

Human Rights beyond the Millennium

■ Rev. Dr Barney Pityana

In this keynote address Barney Pityana highlights the challenges facing policymakers, civil society and indeed human rights movements in defending and promoting an integrated approach and understanding of human rights. Taking the experience of South Africa he stresses that poverty remains the most prevalent abuse of human rights and is a form of violence against the poor. As such the end of apartheid in South Africa or peace agreements in other parts of the world only create minimum conditions of stability and justice for tackling poverty. But unless a broad-based approach to human rights is adopted the risk of further violence or a return to conflict remains very real.

He argues that instead of compartmentalising progress on human rights into categories, which tends to be that civil and political rights are addressed while socio-economic rights and the right to development are considered secondary, what is needed is a new culture of human rights. This culture requires the setting up of national institutions to monitor and implement such rights and concerted global action in support of honouring the universal and indivisible human rights set out in the Universal Declaration of Human Rights. Only then will the world express the same horror at gross poverty and inequality rather than reserving such concerns solely for abuses of civil and political rights.

Introduction

The United Nations High Commissionet for Human Rights, Mary Robinson, visited South Africa in December 1997 to launch International Human Rights Year. This year is a special one as it commemorates the 50th Anniversary of the Universal Declaration of Human Rights which was born on 10 December 1948. Forty-nine years later, on 10 December 1997, Mrs Robinson during her audience with President Nelson Mandela urged South Africa to take a lead in tackling unresolved issues in international human rights policy and practice. She referred in particular to the need to raise the level of understanding and acceptance of social and economic rights. She noted that despite a long tradition of asserting that social and economic rights are on a par with civil and political rights, the debate surrounding the indivisibility and universality of human rights refuses to go away. Even today, the enforcement and reporting mechanisms for social and economic rights are not the same and questions continue to linger about the justiciability of social and economic rights. Mrs Robinson pledged, in turn, that during her tenure as High Commissioner she would strive to assert the integrity of social and economic rights and ensure that they receive the universal recognition currently reserved for civil and political rights.

This emphasis on social and economic rights is not undeserved or misplaced. Great advances have been made in establishing civil and political rights and significant developments have been made in setting universal norms and standards with regard to political rights and human freedoms, such as freedom of expression and the right to life. With mechanisms in place for reporting on these at international level and through regional instruments in Europe, the Americas and Africa, citizens have a variety of means through which to enforce their rights. The world has been sensitised to the need to intervene in instances where civil and political rights are violated, for example, by the intervention in Sierra Leone and international activity in the former Yugoslavia. And yet in many instances, the achievement of various political rights has not ensured a better quality of life for the peoples of the world. Thus development efforts in both political and economic spheres remain a priority for the international community. It needs to be stated that there is a link between political freedoms, democracy and socio-economic rights. The link is that in undemocratic states the

individual has no rights and the poor have no voice. It is usually the case that the wealth of the nation is in the hands of the few in countries where there is no democratic participation. In such cases opportunities for restructuring national priorities are beyond the reach of those most affected by such decisions. This is surely the case with only a few exceptions. China clearly defies this rule.

A holistic approach to human rights: bread and freedom

The *Human Development Report 1997* observes that despite advances in democratisation and human rights in the world and despite progress in reducing poverty during the past 50 years, it remains the case that poverty is one of the starkest violations of human rights in our contemporary world. More than a quarter of the developing world's people still live in poverty, about a third live on incomes of less than \$1 per day. Sub-Saharan Africa has the highest proportion of people in human poverty, some 220 million people. And yet danger signs persist: there has been slow economic growth, stagnation and decline in some 100 countries; the so-called "tiger" economies of Asia are experiencing a period of unprecedented turmoil with currencies collapsing, massive job losses and ballooning debts. The volatility of the world's capital and stock markets has adversely affected a number of emerging economies as well as those in Asia. At the same time other major challenges persist. The threat of an HIV/AIDS pandemic is increasing globally and internal conflicts continue to affect about 30 countries. The United Nations Development Programme (UNDP) report notes that the human development index declined in some 30 countries from previous years. Between 1987 and 1993, the number of people with incomes of less than \$1 per day increased by almost 100m to 1.3 billion and is still growing.¹ So, despite some advances in the political and economic spheres there appears to be a certain inexorability about the advance of poverty.

In the face of this, the world community has been taking some tentative steps to stem the tide. The Declaration of the World Summit on Social Development stated that the eradication of poverty is an "ethical, social and political imperative of humankind". The Summit's Programme of Action

mandated the UNDP “to undertake efforts to support the implementation of social development programmes.” The eradication of poverty has become a principal objective of UNDP and an overriding theme of sessions of the UN Commission on Human Rights.² Human development is the process of widening the choices people make about their lives in order to enhance their well-being. Poverty, therefore, means the denial of the right to make choices about the most basic needs of humanity like living a healthy life, enjoying a decent standard of living and living one’s life in freedom with dignity and respect.

Global trends, particularly the globalisation of the world economy, also affect human development. Not only are emerging states vulnerable to intense competition from abroad and the dumping of subsidised exports on their fragile markets,³ their currencies are susceptible to speculation in world money markets and the management of national economies is largely out of the hands of those who bear political responsibility for the well-being of her citizens. And yet globalisation is the name of the game. States now have to face the competition, unequal though it might be, and play their role in international forums. The result, of course, is that smaller economies are at the mercy of the larger ones and their capacity to manage their national resources is diminished. Thus their only hope for greater influence lies in the formation of alliances at regional level and with those countries keen to pursue similar models of development. There is no level playing field in the global market. The management of the global market has to be a matter of international concerted action in order to ensure the survival of the smallest and most vulnerable members of the global community. For that to happen, new understandings of national interest and indeed the international common good must emerge in order to ensure a widening of opportunities and benefits for all.

In the light of this ambivalence, it becomes necessary to review the state of human rights and progress in promoting social justice in the world today. In order to do so, I will reflect on some international initiatives such as the right to development and the integration of socio-economic with other rights. The experience of South Africa will be examined to show the role which a national human rights institution can play in the monitoring and enforcement of social and economic rights and some broader points will be drawn from this.

Human rights in a global perspective

The Vienna Declaration and Programme of Action (1993) establishes the link between and relationship among all rights. It states that the right to self-determination, for example, is necessary for all people to “freely pursue their economic and social development.” Vienna made the dogmatic assertion that “All human rights are universal, indivisible and interdependent and inter-related.” One must understand that such a statement was meant to settle whatever unresolved issue there was in the debate about the equal status and force of all human rights. This is a debate that might have been settled had there been one covenant as the UN General Assembly had sought instead of the two forced upon it in 1966. This inter-relatedness is stated by the Committee on Economic, Social and Cultural Rights when it says: “The right to live a dignified life can never be attained unless all basic necessities of life – work, housing, health care, education and culture – are adequately and equitably available to everyone”.⁴ The truth, however, is that almost all member states have ratified the Covenant on Civil and Political Rights (ICCPR) and that there are some 60 less ratifications for the Covenant on Economic, Social and Cultural Rights (ICESCR); that the ICCPR has a clearly recognised mechanism for receiving individual complaints which the ICESCR does not have and that more countries take their reporting obligations under the ICCPR more seriously. Such is the situation that the Committee on Social and Economic Rights has been calling for an optional protocol to regulate a system of individual complaints. Until that is done then the Vienna Statement will continue to sound hollow when it says that “The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis....”

Efforts have been made to bridge the gap that has been identified in human rights jurisprudence. The Limburg Principles (1986) drafted by a Committee of Experts asserted that social and economic rights are an integral part of international human rights law. The full and equal implementation of economic and social rights has been hampered by the conceptual and jurisprudential difficulties associated with the need to provide a clear and precise nature, scope and content of these rights, to clarify the fundamental core obligations of states and to define the meaning of compliance that may be expected of

states. To cut through this legal minefield, the Committee asserts that these rights are fully recognised in international human rights law and that they are receiving far more serious consideration than previously and that "the question is not whether these rights are basic human rights, but rather what entitlements they imply and the legal nature of the obligations of states to realise them".⁵ For her part, Dr Audrey Chapman advocates an alternative approach. She holds that the alleged conceptual difficulties can exhaust intellectual energies for all time. She, therefore, picks up on entitlement as used by the Committee and proposes a violations approach whereby states that are in breach of economic, social and cultural rights could be made accountable as in the civil and political rights regime. It is possible to identify violations without needing to conceptualise the full scope of the right and the obligations of states to honour it. Violations can and must be noted and declared as such without resorting to conceptual (and vague) minefields like "progressive realisations" or "within available means" and without the need for the judiciary to abrogate the prerogative of the executive to determine expenditure priorities. "Taking economic, social and cultural rights seriously," writes Asbjorn Eide et al., "implies at the same time a commitment to social integration, solidarity and equality, including tackling the question of income distribution. Economic, social and cultural rights include a major concern with the protection of vulnerable groups, such as the poor, the handicapped and indigenous peoples".⁶ Such an aspiration and commitment is neatly expressed in the Constitution of South Africa as "human dignity, the achievement of equality and the advancement of human rights and freedoms".

And yet economic, social and cultural rights are receiving renewed attention in the international community. Not only has there been the Rio Earth Summit on the Environment and the Social Summit but the right to development is very much on the agenda of the international community. The Commission on Human Rights has a Special Rapporteur on the Elimination of Absolute Poverty. There is, therefore, a realisation that political rights in themselves are meaningless without the economic, social and cultural rights which give effect to a quality of life necessary for a dignified existence. The task of raising awareness of the importance of honouring these rights for the well-being of humanity can never be over-emphasised. It is my opinion, though, that the justiciability of these rights will soon be established by practice and consensus, to the extent that the

civilised community expresses its outrage at abuses of social and economic rights in the same way as it was outraged by genocide and ethnic cleansing in Yugoslavia.

Building a culture of human rights in the new South Africa

The new Constitution of South Africa affirms the democratic values of human dignity, equality and freedom. The Bill of Rights, which is part of the Constitution, has a uniquely comprehensive and holistic balancing of all rights in a manner consistent with the pronouncements of the 1993 Vienna (UN World Conference on Human Rights) Declaration and other international human rights law and jurisprudence. While the Constitution makes no reference to the right to work and to the right to development, it regulates fair labour practices and upholds social and economic rights in a way that, properly interpreted and implemented, could honour the spirit of those rights.⁷ At the same time South Africa has signed but has not yet ratified the 1966 Covenants.

The new South Africa has inherited from the apartheid era a legacy of poverty and inequality. There have been historic patterns of unequal development and unequal access to the resources of the country. This system of inequality was regulated according to race, which meant that by and large poverty had a black face. In the face of this the new government adopted the Reconstruction and Development Programme (RDP), “an integrated, coherent socio-economic policy framework” to drive the process which will meet basic needs: jobs, housing, land, water, a healthy environment etc. The White Paper on the RDP of the Government of National Unity stated confidently that: “At the heart of the Government of National Unity is a commitment to effectively address the problems of poverty and the gross inequality evident in all aspects of South African society.” In his budget speech for 1994, the Minister of Finance reaffirmed the government’s commitment in these words: “The RDP is the embodiment of the commitment of this government to the elimination of poverty in a rapidly growing economy and in the context of an open, peaceful and democratic society. For this vision to materialise, policies must be oriented towards the

provision of basic needs, the development of human resources and a growing economy capable of creating sustainable jobs....”

Four years since these laudable objectives were set, however, poverty persists. South Africa continues to have one of the worst records in terms of social indicators and is among the worst in terms of inequality. In fact the *Human Development Report* 1997 has placed South Africa among the worst in terms of the human development indices. In all the key social indicators including life expectancy, infant mortality, illiteracy, fertility and access to safe drinking water, South Africa fares poorly against comparable middle-income countries. The extremes of poverty are so great that if the indicators of only the black population were taken on their own, then South Africa would perform worse than the much poorer countries of the Sub-Sahara like Kenya and Tanzania. As noted earlier poverty in South Africa has a strong racial dimension. Nearly 95% of South Africa's poor are black and less than 1% white. Blacks are ten times more likely to be unemployed than whites. South Africa's poor are concentrated in rural areas and women account for a disproportionate share of the poor.⁸

The following statistics paint a dismal picture of this race disparity:

... in South Africa, only 3% of whites – but 18% of blacks – are not expected to survive to age 40. And 8% of whites lack education, 16% of blacks do. The average per capita income of the whites is about US\$15,000, nearly nine times more than that of US\$1,700 for blacks. In terms of human development, life expectancy of whites at 75 is 15 years more than that of blacks at 60 years. The HDI of the whites at 0.878 is almost double that of blacks at 0.462.⁹

It is a usual sight in South Africa's main streets to find beggars at traffic intersections or street children huddled together without food or a roof over their heads, or homeless people in sprawling squatter shacks on the peripheries of urban areas. Unemployment is high, service delivery centres like hospitals and schools are not coping with demands and HIV/AIDS is approaching epidemic proportions.

In his 1997 budget speech, the Minister of Finance announced a clear shift in priorities towards eliminating poverty, social development and crime prevention.¹⁰ Concerned about the need to promote growth in the economy and to assert what the government calls “fiscal discipline” a new approach to economic management was adopted in 1996, GEAR (Growth,

Employment and Redistribution Policy). GEAR is designed to attract investment capital and thus create jobs in a growing economy. The flip side of this has been privatisation and a tight monetary policy. The effect of all this has been the shedding of jobs in the public sector without compensatory job creation in the private labour market. At the same time this opening up or liberalisation of the domestic market has led to only modest economic growth.

For the first time in living memory, a Minister of Finance prioritised poverty relief in his spending projections: 300 million Rand for community based poverty relief programmes, one billion Rand toward social security grants to elderly persons and 75 million Rand for child support.¹¹ Equally promising expenditure estimates were indicated for social development programmes like education, health care, welfare, housing, water and sanitation.

Despite this, extremes of poverty and inequality persist and the resources of the state will never be able to reach all the needy to ensure adequate care. In the face of rampant corruption and crime, the victims are typically women and children who are raped and sexually abused or who are robbed of their meagre pensions or social security earnings. This has led to calls for a moral regeneration of South African society and for community participation in the detection of crime. From a human rights perspective South Africa clearly demonstrates the need for fundamental rights to inform and shape the very essence of society. The establishment of a culture of human rights extends possibilities for informed choices and for the responsible exercise of individual freedoms. The state in such a system is not just a paternalistic provider but ensures an environment of safety and security, of free participation and access to resources for development and human well-being.

The role of national institutions

National institutions have emerged as an effective tool for the implementation, monitoring and development of human rights standards and for advancing work in the area of human rights jurisprudence at domestic level. Therefore, national institutions are best placed to ensure the local application of international norms and to reflect at international level on the experiences and insights gained from the application of these standards. With this

in mind, and in order to provide independent and impartial institutions that serve as watchdogs of the democratic process and which are easily accessible to citizens who wish to voice their concerns about the democratic culture of South Africa, a Human Rights Commission was established under the Constitution and by law. The Commission is specifically designed to be an independent institution "subject only to the Constitution and the law, and [they] must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice".

There is a positive duty on organs of state to "assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions" (section 181 of the Constitution). The mandate of the Commission is to "promote the observance of, respect for and the protection of fundamental rights." This broad mandate is supplemented by the Constitutional provisions of Section 184 which give the Commission responsibility for the "development and attainment of human rights and the monitoring and reporting on "measures that have been taken towards the realisation of the rights ... concerning housing, health care, food, water, social security, education and the environment" [Section 184(3)].

It was in pursuit of these twin responsibilities, the development and attainment of human rights and monitoring social and economic rights, that the Commission has been developing some work on social and economic rights. In partnership with NGOs and academic human rights research institutions, the Commission held workshops to determine the scope of its responsibilities, is managing a monitoring and reporting mechanism and is undertaking wide consultations to test public opinion. The whole process will raise awareness and commitment to these rights and establish a "soft" form of judicial protection. The Commission sent out letters of enquiry or protocols to the relevant government departments seeking information on steps taken to bring about the realisation of these rights (significantly the South African Constitution does not use the terminology of "progressive realisation" found in the international instruments). The findings of the report will be published later and will indicate the state of development and protection of social and economic rights in South Africa. The Commission is not, however, called upon to evaluate the performance of government departments save only to require them to provide information and to report. Naturally, once the

information is made public, then the performance of the relevant government department becomes subject to public scrutiny.

Civil society, including an informed NGO community will perform this task of public scrutiny. The Commission has developed a partnership with a coalition of NGOs to undertake a series of public hearings on poverty in South Africa. The hearings involve public participation, gathering evidence, raising awareness and inviting a platform for the poor to speak from their experience and perspective. The hearings aim to test public opinion on the nature and extent of poverty in South Africa, assess the performance of government towards the eradication of poverty and produce proposals for eliminating poverty. This is a unique experiment which brings together civil society and an independent state institution. The findings of the inquiry will be submitted to parliament as a report of the Human Rights Commission.

The Commission has also taken a violations approach to social and economic rights. The Commission has intervened with government in the matter of social welfare pensions. In the Eastern Cape, for example, there was a major crisis when the provincial government failed to pay out pensions in December 1997. This imposed immense suffering on families who relied on these payments for the barest form of living. The Commission was engaged in negotiations with the relevant minister and supported a court application in the public interest. Statements by the Commission were widely circulated in the media. There is now a clear acceptance that the Commission has a duty to monitor and draw attention to violations by the state of any of the rights in the Bill of Rights.¹²

Conclusion: human rights come of age in the 21st century

The Vienna Declaration and Programme of Action emphasised the fact that “democracy, development and respect for human rights and fundamental freedoms [are] interdependent and mutually reinforcing.” Contrary to the overwhelming and powerful voice of Western sceptics, Vienna reaffirmed the right to development “as a universal and inalienable right and as an integral part of fundamental human rights. Development is understood as necessary for the human enjoyment of life and

aspiration to full humanity. Political rights, from this perspective, cannot be the end in themselves but should facilitate the acquisition of human development to guarantee fullness of life for all. The approach being pursued by the South African Human Rights Commission outlined above aims to achieve an integrated approach to human rights and to ensure the involvement of all sectors of society in human rights development, promotion and protection. And yet one must also recognise that the state plays a primary responsibility; hence human rights and democratisation go hand in hand.

The challenge and hope for the world in the new millennium is to continuously extend choices for full and dignified lives to the largest number of people. The 1997 *Human Development Report* emphasises that the eradication of poverty early in the new millennium is an attainable goal.¹³ Even though poverty remains pervasive, it is important not to ignore the gains already made. Instead we must constantly adjust our priorities, building on the successes of the past. Moreover, the obligation to achieve a progressive realisation of these rights is not dependent on states reaching a certain level of development and this duty exists independently of an increase in available resources. The duty imposed is immediate. Indeed as Nobel Laureate and economist Amartya Sen recently wrote: “these concerns may be even more acutely important when people are generally poor and deprived. Preventing terrible deprivation is not a luxury than can be easily postponed”.¹⁴

Finally, the implementation of social and economic rights requires democratic participation by society at all levels: an informed civil society, a democratic government and state institutions which monitor and inspire human rights action. The call for the new millennium, therefore, is clearly for an investment in people who can take charge of their own destiny.

Footnotes

- 1 UNDP, *Human Development Report*, 1997, UNDP/Oxford University Press, 1997, p.5ff
- 2 The Development Assistance Committee of the OECD has also prioritised poverty issues in its “Shaping the 21st Century” document, one of the key goals of which is to halve the number of people living in extreme poverty by the year 2015.
- 3 An example of this is the export by the EU of subsidised beef to Southern Africa which is undermining local efforts at developing the livestock sector. Ironically the EU has also been supporting livestock development in the region under its development co-operation activities. This is an example of policy incoherence between EU agricultural and development policies with the former severely reducing the gains from the latter.

- 4 Fact Sheet No 16, UN Committee on Economic, Social and Cultural Rights, p.1
- 5 "A new approach to monitoring the International Covenant on Economic, Social and Cultural Rights" in *The Review*, Geneva, ICJ, December 1995, no. 55, p.30ff
- 6 *Economic and Social Rights: A Textbook*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, p.17
- 7 In the case of Ireland, which has one of the oldest constitutions in western Europe, a constitutional review was published in May 1996. The Irish Commission for Justice and Peace published a document entitled *Re-Righting the Constitution* (September 1998) which calls for the introduction of four core socio-economic rights in the constitution.
- 8 Fuller figures can be gleaned from *Key Indicators of Poverty in South Africa*, SACA, 1995.
- 9 UNDP, "Poverty and human development: AFRICA", *Human Development Report 1997*, UNDP/Oxford University Press, p.6
- 10 Budget speech, 12 March 1997, p.9. One of the key issues in South Africa is the rise in violent crime and the fact that a culture of violence still persists in some cases.
- 11 IR£1 = approximately 8.4 Rand.
- 12 In a groundbreaking judgement the Constitutional Court in Thiagraj Soobramoney vs. Minister of Health (KwaZulu Natal), Case No CCT 32/97 the Court had occasion to consider the nature and extent of the limitations in social and economic rights. It acknowledged that a patient suffering from renal failure and in need of a dialysis machine, could be refused one if resources were not available. It was ruled that Mr Soobramoney's was not a case of emergency treatment nor did it constitute a right to life. P. Chaskalson stated that it had not been shown that "the state's failure to provide renal dialysis facilities for all persons suffering from chronic renal failure constituted a breach of [constitutional] obligations. J. Madala in a concurring judgement stated that it was not appropriate for the courts to determine matters which appropriately belong to the Executive: "The provisions of the Bill of Rights should furthermore not be interpreted in a way which results in courts feeling pressurised by the fear of gambling with the lives of claimants into ordering hospitals to furnish the most expensive and improbable procedures, thereby diverting scarce medical resources and prejudicing the claims of others" (p.38 of Judgement).
- 13 This message is also contained in the *Human Development Report 1998* which highlights consumption gaps in our world and the fact that although globally the resources exist to eradicate poverty a major deficit lies in the allocation of these resources
- 14 "What's the point of a development strategy", Amartya Sen, (Lamont University Professor and Professor of Economics and Philosophy, Harvard University and Honorary Fellow, London School of Economics), Development Economics Research Programme no.3, LSE; paper written for the UN Committee on Development Strategy and Management of the Market Economy, May 1996.