

**The Winners and Losers from Rights-Based Approaches
to Development Conference**

21-22 February 2005

ABSTRACTS OF PAPERS

Putting Rights-Based Development into Context: Care's Programming Approaches in Malawi and Bangladesh

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Abstract

During the past few years, CARE has moved towards a rights-based approach in development programming, as part of efforts to increase the impact of its work and address underlying causes of poverty. Interventions raise awareness of rights and take advantage of, widen, or create the political spaces within which various forms of legitimate collective social action are possible. However, CARE recognizes that the processes through which rights gain(ed) legitimacy within societies are not uniform, whilst institutional arrangements and notions of social justice vary considerably within and between regions.

This paper, drawing particularly on experiences in Bangladesh and Malawi, discusses how CARE's rights-based approach takes into account the political economy of localities and the larger context within which these are embedded. The discussion is grounded in a more nuanced understanding of the power dynamics between institutional actors, including the aid agency itself. We conclude that there is no one way of applying a rights based approach, and that rights based programmes do not per se have to be confrontational; in fact, the paper will demonstrate that rights approaches often rely on strengthening self-awareness and promoting a sense of interdependence and mutuality between rights- and duty-bearers. Finally, we argue that good programming practice involves assessing the potential risks of interventions and understanding potential negative impacts of our work, before, during and after interventions.

The paper ends by calling on development practitioners not to get tied up in arid debates about winners and losers, that risk polarising positions and creating even less space for honest reflection, but on collaboration and sharing learning from our collective and different efforts to improve our practice, and ultimately reduce poverty and social injustice throughout the world.

RBA: a Duty to Co-operate?

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Abstract

The effects of the much-heralded RBA to development, which has been embraced by numerous development aid agencies, including Oxfam International, are yet to be seen.

In the meanwhile, there are indications to believe that especially the non-governmental sector, for many of which the RBA is a continuation of an ongoing struggle to challenge power relationships, is gaining strength while advocating the RBA. On the other hand, governments, that are crucial in implementing a RBA, are left empty-handed. So far they have insufficiently addressed the other side of the rights-based equation: that of obligations. The position of the corporate sector is even more unsettled, not in the least place because in international law the obligations of the corporate sector are addressed inadequately.

Within the non-governmental development sector it is yet to be seen, whether those, living in poverty or otherwise marginalized or vulnerable: the people who are the ultimate legitimacy for the development sector to exist, do benefit from the RBA. Likewise, if people living in poverty have rights, has this led to an increased appeal to the duties of those living in affluence?

My paper will dwell on earlier work on the need, also for NGOs, to take up the duty to fulfil (or rather to co-operate). In the early eighties, Henry Shue had developed a so-called 'trinity' of obligations, which consisted of the duty to protect, to respect and to aid. The duty to aid was to address the immediate needs of the destitute. Unintendedly, the duty to aid has become a drive for many in the development sector. In human rights circles, this duty became known as the duty to fulfil, a vague concept, with even vaguer legislative measures which were seen as the answer to fulfilling human rights.

The paper will contain examples of changed policy and practice of Novib/Oxfam Netherlands and Oxfam International in their quest for applying a RBA.

Rights-Based Development: the Challenge of Change and Power

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Abstract

This paper draws from the authors' field experience of working with a range of NGOs that take a rights based approach to development. In particular it uses casestudy material from ActionAid International, an NGO that has been undertaking a shift in its way of working over the last 5 years in order to integrate rights based approaches into its work. It explores both the benefits and challenges that this approach can bring.

ActionAid International's experience shows that it can in the best cases:

- Support more holistic thinking in planning:
 - with more complex analysis of both the causes and symptoms of poverty
 - a move from discrete projects in particular areas to looking more at how different work links together and links with the external environment
 - more strategic engagement with different government agencies at different levels to try to ensure that they have both the capacity and the political will to uphold their responsibilities to protect the rights of the poor and marginalised.
 - more collaborative work with other civil society organisations, social movements and networks at all levels
- Encourage focus on the most marginalised within communities
- Lead organisations to focus more on power and their own position and relationships with partners
- Lead organisations to work more on building an active constituency for change in the north
- Enable groups to achieve both immediate changes in their lives and a collective identity and stronger position to contest their rights in the longer term.

However these positive outcomes of a rights based approach depend largely on linking it with what we have learnt about participation and empowerment. There are considerable dangers in seeing a rights based approach equating with an approach that relies on policy and advocacy as the sole solution to poverty and sets up polarities between it and more traditional development approaches. The paper will explore some of the challenges of taking a rights based approach including how some narrow interpretations of what it means can lead to lack of engagement with the poorest and their immediate concerns and a devaluation of grassroots, facilitation and organising skills.

(The Authors: Valerie Miller is a member of Just Associates and a long-time advocate, organizer and researcher of development and human rights work around the world. Adriano Campolina Soares is ActionAid International's regional director for Latin America and the Caribbean and thematic leader for Food Rights. John Samuel has a long history of activism in India and Asia and is currently ActionAid International's Regional Director for Asia. Jennifer Chapman is a member of ActionAid International's Impact Assessment Unit and coordinating action research on advocacy.)

Rethinking Agency: Poverty, Participation and Politics

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Abstract

'Rights-based approaches to development' have gained increased prominence within international development over the past decade, encompassing ideas about the desirability of citizens actively participating in framing the institutions, policies and discourses which shape their access to resources.

Central to a rights based approach is the concept of human agency. Purposive individual action is seen as potentially radical and transformatory; through everyday social practices, participation in public institutions and political engagement people can claim and extend their rights, so bettering their lives and livelihoods.

In this paper I explore how we need better understandings of the ways in which individual *human agency* shapes and is shaped by institutions. The intention is to explore the factors which constrain and enable to exercise of agency for different people. Why are some individuals better placed to participate, politically engage and shape decision-making than others? Examples from participatory natural resource management are used to conceptually engage with these questions.

The paper examines six dimensions of agency:

- How **moral/ world views** (concepts of the 'right way of doing things, respect etc) shape the exercise of agency
- How the complexity of **individual identities** impacts upon agency.
- How agency is exercised in situations of the **unequal interdependence** of connected livelihoods.
- How **structural limitations** (availability of resources, time, income, respect) shape individuals' ability to exercise agency .
- **Agency and embodiment.** The physical limitations on the poor, malnourished, unhealthy, old and disabled which curtail their ability to fully exercise agency.
- **Unconscious motivations**– such as feelings of trust, admiration, altruism or fear, distrust and jealousy which impact on individual and collective decision-making.

Domesticating Rights or Radicalising Development? Reflections on the Emergence and Rise of 'Rights-Based Approaches'

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Abstract

"Rights-based approaches" represent the next generation of development approaches in a trajectory spanning several decades, one in which social development concerns have slowly gained ground. Encompassing significant features of current orthodoxies, from participation and accountability to capabilities and empowerment, "rights-based approaches" offer appealing solutions to a range of today's development challenges. In this paper, I explore the emergence of a discourse of "rights-based" development. Exploring disjunctures between contemporary rights talk and the historical processes through which rights came to be framed and claimed in the contexts in which development agencies are now seeking to apply the "rights-based approach", and drawing lessons from the domestication of participation and empowerment by mainstream development agencies, I explore implications of lessons from this history for attempts to support the realization of rights and the pursuit of social justice.

A Human Rights-Based Approach to Development in Practice: Some Lessons Learned from the Rights-Based Municipal Assessment and Planning Project in Bosnia and Herzegovina

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This paper will illustrate how a human rights-based approach to development has been defined and operationalised through a joint project by OHCHR and UNDP in Bosnia and Herzegovina (BiH) - the Rights-based Municipal Assessment and Planning Project (RMAP).

Much has already been written on the theory behind human rights-based approaches to development¹. However this new development paradigm has not been sufficiently tested to allow for the drawing of positive, or negative, conclusions regarding its operational relevance and added value. It is therefore imperative that any attempts to implement a HRBA to development are recorded and attended to for lessons learnt if current debates are to have any real impact. The experience from the RMAP Project will hopefully offer a practical illustration of the difficulties and debates inherent in the process of bringing together development and human rights concepts in a common agenda.

In brief overview, RMAP conducts human rights-based assessments which are then used to assist in the development planning of selected municipalities in BiH, the ultimate objective being to improve the enjoyment of human rights at the local level. A primary output of this pilot project will be a tried and tested methodology for rights-based analysis and development planning. Having focused on the assessments from October 2002 until April 2004, the RMAP Project is now being implemented in two phases: the first being the assessment and analysis of the human rights-based development situation at municipal level; the second being the formulation of a municipal development plan by the local authorities, during which RMAP facilitates the dialogue between civil society and the authorities. The second phase came as a result of the conviction that human rights-based assessment reports are not ends in themselves but rather tool for raising human rights awareness and building capacities of duty bearers and claim holders to realise their human rights and obligations².

In the following part of the paper, attention will be focused on the assessment and analysis phase of RMAP, identifying the difficulties as well as benefits derived from adopting a HRBA to assessment as a foundation for further development strategies. Here we look at the processes involved in formulating a specific HRBA for the RMAP project. The development of such methodology has been strongly influenced by the following: the convictions and understanding of agencies and individuals involved in RMAP regarding rights based approaches; strategy papers of donor agencies and attempts within the UN system to define a

¹ A 'human rights based approach' will be referred to further as HRBA. In the context of the RMAP Project a 'rights-based approach' is understood as a HRBA. The difference between a HRBA and a rights based approach will be elaborated further in the paper, but not here for lack of space.

² It is important to note that the second phase was initiated only after a revision of the project document at the beginning of 2004 and, at the time of writing, was not sufficiently executed to warrant extensive commentary.

HRBA, in particular, the UN Common Understanding³; and academic writing and training materials on rights based approaches.

The paper will then address some of the major debates that the project encountered: the tension between ‘rights-based’ and ‘human rights-based’ approaches, and legalistic and development approaches; the supposedly antagonistic nature of human rights; and the role and importance of international human rights standards in the assessment and analysis. Each argument has variously influenced the formulation and crystallization of the RMAP understanding of what constitutes a HRBA and of the methodology and tools. As of today the project methodology for rights based assessment and analysis makes explicit link to international human rights standards and principles.

The final section will highlight the most important aspects of implementing this methodology, including the development and utilisation of specific tools in order to ensure that both the assessment and analysis are human-rights based, and the need for a critical capacity to carry out such an assessment.

The paper will conclude by stressing the importance of having a HRBA to problem or situation analysis before implementing a development project. However, this is not to say that there are no pitfalls. The planning phase currently under way points out to potential limitations to the assessments produced so far. We will reflect upon the necessity to improve the direct operational value of the assessments for development planning purposes and to increase the development input to the project. If, we assume, a human rights-based assessment differs from human rights monitoring, there is a need to strike the right balance between development programming and human rights-based methodologies.

³ Available on the website of the UN Development Group - http://www.undg.org/documents/4128-Human_Rights_Stamford_Final_Report.doc

Linking Decentralisation and a Rights-Based Approach: Opportunities and Constraints in Ghana

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Abstract

This paper explores the interlinkages between a rights-based approach and decentralisation. While it is generally recognised that democratic politics provides a more favourable environment, a rights-based approach is discussed most frequently in *national* (constitutions and national legislation) and *international* (UN human rights conventions) contexts. In contrast, this paper examines the potential for the realisation of rights, notably social and economic rights, at a *local* level through democratic decentralisation. In principle there could be a positive interaction. A rights-based approach is based on the model that citizens claim and the state delivers, while democratic decentralisation offers the political structures and mechanisms to make such claims from the grassroots upwards, with delivery by local government, theoretically more responsive to local needs and demands. The extent to which such potential has been realised is examined here through a case-study of Ghana. Ghana is particularly pertinent as a country study given its experience of decentralisation directly to District level and the establishment of sub-District structures, inclusive of village-level elected bodies (Unit Committees). Case-study findings, however, show that progress towards rights-based development has generally not been achieved through the District Assembly system in Ghana. The theoretical model of development planning from the grassroots upwards to District level has not happened in practice, with adverse consequences for the realisation of economic and social rights at the local level. Government shortcomings in the implementation of decentralisation include the retention of significant controls and financial resources by central government and the neglect of sub-District structures by local government. While the conclusion is that the domain of local politics remains a significant one for a rights-based approach, the potential for a positive linkage is dependent on decentralisation being implemented in a manner that both increases the discretionary powers and financial resources available to democratic local government and strengthens the mechanisms by which local people can make and secure their claims to socio-economic rights.

NGOs, Social Movements and Paralegal Extension in North West Cameroon: from Clientelism to Citizenship at the Margins?

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Abstract

This paper evaluates the success of a particular form of rights-based intervention – namely paralegal extension work – in challenging exclusion. It focuses on an innovative NGO programme – involving development NGOs, lawyers and a local social movement – that seeks to challenge the marginality and predations faced by a pastoral group in North West Cameroon. The programme is discussed in relation to underlying processes of socio-political change, particularly in terms of shifts from clientelism to citizenship amongst the programme’s participants.

The experiences of the programme are used to illustrate and engage with key contemporary debates concerning NGO approaches to rights-based development, particularly in terms of: the role of social movements, and issues of ‘partnership’ between legal and development actors; the links between localised rights-based approaches and improving ‘good governance’; the interaction between ‘western’ rights-based approaches and local political, ethnic and religious cultures; and the links between participatory and rights-based approaches.

The paper reveals how the innovative merging of participatory approaches, paralegal extension work and legal representation has achieved some notable results regarding underlying processes of citizenship-formation. The impact of rights-based approaches are found to be closely shaped by local histories of state formation and more recent patterns of democratisation, especially concerning the autonomy and reliability of the legal system. The paper also highlights some potential dangers with the rights-based approach. For example, the explicit shift to a rights-based approach within the programme discussed here tended to have an exclusionary impact regarding women’s involvement in the programme. A further issue concerns the potential for minority rights (in terms of legal justice) to become privileged over and above broader precepts of social justice.

Overall, a citizenship-based approach offers a way of grounding rights-based approaches within local political realities, in terms of programme research (e.g. understanding problems of exclusion) and monitoring and evaluation. It is arguably in promoting inclusive forms of citizenship as part of a wider project of social justice that rights-based approaches can make their most significant contribution.

‘We Are Also Human’: Women as Citizens – or sub-Humans?

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Abstract

Over the past decade, a growing proportion of CARE International’s programming has focused on gender issues. The orientation of this work is shifting. From an early rather broad emphasis on women’s ‘empowerment’, often promoted through a focus on raising women’s savings and incomes, there has come to be a growing realization that there needs to be a much sharper focus on processes of social and cultural change, and in this context on the promotion of gender ‘equity’. The paper will argue that for poor women to act to improve their own lives and those of their children, requires the advancement of their status as citizen’s who regard themselves, and are regarded by others, as having equal rights to men and other higher status social groups. Case material will be drawn from countries as diverse as Bangladesh, India, Tajikistan, Malawi, Zambia and Niger. This material will show that, in the words of a Bangladeshi sex worker, realizing ‘we are also human beings’ represents often a big breakthrough for women constrained by their inferior status and position in traditional social contexts. In these situations of powerlessness and disadvantage that women find themselves in, their energy and commitment to contributing to the improvement of household social and economic status is devalued and drained. A more nuanced understanding of ‘empowerment’ thus requires women to achieve control over decisions that affect all aspects of their and their family’s lives, and is as much about women’s emotional and psychological selves, as it is about the material resources they have at their disposal.

As part of this argument, the paper will refer to the rights based approach to development being evolved by CARE International. This approach uses a relational approach to rights, that as moral beings, ‘endowed with reason and conscience’, we all hold both rights and responsibilities. Thus advancing rights is not merely about pressuring states to improve their ability to protect and fulfil rights, but about working with all social actors to become more accountable to themselves and others. In this regard, in the promotion of gender equity, men can be winners as much as women. In short, a rights based approach to development, to be effective, should support forms of empowerment that see power – and livelihood resources - as being expansive rather than a zero-sum game. This is a key element of the empowerment framework CARE is seeking to develop. Whether men are able to acknowledge the shortcomings of the traditional power structures they have a stake in and to acknowledge and create space for greater women’s equality, thus becomes a critical question for the future work of not just CARE. The cases illustrate how much of a struggle this will continue to be.

Challenges in the Implementation of Women's Human Rights: Field Perspectives on Domestic Violence and HIV/AIDS

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Abstract

The case study to be presented is extracted from a research currently undertaken in Uganda on HIV/AIDS, women's human rights and domestic violence from a socio-legal perspective. The study strives to take on board the latest development in legal anthropology and adheres to grounded legal theory as the main research methodology.

The study focuses on Ugandan women living in the poor urban neighbourhood of Kampala and gradually the "formal" and "informal" institutions and bodies that are accessed by these women to solve their conflicts and invoke their rights. The study thereby does not limit itself to a legal centralist approach to human rights, nor does it confine the interpretation of rights to a legal definition, but adheres to the concept of legal pluralism: "a heterogeneous phenomenon that sustains the State is not the only source of obligatory norms, but coexists with many other sites where norms are being generated and social control exerted".⁴ In this context, the study looks at the values and norms that are generated and upheld by formal institutions such as the police, the courts as well as the informal systems such as the traditional healers, village elders, clan/tribe leaders and religious leaders. The emerging picture seems to support the view that failing to address and analyse the sub-adjacent system of multiple norms and values in a given society (that often lies beneath the formal "imported" legal system) may lead to an incomplete understanding of the complexities and challenges with which democratisation processes and the implementation of human rights face in a given society.

The assumption that the realisation of human rights can contribute to poverty reduction, needs to be analysed and questioned in light of what the specific targeted beneficiaries (e.g. the poor section of a population) resort to in order to solve their conflicts and claim justice. The field research reveals a complex puzzle of intertwined norms and values that have mixed through time with different political, religious and cultural influences. In some cases, informal / traditional institutions are indeed violating and perpetrating gross human rights violations but in other cases, they might actually provide a more effective and accessible protection of human rights by the poor than a formal legal system would do.

Another aspect, that comes to challenge the assumed link between poverty reduction and human rights, is the costs of defending individual human rights and the lack of effective democratic institutions. The paper argues that isolating civil and political rights from economic development and vice-versa is not likely to achieve the goals of poverty reduction. Whereas a combination of the two, with the necessary political changes, mutually reinforcing each other and working towards the same objective might have a more realistic scope towards the realisation of poverty reduction, arguably therefore towards an rights-based approach to development.

⁴ Sally Falk Moore "Certainties undone: fifty turbulent years of legal anthropology, 1949-1999" *The Journal of the Royal Anthropological Institute* 7 (2001): 95-116

The Rights of the Rich versus the Rights of the Poor

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Abstract

Proponents of an individual rights-based approach seem to have a point when they defend their position against certain kinds of “communitarian” alternatives. In the case of indigenous communities, for example, the assertion of collective rights in the name of “the community” has sometimes led to the persecution or dispossession of religious and other minorities. Safeguards for individuals seem a necessary qualification to rights to self-administration and control over resources that might be assigned to collectivities (whose very definition is often problematic). Yet in pursuing such guarantees, and loading self-help responsibilities onto the right to have rights, today’s neoliberal regimes frequently succumb to the old contradictions at the heart of classical liberal formulations that insisted that interference with the distributive mechanisms that reproduced social inequality was a violation of the principle of justice as freedom: the protection of the freedoms of the few is at the expense of the many, social polarization deepens, and the state apparatus dedicates itself to containment rather than amelioration of the multiple social problems such a development path generates. This problem is often recognized in principle. Yet current tendencies to allow market principles of allocation to extend their reach into all areas of life, from public administration to the construction of personhood, coupled with strong informal international sanctions against heterodox policies, have seriously narrowed the field of viable alternative strategies. Some neoliberal reformers have sought to transcend the limitations of classical liberal thinking by introducing notions of “community capacity building” and recognition of poor people and their organizations as valid interlocutors in the development processes. Yet this approach tends to produce a de-politicizing simulation of democracy thwarted by the actual distribution of social power. The “communities” in question may be quite virtual, while this kind of institutionalized “participatory” approach has little capacity to change underlying popular attitudes bred of persistent socio-economic stress and insecurity, which all too often reject the relevance of universalizing Northern principles of human and civil rights to societies seen as founded on injustice and impunity. The irony of the contemporary situation is that if we examine the 19th and 20th century history of regions such as Latin America, we discover that members of particularly disadvantaged sectors of society and women living in patriarchal social orders did often take active steps to try to make the rights formally embedded in liberal constitutional notions of citizenship “work” for them. Yet today, the gains from a deeper enjoyment of the rights of political citizenship in more pluralistic democratic regimes seem increasingly vitiated by non-enjoyment of the socio-economic rights that earlier generations of liberal and social democratic reformers hoped to universalize. Rights-based demands tend to be emancipatory in their initial articulation but cease to be so when they have become depoliticized and normalized as a result of failure to address social problems at a structural level. I therefore contend that while an individual rights-based approach does have a role to play in securing protection for minorities, it is necessary to reject the neoliberal imagining of reconstitution of “communities” and the fragmentation that neoliberal techniques of rule produce. We still need a more global vision that focuses on how power relations would need to be transformed to secure greater social justice, a conception of how the empowerment of some is related in practical terms to the disempowerment of others.

Private Goods and Public Bads. Human Rights and Social Differentiation in Southern Tanzania

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Abstract

Discourses of human rights are being invoked by some citizens in Tanzanian rural communities to legitimate their non participation in community sanctioned activities around dealing with those suspected of practising witchcraft. This paper explores the dynamic interplay between individualistic notions of human rights and oppositional notions of community obligation in relation to emerging axes of social differentiation. In practice, apparently universal notions of human rights and the liberal constructions of citizenship they imply are the property of an emerging elite. The situation of human rights as a private good exposes the disjunction between community and national legal and moral frameworks, and the relation between specific conceptions of the rights bearing subject and institutional environment in which this subject has agency. Rights discourses and their enactment have important consequences for differentiation.

A Missing Point in the Livelihoods Approach: the Question of Property Rights

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Abstract

This paper explores on the relationship between property rights and livelihoods. Property rights are a social construct that denotes the way in what a particular society organizes for the allocation and distribution of resources and assets. The Sustainable Livelihood framework and the extended literature it has grounded suggest that, to people living in rural areas under poverty conditions, that access to assets becomes essential for any likely possibility of sustaining a living and perhaps escaping poverty. Based on case studies of peasant communities in the Southern Peru I start modelling their current livelihoods and corresponding access to assets. These relations are then related to established property rights, particularly referred to natural and physical assets, in order to show how property rights conditions livelihood outcomes and livelihoods strategies. The discussion suggests that the livelihood framework needs to be precise in regard to property rights so as to include structural influences of institutions and organizations and to undertake tensions of private versus communal or state ownership over assets. Ill or under defined property rights can undermine any attempt for improving livelihoods and reducing poverty.

Applying a Rights-Based Approach to Development: Concepts and Principles

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Abstract

This paper focuses on the core concepts involved in applying a rights-based approach to development.⁵ Rights-based approaches are still at a pioneering stage; although a growing number of development co-operation organisations claim to be applying them. At the same time, human rights are gaining a central place in the development rhetoric. While this development may be the first step towards a new phase in development co-operation that provides the poor with an internationally recognised legal basis for their free, active and meaningful participation in the development process, misuse and misunderstanding risk watering-down the concepts and thwarting the opportunities that a rights-based approach may offer. This includes, for example, the potential of more effectively reducing poverty by promoting inclusion, participation, equality, accountability and the rule of law.

Although there is no single, universally agreed rights-based approach, a consensus on the basic constituent elements of such an approach appears to be slowly emerging. By discussing what these elements are, this paper aims to provide an overview of the approach's strengths, challenges and relationship to poverty reduction. It distinguishes between a rights-based approach and a "needs" or "service-based approach", but also highlights some of the commonalities. Likewise, the differences between a human rights *perspective* to development assistance and a full-scale rights-based *approach* are examined. Three basic elements are identified as necessary features of a rights-based approach, which also distinguishes it from other approaches. These are (i) the legal basis; (i) the normative framework consisting of six key principles; and, (iii) the fact that the process of realising the overall goal is always a goal in itself. Each feature is examined and its implications for implementation of development efforts are discussed. The paper contains a number of boxes and diagrams that illustrate concepts, provide practical examples and introduce tools.

The paper's point of departure is that a rights-based approach is a welcome development that can potentially enhance poverty reduction by addressing human rights and freedoms as an integral part of the effort. If it is consistently applied, the approach has the potential to have far-reaching effects extending beyond the development realm. Nevertheless, the paper recognises the serious difficulties development practitioners face when trying to implement a rights-based approach. Challenges are grouped into three sets: (i) country-level challenges, including the inadequacy of state legal apparatuses and practices and poor awareness among state actors and citizens; (ii) shortcomings within development organisations and the cadres of development workers; and, (iii) the limitations of the international human rights framework. These challenges carry implications for the methodological and strategic development of the rights-based development effort. Although these are formidable, they are not necessarily insurmountable. Several of them can potentially be addressed.

⁵ It is based on a sub-chapter prepared for the book *Methods for Development Work and Research - a New Guide for Practitioners* by Britha Mikkelsen and is due to be published shortly by Sage Publications, India.

A Paradox of ‘Rights-Based Approaches to Development’: How Should we Address the ‘Dialectics of Universality’?

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Abstract

This paper looks into the case of a donor-funded project in a village in Nepal that attempted to grant disadvantaged people, such as the original settlers, the landless, and women, ‘special’ rights to participate in the project, through both the allocation of reserved seats on the management committee, and quotas in various project activities. This ‘rights-based’ strategy, however, did not achieve its intended results, since a majority of the representatives from the marginalised groups failed to exercise their rights, owing to such factors as their *habitus* of acting as the underlings of the village, their hand-to-mouth way of life that prevented them from finding time for the project, and their lack of command of the language used in public meetings. The discouraging performance can be attributed to the project’s attempt to invert ongoing social relations, while leaving intact the context that had subjugated the disadvantaged to power asymmetry. This was namely the prevalence of ‘governmentality’ that had prompted villagers to unknowingly embrace the growth of external interventions in village life, and had allowed local leaders to reap the benefits of programmes brought in from outside. The proliferation of external interventions tended to favour the dominant actors in the village who were more conversant with bureaucratic procedures and, drawing on their caste and kinship affiliations with functionaries, were liable to pre-empt interactions with external agents. The project attempted to further assimilate the disadvantaged to the ‘governmental rationality’ that had underprivileged them. This paper offers a warning against neglecting the ‘dialectics of universality’, while according rights to hitherto marginalised groups. Merely attempting to reverse the *contents* of social inequality can serve to perpetuate the overarching *context* in which oppression takes place.

Re-Interpreting the Rights-Based Approach - a Grass-Roots Perspective on Rights and Development

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Abstract

The rights-based approach is particularly associated with pro-poor development and the agency of the poor. At the centre of the approach is an understanding that successful development requires political analysis and action. Rather than development being reliant on charitable goodwill to meet the basic needs of very poor people, the rights-based approach emphasises that development should be based on a recognition of the equal rights of all citizens to the resources required for material well-being and social inclusion. Within such a conceptualisation of development, the contribution of the state is given prominence. Their role is that of provider, through equal access to essential services, and regulator, through a legal system that ensures equal rights for all. It is anticipated that under such conditions, the poor will experience a more supportive and less discriminatory context, and will be able to take advantage of new opportunities.

Despite this emphasis Shack/Slum Dwellers International (SDI), an international network of grassroots organizations and their support NGOs seeking pro-poor urban development (notably secure tenure, basic services and housing), have struggled to work within the rights-based approach. Whilst these organizations believe in redistribution, social justice and people's empowerment, they have been criticised by rights-based groups for being "too close" to the state. At the same time, SDI affiliates have stood back from legal high-profile campaigns.

The discussion below considers the reasons for this tension and focuses particularly on two related themes. First, women, who make up the majority of members in the local organizations (savings schemes), do not believe that an openly critical campaign against this state is likely to be a successful strategy given the present imbalance in power. Whilst on occasion savings schemes may be openly critical of the state, in general they seek to negotiate with local and national government around shelter, service and livelihood issues. Second, the women believe that there is no simple answer to their needs for tenure, basic services and housing that the state will deliver to them in response to successful advocacy. Rather they believe that new alternatives have to be developed, and that requires collaboration between themselves and relevant ministries and department. When the women propose and develop such solutions, they seek to build in an active role for local community groups. Strategically, they seek to strengthen local capacity, thereby investing in further opportunities to negotiate for redistribution and social justice, and to address specific material needs.

Rights to Development Constraints and Opportunities

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Abstract

This paper looks at the emergence of a rights based approach to development as a means to addressing social injustice, poverty and inequality. It demonstrates that for all of the rhetoric and legalistic or constitutional frameworks that focus on rights as basic needs, the rights agenda has not in fact moved policy and practice forwards towards delivery of wider access to development. The discussion on rights to development is placed in a globalising context, reflecting that the rights debate extends far beyond the boundaries of the nation state and in so doing presents a range of challenges around concepts of universality and sovereignty. Given that a rights-based approach is framed within the universal human rights agenda, what are the likely problems integrating this into the plans, policies and processes of development in different social and cultural contexts? Although the dynamics of social relations in the context of development projects increasingly transcend borders, the articulation of rights continues to exist within the institutional frameworks of the nation state. Cultural particularism and local identities are conceived as being territorially bounded, in contrast to the rights agenda that increasingly assumes universality, and abstractedness, defined at a global level. Is there or could there be a widely accepted universal rights standard? Is there an operational gap between the universalism of the rights agenda and particularism that is its local interpretation based on concepts of sovereignty or locally entrenched politics and culture?

The ‘Human Rights-Based Approach to Programming’: a Contradiction in Terms?

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Abstract

Many development assistance organizations – UN agencies, NGOs, bilateral donors, even international financial institutions – have embraced human rights to a greater or lesser extent since the end of the Cold War. Some have gone so far as to embrace a rights-based approach to planning and programming, believing that human rights principles such as universality and indivisibility must inform and infuse every stage of the planning and programming process. Planning and programming must become more holistic, they tell us. In some cases, this has led development assistance organizations to embrace absolutist stances that, while sound in a purely legalistic sense, lead to organizational paralysis through the inability to select intervention points. If “to plan is to choose” (Julius Nyerere), can the absolutist tendencies of rights-based approaches be consistent with good strategic or project-level planning? Will the rights-based approach to programming mean poorer programming and, hence, the realization of fewer rights for those who were meant to benefit? This paper explores the case of one UN agency that has embraced a human rights-based approach to programming while simultaneously trying to develop a more focused strategic plan.

Whose Rights? Examining the Discourse, Context and Practice of Rights Based Approaches to Development

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Abstract

As increasing attention is focused on rights-based approaches, there is the danger that a rights-based agenda will become narrowed into a top-down, donor-led trend. On the other hand, much of the current focus on rights-based approaches derives struggles for rights that are rooted both historically and contextually in experiences of exclusion and marginalisation, and have the capacity contribute positively to change. We will argue that rights-based approaches, in this latter sense, also have the potential to challenge underlying assumptions within development orthodoxy. The aim of this paper will be to take a critical look at the state of current thinking and practice in relation to rights-based approaches, contrasting a comparative analysis of different donor policy discourses on rights with empirical case studies of what is happening on the ground in diverse contexts. Issues of power, exclusion, knowledge, identity and difference will underpin much of the analysis, with a focus on three key questions:

- Whose rights? Within rights-based approaches to development, what rights are being defined and claimed, by whom, and for whom?
- What are some of the processes and strategies by which rights are claimed and achieved in specific contexts?
- What are some of the challenges that rights-based approaches can raise for development orthodoxy?

Addressing Rights of Individuals from National Minorities: the Community Advocates Programme

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Abstract

The trend to increase compliance of countries around the world in supporting human rights is evident in almost every bilateral and multilateral donor strategy with a focus on democratization and human rights. These donor strategies are a natural extension of expressed political, social and economic goals embodied in United Nations, regional multilateral or bilateral policy documents. One of the formal mechanisms for human rights monitoring and reporting is the EU pre-accession process which is aimed at conformance of legislation, establishment of new institutions and regulatory/structural reform of existing institutions. The *implementation* of legislation and the *functioning* of institutions pose a special challenge to human rights monitoring and compliance. Here international nongovernmental organizations and developmental programming can play a special role.

In the western Balkans, the European Commission has attempted to combat racism, xenophobia and discrimination against minorities through its EuropeAid/European Initiative for Democracy and Human Rights (EIDHR). With EIDHR funding, CARE International is implementing a 2.5-year program to protect and promote human rights and the rights of individuals belonging to the Roma national minority in Serbia from the “ground up,” reacting quickly to changes and needs. CARE employs *community advocates*, themselves residents of Roma settlements and urban neighborhoods, to act as a bridge between the poor not served by state services and other dutybearers. This approach catalyzes a social change process to claim rights under the law and adapt norms, values, and attitudes that have hindered individual and collective advancement, impeded compliance with international standards and reinforced negative stereotypes. Two important imperatives emerge from this experience: (a) change must occur at multiple levels – the state institutions, the minority population itself, and the population at large; and (b) human rights and poverty must be addressed concomitantly.

Rights-Based Approach to Social Protection

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Abstract

This paper was commissioned as part of a project of the Overseas Development Institute (ODI) to assist the UK Department for International Development (DFID) in developing an institutional policy and approach to social protection programming. It provides background information and analysis on the relevance of rights-based approaches (RBAs) to development for the provision of social protection (SP) in developing countries, supported through international development assistance.

This paper argues that there is a strong congruence between the two agendas. Rights-based approaches strengthen the normative case for social policy in general, and social protection in particular. Such approaches offer normative standards and principles, analytical tools and operational guidance, which are relevant in both justifying social protection measures and informing their design, implementation and evaluation.

The key contributions of a rights-based approach to social protection are that it:

- considers SP to be a right and entitlement, and not just a matter of charity;
- places clear obligations on states to guarantee SP;
- can use a range of international human rights standards to justify SP, starting with those related to social security but broadening out to all human rights;
- highlights the core obligations and minimum standards that can be expected, as well as the specific requirements of vulnerable groups;
- can use a range of human rights principles to justify SP and also influence the design of schemes (e.g. equality and non-discrimination, participation and accountability);
- places citizenship, and the importance of understanding social and political contexts, at the centre of the justification and delivery of SP;
- as a result requires a focus on the ability of citizens to claim their SP entitlements;
- as well as a focus on accountability mechanisms, and institutional capacity, to guarantee the appropriate design and delivery of SP; and thus
- links demand-side with supply-side considerations, when SP can often appear to be more technical and supply-side focused.

In addition to a RBA making a contribution to SP, social protection policies and programmes can support the realisation of human rights for the poorest and most vulnerable. This is particularly the case when the range of social protection instruments (e.g. insurance schemes, public works, food aid, targeted cash transfers or social funds) are seen not as based on humanitarian concerns or charity, but as grounded in social justice and the equal rights and entitlements of those that benefit from SP. From this perspective both approaches can be seen as complementary and mutually reinforcing.

The Discourse of Human Rights and Aid Policy: Facilitating or Challenging Development?

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Abstract

Over the past decade, the discourse of human rights has become an integral part of the development co-operation policies of OECD donors. This paper will endeavour to inquire into the origins of this debate. This will involve an overview of the history of development in order to trace the evolution of development thinking. Firstly, it will be shown that the notion of ‘development’ went through a series of transformations from modernisation theories in the post-World War II climate, to strong challenges from dependency theorists and developing countries in the 1970s and, subsequently, to the dominance of the World Bank’s neo-liberal economic policies in the 1980s. In the following decade, development aid assumed a more overt political dimension through the introduction of conditionality in the area of political reform. During this period, human rights became compatible with development thinking due to the changing normative definition of development within UN circles, which led to an enhanced position of the ‘individual’ within development co-operation policies. Evidence for this can be seen in the definition of development within the UN’s 1986 Declaration on the Right to Development and the human-centred criteria of UNDP’s Human Development Index in 1990. This approach has now been institutionalised by bilateral donors such as Dfid⁶ and has led to a plethora of literature in the area of rights-based approaches to development.

Following on from this analysis, which seeks to locate human rights within the broader context of development theory, some crucial issues will be addressed. Firstly, does this approach signal a challenge to existing approaches to development co-operation policy, by offering a normative framework rooted in ‘universally’ recognised values contained within international human rights law? In other words, does this approach indicate an acceptance for “rights-based approaches to development” which have become popular in recent decades? Or conversely, does the language of human rights simply provide a new legitimacy for the continuation of the modernising project of development? Secondly, from the perspective of human rights, should the convergence of human rights and development be automatically accepted as a beneficial strategy? For example, does this approach simply focus on a narrow set of human rights, primarily, a negative conception of civil and political rights and the right to property,⁷ which are compatible with neo-liberal reform, or does it allow for a more holistic conception of human rights, including increased political participation and an equal regard for socio-economic rights?

⁶ See DFID, ‘Strategies for Achieving the International Development Targets: Human Rights for Poor People’, Consultation Paper, February 2000.*

⁷ Sarkar, R., ‘The Developing World in the New Millennium: International Finance, Development and Beyond’, 34 *Vanderbilt Journal of Transnational Law* (2001), p. 471.

On the Responsibilities of Economic Non-State-Actors with Regard to a Rights-Based Approach to Development

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Abstract

States have an obligation to respect, protect and fulfil civil and political as well as economic, social and cultural human rights. It is states and parliaments that accede to and ratify human rights covenants and treaties which are then legally binding on them. A rights based approach to development takes account of these obligations of states.

Economic globalisation, as well as the concrete experience of failing and failed states, have drawn scientific and public interest to the responsibilities and obligations of non-state-actors (armed groups, but also economic actors, such as companies, in particular Transnational Corporations (TNC) and International Financial Institutions, in particular World Bank and International Monetary Fund). In some cases, such economic actors are more powerful than nation states. With power comes responsibility.

This argument is based on Catholic Social Teaching. As such it is a moral argument. However, it is also based on an increasing number of legal studies, arguing to also hold companies and other economic actors – in particular World Bank and International Monetary Fund – accountable. And it is based on the Universal Declaration of Human Rights that demands that “every individual and every organ of society [...] shall strive [...] to promote respect for these rights and freedoms [...] to secure their universal and effective recognition and observance [...]” “Every organ of society” does include companies and financial institutions.

The paper will briefly look into various voluntary instruments to achieve this goal. It will then discuss the potential of the “UN Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights”. These norms were adopted in August 2003 by the UN-Sub-Commission on the Promotion and Protection of Human Rights and are now being discussed – very controversially – before the UN Human Rights Commission. The paper will ask whether these norms do have any value added that empowers victims of human rights violations to claim their rights and to promote development and the achievement of the Millenium Development Goals.

Religion and a Rights-Based Approach to Development

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Abstract

While a ‘rights-based approach to development’ has become popular in recent years, the claim that equal human rights are universal has been repeatedly called into question on the basis that understandings of human rights differ according to the cultural and religious context. Despite the fact that religious traditions frequently act against the interests of equal human rights, this paper will be more concerned to investigate the overlap between religious teachings and the values embedded in the Universal Declaration of Human Rights. On the whole the development establishment has adopted a version of the rights-based approach to development that ignores religio-cultural diversity. Turning to the Hindu tradition, I will investigate the scope for a realisation of equal human rights with respect to different understandings of *dharma* (duty). The paper will conclude with a discussion of the issue of ‘the right to food’ in India and the suggestion that the development process has much to gain from a careful consideration of the places where traditional values intersect with modern rights-based concerns.