



**OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER
FOR HUMAN RIGHTS**

**FREQUENTLY ASKED QUESTIONS
ON A HUMAN RIGHTS-BASED
APPROACH TO DEVELOPMENT
COOPERATION**



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New York and Geneva, 2006

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HR/PUB/06/8

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FOREWORD

At the dawn of the new millennium, human rights and development are at a crossroads. On the one hand, the congruence between human rights and development theory has never been more striking. Poverty and inequities between and within countries are now the gravest human rights concerns that we face. As the Secretary-General underscored in his 2005 reform report “In larger freedom”, the challenges of human rights, development and security are so closely entwined that none can be tackled effectively in isolation.

United Nations agencies have gone a considerable way towards reflecting these realities in practice, including through defining a common understanding of a human rights-based approach to development cooperation, embodied within the United Nations common programming guidelines. And at the World Summit in September 2005, United Nations Member States gave an unprecedented political imprimatur and impetus to the Organization’s efforts to bring human rights to the front and centre of all its work, a shared commitment that through my 2005 “Plan of action” I am determined to support.

Yet there remains a chasm between theory and practice, ensuring that the objectives, policies and processes of development are channelled more directly and effectively towards human rights goals. There are, of course, many reasons why this is so, including continuing gaps in knowledge and skills, and difficulties in translating human rights norms into concrete programming guidance applicable in diverse policy contexts and national circumstances. This is the principal gap that this publication aims to fill, with United Nations development practitioners as the primary audience.

A collective and multifaceted effort is required of human rights and development practitioners, now more so than ever. Filling gaps in knowledge, skills and capacities will be meaningless without renewed leadership, commitment and attention to our own internal accountability systems and incentive structures. The valuable contributions brought to this publication from our United Nations development partners are testimony to the kind of collaboration that should be further encouraged.

While a modest contribution on its own, I hope that this publication will succeed in advancing our shared understanding about how the goals of human rights and development can be achieved through more effective development cooperation, within wider strategies and coalitions for change.



Louise Arbour
United Nations
High Commissioner
for Human Rights

ACKNOWLEDGEMENTS

Earlier drafts of this publication were shaped greatly from inputs from partner agencies in the United Nations system. The Office of the United Nations High Commissioner for Human Rights (OHCHR) wishes to express particular thanks to the following, although final responsibility rests of course with OHCHR: Carmen Artigas (Chief, Human Rights Unit, Economic Commission for Latin America and the Caribbean), Marc Derveeuw (United Nations Population Fund Country Support Team, Harare), Emilie Filmer-Wilson (Oslo Governance Centre, United Nations Development Programme (UNDP)), Sascha Graumann (Deputy Chief, UNDP SURF Bratislava), Nadia Hijab (consultant to joint OHCHR/UNDP HURIST programme, New York), Zanofer Ismalebbe (Human Rights Focal Point and HURIST programme officer, UNDP Geneva), Marcia Kran (Democratic Governance Practice Manager, UNDP SURF Bratislava), Carole Landon (Department of Country Focus, World Health Organization (WHO) Geneva), Else Leona McClimans (Oslo Governance Centre, UNDP), Helena Nygren-Krugh (Health and Human Rights Adviser, WHO Geneva), Thord Palmlund (consultant to joint OHCHR/UNDP HURIST programme, New York), Barbara Pesce-Monteiro (Director, UNDP Guatemala), Patrick van Weerelt (Human Rights Adviser, UNDP New York), Lee Waldorf (Human Rights Adviser, United Nations Development Fund for Women) and Richard Young (United Nations Children's Fund (UNICEF) Representative, Kyrgyzstan).

The drafting suggestions and sustained contributions from Urban Jonsson (UNICEF), Detlef Palm (Chair, Global QSA Group for CCA/UNDAF, UNICEF New York), Fabio Sabatini (Regional Programme Officer, UNICEF Geneva), Christian Salazar-Volkman (UNICEF Representative, Islamic Republic of Iran) and Joachim Theis (Youth and Partnerships Officer, UNICEF Regional Office, Bangkok) deserve special mention.

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HUMAN RIGHTS

1 What are human rights?

Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Human rights law obliges Governments (principally) and other duty-bearers to do certain things and prevents them from doing others.

Some of the most important characteristics of human rights are that they:

- Are universal—the birthright of all human beings
- Focus on the inherent dignity and equal worth of all human beings
- Are equal, indivisible and interdependent
- Cannot be waived or taken away
- Impose obligations of action and omission, particularly on States and State actors
- Have been internationally guaranteed
- Are legally protected
- Protect individuals and, to some extent, groups

Human rights standards have become increasingly well defined in recent years. Codified in international, regional and national legal systems, they constitute a set of performance standards against which duty-bearers at all levels of society—but especially organs of the State—can be held accountable. The fulfilment of commitments under international human rights treaties (see annex I) is monitored by independent expert committees called “treaty bodies,” which also help to clarify the meaning of particular human rights.¹

¹ Treaty bodies do this through recommendations directed to specific States when reviewing their compliance with their treaty obligations and through “general comments” (or “general recommendations”) on the meaning of particular rights. See the treaty bodies database of the Office of the United Nations High Commissioner for Human Rights (OHCHR) at <http://www.ohchr.org/english/bodies/treaty/index.htm> and OHCHR Fact Sheet No. 30, *The United Nations Human Rights Treaty System*, <http://www.ohchr.org/english/about/publications/docs/fs30.pdf>.

Their meaning is also elaborated by individuals and expert bodies appointed by the United Nations Commission on Human Rights (a Geneva-based body composed of 53 United Nations Member States), known as “special procedures,”² and of course through regional and national courts and tribunals. There are other human rights legal systems as well. For example, the International Labour Organization (ILO) conventions and standards specifically protect labour rights, and international humanitarian law applies to armed conflicts, overlapping significantly with human rights law.

Among the rights guaranteed to all human beings under international treaties, without any discrimination on grounds such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status, are:

- The right to life, liberty and security of person
- Freedom of association, expression, assembly and movement
- The right to the highest attainable standard of health
- Freedom from arbitrary arrest or detention
- The right to a fair trial
- The right to just and favourable working conditions
- The right to adequate food, housing and social security
- The right to education
- The right to equal protection of the law
- Freedom from arbitrary interference with privacy, family, home or correspondence
- Freedom from torture and cruel, inhuman or degrading treatment or punishment
- Freedom from slavery
- The right to a nationality

² Examples include the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, and the Working Group on the Right to Development. See OHCHR Fact Sheet No. 27, *Seventeen Frequently Asked Questions about United Nations Special Rapporteurs*, <http://www.ohchr.org/english/about/publications/docs/factsheet27.pdf>.

- Freedom of thought, conscience and religion
- The right to vote and take part in the conduct of public affairs
- The right to participate in cultural life

Further reading:

- OHCHR treaty bodies database, <http://www.ohchr.org/english/bodies/treaty/index.htm>, and fact sheets, <http://www.ohchr.org/english/about/publications/sheets.htm>.

2 Is there any hierarchy among human rights?

No, all human rights are equally important. The 1948 Universal Declaration of Human Rights makes it clear that human rights of all kinds—economic, political, civil, cultural and social—are of equal validity and importance. This fact has been reaffirmed repeatedly by the international community, for example in the 1986 Declaration on the Right to Development, the 1993 Vienna Declaration and Programme of Action,³ and the near-universally ratified Convention on the Rights of the Child.

Human rights are also indivisible and interdependent. The principle of their *indivisibility* recognizes that no human right is inherently inferior to any other. Economic, social and cultural rights must be respected, protected and realized on an equal footing with civil and political rights. The principle of their *interdependence* recognizes the difficulty (and, in many cases, the impossibility) of realizing any one human right in isolation. For instance, it is futile to talk of the right to work without a certain minimal realization of the right to education. Similarly, the right to vote may seem of little importance to somebody with nothing to eat or in situations where people are victimized because of their skin colour, sex, language or religion. Taken together, the indivisibility and interdependence principles mean that efforts should be made to realize *all human rights together*, allowing for prioritization as necessary in accordance with human rights principles (see question 14).

³ A/CONF.157/24 (Part I), chap. III, preamble, <http://www.ohchr.org/english/law/vienna.htm>.

3 What kinds of human rights obligations are there?

Obligations are generally of three kinds: to respect, to protect and to fulfil human rights:

- To *respect* human rights means simply not to interfere with their enjoyment. For instance, States should *refrain* from carrying out forced evictions and *not arbitrarily restrict* the right to vote or the freedom of association.
- To *protect* human rights means to take steps to ensure that third parties do not interfere with their enjoyment. For example, States must protect the accessibility of education by ensuring that parents and employers do not stop girls from going to school.
- To *fulfil* human rights means to take steps progressively to realize the right in question. This obligation is sometimes subdivided into obligations to *facilitate* and to *provide* for its realization. The former refers to the obligation of the State to engage proactively in activities that would strengthen people's ability to meet their own needs, for instance, creating conditions in which the market can supply the health-care services that they demand. The obligation to "provide" goes one step further, involving direct provision of services if the right(s) concerned cannot be realized otherwise, for example to compensate for market failure or to help groups that are unable to provide for themselves.

Human rights law recognizes that a lack of resources can impede the realization of human rights. Accordingly, some human rights obligations are of a *progressive* kind, while others are *immediate*.⁴ For economic, social and cultural rights, States have a core obligation to satisfy the *minimum essential level* of each right. This level cannot be determined in the abstract; it is a national task, to be undertaken in accordance with human rights principles (see question 14). However, in any situation where a significant number of people are being deprived of their right to health,

⁴ See general comment No. 3 of the Committee on Economic, Social and Cultural Rights, <http://www.ohchr.org/english/bodies/cescr/comments.htm>.

housing, food and so forth, the State has a duty to show that all its available resources—including through requests for international assistance, as needed—are being called upon to fulfil these rights.

For socio-economic rights, the following obligations are of *immediate effect*:

- The obligation *not to discriminate* between different groups of people in the realization of the rights in question;
- The obligation to *take steps* (including devising specific strategies and programmes) targeted deliberately towards the full realization of the rights in question; and
- The obligation to *monitor* progress in the realization of human rights. Accessible mechanisms of redress should be available where rights are violated.

Taking the right to health as an example, it is not permissible for available resources to be devoted exclusively to first-rate services for only half the population or only those living in urban areas. Available resources should be dedicated to ensuring that the standard of health of the entire population is progressively improved, with immediate planning towards that objective, and effective mechanisms for monitoring progress and, as necessary, redress.

Human rights treaties also set certain limits on human rights obligations:

- The enjoyment of some international human rights can be limited in line with legitimate requirements of national security, “public order” (although this does not offer a *carte blanche* to abrogate human rights) or public health. Examples include the right of peaceful assembly and freedom of movement under the International Covenant on Civil and Political Rights.
- Quite a number of human rights can lawfully be *derogated* from, or suppressed, in times of public emergencies, such as a security crisis. Examples include freedom of expression and freedom of association, although not rights basic to immediate human survival. To be lawful, derogations must be

issued according to pre-established constitutional procedures, be publicly notified, and be strictly necessary and in proportion to the severity of the crisis.

- At the time of ratifying or acceding to a human rights treaty, States may also submit what is known as a *reservation*, limiting or modifying the treaty’s effect, provided the reservation is consistent with the treaty’s overall object and purpose.

The *substantive content* of economic, social and cultural rights obligations

Human rights (including economic and social rights) standards are becoming more clearly defined both internationally and nationally. Courts in a wide range of countries and legal systems—such as Argentina, the Dominican Republic, Finland, India, Latvia, Nigeria and South Africa—have been giving meaning to obligations associated with economic, social and cultural rights, including in connection with workers’ rights and the rights to food, social security, adequate housing, health and education.

For example, in 2002 the Constitutional Court of South Africa declared that the Government had breached its human rights obligations by failing to take reasonable measures (at affordable cost) to make wider provision of anti-retroviral medication to prevent mother-to-child transmission of HIV. This decision and the grass-roots campaign surrounding it have saved many lives. Decisions of the Supreme Court of India, including in 2002 concerning the right to food in the context of a *preventable famine* in Rajasthan, have likewise had a significant beneficial impact in a number of States in that country. The successful outcomes in these cases are to a great extent attributable to the fact that litigation strategies were integrated within wider social mobilization processes.

4 Do individuals, as well as States, have obligations?

Yes. Human rights obligations can also attach to private individuals, international organizations and other non-State actors.⁵ Parents, for example, have explicit obligations under the Convention on the Rights of the Child and States are obliged to cooperate with each other to eliminate obstacles

⁵ See International Council on Human Rights Policy, *Taking Duties Seriously: Individual Duties in International Human Rights Law* (1999), available at www.ichrp.org.

to development.⁶ Moreover, individuals have general responsibilities towards the community at large and, at a minimum, must respect the human rights of others.

However, the State remains the primary duty-bearer under international law, and cannot abrogate its duty to set in place and enforce an appropriate regulatory environment for private sector activities and responsibilities. National legislation and policies must detail how the State's human rights obligations will be discharged at national, provincial and local levels, and the extent to which individuals, companies, local government units, NGOs or other organs of society will directly shoulder responsibility for implementation.

5

Is it possible to realize human rights when resources are limited?



Yes. In many situations the obligations to respect a given right (non-interference) may require more in the way of political will than financial resources. Even for obligations requiring positive action by the State, rapid progress may be possible by using the available funds more efficiently—for example, by scaling down expenditures on unproductive activities and by reducing spending on activities whose

⁶ Article 28 of the Universal Declaration of Human Rights provides: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." The 1986 Declaration on the Right to Development contains an even more explicit recognition: "States have the duty to cooperate with each other in ensuring development and eliminating obstacles to development" (art. 3, para. 3). The Millennium Declaration (2000) repeatedly affirms the twin principles of global equity and shared responsibility, resolving "to create an environment—at the national and global levels alike—which is conducive to development and to the elimination of poverty" (para. 12). See International Council on Human Rights Policy, *Duties sans frontières: Human rights and global social justice* (2003), available at <http://www.ichrp.org>.

benefit goes disproportionately to the privileged groups of society. Some interventions important for human rights, such as tackling corruption, in fact save public money.

In other cases it will be impossible to realize human rights without more funding. This is true for all human rights—economic, civil, social, cultural or political. Depending on the starting point, working towards an accessible and effective justice system may be just as costly as realizing certain socio-economic rights such as safeguarding against forced evictions or guaranteeing the right to form trade unions. Setting in place the systems needed for free and fair elections can be a major draw on the public purse.

6

Are there differences between individual rights and collective rights?

Yes. Sometimes the equal worth and dignity of all can be assured only through the recognition and protection of individuals' rights as *members of a group*. The term *collective rights* or *group rights* refers to the rights of such peoples and groups, including ethnic and religious minorities and indigenous peoples, where the individual is defined by his or her ethnic, cultural or religious community.

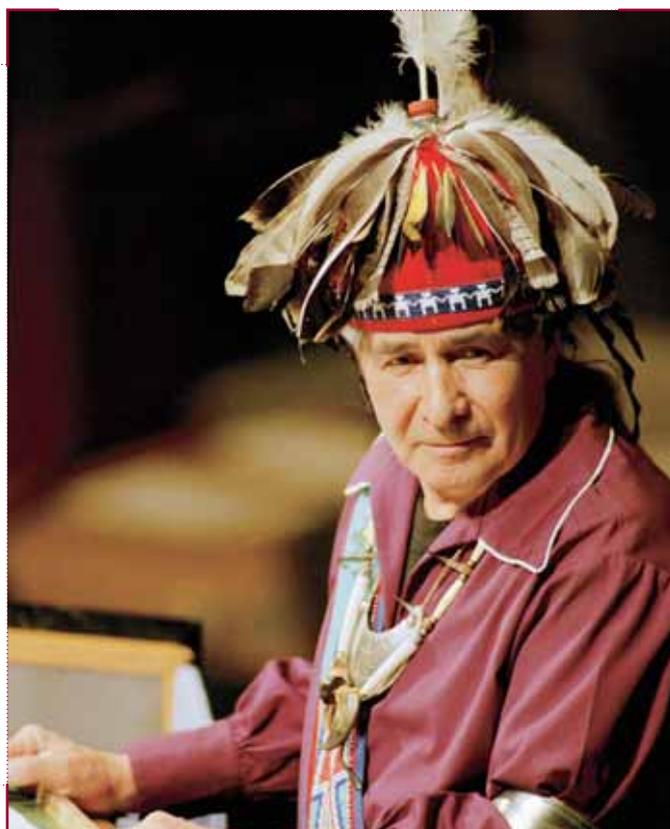
Human rights claims are generally made most effectively by people acting together as a group. For instance, while we are all entitled as individuals to the right to freedom of association, it is only when that right is asserted collectively that it can meaningfully be realized. But in certain specific cases the right in question protects a common interest which the group—rather than any specific individual—is entitled to claim. For instance, the rights of indigenous peoples to traditional lands are recognized in ILO Convention No. 169, minority rights are recognized in article 27 of the International Covenant on Civil and Political Rights, and the right to self-determination is granted to all peoples in article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Collective rights are reflected strongly in some regional human rights regimes. The African Charter on Human and Peoples' Rights, for example, defines "peoples' rights" to embrace the right to

existence and self-determination, the right to economic, social and cultural development, and the right to a general satisfactory environment favourable to their development.

However, there may often be obstacles to people claiming collective rights. The challenges are partly of a legal kind, the problem of identifying *who* is entitled to claim *what*, and also of a political kind, with collective rights in many situations being perceived as a threat to the interests of the majority or of individuals within the group. The right to self-determination, for example, can raise difficult questions about the control and use of resources, and hence is often a matter of heated debate. Strategies to claim collective rights must take account of these kinds of limitations and sensitivities.

7 Do human rights depend on culture?

International human rights are universally recognized regardless of cultural differences, but their practical *implementation* does demand sensitivity to culture.



International human rights standards enjoy a strong claim to universality, with considerable adaptability to different cultural contexts. Article 1 of the Universal Declaration of Human Rights states: “All human beings are born free and equal in dignity and rights.” Human rights are inherent and inalienable in human beings, simply by the fact of their being human. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away. All countries have ratified at least one of the seven core United Nations human rights treaties (see annex I) and 80 per cent of States have ratified four or more, giving concrete expression to this universal recognition.

The international human rights framework itself acknowledges cultural diversity by limiting the ambit of international human rights to a range of standards on which international consensus is possible. However, “culture” is neither static nor sacrosanct, but rather evolves according to external and internal stimuli. There is much in every culture that societies quite naturally outgrow and reject. In any case, culture is no excuse not to ensure the enjoyment of human rights. For instance, harmful traditional practices, such as female genital mutilation, even if embedded in long-standing cultural customs, need to change if they are in conflict with international human rights standards. United Nations-supported development efforts should assist the full realization of international human rights standards whatever the country concerned.

Reconciling culture and universal human rights: a practical illustration

A group of women’s human rights activists from various Islamic backgrounds has developed a manual for women’s human rights education in Muslim societies (M. Afkhami and H. Vaziri, *Claiming our Rights: A Manual for Women’s Human Rights Education in Muslim Societies* (Bethesda, Sisterhood is Global Institute, 1996)). It covers a broad range of “rights situations” such as rights within the family, autonomy in family planning decisions, rights to education and employment, and rights to political participation. Its interactive and interpretive exercises interweave excerpts from international human rights agreements with verses from the Koran, sharia rules, stories, idioms and personal experiences.

Source: C. Nyamu-Musembi, “Towards an actor-oriented perspective on human rights”, IDS working paper 169 (Brighton, Institute of Development Studies, October 2002), p. 9, <http://www.ids.ac.uk/ids/bookshop/wp/wp169.pdf>.

Further reading:

- United Nations Population Fund (UNFPA), *Culture Matters – Working with Communities and Faith-based Organizations: Case Studies from Country Programmes* (2004), http://www.unfpa.org/upload/lib_pub_file/426_filename_CultureMatters_2004.pdf.



HUMAN RIGHTS AND DEVELOPMENT

8

What is the relationship between human rights and human development?

“Human development and human rights are close enough in motivation and concern to be compatible and congruous, and they are different enough in strategy and design to supplement each other fruitfully,” according to the Human Development Report 2000.⁷ Human rights and development both aim to promote well-being and freedom, based on the inherent dignity and equality of all people. The concern of human development is the realization by all of basic freedoms, such as having the choice to meet bodily requirements or to escape preventable disease. It also includes enabling opportunities, such as those given by schooling, equality guarantees and a functioning justice system. The human rights framework shares these concerns (see chap. I above).

Human rights and human development share a preoccupation with necessary outcomes for improving people’s lives, but also with better *processes*. Being people-centred, they reflect a fundamental concern with institutions, policies and processes as participatory and comprehensive in coverage as possible, respecting the agency of all individuals. For instance, in the human rights and human development frameworks, the development of new technologies for effective malaria prevention is a legitimate and even desirable outcome. But in rolling out these technologies development actors should clearly assess and explain the possible negative effects of the testing, as well as ensure that the technologies are accessible and affordable and that vulnerable groups are not excluded.



Human rights contribute to human development by guaranteeing a protected space where the elite cannot monopolize development processes, policies and programmes. The human rights framework also introduces the important idea that certain actors have duties to facilitate and foster development. For people to be enabled to assert a legally binding claim that specific duty-bearers provide free and compulsory primary education (International Covenant on Economic, Social and Cultural Rights, art. 13) is more empowering than it is to rely on “needs” alone or to observe the high economic returns on investments in education, for example.

When human rights go unfulfilled, the responsibilities of different actors must be analysed. This focus on locating accountability for failures within a social system significantly broadens the scope of claims usually associated with human development analysis. In the other direction, human development analysis helps to inform the policy choices necessary for the realization of human rights in particular situations.

⁷ United Nations Development Programme (UNDP), *Human Development Report 2000: Human rights and human development* (New York, 2000), p. 19, available at http://hdr.undp.org/reports/view_reports.cfm?year=2000&country=0®ion=0&type=0&theme=0.

What is the relationship between human rights, the Millennium Declaration and the Millennium Development Goals?

The United Nations Millennium Declaration⁸ explicitly places both human rights commitments and development goals at the centre of the international agenda for the new millennium. While Member States renewed commitments to promote and protect human rights, they also agreed on eight quantified and time-bound development goals—the Millennium Development Goals.⁹ These provide a focus for efforts to reduce poverty and a common basis for measuring progress.

Human rights and the Millennium Development Goals are interdependent and mutually reinforcing. The Goals are underpinned by international law,¹⁰ and should be seen as part of a broader integrated framework of international human rights entitlements and obligations. The Millennium Development Goals and human rights both aim to monitor the progressive realization of certain human rights. There are periodic reporting processes for each at both national and international levels, although ensuring accountability for human rights requires a more extensive set of laws and institutions.

The Millennium Development Goals are important milestones for the realization of the often neglected economic and social rights. Human rights help sharpen the strategies for achieving the Goals by addressing the discrimination, exclusion, powerlessness and accountability failures that lie at the root

of poverty and other development problems.¹¹ For example, Millennium Development Goal 2 sets the target of 2015 for achieving universal primary education. Experience shows that school fees keep more girls than boys out of school, reducing the ability to reach both Goal 2 and Goal 3 on gender equality. Human rights reinforce strategies to achieve Goal 2 by establishing the right to universal, free primary education, and by ensuring that growth strategies are tailored to the needs of girls and other specific marginalized groups. The global Goals and targets must also be adapted to the national context. For example, if the primary education enrolment rate in a country in 2004 was 95 per cent, the obligation on the State to devote maximum available resources towards the full realization of the right to education might—within a wider analysis of national priorities—mean that the goal of universal primary education should be achieved before 2015.

Other ways in which human rights strengthen efforts to achieve the Millennium Development Goals include:

- Reinforcing the legitimacy of the Goals' implementation strategies by building upon human rights treaty obligations voluntarily undertaken by Governments;
- Harnessing the mobilizing potential of human rights discourse;
- Enhancing the sustainability of the strategies to meet the Goals, looking beyond global "averages" to address the root causes of poverty and underdevelopment, including patterns of discrimination against particular groups;
- Building participatory and empowering strategies upon civil and political rights; and
- Factoring in human rights processes and institutions—e.g., courts, national human rights institutions, informal justice systems and mechanisms at the international level (including the treaty bodies)—to strengthen transparency and accountability for the achievement of the Millennium Development Goals.¹²

⁸ Adopted by the United Nations General Assembly in its resolution 55/2 of 8 September 2000. See <http://www.un.org/millennium/declaration/ares552e.pdf>.

⁹ The eight Goals are: (1) eradicate extreme poverty and hunger; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria and other diseases; (7) ensure environmental sustainability; (8) achieve a global partnership for development. For a full description of these Goals and corresponding targets and indicators, see http://unstats.un.org/unsd/mi/mi_goals.asp.

¹⁰ See Philip Alston, "Ships passing in the night: the current state of the human rights and development debate seen through the lens of the Millennium Development Goals", *Human Rights Quarterly*, vol. 27, No. 3 (August 2005), pp. 755-829. Most, but probably not all, Millennium Development Goals can be said to have the force of customary international law.

¹¹ UNDP, *Human Development Report 2003: Millennium Development Goals: A compact among nations to end human poverty* (New York, 2003), pp. 1 and 30 et seq.

¹² See, for instance, United Nations Millennium Project Report, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (2005), pp. 108 and 118-120, available at <http://www.unmillenniumproject.org/reports/fullreport.htm>.

10

What is the relationship between human rights and poverty reduction?

It is now generally understood that poverty is a result of *disempowerment* and *exclusion*. Poverty is not only a lack of material goods and opportunities, such as employment, ownership of productive assets and savings, but the lack of physical and social goods, such as health, physical integrity, freedom from fear and violence, social belonging, cultural identity, organizational capacity, the ability to exert political influence, and the ability to live a life with respect and dignity.¹³ Human rights violations are both a cause and a consequence of poverty.



Human rights reinforce the demand that poverty reduction be the primary goal of development policymaking. Human rights require the process of formulating a poverty reduction strategy to include the following elements and principles:

- Identifying and prioritizing action to improve the situation of the poorest;
- Analysing the underlying power relations and the root causes of discrimination;
- Ensuring that both the process and the concrete poverty reduction targets are consistent with international human rights standards;
- Ensuring close links between macroeconomic design, sectoral initiatives, and “governance” components and principles such as transparency and accountability;
- Ensuring a basic standard of civil and political rights guarantees for active, free and meaningful participation, including freedom of information and freedom of association; and
- Identifying indicators and setting benchmarks so that the progressive realization of economic and social rights can clearly be monitored.

Further reading:

- OHCHR, *Human Rights and Poverty Reduction: A Conceptual Framework* (New York and Geneva, United Nations, 2004), <http://www.ohchr.org/english/issues/poverty/docs/povertyE.pdf>.
- OHCHR, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*, <http://www.unhchr.ch/development/povertyfinal.html>.
- World Health Organization (WHO), “Human Rights, Health and Poverty Reduction Strategies”, *Health and Human Rights Publications Series*, No. 5 (April 2005), http://www.who.int/hhr/news/HHR_PRS_19_12_05.pdf.

¹³ The World Bank’s *Voices of the Poor* studies were based on extensive field research and interviews of 60,000 people worldwide. D. Narayan and others, eds., *Voices of the Poor: Can Anyone Hear Us?* (2000); D. Narayan and others, eds., *Voices of the Poor: Crying Out for Change* (2000); and D. Narayan and P. Petesch, eds., *Voices of the Poor: From Many Lands* (2002).

What is the relationship between human rights and good governance?

Governance refers to mechanisms, institutions and processes through which authority is exercised in the conduct of public affairs. The concept of good governance emerged in the late 1980s to address failures in development policies due to governance concerns, including failure to respect human rights. The concepts of good governance and human rights are mutually reinforcing, both being based on core principles of participation, accountability, transparency and State responsibility.

Human rights require a conducive and enabling environment, in particular appropriate regulations, institutions and procedures framing the actions of the State. Human rights provide a set of performance standards against which Governments and other actors can be held accountable. At the same time, good governance policies should empower individuals to live with dignity and freedom. Although human rights empower people, they cannot be respected and protected in a sustainable manner without good governance. In addition to relevant laws, political, managerial and administrative processes and institutions are needed to respond to the rights and needs of populations. There is no single model for good governance. Institutions and processes evolve over time.

Human rights strengthen good governance frameworks. They require: going beyond the ratification of human rights treaties, integrating human rights effectively in legislation and State policy and practice; establishing the promotion of justice as the aim of the rule of law; understanding that the credibility of democracy depends on the effectiveness of its response to people's political, social and economic demands; promoting checks and balances between formal and informal institutions of governance; effecting necessary social changes, particularly regarding gender equality and cultural diversity; generating political will and public participation and awareness; and responding to key challenges for human rights and good governance, such as corruption and violent conflict.

What is the relationship between human rights and economic growth?

Economic growth alone is not enough

Growth alone is not enough. Growth without equity, without social inclusion, will not reduce poverty. "Equity has an instrumental logic (redistribution can make growth easier and poverty reduction faster) but also has intrinsic value in a fair global society."

Source: Simon Maxwell, "The Washington Consensus is dead! Long live the meta-narrative!", ODI working paper 243 (London, Overseas Development Institute, January 2005), p. 6, http://www.odi.org.uk/publications/working_papers/wp243.pdf.

Economic growth is a means, not the goal, of development. It can also be instrumental for the realization of human rights. However, economic growth must be achieved in a manner consistent with human rights principles.

Certain economic, social and cultural rights may be realized only progressively, over time, due to legitimate resource constraints (see question 3). States are under an obligation to take measures to realize these rights as expeditiously as possible. Since resources are needed to realize these particular rights, their speedy realization depends on softening the resource constraint, which in turn requires economic growth. A faster rate of growth can also help ease the pain of making unavoidable trade-offs, by increasing available resources.

It must be understood, however, that ensuring faster growth is one thing and harnessing its potential for the cause of human rights is another. For economic growth to lead to the realization of human rights, any growth strategy must be part of a comprehensive set of policies and institutions consciously designed to convert resources into rights. This comprehensive framework has both international and national dimensions, the particulars of which vary from case to case, a process guided by the conditions outlined in question 14 below. A key role of United Nations agencies is to help ensure that economic growth is translated into the wider enjoyment of human rights for all.¹⁴

¹⁴ "Study on policies for development in a globalizing world: What can the human rights approach contribute?" by Professor S. R. Osmani (E/CN.4/Sub.2/2004/18), paras. 21-28.

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Does the realization of human rights require big government?

No. The international human rights treaties neither require nor preclude any particular form of government or economic system—whether described as socialist, capitalist, mixed, centrally planned or *laissez-faire*. Human rights can be implemented in a wide variety of economic and political systems, provided that the system is democratic in character and properly recognizes and reflects the interdependence and indivisibility of all human rights.

There is nothing in the human rights framework to preclude an active role for public sector institutions in the delivery of essential services and public goods.¹⁵ In fact, human rights strengthen the economic case for *effective government*.¹⁶ From a human rights perspective, the Government is under a minimum obligation to establish a regulatory and policy framework that ensures access to essential services of acceptable quality on a non-discriminatory basis, and to see to it that nobody is deprived of such services solely because he or she is unable to pay.¹⁷ Human rights principles must guide the difficult policy choices and trade-offs to be made in this context.



¹⁵ For a definition and discussion of the concept of global public goods, see <http://www.undp.org/globalpublicgoods/globalization/index.html>.

¹⁶ For the economic arguments, see World Bank, *World Development Report 2004: Making Services Work for Poor People* (World Bank and Oxford University Press, 2003), <http://www.worldbank.org>; J. Vandemoortele, “Access to basic social services: Human rights that make excellent economic sense” (Carnegie Council on Ethics and International Affairs, Workshop on Social Policy Principles and the Social Development Agenda, New York, 3-5 December 1999), http://www.carnegiecouncil.org/media/693_vandemoortele.pdf?PHPSESSID=c18fa4212c70a8ed30c131e2e03b6485.

¹⁷ See general comments Nos. 14 and 15 of the Committee on Economic, Social and Cultural Rights, <http://www.ohchr.org/english/bodies/cescr/comments.htm>.

Food and Agriculture Organization of the United Nations (FAO) Voluntary Guidelines on the Right to Food

4.9 States will take into account that markets do not automatically result in everybody achieving a sufficient income at all times to meet basic needs, and should therefore seek to provide adequate social safety nets and, where appropriate, the assistance of the international community for this purpose.

4.10 States should take into account the shortcomings of market mechanisms in protecting the environment and public goods.

Source: Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, <http://www.fao.org/docrep/meeting/008/J3345e/J3345e01.htm>.

14

How can human rights help to resolve policy trade-offs?

Human rights standards by themselves can rarely resolve complex policy choices and trade-offs. However, they do impose five essential conditions on policymaking.

The first is the result of their *indivisibility*, a cornerstone of human rights law. No human right is intrinsically inferior to any other. A certain right can still be given priority, but only on practical grounds—e.g., because it has historically been neglected or is likely to act as a catalyst. Countries might, for example, consider giving priority to the right to education, which is a well-known catalyst for the fulfilment of many other rights, such as the right to food, the right to health, the right to work, and the rights of children and women.



Secondly, decisions on trade-offs must take full account of the obligations on States to ensure, with immediate effect, an *essential minimum* enjoyment of economic, social and cultural rights. The principle of “progressive realization” recognizes that some rights may have to be given priority over others, because not all rights can be fulfilled at the same time or at the same place. Yet States have a core obligation, derived from the rights to life, food and health, to ensure that all individuals within their jurisdictions are free from starvation. Core obligations must be treated as binding constraints; they cannot be traded off. The same applies to rights that cannot be derogated from (see question 3 above).

Thirdly, the obligation not to discriminate is immediate. Steps should be taken immediately to identify the most disadvantaged or vulnerable with respect to the proposed policy measures, with data disaggregated as far as possible according to the prohibited grounds of discrimination reflected in international human rights instruments, e.g., race, colour, sex, national or geographic origin.

Fourthly, during analysis and subsequently through all stages of decision-making, implementation, monitoring and evaluation, processes should be transparent and participatory.

Finally, according to the principle of *non-retrogression* of rights, *no* right can be permitted deliberately to suffer an absolute decline in its level of realization, *unless* the relevant duty-bearer(s) can justify this by referring to the *totality of the rights* in force in the given situation and *fully uses the maximum available resources*.¹⁸ So when allocating more resources to the rights that have been accorded priority at any given time, the other rights must be maintained at least at their initial level of realization.¹⁹

human rights are realized and *for whom*. Budget analysis is a critical tool for monitoring gaps between policies and action, for ensuring the progressive realization of human rights, for advocating alternative policy choices and prioritization, and ultimately for strengthening the accountability of duty-bearers for the fulfilment of their obligations.

The budget can be understood as the outcome of systems and relationships through which the varying needs and desires of a nation are heard, prioritized and funded. The choices made by Governments as to how money is collected and distributed—and which rights are realized and for whom—are not value-free or politically neutral.

A rights-based approach to the budget demands that such choices be made on the basis of *transparency, accountability, non-discrimination* and *participation*. These principles should be applied at all levels of the budgetary process, from the drafting stage, which should be linked to the national development plans made through broad consultation, through approval by parliament, which in turn must have proper amendment powers and time for a thorough evaluation of proposals, implementation and monitoring.

While budget debates are overwhelming political ones, the substantive content of human rights standards themselves can furnish guidance to policymakers and legislators in weighing competing demands on limited resources, helping to ensure, for example, that:

- Primary education is free for all;
- Budget allocations are prioritized towards the most marginalized or discriminated against;
- Provision is made for essential minimal levels for all rights;
- There is progressive improvement in human rights realization; and
- Particular rights are not deliberately realized at the cost of others (for example, that health programmes are not compromised by a disproportionate focus on security or debt servicing).

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How can human rights influence national budgets?

All rights can have budgetary implications. To this extent, national budgets have a significant and direct bearing on *which*

¹⁸ See general comment No. 3 of the Committee on Economic, Social and Cultural Rights, <http://www.ohchr.org/english/bodies/cescr/comments.htm>.

¹⁹ E/CN.4/Sub.2/2004/18, paras. 58-61.

Increasing transparency and social spending in public budgets in Ecuador

During the late 1990s Ecuador experienced a serious macroeconomic crisis, which resulted in sharply decreased spending on social programmes. Poverty rates doubled between 1998 and 1999, and spending on health and education dropped by around 25 per cent. Concerned at these cuts, which were especially devastating for Ecuador's poorest and most vulnerable families, civil society organizations with the support of the United Nations Children's Fund (UNICEF) began to analyse the national budget—working with data from the Ministry of Finance and Economy and through a team of respected economists. The objective of this exercise was to help legislators and the public understand how the budget functions and what priorities it reflects. The goal was to encourage the creation of more equitable public policies based on a consensus regarding society's obligation to fulfil the human rights of all its members and to alter spending priorities.

The budget analysis revealed that spending on social programmes was plummeting. For example, in 1999 investment in health dropped from US\$ 198 million to US\$ 96 million. Spending on social sectors was disproportionately low compared to allocations for debt repayment and other non-social sectors. In addition, certain regions—particularly those with a majority indigenous population—were not getting an equitable share of social benefits.

Results

Over the past four years a broad cross section of social groups, with the support of UNICEF, and the executive and legislative branches of government have collaborated to sharpen budget analysis and increase social spending on poor and vulnerable groups. Social spending grew to 23.2 per cent of Ecuador's budget and the issue of public spending was subject to widespread, participatory national debate. It was openly discussed in the media and the legislature, and by the private sector and Ecuador's active indigenous and labour movements. Public discussion has also focused on how to sustain increased social spending, examining the impact of the foreign debt and heavy reliance on income from oil exports, and overcoming inequities in the national tax structure.

Ecuador's political leadership has worked with civil society to strengthen a national monitoring system—the Integrated System of Social Indicators of Ecuador (SIISE)—to track progress in social investment both nationally and by region. The programme led to increased government transparency and

accountability, investment in social services, participation by all people in decisions that affect them, as well as access to information, and a more efficient and effective public sector.

Lessons learned

Messages are much more likely to produce change if they are backed up by data and accompanied by realistic suggestions about how change can be accomplished. For example, by focusing on the inequalities inherent in Ecuador's tax structure, the economic team was able to demonstrate where the funds needed for social programmes might be obtained. Government and society alike perceived that priorities could be shifted to benefit society as a whole.

Source: OHCHR/UNDP Seminar on good governance practices for the promotion of human rights, Seoul, Republic of Korea, 15-16 September 2004, <http://www.ohchr.org/english/issues/development/governance/seminar.htm>.



Further reading:

- A. Norton and D. Elsom, *What's behind the budget? Politics, rights and accountability in the budget process* (London, Overseas Development Institute, 2002), <http://www.odi.org.uk/pppg/publications/books/budget.pdf>.
- M. Diokno, "A rights-based approach towards budget analysis" (1999), <http://www.iie.org/Website/CustomPages/ACFE8.pdf>.
- UNDP, "Public administration reform", practice note (April 2004), <http://www.undp.org/policy/docs/practicenotes/PAR-PN.doc>.
- The International Budget Project, <http://www.internationalbudget.org>.
- H. Hofbauer and G. Lara, "Health care: a question of human rights, not charity" (Fundar, April 2002), <http://www.internationalbudget.org/themes/ESC/health.pdf>.
- J. Streak, "The South African Children's Budget Unit (CBU) of Idasa", Presentation for the Exploratory Dialogue on Applied Budget Analysis for the Advancement of Economic, Social and Cultural Rights (Mexico, 25 January 2001), <http://www.internationalbudget.org/themes/ESC/casesa.pdf>.
- ISODEC, Save the Children Fund Ghana and ActionAid Ghana, "Basic rights, equity and the public budget", workshop report (Sunyani, Ghana, August 2000), p. 2, <http://www.isodec.org.gh/Papers/budgetworkshop-Ghana.PDF>.
- Save the Children (Sweden), "Child-focused budget study: assessing the rights to education of children with disabilities in Vietnam" (Hanoi, 2000), <http://www.internationalbudget.org/resources/library/VietnamChild-Budgets.pdf>.

A HUMAN RIGHTS-BASED APPROACH - DEFINITION AND GENERAL ISSUES

16 What is a human rights-based approach?

A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.

Mere charity is not enough from a human rights perspective. Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law. This helps to promote the sustainability of development work, empowering people themselves—especially the most marginalized—to participate in policy formulation and hold accountable those who have a duty to act.

While there's no universal recipe for a human rights-based approach, United Nations agencies have nonetheless agreed a number of essential attributes (see annex II):

- As development policies and programmes are formulated, the main objective should be to fulfil human rights.
- A human rights-based approach identifies *rights-holders* and their entitlements and corresponding *duty-bearers* and their obligations, and works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.

Practical illustration of a human rights-based approach: rights-holder and duty-bearer capacity-building

A recent example from Malawi provides an excellent illustration of the rights-based approach, particularly because it linked village-level rights education and activism with Government-level legal advocacy. In this way, the campaign worked with (a) duty-bearers, to ensure that the necessary rights were enshrined legally at national and local levels; and (b) rights-holders, to inform them of what rights they had, how those rights related to their food security and how they could go about claiming those rights.

According to the 1998 Constitution of Malawi (art. 13), “The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals: ... (b) Nutrition: To achieve adequate nutrition for all in order to promote good health and self-sufficiency.” Malawi has also ratified international legal mechanisms necessary for ensuring the right to food, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child.

The right-to-food campaign in Malawi began at the village level, educating villagers about their rights and learning more about the root causes of their food insecurity. The campaign linked the particular experiences of the villagers, the human rights that they could draw upon to address hunger and how such a campaign could be undertaken. Working groups at the village level built up their organizing efforts to reach regional and then national actors, maintaining representation from the village-level groups. These groups linked their daily hunger problems to policy proposals for national legislation and action, ensuring the people would be able to claim the necessary rights to respond to their needs.

Source: http://www.escr-net.org/GeneralDocs/MDG_Comment_Hunger.doc.

- *Principles and standards*²⁰ derived from international human rights treaties should guide all development cooperation and programming in all sectors and in all phases of the programming process.

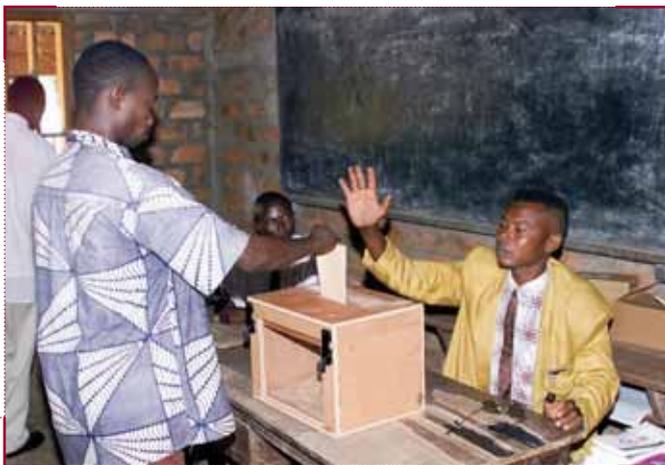
Further reading:

- See annex III and, for further practical illustrations, see OHCHR and UNDP, *Lessons Learned From Rights-Based Approaches in the Asia-Pacific Region, 2005*, http://www.un.or.th/ohchr/SR/Regional_Office/forums/llp_regional_consultation/LLP_Documentation_of_case_studies.pdf.

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What value does a human rights-based approach add to development?

There are two main rationales for a human rights-based approach: (a) the *intrinsic* rationale, acknowledging that a human rights-based approach is the right thing to do, morally or legally; and (b) the *instrumental* rationale, recognizing that a human rights-based approach leads to better and more sustainable human development outcomes. In practice, the reason for pursuing a human rights-based approach is usually a blend of these two.



²⁰ Among the operational principles to be observed in the programming process are: universality and inalienability; indivisibility; interdependence and interrelatedness; equality and non-discrimination; participation and inclusion; and accountability and the rule of law (see annex II).

The question of adding value goes primarily to the *instrumental* case for a human rights-based approach. Importantly, a human rights-based approach seeks to build upon and learn from—rather than discard—the lessons of good development practice and strengthen arguments for their more consistent implementation. Empirical evidence and practice show the vital importance to development of many human rights outcomes, such as improved girls' education,²¹ enhanced security of tenure²² and ensuring women's equal access to land, and the importance of civil and political rights for good governance.²³

The practical value of a human rights-based approach to development lies in the following:

1. *Whose rights?* A human rights-based approach focuses on the realization of the rights of the excluded and marginalized populations, and those whose rights are at risk of being violated, building on the premise that a country cannot achieve sustained progress without recognizing human rights principles (especially universality) as core principles of governance. Universality means that all people have human rights, even if resource constraints imply prioritization. It does *not* mean that all problems of all people must be tackled at once.

²¹ See, for instance, S. Bhalla, S. Saigal and N. Basu, "Girls' education is it: nothing else matters (much)", World Bank working paper, 6 March 2003, http://www-wds.worldbank.org/serlet/WDSContentServer/WDSP/IB/2004/03/01/000265513_20040301102825/Rendered/PDF/28016.pdf.

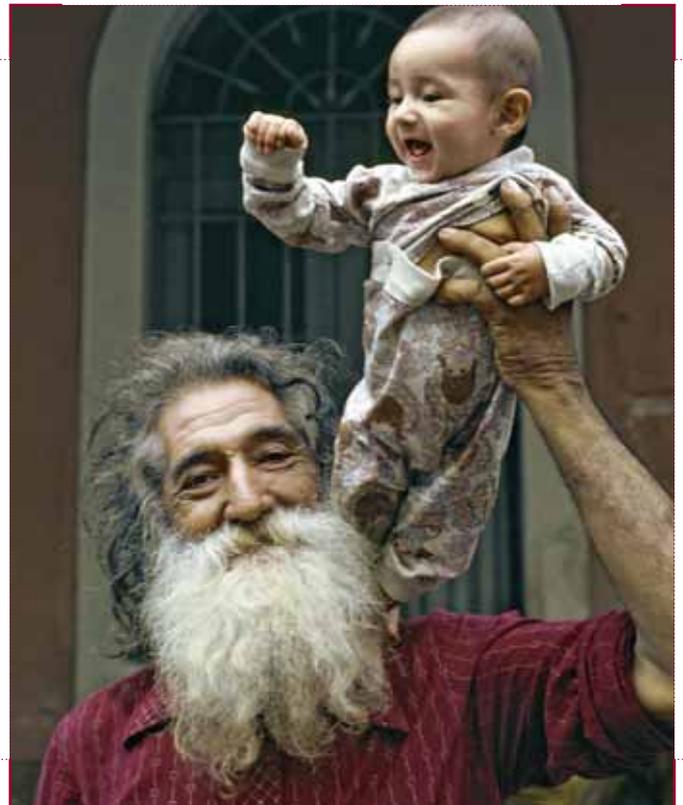
²² World Bank, *World Development Report 2003: Overview*, pp. 9 and 16: "Removing the threat of summary eviction makes possible economic and social transformation of informal slum settlements, giving residents entitlements and responsibilities that change their relationships with formal institutions and with each other." Witnessed through official programmes to regularize favelas (slums) in Brazil, for example, security of tenure has been observed to trigger "a virtuous circle of equitable access to urban assets, as well as political and economic inclusion, giving residents rights and responsibilities as citizens with a stake in the city's future."

²³ The literature is extensive but see, for instance, D. Kaufmann, A. Kraay and P. Zoido-Lobaton, "Governance matters: From measurement to action", *Finance and Development*, vol. 37, No. 2 (June 2000), pp. 10-13; J. Isham, D. Kaufmann and L. Pritchett, "Civil liberties, democracy, and the performance of Government projects", *The World Bank Economic Review*, vol. 11, No. 2 (May 1997), p. 219; and D. Dollar and L. Pritchett, *Assessing Aid: What Works, What Doesn't, and Why* (New York, World Bank and Oxford University Press, 1998), p. 136: "[W]hen civil liberties allow it there is greater expression of all types of citizen voice and that ultimately this voice is a force for improving government performance."



2. *Holistic view.* A programme guided by a human rights-based approach takes a holistic view of its environment, considering the family, the community, civil society, local and national authorities. It considers the social, political and legal framework that determines the relationship between those institutions, and the resulting claims, duties and accountabilities. A human rights-based approach lifts sectoral “blinkers” and facilitates an integrated response to multifaceted development problems.
3. *International instruments.* Specific results, standards of service delivery and conduct are derived from universal human rights instruments, conventions and other internationally agreed goals, targets, norms or standards. A human rights-based approach assists countries in translating such goals and standards into time-bound and achievable national results.

4. *Participatory process.* Accountabilities for achieving these results or standards are determined through participatory processes (policy development, national planning), and reflect the consensus between those whose rights are violated and those with a duty to act. A human rights-based approach seeks both to assist in the participatory formulation of the needed policy and legislative framework, and to ensure that participatory and democratic processes are institutionalized locally and nationally (including through capacity-building among families, communities and civil society to participate constructively in relevant forums).
5. *Transparency and accountability.* A human rights-based approach helps to formulate policy, legislation, regulations and budgets that clearly determine the particular human right(s) to be addressed—what must be done and to what standard, who is accountable—and ensures the availability of needed capacities (or resources to build the lacking capacities). The approach helps to make the policy formulation process more transparent, and empowers people and communities to hold those who have a duty to act accountable, ensuring effective remedies where rights are violated.



6. *Monitoring.* A human rights-based approach to development supports the monitoring of State commitments with the help of recommendations of human rights treaty bodies, and through public and independent assessments of State performance.
7. *Sustained results.* A human rights-based approach leads to better sustained results of development efforts and greater returns on investments by:
 - Building the capacity of prime actors to engage in dialogue, meet their own responsibilities and hold the State accountable;
 - Strengthening social cohesion through seeking consensus with participatory processes, and focusing assistance on the excluded and most marginalized;
 - Codifying social and political consensus on accountabilities for results into laws, policies and programmes aligned with international conventions;
 - Anchoring human rights entitlements within a framework of laws and institutions;
 - Institutionalizing democratic processes; and
 - Strengthening the capacities of individuals and institutions to carry out their obligations as expressed in local, national and international laws, policies and programmes.

Added value of a human rights-based approach: using rights to influence power

Transforming existing distributions of power—the cornerstone of a human rights-based approach—is not without its challenges. While no two situations are exactly alike, experience discloses a range of ways in which a human rights-based approach has been used to change power dynamics in development work and a range of strategies to help minimize risks:

- *Map power relations* influencing the given situation. Power is dynamic, its different dimensions in constant change, relational and not always visible. Historical lack of power can be socialized and concealed within, crippling people’s propensity and ability to accept that they have rights and to claim them.
- *Use language strategically.* The language of human rights can be powerful in both positive and negative ways. In some contexts it can “shut you down” while in others it can serve your cause.
- *Gather solid evidence and use knowledge strategically.* Document success stories of rights-based approaches, and use your strong and convincing evidence strategically, overcoming disciplinary or other biases (e.g., challenging the assumption that more hospitals will reduce child mortality versus the assumption that realizing women’s rights and empowerment will not).

- *Make, bend and reshape the “rules of the game.”* One key aspect of power is the ability to use knowledge to frame the possible, set rules and delimit what counts as knowledge and whose knowledge counts. Making, bending and reshaping the rules of the game are one way for individuals to bring about change.
- *Identify and strategically exploit entry points and hooks,* matching your or your organization’s comparative advantage with the types of spaces and actors you seek to influence.
- *Build strategic alliances,* coalitions and networks with other actors who share a similar vision.
- *Strengthen the capacity for agency.* Build the capacity of people in created and claimed spaces to articulate their rights.
- *Walk the talk.* Development actors must demonstrate responsibility and accountability in their own actions, if they are to effect transformations of power elsewhere.

Source: A. Hughes and J. Wheeler, “Rights and power workshop: report” (Brighton, Institute of Development Studies, 17-20 December 2003), <http://www2.ids.ac.uk/drccitizen/docs/r&pworkshopreportfinal.pdf>.

18 What is the relationship between a human rights-based approach and gender mainstreaming?

A human rights-based approach to development and gender mainstreaming are complementary and mutually reinforcing, and can be undertaken without conflict or duplication.

Gender mainstreaming calls for the integration of a gender perspective in development activities, with the ultimate goal of achieving gender equality.²⁴ A human rights-based approach integrates international human rights standards and principles in development activities, including women’s human rights and the prohibition of sex discrimination. The Committee on the Elimination of Discrimination against Women has analysed comprehensively and in depth how inequality affects women’s lives; this is a valuable input for development policymaking and programming. When backed by national accountability

²⁴ In its agreed conclusions 1997/2, the Economic and Social Council defined gender mainstreaming as “the process of assessing the implications for women and men of any planned action, including legislation, policies and programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.” *Official Records of the General Assembly, Fifty-second Session, Supplement No. 3 (A/52/3/Rev.1), chap. IV, para. 4.*

systems, a human rights-based approach can greatly reinforce progress towards gender equality.

Gender mainstreaming and a human rights-based approach to development have much in common. Both rely on an analytical framework that can be applied to all development activities (for the former, the different situation experienced and roles played by men and women in a given society; and for the latter, a normative framework based on entitlements and obligations). Both call attention to the impact of activities on the welfare of specific groups, as well as to the importance of empowerment and participation in decision-making. Both apply to all stages of activity (design, implementation, monitoring and evaluation) and to all types of action (legislation, policies and programmes). Finally, both require the systematic adoption of new and different approaches to existing activities, as distinct from developing new and additional activities.

In most organizations, gender mainstreaming is a more familiar concept than human rights mainstreaming. Structures and processes set up to ensure gender mainstreaming can be emulated or adapted to facilitate the introduction of a human rights-based approach to programming more generally. But, equally, there is a need to learn from situations where gender mainstreaming has failed. If staff perceive mainstreaming gender (or human rights) as a bureaucratic or technical requirement without real implications for their own work, and if internal incentive structures are weak and lines of accountability unclear, the approach may have no impact.

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Can a human rights-based approach help to resolve conflicts between different stakeholders in development?

Yes. While development is not a zero-sum game, all entitlements cannot be realized for all people at once. Clashes of interest are inevitable, and development actors can profoundly influence the pattern of winners and losers nationally. Conflicts swept under the carpet and grievances ignored can be recipes for violent confrontation. Conversely, and more positively, non-violent conflict can help create space for dialogue and generate impetus for social change.



Human rights: a framework to resolve conflict over competing claims for shared resources

The World Commission on Dams was an independent body sponsored by the World Bank to review the performance of large dams and make recommendations for future planning of water and energy projects. In 2000, after two years of investigation into dam development projects, it released a final report, *Dams and development: A new framework for decision-making*. The report stated that, given the significance of rights-related issues as well as the nature and magnitude of potential risks for all parties concerned, human rights should be the fundamental reference point in all initiatives concerning dams.

The World Commission on Dams held that, in the future, not only dams but the entire development debate would require a rights-based approach where recognition of rights and assessment of risks would provide the basis for negotiated decisions on dams and their alternatives. That rights-based approach, according to the World Commission on Dams, should include a process to assess reparations and environmental restoration as well as development of plans for sharing the benefits.

For further information on the World Commission on Dams, see http://www.dams.org/docs/overview/wcd_overview.pdf.

With human rights in mind, development programmes and actors can help to address and manage conflict, for instance:

- By undertaking social impact assessments and risk analysis prior to any significant development policy initiative or programme, with provision for participatory monitoring throughout.

- Through strengthening access-to-justice components within development policies and programmes, starting with strengthening capacities for data collection and analysis, monitoring, and ensuring accessible avenues (formal and informal) for redress when rights are violated. Human rights education and redress mechanisms can be set up as part of development projects, to raise human rights awareness and provide an open and constructive means of channelling grievances and resolving disputes.
- By encouraging alternative law groups, paralegals and related civil society organizations to help mediate conflicts, assist people in their interactions with the law and facilitate dealings with bureaucratic processes. Paralegals and mediators have helped to resolve competing claims over landownership and land use in many countries, for example between beneficiaries of agrarian reform and landowners.
- Where support is targeted to certain groups at the expense of others, particularly in post-conflict scenarios, the risks of violent conflict must be factored in at the outset and the interests of other groups accommodated as far as feasible.
- The “best interests of the child” principle (Convention on the Rights of the Child, art. 3) is a mediating principle to help resolve conflicts involving children’s rights. It can help address clashes between children’s rights and parental responsibilities on access to health care or schooling, for example.

It is now generally recognized that sustainable human development may be difficult to achieve without addressing power imbalances that prejudice particular groups of people and opening up space for public dialogue.

A human rights-based approach compels a fuller appreciation of the political dimensions of development. Programming is thus directed to supporting States in identifying the root causes of the non-realization of human rights—entrenched patterns of discrimination, clientelism and poor governance—and in addressing them. This calls for a better understanding of the authority, motivation and resources required to produce social change, involving awareness-raising, advocacy, social mobilization and empowerment over and above more traditional capacity-building and service delivery. Broad alliances and new partnerships may be needed to address such challenges, finding a workable balance between constructive engagement with national partners and, where needed, principled advocacy.



20 Does a human rights-based approach require United Nations development agencies to engage in partisan politics?

No. The United Nations cooperation system has a mandate and a role to provide non-partisan policy advice and programming support.

However, development and politics are inextricably linked. Development actors have often been accused of approaching development problems from an artificially technocratic perspective, downplaying or overlooking the political factors.

“Political” challenges in development

“Poverty reduction is a fundamentally political objective: relations of power, access to State resources, Government policy priorities, legislative frameworks, and even constitutional guarantees may need to be transformed if there are to be enhanced opportunities for the poor to secure livelihoods, enjoy access to State services and become less vulnerable. Even if poverty reduction is not necessarily a zero-sum game, there will inevitably be winners and losers in the process of change, as vested interests are no longer protected, discriminatory practices come to an end, and policies become more broad-based and benefit wider social groups.”

Source: L.-H. Piron and A. Evans, “Politics and the PRSP approach: synthesis paper”, ODI working paper 237 (London, Overseas Development Institute, March 2004), p. 4, http://www.prpsynthesis.org/wp237_politics_synthesis.pdf.

Clear communication is needed on the distinctive meaning and requirements of a human rights-based approach in all situations, within the framework of a genuine development partnership. The United Nations and all those involved in implementing a human rights-based approach must themselves walk the talk in order to have credibility in policy dialogues on these issues.

21

Is a human rights-based approach consistent with the requirement for national ownership?

Yes. A human rights-based approach draws from international human rights standards voluntarily subscribed to by the country in question. United Nations development agencies and other “subjects of international law” are legally bound to respect, and operate within the confines established by, the international legal obligations voluntarily entered into by States, including those relating to human rights.

States parties to the international human rights treaties are required to harmonize their national legislation with the international standards. Accordingly, national constitutions across different legal systems increasingly reflect not just civil and political rights but also economic, social and cultural rights. To this extent, the fundamental human rights objectives expressed in the Charter of the United Nations—the foundation for all United Nations-supported development activities—are consistent with and grounded within the principle of national ownership.

Nevertheless, a human rights-based approach is sometimes viewed with suspicion as an external conditionality or the latest development fad or donor import. These concerns are often voiced in good faith, although sometimes they may mask a desire to avoid human rights obligations.



IV

IMPLICATIONS OF A HUMAN RIGHTS-BASED APPROACH FOR DEVELOPMENT PROGRAMMING

22

How do human rights standards relate to the development programming process?

Human rights *standards* as reflected in the international treaties, as well as *principles* such as participation, non-discrimination and accountability, should guide all stages of programming.

Human rights treaty standards are binding upon countries that have ratified them and help to define the objectives of development programmes. For example, the objectives of a food security programme can be reformulated explicitly to realize the *right to adequate food* under the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.²⁵ Guided by human rights standards, governance programmes can more explicitly help to realize rights to liberty and security of person, and human rights concerned with political participation and the administration of justice under the International Covenant on Civil and Political Rights. The right to birth registration (Convention on the Rights of the Child, art. 7) is an important focus of UNICEF programming in certain regions, given the importance of that right for the enjoyment of all others. The right to privacy (International Covenant on Civil and Political Rights, art. 17) can be instrumental in fighting the discrimination and stigmatization at the heart of the HIV/AIDS pandemic.

Human rights standards strengthen and deepen situation analysis (see question 26). They also set certain conditions for implementing and monitoring the progress of development programmes (questions 27-30). The general comments of the human rights treaty bodies, as well as

²⁵ For a discussion of the value that a rights-based approach adds to food security under Millennium Development Goal 1, see http://www.escr-net.org/GeneralDocs/MDG_Comment_Hunger.doc.

their country-specific recommendations, can provide more detailed guidance on what the international human rights standards mean in all phases of programming.

Human rights standards as a guide to justice sector programmes of the Inter-American Development Bank (IDB)

Recognizing that democracy and human rights help create appropriate conditions for development, IDB justice sector work has begun to take international human rights standards explicitly into account. Human rights standards are brought into the picture most specifically in the following areas: (1) providing an entry point into controversial issues such as judicial independence; (2) providing a justification as well as a normative framework for civil justice projects dealing with indigenous peoples' rights; (3) defining project content in criminal justice reform, including guidelines for fair trials, juvenile justice work and so forth; (4) defining indicators for monitoring project performance; and (5) helping IDB to identify conditions in which it should withhold support for programmes in sensitive areas, for example in police and prison reform. Human rights institutions such as the Inter-American Court of Human Rights and the Inter-American Institute of Human Rights play an increasingly important role as implementing partners. Human rights organizations and NGOs also play an important watchdog function to minimize the occurrence of human rights violations in IDB-supported projects.

Source: Christina Biebesheimer, "The impact of human right principles on justice reform in the Inter-American Development Bank", in *Human Rights and Development: Towards Mutual Reinforcement*, P. Alston and M. Robinson, eds. (Oxford University Press, 2005), pp. 269-296.

23

What does the principle of equality and non-discrimination mean for programming?

All individuals are equal as human beings and by virtue of their inherent dignity. All human beings are entitled to their human rights without discrimination of any kind on

the grounds of race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status. While development programmes cannot reach everybody at once, priority must be given to the most marginalized.

The processes and benefits of development all too often go to national and local elites. Programming cannot be directed solely at those that are currently easy to reach, such as urban populations rather than rural or boys' education rather than girls', otherwise existing power imbalances will simply be exacerbated. Unintentional—or indirect—discrimination must also be avoided. This could occur, for example, when the public at large is invited to participate in programme design, but certain groups are precluded because they live in remote areas. Programming must help to address underlying and systemic causes of discrimination in order to further genuine and substantive equality. Specifically, programming may need to:

- Direct priority attention towards those suffering discrimination and disadvantage in any given context, especially the poorest of the poor and those suffering multiple discrimination, such as rural women of an ethnic minority.
- Strengthen capacities for data collection and analysis to ensure that data are disaggregated, as far as possible, on the grounds of race, colour, sex, geographic location and so forth.
- Advocate temporary special measures to level the playing field and rectify structural discrimination, including affirmative action for women and special forums for participation.



- Make project information available in accessible formats and minority languages.
- Support civic education, communication campaigns, law reform and institutional strengthening (including national human rights institutions) to foster non-discriminatory attitudes and a change in behaviour.

24 What does the principle of accountability mean for programming?

Good development programming requires stakeholders (including donors and development agencies) to be accountable for specific results. A human rights-based approach goes further by grounding those accountabilities within a framework of specific human rights entitlements and corresponding obligations established under international law.

To ensure accountability, a human rights-based approach to programming starts by identifying specific obstacles that duty-bearers face in exercising their obligations. This analysis sets a baseline for formulating development strategies to remove them. But for accountability to be effective, it needs to be demanded. Therefore a human rights-based approach also requires an analysis of the capacities needed for rights-holders, especially the poorest and most disadvantaged, to claim their rights effectively. Accessible, transparent and effective mechanisms of accountability are called for at central and local levels.

Ensuring accountability can be difficult in practice, particularly where national capacities are weak or duty-bearers are unwilling to act. There are no ready answers for all situations. Strategies can be supportive or confrontational and could include:

- Raise awareness of rights and responsibilities, and develop the capacities of duty-bearers at central and local levels to fulfil their obligations. Understanding and ownership by duty-bearers can be built by involving stakeholders in analysis, programme planning, implementation and reviews.
- Build relationships between rights-holders and duty-bearers by working together.

- Increase the incentives for better performance by duty-bearers, through educating people about their rights, creating broader alliances for social change in society, promoting transparent budgeting and building capacities for budget analysis, supporting advocacy for information and statistics necessary to monitor the realization of human rights, building capacities for policy analysis and social impact assessment, encouraging media freedom, and building the capacities of claim-holders to demand their rights.
- Strengthen central and local accountability mechanisms—judicial, quasi-judicial and administrative. Informal justice mechanisms, including traditional and indigenous justice systems, should be factored in together with the formal justice system, seeking alignment with international standards regarding the administration of justice.
- Strengthen the capacities of national human rights institutions, including their capacities to monitor the realization of economic and social rights.
- Ensure that national laws are harmonized with international human rights treaty standards, with duties spelled out as clearly as possible at national, provincial, district and local levels.
- When duty-bearers are private corporations or non-Government actors (for example, when governance functions are privatized), advocate adherence to international human rights norms and voluntary codes of conduct, monitor performance and publicize the results. Ensure that duties are made clear in national laws and policies, and that the regulatory framework includes provision for redress in the event of violations.
- Where weak institutions are being re-established, such as in post-conflict States, development actors should strengthen not only State institutions but also those institutions that fulfil a servicing and monitoring role.
- Foster greater knowledge of and buy-in into the national reporting processes under the international human rights treaties in force in the country concerned, widely publicizing the treaty bodies' recommendations.
- Encourage greater recourse to human rights “special procedures” and international petition procedures available under the international human rights treaties.

The principle of accountability also has a number of implications for the process of programming:

- Use qualitative data (such as opinion surveys or findings of expert bodies) as a supplement to quantitative data (such as the global Millennium Development Goal indicators) to reveal whether particular policies are helping to achieve the desired behaviour change.
- Ensure that monitoring takes place on an ongoing basis throughout development programmes. Monitoring should be participatory, involving all stakeholders as far as feasible, allowing them to assess both progress and any revisions required. This should be tied in to agencies' reporting processes and staff performance systems.
- Establish monitoring systems at United Nations country team and agency level. United Nations country team theme groups should ensure that human rights are cross-cutting in their activities. A stand-alone human rights theme group could help to monitor this. Other monitoring systems may also be needed, such as civil society organizations' oversight bodies, advisory boards and regular stakeholder meetings (Government, civil society organizations, donors and the most disadvantaged groups) to assess progress and impact.

Using treaty body recommendations to strengthen human rights accountability – Philippines Common Country Assessment (CCA)

The Philippines CCA (2003) highlighted a key comment made by the Committee on the Rights of the Child on the country's report on the Government's failure to comply with international standards concerning juvenile justice, especially the use of incarceration to punish rather than rehabilitate. The Philippines CCA also identified certain traditional beliefs and practices that tolerate the abuse and exploitation of children, and cites the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) as an important tool for Government and private sector actors to end this scourge. The use of ILO conventions in the analysis led to the identification of a variety of duty-bearers.

Source: OHCHR, “Human rights-based approach to development: good practices and lessons learned from the 2003 CCAs and UNDAFs” (December 2004), p. 6, http://www.undg.org/documents/5683-Review_of_2003_CCAs_and_UNDAFs_from_Human_Rights_Perspectives.doc.

- Ensure that programming processes are coordinated with those of other agencies and donors, priorities are aligned with national priorities and delivery is through national systems rather than project implementation units.
- Undertake social impact analysis, including gender analysis, throughout the course of the programme.
- Make information available on stakeholders' entitlements under the project or programme, including any grievance address mechanisms.

Further reading:

- UNDP, *Programming for Justice: Access for All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (2005), <http://regionalcentrebangkok.undp.or.th/practices/governance/a2j/docs/ProgrammingForJustice-AccessForAll.pdf>.

25 What does the principle of participation mean for programming?

Participation means ensuring that national stakeholders have genuine ownership and control over development processes in all phases of the programming cycle: assessment, analysis, planning, implementation, monitoring and evaluation.



Human rights standards influence the conditions as well as reasonable limitations of participation. For processes to be truly participatory, they should reflect the requirement for “active, free and meaningful” participation under the United

Nations Declaration on the Right to Development. Women in rural areas have the right to participate in development planning at all levels (Convention on the Elimination of All Forms of Discrimination against Women, art. 14) and children's views must likewise be taken into account (Convention on the Rights of the Child, art. 12). However, the right to participate in public affairs (International Covenant on Civil and Political Rights, art. 25) does not necessarily give particular groups of people an unconditional right to choose any mode of participation.



Participation is an objective, as well as a means, of development. From a human rights perspective, participation goes well beyond mere consultation or a technical add-on to project design. Rather, participation should be viewed as fostering critical consciousness and decision-making as the basis for active citizenship. Development strategies should empower citizens, especially the most marginalized, to articulate their expectations towards the State and other duty-bearers, and take charge of their own development. This may require:

- Budgeting and building capacities for civil society organization and effective participation, within the framework of development programmes.
- Increasing transparency, making policies and project information available in accessible formats and minority languages as needed.
- Creating specific channels for participation by the poorest and most marginalized groups, with sensitivity to social and cultural context. These mechanisms must be integrated throughout the programming

process (rather than just at the formulation stage, where participation often stops).

- Civic education and human rights awareness-raising as cross-cutting components of development programmes, rather than optional add-ons.
- Supporting media and communications campaigns.
- Advocacy for and capacity-building of networks of local social communicators.
- Broadening alliances with civil society organizations and groups with shared interests, and strengthening networks to articulate their expectations of the State and other duty-bearers.

Albania United Nations Development Assistance Framework (UNDAF) (2006-2010): example of a participatory approach

The United Nations Country Team in Albania used a novel approach called appreciative inquiry (AI) to draw out ideas on the way forward for Albania's development. AI is an organizational change management philosophy and human development approach, built upon a collective visioning of a desired future ("where do we want to be in five years?"). In contrast to more retrospective or static "problem analysis" approaches, AI is a relatively dynamic, inclusive and proactive process through which a shared vision is translated into a forward-looking agenda for change.

The Country Team set up a special task force to flesh out the objectives of the UNDAF prioritization workshop. Interviews were carried out in different parts of the country, including in disadvantaged regions and communities. Representatives of Government, civil society, donors and the United Nations served as interviewers and were also among the interviewees. An unprecedented arrangement was made to involve young men and women in the UNDAF prioritization workshop. They included members of disadvantaged groups (e.g., persons with disabilities, the Roma community and very poor households).

Contributions from networks of key stakeholders that had been created for the CCA exercise and the Millennium Development Goals consensus-building process fed into the UNDAF exercise. CCA and UNDAF theme groups were expanded to include other interested parties. The implementation of UNDAF, starting in 2006, will be firmly based on established networks and partnerships, and the AI approach will continue to be applied through joint programming processes.

See www.undg.org. For more on the appreciative inquiry, see <http://www.appreciative-inquiry.org/> and <http://appreciativeinquiry.cwru.edu/intro/whatisai.cfm>.

26 How do human rights help with situation analysis?

Human rights analysis gives an insight into the distribution of power. By identifying groups lacking effective rights—and groups who may be denying rights to others—it can highlight the root causes of poverty and vulnerability. As such, a rights approach provides a way of examining the operation of institutions and political and social processes that influence the livelihoods of the poor and the most vulnerable.

Consistent with the United Nations Development Group's guidelines for CCA and UNDAF, human rights standards reinforce situation analysis at three levels:

- Causality analysis: drawing attention to root causes of development problems and systemic patterns of discrimination;
- Role/obligation analysis: helping to define who owes what obligations to whom, especially with regard to the root causes identified; and
- Identifying the interventions needed to build rights-holders' capacities and improve duty-bearers' performance.

Critically, a human rights-based approach seeks to deepen understanding of the relationships between rights-holders and duty-bearers in order to help bridge the gaps between them.

A human rights-based analysis may reveal capacity gaps in *legislation, institutions, policies* and *voice*. Legislative capacities may need to be strengthened to bring national laws into compliance with treaty obligations. Institutional reforms may be needed to improve governance, strengthen capacities for budget analysis and provide people with effective remedies when human rights are violated. Policy reforms may be needed to combat discrimination, and ensure consistency between macroeconomic and social policies, scaling up public expenditure towards the Millennium Development Goals. Recommendations of the human rights treaty bodies can provide relevant and authoritative guidance on the nature and extent of many of these obligations.

Development agencies may need to move beyond their traditional sectors or “silos” in the quest for strategies to reach the most disadvantaged groups and in order to work more deeply and collaboratively on the root causes of problems affecting all sectors.

27

How do human rights guide programme formulation?

Human rights-based situation analysis in CCA: Serbia and Montenegro

The conceptual framework for this CCA provides for a human rights-based definition of vulnerability and poverty, particularly the way gender inequality contributes to women's poverty.

Role/obligation analysis: *Rights-holders*, particularly vulnerable groups (e.g., elderly, one- or two-member households in rural areas, Roma children, refugees and others), were identified along with *duty-bearers* (not only State authorities at different levels, but also private companies and aid donors) with roles to play in addressing identified root causes of development problems. Efforts were made to *disaggregate* data as far as possible, by sex, age, ethnic group, region and other status (such as internally displaced people and refugees) so as not to treat the poor, vulnerable or marginalized as if they were one homogeneous group. For instance, the differentiated impact of problems on Roma children is highlighted in relation to education (pp. 38-39). International, regional and national human rights standards were relied on to some extent in defining the scope of these claims and obligations, for example in the subsections dealing with issues affecting children and women.

“Capacity gap” analysis: Serious attention was given to the *capacities of rights-holders* to access information, organize, advocate policy change and obtain redress. In this connection the assessment rightly recognized the role of civil society organizations (e.g., p. 51) and reviewed their capacities (p. 73). The assessment suggests solutions to the problems of data gaps and weaknesses of statistical methods, recognizing statistical capacity as an indispensable tool to monitor the *progressive realization* of economic and social rights, as well as being necessary for deeper gender analysis. The assessment appropriately recommends that the Government should use the reporting process to treaty bodies as an important opportunity to review its legislation, institutions and practice. Its chapter on governance and the rule of law is also firmly based on human rights principles and obligations, analysing not only the crucial role of the judiciary, but also that of other independent institutions such as the ombudsman.

Source: http://www.undg.org/documents/3648-CCA_Prepared_with_Human_Rights_Approach_-_CCA_Human_Rights_Approach.doc.

A human rights-based approach has significant implications for the manner in which development priorities and objectives are identified and country programme outcomes formulated.

To help the United Nations determine its priorities, the CCA/UNDAF guidelines call attention to the Millennium Development Goals, the Millennium Declaration, national priorities reflected in the human rights treaties ratified by the country, as well as recommendations of the treaty bodies. Human rights help by establishing boundaries, for example by requiring a core minimum threshold of entitlements for all, and by highlighting key issues that must be addressed through programming, for example that priority attention should be given to the poorest of the poor and groups suffering discrimination. Even if not all can be reached at once, efforts should be made to identify these groups at the outset and include them immediately in planning. Human development analysis and tools, in turn, help in prioritizing efforts to realize rights for poor groups, suggesting which kinds of rights are the most important for a particular group at a particular time or the sequence in which rights should be approached for a given group.

Under a human rights-based approach, development efforts should contribute to realizing human rights. Accordingly, national goals and the overarching objectives of development should be geared towards, and articulated as, the positive and sustained changes in the lives of people necessary for the full enjoyment of a human right or rights. The basis for this definition lies in the international commitments undertaken by the Government concerned, including the Millennium Development Goals and obligations under human rights treaties. Such goals imply a long time horizon.

Specific objectives (such as those defined in UNDAF outcomes) can be thought of as the behaviour change in the duty-bearer to respect, protect and fulfil a right or rights, and in the rights-holder to exercise and demand a right or rights. The CCA role/pattern analysis (defining who should do what) should inform the kind of behaviour change needed, aided

by national legislation, plans and policies, and relevant recommendations of the treaty bodies. Specific objectives (or UNDAF outcomes) imply a medium time horizon.

Example of UNDAF outcomes that reflect human rights-based approach principles

GUYANA (UNDAF, 2006–2010)

In Guyana, the UNDAF outcomes and country programme outcomes reflect equitable access with clear, time-bound targets essential for monitoring the realization of human rights and for accountability. See outcome 1: “By 2010 there will be at least a 10 per cent increase in the proportion of Guyanese accessing quality services in education, health, water and sanitation, and housing, with capabilities enhanced to maximize available opportunities.”

This UNDAF outcome promotes quality services, rather than coverage alone, consistent with international human rights standards. While it could have been strengthened further to focus explicitly on the most disadvantaged groups, it is noteworthy in recognizing capability improvement and the importance of people being able to claim their rights.

For a more detailed discussion of the United Nations Development Group's appraisal of this and other UNDAFs from a human rights perspective, see <http://www.undg.org>.

UNICEF Costa Rica – moving beyond a traditional “sectoral” focus

The UNICEF country programme in Costa Rica for 1992–1996 reflected a classical sectoral approach, focusing on: (1) social policy, (2) education, (3) water and environmental sanitation, (4) health, and (5) children in especially difficult circumstances.

Programme structure evolved markedly in response to the requirements of a human rights-based approach, leaving behind the sectoral approach. The programming priorities in 2002–2006 are:

- | | |
|--|---|
| 1. Rights approach in social management and justice | 2. Active citizenship for child and adolescent rights |
| <ul style="list-style-type: none">• National Child Council capacity-building;• National Child Welfare Board capacity-building;• Local rights boards;• Support Supreme Court special laws. | <ul style="list-style-type: none">• Assist civil society and adolescents' organizations;• Partnership with public and private sectors in fund-raising. |

Source: Maresh Patel, “Lessons Learned and the Way Forward, based on Human Rights Approaches Case Studies and Discussions”, presentation at UNDP/OHCHR Regional Consultation, http://www.un.or.th/ohchr/SR/Regional_Office/forums/llp_regional_consultation/DAY%202/maresh%20patel/Human%20Rights%20Lessons%20Learned%20Presentation5.ppt.

Finally, country programme outcomes should be geared towards the institutional, legal or policy changes necessary for desired behaviour change. The CCA capacity gap analysis—informed by relevant recommendations of the treaty bodies—should indicate the capacities necessary for duty-bearers to respond to claims, and for rights-holders (especially the most disadvantaged) to demand and advocate the exercise of their rights. Country programme outcomes are defined for a short time horizon.

28 Does a human rights-based approach bring anything new to capacity development?

Yes. Building the capacities of people to claim their rights, and of duty-bearers to fulfil their obligations, requires some of the strategies already well known in development practice along with others that are new.

Capacity development has become a dominant strategy in development cooperation. Capacity in this context can be understood as the ability of individuals, organizations and societies to perform functions, solve problems, and set and achieve goals. Capacity development entails the sustainable creation, use and retention of that capacity in order to reduce poverty, increase self-reliance and improve people's lives. It builds on and harnesses rather than replaces indigenous capacity. It is about promoting learning,

boosting empowerment, building social capital, creating enabling environments, integrating cultures, and orientating personal and societal behaviour.²⁶

Under a human rights-based approach to programming, the following components are integral to capacity development:²⁷

- *Responsibility/motivation/commitment/leadership.* This refers to things that rights-holders and duty-bearers *should* do about a specified problem. Information, education and communication strategies help to promote a sense of responsibility for realizing human rights. Ensuring pluralistic and free media, a vibrant civil society, effective oversight mechanisms and access to remedies (judicial, administrative and political level) for violations are equally vital;
- *Authority.* This refers to the legitimacy of an action, when individuals or groups feel or know that they *may* take action. Laws, formal and informal norms and rules, tradition and culture largely determine what is or is not permissible. National laws must be harmonized with international human rights treaty commitments and duties clearly spelled out;
- *Access to and control over resources.* Knowledge that something should and may be done is often not enough. Moreover, the poorest are seldom able to claim their rights as individuals, but need to be able to organize. “Capacity” must therefore also include the human resources (skills, knowledge, time, commitment, etc.), economic resources and organizational resources influencing whether a rights-holder or duty-bearer *can* take action.

Capacities for meaningful participation are essential under a human rights-based approach, and strengthened capacities for statistical and budget analysis will often be needed to monitor the progressive realization of human rights.

²⁶ See <http://www.undp.org/capacity/>.

²⁷ Adapted from Urban Jonsson, *Human Rights Approach to Development Programming* (Nairobi, UNICEF, 2003), pp. 52-53.

29

What do human rights contribute to the selection of indicators for monitoring development programmes?

Both quantitative and qualitative indicators should be set to monitor the achievement of human rights through development programmes. Indicator selection and monitoring should be participatory, allowing stakeholders to assess progress.

Human rights standards should guide the selection of indicators. A water and sanitation project, for instance, should ensure that the various elements of the right to water, including availability and quality of water, physical accessibility, affordability, information accessibility and non-discrimination, are monitored.²⁸ The socio-economic indicators reflected in the Millennium Development Goals can help to monitor the progressive realization of many economic and social rights.



When developing indicators to monitor the achievements of a human rights-based approach at the national level, three clusters could be used: *structural*, *process* and *outcome* indicators. *Outcome* indicators reflect summary information on the state of realization of a human right. *Process* indicators identify information that relates particular policy instruments to “milestone outcomes” that contribute to the protection and progressive realization of human rights. Finally, *structural* indicators capture information reflecting the legal and institutional framework for the realization of the human right.

²⁸ See general comment No. 15 of the Committee on Economic, Social and Cultural Rights, <http://www.ohchr.org/english/bodies/cescr/comments.htm>.

Taking the right to health as an example, life expectancy at birth may be a useful *outcome* indicator for the state of realization of this right in a given context. The *process* indicators that reflect progress in areas that may have a positive impact on life expectancy would relate to children's immunization, the population's access to drinking water or sanitation, adequate food and participation. Among the *structural* indicators would be whether the country has ratified the International Covenant on Economic, Social and Cultural Rights and reflects it in its law.

Further reading:

- Report of the Expert Group Meeting on Housing Rights Monitoring (2003): <http://www.unchs.org/programmes/housingrights/documents/EGMHousingRightsMonitoring-FINAL-REPORT.pdf>.
- Interim report of the Special Rapporteur on the right to health (A/58/427): <http://www.ohchr.org/english/issues/health/right/annual.htm>.

30 Is there any contradiction between a human rights-based approach to programming and results-based management?

No. With results-based management, the expected results are identified from the outset. A human rights-based approach is also meant to achieve results, although its participatory programming may lead to changes in planned results during the programming process.

Results-based management is intended to focus an organization on planning for and achieving results. It is a management approach by which an organization ensures that its processes, products and services contribute to the achievement of the desired results—*outputs*, *outcomes* and *impacts*.²⁹ Results-based management rests on clearly defined accountability for results, and requires monitoring and self-assessment of progress towards results and reporting on performance. Human rights also correlate to results; for example, the right to education translates into the goal or re-

²⁹ For definitions of these terms, see *OECD/DAC Glossary of Key Terms in Evaluation and Results Based Management 2002*, http://www.undg.org/documents/2485-Results-Based_Management_Terminology_-_Final_version.doc.

sults of universal primary school enrolment and completion. Results-based management is the programme management vehicle, and the programme meant to achieve the selected results should be planned and implemented by observing human rights-based approach principles.



The human rights-based approach's concern for participatory processes is sometimes perceived to put it in tension with results-based management principles. If a development programme is truly participatory and locally owned, this will likely necessitate changes in planned results during the programming process. But this does not mean that there is any basic contradiction between the two, because without participatory processes it is unlikely that results can be sustained.

ANNEX I

THE SEVEN “CORE” UNITED NATIONS INTERNATIONAL HUMAN RIGHTS TREATIES

Treaty	Adopted	States parties	Monitoring body
International Covenant on Civil and Political Rights (ICCPR)	1966	155	Human Rights Committee
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966	152	Committee on Economic, Social and Cultural Rights
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	1965	170	Committee on the Elimination of Racial Discrimination
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	1979	181	Committee on the Elimination of Discrimination against Women
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984	141	Committee against Torture
Convention on the Rights of the Child (CRC)	1989	192	Committee on the Rights of the Child
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)	1990	34	Committee on Migrant Workers

Source: United Nations Treaties Database, <http://untreaty.un.org/English/access.asp> (accessed 21 February 2006). All countries have ratified at least one of the seven core United Nations human rights treaties, and 80 per cent have ratified four or more.

INTERNATIONAL DECLARATIONS ON HUMAN RIGHTS

- Universal Declaration of Human Rights (10 December 1948), A/RES/217A(III), <http://www.unhcr.ch/udhr/lang/eng.htm>.
- Declaration on the Elimination of Violence against Women (20 December 1993), A/RES/48/104, <http://www.ohchr.org/english/law/eliminationvaw.htm>.
- Declaration on the Right to Development (4 December 1986), A/RES/41/128, <http://www.ohchr.org/english/law/rtd.htm>.
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (9 December 1998), A/RES/53/144, <http://www.ohchr.org/english/law/freedom.htm>.
- United Nations Millennium Declaration (8 September 2000), A/RES/55/2, <http://www.ohchr.org/english/law/millennium.htm>.

For a fuller list of international human rights conventions and related instruments, see the compilation posted on: <http://www2.unog.ch/intinstr/uninstr.exe?language=en>.

ANNEX II

THE HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION

TOWARDS A COMMON UNDERSTANDING AMONG THE UNITED NATIONS AGENCIES

(Second Inter-agency Workshop, Stamford, United States of America, May 2003)

Introduction

The United Nations is founded on the principles of peace, justice, freedom and human rights. The Universal Declaration of Human Rights recognizes human rights as the foundation of freedom, justice and peace. The unanimously adopted Vienna Declaration and Programme of Action states that democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.

In the United Nations Programme for Reform that was launched in 1997, the Secretary-General called on all entities of the United Nations system to mainstream human rights into their various activities and programmes within the framework of their respective mandates.

Since then a number of United Nations agencies have adopted a human rights-based approach to their development cooperation and have gained experiences in its operationalization. But each agency has tended to have its own interpretation of the approach and how it should be operationalized. However, United Nations inter-agency collaboration at global and regional levels, and especially at the country level in relation to the CCA and UNDAF processes, requires a common understanding of this approach and its implications for development programming. What follows is an attempt to arrive at such an understanding on the basis of those aspects of the human rights-based approach that are common to the policy and practice of

the United Nations bodies that participated in the Inter-agency Workshop on Implementing a Human Rights-based Approach in the Context of United Nations Reform on 3-5 May 2003.

This Statement of Common Understanding specifically refers to a human rights-based approach to the development cooperation and development programming by United Nations agencies.

Common Understanding

1. All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of “duty-bearers” to meet their obligations and of “rights-holders” to claim their rights.

1. All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

A set of programme activities that only incidentally contributes to the realization of human rights does not necessarily constitute a human rights-based approach to programming. In a human rights-based approach to programming and development cooperation, the aim of all activities is to contribute directly to the realization of one or several human rights.

2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

Human rights principles guide programming in all sectors, such as: health, education, governance, nutrition, water and sanitation, HIV/AIDS, employment and labour relations and social and economic security. This includes all development cooperation directed towards the achievement of the Millennium Development Goals and the Millennium Declaration. Consequently, human rights standards and principles guide both the Common Country Assessment and the United Nations Development Assistance Framework.

Human rights principles guide all programming in all phases of the programming process, including assessment and analysis, programme planning and design (including setting of goals, objectives and strategies); implementation, monitoring and evaluation.

Among these human rights principles are: universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law. These principles are explained below.

- *Universality and inalienability.* Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in

whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her. As stated in article 1 of the Universal Declaration of Human Rights, “All human beings are born free and equal in dignity and rights”.

- *Indivisibility.* Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.
- *Interdependence and interrelatedness.* The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to information.
- *Equality and non-discrimination.* All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.
- *Participation and inclusion.* Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.
- *Accountability and rule of law.* States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

3. Programmes of development cooperation contribute to the development of the capacities of “duty-bearers” to meet their obligations and of “rights-holders” to claim their rights.

In a human rights-based approach, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-State actors with correlative obligations (duty-bearers). It identifies *rights-holders* (and their entitlements) and corresponding *duty-bearers* (and their obligations), and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.

Implications of a human rights-based approach to development programming of United Nations agencies

Experience has shown that the use of a human rights-based approach requires the use of good programming practices. However, the application of “good programming practices” does not by itself constitute a human rights-based approach, and requires additional elements.

The following elements are necessary, specific, and unique to a human rights-based approach:

- (a) Assessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.*
- (b) Programmes assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfil their obligations. They then develop strategies to build these capacities.*
- (c) Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles.*
- (d) Programming is informed by the recommendations of international human rights bodies and mechanisms.*

Other elements of good programming practices that are also essential under a human rights-based approach include:

- 1. People are recognized as key actors in their own development, rather than passive recipients of commodities and services.*
- 2. Participation is both a means and a goal.*
- 3. Strategies are empowering, not disempowering.*
- 4. Both outcomes and processes are monitored and evaluated.*
- 5. Analysis includes all stakeholders.*
- 6. Programmes focus on marginalized, disadvantaged, and excluded groups.*
- 7. The development process is locally owned.*
- 8. Programmes aim to reduce disparity.*
- 9. Both top-down and bottom-up approaches are used in synergy.*
- 10. Situation analysis is used to identify immediate, underlying and basic causes of development problems.*
- 11. Measurable goals and targets are important in programming.*
- 12. Strategic partnerships are developed and sustained.*
- 13. Programmes support accountability to all stakeholders.*

ANNEX III

SELECTED WEB-BASED REFERENCES ON A HUMAN RIGHTS-BASED APPROACH

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