

WORKSHOP REPORT

First Workshop on Right to Development Project

The first Right to Development Project Workshop was held in Delhi on the 7th and 8th April 2002. It was attended by 38 participants from different disciplines such as academicians, economists, agricultural scientists, law and development specialists.

Objectives of the Workshop

The workshop sought to:

- Bring together the authors of the country studies of Bangladesh, India and Sri Lanka.
- Provide a platform to the researchers to present a detailed outline of their research areas, methodologies and preliminary results.
- Provide forum for exchange of ideas on Right to Development.

The workshop began with an introductory speech by Dr. Arjun Sengupta in which he welcomed the participants and tabled the agenda for the two day long workshop. Professor Stephen Marks gave an introduction to the Right to Development Project and the core concepts. This was followed by presentations of Bangladesh and India country studies. The day concluded with a discussion on Bangladesh country study.

The second day began with the presentation of the Sri Lankan country study. This was followed by a discussion on Sri Lankan and Indian presentation. The workshop ended with a general discussion on the issues that had emerged during the workshop. Finally, a vote of thanks was given by the chairperson of Centre for Development and Human Rights.

The presentations and discussions covered a gamut of issues relevant for the Right to Development (RTD) Project and the proposed country studies. These included:

- Introduction to RTD Project
- Introduction to the concept of RTD
- Specific Area Concerns
- Presentation of proposed outlines of the Country Studies of Bangladesh, India and Sri Lanka.

This report focuses on the core issues that were discussed in the workshop. The report is divided in the following parts.

Section I : Introduction to RTD Project

Section II : Right to Development

Section III : Country Studies

Section IV : Other Discussions

Section –1 : Introduction to RTD Project

RTD Project is a collaborative effort to assist Dr. Arjun Sengupta in fulfillment of his mandate as an Independent Expert to the United Nations on the Right to Development.

Professor Stephen Marks, Director of the FXB Centre of Health and Human Rights at Harvard School of Public Health, while giving introduction to the Project emphasized that the mandate of the independent expert is a daunting one. The Project has the potential to take the concept of the Right to development beyond rhetoric. He said that the utilization of the concept of the RTD has been politicized, is intellectually weak and of marginal practical significance.

He reiterated that the Project is being undertaken at a time when institutionally and conceptionally change is possible. Institutionally change is possible because of the climate prevailing in Geneva (resolution being considered on human rights in April). Several United Nations (UN) agencies, bilateral donors and several non-governmental organizations (NGOs) have adopted a human rights framework for their development work. Amongst the United Nations agencies, UNICEF began in the early 1990s by accepting the Convention on the Rights of the Child as the framework for its work. Since 1998, United Nations Development Programme (UNDP) has adopted a policy of integrating human rights into sustainable human development. World Health Organization (WHO) is working on a strategy for including human rights in its headquarter and field operations. The international financial institutions are also taking steps to integrate some ideas of human rights into their policy frameworks. Bilateral Donors like DFID and SIDA have adopted a human rights framework for their development work. In recent years major NGOs like OXFAM and CARE have been incorporating economic, social and cultural rights as the primary focus of their work.

He added that conceptually the study could contribute to the scholarly literature through in-depth evidence based country studies. Although, in terms of scholarly literature, a library of works exists on the right to development, little of it is evidence based.

The study also holds the potential for transforming the way the relevant ministries and their relevant partners carry out development work. This can be achieved by

involving the development partners in the evolution of the study and engaging them in reflecting on its conclusions. On being found successful, an emulation effect can also occur in other countries.

Section II : Right to Development

Professor Stephen Marks and Dr. Arjun Sengupta provided an introduction to the concept of Right to development.

History

The UN General Assembly proclaimed development as a human right in its 1986 Declaration on the Right to Development. The Declaration was a culmination of drafting of over a decade that began when Keba M' Baye took over the chairmanship of the Commission of Human Rights in its 33rd session and launched the idea of the right to development.

The Commission appointed Dr. Arjun Sengupta as an Independent Expert on Right to Development in 1998. An open-ended working group on the Right to Development was also instituted.

Main Ideas of the Independent Expert

Under the Right to Development approach, development itself is considered a human right. The Independent Expert has represented right to development as a 'Vector'. The vector includes all human rights, growth and policy of norms.

The nature of right to development is to focus on development as a process. The right to this process belongs to individuals and states. The process should be participatory, equitable, non-discriminatory, transparent and accountable. The international community i.e. the donor community must contribute resources. Development compact is a method to match states duties with those of the international community. The concept of development compact has emerged as a contentious issue. Some donor countries see it as a continuation of the New International Economic Order (NIEO) under a new name. Donor countries also brand it as being used abusively by developing countries to demand a transfer of resources from the North to the South.

Criticism of Right to Development

Right to development has been criticized on political, philosophical and practical grounds.

On the political grounds it is viewed as a continuation of the demand for New International Economic Order (NIEO). The concept of global compact has been criticized for promoting demand of resources from North to South.

Philosophically, RTD is taken as indeterminate and vague to be meaningful. It is viewed as a collectivist idea inspired by communism and socialism, thereby neglecting the individual character of human rights. It is also criticized for its inability to identify the right holders or the duty holders in concrete terms.

On the practical level, RTD is criticized for its lack of implementability. Something so broad that covers the entire process of development, is difficult to transform into tangible results.

Right to Development- Five Myths

Myth 1: Development takes priority over respect for human rights.

The right, as defined in the 1986 Declaration supports the opposite position, namely, that all human right, including civil and political must be respected in development planning and implementation. Consequently underdevelopment and lack of resources cannot be a pretext for violation of human rights.

Myth 2: States are free to determine the development policy that suits them.

The Declaration establishes the duty of states, “to formulate appropriate national development policies that aim at constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and the fair distribution of the benefits resulting therefrom.” This implies a limitation on states’ determination of their development policy.

By the above standard, the right to development could be interpreted to mean, that development policies should be revised to meet participatory elements that are contained in the declaration.

Considering the question of RTD for democracy, Professor Stephen Marks pointed out that in his experience there has been no explicit requirement of democratic processes as part of development. However, it would be difficult to conceive of participatory decision making without some form of democracy. Dr. Arjun Sengupta added that the right to development does not refer to democracy as a form of government. It however refers to participatory process. In that sense, democracy is imbedded. The basic requirement for the realization of the RTD is fulfillment of Civil and Political Rights and Economic Social and Cultural Rights. Civil and Political rights have been accepted as basic human rights by almost all countries. By those standards all the elements of democracy get incorporated in the right to development.

Dr. Siddiquir R. Osmani reiterated that genuine participation is not possible without democracy. However, presence of democratic institutions is necessary

but not a sufficient condition for participation that is required in the human rights approach. The human rights approach requires participation of the marginalized groups. It is seen that despite existence of democratic structures like holding of elections, in most cases the marginalized groups still remain marginalized.

Myth 3: Support for development is a separate issue from human rights violations.

The right to development involves a process where human rights are integral.

Article 5 of the Declaration specifies that “states shall take resolute steps to eliminate the massive and flagrant violations of human rights of peoples and human beings affected by situations such as apartheid, racism,” etc. Article 6 further clarifies that “state should take steps to eliminate obstacles to development resulting from the failure to observe civil and political rights and economic, social and cultural rights.”

Myth 4: Economic development necessarily involves “winners” and “losers” and the related policy decisions are part of each states right to development.

Article 2 of the declaration makes reference to “fair distribution of the benefits of development”. Fair distribution and non-discrimination are integral part of the RTD. These can be invoked to block or reduce support to projects that fail to meet the standards of equity and distributive justice.

Myth 5: Whether and how civil society is involved in the development process is a matter for each state to decide.

The declaration requires active, free and meaningful participation and requires the development policies to encourage popular participation in all spheres as an important factor in development. Therefore, role of civil society and NGOs is not a secondary concern it is part of the declaration itself.

Responsibilities and Right to Development

Speaking on responsibilities and RTD, Professor Stephen Marks said that in human rights language there is the duty of individuals to the community and the duty of states at the national and the international levels. The Independent Expert’s stress on international co-operation focuses on the duties that states have to co-operate with each other in ensuring development and diminishing obstacles to development.

Development Compact

Dr. Arjun Sengupta speaking on development compact said that the interdependence of the countries gives rise to the need for international co-

operation, a particular form of which will depend on the context. It may imply liberalization, greater market access, debt relief, modification of IPRs etc. Transfer of resources is perhaps the most important source of rendering that assistance. International community is not obliged to increase the transfer of resources. It is however obliged to co-operate. Development compact is a process of communication between the countries.

Dr. Sengupta accepted that his concept of global compact implies conditionality. He is criticized for it. He added that given that human rights obligations are states obligations, the moment human rights approach is adopted, the states must accept the obligation to do what is necessary for fulfillment of the human rights. The state has to be regarded as the principle repository of resources, which has to make these rights realizable for the large section of population and the weakest. The conditionality of international co-operation has its basis in global interdependence. It is the monitoring of conditionality that is usually problematic. It can be mitigated by establishing procedures for monitoring of conditionality to be a co-operative process.

Legitimate Expectations

Professor Stephen Marks pointed out that one of the challenges facing the authors is to define a set of indicators and benchmarks with respect to country realities. Since, RTD has not evolved the way other rights have, there is no standard set of indicators and benchmarks against which the achievement or violation of RTD can be measured. This makes it difficult to define legitimate expectations.

He raised the issue of conformity to RTD in countries where democratic institutions do not exist. For instance, countries like China and Singapore have recorded major social and economic achievements. However, this has been done at the expense of the right to democratic participation as part of the development process. On the other hand their achievements are higher in comparison to many countries with democratic institutions. This leads to the question of assessing policies in light of specific articles of the Declaration of 1986. He cautioned that the implications of RTD for a complex set of policies is not always clear because they may have already integrated some degree of equity. Therefore, caution needs to be exercised while recommending rejection of certain policies. One of the purposes of the study is to make recommendations on how existing policies can be improved.

He suggested that while arriving at a set of indicators the authors should bear in mind that one right cannot be promoted at the expense of another. Alluding to the global compact he added that human rights should be viewed as a means of enhancing co-operation with Governments rather than as an accusation.

Rationale for Choosing the Three Rights

Professor Stephen Marks said although the Independent Expert has been criticized for selecting the rights to health, education and food, the proposed vector includes all human rights. The study has selected the three rights as critically important examples. A very broad canvass might render the study vague.

He next moved to the important issue of sequencing. He stressed that the selection of the three rights should be treated solely as examples and not a suggestion for sequencing. The countries will have to identify their own priorities.

Section III : Country Studies

1. Bangladesh

Coordinator of the country study: Prof. Siddiqur R. Osmani, Professor of Development Economics, University of Ulster, United Kingdom

Co-authors

Dr. Mustafa K. Mujheri (Right to Education)
Dr. Quazi Shahabuddin (Right to Food)
Dr. Omar Haider Chowdhury (Right to Health)

Broad Outline of the Study

Prof. Siddiqur R. Osmani suggested that the study could be viewed in two parts:

- The first part will examine the extent to which existing practices of development policy conform to the norms and percepts of the right to development. This would include examination of specific policies and programmes in the sectors of food, health and education.
- The second part will comprise of policy recommendations.

He pointed out that undertaking of the exercise would necessitate identification of the ideal characteristics of policy making that are consistent with RTD. These characteristics would serve as yardsticks against which the extent to which actual policies and programmes conform to the RTD will be measured. Viewing the policies in the following three stages will help in identifications of these characteristics:

First Stage: Process of Policy Formulation. In order to satisfy the requirements of the rights based approach, the process of policy formulation will lead to important

sets of characteristics relating to participation and progressive realization of rights.

What constitutes participation is undefined. Some characteristics may include involvement of the affected people in the process of policy formulation. However, direct participation may not always be either possible or desirable. Specific context will define the extent and nature of participation. A hard and fast formula does not exist. Nonetheless, it is important that mechanisms and institutions must exist – legal, administrative, civil society based institutions, through which genuine participation is possible. Fulfillment of the right to participation may necessitate implementation of other ancillary rights. These will include right to information, free speech and association.

The notion of ‘progressive realization of rights’ emanates from resource constraints. Resource constraints imply that all human rights cannot be achieved at the same time. Therefore, most of the social, economic rights will have to be achieved gradually in a progressive manner. Defining of ultimate goals and setting up of intermediate targets are important for progressive realization to be meaningful.

Second Stage: *The Content of Policies.* This stage includes priority setting in view of the resource constraints. Priority setting involves consideration of trade-offs and alternative policy options. Essential features of this stage that make it consistent with rights based approach are:

- Equity
- Non-discrimination,
- Goals consistent with those set up by human rights instruments
- Recognition of the interdependence of rights

Third Stage: *Monitoring of Policy Implementation.* Human rights instruments identify the state as a primary duty bearer. International community also has certain obligations. The state has an obligation to fulfill the right of its citizens. Existence of institutional mechanisms of accountability is essential for policy monitoring from a human rights perspective. The accountability procedure must be participatory in nature. This implies that people who will be affected by policies or whose rights are to be addressed by policy must have a say in determining whether the state and other duty bearers have actually fulfilled their obligations.

Accountability has two dimensions- domestic and external. By signing various treaties the state has agreed to make itself accountable to different treaty bodies, thereby subjecting itself to some form of external accountability. Accountability does not rest with the state party alone. External actors have to be accountable too. This is because the obligation to fulfill rights does not belong exclusively to the states, the world community has an obligation as well. Therefore, all the

external actors, the donor countries, Bretton Woods Institutions, bilateral donor countries, international institutions, even international NGOs and civil society organizations who deal with specific countries have to be accountable for their part in fulfilling the rights.

Right to Food

Dr. Quazi Shahabuddin stated that under Article 15 of the Constitution of Bangladesh the fundamental responsibility of the state is to ensure its citizens the basic necessities of life including food. He pointed out that about 25 million people in Bangladesh are exposed to severe malnutrition and hunger.

Apart from the chronic poverty situation there are issues of seasonal and regional variations. The seasonal variation is about 20 per cent, but the regional variation is as high as 65 percent. These are regions that face ecologically unfavourable conditions like salinity and proximity to coastal areas. Another problem is related with the insecurity of land tenures. Majority of the agreements between the landowners and tenants are verbal. This exposes the tenant to eviction. This has direct bearing on the realization of the right to food. Majority of the provisions of the Land Reform Ordinance of 1984 have not been implemented.

National Food Policy of Bangladesh has evolved in several stages. Comprehensive Food Security Policy approved by the government in 2000 marks a distinct improvement over previous documents. It goes beyond the concern of aggregate availability and brings into the fore ground the other two elements of import access and sufficient food entitlement for all households and utilization with adequate nutrition for all particularly, women and children. However, participatory aspect is lacking in policy. Out of 19 members of the task force only one was from an NGO, others were either from the bureaucracy, or the donor community.

The Public Food Distribution System has been designed to improve access to food. There are two elements of it: price subsidy on food grain and income transfer to vulnerable.

Right to Health

Dr. Omar Haider Chowdhury provided an overview of the health sector in Bangladesh. Health and Population Sector Programme (HPSP) was launched in July 1998. It is a five year programme with an estimated cost of US \$ 3.5 billion. The main objective of the programme is to maximize benefits from the delivery of health and family planning services to the target group meaning women, children and poor. The mid-term review of the programme pointed out that it had not adequately reached the vulnerable groups. The progress towards its goal to promote an equitable system to improve the health status of the family target groups has been very limited. Only one fifth of the national spending reached the

poor. Geographical areas with poorer health and human development indicators received less resources than comparatively better off regions and the average patient cost per visit for services at government facilities was higher for those with lower incomes.

He identified the need to increase community participation for successful implementation of health programmes.

Right to Education

Dr. Mustafa K. Mujeri gave a proposed outline of the study on right to education. The study would start with an assessment of progress towards attainment of the stated goals. The role of the state in meeting its obligations, in terms of compulsory and free primary education for children, will be assessed. In doing so there would be a focus on the status of vulnerable groups. The study would analyse two specific projects implemented by the government for promoting universal primary education.

This includes Food for Education Programme. It is a country wide programme initiated in 1993, covering approximately 2.3 million students from poor families. Under this programme food supplement is provided to the parents of the poor families to enable their primary school aged children to attend school. Due to pilferage the strategy was revised to cash for food.

The Programmes will be assessed from the human rights perspective. For instance, how successful the programmes have been to promote the goals of universal primary education in terms of addressing the problems of equity and quality of education.

As an action under the Post-Dhaka, government has set targets to be achieved during the period of 2002-2015. These targets will be examined from a human rights perspective. The study would make suggestions on how human rights perspectives can be integrated within the institutional and policy framework.

Discussion on Bangladesh Study

Professor Stephen Marks suggested that the specific studies in health, education and food could view the specific programmes in light of the human right obligations as stated in the general comments on the three rights. The starting point would be to look at the human rights obligations as stated by the Committee in General Comment No. 3. The authors could also, based on their experience point out what the general comments might have missed.

Dr. Arjun Sengupta suggested that a field study on the three aspects, viz. policy formulation, contents of the policy and monitoring, could make a major contribution. The study could also focus on resource constraints.

2. INDIA

Coordinator of the Country Study: Dr. S. P. Pal, Project Director, Centre for Development and Human Rights, New Delhi, India.

Co-authors

Prof. Abhijit Sen (Right to Food)
Dr. Ravi Duggal (Right to Health)
Prof. Ravi Srivastava (Right to Education)

Background Information

Dr. S.P. Pal provided a situation report of the areas in which studies are going to be conducted. He pointed out that current development challenges facing the country are of stark disparities.

India has progressed from a food deficit economy of the 50's and 60's to a food surplus one. Yet, poverty estimates show that 300 million people live below the poverty line.

In the area of education, 94 per cent of the population has access to primary school within a one kilometer radius, yet nearly half the population is illiterate. In the health sector, many of the communicable diseases have been eliminated and controlled. There is marked reduction in birth rate, death rate and rise in life expectancy at birth by about 20 years. Nevertheless, there are marked differences between states, population groups and regions.

Right to Health

Dr. Ravi Duggal's basic premise was that an individual has a right to health. It should be available free of charge. Medicine like education is no longer a trade. It becomes a public function of the state. The state should adopt measures for protection and restoration of health for all.

He stressed that adoption of a rights based approach requires a need to move away from the entrenched paternalistic approach, which he classified as '*Mai-Baap*' approach. He said that the core elements of RTD imply the following:

Availability implies not just existence of infrastructure but adequate supply of all the complementary services. For example, just existence of a primary health centre is not adequate. It should be functional with presence of adequate staff doctors, drugs and other facilities.

Accessibility implies that access to health care should be accessible without any conditionality.

Affordability requires health care facilities and goods to be affordable for all. Universal access to health care necessitates that provision of health care should not be subject to direct payment. Resources could be raised through measures like payroll taxes and social insurance. The data suggests that illness accounts for a high level of indebtedness.

Quality should be a central concern for all interventions.

He pointed out that a dichotomy in the nature of services provided by the public sector in the rural and urban areas exists. In rural areas, the public sector largely provides preventive and promotive care which includes immunization programmes, family planning and national disease control programmes. Curative health care is virtually absent in the rural health care system provided by the state. Urban areas have existence of large hospitals primarily providing curative care. Citing an example of urban bias he observed that out of a total of 80,000 of doctors in the state of Maharashtra, 60,000 are stationed in Mumbai city. This gives a ratio of 200: 1 population per doctor.

Recent times have seen a resurgence of communicable diseases, apart from AIDS. Tuberculosis and Malaria have made a come back. The current scenario is marked with declining public investments and expenditures in health care. The current public expenditure on health is 4.4 billion dollars, which accounts for 1 per cent of GDP. This is not even enough to cover the maintenance costs. An increasing proportion of the public expenditure budget goes to fulfilling salary packages. No new investments are being made through the public system and the private system is growing in an unregulated manner. Negligible investment in diagnostic and other facilities is translating into decline in utilization of the public health care system. In contrast, there is a rise in the utilization of private health care system, which provides hospitalization and outpatient care. There is an increase in corporatisation of health care. Private expenditure on health care is of approximately 17 or 18 billion dollars.

The rights based approach needs to address the contradiction regarding the provision of subsidy to the richest class provided by the public health system. Furthermore Health care does not even figure in the political agenda.

People need to be educated about their rights. This can be achieved through active participation of civil society groups.

Right to Food

Prof. Abhijit Sen and Mr. Prem Vashishtha gave an overview of the food situation in India.

India has moved from facing a situation of food shortages to the one of surplus production which it finds difficult to manage. Estimates suggest that average per

day calorie intake of an Indian is 2400 calories. This is significantly above the FAO norms.

Despite this India's nutrition outcome as measured by any clinical test is considerably worse than similar indicators for sub-Saharan Africa where the nutrition levels or calorie intake levels are considerably lower. There is high prevalence of malnutrition amongst children under five years. This points towards the problems associated with intra-household distribution like inequity within the households. This also indicates that the focus has moved from food security to nutrition security.

One school of thought suggests that stocking should be decentralized. This is where the community can play an important role. Community initiative can play a significant role in channeling food from the stock to the household.

The policy of food security was conceived during times of acute food shortages. The strategy was to focus resources in certain regions that would give quick returns in terms of large output. The state intervened in terms of price and procurement policy. The food stocks were maintained at central level to be rationed to food deficit areas. Only regions that contributed to the food kitty benefited from this policy. These included Punjab, Haryana, Western Uttar Pradesh and Andhra Pradesh.

Under the changed context does this policy allow exploitation of full potential of certain regions? The answer is clearly no. There are many regions in India that hold the potential of increasing food production by a substantial amount. These also happen to be regions where a large proportion of poor reside.

There is also a question of certain regions progressing at the expense of others and a range of allied questions. These include:

- Are better off states prime beneficiaries of subsidies?
- What is happening to resources generated from the subsidies? Are these ploughed back into the agriculture sector?
- The efficacy of centralized system of food stocks. The distances between the regions that are producing and those that encounter food deficits are considerable. This leads to high transport costs.
- The infrastructure is poor. There is the issue of governance. States like Uttar Pradesh, Madhya Pradesh, Orissa and Bihar. When the central government says that it is prepared to give x million of tones of food at a subsidized rate. Certain states are not able to pick up one fourth of their assigned quota. This situation raises the issue of governance and accountability.

Right to Education

Prof. Ravi Srivastava said that the country study focuses primarily on the 'elementary education cycle' and the 5-14 year age group. This is based on the constitutional goal of providing free education to children upto the age of 14 years. This is consistent with the age of entry into the Indian labour force, which is 15 years and above.

He pointed out that despite the mandate of putting every child in school within 15 years of independence, realization has been stunted as the debate still centers on provision of free and compulsory education. Current estimates suggest that in the age group of 5-14 years, 30 per cent of the children in rural and 15 percent of children in the urban areas are still out of school. Huge disparities continue to exist amongst social groups, regions and gender.

The paper consists of the following three sets of issues.

- The status review. The study would look at the evolution of policy and legislation in India along three parameters. First, it would provide an overview of the whole question of compulsory education – both pre-independence and post-independence. Second it would investigate the interface between the education and the levels of government – local bodies, states and the center- their responsibilities with respect to education. That is, the whole process of re-centralisation and de-centralisation and what it has actually meant in terms of the right. The third is the specific evolution of the right to education through the legislative sphere. Then the study would look at the state of education in the era of structural re-adjustment and reforms, particularly the priorities of the state, central and local governments and how they have distributed the resources allocated for education amongst themselves.
- Analysis of the scenario.
- The requirements with respect to each of the goals stated by the right to education.

With respect to the status of education in India the study would focus on the pattern of literacy and illiteracy across states and districts, the pattern of enrolment and the issue of quality.

Duties are defined in terms of the role of the central government, the state government and more importantly the role of the local body. In terms of a rights based approach, the issue of assignment follows. The level of decision making and accountability will also be examined. The issue of the duty holder at the three levels is integrally linked to the issue of equity, participation, monitoring and accountability. There is an enormous variation across the states in India in terms

of strategies, perspectives, achievements and policies. Any issue the study seeks to cover needs to capture this variation; as one cannot speak of Kerala and Bihar in the same breath.

The next step, is the identification of non-state duty holders. He identified three major actors. First is the global environment and the role of the external partners. This entails looking at the range of issues including the patterns of financial assistance. Second, is the private sector. Third, are the civil society organizations.

He added that the burden of market and state failure falls on certain groups in society. The study would investigate this phenomenon.

He added that the specific challenges for realizing the right to education are that of demand, quality, resources and participation. The study will address the issues in context of specific state studies in India. It would focus on two educationally advanced states like Kerala and Tamil Nadu and four educationally backward states like Rajasthan, Madhya Pradesh, Uttar Pradesh and Bihar.

Discussion on India Study

General Comments

Professor Stephen Marks pointed out the challenge of the RTD study is to take the various key components of the 1986 Declaration and to examine to what extent these components have been taken into account. It is important to integrate the gender analysis in all sections of the study.

The donor agencies like DFID, NORAD, CIDA, SIDA, DANIDA and others have an explicit human rights and right to development focus in their ODA. The challenge is to look at their programming in India. To look at the implementation of specific projects, allocation of resources the resources. To assess how the specific human rights focus has fared in practice.

Right to Health

Professor Stephen Marks commenting on the right of health component of the Indian study, said that right to healthcare is only one component of the right to health. It is not the total picture.

Dr. Ravi Duggal clarified that the study would view right to health care as a first stage towards realization of the right to health.

3. SRI LANKA

Coordinator of the country Study: Dr. Godfrey Gunatilleke (PhD), Governor, Marga Institute (Centre for Development Studies), Colombo, Sri Lanka.

Co-authors

Dr. Nimal Gunatilleke (Right to Health).
Dr. E.L. Wijemna (Right to Education)
Dr. Nimal Sanderatne (Right to Food)

Proposed Outline

Dr. Godfrey Gunatilleke stated that Sri Lanka had achieved certain states of well being that many countries are still striving to attain. The social achievements in the Sri Lankan case are unusual for a low income country. These include a life expectancy at birth of 73 years, literacy rate of 92 percent, infant mortality of 14 per 1000 live births and fertility rate of 2. Sri Lanka has undergone an epidemiological transition.

The factors responsible for the above mentioned outcomes are:

The political process. The country received democratic processes and institutions during the transfer of power from the colonial rulers. Democracy was set as a pre-condition for the transfer of power. In 1931 system of universal adult franchise was introduced. The supporters of universal adult franchise and the British constitution makers were insistent that the process should begin with empowerment of the people. Therefore, elements of a welfare state were sowed right at the beginning. The language used in the document also had all elements of the rights based approach.

The process ensured that there was accountability through the electoral mechanism. The priorities were primary health care, primary education, rural roads. Right at the beginning the development strategy had a strong rural bias. Sri Lanka had a large revenue base coming from the plantation economy which contributed 12 to 13 percent of GDP as revenue. The economy had a surplus budget and current account surplus in the balance of payments. A cadre of teachers and health workers was built.

Despite registering progress on the social front, low economic growth was recorded. Some believe that this was an outcome of excessive investment in the social sector. However this line of reasoning is flawed. The history of development in Sri Lanka falls in two phases. The first phase is the pre-1977 period. This phase was marked by emphasis on public sector and on regulation. Sri Lanka was a closed economy with import substituting strategies. The second phase is post-1977. During this phase there was a movement towards the market

economy. The social welfare programme was sustained despite the structural adjustments.

The low economic growth can be attributed to unsound economic policies. The social welfare program could not be sustained as a result of policies that were deficient.

Sector studies will examine the three rights within the following framework:

- The commitments made at the international level and domestic attempts at realization.
- Examination of the legal framework *vis a vis* the three rights.
- Assess the programme of implementation.

Right to Education

Dr. E.L. Wijemna while presenting the discussion on the Sri Lankan education system said that at the time of independence Sri Lanka inherited a dual system of education. There was a small percentage of English medium schools and a large number of Vernacular schools. Apart from the medium of instruction, other main difference between English medium and Vernacular schools was that the former were fee levying and the latter free. In 1945 it was decided to eliminate these differences. Free education was introduced right from the kindergarten to the university level. The proposed medium of instruction at all levels was vernacular. This met with resistance. As a consequence, the implementation of the plan saw a break. It took approximately 15 years for the total school system to change to Vernacular medium.

With the introduction of the state sponsored education system, community participation diminished. Previous education system was dependent on community support, as majority of the schools were patronised by temples, churches and the community. Under the new system, the community expected the government to assume responsibility for the schools. The modified syllabus under the new centralized system did not cater to the needs of the people.

Right to Food

Dr. Nimal Sanderatne said that in 1942, the Government introduced the food ration scheme in response to the food crisis which was the fallout of the second world war. This scheme entitled everyone to a basic ration of essential commodities namely rice, flour and sugar. The government was unable to sustain the food subsidy in the 1950s due to unfavourable terms of trade. The first attempt to modify the scheme in 1952 met with massive public resistance. As the notion of a food right was embedded in the minds of the people.

In 1977, the food stamp scheme replaced the earlier scheme. However this scheme was unsuccessful due to inflation. It was followed by income support schemes now named *Samhuti*. Although the very poor were the target group now the scheme includes the better off as well.

Sri Lanka is a food deficient country. Over the years it has attained self-sufficiency in meeting its domestic requirement of rice. In 1950s Sri Lanka imported half its rice requirements with a population of 7 million. Currently it imports 8 per cent of its requirements with a population of 19 million. It has a large degree of trade dependence for other commodities. Trade constitutes 70% of GDP. In the last few years the country's capacity to import has been eroded. This has bearing on its capacity to fulfil right to food.

Right to Health

Dr. Nimal Gunatilleke provided an overview of the health scenario in Sri Lanka. He said that the burden of disease has moved from the diseases of childhood and infectious disease to non-communicable disease. The demographic transition is largely complete, the birth rates and death rates have come down and fertility rate is at a mere replacement level or less.

Health expenditure constitutes approximately 3% of GNP. The private sector provides a substantial proportion of out patient care. The public sector continues to be exceedingly important for population in the last decile of income for both in-patient and out patient care.

Section – 4 : Other Discussions

Suggestive Ways to Integrate Human Rights Approach in the Study

Professor Stephen Marks gave the following suggestion to integrate human rights approach in the study:

- Incorporate insights from General Comments.
- Use a matrix- The General Comments have identified three to five obligations of the state. The matrix must take into account stages of life such as infancy, early childhood, childhood, adulthood, old age, pregnant women and common issues in one column. Other columns would include requirements for state to fulfill the right to health for each of these life stages. For instance, the state's obligation "to respect" the right. This can provide a yardstick to assess whether the duty holders are complying with their commitments.

Participation

Participants pointed out the difficulties in defining both what constitutes participation and its level.

Dr. Godfrey Gunatilleke citing the Sri Lankan experience said that an attempt was made to take the SAARC Social Charter to the community. The targets set for four segments of the Social Charter- women, children, youth and the poor at the Rawalpindi Ministerial Conference, were presented to the community. The community could not identify with these targets. A joint exercise of identification of objectives was undertaken through a series of workshop. Two important inferences were made from this exercise. Participation is important for realistic goal setting. Participation may involve a process of training, consultation and education. This is because the stakeholders involved may not be fully informed.

Dr. Arjun Sengupta pointed out that stark inequity in terms of wealth and power may hinder the process of participation. He also pointed out that closely related to the issue of participation is the issue of level of decision making. Decision making should be given to that agency that has maximum impact. At the local level, *panchayats* or district level decision making may be most effective.

Right to Development, Development Policy and Growth

Dr. Arjun Sengupta pointed out that the difference between the right to development and individual rights is an important one. The law literature on rights distinguishes between 'obligation of result' (entitlements) and 'obligation of conduct'. The obligation of conduct implies that duty holders have an obligation

to follow the right kind of conduct for realization of a right. International law association has stated that different rights would require different kinds of conduct. In economic parlance it means different objectives would require different policy instruments. Drawing upon Professor Amartya Sen's concept of 'meta right', for each right there are policies that have maximum likelihood to realize that right. If one has right to results then one has a meta right to the policies which realize those results. Policies are subject to change over time.

He further stated that right to development is essentially a right to development policy and to the outcomes of that policy. Random variables render establishment of one to one level correspondence between the policies and obligations difficult. Therefore, policies that have a maximum likelihood of achieving the outcomes are rights. Policies must be adopted through a particular rights based process.

Growth is one of the principal variables of development policy. Therefore, growth of resources is an essential element of rights derived from right to development. In other words, RTD approach comes entirely embedded within the mainstream economics. Although, growth has not been accepted as a human right by the international community.

Sri Lanka's experience underlines the importance of growth for realization of human rights. Expenditure in the social sector could not be sustained because the economy did not have a high rate of growth.

Ethical and Logistic Propositions

Dr. Siddiqur R. Osmani suggested that while making propositions during the country studies it may be useful to view the proposition in two parts: 'ethical propositions' and 'engineering/logistic propositions'. The starting point for identifying what is consistent with rights based approach is the normative framework set up by the human rights instruments. The human rights instruments identify a list of things that ought to be done, a pool of value judgments from which one should draw. Certain logical implications can be drawn from this. This exercise is called the ethical exercise. Engineering or logistic proposition will consist of attempts to operationalize the ethical proposition.

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WORKSHOP REPORT

FIRST WORKSHOP
ON

RIGHT TO DEVELOPMENT PROJECT
NEW DELHI

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Submitted by

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