

Concept Note

RIGHTS-BASED APPROACH

Towards the respect and protection of human rights.

Background

As demands for fairer public policies and government accountability increase across the world, two broad civil society groups – the human rights community and the development community – are building on each other’s experiences in an effort to forge more effective combined strategies to address poverty, exclusion, and political abuse.

The growing connections between these two groups and perspectives can be seen in the emerging notion of *rights-based development* advanced by many development organisations.

The Concept of Rights-based Approach

Most, if not all, organisations working in development cooperation refer to a rights-based approach to development as a conceptual framework for the process of human development that is essentially based on the values, standards and principles captured in the UN Charter, the Universal Declaration of Human Rights. This entails:

- (i) work with **duty-holders** - generally state, but also increasingly non-state actors - to strengthen their capacity to respond and be accountable in protecting, respecting and fulfilling human rights: what DFID terms “obligation”, and the UN OHCHR terms “accountability”; and
- (ii) work to build the capacity of citizens to claim their rights, by working alongside them as advocates and by seeking to provide opportunities for people to empower themselves.

Operationalising a Rights-based Approach

Key elements of a rights-based approach

A rights-based approach to development holds that a person for whom a number of human rights remain unfulfilled - such as the right to food, health, education, information, participation, etc. - is a poor person.

Poverty is thus more than lack of resources – it is the manifestation of exclusion and powerlessness. In this context the realisation of human rights and the process of development are not distinct. On the contrary, development becomes a sub-set of the process of fulfilling human rights. In fact, development itself is recognised as a human right.

The following elements are critical when applying a rights-based approach:

- *Explicit linkage to rights*
The definition of the objectives of development in terms of particular rights – as legally enforceable entitlements - is an essential ingredient of human rights approaches, as is the creation of explicit normative links to international, regional and national human rights instruments.
By definition, rights-based approaches are incompatible with development policies, projects or activities that have the effect of violating rights, and they permit no ‘trade-offs’ between development and rights.
- *Accountability*
Rights-based approaches aim at raising levels of accountability to ensure open, transparent, effective, efficient and responsive systems (‘good governance’). They look

both at the positive obligations of **duty-holders** (to protect, promote and provide) and at their negative obligations (to abstain from violations).

- *Participation and inclusion*
Rights-based approaches require a high degree of participation, including from communities, civil society, minorities, indigenous people, woman and others. According to the UN Declaration on the Rights to Development, every Person and all people are entitled to active, free and meaningful contribution to, and enjoyment of civil, economic, cultural, and political development
- *Non-discrimination and attention to vulnerable groups*
Rights-based approaches demand that particular attention is given to discrimination, equity and vulnerable groups (women, minorities, indigenous people, prisoners, victims of violent conflicts, etc.) whereby these groups can vary in any given context.
An important aspect of rights-based approaches is the incorporation of safeguards in development instruments to protect against threats and well-being of prisoners, minorities, migrants and other marginalized groups.

Key challenges in applying a rights-based approach

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

- A) *Inadequacy of state legal apparatuses, inconsistencies between law and practice and poor awareness of human rights among state actors and citizens*
- Many states - although they have ratified them – have not codified the human rights treaties into their domestic legal framework, which may contain laws that are breaching human rights principles;
 - Even when there is a formal coherence between domestic law and international human rights law, the policies and practices in a country may be contrary to human rights principles;
 - Many poor countries do not have an effectively operating judicial system
 - Citizens might be unaware of their rights and indeed of their responsibilities as citizens, making it impossible for them to claim their rights and actively participate in democratic processes, and
 - Poor people are often deterred from approaching the formal judiciary by the cost of engaging a lawyer, the lack of legal aid, their mistrust in the objectiveness of judgements due to corruption within the judiciary system and the lack of education and skills necessary to engage in a litigation process.

To address these challenges, a rights-based development needs to undertake advocacy and be prepared to provide technical assistance to ensure that a state's formal laws comply with the human rights regime. Another emphasis would be on capacity building efforts, e.g., providing targeted human rights training, informing the citizens about their rights.

- B) *Lack of relevant knowledge and experience among development workers*
- The international development community has inadequate knowledge of the human rights regime; and
 - There is comparatively little experience of applying rights-based approaches and insufficient practical guidance available.

The fact that the majority of development practitioners have, at best, limited knowledge of the human rights and associated instruments requires a systematic educational effort with the development community (United Nations, 2003).

- C) *Limitations of the international human rights framework (the compliance with international law primarily relies on a state's own legal system. The international human rights system doesn't have a very strong role to play when the legal system in a country is under-developed with regard to human rights and/or the governing regime is violating the rights of its citizens)*
- The international system for responding to violations of human rights is often accused of being ambiguous, sluggish and can be undermined by political agendas of UN member states; and

Although the international human rights framework may have shortcomings, so far it is arguably the best system there is for realising human rights. In any case, using an internationally recognised legal regime as a basis for development cooperation is preferable to development efforts taking place without a legal foundation.

Resources

Nyamu-Musembi, C., Cornwall, A. (2004). What is the "rights-based approach" all about? Perspectives from international development agencies. IDS Working Paper 234.

UNDP (2003): The Rights Based Approach to Development Co-operation. Towards a Common Understanding Among UN-Agencies.