

**MANY PATHS TO MODERNITY:
HUMAN RIGHTS, DEVELOPMENT AND THE WORLD BANK.**

By

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ABSTRACT

This thesis argues that development requires policies which promote comprehensive human development, rather than simple economic growth. While international law and the human rights system mandate that the individual be the central focus of the development paradigm, there are other reasons in addition to legal obligation to engage in people centred development planning. It also addresses the broad support for participatory processes found in the development planning literature.

The World Bank is a multilateral development agency charged with providing low interest loans to developing nations. Frequently the development interventions financed by these loans violate the human rights of neighbouring residents. Such violations are contrary to the Bank's international legal obligations as a member of the United Nations system. This thesis enumerates steps the Bank must take to align its project planning and implementation policies with international human rights law.

Chapter One summarizes World Bank history, addresses its structure, and discusses its lending policy then moves on to comment on the human rights system, providing the theory and methodology to be used throughout the thesis. The following chapters address specific Bank policies regulating project planning.

Chapter Two discusses the policy regarding involuntary resettlement arising from development, and summarize the Bank's indigenous policy.

Chapter Three concerns the Bank's environmental assessment policy. Chapter Four investigates two areas where no Bank policy has been developed, contrary to the requirements of the human rights system: formation of national development policies, and the detriments

suffered by project affected people not covered by other policies.

Each chapter discusses the nature of the relevant human rights issues, outlines Bank policy (where it exists), and recommends modifications and courses of action to bring the Bank into accordance with the human rights requirements. Chapter five reviews the conclusions reached in earlier chapters and offers a brief case study demonstrating how human rights can be practically applied in development projects.

The World Bank must create policies consistent with international civil, political, economic, social and cultural rights to meet the challenges, and the legal obligations, of human development.

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CHAPTER 1

INTRODUCTION AND METHODOLOGY.

Introduction.

Human rights and development are symbiotic. Human rights protect individual freedoms, choice, and basic needs, while development promotes individual well-being. The human rights system mandates a role in the development process for all affected people. This mandate has been forgotten or ignored by virtually all development agencies throughout most of the modern era. Slowly this has begun to change as development institutions have come to see the need for participation by affected stakeholders in project planning. Participation by project affected people has been shown to dramatically increase the success rate of development interventions. Too often, however, participatory efforts are little more than token gestures aimed at placating critics. The human rights system demands much more. It requires that procedural freedoms — thought, conscience and belief, expression, assembly and association, access to the institutions of civil society — be respected; it requires that people's basic needs — food, shelter, health care, education, the environment, and culture — and the processes which supply them be protected. When changes to people's lives are made, the human rights system mandates that they have a role in deciding upon and implementing those changes. These requirements, and their implications for the development policy of the International Bank for Reconstruction and Development (World Bank), a leading multilateral development agency, are the subjects of this thesis.

The problems facing international development agencies are clear. An estimated 20 - 25 million people have been classified as refugees by the United Nations High Commissioner for Refugees every year throughout the 1990's. To put this in even more shocking terms, this number represents one out of every 264 people on earth.¹ These people have fled their homes due to war or other forms of persecution based on race, religion, nationality, political opinion or membership in a particular social group. Development induced displacement is not included in the definition of a refugee; if it were, the number would be appallingly higher. It is estimated that 10 million people are removed from their homes every year due to dam construction and urban / transportation projects alone.² This amounts to 90 - 100 million people forced from their homes during the 1990's. This number does not include people displaced by forestry, mining, transportation corridors, urban growth, and environmental infrastructure projects.³ These numbers tell only half the story. Development projects affect the lives of many other people who are not displaced: host communities for the development refugees, communities whose livelihoods are harmed or destroyed by development projects — such as those downstream from a hydroelectric dam, communities whose environments are irretrievably damaged as a result of a development project, and entire nations whose collective well being is endangered in the pursuit of modernity. In a world where 3 billion people live on less than \$2 a day, 1.3 billion do not

¹ United Nations High Commissioner for Refugees, UNHCR & Refugees.
<http://www.unhcr.ch/un&ref/un&ref.htm>.

² Gautam Appa and Girish Patel, "Unrecognized, Unnecessary, and Unjust Displacement", in Christopher McDowell, ed., *Understanding Impoverishment: The Consequences of Development Induced Displacement* (Providence: Berghahn Books, 1996), p.139.

³ Ibid.

have access to clean water, and 130 million children (80% of whom are girls) do not have the opportunity to attend elementary school, development is a necessity. It is time, however, to better assess the costs of these projects and methods used in planning and implementation.

This thesis will argue that modernity is the goal of development. Clearly not all commentators will agree with this assertion. Certainly proponents of 'Asian Values', and advocates of communal and traditional societies would contest modernity's central role. In spite of these objections, I believe that a strong case can be made about the centrality of human choice and modernization in the development paradigm. Nobel Prize winning economist, Amartya Sen, has written recently:

Development requires removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states. Despite unprecedented increases in overall opulence, the contemporary world denies elementary freedoms to vast numbers — perhaps even the majority — of people. Sometimes the lack of substantive freedoms relates directly to economic poverty, which robs people of the freedom to satisfy hunger, or to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed or sheltered, or to enjoy clean water or sanitary facilities. In other cases, the unfreedom links closely to the lack of public facilities and social care, such as the absence of epidemiological programs, or of organized arrangements for health care or educational facilities, or of effective institutions for the maintenance of local peace and order. In still other cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community.⁴

Sen posits individual freedom as the unifying principle of development:

Freedoms are not only the primary ends of development, they are also among its principal means. In addition to acknowledging, foundationally, the evaluative importance of freedom, we also have to understand the remarkable empirical connection that links freedoms of different kinds with one another. Political

⁴ Amartya Sen, *Development as Freedom*, (New York: Alfred A. Knopf, 1999) at 4 - 5.

freedoms (in the form of free speech and elections) help to promote economic security. Social opportunities (in the form of education and health facilities) facilitate economic participation.... With adequate social opportunities, individuals can effectively shape their own destiny and help each other. They need not be seen primarily as passive recipients of the benefits of cunning development programs. There is indeed a strong rationale for recognizing the positive role of free and sustainable agency.”⁵

Sen makes the same assertion as will be made throughout this thesis: the individual is the central concern of the development paradigm, and that freedom of choice is the engine which drives development forward. The World Bank pursues development through the modernization of economies. This thesis posits that it is the purpose of human rights to modernize social relationships in order to fulfill the promise of dignity and individuality set out in the Universal Declaration of Human Rights. The goals of modernity and development cannot be achieved without economic stability and growth; nor can they be achieved without social justice and individual choice.

As Sen suggests, econocentric programs designed to increase national incomes and productivity miss many sources of poverty and underdevelopment. Respect for all human rights must become a cornerstone of development; it is time that the World Bank made human rights a cornerstone of its lending policy.

This chapter will introduce the actors and the policies involved in this thesis. It will start by summarizing World Bank structure and lending policy. A brief history of the Bank will be followed by a discussion of the Bank’s obligations under international law. An introduction to the human rights system will conclude the chapter. Chapter 2 will address the issue of the role of human rights in the Bank’s involuntary resettlement policy, as well as looking at the Bank’s

⁵ Ibid. at 11.

policy on indigenous peoples. Chapter 3 discusses the Bank's environmental policy and the requirements imposed by the human rights system, while Chapter 4 offers comments on two areas in which the Bank has no explicit policy: national development strategies, and people who are neither resettled nor indigenous, but are, nonetheless, affected directly by development projects. My thinking throughout the preparation of this thesis has been greatly affected by reading case studies and reports on ongoing projects. Two particular projects — the Sardar Sarovar dam on the Narmada river in India and the Nam Theun 2 hydroelectric project in Laos PDR — have been of much interest to me. Each project is briefly discussed in this thesis, and the studies of them I have conducted have led to many of the conclusions I reach. In spite of these practical foundations, however, Chapters 2, 3, and 4, out of some necessity, will be somewhat abstract. Human rights themselves are abstract concepts — they must be in order to have meaning across diverse cultural and social borders. The final chapter, Chapter 5, will seek to reduce some of this abstraction by recommending methods of implementing policies in a manner consistent with human rights.

World Bank Structure and History.

The World Bank Group is comprised of four different agencies: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), and the Multilateral Investment Guarantee Agency (MIGA). The IBRD is the original Bretton Woods institution, created to rebuild postwar Europe and Japan. The IDA was created in 1960 to meet the needs of the least developed countries, by offering interest free loans to qualifying nations. The IBRD and the IDA share policy structures, and are, together, the subjects of this thesis. The IFC was created in 1956 with the mandate of

offering development loans to private entities, while the MIGA, formed in 1988 provides political risk insurance to lenders, both public and private.

The IBRD is organized as a stock corporation with the United States, Japan, Germany, France and the United Kingdom being the largest shareholders. Every member country appoints a governor to the board of governors. While the board meets every fall to formulate Bank policy and to oversee Bank business activities, the day to day operations are supervised by the Board of Executive Directors and the President of the Bank. The five largest contributing members, listed above, each appoint one director, while the other member countries are represented by 19 directors. The President of the Bank is by custom a citizen of the United States, the largest contributor. Each President (currently James Wolfensohn) is elected for a 5 year renewable term.

The IBRD initially financed itself through financial commitments to the Bank by member countries. Only a very small percentage of those commitments is paid to the Bank by member countries, the rest remaining on call. The IBRD's primary source of income is the bond markets, where it possesses a AAA credit rating. The Bank lends at a rate 3/4 of a percent above its own borrowing rate; loans are generally of terms of 15 to 20 years including a 3 to 5 year grace period.⁶ The IDA, which accounts for about a quarter of World Bank lending, does not charge interest on its loans, and so does not earn money on its investments. It therefore does not seek to borrow money from the markets. Rather about 40 countries contribute to the IDA's funding which is renewed every three years. There has never been a default on either an IBRD or IDA

⁶ The World Bank Group, *Where does the World Bank get its Money?*
<http://www.worldbank.org>.

loan, although emergency restructuring of some loans has been required at times to retain this spotless record.

The IBRD was created in the waning months of the Second World War at Bretton Woods, New Hampshire. The purpose of those who gathered was to construct a new economic order from the ruins of years of conflict. The other institution created was the International Monetary Fund (IMF). The purpose of the IMF was to stabilize national and international economies at the macroeconomic level, while the purpose of the IBRD was to rebuild the shattered economies of Europe and Japan on a project by project basis. The Bank's first loan was of \$250 million to France; this loan remains, in real dollar terms, the largest loan the Bank has ever given⁷.

The history of the World Bank can be seen by tracing the course of three overriding themes that have characterized its existence. The first theme is the Bank's political struggles to retain independence from its owner governments and to maintain credibility with its clients; the second theme is the Bank's struggle, especially in its early years, to find a sound financial footing; the last theme is the move, over its 50 year history, from simple lending institution to development agency. These themes will be traced in order to present an outline of the Bank's history.⁸

⁷ K. Sarwar Lateef, *The Evolving Role of the World Bank: Helping Meet the Challenge of Development*, (Washington: World Bank; 1995) p.15.

⁸ For in-depth histories of the Bank see Devesh Kapur, John P. Lewis, and Richard Webb, *The World Bank: Its First Half Century*, (Washington: Brookings Institution Press, 1997). See also Jochen Kraske, *Bankers with a Mission: The Presidents of the World Bank, 1946 - 91*, (Oxford: Oxford University Press, 1996). See also: K. Sarwar Lateef, ed., *The Evolving Role of the World Bank: Helping Meet the Challenge of Development*, (Washington: The World Bank, 1995).

The Bank has had to work very hard to maintain its independence from its owner governments, and to maintain its credibility with its development clients. Frequently it has appeared as though the Bank is run by the United States Treasury Department, rather than through its own headquarters. This is not surprising, given the nature of its origins. The Bank was originally intended to channel American money to rebuild shattered European and Japanese economies. Development was little more than an added afterthought.⁹ Following that first loan to France, however, little work in Europe was undertaken. The \$13 billion Marshall Plan took centre stage in the reconstruction arena, leaving the World Bank with no clear purpose. The Bank, and its second president, John J. McCloy, was forced to turn its attention to the Bank's other stated, though largely forgotten, purpose — development. However, if the World Bank was to have credibility with developing nations, many of whom were in the process of decolonization, it could not be seen as simply an arm of the United States and the other Western powers. It had to establish some independence from them.

Financial matters also required independence from these governments. While the Bank had capital commitments from member nations, it was required by its Articles to raise operating funds from the private markets. Borrowing on those markets would be impossible if lenders thought the Bank would make loans based on political considerations, rather than economic ones. McCloy was a politically savvy Washington insider who quickly managed to achieve a degree of independence from the United States government. This helped to allay some concerns of both developing countries and Wall Street:

⁹ See Devesh Kapur, *ibid.* P.61.

With the appointment of McCloy and his team, a fundamental decision about the nature of the institution had been made: the Bank was to be not a political or charitable agency but a financially sound lending institution, and the criteria that were to determine the conduct of its business were to be acceptable to wall street.... They [McCloy and his successor, Eugene Black] recognized that earning the trust of the financial community took precedence over meeting the wishes of the shareholders — the member governments — which had appointed them to their positions. To demonstrate that the Bank was in fact autonomous, free from political interference, and run according to sound financial and organizational principles — although its essential role was to provide loans that the private market would not make — thus became a central theme of McCloy's tenure, and later Black's, in the Bank.¹⁰

The future of the Bank was still by no means assured. It had to show both its clients and its lenders that it was sustainable. These factors required the Bank to adopt conservative policies throughout the 1950's and into the 1960's. Loans were made to developing countries with good credit histories.¹¹ While these conservative policies were doing little to achieve development in the poorest countries, they served well in filling Bank coffers. Expansion in the size of the Bank was enormous. Under Eugene Black, the Bank's third president, more than \$4 billion was raised, and Bank staff grew from 408 to 833.¹² The Bank's AAA credit rating was obtained in 1959, and has not been lost since.

With financial stability attained, the more pressing needs of developing countries could no longer be ignored. The Bank began to work with third world countries to create long term plans for their development. Within the Bank itself new discussions about enlightened economic

¹⁰ Jochen Kraske, *supra* note 6, at p.53.

¹¹ See Devesh Kapur, Chapter 3, *supra* note 6, at 85 - 138.

¹² Black's presidency is discussed in depth in Jochen Kraske, Chapter 3, *supra* note 6, at 75 - 114.

policy began, as officials began to look beyond basic creditworthiness as criteria for loans. They started to be involved in the shaping of projects, employing their new economic and structural theories to increase the effectiveness of development interventions.

Financial concerns were never out of the picture, however. As the Bank began to address the needs of the poorest developing countries, it also endangered its secure financial footing. Poor countries are poor credit risks. Innovation was required to protect the Bank's standing and its hard won AAA credit rating. The IDA was created to avoid these dangers and quickly became a strong force within the Bank, but it too was plagued by financial difficulties and political interference. Unlike the IBRD, the IDA is not self sustaining — it provides concessional rate loans to very low income countries. As such it requires periodic replenishment by donor governments; these replenishments have frequently been difficult to obtain, as they are always subjected to political debates within those donor governments.

At least some of these political problems, however, come from within the Bank itself. Bank Presidents have often treated the IDA as a political tool used to persuade developing nations to move in certain directions. For example, George Woods saw the IDA as an opportunity for development issues to rise above Cold War tensions, and to serve the goals of liberation and decolonization in the Third World. His immediate successor, Robert McNamara, however, used the IDA as a weapon in the ideological struggle between the West and the Soviets. IDA loans were used as encouragement to join the democratic powers in their struggle against the communists.¹³

¹³ See Devesh Kapur and Jochen Kraske, *supra* note 6, for discussions of the political machinations of these Presidents. For a more in-depth discussion of World Bank policy under Robert McNamara see Escott Reid, *Strengthening the World Bank*, (Chicago: The

The creation of the IDA moved the Bank in new directions. The Bank needed to develop new broad poverty alleviation strategies as it took steps to address the needs of poorer developing countries. Project planners began to engage in more cerebral and considered policy discussions and project interventions. It frequently turned out that these projects, especially the large ones, were ill-conceived, not reflective of the needs of the local people and borrowing countries, and were utterly unsuccessful.¹⁴ Critics of the Bank abound, and they have cited innumerable failed Bank funded development interventions. These failures are adequately documented elsewhere, and it serves little purpose to go through them again here, though one lesson from these experiences should be noted. Development is a very complex process which requires a comprehensive understanding of many factors and systems. The creation of the IDA, and the resulting involvement of the Bank in the many seemingly intractable problems faced most acutely in the poorest nations, forced the Bank to work to understand the complexities of the development process.

The complexity of the development process (and just how ill-prepared the Bank was for such complexity) was made apparent by one particular study conducted during McNamara's

Adlai Stevenson Institute, 1973).

¹⁴ One particularly informative discussion of a poorly planned and ultimately unsuccessful World Bank development intervention is contained in Robert S. Anderson and Walter Huber, *The Hour of the Fox: Tropical Forests, the World Bank, and Indigenous People in Central India*, (Seattle: University of Washington Press, 1988). Anderson and Huber studied a planned forestry program in Bastar, India to be funded by the World Bank. The project sought to log large areas of tropical forests in order to replant the areas with pine trees. The pine trees would supply a large pulp mill, also to be constructed using Bank funds. Local indigenous populations and environmentalists opposed the project vociferously, until it was eventually canceled by the Indian government.

presidency. After years of little success and much frustration in Sub-Saharan Africa, the Bank commissioned the study to investigate its many failures there. The result was entitled "Accelerated Development in Sub-Saharan Africa" but was known around the Bank as the Berg report. It was a scathing indictment of both the Bank and of the policies of governments in the region. The report made

very clear that a major set of reasons [in the failure of development projects] relates to the domestic policies followed in many African countries which have provided an inadequate incentive for agricultural growth; strongly discouraged the private sector from making the contribution that it is capable of; placed an undue burden on government and the public sector in the face of limited administrative and managerial talent, and have spent an undue share of their investments on low priority projects.¹⁵

These findings indicated that the Bank could sink untold billions into Africa with little or no measurable success because the public structures were standing in the way of development. Corruption and incompetence were stunting growth and poverty alleviation. The Berg report stated that the best way to reverse these problems was through privatization of much government service.

The Bank followed many of the recommendations contained in the Berg report, resulting in a number of innovations in Bank practice. Bank lending heretofore had been project oriented. Following the Berg report, however, structural adjustment loans (SALs), and sector adjustment loans (SECALS) began to emerge. These loans were not given in relation to specific projects, rather they were made to fix macroeconomic problems and to remedy structural inefficiencies. These kinds of loans remain a significant part of Bank lending today.

¹⁵ Memorandum, Ernest Stern to Robert S. McNamara, "African Study," April 23, 1981; Quoted in Devesh Kapur, *supra* note 6, at 716.

The Bank again faced political turmoil in the early 1980's when the neo-conservatives came to power in both the United States and the United Kingdom. Tensions with owner governments coupled with the rising debt crunch in borrowing countries caused the Bank to lose focus. Many in the Bank felt that the best solution to the debt crisis was loan forgiveness programs for the nations most at risk. The new governments in Washington and London did not agree. This conflict resulted in a long period of inaction, until the governments of Reagan and Thatcher were forced to act by the unabating crisis.

The Bank did not escape unscathed. President Clausen refused reappointment to his post, and was replaced by Barber Conable — a former Republican Congressman. Conable's first days were eventful; all employees were, for all intents and purposes, fired. Only those employees who could justify continued employment were rehired. Relative tranquility soon followed, however, as an assuaged American administration was content to support the institution.¹⁶

Trouble was brewing in the NGO community, however, as Bank projects continued to fail regularly. Environmental degradation caused by major infrastructure and development initiatives

The call for transparency, accountability, and participation by the people affected by economic and financial decisions was ultimately also addressed to the Bank itself. Nobody understood this more clearly than Conable. The environmental criticism of the Bank, spearheaded by NGO's, called for direct response and interaction. Conable was not bothered by the seeming contradiction that a government owned and controlled organization should be directly responsive to the people affected by the Bank's interventions. He interacted freely with outside critics, not just to seek their views and support but because he accepted their

¹⁶ World Bank policy under Barber Conable is dealt with extensively in Richard E. Feinberg, ed., *Between Two Worlds: The World Bank's Next Decade*, (New Brunswick: Transaction Books, 1986).

legitimate role. He led the Bank into a new era of openness and more complicated relations of responsibility.¹⁷

Structural reforms followed; a new environmental department was created in 1987, basic human needs — food, health care, education, family planning — became more important areas of lending. Also notable was the increasing role of participation by project affected people — especially women — in project planning.¹⁸

The 1990's have seen these three themes continue to play roles in Bank activities. The end of the Cold War saw the Bank faced with new borrowers in Central and Eastern Europe. The political pressure to provide funds to these countries has been intense yet the financial concerns regarding their creditworthiness has caused concern at the Bank. Meanwhile, reforms in development policy have been frequent and positive. Operational policies have been modified throughout the decade to be more participatory and democratic. Planners are increasingly taking the views of project affected people into account in project design. While much has been done, there is still more to do; hence the subject of this thesis.

The World Bank had a difficult beginning, and has had many notable failures through the course of the last 50 years. Today's Bank, however, is financially secure, maintains relative independence from its political owners, and is starting to achieve transparency and policies based on the principles of good governance. There is still a great deal to criticize about the Bank, but there is also good reason to hope that the Bank will acknowledge those criticisms and continue

¹⁷ Jochen Kraske, *supra* note 6, at 277.

¹⁸ By 1991 40% of projects specifically addressed women's participation in project development, up from 11% in 1988. See Jochen Kraske, *supra* note 6, at 270.

the reform process. Human rights are a crucial part of these reforms. This paper will discuss those human rights concerns and recommend courses of action.

World Bank Lending Methods.

As noted above, the agreement which created and governs the IBRD is its Articles of Agreement.¹⁹ Under these articles the Bank is empowered to make loans and loan guarantees consistent with certain specified conditions. Loans or loan guarantees can be made directly to member governments or to entities within countries if that entity's government guarantees repayment of the loan. Interest is charged on every loan given by the IBRD while loans from the IDA are interest free. In the project development process there are two initial considerations which the Articles require be looked at. The first is whether or not the project serves some productive purpose — i.e. funds will not simply be redistributed, rather they will be used for some development intervention or systemic reform. The second consideration is whether the borrowing country is likely to be able to pay back the loan. Once a project is identified, and has met the two initial criteria, the Bank must complete a more comprehensive evaluation.²⁰ The economic evaluation process is described by the Bank's Operational Directive 10.04: "The Bank evaluates investment projects to ensure that they promote the development goals of the borrower country. For every investment project, Bank staff conduct economic analysis to determine whether the project creates more net benefits to the economy than other mutually exclusive

¹⁹ The IDA was created with articles which were, for the most part, copied from the IBRD's. The IDA's articles are different only in that it is permitted to make interest free loans.

²⁰ A good discussion of Bank lending policy can be found in Celia R Taylor, "The Right to Participation in Development Projects", 13 Dickinson Journal of International Law 69, 1994.

options for the use of the resources in question.”²¹ The projected value must be greater than the projected value of some other use of the funds.²²

The other major considerations, and the subject of this thesis, are the socio-economic and environmental issues. The Bank has issued an Operational Manual to guide projects through the many human and environmental pitfalls that arise from project development, construction, and utilization. Currently the institution is revising the Manual, replacing the former Operational Directives with Operational Policies, Bank Policies, and Good Practices. These comprehensive treatments detail methods of project planning and implementation, Bank informational and procedural requirements, and general expectations. These include: Policy 4.01— Environmental Assessment; 4.20 — Indigenous Peoples; and 4.30 — Involuntary Resettlement. Each of these will be addressed in subsequent chapters. The Bank’s Independent Assessment Group (IAG) is charged with ensuring that Bank employees and borrowing members follow these rules. This is the current policy stance of the World Bank. Because the Bank is an institution within the international system, however, these operations must be reformed to meet the requirements of international law. The next section will discuss those obligations.

²¹ Operational Policy 10.04, at paragraph 1. The World Bank’s lending and other policies can be found on its website at www.worldbank.org/institutional/manuals/opmanual.nsf.

²² Ibid. at paragraph 2.

World Bank Obligations Under International Law.

Like economic development, social development is a cornerstone in the edifice of modernity. In the past the Bank, through its legal department, has denied that it has a duty to protect human rights, citing its Articles of Agreement which do not allow the Bank to consider political issues when making loans.²³ The Bank's Articles of Agreement IV section 10 state: "The Bank shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions."²⁴ The Bank's General Counsel, Ibrahim F.I. Shihata, has written that this circumscribes the Bank's abilities to act in certain ways: "The Bank does not interfere in the political affairs of its members, including their positions on political rights because it falls outside the scope of the Bank's authority as an international financial institution."²⁵ Shihata goes on to say that "Political events which have a bearing on the economic conditions of a member or on the member's ability to implement a project or the Bank's ability to supervise the project may be taken into consideration."²⁶ And he concludes: "While...there are limits on the possible extent to which the World Bank can become involved with human rights, especially those of a civil or political nature, the Bank certainly can plan, and has played, within the limits of its mandate, a very significant role in promoting various

²³ World Bank Articles of Incorporation, Article IV section 10.

²⁴ See Ibrahim F.I. Shihata, "The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements", 17 Denver Journal of Law and Policy 67.

²⁵ Ibid. at p.39.

²⁶ Ibid. at p.46.

economic and social rights.”²⁷ While the Bank has begun to engage in discussions about its human rights responsibilities in recent years, the ‘political issue’ problem has not yet been directly addressed.

Commentators have taken issues with Shihata’s view that human rights can only be addressed by the Bank if they involve ‘economic’ issues. James C.N. Paul has written that it would, in fact, be contrary to international law for the Bank not to insist on respect for human rights in its development projects: “International law now holds that the promotion of ‘universal’ human rights must be treated as an essential means as well as essential end of development activities. Thus, these rights not only express values which must inform the concept of development, they mandate the imposition of duties on officials who manage the development.”²⁸ Paul even dismisses Article VI (10) in the Bank’s charter as an historical oddity: “When Article VI (10) was written, the Bank’s role in Asia, Africa, and Latin America was dimly perceived at best. The concept of a ‘development project’ and the Bank’s role in relation to ‘projects’ was quite differently conceived, because its task was to revive ‘developed’ economies, not minister to ‘underdeveloped’ ones in very different settings.”²⁹ Further, at the time of the Bank’s creation

²⁷ Ibid. at p.48.

²⁸ James C. N. Paul, *Human Rights and Humane Development Projects*. 17 *Denver Journal of International Law and Policy* 67, at p. 69.

²⁹ Ibid. at p.115. Katarina Tomasevski Agrees. She has written: “Human rights are written into the United Nations Charter. They constitute one of the three main objectives of the UN, and an obligation for all the member States.... The financial institutions within the United Nations, the World Bank and the International Monetary Fund in particular, have been subjected to criticism because of the negative effects of their policies on developing countries.... The binding force of human rights obligations obviously needs to be argued anew. Human rights are one of the main aims of the United Nations, yet the UN human rights policy has not been accepted by all its constituent

there was no developed body of human rights law, as there is today. The vast majority of nations have signed and ratified the vast majority of human rights treaties. Most of this has occurred since 1966. The Bank is now operating in a very different world than it was at its creation. To cling to an outdated provision like Article VI (10) in light of such global change is unacceptable in the face of modern international law. This thesis presupposes that human rights must play a role in development planning if the Bank is to act consistently with contemporary international rules and expectations.

The Human Rights System.

The human rights question is not simply limited to whether or not the Bank ought to be enforcing rights, but also must discuss which rights are to be applied and how. The international legal regime surrounding human rights is only a part of the greater debate. There are many moral, ethical and economic standards that people believe to be their birthright, many rights to which they see themselves entitled. Only some of these rights have been recognized by the international community through declarations and treaties. Only these legal rights may be enforced by the Bank because only they are the ones about which the political decisions have already been made.

There are three core documents which form the foundation of the international human rights system: The Universal Declaration of Human Rights; The International Covenant on Civil and Political Rights; and the International Covenant on Economic Social and Cultural Rights. They are the foundation of the enumerated rights to which we are entitled, and encompass far

parts.” Katarina Tomasevski, *Development Aid and Human Rights*. (St. Martin’s Press: New York, 1989) p.17.

more rights than are relevant to the discussion here. The rights which will be discussed in this thesis are the following: the right to dignity,³⁰ which is the guiding principle of the human rights system; the right to live free of discrimination of any kind such as race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status;³¹ the right to life, liberty and the security of person;³² the freedom of thought, conscience and belief, of opinion and expression, including the right to receive and impart information;³³ the freedoms of assembly and association;³⁴ the right to participate in civil society;³⁵ the right to social security;³⁶ the rights to health and environment;³⁷ the rights to food, clothing and housing;³⁸ the right to education;³⁹ and the right to culture.⁴⁰

³⁰ Universal Declaration of Human Rights Article 1; The right to dignity is included in the preambles of both the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, as well as being included in every major human rights treaty and declaration.

³¹ UDHR Article 2; ICCPR Article 2; ICESCR Article 2.

³² UDHR Article 3; ICCPR Article 6.

³³ UDHR Articles 18 and 19; ICCPR Articles 18 and 19.

³⁴ UDHR Article 20; ICCPR Articles 21 and 22.

³⁵ UDHR Article 21; ICCPR Article 25.

³⁶ UDHR Article 22; ICESCR Article 9.

³⁷ UDHR Article 25; ICESCR Article 12.

³⁸ UDHR Article 25; ICESCR Article 11.

³⁹ UDHR Article 26; ICESCR Article 13.

⁴⁰ UDHR Article 27; ICESCR Article 15.

Obviously the legal documents operate at a high degree of abstraction. None of the concepts are explained in detail; each must be more specifically defined through implementation and application. Nevertheless, such interpretation must remain within certain basic parameters, as noted in the 1993 Vienna Declaration and Programme of Action:

All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis. While the significance of national or regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.⁴¹

This interpretation is only a starting point for human rights analysis. There are a plethora of different theories on the applicability of human rights in different cultural contexts. One writer identified 4 main schools of thought regarding the universality of human rights.⁴² First, there are those who believe that human rights are solely of Western origin and are meaningless outside that context. Pollis and Schwab are the exemplars of this school.⁴³ The second school also views human rights as arising in the West, but sees them as resulting from the condition of modernity. Modernity arose in the West first, but is in the ascension everywhere so rights are of

⁴¹ Vienna Declaration and Programme of Action. World Conference on Human Rights, Vienna, 14 - 25 June 1993, U.N. Doc. A/CONF.157/24 (Part I), Article 5.

⁴² Mickelson, Karin, "How Universal is the Universal Declaration? Celebrating 50 Years of the Universal Declaration of Human Rights", 47 *University of New Brunswick Law Review* 19.

⁴³ See Adamantia Pollis and Peter Schwab, eds., *Human Rights: Cultural and Ideological Perspectives*. (New York, Praeger, 1980). See also Adamantia Pollis and Peter Schwab, eds., *Towards a Human Rights Framework* (New York: Praeger, 1982).

universal applicability.⁴⁴ The third school claims that the guiding human rights concept - dignity - is respected in all cultures, though the language of rights may not be employed. The call for dignity is not only from the West, it is the global reaction to suffering.⁴⁵ The last school posits that human rights are universal, but that the contents of those rights can only be determined within each culture; each culture will define dignity differently.⁴⁶

The approach that I will be using in this thesis, and the approach I believe that the Bank should employ, is an amalgamation of the 2nd and 4th schools. I posit that the human rights system guarantees individual choice. It is through freely made choices about basic needs and aspirations by all members of a community that abstract human rights guarantees gain substance at the local level. This approach, I believe, leads to a pluralist conception of dignity in human rights law, which reflects cultural differences without forcing people to analogize their experience to either the western experience or to some hypothetical global cultural experience. It emphasizes the project of modernity, while leaving room for cultural differences.

Human rights are the tool which each individual uses to pull himself or herself into modernity, the condition of life currently ascendant. The move from traditional society to

⁴⁴ See Rhoda E. Howard and Jack Donnelly, "Human Rights. Human Dignity and Political Regimes," *American Political Science Review* 80 (September 1986). See also, Rhoda E. Howard, "Cultural Absolutism and the Nostalgia for Community," *Human Rights Quarterly* 15 (May 1993) pp.332-337; and Jack Donnelly, *Universal Human Rights in Theory and Practice*, (Cornell University Press: Ithaca New York, 1989).

⁴⁵ See Paulin J. Hountondji, "The master's voice — remarks on the problem of human rights in Africa", in *Philosophical Foundations of Human Rights* (Paris: UNESCO, 1986).

⁴⁶ See Alison Dundes Renteln, *International Human Rights: Universalism Versus Relativism* (Sage: Newbury Park CA, 1990).

modern society is the move from fate to choice.⁴⁷ It is the shift from belonging to a community to alienation from that community. Traditional ties were affective — based on familial relations, kinship and community — intense, intimate and personalized relationships which bound people in a coherent cultural whole. One's place in society was determined from birth, and was maintained by following the social rules set by the community. The transition to modernity tore this asunder. George Kateb has written of modern life and individual rights:

There is no good life, only lives that are not bad. The mere absence of oppression and degradation is sweet. A person's equal acceptance by the rest removes the heavy weight of inferiority, contempt, invisibility. That too is sweet. The weakening of traditional enclosure in status, group, class, locality, ethnicity, race — the whole suffocating network of ascribed artificial, or biological, but culturally exaggerated, identity opens life up, at least a bit. The culture of individual rights has lightness of being; free being is light. It seems insubstantial and lacking in positivity. Yet all its negativity, all its avoidances and absences and abstentions, are a life, and a life that it takes patient eyes to see, and a new sense of beauty to admire. The life that is not the good life is good in itself.⁴⁸

The granting of someone access to their human rights is transformative. Identity ceases to be something given, rather it is something found. The choices we make from among the panoply of options makes us who we are. Yet at the same time, these choices separate us from each other — everybody chooses differently. It is access to rights which allows us to make these choices. Without rights real choice cannot exist; without choice, modernity and development cannot exist.

However, even Kateb, or the most radical libertarians must acknowledge that our lives are not entirely modern. We are not totally alienated from one another. We live in communities —

⁴⁷ See Peter L. Berger. *The Heretical Imperative: Contemporary Possibilities of Religious Affirmation*, (Garden City: Anchor Press / Doubleday, 1979) 11 - 16.

⁴⁸ Cornel West, "George Kateb — The Last Emersonian?" in Austin Sarat and Dana R. Villa, eds., *Liberal Modernism and Democratic Individuality: George Kateb and the Practices of Politics*. (Princeton: Princeton University Press, 1996) 39 - 44 at 41-42.

family, friends, schools, employment, churches — all the institutions which together constitute society. As Cornel West has written in response to Kateb:

Yet to be a democrat in our time is to be preoccupied with massive poverty and social misery and to be bighearted enough and tough minded enough to cast our lot with the big losers — the wretched of the earth. And, despite Kateb's profound existential ethic, which energizes heroic selves and galvanizes resistance to oppression, how can we democratize ourselves, our societies, and our world without forms of political solidarity and communal loyalty that go far beyond "mutual recognition" of our self-overcomings? Kateb's suspicion of such solidarity and loyalty is warranted. But if we democrats are to truly live dangerously we must do so not simply as individuals but also as members of communities. Like Ralph Ellison's invisible man, Kateb gives us Wisdom as to how to live and rebel as selves, but he provides little or no *phronesis* as to how to reform and remake our society as citizens.⁴⁹

The international human rights system offers the liberty of choice demanded by Kateb, while offering the guidance sought by West. It protects choice and individuality by protecting life, free speech, thought and conscience, free association, and equality. Meanwhile, the system ensures access to our most basic needs — food and housing, health care, a healthy environment, education and culture. The system is not simply a compromise between individualism and communalism, it is a symbiotic whole. Every person needs the basics of life to be a complete individual. If we are struggling to meet our most basic everyday needs, if we are starving or sick, or have not been educated to our full potential, we cannot be said to have free choice — our condition deprives us of many or most choices. The human rights system, however, ensures that there are choices which must be made, even about life's most basic elements. How should food be produced and distributed? What sort of health care should we have (and how much can we

⁴⁹ Ibid. at 43.

afford)? Who should teach our children, and what should they be taught? Who are we and what binds us together?

Obviously these are difficult choices, and in a society which respects human rights, and therefore modernity, a total consensus cannot ever be reached. Because modernity's core is alienation and choice it is pluralistic; there will always be disagreement between people and groups. Some people will identify with each other; many will not. Human rights do not demand consensus, they demand choice. Isaiah Berlin knew that such choice would result in winners and losers, and so dubbed these social decisions 'tragic choice.'

The universe is not a jigsaw puzzle, of which we try to piece together the fragments, in the knowledge that one pattern exists, and one alone, in which they all must fit. We are faced with conflicting values; the dogma that they must all somehow, somewhere be reconcilable is a mere pious hope; experience shows that it is false. We must choose, and in choosing one thing lose another, irretrievably perhaps. If we choose individual liberty, this may entail a sacrifice of some form of organization which might have led to greater efficiency. If we choose justice, we may be forced to sacrifice mercy. If we choose knowledge we may sacrifice innocence and happiness. If we choose democracy, we may sacrifice a strength that comes from militarisation or from obedient hierarchies. If we choose equality, we may sacrifice some degree of individual freedom. If we choose to fight for our lives, we may sacrifice many significant values, much that we have laboured greatly to create. Nevertheless, the glory and dignity of man consist in the fact that it is he who chooses, and is not chosen for, that he can be his own master.⁵⁰

An approach to human rights that respects cultural difference by ensuring genuine choice will allow the Bank to enforce human rights while not imposing its own views. Human rights become meaningful in the development / modernity paradigm because they are infused with the choices made by the people they protect. While remaining consistent with international law, they

⁵⁰ Isaiah Berlin, "European Unity and its Vicissitudes." in *The Crooked Timber of Humanity*, Henry Hardy, ed., (London: John Murray (Publishers) Ltd, 1990.) 175 at 201-202.

reflect the needs, desires and goals of the people who are their subject. The fear of many developing countries is that modernity and development are synonymous with westernization. Thomas L. Friedman summed up this fear recently in the New York Times Magazine: “two 20-something software engineers who come into your country wearing beads and sandals, with rings in their noses and paint on their toes. They kick down your front door, overturn everything in the house, stick a Big Mac in your mouth, fill your kids with ideas you never had or can’t understand, slam a cable box onto you television, lock in the channel to MTV, plug an Internet connection into your computer and tell you, ‘Download or die.’”⁵¹ These fears need not be realized. Development is necessary. Human rights, economic change and modernity are alienating and frightening. They are transformative, but they need not be harmful. Ensuring that people can participate in the changes in their lives frequently enables people to accept those changes. The Bank must ensure that people are asked for their opinions, and that those opinions are respected in the development process. They must be asked about food security, housing, health care, environment, education, and culture. They must be asked what they want and what they need. The questions cannot stop there. What is development? How should it be achieved? What should the project / program look like? What should be its goals? What are your hopes and dreams for the future? People must be given the freedom to answer, to speak their minds, without fear of retribution. They must have access to the information that they need to make complete answers. When they ask questions, there must be answers. They must be able to associate with one another to share views, and to support positions. This is the process mandated

⁵¹ Thomas L. Friedman, “A Manifesto for the Fast World” *The New York Times Magazine*, March 28, 1999, 40 at 43.

by the human rights system, and interpreted through the gloss of modernity and cultural sensitivity. The people affected by development must have a say in development. Their opinions and beliefs must be heard and accommodated and their choices must be respected.

This is, of course, a highly idealized and abstract structure. Many, if not most, people in the developing world do not have the security, nor the education needed to fully participate in a discourse on development options. Many will simply make decisions in the way they have since time immemorial. The Bank can (and should) use methods designed to encourage people to speak their minds; the reality remains, however, that for now, many will not. What matters most to the human rights system is that the choices be there, and that the opinions of those who do express themselves are heard, and are accounted for in the final outcomes. This will be addressed in Chapter 5 which will discuss practical processes, consistent with human rights, for project development.

Conclusion.

The World Bank is an institution that has been greatly altered in the 50 years since its creation. Rather than being simply a development lender, it has become the preeminent development institution and change agent in the world. Development, it has been argued in this chapter, is the process of moving people out of their traditional ways of life into the condition of modernity. Development is the process of giving people choices about their destinies. An indispensable part of the edifice of modernity is the human rights system. That system guarantees choice by mandating respect for fundamental freedoms, while ensuring continued existence by protecting peoples' basic needs. The following chapters will address the human rights obligations the Bank is given by international law. They will address specific Bank

policies concerning involuntary resettlement, indigenous peoples and the environment, and the changes needed to bring them into line with human rights law. I will look at areas where the Bank has no policy, contrary to human rights principles. I will close with a summary of the conclusions of this thesis and offer suggestions for practical implementation.

CHAPTER 2

INVOLUNTARY RESETTLEMENT AND INDIGENOUS POLICY.

The World Bank has estimated that 10 million people are involuntarily resettled annually because of dam and transportation projects.⁵² This amounts 100 million people facing resettlement every decade in those two sectors alone. Those displaced through forestry, agriculture, urban renewal, industrial and environmental projects add to this number. Bank funded projects are not alone in causing involuntary resettlement, but the Bank frequently funds projects that result in resettlement. Every person displaced by a World Bank sponsored development project suffers a particularly traumatic government intervention in his or her life. Every person in every host community into which displaced communities are settled also suffers a government intrusion. All these people have human rights expectations which must be respected. These expectations are the subject of this chapter.

⁵² Christopher McDowell, ed., "Introduction," in *Understanding Impoverishment: The Consequences of Development Induced Displacement*, Refugee and Forced Migration Studies, Volume 2, (Providence: Berghahn Books, 1996) at 2.

Development Anthropologists and Resettlement.

In recent years there has been an explosion of discussion about development induced involuntary resettlement in the field of Development Anthropology. Much has been learned about the effects of such displacement on people, and many remedies for the worst difficulties have been offered. The development anthropology discourse forms the background to the human rights discussion in this chapter. My initial discussion will concern the causes and effects of development induced involuntary resettlement. This will be followed by a discussion of solutions and remedies offered in the anthropological literature; I will then explore the World Bank's policies designed to limit negative impacts from involuntary resettlement. A discussion of the human rights requirements arising from involuntary resettlement and an evaluation of World Bank policy in light of those requirements will round out the discussion. The chapter will be concluded with a few words about indigenous peoples, who face particular danger from development interventions, and a discussion of the Bank's indigenous policy.

Michael Cernea, the Bank's chief social scientist, and a leading commentator on development induced displacement has posited four main sources of mass population movements: natural disasters, wars, persecution, and development.⁵³ He has written of these:

The displacement caused by development projects is the direct outcome of a planned political decision to take land away from its current users. Most people believe that famine and war should be avoided, but the projects that cause displacement fit into national ideologies about development and are actively sought. Rationalized by beliefs such as 'the greatest good for the greatest

⁵³ Michael M. Cernea, "Disaster-related Refugee Flows and Development-caused Population Displacement", in Michael M. Cernea and Scott E. Guggenheim, eds., *Anthropological Approaches to Resettlement: Policy, Practice, and Theory*, (Boulder: Westview Press, 1993) 375 - 402 at 379.

number,' such schemes reflect basic political choices about who should gain and who should suffer.⁵⁴

Importantly, unlike many refugees from natural disaster, war, or persecution, development refugees never get to return home. Their dislocation is permanent.

Involuntary resettlement involves removing an entire community or group of communities from their homes, farms, jobs, environment, and even their history and culture. They are removed to new settings where the conditions of life may be vastly different from their previous existence. They may have new homes, new neighbours (often from a different cultural group), new and different land to farm in a different environment. Whole ways of life may be radically altered. Resettlers face many extraordinary changes in their lives.

Cernea, basing his findings on the many reports submitted to him by World Bank social scientists, has noted eight major areas of hardship for resettlers: landlessness, joblessness, homelessness, marginalization, increased morbidity, food insecurity, loss of common property, and social disarticulation.⁵⁵

1. Landlessness.

In the developing world land is the primary productive asset. When people lose their land to development projects they lose their predominant source of food production and income. Moreover, they lose any improvements they or their community have made to the land. These losses occur long before project implementation begins. Once a project which will

⁵⁴ Scott E. Guggenheim and Michael M. Cernea, "Anthropological Approaches to Resettlement: Policy, Practice, and Theory", in *Ibid.* 1 - 12 at 4.

⁵⁵ Michael M. Cernea, "Understanding and Preventing Impoverishment from Displacement" in Christopher McDowell, *supra* note 53, 13 - 32 at 21-22.

fundamentally alter the nature of the land is planned, investment in that land is deterred; long term investment serves no purpose if the land is to be taken for project uses. This results in an early reduction in the community's well-being.

2. Joblessness.

Development refugees lose access to the productive assets in their former community. Upon resettlement, enterprises that formerly employed people may have disappeared, may need time to reestablish themselves, or may change in such a way that the need for employees is reduced. Joblessness tends to be a larger problem in urban projects than in rural ones, but landless rural resettlers — labourers, service workers, artisans and small business owners, often suffer job losses as well. It is often difficult for people to find replacement work in new locations, especially when they also find themselves in unfamiliar physical and social environments.

3. Homelessness.

In most projects involving resettlement, homelessness is only a temporary problem. Homes, unlike jobs, farms, economic power and culture, are reasonably easy to replace. Homes, though, are more than simply houses, they are cultural space. The loss of cultural space and identity is tied up, in part, in the home and in the family unit which occupies it. Problems arising from this loss of cultural space will be discussed further under the heading of social disarticulation.

4. Marginalization.

Resettlement often causes a downturn in economic well-being and power; it can cause a slide to the margins of society. The loss of productive assets, jobs, and cultural space all cause

impoverishment if they are not quickly and adequately replaced. Moreover, as noted previously, devaluation of land begins long before actual resettlement. This loss in community productivity results in the reduction of community well-being long before project implementation.

Community well-being is lessened because no one will invest resources in maintaining essential physical, economic and social infrastructure because with project implementation, those resources will be lost.

Another concern is the loss of power many communities experience when resettlement places them in a new cultural milieu. Communities may experience political and social marginalization if they are made to reside in areas where different social or cultural groups form the majority. Resettlers, already weakened by removal from their traditional homes, may face further difficulties when they are not integrated into the host community.

5. Increased Morbidity.

The stresses of resettlement have been found to raise susceptibility to sickness and disease. Parasitic and vector borne diseases like malaria and schistosomiasis are particular problems. Illnesses related to inadequate water and waste systems are also frequently experienced.

6. Food Insecurity.

Resettlement, as has been said, results in the loss of productive assets — farm land, jobs, common property and the like. Even when these assets are replaced, it takes time for their productive capacity to reach pre-development project levels; land must be cleared and improved, jobs may have to be replaced or retraining required, and new areas common property must be established or constructed. These factors frequently result in food insecurity.

7. Loss of Common Property.

Communities in the developing world frequently share assets for their collective well-being — assets like forests, grazing lands, and water bodies. Incomes are reduced when these assets are lost. The landless, the poorest members of the community who frequently rely on these resources for survival, are generally the hardest hit by their loss. One commentator has written: “Resettlers are too often — mistakenly — viewed as full-time farmers whose only source of income is agriculture. Planners tend to forget that resettlers are also gatherers, hunters, and herders and that they need extra land to practice these activities which are part of their traditional production systems.”⁵⁶

8. Social Disarticulation

Resettled communities have development, progress, and modernity thrust upon them. A new place, a new environment, new homes, new production systems, and new neighbours, will invariably cause people to question who they are and why they live as they do. Identity is, in great measure tied up in Place. Space affects behaviour. Theodore Downing has called this ‘Social Geometry’;

To their disappointment, politicians, engineers and resettlement specialists have discovered that involuntary resettlement sometimes unravels the underlying social fabric. In resettlement after resettlement similar patterns reappear. Vital social networks and life support mechanisms for families are weakened or dismantled. Authority systems are debilitated or collapse. Groups lose their ability to self-manage. Their society suffers a demonstrable reduction in its capacity to cope

⁵⁶ Veronique Lassailly-Jacob, “Land-Based Strategies in Dam Related Resettlement Programmes in Africa”, in Christopher McDowell, *supra* note 53, at 196 - 197.

with uncertainty. It becomes qualitatively less than its previous self. The people may physically persist but the community that was is no more.⁵⁷

Resettlement causes social incoherence, the alienation of each from the community. Traditional ties based on status break down. The breakdown of these ties is what Cernea labels social disarticulation.

Resettlement also causes many problems for host communities. Frequently, they suffer deprivations as a result of involuntary resettlement, yet are ignored by development planners.

Cernea has written:

A widespread fallacy is to omit the host population from the pre-project weighing of resettlement implications, only to discover during implementation that intractable problems arise. Since only rarely can implementing agencies find 'empty lands' to place resettlers, the risks are that population density in receiving areas will increase suddenly to levels above the carrying capacity of the land and the natural resources available to hosts and incomers on a sustainable basis.⁵⁸

Host communities often find that their physical environment, their social services, and their cultural ways of life are overwhelmed by the influx of a new population. Frequently the new population is of different social or ethnic make-up, which only serves to heighten tensions.

Having identified these major problems for resettlers, and the problems of host communities, development anthropologists and other social scientists have set out to find cures and solutions. A great deal of study has been devoted to successful and unsuccessful

⁵⁷ Theodore E. Downing, "Mitigating Social Impoverishment from Displacement — Reflections on the State of Knowledge", in Christopher McDowell, *supra* note 53, 33 - 48 at 34.

⁵⁸ Michael M. Cernea, *Involuntary Resettlement in Development Projects — Policy Guidelines in World Bank Financial Projects*. World Bank Technical Paper Number 80, 1988. P. 16.

resettlement projects. There is, of course, no magic formula to make a resettlement project successful. Different communities require different answers. This discussion inquires into the characteristics that many or most successful resettlement projects share: a powerful interest looking out for resettler well-being, participation by project affected people, an adequate replacement land base, investments in human capital, flexibility in project planning, and inclusion of host communities in planning and implementation of project interventions. At the outset, however, it should be considered that it is rarely the rich, or the politically influential who get resettled. Resettlers tend to be disproportionately members of minority groups, poor, and uneducated. As David F. Aberle has stated: "Relocates are removed from their homes because they are relatively powerless. They are often moved because of the interests of central governments or major industries, rather than because of the needs of those who are to occupy the vacated land. Hence relocation will almost always be a tragedy of greater or less proportion."⁵⁹ Perhaps the greatest requirement for a successful resettlement is a strong institution interested in assuring the continued well-being of the resettlers: an institution which will support their interests unwaveringly.

Part of protecting resettler interests involves enforcing strong resettlement policies. Certainly the bare minimum principle which must be enforced is, as Schuh puts it: "those who have to be resettled as a consequence of development projects should be left in no worse status socially and economically than they were before the project."⁶⁰ Although this is true, a policy

⁵⁹ David F. Aberle, "The Navajo-Hopi Land Dispute and Navajo Relocation", in Michael M. Cernea and Scott E. Guggenheim, *supra* note 53, 153 - 200 at 191.

⁶⁰ G. Edward Schuh, "Involuntary Resettlement, Human Capital, and Economic Development", in Michael M. Cernea and Scott E. Guggenheim, *supra* note 53, 55 - 62 at

that only went that far would be inadequate. For resettlement to be successful, people must see value attaching to the momentous changes in their lives. Change must pay; development projects must serve not only the interests of national communities, but also the interests of directly effected communities. To this end, policy must guide and restrict planning.⁶¹ Institutions like the World Bank must see to it that they create and enforce policies which protect resettlers from the worst abuses of their situation, while also enabling them to achieve increased levels of success in their lives. Too often people have lost their homes and communities to development interventions without any commensurate improvement in their quality of life. The World Bank has begun to take steps to ensure that these situations are not repeated, but, as this thesis asserts, it needs to do more.

Like strong policy, participation by project affected people is another crucial element of a successful resettlement. According to Robert Agunga, there are two dominant visions of participation in current development studies.⁶² The first view is that participation 'mobilizes' and 'informs' people about a project or activity in order that those people will implement it. The second view of participation views it as a method of empowering the people affected by a project. It involves using a democratic structure to involve local organizations and individuals in the decision making process.

It says that change agents are free to propose any strategy for development as long as these are accepted by the people. Any development strategy may be

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⁶¹ See Micheal M. Cernea and Scott E. Guggenheim, *supra* note 54.

⁶² Robert A. Agunga, *Developing The Third World: A Communication Approach*, (Commack NY: Nova Science Publishers, 1997) at 190.

appropriate in so far as the beneficiaries understand the positive and negative aspects and agree to its use. Thus, the underlying rationale of popular participation is to afford both men and women in Third World communities the democratic right — an equal chance — of engaging in the development decision making process with development planners and extension workers in effective, decentralized decision making about issues affecting their destinies. The rule of popular participation says that nothing should be done in the community without involving those who will be affected by the outcomes of those decisions.⁶³

This thesis, like Agunga and most other social scientists, favours the second formulation. Not only must the community be able to participate in all decisions affecting their lives for a resettlement project to be successful, all elements of the community must be assured a place in the process. Women must have a place in decision making because, in many cases, they are crucial to the success of the program, as they play a critical role in the modernization process. The poor and other minorities must also be able to participate so that their needs are recognized.

Participation is central to the success of resettlement programs because resettlement must be about recreating a sense of place and belonging. Participation allows project planners to limit the differences from the place resettlers are moving from and the place they are moving to. Differences will be expected and understood by resettlers; changes may even be seen as improvements. Without participation, innovations and changes may be seen as negative and unwanted, because they do not reflect the needs and expectations of the new residents. One social scientist has written:

what is true is that innovations, whether of a technical or institutional nature, differ as to the extent to which they logically contradict — or compliment — the culture set in use. Contradictory innovations are more costly to adopt, and thus more likely to be rejected, by all or some at any given time... [C]ontent should be elaborated by 'the people', the local poor themselves. Their 'participation', not only in the execution but also in the planning of projects and programs, is

⁶³ Ibid.

regarded as necessary. The reason why so many development efforts have failed, it is said, was that the plans did not take the culture of the people sufficiently into account.⁶⁴

Social scientists seem largely in agreement that participatory planning is required for a successful resettlement. Resettlers must be given the power to make significant decisions about their needs and expectations. They must be informed, consulted and integrated into the planning process.⁶⁵ All members of the community — men and women, young and old, majority and minority — must be involved and planned for.

Land is the third crucial element for successful resettlement. There must be an adequate land base of sufficient quality for long term cultivation, and ownership must be vested within the community. There must be enough land for the community to meet both private and common needs — keeping in mind as Veronique Lasailly-Jacob does that “besides growing crops, land also provides other basic resources for meeting daily needs of energy, shelter, medicine, food, and income.”⁶⁶ Moreover, farmland must be of adequate soil quality to be productive over the long term. Adding to the productive capacity of farms through better techniques, crops and equipment also helps to ensure successful resettlement. However, many commentators feel that such innovations should only be undertaken once the community and the farmers have reestablished themselves, using traditional methods and crops. Once established, the farmers

⁶⁴ Benno Galjart “Culture and Development”, in Wasif A. Shadid, *Cultural Development and Communication*, (Leiden: Centre for Non-Western Studies, 1993) 5 - 26 at 9.

⁶⁵ See William L. Partridge, “Successful Involuntary Resettlement: Lessons from the Costa Rican Arenal Hydroelectric Project”, in Michael M. Cernea and Scott E. Guggenheim, *supra* note 53, 351 - 374 at 366.

⁶⁶ Veronique Lasailly-Jacob, *supra* note 57, at 196.

will be more comfortable with change. Even then, traditional agricultural methods should be permitted to remain on the periphery of the innovations.⁶⁷ Lastly, for a successful resettlement, tenure and ownership must remain vested within the community. Outside ownership of land allows communities already weakened by dislocation to be exploited by landlords. Resettlement will likely fail if resettlers become tenants or indentured servants of outside entities.⁶⁸

The fourth condition for successful resettlement is investment in human capital. This requires investments in education and training, encouragement of entrepreneurship through access to credit and other programs, and investments in health care and nutrition. A healthy, educated and innovative community stands a high probability of success and continued growth. Poorly educated and illiterate, unhealthy, and economically backwards communities have a high risk of failure. Edward Schuh has written: "What we know about the development process is that investments in human capital are the critical sources of new income streams, and that investments in this form of capital also increase the rate of return on investments in physical capital."⁶⁹

The final condition for successful resettlement to be discussed here is the need to accept change. Flexibility is crucial as conditions can never be adequately predicted. The need for modification may not be immediately apparent, so long term involvement by planners in the resettlement project is crucial. Chris de Wet has outlined the long term patterns of resettlement projects:

⁶⁷ See *Ibid.* and William L. Partridge, *supra* note 66.

⁶⁸ See Lasailly-Jacob, *supra* note 57.

⁶⁹ G. Edward Schuh, *supra* note 58, at 56-57.

During the most stressful period, i.e. the period leading up to relocation, the move itself and the first few years of adjustment thereafter, people tend to behave in conservative, risk avoiding ways, clinging to familiar practices and groupings. As communities re-establish themselves economically and socially (although it is not necessarily the case that they will do so), they leave this period of stress and insecurity. People now begin to behave in more innovative and risk taking ways and their attitudes become increasingly flexible and individualistic and open-ended — more so than in the case of communities that have not been resettled. This is because the simplified cultural repertoire and the breakdown of patterns of community organization and leadership that occur during resettlement, make for less restraints on diversity and individual initiative as the relocated community re-establishes itself.⁷⁰

As time passes and resettlers start taking on the accoutrements of modernity — choice and individuality — their views change. What they wanted and needed during the planning and implementation stages of the project will change over time. What they once thought they could not live without may no longer seem so indispensable. The ways in which they sought to govern themselves may not suffice in new found conditions. Institutions built to facilitate resettlement must be created for the long term, and must not rigidly cling to early decisions and courses of action. Openness to change shown through a long term commitment and flexibility is a key element of successful resettlement.

Host communities have their own needs, many of which can be incorporated into project planning simply by including them in the planning and implementation processes. Development anthropologists have found that when host communities receive the same or equivalent benefits as resettlers, the resettlement process goes much more smoothly. Expanded education, water, health, and other social services need to be offered to both communities, where the host

⁷⁰ Chris de Wet, "A Spatial Analysis of Involuntary Community Relocation: A South African Case Study", in Michael M. Cernea and Scott E. Guggenheim, *supra* note 53, 321 - 350 at 321.

community wishes to be a part of the process. Where the host community does not wish to be a part of the development plan, their property rights must be protected.⁷¹ Host communities can offer many benefits to resettlement planning as they possess a great deal of knowledge about the areas in which they live: “Time and again settlements are planned and implemented without adequate information on the social, physical, and biotic environment, which is a major reason for their nonsustainability or inability to realize their development potential. Socioeconomic surveys of the hosts should provide population data, information on their system of land tenure and land use, their water rights, and, to an extent, their socioeconomic systems.”⁷² Where the hosts are willing to participate, their knowledge and interests should be incorporated into the planning process. Inclusion of host communities in project planning and resettlement benefits is likely to reduce any resentment they might feel towards the resettlers. The two communities are more likely to integrate successfully when they both benefit from the resettlement project.

These elements — strong policy, participation, sufficient land area, quality and title, investments in human capital, openness to change, and inclusion of the host community are what the development literature points to as keys to lasting successful resettlements. The World Bank has attempted to accommodate all of these elements in its resettlement policy. The current policy — Operational Directive (OD) 4.30 — is in the process of being updated. Bank Procedures (BPs) and Operational Policies (Ops) are replacing OD 4.30 as the Bank’s resettlement policy.

⁷¹ See Thayer Scudder in Michael M. Cernea, *Putting People First: Sociological Variables in Rural Development* (New York: published for the World Bank by Oxford University Press, 1985) at 171.

⁷² *Ibid.*

While the divergences between them are not great, I shall discuss them both, highlighting the differences.

The World Bank's Resettlement Policy.

OD 4.30 was introduced in 1990 as the Bank's comprehensive policy on involuntary resettlement. Its goal was to minimize the negative effects experienced by resettlers in prior Bank projects. The policy was designed to encourage broad resettlement plans which would account for the varied challenges which face resettlers — especially the risk of slipping into poverty.

The directive's initial command is that resettlement must be minimized. Where resettlement cannot be avoided, compensation must be granted. Cash compensation alone has been found to be insufficient, rehabilitation of the resettled community is required. Rehabilitation includes payment of the value of lost assets at their replacement cost, relocation assistance, quality of life improvements through land, housing and infrastructure development, and the reestablishment of community institutions.⁷³ These goals are to be accomplished through a Resettlement Action Plan (RAP). A RAP must accompany a loan application in which resettlement will be required before the Bank will appraise the loan. Bank experts review the plan basing lending decisions on the hardship imposed on resettlers and host populations, the adequacy of the plan, the soundness of the economic analysis, availability of resettlement sites and adequate funding, the feasibility of the plan, and the extent to which it is based on

⁷³ OD 4.30 paragraph 3. The Bank's resettlement and other policies can be found on the Bank's internet website at www.worldbank.org/institutional/manuals/opmanual.nsf.

participatory processes.⁷⁴ Every plan must have a budget, timetable, and must have as its minimum goal the restoration of the community's economic base.

The RAP has specific content and procedural requirements:

1. Organizational Responsibilities — The plan must allocate responsibilities among the development actors. The borrowing nation is the entity with the ultimate responsibility for resettlement activities. However, it may delegate those responsibilities to a special resettlement institution, or regional or local governments. Regardless of who institutes the resettlement plan, a framework must be established and adequate resources set aside.⁷⁵
2. Participation — Inclusion of resettlers and host communities in the resettlement planning process is required by OD 4.30. Successful resettlement often requires moving people in larger social or cultural groups. As such, participatory planning under this policy is based on consultation with the group as a whole. This can be accomplished through consultation with community leaders, NGO's, or through meetings with the community at large. Participation must be conducted in a systematic manner whereby participants are informed and consulted about their options and rights. Normally a range of choices ought to be presented for discussion. Special steps ought to be taken to ensure the representation of women and minorities in the consultative process.⁷⁶
3. Socioeconomic Survey — RAP's should be based on the best and most recent information. As such a socioeconomic survey is required. It must address the magnitude

⁷⁴ OD 4.30 paragraph 30.

⁷⁵ OD 4.30 paragraph 6.

⁷⁶ OD 4.30 paragraphs 7 - 10.

of the displacement — the scale and impact of resettlement. It must evaluate the community's resource base, including all forms of income, common property, the extent to which assets will be lost, formal and informal institutions, and attitudes to various resettlement options. Moreover, the identities of residents should be recorded so developers may know the number of subjects of the RAP.

4. Legal Framework — There must be an analysis of the borrowing government's legal ability to carry out the planned resettlement — the government's power of eminent domain. The investigation should address compensatory requirements, the legal processes available including time frames and appeals, land title and registration procedures, and an assessment of the duties and abilities of the government's agencies involved in the resettlement process. Further, laws on land use, the environment, water use, and social welfare should be evaluated.⁷⁷

5. Alternatives — The various options presented to the resettlers are required to be evaluated. Experts must assess the productive potential and locational advantages of each site. Attention should be paid to non agricultural resources such as fisheries, forests, and access to wage labour. The borrower must create institutions to identify and propose sites, establish timetables and budgets, to conduct the legal work and title transfers, and to prevent land speculation.⁷⁸

6. Compensation, Training, Employment and Credit — The plan must allocate sufficient resources to compensate resettlers and hosts for their lost assets at replacement cost. The

⁷⁷ OD 4.30 paragraph 12.

⁷⁸ OD 4.30 paragraph 13.

plan must examine opportunities for alternative employment and new economic activity for nonagriculturally employed persons. Programs for vocational training, employment counselling, transportation to jobs, employment in the main project itself or in resettlement activities, establishment of industries, access to credit, and public sector employment are all possibilities.⁷⁹

7. Shelter, Infrastructure, and Social Services — It has been observed that resettlers prefer to live in their traditional forms of shelter. As such, Bank policy suggests that they be given the opportunity and the materials to construct their own homes. Infrastructure programs providing a healthy water supply, roads, and the like is mandated by the policy. Further, the plan must incorporate basic social services like education and health care into the resettlement project.⁸⁰

8. Schedule and evaluation — The RAP must fix a schedule for resettlement, as well as set out a system for review and evaluation. The results of each review should be forwarded to Bank officials for their inspection.⁸¹

It is expected that the full cost of resettlement activities be included in the final economic analysis and that the viability of the proposed project will be evaluated based on the resulting figures.⁸²

⁷⁹ OD 4.30 paragraph 18.

⁸⁰ OD 4.30 paragraph 19.

⁸¹ OD 4.30 paragraph 24.

⁸² OD 4.30 paragraph 29.

Much of OD 4.30 is repeated by the proposed new policy contained in BP/OP 4.12.

Under the new policy, however, the Bank will play a more active role in resettlement planning.

The major variations between the current policy, OD 4.30, and the proposed policy are these:

1. Bank staff will help borrowers to identify potential involuntary resettlement. When potential resettlement is identified, Bank staff will notify the borrower of the Bank's policy and engage the borrower in a discourse on the borrower's past experiences with resettlement, the required legal framework, the abilities of the agencies to be involved, and the technical assistance the borrower will require to conduct a successful resettlement project. This dialogue continues throughout the resettlement process with the Bank providing advice and technical assistance where required. Bank staff supervise the program throughout implementation and must do follow up studies.⁸³
2. Submission of a resettlement plan remains a requirement for Bank appraisal of loan applications. However, in addition to the criteria contained in OD 4.30, Bank staff now must explicitly evaluate the proposal for conformity with Bank policy. Bank officials will evaluate the participatory processes employed, investigating the extent to which the views of the community were taken into account in the final proposal.⁸⁴
3. Under the new policy the plan must be included in all loan documents and legal covenants. The plan, therefore, becomes a legally enforceable part of the agreement.⁸⁵

⁸³ BP 4.12 paragraphs 1 - 3 and 8.

⁸⁴ BP 4.12 paragraphs 3 - 5.

⁸⁵ BP 4.12 paragraph 7.

4. The resettlement plan must contain a description of the project as a whole and must specify which elements will result in involuntary resettlement. The plan must then identify the area of potential impact and describe those impacts. Further, the goals and expectations of the resettlement project must be stated.⁸⁶
5. The new policy continues to require a socioeconomic survey, but will require a more complete census to determine eligibility for resettlement benefits. This census must look at personal characteristics — household living standards and income —, production systems, farm and non farm activities, an inventory of assets, community systems of land tenure and acquisition systems, public infrastructure and social services, formal and informal institutions and NGO's in the community. The socioeconomic survey must continue to address the magnitude of displacement and its impact on the community.⁸⁷
6. The assessment of the legal framework continues to be required. In addition to the requirements of OD 4.30 — eminent domain, title systems, compensation, and other property and social rights — the new policy requires an assessment of any alternative forms of dispute resolution available, an evaluation of the laws on natural resources, any customary personal law related to involuntary resettlement, and a description of any legal reforms which will be necessary to ensure effective implementation of the plan.⁸⁸
7. The plan must provide an explanation of the process used to determine eligibility for compensation and resettlement assistance. Further, there must be a description of the

⁸⁶ OP 4.12 paragraph 2(a) - (c).

⁸⁷ OP 4.12 paragraph 2(d).

⁸⁸ OP 4.12 paragraph 2(e).

methodology used to determine the amount of loss to the community and proposed compensation.⁸⁹

8. The new policy requires that the plan contain a description of the various compensation packages and forms of resettlement assistance. Like OD 4.30, OP 4.12 requires that production levels be restored, but explains further that this includes restoration of income earning capacity and living standards. The plan must include a description of the measures to be undertaken with respect to transition and reestablishment, temporary income maintenance, and special arrangements for the landless to restore their incomes and living standards. Also, the plan should include a description of land allocation and safety nets — especially for vulnerable populations.⁹⁰

9. The requirements contained in OD 4.30 concerning shelter, infrastructure and social services remain. The requirements concerning the environment have been expanded. OP 4.12 requires a discussion of environmental impacts, highlighting negative effects and a description of mitigatory measures to be undertaken.⁹¹

10. The participation requirements have been expanded. The resettlement plan must include a summary of views and describe how they were taken into account. This summary should address the alternatives presented to the resettlers, and the choices that

⁸⁹ OP 4.12 paragraphs 2(f) and (g).

⁹⁰ OP 4.12 paragraph 2(h).

⁹¹ OP 4.12 paragraph 2(k) and (l).

were made. A description of the participatory processes used in project planning must also be submitted to the Bank.⁹²

11. The requirements that the plan contain a summary of the allocation of organizational responsibilities, a budget and timetable, and provisions for monitoring and evaluation of the resettlement program remain.⁹³

12. The last major addition contained in the new policy is that it requires that grievance procedures be established. These procedures must ensure that a neutral 3rd party arbitrate. Moreover, the grievance process must be affordable and accessible. Any preexisting community institutions of this nature may be used.⁹⁴

BP/OP 4.12 is more comprehensive than was OD 4.30. It builds and expands upon the requirements of the old policy, and addresses many of the concerns raised by the development anthropologists. Yet does it meet the requirements of the international human rights regime?⁹⁵

Human Rights and Involuntary Resettlement.

Involuntary resettlement constitutes a grave intervention by governmental actors into the lives of the citizens in the resettled community. When governments intervene in the lives of ordinary people they are required by international law to respect human rights. In chapter 1 I

⁹² OP 4.12 paragraph 2(m).

⁹³ OP 4.12 paragraphs 2(o) - (r).

⁹⁴ OP 4.12 paragraph 2(s).

⁹⁵ For an in-depth discussion of Operational Directive 4.30 see Michael M. Cernea "Anthropological and Sociological Research for Policy Development on Population Resettlement", in Michael M. Cernea and Guggenheim, eds., *Supra* note 53, 13 - 38.

listed the human rights related to development — the cornerstone right to dignity; the right to equality; the right to life, liberty and the security of person; the freedom of thought, conscience and belief, opinion and expression, including the right to impart and receive information; the freedoms of assembly and association; the right to participate in civil society; the right to social security; the rights to health and environment; the rights to food and shelter; the right to education; and the right to culture. Governments are, of course, required to respect these rights at all times, but the need is especially great during resettlement interventions. Respecting the human rights of resettlers — respecting their basic human dignity — is not merely a legal requirement; this respect will provide resettlers with a sense of ownership over the changes in their lives. Ensuring that the rights of resettlers are respected gives them control over important areas of their lives. Human rights law has a great deal to say about how the Bank and borrowing governments must act in resettlement projects, and is reflective of many of the remedies suggested by development anthropologists.

1. Equality.

The right to live free from discrimination based on race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, or other status is enshrined in the major human rights documents. Fundamental equality forms a base for the human rights system and the project of modernity. Simple humanity entitles every person to have their rights respected and basic needs protected by the state. This right has implications for resettlement and project planning.

First, project planners and borrowing governments cannot target project areas and options using the political or other weakness or unpopularity as a consideration. This applies to both the

community to be resettled and its hosts. It is a violation of human rights to consider the relative ease with which it will be possible to move one population with respect to another population, or to inundate one population with another, if the goal of that inundation is to create political social weakness. It is an even more obvious violation when people are made to be victims of development programs solely because of political, social, or economic unpopularity.⁹⁶ Development and resettlement cannot be used as discriminatory tools in this fashion.

Second, within project planning itself, it is a violation of this right to exclude minorities from the planning process. Every individual must be given the opportunity to receive full and complete information about the project and be able to give his or her opinion. The equality envisaged by the human rights system focuses on the individual, not the group. While it is a good idea to consult with community and minority leaders, consultation with these people alone is not enough. Every project affected person must have the opportunity to access the planning process on a non-discriminatory basis. These are the demands of the right to equality.

2. The Rights to Life, Liberty, and Security of Person.

These rights are central concerns to both the human rights system and to the development community. Protection of life and personal safety are, obviously, requisite conditions for enjoyment of the benefits of development and modernity. Clearly people should not die as a result of development projects, nor should they be deprived of their personal freedoms, nor should their personal safety be menaced. Resettlers and hosts must not be forcibly removed from

⁹⁶ For example, human rights critics and activists supporting a free Tibet are highly critical of World Bank funding for a resettlement project that will see 58000 poor farmer, 40% of whom are ethnic chinese, resettled in Tibet. Activists claim that this is an attempt dilute the cultural base in the province. See The New York Times, Tuesday, August 31, 1999:

their homes and lands, or be detained in the interests of the project, except where such measures are in compliance with law. The Bank must always be sure that such methods are not being used to pave the way for development projects.

3. Freedoms of Thought, Conscience, Belief, Opinion, Expression, and Information.

These freedoms are the operating forces within the modernization process. It is the development of opinion and belief, a consciousness of one's own self, that enables people to make choices. These choices differentiate (alienate) the individual from all who choose differently. As the number of choices inherent in contemporary life expand, modernity thrives and diversifies. Freedoms of thought, conscience, belief, opinion and expression make participation meaningful because each individual can be engaged in the process. Each person to be affected by resettlement will have different needs, expectations and goals from his or her neighbours. This will be the case (though perhaps less so) even in the most traditional societies. The questions of what the project should accomplish for the community, for each individual, how and where the community should be moved constitute only a very few of the questions to which there will be many opinions within the community. Each person is entitled to search his or her own conscience and beliefs to form opinions and then to act in accordance with those choices.

The right to have full, intelligible information is crucial to this process. Information must be timely, accurate, comprehensive, and comprehensible. Informed opinions cannot be reached without the ability to both receive and impart information. Media freedoms also serve this goal. Without access to necessary information people will not be able to adequately express their expectations for the development intervention. It is a violation of human rights to fail to provide necessary information and to prevent people forming and expressing opinions. Limitations on

access to information, and significant hindrances to the freedom of speech and other forms of expression are not tolerated by the human rights system.

4. Freedoms of Assembly and Association.

Resettlers and their hosts have the rights to organize themselves and to act collectively to represent their interests. Collective action allows interested parties to pool their collective strength in pursuit of common goals. It allows them to disseminate information and opinions on a broader scale. The right to assemble includes the right to protest — a fundamental principle of modernity.

5. The Right to Participate in Civil Society

All the rights and freedoms discussed so far make contributions to participation in civil society. Guarantees to life, liberty and security of person are crucial elements of participation, as are freedoms of belief and conscience, opinion, information and expression. However, this right contemplates more than just these others. The right to participate in civil society guarantees individuals access to state apparatus on an unobstructed and equal basis. People are assured access to courts, administrative and political bodies and agencies, remedies for grievances, and a role in state decision making. It assures the individual of the protection of the state from forces that would deny rights and freedoms. Further, it guarantees access and participation in the institutions which will play a role in determining one's future; as such, all state institutions must provide a participatory role in decision making for affected people. Governmental institutions are required by the human rights system to follow the rules of good governance and transparency.

The exact form of civil society will vary depending on history, culture, physical and social environment and other factors. The right does not impose form, rather it imposes

content. Modern civil society, as contemplated by the human rights system, mandates some form of governance that is accountable, effective and transparent; it requires that some form of peaceful third party dispute resolution be available and accessible; it demands the availability of redress for wrongs committed. Resettlers and hosts are entitled to have these institutions and processes available to them.

6. The Rights to Social Security, Health, Food and Shelter.

The right to social security contemplates economic protection from perils like old age, sickness, accident and unemployment. In the West this vision has become an extensive social safety net. The human rights system mandates some protection for all people from those pitfalls. However, old age pensions, disability insurance, welfare and unemployment insurance are enormously expensive programs, and may very well be peculiar to western society. Every society, though, has some method of looking after its elderly members, its disabled and unemployed. The human rights system demands that some measure be taken to protect these groups, and some allocation of resources be provided to them. What form these measures should take, how much money is the community able to spend and other similar questions must be posed and must be answered by the resettling community and the host community in conjunction with administering entities.

Health care is another complex question. Again, some form of health care must be assured to resettlers, and some resources must be allocated. Health care, like social security, is enormously expensive. Developing countries obviously cannot afford full-scale western health care systems. Decisions about the appropriate kind and level of care, and the appropriate health care provider are decisions that each community must address. These decisions will undoubtedly

hinge on issues of culture, history, economics and social customs. Some health care in some form is required; the form of that care is not predetermined.

Food and shelter are two essential requirements for all human existence, and, in one sense, the easiest human rights to comprehend. Starvation is a violation of the right to food. Homelessness is a violation of the right to shelter. If these things are lacking the state must provide them. These rights, however, contemplate more than the basic requirements for existence. Inherent in these rights are also protections of the systems through which food and other basic staples are produced and distributed. The right to shelter raises issues concerning physical structure, the social unit to occupy the home — the nuclear family, extended family, patrilineal line, matrilineal line? Land title issues must also be resolved. Every society has had methods for taking care of these issues from time immemorial; every community will be aware of strengths and weaknesses of traditional systems. Through recognition of the human rights system each community will be able to choose to adopt or vary its own system of production and distribution of these essentials as it sees fit.

The human rights system demands that each of these rights be specifically addressed by the community, that definitions for each be given, and that those determinations be respected by project planners.

7. The Right to Environment

The right to a safe and healthy environment highlights the need for careful site selection and the availability of alternative choices. Obviously it would be a violation of this right to resettle people into dangerous or unhealthy environments. No environment is completely safe: all pose some risk. Nonetheless, the choices of which risks are acceptable and which are not

must be decided by the resettlers themselves. This requires that alternative sites for resettlement be provided, and that complete, accurate, and comprehensible environmental data be provided to them so as to allow informed decision making. Environmental concerns go beyond simple health and physical safety. The environment must be able to sustain itself and the population that resides within it. This speaks to sensitivities of a particular environment, its productive capacities, access to clean water and other resources. Moreover, it is not only the contemporary population which must be sustained, but also future generations, which will likely be more populous. This may very well require careful maintenance of environmental integrity through working with the resettlers and their hosts to establish sustainable methods of resource use and development.

Members of these communities have the right to a safe and healthy environment that will sustain them and their children. They have the right to be given the education and the tools they will need to ensure sustainable development over the long term. All this must be accomplished through consultation with the affected communities, based on accurate, comprehensive and comprehensible information.

8. The Right to Education.

Education and human rights exist in a symbiotic relationship. Education is necessary to make informed choices about the course of one's life. Human rights are necessary to have the power to make those choices, and to act in accordance with them. What constitutes education, however, can be broadly defined. A former Director General of UNESCO has suggested that education can be defined as: "all activities by which a human group transmits to its descendants a

body of knowledge and skills and a moral code which enable that group to subsist.”⁹⁷ Clearly there is a great deal of room for the community to determine the nature of schooling and the curriculum taught. Each community must be given the opportunity to determine how and what their children should be taught.

9. *The Right to Culture.*

Culture is amorphous, intangible. “Culture is the matrix of society. It encompasses the visions and values, fears and doubts of a people, the built environment, language, educational systems, holidays and customs, and also work in the arts and crafts. Culture is everything that makes a people ... not simply a collection of atomized individuals who happen to share the same time and space.”⁹⁸ It is a reminder of the things which bind us together amidst all the things that drive us apart. Culture is social, political, and religious institutions. It is art and symbol. It is much more than any of these things. The right to culture is the right to exist and progress as we choose. In one sense it is the right of a nation to be left alone; it is the right to be free from outsiders determining right and wrong in that nation’s collective life. In another sense it is the right to have our cultural institutions and expectations protected or nurtured. Every society will assess its cultural needs differently, and may even change its collective mind freely. Resettlement planning must leave cultural space open for resettlers. It must not interfere in some areas, while in others it must act to bolster, protect and support cultural ways of life. Knowing

⁹⁷ Amadou-Mahtar M’Bow “Introduction” in Gaston Mialaret, ed., *The Child’s Right to Education*, (Paris: UNESCO, 1979) at 11. See also Douglas Hodgson, *The Human Right to Education*, (Aldershot England, Dartmouth Publishing Co., 1998).

⁹⁸ Arlene Goldbad and Don Adams, *The Right to Culture*. 13 *Journal of Arts Management and Law* 25 at 25.

when to act and how, and knowing when to step back likely is the most difficult challenge for planners. It is, nonetheless, what the human rights system demands.

The human rights system protects the ability to make free and informed choices, and then to act on those choices throughout our daily lives. The system ensures that our basic needs — food, shelter, health care, a safe and healthy environment, education, and culture — are met, but leaves it to each community to determine the means by which they are fulfilled. It sets out a skeleton process, simply imposing the essential requirements for free and open discourse without imposing answers. Modernity and development are continuing dialectics. Questions are asked and answered and asked again. Institutions promoting the project of modernity, promoting development, must guarantee that choices are made and remade continually. They must provide a free, fair, and accountable, yet flexible structure. In any situation where collective choices are made there will be winners and losers — tragic choices indeed. The institutions responsible for resettlement planning must implement the choices made regarding human rights issues; thus they will help create the winners and losers. This is expected within reasonable bounds. We can hope that the winners will greatly outnumber the losers, and hope that any loss experienced is not too great. What is unacceptable is resettlement institutions permitting people to go without their basic needs for food, shelter, health care, education and so on. Also unacceptable is silencing the discourse and not accommodating changed views. Planners need answers to the questions posed by the human rights system to ensure successful resettlement. They may rely on the answers initially given. What they cannot do is employ those answers in ongoing projects if general opinion has shifted. They cannot stand in the way of changed perspective as resettlers travel down the path of modernity. Planning institutions must remain with the community to help

fulfill their rights and choices over the long term. Once outsiders have inserted themselves into the life of a community, human rights demand that they stay until the community is able to sustain itself; until community institutions are capable of guaranteeing all human rights on their own. These are the demands of the human rights system in the resettlement context.

Development Anthropology, The World Bank, and Human Rights.

There are many parallels between the human rights system and the problems and solutions development anthropologists highlight in the involuntary resettlement discourse. This section will look at those parallels, as well as departures, and use them to evaluate the Bank's involuntary resettlement policy. Michael Cernea's eight resettler hardships will again form the foundation of the discussion.

1. Landlessness

As has been said, land is the primary productive asset for people in the developing world. It is their source of food and income. Living without land reduces most to abject poverty. The solutions offered for this problem are obvious — when people's land is taken away by development projects, it must be replaced. Development anthropologists have said that successful resettlement depends upon sufficient land area, sufficient productive capacity, and ownership being vested within the community. The human right to environment requires much the same thing. People are entitled to an environment that meets their personal physical and social needs. People's environment must be sufficiently productive to sustain them, provide clean fresh water, and meet basic other safety and health standards.

The Bank's existing and emerging policies do an adequate job of meeting these requirements. The policies require resettlement, not simply cash compensation. This ensures

that resettlers will not go without replacement land. The policy requires further that host communities be compensated for their lost assets. The policies require a socioeconomic survey to determine the pre-resettlement standards of living of the resettlers, and require that resettlement planning, at a minimum, reestablish that quality of life. In rebuilding that quality of life, both private and common property must be allocated. Further, the legal requirements assess the title and transfer systems within the state and within the community. This suggests that title will be vested within the resettling community. This ought to be explicitly stated by the policy.

2. Joblessness.

Involuntary resettlers are forced to leave many of their productive resources behind. With those lost resources often go jobs. As has been said, replacing wage labour is often not as easy as replacing land. Further, it has been noted by some that host communities tend to view resettlers as a cheap source of labour. This leads to the problem of exploitation of one community by the other.⁹⁹ Development anthropologists have pointed to investment in human capital as a solution to these problems— education and retraining, entrepreneurship programs, and basic health and nutrition. A healthy, well-trained labour force is attractive. The human rights system supports this view. While it is not easy to argue that human rights require that jobs be provided for all people, education and training, health and nutrition are required. The human rights system takes this a step further by requiring a social security safety net for those who cannot find work. How that safety net is constituted is left to the community for determination, but there must be some measures taken.

⁹⁹ Michael M. Cernea *supra* note 7, at 16.

The Bank's policy covers some investment in human capital and social welfare. OD 4.30 requires that resettlers be given access to training, employment and credit, while, additionally, OP 4.12 requires special arrangements to be made for landless labourers. Social welfare also makes an appearance in both policies, but needs to be more specifically laid out. OD 4.30 mandates an evaluation of the social welfare system, while OP 4.12 requires that safety nets be in place, that temporary income assistance be provided for transition and reestablishment periods. To be consistent with human rights a permanent system must be implemented to deal with the possibility of chronic unemployment. The form of such programs is, again, a determination to be made within the community in conjunction with implementing agencies.

3. Homelessness.

Homelessness tends to be only a passing problem in World Bank projects. Homes are easy to replace. In fact, little needs to be said here as human rights, development anthropology, and Bank policy are in agreement. Replacement housing is required by all three.

4. Marginalization.

One of the greatest dangers arising from involuntary resettlement is the possibility of being pushed to the margins of society. The loss of familiar productive assets, jobs, and cultural space can all contribute to this slide. Development anthropologists point to two related solutions — replacement land and investments in human capital, and a third solution, participation in the planning process. Engaging the affected community in a discourse on their future allows them to shape that future. It helps them to protect their best interests. It helps them to establish a sense of belonging in their new homes, and in the local and national community.

The human rights system also makes demands in this area. Issues surrounding land and human capital investments has already been discussed in this section, while the right to access to civil society has not. Resettlers have the right to expect that the machinery of the state will be open to them on an unobstructed, free and transparent basis. They have the right to expect a role in decisionmaking, access to dispute resolution mechanisms and appeals, and redress for wrongs committed against them.

The existing policy is weak with regard to access to civil society. It only requires minimal levels of participatory planning in the project development process, and an evaluation of the legal processes available to resettlers. It makes no explicit demands beyond basic compensation for assets lost. The new policy is a step in the right direction. It requires that planners explicitly address the views of the community and how those views were incorporated into the final plan. Further, planners are required to detail the participatory methods employed. Both policies require special measures for the inclusion of already marginalized groups within the community.

The participatory nature of the resettlement process needs to be strengthened even further to meet human rights requirements. It must be made clear that all affected people have a role to play in resettlement planning on a non-discriminatory basis, not just their leaders, not just NGO's. It must be stated in uncompromising terms that people have the right to all necessary information in comprehensible form, that they have the right to formulate opinions, and the right to express those opinions and to organize and to demonstrate in their support. They have the right to access both the instruments of the development process and to the machinery of the state. They have the right to see their opinions addressed and reasons given as to why they were or

were not followed. Lastly, it must be explicit (as it is in OP 4.12) that grievance procedures are to be established or made open to resettlers in order to deal with any controversy or dispute.

These grievance procedures must be given the power to provide all necessary redress. If World Bank policy is to be consistent with human rights it is crucial that all these rights and freedoms be rigorously enforced. Any process that lacks these rules of governance and transparency violates the human rights system. All of these rights may be coloured somewhat by national or local systems, but the core principles that underlie them are clear. Deviation from those core principles is not tolerated by the human rights system.

5. Increased Morbidity.

Sickness and disease tend to batter resettlers harder than they do other populations. Malaria, schistosomiasis and other illnesses frequently ravage resettler communities. Development anthropologists again point primarily to investments in human capital as the solution to this problem. Health care and strong nutrition programs are key to the long term strength of the community, especially during the initial periods when water and waste systems may not be fully functional.

The human rights system offers two solutions to this problem. The first agrees with the development anthropologists — the right to health demands that resources be allocated for both remedial health care and health maintenance programs. These programs must be culturally sensitive and appropriate. This can be accomplished by ensuring that they are addressed through participatory mechanisms.

Nutrition is another important response to this hardship, and is inherent in the right to food. The second solution offered by the human rights system is contained in the right to

environment. People should not be forced to reside in areas which are dangerous or unhealthy. Resettlers should not be placed next to dangerous terrain, malaria ridden swamps or other hazards. Obviously these diseases are rampant in the developing world, and exist virtually everywhere. The human rights system simply demands that resettlers not be put directly in harms way. Resettlement sites should not have a higher risk of disease than other parts of the country. They should be informed about particular problems at any given resettlement site through participatory mechanisms.

Both OD 4.30 and OP 4.12 require only that previous standards of living be restored, including social services. This is not adequate. As resettlers are known to have higher levels of illness, the borrower can be seen to be putting them in harm's way by resettling them. Simple restoration of old social services will actually reduce well-being if those services were gauged by previous levels of health. Increased protection in the form of health care and nutrition programs must be assured to resettlers to meet increased demands. This ought to be planned for in the initial stages of project development.

6. Food Insecurity.

Often it will take years before resettled communities restore their previous production levels on their new land, both private and common. Further, because wage labourers often lose employment due to the move, they can no longer afford the amount or quality of food they once could. The scholarly literature suggests that adequate lands be given to the resettlers, and that human capital investments be made as solutions. In the period until food security returns, clearly all agree that assistance must be provided. Both Bank policies require that transitional assistance be provided. This is consistent with the right to food which requires that basic needs are met in

both quantity and nutritional quality. Food security should be developed over the long term by methods which inform, educate and consult the resettlers. Bank planners and policy makers seem to be well aware of the issues that surround food security, and major policy reforms do not seem to be required.

The food rights of the host community may also be violated, as they are forced to sustain themselves on less land. Long term food security for host populations must be included in the project planning. Again, Bank planners seem to be aware of this, and major policy reforms are not needed.

7. Loss of Common Property.

Forests, grazing lands, fisheries and water bodies are community assets which can be forgotten in the planning process. This applies to the assets of both host communities and resettling communities. Planners developing agricultural programs often forget that farmers and other community residents in the developing world depend on these resources for their well being. The loss of common property will cause a slide in community well-being. Development anthropologists include common property assets in their discussion of providing sufficient land for the community to sustain itself. The human rights system makes similar requirements through many different rights. The right to food requires that sufficient productive assets be provided to resettlers, including common lands and resources. The right to health requires that people have access to the resources they need for medicines. The right to culture demands that resettlers have the space they need for cultural activities, and to preserve their own ways of living.

The resettler socioeconomic surveys in both Bank policies require assessment and valuation of all common properties. This is done to determine the standards of living within the community, so that it may be restored during implementation of the resettlement program. Significant modifications to the policies do not seem to be required here. However, more must be done to ensure that the well-being of host communities does not suffer as a result of resettlement. A socioeconomic survey of the host community must be a part of any development plan, as well as methods to avoid, mitigate or compensate harms.

8. Social Disarticulation.

The upheaval in the lives of resettlers is immense. In the face of new neighbours, new production systems, new homes — an entirely unfamiliar environment — traditional modes of existence will generally crumble. It is unavoidable that people will make different choices from one another about how best to deal with the change and uncertainty confronting them. This is how the alienation from one another begins. Modernity becomes an omnipresent force in their lives. As Downing says: “The community that was is no more.”¹⁰⁰ Development anthropologists suggest softening this blow by introducing change gradually — particularly in productive systems. Agricultural reforms should be encouraged over periods of years. Other institutional reforms should be carried out only when resettlers themselves see the need. Chris de Wet says that such reforms are virtually inevitable.¹⁰¹ Changes will come, and they must be viewed as an opportunity to effect positive transformation. Investments in human capital must be provided to take advantage of emerging individual initiative and reduced restraints from traditional systems.

¹⁰⁰ Theodore E. Downing, *supra* note 58.

¹⁰¹ Chris de Wet, *supra* note 71.

The human rights system has a particularly strong role in this process. Human rights are at the core of modernity. The social disarticulation that Cernea, Downing and de Wet describe is the process of separating the individual from the community. Human rights protect that individual to allow him or her to determine the course of his or her own fate. All human rights have a role to play in this. Food, housing, and health rights ensure that the individual will be able to physically persist; these rights (when fulfilled) ensure basic individual security. Rights to life, liberty, equality and security protect the individual from persecution and discrimination. Freedoms of speech and expression, belief and opinion, assembly and association ensure that the individual may think and act as he or she so pleases. The right to education helps to ensure that individual potential is met. The right to participate in civil society ensures that the individual can have a say in the social and political issues affecting his or her life, and redress for any wrongs committed. While all these things contribute to the alienation of the individual from the community, the human rights system does not forget that humans are social animals. The right to culture ensures a place in the community for each person. It protects cultural freedoms — the right to live as we so choose, in the community of our choice, as well as protecting cultural systems and institutions from deprivations by outsiders.¹⁰²

¹⁰² Defining the right to culture as a predominantly individual right is a controversial view, especially in light of contemporary debates on indigenous and other collective rights. I am in agreement, however, with Thomas Hylland Eriksson who has written: “cultural singularities among minorities and majorities in modern societies can only be defended to the extent that they do not interfere with individual human rights. All societies are indeed ‘multicultural’, whether they contain diverse ethnic groups or not, since different citizens hold different values and different world views. Multiculturalism, a term describing doctrines which argue the importance and equivalence of cultural heritages *and* the decentralisation of defining power as to what is to count as one, may in practice be a strong form of individualistic thinking about personhood — the world is seen as a smorgasbord of identity options.” Thomas Hylland Eriksson,

Bank policies have a difficult time dealing with social and cultural problems because they are amorphous. Culture is a nebulous concept. Resettlement policy tries to take this into account with socioeconomic surveys and participatory requirements to help planners accommodate cultural sensitivities and expectations. The policies must require planners to provide cultural space for resettlers. Part of this cultural space can be found in the recommended expansion of the participatory elements in development and resettlement planning. Cultural demands must be respected and incorporated into resettlement planning, and such planning must be flexible, allowing for future modification. Community needs will not stay static; even traditional societies are not entirely monolithic. Flexibility is a crucial element of development planning.

This discussion of development anthropology, Bank policy, and human rights has suggested that the current and emerging Bank policies generally do an adequate job of protecting the basic physical and economic needs of resettlers and their host communities (at least when those policies are enforced). What needs improvement are the participatory mechanisms used in defining rights and designing the resettlement program in general. The human rights system demands that each and every person affected by development and resettlement be given the opportunity to participate in project planning. The Bank must do a better job of mandating proper processes which protect the participatory rights of resettlers and their hosts. The content of rights to food and clothing, shelter, health care, education and culture are left largely undefined at the international level. The Bank has succeeded in creating policies that meet the basic needs requirements of these rights, but has done little more. These rights demand further,

“Multiculturalism, Individualism and Human Rights” in Richard A. Wilson, ed., *Human Rights, Culture and Context: Anthropological Perspectives* (Pluto Press: London; Chicago, 1997) 48-69 at 53.

local definition. By whom and by what means shall food and clothing be produced and distributed? Who shall look after the health needs of the community and how? What shall our children be taught? Who are we as a community? These questions must be asked and answered through a process consistent with participatory rights.

All of these rights and recommendations are meaningless unless the Bank enforces its policies. The Bank, through strong policy, must be the champion of the resettlers. Too often their interests are submerged beneath other development considerations. This is morally and legally unacceptable. People must be central in the development process. This is the demand of the human rights system.

Indigenous Policy.

Indigenous and other collective rights fall outside the scope of the discussion in this thesis. Rather than being individual in scope, collective rights inhere in groups, permitting them to retain traditional modes of existence. There is an ongoing debate as to whether such rights can, in fact, be termed human rights, or if they arise from some other source. This debate will not be engaged in here. However, the Bank's indigenous policy must be discussed as indigenous peoples have suffered as a result of resettlement and other impacts from Bank development projects in far greater proportion than their numbers warrant.

It was indigenous policy that first pushed the World Bank into the social sciences policy realm. In the 1970's and early '80's states were pushing development projects further and further into their hinterlands where populations were primarily indigenous. Project disasters like the Bastar forestry project in India highlighted the need for a comprehensive indigenous policy. The Bastar project planned to cut natural forest lands in order to replace them with pine plantations

— a more commercially viable tree. The residents in the area — primarily indigenous peoples — were strongly opposed to the project as they relied on the forests for many resources. The indigenous peoples neared outright revolt over the project forcing the Indian government to cancel it altogether.¹⁰³ This experience was a shock to the Bank; economists thought that its financial success was virtually guaranteed. Clearly they misjudged the willingness of local residents to give up their ways of life. This situation combined with public controversy over development intrusions on previously uncontacted tribes in the Amazon to make Bank leadership realize that it needed a policy to avoid such mistakes in the future. Operational Manual Statement 2.34 — Protected Rights of Tribal People in Bank Projects (OMS 2.34) was the result. It was the first policy of its kind in the world. OMS 2.34 was essentially protective in scope; it aimed to ensure that indigenous peoples would not be harmed by development projects.

OMS 2.34 was largely unsuccessful in operation. Its most notable failure was the Indian Narmada Sardar Sarovar dam project. The Bank was, while these difficulties were arising in India, becoming increasingly aware of its role as a broad based development agency. The Bank updated its policy, creating Operational Directive 4.20 (OD 4.20). This is the policy that remains in place today, though a draft replacement provision, Bank Policy / Operational Policy 4.10 (BP / OP 4.10), is currently being studied. OD 4.20 retained OMS 2.34's protective provisions, but vastly expanded its scope. First it expanded the definition of indigenous peoples to whom the

¹⁰³ For an in-depth discussion of the Bastar forestry project see Robert S. Anderson and Walter Huber, *The Hour of the Fox: Tropical Forests, the World Bank, and Indigenous People in Central India*, (Seattle: University of Washington Press, 1988).

provision would apply.¹⁰⁴ The second reform was to include indigenous peoples in the development paradigm by encouraging culturally sensitive development interventions. Under the policy, this is to be accomplished in three ways: first, indigenous needs, values and concerns are to be included in development planning through participation and social analysis; second, indigenous knowledge is to be incorporated into project design; and third, indigenous social institutions are to be strengthened.¹⁰⁵

The planning tool employed by OD 4.20 is the Indigenous Peoples Development Plan (IPDP). IPDP's are comprehensive and required whenever a Bank project could have a significant impact on indigenous peoples. The prerequisites of a successful IPDP can be summarized as follow:

- (a) a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project;
- (b) an analysis of likely adverse trends, and mitigatory measures;

¹⁰⁴ OD 4.20 defines indigenous peoples using the following criteria: "Because of the varied and changing contexts in which indigenous peoples are found, no single definition can capture their diversity. Indigenous people are commonly among the poorest segments of a population. They engage in economic activities that range from shifting agriculture in or near forests to wage labor or even small-scale market-oriented activities. Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics:

- (a) a close attachment to ancestral territories and to the natural resources in these areas;
- (b) self-identification and identification by others as members of a distinct cultural group;
- (c) an indigenous language, often different from the national language;
- (d) presence of customary social and political institutions; and
- (e) primarily subsistence oriented production.

¹⁰⁵ OD 4.20 paragraph 15.

(c) social, technical and legal experts able to interact with all appropriate institutions, including local organizations and non governmental organizations;

(d) indigenous institutions, including social organization, religious beliefs and resource uses should be incorporated into project design;

(e) environmentally sustainable practices should be employed;

(f) planners must be wary of creating dependency on project entities. As such, management of the project should be handed over to local people as soon as possible.

Planning should

incorporate education measures to prepare the population for this transition;

(g) long term preparation, and long range planning are required

(h) employment of any preexisting programs within development planning - this reduces the need to create new programs.¹⁰⁶

Specifically, IPDP's require:

(a) *legal framework* - an assessment of the domestic legal status of the relevant groups, an assessment of the possibility of access to the legal system, and an assessment of the groups ability to defend its land title;

(b) *baseline data* - should include a study of physical geography, social and income assessment, access to resources and the use of technology, and the relationship of the indigenous peoples to other local and national groups;

(c) *land tenure* - encourage the establishment of permanent legally recognized land tenure in the hands of indigenous peoples;

¹⁰⁶ Ibid.

(d) *strategy for local participation* - mechanisms to ensure the participation of indigenous peoples in the project planning process throughout the life of the intervention. Such a strategy should employ any customary organizational structures available; however planners must ensure that genuine participation (meaning the participation of all members of the community, rather than only traditional leaders) exists.

(e) *technical identification of development or mitigation activities* - development of social safety nets by on - site professionals. Education, training, health, credit and legal assistance should all be addressed. All should, of course, employ indigenous knowledge and be culturally appropriate.

(f) *institutional capacity* - national and regional level government ministries responsible for the particular development intervention should be strengthened as is needed.

(g) *implementation schedule* - a schedule with progress benchmarks should be laid out so evaluation may take place at regular intervals.

(h) *monitoring and evaluation* - provisions for monitoring by development experts need to be made. Also, and perhaps more importantly, provisions for monitoring by the indigenous people themselves is strongly encouraged. All evaluations should be made open to the public.

(i) *cost estimates and financing plan* - the plan should include detailed estimates, broken down into project years.¹⁰⁷

BP / OP 4.10 is the proposed replacment for OD 4.20. It proposes four main policy changes from the cuurent policy. The opportunity for reform is being taken, but in minor ways

¹⁰⁷ Ibid.

only — the policy objectives remain the same. Discussed reforms fall into four categories - which can be summarized as follows:

(a) adding a number of criteria to the definition of indigenous to account for national and international legal definitions (i.e. ILO definitions), consultations with government, indigenous organizations, non governmental organizations, and academic experts.

Additionally, social vulnerability would be included in the list of criteria that an indigenous population might have.

(b) clarification of the minimum standards and conditions relating to the protection and participation of indigenous peoples which are required by the Bank for approval of development loans. Such a clarification may be stated in the negative, describing those conditions in which the Bank would not be prepared to finance a project absent adequate mitigatory measures.

(c) clarification in three other areas: social analysis, participation and consultation; land and natural resource protection; and when IPDPs are required. The proposals for reform include a statement that the Bank will not approve any development intervention unless potential adverse impacts are disclosed to the indigenous population through full access to information in an atmosphere of meaningful consultation. Moreover, adequate mitigatory measures must be included. Next, the new procedure should ensure that development will not encroach upon indigenous lands without adequate safeguards; nor will indigenous peoples be removed from their lands unless such removal is unavoidable, and adequate compensation and rehabilitation is available; nor will commercial exploitation of natural resources occur in indigenous areas without significant benefits

accruing to the indigenous population. Lastly, a statement should be included in the new policy indicating that where there could be potentially adverse effects on indigenous peoples, the Borrower should prepare an Indigenous Peoples Action Plan.

(d) specification of ways in which the Bank can promote measures aimed at indigenous peoples' development beyond simple safeguard measures. Such programs could include: building indigenous peoples' capacity for self-development based on their own social and cultural assets; supporting legal and administrative measures to protect indigenous lands and resources; and / or improving the ability of both governmental and non governmental organizations to address indigenous development issues. All such measures should, of course, be socially and culturally sensitive to indigenous needs and desires.¹⁰⁸

The Bank's indigenous policy's beginnings were narrow, and somewhat technocratic, but it has evolved into a broad based, insightful and useful directive, consistent with the cutting edge of international law. However, its success on paper has been marred repeatedly by failure in the field. Institutional biases, constraints and a marginalized social sciences department have all contributed to these failures. A policy does little good if it is not followed. Obviously better monitoring and evaluation is needed, along with clarification of the directives expectations with respect to social analysis, participation, and protection. One can hope, and, I think, expect, that the evolution which began with OMS 2.34 in 1982 will continue well into the 21st century. I do not intend to go into a discussion of human rights implications for indigenous policy, because, as I said at the beginning of this section, collective and indigenous rights raise a host of issues apart

¹⁰⁸ Shelton Davis, S. Salman and e. Bermudez, "World Bank Policy on Indigenous Peoples: Approach Paper for Revision of OD 4.20." www.worldbank.org.

from those raised in a conventional human rights discourse. As the discussion about the nature of collective rights continues in the future the Bank may have to reevaluate the basic tenets of its policy. This discussion is beyond the boundaries of this paper. Indigenous policy has been discussed here because it plays a large role in World Bank development loans, and the thesis would not be complete without some mention of the particular issues facing Indigenous peoples.

Conclusion.

Bank resettlement policy must meet the needs of a wide diversity of people and interests. This is an enormous challenge, as the interests of resettlers and hosts often conflict, while the particular perils facing indigenous peoples in the development process make project planning even more precarious. Bank resettlement policies do a good job at ensuring that the essentials of life are maintained for resettlers and their hosts during the development process. The human rights system demands more than this; the system requires the Bank to ensure that people are the masters of their own destiny, and that their choices form the core of the development paradigm. It would be unfair to characterize the participatory elements of Bank resettlement policy as a token effort; they are strong steps in the right direction. More needs to be done. Human rights law demands the protection of choice; as such a transparent and fair process guaranteeing personal freedoms of thought, expression, assembly and association is mandated. The process must be transparent and fair, based on timely, accurate information, and carried out by responsible, accountable and accessible institutions. Through this process project affected people must be given the power to make decisions about the provision of the essentials of life and culture. The development process must be theirs to control. Bank policy must be reformed to meet these requirements.

CHAPTER 3

ENVIRONMENT

In the introductory chapter of this thesis I argued that human rights created an indivisible system. It seems inconsistent, then, to treat environmental issues separately from the other subjects discussed. Rights concerning the environment are interconnected with the rights and fundamental freedoms covered in Chapter 2 and those to be discussed in Chapter 4; in practice all issues discussed in this thesis should be evaluated in one comprehensive participatory process. Bank officials need to integrate all development policies in one all-encompassing system of project planning. This has, obviously not occurred. Environmental assessment is treated separately from other development issues by Bank policy; as such it is treated separately here.

A sound environment is a prerequisite for healthy life, and, therefore, a prerequisite for human rights. Development modifies the environment in which it occurs: dams flood river valleys and alter natural river cycles, forestry projects change ecosystems and may cause deforestation, industrial projects can cause air, water and ground pollution and create toxic waste, agricultural projects can cause soil depletion, desertification, and water pollution from pesticide and fertilizer run-off. All development can result in loss of biodiversity. All these forms of

environmental degradation have been public concerns for many years and require little discussion here.

Many theories have been developed on environmental protection and exploitation by the environmental movement and international law: the precautionary principle,¹⁰⁹ sovereignty over natural resources,¹¹⁰ sustainable development and intergenerational equity,¹¹¹ social ecology,¹¹²

¹⁰⁹ The precautionary principle simply dictates that scientific uncertainty about the possibility of serious environmental damage should be used as a justification for not attempting to prevent that damage.

¹¹⁰ Sovereignty over natural resources is a fundamental tenet of international law. Any state may utilize its resources and natural assets in any manner which does not unduly harm another sovereign state. This ensures that all countries may freely pursue development in virtually any way they see fit.

¹¹¹ Sustainable development was defined by the World Commission on Environment and Development, *Our Common Future* (the Brundtland Report) as: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." The focus of sustainable development is meeting human needs in both present and future generations, not environmental protection. The purpose of sustainable development is not to protect the environment, but to preserve its essential processes for the benefit of humanity in perpetuity. See Gro Harlem Brundtland, *Our Common Future: World Commission on Environment and Development*, (Oxford: Oxford University Press, 1987.) at 43.

¹¹² Social ecology is identified with the writings of Murray Bookchin. It is a theory that arises out of the revolutionary and libertarian strains of Marxist and anarchist thought. It focuses on the dominant (i.e. Western) political and economic structure, and claims that they are the root cause of environmental destruction: "Social ecology takes the major obstacle to social and natural evolution to be the long history of human attempts to dominate others and to conquer nature itself. One of the most distinctive theories advanced by Bookchin is his view that the human urge to dominate nature (a futile, but nevertheless powerful impulse) results above all from human domination of other humans." See John Clark "Introduction to Social Ecology" in Michael E. Zimmerman, ed., *Environmental Philosophy: From Animal Rights to Radical Ecology* (Englewood Cliffs NJ: Prentice-Hall, 1993) at 346. See also Murray Bookchin, *The Ecology of Freedom: The Emergence and Dissolution of Hierarchy*, (Montreal: Black Rose Books, 1991).

deep ecology,¹¹³ and ecofeminism.¹¹⁴ All these theories offer their own program for human interaction with the environment for the human rights system to draw from as it moderates the relationships between people, the environment and development. This chapter engages the relationships between human rights, the World Bank and the exploitation of natural resources and processes in the pursuit of development and modernity. Following the pattern of the previous chapter, I will discuss the relationship between human rights and the environment. Following will be an examination of current World Bank environmental policy. The concluding section will look at the demands the human rights system makes on World Bank environmental policy, and will make recommendations for change.

Human Rights and the Environment.

Having outlined the parameters of the human rights system and my methodology for applying them in previous chapters, here I will employ the more general classifications of civil

¹¹³ Deep ecologists ask us to reevaluate our philosophical, psychological, and spiritual being. They argue that humans must be seen as only part of the totality, a single part of the total field image. We are no more (or less) important to the totality of the Earth's structure than forests, animals, or even mountains and rivers. It is an anti-anthropocentric view of the world: "The person is not above or outside of nature. The person is part of creation ongoing. The person cares for and about nature, loves and lives with nonhuman nature, is a person in the 'earth household' and 'lets being be,' lets nonhuman nature follow separate evolutionary destinies.... Deep ecology seeks transformation of values and social organization." Bill Devall, "The Deep Ecology Movement" in Carolyn Merchant, ed., *Ecology*, (New Jersey: Humanities Press, 1994) at 128. See also: Alan Drengson and Yuichi Inoue, eds., *The Deep Ecology Movement: An Introductory Anthology*, (Berkeley: North Atlantic Books, 1995).

¹¹⁴ While there are many different schools in ecofeminism, all agree that "there are important connections between the domination of women and the domination of nature." See Karen J. Warren, "Introduction to Ecofeminism", in Michael E. Zimmerman, *supra* note 113, at 256.

and political rights and economic, social and cultural rights.¹¹⁵ In this discussion I will draw heavily from the 1994 “Report on Human Rights and the Environment”¹¹⁶ produced by the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities and written by Fatma Ksentini (hereinafter ‘the Ksentini report’). The Ksentini report analyzed the impacts that degraded environments and pollution can have on the enjoyment of human rights, surveyed international human rights law for principles applicable to environmental issues, and outlined a draft declaration of principles on human rights and environmental protection.

1. Civil and Political Rights.

As in the resettlement context, civil and political rights protect the integrity of process in environmental decision making. These rights ensure that project interventions accord a place in the decision making process to all people whose environments will be impacted. The right to life is an obvious place to begin the discussion as degraded environmental conditions can lead to illness, disease, and death. A development project which creates unduly hazardous environmental conditions can be considered a violation of the right to life.¹¹⁷

¹¹⁵ For a good discussions of the relationships between human rights and the environment, See James W. Nickel, “The Human Right to a Safe Environment: Philosophical Perspectives on its Scope and Justification”, 18 *Yale Journal of International Law* 281. See Also: Alan E. Boyle and Michael R. Anderson, *Human Rights Approaches to Environmental Protection*, (Oxford: Clarendon Press, 1996).

¹¹⁶ United Nations Subcommission on Prevention of Discrimination and Protection of Minorities: Report on Human Rights and the Environment. Fatma Zohra Ksentini Special Rapporteur. E/ CN.4/Sub.2/1994/9.

¹¹⁷ *Ibid.* Draft Declaration principle 5: “All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.”

Rights to equality, liberty and personal security also hold a central role in a discussion of environmental human rights. These core rights guarantee individuals a measure of control over the use of their environment, regardless of gender or other status; their protections of unfettered choice help to ensure the legitimacy of the decisionmaking process. Principles 3 and 25 of the Ksentini report discuss these rights: “All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment”¹¹⁸; “In implementing the rights and duties in this declaration, special attention shall be paid to vulnerable persons and groups.”¹¹⁹

As discussed in Chapter 2, freedoms of thought, conscience, belief, and opinion are central in the project of modernity and in the human rights system. Central to the functioning of these rights in the environmental context is notice of potential environmental harm; these are hollow promises if people are unaware of the potential impacts of development on their environment and their lives. Provision of notice is a duty imposed on the Bank with a number of requirements. Access to accurate and complete information is crucial to the functioning of these rights, as are media freedoms. Without information and analysis, informed decision making by project affected people is impossible. The Ksentini report states:

In the Special Rapporteur’s view, the right to the environment requires that information be relevant and comprehensible; that it be provided in a timely manner; that procedures to obtain information, if established, be simple and brief; that the cost to individuals and groups be reasonable; and that it be available across state boundaries. The Special Rapporteur also considers that the right to

¹¹⁸ Ibid. Draft Declaration principle 3.

¹¹⁹ Ibid. Draft Declaration principle 25.

information includes the right to be informed, even without a specific request, of any matter having negative or potentially negative impact on the environment.”¹²⁰

Absent the freedom of expression, freedoms of thought, conscience, belief and opinion are pointless. Choices, once made, require expression to be effective. Neil A. F. Popovic has written: “Freedom of expression plays an important role in the realization of other rights. Together with the right to information, the right to free expression enables people affected by environmental problems to address those problems in meaningful ways.”¹²¹ These principles are expressed in the Ksentini report in principle 16 of the Draft Declaration: “All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.”¹²²

Linked clearly with freedoms of expression are, obviously, rights to association and assembly. The rights to collective action and demonstration are recognized components of participatory processes. These rights enable individuals to pool their strengths so as to be on a more equal footing with state, corporate and other interests. As Popovic has written: “Associational rights provide a mechanism for combining the will of the concerned individuals to work collectively for environmental measures they might not be able to accomplish on their

¹²⁰ Ibid. at 50. See also Draft Declaration principle 15: “All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions or courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.”

¹²¹ Neil A. F. Popovic, “In Pursuit of Human Rights: Commentary on the Declaration of Principles on Human Rights and the Environment”, 27 Columbia Human Rights Law Review 487, at 548 - 549.

¹²² Ksentini Report, supra note 117, Draft Declaration principle 16.

own.... Both ad hoc and organized association are basic to any democratic system and to any human rights regime.”¹²³ Ksentini’s Draft Declaration is explicit regarding these rights: “All persons have the right to associate freely and peacefully with others for the purposes of protecting the environment or the rights of persons affected by environmental harm.”¹²⁴

Access to the institutions of civil society is the final right to be discussed under the civil and political rights heading. The right mandates that all state institutions be transparent, accountable, and follow the principles of good governance. The rights outlined above must be respected by all government officials and actors. The draft declaration examines this right exhaustively. Principle 18 states: “All persons have the right to active, free and meaningful participation in planning and decision making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental, and human rights consequences of proposed actions.”¹²⁵

Principle 20 declares: “all persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.”¹²⁶

Principle 22 mandates the creation of governing institutions for environmental issues:

All states shall respect and ensure the right to a secure, healthy and ecological sound environment. Accordingly they shall adopt the administrative, legislative and other measures necessary to effectively implement the rights in this declaration.

¹²³ Neil A. F. Popovic, *supra* note 122, at 560.

¹²⁴ Ksentini Report, *supra* note 117, Draft Declaration principle 19.

¹²⁵ *Ibid.* principle 18.

¹²⁶ *Ibid.* principle 20

These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, inter alia,

- Collection and dissemination of information concerning the environment;
- Prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;
- Public Participation in environmental decision making;
- Effective administrative and judicial remedies and redress for environmental harm and the threat of such harm;
- Monitoring, management and equitable sharing of resources;
- Measures to reduce wasteful processes of production and patterns of consumption;
- Measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development, and respect for human rights; and
- Measures aimed at ensuring that the international organizations and agencies to which they belong observe the rights in this declaration.¹²⁷

Obviously the draft declaration goes well beyond the scope of this paper in this area, but it makes the point clearly: people have the right to have access to and redress from effective environmental institutions. The human rights system mandates that such institutions be put in place.

Civil and political rights guarantee that when decisions about a community's relationship with the environment are taken, all affected people may participate in the deliberations. They guarantee fair and open procedures, accessible by all members of the community.

2. Economic, Social and Cultural Rights.

Fundamental violations of these rights in the environmental context are not difficult to picture. If the environment in which people live is degraded to the point that it cannot provide these essentials of life, human rights violations are occurring. As noted in previous chapters, however, these rights go beyond the basic essentials of life and question the methods of

¹²⁷ Ibid. principle 22.

production and distribution. It is a violation of human rights if the environment is degraded so that it cannot support the production and distribution choices of the people that live within it. These considerations must be addressed in environmental policy.

Food security is a central environmental concern in development planning. The draft declaration sets out this right clearly and precisely. Principle 8 states: "All persons have the right to safe and healthy food and water adequate to their well-being."¹²⁸ Principle 10 declares that "All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment."¹²⁹

Health concerns are also particularly relevant in the environmental context. Pollution, toxic waste, and other forms of unsafe environments infringe on the well-being of the individual. The international covenants declare that everyone is entitled to the highest attainable standard of health. Obviously living in an environment made unhealthy by human activity is a violation of this right. People are entitled to live in an environment that is not disease-ridden or otherwise unhealthy or unduly dangerous. The right to health goes beyond simple home life and living conditions. It also applies to working environments. People spend much of their time engaged in their occupations. It is a hollow promise to provide a safe environment to reside in, if people are subjected to unhealthy or dangerous working environments. As with other human rights there is a high degree of choice encompassed in the right to health. The balances and trade-offs communities are willing to make based on projected returns are issues of choice they must address. Principle 7 of the draft declaration states: "All persons have the right to the highest

¹²⁸ Ibid. principle 8.

¹²⁹ Ibid. principle 10.

attainable standard of health free from environmental harm.”¹³⁰ Principle 9 details: “All persons have the right to a safe and healthy working environment.”¹³¹

Within the broader right to education there is the specific right to education about the environment, human rights, and the natural and human processes that affect it. People are entitled to be given the knowledge they need to understand the environment around them, and the knowledge they need to be active and able members of their society. Education curricula are within the decision making competence of the community, and must be a topic of discourse when creating environmental policy. The draft declaration is clear on this: “All persons have the right to environmental and human rights education.”¹³²

The right to culture ensures that people have the right to be members of a community; ensures that they are in control of their personal, social, spiritual, and philosophical destinies. The right to culture is an environmental right because culture is very much tied up in place and property — what was referred to in Chapter 2 as social geometry. Cultural identity is frequently related to places or objects — cultural property. When that property is lost, culture is diminished. Planners must leave people with sufficient cultural space to run their lives.

Addressed in Principle 13, the draft declaration states: “Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes. This includes

¹³⁰ Ibid. principle 7.

¹³¹ Ibid. principle 9.

¹³² Ibid. principle 17.

ecologically sound access to nature. Everyone has the right to preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area.”¹³³

These human rights considerations apply to all development projects. Environmental and developmental planning must give people the means to express their free choices on the issues covered by the human rights system. These choices must be accommodated within environmental and developmental planning, or the process will violate human rights principles.

The World Bank’s Environmental Policy.

The World Bank environmental policy is contained primarily in Bank Procedure 4.01 (BP 4.01), Operational Policy 4.01 (OP 4.01), and their annexes. These policies detail a comprehensive environmental study and management program for Bank financed projects. The Bank policy must be complied with before a project can advance to appraisal and implementation. The main tool of the policy is the environmental assessment (EA). EA requirements are set out in OP 4.01. EA’s address many environmental issues. They look at the natural physical environment — air, land and water; human health and safety; social aspects — involuntary resettlement, indigenous peoples, and cultural property; and transboundary and global environmental impacts. EA further considers country background — national environmental studies, plans, policies, law, institutional capabilities, social structure, and international obligations (the Bank will not finance projects which violate the borrower’s

¹³³ Ibid. principle 13.

international environmental obligations).¹³⁴ Other Bank requirements are outlined in BP 4.01.

The following is a summary of the requirements of both policy documents.

EA is the responsibility of the borrowing country. Where borrower technical, legal or other expertise is lacking, the Bank will provide appropriate assistance. Bank and borrower will work together to set out the Terms of Reference for the EA.¹³⁵ Bank staff and the borrower examine the project proposal and assign a risk category level — A, B, or C.¹³⁶ Category A projects require the most comprehensive EA; they have the potential to create significant adverse environmental impacts that are sensitive, diverse, or unprecedented, and may affect an area broader than the project site.¹³⁷ Category A EA examines the project's positive and negative impacts and compares them with feasible alternatives, and makes recommendations for impact prevention, mitigation and compensation.¹³⁸

¹³⁴ OP 4.01 paragraph 3. The World Bank's environmental and other policies are contained on the Bank's website. They can be found at www.worldbank.org/institutional/manuals/opmanual.nsf.

¹³⁵ BP 4.01 paragraph 1, OP 4.01 paragraphs 4 and 14.

¹³⁶ BP 4.01 paragraph 2.

¹³⁷ The World Bank Operational Manual Good Practices 4.01 — Annex B provides a list of projects likely to receive category A treatment: Dams and Reservoirs; Forestry production projects; Industrial plants (large-scale) and industrial estates, including major expansion, rehabilitation, or modification; Irrigation, drainage, and flood control (large scale); Aquaculture and mariculture (large scale); Land clearance and leveling; Mineral development (including oil and gas); Port and harbor development; Reclamation and new land development; Resettlement; River basin development; Thermal power and hydropower development or expansion; Manufacture, transportation, and use of pesticides or other hazardous and / or toxic materials; New construction or major upgrading of highways and rural roads; and Hazardous waste management and disposal.

¹³⁸ OP 4.01 paragraph 8.

Category B EA tend to be narrower in scope because their potential impact on human populations and environmentally important areas is less severe, site specific, and frequently reversible.¹³⁹ Category B EA requires an assessment of the positive and negative impacts of the project and recommendations for prevention, mitigation and compensation.¹⁴⁰

Category C projects generally require little in the way of EA because they have little or no direct environmental impact.¹⁴¹

Once a project is categorized a Project Concept Document is created listing the categorization and type of EA required, key environmental issues (including resettlement, indigenous peoples, and cultural property), proposed consultative methods with project affected people and local NGO's, and an overall EA schedule.¹⁴² Consultation is a cornerstone of the EA process. Project affected groups and local NGO's must be consulted. For category A projects there must be at least two consultations. The first comes in the initial stages when the project is first proposed. Interested parties are given the opportunity to comment on the needs of the EA

¹³⁹ The World Bank Operational Manual Good Practices 4.01 — Annex B lists the types of projects likely to receive category B treatment: Agroindustries (small scale); Electrical transmission; Irrigation and drainage (small scale); Renewable energy (other than hydroelectric dams); Rural electrification; Tourism; Rural water supply and sanitation; Watershed projects (management or rehabilitation); Protected areas and biodiversity conservation; Rehabilitation or maintenance of highways or rural roads; Rehabilitation or modification of existing industrial facilities (small scale); and Energy efficiency and energy conservation.

¹⁴⁰ OP 4.01 paragraph 8(b).

¹⁴¹ OP 4.01 paragraph 8(c). The World Bank Operational Manual Good Practices 4.01 lists Category C projects. The list includes: Education; Family planning; Health; Nutrition; Institutional development; and Human resource projects.

¹⁴² BP 4.01 paragraph 3.

and what the Terms of Reference ought to be. The second consultation is mandated following the completion of a draft EA. Further consultation may be mandated as required. At all consultative stages people must be given timely and comprehensible information. Upon completion of the draft EA, a copy must be placed in a publicly accessible location.¹⁴³

Final category A EA's are released to the public. Final category B EA's are included in project documents (which are also open to public scrutiny). Any category B study not included in project documents will be released to the public separately.¹⁴⁴

Once complete, Bank staff review the results of the EA for compliance with the Terms of Reference and Bank policy giving close scrutiny to the consultative methods used and the extent to which the various points of view were considered.¹⁴⁵

Close scrutiny is also given to the Environmental Management Plan (EMP), a core element of EA. Bank staff will examine the EMP's mitigation and monitoring measures as well as measures designed to strengthen institutional capacity. If the Bank is not satisfied, the loan appraisal mission may be postponed or changed into a preappraisal mission.¹⁴⁶ Formal loan appraisal begins only after the EA is complete.¹⁴⁷

Appraisal missions for category A projects must include at least one environmental expert. The appraisal mission for all projects reviews both procedural and substantive elements

¹⁴³ BP 4.01 paragraphs 16 and 17.

¹⁴⁴ OP 4.01 paragraph 18.

¹⁴⁵ BP 4.01 paragraphs 11 and 12.

¹⁴⁶ Ibid.

¹⁴⁷ OP 4.01 paragraph 15.

of the EA with the borrower, resolves outstanding issues, assesses the adequacy of responsible institutions, ensures the adequacy of financing and determines whether the EA requirements are being fulfilled by project designers.¹⁴⁸ The appraisal mission completes a project appraisal document which summarizes the reasons for the risk classification, the findings and recommendations of the EA and the borrower's international environmental obligations. The summary also includes environmental baseline conditions, alternatives considered, the predicted impacts of the chosen option, a summary of the EMP, a summary of the consultative process including issues raised and how they were accounted for. Finally, the environmental covenants and condition in the loan agreement are included, as are monitoring arrangements.¹⁴⁹

Bank supervision continues through implementation, watching for compliance with the loan agreements. Closely watched are the management and mitigation measures. If compliance is lacking, the Bank will take appropriate steps to remedy the situation.¹⁵⁰

Finally, after project completion, Bank staff create an Implementation Completion Report which evaluates the actual environmental impacts, whether they were foreseen by the EA, and how mitigatory measures functioned.¹⁵¹

Human Rights and Bank Environmental Policy.

The human rights system makes many demands on the World Bank's environmental policy. As has been stated repeatedly in this chapter and in this thesis, the human rights system

¹⁴⁸ BP 4.01 paragraph 15.

¹⁴⁹ BP 4.01 paragraph 19.

¹⁵⁰ BP 4.01 paragraphs 20 - 22.

¹⁵¹ BP 4.01 paragraph 23.

demands that people be given choices about human processes that affect their lives. Bank policy must ensure that people are given the opportunity to make those choices, and that once made they are incorporated into project planning. I will discuss the specific demands of the human rights system in light of current Bank policy and the various theories outlined at the beginning of the chapter.

1. Civil and Political Rights

With regard to environmental issues, civil and political rights demand that people be provided open access to fair and accountable development institutions entrusted with the responsibility of evaluating, mitigating and preventing environmental degradation. The initial right, the right to life, requires that environments not be degraded to the point where human life is threatened. Project planners must discuss project implications with people who could potentially be affected in order to ascertain which risks people are willing to accept and which they are not. Theorists of sustainable development, deep ecology and the precautionary principle may be particularly useful in this. Sustainable development theory offers the benefit of economic analysis in determining both the long term costs and long term benefits of various alternatives. The precautionary principle cautions against rash decisions and mandates in-depth physical study. Deep ecologists would demand that all natural processes be given equal consideration, greatly expanding the rights to life and equality. Residents in the affected area could position themselves with any of these points of view. Once these choices about environmental risks to life, liberty and personal security are made by the project affected people, planners are required to incorporate them into project design.

Rights of liberty, equality and security further demand equal treatment for all. In these area social ecology and ecofeminism may be particularly useful topics as they highlight the needs of minorities and other vulnerable groups. The Bank must ensure that all people have a role in development planning.

The Bank's policy requires that minorities and vulnerable groups be give particular attention during EA consultation. Little in the policy needs to be altered in this respect. With regard to acceptable environmental trade-offs, however, the policy needs to do a better job in ensuring that project planning incorporates the choices made in the consultative process with the community. It is not enough to simply require that the views of the community be summarized and acknowledged. Obviously there will be diverse points of view within any community, but Bank policy needs to require that decisions about environmental issues have substantial support within the community; that the development plan and the environmental trade-offs have significant support from the people affected. Admittedly, this may be implicit in the policy as written, but it needs to be explicit to meet the requirements of the human rights system.

Freedoms of thought, conscience, belief, opinion, expression and information are crucial procedural elements which must be incorporated into the Bank's environmental policy. All people potentially affected by a project must be given notice of the project and its potential effects. Where the environmental impacts could be global the possibility exists that this duty could encompass an unlimited number of people. This is, of course, flirting with the margins of absurdity, but the point is clear. Any person and any community, including the international community could have a stake in the outcome. Any person or community, including the international community may, therefore, be entitled to express their interests and participate in

the project planning debate. To do so, they must be given notice of the potential harm. This virtually unlimited duty must be a part of Bank policy. It is enough to provide indirectly affected people notice constructively, through the media, for example, as it is unrealistic to require direct notice to all affected people

Timely, accurate and comprehensible information must be provided to anyone with a potential interest (i.e. anyone who could have his or her environment impacted). This is crucial to the effectiveness of any consultative process. For there to be genuine choice, as mandated by the human rights system, people must be given all information. This too must be a part of Bank policy.

These freedoms ensure that people can exercise their free will. They are, along with freedoms for the media, the bases of legitimate participation. Where people are not given the opportunity to make informed decisions about environmental issues affecting their lives, consultation constitutes only a token effort at participation. The Bank cannot proceed with a project based on a sham consultative process and be within the scope of international human rights law. The theorists concerned with egalitarianism have a particularly constructive role in this area. Social ecology and ecofeminism demand that all people, regardless of status, be free to think and speak as they see fit — that they be included in the consultative process.

BP/OP 4.01 needs to have broad and explicit notice requirements. The current policy requires that all 'project affected people' need to be consulted; a further explanation about the potential enormous scope of the term 'project affected people' is warranted. The Bank must require that notice be provided to all of them. Information requirements in the policy are strongly worded and meet the requirements of the human rights system.

As with the Bank's resettlement policy discussed in the second chapter of this thesis, the Bank must do a much better job enforcing the integrity of the consultative process. To meet human rights requirements Bank policy must explicitly require that project affected people and NGO's be able to think and speak freely without coercion or fear of reprisal. If these conditions are not met the choices expressed through the process are not legitimate and the Bank cannot proceed and still be within the protection of international human rights law. Free thought, conscience, belief, opinion and expression must be explicitly mandated in Bank policy.

The rights to collective action enable individuals to join together to express and act upon their choices and opinions. It gives strength needed to balance individual interests against more powerful groups — the state, corporations et cetera. Bank policy must require that people be permitted to associate and assemble in pursuit of their environmental interests. Again this is crucial to the integrity of the consultative process. If that process is flawed, the Bank may not continue with the process.

Bank policy acknowledges the role of NGOs in the development process, but no other mention of these rights is made. Bank policy must decisively require that these freedoms be respected for both formal and informal conduct.

This right to access the institutions of civil society requires that accountable, transparent and effective institutions be in charge of creating and implementing environmental policy. Such institutions shall be required to enforce the procedural rights outlined above and to provide redress for wrongs committed. These institutions provide the structure for the consultative process and for the enforcement of all choices made. As such all the theories discussed at the beginning of the chapter have a role to play because each has a legitimate place in the discourse

on environmental policy. It is to the institutions of civil society that opinions and choices will be expressed, and it is through these institutions that decisions and development planning must flow.

Bank policy requires that the institutions of civil society must be capable of implementing the EA. Where they are not capable, they must be strengthened before the Bank will continue. To meet human rights requirements, however, the policy must require that these institutions enforce the procedural rights outlined above. Further, the policy must require that these institutions be transparent, accountable, and follow the principles of good governance. What this means is that the decision-making process must be open to the public, the decision makers must include members of the affected community, and that the processes used be fair. This is the mandate given by the human rights system.

2. Economic, Cultural and Social Rights.

The essential processes of life are fairly well protected by Bank EA and EMP requirements. It is implicit in these procedures that detrimental activity must be avoided, mitigated or compensated. As has been noted, however, rights to basic needs are broader than simply protecting essential processes. Issues of production and distribution are also contemplated. The consultative process mandated by the human rights system must encompass these issues. There is the possibility of a wide ranging discourse in contemplation of these rights. Sustainable development opens these systems to new and more effective methods; ecofeminism and social ecology offer greater protection to vulnerable and oppressed groups; deep ecology questions the very basic methods employed in human society. Choices must be made through this discourse, and those choices must be incorporated into development planning. Bank policy

must move beyond simple basic needs and acknowledge community choices underlying the provision of the essentials of life. Rights to food and shelter are prime examples of rights which are closely linked to the physical environment, and Bank environmental policy ought require that they be the subject of intensive discussion in the planning discourse.

Health is inextricably related to the physical environment. Pollution, toxic waste and physically dangerous environments constitute human rights violations if they are unduly hazardous. Implicit in the EA requirement contained in Bank policy is that the Bank will not proceed with projects which create these conditions. This could be more explicitly stated, but the policy is probably sufficient to meet human rights requirements. However, what constitutes an unduly hazardous or unhealthy environment must be the decision of the community. Again, sustainable development theory offers the benefit of economic analysis of the costs and benefits of various alternatives. Ecofeminism highlights the health concerns of minorities and vulnerable groups. The precautionary principle mandates careful study; while deep ecology expresses a concern for health that extends beyond simple human interest. Choice about what constitutes an environment that meets basic health requirements must come from the community, and must be integrated into project planning. Bank policy must require this clearly.

Environmental policy must incorporate the right to education. Within the environmental context this right has a specific meaning. People potentially effected by environmental change as a result of development must be educated about the nature of those changes, their rights, and the responsible institutions. This goes beyond simply giving people access to information; in this development context the right requires proactive measures. The content of these measures ought to incorporate the range of potential sources of discourse summarized in this chapter. While the

Bank cannot force people to learn about these subjects, measures must be taken to provide willing participants with the necessary education to make and act upon informed choices.

Current Bank policy only requires that information be made available; this is insufficient. Bank environmental policy must include education as a core element of the development process.

The role of place in peoples lives — of social geometry — must be protected by Bank policy. The human rights system protects the rights of people to their cultural property, be it natural or man-made. Bank policy explicitly covers cultural property and protects it by requiring prevention, mitigation, or compensation for detrimental impacts. Bank policy should, additionally, require that the decisions about prevention, mitigation, and compensation should be included in the consultative discourse and that the conclusions and solutions reached have support within the community. The egalitarian theories are important here because minority cultural property must also be protected within development projects.

Conclusion.

Bank environmental policy seeks to ensure the continuing viability of ecological processes during the development process. The policy was drafted recognizing that without a sound environment, development would be pointless. Bank policy is making strides in recognizing the human role in the environment by ensuring that a participatory process is included in environmental planning. As discussed in the previous chapter, though, Bank policy must do more to protect the integrity of the process if it is to be in line with human rights law. Bank loan conditions need to ensure that basic freedoms — thought, expression, assembly and association are respected and that transparent and fair institutions implement environmental and developmental programs. Project affected people have the human rights to make choices about

the systems that impact their lives. These choices must be respected and followed in the development process. If they are not, the Bank violates human rights principles by proceeding. Clearly, this is unacceptable.

CHAPTER 4

OTHER PROJECT AFFECTED PEOPLE

World Bank policy seeks to protect many of the people impacted by development projects; many more, however, are left unprotected. Most project affected people are affected only peripherally by specific development projects — the impact on their day to day lives from the building of a dam, or the implementation of a forestry or agriculture project is minimal. It is only as these projects accumulate that their impacts can be seen; it is only at the macro-level that the effects of national development paradigms become apparent. However, even when it is not obvious, even when effects can only be seen in their totality, peoples lives are affected by development projects. These effects require that human rights principles be respected in the creation of national development policies. People are entitled to a say in their nation's development because of, and in accordance with, their human rights. This is the first subject of this chapter.

The second subject of this chapter looks at project affected people who are not comprehensively protected against direct negative project impacts by Bank policies. These are people who do not require resettlement, and are not indigenous, yet whose lives are marred by development projects. They may live downstream from a dam, adjacent to a forestry, agricultural or industrial project, or be affected by a myriad of other possible development interventions. No macro-level viewpoint is needed to see the detriments suffered by these people, yet there is no

Bank policy that attempts to meet their needs comprehensively. The rights and basic needs of these people will also be discussed here.

International Law and the Right to Development.

International law provides for not only the individual's right to development, but places a duty on nations to ensure that development occurs. These are the two main thrusts of the 1986 Declaration on the Right to Development.¹⁵² The right to development can be difficult to characterize as it is seemingly both an individual right and a collective right. Article 1 of the Declaration states: "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."¹⁵³ In chapter 2, when discussing indigenous issues, I declined to engage in a discussion of conceptual difficulties inherent in relating collective rights to human rights. There is less conceptual difficulty here. The right to development is about achieving modernity for all people, rather than maintaining traditional societies as can be seen to be the case with indigenous rights. The individual is at the centre of the right to development — "The human person is the central subject of development and should be the active participant and beneficiary of the right to development."¹⁵⁴ It is, however, understood that individual development can only be achieved through concerted action. It is made clear that collective action can only be undertaken employing individual rights: "All human beings have a

¹⁵² Declaration on the Right to Development, U.N. Doc. A/41/53(1987).

¹⁵³ Ibid. Article 1.

¹⁵⁴ Ibid. Article 2(1).

responsibility for development, individually and collectively, taking into account the need for full respect of their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.”¹⁵⁵ The state’s role is also made clear by the Declaration in Article 3: “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.”¹⁵⁶

As the declaration makes clear, international human rights law requires that states create policies to promote development within their borders. That policy must be formulated through a process consistent with these individual human rights principles, outlined in preceding chapters.

2. Development in the Third World — Macro-Level Development.

The development paradigm is the underlying *raison d’être* of the state in the Third World.¹⁵⁷ The possibility of development, modernity, and better days to come legitimizes the state, especially in very poor countries where the state is able to offer very few services and limited legal structure. The development paradigm, though, is largely without definition. There are few clear answers to the question of what constitutes development.

Development in the Third World generally refers to induced rather than spontaneous development. The state imposes progress from above. In the past this has meant that planners

¹⁵⁵ Ibid. Article 2(2).

¹⁵⁶ Ibid. Article 3(1).

¹⁵⁷ See Carol A. Smith, “Development and the State”, in Emilio F. Moran, ed., *Transforming Societies, Transforming Anthropology*. (Ann Arbor: University of Michigan Press, 1996), at 27

and government actors have determined the pattern of progress for the people of the nation. This has led to a marked lack of success. One problem is that induced development has generally lacked social legitimacy — the project beneficiaries did not understand it or simply did not want it. As the Bank transitioned from financial institution to development agency, the reason for this lack of legitimacy became more clear. Cernea has described the problem:

Social scientists made the distinction between spontaneous development, on the one hand, and induced or planned development, on the other. Yet it is worth remembering that an overall theory of induced social development has not yet been articulated.... An absence of concern with social dynamics has been inherent and endemic in the econocratic or technocratic models guiding planned intervention. Economists, as the professional body presiding most often over the rites of project making, have done little to incorporate cultural variables into project models.¹⁵⁸

Cernea described the imprecision of the development paradigm, and of modernity itself.

Economists can give us principles and figures describing development. They cannot tell us how or why it happens, or what it should accomplish. The Western model of development is the one generally looked to when envisioning the future of the developing world. That model, however, has failed as many countries as it has helped. Through the lens of modernity, this is unsurprising. To create modernity, people must be given choice. When faced with a development project based on a Western model of development, rather than a local model, people will frequently choose not to support or participate in it, and may even oppose it outright because it does not comport with the choices they would make if they were given the opportunity. Simple economic models do not account for the social dynamic inherent in modernity.

¹⁵⁸ Michael M. Cernea *Using Knowledge From Social Science in Development Projects*, World Bank Discussion Paper 114. (Washington: World Bank, 1991), at 6 - 7.

Econocentric policies have had very negative results. The economic model traditionally employed by development institutions was based on the Marshall plan — large infusions of cash were invested in infrastructure with the expectation that the economy would be jump started. This model has not worked; rather, developing countries are faced with nearly insurmountable levels of debt with little development to show for it. Between 1970 and 1983 — the debt crunch — debt levels in developing countries grew from \$64 billion to \$810 billion,¹⁵⁹ with few able to relieve these debt loads in the ensuing years.

There are other explanations that have been offered as to why the development paradigm has largely failed in many parts of the Third World. Most problems can be traced to a paucity of local legitimacy. Cernea has noted that: “Development projects have been criticized because they are only segmented units of intervention, they often bypass overall structures, are subject to the hothouse over nurturing syndrome, and thus may develop atypically. Projects are also criticized because they tend to create enclaves and siphon resources from nonproject activities, while sustainable development at the same pace beyond their limited timeframe may be doubtful.”¹⁶⁰ In Cernea’s view development has failed because projects do not take into account the larger national milieu. Projects are imposed from the outside, rather than nurtured from the inside, and they focus on isolated parts of the economy without accommodating larger interrelations. Social legitimacy is not found in unsuccessful projects because they do not reflect larger, more complex, realities.

¹⁵⁹ Carol Smith, *supra* note 158, at 28.

¹⁶⁰ Michael M. Cernea, *supra* note 159, at 8.

Carol Smith has made, essentially, the same point, albeit in a much different way. She focuses on the development agent as the problem:

Whatever agency in which the development agent works, whether a local or international NGO, the World Bank, or USAID, the development agent represents a particular development ideology. Development ideologies vary widely: some development agencies have a vision of cooperative communication (which may or may not be appropriate to a particular political context); they may have a vision of grassroots empowerment; or they may simply have a vision of capital accumulation and growth. Only the latter ideology is like that held by the Third World state. And none of them may correspond to the desires and wishes of those people being developed, who may want nothing more than to be left alone — or nothing less than total sociocultural transformation that the development agent is unprepared to assist or deal with.¹⁶¹

Again, according to Smith, as with Cernea, problems with projects arise because they do not comport with local needs, values, and expectations. Rather, development is seen in static, ideological terms. Planners cling to their vision of what development should look like, rather than following a vision coming from the affected community — be it local or national.

Part of the flaw is in the structure of the development agencies themselves. The owners of development institutions are the lenders, rather than the developing countries. Naturally in such a situation, the values of the owners are going to take precedence over the values of the beneficiaries. Again, Carol Smith:

The real contradiction in current development schemes and Third World states, then, has to do with constituencies. Local Third World communities do not provide support to or form the constituency of international development organizations and thus have little control over the kind of assistance offered. At the same time the international community of development agents plan for people the do not know, living and working under conditions about which they have little comprehension.¹⁶²

¹⁶¹ Carol Smith, *supra* note 158, at 31-32.

¹⁶² *Ibid.* at 30.

This separation between the developers and the developed serves to create a schizophrenic system with various actors seeking different goals. It also serves to create a system that is contrary to the spirit of human rights.

Development in the Third World — Micro-Level Development.

The detriments caused by development projects weigh more heavily on some than on others. Obviously those most directly affected are resettled communities and their hosts, while indigenous peoples also frequently suffer extensive difficulty and deprivation as a result of project interventions. But there are others who are also directly affected by project implementation, yet are not comprehensively covered by a protective Bank policy. They may live downstream from a dam, adjacent to an agriculture, forestry, transportation, or industrial project, or be affected in any of an innumerable number of ways by development projects.

As an example, I will focus on one particular development intervention currently under consideration by the World Bank: the Nam Theun 2 hydroelectric project in Laos. In particular, I will address the downstream impacts of the project and its potential effects on any populations living in that area. Located on the Nakai Plateau, the planned 50 metre dam will create a 450 km² reservoir for generation of power for sale to Thailand.¹⁶³ Much water will be diverted by the dam from the Nam Theun river into the Xe Bang Fai river. Potential downstream direct and indirect impacts of the dam include: reduction of the downstream flow and sediment transport characteristics of the Nam Theun; changes in the water quality of the reservoir and water released from the reservoir; reduction in thermal conditions; reduction in biodiversity and natural species;

¹⁶³ David Wegner, Review Comments on: Nam Theun 2 Hydroelectric Project Environmental Assessment and Management Plan, International Rivers Network, www.irn.org/programs/mekong/wegner.html, at 2.

reduction in native and exotic species; easier access to forests for logging; changes in the nutrient characteristics of downstream water resources; loss of annual variability in downstream flows to the Nam Theun and Xe Bang Fai rivers; loss of seasonal variability; replacement of seasonal variability in flows with daily variability; and significant decrease in flows below the Nam Theun 2 dam (only 16% of the 7,380 million metres³ / year that currently flows through the site will pass through after the dam is built; the Xe Bang Fai, on the other hand, will have an increased flow of 210 metres³ / second).¹⁶⁴ Environmentalists say that the reduced downstream flow will not be sufficient to meet the needs of fish, other wildlife, and riparian ecosystems.¹⁶⁵

People living downstream from the dam on the Nam Theun and Xe Bang Fai rivers will experience enormous changes in their day-to-day lives. Most are reliant on the rivers for one reason or another. Many may rely on the fishery, or on water and flooding for irrigation and agriculture production, and most may rely on it as a source of drinking water. These needs may be more difficult to meet as the level of the Nam Theun is sharply decreased and that of the Xe Bang Fai is sharply increased.

Many of these environmental impacts can be avoided, mitigated, or compensated through the environmental assessment policy outlined in the third chapter of this thesis. But, as was made clear in that chapter, the environmental assessment process does not attempt to incorporate social considerations into environmental planning. The social safeguards in the resettlement and indigenous policies are not present in the environmental policy. This is very problematic. The residents' environment and modes of existence will be altered in fundamental ways. Their

¹⁶⁴ Ibid. at 4.

¹⁶⁵ Ibid.

methods of production and subsistence will require fundamental alteration. Changes to a community's environment and economy will change that community's social structure. Food security and health levels will undoubtedly be lessened. Many of the other impacts experienced by resettlers — landlessness, joblessness, homelessness, marginalization, increased morbidity, social disarticulation — can be expected. For, while these people will not be physically moved, their place and situation will be fundamentally altered. Yet these social ramifications caused by the project intervention are left uncovered by Bank policy. This gap in policy must be remedied.

Human Rights and Macro-Level Development.

Rather than enumerating each right as I have done in previous chapters, here I will simply address larger divisions: civil and political right, and economic, social and cultural rights. Respect for and achievement of civil and political rights are legitimate development goals in and of themselves. As I believe I have made clear, however, they also serve to foster other positive development results. Public policy development benefits from the debate fostered in free civil societies: new ideas are interjected into discourse, needs and aspirations are made clear. When those new ideas, needs and aspirations are incorporated into policy, that policy gains legitimacy will all citizens, whether they are directly impacted by development projects or not. Implementation of development policy also benefits from compliance with civil and political rights. Opportunities for graft and corruption are reduced when the development system is open to inspection by and accountable to the people it serves.¹⁶⁶ Overall development program quality

¹⁶⁶ For excellent studies of corruption in the developing world see R.B. Jain, "Bureaucratic Politics in the Third World: Some Reflections", in *Bureaucratic Politics in the Third World*(New Delhi: Gitanjali, 1989) Ch. 16, pp 362 - 374, and O.B. Server, "Corruption: A Major Problem for Urban Management", 20 *Habitat International* 23.

improves as people judge development intervention in light of openly stated national objectives. Further, once development starts to create benefits, an existing national discourse on how those benefits should be used serves to further legitimate the process. As Sen has written:

The ends and means of development require examination and scrutiny for a fuller understanding of the development process; it is simply not adequate to take as our basic objective just the maximization of income or wealth, which is, as Aristotle noted, “merely useful and for the sake of something else.” For the same reason, economic growth cannot sensibly be treated as an end in itself. Development has to be more concerned with enhancing the lives we lead and the freedoms we enjoy. Expanding the freedoms that we have reason to value not only makes our lives richer and more unfettered, but also allows us to be fuller social persons, exercising our own volitions and interacting with — and influencing — the world in which we live.”¹⁶⁷

This, of course, leads directly to a discussion of economic, social and cultural rights at the macro-development level. Where civil and political rights serve to protect and legitimize the process of development, economic, social and cultural rights protect and legitimize the structure of community. Human dignity, the stated premise of the human rights system, depends on the fulfillment of everyday basic needs — food and shelter, health care, education, culture. These essentials, and the systems through which they are produced and distributed, constitute the foundation of the macro-level development process. As Sen has suggested, stable, healthy and educated people build better productive systems, generate higher levels incomes and revenues, and build a stronger state. Provision and protection of these needs and services must be the base upon which national development policy is built.

The World Bank has a role to play in national macro-level discourses. The Bank frequently engages developing countries in discussions on broad development agendas. The

¹⁶⁷ Amartya Sen, *Supra* note 4, at 14-15.

Bank needs to start encouraging greater participation in creating these development agendas through discourse with the national population. The Bank must strongly support the rights to freedom of conscience and opinion, of expression, association, and assembly. It must encourage transparency and accountability in the institutions of civil society responsible for development. The Bank needs to encourage nations to develop programs that meet the basic needs of their citizens by reminding them that these needs are the foundation upon which development is built. The human rights system demands that the World Bank consistently push nations to respect and ensure fundamental freedoms and basic needs as the development process progresses.

Human Rights and Micro-Level Development.

There is no Bank policy which deals comprehensively with the issues faced by non-indigenous, non-resettler project impacted populations. This failure must be remedied. Large scale development projects are frequently detrimental to the food security of local populations, while community abilities to maintain social services — health care, education, social security safety nets — and cultural integrity are regularly compromised. Economic, social and cultural rights require the Bank to ensure that its funds are not being used to violate people's rights to the satisfaction of their basic needs. Where development affects a population the Bank must mandate programs to ensure that those effects do not degrade that population's ability to survive socially, culturally and economically. A policy similar to the one recommended in this thesis for resettler populations needs to be adopted.

Responsibilities mandated by civil and political rights give the mandate to the Bank to require that all project affected people be given the opportunity to participate in the development decisions affecting their lives. They must be given the opportunity and information they need to

form their own beliefs; they must be given the opportunity to express those beliefs to responsible individuals, and be able to organize and demonstrate on behalf of their interests. They must be guaranteed access to transparent, fair and accountable institutions entrusted with project decision making responsibility. An example of how such open and participatory processes can function is addressed in Chapter 5.

As with macro-level development issues, the reasons for engaging in processes which recognize the rules of human rights go beyond simple legal imposition. Participatory processes which protect and build on basic human needs have been shown to lead to greater success in development projects.¹⁶⁸ Participatory processes lead to greater efficiency in project development: development, as Cernea points out, is provided legitimacy within the affected population, and new ideas and local knowledge serve to challenge assumptions and beliefs of project planners and officials. Opportunities for corruption are lessened in a transparent, accountable process, and people are better able to ensure that implementation follows the project plan and policy if they, themselves, contributed to the project's design. In this call to the Bank to remedy the lack of a comprehensive policy directive in this area, I echo Katarina Tomasevski:

It is a common occurrence for governments to decline responsibility for the negative consequences of development policies, saying that these were imposed on them. If the government negotiating aid agreements claims not to have freedom of choice, what freedom of choice is there for the population which bears the burden? A basic human rights problem is the lack of any role in decision-making for the population affected. A democratization of the process of decision-making is today a demand that is frequently voiced.¹⁶⁹

¹⁶⁸ See Chapter 5 in this thesis for discussion of this assertion.

¹⁶⁹ Katarina Tomasevski, *Development Aid and Human Rights*, (New York: St. Martin's Press, 1989) at 34 - 35.

The Bank must establish a clear policy that ensures the protection of, and participation by all project affected people in project development, implementation and operation. The human rights system demands that all their rights — civil and political, economic, social and cultural — be respected and preserved. The lack of comprehensive policy covering all project affected persons is a violation of the human rights system.

Conclusion.

Development, progress and modernity are very abstract terms. What they imply is a vision of the future resulting from actions taken today. Traditionally, they have tended to be understood as economic in nature. Growth in personal income and overall economies was seen as the ideal of the development paradigm. Recently this view has come under fire by commentators like Amartya Sen. A simple focus on economics ignores the massive social, environmental, and cultural changes that result from development. To say that a society that has lost its cultural focus, has degraded its environment, and created impoverished underclasses, personal insecurity, and social disarticulation has achieved progress simply because incomes have grown is absurd. A singular focus on economics has failed the developing world. A broader focus is needed. Cernea and Smith focus on participatory processes as the solution: let the people decide what constitutes progress. Sen suggests that achieving freedom is the ultimate goal of development. The difficulty with these new standards is that they are not quantifiable; it would be difficult to evaluate success and failure using these criteria. Unfortunately, there is no getting around this. The human rights system mandates that decisions affecting peoples lives ought to be made by those people and by their communities. Economic growth may very well be their chief priority, though it is very likely that it will not be. The Bank may be facing a future

where it does not set standards and goals, it merely helps to fulfill the visions of others. This may be a hard transition to make, but if the Bank is serious about respecting human rights the transition will have to happen. The Bank's role should become facilitation and encouragement. It needs to encourage national policy articulation through processes based on fundamental freedoms. It needs to get countries to ask hard questions about what the future should hold, and then help to bring that future about.

On a more local level, many people directly impacted by development projects are being forgotten in Bank funded development projects. Many people have their lives altered, frequently for the worse, because they live near development projects. The environmental impacts resulting from these projects are covered by Bank policy, but if the local people are not being resettled or are not indigenous, the social and cultural ramifications they experience are ignored. This is absolutely unacceptable. The Bank needs to implement a comprehensive social policy which covers all project affected people. This new policy must use, as its base, human rights and fundamental freedoms. It must make the same efforts to ensure community continuity that the resettlement and indigenous policies make. The current void in this area in Bank policy is entirely unacceptable and must be remedied.

CHAPTER 5

CONCLUSIONS AND IMPLEMENTATION.

To this point this thesis has engaged in a very abstract discussion of policy and rights. Given the diversity of cultures and societies this is, to a degree, unavoidable. If rights and policies are to be effective, they must be general enough to have meaning across cultural boundaries; they must be flexible enough to function well in disparate circumstances. As one commentator has noted: "A meaningful incorporation of human rights into development aid necessitates the recognition of human rights at a high level of abstraction. The principle that people matter, that they have rights, needs to be accepted."¹⁷⁰ A unifying theme of this thesis has been that individuals are at the centre of both the development paradigm and the human rights system. As people differ, so do their needs and expectations. Development and human rights need to be accessible to all people in a manner consistent with their ways of life. This requires abstraction and flexibility from rights and policy.

That said, this final chapter will address practical ways to implement the recommendations I have made in preceding chapters. This chapter will address one potential structure of the participatory system and institutions that are required by human rights law for all development interventions. The chapter will first summarize the conclusions I reached in earlier chapters. It will then incorporate those conclusions into a discussion of what is meant by participation, who it involves and what it is expected to accomplish. The chapter then moves on

¹⁷⁰ Katarina Tomasevski, *supra* note 170, at 165.

to discuss what I view as three key components of any participatory system or institution: communication, evaluation, and integration. I will conclude with comments on the nature of the participatory process and a case study of a successful resettlement project in Costa Rica.

Thesis Conclusions.

Three broad arguments summarize the conclusions reached in earlier chapters. First, any person who has their human rights touched upon by a development project is entitled to be involved in the planning of that project — if a person will be physically moved or affected, if their social and cultural life will be impacted, or if their environment will be changed in any significant way, the human rights system demands that they be included in a participatory development process. Second, the human rights system demands that fair, transparent, and accountable processes and institutions be employed to guide planning, implementation, and operation of the project. All affected people must have the opportunity to participate in these processes and institutions, having their rights to equality, belief and opinion, expression and information, assembly and association respected. Third, people's basic needs and the processes which deliver them must be protected and may only be changed with their informed consent and participation. Modifications of people's health care, food or housing security, educational systems, and social services and their delivery, can only be modified with the consent of the people themselves. These are the standards that must be satisfied by the World Bank and its development policies.

Participation.

Many commentators have written at length about the costs and benefits of the participation of project affected people in development interventions; others have written about

the underlying structural needs for successful participation. Few, however, have been able to define participation in a comprehensive and satisfactory manner. This lack of definition has occurred because there are many different forms participatory processes can take. In a study looking at 121 rural water supply projects in Asia, Africa and Latin America funded by 18 different agencies, Deepa Narayan noted that “The forms of effective participation varied tremendously ranging from representational to domination by leaders and elites, from direct involvement in construction to supervision of hired contractors and from direct involvement in operations and maintenance (O & M) to contracting out O & M to private agencies.”¹⁷¹

While participation is difficult to delineate, there are a number of things that can be said about it within the development paradigm. Participation establishes a relationship between the developers and the developed; it creates a discourse where each stakeholder group can make its positions clear. Genuine participation must include all affected people, majority and minority, rich and poor, advantaged and disadvantaged. A participatory process premised on inequality defeats the purpose of development — it simply reinforces status quo relationships. Communities involved in a participatory process must be given power over some decision making and / or implementation responsibilities, otherwise they are simply being informed or affected by decisions made elsewhere. These factors lead to the working definition of participation offered by James Midgely:

In this mode, the state approves fully of community participation and responds by creating mechanisms for the effective involvement of local communities in all

¹⁷¹ Deepa Narayan, “The Contribution of People’s Participation: Evidence from 121 Rural Water Supply Projects, In Jennifer Rietbergen-McCracken, *Participation in Practice: The Experience of the World Bank and Other Stakeholders*, World Bank Discussion Paper No. 333. (Washington: The World Bank, 1996.) at 12.

aspects of development. Inspired by various social and political theories including populism, anarchism and pluralism, the participatory mode involves a real devolution of power. In addition to creating genuine community level political institutions, the state sponsors participatory activities through the training and deployment of community workers, the provision of material and other forms of assistance and the co-ordination of central, regional and local decisions through comprehensive national planning. A concerted effort is made to enfranchise the poorest sections of the community and recognition and support is provided for local voluntary associations of all kinds. Local decision-making bodies are given specific rights and functions and real control over budgets. Steps are taken to ensure that civil servants are sensitized to the needs of ordinary people and that participation becomes institutionalized in the administrative procedures of government. Above all, major economic and social reforms are carried out to ensure that poor communities derive real benefits from national development effort and that political participation and social development ideals are integrated.¹⁷²

Midgely's definition is an idealized vision, and is obviously not the only way to construct participatory structures. S.R. Arnstein outlined eight different levels of participation, forming a hierarchy of participatory methods.¹⁷³ Genuine participation, he wrote, can be found in three types of structure: citizen control, delegated power, or partnership. Placation, consultation, and mere provision of information constitute token participation, while therapy and manipulation are seen as forms of non-participation. It is not my purpose here to delve into the definitions of each of these terms, merely to point out that genuine participation must give project affected people an effective role in the decision making and implementation process. Simply asking questions of

¹⁷² James Midgely, "Community Participation: History, Concepts and Controversies", In Anthony Hall, Margaret Hardiman and Dhanpaul Narine, *Community Participation, Social Development and the State*. London: Methuen, 1986, at 44.

¹⁷³ S.R. Arnstein. "Eight Rungs on the Ladder of Citizen Participation" In Cahn and Passet (eds.), *Citizen Participation: Effecting Community Change*. (New York: Praeger, 1971), at 70. For a brief discussion of Arnstein's outline, see also: Claus C. Rebien. *Evaluating Development Assistance in Theory and in Practice*. (Aldershot: Avebury, 1996), at 58.

project affected people and informing them of decisions, once they are made, is not sufficient to meet the standards of participation set out in development literature, nor the human rights system. Project affected people must be given power over significant decisions in the planning, implementation and operations of projects. They must be given power directly or through their representatives: they must be made partners in the process if it is to be legitimate according to both the scholarly literature and international law.

The benefits of creating these sorts of participatory methods have been shown time and again. Narayan notes, in the water project study noted above, that there are two factors that frequently determine whether a project is a success or a failure — both relate to participation by project affected people. First, project affected people and beneficiaries must make a commitment to be involved with the project prior to implementation. When people understand their role before construction begins, they are more likely to participate in and receive the benefits of the development process. Secondly, organization of project affected people and beneficiaries is crucial. Narayan's study found that

the forms of beneficiary *organization* varied even within communities, but they were characterized by internalized and membership-enforced rules and regulations. All successful groups not only had rules that they enforced but also had special rules allowing access by the poorest and most destitute people based on some labor exchanges. Successful groups were either newly created, incorporating traditional principles of organization, or were built on indigenous organizations. This outcome maximized operation of trust, loyalty, and reciprocity.¹⁷⁴

Narayan reached the conclusion that when these two conditions, commitment and organization, were met beneficiary participation was a significant contributor to project success. Others have

¹⁷⁴ Deepa Narayan, *supra* note 172, at 13.

made similar findings: in her study of 48 World Bank project interventions of various types, Mary Schmidt also found that participation was a key component of project success. She found that where participatory approaches were employed projects achieved higher rates of effectiveness and efficiency relative to projects where participatory efforts were unsuccessful or non-existent. Moreover she found that participation led to greater empowerment of beneficiaries in relation to their governments.¹⁷⁵

Many commentators have over-idealized the strengths of participatory methods. This is a mistake I seek to avoid repeating. It must be remembered that successful participation is the result of hard work and understanding by development agents. Midgely has written a scathing indictment of ivory tower advocates of community participation:

The proponents of community participation are staunch advocates of local self-reliance, independence and autonomy and are stern critics of paternalism in all its guises. They have consistently attacked the 'top-down' approach of conventional community development and the efforts of external agencies to provide benevolently for the poor. However, they do not seem to realize that their own approach is riddled with paternalism. Although many writers claim that community workers always respect the community's right to decide its own affairs, it is unlikely that these workers will refrain from seeking to have their own views adopted.... Although many community participation advocates employ a concept of community participation that equates people's involvement with a total and continuous commitment to activism, this is hardly feasible..... Ordinary people have many other commitments and it is a myth that the poor have an excess of free time. But this fact is often overlooked by the proponents of community participation who often complain about the failure of participatory programmes to secure indefinite and total involvement.¹⁷⁶

¹⁷⁵ Mary Schmidt. "Popular Participation and the World Bank: Lessons From Forty-Eight Case Studies", in Jennifer Reitbergen-McCracken, *supra* note 172, at 24-25.

¹⁷⁶ James Midgely, *supra* note 173, at 35-36.

Given the abstraction of this thesis to this point, Midgley's criticisms must be noted and met.

The human rights system is an idealistic structure, but international law requires that its principles be met. The next section discusses how the human rights structure may be practically employed to create a realistic participatory system.

Communication, Evaluation, and Integration.

Communication, evaluation and integration are the three processes which I believe are crucial to successful participatory planning in a manner that is consistent with human rights. Communication and evaluation are terms with specific meanings in certain scholarly communities. Integration, meanwhile, is a term I have decided to employ to describe the role of the technical expert in project planning.

Communication has come to be understood in the development communication community as the process of gathering information and expressing findings through interchange between developers and developed¹⁷⁷. Robert Agunga, a proponent of Development Support Communication (DSC), has described communication as a concept in the development paradigm in this way:

Communication is used to refer to the process of creating *understanding* as the basis for development. People should not be forced to adopt new practices, no matter how good aid-givers perceive them to be. Instead, people must be encouraged to adopt new practices based on well-informed decisions. Communication places emphasis on *people interaction*. Where beneficiaries and benefactors seem unable to understand one another, the professional communicator is needed to facilitate the dialogue.¹⁷⁸

¹⁷⁷ See Robert A. Agunga. *Developing the Third World: A Communication Approach*. (Commack: Nova Science Publishers, 1996).

¹⁷⁸ *Ibid.* at 225.

Communication must be a cooperative process between developers and developed. Planners and project affected people need to be able to talk to one another and to understand one another. Each must be able to express their needs and abilities to the other. Open lines of communication enable the development discourse to reflect the needs of all stakeholders, rather than merely the goals and methods of the developer.

Evaluation is a process that all people engage in every day — it occurs whenever we address circumstances confronting us. Evaluation in the development context, obviously, is closely related to this. Aid evaluation looks at the information and views conveyed by all stakeholders and attempts to reach conclusions about consistencies and inconsistencies between those views. “The inquiry, research, or evaluation process is a continuous, dialectic chain of questioning, answering, requestioning, reanalysing and so on, leading to a common construction among observer and observed.”¹⁷⁹ In development, evaluation is employed in many contexts — it is used to judge the process employed in planning and implementation, as well as to monitor project effectiveness in terms of desired results. It is a mechanism used by all stakeholders, formally and informally.

Communication and evaluation are symbiotic. The former is used to gather and share information, while the latter is the considered response to that information once received. Together they help create a legitimate participatory process. Communication and evaluation professionals each see themselves as creating a holistic development process, whereby understanding and cooperation can be fostered. Claus C. Rebien, an evaluator, has outlined the evaluation process:

¹⁷⁹ Claus C. Rebien, *supra* note 174, at 30.

There are four phases to the evaluation approach. In the first phase, stakeholders are identified and their claims, concerns, and issues are solicited. In the second phase, the concerns raised by each stakeholder group are presented to other groups of stakeholders for refutation, agreement or any other reaction. Many concerns will be resolved through this process of dialogue. In the third phase, concerns which have not yet been resolved will determine the information to be collected by the evaluator. The choice of method and type of data to be collected will depend on stakeholders' information needs. After additional information has been collected, stakeholders will, in the fourth phase, negotiate solutions to the disputed issues under the guidance of — and facilitated by — the evaluator.¹⁸⁰

With Midgely's warning in mind it is necessary to cut through the self-important rhetoric of the evaluation and communication professionals to understand the value of what is being said.

Communication and evaluation are methods of involving project affected people in the decision making and implementation processes. They help accomplish Narayan's two prerequisites for successful participatory planning: prior commitment and organization. Communication between stakeholders, both developers and developed, helps everyone involved to understand what is desired from the development project and what their role is to be in bringing results to fruition. Evaluation is needed to provide realistic expectations of what the abilities of each stakeholder are, and what they can reasonably be expected from the project. Communication and evaluation provide the essential structure for successful participatory planning.

Professional planners trained in communication and evaluation skills are necessary for successful project development. As Midgely wrote, it is unrealistic to expect that all project

¹⁸⁰ Ibid. P.31. The DSC professionals see themselves as being just as indispensable as the evaluators. Agunga wrote: "The need for communication in development has increased with a growing sophistication of the development process. Since 1970, development emphasis has gone from stressing piecemeal and simplistic projects to an emphasis on holistic or complex development programs. The more complex the development process, the greater the need for communication to facilitate it." Agunga, *supra* note 178, at 224.

affected people are going to be actively involved in all stages of development planning, implementation and operation. It is also unrealistic to expect that all people will express their views openly and completely. Development projects tend to be implemented in societies which retain many traditional methods of decision making and community planning. Narayan noted that the best forms of participatory planning utilized traditional or indigenous forms of community organization because they are the ones that people trust and have faith in. It is through these community institutions that most decisions will be made, and most actions mandated. Planners must be trained in communication and evaluation skills so that they can understand and interact with these institutions effectively. Planners must be able to evaluate the strengths and weaknesses of community structures so that they can draw from the strengths and help remedy the weaknesses. Where minorities are excluded, or their voices drowned out by stronger members of the community, it is up to development agents to actively investigate those unheard interests, without unduly damaging the community's methods of self-governance. Further, while members of traditional societies are more likely to make decisions employing traditional decision making institutions, project planners must provide people with the opportunity to speak their minds, both in public or in private. The human rights system does not require people to exercise their rights, rather it simply mandates that they have the opportunity to do so. Project planners must develop practices and institutions that engage the affected community in ways that are meaningful and effective for that community, while at the same time actively ensuring that all people's interests are reflected in the planning process, and that all people may think, speak, and act in a manner consistent with their consciences if they so choose.

Integration is the development function occurring after initial communication and evaluation. It is the role of the professional planner to take the decisions arising from the participatory process and to create a project that reflects those decisions. Integration occurs when the decisions reached are merged with technical expertise. It is the challenge to the planner posed by the development paradigm and the human rights system to facilitate the needs, wishes and desires of the stakeholders in a feasible development plan. The role of technical planners is crucial to project success, as the completed project must resemble community expectations if genuine and sustainable development is to occur. Again, communication and evaluation professionals are crucial here. They must ensure that the technical planners fully understand what is required and expected. At the same time, technical planners must be able to convey, through communication experts, which results are possible and which are not. Technical construction plans are a part of the dialectic which must occur in stakeholder participation.

Communication, Evaluation, and Integration in Context.

The final section of this chapter will address an example of effective participatory planning in the resettlement context. William L. Partridge conducted a case study on the Arenal hydroelectric project in Costa Rica, which was constructed in the 1970's. His case study forms the basis of the discussion in this section.¹⁸¹

The Arenal hydroelectric project, funded by the Inter-American Development Bank (IDB), centres upon a 70 metre dam with a production capacity of 157 MW. As with all such

¹⁸¹ William L. Partridge, "Successful Involuntary Resettlement Lessons from the Costa Rican Arenal Hydroelectric Project", in Guggenheim and Cernea, eds., *Anthropological Approaches to Resettlement: Policy Practice and Theory*, (Boulder: Westview Press, 1993) 351-369.

dams, a large reservoir is needed for power generation; creation of this reservoir required the resettlement of some 500 families, amounting to about 2500 people. The economy in the area was based on ranching. As such about half the population was dispersed over a large area, while the other half lived in two towns. Resettlement planning was conducted through an 11 phase process. The resettlement project was planned and implemented by Instituto Costarricense de Electrificación (ICE) the Costa Rican power company; the IDB approved funding and became involved two years after resettlement planning began.

Phase one consisted of an ethnographic sample survey of the affected communities. A task force of anthropologists was sent into the area to establish basic demographic information and baselines. This survey showed that very few members of the community had knowledge of the project, or of its potential impact on their lives. Phase two saw the task force conduct an information campaign and meet with the affected families. The anthropologists collected more specific demographic and economic information regarding the families, but also kept track of the questions they were being asked by residents. A pamphlet was created and distributed to answer the most frequently asked questions and to provide general project information. Further opportunity for community interaction with project planners was given when open meetings were held in order for questions to be posed directly to project officials.

Phase three saw more information gathered, as a census was conducted. Not only were people counted, but they were also asked a number of questions about local physical, economic and social conditions, as well as about their needs and aspirations. Developers found that people wanted few changes — they wanted their physical environment to change very little, they wanted the new settlement sites to be as close to their current residences as possible, and most wanted

their occupations to remain unchanged. This information, once compiled, was included as a part of phase four, publication of planning data. The published data included in the published planning data included demographic information, economic bases and employment patterns, land tenure systems, housing quality, and general infrastructure information. Further, planners published their objectives in the resettlement process: first they wanted to create better living conditions for the communities, and second, they hoped to integrate the physical resettlement with social and economic development. This enabled the project affected people to scrutinize and challenge the information and objectives which created the planning framework.

Technical experts were hired to help conduct phase five, which determined resettlement sites. Town committees were used to help find the most suitable locations for relocation. These committees had originally been established by wealthy ranchers opposed to the project. However, their interests had ceased to be important in the committees because it had become apparent that they were not interested in the needs of the community, rather they were concerned with only their own well-being. The committees had become the representatives of the interests of the poorer town residents.¹⁸² Based on the preferences expressed in earlier phases, and on interaction with the committees, seven potential resettlement sites were identified for one town, and three potential sites for the other. The committees organized votes on both the sites for the new towns, as well as on the design of the new settlements.

Based on the expressed preferences of the residents, technical experts prepared a resettlement action plan to be submitted to the IDB for approval. Once the loan was approved

¹⁸² The interests of the wealthy ranchers were not, of course, ignored. Their interests were, in fact well represented as most elected and appointed officials came from the upper classes.

(phase six), developers undertook completion of phase seven, land acquisition. Land acquisition was a more confrontational process, than the preceding phases had established. Planners offered compensation based on their studies of the value of the community, and the value of each family's owned assets. Owners could either accept the offer, or could challenge the compensation through either the development office, or through the courts. In the end, no owners resorted to the courts, and the land was all successfully purchased. With the submergence land purchased, planners turned their attention to the structure of the new settlements. This phase, phase eight, again saw developers working with the communities to establish plans cooperatively. Experts created a settlement plan based on the previously expressed needs and desires of the communities, and presented it at meetings. The resettlers were given time to examine the plan and request modifications (which were accommodated), and were given the power of approval over the final resettlement program. Planners then met with families individually to assess their particular needs. The accommodation and farmland to be provided in the new settlements was determined by assessing each family's current holdings, their abilities, and the number of members. Planners used the results of these meetings, as well as consultations with community leaders who were consulted on social networks and friendship preferences to determine the placement of each family.

Construction of the new settlements began with phase ten. Each residence and farm was built based on the specifications of the relevant family; in fact, family members were permitted to act as 'building inspectors' for their own homes. Community involvement in construction was also achieved as seventy community members were trained and employed to construct the new houses. Once families moved into the new settlement phase eleven, community and agricultural

development, began. This process was facilitated by experts who had moved into the towns before resettlement had taken place; in doing so they gained the trust of the communities, and a better understanding of them. Following resettlement, they engaged many resettlers in general agricultural and community development programs, as well as mobilizing people to build a new Catholic church, and to construct desks and tables for the new school.

Partridge found that the settlements had stabilized and become sustainable at the time of his study, six to seven years following resettlement. Most of the resettlers have remained in the community, and their quality of life seems to have improved. By his account, this was a very successful resettlement project. In light of the discussion contained in this thesis, the project also met most human rights requirements. The resettlers were involved in a participatory process, in which they were permitted to develop their own ideas and opinions, they were given access to the relevant information, they were permitted to organize to support their own interests, and they were permitted to express themselves freely. Initial meetings with project planners were open to discussions of not only resettlement planning, but also to discussions about the project itself. While community input into the overall hydroelectric project structure seems minimal, communities were, at least, given the opportunity to comment on it. While Partridge did not explicitly discuss maintenance of basic needs and provision of social services, it is not unreasonable to expect that they were contained in the resettlement action plan's infrastructure provisions, which resettlers were able to comment on and modify.¹⁸³ Project planners created a

¹⁸³ There are many case studies of projects designed to help people meet their basic needs. For a discussion of a rural health care program See Margaret Hardiman "People's involvement in health and medical care", in James Midgely, *supra* note 3, 45 - 69. For a discussion of an education project See Anthony Hall, "Education, schooling and participation", in James Midgely, *supra* note 173, 70 - 86. For a case study of a rural

system that was transparent, accountable and fair to all parties; most human rights appear to have been satisfied.

It is surprising that a small power company in a developing nation could achieve such success with resettlement in the 1970's, yet today large development institutions are still having difficulties with resettlement planning. The World Bank's failure at Narmada is just one example of its inability to develop policies and programs facilitating successful resettlement.¹⁸⁴ It is to be hoped that the resettlement experience caused by the construction of the Nam Theun 2 dam in Laos will be more reflective of Arenal than of Narmada.

The effectiveness of the communication, evaluation, integration approach I have outlined in this chapter can also be seen. Project affected people were informed about all aspects of the resettlement project. They were given the opportunity to evaluate options presented at all stages of the project development cycle, and were given the power to modify plans according to their needs and aspirations. Technical experts were able to communicate with both communities as entities, and with residents on a personal level; this enabled them to integrate the wishes of project affected people with their own development expertise to create an effective resettlement plan. If planners engage the communication, evaluation, integration approach I have laid out here, they can accomplish very successful development projects that are also consistent with the demands of the human rights system.

development project See Nia Consult "Farmers' Participation in National Irrigation Systems in the Philippines" in Jennifer Rietbergen-McCracken, *supra* note 172, 79 - 83.

¹⁸⁴ The Narmada project is discussed in Chapter 1, footnote 17.

Conclusion.

Human rights make many demands within the development paradigm. Not only do they protect people's basic needs, and the processes which serve those needs, they also mandate a free, fair, and accountable participatory process to create development strategies, and to implement and operate development projects. International law requires that World Bank policy move to protect human rights within the development paradigm; all international institutions are so obliged. The Bank has been moving in this direction from its origins as a financial institution, to its current status as a development agency encouraging broad based development reforms. It is time to move beyond rhetoric and to meaningfully implement human rights principles into project planning policies. Bank resettlement and environmental policies must do a better job of creating transparent participatory processes which guarantee project affected people a decision-making role in project development. Those policies also need to better protect basic human needs and their processes through explicit guarantees. New policies are mandated by the human rights system to encourage free and open discourses within nations and to protect other vulnerable people directly affected by development interventions. The broad effects of development must be acknowledged by the Bank through comprehensive new policies. Complex human rights based development will require new skills for planners; professionals trained in communication and cooperative evaluation skills must be employed along side technical experts to effectively implement community based development interventions. The World Bank must align its policies with the principles of human rights as those principles continue their ascension to preeminence in international law and in the global community.

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