

National Implementation of International Human Rights, Social Inclusion and the Empowerment of People

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Poverty eradication, full employment and creating a context for inclusive citizenship is recognized as an important goal of governance. And yet social indicators across developing nations clarify that inequality and disparity derived from many factors including persistent poverty, ethnicity and gender deny the promise of inclusive citizenship, economic growth and development. Even within developed countries some sectors experience poverty, discrimination and disadvantage. The need for a model of development and economic growth that benefits all sectors of the population has become particularly urgent given the phenomenon of jobless growth and increasing disparity in countries that have achieved significant and successful economic growth, even acquiring a different status as a middle or high income country.¹

Human rights activists and scholars have argued for some years that a human rights based approach that integrates international human rights norms and standards into national development policies and programmes is an essential strategy in responding to the contradiction between successful economic growth and disparity reduction. They have also argued that it is the integration of these norms and standards that can facilitate people's participation and their empowerment in development. It is useful to reflect on the implementation of international human rights in the last few decades, and examine whether country experiences indicate that a human rights based approach to development can contribute in some measure to achieve inclusive development.

Evolution of Human Rights – Concepts, Norms and Standards: The Link to Development

International human rights concepts norms and standards evolved from a European discourse that focused on individual civil liberties and civil and political rights. The Universal Declaration of Human Rights (UDHR) (1948) had a broad vision of equality. The focus was on civil liberties of the individual but there were references to economic social and cultural rights including the right to “just and favourable” conditions of work, an adequate standard of living, shelter, education and health. (Art 22-26). However while civil liberties were considered immediately enforceable, socio economic rights were rights described as rights enjoyed “as a member of society,” to be realized through “national effort and international co-operation and in accordance with the organization and resources of each state.” (Art 22). Some early multilateral treaties such as the Convention on Racial Discrimination and also Women's Rights (CEDAW) adopted a different approach and recognized the parity of both sets of rights in working to eliminate discrimination and achieve a standard of equality and inclusive citizenship. The concept that civil liberties were “enforceable and justiciable” hard rights and “economic and social rights” only programmatic and discretionary policies of the state that were dependent on available resources dominated the human rights discourse for decades.²

¹ Economic and Social Survey of Asia and the Pacific, UNESCAP Thailand, (2012).

² W.van Genugten and C.Perez Bustillo ed. The Poverty of Rights Zed Books (2001); P Alston and J Crawford The Future of UN Human Rights Treaty Monitoring, Cambridge University Press (2000); P Alston and M Robinson

It was in 1993 that the World Conference on Human Rights in Vienna helped to develop a consensus that both regimes of rights were equally important. The Declaration and Plan of Action accepted that civil and political and socio economic rights were indivisible and interdependent, thus also helping to strengthen the argument that they were universal entitlements of all people.

This consensus was important because it contributed to human rights principles that make the State accountable for implementing civil liberties and non arbitrary justice through the law, as well as socio economic rights of the people to basic needs such as access to livelihoods, land and property as productive assets, health, education and shelter. National resources must be used to implement both regimes of rights on the basis of a parity of status. It is no longer considered possible to delink human rights and development or development co-operation since State obligations encompassed both regimes.

Treaty bodies, including the CEDAW Committee and the Committees on the International Covenant on Economic Social and Cultural Rights (ICESCR) have developed General Recommendations and General Comments interpreting treaty provisions, clarifying that civil liberties and economic and social rights relating to basic needs are no longer discretionary State hand outs and “welfare” benefits, but commitments that make governments accountable for effective implementation. The argument that the latter are programmatic social policies dependent on resources, can be postponed indefinitely, and are not subject to judicial review, has been addressed and rejected in the quasi jurisprudence of these treaty bodies.³

Parallel developments in the area of international standard setting in Environmental law have reinforced the link between human rights and development. International Conventions and United Nations Conferences on preservation of the Environment in Stockholm and Rio in particular, paved the way for the recognition of a concept of “sustainable development” linking people’s participation, human rights and development. They focused on disparity reduction and managing national resources so as to achieve economic and social development of all sectors of the population. Poverty and disparity reduction are recognized as an essential dimension of development. Environmental justice and human rights are now recognized as mutually reinforcing agendas.⁴

The linkages and synergy between the human rights agenda and development activities, and the concept of a human rights based approach to development and development assistance was made by the United Nations in the 1990’s. A directive of the UN Secretary General in 1997 required all UN agencies to mainstream human rights into their work. The UN Commission on Human Rights and the Human Rights Council has also appointed Special Rapporteurs with mandates to examine country contexts and propose advancements on the socio and economic rights agenda, including in areas such as education, food, health and shelter. There is now a recognition that interdisciplinary and holistic approaches have to be followed in implementing human rights instead of an exclusive focus on law and lawyers. As the former High Commissioner on Human Rights Mary Robinson said in her lecture on “Bridging the Gap between Human Rights and Development,” “a rights based approach is a conceptual framework

Ed. Human Rights and Development Oxford University Press (2005); H Steiner and P Alston, (eds) Human Rights in Context (Oxford University Press, 2000).

³ Ibid; M A Freeman and Others (eds) UN/CEDAW:Commentary (Oxford University Press, 2012).

⁴ Gabcikov-Nagymaros Project Hungary v Slovakia 1997 (4) South Asian Environmental Law Reporter (SAELR) 197

for the process of human development that is normatively based on international human rights standards (it) integrates the norms standards and principles of the international human rights system into the plans, policies and processes of development.”⁵

This holistic approach to human rights and development is reflected in the recognition in contemporary human rights law that State obligations include a duty “to respect protect and fulfill.” While the obligation to respect entails negatives obligations not to violate rights, the obligation to fulfill places positive obligations of implementation on States. The duty to protect is interpreted as a duty to prevent violation by third parties. The latter obligation places a duty of “due diligence” on the State to prevent violation by Non-State actors – thus bringing the private and corporate sector within the ambit of human rights and development. This latter dimension is particularly important in the context of economic transformation and the growth of the private and corporate sector activities in development work.⁶

National Constitutions invariably seek to safeguard the sovereignty of the people. Yet even in parliamentary democracies, rulers once elected to power do not adhere to the norms and commitments on human rights incorporated in Constitutions. The concept of State Sovereignty under international law has been qualified significantly today because international human rights norms and standards provide an opportunity to scrutinize governance at the national and international level. The acceptance of an individual complaints procedure through Optional Protocols to international Conventions has also created an environment where violations can be brought before international fora. These procedures also create opportunities for national courts to develop national norms and standards so as to strengthen implementation of human rights and link them to the development process. Civil society in particular acquires status to access international fora which originally was limited to States. The recent adoption of an Optional Protocol to the International Covenant on Economic Social and Cultural Rights (ICESR) (2008) in particular has helped to undermine objections to the indivisibility of international human rights, and the gap in norms when they were perceived as including only civil liberties. Challenges remain in operationalising the link between national initiatives on development and States obligations on human rights. Yet international human rights law has also impacted to strengthen the national environment for enforcement of social and economic rights.

Some Reflections on Lessons Learned in the National Integration of International Human Rights

The national integration of international human rights norms and standards has taken place over many decades since the adoption of the UDHR in 1948 and the progressive ratification of an increasing number of multilateral Conventions. Treaty monitoring bodies have in progress reviews of State Party reports called for harmonization of domestic law and policy with State obligations under treaties.

Constitutional Reform⁷

⁵ M Robinson, What Rights Can Add to Good Development Practice, Human Rights and Development , note 2

⁶ J Symonides ed. Human Rights Concepts and Standards UNESCO 2000, The Poverty of Rights, note 2 above.

⁷ M V Pylee, Constitutions of the World, (3rd ed) Universal Law Publishing Company Pvt Ltd, New Delhi (2006); UN/CEDAW Note 3 Supra; Protecting the World’s Children, Cambridge University Press 2007’ M P Jain, Indian Constitutional Law, Print India, New Delhi, 1998; T Curry and Others (Eds), The New Constitutional and Administrative Law, South Africa, Juta Law, 2001; V Gauri and D Brinks, (eds) Courting Social Justice, Cambridge University Press, 2010.

The basic law of a country is critical in ensuring that State party obligations under treaties are not merely aspirational political commitments, but create procedure for ensuring accountability to the beneficiaries of rights under international instruments.

Post independence National Constitutions in developing countries of Non-European regions have adopted the practice of including Bills of Rights in their basic law that deals with the system of governance. Though formulations vary, Constitutions invariably have clauses on the right to equality and non-discrimination, and the right to freedom from torture and inhuman degrading treatment. The approach to the issue of justiciability also varies. East Asian Constitutions invariably articulate civil and political rights and socio economic rights as aspirational standards, without an independent enforcement mechanism through courts and judicial tribunals. Consequently legislation and administrative regulations and more recently Human Rights Commissions become the strategies used to provide remedies and investigations into violations. South Asian Constitutions by contrast follow the Indian model on human rights. The full range of civil liberties in the UDHR and the International Covenant on Civil and Political Rights (ICCPR) are invariably included, and Constitutions adopt a procedure of enforcement through the courts. Human Rights Commissions in these countries provide a parallel and alternative path for dispute resolution involving a violation of rights by State institutions. Socio economic rights in ICESCR, CEDAW and the Convention on the Rights of the Child (CRC) and other treaties are not treated as justiciable human rights. Following the approach in the Indian Constitution of 1948, based on the Irish Constitution model, socio economic rights are not enforceable as human rights. They are defined selectively and included in separate chapters on guidelines or “Directive Principles” for State Policy. This same approach has been followed in the Nigerian Constitutions of 1979 and 1999. Similarly Brazil’s Constitution of 1988 recognizes rights in areas such as health and education as “social rights.” In the earlier years these were described as “programmatic rights” and not directly justiciable.

More recent Constitutions follow the concept of indivisibility of human rights and include both civil liberties and socio economic rights as justiciable and enforceable claims. The South African Constitution (1996) has been path breaking, in adopting a Bill of Rights that expands the scope of the civil liberties, including the right to equality. It makes these rights as well as socio economic rights enforceable, entitling a claimant to relief and remedy for violations. Equality has been defined as a concept that goes beyond the traditional definition of formal equality and equal protection of the law. Article 9 incorporates the idea of substantive equality, or addressing and eliminating disadvantage and discrimination by achieving equality in impact or outcome. Rights relating to the environment have also been included. They conform to the concept of sustainable development in international environment law, thus linking it with the concept of justiciable human rights.

The South African Constitution contains innovative provisions on methods of enforcement. Litigants may directly invoke the Bill of Rights. In addition the Constitution clarifies that interpretation of legislation, the Common Law and Customary law can be based on the Bill of Rights. This is an important method of ensuring that all branches of the law are harmonized with the guarantees on fundamental human rights, providing an impetus to rights based approaches to development. International human rights law recognizes that some fundamental rights can be limited according to the need to respect the rights of others and also national security, public order and legitimate needs of society. The South African Constitution contains a general limitation clause that applies to all rights. This refers to limitations set by “a law of general application that is reasonable and justifiable in an open and democratic society based on human dignity equality and freedom.” (S.36) This provision can be used to evaluate

the context so as to prevent recognition of socio economic rights hampering economic growth in developing countries with limited resources.

The Kenya Constitution of 2010 recognizes socio economic rights as enforceable rights. An earlier approach in Brazil considered social and economic rights “programmatic.” However later developments recognize that the government is accountable to put in place policies to implement these rights as a matter of priority. A Constitutional Amendment of 2000 incorporates minimum percentages of the national budget to resource these rights. A Constitutional amendment of 2000 and 2002 in Indonesia incorporates international human rights norms in recognizing fundamental rights to civil liberties and economic and social rights, incorporating mandatory budgetary resources for education. It also incorporates positive obligations of the State in regard to achieving inclusive citizenship for disadvantaged groups especially people in poverty.

Treaty bodies request States to amend Constitutions so as to harmonise national governance with on human rights incorporated in ratified treaties. Amending a Constitution is a complex task. However when new Constitutions are being drafted or there is a project of Constitutional amendment, comparative experience on Bills of Rights must be shared. There should be every effort to ensure a broad consultative process, so as to ensure that contemporary human rights norms and standards are incorporated, and a general provision included on the applicability and enforceability of treaty law in national jurisdictions.

The Role of the Courts⁸

When a Constitution incorporates a procedure of enforcement in courts of law, this institution becomes a major actor in bringing international human rights into domestic law. In countries which adopt a dualist approach to international law, as in Common law countries, traditionally courts adopt a conservative role in regard to creating jurisprudence on treaty incorporation. However treaty bodies as well as the Bangalore Principles adopted in judicial colloquia of Commonwealth judges have clarified that courts have a responsibility to interpret national law in harmony with treaty obligations of the State. In South Africa, the Constitution gives courts this role, and judicial activism is encouraged. Experience shows that even in the absence of such provisions, courts of law can play an activist role in incorporating international human rights norms in national law. They have empowered individuals and civil society groups to litigate and strengthened human rights enforcement. They create jurisprudence that goes beyond individual or individual groups, and impacts on communities. This is evident in the experience of many countries.

Since some African Constitutions have provisions on the justiciability of socio-economic rights courts have created jurisprudence on the enforceability of the rights to shelter, health and education and women’s property rights.⁹ They have recognized the State obligation to realize these rights without discrimination against disadvantaged groups such as women and people living in poverty. The concept of the State obligation to “fulfill” socio economic rights as a positive obligation to ensure inclusive citizenship challenges their erosion on the ground of factors such as lack of resources, and the argument that they are “programmatic” or “policy” interventions that the State may postpone at its discretion, unlike civil and political rights which

⁸ UN/CEDAW, note 3 supra; Protecting the World’s Children, Courting Social Justice, The New Constitutional Administrative Law, note 7 supra; R Emerton and Others (eds) International Women’s Rights Cases, Cavendish Publishing UK 2005; Interights Bulletin, Volume 17 No. 2, 2013.

⁹ Ibid.

are immediate claims on the State. A balance can be maintained by the Courts to address the criticism that this institution should not interfere in the legislative and executive function of public administration and resource allocation, by using a guideline of “reasonable and justifiable” limitation of rights. The South African Constitution for instance has encouraged the development of a test of reasonableness, which requires the court to assess whether the limitations on the implementation of rights and the obligation to fulfill socio economic rights is reasonable and proportional. This concept has been used to restrict a right to health care which requires the State to provide an individual life saving procedure which is considered too expensive when there are limited resources which must be allocated to provide for a maximum number of persons. However giving access to shelter for the homeless or access to drugs to prevent mother to child transmission of HIV/AIDS are positive obligations of the State. Lack of funds cannot be used as an argument to detract from the States obligations where there is corruption. Judicial activism is constrained by undue deference to the legislature, on the argument that the courts are not proper institutions to assess and evaluate resource allocation and decisions in public administration.

Jurisprudence on the right to free education especially at the level of primary schools, protection from forced evictions and the right to shelter have been litigated in several countries on the basis that these are immediately enforceable and cannot be postponed. Policies in several African countries preventing pregnant girls from access to schooling have been sometimes challenged as gender based discrimination, which denies equal access to education. More recent jurisprudence in Brazil and Kenya has recognized that socio economic rights must be implemented as part of the State obligation to “fulfill” and cannot be postponed as programmatic interventions. However in Nigeria with similar Constitutional provisions as in South Asia distinguishing between justiciable civil and political rights and non-justiciable and policy or programmatic socio economic rights the courts have not adopted a similar activist approach.

The manner in which international standards can link to and reinforce Constitutional standards on human rights is clearly seen in a South Asian jurisprudence in superior courts, on women’s land rights, reproductive health, nationality, education, shelter and food security.¹⁰ Cases litigated in the Supreme Court of India on child labour highlighted the State obligation to adopt preventive measures such as compulsory education recognized in international human rights standards. The Supreme Court in several cases interpreted the right to life as including such a right. In Sri Lanka where the Constitution adopts a policy rather than a socio economic rights approach, the equality clause in the Constitution has been used to recognize a right to education. The jurisprudence in India contributed to a Constitutional amendment of 2002 incorporating the right to education as a sub-element of the right to life, and later legislation of 2009 on the right to education. A very recent judgment of the court in 2012 has upheld the Constitutionality of the Act and made an order on the need to reserve a 25% quota of admission in even elite schools to children from underprivileged communities. The right to food and shelter and a clean environment have been litigated in important cases in South Asia including India, impacting on public administration in the area of food security and programmatic interventions. Consequently the Courts have integrated the international human rights norm of indivisibility into domestic jurisdiction by their own interpretation of the right to life and equality

¹⁰ Courting Social Justice note 8 supra; Human Rights and Development, note 2 supra; I Jaising (ed) Elusive Equality, Women Unlimited, New Delhi 2011; Litigating the Right to Education in Africa, Interights Bulletin, International Women’s Rights Cases, note 8 supra.

and non-discrimination. In doing so they have also motivated legal reform and changes in governance.¹¹

These varying experiences in countries with similar jurisdictions indicate that judicial activism can become an important force in motivating legislative reform, policy changes, and resource allocation, so as to move governance towards implementing socio economic rights of disadvantaged groups to realize the promise of inclusive citizenship. Strengthening that contribution by sharing positive experiences in human rights cases through initiatives such as judicial colloquia and legal education institutions can ensure positive outcomes in developing a travelling jurisprudence in integrating international human rights norms in domestic . Citing case law from different jurisdictions such as South Africa, India and Kenya particularly on the implementation of socio economic rights, can strengthen the integration of international human rights through cross fertilization between different legal systems. Regional jurisprudence can also impact on national courts.

National Integration of International Human Right Norms and Standards through

Legislative and Administrative Reforms¹²

Standard setting on human rights at the international level and the focus on harmonization of international law and domestic law by treaty bodies and other agencies has sometimes motivated legislative and administrative reform in regard to putting the norms in place and their enforcement. One of the early and most successful areas of incorporation is seen in regard to labour law and policy and worker rights. ILO standards in regard to matters such as equal wages for men and women workers for equal work, non-discrimination against women through mandatory maternity leave and sexual harassment laws have been incorporated in domestic jurisdictions. Prohibitions on child labour have been incorporated in many countries through legislative and regulatory changes. The tripartite interaction of the State, employers and unions in the ILO process has also helped to create a consensus on the importance of legislation, supportive social services such as access to compulsory education and training and creating enforcement institutions such as special labour tribunals and dispute settlement procedures.

The internationalization of many other issues and the work of scholars and activists in research and promoting and understanding of the social impact of discrimination and disparity have contributed to legislative and administrative reform and institutional changes at the national level. Legislative national reforms in regard to equal land rights and inheritance for women, violence against women and trafficking have been motivated by the internalization of the agenda on women's rights, gender equality, gender based violence, and women's right to equal opportunities and life chances. The Palermo Trafficking Protocol has been integrated by the CEDAW Committee into its interpretation of the CEDAW Art 6 on trafficking, and many countries have introduced legislative and administrative changes in line with those standards. Domestic Violence legislation that combines criminal and civil remedies have been introduced.

¹¹ Interrights Bulletin, *ibid*; Society for Unaided Preschools of Rajasthan v. UOI and Another (2012) INSC 248; The Right to Food, Human Rights Law Network, Delhi, 2009; Vellore Citizens Welfare Forum v. Union of India AIR 1996 SC 2715; M C Mehta v. Kamal Nath 1997 Vol 4/3 SAELR 122 (India); Shela Zia v. WAPDA Vol. 46 APLD 693 (Pakistan); Bulankulama v. Secretary Ministry of Industries, 2003 SAELR 243; SPA v. Victor Perera SC 177/2007 (Sri Lanka); UN/CEDAW, note3 *supra*; Protecting the World's Children note 7, *supra*; Elusive Equality *ibid*.

¹² *Ibid*.

Connected interventions such as fast track courts witness protection and “One Stop” Centres have strengthened the capacity of women victims to access legal relief, shelter and medical services. The recognition of the critical importance of statistics and information for good governance and a rights based approach to development has contributed to the enactment of right to information legislation in many countries.

While normative standards have been put in place by ad hoc legislation on these topics, or general laws such as Children’s Acts, Women’s Rights Acts or Human Rights laws, institutions such as Women’s Commissions, Children Ombudspersons and Human Rights Commissions have been created to strengthen capacity for implementation of rights at the national level. National Plans of Action, Budget analysis such as child rights or gender budgets, and allocation of specific percentages of resources in areas such as health and education also represent improved rights enforcement strategies, recognized in several countries. The adoption of the MDGs as international policy has sometimes tended, as in South Asia, to detract from the rights based approach, as the standards are lower and do not always reinforce treaty obligation of States. However criticisms in this regard have also motivated international organizations and civil society organizations to analyze the MDGs and see how they can be harmonized with human rights treaty commitments.

Legislative and public administration changes at the national level have therefore been motivated and benefited from the internationalization of these human rights issues. Sustained advocacy and engagement of interest with these issues of disparity and disadvantage at the international level is a critical need to promote State accountability. Regionalization can tend to dilute international standards through cultural relativist approaches unless they are linked to and reinforce international norms.

The Contribution of Civil Society and the Role of the Corporate Sector¹³

In Asia, Africa and Latin America human rights activists and human rights defenders and a range of civil society actors have contributed to “bringing human rights” home to domestic jurisdictions. Public interest litigation that permits a widened citizen standing on human rights concerns instead of an over focus on an individual victim, has been supported through court decisions. Civil society and non-governmental organizations in developing countries have traditionally engaged in service delivery, and either independently or in partnership with governments focused on programmatic interventions to address poverty through initiatives such as micro credit, supporting livelihoods, providing access to basic services and poverty alleviation in urban and rural communities. However in more recent decades they have also in partnership with researchers and professionals engaged in Cause Lawyering, research, data analysis, and budget analysis from the perspective of enforcement of human rights outcome and process and people’s concerns. They have challenged governments to adopt similar analysis to resource allocation.

This type of cause lawyering has given civil society and people’s movement an opportunity and space to surface international human rights issues that resonate with public concerns at the national level. They have strengthened capacity to successfully lobby for changes in the local legislative and policy agenda and resource allocation.

Pressure by civil society on the State for devolution of power at the local level particularly through affirmative action such as quotas for women in local bodies has helped to

¹³UN/EDAW note 3 supra; Courting Social Justice, Protecting the World’s Children, note 7 supra; Bringing International Human Rights Law Home, United Nations 2000; Interights Bulletin, note 10, supra.

create opportunities for representation of marginalized groups. Election monitoring to ensure free and fair elections, has been encouraged by local NGOs and civil society organizations.

The international human rights system has increasingly recognized the space for hearing the voice of civil society in international fora. The recent developments in regard to international complaints procedures such as the Optional Protocols to CEDAW and ICESCR have widened the standing to bring complaints, enabling organizations to access these international procedures on behalf of citizens who may not have the capacity to do so. These procedures provide an opportunity for local organizations to persist in their local lobbying efforts for legislative and policy change, and encourage local courts to promote accountability in government laws and policies in light of treaty standards. The legitimacy of civil society as stakeholders in the implementation of international human rights nationally is critical to preserve gains made, and prevent governments eroding them through arguments on State sovereignty and national security.

It is in this context that human rights incorporation at the national level must face the challenges presented by Non-State actors who may not conform to human rights norms and standards that are considered binding on the State. The traditional gap in international human rights law that focused exclusively on State accountability has been replaced by later developments that have brought Non-State actors within the scope of international human rights standards at the national level. The concept of the State's obligation of "due diligence" developed in national jurisprudence, links to international human rights standards on the liability of the State "to protect" their citizens from violations by third parties. A recent communication of the CEDAW Committee in regard to the State's accountability for violations of rights to health and freedom from domestic violence by private health care providers or a spouse/partner reinforce this State obligation of due diligence.¹⁴

A more difficult area is the direct liability of non-State actors to respect human rights and refrain from violations. Where as in South Africa, the Constitution imposes such a liability the Constitutional Court has decided that a private property owner cannot evict a public school from private property and deny children the right to basic education.¹⁵ However when the State fails to regulate Non-State actors, and the fundamental rights guarantees do not directly apply to them, the corporate sector's conduct in particular can represent a serious challenge to the implementation of human rights at the national level. The concept of self regulatory "corporate social responsibility" may not be adequate to promote accountability for human rights in the corporate sector.

A body of scholarship has also demonstrated that international financial institutions created as specialized agencies of the United Nations have a direct responsibility and accountability in conforming to international human rights norms and standards in their work within domestic jurisdictions.¹⁶ It has been argued that the legal framework under which these institutions were established does not permit engagement in "political issues" and they must confine their work to "economic" considerations. When "human rights" was interpreted as exclusively civil and political rights, it might have been easy to argue that these International Financial Institutions should not engage with the international human rights agenda. However where human rights incorporate a concept of indivisibility that recognizes the relevance of socio economic rights it becomes difficult to delink human rights and development work.

¹⁴ A T v. Hungary, Communication No. 2/2003; Goeke Deceased v. Austria, Communication No. 5/2005 (domestic violence); Da Silva Pimental Jeixera Deceased v. Brazil Communication No. 17/2008.

¹⁵ Jumma Masjid Primary School Case, (2011) 8 BCLR 761, (South African Constitution Article 29 (1)).

¹⁶ See Poverty of Rights, Human Rights and Development, note 2 supra; UN/CEDAW, note 3 supra.

The work of International Financial Institutions in disparity reduction is also linked to the concept of eliminating inequality and achieving human development and inclusive citizenship. Consequently the development agenda itself can be used to reinforce and incorporate human rights based approach. The MDG attainments can also be linked to the achievement of national State obligation on human rights. There must be a continued and sustained effort to develop synergies between the corporate sectors approaches and the rights based approach to development. This is necessary to move international and national governance towards recognition that inclusive citizenship and disparity reduction is not a matter of “protecting the vulnerable” but respecting, protecting, and fulfilling their human rights.