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## THE POLITICAL ECONOMY OF HUMAN RIGHTS

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Contemporary political economy can make an important contribution to the human rights debates which have come to dominate political relations over the past half century. These debates hide a wide variety of political agendas. Rights arguments often indicate ethical deficiencies, and sometimes help adjudicate social disputes - but not always. Defining rights does not necessarily resolve and may even aggravate social conflicts (Ignatieff 2000: 16). Further, an abstract portrayal of formal, individual rights may obscure actual rights in a particular social situation. At the same time, human rights have become a unique moral and political consensus. Dictators and democrats alike now rely on some variant of rights arguments, as the touchstone of their political legitimacy. This, of course, only adds to the confusion of meanings.

How can we best understand this new language? The traditions of political economy may help reinterpret the evolving phenomenon of human rights. What is needed is a means to interpret the relationship between language and social interests, as well as to make this relationship relevant to praxis - in this case, human rights activism. For this reason, the 'political economy of human rights' should not be restricted to a study of how (contrary to liberal assertions) greater freedom for powerful economic interests "has often required" political suppression (Chomsky and Herman 1980: 4), as important as this study is. The project should rather begin by considering a method of enquiry

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which enables us to disentangle the contemporary plethora of claims over rights.

With this in mind, in this article I introduce some conceptual approaches to human rights, informed by the methods of political economy - in particular by historical, distributional and legitimacy analyses. First I discuss the social character of human rights; second, the important distinctions between formal (human and legal) rights and effective (individual and social) rights; and third, the distinct ways in which human rights arguments (and therefore also arguments of political legitimacy) are promoted in matters of economic development.

### **The Social Character of Human Rights**

We cannot understand rights arguments simply through rational argument. Formal rights have been defined through a historical struggle, and generally a second social struggle has been required to give effect to these formal rights. For example, in the USA, equality before the law as a principle was established a long way in advance of even formal racial equality. Rights arguments as purely rational exercises are often tortured where real interests are involved. Cultural argument has not entirely displaced the force of class and other material interest (Touraine 1994), but the relationship between the two is certainly potent. Rights in 'liberal democratic' societies are indeed linked to an "integration of interests" by the state, an integration which must be "continually reconstituted" in some sort of democratic manner (Habermas 1971: 117).

The entire postcolonial period (where the former colonies gained their political independence, from the 1940s onwards) provides a range of examples of subordinate groups mobilising the force of rights arguments, for self-determination and racial equality, to compete with the power of entrenched class and institutional interests. In the case of South Africa and East Timor, longer term moral arguments aided by international solidarity movements seem to have played a greater role than in previous decolonisations. But there have also been significant accommodations with financial and corporate interests (Venter 1997; Anderson 2002).

Rational liberal jurisprudence, even if it were not captured by its legacy of property rights and individualism, cannot properly interpret these developments. It may eventually say that colonisation was unethical, and that the legal arguments for dispossession were artificial (International Court of Justice 1975); but it is unable to explain the mechanisms or the timing of these developments. With little sense of history and with an inclusive language which is politically seductive yet analytically deceptive, liberal reasoning is simply inadequate. A rights argument, it seems to me, must be linked to identified social interests and social conflicts, to ground a proper understanding of how these developments occur and how they may be advanced.

Yet neither can contemporary human rights arguments be reduced to the simple expression of class interests (Fudge and Glasbeek 1992). That would be a betrayal of their promise. Most often constructed as a reaction to the historic denial of rights - though initially and principally the denial of property rights (Locke 1690) - human rights today do embody collective human aspirations, some sense of human identity, and the hope of a better life. What distinguishes the apparently discursive and eclectic exercise of 'human rights' from earlier constructions of 'rights' is the level of adoption and consensus at an international level, and the relative detachment of the process of human rights construction from particular state or corporate interests. In this way, 'human rights' differ from 'legal rights', though both are social constructions. As Freedon (1991: 3) says:

Unless we postulate an essentialist view of [rights] as bearing inherent meanings they are more usefully seen .. as products of a group or groups, who then consume them and transmit them further.

So human rights these days cannot sensibly be considered an essentialist discovery of human nature (Locke 1690; Paine 1791), nor an elusive, incoherent and unstable cultural construction (Tushnet 1989); nor simply a smokescreen masking powerful interests (Fudge and Glasbeek 1992). Rather, they might be best seen as a substantial yet evolving human consensus, which is informing global political and economic development. Human rights are not a simple product of idealistic discourse, nor a simple function of material interests, but rather an

international charter, defining the evolving relationship between political language and social interest.

Historically, rights have been defined by a liberal jurisprudence dominated by concerns over property rights, state power and the economic freedoms of a wealthy class. But these powerful interests have not completely captured the formal process. It is not yet clear, for example, what place property rights have within international jurisprudence. There is no right to property, as such, under the International Covenant on Civil and Political Rights, and individual property rights have only been adjudicated by the UN Human Rights Committee where they involve matters of discrimination or inequality before the law (Human Rights Committee 1996). The matter is less clear under the International Covenant on Economic, Social and Cultural Rights, but it seems likely that property rights there will also be subordinate to other rights, such as the right to food, shelter and so on. It therefore seems likely that property rights are derivative and subordinate to the substantial and more primary human rights - in international jurisprudence, if not in national legal systems. Are unlimited property rights then simply a relic of feudal times? And if property rights are contingent on their support for wider economic rights, to what extent may property rights be compromised by the right of access to the basic necessities of life, such as food, clothing and life saving medicines?

In any case, the project of human rights has certainly expanded. Democrats, Socialists and Chartists prosecuted the idea, helping construct the 'liberal democracies' of the 19th Century. Representative assemblies and universal franchise embodied some elements of the new rights agendas. However the major steps towards a international consensus on rights (and therefore 'human rights') came after the two world wars of the 20th Century. The Genocide Convention (1948) was created as part of a reaction to the horror of attempts at racial extermination. The United Nations Charter (1945), in the face of the collapse of European empires, recognised in its first article the collective right of a people to self determination - a right that was later written into the twin Covenants of the International Bill of Rights (the ICCPR and the ICESCR), though not into the Bill's initial founding document, the Universal Declaration of Human Rights (1948). These documents were

constructed in the late 1940s by a relatively small group of nations, including the great powers. However, by the time the major human rights Covenants of the 1960s were constructed, this group had steadily expanded. India, in particular, was influential from the beginning in the discussions that constructed these Covenants. The Government of India admitted that it had borrowed from a wide range of sources to supplement its own traditions in developing a commitment to a "relentless pursuit" of fundamental human rights (Pandit 1948). States joined the Human Rights Commission steadily from its inception, contributing to successive human rights treaties, and the level of state participation in the process is now very high (Table 1).

**Table 1: State Participation in the UN Human Rights Commission**

| Regions                   | Original members (from 1947)         | Numbers at 1947 | Numbers at 2002 |
|---------------------------|--------------------------------------|-----------------|-----------------|
| Africa                    | Egypt                                | 1               | 46              |
| Asia                      | China, India, Philippines            | 3               | 14              |
| Middle East               | Iran, Lebanon                        | 2               | 10              |
| Latin America & Caribbean | Chile, Panama, Uruguay               | 3               | 18              |
| Central & Eastern Europe  | Belarus, Russia, Ukraine, Yugoslavia | 4               | 11              |
| Western European & other  | Australia, Belgium, France, UK, USA  | 5               | 22              |
| <b>Totals</b>             |                                      | <b>18</b>       | <b>121</b>      |

*Source:* UNHCHR (2002a) Membership of the Commission on Human Rights, United Nations High Commissioner for Human Rights,  
<http://www.unhchr.ch/html/menu2/2/chrmem.htm>

By the turn of the 21st Century, a unique event had occurred. As at 2001, every single member of the 192 member United Nations had signed and ratified the most popular of the U.N.'s human rights treaties, the Convention on the Rights of the Child (1989). Never before had there been unanimity on a human rights agreement. A wide variety of nation-states contributed to the construction of this treaty. The wealthy nations, of course, were also involved, and although CROC advanced some new principles in support of young people's rights, there was some regression. Some wealthy countries took the opportunity in the late 1980s to revise the mid-1960s wording of the right to tertiary education - consistent with

retreats in the welfare state policies of many wealthy nations. Whereas the ICESCR still holds that tertiary education is to be made available "by every appropriate means, and in particular by the progressive introduction of free education", the Convention on the Rights of the Child has retreated to "by every appropriate means". Free tertiary education now has less support as a common ideal.

The international consensus was ruffled, but not seriously derailed, by claims from some East Asian political leaders (Lee Kuan Yew, Mahathir Mohammed, Jiang Zemin) that human rights were a western individualistic idea, at odds with elements of 'Asian values' (Lee 1995; Mendes 1996). Drawing on the historical resentment over colonial rule, Dr Mahathir argued:

It would seem that Asians have no right to define and practise their own set of values about human rights ... the implication is that Asians cannot possibly understand human rights, much less set up their own values. (in Lee 1995: 3-4).

However it is not accidental that these same leaders tolerate little dissent in their own countries, and hardly speak for their own civil societies, let alone all Asian nations. Dr Mahathir's Deputy Prime Minister, Anwar Ibrahim, shared a distaste for western sermonising but (before he was jailed on politically motivated charges) had this to say about Asian values and human rights:

If we in Asia want to speak credibly of Asian values, we too must be prepared to champion these ideals which are universal and which belong to humanity as a whole. It is altogether shameful, if ingenious, to cite Asian Values as an excuse for autocratic practices and denial of basic rights and civil liberties. To say that freedom is western or unAsian is to offend our traditions as well as our forefathers, who gave their lives in the struggle against tyranny and injustices (Ibrahim 1994).

Asian civil society groups agreed. In 1993 more than a hundred NGOs from 26 Asia-Pacific countries endorsed the "universal value" and "indivisibility and interdependence" of the human rights project, saying that this project encompassed the "richness and wisdom of Asia-Pacific cultures" (Asia-Pacific NGOs 1993). And in the late 1990s, on the 50th

anniversary of the UDHR, a large group of Asian NGOs launched an Asian Human Rights Charter, designed to build a powerful contemporary consensus in that region (Asian Human Rights Commission 1998).

Even as the Chinese and Malaysian leaders were decrying western human rights arguments, they were signing and ratifying UN human rights conventions. In the mid-1990s Malaysia ratified the Conventions on women, children and genocide while, between 1998 and 2001 (while seeking access to the WTO) China ratified both Conventions of the International Bill of Rights (UNHCHR 2001). The historical claims of the 'Asian values' argument have been debunked by Indian scholar Amartya Sen (1999: pp.231-8, 244-8; and 1997), who points out that rights and liberal tolerance have a long tradition in Asian civilisations, just as dictatorships and intolerance have a long tradition in the west. But it is the universal participation in and endorsement of the Convention on the Rights of the Child (1989) which most powerfully demonstrates that human rights have indeed become a human rather than simply a western liberal process. That Convention and that consensus have now become a powerful tool for youth and rights activists world-wide, influencing new standards in criminal justice for young people. For example, the Australian Young Offenders Act (NSW) 1997 established new standards to prevent the institutionalisation of young people - even though that state's practice is uneven, and far from meeting these legislative ideals.

Tracing these historical developments helps draw our attention to the social character of rights, and the long and tortured path of the development of human rights. Rights have typically been promoted by the disempowered, constructed and mediated by privileged classes, augmented by popular reactions to atrocities and oppression, then broadened and universalised by appeal to human equality. In the economic sphere, effective rights (eg. to food, clothing, shelter) have also been universalised, by affected groups and their advocates, to various extents, through social security systems, various forms of social protection and wage regulation. And while these developments have been uneven, they have also been widespread. For example in 1997 Thailand (governed by a military regime until the early 1990s) secured a Constitutional Bill of Rights (Foreign Law Division 1998). This Bill recognises a large number of civil and economic rights, and was fought

for by a wide range of Thai activists, many of whom are now engaged in helping make those rights effective (Forum Asia 2000; Tammasiri 1998). Some of the provisions in the Thai Bill of Rights were immediately called on to help resist IMF-imposed privatisations in Thailand, in the wake of that country's financial crisis (The Nation 1999). These provisions were the rights to assemble peacefully (s.44), to freely express opinions (s.39), and "to participate in a [state] decision making process ... which affects or may affect his or her rights and liberties" (s.60).

Labour rights, too, have been recognised in the International Covenants (ICESCR Article 7) and in a series of International Labour Organisation Conventions, especially the seven 'fundamental' conventions (ILO 2001). The ratification of these Conventions, like the ratification of the main human rights treaties, has grown in recent years (Tables 2 & 3). The rapid expansion of such ratifications must, at the least, be explained by the growing need of a wide variety of regimes for political legitimacy, and a perception by those regimes that the ratification of human rights treaties is an important means to gain such legitimacy.

**Table 2: Number of Signatures and Ratifications of Major UN Human Rights Treaties - as at 2001**

|          | ICESCR | ICCPR | ICCPR-<br>OPI | ICCPR-<br>OP2 | CERD | CEDAW | CAT | CROC |
|----------|--------|-------|---------------|---------------|------|-------|-----|------|
| Signed   | 7      | 6     | 4             | 6             | 9    | 3     | 10  | 1    |
| Ratified | 144    | 147   | 98            | 44            | 157  | 167   | 124 | 191  |

Source: UNHCHR (2001) [www.unhchr.ch](http://www.unhchr.ch) - as at May 2001 (Somalia, the last nation to ratify CROC, did so soon after this)

Endnote 1 at the conclusion of this article explains treaty acronyms

Importantly, collective rights have emerged as part of this new international consensus, the most significant being the right of a people to self-determination (Article 1, ICCPR and ICESCR), the rights of workers, including the right to form trade unions (ICESCR Articles 7 & 8), the right to social security (ICESCR Article 9), and the right to a healthy environment (ICESCR Article 12). In formulation are the new collective notions of a right to development (Sengupta 2000; UNHCHR

2002b) and the rights of indigenous peoples (UNHCHR 2002c). There may be a 'natural trajectory' to these new rights, and to their increasing social nature. In some respects they seek to fill gaps left by the previous consensus; in other respects they create new formal rights by recognising deficiencies in effective rights.

**Table 3: Number of Ratifications of ILO Conventions - 1991-2001**

|                           | 1991  | 1992  | 1993  | 1994  | 1995  | 1996  |
|---------------------------|-------|-------|-------|-------|-------|-------|
| All ILO Conventions       | 5,555 | 5,761 | 6,070 | 6,184 | 6,253 | 6,319 |
| 'Fundamental' conventions |       |       |       |       |       | 812   |
| Other ILO Conventions     |       |       |       |       |       | 5,507 |

  

|                           | 1997  | 1998  | 1999  | 2000  | 2001  |
|---------------------------|-------|-------|-------|-------|-------|
| All ILO Conventions       | 6,400 | 6,491 | 6,611 | 6,847 | 6,897 |
| 'Fundamental' Conventions | 850   | 879   | 936   | 1,049 | 1,075 |
| Other ILO Conventions     | 5,550 | 5,612 | 5,675 | 5,798 | 5,822 |

Source: ILO (2001) [www.ilo.org](http://www.ilo.org), ratifications as at 26 May 2001.

Like the 'dangerous' nineteenth century ideas of Charles Darwin and David Ricardo, the collective right to self-determination of a people has become one of the great and 'dangerous' ideas of the 20th and 21st centuries - 'dangerous' in that it tends to undermine the existing order. Darwin's theory of evolution challenged traditional views of human identity (Dennett 1995). Ricardo's theory of value, and of income competition between classes, was attacked by some liberals as "wrong headed" (Jevons 1871) and "dangerous" (Sidgwick 1887). Although Ricardo himself was a liberal, these ideas tended to undermine the liberal project of harmonious growth through expanded economic liberties. Ricardo's exploration of ideas of 'value', and his associated suggestion that wages were in a competition with profits (Ricardo 1819), was developed by Marx (1867) into a labour theory of value, linked to a radical view of competing social classes. Although these ideas of value, as explanations of price determination, were eventually displaced by the neoclassical modelling of liberals (eg Jevons 1871), they survive as

powerful reminders of economic antagonisms within the productive relations of capitalist societies.

In a similar way, the collective right to self-determination was created in the process of national groups seceding from the European empires; but the idea was radicalised and passed on to colonial peoples seeking independence, and then to indigenous groups seeking self-governance and redress for dispossession of lands. While not incorporated into the Charters of the League of Nations or the Universal Declaration of Human Rights (1948), the principle of self-determination does appear in the Charter of the United Nations (1945). Here it is the right of a 'people', strongly linked to existing nation-states. The concept of self-determination then reappears in the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and in the twin Covenants of the International Bill of Rights (which give effect to the Universal Declaration) - the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic Social and Cultural Rights (1966). These two treaties have identical provisions at Article One, which begin as follows:

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The meaning of the principle is still contested in international law, often because of resistance to the recognition of new groups of 'peoples' within existing states. However, as Chowdhury (1989: 296) says:

a peoples' right to self-determination is a continuing one involving several principles: every state has an obligation to respect the right; all peoples possess the right, even those in independent states; the right can be implemented short of total independence; real choice about political regime and course of development must exist; [and] gross violation of the right may justify secession/independence.

While the collective nature of the right to self-determination of a people continues to puzzle liberal jurists, the fact that it is the first principle of both the major Human Rights Covenants lends recognition to its status as

an economic as well as a political right (Craven 1995: 25). In a postcolonial era, with giant multinational corporations and multilateral banks dominating small developing nations, this may have great significance. For example, community leaders in East Timor have linked their broad concept of 'Ukun Rasikan' (ongoing self governance) to their political self determination (Anderson 2002).

Building on the principle of collective self-determination, indigenous peoples now have an international process to pursue their struggle for self-governance and compensation for dispossession (UNHCHR 2002c). In some countries they have established new forms of self-government (eg. the indigenous statelet of Nunavut, in Canada's north) or of collective and inalienable land title (eg. the Australian Aboriginal Land Rights (Northern Territory) Act, 1976), in an era of increasing commodification. Further, the creation of a Convention on the 'right to development', following the U.N.'s Declaration on the Right to Development (1986), is now focussed on a social process of participatory development, including appropriate institutions (Sengupta 2001; UNHCHR 2002b), rather than simply the previously existing individual rights to food, education, housing and so on (ICESCR 1966). As these collective rights expand, they are also raising conflicts with the limited formal and effective rights embodied by economic liberalisation. A conflict is emerging, for example, between the global trend of water privatisation, and the assertion in the UN's Declaration on the Right to Development (1986) that states shall "ensure equal opportunity for all in their access to basic resources" (Santiago 2002).

Human rights have therefore become something more than just an expression of individualistic liberalism, and have become a vehicle for the creation of new dynamics in world politics. A variety of 'rights activists' are the agents of this change. Yet rights still reside within political and legal systems which are often dominated by authoritarian states and the interests of large corporations. These institutions often see their own interests (which they publicly and misleadingly equate with the common good) best served by promotion of a very limited range of rights, encompassed within the theory of economic liberalism. These rights are principally the right to property and an equal opportunity to participate in markets. This stunted view of human aspirations has also

spread across cultures, and has gained force with the rise of multinational corporations. This conception of rights was largely a 19th century north European creation, but some East Asian leaders, more cautious in their support of civil and political rights, have adopted the economic liberal language of 'freeing up' markets, privatising and 'deregulating' corporate activity, apparently in the quest of new economic opportunities (eg. Ministry of Foreign Affairs of Japan 1998). At the same time, in 2002 a highly 'deregulationist' US regime was forced to back-track on its advocacy of greater corporate freedoms, in face of exposure of the largest corporate frauds in history. These frauds damaged employee and consumer rights, as well devastating small investors and causing a slump in US stocks (Cummings *et al.* 2002: 1). The agenda of corporate rights is powerful, but not invulnerable.

The liberal view of 'pure economics' - with a stunted view of rights, and with little reference to actual power relations, social needs and the full range of human aspirations - has scabbled for legitimacy against the parallel but broader tide of human rights. The power of the former needs the legitimacy of the latter. In pursuit of this legitimacy, the stunted rights view has sought to maintain currency through consequential and associative arguments, linked to the broader view of human rights. Proponents of economic liberal processes and policies argue that consumer benefits and the satisfaction of other human needs will follow as a consequence of 'pro-market' moves. Economic liberals associate themselves with broader human rights objectives, provided that the means towards these objectives are economically liberal. So, for example, the World Bank associates itself with human rights objectives (World Bank 1998), while maintaining a clear focus on capital liberalisation, rationalisation of industry and the privatisation of productive public assets (World Bank 2001; Cheru 1999; SAPRIN 2000). This 'layering' of agendas - associating a narrow economic liberal argument with a broader human rights argument - makes things difficult to read. We are betrayed by the complexity of language, or by language alone, because of the significance of hidden meanings. In these circumstances, a close identification of social and class interests in all important questions of rights is required, if we are not to be misled. This requires an examination, in each particular circumstance, of the differences between formal rights and effective rights.

### Formal Rights and Effective Rights

Much of the scepticism about rights and rights instruments has focussed on the gap between stated and actual rights. There was much justification for this scepticism. Institutionalised racial discrimination persisted in the USA for almost two centuries after the 1791 Bill of Rights proclaimed the rights of all people to be "secure in their persons" and to not be deprived of liberty without due process of law (Article 4 & 5). Racial equality provisions inserted into this Bill of Rights in 1868-70 (Article 14 & 15) were mostly ineffective over the next century.

In the mid 19th century Marx and Engels identified dominant class interests in capitalist society as effectively reducing all chartered and idealised freedoms to the one single and privileged freedom of "free trade" (Marx and Engels 1848: 36), and this theme is still powerful in today's clashes and debates over 'globalisation'. The original aim of communists was not to establish some new charter of principles, but to mobilise opposing subordinate class interests. However there was also a vision of a future society where "the free development of each is the condition for the free development of all" and where there was no class domination, but rather such achievements as free education and an abolition of child labour (Marx and Engels 1848: 49, 60-61). Marxists since then have assumed that the social forces necessary to prosecute equal rights simply could not emerge under capitalist class relations and that, in particular, the state in capitalist society was effectively 'captured' by private investor interests. The international engagement with rights and rights agreements had moved on substantially in the late 20th century, but in 1996 a fine sounding Bill of Rights in post-apartheid South Africa hardly translated into practical benefits for most poor, black South Africans, even after they gained the vote (Venter 1997).

The skepticism about rights is often justified, but much of it fails to distinguish formal rights from effective rights, and the different roles the two may play. The experience of the late 20th century demonstrates that confidence in the supposed liberating power of inexorable economic forces may be misplaced, and that the development of an international consensus over formal rights is not meaningless. The development of the collective right of a people to self-determination, through anti-colonial

and indigenous struggles, is the best example of this, in the 20th century. Yet experience also suggests that, in most cases, the development of a formal right only establishes a basis for a further struggle for an effective right. Formal rights are rarely self-actualising.

Further, while separate social struggles may be required for defining formal rights and converting these formal rights into effective rights, it is not always a disadvantage that they are separate processes. Formal rights constructed within a state are usually 'legal rights' - that is, enforceable through some state structure or process. Legal rights therefore tend to be measures of state power, often with contingent or subordinate civil rights attached. Where there is a weak formal structure of legal rights (e.g. no Bill of Rights) the rights tend to be residual - legal rights and freedoms that remain after state power is defined and often expanded. The state, in association with its powerful interest groups, tends to delimit individual and collective rights so as to maintain the sphere of state power and to protect the rights of powerful interest groups. For these reasons, the practical scope of formal legal rights is often quite limited.

However, formal rights at an international level are constructed in relative innocence of their immediate application, precisely because they are seen as fairly ineffectual expressions of principle. The international consensus of states on formal human rights is thus conceived in a different climate to that of formal legal rights within a state. Even autocrats tend to be more generous when agreeing in principle, or with reference to matters apparently outside their spheres of influence. States certainly tend to behave with much greater caution about legislating domestic rights when their minds are more concentrated on their own affairs.

Formal rights thus comprise both human rights - the gradually evolving international consensus - and legal rights, developed at a state level. British common law traditions, influenced by utilitarian theories (Bentham 1780), have seen legal rights as the only 'real' rights because they are associated with enforceable duties. However contemporary international jurisprudence now constructs rights as primary, and sees duties as derivative of these rights. We can argue that legal rights should be informed by human rights (the international consensus), but these two types of formal rights are distinct in their genesis, as well as in their

means of enforcement. At a state level, legal rights tend to represent the outcomes of more particular struggles between the legitimising needs of powerful interests and the claims, solidarity and resistance of civil society. These latter claims often draw on the arguments of human rights. Often they fail, sometimes they succeed.

The achievement of a certain level of formal rights, although important, does not substitute for the social struggle to realise those rights. But formal rights do lend legitimacy to social struggles for effective rights. A state is answerable to the supervising body (typically a United Nations agency) of a human right agreement it has ratified, and it may be subject (at times against its will) to the coerced application of legal rights. In the former case the formal 'opinion' of the supervising agency can lend legitimacy to a political struggle within a country - as with the Human Rights Committee opinion in *Toonen v. Australia* (Human Rights Committee 1994), which contributed to the repeal of Tasmanian anti-homosexual laws. In the latter case, a civil group may forestall the extension of state power and erosion of rights, through conventional legal or constitutional means - as with the US Supreme Court case of *Reno v ACLU* (US Supreme Court 1997), where US Government moves to censor the Internet were blocked. Rights activists will be alive to both of these types of opportunities, when focussing on gaps between formal and effective rights.

Effective rights can be measured, and this may be important in distinguishing an effective from a theoretical right. Economic liberals often say, for example, that all citizens have the right to own company shares, and thus gain an income from the work of others. Such a belief may have policy implications, such as proposals for tax reform to assist private shareholders, on the basis that private shareholding has become part of a country's social security system. Owning shares is not in itself a human right, but rather a property right, and one suggested means of gaining access to some important primary human rights - such as the right to food and shelter. Is share-holding an effective means for a large population to achieve these primary rights? We can test this argument by measuring what proportion of citizens gain a significant proportion of their income from shares. It has been suggested, for example that Australia has become a 'shareholder society' because (particularly after

some large privatisations) 53% of the adult population own some form of shares, according to a Stock Exchange survey (ASX 2000). However a simple distributional analysis of this same survey (see Table 4) shows that less than 5% of the adult population's shareholdings are capable of generating a significant proportion of income (more than 25% of the average income). This disparity in Britain is even more marked, where 25% of the adult population was found to have direct or indirect shareholdings - but distributional analysis of the same survey shows that only 2.25% of the adult population earns more than 20% of an average income from these shares (Hanley *et al.* 2000). Such distributional analyses show that policy changes to assist shareholders would only further privilege a wealthy elite.

**Table 4: Distribution of Australian Share Ownership by Value, 2000**

| Value of Shares (AS) | Earnings as %<br>Average income * | Percentage of<br>Shareholders | Shareholders as %<br>of Adult Population |
|----------------------|-----------------------------------|-------------------------------|--|
| >100,000             | >25                               | 9                             | 4.8                                      |
| 50,000<100,000       | 12.5-25                           | 8                             | 4.3                                      |
| 25,000<50,000        | 6.25-12.5                         | 8                             | 4.3                                      |
| 10,000<25,000        | 2.5-6.25                          | 17                            | 9.2                                      |
| 5,000<10,000         | 1.25-2.5                          | 14                            | 7.6                                      |
| 1,000<5,000          | 0.25-1.25                         | 27                            | 14.6                                     |
| not stated           | n/a                               | 17                            | 9.2                                      |

Source: ASX (2000) *2000 Australian Shareownership Study*, Australian Stock Exchange. [www.asx.com.au/about/13/shareownership\\_AA3.shtm](http://www.asx.com.au/about/13/shareownership_AA3.shtm);

\* Working assumptions (i) 10% return on shares (ii) average income rounded to \$40,000 p.a.

Other effective rights can also be measured. The opportunities for women to earn a decent income, and to become elected national representatives, managers, and professional workers have already been compiled by the United Nations Development Programme, as part of its Gender Empowerment Measure (GEM). Actual disparities, developments over time and cross-country comparisons can be made on

the basis of this sort of data (see Table 5). Such measures of effective rights provide a far better basis for social and policy argument and contestation, than do statements of principle or formal rights - though the latter are important in setting the 'ground rules' for these same arguments and contests.

**Table 5: Examples of Gender Empowerment Measures, 2001**

|           | Seats in Parliament | Female Legislators, Senior Officials and Managers | Female Professional and Technical Workers | Estimated Ratio of Female to Male Income |
|-----------|---------------------|---|---|--|
| Norway    | 36.4%               | 31%   | 58%                                       | 0.63                                     |
| Sweden    | 42.7%               | 29%   | 49%                                       | 0.68                                     |
| Singapore | 6.5%                | 21%   | 42%                                       | 0.49                                     |
| Mexico    | 15.9%               | 23%   | 40%                                       | 0.37                                     |
| Australia | 25.4%               | 25%   | 47%                                       | 0.67                                     |

*Source:* UNDP (2001) Human Development Report 2001, Oxford University Press, New York, T22

What stands in the way of a formal right becoming an effective right? There seems to be two types of constraint. First, social structures such as laws, privileged associations, and discriminatory cultural practices may constrain effective rights. Second, the economic incapacity of individuals or groups may create the barrier. In the case of gender measures, it seems likely that many countries have social structures (eg. gender-biased social networks and cultural practices) which either constrain or facilitate the formal equal opportunities of women (where gender equality is formally recognised) to become nationally elected representatives, managers or to gain a decent income. Economic incapacity, possibly coupled with educational deprivation, may also limit women's opportunities. Similarly, in the case of a social policy based on spreading shareholdings, it should be fairly obvious that there is a fundamental structural reason (beyond simple economic incapacity) that prohibits a large proportion of any population from gaining a significant proportion of their income from shareholdings. At any given time, only a small group can passively gain an income from the work of others. As Joan

Robinson (1942: 18) observed, whatever may be said about whether or not capital is productive, "owning capital" is clearly not a productive activity. Income from shareholdings is thus a passive privilege which society may decide to grant to its older citizens; alternatively, private individuals often arrogate that privilege for themselves.

The gap between formal and effective rights is a source of important information about any society. It tells us something of the existence, size and nature of groups which can, or which cannot, access significant rights and facilities. It also tells us of the potential for rights activists to rectify particular gaps, especially substantial gaps. Gaps between formal and effective rights might also be regarded as profiles of the uneven development of a particular society. Such a view carries the assumption of a general social goal of the full enjoyment of all rights by all citizens or, as repeated and emphasised by the U.N. World Conference on Human Rights, and its 1993 Vienna Declaration and Programme for Action: "the universal respect for, and observation of, human rights and fundamental freedoms for all".

Uneven development of rights raises the question of competition between the rights of individuals or groups. This issue is somewhat distinct from the international jurisprudence on formal rights, where rights are generally asserted to be indivisible and non-competitive (Vienna Declaration Article 5) - although liberal jurisprudence does often speak of the need to 'balance' competing rights. In practice, though, there are many examples of competition between effective rights, largely because one right may be asserted or realized, whereas another may be dormant or repressed. For instance, states often strongly enforce the property rights of a mining company at the expense of the traditional land rights of an indigenous group. In this competition over distinct property rights, in Australia and from the indigenous point of view, "gains have rarely obviously outweighed losses" (Connell and Howitt 1991: 197). The mining company is typically a powerful and privileged group, because of its strategic economic significance to the state; the indigenous groups are typically disadvantaged because of their history of dispossession, marginalisation and economic incapacity.

In considering competition between the effective rights of groups, it is important to identify such privileged groups and to measure the

disparities. Identification of effective privilege, as well as effective disadvantage, is necessary to prevent inappropriate arguments of formal rights or public policy further entrenching privilege. Examples of such inappropriate arguments might include large damages payments by the state (ie from public moneys) to wealthy corporations for 'lost profits', or tax concessions on interest payments to wealthy deposit holders, in the name of a social savings strategy. At the same time as group privilege (or unequal effective rights) is identified, the inevitable exceptions must also be identified. This means, for example, recognising the differences between large and small employers, and between wealthy shareowners and low income share owning retirees; or recognising when indigenous groups targeted for affirmative action measures might have overcome their previously identified disadvantage.

### **Rights Advocacy and Economic Development**

Who is a 'rights activist'? From an individual point of view we might regard virtually anyone as a rights activist, as all are citizens (of the world, from a human rights perspective, of a nation, from a legal rights point of view) with the right to fully develop and pursue their rights and capacities, as well as those of their friends. However, socially speaking, activism must be a process beyond the concerns of individuals and families, and rights activists must be those who seek to either establish new, broad and inclusive formal rights or to address significant deficits in effective rights. The entrenchment or pursuit of privilege, or advocating or campaigning for sectional interests, cannot credibly be regarded as rights activism. And while traditionally activism has been an important part of the "discourse and practice of democratic politics and social change" at a local level, in recent years global activism has also become important (Gaventa 2001: 275). Barlow and Clarke characterise this global activism as distinct from the "cheap hope" of liberal modernisation; it is instead a "costly hope", which comes through struggle with the powers and principalities of the world" (Barlow and Clarke 2002: 225).

Virtually every social group these days wants some part of the contemporary legitimacy that attaches to human rights, and this is

perhaps most clearly the case in the area of economic development. Yet a confusion of claims over rights advocacy attaches itself to a range of approaches to economic development. Three broad types can be distinguished - associative, linked and definitive approaches to human rights in development.

The first approach - an 'associative' strategy of human rights in development - is practised by many economic liberals. Here the stunted liberal view of rights (an emphasis on property rights and the formal equal opportunity to participate in markets) is associated with broader human rights. The argument is that the full range of rights (eg. civil and political rights) will naturally come as a consequence of pursuing the essential economic liberal rights. British Diplomat Robert Cooper (2002), for example, argues the common liberal theme that "the global market ... brings with it the values of liberty and equality". The World Bank (1998: 2) argues that its pursuit of capital liberalising policies "contributes to building environments in which people are better able to pursue a broader range of human rights"; but the Bank tends to ignore the conflicts between its policies and coercive programs, where they conflict with important human rights (Cheru 1999). So, in the liberal 'associative' view of human rights, a rights gloss is often given to policies of corporate deregulation, rationalisation and privatisation, which mostly benefit large corporations.

The second approach - a 'linked' approach to human rights in development - is not so much a strategy of development as a pragmatic attempt to attach the legitimacy of a workers' rights claim to the rising force of economic liberal institutions. A number of peak trade union bodies, principally the International Confederation of Free Trade Unions (ICFTU), have proposed a 'social clause' to make adherence to the International Labor Organisation's seven 'fundamental' labour rights a condition of reduced levels of trade protection within the World Trade Organisation, as well as in regional and bilateral 'free trade' agreements (Harvey et al 1998). Here the privileged effective rights of international trading corporations are not attacked, but sought to be used to lever up the deficient effective rights of workers (eg. to organise, to limit child labour) in the poorer trading countries.

There is a fierce debate over the extent to which social clause campaigns actually represent a genuine movement of solidarity amongst labour activists (ie. with wealthy country workers seeking to raise the rights of repressed workers in poorer countries) or whether they represent more an old-style protectionist move (ie. with workers in wealthy countries seeking to prevent their jobs being transferred to workers in lower wage countries) (Bullard 2000; Waghorne 2000). Some qualifications to the original social clause claims have been suggested by rights activists in developing countries, to enable this proposal to maintain its solidarity status. These qualifications include progressive compliance provisions, instead of sanctions, and greater civil participation in international trade agreements and complaints procedures (SALIGAN 1996). This finessing of the 'linked' social clause approach represents a reasonable attempt by rights activists to reinterpret and ground a fairly abstract formal rights claim, by reference to more specific knowledge of the effective rights position in developing countries.

The third approach - a 'definitive' strategy of human rights in development - generally attempts to define both the ends and the means of economic development in human rights terms. This is the recent approach of the UNDP's Human Development Report. The UNDP (2000: 19-23) discusses a "more integrated approach to human rights and human development", where both goals and means are measured according to human rights standards, an assessment process which "involves a reorientation of factual concentration, which can broaden and enrich human development accounting". A variant of this approach is explained by Amartya Sen, who argues that economic development is "a process of expanding the real [ie. effective] freedoms that people enjoy", that development must centre on this objective, rather than on "some particular means", and that human freedoms must be seen as "the principal ends of development" (Sen 1999: 3-5).

The appeal of elevating a wide range of individual human freedoms as the basis for development is that (although quite different) the argument sounds similar to the associative approach of economic liberalism, and might thus more easily gain support as a means to widen what I have called the 'stunted' liberal view of rights. Individual civil freedoms or civil liberties represent an older form of human rights, which indeed

developed from bourgeois property rights in precisely this way. However it is not clear why economic development should be defined by this older view of human rights, and so ignore the significant consensus on positive rights (eg. to food, to shelter) and on collective rights (eg. of a people to self determination) which have developed in recent decades. The full range of human rights, perhaps reinterpreted through the UN's 'right to development' process (which is taking account of previous agreements), seems to be the better candidate for a definitive appeal to human rights in development.

### Conclusion

I have attempted in this paper to introduce some conceptual approaches to human rights, informed by some of the methods of political economy. In doing this I have also tried to distinguish these approaches from those of liberal jurisprudence, and to reflect critically on the limited or 'stunted' rights view of economic liberalism. I began by describing human rights as a social construction, with an evolutionary history driven by powerful interests, but conditioned by rights activists and forces of civil solidarity. Human rights standards in the late 20th Century represent a unique and slowly evolving social consensus, which is increasingly lending legitimacy to global political and economic development.

However, in interpreting the use of these standards, some conceptual distinctions have to be made. The first distinction is that between formal and effective rights. Formal rights comprise both the international agreements on the principles of human rights, and the legal and enforceable rights that exist distinctly and differently within each state. In contrast, effective rights are informed by formal rights but develop unevenly, and generally through a second process of social struggle. The gap between the two describes lines of privilege and unequal capacity in societies, but also represents opportunities for rights activists to add force to their arguments, within a range of tactics which seek to reconstitute formal rights and to redress particular deficient effective rights. Measurement of effective rights is an important element in this process.

Finally, in economic development the proliferation of human rights arguments calls out for some analysis of the arguments according to interest and motivation. I have suggested three such types of argument: an 'associative' argument by economic liberals (which seeks to associate limited economic liberal rights with the broader spectrum of human rights); a 'linked' argument by some trade unionists (which seeks to harness labour rights to the institutions of trade liberalisation); and more recent 'definitive' arguments which seek to recast both the means and ends of economic development in human rights terms. Conceptual distinctions such as these may help analysts and rights activists navigate their way through the new and confusing 'forest' of human rights claims.

### References

- Anderson, Tim (2002) 'Self-determination after Independence: East Timor and the World Bank', Paper at Islands of the World VII Conference, University of Prince Edward Island, Canada, June
- Asia-Pacific NGOs (1993) 'Statement from 110 NGOs from 26 Asia-Pacific Countries, adopting the Bangkok NGO Declaration on Human Rights', 29 March
- Asian Human Rights Commission (1998) *Asian Human Rights Charter: a peoples' charter*, AHRC, Hong Kong
- ASX (2000) *2000 Australian Shareownership Study*, Australian Stock Exchange, [www.asx.com.au/about/13/shareownership\\_AA3.shtm](http://www.asx.com.au/about/13/shareownership_AA3.shtm)
- Barlow, Maude and Tony Clarke (2002) *Global Showdown: how the new activists are fighting global corporate rule*, Stoddart, Toronto
- Bentham, Jeremy (1780) *An Introduction to the Principles of Morals and Legislation*, Legal Classics Library, Birmingham Alabama (1986 edition)
- Bullard, Nicola (2000) 'It's time for 'uncivil' society to act', *Focus on Trade*, No 47 March, <http://www.focusweb.org>
- Cassidy, Frank (Ed) (1991) *Aboriginal Self-determination*, Oolichan Books, Lantzville BC (Canada)
- Cheru, Fantu (1999) 'Effects of structural adjustment policies on the full enjoyment of human rights', UN Commission on Human Rights, 55th session, review by independent expert, 24 February
- Chomsky, Noam and Edward S. Herman (1980) *The Washington Connection and Third World Fascism: the political economy of human rights*: Volume 1, Hale and Iremonger, Sydney

- Chowdhury, Akram H. (1989) 'Self-Determination, the Chittagong and Bangladesh', in Timothy Shaw (Ed) (1989) *Human Rights and Development*, MacMillan, London
- Connell, John and Richard Howitt (1991) *Mining and Indigenous Peoples in Australasia*, Sydney University Press, Sydney
- Cooper, Robert in Kirsten Garrett (2002) 'Global Morality', Background briefing, ABC Radio National, 30 March, <http://www.abc.net.au/rn/talks/bbing/stories/s519815.htm>
- Craven, Matthew (1995) *The International Covenant on Economic, Social and Cultural Rights: a perspective on its development*, Oxford Monograph in International Law, Clarendon Press, Oxford
- Cummings, Jeanne, Jacob M. Schlesinger and Michael Schroeder (2002) 'Bush Crackdown on Business Fraud Signals New Era', *Wall Street Journal*, 10 July
- Dennett, Daniel (1995) *Darwin's Dangerous Idea: Evolution and the Meanings of Life*, Simon and Schuster, New York
- de Winter, Micha (1997) *Children as Fellow Citizens*, Radcliffe Medical Press, Oxford
- Foreign Law Division (1998) *Constitution of the Kingdom of Thailand B.E. 2540 (1997)*, Foreign Law Division, Office of the Council of State, Bangkok
- Forum Asia (2001) *Human Rights in Asia, Annual Human Rights Report 2000*, Bangkok, August
- Freedon, Michael (1991) *Rights*, Open University Press, Milton Keynes
- Fudge, J & H Glasbeek (1992) 'The Politics of Rights: A Politics with Little Class', *Social and Legal Studies*, Vol 1
- Gaventa, John (2001) 'Global Citizen Action: Lessons and Challenges' in Michael Edwards and John Gaventa (Ed.s) (2001) *Global Citizen Action*, Earthscan, London
- Habermas, Jürgen (1971) *Theory and Practice*, Polity Press, Cambridge, 1973 English edition
- Hanley, Chris, Jeremy King & Alison Pugh (2000) *Private Share Ownership in Britain*, Proshare, [www.proshare.org/research/bs02000.pdf](http://www.proshare.org/research/bs02000.pdf)
- Harvey, Pharis J, Terry Collingsworth and Bama Athreya (1998) 'Developing Effective Mechanisms for Implementing Labor Rights in the Global Economy', International Labor Rights Fund, <http://www.laborrights.org/ilrfinfo.html>
- Human Rights Committee (1994) 'Toonen v. Australia', Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992
- Human Rights Committee (1996) Josef Frank Adam v. the Czech Republic, Communication No 586/1994, UN Doc CCPR/C/57/D/586/1994 (1996); and also Ivan Somers v Hungary, Communication No. 566/1993, UN Doc CCPR/C/53/D/566/1993 (1996)
- Ibrahim, Anwar (1994) 'Media and Society in Asia', Keynote Speech to Asian Press Forum, Hong Kong, December 2 (cited in Hoong-Phun Lee 1995: 17)

- Ignatieff, Michael (2000) *The Rights Revolution*, Anansi, Toronto
- ILO (2001) *Ratifications of ILO Conventions*, International Labor Organisation, [www.ilo.org](http://www.ilo.org)
- International Court of Justice (1975) *Western Sahara: Advisory Opinion*, ICJ Reports, 16 October
- Jevons, William Stanley (1871) *Theory of Political Economy*, Penguin, Harmondsworth (1970 edition)
- Lee, Hoong-Phun (1995) 'Constitutional values in Turbulent Asia', papers of the 14th LawAsia Biennial Conference, August 16-20, Beijing
- Locke, John (1689) *Two Treatises of Government*, CUP, Cambridge, 1963 edition (Editor: Peter Laslett)
- Marx, Karl (1867) *Capital*, Progress Publishers, Moscow (1971 edition)
- Marx, Karl and Frederick Engels (1848) *Manifesto of the Communist Party*, Foreign Languages Press, Peking, (1977 edition)
- Mendes, Errol (1996) 'Asian Values and Human Rights: Letting the Tigers Free', *Human Rights and Education Bulletin*, Human Rights Research and Education Centre, University of Ottawa, [www.uottawa.ca/hrrec/publicat/asian\\_values.html](http://www.uottawa.ca/hrrec/publicat/asian_values.html)
- Ministry of Foreign Affairs of Japan (1998) 'Japan's Deregulation requests for the EU', [www.mofa.go.jp/region/europe/eu/summit/summit9805.html](http://www.mofa.go.jp/region/europe/eu/summit/summit9805.html)
- Paine, Tom (1791) *The Rights of Man*, Penguin, Harmondsworth (1969 edition)
- Pandit, Mrs. Vijaya Lakshmi (1948) speech, 3rd Session, 143rd Plenary Meeting, 25th September, 1948, in India at the UN, *Speeches (1946-64)*, <http://meadev.nic.in/un/vol1/s3.htm>
- Ricardo, David (1819) *On the Principles of Political Economy and Taxation*, Penguin, Harmondsworth, (1971 edition) Chapter One: On Value
- Ricardo, David (1820) 'Letter to T. R. Malthus, October 9, 1820', in *Collected Works Vol VIII*, p.278-9
- Robertson, A.H. and J.G. Merrills (1996) *Human Rights in the World*, Manchester University Press, Manchester
- Robinson, Joan (1942) *An Essay on Marxian Economics*, MacMillan, London (1971 edition)
- Sachs, Albie (1991) *Protecting Human Rights in a New South Africa*, Oxford University Press, Cape Town
- SALIGAN (1996) *A Conditional 'Yes' on the Issue of Social Clause in Trade Agreements*, booklet, SALIGAN, Manila, October

- SAPRIN (2000) 'SAPRIN Challenges World Bank on Failure of Adjustment Programs', SAPRIN Secretariat and Executive Committee, [www.developmentgap.org/saprin/april2000.html](http://www.developmentgap.org/saprin/april2000.html)
- Sen, Amartya (1997) 'Human Rights and Asian Values: What Lee Kuan Yew and Le Peng don't understand about Asia', *The New Republic*, July 14, v.217 n.2-3
- Sen, Amartya (1999) *Development as Freedom*, Anchor Books, New York
- Santiago, Charles (2002) 'European Water Corporations and the Privatisation of Asian Water Resources: the Challenge for Asian Water Security', paper for Asem4people (Asia Peoples Forum IV, Copenhagen, Denmark, September 2002, Transnational Institute, Amsterdam, [www.tni.org/asem/copenhagen/docs/paper5.htm](http://www.tni.org/asem/copenhagen/docs/paper5.htm))
- Sengupta, Arjun (2000) The Right to Development, Report of the independent expert on the right to development, E/CN.4/2000/WG.18/CRP.1, United Nations Commission on Human Rights, 57th session, Geneva, 18-22 Sept
- Sidgwick, Henry (1887) *The Principles of Political Economy*, MacMillan, London
- Tammasiri, Somchart (1998) 'Human Rights Developments in Thailand: According to the New Constitution', paper to the Second Annual Asian Regional Study Session on Human Rights, Asia Forum for Human Rights and Development and the Centre for Social and Development Studies, Chulalongkorn University, Bangkok, October
- The Nation (1999) 'Govt Privatisation Plans Biased', 24 March
- Touraine, Alain (1994) *Qu'est-ce que la démocratie?*, Fayard, Paris
- Tushnet, M (1989) 'Rights: An Essay in Informal Political Theory', *Politics and Society*, Vol 17
- UNDP (2000) *Human Development Report 2000*, United Nations Development Program, 'Chapter 1: Human rights and human development', pp.19-26
- UNDP (2001) *Human Development Report 2001*, Oxford University Press, New York
- UNHCHR (2001) *Ratifications of Human Rights Treaties*, United Nations Commissioner for Human Rights, [www.unhchr.org](http://www.unhchr.org)
- UNHCHR (2002a) 'Membership of the Commission on Human Rights, United Nations High Commissioner for Human Rights, <http://www.unhchr.ch/html/menu2/2/chrmem.htm>
- UNHCHR (2002b) *Human Rights in Development*, United Nations High Commissioner for Human Rights, <http://www.unhchr.ch/development/>
- UNHCHR (2002c) *Indigenous Peoples*, United Nations High Commissioner for Human Rights, <http://www.unhchr.ch/indigenous/main.html>
- US Supreme Court (1997) 'Reno, Attorney General of the United States, et al v. American Civil Liberties Union et al', No 96-511, argued March 19, 1997 - decided June 26, 1997
- Venter, Lester (1997) *When Mandela Goes: the coming of South Africa's second revolution*, Doubleday, Johannesburg

Waghorne, Mike (2000) Letter to the Editor, *Focus on Trade*, Number 48, April, <http://www.focusweb.org>

World Bank (1998) 'Development and Human Rights: the Role of the World Bank', World Bank Group, [www.worldbank.org/html/extdr/rights/hrintro.htm](http://www.worldbank.org/html/extdr/rights/hrintro.htm)

World Bank (2001) 'Articles of Agreement', [www.worldbank.org](http://www.worldbank.org)

#### **Legislation**

*Aboriginal Land Rights (Northern Territory) Act*, (C'th) 1976

*Young Offenders Act* (NSW) 1997

#### **United Nations Documents**

*Charter of the United Nations* 1945

*Covenant of the League of Nations* 1919

*Convention on the Prevention and Punishment of the Crime of Genocide* 1948

*Convention on the Rights of the Child* 1989

*Declaration on the Granting of Independence to Colonial Countries and Peoples* 1960

*Declaration on the Right to Development* (1986)

*International Covenant on Civil and Political Rights* 1966

*International Covenant on Economic, Social and Cultural Rights* 1966

*United Nations Charter* 1945

*Universal Declaration of Human Rights* 1948

*Vienna Declaration and Programme of Action* 1993

#### **Endnotes:**

##### **1. Important UN Human Rights Treaties:**

ICESCR = International Covenant on Economic, Social and Cultural Rights 1966;

ICCPR = International Covenant on Civil and Political Rights 1966;

ICCPR-OP1 = Optional Protocol to the ICCPR (individual complaints);

ICCPR-OP2 = Second Optional Protocol to the ICCPR (abolition of the death penalty);

CERD = Convention on the Elimination of All Forms of Racial Discrimination 1965;

CEDAW = Convention on the Elimination of All Forms of Discrimination Against Women 1979;

CEDAW-OP = Optional Protocol to CEDAW (individual complaints);

CAT = Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment 1984;

CROC = Convention on the Rights of the Child 1989;

CROC-OPAC = CROC optional protocol on the involvement on children in armed conflict;

CROC-OPSC = CROC optional protocol on the sale of children, child prostitution and child pornography;

MWC = Convention on the Protection of the Rights of all Migrant Workers and members of their Families 1990 [not in force - will enter into force when there are 20 ratifications]

## 2. ILO 'Fundamental' Conventions:

ILO Convention # 87 (1950) -- 'Freedom of association and protection of the right to organise Convention' -- no state interference with this right, right to establish and join federations, the law shall not impair these rights, right to organise shall be protected;

ILO Convention # 98 (1951) -- 'Right to organise and collective bargaining Convention' -- protection from acts of anti-union discrimination, no domination of union by employer groups, support collective agreements;

ILO Convention # 29 (1930) -- Ban on forced labour;

ILO Convention # 105 (1957) -- Abolition of forced labour;

ILO Convention # 100 (1951) -- Equal remuneration;

ILO Convention # 111 (1959) -- Ban on discrimination in employment;

ILO Convention # 138 (1973) -- Progressive and effective abolition of child labour, compulsory schooling to age 15, ban on hazardous work under age 18, light work which does not jeopardise health or schooling from age 13, and other controls

