# The Use of Human Rights Instruments in the Struggle against (extreme) Poverty

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*Published in:*
Law, Power and Poverty

*Publication date:*
1997

International Social Science Council/ Conseil International des Sciences Sociales


Comparative Research Programme on Poverty


# Law, Power and Poverty

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Law, Power and Poverty - Bergen 1997

**ISBN 82-91844-00-3**

# Chapter 7

## The Use of Human Rights Instruments in the Struggle against (Extreme) Poverty

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**Abstract**
Human rights are the expression of a specific social goal: creating the legal, economic and social conditions in which persons all over the world can live a life worthy of a human being. Taking this a starting point, it is immediately clear that living in circumstances of (extreme) poverty means a violation of a lot of internationally recognized human rights. The present article tries to find out in what way aspects of the manifold poverty problem can be fruitfully tackled by using human rights instruments.

## 1. Introduction

Human rights are the expression of a specific social goal: creating the legal, economic and social conditions in which persons all over the world can live a life worthy of a human being. This - highly ambitious - goal immediately links human rights protection to specific situations in specific countries. In some of these countries there will be an enormous need for legal protection against torture and political killings, in other situations the primary problem will be the right to adequate food or health care, and in many cases there will be a combination of such needs, often reflecting the levels of extreme and structural poverty. The international human rights instruments are supposed to evolve according to the changing needs which have to be met worldwide. Law is not a static phenomenon.

Taking as a starting point the right for everybody all over the world "to live a life which is worthy of a human being", it is immediately clear that living in circumstances of (extreme) poverty means a violation of many internationally recognized human rights. The United Nations Special Rapporteur on Extreme Poverty and Human Rights, Leandro Despouy, speaks of the "vicious circle of poverty": "virtually all the energy of the extremely poor is devoted to the struggle for survival, leaving little room for an enriching cultural and social life".[1]

According to official statistics at least one-fifth of the world population is turning around in this vicious circle. The Special Rapporteur used, as some sort of an objective bottom line, an income level (per capita per year) of $ 275 for the extreme poor and $ 370 for the poor.[2] Using these standards he estimated some 1.116 million persons were under the poverty line in 1995, and some 633 million persons were under the line of extreme poverty.[3] The statistics also suggest that poverty in the year 2000 may be more or less at the present level, but will be divided differently: there will be a reduction of poverty in East-Asia, and a considerable growth in sub-Saharan Africa and the Caribbean.[4]

This chapter will concentrate on the question, in which ways can aspects of the manifold poverty problem be fruitfully tackled by using human rights instruments.

## 2. Civil and political rights in relation to poverty

The human rights "codex" consists of a many legal and political texts and procedures in the fields of civil and political rights, economic, social and cultural rights, and the so-called "third generation of human rights" (especially the right to development).

From a poverty perspective, looking at the civil and political rights, and specifically at the 1966 UN Covenant on Civil and Political Rights (ICCPR), at least three things can be said. First, these rights must, generally speaking, be protected

whether a state is poor or not. For instance, the right "not to be arbitrarily deprived of his life" (art. 6), the right not to be "subjected to torture" (art. 7), the right not to be "held in slavery" (art. 8), the right of "liberty and security of person" (art. 9), the right to "be equal before the courts and tribunals" (art. 14), the right not to "be held guilty of any criminal offence (...) which did not constitute a criminal offence (...) at the time when it was committed" (art. 15), and the right to "freedom of thought, conscience and religion" (art. 18) may all be expected to fall under this covenant. This list of examples is not exhaustive and is subject to constant debate. Those who seek greater certainty as far as the list is concerned, should see article 4 of the ICCPR, mentioning the so-called "non-derogable rights" in times of "public emergency", at the relevant case-law of the ICCPR Committee, and, for instance, at the recent *General Comment* of the ICCPR Committee on reservations made by states upon ratification or accession to the ICCPR. In this comment the Committee enumerates the rights which belong to customary international law: "The right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women and children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriagable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language, and (...) the right to a fair trial (...)".[5] One also can read the formula of the Second World Conference on Human Rights on this point: "(...) the lack of development may not be invoked to justify the abridgement of internationally recognized human rights".[6]

Second, one must immediately add that it is easier to implement many of the civil and political rights mentioned above in situations which can be labelled as "developed" than in situations of (extreme) poverty. In many cases, states need to build up political, social, economic and legal structures in order to ensure the aforementioned rights, and this takes time *and* money. It is not helpful to overlook or even to deny this. Too often one hears the argument that realizing classical human rights does not cost money, and that using the underdevelopment argument is merely a pretext for human rights violations. It may or may not be so: I shall return to this below.

Third, how can civil and political rights be used in order to deal actively with situations of (extreme) poverty? The main answer to this question has to do with the monitoring system of the ICCPR. First of all, the relevant "poor state" must have ratified the Covenant (which has been done so far worldwide by some 130 states.[7] Many poor states have not done so, although their absence is in terms of percentage not abnormal[8]. The state then is periodically obliged to report to the ICCPR

Committee and to receive comments by this supervisory body. It is good to know that the Committee is inclined to interpret articles of the ICCPR in a broad rather than narrow sense. Which means, for instance, that the "right to life" is not only the right not to be killed, but also the right to live a life which is "socially acceptable" according to local standards or which is in conformity with internationally recognized environmental standards. Though it is not yet a major influence on the Committee's work, it may hold out promise for the future and is relevant to the framework of poverty alleviation.

As far as the legal position of the individual in using civil and political rights to tackle poverty situations is concerned, the primary question is whether these rights are guaranteed by the *national* legislation and by *national* courts. This can be judged only by carefully study of specific country situations. As far as the international level is concerned, the question is whether the relevant state ratified the First Optional Protocol to the ICCPR (individual complaint procedure; so far ratified by some 80 states[9]). If so, the right to send individual communications can be used for instance to ask for a "social" or "green" interpretation of civil and political rights (see above), to claim the right of individuals to speak freely about the governmental policy, to complain about governments using the poverty argument in a non correct way (that is to say in a way in which the situation of underdevelopment *is* used as a pretext for the violation of the relevant rights, also see above), and so on. In sum, however, the ICCPR may be an important treaty, but is ineffective in dealing with poverty.

### 3. Economic, social and cultural rights in relation to poverty

The other main United Nations Treaty on Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966, also ratified by some 130 states[10]), may, however, be more effective than the ICCPR. Many of the articles in the ICESCR are directly related to the poverty problem, and may even be seen as synonymous with aspects of poverty situations. Examples are the "right to work", which includes the right of everyone "to the opportunity to gain his living by work which he freely chooses or accepts" (art. 6), the right "to just and favourable conditions of work" (art. 7), the right "to social security, including social insurance" (art. 9), the right "to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" (art. 11), the right "to the enjoyment of the highest attainable standard of physical and mental health" (art. 12), or the right "to education" (art. 13).

What, then, is the legal status of the ICESCR obligations? At present these are not legally binding standards, but "only" obligations for a state to take steps "to the

maximum of its available resources" (see art. 2 of the ICESCR). This has been the situation since the ICESCR was made in the 1950-s and '60-s, and subsequently. In the last five years, the Committee which monitors the treaty has discussed the possibility of strenghtening the legal character of the ICESCR obligations. I want to emphasise its very straightforward opinions on the questions of what does it mean for states to be obliged to work progessively towards the realization of the ICESCR standards and what parts of the standards can already be used in judicial procedures.[11] In addition, the Committee has discussed the possibility of a Protocol to the ICESCR, containing an (individual and/or collective) complaint procedure.[12] Such a procedure could be used, in the words of the Committee, to bring "concrete and tangible issues into relief. The real problems confronting individuals and groups come alive in a way that can never be the case in the context of the abstract discussions that arise in the setting of the reporting procedure".[13]

The legal status of the ICESCR is thus under discussion, but the main results must be awaited. Many conceptual and practical problems must still be solved. As the Netherlands Government said during the 1995 meeting of the United Nations Human Rights Commission: "Can government policies in the socio-economic field be narrowed down to individual rights, which can be judged on their merits? Is it possible to establish a causal link between the alleged violation, and actions or failure to act, on the part of the government? One solution suggested to solve this problem would be to focus on a number of core rights, which would together constitute a floor below which conditions should not be permitted to drop. However, even with such a body of core rights defined, it would not be an easy task to identify the precise judiciable elements, and it would seem even more difficult to pronounce a verdict in judicial terms".[14] These are real problems, but can in part be countered. The question of narrowing down government policies in the socio-economic field to individual rights, for instance, can, I believe, be answered by saying that giving individuals "hard" rights in the economic, social and cultural fields, forms only part of the measures to be taken in order to strengthen the economic, social and cultural human rights. Although work on the legal position of the individual is important, the primary emphasis in implementing the ICESCR still must be on governments and their political and legal instruments and attempts to realize the rights concerned. If priority is not given to obligations of states parties to the ICESCR to do whatever they can "with a view to achieving progressively the full realization of the rights recognised in the present Covenant" (art. 2 of the ICESCR), then the plea for sharpening the rights of individuals would be left hanging and be almost meaningless. But given the governments' obligations to do whatever they can, the individual's rights to complain can be seen as a test of whether governments take their obligations seriously. The Netherlands Government said in Geneva that "the

thesis that case law that will ensue, once an optional protocol has entered into force, will contribute to the development of standards by which to assure the performance of states, is questionable."[15] It may be "questionable", but the answer does not have to be negative. But it will not be easy to identify the precise justiciable elements of core rights. Nevertheless, there is an undeniable tendency - promoted by the ICESCR Committee and regional bodies such as the Council of Europe, strengthening the European Social Charter supervisory mechanisms - towards legally sharpening economic, social and cultural human rights, and towards clarifying the justiciable elements of these rights.[16]

In addition, we can see a tendency to award claims for a "social" and/or a "green" interpretation of classical human rights within organs originally *not* entrusted with the implementation of economic, social and cultural rights (see above). Let us take, for example, the judgement of the European Court in Strasbourg in the case concerning Mrs. López Ostra versus Spain. Mrs. López Ostra acquired serious health problems, caused by a plant for the treatment of liquid and solid waste from tanneries which was build and started to operate a few metres away from her home. The authorities initially decided to evacuate Mrs. López Ostra and her family (and other people living near the plant), but after their return the problems continued. After having used all local remedies (including an appeal to the Spanish Supreme Court, which the Court considered to be "manifestly ill-founded"), Mrs. López Ostra went to the European Commission on Human Rights in Strasbourg. The Commission declared her claim admissible and expressed the (unanimous!) opinion that there had been a violation of article 8 of the European Convention (right to respect for private and family life and for the home). The Commission also referred the case to the European Court in Strasbourg in order to get its opinion on the principal elements of the case. The Court considered in general that severe environmental pollution might indeed affect individuals' well-being and prevent them from enjoying their rights to private and family life. What the Court seeks is a fair balance between the competing interests of the individual and of the community as a whole. In this specific case the Court decided that the respondent state, despite the margin of discretion left to it, had not succeeded in striking a fair balance between the interest of the community as a whole and Ms. López Ostra's effective enjoyment of the right to respect for her home and her private and family life. Accordingly the Court decided, also unanimously, that there had been a violation of the article 8 of the European Convention, and, making an assessment on an equitable basis, awarded Ms. López Ostra financial compensation (4.000.000 Pesetas).[17]

From the perspective of independent experts, working with economic, social and cultural rights, the question of legally strengthening the position of the individual by

accepting an Optional Protocol to the ICESCR is not so much a matter of the availability of legal skills, (needed to separate justiciable from non-justiciable aspects), but of political will. The Netherlands Government is right to point out that "politically speaking it might be difficult to muster the necessary support for an Optional Protocol".[18] At the same time, however, it should be remembered that governments are not independent observers of a passing train but travellers themselves.

Having emphasized the importance of legally strengthening economic, social and cultural rights, it must be repeated that the implementation of the ICESCR standards in many ways is *not* a matter of using legal instruments. Many situations of (extreme) poverty cannot in practice easily be tackled by using legal instruments, individually, or collectively ("collective action") because of the complexity of the problems (where to begin?), the social position of the claimants, and so on. Besides, non-implementation is sometimes blocked by the non-availability of natural resources or other barriers or forms of *force majeure*. However, the ICESCR contains two articles which give a right to international assistance in cases where a state, party to the Covenant, is not able to realize the standards on its own. Article 2, speaks of "international assistance and co-operation" and article 11 provides hat "the States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures (...) which are needed", thereby taking into account "the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need".

These articles pose at least one major question: is there a legal duty to assist in case states are not able to meet their ICESCR-based obligations themselves? Suppose they can plausibly argue, for instance before the ICESCR Committee or outside the ICESCR framework, that their non-implementation is caused by lack of natural resources, to economic bad luck, to the burden of large flows of refugees, or to the absence of sufficient means to rebuild society after a period of (civil) war. Is there then a right/duty to assistance, be it under the ICESCR or otherwise? This question leads to the more general discussion on the right to development.

## 4. The right to development in relation to poverty

### *4.1 Introduction*

Suppose states are not able to handle their structural poverty situations themselves, do they then have a human *right* to development or is it a matter of altruism on the part of the rich world to help such states?

After a long history of debates about the New International Economic Order in several UN bodies in the 1960-s and 1970-s, in 1986 the UN General Assembly adopted the Declaration on the Right to Development.[19] The Declaration speaks of the right to development as 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" (article 1). The right to development is at the same time the right to participate in and to profit by development. In the Declaration it has been stated explicitly that "the human person is the central subject of development and should be the active participant and beneficiary of the right to development" (article 2). The Declaration is as such not legally binding (see below).

The question then is,what are the chances of creating a sharpened, legally binding right to development in the near future. In this respect there are two central issues: Who can act as the bearers of the right to development, and what conditions will - and realistically can - the rich part of the world demand in exchange for formulating a "hard" right to development?

*4.2 The bearers of the right to development*

As far as the bearers of the right are concerned, one cannot overemphasize the importance of this point to the discussion on the right to development. Many Western contributors to the debate have been reluctant to create a real right to development as long as it is not explicitly clear who will profit from it. In other words: as long as there is a risk that state organs will use the right for their own welfare, one is not prepared to formulate a real *right* to development.

The question then is how to overcome this problem. This is partly a matter of politics, and partly a matter of legal analysis. First, it should be emphasised that the 1986 Declaration on the Right to Development clearly distuinguishes between states, peoples and individuals. This is often overlooked. Article 2 of the Declaration says: "States have the right and duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom". It is evident that according to the Declaration states or governments have an important role to play as far as the realization of the right to development is concerned, but at the same time it is even more obvious that such tasks have to be fulfilled in favour of populations and the individuals composing them. In this respect the Declaration cannot be misunderstood.

The recently formed UN Working Group on the Right to Development (1993) during its first session discussed at length the "players" who together play the "right

to development game". The Working Group divided them into "states" ("as entities responsible for creating the conditions and taking measures for the realization of the right to development"), "individuals, groups and peoples" ("as beneficiaries of the right to development and as participants in its realization"), and "the institutions of society and non-governmental organizations" ("as catalytic elements in the realization of the right to development").[20] By doing so, the Working Group emphasized - in line with the Declaration itself - the importance of the difference between states, peoples, individuals (and societal institutions and NGOs). Allan Rosas, a member of the Working Group, explicitly stated: "It is to be noted that the UN Working Group (...) does *not* mention States as beneficiaries, despite views put forward now and then, especially from a Third World point of view, that States are subjects of the right to development. (...) In our opinion it is a misnomer to define States as subjects of a *human right*. Human rights concern, above all, the relations between the State and its own population, where individuals and groups are the beneficiaries while the obligations lie on the States".[21] Such clarifications and caution are, once again, especially important while the problem of the bearer of rights is a well-known obstacle for many Western states in the process of accepting a fully elaborated and obligatory right to development. In addition, it cannot be surprising that the Working Group during its first session paid attention to the item of "popular participation".[22]The Working Group thereby seemed to seek guarantees that the right to development will not be filled in "from above" (by governments alone), and at the same time elaborated on arguments which can be used as a bridge between the standpoints brought forward by Third World and Western Countries in the discussion on the right to development. To clearify for the Western world a sharp division of the players is definitely not enough to realize a full right to development, but it is one of the obstacles which must be removed before there canl be any chance at all of dealing fruitfully with the problem of the formulation of a legally binding right to development.[23]

Directly following the previous point, many Western critics of the right to development hold the view that the right can only be realized at the expense of the rights of individual human beings. In other words: the collective aspects of the right to development are supposed to dominate and even displace the individual aspects. Development, seen from the perspective of human rights, could then mean that individuals could be asked to abandon their personal, individual rights temporarily in order to give state organs the possibility to concentrate on the structural level. Many critics of the right to development have argued that its collective dimension might serve as a pretext for governments not to observe the human rights of individual citizens, or even worse, that the money which would be received by states under the

heading of development cooperation might be used for military aims, the strengthening of the repressive apparatus, and so on.

In fact there are many examples of governments acting as claimants and actual receivers of the money, and their populations and individual members never profiting at all. The question then is whether to accept this risk as a reality and to stop thinking about solutions, or - given the enormous poverty problem - to try to overcome it in an acceptable way.

One solution might sometimes be to neglect the classic scheme of interstate law (with governments as the main actors), and to choose directly and in a clear way for the population. In fact, many donor countries are prepared to "by-pass" the state organs and give a direct help to those who are in need of it. In the case of the search for solutions for situations of extreme and structural poverty, however, this might not be an adequate way, at least in the long run. In most cases it is then neither logically possible nor desirable to neglect the state organs. They cannot be dismissed.

The main point of the discussion on strengthening the right to development seems to link the two elements: combining some respect for interstate principles with the aim of helping people(s) who are really in need of it. To my mind, bringing this process of identifying the bearers and beneficiaries of the right to development to a good end is one of the main human rights challenges for the near future.

*4.3 Conditionality*

Another main concern of the Western world has been the conditions to be attached to the right to development. Until now, the most basic condition Western states have put forward in their development aid relations with poor countries has been related to "good governance". Although appearing to be a clear concept, "good governance" is a "black box", which can be, and actually is, filled with many elements. For instance, the description of good governance used by the Council of Ministers of Development Co-operation of the European Union calls it: "sensible economic and social policy, democratic decision making, adequate governmental transparency and financial accountability, creation of a market friendly environment for development, aid-receiving measures to combat corruption, as well as respect for the rule of law, human rights and freedom of the press and expression".[24] It makes one glad not to be a minister in a government of an aid-receiving country, as the Netherlands Minister of Development Co-operation, Jan Pronk, once said.[25] At the same time one cannot evade the political reality and even fairness of putting forward such conditions. Generally speaking, why should one not have the right to ask for instance for governments to be "financial accountable" in exchange for - in many

cases - considerable amounts of money? The human rights condition seems to be a very simple relation: no human rights, no development aid. However, we have to realize that human rights cover a broad field. One can imagine the condition: no freedom of expression, no aid, although already this is a complex relationship. But how about the right to vote or the right to a fair trial, in cases where there are no adequate political and judicial infrastructures? Respect for such rights might be asked as a *condition for* development aid, but at the same time these rights in many ways may only be realized as a *result of* this aid. The same can be said about the relation between development aid and, for instance, the right to adequate food or health care. And how about the right to development? One cannot even think of this right as a condition to be met before receiving development aid. So, as far as human rights are concerned, an easy linkage between development aid and respect for such rights is to be mistrusted, or at least to be handled carefully, to establish exactly what the human rights effects would be if aid were stopped. Instead of thinking in terms of a negative linkage, I prefer to stress positive relations between development aid and creating a sound human rights infrastructure. In the long run, this seems to be a much more fruitful approach.

*4.4 A hard right to development?*

The adoption of the Declaration on the Right to Development in 1986 (see above) made this right the only one in the sphere of the third generation human rights "that can plausibly be argued to have widespread international legal recognition (although even that would be challenged by those with legal positivist inclinations)" (Donnelly).[26]

As far as the legal status of the 1986 Declaration is concerned, it must, however, be emphasized that this is "only" a declaration, which means that it is not binding in a strictly legal sense. On the other hand the Declaration has not been made in a vacuum, and is connected in many ways with obligations of a more or less legally binding nature. One might refer to articles 1, 55 and 56 of the Charter of the United Nations and articles 2 and 11 of the ICESCR (see above). It must, however, be emphasized that these articles consist of quite open standards and as such form only the beginning of a codified right to development, including a "hard" duty for states to help one another in case of the incapacity of states to solve their own problems. In other words, a lot must be done before we can definitely speak of a legally binding right.

The problems mentioned above suggest that a "hard" right to development will not come soon. The discussions on right bearers (and duty bearers which are not explicitly discussed here) and on the conditions to be attached to such a right, will be extensive if they are to be successful. As long as this has not happended, the right

to development can only be used politically and morally to tackle structural poverty situations in a fundamental way - that is to say, not in a strictly legal way, but on a level which exceeds the individual situations of persons. At the same time, however, it should be realized that, in the absence of written rules, there can also be a rule of customary law, which under specific circumstances can be as strong as a written standard. If there is a combination of a morally or politically binding standard with an established state practice, this combination can also create rights. Take, for instance, the standard "everyone has the right to adequate food". State practice shows that the binding character of the standard is accepted and practised all over the world - at least in principle -, which means that it can be seen as customary law. As far as the right to development is concerned, one can say that some parts of it at least have such customary law characteristics. This is not the case for the right to development as a whole.

*4.5 The right to development in the Human Rights Commission, 1995*

The discussions on strengthening the right to development have not advanced recently. After what one might call the "careful consensus" on the right to development reached at the Vienna World Conference on Human Rights and during the 1994 session of the United Nations General Assembly, the Human Rights Commission of the UN took some steps back during its meeting of January-March, 1995. Headed by Indonesia, a group of 27 members of the Human Rights Commission and of 20 observer states, tried to force a resolution through on issues such as the "establishment of a permanent evaluation mechanism in the future to follow up the implementation of the Declaration on the Right to Development", "providing the Centre for Human Rights with a focal unit with the specific task of following up on the Declaration on the Right to Development" and calling on the Centre for Human Rights "to give priority to the right to development by making it a sub-programme of its programme of activities for the years 1992-1997". For many states these formulations went too far, at least for 1995 and taking into account the limited progress so far. The Indonesian resolution was adopted with 36 votes in favour, 15 against and 1 abstention, but all the votes against came from Western (oriented) countries, such as Canada, Japan, the Russian Federation, United Kingdom and United States of America.[27]

## 5. The Social Summit and human rights

In 1992 the United Nations General Assembly decided to organize the *World Summit for Social Development*. The Summit was intended to consider three "core issues": The enhancement of social integration, particularly of the more

disadvantaged and marginalized groups; the alleviation and reduction of poverty; the expansion of productive employment.[28]

These issues are all more or less related to the central social goal behind the idea of human rights. As the Final Document of the Social Summit explicitly put it in relation to the eradication of poverty: "Poverty has various manifestations, including lack of income and productive resources sufficient to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environment; and social discrimination and exclusion. (...) Absolute poverty is a condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information."[29]

Two topics are important in reviewing the Social Summit: the attention which has been given to "popular participation", and the relations between poverty alleviation and (the use of) human rights. (A third topic which would have deserved some attention in this article, the so-called 20-20 agreement, is discussed by A. Eide.)

As far as popular participation is concerned, a preparatory document for the Social Summit reads: "The poor, far from being welfare recipients exclusively must be seen as productive agents of society, who are able to - and actually do - contribute to growth and development. A key question for the Summit will therefore be how to make 'banking on the poor' a unifying feature of development strategies".[30]

This is an appealing way of thinking, because it takes people's wishes as a starting point. On the other hand, more attention to "popular participation" (or "self-empowerment") does not mean that state organs can fade away, especially in the field of poverty alleviation. As the Dutch government once said: "(...) governments will have to create from above room for initiatives coming from below, from the poor, and will have to protect this against the reaction of settled groups, such as local and regional elites".[31] Governments must not refrain from action to provide the infrastructure for human rights, in the sphere of economic, social and cultural *well as* civil and political rights. The same line of argument is found in a report of the United Nations Economic and Social Council, made in preparation for the Social Summit: "State action is also clearly necessary to provide a legal framework governing social relations and social protection, and to maintain a balance among different interest groups in accordance with the public interest; the State also has a responsibility to provide efficient social services to protect the most vulnerable groups of society, and to provide them with opportunities to be productive citizens and to reduce their vulnerability".[32] Stressing the importance of "popular

participation", one must not forget that the state organs are normally of paramount importance in order to tackle poverty situations structurally.

This double approach can also be found in the Final Document of the Copenhagen Summit. It gives much attention to "empowerment", "popular participation" and "responsive government", as well as to the need actively to create favourable national and international conditions. To quote only one passage from the document: "Poverty is inseparably linked to lack of control over resources, including land, skills, knowledge, capital and social connections. Without those resources, people are easily neglected by policy makers and have limited access to institutions, markets, employment and public services. The eradication of poverty cannot be accomplished through anti-poverty programmes alone, but will require democratic participation and changes in economic structures in order to ensure access for all the resources, opportunities and public services, to undertake policies geared to more equitable distribution of wealth and income, to provide social protection for those who cannot support themselves, and to assist people confronted by unforeseen catastrophe, whether individual or collective, natural, social or technological".[33]

Another major human rights question for the Social Summit, is the way in which the poverty approach is linked to the availability of human rights instruments. Reading the Draft Declaration and Draft Programme of Action of November 1994,[34] the Dutch Advisory Committee on Human Rights and Foreign Policy was worried about the lack of linkage, and sent its reaction to the Ministry of Foreign Affairs, asking for "clear and functional connections between the central issues of the Social Summit and economic, social and cultural human rights".[35] According to the Committee "such an approach will highlight that human rights and supervisory mechanisms developed for that purpose can play an important role in the search for and the finding of solutions for aspects of the three central issues of the Summit". In line with this argument, the Committee pleaded for the monitoring of the results of the Social Summit to be divided up and specific items in the final documents to be allocated to those bodies and organs already engaged with the relevant issues, such as the International Labour Organization, the World Health Organization, the Food and Agriculture Organization and the ICESCR Committee.[36] The Advisory Committee stated: "By charging such organizations and organs with relevant parts of the 'after-care' of Copenhagen, the recommendations agreed upon at the Summit can be brought back to manageable proportions. In the view of the Advisory Committee such an approach would have the most chance of tangible progress."[37]

In the Final Document of the Copenhagen Meeting, there are several linkages between poverty alleviation and human rights, on the normative as well as on the operative and institutional level. There are thus some places where aspects of the

poverty problem have been formulated in human rights terminology, and where it has been stressed how important it is for states to comply with the existing human rights standards as part of the struggle against poverty. At the same time, the Final Document asks the United Nations system, including the technical and sectoral agencies and the Bretton Woods institutions, to "expand and improve their cooperation in the field of social development to ensure that their efforts are complementary", while also expressing the need "to renew, reform and revitalize the various parts of the United Nations system, in particular its operational activities."[38] The Document thus underlines one of the main weaknesses of the United Nations system: lack of cooperation. Taking into account some specific characteristics of UN consensus-making during major events such as the subsequent World Summits and being aware of the relativity of the agreements" reached so far, one can say that the strategy formulated at the Social Summit is not a bad one, seen from the perspective of poverty alleviation and the use of human rights. However, the results are still awaited: when will the action be suited to the word?

## 6. Conclusions

The 1948 Universal Declaration on Human Rights, once again confirmed as the well-known "common standard of achievement for all peoples and all nations" during the 1993 World Conference on Human Rights, states that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to insecurity in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control" (art. 25). As has been seen in this article, the human rights instruments which have been developed after the adoption of the Universal Declaration, can be used in many ways to tackle poverty situations, although it is wise not to expect miracles. In addition, more clarification of the linkages between poverty and (the use of) human rights is needed: much remains to be done to make the instruments more fitting for tackling poverty problems, which worldwide are one of the main human rights issues for present and - certainly - future generations.

## Notes

1. E/CN.4/Sub.2/1994/19: 10.
2. *Idem*, Annex III.
3. *Idem*.
4. *Idem*.
5. CCPR/C/21/Rev.1/Add.6: 3.
6. A/Conf.157/23 (*Vienna Declaration and Programme of Action*), para I, 10.
7. Situation at December 1, 1994: 127 ratifications. See E/CN.4/1995/79.
8. I compared the list of ratifications to the list of poorest states as yearly presented by UNDP (cf. *Human Development Report 1994*, several figures and tables).
9. Situation at December 1, 1994: 77 ratifications. See E/CN.4/1995/79.
10. Situation at December 1, 1994: 129 ratifications. See E/CN.4/1995/79.
11. See for instance the 1990 *General Comment on State Obligations* (E/C.12/1990/8, Annex III) and the 1991 *General Comment on the Right to adequate housing* (E/C.12/1991/4, Annex III).
12. See A/Conf.157/PC/62/Add.5, Annex II, and E/C.12/1994/12.
13. A/Conf.157/PC/62/Add.5, Annex II: 15.
14. Statement by mr. Peter van Wulfften Palthe, Head of the Netherlands delegation to the 51th session of the Commission, Geneva, February 1995: 4.
15. *Idem*.
16. See for an identification of the main points of discussion in several international and regional bodies, the report on this topic prepared by the Dutch Advisory Committee on Human Rights and Foreign Policy (English title: *Economic, Social and Cultural Rights*), handed to the Minister of Foreign Affairs in September 1994. The report can be obtained at the Secretariat of the Committee, PO Box 20061, 2500 EB The Hague, The Netherlands.
17. Judgment of the Court in Strasbourg of December 9, 1994.
18. Statement Van Wulfften Palthe, *o.c.*: 4.
19. A/Res. 41/128, adopted with 146 votes against 1, with 8 abstentions.
20. E/CN.4/1994/21: 10.
21. Rosas, Allan. 1995. The Right to Development, in *Economic, Social and Cultural Rights*, edited by A. Eide, C. Krause and A. Rosas. Dordrecht/Boston/London: Martinus Nijhoff Publishers: 252.
22. E/CN.4/1994/21: 10-12. Also see the reports on the second and third session: E/CN.4/1995/11 and E/CN.4/1995/27, passim.
23. Also see my paper presented at the Seminar on Extreme Poverty and the Denial of Human Rights, UN Headquarters, New York, October 12-14, 1994 (for a report, see UN Doc. E/CN.4/1995/101, 14-17), and - for those who read Dutch - my article "Over staten, volken en individuen, en de moeizame weg naar aanscherping van het recht op ontwikkeling" ("About states, peoples and individuals and the laborious road to sharpen the right to development"), *Ars Aequi*, October 1994.
24. Resolution on *Human Rights, Democracy and Development*, adopted on November 28, 1991.

25. *Final Report NOVIB Human Rights Conference 'Maria Elena Moyano'*, Peace Palace, The Hague, 1992: 6.
26. Donnelly, Jack. 1993. The Third Generation of Human Rights, in Peoples and Minorities in International Law, C. Brölmann, R. Lefeber en M. Zieck, eds, Dordrecht/Boston/London: Martinus Nijhoff Publishers. 121.
27. See Draft-resolution E/CN.4/1995/L.27, and, for the voting, E/CN.4/1995/SR.42 (3 March 1995): 9. Also see E/CN.4/1995/25 and 25/Add.1.
28. GA-resolution 47/92.
29. *Copenhagen Programme of Action*, adopted by the World Summit for Social Development, Copenhagen, 6-12 March 1995, advanced unedited text, 20 March 1995, para. 19.
30. UN Doc. E/1993/77: 9.
31. *Een wereld in geschil*, The Hague, 1993: 110.
32. E/1993/77: 9.
33. *O.c.*, para. 23.
34. A/Conf.166/PC/L., 22 November 1994.
35. Letter, dated 12 January 1995.
36. *Idem*.
37. *Idem*.
38. *O.c.*, para's 96 a and b.