

Perspectives on Development Co-operation

The Human Rights Approach to Development – Issues and Challenges

■ Patrick Earle

This article discusses the human rights approach to development and examines its evolution over time. In addition to looking at the conceptual underpinnings of this approach the paper outlines and examines some of its practical applications. It identifies some benefits from adopting such an approach while at the same time highlighting various challenges facing development actors, including bilateral donors, multilateral agencies and NGOs, in making it operational in their policies and programmes.

“Count up the results of fifty years of human rights mechanisms, 30 years of multi-billion dollar development programs and endless high-level rhetoric and the general impact is quite underwhelming... this is a failure of implementation on a scale that shames us all”.¹

It is hard to contest the above assessment by the UN High Commissioner for Human Rights, Mary Robinson on the 50th Anniversary of the Universal Declaration of Human Rights (UDHR) in 1998. A new Millennium has since dawned over a world where peace and security are undermined by the justice

denied to the world's poor, by widening divides between powerful and powerless and rich and poor in societies all over the world.

The failure we are witnessing is shameful but it is hardly surprising. Human rights and development have until recently progressed along different paths. Rhetoric on human rights has not been followed by a reallocation of resources to the poor and marginalised. Instead, for most of the past fifty years there has been little attempt to match development policies and programmes at the national and international level with human rights commitments.

Nowhere has this had more tragic consequences than in Rwanda, where decades of development assistance largely failed to address issues of discrimination, exclusion, intolerance and inequality that culminated in the genocide of 1994. International human rights organisations and the UN human rights machinery did not press the need for the development process to address these issues and relied on letter-writing and diplomatic dialogue to pursue concerns in the years before this eventual human catastrophe. Progress from decades of development funding was buried with the victims of the genocide.

Rwanda is an extreme case. Few would today question that political and economic exclusion, poverty and discrimination, inequality and instability are inter-related challenges. Within the development community there is recognition that traditional development policies which ignored sensitive political questions of participation, accountability and equity have had, at best, limited impact on patterns of poverty. There is also growing recognition within the human rights movement of the need to tackle the underlying and structural causes of violations of civil and political rights and to prioritise economic, social and cultural rights.

The human rights approach to development has grown out of this mutual recognition. In doing so it holds out the hope that we can learn from the past and prevent future human rights catastrophes – and that by observing human rights agreements we can enhance the sustainability of global efforts to overcome poverty, discrimination and intolerance. It seeks to end the divide between approaches to development and human rights which grew throughout the Cold War and to focus international resources on the shared global commitment to realise all human rights for all.²

The human rights approach to development assistance

The human rights approach to development assistance acknowledges that human rights agreements adopted by UN member states provide an existing and comprehensive framework for international development cooperation. It gives equal emphasis to economic, political, social, civil and cultural rights. These rights are set out in the UDHR together with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which form the International Bill of Rights.³

The UN Committee on Economic, Social and Cultural Rights in its General Comment 14 notes that “it is particularly incumbent on States Parties and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enable developing countries to fulfil their core and other obligations”.⁴

Human rights agreements articulate the rights of individuals and impose responsibilities on governments. They emphasise the right of people to participate in decisions that affect them and they outline the minimum conditions for living lives of dignity, providing practical guidance for the analysis of development challenges, for the setting of development objectives and for the design and delivery of development programmes.

The human rights approach to development assistance therefore requires an analysis of human rights in their national context in order to identify development priorities. It needs development objectives to be formulated in terms of human rights. It also demands participatory processes of development planning and implementation that respect and promote human rights, agreement by stakeholders on measurable human rights outcomes and progress indicators and that development outcomes are evaluated on the basis of human rights and participation criteria.

By basing the development dialogue with partners and stakeholders within the human rights framework and on the shared international obligation to realise human rights it is possible to move away from the arbitrariness of current definitions of governance, to build mechanisms of mutual accountability into existing rhetoric on partnership and participation, and to bring

issues of discrimination and equity into the focus on poverty.

The human rights approach brings a different perspective to issues that are the existing focus of aid programmes. "A rights perspective means incorporating the empowerment of poor people into our approach to tackling poverty... it means ensuring that poor people's voices are heard...recognising that equality matters...making sure that citizens can hold governments to account for their human rights obligations."⁵ Adopting such an approach means that a sectoral programme on education for example would be guided by the content of the right to education.⁶ It would give priority to ensuring the entitlement of all children to free, primary education. The state (with international assistance) must fulfill this obligation by giving it priority over other education spending if resources are scarce and by removing barriers of economic disadvantage that deny some children access to education. It must respect and protect the child's right to education by ending gender and other forms of discrimination. It would also look at the rights of children and teachers within the education system and at the participation of communities in designing and administering the education system. To give a different example: aid agency support of national human rights institutions⁷ would not only look at how such institutions monitor and investigate violations of civil and political rights but at how they monitor and promote economic, social and cultural rights.

The human rights approach applies the principles of the universality, indivisibility and interdependence of human rights to development practice. The universality of human rights acknowledges that human rights belong to all of us equally by virtue of our common humanity. It follows from this that particular priority needs to be focussed on those currently denied their rights – whether because they have no secure access to work, food, education or health or because they are subject to arbitrary detention, ill-treatment, intimidation or denial of freedom of association. Thus the approach requires undertaking analyses using disaggregated data to identify those who are most vulnerable and marginalised. The indivisibility and interdependence of human rights means that people cannot be asked to give up some rights to gain others and reflects the reality that people must have the right to speak freely, to come together and to challenge decisions if they are to identify how they wish to develop as individuals, as a community and as a society.

Meaningful participation becomes the expression of these human rights principles in development processes and practice.

This requires that development agencies and national governments take steps to facilitate informed civil society participation in development processes from initial analyses through to monitoring and evaluation. These steps include actively providing civil society with relevant information on agencies' own policies and priorities, informing people of their human rights and of the obligations of government, considering the personal security, financial or other costs of participation by vulnerable groups as well as cultural and other impediments to participation.

The human rights approach entails underwriting participatory processes with accountability⁸ mechanisms which are open, accessible and independent. It is only through such mechanisms that participants can have confidence to effect change. Such mechanisms should enable development decisions to be challenged, reviewed and if necessary for redress to be sought.⁹

In emphasising that the realisation of human rights is a shared international obligation, the human rights approach places development partnerships on a more equal footing and calls for mutual accountability on the part of donors and recipients in achieving human rights outcomes.¹⁰ For the donor country it means acceptance that its policies, programmes and projects can be assessed against their contribution to fulfilling international human rights standards. For the recipient government it means acceptance of its obligations to the rights of the people it governs.

The human rights approach also calls for donors to make greater reference to the work of the UN's human rights treaty monitoring bodies such as the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee Against Torture as well as the work of UN special rapporteurs and independent experts. Under most human rights treaties, governments commit to report regularly to the treaty bodies on their performance. This reporting process provides a forum for a positive dialogue on human rights, identifies issues and produces information which is very relevant to development programming on human rights. These UN monitoring mechanisms are chronically under-funded, but they are independent, have specialist expertise and a formal authority that has been accepted by states.

Simply by extending the dialogue on human rights beyond the confines of diplomatic exchanges into the discussion of decentralisation, poverty reduction, education and health the human rights approach can help to legitimise claims to rights and

to make officials more responsive to such claims. Using the development dialogue to inform people of their rights helps to fulfill the potential of the development processes to nurture a vibrant civil society that is able to claim and defend its human rights in the longer term.

Economic, social and cultural rights and development

It is now widely accepted that states have specific obligations to respect, protect and fulfill human rights.¹¹ The obligation to respect requires that the state and its agents do not violate the rights of individuals or tolerate discrimination in law, policy or practice. The obligation to protect rights obliges the state to prevent the violation of rights by other individuals or non-state actors, including for example, corporations. Where violations do occur the state must guarantee access to legal remedies. The obligation to fulfill involves issues of public expenditure, governmental regulation of the economy and the provision of basic services, related infrastructure and redistributive measures.

Although economic, social and cultural rights were largely neglected by the human rights movement during the Cold War and became largely disconnected from considerations of development policy and practice, there is now a rich and growing literature and jurisprudence on these rights. This literature elaborates on the content and meaning of economic, social and cultural rights, covering both domestic and international obligations of State Parties, exploring what constitutes violations of these rights¹² and how they are justiciable¹³ at national, regional and international levels. The International Committee on Economic, Social and Cultural Rights, the body of independent experts established to monitor state performance,¹⁴ is responsible for much of this work of elaboration and clarification and carries particular authority. In recent years this Committee has issued a series of General Comments to elaborate on the understanding of particular issues and particular rights – including the right to health, the right to education and the right to food.

The Committee's General Comments on the right to housing, food, education and health give much emphasis to the core

content, or the state's minimum obligations, in relation to each right. For example General Comment 14 on the right to the highest achievable standard of health includes the following core obligations: "To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; to provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs; to ensure equitable distribution of all health facilities, goods and services; to adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population... [this] shall give particular attention to all vulnerable or marginalized groups." The General Comments and other expert opinion on the meaning of economic, social and cultural rights consistently emphasise issues of non-discrimination,¹⁵ equity, access, participation and accountability. Reference to these General Comments and to other guidelines and information on the content of specific rights can therefore offer practical guidance for the design and implementation of development programmes.

The Covenant on Economic, Social and Cultural Rights imposes on governments the obligation to "progressively realise" these human rights to the "maximum of available resources." Progressive realisation acknowledges the reality of differing national starting points in terms of how, for example, the rights to health, education and an adequate standard of living are currently experienced but requires the state to take some immediate action and to make measurable progress toward full realisation of the right in question. Regression in people's experience of their rights, for example through the introduction of user fees for health or education is likely to be viewed as a violation of the particular right.¹⁶ Similarly the obligation to use "maximum available resources" recognises that fulfilment of rights is a matter of both will and resources. In determining violations the Committee has made it clear that it will assess both budgetary priorities and whether international assistance has been called on and allocated.

Without explicit reference to human rights in their analyses, objectives and indicators of progress it can be difficult to assess the contribution of macro or sectoral reform policies or development programmes to the realisation of human rights or the capacity of the state to fulfil its human rights obligations. Without such explicit reference it is unlikely that development programmes are fulfilling their full potential to promote and realise all human rights.

Human rights in official development policy

Recent years have seen considerable changes to official development policy among many bilateral and multilateral development agencies. For most, poverty reduction has become the overarching framework or priority goal. Although there has been a welcome move away from a narrow measurement of poverty there remains no accepted international definition of poverty. Instead “the term is usually understood more broadly as the lack of basic capabilities to live in dignity. This definition recognizes poverty’s broader features, such as hunger, poor education, discrimination, vulnerability and social exclusion. The Committee on Economic Social and Cultural Rights notes that this understanding of poverty corresponds with numerous provisions of the Covenant... The Committee points out that the human rights dimensions of poverty eradication policies rarely receive the attention they deserve. This neglect is especially regrettable because a human rights approach to poverty can reinforce anti-poverty strategies and make them more effective”.¹⁷ Through providing a clear definition of different aspects of poverty, including lack of power, human rights standards can make anti-poverty strategies more measurable and therefore transparent.

Similarly while donors are giving increasing emphasis to governance issues and to participation, there are no internationally agreed standards or definitions for either. Both are subject to arbitrary and selective interpretation, principally by those involved with providing the aid. As with the focus on poverty, clearer reference to specific human rights in discussions of governance and participation could bring both greater clarity and greater accountability for outcomes.

Within official development policies the promotion of human rights has also taken on greater prominence. For many donors this emphasis on human rights has meant new programmes and projects focusing on civil and political rights including human rights training of police, judicial reform, funding the establishment of national human rights institutions, support for electoral processes and discrete funding to human rights NGOs. Fewer agencies have taken on the challenge of exploring how reference to human rights and to economic, social and cultural rights in particular might enhance their focus on poverty and

how a rights perspective might impact on core programme areas such as health, education, agriculture and public sector reform.

In the lead-up to the recent World Conference Against Racism, Minority Rights Group International hosted an international workshop "Tackling poverty and discrimination: mainstreaming minority rights in development assistance".¹⁸ This forum came up with a list of recommendations aimed at development agencies. They included the need to ensure that land tenure and land use policies are in conformity with international standards, to look at regulation standards applied to corporations in the North and South, to gather and apply disaggregated data for minority and indigenous peoples and to improve the availability of information on (and to) indigenous and minority peoples including translating materials into accessible languages.

Some bilateral agencies have explicitly adopted the human rights approach. In November 2000, the UK's Department for International Development (DFID) published *Realising the Human Rights of Poor People*. This outlines the relevance of the human rights approach to international development targets and places a heavy emphasis on the potential of the approach to highlight and advance issues of participation and accountability. The official Swedish agency, Sida, has perhaps gone further than other agencies in articulating a human rights based approach to development programming. It has done so in its overarching policy statements, as well as in policies on programming for children's rights and in the education sector.

At a multilateral level the UN has been at the forefront of efforts to integrate the standards negotiated under its auspices into its work. UN Secretary General, Kofi Annan, has emphasised the centrality of human rights to the UN's mission. UNICEF has played a leadership role among UN agencies in this regard by adopting the Convention on the Rights of the Child (CRC) as its guiding document, while in 1998 the UN Development Program (UNDP) adopted a policy on integrating human rights into its policy on sustainable human development.

Within other multilateral bodies such as the international financial institutions (IFIs) and the OECD Development Assistance Committee (DAC) it is harder to find any substantive consideration of human rights in development policy and practice. There is no dedicated forum within the DAC to discuss these issues. Nor have efforts been made to integrate human rights into existing networks focusing on poverty, governance or, perhaps most surprisingly, on conflict prevention and resolution.

Within the World Bank it is a similar story. The Bank has traditionally been resistant to external calls to consider human rights. It points to its Articles of Agreement that preclude political considerations. In response to widespread criticisms of the impact of certain major Bank-funded projects and Bank-promoted policies, it has recently made substantial efforts to woo its critics and to persuade them that the poacher has turned gamekeeper with a new focus on poverty and participation. It talks the language of empowerment and has established both environmental safeguard policies¹⁹ and an independent inspection panel which bring a measure of accountability to its interventions. The new emphasis of the World Bank on having broad understanding of poverty and on the importance of participation and national ownership is welcome from a human rights perspective. It represents significant success for worldwide mobilisations of public opinion on behalf of the poor by aid, religious and other organisations.

However, it is not yet evident that the Bank's emphasis on poverty represents a genuine change or whether it is simply a relabelling of past policy prescriptions that emphasised deregulation, privatisation and the primacy of economic growth. At a very minimum, international human rights standards impose a responsibility on international agencies to ensure that their policies and practices do not have a negative impact on the capacity or ability of states to meet their legal obligations under these standards.²⁰ These standards therefore limit the policy options open to governments in many areas. As an example the imposition of fees for primary education is a regressive measure²¹ and would be a *prima facie* violation of human rights.

Under the right to education²² the provision of free compulsory primary education is a core or minimum obligation of states. States where primary education is not yet compulsory and free are required to work out and adopt a detailed plan of action for progressive implementation of the right within a reasonable and specified number of years.²³ The right to free primary education cannot be circumvented by the introduction of other "user fees" such as compulsory charges for school-building funds or other such mandatory contributions.²⁴ It would be inconsistent with its support for the rule of law for the World Bank to promote policy prescriptions at odds with government obligations to international legal agreements on human rights or to make provision of assistance conditional on such policy prescriptions. Thus being able to judge policy prescriptions against the obligations of states to realise specific

economic, social and cultural rights progressively over time and to the maximum of available resources (including resources available through international development assistance) would enhance the potential for the poor to hold their own government and the World Bank accountable for their policies.

From policy to practice – the use of pilots and guidelines

Experiences of translating human rights policy into practice were exchanged at an international workshop on the human rights approach to development held in Stockholm in October 2000.²⁵ The workshop brought together NGOs from North and South and officials from bilateral and UN development agencies to identify and find ways to overcome the challenges of implementation. For UNICEF the most noticeable changes in pursuing this approach were staff training programmes, a shift in the balance of UNICEF programmes to put greater emphasis on advocacy and promotion of the CRC, more emphasis on issues of participation and increased interaction with the UN Committee on the Rights of the Child. UNDP has followed up its 1998 UNDP policy statement with the Human Rights Strengthening Project (HURIST), a collaboration with the Office of the High Commissioner for Human Rights (OHCHR). HURIST consists of a number of pilot projects in a range of countries looking at implementation issues including providing assistance with the drafting of National Human Rights Action Plans, developing staff capacity on rights programming and assisting the integration of human rights into Common Country Assessments (CCAs) and UN Development Assistance Frameworks (UNDAFs).²⁶ The Nepal UNDAF, drafted by the UN System and HMG Nepal with HURIST support, provides one of the few existing examples of how the International Bill of Rights can be used as a practical framework for analysing development challenges and setting priorities.

The Swedish agency, Sida, piloted a human rights analysis for identifying development challenges in Zimbabwe²⁷ that drew on the work of the UN treaty monitoring bodies. Ultimately the uncertainty of the political situation put the resulting country strategy on hold. However, on the basis of this experience Sida

has since developed comprehensive staff guidelines for conducting such analyses²⁸ and Sida has emphasised the value of the human rights approach for analysing development challenges and addressing issues of discrimination.²⁹

Similarly, Sida used a pilot project in Sri Lanka as a basis for drafting guidelines for applying a human rights and democracy approach to its support to the education sector. These guidelines look at the right to education, human rights in education (for pupils, staff and communities and curriculum content) and human rights through education (how education enables people to realise other rights).³⁰ Consequently these highlight the need for Sida to promote initiatives aimed at groups who do not have access to education because of discrimination on the basis of gender, ethnicity, income level or disability. These also draw attention to Sida's role in facilitating contacts between civil society and governments to enable different stakeholders to participate in the setting of objectives.

Stockholm workshop participants identified other changes required for the adoption of the human rights approach. There was consensus on the need to base strategies on a human rights analysis and to provide human rights training to staff, particularly training on economic, social and cultural rights as the approach calls for a level of human rights expertise and resourcing that does not yet exist in many agencies.³¹

Developing these skills and capacities requires that additional resources either have to be provided or existing ones reallocated. Some official aid agencies or foreign ministries employ specialist human rights staff, while others have established human rights units. There is a need in these instances to ensure that these staff or units do not end up marginalised and isolated.³² Sida has twenty-five staff as human rights focal points who are able to provide advice on the integration of human rights into projects and sectoral programmes.

The Norwegian official aid agency, NORAD³³ has also prepared materials to assist staff including an analysis of human rights in development planning. NORAD is currently designing a programme for training its field representatives in human rights. DFID in the UK is piloting methodologies for participatory rights assessments and recently held a workshop on the relationship between service delivery and advocacy in rights based development.³⁴ The Danish agency DANIDA has engaged consultants to review its programmes in Uganda from a rights based perspective. In 2000 the Swiss international development agency hosted a major international conference on

statistics and human rights.

The Stockholm Workshop also noted the need for bilateral agencies to reflect on the priority they give to human rights in their participation at various international fora, including the IFIs. While these bodies are far from democratic with their weighted voting system based on property rights rather than on a one-country one vote basis (as in the UN), donor countries have the potential to wield significant influence in ensuring that human rights are not undermined by the policies and programmes of these bodies. Moreover, these multilateral bodies make a unique contribution to development, not only through the scale of their resources but also through the influence they can exercise over policies of partner governments.

Claiming rights – an NGO agenda

It is clear that the human rights approach emphasises many of the same principles and practices long promoted by development NGOs, civil society organisations and organisations of the poor. These include focusing resources on the poor and marginalised, full participation by the poor in the development process and creating more accountable government institutions. Partly because this approach shares so many elements of existing best practice, there are questions about what practical changes it means for the programming and advocacy work of Northern development NGOs with their partners in the South. The discussions at the Stockholm workshop made it clear that there is a small, but increasing pool of experience to source in order to answer these questions.

Any changes called for will vary according to existing organisational approaches and practice. For many NGOs, it may be that their existing partnerships and programmes are rights sensitive without being explicitly rights based and there may be little need for change in how they work on the ground. For some, greater staff and partner/NGO awareness and familiarity with human rights might be sufficient to identify areas of change. For certain larger international development NGOs the organisational challenges can be similar to those faced by official agencies. There is, for example, the need to provide human rights training to staff, particularly training on economic, social and cultural rights. This might require allocating more resources

into the preparation of user friendly and practical materials on human rights applicable to different national and local situations.³⁵

The Australian Council for Overseas Aid, Australia's umbrella body of NGOs, has begun to advocate for the adoption of the human rights approach by Australia's official aid agency at the same time as organising training workshops for its members on practical implementation of the approach. NGOs at two such workshops in 2001 came up with some priority human rights questions which can help guide project/programme design and implementation. These included:

- What is the country's human rights record/position?
- Does the project plan identify the relevant human rights instruments that pertain to the project?
- Have the wider human rights implications of the focus of the project been thoroughly identified?
- Are project objectives framed in terms of human rights?
- Does the project design include indicators to judge human rights achievements/impacts?
- Is evaluation continuous and participatory with constant review of the impact of the project on human rights?
- Does the project focus on the most vulnerable – those most denied their rights?
- Does the project sustainably enhance the power of the local community?
- Does the project partner adequately represent those whose rights are most neglected?
- Has there been any dialogue during the project with government representatives at different levels about their interpretation and understanding of human rights?
- How are human rights achievements being evaluated?³⁶

The human rights approach is also consistent with the move among many NGOs away from a service delivery or welfarist approach towards a more empowerment advocacy based approach. There is growing recognition that if the gains made by local communities through NGO interventions are to be sustainable over the longer term, then government authorities at the local and national level need to be responsive to and have the capacity to meet the human rights claims of individuals and

communities when the NGO leaves. Hence the focus by many NGOs advocating for the reform of the institutions of government at national and local level so that these are equipped to deliver on human rights. This can serve to complement investments by official donors in strengthening institutional structures, e.g., local government, the judiciary, police training, public sector reforms and so on. In essence while civil society actors, North and South, can work together to advocate around human rights, if the structures to deliver on such rights are weak or non-existent they have little hope of achieving lasting improvements in compliance with human rights standards.

This shift among NGOs towards prioritising advocacy raises its own challenges, from changing the skills base of staff to communicating outcomes. Save the Children Sweden has highlighted the dilemma of setting realistic goals and measurable results that could be easily communicated to members and funders. It is easier and more compelling to show a well that has been dug or a hospital that has been built than to demonstrate the impact of advocacy or efforts to end discrimination.

The approach also means new advocacy targets for many NGOs. The UN's human rights treaty monitoring system presents a forum for advocacy that is very underused by development NGOs. Under some human rights agreements it is possible to take individual cases to the treaty committees for adjudication, although judgements carry only moral force. Nevertheless the work of these bodies can be influential and can be useful to refer to in other forums. The preparation and presentation of official government reports to the treaty monitoring system is meant to be a participatory process involving wide consultation with civil society, but the monitoring bodies have also expressed a desire to hear directly from NGOs. Hence NGOs in an increasing number of countries are preparing and presenting alternate or "shadow" reports. In situations where there has not been wide consultation in the preparation of official reports these shadow reports assume critical importance.

Both Save the Children and UNICEF are increasingly working with and assisting children's NGOs in the South to participate in and use the reporting process – to highlight issues and to promote greater awareness of human rights generally. Minority Rights Group International has also become increasingly active in advocacy on minority rights in development. Like the Save the Children Alliance, it has organised training with its partners to enable them to make better use of the UN human rights monitoring system. It has also sought to reach out to

development NGOs in the UK to look at how they can collaborate in ensuring that minority rights and human rights are reflected in DFID's programmes. At the same time it is necessary to acknowledge that these independent UN monitoring bodies are chronically underfunded and overworked, which limits the practical value of their work. There is a long backlog in presenting country reports and many governments are late in their reporting.

Closer to home development NGOs in donor countries need to assert their claim, as civil society organisations who are key stakeholders in their governments' overseas development policies, to be more involved in the country strategy preparatory process of their national official aid agencies and in so doing to be committed to pursuing the human rights claims of their Southern partners in this process. They need to press for these processes to be open, transparent and participatory – with emphasis on civil society participation in the partner country. Bilateral country strategies and programmes offer significant opportunities for advancing rights. However, the poor of the South have little say or influence over bilateral policy or priorities. Development NGOs can work with their southern partners to encourage them to use the openings provided by donor commitments to human rights and to participation to further their human rights claims.³⁷

At a multilateral level many development NGOs are already heavily engaged in advocacy activities, particularly in relation to World Bank and IMF policies, often in close collaboration with their Southern NGO partners. There is a real need to integrate human rights into this work, to work with these partners to analyse the challenges of poverty and discrimination from a rights perspective and to support Southern partners in using rights to assert their demands in these development discussions. This advocacy focus on the multilaterals should be complemented by a focus on working with bilateral donors in order to persuade them to use their influence within these institutions to advance a rights based approach to development.

There is a shift in emphasis in official policy towards active participation in and national ownership of development strategies. This shift places new demands on civil society in the South and on the capacity of its representative bodies to take part in these processes. As a result Northern NGOs are increasingly looking at how they can strengthen the policy and organisational capacity of their partners. A commitment to building the capacity of Southern civil society to engage in a

development dialogue based on human rights might lead to greater NGO coordination, North and South, on the production of education, training and advocacy materials.

For instance, investing in national budget monitoring and analysis is an advocacy strategy that is increasingly employed by NGOs in the South to identify whether available resources are focused on the most vulnerable and marginalised.³⁸ Integrating reference to specific economic and social rights into such analyses and into the social impact assessments that are being explored by NGO networks such as Oxfam International and EURODAD could help make poverty reduction efforts more accountable to international human rights standards.

While the advocacy strategies outlined above focuses on the potential to promote human rights, NGO participants at the Stockholm workshop also highlighted the need for development NGOs to identify violations of economic, social and cultural rights. Clear instances of such violations are the forced evictions that have accompanied major infrastructure projects, but other examples include the forced removal of indigenous communities from national parks or forestry zones. As multilateral agencies shift resources towards areas such as public sector and legal reform processes new risks to rights are emerging. These include the impact of land titling reforms being promoted by donor institutions on the right to housing for people living on communal land. Strategies for monitoring and reporting on the human rights impact of these policies need to be developed. The privatisation of utilities such as water continues to be promoted by many bilateral and multilateral development agencies without reference to the impact of these policies on the human rights of the poor.³⁹ In Bolivia and Papua New Guinea popular protests against privatisation have resulted in the killing of demonstrators by security forces. The protestors in Papua New Guinea clearly identified and directed their anger against the World Bank and the Australian Government as the promoters of privatisation plans. Indeed aid, loans and debt relief have been made conditional on the implementation of privatisation measures.⁴⁰ Such conditionality is inconsistent with an approach to development based on an acceptance of the responsibility to co-operate in realising the human rights of the poor.

Overcoming challenges

Attempts to bridge the longstanding divide between human rights policy and development practice are still relatively new and many challenges remain to be overcome within NGOs and official agencies. There is a concern that using the language of rights raises the expectations of the poor and places demands on the fragile governments of developing countries that they cannot possibly fulfil. This illustrates the need to look in more detail at the content of specific rights and the obligations they impose. The right to housing does not oblige the state to build everyone a house, for example. Informing people about their rights, the choices open to them and involving them in development efforts to realise these rights avoids unrealistic expectations. The human rights approach focuses attention on the need to increase the capacity of the state to fulfil its human rights obligations.

There is also a concern that a focus on human rights will lead to a confrontational or legalistic approach to development, reliant on litigation through weak and overburdened court systems and demanding the building of specific human rights institutions. International human rights advocacy has understandably focused principally on exposing violations of human rights and demanding accountability. The realisation of economic, social and cultural rights, in particular, calls for the exposure of violations to be complemented by positive strategies and assistance. The potential of the rights based approach lies not simply in its emphasis on the state's legal obligations and the need to integrate awareness of these into all levels of government, but in its moral and ethical dimensions and in its focus on solidarity. All human rights struggles have relied on a combination of strategies.

The issue of culture and human rights continues to raise questions within development agencies. There is consensus that human rights are universal. North and South NGOs have united to speak out for and defend human rights. Donor and recipient governments have signed up to the same human rights agreements and human rights guarantees appear in most constitutions. Yet there are still sensitive issues. This is evident in the Convention on the Rights of the Child, ratified by all but two states, the US and Somalia. In Australia it was fiercely opposed by some in the Christian Churches as interference in family relationships and in decisions about how children could be disciplined at home and in the school. While human rights

standards draw on and reflect universal principles these need to be negotiated and discussed with sensitivity in many different and difficult environments. The success of UNICEF and Save the Children in engaging in dialogue on children's rights suggests these sensitivities can be overcome with care and commitment. Very few governments still seek to use culture to defend the abuse of rights.

If there is cultural sensitivity over rights then equally there is often political sensitivity. Human rights address issues of the distribution of power, equity and discrimination. If the objective is to build cultures and governments that respect human rights, then it is necessary to discuss human rights openly rather than use other terminology such as "governance" that can carry many different interpretations. It is the skill of diplomacy to be able to doggedly pursue difficult issues. And if it is difficult for a development agency official to talk with developing country governments/officials about human rights, it is also problematic for local NGOs and community representatives to do so. In such circumstances legitimising human rights claims through development dialogue becomes a practical means of strengthening civil society. But it does so by using independent standards, a key advantage pointed to by officials from development agencies at the Stockholm workshop. Moreover, greater reference to the work of the independent UN treaty bodies can help minimise concerns that a selective political agenda is being pursued through a focus on human rights. Perhaps the more significant challenges to implementation arise from changes in global relations. Processes of globalisation have led to much discussion on the decline in the power of the nation state. This is a trend that can be conveniently exaggerated by governments wishing to wash their hands of responsibility for negative human rights outcomes on the poor, and to undermine democratic accountability. A rights based approach, working at multiple levels, local, national and international, can help ensure that all actors who directly or indirectly have an impact on development are guided by the human rights impact of their policies.

Footnotes

- 1 Mary Robinson, UN High Commissioner for Human Rights, 10 December 1998, quoted in Geoffrey Robertson, *Crimes Against Humanity*, Penguin, 1999, p.32
- 2 The UN's rallying call for the 50th anniversary of the Universal Declaration of Human Rights

- 3 The International Bill of Human Rights also includes the two Optional Protocols to ICCPR. Other human rights standards focus on specific human rights violations, or on the rights of particular and vulnerable sections of society such as the Convention Against Torture (CAT), Convention on the Elimination of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC).
- 4 General Comment 14, Committee on Economic, Social and Cultural Rights
- 5 Executive Summary, *Realising the Human Rights of Poor People*, DFID, UK, p.7
- 6 Article 13, ICESCR
- 7 "National human rights institutions and the human rights approach to development - a background paper for the Asia Pacific Forum Regional Workshop", July 2001 www.hrca.org.au
- 8 The UNDP *Human Development Report 2000* on the theme of human rights and human development identified the emphasis on accountability as one of the key added values of the human rights approach.
- 9 The establishment of independent review and complaint procedures by bilateral agencies was one of the suggestions made by the Human Rights Council of Australia in *The Rights Way to Development - Policy and Practice*. A similar recommendation was endorsed by an international workshop on "Tackling poverty and discrimination - mainstreaming minority rights in development assistance" hosted by Minority Rights Group International in July 2001
- 10 The UN's Independent Expert on the Right to Development, Arjun Seugupta, has called for "coupacts" binding the respective parties to set agreements. Also see *The Rights Way to Development - Policy and Practice*.
- 11 These obligations are set out in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1987/17) and are included in the DFID policy paper, "Realising the human rights of poor people".
- 12 The Maastricht Guidelines, adopted at an experts meeting: www.law.uu.nl/english/sim/specials/no-20/20-01.pdf
- 13 An example based on the Indian experience is provided in "Justiciability of economic, social and cultural rights" - Professor Moolehand Sharua's paper to the July 2001 regional workshop of the Asia, Pacific Forum of National Human Rights Institutions
- 14 States that ratify ICESCR agree to submit an initial report and subsequent progress reports to the Committee. The *UN Manual on Human Rights Reporting* provides guidelines to help states compile their reports and is a useful reference for states and NGOs alike.
- 15 The issue of discrimination is given emphasis, demanding immediate action in both the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.
- 16 Maastricht Guidelines
- 17 Poverty and the International Covenant on Economic, Social and Cultural Rights: 10/05/2001. E/C.12/2001/10
- 18 July 2001, www.minorityrights.org
- 19 A broad coalition of environmental, indigenous rights and human rights organisations have raised concerns that the World Bank is in the process of retreating from existing safeguard policies aimed at protecting the environment and vulnerable social groups from the adverse effects of World Bank funded projects. Letter under Forest People's Program, March 2001
- 20 If a national or international anti-poverty strategy does not reflect this

minimum threshold, it is inconsistent with the legally binding obligations of the State Party – CESCR Statement on Poverty and Economic, Social and Cultural Rights 10/05/2001. E/C.12/2001/10

- 21 Maastricht Guidelines
- 22 Article 13, ICESCR
- 23 Article 14, ICESCR
- 24 Guidelines on ICESCR Article 14, *UN Manual on Human Rights Reporting*
- 25 “Working Together I & II” reports of the Stockholm workshop on the human rights based approach to development, SIDA 2001. The workshop was hosted by the Swedish Ministry of Foreign Affairs, with Sida and the Swedish NGO Foundation on Human Rights and facilitated by the Human Rights Council of Australia.
- 26 Together the CCA and UNDAF provide a common UN analysis of development challenges and a framework for a coordinated response by UN agencies specific to each country.
- 27 See *Working Together* for a description of the experience.
- 28 “Country strategy development – guide for country analysis from a democratic governance and human rights perspective”, Sida
- 29 “A democracy and human rights based approach to development cooperation”, Sida, September 2001
- 30 “Education, democracy and human rights in Swedish development cooperation”, April 2001
- 31 In its submission to the review of Ireland Aid, Trócaire recommended increased resourcing for the human rights unit in the Department of Foreign Affairs.
- 32 The Human Rights Council of Australia made some suggestions to this effect in a submission to the review of Ireland Aid.
- 33 *Handbook on Human Rights Assessment – State Obligations, Awareness and Empowerment*, NORAD
- 34 Department for International Development, “Evaluation of public-sector influencing and advocacy strategies in the UK private sector– terms of reference”, August 2001
- 35 There is an increasing number of NGO training packages and manuals which can be used. The Save the Children Alliance in the Asia-Pacific has been running week-long courses for regional programming staff and is producing a training manual for child rights programming. CARE International has established a pilot programme to integrate the human rights approach into its programming work and the coordinator has produced training materials and conducted training workshops with staff in Africa, Central Europe and Latin America. There are increasing numbers of educational and activist resources specifically on economic, social and cultural rights – among others *Circle of Rights*, a training manual on economic, social and cultural rights aimed at Southern NGOs, and other resources by Food First International Action Network (FIAN) and the Centre on Housing Rights and Evictions (COHRE).
- 36 Participants at the workshops identified over 50 questions which could be useful for guiding programme staff.
- 37 *Rights Way to Development NGO Action Pack*, Human Rights Council of Australia 1998. See also “Governance and the role of civil society: a Dóchas perspective on the potential roles of Ireland Aid and NGOs”, November 2001, an initial submission based on the work of a Dóchas working group.
- 38 UNDP *Human Development Report 2000*

- 39 See the submission by Rights and Accountability in Development to the Committee on Economic Social and Cultural Rights on the privatisation of the mining sector in Zambia that highlights numerous violations of economic, social and cultural rights, Oxford, 2000
- 40 Interpress Service, 13 November 2001, "Ethiopia's creditors have agreed to write off \$1.3 billion of the country's external debt as long as Addis Ababa toes the line on economic restructuring laid down by the World Bank and IMF. Critics said that to get the relief, the country has had to take on a privatisation programme, economic deregulation and other steps either negligent of or harmful towards the poor".