

Comment – The Human Rights Approach to Development¹

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The “human rights approach to development” is one particular attempt to place human rights principles and concerns at the centre of all development programming. Efforts to implement this approach have gained increasing momentum over the last few years, given impetus by the end of Cold War political and ideological rivalries and by the UN conferences of the past decade, such as the Social Summit in Copenhagen (1995) and the Vienna Conference on Human Rights (1993).

At the heart of this approach is the suggestion that the substantive articles of international human rights treaties, particularly the Universal Declaration of Human Rights (UDHR) and the two covenants on civil and political rights, and on economic, social and cultural rights (i.e. the International Bill of Rights), can provide the basis for formulating and implementing detailed development strategies for all developing countries. The implication of this approach for development practitioners (including bilateral donors and NGOs) is that human rights concerns should not merely be viewed as a distinct area of work in addition to sectoral programmes in health and education, for example. Rather, human rights principles should be integrated into all development work to the extent that they provide the basis for all development policies and programmes.

Thus, Mary Robinson has referred to “rights-based approaches” to development as “the operational expression of the link between human rights and development”.²

Key elements of the human rights based approach to development

The central principle of the rights based approach to development is that development is the process by which people realise their basic human rights. Furthermore, these rights are embodied or encapsulated in international human rights treaties or instruments. The most important of these are the UDHR and the two 1966 covenants, supplemented by the UN Declaration of the Right to Development (1986), as well as the four conventions covering specific rights issues, namely racial discrimination, discrimination against women, torture, and the rights of the child. Many of the rights contained in these instruments underpin the international development targets agreed by donors at various fora, including the UN’s special Millenium Summit.

Not only does the human rights approach give equal emphasis to all rights it is also strengthened by their indivisibility and complementarity. In other words, this approach to development does not recognise a dichotomy between civil and political rights on the one hand, and economic and social rights on the other. Furthermore, it does not accept any sort of ranking or hierarchy of rights, or categories of rights. This is reiterated by the UN Declaration on the Right to Development (1986) which, as Arjun Sengupta, the Independent Expert on the Right to Development for the UN Commission on Human Rights, states “unifies civil and political rights with economic, social and cultural rights into an indivisible and interdependent set of human rights and fundamental freedoms.”³

Earle⁴ points out that the human rights approach to development reflects best practice in sustainable human development. It can be argued more directly that the rights based approach offers the best way to achieve the goals of human development, because specific human rights encapsulate or embody particular human development targets. For instance the core human development indicators in the UNDP annual

Human Development Report, life expectancy, literacy and level of income, can be connected to basic human rights to the highest attainable standard of physical and mental health, education, etc.

Some benefits of the human rights based approach to development

There are several important benefits of placing human rights at the centre of development policy and practice. The first is that a rights based approach to development provides a normative basis to development work, in the sense that development can be seen as the process by which people progressively realise their rights. Rights, and hence the goals of development, are basic human entitlements, which each of us can claim by virtue of our shared humanity. As the UNDP's *Human Development Report 2000* points out, these notions of rights, claims and entitlements take us beyond the idea of human development, which formulates laudable goals for social progress but does not examine the normative basis for action to achieve these objectives.⁵

A second benefit of the human rights based approach to development is its comprehensiveness, both in the sense of the universality of human rights and also their indivisibility. In other words, all human beings have an equal entitlement to the protection and fulfilment of their human rights, whether they live in the industrialised countries of the North or the least developed countries of the South. Furthermore, the range of rights contained in the UDHR and the two covenants, for example, ensures their applicability to virtually every aspect of human life or human activity.

Another benefit is the explicit connection between the human rights based approach to development and an emphasis on poverty reduction. As Sengupta notes: "One of the benefits of using a human rights approach to development is that it focuses attention on those who lag behind others in enjoying their rights, and requires that positive action be taken on their behalf...[T]his is often dealt with in terms of favouring the poorest or the most vulnerable groups of the society."⁶ The poorest sectors of a population are also those most deprived of their rights, whether in the economic and social sphere or the civil and political sphere. As Mary Robinson emphasised: "Perhaps no social phenomenon

is as comprehensive in its assault on human rights as poverty.”⁷ The universality of human rights reiterates the importance of ensuring that all human beings are able to have their basic human rights fulfilled, and this requires an emphasis on poverty reduction to guarantee that this is achieved.

A fourth advantage of the human rights approach to development is that it can provide mechanisms of accountability, enforceability and empowerment. Rights can be interpreted as claims implying corresponding duties or obligations on the part of those responsible for ensuring those claims are fulfilled. States or governments in particular have an obligation to meet the basic human rights of their citizens. Earle refers to the specific obligations of states to respect, protect and fulfil the basic human rights of their citizens. The fulfilment obligations, involving public expenditure and the provision of basic services, are especially relevant to economic and social rights, and the development objective of poverty reduction.

If development is interpreted as the full realisation of human rights, and states or governments have specific obligations to respect, protect and fulfil these rights, then this implies that they must be held directly accountable for the human development of the citizens they say they represent. Furthermore, if such rights are translated into components of domestic or international law, then they can provide an element of enforceability as well as accountability. Thus, the human rights approach brings something new and powerful to current efforts to eliminate poverty because of its emphasis on the legal obligations imposed by the human rights standards accepted by governments or states.

This can be further extended through viewing such rights as vehicles of empowerment, or as platforms for political and social mobilisation. The indivisibility of human rights is especially important for linking rights as expressions of abstract claims or entitlements to programmes of political and social action. In other words, exercising rights in the political realm can empower people to demand and achieve the fulfilment of a whole range of other rights, including economic and social rights. For instance the right to vote or to take part in public affairs can be instrumental in guaranteeing access to health care, or to food.

Some challenges for the human rights based approach to development

These challenges which arise with this approach are both pragmatic, involving issues of implementation, and political, involving questions of power. At the pragmatic level, one challenge concerns the amount of organisational change and commitment required to implement this approach consistently and effectively. This is because the rights-based approach involves not merely the addition of a new sphere of activity or responsibility for aid donors and practitioners, but is supposed to permeate all development practice in every sector. As such, it can encounter incomprehension and resistance from both donor agencies and aid recipients. This can be partly due to a sort of “policy fatigue” from having to come to terms with and implement other new or innovative approaches to development, which are also supposed to be “cross-cutting”, from “basic needs” in the 1970s to gender and the environment in more recent decades. The links between these other comprehensive approaches to development and the human rights based approach need to be explored at more length.

Another pragmatic challenge for the rights-based approach concerns difficulties of evaluation and assessment of impact. This is especially true if this approach is interpreted as an explicitly value-based rather than merely “outputs” or results-based approach to development. Frankovits has acknowledged the difficulties in establishing indicators for the realisation of economic and social rights in particular. He argues however that indicators can be formulated in connection to each of the rights of the two international covenants in the context of a particular human rights based development strategy (such as an UNDAF). In particular, indicators can be established to measure the efforts of a state or government to respect, protect and fulfil each of the rights of the two international covenants. Such efforts can be measured in terms of the relevant legislation enacted by a government and the resources made available by the state to ensure the fulfilment of specific rights (such as equal access to education for example).⁸

The fulfilment of economic and social rights in particular raises questions about scarcity of resources and the so-called

“progressive realisation” of rights. In economically impoverished countries in particular, resources available to meet the basic needs of people are limited or constrained. Thus, real policy choices must be made about using available resources, however limited, to fulfil rights to food, health care or education, for example. Attempts to meet one set of economic and social rights can involve opportunity costs for other rights. Invoking the principle of “ought implies can”, one can ask then whether it is meaningful to apply the language or criteria of human rights discourse in the economic and social sphere, if states or governments are severely constrained in their capacity to fulfil their obligations in this area.

Two ideas may be helpful here. The first is the notion of the “progressive realisation” of rights, which acknowledges that it will not be possible for many states to fulfil completely and immediately their obligations under the two international covenants. Instead, each state has a minimum obligation to provide the maximum available resources towards progressively fulfilling these rights over time. This raises questions about what might count as “maximum available resources” of course, although it has been suggested that spending 20 per cent of a government’s budget on social sectors (as stipulated in the 20/20 compact emerging from the Social Summit in Copenhagen) might provide at least a minimum standard.⁹

The second idea, which Osmani derives from Dworkin, concerns the distinction between “abstract rights” and “concrete rights”. An abstract right represents a general goal or aim unimpeded or unqualified by questions of implementation or realisation. A concrete right, on the other hand, exists once those questions have been addressed. Thus, according to Osmani, “we can say that citizens have an abstract right to freedom from hunger under all circumstances, regardless of resource constraint.” In the context of resource constraints, however, “we can still say that citizens have a concrete right to appropriate policies for eliminating hunger in the shortest possible time, once the trade-offs involved in designing an appropriate policy have been agreed upon.”¹⁰ In other words, in the context of resource constraints with their attendant opportunity costs, the abstract (and absolute) right to freedom from hunger becomes a concrete right to government policy and action aimed at eliminating hunger as quickly as possible. This is the normative claim citizens can make upon their government, and this is the obligation a government has towards its citizens. The concrete right, in a sense, involves the “progressive realisation” of the abstract right to freedom from hunger.

Osmani goes on to argue that this emphasis on concrete as distinct from abstract rights in the context of a human rights based approach to development has important implications for both the monitoring of and participation in development processes. Monitoring must concern a state's efforts to fulfil the rights of its citizens, given its resource constraints, at least as much as its ability to satisfy specific indices of human development, for example, which correspond to abstract rights. "When resources are scarce, the only obligation of State parties is to implement policies for progressive realization of rights, and it is only for these policies that they can be held responsible. In other words, it is the citizen's concrete rights to policy, rather than their abstract rights which should be the principal object of monitoring."¹¹

A second implication concerns decisions that must be made about the content of concrete rights, which after all are specific to particular countries or situations. Such decisions involve assessments of opportunity costs associated with attempts to fulfil economic and social rights, for example, and value judgements and choices concerning the priority given to each of these rights in the context of resource constraints. Osmani argues strongly that "no-one other than the people of the society concerned are entitled to make these judgements" and this requires a participatory process involving "different segments of the society." Therefore, he concludes, "only the policies emerging from a participatory process can count as acceptable policies for progressive realization of rights given the constraints."¹² He also points out that the fulfilment of concrete economic and social rights through mechanisms of participation involves exercising citizens' political and civil rights, reiterating the importance of the indivisibility of human rights from a development perspective.

A further challenge to the rights based approach concerns the link between ethics, or concerns about values and principles, and politics, or concerns about power. It must be recognised that discussions about human rights do not occur in a political vacuum. Disparities of power within a society are major impediments to the protection and fulfilment of human rights, and one of the main reasons for the lack of respect for human rights, or their active and deliberate violation.

Issues of power are particularly important if the fulfilment of human rights is linked to the allocation of scarce resources. Power in the economic sphere is connected to access to or control over resources, such as land or mineral wealth. It is

exercised in the political sphere in terms of decision-making processes determining, among other things, the allocation of the resources available to the state. One could even argue that it is exercised in the intellectual sphere, or the sphere of knowledge, in terms of defining (or controlling information about) the resources available for particular purposes, or to achieve particular social goals. Each of these three types of power affects a society's capacity to realise the human rights of its members, whether immediately or "progressively".

States may have obligations, according to the human rights based approach to development, to provide the "maximum available resources" to fulfil their citizens' rights, but their access to such resources may be severely curtailed by patterns of resource ownership or the penetration of international capital into domestic economies, for example. Similarly, decisions about opportunity costs, trade-offs and the use of state resources may be shaped by specific sectors or segments of society, while other sectors of society are marginalised, excluded or even harmed by such decision-making processes. An emphasis on participation goes some way to addressing such political power issues, providing it is understood as the exercise of real power, and not merely an empty or formal gesture within predetermined political or social processes and structures.

In terms of the distribution of power at a global level, there is a need to recognise that such a rights based approach conflicts with the dominant neo-liberal ideology, with its focus on economic indicators and markets for example, and the processes of globalisation it supports. Thus, proponents of the human rights based approach to development must be prepared to place it in the context of a political and social analysis that may have more wide-ranging or even radical implications for action. The protection and fulfilment of human rights may require more than reform of development policies and programmes. It may require a more fundamental challenge to existing structures of political, economic and even intellectual power at many different levels, from the local to the national to the global. For instance Earle acknowledges that more work needs to be done on the implications of the human rights approach for macroeconomic policies (such as the privatisation of utilities) promoted by multilateral agencies like the World Bank.

Conclusion

A number of distinct benefits of and challenges or difficulties from placing human rights concerns at the centre of development policy and practice, as exemplified by the rights based approach to development, have been highlighted. However, the latter are caveats and do not represent insurmountable or fundamental obstacles to further progress on the implementation of this rights based approach. The words of the UN High Commissioner for Human Rights, Mary Robinson are particularly relevant when she speaks about the “undeniable nexus” between development and human rights and reminds us that “the merging of [these] two heretofore separate, if parallel, movements for human dignity...must also be seen as long overdue.”¹³

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Footnotes

- 1 This article is based on a presentation to the Fourth NGO Forum on Human Rights, organised by the Department of Foreign Affairs, in Dublin, 21 July 2001.
- 2 Mary Robinson, “Development and rights: the undeniable nexus”, United Nations Office of the High Commissioner for Human Rights, 26 June 2000, p.2

- 3 Arjun Sengupta, "Realizing the right to development", *Development and Change*, vol.31, 2000, p.555
- 4 Patrick Earle, "The human rights approach to development", *Trócaire Development Review 2001*, pp.17-38.
- 5 United Nations Development Programme, *Human Development Report 2000*, Oxford University Press, Oxford, 2000, p.23
- 6 Sengupta, *op.cit.*, p.561
- 7 Robinson, *op.cit.*, p.4
- 8 André Frankovits, "Promoting a human rights approach in development cooperation", Human Rights Council of Australia, October 2000, p.10
- 9 Overseas Development Institute, "What can we do with a rights-based approach to development?", *ODI Briefing Paper*, September 1999, p.3.
- 10 Siddiqur Rahman Osmani, "Human rights to food, health and education", *Journal of Human Development*, Vol. 1, No. 2, 2000, pp.279-280
- 11 *Ibid.*, p.291
- 12 *Ibid.*, pp.292-3
- 13 Robinson, *op.cit.*