Inclusive democracy secures rights

The primary meaning of democracy is that all who are affected by a decision should have the right to participate in making that decision, either directly or through chosen representatives . . . . to exclude the losing groups from participation in decision-making clearly violates the primary meaning of democracy.
—Arthur Lewis, first Nobel Prize winner in the economics of development

Democracy is the only form of political regime compatible with respecting all five categories of rights— economic, social, political, civil and cultural

The democratic liberalization sweeping the world is making transitions more civil. One of the more remarkable transitions: in Senegal President Abdou Diouf's loss in an open election in February 2000 ended four decades of one-party rule. Senegal became part of the refreshing trend in Africa of leaders leaving office through the ballot, a rare occurrence until recently. Yet despite undoubted benefits, the transition to democracy in many countries remains imperilled, insecure, fragile. The spread of democracy is important, but we must not overlook the challenges and dangers.

THE LINK BETWEEN HUMAN RIGHTS AND DEMOCRACY

Democracy is the only form of political regime compatible with respecting all five categories of rights—economic, social, political, civil and cultural. But it is not enough to establish electoral democracy. Several policy interventions are required to realize a range of rights under democratic government.

DEMOCRACY IS DEFINED BY HUMAN RIGHTS

Some rights require mechanisms that ensure protection from the state. Others need active promotion by the state.

Four defining features of a democracy are based on human rights:
- Holding free and fair elections contributes to fulfilment of the right to political participation.
- Allowing free and independent media contributes to fulfilment of the right to freedom of expression, thought and conscience.
- Separating powers among branches of government helps protect citizens from abuses of their civil and political rights.
- Encouraging an open civil society contributes to fulfilment of the right to peaceful assembly and association. An open civil society adds an important participatory dimension, along with the separation of powers, for the promotion of rights.

These rights are mutually reinforcing, with progress in one typically linked with advances in others. Openness of the media, for example, is usually correlated with the development of civil society institutions.

But democracy is not homogeneous. From the several forms of democracy, countries choose different institutional mixes depending on their circumstances and needs. For simplicity, it helps to distinguish two broad categories of democracies—majoritarian and inclusive. In a majoritarian democracy government is by the majority, and the role of minorities is to oppose. The danger is that many minorities in plural societies may be permanently excluded, discriminated against and marginalized—since this would not affect the electoral prospects of majority-based political parties. That can lead to violence, the case under several democracies.

In the liberal democratic model all individuals are autonomous in displaying public loyalty to the state, while their various private loyalties— religious, ethnic or regional—are ignored. This puts the emphasis on a majority's right to decide. And when collectives of unequal size live together in a democracy and do not have identical or cross-cutting interests, conflicts become likely.

These dangers are evident in Nigeria, which has experienced much violence since its return to democratic rule. These concerns are emphasized in the special contribution by President Olusegun Obasanjo.

Majoritarian democracies have frequently been undermined by a minority's fear of repres-

sion. In 1947 the South Asian subcontinent split into two nations in part because the Muslims of India felt that Westminster-style majoritarian democracy would mean rule by the overwhelming Hindu majority. These fears echoed those of Catholics in Northern Ireland, who lived under a Protestant-elected government from 1921 to 1972. Both situations led to widespread violence.

Now consider an inclusive democracy built on the principle that political power is dispersed and shared in a variety of ways—to protect minorities and to ensure participation and free speech for all citizens. Inclusive democracy emphasizes the quality of representation by striving for consensus and inclusion, not the brute electoral force of the majority. An inclusive democracy also appreciates the need to promote civil society organizations, open media, rights-oriented economic policy and separation of powers. It thus creates mechanisms for the accountability of the majority to the minorities.

After the first elections in a free South Africa, President Nelson Mandela asked a prominent leader of the opposition to join his cabinet, even though the African National Congress had a comfortable majority. Mandela's accommodation of a threatened—and potentially violent—minority is an important lesson for other democracies. Having an opposition is important, and coalitions can make governments unwieldy. But the price of exclusion is often higher, especially when it leads to civil war.

HOLDING FREE ELECTIONS TO ENSURE PARTICIPATION AND NON-DISCRIMINATION

When individuals are acknowledged as an important part of a system, they tend to take responsibility for it and make efforts to maintain and improve it. Voting is the opportunity to choose the government, and faith in the process of electing representatives confers legitimacy on the institutions of government. This basic right of participation, along with related rights, has been extended recently in the once colonized or satellite regimes of Africa, Europe and Asia. The initial progress in democratization has been impressive in parts of Central Asia, such as Kyrgyzstan and Mongolia. In sharp contrast are neighbouring Turk-

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SPECIAL CONTRIBUTION

Transition to democracy and human rights

A main feature of Nigerian sociopolitical life of the recent dark years is the extent to which it spawned human rights activism. The more tyrannical the regime got, the more people became aware of what they were losing by way of freedom of expression and the right to determine how they were to be governed. In fact, human rights activism became the only form of political expression. It's thus hardly surprising that the protests all became generically known as pro-democracy movements.

The human rights groups aligned themselves into forces that were determined to force General Sani Abacha out of power. And, looking back, they had a strong chance of scoring a unique victory for the nation, had there not been the divine intervention that offered an opportunity for transition without the disadvantages of violent confrontation.

In the immediate years before the transition Nigerian society experienced evil governance. Nigerians were so traumatized by the experience that transition alone was not an adequate palliative. In recognition of this, our administration immediately set up a commission to look into all complaints of human rights abuses in the past. The commission has yet to conclude its findings, but already we seem to be achieving some of the desired effect: namely, that many people have felt a sense of relief simply because they have had the chance to air their grievances and put their cases before someone who is willing and prepared to listen.

By all standards, the transition in Nigeria has been most rapid, and we thank God that it has so far been without any major crises. However, the speed of liberalization is analogous to the sudden release of the lid from a boiling kettle. After years of oppression and suppression, many conflicts have suddenly found voices for public expression. Besides this, there are those forces of activism that are yet to lose their confrontational habits from the days of less sympathetic and undemocratic regimes. Some of these forces have even been hijacked by people with criminal intentions.

We fully accept the challenge of persuading all Nigerians to accept that transition is a process and not a one-off event that was concluded on 29 May 1999. In that process all Nigerians should feel free to bring their legitimate grievances to the dialogue table, where they will be heard rationally, justly and constitutionally. That is the beauty of the unique advantage of democracy over other forms of government.

Our administration is not only fully committed to democratic rule, but our battle cry in the transition process is "Never again will this country sink into the abyss of the recent past when human rights abuse was the order of the day!"

President Olusegun Obasanjo
President of Nigeria

menistan, which has a president for life, and Uzbekistan, where the Inter-Parliamentary Union and other observers raised concerns about the electoral process.

There are other stirring developments. In the Islamic Republic of Iran the February 2000 parliamentary elections—a democratic path to revolutionary change—is an example of people's power contributing to systemic structural changes.

INDEPENDENT MEDIA—FOR FREEDOM OF EXPRESSION

The freedom of individuals to openly debate and criticize policies and institutions guards against abuses of human rights. Openness of the media not only advances civil and political liberties—it often contributes to economic and social rights. Pricking the public conscience and pressuring for action have worked in several cases (box 3.1).

In many cases the media have raised awareness of rights violations. Child labour in making carpets and soccer balls and poor working conditions in the factories of multinational firms received extensive coverage. In most of these cases NGOs formed an alliance with the media—to mobilize the power of shame to protect the rights of the vulnerable.

THE SEPARATION OF POWERS—FOR THE RULE OF LAW

The state is omnipresent in any discussion of human rights, as culprit and protector, as judge, jury and defendant. It often has to be ready to act against itself—if, say, extrajudicial killing or torture is carried out by its police. A democratic state can fulfil its human rights obligations only if it ensures the rule of law. The institutions that curb the arbitrary exercise of power are a democratically elected legislature, an independent judiciary and an executive that can retain a reasonable professional independence in implementing laws and policies. These key elements of democratic governance are embodied in the separation of powers. And their existence enhances the accountability of the state.

Little noticed by the world, reforms are taking place in this direction in a number of countries, with profound implications for the civil and political rights of people. Not least of these developments has been in China, where a series of fundamental reforms have been introduced into the constitution. A major revision of the penal code introduces the principle of habeas corpus, and a new civil code incorporates the principle of rights and dignity of the individual. Reforms have moved towards greater independence of the judiciary from the executive, and within the judiciary, the functions of judge, prosecutor and legal counsel have been separated, and each of these professional groups has a code of conduct.

AN OPEN CIVIL SOCIETY—FOR DEEPENING PARTICIPATION, EXPRESSION AND ACCOUNTABILITY

The state is accountable to its citizens—but a neutral public space is needed as an intermediary for the citizens to make the state fulfil its

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BOX 3.1

The power of shame—a weapon for human rights NGOs

For many civil society agencies, shame is their only weapon. And it can be quite powerful.

Brazil
In February 1989, 50 prisoners were locked in an unventilated maximum security cell at the 42nd police station in São Paulo. Eighteen died of asphyxiation. To protest, NGOs filed a petition with the Inter-American Commission on Human Rights. This pressure prompted the federal government and São Paulo state government to pay compensation to the prisoners' families in 1997, and to close down the maximum security cells in São Paulo police stations. And partly as a result of this incident, Brazil has produced guidelines for the treatment of prisoners closely based on the UN framework.

Hungary
In 1997 municipal authorities in the town of Szekesfehervar began to relocate predominantly Roma families from a rundown building on "Radio Street" to a row of containers used to house soldiers stationed in Hungary during the Bosnian war. The containers were placed outside city limits. A number of NGOs banded together to form an ad hoc Anti-Ghetto Committee, which held public demonstrations and lobbied the national government. Municipal authorities finally agreed to purchase flats in the city.

Nigeria
To resist human rights violations by Shell Oil in 1990, the Ogoni people formed the Movement for Survival of Ogoni People, a peaceful movement led by Ken Saro-Wiwa. Although Shell Oil suspended its activities in Ogoniland in 1993, it continued to pump more than 250,000 barrels of oil a day in Nigeria, nearly 12 percent of its international output. In the wake of Saro-Wiwa's execution in 1994, many NGOs and fair trade organizations started campaigning against Shell. The damage to the company's public image and profits compelled it to publicly admit its errors and adopt a human rights code.

Source: Neve and Affonso 1995; Cahn 1999; CAD 1995; Shell Report 1999.

obligations. There may be independent auditing by citizens groups, such as the People's Union for Civil Liberties in India—or by international NGOs, such as Amnesty International or Human Rights Watch. Such pressure is aimed at advancing freedoms of press, of speech, of association. A state may have signed all human rights treaties—but without an open civil society it may be under little pressure to honour its commitments.

In sum, democratic governance provides the ideal political framework for the realization of human rights—because it is based on the extension of civil and political rights, notably the right to participate in political life. And by allowing a voice in political decisions, it can be instrumental in realizing other rights. Democracy builds the institutions needed for the fulfilment of human rights.

How and why some "democracies" harm human rights

Many democracies nevertheless fail to protect or promote human rights. Although the global transition to democratic regimes is undoubtedly progress, problems of human rights are not resolved simply because an electoral system has replaced an authoritarian regime. The transition to a new order involves complex issues of human rights. In extreme cases of illiberal majoritarian democracy, the human rights of several groups have worsened. In other cases the world community has been too tolerant of human rights abuses under democracies.

Countries in the transition to democracy generally face four challenges in promoting human rights.
• A critical challenge is to integrate minorities and address horizontal inequality between ethnic groups or geographic regions. Perhaps the most persistent weakness of majoritarian democracies is discrimination against minorities and worsening of horizontal inequalities.
• A second key weakness is the arbitrary exercise of power. Elected governments frequently lose legitimacy and popular support when they behave in an authoritarian manner. When elite groups act as if they are above the law or when elected representatives arbitrarily remove judges, civil servants and others, faith in democratic institutions weakens.
• A third weakness is neglecting the economic dimension of human rights. Many democracies fail to address the economic and social rights of significant groups, typically because this neglect does not hurt the electoral outcomes for those in power.
• Finally, failing to deal adequately with the legacy of an authoritarian past can lead to the recurrence of violence and the reversal of democratic rule.

In each case human rights are seriously affected. Minorities are punished. Children remain uneducated and hungry. Journalists are intimidated, judges threatened, political opponents tortured and human rights activists eliminated. These violations continue under many elected governments.

Exclusion and marginalization of minorities

The Achilles' heel of majoritarian democracies: the exclusion and marginalization of minorities. The scale and extent of discrimination differ, but the histories of India, Israel, Nigeria, Russia, Spain, Sri Lanka, Turkey, Uganda, the United Kingdom, the United States, to name a few, show that minorities suffer serious discrimination.

Rights are protections against the harms that people are likely to suffer. Minority rights protect groups against threats from majoritarian decision-making procedures. The threats typically include:
• *Exclusion from participation*—manipulating political rights and the media to increase the power of the majority in politics, such as through gerrymandering of constituencies.
• *Bypassing of the rule of law*—setting aside the rule of law in times of great social stress, often targeting minorities whose loyalty the majority questions. In assessing the rights of minorities in a democratic society, two questions are relevant. What rights for the protection of minorities are in the constitution? How well does the political system protect these rights in practice?

Many democracies fail to protect or promote human rights

- *Oppression*—imposing social practices on minorities, a recurrent theme in many societies. The languages and cultures of minorities have often been banned or marginalized. Today the rise of religious intolerance in several countries is imposing alien cultural practices on minorities. And in some societies intolerance towards those wishing to practise their religion is a denial of the right to freedom of expression.

- *Impoverishment*—actions of the majority to further its economic interests at the expense of minorities, through, say, forced relocations from resource-rich areas.

Violence against minorities is a burning political issue the world over. Even with constitutional protection, minorities can face large threats. In Western Europe immigrant minorities are constantly exposed to violence and racism (box 3.2).

THE FAILURE TO INTEGRATE MINORITIES— THE EXTREME OF CIVIL WARS

An estimated 5 million people perished in civil wars in the past decade. The breakdown of trust and failure of internal political accommodation often occur because of horizontal inequalities and the absence of democratic processes for settling disputes. The paradox of the former Yugoslavia and Sri Lanka—two countries with reasonable progress in incomes alongside human rights violations, though there are many other examples—is at one level due to civil war. But why are these societies in civil war? The answer relates to the quality of democracy, particularly the way minorities have been excluded.

Yugoslavia in the 1980s was a multi-ethnic, multi-faith federation with much local autonomy for minority ethnic groups, as in Kosovo. But the country—once considered a model of dynamic workers' cooperatives, ethnic integration and non-Soviet socialism—imploded into vicious ethnic cleansing of minorities, which resulted in the first genocide in Europe since Nazi Germany.

In Sri Lanka two large communities—the Sinhalese and Tamil—started out as citizens in a liberal democratic framework with guaranteed rights. In this multi-ethnic society the Sinhalese speakers far outnumbered the Tamil speakers. But in 1956 the Sinhalese majority started imposing a single-language national identity, and had the numbers to force it through parliament.

After decades of troubles the majority has recognized that some form of recognition of the parity of the two communities is a prerequisite for reconstructing the Sri Lankan nation. But the assassination of a well-known human rights activist and lawyer in July 1999, a few months before attempts on the life of the president of Sri Lanka, is a gruesome reminder of the continuing obstacles (box 3.3).

So, despite reasonable progress in income, the failure to integrate minorities can lead to violations of human rights and to war. The spirit of democracy has to be inclusive, embracing the principle that power must be dispersed and shared. The multiple layers of people's identity and loyalty—to their ethnic group, their religion, their region and their state—have to be recognized and given fair play in democratic institutions—or explode into conflict (box 3.4).

ARBITRARY EXERCISE OF POWER

Democracy suffered reversals in Ecuador, Pakistan and Sierra Leone, where elected regimes changed through unconstitutional mechanisms. In other, less extreme cases elected leaders have become more authoritarian.

BOX 3.2

Racism against immigrants and other minorities in Western Europe

The European Monitoring Centre on Racism and Xenophobia, in a comprehensive survey in 1998, confirmed that racism and xenophobia exist in all 15 member countries of the European Union, though the situation varies across countries.

The centre documented vicious attacks, intimidation and discrimination against foreigners, immigrants and racial groups in several countries in 1998—while recognizing just how few cases are ever reported. In Germany there were 430 officially reported cases of xenophobic violence; in Spain 143 cases, mostly against "gypsies"; in France 191 cases, most of them anti-Semitic; in Sweden 591 "acts against ethnic groups"; and in Finland 194 reported racial crimes, most against immigrants and Roma. The study observed that racism is not always linked to social marginalization. Hate crimes are perpetrated in many cases by members of far-right organizations and parties, but also by other citizens and by police officers.

Such uncivil society poses threats to the human rights of minorities in many parts of the world. Refusing to keep silent, by documenting cases and reporting on them in the media, is the first step towards combating racism—bringing it to collective awareness and mobilizing a response.

Source: European Monitoring Centre on Racism and Xenophobia 1998.

An economic crisis might contribute to an elected regime's unpopularity, but a deeper disillusionment comes from the arbitrary exercise of power. In many countries suffering reversals, civilian governments behaved like their military predecessors. Elected to power in an institutional collapse, they did not institute any separation of powers. Instead, the judiciary, legislature and civil service were effectively merged into an instrument of arbitrary power, concentrated in the office of the chief executive. There was no effective check on the exercise of power, a legacy of long periods of military and colonial rule. Rather than undertaking major institutional reforms—which would introduce checks and balances and thereby protect rights—successive civilian governments continued to exercise arbitrary power. Rights to participate, as well as many other rights, have suffered in fragile democracies.

PERSISTENT POVERTY AND GROWING INEQUALITY

Despite half a century of elected governments, India has failed to provide universal primary education. There is no provision in the constitution for mandatory primary education as a right of all citizens. Resources are not the critical constraint. Countries with similar resources, such as China, have legal guarantees for this economic right, and have delivered it.

Mass poverty, particularly when combined with growing vertical or horizontal inequality, often leads to social instability. The resulting law and order problems have an economic base but undermine civil and political rights. Persistent poverty and growing inequality lead to social strife, which has often undermined civil liberties. The fact that progress in human rights is unlikely to be sustainable without balanced development of economic and political rights is explored in detail in chapter 4.

THE TROUBLED LEGACY OF AN AUTHORITARIAN REGIME

Cambodia, Chile, Guatemala, Indonesia, Nigeria, Russia, South Africa—to name a few—have to build democracies on the ashes of a brutal past. Healing deep wounds, taming repressive institutions, changing violent attitudes born of conflict and creating a culture of consensus are vital to the process of democratization.

How best to convert militaristic or fascist states into democracies? There have been three types of responses:

• A country accepts externally imposed democratic institutions because of military defeat and the promise of major financial assistance. This was the case in Germany and Japan after the Second World War—ironically, outsiders "imposed" democratic institutions, which have nonetheless taken root and grown for the past five decades.

• A country has an internal consensus on democracy as the system for the future, often supported by incentives from regional institutions—and by features of the past that provide a symbol of unity during radical institutional change. Spain chose not to rake up a

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BOX 3.3

A murder that didn't silence a message

Dr. Neelan Tiruchelvam, human rights activist, member of the Sri Lankan parliament, scholar and constitutional lawyer, was brutally assassinated on 29 July 1999. He was a critical link in the discourse on ethnic politics and human rights in Sri Lanka, bringing his intellectual strength, activist inspiration and mediation skills to the peace effort. His contributions, both locally and internationally, to democratization and conflict resolution are most clearly visible in his efforts to mediate a negotiated settlement and his work in drafting constitutional amendments and legislation on equal opportunity and non-discrimination and establishing civil society institutions for human rights.

The politics of ethnicity and the politics of war require people with the commitment and capacity to confront the perpetrators of all forms of discrimination, extreme nationalism, human rights violations and injustices—and to do so at all levels, legal, constitutional, political, intellectual and moral.

Neelan, who belonged to one of the minority communities of Sri Lanka, advocated tolerance and celebration of diversity and pluralism in an environment where both the state and the people could be held

accountable for their actions. His life's work was committed to these ideals and practice. The void he leaves behind is great in a world where the voices of moderation, negotiation, self-determination and liberalism are frequently threatened by violence.

On what would have been his 56th birthday, 31 January 2000, human rights activists, academicians, lawyers, political leaders and friends gathered from around the world to pay tribute to his memory and his work. Kofi Annan and Mary Robinson added their messages to this gathering. To quote from Neelan's last address to parliament on 15 June 1999:

We cannot glorify death, whether in the battlefield or otherwise. We, on the other hand, must celebrate life, and are fiercely committed to protecting and securing the sanctity of life, which is the most fundamental value without which all other rights and freedoms become meaningless.

We can only hope that all those individuals and institutions he engaged and inspired, both in Sri Lanka and around the world, will advance his work and his vision.

Source: Wignaraja 2000.

difficult past in human rights, in part because of the consensus across the political spectrum on democracy and the lack of any serious threat of reversion to a militaristic, authoritarian government. As part of this consensus, the major political parties agreed to a symbolic role for the monarchy in consolidating the transition to democratic governance.

- A country uses a truth and reconciliation commission to heal deep wounds. Many countries have felt the need to openly discuss human rights abuses—to recognize suffering and to put the perpetrators of such abuses on the defensive.

Formal truth and reconciliation commissions were first established in Latin America in

the 1980s (annex table A3.1). They have since proved, in some countries, to be an ingenious device for balancing the divergent needs of healing and justice. Elsewhere, they have been superficial exercises in futility.

In 1983 the newly elected president of Argentina, Raúl Alfonsín, appointed a National Commission on the Disappearance of Persons, chaired by the writer Ernesto Sabato. In 1984 the commission produced *Nunca Más* (Never Again), a chilling account of the machinery of death created by the military dictatorship. Immediately thereafter, the Argentine courts heard the historic case against the members of the three successive military juntas that governed between 1976 and 1982. The process resulted in the sentencing of powerful figures, omnipotent only a few years before. Restlessness in the armed forces over continued prosecutions later led to presidential pardons for the convicted officers.

Following this experience, the democratic government in Chile also created a truth and reconciliation commission, with members representing a wide political spectrum. Rather than describe the patterns and structure of repression, as the Argentine commission had done, the Chilean commission gave each victim's family an account of what had happened—to the extent that it could reconstruct the facts.

Truth and reconciliation commissions gained global visibility with their adoption in Africa. The deep physical and psychological wounds of apartheid in South Africa were bared in an intensely emotional, participatory process. Victims confronted perpetrators, recalling inhumane acts, but generously expressing forgiveness for unforgivable crimes.

Suddenly Africa, so defamed by its dictators, was leading the world through the wisdom of Nobel Prize winners such as President Mandela and Archbishop Desmond Tutu. The South African Truth and Reconciliation Commission was preceded by one President Yoweri Museveni established in Uganda to come to terms with the terrors of Idi Amin and Milton Obote. Rwanda created an NGO-led commission. The most recent significant example is

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BOX 3.4

Horizontal inequality and conflict

Africa

Politics in several African countries are dominated by conflict among groups (horizontal conflict) rather than classes. The usual form is majority exclusion of minorities from political and economic resources. This has led to conflict in Nigeria, Rwanda, Uganda and others. South Africa and Zimbabwe face the opposite challenge: protecting minorities previously associated with repressive rule over the majority. Such complexities need to be addressed within the framework of inclusive democracy being pursued by some African countries.

Eastern Europe and the CIS

Threats to the Albanian minority in Serbia evoked memories of the massacre of Muslims in Bosnia and Herzegovina and led to international intervention in Kosovo. The form of the intervention, through the North Atlantic Treaty Organization (NATO), raised complex new issues of international law and sovereignty related to the rights of minorities and the obligations of the international community.

Other minorities face discrimination in the new democracies. The Roma, of Asian descent, have encountered violence, legal discrimination and prejudice in such countries as Bulgaria, the Czech Republic, Hungary and Romania. Estonia and Slovakia face the challenge of integrating Hungarian and Russian minorities. Armenia, Azerbaijan and Georgia face intense ethnic conflict, frequently involving other countries.

Latin America

Constitutions recently adopted in Latin America include provisions on the protection and promotion of the rights of indigenous communities. They are an attempt to clear away the legacy left by the indigenism that was formally instituted following the Inter-American Indigenous Congress in Patzcuaro, Mexico, in 1940.

Indigenism had two main objectives: to speed up and consolidate the national integration of Latin American states, and to promote economic and social development in order to overcome the "centuries-long backwardness" of indigenous communities and assimilate them into the nation-state model. These nationalistic societies, dominated by the white and mestizo urban middle class, rejected cultural diversity and did not recognize the indigenous elements of their culture. Indigenism, which in practice assigned indigenous people the same legal status as minors, exacerbated rather than solved the problems of extreme poverty, marginalization and recognition of ancestral lands.

Political liberalization has begun to reverse formal legal discrimination against indigenous peoples. But in some Latin American countries such progress has been accompanied by growing economic inequality and social marginalization.

Source: Mendez 2000; Oloka-Onyango 2000; Šilovic 2000; Stewart forthcoming.

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that of Nigeria, whose return to democratic rule in 1999 was accompanied by President Obasanjo's announcement of a truth and reconciliation commission.

Advancing the human rights agenda during the transition to democracy does not always require a truth and reconciliation commission, particularly when there is a consensus in society about the direction of transition, and no perceived threat of a reversal. This was evident in many transitions from one-party to multi-party states (box 3.5).

Truth and reconciliation commissions have not only exposed sordid details of the past, however—they have also put the perpetrators to shame in the public eye. But some have been meek, tokenistic failures. Sceptics note that in proportion to the enormity of the crimes, truth commissions have often achieved very little justice and disclosed too little truth.

Countries that have already suffered a return to military government or fear the resurgence of authoritarian forces may well consider the utility of a truth and reconciliation commission to put such forces on the defensive. An open discussion of their role in brutalizing society and destroying institutions is preferable to appeasing unrepentant authoritarian forces by hiding ugly truths under the carpet. Some countries that protected their armies, by avoiding an open discussion of their human rights abuses, have paid a heavy price in the return to military rule.

Experience with truth and reconciliation commissions suggests, ironically, that the key to their success is to be forward-looking. Commissions should not be seen as an alternative to creating judicial institutions for the future—but as part of a policy of accountability for the past that helps the process of creating independent and just institutions. Truth commissions succeed if society sees them as an effort not only to respect and acknowledge the plight of victims but also to ensure that state-sponsored abuses of human rights are not repeated.

POLICY RESPONSES—ADVANCING HUMAN RIGHTS THROUGH AN INCLUSIVE DEMOCRACY

The solution to the many dilemmas of democracy is not to return to authoritarian government. Nor are civil society organizations by themselves the answer. Reasonable progress requires a political framework conducive to human rights. And there is far more to that framework than elections, which can still produce governments that tolerate or are directly responsible for serious human rights violations.

The rights way forward is a four-part policy agenda for creating an inclusive democracy.

PROTECTING RIGHTS OF MINORITIES AND ADDRESSING HORIZONTAL INEQUALITIES

International comparative analysis studies have emphasized that acute horizontal inequalities in access to political and economic resources lead to conflict. They have also identified 267 minorities particularly at risk across the world.

Horizontal inequalities typically translate into discrimination and marginalization for minority groups. The lack of belonging spurs alienation from the political and economic sys-

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BOX 3.5

The importance of laughter and forgetting

In *The Book of Laughter and Forgetting*, Milan Kundera noted that "the past is full of life, eager to irritate us, provoke and insult us, tempt us to destroy or repaint it. The only reason people want to be masters of the future is to change the past." The link between past and future had a twisted logic in the totalitarianism that suffocated Czechoslovakia. Many communist regimes used the past as an ever-changing tool to justify the present—most crudely by obliterating figures in disrepute from historical photographs. That was the fate of Leon Trotsky in the USSR. And in Czechoslovakia, Foreign Minister Vladimir Clementis was airbrushed out of a famous photograph of communist leader Klement Gottwald making a historic speech in Prague in February 1948.

There was a particular irony to the airbrushing of Comrade Clementis. It was freezing, and the foreign minister had had the generosity to lend his hat to his bareheaded leader. So Clementis's hat remained in the photograph and became a symbol—for men such as Vaclav Havel—of the distortion of the past that was so much a part of totalitarian societies. The democratic Czech Republic of the 1990s, under Havel's leadership, has come to terms with its past in a remarkably open way. This attitude contributed to perhaps the most amicable divorce in history, Czechoslovakia's voluntary split into two countries.

Countries such as the Czech Republic and Slovakia illustrate how much wider human development and human rights are than some of the indicators used to measure them. Even a composite indicator such as the human development index, while a broader measure of progress than gross national product, does not pretend to measure civil and political rights. Czechoslovakia had ranked higher in the human development index than in gross national product, indicating a fairer distribution of economic resources than that in many other countries at the same income level. But the index does not measure the political dimension of rights—an area in which many one-party states were seriously deficient.

Source: Kundera 1978; Human Development Report Office.

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tem controlled by the majority. Incorporating minority groups requires a more enlightened view of sharing economic and political resources than simple majoritarian democracy. The institutional framework and values of inclusive democracy need to be promoted to prevent violence and civil war.

This does not mean that minorities are better off under authoritarian governments. The recent ethnic cleansings have not occurred under democracies. Some of the worst abuses of minorities have been by dictatorships. But the transition to democracy will improve matters only if there is public policy intervention in favour of minority protection—and that goes far beyond the assumption that the ballot box is an automatic protector.

Several countries have recognized the need for additional measures to incorporate groups that may be left out from a narrowly defined majoritarian democracy. Belgium and Switzerland have taken policy and institutional measures to incorporate groups within representative institutions (box 3.6). Similar efforts have been undertaken by other countries. Germany has cross-party representation in parliament, with many parliamentary committees chaired by the opposition. And when the second chamber of parliament blocks legislation, conciliation committees work out an acceptable compromise.

Two large new democracies facing major challenges with minorities and horizontal inequalities are Indonesia and Nigeria. They may have something to learn from Malaysia's experience in addressing horizontal inequalities, while Malaysia has much to learn about expanding other human rights from such neighbouring countries as Thailand, where the new constitution and supporting measures represent impressive gains for human rights (box 3.7). Much of East Asia is not only recovering from the economic crisis but doing so under greater political freedom than before.

Malaysia's policies on horizontal inequalities in the 1970s, inevitably contentious, have been admired by many. Race riots shook the nation in 1969. In response, Malaysia embarked on an ambitious programme to address the severe horizontal inequalities underlying the racial violence. The key elements of Malaysia's response are captured in box 3.8.

Other countries' experiences of promoting majorities have been less benevolent. But instituting affirmative action is unavoidable in any country where inherited horizontal inequalities favour a minority, and the majority acquires power—the dilemma in South Africa and Zimbabwe. In such situations public policy has to tackle inequities while maintaining the dynamism of markets historically dominated by the minority.

Much has been learned about the need to address horizontal economic inequalities to prevent political conflict. Governments should avoid nationalizing the economic assets of relatively prosperous minorities. And they should stimulate growth in the assets and incomes of impoverished minorities through such targeted measures as small business promotion and measures to end discrimination in the labour market. Job quotas in the public sector are likely to work only in a rapidly growing economy. Economic stagnation and an overstaffed public sector are a poor environment for affirmative action in the labour market.

BOX 3.6

**Minority rights and horizontal inequality—
the parliamentary responses in Belgium and Switzerland**

Switzerland's political system has tried to incorporate the country's three major ethnic groups—German, French and Italian. The national executive—the Federal Council—has had representation of all three groups since 1959. While the Swiss have an informal criterion of ethnic representation, the 1970 Belgian constitution has a formal requirement of equal representation for the two ethnic groups—Dutch and French. This regulation must be honoured whether the government is formed by one or several parties.

Inclusiveness is also ensured by giving minorities special representation in the second chamber. In Switzerland the national council is the lower chamber, with freely elected members. The upper house, the Council of States, has a representational formula that favours smaller cantons and has real decision-making power. The cantons have extensive self-governing powers.

While Swiss federalism is territorial, Belgium introduced "non-territorial" federalism to protect some cultural rights. The Dutch and the French each have a cultural council, with members from both houses of the legislature, that acts as a legislature for cultural and educational issues affecting its ethnic group.

Political parties in these countries have naturally tended to reflect a multitude of ethnic, religious and socio-economic cleavages. Such a complex weave of horizontal and vertical divisions could easily lead to neglect and alienation of minorities. The political systems created have tried to address this challenge. Other countries, such as Germany, have also established institutional mechanisms that encourage consensus rather than two-party, adversarial politics.

Source: Donnelly 1989; Lijphart 1999.

A precondition for building an inclusive democracy is ensuring the right to elect representatives. Tampering with the ballot has often undermined the legitimacy of elected governments. In Bangladesh doubts about the independence of the election commission led to an agreement among political parties that elections would always be held under a temporary interim regime. This prevents the military's control over electoral politics, while ensuring that the results of elections are considered legitimate, an important advance in a new democracy. An independent election commission and international election monitors provide other tools for protecting the sanctity of the ballot where trust and autonomous institutions are lacking.

A key element in deepening inclusive democracy is a legal framework that protects the right to participation and free expression. Civil society organizations and open media are vital for monitoring violations of rights. People's participation in local institutions, including school boards, is as important a feature of democracy as participation in elections or in formal political parties.

Jordan shows how civil society organizations can lead in advancing rights in a country undergoing a gradual transition to democracy. Several members of the royal family have not only helped establish human rights NGOs directly but also supported an environment that promotes grass-roots civil society organizations struggling for human rights, including those fighting for women's rights.

An important element of the participatory principle is internal democracy in political parties. Too often, the organizational structure of parties engaged in democratic politics is anything but participatory. Parties that are not open and transparent are unlikely to be democratic in their policy commitments. Without internal democracy, parties become individual or family fiefdoms. Creating a culture of democracy in political parties is thus vital. At the very least, this should involve open, competitive elections for the party leadership.

In Panama the military was abolished as part of wide-ranging structural political reform. The democratic features of the reform included an electoral code, adopted in 1995,

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BOX 3.7

The values of Asia

The signs of economic revival in Asia—so soon after the 1997–98 East Asian financial crisis—appear to provide further evidence of the deep structural foundations for economic development laid by the region. But perhaps the most positive outcome has been the remarkable change in civil and political rights, whose neglect the crisis exposed.

There has been a major change in Thailand, where the main safeguard of human rights and human development is the 1997 constitution, the country's first democratic one. The constitution stipulates that "human dignity" is the basis of human rights, which include equality between people and genders, the presumption of innocence, freedom of religion, association and expression, the rights to life, to privacy, to 12 years' education, to property and to health care, the right of children against violence and injustice, the right to access to public information and the rights to take action against public authorities and to use peaceful means against those who subvert the constitution.

Violations of the constitution can be contested in the courts. Unlike rights in past constitutions, many of which had no force unless enacted into law, many of the new provisions are immediately applicable. And while earlier constitutions subordinated rights to interests such as national security, the new constitution does not allow such interests to undermine the substance of rights.

Other Asian societies have made similar gains. Indonesia, the Republic of Korea and Taiwan (province of China) have become more open, with greater recognition of the need to advance civil and political rights. Indonesia, a complex case, has moved to civilian rule, although the new regime is having to grapple with the troubled legacy of East Timor.

The new talk of Asia advancing the cause of human rights and democracy is a far cry from earlier false claims that "Asian values" justified neglect of civil and political rights.

Source: de Barry 1998; Saravanamuttu 2000; Muntarbhorn 2000.

BOX 3.8
Malaysia's response to race riots—addressing horizontal inequality

Unlike many other countries, Malaysia refrained from nationalizing the assets of the richer minority community. This restraint ensured adherence to an efficient, market-led economic framework and reassured the Chinese minority. Political power rested in the hands of the Malay majority, the *bumiputras*. Their legitimate grievances were addressed largely through extensive intervention in the public sector, including programmes for affirmative action in education, technology and employment.

In 1969, around the time of the race riots, the per capita income of the Chinese was twice that of the Malays. Two decades later both communities were substantially richer. But while the average incomes of both communities rose, the gap between

them narrowed—the Malay income was half of Chinese income in 1970, but nearly two-thirds by 1990. This outcome was made possible by an enabling economic environment that generated rapid growth—and more equal sharing of the pie.

Critics of the Malaysian system point to its extensive network of controls on the press, political parties and the judiciary. Others point to Malaysia's practical good sense in many areas—including the unfashionable imposition of temporary capital controls in the midst of the East Asian financial crisis. This pragmatic ethos, it is claimed, will lead to a deepening of democracy, as evidenced by the recent open presidential elections.

Source: Yoke and Leng 1992.

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that requires political parties to democratically elect their presidential candidates.

In addition to internal democracy, political parties in new democracies need to exemplify tolerant behaviour. The Institute for Democracy and Electoral Assistance, a policy institute based in Stockholm, has proposed a code of conduct for political parties to promote a public atmosphere of tolerance.

The code sets out principles of behaviour for political parties and their supporters relating to their participation in a democratic election campaign. Ideally, parties would agree voluntarily to this code and negotiate towards consensus on the text, which might later be incorporated in law.

The core prescriptions of such a code generally include:

- *Campaign management*—the right of all parties to campaign and to disseminate political ideas, and respect for the freedom of the press.
- *Election process*—peaceful polling, cooperation with election observers and acceptance of the outcome of the election.
- *Fair conduct*—avoiding defamatory language, destruction of the symbols of other parties or intimidation of voters and election officials.
- *Legal penalties*—for example, disqualification for corrupt practices, such as offering money to induce people to vote, or to stand or not stand.

Efforts to extend participation should also involve special measures to incorporate groups that are underrepresented because of a history of prejudice and discrimination. All over the world, social and structural barriers impede women from participating in politics. In many countries women have enhanced their participation by increasing gender sensitivity and awareness, by lobbying for party and parliamentary electoral quotas for women and by providing support services to women legislators. Gender-balanced local elections often represent the first step, enabling greater political participation at all levels.

In Trinidad and Tobago a network of NGOs conducted workshops to train 300 women to run as candidates in the 1999 local government elections. Of the 91 women contesting the elections, 28 won, virtually doubling the number of seats held by women since the 1996 election.

Sweden has the largest proportion of women in parliament. Although this cannot be attributed to any single factor, the quota system used by the majority party—the Green Party in 1983–90, the Left Party in 1990–93 and the Social Democratic Party since 1993—has undoubtedly contributed.

In South Africa after the end of apartheid, the African National Congress expanded women's political participation in parliament by adopting a quota. According to the Inter-Parliamentary Union, the country now ranks ninth in the world in the proportion of women in parliament, with 119 women in its 399-member National Assembly (in 1994 it was 141st).

India reserves seats for women in local government institutions known as *panchayats,* challenging the traditional structures of policy-making. In 1993 the federal government passed the Panchayat Raj Act, reserving 33% of the three-tiered *panchayats* for women. The *panchayat* elections of 1998 showed that the reservation policy worked in most states: women won 33–40% of the seats.

In the Philippines improving the quality of women legislators' participation in policy-making is as important as increasing the number of elected women. The Centre for Legislative Development provides elected women, particularly at the local level, with the technical skills they need for their job—through training on legislative agenda setting and on the development of legislative proposals and deliberations. To sustain advocacy initiatives, the centre also helps build links between elected women and women's groups.

Widening the participation of those discriminated against—whether minorities, women or others—is linked to the process of changing norms and values. Instilling a democratic culture at all levels of society is a radical process—threatening existing values, inequities and injustices. The task is complicated further by a recent history of violence. Two societies struggling to create a culture of

Too often, the organizational structure of parties engaged in democratic politics is anything but participatory

democracy on the ashes of violence are Cambodia and South Africa (box 3.9).

An independent press has been a vital ally in the recent advances in Eastern Europe. The Network of Independent Journalists, run by the Croatian-based Stina press agency, has campaigned vigorously for extension of freedoms long denied in the region.

Widening participation has several other dimensions. Even well-established democracies face the need for continual reform to adapt to changing circumstances and to correct deficiencies. Recent reforms in the United Kingdom are aimed at addressing the shortcomings of the Westminster model, the subject of debate in the country for decades.

While Thailand was forming its first democratic constitution, the United Kingdom's Labour government began to enact a series of wide-ranging reforms to the country's customary unwritten constitution. These include devolving power to regional assemblies, enhancing the powers of the Scottish parliament in particular. Apart from excessive centralization, another deficiency was the hereditary principle governing membership in the House of Lords, the upper chamber—a symbol of privilege rather than inclusion. The reforms changed its composition and the criteria for selection to reduce the power of inherited privilege. Other changes include a move towards a freedom of information act.

These reforms, linked to the expanded framework of the European Union's human rights legislation, have modernized British democracy. Many of the changes are in line with the EU principle of subsidiarity and decentralization—that power is more accountable when it is close to the beneficiaries. Some decision-making is retained at regional or central levels of authority, where justified for consistency and enforcement of common standards across national boundaries.

IMPLEMENTING THE SEPARATION OF POWERS

When elected leaders behave like military rulers, arbitrary power undermines a basic principle of democracy, violating the checks and balances at the heart of democratic government. Human rights are most vulnerable when the exercise of power is not rule based. An elected leader must face institutional curbs to restrict arbitrary action. Most countries making the transition from authoritarian to democratic government still face this challenge.

There is tension in restricting arbitrary power. A newly elected leader typically inherits an environment in which arbitrary power has been part of authoritarian rule. The elected leader and party are entrusted with building institutions that place checks on their power. Visionary leadership is rare in such situations. Civilians carry on behaving in much the same way as their military and colonial predecessors. That is why a coalition of forces is required to create a culture of accountability for civilian rule—a coalition of an independent press, opposition parties, national civil society institutions and international human rights organizations.

BOX 3.9

Transition from a brutal past to an open society in South Africa and Cambodia

This Constitution provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

This quotation from the 1993 interim South African constitution provides a framework of values and institutions for advancing human rights and development. The constitution includes civil, political, economic, social and cultural rights.

But the wide gap between the constitutional promises and the lived realities of millions of poor South Africans remains a challenge. The constitution and new laws are means to overcome that challenge, and South Africa's national action plan for human rights provides a framework for doing so. The plan enables the government to evaluate its human rights performance, set goals and priorities within achievable time frames, devise strategies and allocate resources for promoting human rights. It can also be used as a tool by NGOs and the media to hold the government accountable for its human rights commitments—by monitoring the human rights impact of government policies, legislation and programmes.

Cambodia's recent past was even more violent than South Africa's. And it too has adopted a constitution respectful of human rights, after the Paris peace accords of 1991. But the gap between the constitution's ideals and reality led to heated exchanges in 1997 between the United Nations Human Rights Envoy Thomas Hammerberg and Cambodian leaders.

Over the past three years, however, there have been signs of progress. A coalition of 17 NGOs formed the Human Rights Action Committee, and another group of NGOs won prominence as the Coalition for Free and Fair Elections. The establishment of the Khmer Institute for Democracy, the widespread revival of Buddhism and the appearance of reasonably independent newspapers are all advances, although inevitably many acute problems remain as Cambodia continues its slow climb back from the heart of darkness.

Source: Neou 2000; Liebenberg 2000.

Such a coalition needs to build opposition to arbitrary power. It has to exert pressure for the institutionalized separation of powers. If disputes cannot be settled in court, if corruption undermines the legal process and if the elite is above the law, a country is in no position to fulfil the rights of its citizens. Establishing a sound and supportive institutional framework is thus essential for any serious implementation of rights.

An important aspect of the separation of powers is the role of the judiciary. Argentina and El Salvador provide important examples of promising judicial reform (box 3.10).

Besides independent judiciaries, democracies need a civil service protected from arbitrary instructions from the political leadership. But the actions of civil servants also have to be under public scrutiny. Several institutional mechanisms can curb bureaucratic arrogance. An increasingly popular one is the office of the ombudsman, typically created to examine abuses of authority by public officials. The protection of civil servants against arbitrary political intervention lies in genuinely independent civil service commissions responsible for recruitment, promotion and discipline. These need to be supplemented by open procedures for bureaucrats to take elected representatives to court if asked to do anything illegal.

These open procedures in turn require an independent judiciary, reinforcing the point that an effective separation of powers requires rule-based interaction between institutions. The US constitution and subsequent civil rights reforms provide a classic model for effective separation of powers.

Within the civil service, the police are particularly important for human rights. Recent shootings by the police in New York City, for example, have raised apprehensions among the African American minority, some of whom have called for federal monitoring of the city's police.

Investigative reporters across the world have exposed rape in prisons, extrajudicial killings, torture and many other human rights violations by the police and security forces. Such journalists have played a vital role in raising awareness and contributing to a culture of public outrage at abuses.

Recognizing the importance of police reform for advancing human rights, several countries have taken important steps. Luxembourg is training police to combat racism and xenophobia. In Honduras the police reform has been inspired by an integrated set of principles on demilitarization, subordination to civil authority, respect for human rights, citizen control and accountability. The government created a new Ministry of Security to inculcate a new ethos in what was considered a volatile and dangerous police force.

As with other separations of powers, there is a dual nature to police reform. The police have to be protected from arbitrary orders from the political system. At the same time, the people have to be protected from rights abuses by the police. An ombudsman can monitor police abuses and hear complaints. In addition, human rights NGOs should have the political space to monitor prisons and any abuses by the police system.

BOX 3.10

Strengthening the rule of law in Argentina and El Salvador

Access to justice is an important part of the rule of law. Partnerships of governments, civil society and international development organizations are implementing judicial reform programmes bringing timely and tangible results. Two promising examples, symbolic of similar initiatives being undertaken across the world: Buenos Aires and El Salvador.

Under the 1996 constitution of Buenos Aires, politicians and the people are collaborating on new institutions that will improve access to justice. All laws used by the courts are to be compiled and analysed. Experts, judges and citizens are to confer about the institutional barriers to justice and propose solutions. New laws are to be drafted, new institutions designed and judges retrained. In the words of the president of Argentina, Fernando De la Rua, who started the process when he was mayor of Buenos Aires, "the key objective of the new justice system is to promote and facilitate access to justice, mainly for poor people and women."

In El Salvador judicial reform, a product of the 1992 peace agreement, is a joint effort by government, civil society and international development agencies. Since its inception during the war years, judicial reform has been led and "owned" by Salvadorans working in partnership with international experts sponsored by bilateral and multilateral donors and the development banks. They have rewritten laws, reorganized the judiciary, retrained police and prosecutors and carried out public awareness campaigns.

These examples suggest some lessons:
• An efficient, high-quality justice system entails a social, economic and political commitment. Setting up institutions that protect rights, particularly where public opinion of political parties and the justice system is poor, involves serious resource commitments and substantial political risks
• Countries need international advisory services as well as national political will and social participation to succeed.
• The reform should be holistic to avoid setbacks and obstacles. Legal institutions must be made credible. Laws must fit with the constitution and international human rights conventions. To ensure access to justice, institutional barriers must come down, information about rights and how to exercise them must be freely available and the quality of the public service of justice must be increased.

Source: Yujnovsky 2000.

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Such measures as public interest litigation, often involving an appeal to the supreme court, have advanced people's involvement in mechanisms of accountability. People's organizations have used similar instruments to appeal to other branches of government. In Hungary citizens groups representing the Roma have regularly filed discrimination complaints against employers with the Office of the Parliamentary Ombudsman for Minority Rights, including for refusal to hire them because of their ethnicity. After an investigation, the ombudsman recommended that the Ministry of Social and Family Protection compile a brochure informing prospective employees of their rights and that employment centres report all cases of discrimination. It also requested that the Ministry of Justice simplify the procedures for discrimination cases and recommended that the Ministry of Internal Affairs require officials to report such cases.

In Italy in 1993, the Federation of the Association of Haemophiliacs filed a case against the Ministry of Health on behalf of 385 haemophiliac patients infected with HIV by contaminated blood transfusions. No action was taken on the case, and in May 1998 some of the patients filed an appeal with the European human rights commission against the Italian government for violating Article 6 of the European human rights convention. The article asserts entitlement to a fair and public hearing "within a reasonable time". In November 1998 the case filed in 1993 was concluded in favour of the plaintiffs. And in July 1999 the European Commission ordered the Italian government to compensate the victims for its negligent behaviour.

INCORPORATING HUMAN RIGHTS INTO ECONOMIC POLICY

The process of economic policy-making for human development should honour the rights of participation and freedom of expression. These rights imply that economic policy formulation must be open and transparent, allowing debate on the options and conferring the authority for the final decision on elected representatives.

Economic policies have large effects on the rights of people. Those hurt by decisions have the right to know—and to participate in debate and discussion. That does not mean that they have veto power, since many economic policies can hurt a few people justifiably, on grounds of efficiency in resource allocation, reduction of horizontal inequality or, indeed, improvements in human development. But those adversely affected must be heard and, if appropriate, compensated.

The importance of process for sustaining ownership of structural economic policy change is shown by India. Open debate helped embed the decision-making in the national discourse (box 3.11). Opposition remains and is desirable, but India debated the options far more openly than have most countries undergoing similar reforms.

The typical process for international policy-based lending often suffers from a democratic deficit of broad participatory debate, for example, lacking parliamentary debate. It is therefore ironic, but not surprising, that a constant refrain in the international community is "lack of ownership" of the agreed policy programme (box 3.12). And it was one of the weaknesses of adjustment policies in the 1980s, when international financial agencies and national finance ministries often agreed to policies behind closed doors.

Participatory processes can increase efficiency and economic sustainability, particularly for projects requiring community

The process of economic policy-making for human development should honour the rights of participation and freedom of expression

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BOX 3.11

Ownership of structural adjustment—the rights approach in India

By the late 1980s there was wide consensus that India's economy had performed below potential since independence and recognition of the need for major policy change. Most, if not all, international agencies agreed.

Rather than signing a secretive agreement on a structural adjustment programme with international financial institutions, India engaged in an open policy discussion. There were, and remain, vociferous critics of the reform path being suggested. But the process of open participation and expression of opinion has led to two important results.

First, despite persistent political instability and fragile coalition governments, the broad consensus on economic policy reform has survived. All the major political parties have adhered to the programme. National ownership has not been at issue.

Second, India's economic reforms have produced the most rapid growth in its history—twice the average annual rate before the reforms. That has underscored the importance of the reforms—and led to public debate on how the benefits of the growth should be shared among regions, groups and classes.

Source: Human Development Report Office.

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involvement. Many evaluations confirm that community participation in project design increases the efficiency and viability of projects in water and sanitation and in education and health. So, due process can do more than fulfil important participatory rights.

The other side of incorporating rights in economic policy-making relates to the outcome. Individuals have economic and social rights, not all of which can be immediately realized because of resource and institutional constraints. The first step in a rights-oriented approach to economic policy is to recognize these rights. This implies that citizens have a claim to have these rights realized—and may have certain duties to perform to have them fulfilled.

Many human rights are subject to progressive realization. Rights-oriented economic policy-making would force a national debate on choices and on the priority given to fulfilling some rights before others. For example, the citizens of a poor country may find that the government can meet its obligations to fulfil the right to basic education more easily than the right of each individual to housing.

Difficult choices are inherent in economic decision-making, involving complex trade-offs due to scarce resources. Incorporating human rights into economic policy-making does not make these constraints vanish. But it honours certain rights in due process. It also recognizes that choices must produce outcomes that reflect the claims that individuals have to levels of human development—and honour the economic dimension of their human rights.

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Implementing these four interconnected institutional reforms will go a long way towards creating a rights-based, inclusive democracy. But it will not be a technocratic, depoliticized exercise. The agenda will face strong internal opposition, for there are groups whose power, values and interests are threatened by such change. Implementation will require a committed coalition of the media, people's movements and civil society organizations, including professional bodies of lawyers and human rights advocates. Such reforms are possible only with the active involvement of democratic political parties.

Other reforms accompanying these four, such as decentralization, would deepen democracy by extending participation. Decentralization on its own may not further rights—but when allied to these four pillars of reform, it can strengthen democratic governance.

All this can be summarized in a 10-point policy agenda for inclusive democracy:
- An independent judiciary is the pillar in a system of checks and balances against arbitrary power. Judicial appointments, training and the court system have to curb executive authority—not succumb to it. Direct recourse of people's organizations to the judicial system, through public interest litigation, also helps protect rights.
- There are two dimensions to police reform. The police have to be protected from arbitrary orders from the political system. And the people have to be protected from rights abuses inflicted by the police. This requires monitoring of police actions and other measures to

An independent judiciary is the pillar in a system of checks and balances against arbitrary power

BOX 3.12

**The John Le Carré approach to economic policy—
structural adjustment by stealth**

Structural adjustment has aroused strong passions. Its proponents have argued that poor performance was due to poor policy, pointing to the futility of huge project investments in a perverse policy environment. Its critics point to adverse social consequences and the lack of fine-tuning of a blunt "cookie cutter" approach.

This debate has often ignored a vital shortcoming in the process for negotiating and implementing these programmes—a level of secrecy of which the finest spy novelists, including John Le Carré himself, would be proud. Economic policies that will profoundly affect the lives of many citizens were often agreed in closed-door meetings between finance ministers and international financial institutions. Such secrecy would be considered scandalous in the countries of many of the representatives of these international institutions.

This process is fundamentally contrary to a rights-based approach to economic policy. Regardless of the merits of the programme, the process undermined accountability. This was a particularly serious neglect, since the citizens barred from debating the options are often those who must bear the burden of paying back the debts incurred.

But representatives of international financial institutions are increasingly recognizing this need for greater transparency. Joseph Stiglitz, chief economist of the World Bank from 1996 to 2000, has expressed concerns over a process that has left "a legacy of suspicion and doubt. Opponents see in development conditionality an echo of colonial bonds…the process of negotiating policy conditionality is widely perceived to have undermined transparency and participation".

Getting the policy environment right, and honouring conditions linked to project loans consistent with this objective, are important aspects of economic management. But the process has to respect important rights if governments and nations are to be held accountable through national ownership of programmes.

Source: Stiglitz 1999a; Human Development Report Office.

promote human rights norms in the police force.

• Ensuring non-discrimination against women in politics requires various interventions, including quotas—for the national parliament and at other levels of representation, particularly local.

• Minority participation in decision-making structures should be promoted by giving minorities special weight in legislative procedures and by having opposition and minority representatives chair parliamentary committees.

• Reducing horizontal inequalities requires economic measures. Countries need to consider what to do and what not to do. They should avoid nationalizing the private economic assets of priviledged minorities, instead using targeted economic measures to promote asset accumulation and income opportunities for poor minorities.

• The sanctity of the vote must be guarded by autonomous election commissions, international monitors and, if necessary, interim regimes for the sole purpose of transferring power from one elected regime to another.

• Political parties must be internally democratic. Party leaders should be elected and replaced through open, competitive processes. Political parties should adopt codes of conduct for internal democracy and for tolerant behaviour during the electoral process.

• Countries that have already suffered a return to military government—or fear the resurgence of authoritarian forces—might well consider the utility of a truth and reconciliation commission to create an environment conducive to democracy and respect for human rights.

• Governments should create the political space, and encourage partnerships, for monitoring and promoting human rights. Ultimately, governments and the people benefit when the media are open and civil society institutions free—conditions conducive to partnerships for creating norms and accountability for human rights.

• Pro-poor human development policies—and a reasonable distribution of the resources from economic growth—are vital companions to legal and institutional advances in human rights. The process of economic policy-making has to respect rights of participation and expression. And the content of pro-poor economic policies has to be aimed at increasing resources and targeting programmes to the vulnerable (see chapter 4).

Democracy, as noted earlier, is not homogeneous. Developing a framework of institutions that fit a country's structure and circumstances requires measures that celebrate diversity. Happily, nations no longer face the choice between authoritarianism and democracy. Their challenge for the 21st century is to deepen and enrich fragile democracies.

Truth and reconciliation commissions—a selected list

Country	Year commission was established	Main features
Bolivia	1982	This commission focused on unearthing and documenting disappearances under military rule, a major issue in the Latin American transitions to democracy.
Argentina	1983	Established by President Raúl Alfonsín, this commission consisted of writers, judges, journalists and legislators. Its report focused on 9,000 disappearances under military rule.
Philippines	1986	Established by President Corazon Aquino with a broad mandate and powers to probe the Marcos era, this commission did not produce a final report.
Chile	1990	Led by Senator Raul Rettig, this commission documented two decades of human rights abuses during the Pinochet era.
Chad	1992	Headed by Chad's chief prosecutor, this commission examined human rights violations and corruption.
El Salvador	1992	A distinctive feature of this commission was its international membership, including a former president of Colombia, a former foreign minister of Venezuela and a law professor from George Washington University. Its report, "From Madness to Hope", was released at the United Nations in 1993.
Germany	1992	This commission, headed by an eastern German member of parliament, covered 40 years of human rights violations under communist rule in East Germany.
Rwanda	1993	A unique model for truth commissions, this commission was created, funded and fully sponsored by international NGOs in response to a request by a coalition of Rwandan human rights organizations. The commission covered the civil war period, from 1990 to 1993. Its report was widely circulated in Rwanda.
Guatemala	1994	This famous commission was established in the wake of a peace accord, after 36 years of civil war. Its report, "Memory of Silence", was given to the government and international agencies at a public ceremony in Guatemala City. The commission had a mix of foreign and national lawyers.
Haiti	1994	Established by President Jean-Bertrand Aristide, this commission also contained a mix of international and national members, headed by a sociologist. The commission took 14 months to complete its findings.
Uganda	1994	President Yoweri Museveni's six-member commission, established a year before South Africa's, had an explicit forward-looking mandate. Its clearly stated objective is to prevent a recurrence of the events that traumatized Uganda under Milton Obote and Idi Amin.
South Africa	1995	This most well-known truth and reconciliation commission was established by parliament and chaired by Archbishop Desmond Tutu. The 17-member commission covered 25 years of human rights violations. One of its most significant features was its extensive series of public hearings. The commission submitted its report to President Nelson Mandela in 1998.
Nigeria	1999	This commission, established in June 1999 by President Olusegun Obasanjo, is headed by a senior judge and covers nearly two decades. Soon after its formation, the commission was inundated with submissions.
Sierra Leone	1999	Established a month after the Nigerian commission, this commission has strong amnesty provisions, allowing it to grant pardons and immunity from prosecution to perpetrators. The commission provides a public forum for victims and perpetrators to discuss a brutal past.

Source: Hayner 1994; United States Institute of Peace 2000; Garton Ash 1998.