

Conceptualizing Collective Human Rights

A right can be defined as a claim on others to a certain kind of treatment. Civil Rights activist and former U.S. Representative Barbara Jordan defines a right as "that which is due to anyone by tradition, law or nature" (1992). Rights are the product of specific historical circumstances with political and economic trends directly influencing how rights are created, defended, and implemented. Rights thus arise from social relations.

To a significant extent, human rights are based on the liberal tradition of the protection of the individual. Internationally, human rights emerged as a result of the failure of the Westphalian¹ system to protect human beings from genocide and abuse. In fact, World War II demonstrated the inability of the nation-state system to prevent governments from carrying out the most extreme, abusive practices toward its citizens.

In the twentieth century, human rights assume a degree of importance similar to that which natural rights claimed in the eighteenth century. Human rights have been defined as "a special class of rights, the rights that one has simply because one is a human being. They are thus moral rights of the highest order" (Donnelly 1989, 12). The source of human rights is often said to arise from a socially shared moral conception of both the nature of the human person and the conditions necessary for a life of dignity. Human rights are thus claims and demands essential to protect human life and enhance human dignity, and should therefore enjoy full social and political approval.²

Advocates of human rights for the most part accept the *prima facie* priority of rights over other justifying principles (such as law and order), accepting Dworkin's concept of "trumping." Human rights "trump" other claims³ (Dworkin 1977, 364).

As Pollis, Falk, and other human rights scholars point out, any claimed international human right inherently challenges the foundations of the state system itself. International human rights present a higher law, a higher authority to which states are subject.⁴ Advocates hope that human rights will help restrain the present-day all-powerful state⁵ (Pollis 1982, 1-2; Falk 1983, 246).

Human rights are value-based. Within nation-states, the values embodied in claimed rights, for the most part, reflect the economic and social development of a society. For example, in the United States, rights generally represent freedom *from* governmental interference in our lives. The historical circumstances that led to claiming such rights as inalienable were the preoccupation with limiting capricious governmental interference in the economic and political social order. However, other important human values were not considered inalienable, such as the basic values necessary for human beings to keep on living—food, shelter, and clothing. Survival values were not addressed in the Lockean and Hobbesian experiment that was embraced by the American Revolution. Thus, a very *limited* conception of human rights developed in the United States.⁶

The historical circumstances and economic and social development in other countries have brought about alternative conceptions of human rights. Socialist ideology and social-democratic governments prioritize values which revolve around securing the basic needs of all members of society. This usually requires a great degree of governmental intervention in society, particularly in the economy. The value bias of distributive justice thus dominates human rights priorities in many less developed countries. To some of these countries, Western political rights are often seen as part of the ruling ideas of the day that disguise the viciousness of class rule, with its subsequent exploitation, degradation, and alienation of the majority classes. At the Vienna human rights conference in 1993, this debate once again to a large degree divided along North-South lines, with the underdeveloped countries emphasizing that their economic needs were as pressing as their thirst for democracy. In a switch in American policy, the Clinton administration decided to recognize the “right to development” as a universal human right (see chapter 4 below). And most Western countries paid lip service to the “indivisibility” of human rights, which means, as Pierre Sane, the head of Amnesty International, put it, that “you can’t choose between torture and starvation.” Yet the West’s focus at the Vienna conference remained on civil and political rights (*New York Times*, 20 June 1993).

Collective human rights differ from individual rights. Human rights theory traditionally has focused on the rights of the individual, independent of social groupings, and advocates for individual human rights mainly seek redress through the nation-state system or through intergovernmental structures, such as the United Nations. The focus of collective human rights, on the other hand, is on the rights of social groups, and proponents seek to create a normative framework independent of nation-states to enhance and protect these rights.

There is, however, an interdependent relationship between group and individual rights, in that certain individual rights cannot be exercised outside of the group context. In many instances, individual rights can only be fully realized through an understanding and protection of group rights. For example, trade union rights must be protected to give the individual the freedom to join a union. Or the protection of minority culture must be guaranteed if individuals are to enjoy their culture. Certain rights are collective in nature, even though the individual is the ultimate beneficiary (Triggs 1988, 156).

Although a dialectical and interdependent relationship exists between the two, the human rights tradition has clearly emphasized the individual's rights in these collective situations. In contrast, advocates for collective human rights emphasize the rights of the collective as a whole. For example, a focus on collective human rights implies attention to the ethnic rights of Native Americans as a whole social group, rather than on the status of individual Native Americans. A focus on individual rights, however, implies seeking the protection of the ethnic rights of individual Native Americans, with group protection seen as occurring in the distant future. This often means not seeing the forest for the trees. Equal opportunity, for example, remains a myth for the majority of Native Americans today, while, at the same time, on an individual basis a small minority of middle-class Native Americans may enjoy this right. A framework of collective human rights keeps the problem in focus. It comes down to a question of the vantage point in the relationship between the individual and the group.

In contrast to the liberal premise of the isolated human being, the ideas of collective human rights begin with a view of humans as they really are, that is, as social beings.⁷ The concept of collective human rights presented here is based on understanding the human race as primarily a social species—composed of social beings who congregate, associate, and exist within groups. Groups can be based on race, ethnicity, class, gender, and sexuality. This conception of the human species is the opposite of the one which is the basis of Lockean liberal theory: the isolated, lone individual, afraid of other humans. Human here means fundamental relationships, processes, and interactions with others in society.

Collective human rights are subversive to nation-state sovereignty in that they present the people (in the Rousseauian sense) as being the ultimate repository of sovereign rights. As Rousseau wrote: "Sovereignty, being nothing less than the exercise of the general will, can never be alienated. . . . [P]ower indeed may be transmitted, but not the will" (Rousseau [1762] 1973, 182). Our conception of collective human rights rests on this assertion of the sovereignty of peoples over any government and/or nation-state.

ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

There is not an absolute distinction, however, between some rights as formulated by IGOs and NGOs and this conception of collective human rights. For example, economic, social, and cultural rights adopted in various United Nations human rights documents, primarily are concerned with group rights. Less developed countries, in particular, have called on the world community to include these group rights within the human rights dialogue. The conception of collective human rights presented here builds on this foundation and extends it.

Economic, social, and cultural rights are collective rights based upon the rights of human beings in their various group and social roles. Meeting these rights often depends upon positive action on the part of the state. These rights call for the fulfillment of basic human needs and social equality. They are substantive in nature, calling for state intervention in the allocation of resources to address collective, rather than individual, problems (Kim 1984, 202).

Economic, social, and cultural rights were formulated in the Mexican Constitution in 1917, the Declaration of Rights of the Working and Exploited Peoples of 1918 (which was incorporated into the Soviet Constitution), the Weimar Constitution of Germany in 1919, the Constitution of the Spanish Republic of 1931, and the Constitution of Ireland of 1937.

With the growing influence in the 1970s of the Third World on the United Nations (along with strong support from what was formerly called the Socialist or Second World), collective rights took on an added importance within UN institutions. Not only self-determination, but the rights of minorities, the rights of the underprivileged peoples to an equitable share in the world's resources, women's rights, the right to development, and the right to peace were put on the world agenda as collective human rights. Collective human rights demand recognition of the rights of groups and can *only* be exercised with the cooperation of a group. The evolution of human life in modern society has made it increasingly necessary for individuals to collaborate with fellow human beings in order to survive. The Covenant on Economic, Social and Cultural Rights established a minimum level of social protection and welfare whose attainment should be sought by all states, whatever their politics.

Fundamentally, collective human rights posit that the foundation of all citizen/individual rights depends upon the material conditions of each society. Some scholars and activists formulate a hierarchical relationship putting these rights ahead of civil and political rights. Some liberal theorists deny that economic, social, and cultural categories should be considered human rights at all, and do not see how these rights flow from natural law.

Most United Nations scholars and human rights advocates, however, approach these questions by promoting an *interdependence* between the two sets of rights and criticize those who make too sharp a distinction between them. These writers point to article 29, paragraph 1 of the Universal Declaration, which states: "Everyone has duties to the community in which alone the free and full development of his personality is possible" (Brownlie 1981, 26).

The United States has had particular difficulty accepting the legitimacy of economic, social, and cultural rights. Following the great depression of the 1930s, on 25 January 1941, President Franklin D. Roosevelt announced his "four freedoms": freedom of opinion and expression, freedom of worship, freedom from material want, and freedom to live without fear. This marked a step forward in including economic and social rights within the American experience. President Truman also expressed verbal support for economic rights when he stated: "we must declare in a new Magna Carta, in a new Declaration of Independence, that henceforth economic well-being and security, that health and education and decent living standards, are among our inalienable rights" (McCullough 1992, 957). But these collective rights have not come easily to America, and in fact, confront an ideology of supreme individualism which has successfully blocked their implementation. As a result, the 1990s were ushered in with mass beggary on the streets of American cities on a scale not seen since the 1930s, with the differential between rich and poor at an ever-widening level. The right to be free from material want is not a protected right in the United States. In fact, scholars assert that the real reason for a separate UN Covenant on Economic, Social and Cultural Rights, rather than combining it with the Covenant on Civil and Political Rights, was so that "the Western states could avoid economic rights for the most part" by not signing this convention (Renteln 1990, 33).

There has been a great deal of debate about the relationship between human rights and meeting human needs. Galtung locates human needs inside individual human beings, whereas human rights are located between them. His value bias is that of justifying human rights by their relationship to human needs. One method of identifying human needs is by asking people questions such as "What is it you cannot do without?" Human needs thus may serve as a guide to identify victims. A human needs approach may place the human rights debate more firmly among the suffering, where the nonsatisfaction of minimal subsistence needs has drastic consequences (Galtung 1994, 54-58). Christian Bay uses the analogy of any reputable hospital which would serve the most severely injured and in need first. His argument is that the claims of the oppressed, those in global poverty, deserve preferred treatment (quoted in Kim 1984, 211).

Such an approach involves moving beyond “standard-setting” and “norm-making,” to examine the *structures* of the existing social order responsible for such things as unemployment and poverty. The causes of human suffering can most often be traced to economic structures that produce as much failure as success. Examining structures means acknowledging that violence and deprivation may, in part, be structural, and often not intended, nor even recognized, by individuals who uphold and even benefit from a particular political system. For millions living in poverty such an approach is fundamental to any discussion of human rights.⁸

A number of scholars believe that the human rights conundrum cannot be overcome to any significant degree without transforming the existing world order system. As Falk has written, “a denial of human needs of the masses is not inevitable, but results from the contingent structures of inequality existing between and within states” (1983, 244). “Our concern rests with the more organic attainment of a development process that encompasses everyone, providing work as well as sustenance, dignity as well as material wherewithal, participation as well as benefits” (1983, 249).⁹

Liberal thinkers continually make a distinction between individual and group rights, and endorse the primacy of individual claims for protection. The Universal Declaration of Human Rights and the UN Human Rights Covenants, however, include both kinds of rights, individual and collective, as human rights. In basing rights on the needs of individuals *and* groups, the international community has actually defined global human rights in a manner that goes far beyond liberal theory.

WHICH GROUP RIGHTS ARE COLLECTIVE HUMAN RIGHTS?

The international community has struggled with various definitions of group rights and peoples' rights. One scholar, for example, defines peoples' rights as: “rights of communities . . . ranging from the family unit to the entire human community (and including national, religious, linguistic and cultural communities, taking special account of minorities, indigenous populations, etc.)” (Marie 1986, 202). Another scholar put it, “the right *to be and to live in community with other members of one's own group*” (Hannum 1989, 19). Others contend that what comprises a people is contingent on both objective and subjective elements; the former being the existence of “an ethnic group linked by common history,” and the latter “a present ethos or state of mind,” that is, that a people is “entitled and required to identify itself as such” (Dinstein 1989, 161). And the former director of the UN Division of Human Rights Theo van Boven defined the issue as follows “for the sake of the

distinction between individual rights and group rights, a group should be taken as a collectivity of persons which has special and distinct characteristics and/or which finds itself in specific situations or conditions. Those special and distinct characteristics, may be of a racial, ethnological, national linguistic or religious nature. The specific situations or conditions could be determined by political, economic, social or cultural factors" (1982, 55).

In appraising (1) the contemporary ways in which people objectively and subjectively identify themselves, and (2) the new forms of group suffering in the modern era, the necessity to expand group rights beyond solely rights of ethnicity and race is starkly apparent. Groups based on gender, sexuality, and class also have a common history which has been systematically denied them. Thus self-awareness and group identity for many of these sectors is only now being born. The recognition by these groups of a common identity, a common history, and common sources of suffering, has led to the growth of strong social movements, whose demands include the protection of their rights as social groups.

The significance of this development should not be underestimated. Women's liberation, for example, is not just a cause. It is also a means whereby women bring fresh insights to their understanding of their collective identity as women, the culture of domination which oppresses key aspects of women's existence, and political concepts (such as self-determination). To ascribe theoretical and political importance only to ethnicity in formulating group rights, and *not* address other self-defining characteristics, is a fundamentally *conservative* worldview and orientation toward change. In fact, to stress ethnicity *over* other defining characteristics of peoples can easily lead to racist ideologies and supremacist notions. This is not to argue that all groupings of human beings are of equal importance. For example, the impact of social groups, such as sports clubs, on an individual's self-definition is for the most part minor. However, certain groups have emerged in modern society which, due to their nature and importance, call for a reexamination of collective human rights as well as the corresponding duties. Therefore, formulations of collective human rights must be expanded beyond ethnicity and race to include other group rights based on class, gender, and sexuality.

This expanded conception of collective human rights allows vital connections to be made. A comprehensive understanding of collective human rights would include: the indigenous peoples of the world, such as Native Americans; specific ethnic groups and minorities within a nation-state, such as African-Americans; oppressed segments of a population, such as gays within a homophobic society and women within a sexist society; and trade union and other class-based claims.¹⁰

Many advocates of collective human rights also accept the autogeneration of law by nonstate actors (see discussion of the "Algiers Declaration" below)

which challenges the nature of law itself. Autogeneration refers to the principle of self-creation, namely that norms, values, rules (and thereby “law” itself) can be generated by individuals and groups working with nonstate structures (NGOs and other associations).

THE POST-WORLD WAR II EVOLUTION OF COLLECTIVE HUMAN RIGHTS

Between the two world wars, the concept of collective human rights was utilized in international relations primarily with regard to self-determination. At this time, ethnic groups and minority populations *within* existing states were said to have the right to self-determination.¹¹

After World War II, the international community focused on the rights of peoples subjected to colonialism. In fact, it appeared that *only* peoples under colonial rule were entitled to the collective right of self-determination. For people struggling against overt colonialism, this was an important source of support to achieve national liberation. As soon as independent statehood was reached, however, the territorial integrity of the country became sacrosanct. The struggle of oppressed peoples *within* existing and newly created nation-states was not recognized by the international system (Partsch 1982, 63–65).

Recognizing the rights of peoples and minorities within the borders of nation-states threatens those in power for a number of reasons. Rulers (and many intellectuals) fear that such recognition leads to fragmentation and undermines national unity—sentiments expressed, for example, in debates regarding the dissolution of the former Soviet Union and the former Yugoslavia. “Ethnic cleansing” and other inhuman acts in Bosnia against racial and ethnic minorities reinforces this fear. In addition, many ruling elites express their own racism and intolerance toward all minorities.

The debate over expanding collective human rights gained focus and clarity during the anti-imperialist and decolonization movements of the 1960s. This debate took place not only within the United Nations and among nation-states, but also within NGOs, which in certain cases have been influential in shaping both public and official positions. The evolution of the ideas of collective human rights, in the post-World War II period, can be broken down into three relatively distinct periods:

- 1945–1975—Initial formulation of specific collective human rights.
- 1976–1981—Substantial elaboration of collective human rights.
- 1982–1996—Conflicting interpretations of collective human rights.

1945–1975: INITIAL FORMULATION

The world wars of the twentieth century produced a level of terrorism and violence unprecedented in human history. On a worldwide scale, the atrocities committed during World War II shocked all of humanity, aroused universal indignation, and led to the development and acceptance by nation-states of international human rights standards and norms. The frustrations evident in the trials at Nuremberg and Tokyo, due to the lack of international law in the field of human rights, pointed to the importance of developing treaty commitments defining world community standards for the rights of all humanity.

Such was the atmosphere in which the United Nations was launched, and as a result, much of its attention has been focused on the international protection of various human rights. This has not been an easy task. Numerous scholars point to two basic reasons why international human rights organizations often appear weak: (1) International standards directly challenge the statist perspective of the inviolable sovereignty of the nation-state. Human rights places the individual above the interests of any particular nation-state. (2) The development of such standards requires agreement on the perceived values necessary to advance human well-being. In a world of competing ideologies and politics, such unity has been difficult to achieve.

Creating norms to internationalize the legal obligations of states toward their citizens began in the late 1940s. Article 55 of the UN Charter calls for universal respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion (Brownlie 1981, 5). One hoped-for result of these efforts is that the eradication of human rights abuses can create the conditions for peaceful and friendly relations between states. Before World War II, total *indifference* toward human rights was often seen as necessary for a tolerably peaceful international order. At that time, the international community in general felt that attempts to interfere in the affairs of other nations, even if these nations committed abuses against their own citizens, were counterproductive and could lead to further misery and potentially war. Hitler's actions forced the international community to change their approach, and the United Nations began the process of creating international norms.

While article 56 of the UN Charter called for both joint and separate action to insure adherence to these international norms, the call for enforcement was left ambiguous, and was *not* a direct challenge to nation-state sovereignty. In fact, article 2, section 7 of the UN Charter, denies the right of the UN to intervene in the internal affairs of sovereign states¹² (Brownlie 1981, 4–6; McKean 1983, 56–57).

In 1946, the UN General Assembly established a Human Rights Commission to study human rights and recommend actions on the part of the UN and member states to enforce them (Brownlie 1981, 15–20).

On 10 December 1948, the General Assembly passed the “Universal Declaration of Human Rights” (48-0:8; pursuant to art. 13(1)(b) & 55(c) of the UN Charter). The Universal Declaration, which is like a global Bill of Rights, begins by stating that all human beings are born free and equal in dignity and rights (Brownlie 1981, 22). The Universal Declaration is considered more than just a recommendation, as was stressed by René Cassin, the person most responsible for the draft and a Nobel Peace Prize winner, because the states pledge to work in cooperation to achieve respect for human rights.¹³ The Universal Declaration represents a compromise resolution embodying civil and political rights as well as economic and social rights.

The declaration is not a treaty and does not have binding authority, but it puts forward a common standard to which states should aspire. In fact, the Universal Declaration represented a shift from the establishment of recommendations to the establishment of norms embodied in customary international law.

The “Universal Declaration of Human Rights” strongly emphasizes individual rights but also contains broader provisions. Article 28 contains the right to a “social and economic order” in which basic human rights can be achieved. In addition, the “Convention on the Prevention and Punishment of the Crime of Genocide,” adopted on 9 December 1948, defines genocide as “a crime under international law,” in terms of certain acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.” This multinational treaty went into force in December 1951, and over one hundred states are now parties. Both documents thus implicitly refer to peoples’ rights (Brownlie 1981, 26, 31).

The most important collective human right to gain official acceptance in this period was the right to self-determination. The “Declaration on the Granting of Independence to Colonial Countries and Peoples,” approved 14 December 1960 by the United Nations General Assembly (resolution 1514[XV]), addressed this issue (Brownlie 1981, 28–30). Control over natural resources was included in the discussion of self-determination. This was expressed in the “Resolution on Permanent Sovereignty over Natural Resources,” passed on 14 December 1962. This UN General Assembly resolution (1803[XVII]) declared “the right of peoples and nations to permanent sovereignty over their natural wealth and resources,” as “a basic constituent of the right to self-determination” (Weston, Falk, & D’Amato 1990a, 537–38). Later, in December 1966, the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, were approved, both referring to the rights of peoples to self-determination and to freely dispose of their natural re-

sources. Group rights are also implicit in references to rights to food, health, education, science, and culture. In addition, article 27 of the Covenant on Civil and Political Rights, extends individual rights based on membership in a group (ethnic, religious, or linguistic) (Brownlie 1981, 137). If read in connection with article 1(1) on self-determination of peoples, it could be argued to imply, at least, an endorsement of collective human rights.

The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, both of which entered into force in 1976, provide legally binding obligations embodying the standards of the Universal Declaration (Brownlie 1981, 118–46). As with the declaration, the covenants are of general character and in principle cover all fundamental human rights. As such, they include both individual rights and collective rights. The subjects of civil and political rights are individuals; for economic, social, and cultural rights, the subjects are individuals and groups.

More than 125 nation-states have signed these two covenants, representing to some a potential normative leap for the world community. For example, according to Lynn Miller, “a genuine worldwide *consensus* may have emerged in recent decades on explicit and wide-ranging standards for the acceptable treatment of human beings. If that is so, its implications for the future growth of a global sense of community should be very great indeed” (1985, 160).

However, the issue of sovereignty remains a contradictory one for the international protection of individual and collective human rights. As noted, nothing contained in the UN Charter shall authorize any nations belonging to the UN to intervene on matters “which are essentially within the domestic jurisdiction of any state” (Brownlie 1981, 4). The recognition of human rights questions the primacy of sovereignty, but in the fifty-year history of the United Nations, and despite the various declarations on human rights, states have been generally unwilling to voluntarily limit their sovereignty or delegate their rights to any international organization.

Also during this initial period, documents were approved by the General Assembly and UNESCO regarding the elimination of racial discrimination, the protection of cultural rights, and the suppression of apartheid.

1976–1981: SUBSTANTIAL ELABORATION

Three documents, the “Universal Declaration of the Rights of Peoples,” the “African Charter on Human and Peoples’ Rights,” and the “Convention on the Elimination of All Forms of Discrimination Against Women,” drafted during the period 1976–1981, provide the most complete elaboration of collective human rights to date (see the appendices below for the text of all three documents). It is noteworthy that the first document was written by an NGO

in conjunction with individuals and movements dedicated to combatting exploitation and protecting peoples' rights. In contrast, the latter two documents were drafted by nation-states themselves.

The "Universal Declaration of the Rights of Peoples" is also known as the Algiers Declaration, as it was proclaimed there on 4 July 1976. This document is divided into the following seven sections: Right to Existence; Right to Political Self-Determination; Economic Rights of Peoples; Right to Culture; Right to Environment and Common Resources; Rights of Minorities; and Guarantees and Sanctions. Each section contains specific articles outlining relevant claims. The document has been used with some success to legitimate struggles against oppressive regimes. The declaration was drafted by a group of nongovernmental scholars and jurists, and has provided a framework for examining grievances which have not been sufficiently addressed by established institutions.

The Algiers Declaration has guided the work of the Permanent Peoples Tribunal (PPT), an organization which evolved out of the Bertrand Russell War Crimes Tribunal on Vietnam a decade earlier. The PPT established rules and decision-making procedures through which peoples can appeal for the protection of their rights. It is a tribunal of opinion whose authority is not based on any state power. The tribunal comprises sixty members, representing thirty-one nationalities, of whom twenty-three are legal experts and five are Nobel Prize winners.

Since 1979, the PPT has held sessions on the Western Sahara (1979), Argentina (1980), Eritrea (1980), the Philippines (1980), El Salvador (1981), Afghanistan (1981 and 1982), East Timor (1981), Zaire (1982), Guatemala (1983), Armenian genocide (1984), Nicaragua (1984), Puerto Rico (1989), and Tibet (1992). In addition, the tribunal extended the subject of its concerns to deal with: the question of the external debt during the 1988 Berlin session on the International Monetary Fund and the World Bank, the Brazilian Amazon (1990), impunity in Latin America (1991), the conquest of America (1992), the environment and industrial hazards (1991 and 1992). In most of these cases, the results of the tribunals have been effectively utilized by the victimized people in their quest to alter the status quo.

One advantage of this NGO tribunal is that it can address the structural factors associated with the imperatives of capital accumulation by market-oriented economic systems, which many believe pose the principle threat to collective human rights today. International bodies composed only of nation-states (like the United Nations) have proven incapable of drawing the links between the economic and political structures of domination and the denial of peoples' rights. The PPT provides mechanisms to make these links and assert claims in international arenas, thus potentially influencing public opin-

ion on a world scale. A clear disadvantage of the PPT, however, is its lack of enforcement ability; it cannot force nation-states to change policies which violate the rights of peoples.

The second document that provides a significant elaboration of collective human rights is the "African Charter on Human and Peoples' Rights," approved by the thirty-seventh ordinary session of the Council of Ministers of the Organization of African Unity (OAU) and the OAU Assembly of Heads of States and Government, meeting in Nairobi, Kenya in June 1981.¹⁴

Certain events took place on the African continent in the late 1970s which compelled such an action on the part of the OAU. The most important of these were the large-scale killings of political opponents and others by Idi Amin in Uganda (1971-79), Macias Nguema in Equatorial Guinea (1968-79), and the killings of high school students in the Central African Empire in the last year of the regime of Jean-Bedel Bokassa (1966-79). The worldwide condemnation of these regimes led the OAU to draft and later adopt the charter on human and peoples' rights.¹⁵

The charter entered into force on 21 October 1986, at which time thirty African states were parties. It is the *only* human rights treaty (universal or regional) to deal specifically with peoples' rights in general. Articles 19 through 24, in particular, assert the rights of peoples in the following areas: existence, self-determination, political status, economic, social, and cultural development, disposal of wealth and natural resources, and the elimination of foreign economic exploitation. Notably, the charter asserts the right to development, the right to national and international peace and security, and the right to a general satisfactory environment as collective rights of peoples. The charter establishes an African Commission on Human and Peoples' Rights to "promote human and peoples' rights and ensure their protection in Africa."

By explicitly endorsing the concept of peoples' rights, the document attempts to be responsive to African traditions and needs. "All peoples shall have the right to their economic, social, and cultural development with due regard to their freedom and identity. . . . States shall have the duty, individually or collectively, to ensure the exercise of the right to development."¹⁶

Theo van Boven argues persuasively that the African charter presents a dialectical relationship between the human rights of the individual and the collective rights of peoples. He contends that the highly innovative element of the charter is that it imparts "to peoples a set of existing or emerging rights" which were already identified in connection with States. "That makes the African Charter a peoples oriented document." And later he writes, "It is the notion of peoples' rights that is not destructive of individual human rights but places peoples' rights and human rights in a mutual relationship as complementary concepts" (van Boven 1986, 190, 193).

The third document, the "Convention on the Elimination of All Forms of Discrimination against Women," was drafted in New York in 1979 and entered into force on 3 September 1981. This important convention affirms numerous collective human rights of women in political, economic, social, cultural, and civil arenas. For example, state parties to the convention agree in article 5 to take all appropriate measures: "To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

Collective human rights are affirmed throughout this convention including article 11, in which state parties agree to take all appropriate measures to eliminate discrimination in the field of employment to ensure, (a) "The right to work as an inalienable right of all human beings; . . . (e) The right to social security." Other rights upheld include the prohibition of sanctions or dismissal on the grounds of pregnancy or maternity leave; the introduction of maternity leave with pay or with comparable social benefits without loss of former employment, seniority, or social allowances; the right to family benefits; and the right of rural women to have access to adequate health care facilities, including information, counseling, and services in family planning.

One hundred thirty-one states have ratified the women's convention, while seven states signed the convention but have yet to ratify it (including the United States) (Cook 1994, 585).

1982–1996: CONFLICTING INTERPRETATIONS

Since the 1979 women's convention and the 1981 African charter, various organizations have tried to develop specific rights as collective human rights of peoples. For example, in September 1984, the World Conference of Indigenous Peoples (WCIP), a confederation of indigenous organizations from around the world, proclaimed a Declaration of Principles of Indigenous Rights. The declaration represents the common views of its member associations, and presents a clear statement of indigenous rights.¹⁷

On 4 December 1986, the UN General Assembly approved the Declaration on the Right to Development (UNGA resolution 41/128—see chapter 4 below). This declaration asserts 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. . . . The human right to development also implies the full realization of the right of peoples to self-determination" (Weston, Falk, & D'Amato 1990a, 486).

Among scholars, there continues to be a great deal of controversy about the conception of peoples' rights and collective human rights. International law professor James Crawford outlines three clear categories of such rights: (1) The right to self-determination, a right vested in people and not governments; (2) the right of peoples to existence; and (3) the right of people to permanent sovereignty over natural resources (Crawford 1988, 159–75).

Other scholars outline a broad range of individual and collective human rights, conceptualizing "three generations" of rights (see Rich 1988, 41; and Weston 1992, 18–20). Karl Vasak, formerly UNESCO's legal adviser, popularized the concept of three generations of human rights as follows:

The first generation of rights emerged from the American and French revolutions and were aimed at securing the citizen's freedom from arbitrary action by the state. Articles 2–21 of the Universal Declaration of Human Rights are often included in this first generation, embracing: freedom from racial and equivalent forms of discrimination; the right to life, liberty, and the security of the person; freedom from slavery or involuntary servitude; freedom from torture and from cruel, inhuman, or degrading treatment or punishment; freedom from arbitrary arrest, detention, or exile; the right to a fair and public trial; freedom from interference in privacy and correspondence; freedom of movement and residence; the right to asylum from persecution; freedom of thought, conscious, and religion; freedom of opinion and expression; freedom of peaceful assembly and association; and the right to participate in government, directly or through free elections. The core value in this first generation conception of human rights is freedom and the notion of liberty, that is, to shield the individual from abusive political authority.¹⁸

The second generation of rights emerged from the Russian Revolution and were echoed in welfare-state concepts which developed in the West. They correspond largely to economic, social, and cultural rights, and are found in articles 22–27 of the Universal Declaration of Human Rights, including the right to social security; the right to work and to protection against unemployment; the right to rest and leisure; the right to a standard of living adequate for the health and well-being of self and family; the right to education; and the right to the protection of one's scientific, literary, and artistic production. The core value of second-generation rights are claims to equality.

The third generation of rights are a response to the phenomenon of global interdependence, and correspond to the core value of fraternity. Individual states acting alone can no longer satisfy their human rights obligations. International cooperation is required to solve contemporary problems, leading to the classification of this third generation as "solidarity rights." Such claims include: the right to peace; the right to a healthy and balanced environment; the right to humanitarian disaster relief; the right to political, economic,

social, and cultural self-determination; the right to economic and social development; and the right to participate in and benefit from "the common heritage of mankind" (including earth-space resources). These third-generation rights are collective human rights which benefit individuals and groups.

Different lists of collective human rights and peoples' rights were discussed by scholars in the 1980s and 1990s.¹⁹ Academics documented how the existing world system did not display much hospitality toward defining and implementing a program of collective human rights. In fact, the dominant categories at the UN (and in international relations in general) remained the individual and the state. Others noted a certain "ideological fatigue" over the "unceasing elaboration and reformulation of new human rights at a time when the existing norms are systematically ignored and violated" (Kim 1984, 207).

In the mid-1990s, the most successful group internationally to articulate rights claims was women. The 1993 "Vienna Declaration and Programme of Action," adopted at the World Conference on Human Rights, emphasized eliminating violence against women as a human rights obligation. Governments recognized gender-based violence as a human rights violation, rather than dismissing it as incidental to the horrors of war or as private conduct solely within the realm of domestic law (Sullivan 1994, 155). The conference also endorsed the draft "Declaration on the Elimination of Violence against Women" by calling for its adoption by the General Assembly. This draft declaration is significant because it is a clear expression of an international commitment to address violence against women in private life by explicitly addressing gender-based violence in the family and violence by non-governmental actors in public life (Sullivan 1994, 157). The denial of women's economic, social, and cultural rights, and the impact of development on all their human rights, however, did not receive similar attention at the conference.

In June 1994, the Organization of American States, meeting in Belem do Para, Brazil, adopted the "Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women." This convention also recognizes that violence against women constitutes a violation of human rights and defines violence in both the public and private spheres.

The United Nations Fourth World Conference on Women meeting in Beijing adopted a final declaration on 15 September 1995 embracing the collective human rights of women. The broad declaration called on world governments to raise the economic circumstances of women and protect them from increasing levels of violence. Key collective human rights of women agreed to by the nation states include [see *New York Times*, 15 September 1995].

- Women have the right to decide freely all matters related to their sexuality and childbearing.
- The systematic rape of women in wartime is a crime. Perpetrators should be tried as war criminals.
- Domestic violence is a worldwide problem that demands governmental intervention.
- Critical to the empowerment of women is access to credit. Therefore, governments and international lending institutions should support banking services for low-income women.

THE GROWING IMPORTANCE OF TRANSNATIONAL NORMS

Although the nation-state is still the most viable actor in the international arena as we approach the end of the twentieth century, its authority and supremacy is currently challenged on several fundamental levels. First, ethnic groups within existing borders of many nation-states are contesting the legitimacy of the states' control over their lives, with demands ranging from the protection of social and cultural rights to the establishment of independent nations.²⁰ Second, in most nation-states, because class conflict remains intense, the state is functioning to diffuse unrest and prevent the explosion of class contradictions. In addition, in many countries, people increasingly expect that an "interventionist" state will guarantee basic human needs, including health care, a job, and housing. In the vast majority of countries in the world today, the state has not come close to meeting these demands. At some point, the legitimacy of the state is called into question by those whose basic needs are ignored.²¹ Finally, issues of social justice challenge basic social relations and structures of political power that exist in most nation-states. Women and gays, for example, confront cultural norms and the patriarchal hierarchy in governing structures with demands that, for the most part, go unheeded by ruling states and classes. The environmental and peace movements raise critical problems affecting the future survival of all forms of life on the planet. Yet the nation-state system appears limited in its ability to seriously incorporate or resolve the basic issues of social justice raised by these movements.²²

Conceptions of collective human rights attempt to address many of these failures in the current statist world system. Advocates of these ideas argue that a fundamental restructuring of the international system based on

transnational collective human rights is necessary for the survival and development of the human species. These proponents actively utilize the ideas of collective human rights to confront the authority of the nation-state. The review of three critical arenas of collective human rights, ethnic rights, women's rights, and lesbian/gay rights, in the next chapter makes this point fundamentally clear.