Catholic Relief Services
CRWHUM	Cingranelli, Richards, and Webster Human Rights Codification
CSOs	Civil Society Organizations
CSR	Corporate Social Responsibility
DFID	Department for International Development
DFIDB	DFID Bangladesh
DG	democracy and governance
DHS	Demographic and Health Surveys
EBRD	European Bank for Reconstruction and Development
EFA	Education For All
EGI	Ethical Globalization Initiative
EMP	environmental management plan
EOS	Executive Opinion Survey
EPZs	export processing zones
EU	European Union
FDI	foreign direct investment
FGM	female genital mutilation

FSU	former Soviet Union
FTI	Fast Track Initiative
GAC	governance and anti-corruption diagnostics
GDP	gross domestic product
GER	gross enrollment rates
GPI	gender parity index
GRESEA	Groupe de recherche sur les stratégies économiques alternatives
HAART	highly active anti-retroviral therapy
HGAs	Host Government Agreements
HIPC	Heavily Indebted Poor Countries
IBRD	International Bank for Reconstruction and Development
ICCPR	International Covenant on Civil and Political Rights
ICDS	Integrated Child Development Services
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTV	International Confederation of Free Trade Unions
ICSID	International Center for the Settlement of Investment Disputes
IDA	International Development Association
IDB	Inter-American Development Bank
IELRC	International Environmental Law Research Centre
IFC	International Finance Corporation
IFES	International Foundation for Election Systems
IFIs	international financial institutions
IGA	Inter-Governmental Agreement
ILO	International Labour Organization
IMF	International Monetary Fund
INGOs	international NGOs
IPEC	International Program on the Elimination of Child Labor
I-PRSP	Interim Poverty Reduction Strategy Paper
LDCs	least developed countries
LRC	Legal Resources Centre
LTCs	Land Tenure Certificates
MAI	multilateral agreement on investment
MDGs	Millennium Development Goals
MICS	Multiple Indicator Cluster Survey (UNICEF)
MIGA	Multilateral Investment Guarantee Agency
MLIs	multilateral lending organizations
NACC	National AIDS Control Council (Kenya)
NAFRE	National Alliance for the Fundamental Right to Education
NAFTA	North American Free Trade Agreement
NAR	net attendance ratio

NGO	non-governmental organization
NNMB	National Nutrition Monitoring Bureau
NYU	New York University
OAS	Organization of American States
ODI	Overseas Development Institute
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PCR	primary completion rates
PDS	public distribution system
PIL	Public Interest Litigation
PISA	Program for International Student Assessment
PPAs	Participatory Poverty Assessments
PREM	Poverty Reduction and Economic Management
PRGF	Poverty Reduction Growth Facility
PROBE	Public Report on Basic Education in India
PRs	Poverty Reduction Strategies
PRSPs	Poverty Reduction Strategy Papers
PSIA	Poverty and Social Impact Analysis
RAPs	Resettlement Action Plans
RBA	rights-based approach
RDI	Rural Development Institute
ROL	rule of law
SDC	Swiss Agency for Development and Cooperation
SIDA	Swedish International Development Cooperation Agency
SSA	sub-Saharan Africa
SSAJ	Safety, Security, and Access to Justice
SUBIR	Sustainable Use of Biological Resources Project
TB	tuberculosis
TBP	Time-bound Programme
TNCs	transnational corporations
TRC	Truth and Reconciliation Commission (South African)
TRIMs	Trade-Related Investment Measures
UDHR	Universal Declaration of Human Rights
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCTAD	United Nations Conference on Trade and Development
UNCTC	United Nations Centre on Transnational Corporations
UNDP	United Nations Development Program(me)
UNESCO	United Nations Educational Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
USAID	United States Agency for International Development

WBES	World Business Environment Survey
WBI	World Bank Institute
WDR	World Development Report
WEF	World Economic Forum
WHO	World Health Organization
WTO	World Trade Organization
1GHR	first generation human rights
2GHR	second generation human rights

1

The Challenges of Ensuring the Mutuality of Human Rights and Development Endeavours

PHILIP ALSTON AND MARY ROBINSON

The focus of this volume is on ways in which the strengths, resources, and support of the international human rights and development communities can be mobilized in order to reinforce one another in their efforts to achieve shared goals. Endeavours to promote meaningful and productive linkages between the agendas of these two communities are hardly new. Indeed, one of the main achievements of the first World Conference on Human Rights, held in Teheran in 1968, was precisely its assertion that ‘the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development’.¹ Almost a decade later, in 1977, the UN Commission on Human Rights gave a new impetus to these efforts by proclaiming the existence of a human right to development.² That in turn led to the launching of a major push by developing countries to broaden the focus of international human rights debates to include a range of economic and other issues which had previously been considered to lie squarely and exclusively within the domain of the national and international development agencies.³

But debates in the United Nations and in other international fora do not necessarily translate into change on the ground, let alone within the different disciplines which need to adjust their working assumptions and methods in order to embrace, or at least accommodate, change. While the human rights

¹ The Proclamation of Teheran, para. 13, in *Final Act of the International Conference on Human Rights*, UN doc. A/CONF.32/41 (1968).

² Commission on Human Rights res. 4 (XXXIII)(1977).

³ For the next few years a debate raged around the pros and cons of the resolution—General Assembly res. 32/120 (1977). For some contemporary competing perspectives see various contributions in B. Ramcharan (ed.), *Human Rights: Thirty Years After the Universal Declaration* (Martinus Nijhoff, 1979).

community had recognized the need to engage with their development counterparts, they were not necessarily prepared to change their *modus operandi*. And, perhaps unsurprisingly, the latter group proved generally reluctant to engage in debates about international legal obligations and how to reflect the relevant norms in policies at the domestic and international levels. In the latter setting, the initial efforts to achieve some sort of practical integration of the issues came, in different ways and in response to different pressures, in the institutional arrangements dealing first with women and then with children. One of the most important of the policy initiatives during this period focused on gender mainstreaming, although it is important to note that this was not always pursued in terms of women's rights *per se*. Similarly, the impetus behind the Convention on the Rights of the Child, adopted in 1989, and the involvement of the UN children's agency UNICEF in the promotion of that Convention, led to measures designed to insinuate at least a part of the overall human right agenda into development activities as they related to children. Several of the chapters in this volume address the current state of the art in relation to these efforts.

In the mid-1990s the human rights community began to engage more directly and constructively with their counterparts working on development issues and a movement began to promote rights-based approaches to development.⁴ But it was not until Kofi Annan directed all UN agencies, in 1997, to contribute to the mainstreaming of human rights that a comprehensive effort began in that regard. Mary Robinson's appointment as High Commissioner for Human Rights later in the same year ensured that this important policy initiative would be given a major practical impetus and one of the results was the initiation of in-depth discussions with many of the principal UN agencies.⁵ Some of the results achieved in that context are noted below in Chapter 3.

But despite the very considerable progress made in recent years in terms of formal commitments to the mainstreaming of human rights there remains a great deal to be done. In his recent book, Peter Uvin presents a detailed and challenging evaluation of the role of rights-based approaches to development. One of the principal conclusions that he draws relates to the extent to which the embrace of a human rights approach by a development agency requires far-reaching change. In his view, the adoption of such an approach is:

a radical affair . . . demanding profound changes in choices of partners, the range of activities undertaken and the rationale for them, internal management systems and

⁴ P. Alston, 'The Rights Framework and Development Assistance', 34 *Development Bulletin* (Australia), August 1995, p. 9.

⁵ See e.g. M. Robinson, *Bridging the Gap between Human Rights and Development: From normative principles to operational relevance*, World Bank Presidential Lecture, Washington, 3 December 2001.

funding procedures, and the type of relationships established with partners in the public and non-governmental sectors.⁶

And the challenge is rendered all the more difficult by the continuing compartmentalization of responsibilities in the development domain. This point was emphasized in the 2004 report submitted to the UN Secretary-General by a 'High-level Panel on Threats, Challenges and Change' which explored the major challenges to the UN system in the years ahead. They noted that '[i]nternational institutions and States have not organized themselves to address the problems of development in a coherent, integrated way . . .'. The approaches of the former were said to 'mirror the fragmented sectoral approaches of Governments'.⁷

The challenge of mainstreaming or of ensuring a human rights-based approach to development is thus clearly on the international agenda, but it has to be acknowledged that there is a very long way to go before such approaches become the norm. And as Christina Biebesheimer observes in this volume, there is a great deal more that the human rights community can do in terms of developing more practical and applied approaches to demonstrate how human rights dimensions can best be integrated into work being done on many of the key challenges that confront those seeking to promote human development.

The aim of this volume is precisely to facilitate a dialogue between development and human rights practitioners and to contribute, both in conceptual and practical terms, to moving the debate forward. Rather than engaging in the type of abstract or polemical approaches which have so often been adopted in the literature dealing with these issues, the focus is on six very practical and quite specific sets of issues. They are (a) the economics of social rights; (b) land rights and women's empowerment; (c) child labour and access to education; (d) reform of legal and judicial systems; (e) the role of the private sector in promoting human rights; and (f) building human rights into development planning processes.

We turn now to a brief review of the different contributions to the book.

1.1 PROMOTING MUTUAL REINFORCEMENT: INTRODUCTORY ESSAYS

The nature of some of the challenges confronting efforts to ensure that the human rights and development agendas really can be mutually reinforcing are elucidated in the first part of the volume by two of the key players in the

⁶ P. Uvin, *Human Rights and Development* (Kumarian Press, 2004).

⁷ United Nations, *A More Secure World: Our Shared Responsibility*, Report of the High-level Panel on Threats, Challenges and Change (New York, United Nations, 2004), para. 55.

international debate, James Wolfensohn, as former World Bank President, and Mary Robinson, as former UN High Commissioner for Human Rights. Wolfensohn begins by acknowledging that the debate is one ‘that I’ve never fully understood’. Nevertheless, by undertaking a systematic review of some of the key provisions of the Universal Declaration of Human Rights and the two International Covenants on Human Rights he concludes that this normative base could easily have provided ‘the framework which led [the World Bank] to the poverty reduction strategy approach, or the comprehensive development framework’.⁸ And he observes that a good many of the World Bank’s other initiatives in relation to issues such as addressing the plight of the Roma Peoples of central and eastern Europe, or the role of culture in development, could equally well have been approached through a human rights lens.

Wolfensohn notes, however, that to some of the governments who constitute the Bank’s shareholders ‘the very mention of the words human rights is inflammatory language’. And so in order to avoid controversy the Bank has opted in the past to ‘talk the language of economics and social development’.⁹ He notes, encouragingly, that the Bank had been unable or unwilling to talk about the issue of corruption when he first became President and that this has since changed dramatically. In the same spirit, he suggests that ‘maybe we now need to mention the “R” word which is “rights”. And, maybe . . . we will talk much more about rights as we move forward.’ At the end of his remarks he states that the Bank is ‘deeply committed to trying to clarify the role of rights in development’. Finally he concludes by emphasizing that both the human rights and development communities share a common enemy of indifference to the plight of poverty in the world, to the neglect of the Millennium Development Goals, and to the spiralling levels of military expenditure in the world. The two communities need to join together to tackle those issues.

Mary Robinson begins her chapter by surveying the situation of global poverty and some of the factors that have exacerbated it. She then considers some of the positive developments in recent years which have seen greater attention paid to human rights issues in development discussions. They include efforts by various UN agencies to consider how they might incorporate a stronger human rights dimension in their work, leading to the adoption of a Common Understanding on the application of a rights-based approach. In addition, various bilateral development assistance programmes have adopted a human rights approach, human rights NGOs are now more engaged with these issues, and the World Bank has made a major effort to engage with human rights on a variety of fronts. Taken together, these add

⁸ J. D. Wolfensohn, ‘Some Reflections on Human Rights and Development’, Chapter 2 below, p. 19.

⁹ *Ibid.*, p. 21.

up to a sea change in the relationship between the two communities, although while mutual curiosity has increased ‘confidence is far from being safely established’.¹⁰

Robinson’s chapter then turns to examine some of the major criticisms directed at human rights by development specialists. They include the claim that human rights are political, that they are unrealistic, that they are abstract and incapable of practical application, that they cannot cope with notions of change over time, and that an emphasis on law does little to help the poor. She concedes that there are elements of truth in some of these criticisms but contends that the human rights community is well able to respond to each of them. She concludes by outlining the ways in which a human rights framework can add value to development challenges and, like Wolfensohn, emphasizes the importance of promoting an effective and empowering approach to realizing the Millennium Development Goals.

(a) The Economics of Social Rights

Human rights proponents are often accused of ignoring the economic implications of the normative positions which they advocate. While this shortcoming tends to be overlooked when it affects civil and political rights, such as freedom of speech, the right to vote, or the rights to be free from torture and slavery, it is considered to be especially problematic when it arises in relation to economic and social rights. This first section of the book thus sees two economists casting a critical eye over the rights to food, health, and education, and evaluating the extent to which sound economic policy is compatible with commitments to promote respect for these rights.

In Chapter 4, Jean Drèze argues that the persistence of a serious nutrition crisis in India reflects the fact that Indian democracy is trapped in a ‘vicious circle of exclusion and elitism’.¹¹ Despite constitutional protections of certain economic and social rights, including the right to food, and relatively stable democratic institutions, the underprivileged are excluded from actively participating in democratic politics, with the result that their aspirations and priorities are not reflected in public policy. The elitism of public policy further disempowers the poor by perpetuating their deprivations. Drèze notes that the renowned Indian political leader Dr. Ambedkar predicted an intensification of the contradiction between political equality and economic and social inequality, in speeches given a few years after India achieved independence. Ambedkar had insisted on the inclusion of social and economic rights in the Directive Principles of the Indian Constitution in order

¹⁰ M. Robinson, ‘What Rights Can Add to Good Development Practice’, Chapter 3 below, p. 31.

¹¹ J. Drèze, ‘Democracy and the Right to Food’, Chapter 4 below, p. 45.

to try to ensure that a concern with economic and social democracy would not be allowed to disappear from the political agenda in India. Relying on these Directive Principles, Drèze calls for a revival of concern with Constitution-based economic and social rights, in order to fully realize the democratic vision of Ambedkar and of the Indian Constitution itself. He notes that greater consciousness of elementary education as a *constitutional right* (brought about by two decades of social activism and a landmark Supreme Court decision) has helped expand the reach of the school system, and protect it—to some extent—from the fiscal cutbacks arising from structural adjustment.

In the case of the right to food, Drèze accepts that it may be harder to define and operationalize than the right to education. Defined as ‘freedom from hunger’, the right to food may be seen as a right to ‘nutrition’. But nutrition is achieved not just through food but through clean water, basic health care, and good hygiene, among other inputs. Similarly, although the state can be regarded as bearing primary responsibility for the right to food, there is also a responsibility on local communities and families to ensure basic nutrition is equally available to all their members. Drèze accepts that this complicates the question of how the right to food can be enforced. The courts are not powerless, but may not be the best venue through which to realize the right to food. Instead of relying on an unwieldy and ad hoc judicial enforcement process, he insists that the right to food must be the basis for mobilization in the democratic public sphere, and made the object of political demands for protective legislation. Drèze sees asserting the right to food *as a fundamental right* as one way of creating a focus for public action in response to India’s nutrition emergency, and for increasing the poor and underprivileged’s sense of entitlement to state action on nutrition. Moreover, the more politicized the deprived are about their right to food, the more vigilant they will be in policing the various state nutrition schemes that already exist, and in combating the endemic corruption that diminishes the effectiveness of existing measures. That campaigning, combined with selective litigation over the right to food, can achieve concrete successes, is illustrated by the introduction of cooked mid-day meals in primary schools in many states, after a public campaign and a Supreme Court case in 2001.

Drèze concludes that the right to food cannot be realized in isolation from other social and economic rights, such as the right to health. The rights to health care and education are taken up by another economist, Varun Gauri, in the second contribution to this section of the volume. Gauri’s carefully argued essay is a nuanced analysis of the philosophical foundations of social and economic rights, which demonstrates that disagreements between a ‘rights-based’ and a development economics approach to social welfare are not as significant as they might appear. He first reviews the different normative bases upon which social and economic rights are claimed to be

‘rights’, and the major philosophical and practical objections. He suggests that economic and social rights, such as the right to health care and education, are best understood not as legal instruments for individuals, but as ‘duties for governments, international agencies, and other actors to take concrete measures on behalf of individuals, or to restructure institutions so that the rights can be fulfilled more effectively. . . . Calling health care and education rights means, on this understanding, that everyone bears some responsibility for their fulfillment.’¹²

Gauri then reviews some of the economic literature on education and health care, observing that economists seem to accept that the realization of high standards of health and education are conducive to economic growth. Moreover, economists’ concerns about how health care is best provided are not incompatible with a human rights orientation. From a human rights perspective, participation, empowerment, transparency, and accountability in relation to service delivery are important for ensuring health care and education quality and for fostering a social basis for self-esteem. From an economic perspective, the same goals are important because they help solve problems related to collective action and asymmetric information. Nevertheless, the tensions do not dissolve completely. The human rights approach regards transparency and empowerment as ends in themselves, while an economic approach sees them as instrumental to a welfare outcome. Similarly, a human rights approach typically evaluates health and education programmes in terms of distribution of outcomes, not just averages. Conversely, a human rights approach gives little or no guidance in terms of prioritizing allocative decisions or making trade-offs, and cannot easily analyse the sometimes perverse consequences of a redistributive policy, such as forms of moral hazard or free riding. Gauri concludes that there are no simple answers to some of these tensions between the human rights approach and an economic perspective, but that both approaches can learn from the limitations of the other, and should recognize their complementarities.

(b) Land Rights and Women’s Empowerment

The second section of the volume explores the complementarities and possible conflicts in the relationship between human rights principles and development programmes intended to increase women’s legal right to land in developing countries.

Kerry Rittich notes that programmes which promote the formal real property rights of women—in place of customary laws or other informal mechanisms—have the potential to both improve and retard women’s access

¹² V. Gauri, ‘Social Rights and Economics: Claims to Health Care and Education in Developing Countries’, Chapter 5 below, p. 72.

to real property, depending on how such measures are implemented.¹³ She argues that the programmes promoting property rights tend to go together with measures to formalize, commodify, and individualize landholdings, and that these three processes have often intensified the dispossession of women who may have had access to land under informal or customary law arrangements. Thus, the promotion of property rights from an economic perspective may well undermine the social rights and human development of women in developing countries, if specific attention is not paid to the gender-specific impact of changing property regimes. In this field, economic analysis may learn something from legal conceptions of property, which treat property not just as a resource but as a set of relations between individuals and groups. Such an approach might highlight the otherwise unforeseen distributive consequences for women of moving from an informal property regime to a formalized and individualized one. No single conception of property or set of institutional reforms in respect of land can be associated with greater gender empowerment.

Based on their extensive experience with the World Bank, Karen Mason and Helene Carlsson draw on a large amount of empirical material in their consideration of the development impact of gender equality on land rights. Their review of the literature and their own empirical investigations suggest that secure rights to land enhance human development, but that a range of factors lead to gender disparities in women's ability to benefit from reforms aimed at securing land tenure.¹⁴ They argue that secure land rights enhance incentives to invest in the land and thus raise agricultural productivity and household incomes, and may also improve the sustainability of agricultural practices. However, despite the fact that women do the majority of agricultural labour in many developing countries, they own very little of the land they work. Mason and Carlsson note that, unless gender inequality in land holding is taken into account when implementing land tenure reforms, improved land tenure security may diminish women's land holdings. A variety of factors can lead to this result, including discriminatory inheritance laws, the application of an androcentric definition of 'head of household', and inequalities in women's capacity to participate in the market for land. However, the authors cite some examples, such as Costa Rica and Colombia, in which land reforms were undertaken in a way that improved women's ownership of land.

They argue that improving women's access to secure land holding will greatly enhance their human development, and that of the country in which they live: women who own the land they work have greater incentives to raise

¹³ K. Rittich, 'The Properties of Gender Equality', Chapter 6 below, p. 92–3.

¹⁴ K. O. Mason and H. M. Carlsson, 'The Development Impact of Gender Equality in Land Rights', Chapter 7 below, p. 114.

their labour productivity, and women who earn more income are more likely than men to invest in the household and in their children's education and nutrition. Overall food production may also increase. The empowerment of women that flows from having a productive economic asset may also help ameliorate the impact of the HIV/AIDS pandemic on agricultural production, and strengthen the bargaining power of women in household decisions. The reforms suggested by Mason and Carlsson at the conclusion of the chapter illustrate the importance of applying a human rights lens—specifically, the norms of non-discrimination and equal property rights—when implementing economic reforms, and suggest the indivisibility of economic and social rights from women's capacity to exercise civil and political rights.

Janet Walsh, basing herself on a lengthy report on Kenya prepared by Human Rights Watch,¹⁵ documents the serious violations of women's human rights that arise from a discriminatory property rights regime and a lack of will on the part of courts and the government. Although the right to property can be regarded as an 'economic and social right', discriminatory laws and practices in relation to women's right to own property after the death of a husband, after a divorce, or as part of an inheritance, have immediate consequences for the civil and political rights of women in Kenya.¹⁶ Women who lose their property due to discriminatory laws and practices face impoverishment, sexual violence, and are at increased risk of HIV/AIDS due to both homelessness and the rituals associated with the loss of their property. The inequality in gender relations that is encoded in discriminatory laws, and the indifference of state organs, jeopardizes Kenya's efforts to stem the spread of HIV/AIDS, and threatens agricultural production, indicating the concrete negative impact that human rights violations can have on the achievement of development goals.

(c) Child Labour and Access to Education

From both a development economics perspective and a human rights perspective, there are strong reasons to seek an end to child labour. Human rights advocates have long regarded child labour as implicated in the violation of many of the rights of the child. It should be eradicated in order to ensure children's human rights as ends in themselves. From the perspective of development economics, child labour amounts to an inter-generational loss of potential income, as children suffer diminished human capital (such as reductions in health and opportunities for education) that will reduce their productivity in the future. The contribution to this volume by Gordon Betcherman, Jean Fares, Amy Luinstra, and Robert Prouty notes the

¹⁵ Human Rights Watch, *Women's Property Rights Violations in Kenya* (New York, 2003).

¹⁶ J. Walsh, 'Women's Property Rights Violations in Kenya', Chapter 8 below, p. 133.

International Labour Organization's (ILO's) estimate that current levels of child labour will result in an income foregone of \$5 trillion between 2000 and 2020. They review recent statistics on the extent of child labour, and estimate that a staggering 23 per cent of the world's children aged between 5 and 17 years are engaged in some form of work. They also note that there is considerable evidence to suggest that child labour adversely affects children's educational attainment.¹⁷

While economists and human rights activists are united in their desire to see an end to child labour, Betcherman et al. demonstrate the important insights that economic analysis can provide in understanding how best to reduce child labour. Factors contributing to child labour can be seen in terms of incentives that encourage child work, constraints that compel children to work, and decisions that may not be made in the best interests of the children. Human rights advocates often focus on the latter (whether by parents or governments), but also need to consider how the direct (books, transport) and indirect (poor quality, loss of household labour) costs of education may lead parents to regard the returns of education as not providing sufficient immediate returns to the household or the child. Understanding these factors could improve strategies for changing household decision making. Betcherman et al. consider some creative examples of government policies aimed at altering the structure of incentives and constraints affecting child labour, such as Mexico's *Progresa* programme, that indicate the important concrete contribution that a development economics perspective can bring to the question of how best to alter social and economic practices. Similarly, echoing Gauri's argument, the authors point out that standard setting legislation is of itself insufficient to alter an interacting set of incentives and constraints, and may well have the perverse effect of reducing child welfare.

Drawing on their extensive experience of working with these issues in UNICEF, Elizabeth Gibbons, Friedrich Huebler, and Edilberto Loaiza consider how, at the level of *statistical analysis*, the application of the human rights principle of non-discrimination can affect our understanding of the dimensions of child labour.¹⁸ They note that existing methods of calculating the extent of child labour under-report the degree of child work done by girls, because the measures exclude household chores. By failing to consider 'female work' within the definition of child labour, the impact of child work on the educational and health attainment of girls is made invisible.

The authors undertake an analysis of child labour data in an attempt to make female child labour visible, revealing a one-quarter increase in the estimate of child labour among girls, and a fall in the gap between boys' and

¹⁷ G. Betcherman, J. Fares, A. Luinstra, and R. Prouty, 'Child Labor, Education, and Children's Rights', Chapter 9 below, p. 175.

¹⁸ E. D. Gibbons, F. Huebler, and E. Loaiza, 'Child Labour, Education, and the Principle of Non-Discrimination', Chapter 10 below, p. 205.

girls' child labour. Gibbons, Huebler, and Loaiza also investigate some of the factors affecting school attendance and find that, while labour and household poverty are generally constraints on attendance, a mother's educational attainment is also an important determinant that correlates positively with school attendance. This, they argue, 'shows, in dramatic and incontrovertible terms, the inter-generational payoff from an investment in girls' education'.¹⁹ An examination of the impact of child labour on *performance* in schools (as opposed to simply attendance) leads to the conclusion that child labour does not result in a higher likelihood of grade repetition in most countries, but that household wealth and the level of education of the primary caretaker can also have a significant effect on educational attainment.²⁰ However, child labour does clearly increase the probability that a child will drop out of school.

On the basis of a case study of India, the chapter by Philip Alston and Nehal Bhuta considers the evidence of the qualitative impact that human rights discourse, and the constitutional entrenchment of economic and social rights, can have on the attainment of social goods such as education. They review the history of the constitutional amendment that was adopted in 2002 to make education part of the category of 'fundamental rights' in the Indian Constitution.²¹ The amendment led to the inclusion of a justiciable right to education in relation to children between the ages of 6 and 14. The authors ask whether this has made any difference in terms of progress towards achieving the goal of free, universal, elementary education. The evidence is mixed, but does suggest that the public debate surrounding the constitutional amendment, and public interest litigation in state and federal courts, have provided some impetus for government authorities to address critical problems in the provision of education. Perhaps more enduringly, and in line with the analysis of the right to food undertaken by Jean Drèze in Chapter 4, the idea of education as a 'fundamental right' is becoming a focus for local political action and agitation among under-resourced and oppressed communities, who rely on the new constitutional provision as a way of pressing their demands on local and regional government decision makers.

(d) Reform of Legal and Judicial Systems

The extent to which multilateral lending agencies should use human rights criteria in assessing development projects has been subject to considerable debate over the last fifteen years. Agencies such as the World Bank and International Monetary Fund have been criticized for failing to consider

¹⁹ Ibid., p. 214. ²⁰ Ibid., p. 230.

²¹ P. Alston and N. Bhuta, 'Human Rights and Public Goods: Education as a Fundamental Right in India', Chapter 11 below, p. 244.

adequately the human rights impact of their lending.²² At the same time, international financial institutions (IFIs) are increasingly funding ‘institution-building’ projects that, explicitly or implicitly, have human rights-related objectives, particularly in the form of rule of law initiatives. Christina Biebesheimer reflects on the experience of the Inter-American Development Bank (IDB), which has explicitly embraced the promotion of human rights as conducive to creating the conditions for economic development. The IDB, perhaps more than any other international financial institution, has expanded its loans to projects concerned with improving public sector institutions such as courts. It has, as a matter of policy, come to regard democratic institution-building as part of a state modernization strategy and has taken the justice sector as a particular focus. Biebesheimer reviews the kinds of projects that the IDB has supported through its ‘modernization of the state’ strategy, and observes that human rights principles are being used in ‘interpreting the areas of justice [the IDB] can work in, in defining project content, in establishing methodologies for pre-project diagnostics, and in defining indicators for project success and impact’.²³

In her concluding sections, Biebesheimer asks how a comprehensive human rights approach would change the way that the IDB works. Her answer is that it may lead to a greater emphasis on citizen participation in the design and implementation of justice projects, and may lead to placing greater emphasis on justice sector initiatives that combat discrimination and exclusion. She laments, however, that little practical guidance in project design and implementation can be derived presently from the materials produced by the human rights community. There is a need for human rights advocates to address their concerns to the development community in a way that demonstrates how a human rights approach will improve project effectiveness, and how improvements could be implemented in a way that is consistent with existing time and resource constraints.

In his chapter, Stephen Golub takes aim at the ‘rule of law’ promotion practices of the international financial institutions. He argues that these lending practices are underpinned by a ‘rule of law orthodoxy’ that does not adequately conceptualize the relationship between justice sector reform and human rights protection.²⁴ The ‘rule of law orthodoxy’s’ focus on narrowly defined justice sector projects does not pay sufficient attention to the reality that improvements in the courts or in legal training will by no means necessarily result in the enforcement of rights or the alleviation of poverty for

²² See generally M. Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Oxford, Hart, 2003).

²³ C. Biebesheimer, ‘The Impact of Human Rights Principles on Justice Reform in the Inter-American Development Bank’, Chapter 12 below, p. 279–80.

²⁴ S. Golub, ‘Less Law and Reform, More Politics and Enforcement: A Civil Society Approach to Integrating Rights and Development’, Chapter 13 below, p. 299.

structurally disadvantaged groups. Golub notes that project reviews of justice sector reform projects have generally found that the projects have not had a discernible impact on the poor and disadvantaged, and have not necessarily resulted in durable and sustainable changes in the functioning of legal institutions.

He argues that, instead of the 'rule of law', development agencies should promote 'legal empowerment', which he defines as 'the use of legal services and other development activities to increase disadvantaged populations' control over their lives'. He suggests that such a strategy would emphasize strengthening the capacity of NGOs and community-based organizations that defend and promote the rights of the poor, and the selection of issues flowing from the needs of the poor. It would also pay greater attention to a variety of state institutions (administrative agencies, local governments, and so forth) that can be used to advance the rights of the poor, rather than focusing on a narrowly defined justice sector. Golub marshals considerable evidence that such an approach is more sustainable and more likely to have long-term benefits for the realization of human rights and human development, than justice sector programmes. His contention is not that justice sector programmes should be abandoned, but that a better balance should be struck in 'rule of law' development funding, between legal empowerment and legal reform.

(e) The Role of the Private Sector in Promoting Human Rights

Peter Woicke reflects on the International Finance Corporation's (IFC's) efforts to incorporate human rights standards into its criteria for evaluating prospective loans to private companies. The IFC is the private sector development lending arm of the World Bank Group. In recent years it has emerged as a leader within the group in developing modalities for using human rights criteria in lending decisions. Woicke argues that this effort by the IFC should be seen as part of a broader worldwide movement for corporate social responsibility.²⁵ It is thus consistent with efforts by large corporations to respond to criticism of corporate behaviour and to present adherence to international human rights standards as part of their corporate and brand identity. As a financier of private companies active in developing countries, the IFC has accepted that corporate responsibility principles can and should be applied to those who fund private sector activity, as well as to those who implement them. In an informative and illuminating case study, Woicke describes in detail a project that was financed by the IFC, and how

²⁵ P. Woicke, 'Putting Human Rights Principles into Development Practice through Finance: The Experience of the International Finance Corporation', Chapter 14 below, p. 328.

the process of project assessment could have incorporated a human rights analytical framework.

Does human rights promotion and enforcement actually lead to better governance and greater human development? Are civil and political rights and economic and social rights really indivisible? While these propositions have become something of a policy and philosophical commonplace since Amartya Sen's powerfully persuasive work,²⁶ Daniel Kaufmann observes that the empirical basis for (or against) the claims is not easy to establish. Employing an innovative method for measuring and assessing human rights outcomes and their impact on governance, he seeks to rise to this challenge in his chapter.²⁷ He first reviews indicators for political and civil rights and asks whether there has been an improvement in the realization of these rights. He then explores the relationship between civil and political rights and economic and social rights, and asks how improvements in the former affect the realization of the latter. He finds that progress in the realization of civil and political rights is uneven and varies according to region, but that there is a strong correlation between income levels and respect for civil and political rights. Of course, this tells us little about the causality of the relationship between civil and political rights and economic development.

In a further series of analyses, Kaufmann makes a persuasive case for the proposition that good governance is not a 'luxury good' which every country comes to enjoy when it becomes wealthier, implying that policy makers and civil society must work hard and continuously at improving civil rights and governance. He also finds that where political and civil rights are less respected, the risks of corruption and state capture by special interests are higher, which in turn impairs socio-economic development. Conversely, better governance seems to be causally related to improved development outcomes. Kaufmann examines the case of Bolivia to contend that measures that promote participation and citizens' input into the operations of an institution were likely to reduce corruption and improve service delivery. Voice and participation are thus instrumentally related to containing corruption and realizing social and economic rights, and it may not be reasonable to expect that a purely technocratic approach to macroeconomic management will deliver such objectives.

Olivier de Schutter proposes a new way of conceiving the human rights responsibilities of transnational corporations (TNCs). He argues that the conventional approach, which focuses on the project-specific human rights consequences of a particular company in a particular locale, is inadequate to address concerns about whether the activities of TNCs promote the human

²⁶ See e.g. A. Sen, *Development as Freedom* (Oxford, Oxford University Press, 1999).

²⁷ D. Kaufmann, 'Human Rights and Governance: The Empirical Challenge', Chapter 15 below, p. 352.

development of the society as a whole.²⁸ De Schutter distinguishes between a 'micro' and a 'macro' approach to the human rights impact of TNC activity. Most current analyses take the 'micro' approach, but do not consider ways in which TNCs and foreign direct investment can be instruments in a form of growth that realizes the right to development. De Schutter contends that the 'macro' analysis must supplement the 'micro' to discern measures that can link TNC activity to national economic development. De Schutter reviews a wide range of evidence indicating that the mere presence of foreign investment will not necessarily result in balanced human development, and should be subject to a multilateral framework of development friendly rules. By contrast, the current framework for investment aims to limit as much as possible the capacity of a state to impose conditions on foreign investment and TNC activity. De Schutter argues that developed states and multilateral lending institutions should bear primary responsibility for developing a multilateral framework for 'development friendly' investment, and suggests that such a set of rules has the potential to alleviate the problem of 'regulatory competition' between national jurisdictions.

**(f) Building Human Rights into Development Planning Processes:
The PRSP Exercise**

By far the most important single tool for development planning and for seeking to stimulate a greater and better focused flow of development assistance today is the Poverty Reduction Strategy Paper (PRSP) process. It was introduced in 1999 as a condition of eligibility for debt relief among Heavily Indebted Poor Countries (HIPC), but has since become ubiquitous in the development context. The rationale for the PRSP process was that it would promote national and local 'ownership' of macroeconomic policies and help ensure that these policies were sufficiently adapted to relieving poverty in the world's poorest countries. In principle, the process represents an embrace of the values of participation and transparency in the formulation of macroeconomic policy, and thus has the potential to shape the content of these policies in order to meet the needs of the poor. As of April 2004, thirty-nine countries had completed PRSPs on a full or interim basis.

The chapter by Frances Stewart and Michael Wang reviews the experience of participation in the preparation of these strategies over a number of countries, and assesses whether this participation has empowered the poor to alter the content of macroeconomic policy and poverty reduction strategies. They find significant variation across countries, in terms of *who* participates, *how* they participate, and *issues* in respect of which they have

²⁸ O. de Schutter, 'Transnational Corporations as Instruments of Human Development', Chapter 16 below, p. 404.

participated.²⁹ Troublingly, they find that a number of important actors have been consistently excluded from participation, including parliamentarians, and the representatives of trade unions, women, and marginalized groups. The amount of time allowed for consultations and participation was often inadequate, and in a number of cases civil society groups were presented with pre-prepared drafts on which to ‘comment’ rather than having an opportunity to participate in the design of the framework. Nevertheless, Stewart and Wang find that the PRSP process seems to have led national development plans to become more ‘pro-poor’ and include more ambitious social targets. At the same time, participation rarely resulted in changes to the macroeconomic policies prescribed by IFIs and there were no departures ‘from the kind of advice provided under structural adjustment programmes’.³⁰

Stewart and Wang conclude by asking how a more explicitly ‘human rights-based’ approach might alter the process and content of PRSPs. They note that even if PRSPs did use the language of rights, the change might end up being confined to language and have little consequence in reality. They recommend, instead, that PRSPs be reformed so that there is greater participation by the marginalized and the poor, and that the representation of private sector groups and external agencies be limited. Wang and Stewart note, however, that even if steps are taken to improve the PRSP process, they will not have a positive impact on the content of PRSPs unless donor countries and IFIs cede greater control to the countries concerned in defining their economic priorities.

Drawing on the experience of the World Bank, as the principal driving force behind the PRSPs, Gobind Nankani, John Page, and Lindsay Judge argue that these strategies should be seen as an important means for bringing about a convergence of human rights principles and poverty reduction policies. The PRSP process, they recall, was introduced as a way of ensuring that the voice of the poor was heard in the formulation of development strategies, and as a way of trying to avoid the failures of ‘top-down’ development policies.³¹ The participatory process mandated by PRSPs represents a ‘pact between states, their citizens, and the international community’ to achieve poverty reduction. Nankani, Page, and Judge contend that the outcomes sought by a poverty reduction focused development strategy overlap considerably with the norms and values embodied in human rights instruments, although the overlap is not total. They note that, on the *supply* side, human rights advocates and development economists may be at odds over what governments need to do to ensure various possible outcomes for

²⁹ F. Stewart and M. Wang, ‘Poverty Reduction Strategy Papers within the Human Rights Perspective’, Chapter 17 below, p. 454.

³⁰ *Ibid.*, p. 466.

³¹ G. Nankani, J. Page, and L. Judge, ‘Human Rights and Poverty Reduction Strategies: Moving Towards Convergence?’, Chapter 18 below, p. 477.

citizens (with economists focused on the question of how to ensure optimal use of finite resources), while on the *demand* side there is convergence in the emphasis on empowering marginalized people to take control of their lives and claim their entitlements.

Nankani, Page, and Judge defend the PRSP process as likely to lead to a better alignment between poverty reduction strategies and human rights principles. They argue that the process has enhanced country ownership of, and commitment to, poverty reduction policies, and has also changed donor behaviour by encouraging donors to co-ordinate more carefully their inputs with national governments. They also contend that the PRSP process has led to a more comprehensive approach to poverty reduction in countries that have undertaken it. They argue that further steps can be taken to heighten the complementarity between a human rights approach and the PRSP process, but sound a note of caution: resource and capacity constraints in developing economies mean that hard choices and some trade-offs must always be made. But there is room for thinking through these hard choices in terms of a human rights framework.

Finally, in the last chapter, the theme of hard choices and trade-offs is taken up by Mark Plant, a senior official of the International Monetary Fund. Plant revolves his comments around a set of *Draft Guidelines* for a human rights approach to Poverty Reduction Strategies which was prepared at the request of the Office of the High Commissioner for Human Rights (OHCHR).³² He raises some challenging questions about the practical utility of incorporating human rights language into PRSPs. He notes that there is a danger that the strategy documents will become overburdened with 'wish-lists' of desired outcomes and principles, while at the same time losing their role in providing concrete guidance to the implementation of poverty reduction policies in a given national context. He asks whether the human rights community has given enough consideration to achieving the right balance between ambition and realism. He suggests that there is a real danger that the human rights approach advocated by the OHCHR will be seen by low-income countries as being unnecessarily 'grafted on to the PRS process and thus more of a burden than a help'.³³ Plant also raises an important empirical question about whether broader participation will actually result in *better* economic policy. While local level actors are well placed to identify the needs and priorities that concern them the most, these must be balanced with the maintenance of national economic stability in an international economy.

³² United Nations High Commissioner for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*, 10 September 2002 (Geneva: United Nations). It should be noted that a revised version of this document was due to be made available early in 2005.

³³ M. W. Plant, 'Human Rights, the Poverty Reduction Strategies, and the Role of the International Monetary Fund', Chapter 19 below, p. 501.

Plant contends that ‘difficult macroeconomic choices cannot be avoided by adopting empty or internally contradictory policies; if this is done, the choices will be made by markets . . . or postponed until later generations through indebtedness’.³⁴ Plant’s pointed questions lead to a challenge to members of the human rights community to ask themselves whether, while demanding that development economists internalize the human rights perspective, they have failed to adequately internalize the economists’ concerns. He concludes by suggesting that OHCHR should consider ways in which it can operationalize its expertise, so as to provide concrete assistance to developing countries that face difficult trade-offs in terms of how best to implement economic policies in a manner consistent with human rights principles.

(g) The World Bank and Human Rights

In the concluding chapter of the volume Roberto Dañino, who has been Senior Vice-President and General Counsel of the World Bank since 2003, offers some personal reflections on the appropriate role of human rights within the work of the Bank. His views are of particular significance in light of the influence that his predecessors, and especially Ibrahim Shihata, exerted in relation to such matters within the Bank. Dañino makes clear that while there are both legal and institutional limits that must be respected, the World Bank should in the future ‘embrace the centrality of human rights to [its] work instead of being divided by the issue of whether or not to adopt a “rights-based approach” to development’. While some would suggest that such an approach would represent a significant change in Bank policy, others would argue that the Bank already has a very extensive *de facto* policy in relation to a wide range of human rights issues and that Dañino’s approach would serve mainly to bring the theory into line with the practice and thus encourage a more systematic approach to human rights within the work of the most influential of the international community’s development agencies.

³⁴ M. W. Plant, ‘Human Rights, the Poverty Reduction Strategies, and the Role of the International Monetary Fund’, Chapter 19 below, p. 503.