

## Human Rights Based Approach

### I. Introduction

[1] The Human Rights Based Approach (HRBA) emerged in the 1990s at the intersection of two fields, which both started in the period following World War II: development and international human rights. Since 1945, both clearly constitute fields of international concern and they have – separately – grown in relevance over time. Early discussions on the connection between human rights and development in the 1970s led, *inter alia*, to the adoption of the UN Declaration of the Right to Development in 1986 (→ Development, Right to), which constituted a first milestone for seeing human rights both as the goal and basis of development. The 1989 UN → Convention on the Rights of the Child (CRC) and the → Vienna Declaration and Programme of Action 1993, which reaffirmed the right to development as well as stressed the interrelatedness and interdependence of all human rights – further strengthened the growing intersection between the two areas. Kofi Annan’s → United Nations (UN) reform plan of 1997, calling for the integration of human rights into all UN activities (‘Mainstreaming’), was another milestone. Furthermore, the normative claims of mutual dependence of these two fields found sound empirical backing in economic and social sciences. Amartya Sen, who had contributed to the UN Development Programme’s (UNDP) human development reports and other authors demonstrated that development problems were essentially conditioned by cultural, economic and political structures and dynamics and that freedoms (and human rights) were both of intrinsic value for (individual and societal) development and instrumentally useful for development processes.

[2] Against this background, the HRBA to development constitutes one approach among others towards bringing development and human rights discourses together. The HRBA aims at finding practical ways to operationalize human rights in programming, projects and strategy design in a development setting. It constitutes a conceptual and methodological framework for the process of realizing human rights in development. The HRBA has increasingly found acceptance in UN agencies, major → non-governmental organizations (NGOs) as well as bilateral and multilateral agencies active in the field of development. Nowadays, it is firmly established as the most

influential approach to human rights in → development cooperation.

[3] A more recent phenomenon is the expansion of the HRBA beyond classical ‘development’. It has moved into areas as diverse as → climate change, social work, police reform, city development, human rights implementation in countries of the Global North. The universally applicable ‘United Nations Sustainable Development Goals Cooperation Framework’ of 2019 explicitly lists the HRBA as a guiding principle for → sustainable development in the world (→ Sustainable Development Goals (SDGs)).

## II. The conceptual basis of the human rights based approach

[4] A helpful starting point for grasping the concept of a HRBA is the so-called ‘Stamford Common Understanding’ (SCU), which was adopted by the major UN agencies active in the field of development cooperation in 2003 (OHCHR [2006] at 35). Its full title reads: ‘*The human rights based approach to development cooperation: towards a common understanding among the United Nations agencies*’. The Stamford Understanding and the → Office of the High Commissioner for Human Rights (OHCHR) *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (OHCHR [2006]) provide useful guidance regarding the conceptual basis of a HRBA. OHCHR’s definition of a human rights based approach is widely quoted:

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.

(OHCHR [2006] at 15)

This clearly echoes Article 28 of the → Universal Declaration of Human Rights (UDHR): ‘Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.’

[5] The SCU puts forth three strategic pillars: 1. Human rights are the goal of all development. 2. Human rights frame and guide all development policies, programs, projects and interventions. 3. Rights-holders and duty-bearers need capacity building and empowerment. As a consequence,

human rights should be integrated in and 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’ (OHCHR [2006] at 36).

### Stamford Common Understanding 2003

1. All programmes of development co-operation, policies and technical assistance should further the realisation 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/or of ‘rights-holders’ to claim their rights.

[6] The normative essence of the HRBA finds expression in a set of operational principles. They are commonly abbreviated as PANEL: Participation, Accountability, Non-discrimination, Empowerment and Link to human rights standards. These principles serve to reduce the complex, complicated and vast field of human rights law so that it can be concretely applied in an operational setting in a sound way. At the same time, the PANEL principles constitute a bridge to development practice where some of them are in long use. This overlap facilitates the professional application of human rights in the development field, potentially creating win-win situations. Human rights strengthen existing principles and bring new perspectives to their application. Properly integrated in practical and process knowledge of development practice, the PANEL principles can help to better understand and effectively shape processes for the concrete application of human rights norms.

[7] *Empowerment*: The HRBA is firmly grounded in the empowering basic premise of human rights: the equal dignity of all human beings. When → human dignity is taken seriously in practice, it alters relationships and strengthens positive self-identification. Empirical evidence for this comes from the studies of conflict transformation and psychotherapy. Such a transformative concept of dignity lies at the heart of the HRBA. Relationships of charity that traditionally characterize development efforts are at odds with the self-understanding of humans as being endowed with equal dignity.

Instead, the HRBA establishes a clear and well-structured rights-obligations relationship that helps equalize human relations. When people become truly aware of their dignity and rights as well as of the accompanying responsibilities, they gain in strength and feel empowered. There is plenty of evidence of empowerment effects in HRBA practice, for example, when a training participant in a workshop describes it as creating 'a paradigm shift, so that people stop perceiving others as recipients of services, but as rights holders who have a say in what they are provided' (Okille [2005] at 104).

[8] *Participation*: Participation has a long history in the development discourse, reaching back to the 1970s. Practice has grown immensely and useful tools for adequate stakeholder participation and management have been developed, partly inspired by the field of business. The HRBA adds to this a crucial dimension: participation is a human right of rights-holders, with corresponding obligations. It is partly specifically guaranteed ('take part in public affairs', 'vote' (→ Elections and Government, Right to Participate in)) and partly deduced from other human rights, such as → freedom of opinion and expression, → freedom of assembly and → freedom of association. This rights perspective has the potential of creating the necessary conditions for better and more inclusive participation, with a special focus on persons and/or groups in a situation of vulnerability.

[9] *Accountability*: → Good governance, often narrowly construed, has been a strong component of development discourse since the 1980s. Good governance is intrinsically linked to the → rule of law, which is also an essential aspect of human rights. The clear orientation that human rights standards provide in the area of the rule of law, as well as innovative approaches towards ensuring accountability, are clear assets that the HRBA can bring to development.

[10] *Non-discrimination*: A focus on gender discrimination is firmly established in development practice and → poverty reduction strategies have focused on marginalized people (see the motto of the SDGs 'Leave no one behind'). A HRBA adds much to this: non-discrimination forms a central pillar of human rights and is a right in itself (→ Discrimination, Prohibition of). Human rights law provides a useful legal definition of equality as well as sound analytical tools for analysing cases and patterns of discrimination. This is supplemented by rich human rights experience in steering processes of structural change, including at the level of attitude.

[11] *Link to human rights*: While the other principles overlap with development practice, this

principle is (relatively) new to development work, with all the accompanying difficulties. A major challenge consists in how to reduce the complexity of international human rights law and to avoid rigid legalistic approaches (see section IV on challenges below). Operationally relevant key human rights legal knowledge includes: First, a firm grasp of the concepts of rights and corresponding obligations (triad of obligations, the → Respect – Protect – Fulfil framework). This also allows for proper identification of rights-holders and duty-bearers. Second, the essential elements or normative content of rights. For example, the four A's framework for understanding economic, social and cultural rights (Availability, Accessibility, Acceptability and Adaptability of education, health, housing etc.) has been widely adopted in HRBA guides and training manuals. The four A's framework is a good example of successful adaptation of legal knowledge to operational needs. Third, legal analytical tools for assessing whether certain situations/events fall short of human rights standards, including a clear analysis of discrimination and discriminatory patterns. This is the methodological basis of all concrete human rights based assessments and strategic action.

### III. Human rights based approaches – the evolving practice

[12] The HRBA started to materialize in the early 1990s, with a shifting of development concepts. The launching of the first UNDP Human Development Report in 1990, based among others on the pioneering work of the Pakistani economist Mahbub ul Haq and the Indian economist Amartya Sen, broadened the look at development beyond the economic aspects. Conceiving 'Development as Freedom', the report showed the twofold importance of freedoms and human rights to development. They have intrinsic value for development (individual and societal) and they are instrumentally useful for development processes. In response to Annan's call for the mainstreaming of human rights in UN activities, an increasing number of UN agencies adopted a HRBA. Particularly relevant in this context are UNDP and UNICEF, with the latter adopting the CRC as the basis of work already before. Furthermore, important NGOs, such as Oxfam, Save the Children, Care International and ActionAid, had begun implementing a HRBA. Bilateral development agencies, such as the UK Department of International Development and the Swedish International Development Agency, followed and multilateral agencies, such as the → Organisation of Economic Co-operation and

Development (OECD), joined in. Out of the first and diverse experiences in operationalization of a HRBA, an urgent need for a common understanding among UN agencies arose, which eventually led to the Stamford Common Understanding. It achieved two things: First, it clarified the core concepts, elements and principles of a HRBA; and second, it outlined a methodological framework for steering development processes in line with human rights. The OHCHR's Frequently Asked Questions (2006) helped concretize the approach and address relevant questions of a conceptual and practical nature. This was accompanied by academic analysis of and reflection on the HRBA, including on emerging practice (Gready and Ensor [2005]).

[13] Since then, an increasing number of inter-governmental actors, bilateral agencies and NGOs have engaged in practical reflection on the adequacy of the HRBA and its practical application. Academic research – which has become more empirical, operational and practical – has accompanied this process. Evaluations of HRBAs in the policies of relevant actors, including UNICEF, ActionAid and bilateral agencies have been carried out. Some new features of this phase include: First, the important question of measuring human rights performance has been given more thorough attention. Second, there is progress in merging human rights language and process-related development language, with OHCHR's work on 'Human Rights Indicators' (2012) leading the way (→ Human Rights Indicators). Third, the basic assumptions about effecting change and impact have come under scrutiny, using theory-of-change models. Such models ask for the explicit and implicit assumptions which underlie strategies and actions for achieving a desired outcome, both in the field of human rights and development practice. This analysis helps to refine strategies, policies and activities with a view to maximizing impact. Fourth, integration of a HRBA needs adjustment of an organization's external strategies, policies and operational activities (outward-looking). Finally, HRBA organizations also need internal organizational change in order to adjust to the rights-based focus (inward-looking) (see Gready and Vandenhole [2014]; special issue of *Nordic Journal of Human Rights* [2014]; special issue of the *International Journal of Human Rights* [2019]).

[14] Furthermore, as mentioned, the HRBA approach has expanded into areas beyond the classical fields of 'development' and 'development cooperation'. It has been used in global, national and local contexts, in a variety of policy fields, such as: education, the conservation of nature; health

(including maternal health, public health HIV/AIDS and lesbian and bisexual women's health); climate change; world heritage site management; fisheries and local water governance; disarmament, demobilization and reintegration; migration; food security; social work; police reform. Beyond the world of development cooperation, new stakeholders have adopted such an approach: human rights cities (City of York in the UK) (→ Local and Regional Governments and Human Rights Cities), → national human rights institutions (NHRIs) (such as the Scottish Human Rights Commission) as well as actors in a local and national context in middle-income countries and in the Global North.

[15] The HRBA has also made progress in entering broader discussions of defining and implementing international development goals. The → Millennium Development Goals (MDGs) of 2001 and human rights were seen as 'ships passing in the night' in 2005. The evolving practice of MDGs' implementation and academic critique of the disconnection contributed to the clarification of conceptual and practical links, clearly showing the potentials for mutual benefit and win-win situations. Although the language of human rights was not explicitly used in the drafting process of the 2015 UN Sustainable Development Goals, the SDGs are clearly anchored in human rights, and the HRBA figures prominently in the universally applicable 'United Nations Sustainable Development Goals Cooperation Framework' of 2019. The 'Cooperation Framework' explicitly mentions the HRBA as one of the guiding principles of sustainable development. One can safely conclude that the HRBA has entered the discussion of how to implement sustainable development in all countries of the world.

#### **IV. Current discussions around the HRBA – added value, shortcomings, questions**

[16] The growing relevance of HRBA has been accompanied by increasing academic research to test the feasibility and desirability of a HRBA as well as to identify concrete measures to strengthen its practical application. This thorough reflection process includes practitioners from the human rights and the development field as well as academics. While a HRBA's added value seems to be increasingly visible, a number of challenges and open questions need thorough attention.

[17] The added value of a HRBA can be seen in connection with the PANEL principles. Firstly, empowerment has the real potential of transforming relationships on the basis of equal dignity

through an everyday awareness of rights and obligations. The HRBA leads out of charity thinking ('the charity trap') which is still widespread in development practice. Secondly, human rights law, adequately conceived, constitutes a strong and plausible normative frame and provides helpful analytical structures and processes for analysing concrete situations ('the normative human rights lens'). Thirdly, the human rights-based vulnerability perspective immensely sharpens the focus on situations, structures and systems that produce vulnerability and exclusion. Fourthly, human rights can strengthen and enrich accountability (structures, procedures, processes). Dignity and rights awareness adds helpful analytical tools for demanding responsibility. Fifthly, rights awareness also transforms participation, making it more inclusive and meaningful and providing for innovative communication. Finally, the interdisciplinary dialogue has the potential of opening the door to a broader look at the manifold cultural, social, economic and legal dynamics, processes and structures which shape development. This can lead to an 'integrated programming approach' (SDG Cooperation Framework) which merits its name.

[18] Obstacles and challenges regarding the implementation of the HRBA abound. They are located at different levels: the conceptual frame, the policy level, practical application. The following is only a short enumeration and introduction, doing only limited justice to the richness of the discussion.

[19] The conceptual frame: The HRBA has been seen as: 1. too narrowly understood, 2. not to cover all uses of human rights in development, 3. partly loathed by development/human rights practitioners. Proposals have been made for replacing it with a broader concept such as a HRFA (human rights-framed approach) or a HRRA (human rights referenced approach) (Miller and Redhead [2019]). The substantive issues of this critique – lack of conceptual clarity, type of use of human rights language, definitional power questions etc. – are very pertinent and need to be discussed. Whether new terminology is needed is another question. As outlined above, the evolution of a HRBA suggests that it is flexible enough to accommodate relevant and valuable concerns.

[20] Difficulties of cross-disciplinary communication: This is an area of great relevance as the HRBA ties together two different logics; the legally based human rights on the one hand, and social and economic science based development logic, on the other hand. This cross-disciplinary/interdisciplinary dialogue is not yet well devel-

oped. It would require reducing complexities on both sides and co-creative learning. Human rights practitioners need to reduce the detailed web of human rights norms and standards, so as to make it accessible to non-lawyers, they must learn to think in processes and structures/systems instead of focusing on human rights violations and the naming and shaming of perpetrators. Conversely, development practitioners probably need to simplify their approaches and tools in order to enhance practical usability by non-specialists. They must also be prepared to explicitly engage in normative discussions in an open-minded way and acquire adequate human rights knowledge.

[21] Role of law in development and of advocacy in implementing a HRBA: The specific role that law plays in development is an object of academic debate, in particular related to the use and possible misuse of the law by those in power. But even sceptics see human rights law as a potentially useful tool of change, in particular in the context of strategic litigation. Using the law and litigation belongs to the broader field of advocacy activities of organizations (→ Public Interest Litigation). Advocacy (understood as targeted legal, political and public measures to achieve compliance) belongs to the long proven strategies of human rights practice. This constitutes a key strategic challenge in a development context and requires careful balancing of the different interests involved: How to act as forcefully as possible as a catalyst for better human rights protection and accountability while maintaining constructive working relations with authorities? In practice, dealing pragmatically with this challenge has led to 'light versions' of HRBAs (Broberg and Sano [2017]). Human rights are a moral, political and legal language that often makes counterparts (as duty-bearers) react in a defensive mode. Understandably so: human suffering is real, human rights purport to address it and this questions the use of power. Given this difficulty, strategic reflection on adequate language and ways for engaging with counterparts in this highly sensitive area is key. Rigid and legalistic use of human rights might even have counterproductive results.

[22] Prioritization: While prioritization among different human rights is not foreseen, it is essential for any practical work. Establishing criteria and developing sound prioritization processes are therefore crucial, despite intuitional scepticism of human rights practitioners. Human rights law offers some guidance, among others, by introducing a strong non-discrimination perspective, by helping to define 'minimum essential levels' with

regard to economic, social and cultural rights (→ Core Obligations and Progressive Realization), and by providing tools for balancing out the different interests and rights that are involved in concrete situations.

[23] Knowledge management and training: This constitutes a very practical and formidable challenge. More and more manuals by → international organizations and NGOs provide helpful orientation and guidance for practical application. Still, there seems to be much room for improvement. How to present human rights norms in a way that non-experts can easily grasp and apply them? How to present the insights and tools of social and other sciences in a way that others can use them in specific situations?

[24] Reflection on how change works: Research (Gready and Vandenhole [2014]) has highlighted the lack of and need for proper inclusion of reflection, including self-reflection, as part of organizational practice in development cooperation and human rights work. What are (implicit) theories/assumptions/hypotheses on how change can be brought about? What is the very role of development actors in this change process? This ties in with practice in other areas, in particular in the field of business, where appropriate (self-)reflection is increasingly seen as an important tool for strategizing and organizational development. It broadens the look and also allows to correct mistakes as inescapable parts of the process.

[25] Other points of discussion include: Where are the conceptual and practical limits of a HRBA? How can the quantitative and qualitative measurement/research of human rights performance be improved? How can it be ensured that actions to integrate human rights into the social, political and judicial domains do not produce negative or adverse outcomes contrary to their very purpose? ('unintended consequences') (Broberg and Sano [2017]).

## V. Conclusions

[26] The HRBA is gradually turning into a mature conceptual and methodological framework for operationalizing human rights in development practice. It has the potential to become a useful umbrella concept for applying human rights more generally and mainstreaming human rights in other policy fields. It has all the major ingredients for successfully steering societal development in line with human rights. Its expansion into new and highly relevant areas is promising. Obviously, implementation is a different question and a lot of

conceptual and practical challenges remain which need more thorough and systematic analysis. A HRBA will lastly be judged according to the following criteria of success: whether it is able to contribute to visible improvements in human rights implementation and whether it can make development interventions more inclusive, effective and sustainable.

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