The Application of a Human Rights-based Approach to Development Programming

What is the Added Value?

1. Background

UNDP's Poverty Report 2000 "Overcoming Human Poverty" highlights effective governance as the 'missing-link' between national anti-poverty efforts and poverty reduction, and stresses the need to support communities to organise themselves to advance their interests.

> *" A major source of poverty is people's powerlessness - not just their distance from government"*

The Poverty Report goes on to state that "holding governments accountable to people is a bottom-line requirement for good governance, and that if officials are to be held accountable, people need to be organised, and well-informed". Thus, without mentioning human rights, the report identifies two key human rights concerns as major obstacles to poverty reduction: the lack of accountability on the part of authorities and the inability of people to claim their rights.

At the global UN conferences of the nineties, the realisation of human rights was stressed time and again as an essential part of the development process. As such, the purpose of the United Nations, as described in article 1, paragraph 3 of the UN Charter, "to ensure respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion", finally received the attention and recognition that the Charter gave it in 1945.

Following the World Conference on Human Rights, held in Vienna in 1993, and in response to the Secretary General's call for the integration of human rights into all areas of the United Nations System as part of the UN reform, UNDP adopted a specific policy on human rights: *Integrating Human Rights with Sustainable Human Development (1998).* In this policy document UNDP expressed its commitment to strengthen its support for all human rights - civil, cultural, economic, political, and social, in a holistic way, and to mainstream human rights into its work in support of sustainable human development. Three focus areas were identified for this endeavour:

1. To provide support for institutions of governance in its partner countries;
2. To develop a human rights approach to sustainable human development;

3. To contribute to human rights policy dialogue, UN Conference follow-up and national implementation of human rights treaties.

Thereafter, in support of the implementation of this policy UNDP, in cooperation with the Office of the High Commissioner for Human Rights, designed a programme for Human Rights Strengthening (HURIST). Its primary purposes are to test guidelines and methodologies to identify best practices and learning opportunities in the development of national capacity for the promotion and protection of human rights as well as in the application of a human rights approach to development programming.

But what does integrating human rights with Sustainable Human Development mean, and, in particular, what added-value does such an approach bring? Does the approach tackle issues and obstacles as identified by the Poverty Report 2000? This note attempts to respond to these questions.

2. The Human Rights Legal Framework

Human rights refer to those rights that are inherent to the person and belong equally to all human beings regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Within the UN framework they found their earliest codification in the 1948 Universal Declaration of Human Rights (UDHR), which recognised that human rights reflect the moral conscience of the world. Since then the international community has developed a comprehensive legal framework for the protection and promotion of human rights.

Examples of Human Rights:

Civil and Political Rights

- ✓ the right to life
- ✓ the right to liberty and security of person
- ✓ freedom of movement
- ✓ equality before the law
- ✓ independence of the judiciary
- ✓ the right to privacy
- ✓ freedom of thought, conscience and religion
- ✓ freedom of expression
- ✓ freedom of association
- ✓ the right to take part in the conduct of public affairs
- ✓ the right to vote and to be elected
- ✓ the right to freely determine political status

Economic, Social and Cultural Rights

- ✓ right to work, form trade unions, safe and healthy working conditions
- ✓ right to the highest attainable standard of physical and mental health
- ✓ right to education
- ✓ right to an adequate standard of living, including adequate food, housing and clothing
- ✓ right to take part in cultural life
- ✓ the right to freely pursue economic, social and cultural development

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Box 1

Following the UDHR, two legally binding treaties were drafted covering the whole range of human rights. These treaties, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, together with the UDHR, constitute the International Bill of Rights. Alongside these, conventions were drafted to protect the rights of certain vulnerable groups, such as women and children, and to address certain specific rights, such as the elimination of racial discrimination and the prohibition of torture. States become parties to these covenants and conventions by <u>voluntarily</u> accepting the obligation to implement the respective provisions of the treaties (box 2).

Going beyond treaties regarding specific rights, the United Nations also reaffirmed on numerous occasions the right to development as a human right, as captured in the 1986 UN Declaration on the Right to Development. It confirmed the human person as the central subject of development and the active participant and beneficiary of development. The 1986 UN General Assembly Declaration on the Right to Development links the normative standards of human rights law with developmental processes.

In scrutinising these core-conventions and declarations, in particular those that constitute the International Bill of Human Rights, a number of fundamental recurring principles can be derived. It is in these principles that guidance can be found for the application of a rights-based approach to development programming.

THE CORE UN HUMAN RIGHTS TREATIES
AS STANDARDS FOR HUMAN DEVELOPMENT

UNITED NATIONS CHARTER

UNIVERSAL DECLARATION OF

HUMAN RIGHTS

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)	**INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)**
+ 2 Optional Protocols - Individual Complaints - Death Penalty - Ratified by 144 States (Jan.2000)	- Ratified by 142 States (Jan. 2000)

International Convention on the Elimination of All Forms of Racial Discrimination	**Convention on the Elimination of All Forms of Discrimination against Women**	**Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**	**Convention on the Rights of the Child**
- Ratified by 155 States	- Ratified by 165 States	- Ratified by 118 States	- Ratified by 191 States

Box 2

3. **Fundamental Principles of the Rights-based Approach**

Universality/Non-Discrimination/Equality

Human rights are acquired at birth and belong equally to all human beings regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status. They apply to all people wherever they may be found. Inclusion is the fundamental consequence for development. The most vulnerable, marginalised and excluded should be prioritised in setting targets for national policies.

Indivisibility/Interdependence

Some rights cannot be classified as being more basic than others. All human rights are equally important and equally essential to the respect for the dignity and worth of every person. One cannot deal with one specific right in isolation without taking into consideration the whole range of related rights (For example, it does not make sense to speak about the right to life without regard for the right to food and to security of the person, and vice versa). Moreover, one right cannot be pursued to the detriment of others. However, indivisibility does not preclude priority setting in programming.

Accountability

Human rights do not simply define the needs of people , but also recognise people as active subjects and claim-holders, thus establishing the duties and obligations of those against whom a claim can be brought to ensure that needs are met. Therefore, the identification of duty-holders will have to become part and parcel of all assessments and analysis related to programming. In this regard, it is important to keep in mind that the State has the duty to respect, protect, promote and fulfil all human rights.

Participation

An essential principle of the international human rights framework is that every person and all peoples are entitled to participate in, contribute to, and enjoy civil, economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realised. This means that participation is not simply something desirable from the point of view of ownership and sustainability, but rather a right with profound consequences for the design and implementation of development activities. Thus, it is concerned also with access to decision making, and the exercise of power in general.

Rule of Law

Rights themselves must be protected by law. Disputes about them are not to be resolved through the exercise of some arbitrary discretion, but through adjudication by competent, impartial and independent processes, that will to ensure full equality and fairness to all the parties, and determine the questions in accordance with clear, specific and pre-existing laws, known and openly proclaimed. All persons are equal before the law, and are entitled to equal protection. Without a sound legal framework, without an independent and honest judiciary, economic and social development risks collapse. The rule of law ensures that no one is above the law, and that there will be no impunity for human rights violations.
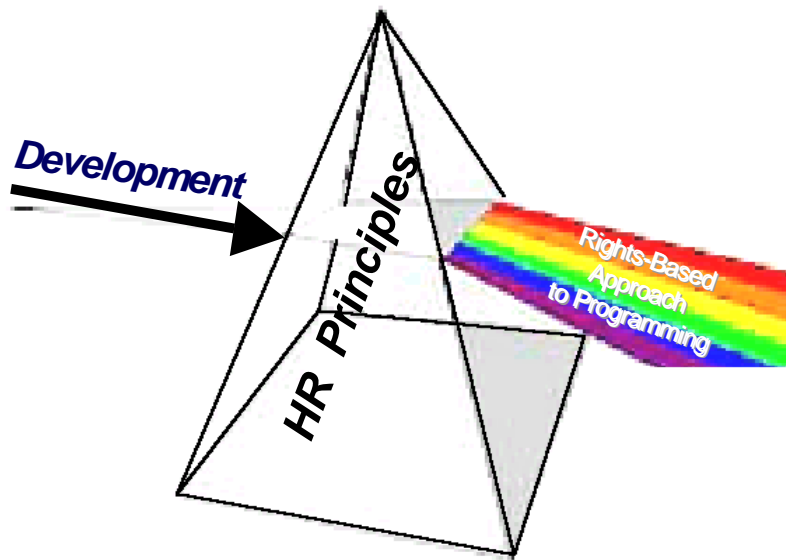
Progressive Realisation

Within the framework of human rights law, States have to undertake steps, individually and through international assistance and cooperation, to the maximum of their available resources, with a view to achieving progressively the full realisation of the rights recognised. Moreover, the World Conference on Human Rights (Vienna 1993) proclaimed that "a lack of development may not be invoked as a justification for the abridgement of internationally recognised human rights". This principle should be kept in mind during assessments, evaluations etc. In order to take the progressive realisation principle serious it is of the utmost importance to disaggregate all available data.

Human rights cannot easily be measured, the complexity of every context goes far beyond what can be captured in two digits. But without information, the realisation of rights cannot be assessed. Statistical indicators may not reveal the full answers, but they do equip people for analysing, understanding and debating the questions. Data disaggregated by gender, ethnicity, social origin, race, age, location, disability etc. highlights discrimination and vulnerability, undermining the view that no such problems exist. Moreover, data on state policies and spending allocations help answer whether earlier identified duties/obligations are met.

4. What is new in a human rights-based approach to development?

The integration of human rights with SHD would first of all require us to be mindful of the earlier described basic principles of human rights that have been universally recognised and which are embodied in the International Bill of Human Rights. None of the principles are new, but the holistic application of the principles will change our methods of working. It may not necessarily be a matter of changing **what** we do, but rather a question of **how** we do it.

Box 3 (Source UNICEF)

Through the systematic application of the human rights principles during all phases of programme development and implementation ways must be found to empower people to make decisions about issues that affect their lives, rather than treating them as passive objects of decisions made on their behalf by bureaucrats. That way recognition is given to the fact that all people are inherently holders of rights. At the same time, obstacles at governmental level which need to be tackled simultaneously if development efforts are to be successful will be identified. The integration of human rights through the application of the human rights principles will become the 'natural' bridge between, for example, institution-building programmes and participatory community development. This is particularly relevant at local government level in relation to basic social services delivery.

Moreover, the systematic application of the principles will guide us in our programming by focussing on the most marginalised and excluded in society, i.e. on those whose human rights are most widely denied or left unfulfilled (whether in the social, economic, political, civil or cultural spheres, and often, in practice, a combination of these).

5. **What is the value-added of integrating human rights with SHD ?**

Despite the fact that human rights are the birthright of all human beings, they have too often been relegated to mere social aspirations. It is important to note that human rights are given the force of international law, give rise to entitlements, and increasingly carry greater weight in international and national policy dialogue. They retain their legal character even when some of these rights are not yet legislated or judicially enforceable. This is one fundamental element of the rights approach that adds value and strengthens human development efforts. Thus, the legally binding obligations voluntarily accepted by States, strengthen the basic tenets of SHD, such as empowerment, equity and sustainability because these are backed by the force of law arising from States obligations.

A human rights-based approach not only defines and identifies the subjects of development but it also translates people's needs into rights, and recognises the human person as the active subject and claim-holder. It further identifies the duties and obligations of those, against whom a claim can be brought, to ensure that needs are met. Thus, the concept of claim-holders and duty-bearers introduces another important element of the rights approach namely, accountability, which in current development strategies is not adequately addressed. Increased focus on promoting accountability, using the human rights obligations as the vehicle, holds the key to improved effectiveness and transparency of action and as such offers the potential "added-value" flowing from the application of a rights-based approach. Accountability derives from the duties and obligations of States that are required to take steps, for example, through legislation, policies and programmes, that aim to respect, protect, promote and fulfil the human rights of all people within their jurisdiction. It should be underscored that this does not imply conditionalities but rather encourages action through cooperation and constructive dialogue in the development process.

The human rights approach, therefore, provides both a vision of what development should strive to achieve and a set of tools and essential references. In using the principles and standards as development tools and references the following immediate benefits of the application of a rights-based approach can be derived:

> ✓ The systematic application of human rights principles and standards to all our programmes will lead to better analysed and more focused

strategic interventions (indivisibility/interdependence, progressive realisation, accountability).

✓ Programmes will furthermore benefit from <u>enhanced ownership</u> by the people concerned in the process and outcome of development (participation as a right), whilst stronger <u>partnerships</u> with actors in civil society will naturally be forged.

✓ <u>Democratic processes</u>, at both central and local levels, <u>will be strengthened</u>, and are likely to become <u>more sustainable</u>, through the emphasis on accountability in decision-making and participation.

✓ By using the human rights legal framework as a guiding reference for the analysis and development of programmes, UNDP's <u>result-based</u> programming system will be strengthened and the process of <u>identifying benchmarks and indicators</u> will be greatly facilitated.

Conclusion

The current poverty discourse stresses the need to integrate governance issues into poverty reduction strategies because more attention needs to be paid to accountability, transparency, empowerment and participation of people in poverty programmes. The human rights framework will in this respect be of invaluable assistance. It provides the normative foundation for tackling fundamental issues related to SHD, and can play a catalytic role in bringing together governmental/institution building programmes and community-support programmes in order to tackle poverty in a comprehensive and holistic way. The emphasis on the moral and legal character of human rights, and on the obligations and duties of States will furthermore promote accountability, transparency, empowerment and participation.

By informing all stakeholders on the (human rights) ground rules for development, "participation, accountability and empowerment" will become the logical modality for future development efforts. In this way the rights-based approach becomes a programming tool at the same time that it articulates a vision for human centred development.