



Members of the Constitution Drafting Committee.

HUMAN RIGHTS, DEVELOPMENT AND DEMOCRACY

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Two transitions are taking place simultaneously: the first is the political transition from the pre-independence authoritarian to a post-independence democratic political order, the second is the economic transition, from a least developed to a middle-income economy. Experience across the globe shows that these transitions have substantial implications for the implementation of human rights and present a challenge to all those involved - governments and the citizens who constitute members of emerging civil societies.

DEMOCRACY
Democracy building is marked by formal measures such as the coming into force of a constitution, which guarantees the enjoyment of human rights and provides for the establishment of democratic institutions such as an elected parliament, an accountable government, and an independent judiciary. Such a political order is founded on the recognition of the supremacy of the constitution and respect for the rule of law. Actual experience, however, shows that formal restoration only provides a society with an opportunity to build through conscious and sustained efforts a truly democratic order in place of the authoritarian one which it aims to supplant. Orchestrated efforts are needed both at the level of the legislature and executive, and by an active citizenry, to nurture democracy. Indeed, a newly-restored democracy is akin to a fragile plant which needs to be painstakingly nurtured.

Such nurturing requires an environment conducive to the functioning of democratic institutions, which in turn have to be sustained. Democratic values need to be disseminated and to be reflected both in the functioning of the institutions of the state and in the actions of its citizens. The negative legacies of an authoritarian past cannot be expected simply to go away. Among these legacies are centralised bureaucracies, accustomed to the arbitrary exercise of wide discretionary powers remain allergic to transparency and accountability; law-enforcing agencies which have habitually acquiesced in carrying out illegal and repressive orders and a social milieu which discourages dissent, the free expression of views and open debate of public issues. There are no checks and balances to act as safeguards against abuse of power. Judicial independence, if it had existed at all, underwent serious erosion. Violations of human rights were substantially un-redressed and victims could hardly expect justice in the absence of the rule of law.

A weak civil society exists, where democratic values had been absent for long, thus engendering a sense of helplessness and inertia on the part of citizens. In the absence of channels for ventilating genuine

grievances and felt injustices, these remained suppressed. With the advent of democracy, as the lid was lifted, there were often outbursts of violence. This explains in part why in many of these transitional societies sectarian, communal, linguistic, religious and ethnic conflicts erupted and became major threats to the survival of democracy. Due to lack of democratic processes to reconcile conflicting claims and to redress injustices, multi-party politics tends, in some newly-restored democracies, to degenerate into extreme partisanship, the practice of patronage on party lines, the emergence of clientelism and, ultimately, into violent confrontation among the adherents of different political parties. Human rights can hardly be expected to flourish in an environment where instead of tolerance and mutual respect of rights there are mounting tensions, which culminate in violent conflicts between different sections of citizens.

Positive lessons that would be useful in order effectively to combat these negative legacies may be learnt from those societies which through conscious efforts have implemented programmes to nurture an environment conducive to the growth and healthy development of democracy and the promotion and protection of human rights.

CONSTITUTIONAL INNOVATIONS AND STRENGTHENING OF DEMOCRATIC INSTITUTIONS

The concerted efforts of the international community had re-inforced the initiatives of the leadership and of the people of South Africa: innovative constitutional provisions which provided clear sign-posts for social restructuring through affirmative action to be effected. Considerable flexibility was provided in terms of how the goals were to be realised, which (in the words of one of the architects of the Constitution) "helps to avoid the dangers of backsliding on the one hand, and producing grandiose but highly voluntaristic and unrealizable plans on the other". Equally innovative was the establishment of an independent media commission and the provision for the media to play a truly impartial role in promoting the values of tolerance, critical discussion and evaluation of the different political parties through open debate and free exchange of information and views. The measures adopted include re-training the police to transform them from being instruments of a repressive regime to that of protector of the rights of citizens and the upholders of the rule of law in a democratic society are also noteworthy.

STRENGTHENING THE ELECTORAL PROCESS

Voters' education has played a critical role in involving voters and conscious citizens and in nurturing an environment of tolerance

and respect for democratic values as well as in promoting scrupulous observance of the ground rules of a free and fair election e.g., not tearing down posters, abstaining from carrying any arms to public meetings, renouncing political violence and observing limits on expenses and refraining from inundating the electoral process with black money.

Election observers deployed also play a useful role. International election observation by impartial observers need to be made available and their national capacity for election observation should be strengthened by involving the efforts of NGOs and other civic organisations. Training of polling agents, election agents, and presiding officers is also important. A citizens' election watch effort needs to be encouraged, which should monitor the activities of the contesting parties over a considerable period prior to the formal commencement of the election period. Coordinated citizens' movements for free and fair elections should be promoted, of which voters' education and training of national election monitors and observers could form an integral part. Active involvement of young citizens in promoting observance of democratic values and in renunciation of violence should be promoted.

DEVELOPMENT

The economic transition to a developed economy has significant implications for the implementation of economic, social and cultural rights, and, in particular, the rights of the poor and disadvantaged, and of women and of children. The linkage between democracy, development and human rights is underscored by studies which have documented how "bad governance leads to incompetent - and often discriminatory - administration of social services and development projects, widening social gaps... and constitutes a major obstacle to social development." There is also considerable evidence of the impoverishing effects and basic inhumanity of gender discrimination - in terms of prescribed and limiting roles; lack of economic opportunity, health care geared to the needs of women and children, access to education, credit, land, income and property; and participation in institutions which enable popular participation. World Bank studies identify and illuminate the risks (e.g. deterioration of health care, food shortages, unemployment) which result from ill-designed structural adjustment programmes and some of the strategies which can be used to mitigate them. A important conclusion to be inferred is the need to democratize the process of designing and implementing these programmes. The participation process can be used to illuminate the risks more starkly and

mobilise demands for effective protection of those most vulnerable. As the World Bank studies show, poor people are the primary victims of these programmes, and it is essential that their interests be represented and their rights to food, health and other basic resources be protected.

In designing development projects and programmes, appraisals only of economic costs and benefits need to be supplemented by appraisals of the special impact of these projects and programmes and of their impact on human rights and on the environment. Such appraisals should be made taking into account such matters as: how it will affect different sections of the community, in particular, women and children, the poor and the vulnerable? What will be their impact upon the environment? Will the implementation involve procedures which would enable the most powerful to preempt the benefits or lead to corruption? How will it impact on human rights?

HUMAN RIGHTS

The priority to be attached to the implementation of human rights also requires that new institutions be developed to monitor and measure the progressive implementation of the rights. The traditional approaches, which viewed enforcing human rights through judicial enforcement, should be supplemented by the establishment of institutions such as Human Rights Commissions and Information Commissions, latter could play an active role in making state and non-state entities aware of their responsibilities in the sphere of human rights and monitor progress in the implementation of these rights. Such a Commission could monitor situations which could give rise to sectarian, communal, religious, racial or ethnic conflicts and take effective and timely measures to prevent their deterioration, which could lead to large-scale violence resulting in human rights violations. There is a need for such bodies also to monitor the causes of violence, both by state and non-state actors, since we perceive the co-relation between human rights violations and the escalation of violence in societies.

HUMAN RIGHTS, DEMOCRACY AND DEVELOPMENT: AN INTEGRATED APPROACH

Today there is a consensus on the need to adopt an integrated approach to the implementation of human rights - civil and political on the one hand, and economic, social and cultural rights, on the other. Parallel to this, the development "paradigm" has also shifted, so that development is no longer measured in terms of an exclusively economic yardstick such as per capita GDP but instead is viewed in terms of its wider social impact. There is increasing recognition that sustainable development must be

'human-focused' or centred around the realisation of human rights and democracy - indeed we speak today of 'sustainable human development'.

In designing development programmes and projects, feasibility studies instead of being confined to narrow economic appraisals of cost and benefit, have begun to include assessments of their environmental impact. A significant step forward is the recognition of the need to include assessments of social and human rights impacts. How will the benefits and costs of a project or programme be distributed among the different sections of a community, in particular, women and children, the poor and the vulnerable? Is it likely to favour the privileged and the powerful? Will the implementation involve procedures which would enable the more powerful to preempt the benefits, or lead to corruption? How will it impact on human rights?

The new human rights-centered approach to development calls for greater popular participation in the designing of development programmes and policies and in their implementation. It calls for a re-definition and re-orientation of the role of governments. The exercise of arbitrary discretion of centralised bureaucracies, taking decisions behind closed doors, and making policies without consulting those affected by the policies, must be replaced by a new mode of participatory governance which would seek to involve citizens through dissemination of information, consultation and participation. The Right to Information should be effectively innovated in order to obtain information which citizens need and can use to protect themselves against environmental damage.

An important lesson is that effective human rights implementation must be able to strengthen the constituencies for change and development in a society and overcome, in as peaceful and orderly a manner as possible, the opposition and the barriers to change. This calls for consensus-building and imaginative coalition-building among all the protagonists of human rights and development within a society - among state and non-state actors, within government and parliament, within professional associations and women's organisations, and NGOs. These would provide essential sustenance for the institutions engaged in implementation of human rights with the aim of promoting development and democracy.

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