

INTERNATIONAL  
COUNCIL  
ON HUMAN RIGHTS POLICY

# Enhancing Access to Human Rights

Summary

## THE ISSUES

The report summarised here examines why across the world large numbers of people do not enjoy rights to which they are entitled, even when laws and policies exist to protect those rights and when official institutions do not seek to discriminate against or deprive them of their rights.

The causes of lack of access or imperfect access are manifold, and they often overlap and mutually reinforce each other. Poor and marginalised communities are particularly exposed. The fact that economic and social inequities have persisted or widened in many countries even after political and democratic reforms have taken place, has convinced many human rights activists and organisations that they need to go beyond law and legal reform if they are to make rights and entitlements available and accessible to all.

Many institutions have a duty to provide protection and services to marginalised groups. They include government institutions, civil society groups, intermediary institutions such as ombuds offices and human rights commissions, as well as the alternative social networks and arrangements to which those who are excluded tend to turn.

The study looks at the performance of these actors and examines why, on their own admission, many of them fail to achieve their aims or fulfil their responsibility to provide services to all those who qualify for them.

The report argues that, to tackle the needs and protect the rights of the excluded, human rights practitioners also need to look beyond formal power structures and legal mechanisms. More effort should be made to understand how poor and marginalised communities cope, use local procedures to solve disputes and meet their needs, and why they are often reluctant to use official institutions. New forms of action will be required to augment accountability and participation, challenge discrimination and strengthen grassroots social movements. It will also be necessary to bolster the capacity of state institutions as well as to reveal abuse.

Adopting new forms of action may have important practical implications for human rights organisations that wish genuinely to become more relevant and useful to the large numbers of people in the world who remain powerless, marginalised and poor.

## RESEARCH PROCESS

The report summarised here is the result of a research project that began in June 2002.

Between June and December 2002, several papers were commissioned to provide background analysis and information concerning different aspects of the issue of access, in advance of an international meeting on the subject, which took place on January 17-18, 2003 in Guadalajara, Mexico, on the occasion of the Sixth Annual Assembly of the International Council.

The conference examined the roles of unofficial and community organisations and the performance of institutions, including those of government, in delivering services that protect rights effectively. It brought together those who had written the papers, invited international and local experts, Council Members and staff of the Council's Secretariat.

Following the seminar a draft report was prepared and sent out for comment internationally in May-August 2003 to over four hundred organisations and individuals. The comments received during the consultation phase were woven into the final report, which was completed in October-November 2003.



## ACKNOWLEDGEMENTS

Marguerite Garling, Regional Human Rights Adviser at the British High Commission in Kenya, wrote the report summarised here.

Mohammad-Mahmoud Ould Mohamedou, Research Director at the International Council on Human Rights Policy, directed the project and edited the report.

Several papers were commissioned to provide background analysis and information concerning the issue of access to human rights. The papers – which are available on the International Council's website ([www.ichrp.org](http://www.ichrp.org)) – and their authors were:

- ◆ “The Work of Formal Institutions in Providing and Ensuring Access to Human Rights: An experience from Latin America” by Martín Abregú, Ford Foundation Representative for Argentina, Chile, Peru and Colombia
- ◆ “The Urban Poor: Problems of access to human rights” by James Cavallaro, Associate Director of the Human Rights Programme at Harvard University Law School
- ◆ “Human Rights Respected in Law, Abused in Practice” by Stephen Ellis, Senior Researcher at the African Studies Centre, The Netherlands
- ◆ “A Road Strewn with Stones: Migrants’ access to human rights” by Bimal Ghosh, Director of a global project on migration management, Geneva
- ◆ “Access to Human Rights: Obstacles and issues” by Stephen Golub, consultant and researcher, Boalt Hall Law School, University of California at Berkeley
- ◆ “Gender Issues in the Challenge of Access to Human Rights” by Ayesha Imam, freelance consultant on women's human rights
- ◆ “Informal Responses to Access to Human Rights” by Chidi Anselm Odinkalu, Senior Legal Adviser for Africa, Open Society Justice Initiative, Abuja
- ◆ “Informal Obstacles to Accessing Human Rights” by Dimitrina Petrova, Executive Director of the European Roma Rights Centre, Budapest
- ◆ “Rural People’s Access to Human Rights” by Christopher Sidoti, Director of the International Service for Human Rights, Geneva
- ◆ “Indigenous Peoples and their Access to Human Rights” by Rodolfo Stavenhagen, Special Rapporteur for the Human Rights of Indigenous Peoples, United Nations Commission for Human Rights

An advisory group guided the research. Its members were: Thomas Hammarberg, General Secretary of the Olof Palme International Centre, Sweden; Theo van Boven, Professor of International Law, United Nations Special Rapporteur on Torture, The Netherlands; Charlotte Bunch, Professor, Centre for Women’s Global Leadership, Rutgers State University, United States; Ayesha Imam, consultant on women's human rights, Nigeria; Hina Jilani, Director, AGHS Legal Aid Cell, Lahore, and Special Representative of the United Nations Secretary-General on Human Rights Defenders, Pakistan; and Walter Kälin, Professor of International

Law, Institute of Public Law, University of Bern, and member of the United Nations Human Rights Committee, Switzerland.

An international meeting was held in Guadalajara, Mexico, on January 17-18, 2003, at which, in addition to the individuals listed above, the following people provided input and discussed the research: Robert Archer, Edgar Cortez, Larry Cox, Rocio Culebro, David Fernández Davalos, Max Everest-Phillips, Dharam Ghai, Stefanie Grant, Scott Jerbi, Marina Jiménez, Virginia Leary, Ana Luisa Liguori, Emma Maza, Guadalupe Morfin, Bacre Waly N'Diaye, Aida María Noval, Gerardo Perez, Adelfo Regino, Mary Robinson, Victor Rodrigues, Thun Saray, Miguel Sarre, José-Luis Soberanes and Sylvia Tamale.

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## FINDINGS

### Definitions and focus

Many factors and forms of behaviour influence whether individuals, or groups of people, are poor or unable to access rights to which they are entitled in law. Use of the phrase 'access to rights' in this report does not suggest that the most vulnerable groups of society have no rights – all human beings have inalienable and indivisible rights. It refers, rather, to the fact that large groups of people are not able to realise their rights completely or sufficiently.

The report looks in particular at the experience of four groups of people who tend to be excluded from access to rights they have in law, or services essential to the protection of their rights: (i) those who are poor; (ii) racial, ethnic and outcast minorities, including 'indigenous' communities; (iii) migrants, people forcibly displaced (internally or across borders), or those 'without papers' or citizenship; and (iv) women, across all these groups and in general.

This list clearly does not capture all those who are subject to exclusion or lack access to human rights. Children, youths, the unemployed, the elderly are all vulnerable in similar or comparable ways. Other out-groups who are likely to suffer discrimination because of their difference can also be identified, in particular persons with disabilities.

It should also be noted that these categories frequently cut across and reinforce one another. Viewed generally, all these groups share some of the following characteristics:

- they tend to be *invisible* to institutions of government – or seen only as 'others' (and de-humanised in extreme situations);
- they are *voiceless* or their voices are not heard by decision-makers who have power to protect them or affect their lives;
- they are often *dependent* on patrons for benefits;
- they tend to occupy a *subordinate* position in relation to others (within family, castes, classes or ethnic groups);
- they are more *vulnerable* to human rights abuse than dominant social groups; and
- they are *excluded* from important decisions about their lives, or only paid token lip-service in participatory fora.

## **Impediments to access**

*Institutional obstacles* – Institutional responses create many obstacles to the full enjoyment of human rights. They include uneven resource allocation; corruption, patronage and nepotism; gender, class, disability, caste, tribal, ethnic and racial bias; ignorance and incompetence; and criminality. Other systemic obstacles are due to defects in laws themselves, which often perpetuate exclusion and injustice or criminalise the survival strategies of those without access.

*Limits of the law* – The incorporation of human rights into domestic legislation does not by itself ensure access to human rights. The law means little to citizens if it is not enforced effectively, and effective enforcement occurs usually when citizens interact forcefully with the system and assert their claims. Moreover, even when enforcement is effective, not all members of most societies actually engage with and benefit from the services provided by state institutions. In many societies, the moral authority of national law has been undermined because it has been used to oppress subordinate social groups. Officials frequently enforce those laws that protect property rather than people and, where a climate of impunity becomes established, authority often not only fails to protect the excluded but comes to abuse them.

*Social attitudes* – Many people may find themselves excluded from access to rights for reasons that have to do with the attitudes of those around them. Social exclusion can result from stereotyping and racial profiling; visibly different communities may be scapegoated. Such attitudes may persist even when anti-discrimination legislation is in place. Although such laws can enhance the rights of groups that suffer direct discrimination, indirect discrimination is much harder to tackle. Impartial laws and policies often fail in practice to remove the inequalities or entrenched disadvantage from which specific ethnic, linguistic or religious groups suffer.

*Isolation and physical access* – Significant numbers of states do not have the resources or the political commitment to run an effective administration beyond the more fertile, inhabitable and controllable areas of their countries. In large states, sheer physical distance and the dispersal of rural communities place a heavy burden on administrative and communications systems. Physical isolation reduces access. Equally, social isolation from resources and skills, due to poverty, has similar effects.

*Choice not to engage* – Excluded groups may be ambivalent about engaging with official institutions. Many do not know their rights or do not know that they are entitled to claim services from government. Others may be aware of their rights, but unwilling to press for them using formal structures that remain alien and intimidating (and possibly distant, corrupt and costly). The social exclusion and marginalisation which vulnerable groups experience reflect power relations. Whatever the political model, the asymmetry of power means that those who are poor or marginalised are in a subordinate posture as claimants. Under a repressive system, it may be a perfectly rational choice for them not even to claim their rights. Excluded groups may also resist engaging with officialdom for cultural and historical reasons. Some may mistrust all institutions of a state that has oppressed

them and may also refuse to engage with non-governmental organisations that are viewed in the same light.

*Psychological barriers* – Within this kind of context, those denied their rights experience a range of psycho-social responses. Where exclusion is historically entrenched, groups may internalise the prejudices of the dominant groups regarding their ‘inferiority’ as a way of rationalising their status. Internalisation of inferiority is a barrier to contemplating remedial action of any sort. Such internalised guilt and oppression result in further alienation from mainstream institutions (which are already the object of justified mistrust), and can lead to low self-esteem and depression, inhibiting energy at both a personal and a collective level.

*Conflict* – In a number of places, conflicts over power or access to vital resources have led to the degeneration or disintegration of formal state structures. Under such circumstances, states may lose control over key powers, including the security and police forces and tax collection, often to private or foreign armies and criminal consortia. In such areas, civilians are at the mercy of lawless bands with no pretence of respect for their rights, or semi-autonomous security forces that loot them economically or exact reprisals against them for supposedly harbouring and succouring rebel groups. Many grave human rights abuses predictably occur in these situations.

*Insecurity* – Many of those who do not access rights to which they are legally entitled are also poor. This raises specific issues for organisations in government that seek to provide services more effectively. People living in cities may experience day-to-day uncertainty – solvency one week, indigence the next. Others, especially landless people in rural areas, are locked permanently into a state of extreme poverty. Choices are often determined by the need to reduce insecurity: people cannot afford to look ahead or take on new risks, put their trust in people they do not know, or put resources into activities that have uncertain outcomes. Initiatives designed to improve access therefore need to generate immediate and tangible benefits, as well as longer-term ones. This has important implications for officials who seek to develop government programmes that increase the effective entitlement of deprived communities, particularly where those communities have long experience of being ignored, abused or exploited by state officials.

## Vulnerable groups

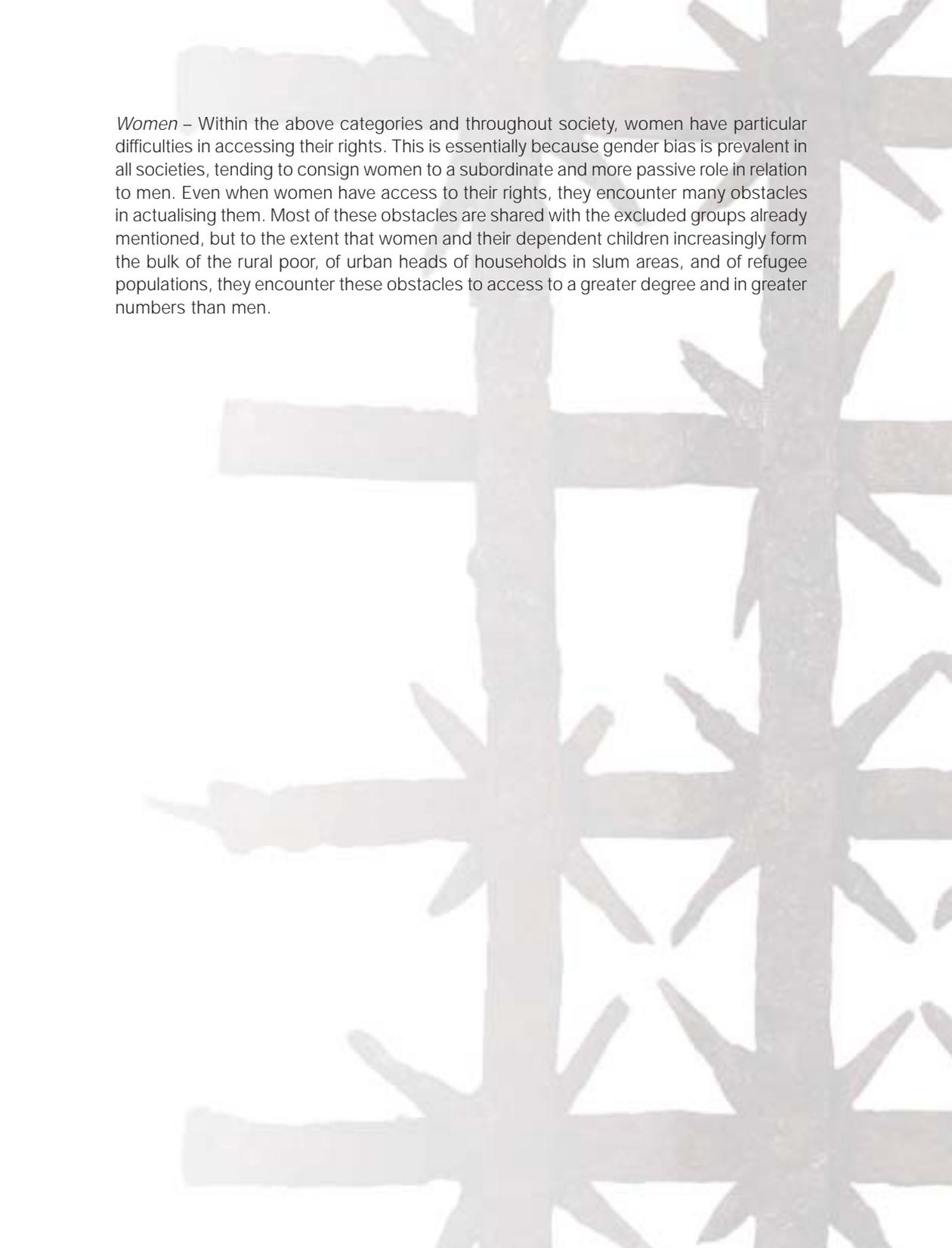
Around the world, large numbers of people are not able to enjoy the human rights to which they are entitled. For a variety of reasons, these individuals lack access to rights that are written in law, and which, theoretically, are protected by local, national and international institutions. Certain groups tend to suffer from lack of access or incomplete access to a marked degree. They include the urban poor, the rural poor, migrants, indigenous groups and women.

*Urban poor* – The urban poor are particularly vulnerable to rights violations because they have no cushion to protect them against risk and no capital to invest in retraining or new activities. In many countries, this is partly because they are not able to realise, or borrow against, the value of physical assets they may possess. In addition, being often among the least educated, they often cannot take advantage of new opportunities. Because the urban poor (and poor people in general) live in precarious settlements, they are also particularly exposed by global processes such as rapid urbanisation, climate change, pollution and macro-economic reform, all of which impact directly on economic, social and cultural rights.

*Rural poor* – Rural people share many of the problems of access to rights experienced by their urban counterparts, though compounded by the distance and remoteness from remedies for rights violations which characterise life in many rural areas. Isolation is the main concern of rural communities when it comes to access to their rights. This involves both the *distance from mechanisms* capable of remedying rights abuses, and the *distance from public view* and consequent lack of recognition of the specifically rural character of certain human rights violations.

*Indigenous peoples* – Indigenous peoples not only have poorer access to services and rights, they often face systematic discrimination. In addition, however, their rights as indigenous peoples are also often denied. In such cases, they face the worst of both worlds: they may be regarded as incomplete or even non-citizens, but at the same time may be refused the right to define themselves separately. Such situations are often accompanied by violations of economic and social as well as political, civil and cultural rights.

*Migrants and refugees* – The marginal situation of migrants has been accentuated by globalisation, which has everywhere swelled the informal economy, characterised by lack of labour standards, social security and other forms of social protection. Migrants face five main obstacles to access: their *'illegal' status* renders them powerless and highly insecure; *prejudicial language* is used to exclude them; *failure of governments* to extend protection and assistance; their *extreme vulnerability* which, given the constant threat of expulsion, leads them to avoid the state, or indeed non-state bodies which might help them gain recognition; and finally, media bias, which in many countries has reinforced *stereotyping* of migrants, often whipped up by politicians wishing to exploit widespread insecurity about jobs and housing.



*Women* – Within the above categories and throughout society, women have particular difficulties in accessing their rights. This is essentially because gender bias is prevalent in all societies, tending to consign women to a subordinate and more passive role in relation to men. Even when women have access to their rights, they encounter many obstacles in actualising them. Most of these obstacles are shared with the excluded groups already mentioned, but to the extent that women and their dependent children increasingly form the bulk of the rural poor, of urban heads of households in slum areas, and of refugee populations, they encounter these obstacles to access to a greater degree and in greater numbers than men.

## Responsibilities of the state

The state plays a crucial role in ensuring access to rights. Issues of responsibility and accountability are involved, not merely law and law-enforcement. Numerous official institutions have a responsibility to provide resources and protection to individuals and communities in society. They include ministries, judicial bodies, and police and law-enforcement organisations. The performance of governments and government officials varies widely, from positive reform, via indifference, to repression.

When states fail routinely to meet their international and domestic legal obligations to provide rights for their citizens, by failing to allocate sufficient resources to ensure their implementation, more often than not they are responding to pressures which relegate the needs of the vulnerable to a secondary status. Lack of security is an example: around the world, countless urban poor communities live in a state of insecurity that is officially condoned or tolerated. For many, this insecurity represents a direct and constant threat to their basic rights to life and physical integrity.

State policies in relation to poverty raise particularly sharp questions. In many cases, social aid programmes that grant subsidies, food or other kinds of resources are the only 'positive' interaction that poor communities have with the state. While these programmes often help recipients to survive and endure poverty, in general they work against human rights access, because they consider people to be *beneficiaries* of these programmes rather than *subjects* entitled to rights. In these circumstances, social assistance programmes tend to preserve and entrench unequal and unjust relations of power.

The state and its formal institutions are the final guarantors of rights for citizens and non-citizens, and have the primary responsibility to ensure that all those who live within their jurisdiction have access to all the rights to which they are legally entitled. At present, governments fail to reach the most disadvantaged in most societies – and, in many societies, large numbers of people are deprived of protection or benefits as a result. National human rights institutions and civil society organisations can help in important ways to encourage governments to connect more efficiently with those that are excluded, and develop methods for doing so. They can also assist people to claim their rights from the state and in relation to other actors in society.

The role of the state remains central, both to initiation of reform and implementation of and compliance with protective legislation. Human rights organisations should continue to bring pressure to bear on governments in this key area, because exclusion is sustained to an important extent by the failure of governments to protect and enforce rights. Lobbying governments, however, is not enough on its own.

## Challenges for human rights groups

Reformers always run the risk of setting their own agendas or idealising those they seek to help. Human rights activists are no exception. Their emphasis on the legal and constitutional framework of human rights has led them, at least to some extent, to neglect forms of action, including the development of social movements that are more likely to motivate and empower marginalised groups.

In a similar way, the focus of human rights law on the responsibilities of states also distanced human rights organisations from the experience of marginal communities, while delaying their engagement with violations in the private domain – committed by domestic, non-state or proxy actors – and the more difficult issues of accountability that arise in relation to social, economic or cultural rights.

Today, many poor and marginalised groups often do not see their interests or experience adequately reflected in the advocacy of human rights organisations. These will need to identify fresh approaches if they are to be truly relevant to the poor. If human rights workers cannot demonstrate that their methods will bring real, practical benefits to people who are poor and excluded, but will only be useful to those who are already well-off, well-educated and well-connected, the claim that human rights are universal and should be enjoyed by everyone will have little credibility.

The vulnerable groups who enjoy no or limited access to rights cannot afford to take undue risks. Human rights strategies to assist and promote the interests of people in this position need to recognise this insecurity and take it into account. Efforts that produce benefits in the long-term, or uncertain benefits, or initiatives that depend solely on taking cases to court or engaging primarily in processes of legal or institutional reform may not be viable or realistic strategies for such communities. Building long-term relationships, involving presence may be crucial. In the long-term, participatory involvement in thousands of small communities may be required.

This will require skills which many human rights organisations have not yet developed fully. If they are to *engage* effectively with deprived communities, human rights organisations will need to (i) move out of the centre of cities, (ii) avoid abstraction, (iii) develop programmes that provide practical benefits, (iv) become locally accountable to numerous individual communities and (v) ensure that the ethnic make-up of their staff reflects the societies in which they are working.

## ALTERNATIVE TRADITIONAL MECHANISMS

Large numbers of people worldwide solve most of their problems by using mechanisms and remedies that are outside the formal structures of government. A multitude of non-formal institutions, new and old, serves a large portion of the world's population in lieu of and often in preference to more formal structures. The responses of traditional support networks and systems, and their ability to provide a degree of protection and security, assume added importance in the context of strategies to protect and advance access to rights.

Some traditional customary or religious mechanisms and values may conflict with accepted human rights principles. At the same time, they may convey a vision and practice of community that provides satisfaction to people whose only experience of rights may be in their denial.

Local traditional systems of adjudication are often perceived to be approachable, affordable, familiar and culturally relevant. They are an expression of the culture in which members have been socialised and grown to adulthood. They adapt to changing circumstances, as community members move from the countryside to towns and big cities, where they recreate familiar communal mechanisms and rituals. They travel with forced and unforced migrants beyond the traditional borders of the community.

These systems are run by community leaders who speak the local language and understand local problems. As a result, their rulings are, by and large, likely to be accepted by the community. The process is not usually adversarial but involves consensual rulings, which will allow community members to continue living side by side. The effectiveness of such mechanisms in affording access to rights is determined not only by cases won or lost, but by the *quality* of the rulings handed down and the *satisfaction* these afford the applicant. In this respect, they can be effective, and politically legitimate, without necessarily meeting international standards of fair trial or other human rights norms.

This said, customary systems should not be romanticised. They are open to manipulation and may endorse violations of internationally recognised human rights. They may be ill-equipped to deal with certain problems. They merit analysis and dialogue by reason of their potential. While they cannot replace the state, which has ultimate responsibility for ensuring access to rights, they may complement official institutions and answer some of the immediate needs of many communities. Efforts can be made, no doubt, to improve the accountability of those who have authority within traditional systems, and improve the degree to which informal and traditional decision-making avoids discrimination, particularly against women.

## POINTERS FOR ACTION

Underlying the overall argument of the report summarised here is the assumption that government and human rights organisations will need to reposition their work if they are to become relevant to millions of people in the world who are insecure because they are poor or suffer forms of social and economic discrimination. Institutions and organisations need to respond to the reality of exclusion and reach out to those who lack access to human rights, primarily by

- *improving state performance* (i.e., state delivery of economic and social services, physical security, justice, and so on);
- *recognising that significant and sustainable improvements cannot be achieved everywhere or at once*, and mere emphasis on law will not resolve the problem of access adequately; and
- *engaging in and applying new thinking*, required if the poor and excluded are to be reached and assisted effectively.

A number of immediate tasks may be suggested:

- encourage governments to monitor access and collect disaggregated statistics to measure it;
- encourage participation in decision-making at all levels;
- develop techniques of budget monitoring and resource allocation to influence government spending priorities;
- support grassroot integration of human rights and development;
- look into the risks and costs for very poor communities and at ways of minimising them;
- provide immediate benefits;
- look at issues of accountability;
- build human rights awareness among the excluded;
- encourage strategic networking and issue-based alliances, particularly between human rights activists and organisations (such as religious communities) that have a permanent presence in poor and excluded communities;
- monitor, strengthen and support intermediate human rights bodies such as national human rights commissions;
- examine informal mechanisms and remedies for their human rights potential;
- develop indicators for economic and social rights;
- adopt a more holistic approach to human rights work; and
- put the question of access to rights on the human rights and the international agenda.

## ORDER INFORMATION

### Main Report

*Enhancing Access to Human Rights*, 2004

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### Summary

*Enhancing Access to Human Rights – Summary*, 2004

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- *Taking Duties Seriously: Individual duties in international human rights law – A commentary*, 1999, ISBN 2-940259-00-3.

Why are many individuals, particularly those who are vulnerable because of exclusion, poverty and discrimination, unable to obtain benefits and rights to which they are entitled in law?

This report examines the impediments that obstruct large numbers of people from accessing the full range of human rights. It analyses the performance and responsibilities of governments and other institutions, and identifies new forms of action that official and human rights organisations might need to undertake if access is to be improved.

*"A clear, rich and forward-looking report. The first study to provide some welcomed insight into a little-researched human rights issue. A valuable policy tool, which challenges us to identify fresh and dynamic ways to address practically the problems of exclusion and of access to human rights."*

Bertrand Ramcharan,  
United Nations Acting-High Commissioner  
for Human Rights

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