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Applying a Rights-Based Approach to Development: Concepts and Principles

Conference Paper: The Winners and Losers from Rights-Based Approaches to Development

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A Rights-Based Approach to Development

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1 Human Rights and the International Development Co-operation Agenda[1]

A rights-based approach to development 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. Essentially, a rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations. - *OHCHR Website, 2004.*

A rights-based approach to development describes situations not simply in terms of human needs, or of development requirements, but in terms of society's obligations to respond to the inalienable rights of individuals, empowers people to demand justice as a right, not a charity, and gives communities a moral basis from which to claim international assistance when needed. -*UN Secretary General Kofi Annan, 1998.*

(A rights-based approach) means having the courage to build local, national, and global movements that argue for specific duties to be met by governments, corporations, and individuals that will enable all people to enjoy their rights. Above all, it involves abolishing the development enterprise as a neo-colonial programme of correction administered from rich to poor and replacing it with a common political project that recognises everyone's equal rights and judges the behaviour of all on the basis of how they realise or violate these rights. – *Hugo Slim, 2002.*

In the last decade, human rights-based approaches have gained more attention in the development discourse. Although a consensus on the basic constituent elements of this approach appears to be slowly emerging, there is no single, universally agreed rights-based approach. The above statements on human rights approaches illustrate compatible but different perspectives on rights-based approaches that range from incorporating the norms, standards and principles of the international human rights system into development work, to a complete paradigm shift that involves replacing the development effort. This paper aims to provide an introduction to the concepts of a rights-based approach, its strengths, challenges and its relation to the poverty reduction effort.

Regarding socio-economic development as part of the human rights agenda is not new. It dates back to when the authors of the Universal Declaration of Human Rights (1948) articulated economic, social, cultural, civil and political human rights in a single document with the aim of preventing the horrors of mass war from ever happening again. However, the effort to translate this document into legally biding obligations was thwarted by the ideological divisions between the western liberal democracies (which championed civil and political rights) and the East Bloc (which prioritised economic, social and cultural rights). One effect of this was the separation of the UN's development activities from its human rights efforts.

The end of the bipolar era gave rise to new opportunities for the development community. The emergence or resurgence of democracies, civil conflicts, war, acts of genocide and the rise of an "international civil society" in the post-Cold War period brought human rights to the fore-

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[1] This paper is based on a chapter by Cecilia M. Ljungman in Britha Mikkelsen's *Methods for Development Work and Research - A New Guide for Practitioners*, 2e. Sage Publications, New Delhi - forthcoming in February 2005.

front. Discourse on the relationship between human rights and international development co-operation gradually regained prominence and became a feature of the host of world summits held from 1990s onwards.[2] When the UN launched its reform process in the late 1990s, the Secretary General saw an opportune occasion for the UN to reassert itself in its mandate to "(assist) in the realisation of human rights and fundamental freedoms" (art. 13(1)b UN Charter). The Secretary General has since taken the significant step of calling for the mainstreaming of human rights in *all* of the UN's development work.

In the last decade several organisations, such as CARE, Save the Children and UNICEF started to develop rights-based approaches.[3] Likewise, some bilateral donor agencies, -- such as Sida and DFID - have begun promoting rights perspectives in their assistance. Rights and development gained further impetus in 2000 when UNDP's *Human Development Report* focused on human rights and human development. It presented a compelling argument for an integrated approach to development drawing upon the principles of international human rights and the strategies of human development to advance dignity and well being. In 2002, the UN in collaboration with the Bretton Woods institutions prepared draft *Guidelines for a Human Rights Approach to Poverty Reduction Strategies*.

2   The Principles and Concepts of Human Rights

Human rights are fundamental moral and legal entitlements that pertain to basic wellbeing and dignity. They are also described as the "social and political guarantees necessary to protect individuals from the standard threats to human dignity posed by the modern state and modern markets" (Donnelly, 1989).

Human rights take departure in the *International Bill of Rights* which comprises the *Universal Declaration of Human Rights*, and the consequent *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR) which came into force in 1976. These treaties, which have been drafted debated and adopted by the member states of the United Nations, contain a broad range of guarantees that address virtually every aspect of human life and human development. Other central human rights documents are the *Convention on the Rights of the Child* (CRC), *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD). In addition, norms, standards and principles have been developed by a variety of international processes and fora.

On paper there is ample evidence of a wide international consensus of the human rights framework. The 160 world leaders who endorsed the United Nations Millennium Declaration in 2000 resolved "to respect fully and uphold the Universal Declaration of Human Rights" and to "spare no effort to promote democracy and strengthen the rule of law, as well as respect for

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[2] For instance, the World Conference of Human Rights in Vienna (1993); the World Conference on Women in Beijing (1996); the Social Summit in Copenhagen (1996); the World Food Summit in Rome (1997); the World Summit on Sustainable Development in Johannesburg (2002).

[3] It is worth noting that the International Labour Organisation was actually applying a rights-based approach to labour standards even before the UN was established.

all internationally recognised human rights and fundamental freedoms, including the right to development".[4]

2.1 Rights-Holders and Duty-Bearers

Human rights law recognises three groups of agents: (i) rights-holders; (ii) duty-bearers; and, (iii) "other actors". All human beings belong to the first group - we have human rights simply because we are human - these rights are supposed to be held *equally* and *inalienably*.

By signing human rights treaties, States[5] are the *principal duty bearer* in their respective countries. These oblige the State to *respect*, *protect* and *fulfil* all human rights committed to for all citizens (see box 1). Fulfilling human rights requires the State to facilitate, provide and/or promote rights, but not *necessarily* directly meeting all people's socio-economic needs. Thus, if it can be justified from an effectiveness and sustainability standpoint, States can meet their obligations by acting as a regulator or facilitator of other actors who provide services, such as the market and civil society (Moser & Norton, 2001). However, rights-holders are not supposed to be mere passive recipients but active subjects that are expected whenever possible, through their actions, discourse or legal claim, to invoke and demand their rights whether individually or collectively.

Box 1: Obligations of State Parties to International Human Rights Law

The obligation to respect requires the State and all its organs and agents to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of individuals or impinging on their freedom to access resources to satisfy their needs. It also requires that legislative and administrative codes take account of guaranteed rights.

The obligation to protect obliges the State and its agents to prevent the violation of rights by other individuals or non-state actors. Where violations do occur the State must guarantee access to legal remedies.

The obligation to fulfil involves issues of advocacy, public expenditure, governmental regulation of the economy, the provision of basic services and related infrastructure and redistributive measures. The duty of fulfilment comprises those active measures necessary for guaranteeing opportunities to access entitlements.

(van Weerelt, 2001)

Achieving human rights often implies some degree of public expenditure.[6] In recognition of resource constraints that poor countries face, international law allows for *progressive realisation* of some rights over a period of time as long as the State takes deliberate, concrete and targeted steps in the direction of the realisation of human rights - although core obligations, in-

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[4] Despite the official international consensus on the human rights regime, human rights remain contested subject area. Some developing countries regard human rights as another aspect of Western hegemony serving Western interests and are associated with donor-imposed conditionalities.

[5] Over 140 states have committed to realising human rights for their citizens by respecting, protecting and fulfilling human rights.

[6] It is often held that realising economic, social and cultural rights are more costly than realising civil and political rights. However, this is not necessarily the case. For instance, fulfilling a citizen's right to vote (right to political participation ICCPR, art. 25) is likely to have greater implications on public expenditure than respecting a citizen's right from being unlawfully evicted from his/her home (right to housing art. 11 ICESCR).

cluding, for instance, non-discriminatory practices, must always be respected.[7] In addition, the *International Covenant on Economic, Social and Cultural Rights* (1976) comprises measures to assist poorer States in the realisation of human rights by placing an obligation on other States in development co-operation.[8]

While governments have a *legal* obligation to protect and achieve human rights, "other actors" such as organisations and individuals also have *moral* obligations under the *Universal Declaration of Human Rights* to respect and promote human rights (See box 2 below). They can therefore be described as *moral duty-bearers*.

Box 2: Obligations of Other Parties

"THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every *individual* and *every organ* of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction." (Our Italics) Preamble of *The Universal Declaration on Human Rights.*

The moral duty-bearers implied by the preamble can be divided into the following groups:

Primary duty-bearers – e.g. parents for children, teachers for students, police for crime suspects, doctors/nurses for patients, employers for employees;

Secondary duty-bearers – e.g. institutions and organisations with immediate jurisdiction over the primary duty-bearers e.g. school principals, community organisations, hospital administrations, etc.;

Tertiary duty-bearers – e.g. institutions and organisations at a higher level / more remote jurisdiction (NGOs, aid agencies, private sector organisations);

External duty-bearers – e.g. countries, institutions, organisations with no direct involvement e.g. WTO, UN, INGOs, Security Council, African Union

Moral duty-bearers exist not only at the local levels. NGOs, aid agencies, private sector organisations, trans-national corporations, regional organisations and the United Nations can all be considered as moral duty-bearers. As the world becomes increasingly globalised, moral duty-bearers at the international and trans-national level may be increasingly expected to assume a greater responsibility in the promotion and protection of human rights

3 Towards the Application of a Rights-Based Approach

A growing number of development co-operation organisations claim to be applying a rights-based *approach*. The majority, however, are actually applying a human rights *perspective* to development assistance and poverty reduction. Nonetheless, until an organisation's capacities

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[7] The non-fulfilment of human rights does not necessarily mean that a State is in non-compliance with its obligations, as long as it has taken all measures within its power to ensure an expeditious progressive realisation.

[8] *International Covenant of Economic, Social and Cultural Rights*, Part II, article 2.1.

and methodologies have been adequately developed, a rights-based perspective may be a first step in the gradual process towards full-scale application of a rights-based approach.

A human rights perspective typically recognises that there is an intrinsic link between poverty and human rights at the policy and strategy level. It may be contributing to the realisation of human rights and may also embrace the human rights principles listed below. At best, however, a human rights perspective tries to apply human rights concepts consistently throughout the development co-operation process but is not guided by the realisation of *all* human rights for *all* people as the first and foremost goal. Moreover, a human rights perspective does not shift from the traditional development philosophy to a new paradigm where the concept of rights-holders and duty-bearers would permeate every aspect of development co-operation (this is further discussed below) and where the process of development becomes a sub-set of the realisation of human rights (see box 3).

Box 3: Poverty and Development in a Rights-Based Approach

A rights-based approach holds that a person for whom a number of human rights remain unfulfilled - such as the right to food, health, education, information, participation, etc. - is a poor person. Poverty is thus *more* than lack of resources – it is the manifestation of exclusion and powerlessness. In this context the realisation of human rights and the process of development are not distinct. On the contrary, development becomes a sub-set of the process of fulfilling human rights. In fact, development itself is recognised as a human right.[9]

A human rights-based approach has many elements in common with other approaches currently used by development practitioners: For example, the emphasis on participation in development work resonates with the right of individuals to take part in the conduct of public affairs and the related rights of association, assembly and expression. Similarly, the focus on transparent budgetary processes in the effort to promote good governance within the framework of development support corresponds with the right to information. Meanwhile, aid interventions that aim at providing social safety nets relate to the right to a reasonable standard of well-being, food, shelter, health, education and/or social security. Likewise, many of the techniques and management practices used in development work remain valid and important tools for a rights-based approach. Table 1 illustrates differences between the commonly applied needs based approach to poverty reduction and human development, and the rights-based approach.

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[9] The World Conference on Human Rights, held in Vienna in 1993, reaffirmed by consensus the right to development as a universal and inalienable right and an integral part of fundamental human rights.

Table 1: Illustration of the Differences between a Needs Approach and a Rights Approach (After Collins, Pearson & Delany, 2002)

Needs Approach	Human Rights Approach
Works toward outcome goals	Work towards outcome and process goals
Recognises needs as valid claims	Recognises that rights always implies obligations of the state
Empowerment is not necessary to meet all needs	Recognises that rights can only be realised with empowerment
Accepts charity as the driving motivation for meeting needs	Regards charity as an insufficient motivation for meeting needs
Focuses on manifestations of problems and immediate causes of problems	Focuses on structural causes of problems, as well as manifestations and immediate causes of problems
Focuses on the social context with little emphasis on policy	Focuses on social, economic, cultural, civil and political context and is policy-oriented

There are three basic features that distinguish the rights-based approach from other approaches. These are (i) the legal basis, (ii) the normative framework; and, (iii) the process of realising the overall goal in which the process is a goal in itself. These are discussed in the following sections.

3.1 Legal Basis

Fundamentally, a rights-based approach differs from poverty reduction / human development approaches to development by claiming that others have duties to facilitate the fulfilment of people's rights and fundamental freedoms which thereby necessitates action. This claim is backed by international law that specifies **obligations that are legally binding under international law.**[10] By ratifying or acceding to the international human rights treaties, States have agreed to these binding international legal obligations that require them to take necessary legislative, administrative or policy measures and to provide appropriate remedies in case of violations. A State also commits to report on its practices and performances relating to implementation.[11]

The rights based approach's departure in international law, acknowledges the universal legitimacy of the conceptual framework that essentially consists of duty-bearers and rights-holders. Thus, at the core of a rights-based approach is a "two-pronged" strategy of aiming to realise human rights by:

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[10] In comparison, the establishment of goals and motivation for action of other approaches can appear arbitrary or "lawless". (Human Rights Council of Australia, 2001).

[11] Ratification of international treaties also creates relations between States by making the respect for human rights a matter of legitimate international observation - and action - of individual States' performance or violations.

- **Strengthening** duty-bearers to fulfil their obligations; and,

- **Empowering** rights-holders to invoke their rights.

While an exclusive focus on either rights-holders or duty-bearers may be necessary and useful in the short-term, a long term one-sided strategy is unlikely to bring about the accountability dynamic that is at the core of the approach as illustrated in Figure 1 below.

Figure 1: Rights-Based Approach
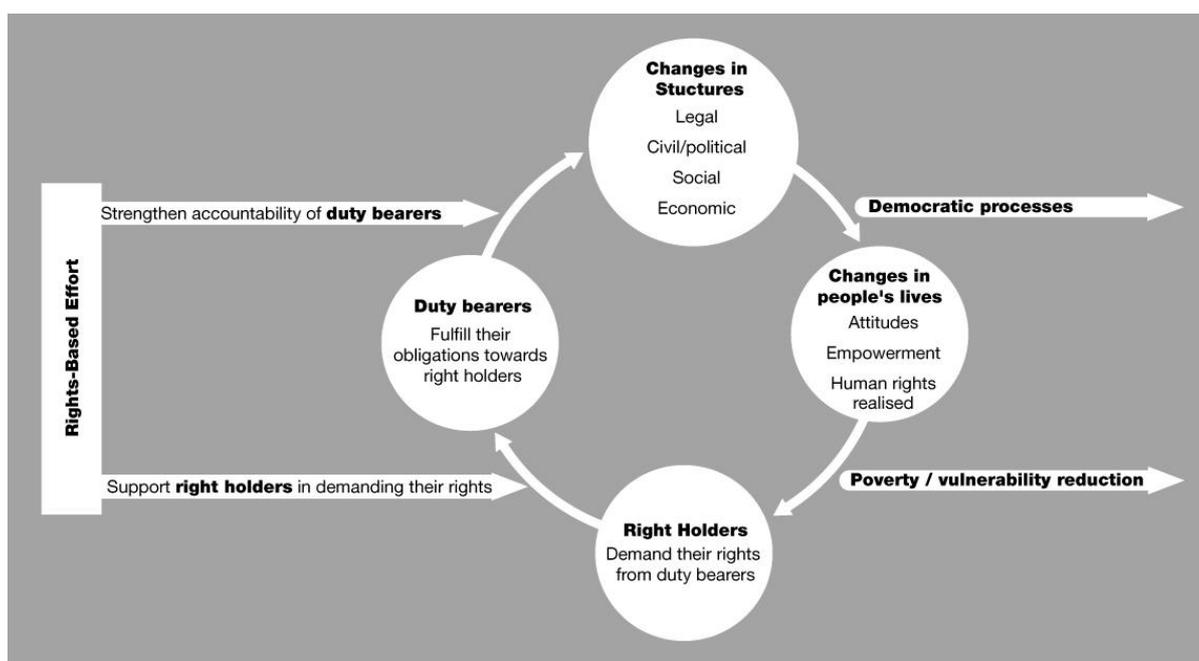
In a dynamic world, democratic processes and poverty reduction (illustrated on the right-hand side of the diagram) would continuously feed into strengthening the rights-based effort (depicted on the left), but these complex processes are not illustrated in the above diagram for the sake of simplicity.

3.2   Normative Framework

The international instruments and the authoritative interpretations of the human rights treaty bodies offer a normative roadmap for development to policy makers and practitioners that pursue a rights-based approach. There are **six key principles** that are derived from the human rights instruments. These are:

1. Universalism and inalienability;

2. Equality and non-discrimination;

3. Indivisibility & interdependence of human rights;

4. Participation & inclusion;

5. Accountability; and,

6. The rule of law.

These principles are constituent components of a rights-based approach. The implications of these principles in the effort to operationalise a rights-based approach are discussed in the following paragraphs.

3.2.1 Universalism

The principle of the **universality** of human rights means that every woman, man, child is entitled to enjoy his or her rights simply by virtue of being human.[12] Universality is what distinguishes human rights from other rights – such as citizenship or contractual rights. The rights are **inalienable** in that they cannot be taken away from someone or voluntarily given up.

Both invoking and realising a right requires prior knowledge and understanding of human rights, their universality and inalienability. Efforts are therefore required to raise awareness among individuals and communities with the aim to empower them to claim their rights. Civic education (both as an effort on its own and as an integral part of specific development initiatives), which consist of providing accessible information to all and enhancing knowledge about human rights and duties, is an essential activity to operationalise a rights-based approach (Goonesekere, 2003). In parallel, raising awareness among principle duty-bearers as well as the range of local, national and international moral duty-bearers through dialogue and advocacy becomes an important task in a rights-based approach to development. In this effort, the international human rights law offers an authoritative basis for *advocacy*.

3.2.2 Equality and Non-Discrimination

The principle of **equality** and **non-discrimination** requires that all persons within a society enjoy equal access to the available goods and services that are necessary to fulfil basic human needs. Equality before the law prohibits discrimination in law or in practice in any field regulated and protected by public authorities. The principle applies to all state policies and practices, including those concerning healthcare, education, access to services, travel regulations, entry requirements and immigration.

For a rights-based approach the principle of equality and non-discrimination implies that the development effort should target excluded groups that may, for instance, have inadequate access to social services. These groups may be discriminated by state policies and practices and/or cultural practices, or, in other ways enjoy less economic, social, cultural, political and civil rights than others. A rights-based analysis (see box 4) assists in the identification of prevailing discriminatory patterns. The two-pronged approach with focus on rights-holders and on duty-bearers implies that efforts be focused on empowering these groups while at the same time strengthening the State actors' capacity to realise the rights of these groups. Depending on the causes for the exclusion, the latter may entail legal and administrative measures to re-

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[12] Some argue that human rights are not universal but a product of western Judeo-Christian traditions. The supposed "cultural relativism" of human rights is a hotly debated topic but there are strong arguments against this position. See, for instance, chapter 10 in Amartya Sen's *Development as Freedom,* which illustrates how enlightened societies across the globe and in different eras have shared the same common values. Jody Kollapen (2003), Chairperson of the South African Human Rights Commission points to how human rights existed in pre-colonial Africa. Another area of contestation is the right of the individual versus collective rights.

move explicit legal inequalities in status and entitlements and revise policies that imply indirect discrimination. It could also include public sector reform and capacity-building, decentralisation and democratisation of local government, and/or infrastructure development.

Box 4 Rights-Based Analysis

- Rights-based analysis takes departure in the principles of *equality* and *non-discrimination* to identify patterns of poverty, powerlessness, social exclusion and discrimination which are usually sustained by socio-cultural and political-legal institutions.

- The analytical *framework* of a rights-based approach goes *beyond* socio-economics to also encompass aspects of a society's social, cultural, legal *and* political dynamism. It aims to capture the root causes of the perpetuation of poverty, exclusion, discrimination and power relations that sustain inequity (Moser & Norton 2001). With this multi-faceted approach, a more complete analysis of a country's development situation, which potentially captures social and political processes, can be achieved. The problem analysis takes departure in whose rights and what rights are *not* being realised. This crucially requires disaggregating data according to gender, citizenship, social status, ethnicity, etc. in order indicate the extent to which different categories of people are are/ are not enjoying their human rights.

- The analysis aims to determine what i*mmediate, underlying and structural obstacles* there are to realising rights. This includes examining social, cultural, legal and administrative frameworks, which requires studying how people's claims are processed by authorities in the different arenas of negotiation (e.g. customary law, religious law, statutory law, constitutional law, etc.) (Moser & Norton, 2001; The Human Rights Council of Australia, 2001).

- A rights-based analysis must necessarily *identify responsible duty-bearers* (UN, 2003). Not only does this include the state at different levels, it also comprises the identification of other duty-bearers in society, including family, the community, corporate actors, etc. The capacities and resources of the duty-bearers to fulfil their duties should be assessed.

3.2.3   Indivisibility and Inter-dependence of Rights

The principle of **indivisibility** and **inter-dependence of rights** recognises that the enjoyment of one right is indivisibly interrelated to the enjoyment of other rights because all rights are inter-dependent. The inter-dependence of rights is a reflection of the *multi-dimensional* character of well-being. [13] (See box 5) While all human rights - civic, political, economic, social and cultural should be treated with the same importance, depending on the specific context - certain rights will take priority. However, the principle of **non-retrogression** states that the prioritisation of some rights must not deliberately be at the expense of the level of realisation of other rights. Thus care must be taken to ensure that other rights maintain at least their initial level of realisation.

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[13] Although it has been reaffirmed that rights are indivisible in innumerable resolutions since the drafting of the Universal Declaration on Human Rights, this is sometimes contested. In western democracies it is sometimes argued that economic, social and cultural rights are not rights at all but political objectives. This is usually based on the misconception that they are necessarily costly to implement and that implementation can only be done progressively. On the other hand, some governments have shown reticence to accept the equal importance of civil and political rights, arguing that what good is the right to vote or freedom of expression if you are starving and illiterate?

The principles of indivisibility and interdependence imply a holistic scope for a rights-based approach. This does, however, not mean that all rights must be addressed at once. The rights that are least realised or that can be considered contextually strategic by having the most potential of assisting in the realisation of other rights could constitute the focus of the assistance.

Box 5: The multi-faceted dimensions of well-being

Child mortality among poor people can offer an example of the inter-dependence of rights. The high mortality figures among children in developing counties are not simply an effect of disease or a dysfunctional health system. A number of underlying factors contribute to mortality in early childhood. These include the mother's access to education, information, health care, food, work, credit, participation in public life and power over resources. (UNCEF 1999)

3.2.4 Participation

The principle of **participation** - which is recognised as a right in itself[14] - means that every person and all peoples are entitled to participate in, contribute to, and enjoy civil, economic, social and political development. It also means that all people are entitled to participate in society to the maximum of their potential. This, in turn, necessitates taking steps to facilitate participation including the provision of supportive environments to enable people to develop and express their full potential and creativity.

Participation is an entitlement guaranteed by international law and thus an imperative in the rights framework. In effect, as much importance is attached to the processes of achieving goals, as it is to the goals themselves. A rights-based strategy, therefore, must aim for *free, active* and *meaningful* participation of targeted communities. "Free" means participation that is not imposed. A community could therefore, in theory, decide to have their views *represented* by someone or could decide to entrust technicians to make specific technical choices for a project. "Active" requires that the participation process is going somewhere; and "meaningful" participation entails that it is consequential for goals achieved (Human Rights Council of Australia, 2001:58).

A rights-based development strategy views participation from a rights-holder and duty-bearer perspective - on the one hand the aim is to enhance right's holders' capabilities to advocate for their entitlements so that they can define for themselves their own entry points for change. On the other hand, the strategy must address the duty-bearers' capacity to recognise, respect and fulfil the right to participation. It should deliberate the question: "How can existing procedures, structures and processes be reformed or supplemented to secure free, active and meaningful participation of rights-holders?"

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[14] *Declaration on the Right to Development*, General Assembly Resolution 41/128, article 1, 1986; and the right to take part in the conduct of public affairs (article 25, ICCPR).

Box 6: Human rights perspectives and mine action

The evaluation of Danish support to mine action found that in the emergency phase the prioritisation of mine clearance was - at least in theory - a function of the number accidents. As mine affected countries began to normalise after the conflict and mine casualties began to stabilise (due to, for instance, increased knowledge of the location of mine fields), mine action agencies began to emphasise socio-economic reasons for mine action. Typically roads, electricity pylons, irrigation systems, schools and agricultural land were prioritised as a function of their potential socio-economic benefit. However, this approach overlooked the weakest and most marginalised groups affected.

The evaluation team became aware of the fact that the presence or mere suspicion of mines had a considerable impact on human rights. The rights of mine affected communities that were typically affected were, for instance, the right to life and physical integrity, adequate food, education, work, association and a standard of living adequate for mental and physical health and wellbeing. Too often the socio-economic approach did not address these rights and instead focused on justifying support from a cost-benefit perspective. Furthermore, in many cases it was difficult to justify removing landmines using economic calculations - particularly in poorer regions where expected *economic* gains were low.

The team found that aiming to fulfil the fundamental human rights of mine-affected populations could help prioritise efforts and could ensure a more comprehensive poverty focus. In addition, manifestly linking human rights and mine action could strengthen the underlying mine action concept that mine action is about *people* and mines, not least by improving the *participation* of mine affected communities. Moreover, the conceptual, institutional and funding gaps that plagues mine action because of it being classified as both humanitarian and development assistance could be solved by a rights-based approach, since both forms of assistance are compatible with an overall aim of realising human rights. (Ministry of Foreign Affairs/Danida, 2003)

3.2.5   Accountability

The principle of accountability is derived from the fact that rights implies duties and duties demand **accountability**. To demand the accountability of policy-makers and other actors whose actions impact on the rights of people, contributes to moving development from the realm of charity to that of obligation, making it easier to monitor progress. This is arguably the most important value-added of a rights-based approach. Accountability requires that the government, as the legal and principle duty bearer:

1.   Accepts responsibility for the impact it has on people's lives;

2.   Co-operates by providing information, undertaking transparent processes and hearing people's views; and,

3.   Responds adequately to those views (UNDP, 2000).

Accountability requires conditions for transparency and avenues for challenging and seeking redress for decisions or actions negatively affecting rights. While it is up to duty-bearers to determine the appropriate mechanisms of accountability themselves, all mechanisms must be accessible, transparent and effective (OHCHR, 2002). Other duty-bearers that assist the government in fulfilling its obligations - such as donors, aid organisations, NGOs and development practitioners - are accountable in the same way.

Rights-based development co-operation aims to strengthening a government's accountability to ensure open, transparent, effective, efficient and responsive systems ("good governance"). Bearing in mind the two-pronged strategy, a rights-based approach fundamentally seeks to empower rights-holders to demand accountability and, if necessary, seek redress. This could include establishing an independent monitoring and inspection panel with the function of arbitrating disputes or grievances within the framework of a development effort.

3.2.6   The Rule of Law

Human rights must be protected by law. The **rule of law** entails that disputes should be solved through adjudication by competent, impartial and independent processes. Aggrieved rights-holders require access to the judicial machinery to invoke their rights to institute legal proceedings for appropriate redress. However, the legal apparatus in many poor countries is weak, under-developed, under-resourced and often undermined by the ruling elites. For human rights to become a development tool, the judicial system needs to function and be accessible to all. A rights-based development strategy therefore needs to take into account the state of the judicial system, the prosecution, police and other institutions for upholding rights. In addition, religious, customary and living law and their respective corresponding mechanisms need to be considered in terms of their relationship to marginalised groups and their conformity with human rights.

3.2.7   The Six Principles and a Rights-based Approach

The six key principles discussed above are central to a rights based approach. Only development efforts that address the implications of *all* six principles should be called a rights-based approach. If an agency takes some - but not all - of the above principles into consideration in a development programme, it would be applying a rights-based *perspective*, which may be a first step towards a right-based approach. Distinguishing between a rights-based approach and a rights-based perspective is crucial. First, it sets a standard for rights-based approaches and thereby contributes to safeguarding the meaning of human rights and the principles that they imply in the development context (all too often the content of complex concepts is reduced to a buzzword by large parts of the development community). Second, this distinction illustrates that applying human rights to development co-operation can be a gradual process. Thus, a development programme may begin by focusing on, for instance, equality and non-discrimination by conducting rights-based analyses and then address the implications of the other principles over time.

3.3   Process Goals

The process of achieving human rights is central to a rights-based approach to development. It is therefore presumed that an individual is the subject of his or her rights and as well as an active participant in his or her development. With these assumptions human rights are thus by necessity:

* Active - dependent on the participation of individuals and groups; and,

* Practical - they must be applicable in the daily lives of people.

Therefore rights should not only be *promoted* and *protected* by duty-bearers, but *practised* and *experienced* by rights-holders. The rights and freedoms which are of particular importance to ensure practicality and active enjoyment of human rights, are the right to information, freedom of expression, the right to take part in the conduct of public affairs and the right to participation in the development process. (Human Rights Council of Australia, 2001)

Box 7: Formulating Rights-Based Objectives

The so-called "development" or long-term **goals** of a rights-based development initiative should be formulated in rights language (Human Rights Council of Australia, 2001). For instance, the goal of a health sector reform programme would refer to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12, ICESCR). While some practitioners argue that the essence of a rights-based approach can be achieved without specifically using rights language, (OHCHR, 2002) this runs contrary to the concepts of transparency and dialogue, which are essential in a rights-based approach. As important as the outcome of an initiative, is the process of getting there – because a rights-based implementation process is underpinned by participation, which is a right.

By consistently applying the rights-based principles discussed above to all activities and processes, a rights-based approach to development co-operation aims to contribute to the practicality and active enjoyment of human rights. As a result, the approach regards the realisation of human rights as both an *outcome* goal and a *process* goal, which entails that the *means* of achieving human rights is itself of great importance.

When the *legal basis*, *normative framework* and *process goals* that distinguish a rights-based approach are put into practice in a development co-operation project between a bilateral donor and a recipient government, it may have the components described in Box 8.

Box 8: Components of a rights-based project

- People involved in the project have a thorough knowledge of the international human rights framework;

- Initial negotiations with the agency of the receiving government make it clear which rights are at stake;;

- The feasibility study involves communities themselves in the design of the project, not only in its implementation;

- Communities are provided choices and they are given undertakings regarding the project;

- Information is provided including the communities' entitlements and their decision-making powers;

- The timetable of outcomes includes the provision of penalty clauses;

- Access is provided to the project decision-makers and to grievance procedures;

- Guarantees are given in case of project failures to ensure the provision of services;

- Explicit provisions for relevant information and skills regarding entitlements would be a standard part of the project package, which may include, e.g. financial provision for communities to provide their own legal advisers;

- At the feasibility study stage, project designers analyse the other rights that are breached (through omission or commission) in the area and consideration is given as to whether the project can address these or how else they can be addressed;

- Negotiations with provincial and local government authorities make it clear which rights are at stake ;

- The responsibility for project evaluation and monitoring includes the participation of communities, who are also encouraged to advice the donor agency of problems even after the project is terminated. The donor agency is in turn responsible for advising the recipient government at local and national level of these problems.

After Human Rights Council of Australia, 2001

3.4   Tools for operationalising a Rights-based Approach

There are still relatively few tools to assist organisations in operationalising a rights-based approach. Some of those worth mentioning include the draft guidelines for a rights-based approach to poverty reduction (OHCHR 2002) which the World Bank and the UN collaborated on. UNDP and OHCHR have also developed a simple checklist for programme staff (UNDP/OHCHR 2003). Furthermore, the Human Rights Council of Australia (2001) has put together a manual that, although being geared towards government-to-government assistance, has been a source of inspiration to NGOs developing a rights-based approach.

In addition, NORAD (2001) has developed a handbook in "human rights assessment". The handbook assists practitioners in asking the relevant questions concerning human rights, implementing and monitoring them. It is particularly suitable when trying to apply a human rights *perspective* to a project. It includes a simple scoring tool for assessing how a programme affects human rights, people's *awareness* about their rights and whether or not it *empowers* people to claim their rights. A simplified version appears in Table 1. The scores used in the checklist are suggestive only. Their main function is to rouse attention and awareness to trends and tendencies as regards human rights impact.

Table 2: Human Rights Impact Analysis Tool (after NORAD, 2001)

Human rights issue	Score	Follow up
1. AWARENESS		
1. What is the programme's assumed/actual impact on equality and non-discrimination?		
2. Has the population directly affected been informed about the programme?		
3. Does the programme respect/has it respected everyone's right to seek, and impart information relevant to its implementation?		
2. EMPOWERMENT		
4. Does the programme respect/has it respected the right to express views freely in the preparation and implementation?		
5. Does the programme promote/has the programme promoted participation in decision making of groups affected?		
6. Does the programme uphold/has the programme upheld the right to organise?		
7. Does the programme respect/has it respected the right to just and favourable conditions of work?		
8. Does the programme affect/has it affected the fulfilment of the right to an adequate standard of living for target groups and other people affected?		
9. Does the programme affect/has it affected the opportunity of people for self provision i. t. o. income generating activities?		
10. Does the programme address the right to compensation for those negatively affected?		

Legend for scoring: PI - Positive Impact   **NC -** No Change   **NI -** Negative Impact
N.A. - No Information Available

The scores represent a non-metric ordinal scale with increasing orders, but with no exact ranking. Human rights enhancement often requires institutional reform, or change of attitudes, traditions or customs. Therefore measuring human rights advancement often implies that economic, social, cultural and political processes are being reviewed. In some cases this may require follow-up research, additional information gathering and/or targeted studies.

3.5   Challenges in Applying a Rights-based Approach

There are considerable and numerous challenges to effectively implement a rights-based approach to development. Three main sets of challenges are outlined below.

The first set of challenges relate to the inadequacy of state legal apparatuses, inconsistencies between law and practice and poor awareness of human rights among state actors and citizens:

- Although a majority of States have ratified the human rights treaties, many States have not codified the treaties into their domestic legal framework - which may contain laws that are breaching human rights principles;

- Even when there is a formal coherence between domestic law and international human rights law, the policies and practices in a country may be contrary to human rights principles;

- Many poor countries do not have an effectively operating judicial system.

- Citizens may be unaware of their rights and indeed of their responsibilities as citizens, making it impossible for them to claim their rights and actively participate in democratic processes; and,

- Poor people are often deterred from approaching the formal the judiciary by the cost of engaging a lawyer, the lack of legal aid, the opportunity cost of time spent in court, their mistrust in the objectiveness of judgements due to corruption within the judiciary system and the lack of general education and skills level necessary to engage in a litigation process.

To address these challenges, a rights-based development effort needs to undertake *advocacy* and be prepared to provide technical assistance to ensure that a state's formal laws comply with the human rights regime. As discussed in the previous section, building the capacity of the justice and law sector and raising awareness of human rights among duty-bearers and rights-holders are of central importance.   An effective rights-based approach would thus include initiatives ranging from promoting the inclusion of civic education in national curricula, to providing targeted human rights training and supporting a free, independent and pluralistic media sector and anti-corruption programmes Most organisations cannot tackle all these issues, but the composite development effort can make headway in these areas.

A second set of challenges concern the cadre of development workers:

- The international development community has inadequate knowledge of the human rights regime; and,

- There is comparatively little experience of applying rights-based approaches and insufficient practical guidance available.

The fact that the majority of development practitioners have, at best, limited knowledge of the human rights and associated instruments [15] requires a systematic educational effort within the development community (United Nations, 2003). A rights-based approach to development is, however, still at a pioneering stage, which means that *practical guidelines will need to be elaborated* in step with the development, application and experience of the approach. In this respect sharing and documenting lessons learnt will be very valuable. To enhance its human rights proficiency at both the conceptual and practical levels, some organisations may adopt a strategy of introducing and developing a rights perspective in the short-term while gearing up for a full-fledged rights-based approach in the future.

A third set of challenges concern the limitations of the international human rights framework. The compliance with international law primarily relies on a state's own legal system, courts and other official bodies. When the legal system in a country is under-developed with regard to human rights and/or the governing regime violates the rights of its citizens, the international human rights system can play a role.[16] However;

- The international system for responding to violations of human rights is often accused of being ambiguous, sluggish and can be undermined by political agendas of UN member states; and,

- There is not yet an independent international judiciary to assist in enforcing all human rights in member states.

Although the international human rights framework may have shortcomings, so far it is arguably the best system we have for realising human rights.[17] In any case, using an internationally recognised legal regime as a basis for development co-operation is preferable to development efforts taking place without a legal foundation. Furthermore, it is not a static regime, but can and has developed in line with changes in international relations and the demands of international civil society. A high proportion of the most significant initiatives to draft new international instruments and to establish new procedures and machinery have come about as a result of concerted NGO campaigns designed to mobilise public opinion and lobby government support (Steiner & Alston, 2000). This suggests that the application of a *rights-based approach to poverty reduction* can potentially lead to an organic development of the international rights regime so that it better serves the world's poor and the development community that aims to assist it. As Philip Allott holds, there is cause for optimism:

- The idea of human rights having been thought, it cannot be un-thought. It will not be replaced, unless by some idea which contains and surpasses it.

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[15] Among the exceptions are those NGOs who have conceived of development as a popular movement for social justice and thereby concur with the political philosophy of human rights.

[16] The Americas, Europe and Africa each have regional arrangement for addressing human rights. In particular the European and Inter-American systems have innovative institutions and processes. See the relevant documents in *Basic Documents on Human Rights* edited by I. Brownlie (2002)

[17] In a similar vein, *democracy* is considered the best system of government we have managed to create, yet it is not without its problems.

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- There are tenacious individuals and non-statal organisations whose activity on behalf of human rights is not part of international relations but is part of a new process of international reality forming (Philip Allott, 1990).

4   Human Rights, Freedom and Poverty Reduction

The cost of providing shelter, education, health care and social services to the world's poor has been estimated at US$ 4.5 billion per annum. It is a massive sum, but roughly the same figure that the world spends on arms in just two weeks. The obscenity denies one-fifth of the world's population their fundamental right to survive and live in human dignity (Häusermann, 1992).

International development cooperation has not been able to reach the results aimed for. The persistence of deprivation and lack of very basic needs among the majority of the world's people has led to increased questioning of development policies and practices. There has been a growing recognition in the post-Cold War era that development and prosperity are closely linked with non-economic concerns that are considered to belong to the social and political realm. Amartya Sen has, for instance, shown that famine has never afflicted any country that is independent, goes to elections regularly, that has opposition parties to voice criticisms and has a free and independent media (Sen, 1999). Poverty has thus come to be redefined as being beyond the lack of material resources and including lack of power and choice. In the same vein, as argued by Sen, the quality of life and wellbeing should be measured not by people's wealth but by their freedom. Freedoms, or in other words human rights, are both the primary aim, as well as the principle means of development (Sen, 1999). Without the effective realisation of human rights it is hard to foresee any sustainable development.

As both a strategy and a tool, a rights-based approach to development is in a much better position to ensure that development efforts address the broad concepts of poverty and poverty reduction - lack of material resources, power, influence, choice and freedom. Moreover, it provides the poor with an internationally recognised legal basis for their free, active and meaningful participation in the development process. Rights-based development assistance furthermore has a considerably larger scope for preventing violent conflict, a phenomenon that has contributed to both deepening and widening poverty in several parts of the world.

The way human rights are being bandied about in the development rhetoric today can pose a threat to the approach. It is not uncommon that donor agencies today claim that all development assistance contributes to social and economic rights. Misuse of this kind contributes to watering down the human rights concepts leaving us with little more than a buzzword. As a consequence, the key elements that make the approach fundamentally different from the service-based approaches that have dominated development assistance for several decades need to be steadfastly safeguarded by the proponents of rights-based approaches.

The full implications of a global rights-based approach to development on the world order would be nothing short of a paradigm shift in the effort to reduce poverty. The consequences would, however, not be limited to countries of the South and the development community, but also affect the domestic arena of so-called developed countries. Furthermore, equality, participation, rule of law and accountability have implications for the relationship between the rich and poor countries. Both parts would be placed on equal footing and judged on the degree to

which they achieve or violate human rights. In our globalised world, corporations, civil society organisations and the multilateral systems would be expected to play their part in pursuing the realisation of human rights in line with equality, participation, rule of law and accountability. Poverty reduction is not only a question of combating the deprivation of material needs but as much a question of poor people's deprived rights and freedoms.

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