

UNIVERSITY OF MALAYA FACULTY OF LAW

TUN ABDUL RAZAK FOUNDATION

TUN ABDUL RAZAK MEMORIAL LECTURE 1996

**HUMAN RIGHTS AND ECONOMIC DEVELOPMENT**

The Hon Justice Michael Kirby AC CMG

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TUN ABDUL RAZAK AND MALAYSIAN DEVELOPMENT

It is a great honour to me to be invited to deliver a lecture that carries the name of Tun Haji Abdul Razak bin Hussein. I am proud to be invited to do so in succession to a number of distinguished lawyers who have honoured a member of our profession who went on to offer remarkable public service and who helped to lay the foundation of the economic and social miracle that is modern Malaysia<sup>1</sup>. I am particularly gratified that

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\* President of the International Commission of Jurists 1995-. Justice of the High Court of Australia 1996-. Formerly Special Representative of the Secretary-General of the United Nations for Human Rights in Cambodia 1993-96.

1 Details from W Shaw *Tun Razak - His Life and Times*, Longman, 1976.

I do so in the presence of members of Tun Razak's family and of all of you present.

Abdul Razak was born in Pekan in March 1922. He was called to the Bar by Lincoln's Inn in England in 1950. His legal training profoundly affected his approach to public office<sup>2</sup>. He joined the Malayan civil service. When independence came, he was already Minister of Education in the federal government, an office in which he has been followed by his distinguished son, Dato sri Najib. With that continuity which has been the remarkable feature of Malaysian history, he continued in office as Minister. He helped to spread the precious gift of education throughout Malaya. He realised that education would be the foundation-stone upon which the country's future development would be built. In 1957 he was promoted to Deputy Prime Minister and Minister of Defence. He combined those positions between 1959 and 1969 with the office of Minister of Rural Development. This was a position of central importance to the advancement of the Malay people of this country. By

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<sup>2</sup> The reference is to the response of Tun Razak to the revelation of charges of corruption against the then leader of UMNO Youth. Tun Razak insisted that the process of law should take its course. The accused was expelled from the Party and found guilty and sentenced to six years imprisonment in December 1977. In 1981 he was given remission. In August 1982 he received a royal pardon. See article *New Straits Times* 26 June 1995 at 4.

courageous and innovative public investment, designed to promote private initiatives, an economic revolution was wrought which is still going on.

When in September 1970, in the aftermath of much ethnic tension, Tunku Abdul Rahman Putra al Haj retired as First Prime Minister of Malaysia, it was natural that he should be succeeded by Abdul Razak. As Head of the National Operations Council, set up with emergency powers in 1969, he steered the country through its ethnic tensions with a mixture of firmness and equity. As Prime Minister he showed imagination and creativity, pursuing a policy of close friendship with regional countries. In 1974 his government established diplomatic relations with the People's Republic of China, a bold step that earlier would have been considered unthinkable.

In 1959 Abdul Razak was honoured by the award of the Seri Maharaja Mangku Negara and thereafter titled Tun. On several occasions he represented Malaysia at conferences and meetings of leaders of Islamic nations. He was a firm supporter of the Commonwealth of Nations, leading the Malaysian delegation to the Heads of Government Conference in Singapore in 1971. His sterling personal qualities and principled leadership attracted many honours. He received the Magsaysay Award in 1967 and the University of Malaya honoured him with the Honorary Degree of Doctor of Laws - recognising a son of this country who had risen to great heights but who had ever

remained faithful to the rule of law. He was much loved and respected in my own country, Australia. He died in London in January 1976, aged only 54 years. It was far too young. It is right that we should remember, and celebrate the life, of such a distinguished man who made the world a better place for his existence.

Pondering upon the theme that would be suitable to a life so varied and dynamic, I reflected on my own links with Malaya and Malaysia. I thought of my time at Sydney University in the early 1960s when there were so many students from Malaya, doubtless recipients of scholarships founded during Tun Razak's term in Government, including as Education Minister. In fact, there are 120,000 Australian University graduates who are citizens of Malaysia. I recall standing in the Sydney Town Hall during the unhappy period of *Konfrontasi*, as a young man, to explain why Australians should oppose Dr Sukarno's adventure and support, with blood if necessary, the defence of the new Malaysia. As a result, I was made a honorary member of the Malayan Students' Association. It was a precious honour. Many are the friendship I made at that time. I visited this country leading a delegation of the National Union of Australian University Students. Perhaps from afar I saw Tun Razak. From close-up I came to know how many and precious were the links of history, of law and of commitment to pluralism and multiculturalism that we in Australia share with you.

My next visit to Malaysia was in 1970, by which time Tun Razak was Prime Minister. As a tourist, I drove up the Peninsular of your country visiting many small towns. It was an idyllic time. Malaysia was, and is, a hidden jewel of tourist delight.

Then, more recently, in May of this year I returned for a conference of the Commonwealth Association for Communication and Journalism. Imagine my surprise as I drove into Kuala Lumpur. I saw the tallest building in the world. My eyes took in the astonishing sights of economic development. I have no doubt that there are many problems, social and economic which accompany such a rapid advance and radical societal change. When I had last seen it, Kuala Lumpur seemed a rather sleepy ex-colonial township. Now it is truly one of the great cities of Asia. It serves an economy which is one of the fastest growing in the region. That economy is built on a dedication to constitutionalism, democracy and the rule of law. These are principles to which Tun Abdul Razak devoted his life.

It therefore seemed natural to me to address my remarks, in this lecture in honour of this fine statesman, to the subject of human rights and development. Are these two notions antithetical? Is there (as is sometimes claimed) an "Asian exception" which postpones civil and political rights until there has been achievement of economic, social and cultural rights and of the right to development? Because of Tun Abdul Razak's contribution to Malaysian development, this seemed a suitable

theme to explore. Because of Malaysia's remarkable progress in economic development, it seemed an appropriate occasion to examine the point.

I want to start by tracing, as a lawyer should, the international legal principles which support human rights and the right to development. As a lawyer himself, Tun Abdul Razak would expect nothing less. But then, by reference to some practical work which I have until lately been doing in the region, specifically in Cambodia, on behalf of the Secretary-General of the United Nations, I will try to bring my legal thesis down to earth.

My propositions will be that we are all on a journey of discovery in the matter of human rights; that we can all learn from each other; that all fundamental human rights are important, integrated and universal; and that it is the duty of lawyers in Malaysia and Australia, where they can, both at home and abroad in less fortunate countries, to contribute to the building of the rule of law and respect for the whole variety of human rights.

#### THE RISE OF UNIVERSAL HUMAN RIGHTS

The idea of universal, fundamental human rights steadily gains power. The idea has an ancestry which may be traced to the writings of ancient prophets and philosophers. But in terms

of the modern, global community, its international influence follows the adoption by the General Assembly of the United Nations, on 10 December 1948, of the *Universal Declaration of Human Rights*. This has been described as "a major step forward in the promotion of the rule of law at the international and national levels. The *Declaration* comprises, in one consolidated text, nearly the entire range of what today are recognised as human rights and fundamental freedoms"<sup>3</sup>.

The *Universal Declaration* was followed by a call from the General Assembly of the United Nations, to convert its broad and general language into a legally binding treaty. At first it was envisaged that a single convention would be adopted. However, at the time, in the midst of one of the frostiest periods of the Cold War, the Western States were resistant to the idea of a treaty with binding obligations concerning economic, social and cultural rights. This was seen by many Western jurists as adopting the language of the communist states. The result was the decision of the General Assembly to divide the rights contained in the *Universal Declaration* into two separate international covenants, one on civil and political rights (ICCPR)

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3 Eide and Rosas, "Economic, Social and Cultural Rights: A Universal Challenge" in Eide and Ors, *Economic, Social and Cultural Rights*, Nijhoff, Dordrecht 1995 at 15.



and the other on economic, social and cultural rights (ICESCR)<sup>4</sup>. A great deal of attention has been given by jurists to the ICCPR. In many countries, including my own, the First Optional Protocol renders infractions accountable on the individual petition of citizens. Much jurisprudence has now grown up around the provisions of the ICCPR. But the other Covenant (ICESCR) is relatively unexplored territory for most lawyers.

Yet it is here, in economic and social rights, that at least some matters of special interest to the average citizen are mentioned. Take the references to women. Article 10(2) mentions "special protection" for "mothers during a reasonable period before and after childbirth" including paid maternity leave. Article 12(2) refers to "provision for the reduction of the still-birth rate and infant mortality". Article 7(a)(i) also envisages "equal pay for equal work"<sup>5</sup>. These are very practical concerns. A purpose of my contribution is to draw attention to the ICESCR and to suggest ways in which lawyers can promote its objects and enhance its impact.

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4 GA 543 (VI) 5 February 1952.

5 Wright, "Human Rights and Women's Rights:" (1993) 18 *Alternative LJ* 113 at 125.

The ICESCR, and its subject matter, suffered years of neglect. This was, in part, because of ideological differences and, in part, for technical legal reasons. To some the rights collected in the ICESCR were not true "rights" at all. To others, they are more important rights even having priority over civil and political rights on the suggested footing that affording to every citizen a full stomach is more urgent and important than securing "developed" or "western rights" of a political or legal character<sup>6</sup>. As Asbjorn Eide and Allan Rosas observe<sup>7</sup>:

"Regrettably, adherents of opposing schools of thought resort more to catchwords and political sloganism than to serious analysis of economic, social and cultural rights as individual, enforceable rights. ... At least some of the rights falling into the category of economic, social and cultural rights lend themselves to what is often referred to as 'justiciability'. ... A crucial question is whether we, as human beings, are willing to uphold the vision of a universal rule of law embracing civil, political, economic, social and cultural aspects of human existence and to promote the concern with solidarity which is essential to integration, both at the national and international level. Alternatively, we might have to be prepared to allow the world to break up even more than before into profit-centred individualism in some parts of the world, and into ethnically and culturally defined entities in other places - entities which might contain a degree of solidarity within the group while excluding others."

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<sup>6</sup> Eide and Rosas, "Economic, Social and Cultural Rights: A Universal Challenge" in Eide and Ors, *Economic, Social and Cultural Rights*, Nijhoff, Dordrecht 1995 at 17.

<sup>7</sup> *Ibid* at 17-18.

Some writers, tracing the development of human rights since the establishment of the United Nations discern what they describe as different "generations" of human rights, reflecting different stages of their conception, institutionalisation and achievement.

The so-called "first generation" human rights are those dealing with basic civil and political matters. They were conceived and expressed early in the history of the international human rights movement. In many countries they have a long history of institutional protection. Since the *Universal Declaration* they have been addressed both in the ICCPR and in numerous regional conventions and national constitutions.

The "second generation" of human rights are those dealing with economic, social and cultural rights. Many of these were conceived at the same time as the statement on civil and political rights. But their development has been retarded. The institutional arrangements for their enforcement are still very weak. Until 1986 the ICESCR existed only as a textual reference point<sup>8</sup>. It was in that year the United Nations Committee on

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<sup>8</sup> Craven, *The International Covenant on Economic, Social and Cultural Rights - A Perspective on its Development*, Clarendon, Oxford, 1995, 1.

Economic, Social and Cultural Rights, comprised of independent experts, was established to receive state reports on the carrying into effect of the high objectives of the Covenant. According to expert observers "the Committee has begun the important but lengthy process of normative development"<sup>9</sup>.

The "third generation" of human rights, so-called, comprises group or "solidarity" rights. These are also sometimes contested by lawyers<sup>10</sup>. The group rights usually dealt with in the so-called "third generation" category are the suggested right to a healthy and sustained environment and the right to development.

The notion that the people of the world have a claim on economic and social development is actually reflected in the United Nations *Charter*. Article 55 requires the United Nations to promote higher standards of living and conditions of economic and social progress and national development. It requires the United Nations to find solutions to international economic, social,

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<sup>9</sup> Craven, *The International Covenant on Economic, Social and Cultural Rights - A Perspective on its Development*, Clarendon, Oxford, 1995, 1.

<sup>10</sup> Rosas, "The Right to Development" in Eide and Ors, *Economic, Social and Cultural Rights*, Nijhoff, Dordrecht 1995 at n 1, 247.

health and related problems. It requires universal respect for human rights and fundamental freedoms. By Article 56, all member states of the United Nations pledge themselves to take joint and separate action, in cooperation with the Organisation, for the achievement of the purposes of Article 55.

The existence of a fundamental human right, of the third generation, to economic development is still controversial<sup>11</sup>. In 1969 the General Assembly adopted a Declaration on Social Progress and Development. The idea of a separate right to development was first put forward by Judge Kéba M'baye in 1980<sup>12</sup>. The United Nations Commission on Human Rights then called for a study of the international dimensions of the right.

In 1986, the General Assembly adopted a declaration on the right to development. It was adopted by a vote of 146 to 1 with 8 abstentions. The United States of America was the sole dissident. The abstaining states were the Nordic countries (except for Norway), Germany, Israel, Japan and the United Kingdom. This declaration was followed up by numerous expert

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<sup>11</sup> Rosas, "The Right to Development" in Eide and Ors, *Economic, Social and Cultural Rights*, Nijhoff, Dordrecht 1995 at 247.

<sup>12</sup> M'Baye "de Droit au Developpement" in Dupuy (ed) *Le droit au developpement au plan international* 1980 at 72.

meetings. In June 1993, the United Nations' World Conference on Human Rights in Vienna adopted, by consensus, a Declaration and Programme of Action containing passages reaffirming the right to development as:

"a universal and inalienable human right, and an integral part of fundamental human rights"<sup>13</sup>.

Following the *Vienna Declaration* the United Nations Commission on Human Rights established a working group on the right to development. It held its first session in November 1993. In 1994 it adopted a resolution calling for the establishment of a permanent mechanism to evaluate the achievement of the right to development. But by this time it had become clear that many developing countries saw the issues involved in the "right to development" as being concerned with equitable economic relations, favourable economic environments at the international level more to the liking of developing countries and relief from the crippling burden of servicing international loans. It is perhaps because of these divisions that the proposal of the Commission on Human Rights that its working group should address global economic issues (such as the debt problem) saw a sharp division in the membership of the

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<sup>13</sup> World Conference on Human Rights, Vienna Declaration, United Nations Document A/Conf/57/23 para 1/10.

Commission on Human Rights. Whilst 43 states supported the proposal, 3 (Japan, the United Kingdom and the United States of America) voted against. Eight countries (of Europe) abstained. The vote shows the "continuing divergencies of views as to the implications of the right to development and its follow-up"<sup>14</sup>.

Three elements in the content of the right to development can be noted. The first is the importance of *participation*<sup>15</sup>. Individuals and peoples have the right to participate in and contribute to, and enjoy, development.

Secondly, the Declaration makes reference to the need to ensure that the improvement of the well-being of the entire population and of all individuals takes place on the basis of their participation not only in development but also in "the fair *distribution of the benefits* resulting from it". This envisages the eventual elimination of extreme poverty and gross disparities in income distribution within nations and as between nations.

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<sup>14</sup> Rosas, "The Right to Development" in Eide and Ors, *Economic, Social and Cultural Rights*, Nijhoff, Dordrecht 1995 at 251.

<sup>15</sup> This draws on the analysis of Rosas, "The Right to Development" in Eide and Ors, *Economic, Social and Cultural Rights*, Nijhoff, Dordrecht 1995 at 253.

Thirdly, the Declaration emphasises both national policies and international cooperation. The right to development envisages that individuals, groups and peoples have *rights against their own governments* where they neglect or frustrate the achievement of that right.

The best evaluation of the third generation "right to development" that I have seen is written by Allan Rosas<sup>16</sup>:

"The right to development should, perhaps, be seen as an umbrella concept and programme rather than a specific human right. It may be of particular relevance as a summary and pointer of the human rights dimension for development cooperation and development aid purposes, including the notion of 'human rights impact statements'. It could then play a role in planning and implementing *policies and programmes*, rather than function as a legal mechanism per se. For the right to development to play a constructive role in such contexts, however, there must be less political controversy and more analytical and critical discussion surrounding the concept."

#### UNIVERSALITY AND INTEGRATION IN PRACTICE

From this level of generality, with a description of the international developments affecting human rights, I now wish to

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<sup>16</sup> Rosas, "The Right to Development" in Eide and Ors, *Economic, Social and Cultural Rights*, Nijhoff, Dordrecht 1995 at 254-5.



descend into the engine-room. Until May 1996 it was my privilege, for two and a half years, to serve as the Special Representative of the Secretary-General for Human Rights in Cambodia. My period of service gave me the rare opportunity to see the implementation of specific programmes for human rights protection in a particular country sorely afflicted in the past by human rights derogations. As that country is in the Asian region and virtually a neighbour of Malaysia, it may be of interest to consider my experience and to observe the way in which the United Nations contributes, in practical ways, to human rights protection.

There are about 25 Special Rapporteurs and Special Representatives working to the Commission on Human Rights. Some have thematic responsibilities (eg summary executions, independence of the judiciary and of lawyers, rights of women). Dato' Param Cumaraswamy of Malaysia is the Special Rapporteur on the Independence of the Judiciary and of lawyers. Others, like myself, have country responsibilities. Most of these lie in the field of "Special Procedures", designed to respond to urgent concerns about reported human rights abuses. My own responsibilities fell under that item of the agenda of the Commission on Human Rights dealing with "Technical Assistance". It derived from a provision in the *Paris Peace Agreements* by which peace was brought to Cambodia after decades of war, revolution, genocide, invasion and resistance.

Entering upon my responsibilities in Cambodia, I was very conscious of the suggestion that there are different priorities for human rights in countries in the Asian region. Some commentators have even suggested that there is an "Asian exception" to the universality of human rights, reflective of the traditional emphasis placed by at least some of the philosophies of Asian societies upon duties not rights; upon the community not the individual; and upon the rule of powerful men of virtue not the rule of law<sup>17</sup>. One observer has described the debate thus:

"The ideological debate between East and West then, and between North and South now, has ... affected the realisation of [human] rights. In the past, socio-economic rights were seen as requiring a strong state and forceful state action. They were thus championed strongly by the former Soviet Union and Eastern European countries. The countries of the West, on the other hand, sometimes did not even recognise them as rights. This was one reason why the General Assembly adopted two Covenants and not one.

A similar ideological clash is taking place now. Countries of the South, led by China, India, Indonesia and Malaysia, argue that socio-economic rights are equally important as, if not more important than, civil and political rights. Very few of these have recognised socio-economic rights as human rights, though they have spoken strongly in favour of these issues at several international fora. Their views, however, have been given increasing prominence because some of these countries are in

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17 *The Confucian Renaissance*, Sydney, 1993.

the forefront of the economic boom, that is now taking place in the Asia-Pacific region"<sup>18</sup>.

When proponents from the "West" speak of the universality of human rights, perceptive commentators from the "East" point to the imperfect protection, in earlier decades in "Western" countries of rights now claimed to be universal and fundamental. Thus women did not secure the vote in England until this century. African Americans did not have an effective right to vote in some parts of the United States until 1965. Homosexual citizens were criminalised and punished in Western countries until even more recently. These points are made to emphasise that perceptions of what are "fundamental human rights" take time. Accordingly, Western countries, and their citizens, should not be insensitive to the different stages at which Asian countries find themselves in the process of "enlightenment"<sup>19</sup>. Their minds should be open to enlightenment which they may receive from other cultures.

Within the resolutions and declarations of the United Nations, the notion of an Asian cultural exception, or of the

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<sup>18</sup> Gomez, "Social Economic Rights and Human Rights Commissions" (1995) 17 *Human Rights Quarterly* at 155, 161-2.

<sup>19</sup> Statement to the Vienna Conference by the Singapore Minister for Foreign Affairs.

division of human rights into different priorities, has been rejected. Thus the *Vienna Declaration* of June 1993 affirms:

"All human rights are universal, indivisible and inter-dependent and inter-related ... While the significance of national and 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<sup>20</sup> all human rights and fundamental freedoms".

This is not the place to review at length my work in Cambodia. Every report which I produced contained scrutiny of issues beyond civil and political rights: such as the right to health; the protection of cultural rights; the furtherance of rights to education; and protection of the right to a healthy environment and of the right to sustainable development<sup>21</sup>.

In each of my reports, I called to notice the progress that had been made in the economy of Cambodia. Predictably enough, following the end of war, and the confinement of rebellion to a small area of the country, economic activity has begun to flourish in Cambodia. With it came job opportunities,

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<sup>20</sup> World Conference on Human Rights, Vienna Declaration, United Nations Document A/Conf/57/23 para 1/10 n 18.

<sup>21</sup> Report of the Special Representative of the Secretary-General for Human Rights in Cambodia. UN doc E/CN.4/1996/93 (26 February 1996).

educational demands, and a gradual improvement (at least in the cities) of general standards of living. Derelict buildings were repaired to provide office and housing space. Long abandoned canals were restored. A ready measure of economic progress could be seen in the increased number of motor cars and motorised bicycles visible upon every fresh visit to Cambodia. Although economic development is not a necessary assurance of improvement of human rights, it is difficult to provide the environment for respect for the whole range of human rights referred to in United Nations' instruments without the basic necessities that a modern economy can provide. Credit must be given to the Government of Cambodia for promoting at least some of the improvements in the infrastructure that is necessary for modern economic development. Amongst other things, such developments raised the aspirations of those people who are its beneficiaries. They begin to demand reading matter and access to informative, non-propagandist radio and television. They travel, including overseas. They become aware of derogations from basic human rights (particularly in the areas of civil and political rights) in their own country. They organise themselves and lift their voices, in human rights bodies, calling for improvements.

These are the positive sides of economic development which were clearly visible in Cambodia relevant to human rights. But there are negative sides as I observed in my last mission in January 1996.

For example, the protection of Cambodia's environment is particularly important because of the vulnerable eco-system and the damage already done in the region by the large-scale destruction of forest timber and the substitution of large-scale agri-business. The danger of enduring damage to the environment for short-term, and relatively modest, economic returns was presented by me as a challenge to fundamental human rights because of the potential of such developments to affect, in the long run, the living standards of all Cambodians - indeed all people living in the region served by the river and eco-system of Cambodia.

During my last mission to Cambodia I visited the province of Rattanakiri in the remote north-east of Cambodia. I received many complaints of the intrusion of foreign-backed developers who reportedly, for a relatively small fee, gained concessions<sup>22</sup>. These allegedly entitled them to clear forest areas, sell the removed timber and substitute palm oil and other agri-businesses to the destruction of the environment of indigenous people who had lived there since time immemorial.

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<sup>22</sup> Report of the Special Representative of the Secretary-General for Human Rights in Cambodia. UN doc E/CN.4/1996/93 (26 February 1996) para 90 (page 26).

In my last report on Cambodia I also concentrated upon a number of particular ways in which the human rights of women are especially neglected in Cambodia. By reporting this, I do not mean to infer that Cambodia is more hard on its women than other countries of the region in this regard. But one function of the United Nations Commission on Human Rights, and its Special Rapporteurs and Special Representatives, is to bring the jurisprudence of the *International Covenants* down to the grass-roots: offering commentary on local practices when measured against the adopted international standards. The aim is to assist the governments of member states and their peoples and to translate the fine language of the international instruments into practical reality. It brings defaulters before the bar of humanity in Geneva and New York to receive praise where it is due but also to answer criticism. Many of the defaulters do not permit any criticism at all at home. Yet, in the United Nations, they have to face and answer it.

The United Nations treaty and human rights mechanisms may not be perfect. But at least they provide standards to measure basic human rights and institutions to scrutinise compliance. They create fora in which people can lift their voices when compliance. It is easy to condemn the weaknesses of the treaty system and of the institutions (including of office-holders such as I, until recently, was). But many of the recommendations I made gained the concurrence of the

Government of Cambodia. Some of my proposals will doubtless be overlooked or ignored. A few were expressly rejected. But others, I feel sure, will influence policy and legal development in Cambodia to the improvement of human rights generally and specifically those of women, children and other vulnerable groups.

This is one of the ways in which the United Nations contributes to the protection of basic human rights. The work of the United Nations agencies can also be directed and mobilised in this way in order to target those areas needing particular support and assistance.

#### THINGS TO BE DONE

My experience in Cambodia certainly taught me this lesson. Economic development is closely entwined with human rights protection. This is so for many reasons which have now been mentioned. I want to close with some particular comments on this issue from the specific point of view of jurists.

What can we do about the issues I have been discussing? Some lawyers, like Tun Abdul Razak, take leadership position in the government of their countries and contribute, in that way, to building economic development as a foundation for human rights advancements. But from the rest of us, there is a somewhat crippled response to assertions that the law should protect and



uphold fundamental social and economic rights essential to equitable development. The courts are often reticent in such matters. For example, in *DeShaney v Winnebago County Department of Social Services*<sup>23</sup> the United States Supreme Court ruled that under the Constitution of that country the government had no affirmative duty to provide positive rights to individuals. In *Webster v Reproductive Health Services*<sup>24</sup> the same Court held that the government had no affirmative duty to provide medical care to individuals. Commentators have explained that these cases (which find reflection in decisions in England, Australia, Malaysia and elsewhere) may be traced to a particular conception that the best government is generally one that leaves its citizens alone. For government to provide positive freedoms to the disempowered is seen as limiting the content of the individual freedoms of others<sup>25</sup>. Yet many of the remarkable economic and social developments achieved in Malaysia since independence have been secured by well-targeted governmental policies designed to achieve large social goals. In this, Malaysia can teach other countries of how governments can play an

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<sup>23</sup> 489 US 189 at 196-7 (1989).

<sup>24</sup> 492 US 490 (1989).

<sup>25</sup> Motala, "Socio-Economic Rights, Federalism and the Courts: Comparative Lessons for South Africa" (1995) 112 *Sth Af LJ* at 61, 71.

affirmative role in promoting equity and development whilst presiding over a highly successful market economy.

It is often said that jurists are not really concerned in economic and social rights because these rights are not justiciable: they are not readily enforceable in courts of law. The International Commission of Jurists (ICJ) of which I am President, has repeatedly sought to demonstrate that on the contrary there is a close inter-relationship between the effective attainment of economic, social and cultural rights with the full enjoyment of civil and political rights. The ICJ made this clear in 1986 when it adopted the *Limburg Principles*<sup>26</sup>. These examined the nature and scope of the obligations of states under the ICESCR. More recently, in 1995 at Bangalore, India, the ICJ - with Param Kumaraswamy and myself participating - adopted the *Bangalore Declaration and Plan of Action*. This calls for<sup>27</sup>:

"equal attention and urgent consideration ... [to] be given to the implementation, promotion and protection of economic, social and cultural rights, as well as civil and political rights."

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<sup>26</sup> (1986) 37 ICJ Review 43.

<sup>27</sup> See Bangalore Declaration and Action Plan in International Commission of Jurists (1995) 55 ICJ Review 219 at 221.

The *Bangalore Declaration* deplores the "professional failure and indifference which has often marked, in the past, the response of lawyers" to the rights enshrined in the ICESCR<sup>28</sup>:

"For lawyers to exclude themselves from a proper and constructive role in the realisation of [economic, social and cultural] rights would be to deny themselves a function in a vital area of human rights. ... The lack of involvement of lawyers in the realisation of more than half of the field of human rights, vital to humanity, is no longer acceptable."

The *Action Plan* lists action that can be taken by lawyers, individually, nationally and internationally to strengthen the attainment of economic, social and cultural rights, including by the contribution of lawyers. Individual lawyers are urged to ensure that their professional organisations include such rights within their human rights strategies. At the national level, the *Plan of Action* proposes increased attention to the obligations contained in the ICESCR, which many states have ratified, others not but which most have largely ignored. Judges are encouraged to apply, in the cases coming before them, international human rights norms in the field of economic, social and cultural rights. It is acknowledged that the implementation of economic, social and cultural rights in legal decision-making demands both "legal

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<sup>28</sup> *Ibid*, 223.

skills and imagination". We know that our profession has these qualities.

At the international level, a call is made to secure more ratifications from countries in the Asia/Pacific region of the International Covenants - and both of them. Renewed efforts towards the adoption of an Optional Protocol to ICESCR, akin to that under the ICCPR, to provide a complaints mechanism for alleged violations is mentioned. Attention to the reduction of manufacture, sale and purchase of armaments and greater equity in debt repayments is listed as practical ways for improving the position of economic, social and cultural rights, especially in poorer countries<sup>29</sup>.

To say that ordinary citizens are more interested in a full stomach, in educational chances for their children and health facilities, in clean water supply and in protection of local culture than they are in what happens in courts, police stations and legislatures is a serious over-simplification of the views of ordinary people about basic human rights. I have learned from my work in Cambodia that "ordinary citizens", in so far as such

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<sup>29</sup> See Hunt, "Reclaiming Economic, Social and Cultural Rights" [1996] NZLR 69 at 68 quoting *The Bangalore Declaration and Plan of Action*, International Commission of Jurists, Bangalore, India, 25 October 1995.

mythical people exist, are interested in *all* aspects of human rights. Truly, they see human rights as inter-related and indivisible. It is for that reason that lawyers should, as the *Bangalore Declaration* urges, become more knowledgeable about, and interested in, the "other half" of human rights. They should realise the occasional potential of the law to provide support for the achievement of those rights. Increasingly it is being perceived that economic liberty and progress are on the other side of the coin which celebrates progress in political and civil liberties. The reverse is also true. Economic and civil liberties are inter-related and inter-dependent.

We will not see, in a decade or even in our lifetimes, the fulfilment of our dreams of a world with human rights for all and economic development in every land. But it is the obligation of each one of us to contribute, in whatever way we can, to this end. Tun Abdul Razak did not live to see the extraordinary economic development of Malaysia or the building of a diverse and pluralist society in which there are opportunities for all and in which all enjoy basic civic rights under the rule of law upheld in independent courts. But, by his labours and example, those who come after him have benefited greatly. It now falls to the new generation in Malaysia in the coming millennium, to accept a leadership role in the region. This will surely be done in matters of economic advancement. But I believe that Tun Abdul Razak, a jurist, would also expect it to be done in the fields of law, in the building and training truly independent courts and in respect for

universal human rights. I expect that this will be a great challenge for Malaysia in the coming years. No-one who has seen the economic and social achievements of recent years can be other than optimistic about Malaysia's response to that challenge. By turning its economic development and progress in the field of economic, social and cultural rights into a leadership role in the field of civil and political rights, Malaysia can fortify its own advancement and provide a marvellous example to all who watch its achievements with admiration. Civil and political rights without economic development cannot be sustained for long. Economic, social and cultural developments without civil and political rights provides a society built on unstable foundations. Truly universal human rights are indivisible, inter-dependent and inter-related. Let this be the bold message that Malaysia gives to the coming millennium.