Human rights as an instrument of development policy has only recently been incorporated into the international development agenda. An attempt is made in this article to trace the inception of this idea in the international arena and to evaluate its applicability to the Bangladesh case. The article concludes with some recommendations for incorporating human rights in future development co-operation programmes with Bangladesh.

One of the main objectives of the United Nations is the promotion of human rights as stated in the preamble and in Articles 55 and 56 of the UN Charter, an international treaty which is legally binding on practically every country in the world. A comprehensive enumeration of political, civil, economic, social and cultural rights was articulated in the Universal Declaration of Human Rights (UDHR), adopted unanimously by the UN General Assembly in 1948. The Universal Declaration contains 30 articles covering the
integrity of the individual, political and civil rights (such as freedom of thought, expression, religion, association and access to the political process), and economic, social and cultural rights such as right to employment, education, social security and full participation in society.¹

The Universal Declaration has served as an authoritative guide to the subsequent development of international and regional treaties and other instruments. After the Universal Declaration was adopted, the UN Commission on Human Rights was charged with drafting an international treaty that would codify those rights into a legally binding instrument. Almost twenty years of preparatory work resulted in the General Assembly’s adoption of two separate treaties in 1966: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR). By 1976, both treaties had been ratified by the requisite number of states to come into force as legally binding documents. Together UDHR, ICCPR and ICESCR are referred to as the “International Bill of Human Rights”.

The UDHR embodied two principles, which serve as cornerstones of international human rights law: universality and indivisibility. The principle of universality affirms that human rights are a fundamental component of the state of nature that all human beings have rights by virtue of being human, without regard to any distinctions, such as sex, race, class, or other social, economic or political conditions. The indivisibility of human rights means that all categories of rights

political, civil, economic, social and cultural are equal in importance and mutually interdependent. Both these principles were strongly affirmed at the 1993 World Conference on Human Rights in Vienna.

But despite this there have been persistent attempts to perceive these rights in a hierarchical way. This has led to misrepresentations such as that (a) civil and political rights are more justifiable i.e. capable of being deliberated with reference to legal principles than economic, social and cultural rights, and (b) economic, social and cultural rights are not really rights but rather aspirations to be realised progressively, and (c) that resource constraints effectively provide states with a valid exemption from their obligations to ensure that economic, social and cultural rights are enjoyed by their citizens.

Scholars and human rights practitioners have been working to clarify these confusions and misrepresentations and hence bring the notion of human rights closer to the indivisibility principle.

II
THE HUMAN RIGHTS OBLIGATIONS OF GOVERNMENTS

The above misrepresentations have often given governments the leeway to escape from their obligations to respect, protect and promote the social, economic and cultural rights of the people as embodied in the ICESCR. This has crucial implications for development policy since it is through the realisation of these rights that the human rights approach to development policy can be achieved. The following
arguments will make clear the indivisibility of rights and hence the obligations of governments to respect them.

The root of the confusion is often thought to be the implementation clause of the ICESCR which states: "Each State party to the present Covenant undertakes to take steps, individually and through international assistance and, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised by the present Covenant by all appropriate means, including particularly the adoption of legislative measures."²

The confusion arises from the phrases 'to the maximum of its available resources' and 'achieving progressively'. Other ambiguities in the ICESCR were deliberate in order to allow States to fulfil their obligations within their particular economic, social, cultural and political contexts. But these have been misconstrued by many scholars as an inherent weakness. The Limburg Principles on the Implementation of the ICESCR had set the record straight. It had interpreted the phrase 'to the maximum of its available resources' as meaning:

- State parties are obligated, regardless of economic development, to ensure respect for minimum subsistence rights for all.
- ‘Available resources’ refers to both the resources within a country and those available from the international cooperation and assistance.

² International Covenant of Economic, Social and Cultural Rights (ICESCR), note 7, Article 2(1).
In determining whether adequate measures have been taken for the realisation of the rights recognised in the Covenant attention shall be paid to equitable and effective use of and access to the available resources.

Some obligations in the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in Article 2 (2) of the Covenant.

In relation to the 'progressive realisation' of economic, social and cultural rights the Maastricht Guidelines stipulate: "The burden is on the State to demonstrate that it is making measurable progress toward the full realisation of the rights in question. The State cannot use the 'progressive realisation' provisions in Article 2 of the Covenant as a pretext for non-compliance. Nor can the State justify derogation or limitations of rights recognised in the Covenant because of different economic, social, religious and cultural backgrounds."³

III

THE HUMAN RIGHTS OBLIGATIONS OF DEVELOPMENT AGENCIES

Not only states but also many multilateral and bilateral agencies as well as NGOs have been reluctant to recognise for themselves how the obligations contained in the Covenant, as well as other sources of human rights law can provide an enforceable, normative framework with which to promote goals of economic and social development. Philip Alston, a former Chairperson of the Committee on Economic, Social and

Cultural Rights stated that none of the official multilateral or bilateral development agencies nor any of the larger international development NGOs had mentioned human rights prior to the early 1990s. This slow recognition of the linkages existing between economic and social development and economic and social rights by major development agencies, have perhaps been responsible for the consequent marginal realisation of those rights. These linkages have, however, been more strongly and effectively stated in the Women in Development (WID) framework than in any other area.  

IV

WOMEN'S RIGHTS AS HUMAN RIGHTS

Activists in the women's movement have rightly questioned that how is it that 556 million women and girls throughout the world are illiterate and this is not viewed as a violation of their right to education? When 600,000 women die annually as a result of complications of pregnancy and an additional 18 million women suffer from pregnancy-related morbidities that go untreated how is that that this is not seen as a failure of governments to meet their obligations to promote, protect and fulfil women's rights to the most basic attainable standard of health? How can the feminisation of poverty be viewed as anything less than a violation of women's rights to an adequate standard of living, equal access to employment, credit, property and training. The asking of these questions from a woman's perspective have been made possible due to the 1979 Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) which made the

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4 Cited in Daniel Whelan, *op.cit.*
elimination of gender-based discrimination an objective of international human rights law. Prior to CEDAW, human rights protection of direct relevance to women were codified in a number of specialised instruments relating to employment, maternity, trafficking in persons, nationality, civil and political rights, marriage, education and violence against women. However, none of these instruments created monitoring mechanism for the implementation of rights enumerated in each. Women also find the non-discrimination clauses in the ICCPR and the ICESCR extremely relevant to their cause since they guarantee that the rights embodied in these Covenants are to be extended equally without distinction of any kind as to sex. However, whereas ICCPR and ICESCR enumerate basic human rights, CEDAW is a directive document that obligates State parties to eliminate discrimination against women. For example, ICESCR guarantees the right of everyone to education. CEDAW obligates State parties to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and specifically to ensure the same conditions for career and vocational guidance, access to studies and the same curriculum, examination, teaching staff and facilities as men enjoy.

THE HUMAN RIGHTS APPROACH TO DEVELOPMENT: DEMONSTRATIONS AND DEBATE

The human rights approach to development have thus been greatly enhanced by instruments such as CEDAW and
reinforced through the Cairo and Beijing agreements. Developments such as these have generated the necessary impetus to many multilateral agencies to recast many of their traditional development concerns within a human rights framework. For example UNICEF has reaffirmed its goals and objectives within the framework of the Convention on the Rights of the Child (CRC). The UNDP provides another example of a development agency that has taken bold steps to re-invent itself. In its most recent policy paper, UNDP states that the human rights approach it is adopting, should be holistic and multidimensional, recognising the multidimensional, recognising mutual dependency and complementarity of sustainable human development with social, economic, cultural, civil and political rights. UNDP has also recognised that human rights will be mainstreamed in its activities and not relegated only to specific human rights projects.

But the human rights approach to development is far from being strewn with roses. The foremost obstacle it faces is political. Since according to the indivisibility principle of human rights, economic, social and cultural rights stand on an equal footing with civil and political rights, failures by governments to protect, promote and fulfil those rights can appropriately be considered as violations as opposed to mere ineffectual development policies. Thus issues of development become politically sensitive areas, which especially makes developing countries vulnerable to the machinations of global power politics. This is not a desirable position, which many national governments would want to be in. Among recent examples are
debates which raged between the North and South regarding child labour or criticisms directed at the US for making use of human rights issues to gain political leverage in particular countries.

But the reluctance is not solely on the part of national governments. Many development agencies, international and local, are hesitant to take on board the human rights perspective only because they lack the political mandate to do so. A human rights perspective involves rigorous monitoring of a government's obligations, and this is not possible for development agencies, which can operate only by permission of that government. This is also true of local NGOs whose mandates limit them to charitable activities and hence prevent them from taking part in activities of a more political nature. But in the broader sense defending the economic, social and cultural rights of a people is essentially a political task. The only way to circumvent such obstacles would be to encourage a vibrant and thriving civil liberties movement which could give shape to a human rights regime rooted strongly within a nation-state, but at the same time having effective and meaningful cross-border alliances.

VI
THE BANGLADESH CONTEXT

Bangladesh is a signatory to the UDHR, CEDAW, the Cairo and Beijing agreements but it has yet to sign and ratify the ICCPR and the ICESCR. The present Government has withdrawn the earlier reservations to Article 13 (a) and Article (1) (f) of CEDAW with respect to family benefits and
guardianship of children, but it still retains its reservation to Article 2, the most important clause of the document regarding implementation. In fact critics have stated that such reservations were incompatible with the object and purpose of the Convention, inconsistent with Bangladesh’s existing international obligations and are grounded on vague and unspecific premises.\textsuperscript{5} From the above it may be understood that Bangladesh’s commitment to human rights though well-intentioned is often marred by political considerations. Yet at the birth of the state’s independence it had articulated the four principles of statecraft: nationalism, democracy, secularism and socialism. The enunciation of these principles should have naturally led Bangladesh to commit itself to two of the important underlying principles of human rights: universality and indivisibility. But subsequent political developments took Bangladesh onto a plane of politics, which rejected the principles of secularism and socialism. The fact that the four principles have been severely amputated and distorted and that this has not been remedied even by the present government is a tragic reminder of how a government, which emerged from an idealistic battle against repressive forces can quickly fall prey to the machinations of powerful interests.

Currently, the Bangladesh scene witnesses many instances of blatant human rights violations: increasing violence against women, trafficking of women and children, structural violence against religious and ethnic minorities, incidents of state coercion and para-statal violence e.g. eviction of slum dwellers, sex workers from brothels without proper rehabilitation measures, the sustained promulgation of

\textsuperscript{5} Meghna Guhathakurta, “The Universality of Human Rights”, unpublished paper.
black laws such as the Special Powers Act, or Vested Properties Act to name but a few.\(^6\) Although it is easy to criticise the government on these issues, it is harder perhaps to think of alternative ways in which one may mobilise public opinion to help bring pressure on the government to change the state of affairs. As mentioned before this could only be possible if a vibrant civil rights movement and human rights regime were to emerge. The civil liberties movement in Bangladesh is still at an embryonic stage and the more resourceful organisations often too dependent on the donor community for their survival.

Given such a situation, it may be difficult to envisage an effective human rights approach in development policy. However, that is not to stay that it cannot or indeed should not be initiated. It is appropriate in this respect to look at those spaces, which are open to change or show signs of potentiality. Bangladesh Government has adopted a primary education and mass literacy programme “Education for All by the Year 2000".\(^7\) It would be interesting to see if a human rights perspective can be brought in the actual implementation of this programme i.e. to ensure that in the implementation phase, care would be taken to eliminate all forms of discrimination on the basis of sex, income, race, and religion in both its outreach plan as well as curriculum development.


Since it is the German-Bangladesh Development Co-operation, which is at issue here, one may take a look at the nature of current German assistance and explore its potentials. Germany is currently the third largest bilateral donor to Bangladesh, next to Japan and the USA. From 1971 the total German government assistance to Bangladesh has amounted to US$ 4.11 billion. Financial assistance amounting to US$1.6 billion went into areas of power generation and distribution, development of transport services and construction of cyclone shelters and schools. Agricultural and rural development, food for the poor, professional training, promotion of basic health services and last but not least, family planning were other main areas of financial co-operation. German technical co-operation focused on the promotion of basic health services, agriculture and rural development, education and vocational training and the support of self-help initiatives designed to alleviate poverty. The technical aid amounted to more than US$320 million.

From the above it is clear that a large chunk of German project aid is targeted to infrastructure oriented projects. Technical assistance is, however, more labour-intensive. But a summary of German Bangladesh Relations released by the German Embassy in Dhaka states\(^8\) that Germany’s development co-operation in the coming years will give top priority to improving basic health services including family planning and mother-child care, fostering basic education and vocational training and poverty alleviation programmes. Hence, there is enormous potential for transforming this new

\(^8\) German-Bangladesh Relations, (German Embassy, Dhaka, 25.7.99).
direction of German aid and channelling it towards a human
rights perspective. That the health sector has already been
affected by this new discourse is evident from the evolution of
the Bangladesh Government's policy on Family Planning.
Needless to say, the women's movement played a
considerable part in this transformation.

The women-targeted family planning or rather population
control policies of the Government in the early years were
questioned and contested by women who demanded that such
policies be made more women-friendly and geared towards
the well-being of the mother and the child. But even this
welfarism was not sufficient in meeting the health care needs
of women. The participation of a number of Bangladeshi
NGOs in the Cairo Conference and the accession of
Bangladesh to the Cairo Declaration were instrumental in
increasing the demand on the family planning and health
services of the state to make reproductive health a basic and
fundamental right of a woman. Although the implementation of
such policies may still be wanting, in practice, for the first time
with the help of UNFPA the topic is being introduced as a
training module for many senior bureaucrats and policy-
makers. Care is being taken to insist on a holistic and
multidimensional perspective, so that many other issues of
gender are also being engaged in. The impact of such
interventions is bound to be long-term and dependent on many
conditions, but at least this has opened up a space in which a
gendered perspective on health-care and related issues may
be deliberated upon in the policy-making sector at various
levels of the bureaucracy.
Finally, no note on Bangladesh German co-operation would be complete without mentioning the role of the Goethe Institute in the cultural arena. One of the few areas in which German co-operation has primarily served human rights principles has been in supporting artists and movements who throughout the turbulent history of Bangladesh have struggled to establish their cultural rights and their freedom of expression against state-coercion and orthodox ideologies. I think many of our literary personalities, theatre artists and alternative filmmakers will join me in this acknowledgement.

VII

SUGGESTIONS FOR A HUMAN RIGHTS PERSPECTIVE OF DEVELOPMENT

Given some of the limitations mentioned earlier, from the perspective of the ordinary citizen of Bangladesh, it would be more beneficial to incorporate a human rights perspective of development. The following are a few suggestions:

- Increase resource allocation to areas directly connected with human development.

- The Government of Bangladesh should sign and ratify the ICCPR and the ICESCR. (Since they are already signatories to UDHR and CEDAW, this should not be a problem)

- Bilateral donors in response to their own constituency of taxpayers as well as in response to demands from the recipient's electorate should work towards building up of a healthy human rights regime.
• A human rights perspective should be properly worked through to cover the designing, implementation and monitoring phases of a project and not be construed as a mere ‘flavour of the month’ theme.

• Civil society organisations and coalitions should work to build up a strong civil liberties movement both nationally and internationally.

• The civil society movement should be concerned with campaign for both political and civil liberties as well as economic, social, and cultural rights.

• Civil liberties should not only be about demanding the transparency and accountability of the government but also of institutions operating in the market and civil society.