OBITUARY

CELEBRATING PROFESSOR M. P. JAIN

THE RECENT sad demise of Professor M. P. Jain brings literally to a close the era of the founders of modern Indian legal education and research. He contributed immensely and enduringly to the life of law in contemporary India. He shaped, and sustained, the cultures of institutional innovation at the Benaras Hindu University Law School and the Delhi Law School and also eminently serviced the formative moment of the Indian Law Institute. A true scholar, Professor Jain continued to contribute robustly to developments in the public law domain till the very last working day of his life. In this truly exemplary genre of encyclopaedic exegetical scholarship, he also exemplifies nobly the authentic meaning of his first name: *Mahavir*.

'M. P.' (as he used to be hailed with warm fondness, and he did not chafe at my calling him by his first name) inspired *affection* but never a sense of *awe*, usually associated with and distinctively Indian law school modes of wielding often tyrannical academic institutional power and authority; in this, it must be said, Mahavir differed from many of his luminous contemporaries. As a teacher, researcher, and author, Mahavir remained accessible to all; he wrote clearly and cogently. He did not believe that simplicity in writing betrayed the complexity of the field. He made the law bare in all its august yet technical, turgid, and prosaic detail. If there was ever the whisper of romance, excitement, and extravagance of adventure in legislative or judicial texts, Mahavir ensured a rather smooth, and flattened, passage of all this in a linear doctrinal narrative. I suspect he did so with a sense of fidelity to the virtues of legalism; M.P. believed that law has an autonomous life of its own, with histories that may not be reduced to the social, economic, and the political, and that the stories concerning the development of the law must be so told as to foster a public ethic of rule following, especially among those who make and interpret rules.

For him then the pursuit of the doctrinal development of the law was not a lapsparian fault but rather a badge of scholarly honour. Mahavir pursued rather a homegrown pragmatic understanding of Indian law, in its manifold development. This contrasted radically with some of his contemporaries (in particular, Dean Anandjee and Professor R.S. Murthy, and partially even Gyan Swaroop Sharma) who strove to emulate the

difficult diction of the Yale mentors— Myers McDougall and Harold Laswell. Instead, Mahavir strove to exemplify the resilient best in the common law scholarship resisting forms of understandings of the law as *one* among *many* policy sciences. He had the better of his contemporaries, thus consolidating a rival source and stream of the ways in which the life of the colonial and postcolonial law may be narrativised. M.P. never wavered in his choice of indwelling the worlds of blackletter law legal doctrine. A robust pragmatist, Mahavir believed that doctrinal criticism held the best promise there was for ameliorating legislative and adjudicatory waywardness.

M.P. also affirmed the importance of understanding the craft of legal history, conceived as rather relentless pursuit of the rather dull detail of the development of legal institution and doctrine. His many editions of *The Indian Legal History* command the highest citation index; no Indian legal scholar, in my knowledge, has achieved or since rivalled this honour. He wrote concerning the *retail* not the *wholesale* imposition of forms and practices of colonial legality. This imposition, in his view, came in bits and pieces. M.P. doubted grand designs and equally grand narratives and would have agreed with the extraordinary assertion of John Robert Seeley, writing in 1883, that the British 'seem… to have conquered and peopled half of the world in a fit of absence of mind[1].' While certainly he would have, at many points, agreed with my description of colonial 'predatory legality[2] ', M.P. would not have shared my anxious narratives of a hegemonic imperial design. For the moment, it remains important for me to affectionately recall that my friendly nudging led him, finally, to look in some different ways of construction of colonial legal history, in particular at least to Lloyd and Susanne Rudolph's superb *Modernity of Tradition*[3]. I believe that Mahavir, after all, puts this discourse to some gifted narrative usage.

Yet, Mahavir resolutely chose to ignore the genre of Marxian and subaltern historiography. Sadly enough, thus, Mahavir had no use, and

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1. Quoted in Robert Young, *Postcolonialism: An Introduction* 23 (2001; Oxford Blackwell.) Seeley here does not mean quite what he says after all! He means rather to convey 'absent-mindedness' whereas his latent internationality more accurately deploys the singular deadly phrase: 'the absence of mind.' After all, colonialism and imperialism constitute the pathological. The difference here matters, and measures, decidedly in terms of colonial histories of politics of cruelty. I may only invite, incidentally and illustratively the manifold crticially suggestive labours of reading of the film *Laggan*.

2. Upendra Baxi, 'The Colonial Inheritance', in Pierre Legrand and Roderick Munday (Eds), *Comparative Legal Studies: Traditions and Transitions* 46-75 (2003, Cambridge, Cambridge University Press).

3. (1967, Chicago, University of Chicago Press; reprinted, New Delhi, Orient Longman, 1969.)

actually resisted, anti-imperial class struggle oriented narratives of Indian legal history. Nor did he, in his many revised editions of his germinal work, quite choose to grapple with the new feminist[4] and eco-history readings[5] of the colonial and post-colonial moment. He remained cast in earlier histories of mentalities thus, after all, privileging himself as a gifted raconteur of the globalizing capitalist law. Even so, he foresaw the organic connection between global capitalism and state sponsored racism. Indeed, he went so far as, among other matters\things, to devote a whole precious chapter concerning the constitution of racial discrimination in the high colonial British Indian state and law. His still remains the most adequate account, on my reading, that explains why the jury system failed to institutionalise itself in postcolonial India. However, it remains a measure of the strength of his contribution that no constestatory reading of Indian legal history may ignore what he has after all to finally offer.

Mahavir's contributions to Indian public law development (alongside with S.N. Jain) remain cast, overall, in the legalist (in the very best sense of that discursive term) mould. The range and depth of his analytic coverage remain as impressive as the labours of Durga Das Basu and H. M. Seervai, whose corpus has been rightly compared with Blackstone and Chancellor Kent. Mahavir's corpus, I believe, deserves the same order of praise, with even a happy caveat that he has innovated, and put to work, even richer uses the tradition of comparative constitutional studies. Unlike them, Mahavir wears his comparative learning lightly. Enormously conversant, and fluent, with the Euro-American development in constitutional and administrative law and jurisprudence, his preponderent interest lay in essaying a deeper understanding of the practical ways in which these may be related to the courage, craft, and contest of Indian decisional law and jurisprudence. In this mode, even as Mahavir vivisects the distinctive Indian constitutional context, he also scrupulously distances himself from the rather voguish, even fancy (now postmodernist) jurisprudential fashions of writing. All this, unfortunately, enables some of his contemporaries, and even successors, to neglect the crucial significance

4. Nor does M.P. Jain have much use for the classic study by Vasudha Dhagamwar entitled *Law, Power, and Justice* (1974, Bombay, N.M Tripathi; revised and reprinted by the same title by New Delhi, Sage.) I do not here mention the subsequent feminist readings of the colonial and postcolonial law, save to mention Rajeswari Sunder Rajan, *Scandal of the State: Women, Law, and Citizenship in Postcolonial India* (2003, Durham, Duke University Press)

5. Here I desist from citations but may instance the many –splendoured corpus of Ram Guha and Madhav Gadgil.

of legal doctrine in search of an ideal policy.[6]

Many generations of students and colleagues held M. P. Jain in great affection and owe a considerable debt to him as a mentor. So still do his students and colleagues at the Faculty of Law, University of Malaysia, as well as the Bar and the Bench in Kuala Lumpur. His treatise on Malaysian administrative law continues to be studied, and cited, thus also marking a contribution not usually associated with expatriate lifeworlds of Indian scholarship. Many a Third World student and scholar associates the habits, or rather (as Pierre Bourdieu names this in anthropological contexts) the *habitus* of the study of public law with the M. P. Jain's scholarly tradition. For the same reason, it remains important for us all to recall with him the values of doctrinal scholarship, which for him remained also a vehicle of social critique and Indian reconstruction.

The 'Jain' scholarly virtues need now a fuller re-visitation in these halcyon days of contemporary Indian globalization precisely if only because these reaffirm the potential of legalism (an ethic of following rules) itself as a Global South constitutional, juristic and judicial resource. 'M.P.' lived truly a rich, learning and learned, life as a Member of Parliament of Commonwealth of Constitutional Republic. Even as we may now miss his presence amidst us, those privileged to know him will never miss his authentic voice.

Upendra Baxi[*]

6. And although not as often cited in the Indian judicial decisions, his texts have, on all available evidence, nurtured many an unacknowledged forensic legal career at the Indian Supreme Court.

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DEMOCRACY AND HUMAN RIGHTS: THE CHALLENGE OF ETHNICITY AND INCLUSIVE DEMOCRACY

*Clarence J. Dias**

I Democracy and Human Rights: Values, Norms and Principles

TODAY, AROUND the world one witnesses a crisis of democratic governance at all levels: local, national, regional and global. The crisis has been the product of the convergence of several patterns of bad practices, which have placed ideology above values, expediency above principles; and tact above truth. The crisis is not only one for the new and restored democracies. It is also importantly, one for the old democracies as well, some of whom are involved in assisting the new and restored democracies, There are the fatigued democracies, with a serious need for renovation of key democratic institutions such as the political party. There are the facade democracies, with all the trappings and trimmings of formal democracy, but with little of the substance of democratic values and principles. Especially in respect of post-conflict societies, development agencies are tending to settle for "low-intensity democracy", accepting as rationalization the principle that even a little democracy is better than no democracy. Against this backdrop it is useful to recall how international law (notably, the UN Charter, the UN Human Rights treaties and the ILO Conventions) and national law (notably national Constitutions and special laws relating to ethnic and other minorities) have defined democracy.

The UN Charter does not mention the word 'democracy.' Instead, it sets out the purpose of the United Nations which is to achieve international co-operation… in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, languages or religion[1]; and to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.[2]

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1. UN Charter, art 1.3.
2. *Id*., art 1.2.

Implicit in these purposes of the UN are the key values and core principles of democracy. These values and principles are further elaborated in the three UN human rights instruments that have come to be referred to as the International Bill of Human Rights. ***The Universal Declaration of Human Rights*** (in its preamble) stresses the link between democracy and human rights by stating, "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." This formulation stresses that governments should refrain from tyranny and oppression and should ensure that human rights are protected by the rule of law. The Universal Declaration sets out the core principle of governance, "The will of the people, shall be the basis of authority of government" and goes on to explain, "this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage."[3] It further elaborates two key related issues: everyone has the right to take part in the government of his (*sic*) country, directly or through freely chosen representatives;[4] and everyone has the right to equal access to public service in his (*sic*) country.[5] Hence democracy can be representative or participatory, and in reality comprises the most practical blend of the two.

The Universal Declaration also recognizes several human rights which are essential for political participation including: freedoms of thought, conscience and religion; of speech and expression; of peaceful assembly and of association. The Universal Declaration, importantly also articulates the important concept of the rule of law which has three component principles: no one is above the law;[6] all persons are entitled to equal protection of the law;[7] everyone has the right to an effective remedy for acts violating the fundamental rights granted by the constitution or by law.[8]

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights convert the above democratic values into legally enforceable rights. Article 1 of each of the covenants (using identical language) unequivocally affirms, "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development". Democracy, therefore, not only has a political dimension, but also has economic, social and cultural

3. The Universal Declaration of Human Rights, art 21.3.
4. *Id*., art 1.1.
5. *Id.*, art 1.2.
6. *Id*., art 7.
7. *Ibid.*
8. *Id*., art 8.

dimensions, which are closely interrelated with development. As the UNDP Human Development Report 2000 puts it, "Democracy is the only form of political regime compatible with respecting all five categories of rights—economic, social, political, civil and cultural".

The ILO Conventions elaborate the concept of democracy in the workplace by affirming basic human rights of freedom of association and equality of opportunity and treatment.

International law thus, has defined democratic governance in relation to values, principles and related human rights; and stresses the interdependence and inter-relatedness of democratic governance, human rights and sustainable human development. Such an approach is also reflected in regional human rights charters (such as the Inter-American, European and African Charters) and in the national constitutions of most independent member states of the UN. All of these bodies of law reaffirm three key elements of democracy:

- *inclusion and participation*: International human rights law recognizes several aspects of participation: political, economic, civil, social and cultural. In the context of development, participation is affirmed as an inter-dependent means and end of development and must be "active free and meaningful:"[9]
- *equality and non-discrimination*: It is important to note that all the key human rights instruments prohibit discrimination, "of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;"[10]
- *transparency, accountability and access to effective remedies*: This element has been primarily developed under national constitutions and laws which affirm freedom of information, the right to know, and the power to act upon such knowledge through exercising the right to an effective remedy from competent national tribunals.[11]

Thus, existing international law prescribes the normative content of democratic governance through articulating the key values and core principles that constitute democratic governance. Such laws go further and enshrine those values and principles within rights which are intended to be legally enforceable. The challenge of democratic governance lies in the implementation and enforcement of such values, principles and rights. There is usually a huge gap between laws, their implementation

9. See UN Declaration on the Right to Development.
10. Universal Declaration, art 2.
11. *Id.*, art 8.

and their enforcement. The challenge of democracy is to develop and sustain governance institutions, notably parliament, the executive, the judiciary, electoral bodies, the police, national human rights institutions, and civil society organizations which provide effective, institutionalized and sustained implementation of policies and decisions and enforcement of the law. Democratic institutions make the difference between mere *rule by law* (such as prevailed in Germany (under the Third Reich) and South Africa (under Apartheid); and *the rule of law* which respects, protects and promotes that most cherished of all human rights, *"the right to be human"*.

Democratic governance becomes all the more challenging in societies where the need is for inclusive democracy, not only for majority groups, but also, importantly, for minorities and for vulnerable and disadvantaged groups as well.

II Minorities, Vulnerable and Disadvantaged Groups: Values, Norms and Principles

International and national human rights law recognize four duties correlative to human rights: the duty to respect the rights of others; the duty to protect the rights of those vulnerable or at risk; the duty to promote awareness of rights, as well as of related duties and remedies; and the duty to fulfil the realization of rights for those who do not currently enjoy them, primarily, through sustainable human development.

Each of the above four duties (which fall upon both state and non-state actors) assumes special difficulties in respect of vulnerable or disadvantaged groups and minorities. Yet, the challenge for democratic governance is that it must be not for only a few, but for all – including the vulnerable, the disadvantaged and minorities. International and national human rights law do address the challenge by prescribing specific values, norms and principles.

Vulnerable and disadvantaged groups

For *vulnerable groups* there is the obligation that democracies have institutions of governance which: effectively protect them against denial or abuse of their rights; work towards reducing and eliminating the causes of such vulnerability; and ensure capacity- building of such groups to enable their effective participation.

For *disadvantaged groups* there is the obligation to implement programmes of affirmative action so that no longer will it be true that, "all people are equal. But some are more equal than others."

Minorities and minority rights

For minorities, however, there remain important unresolved issues. For this reason, applicable international and national law is far from satisfactory on the subject of minority rights.

At the very outset, international law has been beset with problems in defining the term "minority" and in agreeing upon the scope, nature, and content of "minority rights." Like indigenous people, minorities feel that the right to self-definition is itself an important right. The UN Declaration on the Rights of Minorities, therefore, refrains from defining the term but instead, inclusively, states that it applies to national, ethnic, religious or linguistic minorities. The declaration enumerates, five specific rights of minorities:[12] the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and public, freely and without any form of interference or discrimination; the right to participate effectively in cultural, religious, social, economic and public life; the right to participate effectively at the national and, where appropriate, regional level in decisions concerning the minority to which they belong; the right to establish and maintain, without any discrimination, free and peaceful contacts with members of their group and with persons belonging to other minorities. The right also includes maintaining contact across frontiers, with citizens of other states to whom they are related by national, ethnic and religious or linguistic ties; and the right to establish and maintain their own associations.

The declaration makes it clear that persons belonging to minorities may exercise their rights individually, as well as in community with other members of their group. The declaration also balances the rights of minorities with the rights of others, stating that the exercise of the rights set out herein shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedom. The rights of minorities under the declaration are recognized "subject to the territorial integrity" of the state in which they are present and so, it subjects the rights of minorities to the sovereignty of the nation-state.

The declaration requires states to: protect the existence and identity of minorities within their respective territories;[13] encourage conditions for the promotion of such identity;[14] adopt appropriate legislative and other measures to achieve those ends;[15] take measures, where required, to ensure that persons belonging to minorities "may exercise fully and

12. The UN Declaration on Rights of Minorities, art 2.
13. *Id*., art 1.
14. *Ibid.*
15. *Ibid.*

effectively all their human rights", "without any discrimination and in full equality before the law";[16] create favourable conditions to enable minorities to "express their characteristics and to develop their culture, language, religion, tradition and customs;"[17] take appropriate measures so that, wherever possible, minorities "may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue";[18] take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory";[19] consider appropriate measures so that "Minorities may participate fully in the economic progress and development in their country".[20] A working group on minorities has been set up by the Sub-Commission of the UN Commission on Human Rights to monitor the implementation of the Declaration and to work towards the possible drafting of a Convention on Minority Rights. As of date, there does not exist any internationally binding treaty specifically devoted to minority rights. Hence, legal enforceability of such rights will need to depend primarily on national or regional law. It is desirable, therefore, that national constitutions recognize and guarantee minority rights and that special national laws and institutions be put in place to ensure the protection and promotion of the human rights of minorities.

Cultural diversity and pluralism

Fifty-eight years ago, the Charter of the United Nations gave us a vision of a world in which *cultural diversity* was a treasure beyond any price, to be nurtured, savoured, conserved and preserved. A vision of the world, in which *pluralism* was the conspicuous, preferred alternative: to be strived for, attained and safeguarded. Fifty-five years ago, the Universal Declaration of Human Rights gave us a universal, indivisible, holistic framework of values and principles which reiterate and reverberate core concepts of equality, nondiscrimination, participation, accountability, well-being and justice for all.

These values, principles and norms apply equally to cultural diversity as they do to biological diversity. Today, environmentalists rightly bemoan the loss of biological diversity and are advocating steps to halt such loss. Unfortunately, there is no counterpart movement to arrest the loss of cultural diversity.

16. *Id*., art 4.
17. *Ibid.*
18. *Ibid.*
19. *Ibid.*
20. *Ibid.*

In today's increasingly conflict-ridden world, ethnic identity (a concept not only constructed, but constantly reconstructed) is increasingly viewed as negative and undesirable both by governments, as well as by transnational corporations (who often exercise power and resources in excess of that of most governments of nation states). Ethnic identity is increasingly being viewed by them as something to be controlled, co-opted and homogenized. Communities are themselves, uncertain about how to deal with their ethnicity. In many societies, minority communities, continuing to be excluded from development, and facing increasingly intolerable impoverishment, are responding by asserting their ethnic identity in their struggles against discriminations, for social and economic justice, for self-determination, and ultimately for secession. The resulting internal armed conflicts are, all too quickly, labelled ethnic conflicts. In other societies such as Indonesia, unprecedented economic crises, driving two-thirds of the country's population below the poverty line, are causing ethnic majorities to attack the more affluent ethnic majorities. Harsh economic conditions at home are pushing increasing numbers of migrant workers to seek employment, both within the more affluent countries of their region, as well as outside their region. Such migrant workers are encountering not only exploitation but harsh discrimination as well. States are responding by adopting authoritarian policies and measures.

Over the past 50 years, state management of ethnic relationships has often ranged from policies and practices of forced integration, discrimination, co-optation and manipulation; to those of militarization, ethnic cleansing and ethnocide. Over the past 50 years, on the other hand, people-to-people community initiatives, in respect of ethnic relationships, have often provided successful examples of accommodation, mediation, crisis-response and peace negotiation. Clearly, there is a lesson to be learned from this. Democratic governance must respond to the challenges of ethnicity and pluralism by becoming more and more inclusive.

Collective rights and responsibilities

If the democracy is indeed to become more inclusive, it will need to be primarily rooted in human rights: both individual and collective.

Several myths and misconceptions prevail regarding the concept of collective rights. During the cold war era, collective rights were viewed in the West to be a ploy of communist ideology to negate liberal notions of human rights. But, historically, both individual and collective human rights have coexisted in traditional as well as in natural law; in formulations of human rights in the earliest positivist sources of law; in President Roosevelt's celebrated four freedoms speech; in the Charter of the United Nations, the Universal Declaration of Human Rights; in

several of the UN human rights conventions, declarations and resolutions; in several regional human rights charters and in national constitutions and laws.

In basing rights on the needs of individuals and groups, the international community has defined global human rights in a manner that goes far beyond liberal theory. The liberal premise of human rights centers on the isolated human being. The liberal paradigm of human rights seeks to restrain the all-powerful state, by providing individual redress to those suffering human rights violations, through the nation state system. Collective rights on the other hand, are premised on humans as social beings. Collective rights are derived from a socially shared moral conception of both the nature of the human person and the conditions necessary for a life of dignity-free from fear and want. Philosophically, collective rights embody a vision of society imbued with the values of egalitarianism and full, participatory democracy. Collective rights seek to address the huge discrepancy between the *values* of equality and freedom promoted by liberal democracy and the *reality* of prevailing social relationships.

Collective rights accompany, and do not replace individual rights. There is an interdependent relationship between collective rights and individual rights. Certain individual rights cannot be exercised outside of the collective context and certain individual rights can only be fully realized through an understanding and protection of group rights (*e.g.*, trade union rights). Thus, rights based on race and ethnicity do not deny individual and collective rights. But this is a dialectical tension to be resolved by strict application of the values and principles of human rights. Within the United Nations, developing countries have stressed the importance of the collective rights of self-determination; of minorities and underprivileged peoples to share equitably the world's resources; and have pressed for recognition of the human rights of other groups based on ethnicity, race, gender, class, sexuality and age.

Collective rights reject nation-state hegemony over the norms and structures that determine individual and/or group existence. Collective rights are based on the concept that there are certain rights for all people that stand above nation-states and intergovernmental bodies. In a sense, collective rights are subversive to nation-state sovereignty by presenting the people as being the ultimate repository of sovereign rights. Collective rights rest on the assertion of the sovereignty of peoples, over any government and/or nation-state, who seek to vest themselves with the sole and exclusive monopoly to enhance and protect human rights. Within civil society, groups themselves have the right to define and defend necessary protections. Thus, a collective rights approach challenges, and is anathema to, the elite bias prevalent at both governmental and intergovernmental levels. An elite bias which, in the

formulation of human rights, focuses on the efforts of elites of different nations to institutionalize and/or legalize rights of the elites within the canons of international and/ or national jurisprudence. Such formulations end up documenting what *is* rather that what *should be.*

Collective rights demand recognition of the rights of groups and can only be exercised with the cooperation of groups. These rights are of at least two conceptual categories: Rights specific to particular groups; which rights respond to the unique claims of that particular group; and rights necessary so that members of all groups can benefit from equal opportunity (e.g. the right of self-determination, the human right to development).

The struggle for recognition and protection of collective rights signifies many orders of history and social reality. States have historically laid claim to their collective rights and international law recognizes their sovereignty over natural resources; and their rights to non-intervention and to equality among the world community of states. The concern here is not solely with the rights of states, rather, it is with *collective human rights*, and *the rights of peoples* subordinated within sovereign nation-states. Subordination may arise out of forces of history (colonization), culture and tradition (patriarchy) or economy (exploitation). In many cases it may be civil society actors who are seeking to impose such subordination. But it is the failure or inability of the state to promote fulfilment of human rights, or the complicity of the state with certain civil society actors that brings about, maintains, and institutionalizes such subordination. In most developing societies, subordinated people would include: minorities, workers, vulnerable peoples (*e.g*., children, the aged, the disabled), indigenous peoples and women. Moreover, it must be recognized that there are different orders of subordination resulting in a conflict between the rights of one subordinated people and those of another (*e.g.*, rights of a minority community to their cultural practices and the rights of women). Where such conflict is real, collective rights activists will need to find modes for negotiation of such conflict. Where the conflict is apparent, rather than real, collective rights discourse must expose the mode of production of such conflicts as an aspect of the resistance of dominant powers in their attempts to fragment human solidarities among constituencies of subordinated peoples. This is especially relevant to cultural diversity and pluralism. Collective rights discourse must affirm and celebrate pluralism. Pluralism indeed does present people's solidarity and movements with many tensions and difficulties: linguistic, religious and cultural. But authentic assertion of pluralism is an important check and balance against the power of domination. Hence collective rights activists must carefully archive how people's movements have reinforced the authentic assertion of pluralism, while severely interrogating spurious

or manipulative assertions of pluralism.

Collective rights emerge when a groups' common identity, common history and common sources of suffering have led to growth of a social movement whose demands include the protection of their rights as a social group. In the contemporary era, collective human rights have been recognized relating to class, gender, ethnicity and indigeneity. But, as contemporary struggles for social justice indicate, the struggle for recognition of collective rights is far from over, and valuable lessons must be drawn from past struggles that have successfully gained recognition and fulfilment of collective rights.

III Protection Mechanisms and their Institutionalization

Effective protection of the human rights of minorities and ethnic groups requires a creative interplay between mechanisms at the international and regional levels and those at the national level. There is an important division of labour here.

Standard-setting and recognition of rights (individual and collective) has been most successfully undertaken at the international and regional levels through negotiations leading to the signing and ratifying of international treaties such as the Convention on the Elimination of All Forms of Racial Discrimination; and the European Charter of Human Rights.

Implementation and enforcement of such standards must inevitably take place primarily at the national level. Hence, the importance of inclusive democratic governance.

Monitoring of implementation or of violation of such standards takes place as a cooperative endeavour both at international/regional levels and at national levels. A brief review of the existing mechanisms and institutions for protecting the human rights of minorities and addressing challenges of ethnicity is given below.

International and regional mechanisms and institutions

The main international mechanism is the UN human rights system which performs many roles and functions through a range of institutions comprising: treaty– bodies, the UN Human Rights Commission, its special mechanisms and procedures and its sub-commission, the High Commissioner for Human Rights and UN ECOSOC (Economic and Social Council). Together, they play the following key roles:

Standard-setting (law making): Although, as mentioned earlier, no single UN treaty exists covering the rights of minorities, several UN human rights treaties and declarations do set standards relating to minority

rights notably the UN Charter; the Universal Declaration; the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; the Convention against Racial Discrimination; the Women's Convention (CEDAW); the Child Convention (CRC); the Genocide Convention and the UN Declaration on the Elimination of All Forms of Intolerance and Discriminations Based on Religion or Belief; the UNESCO Declaration on Race and Racial Prejudice; and the European, Inter-American and African Human Rights Charters. There thus, does exist a formidable body of international law relating to minorities and ethnic groups. The challenge, as always, lies in implementation and enforcement.

Awareness-raising: The setting of international law standards, while itself an important task, is not enough if such standards exist only on paper. There is a need to raise global awareness about such standards and to promote advocacy for states to adopt such standards by ratifying international treaties. This task is performed by the Office of the UN High Commissioner for Human Rights, several UN agencies notably UNESCO and UNICEF, and the UN Country Team as a whole, working at the national level. Important contributions are also made by international and national NGOs.

Monitoring implementation and violations: This task is performed at the international level by the UN Human Rights Commission; the committees (called "treaty-bodies") under the six core UN human rights treaties; by special rapporteurs created by the UN Human Rights Commission, such as the Special Rapporteur on Religious Intolerance and Discrimination; and by international NGOs. At the regional level this task is performed by the European, Inter-American and African Human Rights Commissions (which are inter-governmental bodies) assisted by international, regional and national NGOs. Together they investigate complaints and "situations'; document progress or violations and engage in what has come to be known as "the international mobilization of shame." The responses to the execution of the Ogoni Nine in Nigeria, and the killing of street children in Brazil are examples of the effectiveness of the international "mobilization of shame".

Civil society is important for monitoring not only individual violations but also widespread practices as well. The European Monitoring Centre on Racism and Xenophobia conducted a study which found that in 1998, such practices existed in all the then 15 member countries in Europe.

Another interesting example is MIMCO (the Mattel Independent Monitoring Council) set up by one of the world's largest toy-making companies, to monitor implementation of its 1997 corporate code of conduct. This independent body visits mattel plants, makes recommendations to mattel's board of directors, and revisits the plants

after six months to ensure that its recommendations are being heeded.
Implementation: This takes place primarily at the national level but the UN development agencies and international NGOs (*e.g.*, minority rights group) assist governments in fulfilling their obligations under treaties that they have ratified, and in promoting the progressive realization of *all* human rights of *all*, including, through sustainable human development. International NGOs like Transparency International can play important roles here. Another interesting international example is the Forest Stewardship Council: a coalition of environmental groups, timber industry, forest workers, indigenous people and communities who work together to certify sustainably harvested timber for export.
Enforcement: Once again, this takes place primarily at the national level. However, there has been a trend towards enforcement at the regional level (notably by the European Court on Human Rights) and at the international level through *ad hoc* tribunals (on the former Yugoslavia and on Rwanda) and through the recently created International Criminal Court. The NGO Coalition for an International Criminal Court played vital roles during the negotiations that led to the creation of an International Criminal Court, and is also facilitating collaboration between governments and civil society now that the court has come into existence. But international enforcement is a highly politicized, and, therefore, selective process; able to work only in exceptional cases. Hence national implementation and enforcement become vital.

Regional mechanisms are also proving important. The work of the European Court of Human Rights (of the Council of Europe) and the European Court of Justice (of the European Union) in protecting the human rights of minorities and fighting racism and xenophobia has received worldwide recognition and acclaim. Moreover, the OSCE (Organization for Security and Co-operation in Europe) created a High Commissioner for National Minorities in 1993.

National mechanisms and institutions

The main mechanisms at the national level are governmental, assisted by NGOs and civil society. Hence, developing a national system for the promotion and protection of human rights and minority rights; and developing national institutions for inclusive democratic governance are really two sides of the same coin.
Standard-setting (law making) at the national level is primarily the task of parliaments and legislatures with the judiciary playing a supplemental role.
Awareness-raising is the task of ministries (*e.g.*, of education, justice, human rights), NGOs and civil society, including the media and professional organizations.

Monitoring is the task of regular governance institutions (Parliament, the executive, the judiciary) as well as of special institutions such as National Human Rights Commissions, National Commission on Minorities, on women or on youth, and the office of the Ombudsman. National Truth Commissions have also played a historic role in South Africa, Central America and in some other Latin American countries. It is also, importantly, the task of NGOs and of civil society. In Costa Rica, for example, a citizens' audit of the quality of democracy was conducted (in 1998-99) which reinforced positive developments regarding the electoral system and constitutional reviews of public policy; but also drew attention to shortfalls regarding local government. In many countries, the National Human Development Report, often a joint undertaking by the UN and national government, serves a monitoring function.[21]

Implementation is the task of ministries and their bureaucracies assisted by NGOs and civil society.

Enforcement is the task of the law enforcement system comprising the police, prosecutors and judges. But here again NGOs and civil society need to create the pressure for effective enforcement.

IV Some Good Practices and Lessons Learned Therefrom

Some of the more successful approaches to developing and institutionalizing protection mechanisms at the national level are dealt with illustrations below. As the examples indicate, the challenges are formidable, and require creative linkages between international and national organizations, and between governmental, non-governmental and intergovernmental organizations. The examples given below track four basic challenges and tasks for protecting the rights of minorities; promoting ethnic co-existence; preserving social, cultural and political pluralism; and preserving peace and human security. These can be dealt with under four sub-heads: *securing the normative framework; securing the institutional framework; securing the policy framework and addressing the special problems and obstacles faced by new and restored democracies*.

21. Since 1992, there have been 157 such reports in Eastern Europe and the CIS; 106 in Africa, 63 in Latin America and the Caribbean, 50 in Asia and the Pacific, and 26 in the Arab states. However, when broken down by governance-related topics, only 17 dealt with human rights, 21 with decentralization, 30 with social cohesion and exclusion, 29 with participation, 17 with democracy and 3 with inequity.

Securing the normative framework

This involves twin tasks, related respectively to international standards and to constitutional standards.

International standards

(i) Ratification and national incorporation of existing international standards. This is an important basic task and different approaches have been tried in different country contexts:

In post-conflict countries such as Cambodia, the former Yugoslavia and Afghanistan, ratification of the core human rights treaties have been put into, and made an integral part of the peace accord (for example in the Dayton and Bonn Agreements). While this ensures formal ratification, as the Cambodian experience shows, it takes massive, and on going human rights education throughout society to obtain societal understanding, acceptance and support for moving from formal ratification to serious attempts at implementation.

In countries emerging from long periods of dictatorship (for example Nepal and Bangladesh), and those achieving independence, as a result of a society-wide struggle (for example East Timor) the approach has been to seize upon the historic nature of the moment and to immediately announce, and in fact ratify all the core human rights treaties as an act not only of the leaders, but of the people of the country.

In countries making a less dramatic, but slow transition to democracy, it has been important to build broad-based constituencies within the country, in support of ratification. A good example is Swaziland, moving away from absolute monarchy.

(ii) Participation in the development of new international standards: The setting of international human rights standards and their incorporation into national law is a necessary first step towards realization of such rights. Cynics will argue that standards abound, and that already there is much legislation enshrining many rights. But such legislation is, all too often, honoured more in breach than in observance. Nevertheless, the process of standard-setting is a worthy endeavour. Participation, in such process of standard-setting (by minorities, by indigenous peoples), provides an opportunity for dialogue and negotiation. Recognition of rights both clarifies and legitimates claims. Education about such rights helps enhance awareness, not only of rights but of duties and obligations as well.

Within the UN system, the term *collective rights* (with its ideological implications) has often given way to the term *group rights*. Group rights are about identity but, importantly, they are also about equity. The challenge lies in finding universality in diversity. In securing both

separateness of identity as well as balance and nondiscrimination. The challenge lies in developing group rights without undermining key and core concepts of universality, indivisibility and interdependence of all human rights. Defense of diversity and pluralism involves both identification of the core rights comprising such diversity and pluralism as well as the outer limits of such rights.

Complex conceptual and practical issues relate to the articulation of group rights: inter-group accountability and justice; and intra-group accountability and justice. But bearing in mind these difficulties, the challenge lies in developing international standards regarding several categories of group rights: the right of self-definition and of self-identification; the right to autonomy; self-governance and possibly internal self-determination; the right to indigenous law and social organizations; rights of language, education and cultural identity; rights of participation; protection of the resources of the group and rights of equitable access to resources of the state; and the right to defense of collective-self.

Participation of minorities in the process of elaborating international standards regarding the above collective human rights will beneficially impact on the process. This has been clearly shown in two past instances. Rural women, all over Africa, participated in the drafting of article 14 of CEDAW (the Convention on Elimination of All Forms of Discrimination Against Women) and it remains one of the most effective articles of that treaty. Similarly, participation for several years by indigenous peoples in the drafting of the UN Declaration on the rights of indigenous people has resulted in a draft which is so pertinent and effective that for several years, reluctant member states have kept it languishing as a draft and have not adopted it!

Constitutions and constitution-making processes

The second important component of the normative framework is the national constitution. Western political scientists offer two basic theories to guide constitution making*: consociationalism* and *ethnic accommodation.*

Consociationalism, as originally conceptualized by A. Lijphart, refers to a stable and democratic system that emerges as a result of elite accommodation in multi-ethnic societies. He suggests four mechanisms for achieving consociationalism: grand coalition governments (involving all major segments of the society); proportionality (in the distribution of positions, goods and services); mutual veto (so as to protect the rights of the minority groups); and some measure of segmental autonomy, especially with regard to questions of language, religion and culture. His studies focused on the experiences of the more industrialized Western

European countries particularly the Netherlands, where democratic institutions had already been put into place for some time.[22]

By contrast D. Horowitz[23] has highlighted the difficulties of achieving consociationalism in the developing countries, still in the throes of consolidating their democracies. He criticizes Lijphart's notion of consociationalism as too elite-centric, particularly his assumption of altruistically inclined elites. Instead of building upon the assumption that the elites (contra the masses) imbibe more universal and accommodative values, attitudes and principles, Horowitz suggests the need to introduce three mechanisms so as to promote accommodation in multi-ethnic societies:

First, there is the need to initiate and institutionalize some measure of affirmative action. There can be no accommodation, and even less trust, if one segment of the population is continuing to be economically deprived, with no resolution of its predicament.

Second, there has to be "adjustments" in favour of a federal system that allows minorities to have a role in decision-making, at least in the regions of their concentration. Apart from facilitating political participation, federalism allows for regional minorities to preserve their cultural identity and their material interests too.

Third, adjustments towards an electoral system needs to be there, so that it is biased in favour of would-be leaders who mobilize and receive multi-ethnic support. Elections based on the principle of proportional representation (rather than on simple-majority single constituencies), generally work in favour of minority representation.

Constitutional experts in developing countries stress three aspects of constitutional standards: Adequate and effective safeguards of minority rights in a judicially enforceable charter on fundamental rights in the constitution; federal arrangements of a variety of forms; from loose confederation to full autonomy; devolution of authority and resources to the institutions of local government.

Participatory processes of constitution-making are very important. The greater the participation in such process, the longer has been the life of the Constitution.[24]

Securing the institutional framework

UNDP's programming in the area of governance has concentrated on strengthening a number of institutions of governance, all of which

22. See A Lijphart, *The Plitics of Accomodation : Pluralism and Democracies in the Netherlands* (1976).

23. See D. Horwitz, *Ethnic Groups in Conflict* (1985).

24. Nepal provides a good example of participatory constitution-making.

are vital to the institutionalization of inclusive democracy:

Electoral institutions: Electoral assistance has initially taken the form of UN monitored, or at times even UN conducted elections. But this must be followed by the creation and strengthening of national electoral institutions. These institutions have proved to be invaluable for the free expression of the will of the people.[25]

Parliaments and legislative bodies: The focus here, has been on: Strengthening the law-making capacity of parliaments, (especially in national incorporation of human rights), by providing exposure to comparative experiences and by strengthening legal drafting skills; strengthening parliament as an institution, through support to standing and select committees of parliament; strengthening the oversight role of parliament, especially in respect of budgetary processes;[26] strengthening the investigative role of parliament by support to parliamentary commissions of inquiry; supporting parliaments in their role of creating national institutions such as national human rights and other commissions and ombudsman and encouraging parliament, through its parliamentary hearing processes, and more generally as well, to provide a public forum for discussion and debate; and reaffirming that all views and all groups of society have a right to be represented.

Administrative reforms: There is growing recognition that administrative reforms are a priority to make administration more transparent, accountable, effective and responsive. But it has also become apparent that participation of bureaucracy and civil service in the process of

25. The Mexican Federal Election Commission's independence and integrity was a factor in the opposition gaining a majority in the Chamber of Deputies in 1997 and the President being an opposition candidate in 2000. There is a role here for civil society as well. In Ghana a free and independent media, mainly private radio stations, made rigging difficult and ensured the transparency of Ghana's election results. In the Philippines, the contributions of NAMFREL are well-known. Another NGO there, the The Concerned Citizens of Abra for Good Governance, began in 1986 as an election monitoring group is now involved in fighting corruption and conducts advocacy about budgetary allocations.

26. Human rights criteria play a vital role in parliamentary oversight of the actions of the executive. In Porto Allegre, Brazil; in Rajasthan and Gujarat, India; Bangladesh and Canada, to name a few, citizens groups have worked with parliaments to make budget-making processes participatory, resulting in "budgets as if people mattered". Thus, for example, in Gujarat, India, an NGO DISHA (Development Initiatives for Social and Human Action) used budgetary under-spending on tribal peoples as the basis for its advocacy efforts. Gender-responsive budgeting has become a practice in the U.K., and in some 40 countries including South Africa, Tanzania, Mexico, Philippines and Uganda. In Mozambique, the media has succeeded in stimulating public participation in debates on economic policy through a daily fax sheet.

reform contributes to enhancing the effectiveness of the reforms.[27]

Judicial reform: The judiciary is the institution often most in need of strengthening in new and restored democracies. Judicial reforms aim at strengthening judicial independence and accountability, which are often concepts totally absent in the traditions of the recent past. Judicial reforms also aim at accelerated capacity enhancement through judicial mentoring (as in Cambodia and East Timor) and through the setting up of judicial training institutes. An important aspect of judicial reform is reform of judicial administration. But most important of all is access to justice reforms which reverses earlier practices of access only for the rich and powerful. Judicial reforms are a popular area for both multilateral and bilateral donors and hence there is usually a need for enhanced coordination among donors. Very considerable resources, from a myriad of donors, have been devoted to judicial reforms, but as yet, they have produced miniscule results (in the former Yugoslavia, for example). A much-neglected area of judicial reforms is the role of the judiciary in developing human rights jurisprudence in full conformity with international human rights law. On a positive note, judicial reform in El Salvador was undertaken as a joint effort of government, civil society and international development agencies, and serves as a model for emulation.

Law enforcement reforms: Reorientation and reorganization of the police service is usually a priority in new and restored democracies. It is hard

27. In Swaziland, after the work described earlier with Swazi Parliament on ratification of human rights treaties, in 1997 there followed a request from the office of the Prime Minister to UNDP for assistance in drawing up a code of conduct for Members of the Parliament in Swaziland. The code would cover all members of parliament including those who were cabinet members and would be both a code of conduct (and misconduct) and a code of leadership. With UNDP assistance, the office of the Prime Minister conducted a series of consultations and dialogues not only with members of parliament, but also with civil society including NGOs, trade unions, media, women's organizations and church groups, to ascertain what they would like to see included in such a code. After a six-month process of dialogue and consultations, such a code was drawn up and tabled before Parliament for adoption. The code embodies a concept of governance that is transparent, accountable, non-discriminatory, fair and committed to the rule of law, secured by a system of checks and balances. The code sets out principles of leadership, stressing that leadership should be: participatory, responsive, effective, responsible, accountable, humane, and just. It addresses individual morality as well as public life. It contains provisions for the prevention and punishment of corruption and places a ban on advocacy for which a member receives payment. It also sets up a parliamentary mechanism for monitoring and implementing the code. Three aspects of the Swazi's experience are exemplary. First, the code was an initiative originating from within and not imposed upon Parliament. Second, the process of determining the content of the code was participatory. Third, the code was deliberately drafted in lay rather than legal language, so that it could be used as a tool for civic education.

for police, used in the past to be operating in a police state, to appreciate what their new roles and responsibilities are. Training on human rights law should be routinely incorporated into induction courses for law enforcers. Several reforms have proved effective. Enhancing investigative skills has often brought about a reduction of routine use of torture in interrogations. In some countries, the experience with civilian policing has been promising. Other important areas of law enforcement reform are establishing that the offices of the prosecutor and of the public defender are institutionalized as autonomous, independent, impartial and are adequately resourced. In South Africa and several Eastern European countries, democratic control over security forces has been an important element of law enforcement reforms. In Haiti and Costa Rica, community policing has proved to be a success.

National human rights institutions: There has been a rush to promote the establishment of institutions such as the ombudsman and national human rights and other commissions. It is important to set up such institutions (and ensure that they comply fully with the Paris Principles relating to national institutions) but it is equally important to work on developing relationships of cooperation and mutual support between such national human rights institutions and the regular institutions of government (notably the legislature, the executive and the judiciary) who continue to have vital roles to play in the protection and promotion of human rights. South Africa's Human Rights Commission has been held out as a model for the imaginative range of activities it has undertaken including nation-wide speak-outs on poverty and its investigations into racism in the media.

Civil society institutions: These are vital to inclusive democratic governance. It is important to establish an enabling environment for NGOs and other civil society organizations and move from attitudes of control and cooptation, to attitudes of cooperation and collaboration. But the issue of accountability of civil society institutions must not be neglected. When institutions of civil society behave in a distinctly uncivil manner (inciting hate crimes, racism, xenophobia, religious intolerance and fundamentalism, ethnic politics and ethno-nationalism), it is important that both non-governmental and governmental organizations work together to hold them accountable. Civil society has much to offer to deepen inclusive democracy through NGO campaigns and activities and the contributions of media and professional associations. A few anti-social, uncivil elements of civil society should not be allowed to close the space that legitimate civil society needs to be effective.

NGOs are often better known for their advocacy campaigns against land mines; against blood diamonds in Africa; against the WTO and TRIPS and for access to essential medicines for HIV/AIDS victims; and for debt relief (for example, the dramatic human chain encircling of the

G-8 leaders in Birmingham by Jubilee 2000's campaign). But they have made equally impressive contributions to the institutionalization of accountability (there would not exist an International Criminal Court today, but for the efforts of NGOs) and of inclusive democracy.[28]

Securing the policy framework

Each country context is unique. But there does exist a menu of state policies regarding culture, ethnicity and minorities to choose from, including: preferential treatment along ethnic lines (either of the minority group or the majority group); language policies (such as in the redrawing of state boundaries in India); electoral policies: separate electorate for certain groups, systems of proportional representation; federalism/ devolution: accommodation of ethnic diversity within a provincial or local government context; regulation of religion : secular state versus theocratic state; freedom of religion in the Constitution, laws, and practices relating to religion; legal pluralism : allowing separate personal laws for different ethnic groups (laws on marriage, property, etc); regulations regarding land: policies that prevent alienation of land by indigenous people to protect them from being exploited by the more powerful, more modern sections of the society.

In securing the most appropriate policy framework for each country, it is important to do so through a process that is endogenous, nationally-owned and driven, participatory and genuinely inclusive.

Addressing special problems and obstacles faced by new and restored democracies

Securing national normative, institutional and policy frameworks does involve consciously addressing the special problems and obstacles frequently encountered by new and restored democracies : a prevailing

28. These are few examples: - KRW (the Kensington Welfare Rights Union, established in 1991) deals with issues relating to housing, gender, and race in the US. In 1997, its Freedom Bus traversed the United States, providing human rights education and mobilizing new leaders among the ranks of the poor. Today such leadership numbers in excess of 3000.

— Child Rights, a Bangkok-based NGO, was instrumental in ensuring that some 30 benchmarks for realizing children's rights were included in Thailand's Seventh National Social and Economic Development Plan (1992 – 1996).

— Thailand's Assembly of the Poor is a unique coalition fighting for redress and remedies for the victims of development projects in Thailand.

— FEWER (the Forum for Early Warning and Early Response) is a unique consortium of intergovernmental, non-governmental and academic institutions that seeks to prevent a recurrence of what happened in Rwanda, through a methodology self-evident from its very name itself.

culture of impunity and utter lack of accountability; entrenched practices of abuse of power; systematic dismantling of checks and balances and institutions of accountability; widespread corruption accompanied by widespread toleration of corruption; a culture of subservience and distrust; limited human resources and acute need for accelerated capacity-building.

These legacies of the past need to be confronted by conscious measures to: enhance empowerment and participation; counter exclusion and discrimination, ensure transparency and accountability; and strike an equitable balance between meeting competing needs for truth, reconciliation and justice.

V Inclusive Democracy for All: Towards an Integrated Programmatic Approach

The challenge for new and restored democracies to effectively protect and promote the human rights of minorities through their processes of democratization is a long-term one. It involves moving from effective representation and interest articulation of minorities in the processes of democratization; to sustained, meaningful participation in the day-to-day processes of government. It requires an approach that is holistic, inter-disciplinary and multi-sectoral. It requires an approach that is integrated and not piecemeal or fragmented, focusing on reform of specific institutions of government (the legislature, executive, judiciary, law enforcement and public administration) alone. It requires above all, an approach that is inclusive, non-discriminatory and participatory.

It requires from donors and development agencies, long-term commitment, co-ordination and consistency. National self-interests and foreign policy imperatives of donor countries must not gain precedence over principles (regarding prohibition of impunity or making compromises accepting "low intensity democracy"). Nationalistic export and transplant of institutional models should have no place in programmes of technical co-operation and capacity-building, which must be home-grown, endogenous, and predicated upon national ownership.

National governments, for their part, must deliver enduring commitment and consistency of values and principles. They must favour a proactive approach over belated reaction. They must strive for prevention of crises and protection of the rights of minorities and vulnerables, rather than relying on purely reactive crisis-response and crisis-management alone.

Both government and civil society need to appreciate, promote, and celebrate cultural diversity and pluralism, reacting swiftly to those who seek to spread distrust and fear based upon differences. Practices of accommodation should be favoured over those of domination and control.

Both governments and civil society should unite to reject equally, the ethnicisation of politics, and the politicisation of ethnic identities. Civil society must exercise the primary responsibility *of holding accountable their own members.* Prejudice should be identified, exposed, addressed and redressed at the earliest possible opportunity. Information and education should be utilized as instruments of prophylaxis, rather than as tools for manipulation and indoctrination.

Three, well-tested and proven aspects of peace-making and peace-building have equal relevance for inclusive democratization:

Constituency-building: Examples have been cited earlier to indicate the effectiveness of national constituency-building for ratification of international human rights treaties. Such approaches should also be used for building national constituencies for cultural diversity, pluralism, peaceful co-existence, and multi-ethnic harmony.

Confidence-building measures: Examples have been cited earlier to explain how constitution-making processes can contribute to confidence-building. There are many other opportunities for confidence-building including the process of integration of minorities into the national and local justice and security sectors. Similarly, the legal and judicial reform processes can also be used for encouraging participation and, thereby, confidence-building.

Constructive-engagement: Almost all aspects of the process of inclusive democratisation can serve for constructive engagement, especially through encouraging meaningful participation (including those set out above, namely constitutional, legal, judicial, and security-sector reform).

For both new and restored democracies, inclusive democratization involves change in the behaviour, actions, operational procedures, and strategies of both the personnel, and of the institutions in which they serve. Mere reforms on the books are not enough.