At first blush, development would appear to be the prime vehicle for promoting realization of human rights such as the right to an adequate standard of living; rights of education, food, and housing; the right to work; and the right to social security. Similarly, it would seem that environmental preservation and rehabilitation would figure high on the priorities for development. However, development, as currently practiced in the countries of South Asia, has overtaken poverty as the single-largest course of human rights violations and of environmental degradation. Numerous examples abound. Take for example Bhopal, the world's worst industrial disaster, a typical example of the dumping of hazardous technologies and substances in the name of industrial technology.

The much vaunted "green revolution" in agricultural development has left in its wake departed soul, chemical, and energy intensiveness and dependency. It has had multiple negative impacts on the availability of water, the pollution of groundwater, drought, and desertification. Deforestation and unsustainable use of forest resources has both caused and contributed to such drought and deforestation. Reforestation programs that involve monocropping of eucalyptus trees for timber production have further depleted already scarce water
resources, and it is hardly a surprise that local communities are ripping out eucalyptus seedlings as fast as they are planted. Fisheries' resources are being over-exploited by trawler fishing, and subsistence fisherfolk in South Asia are facing the destruction of their livelihood. Environmentally unsustainable projects of aquaculture are exacerbating the situation for both subsistence of fisherfolk and subsistence of farmers. Large scale infrastructure projects (such as the Narmada Dam - building project) have displaced thousands of people and, left in their wake, hundreds of internally displaced persons.

Urbanization is taking place at a pace and manner that is creating megaslums; increasing numbers of debt-bonded construction workers; intolerable air pollution and traffic jams; and an insatiable thirst for energy which can only be met through environmentally disastrous projects such as Narmada and Enron, India. Air pollution, water pollution, and noise pollution go unabated and checked in an insatiable race to develop and an unconscionable pursuit of profits at any cost.

Indeed, the situation in many parts of South Asia is best described in a line verse by Shel Silverstein:

Oh if you are bird, be the early bird,
And catch the worm for your breakfast plate,
If you are a worm,
Sleep late.

The development countries in South Asia have become a world of development predators and developmental victims and indeed, as the Bhopal tragedy shows, even the option of “sleeping late” may not prove a viable survival strategy.

As we sit here this morning, amidst oak paneled walls and marble fireplaces, I urge you to transport yourself back in time for a moment to a late night fifteen years ago in December to the city of Bhopal. A young man by the name of Kailash Panwar struggled back to consciousness to find that he was at the bottom of a pile of human bodies being taken in a truck to a mass cremation. An explosion in a storage tank in Union Carbide’s pesticide producing plant had released forty tons of methyl-isocyanate and other lethal gases in the atmosphere. As the poisonous cloud spread over the populous city, it left death and devastation in its wake. The accident occurred in part because as a cost-cutting measure, several of the safety precautions (including spending approximately $50 per day to keep the deadly gas refrigerated as required by the company’s own operating manual) had been discontinued. The plant had been running at a loss recently, because, after years of profit from the over application of the pesticide, the pests had now grown immune! Not so, unfortunately for the designs of Bhopal. Young Kailash Panwar spent the next
six years of his life in extreme pain and suffering, shuttled from one hospital bed to another, with doctors unable to even alleviate, leave alone cure, the deadly legacies of his exposure on that fatal night.

II. RESPONDING WITH HUMAN RIGHTS-BASED STRATEGIES

In India, South Asia, and indeed throughout the developing world, Bhopal catalyzed and inspired the search for effective counter strategies and three basic human rights strategies have emerged.

A. The Right to Development

In 1986, the United Nations General Assembly adopted the Declaration on the Right to Development. The United States was the lone Member State casting a negative vote, and a few European countries abstained. Since 1986, the right to development has been reaffirmed by consensus, (with no dissent whatsoever) at several United Nations global conferences as a “universal and inalienable right and an integral part of fundamental human rights.”

The right to development is both an inalienable and collective right, and, like other solidarity rights, seeks to realize Article 28 of the Universal Declaration on Human Rights which states, “[e]veryone is entitled to a social and international order in which ... rights and proceedings ... can be fully realized.” The right to development has several important and unique factors:

1. It redefines development as a “comprehensive economic, social, cultural, and political process which aims at the constant improvement of the well-being of the entire population and of all individuals.”
2. It makes “realization of all human rights” the sole rationale of development.
3. It reiterates the right of “active, free, and meaningful participation,” both individual and collective, in all decisions relating to development.
4. It proscribes exclusion or discrimination from development.
5. It prescribes for distribution of the benefits from development.
6. It mandates that development must be human-centered.
7. It requires “measurable realization of human rights,” an essential criteria for evaluating development.2

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2. Id.
Thus, the right to development provides a normative basis both for prohibitive unsustainable development and for promoting human development which is environmentally sustainable.

B. Enforcing Human Rights as a Strategy for Protecting the Environment


The Report of the Special Rapporteur analyzes the effects of the environment on the enjoyment of fundamental rights, notably the right to self determination; the right to life; the right to health; the right to food and housing; the right to safe and healthy working conditions; the right to information; and the right to popular participation, freedom of association, and cultural rights.

Thus, the enforcement of human rights, both civil and political, as well as economic, social and cultural, provides a strategy for protecting the environment. In particular, as the Indian courts have shown, the right to life can be interpreted in a manner that proscribed several environmentally sound practices. Other rights of particular importance are the right of self determination (to "freely pursue" development); the right to equal participation of the law, and freedom from discrimination.

C. The Right to Environment and Environmental Human Rights

There are environmentalists who believe that while the strategy of enforcing human rights to protect environment is a useful one, it is not enough. They have been working therefore to get recognition and enforcement of the right to environment and environmental rights.

1. The Right to Environment as a Human Right

Although the right to environment has not yet gained recognition under international law, the constitutions of forty-nine countries do recognize the right to environment. The substantial context of such a right varies from being the right to clean, safe, or healthy living environment. The procedural context of such a right includes one or more of the following components:

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The right to know and act; the right to participate (and realize the principle of subsidiary as articulated at Rio); and the right to judicial and/or administrative remedies including preventive remedies. At times, the right to participate is accompanied by the requirement of conducting environmental impact assessments.

2. Environmental Human Rights


Part II of the Draft Declaration details the following substantive environmental human rights:

1. The right to freedom from pollution, (Principle 5), as an integral part of the rights to life, health, work, privacy, personal security, and development. Principle 5 makes clear that the right to freedom from pollution applies within, across, or outside national boundaries.4
2. The right to the highest attainable standard of health, free from environmental harm. (Principle 7).5
3. The right to safe and healthy food and water adequate to ones well-being. (Principle 8).6
4. The right to adequate housing, land tenure, and living conditions in a secure, healthy, and ecologically sound environment. (Principle 10).7
5. Freedom from eviction and the right to participate effectively in decisions regarding resettlement. (Principle 11).8
6. The right to timely assistance in the event of natural or other catastrophes. (Principle 12).9
7. The right to benefit equitably from the conservation and sustainable use of natural resources. (Principle 13).10

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4. Id. at princ. 5.
5. Id. at princ. 7.
6. Id. at princ. 8.
7. Id. at princ. 10.
8. Draft Declaration, supra note 3, at princ. 16.
9. Id. at princ. 12.
10. Id. at princ. 13.
8. The right of indigenous peoples to control their land and natural resources. (Principle 14).\textsuperscript{11}

Part III of the Draft Declaration sets out \textit{procedural} aspects of environmental human rights including:

1. The right to information. (Principle 15).\textsuperscript{12}
2. The right to hold and express opinions and to disseminate ideas and information regarding the environment. (Principle 16).\textsuperscript{13}
3. The right to environment and human rights education. (Principle 17).\textsuperscript{14}
4. The right to active, free, and meaningful participation and the right to prior assessment of the environmental, developmental, and human rights consequences of proposed actions. (Principle 18).\textsuperscript{15}
5. The right to free and peaceful association for the purpose of protecting the environment. (Principle 19).\textsuperscript{16}
6. The right to effective administrative and judicial remedies and redress. (Principle 20).\textsuperscript{17}

Part IV of the Draft Declaration sets out the following correlative duties:

1. Of all persons, individually and collectively to protect and preserve the environment. (Principle 21).\textsuperscript{18}
2. The duties of States to protect the environment in all acts of commission or omission, (Principle 21),\textsuperscript{19} with several correlated duties regarding environmental impact assessment; control; licensing; regulation; and prohibition; public participation; monitoring and management; and reduction of wasteful processes of production and patterns of consumption. The State duties include the duty to "take measures aimed at ensuring that transnational corporations, wherever they operate,

\textsuperscript{11} Id. at princ. 14.
\textsuperscript{12} Id. at princ. 15.
\textsuperscript{13} Draft Declaration, supra note 3, at princ. 16.
\textsuperscript{14} Id. at princ. 17.
\textsuperscript{15} Id. at princ. 18.
\textsuperscript{16} Id. at princ. 19.
\textsuperscript{17} Id. at princ. 20.
\textsuperscript{18} Draft Declaration, supra note 3, at princ. 25.
\textsuperscript{19} Id.
carry out their duties of environmental protection and respect for human rights.” (Principle 22).20


4. The duty of “all international organizations and agencies” to observe the Declaration. (Principle 24).22

Part V of the Draft Declaration sets out special considerations

1. To pay special attention to vulnerable persons and groups (Principle 25), including women, children, indigenous peoples, refugees, and the disabled poor.23

2. The rights in the Declaration may be subject only to restrictions provided by law which are necessary to protect public order, health, and the fundamental rights and freedoms of others. (Principle 26).24

3. All persons are entitled to a social and international order in which the rights in this declaration can be fully realized. (Principle 27).25

The Draft Declaration has a potential to make significant contributions to protecting human rights and environment by advancing a standard-setting process; by raising awareness of the public, national governments, and international organizations; by advancing the process of creation of implementing monitoring and redress mechanisms; and by facilitating the mobilization of public pressure for the protection and promotion of human rights and the environment. After all, environmental human rights, like all human rights, do not function solely through formal international procedures, although such procedures and their national counterparts, are indeed important. The principles in the Draft Declaration do address the key issues implicated in the interrelationships between human rights and the environment. Widespread dissemination, discussion and action on the Draft Declaration, will help promote and protect human rights and the environment through recognition, implementation, and enforcement of environmental human rights.

20. Id. at princ. 22.
21. Id. at princ. 23.
22. Id. at princ. 24.
23. Draft Declaration, supra note 3, at princ. 25.
24. Id. at princ. 26.
25. Id. at princ. 27.
III. LIBERATING OURSELVES, FROM OURSELVES

Environmental activists and human rights activists, at times, tend to be at odds with one and another. The “deep ecologists” are disdainful of the anthropocentric nature of human rights activists as being excessively confrontational and adversarial. Human rights activists are disdainful of concentration strategies that tend to protect the environment from people rather than for people. A common middle ground would appear to be the right to environment and environmental human rights. But until international law does recognize such rights, it would be desirable to use the international human rights treaties and conventions that do exist. After all, as yet, we do not have an international convention on sustainable development. We only have the Rio principles. We need enforceable international law to address the growing environmental problems resulting from practices of economic globalization, the so-called paradigm shift from development through aid to development through trade and investment. Let me close by returning to the story of Kailash Panwar. After six years of intolerable suffering, Kailash Panwar committed suicide by setting fire to himself in his hospital bed.

Milan Kundera, the Czech author reminds us that “the struggle of man over power is the struggle of memory over forgetting.”

Let us pledge never to forget Kailash Panwar and to learn from the tragedy of Bhopal and its countless counterparts all over South Asia, and indeed the world.