

THE INFLUENCE OF HUMAN RIGHTS ON LAND RIGHTS AND SPATIAL INFORMATION

JOHN S. COOK

School of Design and Built Environment,
Queensland University of Technology,
GPO Box 2434, Brisbane, Queensland 4001, Australia
Phone: +61 7 3864 2239 Fax: +61 7 3371 4781
Email: js.cook@qut.edu.au

Key Words: human rights, human development, land rights, spatial information

ABSTRACT

This paper reviews the growing influence of human rights issues on land rights, administration, management and tenure. In the last few decades, attention focussed on integrating economic and environmental considerations to achieve sustainable land use. The World Trade Organisation began in 1995. As a condition of membership, nations undertook legislative programmes aimed at reducing price distortions and barriers to international trade. Reducing trade barriers has direct effects on agricultural production as a major land use. Similarly, as signatories to the 1992 Rio Declaration, nations undertook caring for and reporting on the state of the environment. However, quality of life is also an issue in deciding what is sustainable development. The Universal Declaration of Human Rights, proclaimed in 1948, provided a framework for a series of international human rights conventions. These conventions now influence national legislative programmes. The purpose of this paper is to review some of the implications of human rights on rights in land and the production and use of spatial information.

INTRODUCTION

The Queensland Spatial Information Infrastructure Council (QSIIC) has a need to explain how the community benefits from investment in spatial information infrastructure. The Council is a high-level policymaking agency with a mandate to promote the development of a spatial information industry in Queensland. Promoting such development depends on the industry's ability to make itself indispensable to the wider community, both as a matter of fact and as a matter of common knowledge. Factually, spatial information is already indispensable in providing a general spatial orientation to social organisation. Indeed, this orientation is so basic and pervasive that it is easily overlooked and taken for granted. Even the ability to evaluate and compare the success of public policies in various local, regional or national jurisdictions depends ultimately on an underlay of spatial information and knowledge. However, if the benefits of spatial information to society are to be a matter of common knowledge, raising consciousness of how spatial information helps to promote the objectives of broader public policies is of some importance.

Members of QSIIC comprise senior personnel in State Government Departments together with representatives of local government and the private sector. Each brings the language, culture and intellectual discipline of various areas of specialisation. However, in an environment of high level 'whole of government' or 'integrated decision-making', the need for participants to appreciate information beyond their areas of expertise becomes increasingly necessary and demanding for the individuals involved. The need is for

explanations of broader public policy issues in language that is neither too complex for easy assimilation nor too misleading through oversimplification.

Some issues concerned with the production and use of spatial information seem to identify themselves fairly readily as 'economic' or 'ecological' in character. However, other issues such as freedom of information, privacy, 'government on-line' and copyright seem to fit a separate category that is 'social' in character. In seeking a more coherent and comprehensive explanation of these issues, attention focussed on tracing the development of the human rights movement. A reasonably succinct explanation of a number of pervasive issues that ultimately affect the production and use of spatial information emerged by tracing the development of the ideas regarding human rights, especially since the United Nations Universal Declaration of Human Rights in 1948.

AUSTRALIAN POLICY MAKING IN A GLOBAL ENVIRONMENT

The Role of International Agreements and Obligations

Australia undertakes numerous obligations as a signatory to international treaties, conventions and agreements to cover most aspects of international relationships. These relationships affect issues such as international communications, trade and travel, cultural exchange, national defence and care of global common property. Global common property includes the atmosphere and international waters. Thus, international policies directed towards control of greenhouse gases have major impacts on transportation and energy production at regional and local levels. Similarly, laws governing international waters have implications for the discharge of storm-and wastewater from local land developments into waterways and oceans. Increasingly, obligations entered into at international level impose obligations at regional and local levels. Failing to observe these obligations affects Australia's reputation and ability to maintain international relationships from which Australian citizens can benefit.

Australia's Constitutional Constraints

The Australian Constitution sets out legislative powers of the Commonwealth Parliament.¹ Residual legislative powers reside with the State legislatures. State legislation is invalid to the extent of any inconsistency with legislation made in accordance with the Commonwealth Government's legislative powers.² The Australian High Court has consistently upheld the primacy of the Commonwealth powers to legislate in external affairs. Moreover, trying to make Commonwealth and State powers more explicit by changing the Constitution through referenda proves to be unworkable without support from major political parties. The net result is that governments need to demonstrate some ability in reaching intergovernmental agreements if they are to set any example in conflict resolution.

Cooperative Federalism in Australia

Given that High Court interpretation and the practical problems of changing the Constitution, importance attaches to inter-governmental agreements between Commonwealth, State and Territory governments. The Council of Australian Governments (COAG) has protocols for conducting negotiations and reaching inter-governmental agreements. The role of COAG assumes particular importance in economic, social and environmental issues that impact on Australia's relationships between States and with the rest of the world. Given the sensitivity of some international instruments, Head of Government agreed at a COAG meeting on 14

1 Australian Constitution, s.51
2 Australian Constitution, s.109

June 1996 to create the Treaties Council to improve inter-governmental consultations and provide some forewarning of likely international obligations.³

ESSENTIAL TENSIONS IN GOVERNING COMPLEX SITUATIONS THROUGH DEMOCRATIC INSTITUTIONS

Modern development involves institutional arrangements of increasing sophistication and complexity. In the process of social and economic development, the potential for good or harm depends on how people use or misuse the technology and institutional arrangements at their disposal. Each misuse of technology or institutional arrangements has a potential to affect the rights of some person. Where there is a right (as a matter of fact as distinct from a mere political statement of good intention) there is also a remedy. Remedies depend on a rule of law supported by appropriate enforcement. Thus increasing sophistication in technological and institutional development requires increasingly sophisticated controls through laws and enforcement processes that have some measure of social acceptance, if not respect.

Typically, regulation of complex systems depends on rationale that derives from expert technical or scientific knowledge. Thus, economic policy may have its rationale founded in economic theory; and environmental regulation may depend on various specialisations in the natural sciences. Such specialised knowledge is often beyond the understanding of people who are not specialists in these areas. Necessarily, politicians, academics, social commentators, members of the judiciary, public servants, journalists and industry leaders are likely to converse well beyond their own levels of expertise in public debate on policy rationale. Public debate is important in maintaining democratic institutions. However, commentators who try to explain public policy issues often reveal much of their attitudes and personality together with their knowledge and ignorance of subject matter to sufficiently prudent observers. Under these circumstances, the wisdom of Abraham Lincoln may well be apposite - 'Tis better to be silent and be thought a fool, than to speak and remove all doubt'.

The well being of modern democratic institutions depends increasingly on an informed consent of voters. Moreover, democratic institutions can destabilise through indecision because no clear voting majorities may emerge in electorates and legislatures on important issues. Indecision often arises through uncertainty, and uncertainty implies a lack of information. This places some obligation on people with relevant specialist knowledge to supply information that explains public policy issues and rationale. Explanations need to avoid clouding issues because of their complexity or misinforming people through undue simplification of complex issues.⁴ Tensions arise in part because people have limits imposed not so much by 'information overload' as 'cognitive overload' – a limit to how much can be understood in the time given for decision-making. Consequently, political dealings in complex issues often leave an impression of 'muddling through' with the hope that things can be seen to improve.

A further source of tension emerges when agreements entered into globally impose obligations that often bind State, Territory and local governments in circumstances where citizens have little opportunity to comment on laws that affect them. The Treaties Council operating under the auspices of the COAG is an attempt to address some of these concerns. Having no power to influence such laws contributes to increasing levels of alienation from

3 Treaties Council Meeting Communiqué, Inaugural Meeting, held 7 November 1997, Internet URL <http://www.pmc.gov.au/docs/communqe.cfm>

4 David Guston, 'The essential tension in science and democracy', *Social Epistemology*, Vol.7 No.1 (January-March 1993) pp.3-23

and frustration with the processes of global decision-making. However, genuine reform depends on implementing workable solutions to complex problems. Reform does not happen through mere questioning or pointing out that problems exist in prevailing social and economic systems, however virtuous this may seem. 'Examinations are formidable even to the best prepared, for the greatest fool may ask more than the wisest man can answer.'⁵ Timely decisions remain important, regardless of the problems that decision-makers may have in assimilating information and deciding issues. Part of the remedy resides in delivering complex information in timely fashion and in ways that allow its assimilation.

COOPERATIVE FEDERALISM AND MICROECONOMIC REFORM

A Simplistic View of Advantages in Free Trade

Recent history of microeconomic reform in Australia illustrates some of the problems of policy-making about free trade in a global context. Theoretical arguments for free trade are deceptively simple but the reality is far more complex. The basic argument (known as the Pareto Criterion) is that two parties gain more satisfaction from available resources when they trade to mutual advantage without harming anyone else. Moreover, satisfaction continues to improve until opportunities for trading to mutual advantage exhaust themselves. Under these circumstances, an optimal situation (known as a Pareto Optimum) arises when trading allows resources to reach their highest and best use as reflected in market valuations.

A More Complex View Involving Free Trade

As a policy rationale, the basic free trade argument ignores a number of complicating factors of particular relevance in assessing human well being and development. First, the free trade argument ignores the fact that an initial distribution of wealth has significant effects on subsequent resource allocations. The capacity exists for initial disparities of wealth to widen into distinctly inequitable outcomes. Second, trade occurs within a framework of laws relating to property, contract and liability. Changing this framework changes the nature of subsequent resource allocations. As an example, resource allocations in production processes may change if laws requiring producers to negate pollution or pay for its effects are enforceable and enforced. However, regulation itself comes at a cost of allocating resources towards making and enforcing the laws. Third, the capacity to trade to mutual advantage depends on people being the best judges of their own welfare. This condition is not met when there is asymmetry in information or knowledge available to the parties. Such an asymmetry occurs where people admit their limited knowledge by being prepared to pay for technical or professional advice. The knowledgeable and well informed can take advantage of the less knowledgeable and less informed parties, unless institutions and laws exist to negate effectively the misuse of this advantage. Accordingly, access to education and affordable information are important factors in helping people decide what will suit them best.

Perhaps the greatest oversimplification in the free trade argument resides in assuming that trading does not affect third parties. Gains and losses to external parties are pervasive in modern societies. Technological change involves processes of investment and disinvestment in capital equipment and personal knowledge. Disinvestment leads to devaluation of capital equipment and losses to the owners unless the equipment is readily convertible to new and worthwhile uses. Similarly, disinvestment in personal knowledge leads to devaluation of personal knowledge and skills unless these skills are convertible to new uses or re-skilling opportunities become available. Since such disinvestment can reflect in the self-worth of

5 Charles Caleb Colton, *Lacon*, (1825) 1.322 cited in *The International Thesaurus of Quotations*, compiled by Rhoda Thomas Tripp, Harmondsworth, Middlesex: Penguin, 1970, p.478

people involved, they can become significant losers in the processes of technological change. Moreover, people suffering losses in value of capital equipment and personal knowledge can protest in ways that impose political impediments to change. In many respects, the rate of progress depends not only on rates of investment but also on sensitivity to the problems of disinvestment.

Cooperation Between the UN and the WTO

The World Trade Organisation (WTO) came into being on 1 January 1995 and replaces organisation involving the multilateral arrangements within the former General Agreement on Tariffs and Trade (GATT). Evolution of the WTO and the UN took separate historical paths. Thus, a nation having membership of the UN need not necessarily have membership of the WTO. However, many of the objectives of the UN Economic and Social Council (ECOSOC) coincide with those of the WTO. Accordingly, protocols for cooperation and coordination need to exist between the two organisations.⁶

Implications of Australian Involvement in the WTO

Membership of the WTO involves a commitment by national governments to enact legislation that reduces trade barriers and price distortions. Meeting this commitment required complementary legislation involving the legislative powers of the Commonwealth under the Constitution and the residual legislative powers of State legislatures. Given the intergovernmental cooperation needed to meet obligations of WTO membership, the Council of Australian Governments (COAG) commissioned the Hilmer Report. Following the Report recommendations, COAG entered into a Competition Principles Agreement on 11 April 1995.

Some Implications of the Competition Principles Agreement for Queensland's Spatial Information Industry

The Competition Principles Agreement committed Commonwealth, State and Territory Governments to introducing complementary legislation on a broad range of issues touching upon delivery of goods and services in the public and private sectors. The Agreement called into question all services delivered under monopoly conditions within the public sector to see whether advantages existed in opening some service provision to competition, corporatisation or privatisation. Where competition was achievable, government accounting practices needed to adopt accrual accounting practices to emulate private sector accounting and achieve competitive neutrality in competitive tendering between public and private sector agencies.

Accrual based accounting obliges public sector agencies to bring to account a return on investments in publicly owned assets. This had an effect on developing spatial information systems to manage some assets such as land and physical infrastructure. The need to bring to account investment in intellectual property poses particular difficulties in valuing public sector assets, especially where actual costs reflect the significant learning costs of doing some complex and difficult tasks for the first time. Valuing public investments in spatial information infrastructure remains a vexed question.

A complex interdependence exists between public and private sector agencies in producing and using spatial information. Some regulatory functions exist properly with public sector

6 J. Oloka-Onyango and Deepika Udagama, 'Realization of Economic, Social and Cultural Rights: Globalization and its Impact on the Full Enjoyment of Human Rights', Economic and Social Council, Report to Sub-Commission on the Promotion and Protection of Human Rights, (15 June 2000), paras.51-61, Internet, URL <http://www.unhchr.ch/Huridocda/Huridoca.nsf/2848af408d01ec0ac1256609004e770b/21a92d3d0425a0ceec125693500484d2f?OpenDocument>

agencies. Accordingly, arrangements between public and private sector agencies need to avoid situations involving conflict of interest where public sector agencies are a regulator of and a competitor to private sector agencies. Proper adherence to competition policy requires a careful unbundling of public sector activities to identify where competitive trading arrangements can prevail and where there is a tendency for natural monopoly with its potential for abuse of market power. Thus, the Queensland Spatial Infrastructure Council needs to recognise the Competition Policy Agreement and the rights of various industry stakeholders. Stakeholders include those who rely on the supply of information for the well being of their business as well as those who have made investments in capital equipment and knowledge needed for the production and use of spatial information. Accordingly, to involve stakeholders in meaningful discussions on matters that affect their futures is to recognise a fundamental human right.

ENVIRONMENTAL POLICY AND COOPERATIVE FEDERALISM

UN Environmental Initiatives

Agitation by non-government international organisations was an important factor in mobilising national governments and the UN to act in regard to deteriorating quality in the natural environment. In 1972, the UN Conference on the Human Environment (UNCHE) approved the United Nations Declaration on the Human Environment. As a result, the United Nations Environment Programme (UNEP) commenced in 1973 and some attention focussed on global environmental monitoring. The UN established the World Commission on Environment and Development (the Brundtland Commission) in 1983. The Commission's Report issued in 1987 and was published under the title *Our Common Future*. The Report provided a draft UN Action Plan on Sustainable Development and led to the convening of the UN Conference on the Environment and Development (UNCED) in Rio de Janeiro in 1992. The UNCED outcomes included the Rio Declaration on Environment and Development,⁷ and Agenda 21 (as an accompanying action plan).⁸

Formation of the UN Environment Programme (UNEP) in 1973 prefaced a steady increase in international treaties and agreements concerning the environment. Australia's involvement as a signatory to many of these agreements reflects in considerable legislative activity by Commonwealth, State and Territory Governments in relation to the environment since the 1970s. The Web sites of several Environment protection Agencies testify to this legislative development.⁹

Some Implications of UNCED for Queensland's Spatial Information Industry

Principle 5 of the Rio Declaration on Environment and Development states:

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of people of the world.

Thus development in the eyes of the international community has direct links with human rights, and in particular on rights to a decent standard of living. Recent development of a Human Poverty Index (HPI) takes measures of poverty beyond basic economic indicators of income and wealth and into other measures such as poor health, poor literacy standards and

7 United Nations Environment Programme (UNEP), Rio Declaration on Environment and Development, Internet, URL <http://www.unep.org/unep/rio.htm>

8 Agenda 21 and other UNCED Agreements, Internet, URL <http://www.igc.apc.org/habitat/agenda21/index.html>

9 As an example, Environment Australia, 'Legislation', Internet, URL <http://www.ea.gov.au/about/legislation.html>

impoverished rights to self-determination.¹⁰ Moreover, poor access to information is seen as impairing the human right to self-determination. On this issue, Principle 10 states:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including access and remedy, shall be provided.

Agenda 21 contains 40 chapters that elaborate substantially on the principles expressed in the Rio Declaration. The titles of the various chapters suggest particular linkages with spatial information. Examples with evocative titles include Chapter 10 ('Integrated Approach to the Planning and Management of Land Resources') and Chapter 40, ('Information for Decision-making').

EMERGENCE AND RE-EMERGENCE - HUMAN RIGHTS AND DEVELOPMENT Recent Focus on Human Rights and Human Development in the Context of Sustainable Development

The approach in the immediate post-war period of reconstruction after 1945 focussed primarily on fundamental economic conditions. However, increasing industrialisation introduced major concerns with the quality of the environment. Internationally organised non-government organisations were major influences in changing the prevailing attitudes at national and international levels. Consideration of environmental issues led in turn to ideas about sustainability. Sustainability was seen to involve integrated decision making on economic and ecological issues as highlighted in the 1987 Brundtland Report. Consideration of sustainability introduced social issues concerned with the development of human potential and capacity for self-determination. The overall effect of these extensive deliberations was to refocus attention on the human dimension as a central issue of development considerations. Thus development implied betterment of the living conditions of human beings. However it also placed some emphasis on the role of governance and self-determination to allow the people concerned to decide whether their standards of living could be said to be improving.

Problems with Development in Utopia

The desire inherent in current ideas about development is reminiscent of Utopian ideas of earlier times. The Utopian hope was to establish new settlement with an idealised form of government. The reality is somewhat different in so far as ideas about whole of government and integrated decision-making assume high levels of literacy, intellect and inter-disciplinary communication that are simply unavailable in practice. Moreover, the hierarchical nature of most public and private sector organisations often filters and distorts the information available to high-level decision-makers in ways that can produce calamitous results. In effect, decision-makers often display a predilection for seeing what they like to see rather than what they need to see. Thus the design of spatial information infrastructure requires increasing attention to the on going monitoring of complex social economic and ecological environments. In particular, design needs to address the cognitive load on decision-makers and the need for strongly corroborating data to overcome particular tendencies for large systems to produce misinformation for decision-makers.

10 United Nations Development Programme, *Human Development Report 2000*, p.18

Human Rights in the Context of European Colonialism

Historically, attitudes to human rights have been important in determining the mode of land settlement and land use. As an example, European colonisation of the eighteenth century occurred at a time that condoned transportation of convicts and slave labour. Human rights movements against transportation in the 1830s allowed South Australia as the first Australian colony that barred convict labour. In the US, the civil war of 1861-65 abolished slavery and changed the nature of American agricultural production from the plantation type economy to a form of agriculture based on the idea of a homestead and the yeoman farmer or soldier settler. Attitudes by Britain towards indigenes changed substantially between the time of Australian first settlement in 1788 and the time of annexation of part of New Guinea by the Queensland Colonial Government in 1886. The attitudinal difference between 1788 and 1886 proved to be of more moment than the geographic distance between PNG and the Northern parts of Queensland. Consequently, the historical development of land rights for indigenes in Papua New Guinea follows a less tortuous path than attempts to gain similar rights for indigenes in Australia.

Human Rights in Facilitating the Resolution of Global Conflict

World War 2 was a consequence of failure on the part of an international community to make a satisfactory peace after World War 1. Factors contributing to this failure included the desire for recrimination in imposing economic reparations on Germany, the destabilisation of German institutions as in removing the German Monarchy, and American isolationism manifest as a refusal by the US Congress to ratify President Woodrow Wilson's peace making efforts. This contrasts with efforts to establish a peace after World War II. The allies, after exacting recriminations in the war crimes tribunals at Nuremberg and Tokyo, also contributed significantly to post war economic reconstruction in Germany and Japan. This reconstruction within vanquished nations became significant to post war development in Europe and Asia. The US overcame its predilection for republicanism by retaining the Japanese monarchy in the interests of social stability under a new Japanese political constitution.

The United Nations Charter

In 1945, the US hosted a convention and became a major player in the development of the United Nations Charter. In order to carry out its objectives, the UN Charter established several instrumentalities (described in the Charter as 'Organs' of the UN). At its inception the Organs of the United Nations were the General Assembly, the International Court of Justice, the Security Council, the Trusteeship Council, the Secretariat, and the Economic and Social Council. From the outset, achieving human rights was a key element in bringing together nations of the world to form a United Nations Organisation. The preamble to the UN Charter commences with the following words:

We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom ...¹¹

11 Charter of the United Nations, signed at San Francisco on 26 June 1945, Preamble, Internet, URL <http://www.unhchr.ch/html/menu3/b/ch-pream.htm>

United Nations Influence on the Evolution of Human Rights

The United Nations General Assembly adopted and proclaimed the Universal Declaration of Human Rights (UDHR) on 10 December 1948.¹² Member States of the United Nations pledged themselves, in co-operation with the United Nations, to promote universal respect for fundamental human rights and freedoms. The Declaration envisaged progressive national and international measures to improve the quality of life for all people in the world.

A traditional view limited the scope of human rights to civil and political rights. Thus the UDHR restates many human rights principles contained in earlier documents of historical significance. Such documents were significant in developing the political constitutions of a number of leading nations. Examples include Magna Carta (1215), the English Bill of Rights (1688), the US Declaration of Independence (1776), and the French Declaration of the Rights of Man (1789). Many later political constitutions embody similar sentiments and include constitutional safeguards of human rights. The UDHR reaffirmed many of these traditionally recognised human rights. These rights included a right to life, liberty and security;¹³ a right not to be discriminated against on the basis of race, colour, sex, language, religion, social class or political opinion;¹⁴ a right to vote, freedom of speech and freedom of press; a right to be free from arbitrary invasion of privacy, family or home;¹⁵ and legal rights such as the right to due process of law and the presumption of innocence until proven guilty.¹⁶

Seemingly as a consequence of experience of two world wars and the Great Depression, the UDHR identified or foreshadowed further human rights in the form of key social, economic and cultural rights. These rights included a right to an adequate standard of living and social security;¹⁷ a right to education;¹⁸ a right to work and to equal pay for equal work;¹⁹ and a right of minorities to enjoy their own culture, religion and language.

This expanded view of human rights has particular application to the protection and advancement of the rights of disadvantaged and minority groups (such as women, children and indigenous peoples). The United Nations (UN) has adopted this holistic approach in determining what human rights are, and the international community has repeatedly affirmed the interdependence of both sets of rights.

The International Bill of Human Rights

The 1948 UDHR effectively set an agenda for more detailed agreements and statements on various aspects of human rights. The UDHR together with other human rights covenants listed below are generally known as the *International Bill of Human Rights*:

- 1 International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁰
- 2 International Covenant on Civil and Political Rights (ICCPR)²¹
- 3 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)²²

12 Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, Internet, URL <http://www.un.org/Overview/rights.html>

13 UDHR, Article 3

14 UDHR, Article 2

15 UDHR, Article 12

16 UDHR, Articles 7-11

17 UDHR, Articles 22 and 25

18 UDHR, Article 26

19 UDHR, Article 23

20 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27, Internet, URL http://www.unhchr.ch/html/menu3/b/a_ceschr.htm

21 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49, Internet, URL http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

- 4 Convention Against Torture and Other Cruel, Inhuman and Degrading Forms of Punishment (CAT) ²³
- 5 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ²⁴
- 6 Convention on the Rights of the Child (ICRC) ²⁵

Declaration on the Right to Development

The UN General Assembly adopted the Declaration on the Right to Development on 4 December 1986 as a further declaration of human rights. ²⁶ Among other things, this Declaration recognises that:

development is a comprehensive economic, social, cultural and political process, which aims at the 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 in the fair distribution of benefits resulting therefrom

In Article 1(1), the Declaration conveys an expectation that people will be able to improve their standards of living as a consequence of development. Moreover, Article 1(2) states:

The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Human Rights, Human Development and Sustainable Development

The United Nations Development Programme (UNDP) *Human Development Report 2000* refers to ‘Human Rights’ and Human Development as follows:

Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. They give all people moral claims on the behaviour of individuals and on the design of social arrangements – and are universal, inalienable and indivisible. Human rights express our deepest commitments to ensuring that all persons are secure in their enjoyment of the goods and freedoms that are necessary for dignified living.

Human development is the process of enlarging people’s choices, by expanding human functionings and capabilities. Human development thus also reflects human outcomes in these functionings and capabilities. It represents a process as well as an end.

At all levels of development the three essential capabilities are for people to lead a long and healthy life, to be knowledgeable and to have access to the resources needed for a decent standard of living. But the realm of human development extends further: other areas of choice highly valued by people include participation, security, sustainability, guaranteed human rights – all needed for being creative and productive and for enjoying self-respect, empowerment and a sense of belonging to a community. In the ultimate analysis, human development is development of the people, for the people and by the people. ²⁷

22 Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19, Internet, URL http://www.unhchr.ch/html/menu3/b/d_icerd.htm

23 Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1), Internet URL http://www.unhchr.ch/html/menu3/b/h_cat39.htm

24 Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, in accordance with article 27(1), Internet, URL <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>

25 Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49, Internet, URL <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

26 ‘Declaration on the Right to Development’, adopted by General Assembly resolution 41/128, (4 December 1986), Internet, URL <http://www.unhchr.ch/html/menu3/b/74.htm>

27 United Nations Development Programme (UNDP), *Human Development Report 2000: Human Rights and Human Development*, (New York: Oxford University Press, 2000), Internet, URL <http://www.undp.org/hdr2000/english/HDR2000.html>

Developing Capacity for Good Governance

The United Nations Development Programme (UNDP) sees the building of a capacity for governance as central to sustainable human development.²⁸ The Programme defines governance as:

the exercise of political, economic and administrative authority in the management of a country's affairs at all levels. Governance comprises the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, mediate their differences and exercise their legal rights and obligations. Good governance has many attributes. It is participatory, transparent and accountable. It is effective in making the best use of resources and is equitable. And it promotes the rule of law.²⁹

In elaborating on the nature of governance, the same policy document states that:

Governance includes the state, but transcends it by taking in the private sector and civil society. All three are critical for sustaining human development. The state creates a conducive political and legal environment. The private sector generates jobs and income. And civil society facilitates political and social interaction - mobilising groups to participate in economic, social and political activities. Because each has weaknesses and strengths, a major objective of our support for good governance is to promote constructive interaction among all three.

The overall role of education and information within society has major implications in building capacities for governance and self-determination. In forming personal opinions and understanding their own human rights, people need access to education and information relevant to the choices they have as a matter of practice. In practice, a person has rights only to the extent that other people respect them and social institutions can enforce them. Thus development also implies improvement in a broad range of institutional arrangements.

COORDINATING THE PROMOTION OF HUMAN RIGHTS

Since the promotion of human rights is a key element of the UN's reason for being, the need to coordinate activity promoting human rights across a number of UN agencies has grown in importance. The Economic and Social Council (ECOSOC) is the key Organ of the United Nations in matters of economic and social development. A number of programmes operate under its auspices including the United Nations Development Programme (UNDP) and the United Nations Environmental Programme (UNEP). A number of organisations with functions that are relevant to the work of ECOSOC hold a UN specialised agency status. These include the Food and Agriculture Organisation (FAO), the World Health Organisation (WHO), the Commission for Sustainable Development (CSD), and the World Bank Group.

Almost 2000 non-government organisations (NGO's), mainly national or international in character, hold consultative status with the Economic and Social Council (ECOSOC) as permitted under UN Charter. These NGO's provide mainly technical advice of interest to ECOSOC.

Following a recommendation from the 1993 UN World Conference on Human Rights in Vienna, the UN General Assembly (at its 48th session in 1993) established a High Commissioner for Human Rights. Acting under direction and authority of the UN Secretary-General, the High Commissioner has a duty to promote and protect all human rights.

28 James Gustave Speth, Administrator, UNDP, Forward to 'Governance for Sustainable Human Development', (January 1997), Internet, URL <http://magnet.undp.org/policy/foreword.htm>

29 UNDP, Executive Summary to 'Governance for Sustainable Human Development', (January 1997), Internet, URL <http://magnet.undp.org/policy/summary.htm>

World Bank Response – a Comprehensive Development Framework

In January 1999, World Bank President James D. Wolfensohn issued a ‘Proposal for a Comprehensive Development Framework’.³⁰ The Comprehensive Development Framework (CDF) proposed:

a long term holistic approach to development that recognizes the importance of macroeconomic fundamentals but gives equal weight to the institutional, structural, and social underpinnings of a robust market economy. It emphasizes strong partnerships among governments, donors, civil society, the private sector, and other development actors. Perhaps most important, the country is in the driver's seat, both "owning" and directing the developing agenda, with the Bank and the country's other partners each defining their support in their respective business plans.³¹

Increasingly, development depends on establishing a range of political and social institutions that can deliver outcomes consistent with human rights and human development. The Universal Declaration of Human Rights (UDHR) embodies ideas about good government. The Preamble states, ‘it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.’ At Article 28, the UDHR states ‘Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized’. Article 21(3) states, ‘The will of the people shall be the basis of the authority of government’. Article 21(1) states, ‘Everyone has the right to take part in the government of his country, directly or through freely chosen representatives’. Article 21(2) states, ‘Everyone has the right of equal access to public service.’

HUMAN RIGHTS AND LAND RIGHTS

Rights to Property

The Universal Declaration of Human Rights (UDHR) set an agenda for considering a number of issues that affect rights to land. Article 16 declares:

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

War torn situations can destroy physical property and records. This destruction can threaten the collapse of governance structures that exist to protect property rights.³² Moreover, mass movements of people can complicate these situations with needs for emergency accommodation and arrangements for on going property adjudication that involve considerable expense. This has some relevance to the native title question in Australia where adjudication on rights to land following conquest of the eighteenth and nineteenth century is still taking place. The *Mabo case* rejected that the concept of *terra nullius* applied to Australian land settlement. In the absence of settlement through treaty, the conclusion is that settlement occurred through conquest.

Some sections of the Australian community have argued for a blanket denial of native title rights to remove the uncertainty about their nature and scope. Uncertainty implies an absence

30 James D. Wolfensohn, World Bank President, ‘Proposal for a Comprehensive Development Framework’, Memorandum to the Board, Management and Staff, (21 January 1999), Internet, URL <http://www.worldbank.org/cdf/cdf.pdf>

31 World Bank, Comprehensive Development Framework, general overview, Internet, URL <http://www.worldbank.org/cdf/overview.htm>

32 Organization for Security and Co-operation in Europe, Mission in Kosovo, Background Report, ‘The Impending Property Crisis in Kosovo’, (25 September 2000) Internet, URL http://www.osce.org/kosovo/documents/reports/property/property_report_september_2000.pdf

of information, and the remedy is to supply the missing information, if that is feasible. Remedying uncertainty about native title requires understanding knowledge that is perpetuated through oral traditions. Understanding this knowledge requires listening to the traditional owners of these rights to discover their nature and extent. Native Title rights in Australia are a right to property and knowledge about these rights involves spatial information. Moreover, special knowledge of indigenous people that involves their traditional lands may have status as intellectual property.

The *Racial Discrimination Act 1975* (Cwlth) embodies the main principles of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). This Act is likely to debar a blanket confiscation of native title rights. Even compulsory acquisition of native title rights, for some higher public purpose as a legitimate function of government, requires discovery of the nature of the rights being acquired to effect compensation. Compulsory acquisition without effecting compensation is likely to be unconstitutional. Seemingly, entry into meaningful discussion with traditional owners to discover the nature of their rights is essential to any outcome that is consistent with fundamental human rights. If delays are costing money, the cost-effective remedy may be to proceed with this discovery without further delay.

Rights of Access to Landscape involving Cultural Heritage

The desire of indigenes to maintain contact with the land as a source of their culture and heritage is similar to many local community movements that desire to preserve access land with cultural and heritage associations with the landscape. The UDHR at Article 27 states:

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interest resulting from any scientific, literary or artistic production of which he is the author.

Access to sites is important in the culture of Australian aborigines, but it is also seen as important in Scotland, for example. Current discussions on Scottish land reform include questions of communities acquiring easement rights to places of significance in Scottish history.³³ These ideas are consistent with Agenda 21, para. 40.11

Countries, with the cooperation of international organizations, should establish supporting mechanisms to provide local communities and resource users with the information and know-how they need to manage their environment and resources sustainably, applying traditional and indigenous knowledge and approaches when appropriate. This is particularly relevant for rural and urban populations and indigenous, women's and youth groups.

The rights to intellectual property inherent in UDHR Article 27(2) have implications for preservation of archaeological sites, art and artefacts as well as local indigenous knowledge, especially of animal and plant life. Article 27(2) of the UDHR focuses attention on intellectual property rights inherent in indigenous knowledge.³⁴ Moreover, maintaining access by indigenes to their lands is important in keeping some forms of their knowledge alive.

33 Scottish Executive, Land Reform: Proposals for Legislation, (July 1999), Internet, URL <http://www.scotland.gov.uk/library2/doc01/lrpl-00.htm>

34 Michael Davis, 'Biological Diversity and Indigenous Knowledge', Parliamentary Library, Research Paper 17 Science, Technology, Environment and Resources Group, (29 June 1998), Internet, URL <http://www.aph.gov.au/library/pubs/rp/1997-98/98rp17.htm>

Gender and Rights to Land

The Universal Declaration of Human Rights (UDHR) in Article 2 accords equal rights to women. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) grew out of concern for redressing cultural biases against women where this occurs. Thus, dealing with development implies providing equal opportunities for women in the form of access to education, information and resources. Moreover, accessing some resources implies rights to land. The United Nations Centre for Human Settlements, also known as UNCHS (Habitat), has two programmes of particular relevance to human development. First, the Global Campaign for Good Governance aims to promote accountable and transparent urban governance;³⁵ a recurring theme in discussion on development issues. Second, the Global Campaign for Secure Tenure aims to improve the shelter and living conditions of urban poor people.³⁶ In justifying a focus on women's rights to land, a recent Report states:

Access to land, housing and property is one of the principal factors determining the economic and social well-being of women, especially in situations of conflict and reconstruction, when their rights are violated on a mass scale. The number of women-headed households increases sharply in situations of conflict and reconstruction. Housing becomes not only a place for living, but also working, earning extra income through room rental, or collateral for loans. During reconstruction and rehabilitation, the restitution of land and property usually marginalizes women, leading to social and political instability in the country. Without land, housing and property rights for women, there can be no sustainable peace-building.³⁷

While this identifies urban issues affecting women, women also have a special place in agriculture worldwide. Most farmers are women in some societies. A 1995 Conference convened by the Food and Agriculture organisation announced a 'Plan of Action for Women in Development'. The ideas prompting the plan are evident from the opening paragraph of the Plan that states:

Agricultural and rural development that is equitable, effective and sustainable cannot be pursued without an explicit recognition of the tremendous contribution of rural women to food and agricultural production and their crucial role in determining and guaranteeing food security and well-being for the entire household. In a global atmosphere of increasing poverty, food insecurity, rural out migration and environmental degradation, it will be necessary to assure that all the potential actors in development are given the support and access to resources they need to pursue sustainable livelihoods and strategies for a better life. Within this context, women's empowerment will be central to achieving initiatives aimed at raising levels of nutrition, improving production and distribution of food and agricultural products, and enhancing the living conditions of rural populations.³⁸

The International Federation of Surveyors (FIG) recently published Guidelines regarding equal access to land entitled 'Principles for Equitable Gender Inclusion in Land Administration: Background Report and Guidelines'.³⁹ The Guidelines indicate their purpose as follows:

35 United Nations Centre for Human Settlements (UNCHS), Global Campaign for Good Governance, Internet, URL <http://www.unchs.org/govern/>

36 United Nations Centre for Human Settlements (UNCHS), Global Campaign for Good Governance Internet, URL <http://www.unchs.org/tenure/>

37 United Nations Centre for Human Settlements (UNCHS), Land Management Programme, Forward to 'Women's Rights to Land, Housing and Property in Post-conflict Situations and during Reconstruction: A Global Overview', A Research Study done with the Support of the Government of Sweden, Internet, URL http://www.unchs.org/tenure/Publication/Womrights/pub_1.htm

38 Food and Agriculture organisation (FAO), 'FAO Plan of Action for Women in Development',

39 International Federation of Surveyors, Principles for Equitable Gender Inclusion in Land Administration: Background Report and Guidelines, FIG Publication No24, endorsed by the FIG General Assembly in Seoul, Korea in May 2001

The purpose of this document is to:

1. provide background information to surveyors and other land professionals on why gender issues matter in development projects;
2. to provide draft guidelines to assist development project managers, surveyors, land administration agencies, and others in ensuring that land administration enhances and protects the rights of all stakeholders, including women.

Fair and equitable societies tend also to be productive societies. Institutional arrangements need to reward efforts that are socially beneficial and penalise efforts that are socially harmful. The essence of a corrupt society is that people get rewards and suffer penalties that they do not deserve. Institutional arrangements should allow the full human development of women and provide appropriate rewards for the socially beneficial efforts. Moreover, women may have special cultural identity with land. Perpetuating this cultural knowledge may require maintaining access to sites of cultural significance to women.

THE ROLE OF INFORMATION IN REALISING HUMAN DEVELOPMENT

Information and Management – Misinformation and Mismanagement

Good governance implies some basis for deciding collectively whether governance is 'good'. Reaching some consensus on the status or performance of a system (social, economic, political, legal) depends on arriving at some consensual understanding of what are criteria for success and whether some statistical indicator is useful in measuring the status or success of some aspect of these complex systems.

Information and statistics are a powerful tool for creating a culture of accountability and for realizing human rights. Activists, lawyers, statisticians and development specialists need to work together with communities. The goal: to generate information and evidence that can break down barriers of disbelief and mobilize changes in policy and behaviour.⁴⁰

On the subject of developing capacity for data collection, Agenda 21 states in para. 40.5

The following objectives are important:

- (a) To achieve more cost-effective and relevant data collection and assessment by better identification of users, in both the public and private sectors, and of their information needs at the local, provincial, national and international levels;
- (b) To strengthen local, provincial, national and international capacity to collect and use multisectoral information in decision-making processes and to enhance capacities to collect and analyse data and information for decision-making, particularly in developing countries;
- (c) To develop or strengthen local, provincial, national and international means of ensuring that planning for sustainable development in all sectors is based on timely, reliable and usable information;
- (d) To make relevant information accessible in the form and at the time required to facilitate its use.

Development of indicators of sustainable development is a key recommendation in Agenda 21 and of particular importance in environmental monitoring and state of environment reporting. Accordingly, the design of spatial information infrastructure should reflect this need for information that can indicate the success or failure of policies aimed at sustainable development. Agenda 21 states in para.40.5:

Countries at the national level and international governmental and non-governmental organizations at the international level should develop the concept of indicators of sustainable development in order to identify such indicators. In order to promote the increasing use of some of those indicators

40 UNDP, *Human Development Report 2000: Human Rights and Human Development*, p.10

in satellite accounts, and eventually in national accounts, the development of indicators needs to be pursued by the Statistical Office of the United Nations Secretariat, as it draws upon evolving experience in this regard.⁴¹

Personal Privacy

Article 12 of the UDHR calls for respect for personal privacy. The International Covenant on Civil and Political Rights (ICCPR) expands on privacy principles and the *Privacy Act 1988* (Cwlth) refers to the ICCPR as a standard. The Act also gave effect to Australia's agreement to implement guidelines adopted in 1980 by the OECD for the Protection of Privacy and Transborder Flows of Personal Data.

The Idea of Government On Line

Although not a member of the G8 (formerly the G7 before Russia's admission in 1997), Australia maintains close relationships with nations that are members. A G7 Ministerial Council, held in Brussels in February 1995, initiated a project to improve the uptake of information technology within government. Australia joined with the UK and Canada in a Government Online project. Aims included improving the access of citizens to government information and their participation in democratic processes. While the origins of this initiative are not generally known, much wider access to online information at affordable costs is a noticeable outcome.

CONCLUSIONS

Human rights are at the core of current thinking about development rather than an outcome that might happen as a trickle-down effect in regional economic development.

Development means bringing about an improvement in the well being and living standards of the people concerned. It includes development of governance structures that allow people to decide for themselves what is in their best interests.

The right of people to self-determination and sustainable development includes attention to a range of measures to address education, access to information, and provision of political and social institutions needed to make collective decisions and resolve conflict.

Holistic approaches and integrated decision-making in a variety of governance structures are essential since human rights are inextricably interwoven with social, economic and ecological issues. The multi-disciplinary nature of these tasks requires effort on the part of experts to simplify complex information for inter-disciplinary and public dissemination. This is difficult to do and undue simplification may be misleading.

Information and statistics to educate and inform people about their situation and how it compares with people in other places is critical to allowing people to understand what is possible and the choices that they have.

The design and integration of spatial information infrastructure with other statistical information is important in allowing assessment of the status of various social, political, economic and ecological systems from place to place and the measurement of progress over time. Ultimately, this design has implications for good governance and self-determination as essential elements in the quest for human rights.

41 Agenda 21, Chapter 40, Para 40.6, Internet, URL <http://www.igc.apc.org/habitat/agenda21/ch-40.html>

REFERENCES

- Guston, David. 'The essential tension in science and democracy'. *Social Epistemology*, Vol.7 No.1 (January-March 1993) pp.3-23
- Haddad, Louis. 'Economic Dimensions of Human Rights in Transition Economies'. *Australian Journal of Human Rights*, Vol.4 No.2 (June 1998) pp.107-124
- Nettheim, Garth. 'Governance Structures for Indigenous Australians on and off Native Title Lands', Discussion Paper 2, International Law Standards, Reconciliation and Social Justice Library, Internet, URL <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/arccrp/dp2.html>
- Oloka-Onyango, J.; and Deepika Udagama, 'Realization of Economic, Social and Cultural Rights: Globalization and its Impact on the Full Enjoyment of Human Rights', Economic and Social Council, Report to Sub-Commission on the Promotion and Protection of Human Rights, (15 June 2000), paras.51-61, Internet, URL <http://www.unhcr.ch/Huridocda/Huridoca.nsf/2848af408d01ec0ac1256609004e770b/21a92d3d0425a0cec125693500484d2f?OpenDocument>
- United Nations Development Programme (UNDP), Human Development Report 2000: Human Rights and Human Development. New York, NY: Oxford University Press, 2000
- United Nations Development Programme (UNDP), *Human Development Report 2001: making New Technologies Work for Human Development*. New York, NY: Oxford University Press, 2001
- Wolfensohn, James D. (World Bank President). 'Proposal for a Comprehensive Development Framework', Memorandum to the Board, Management and Staff, (21 January 1999), Internet, URL <http://www.worldbank.org/cdf/cdf.pdf>