

# **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**

By Laure-Anne Courdesse\* and Sarah Hemingway\*\*

## **Introduction**

By illustrating how a human rights-based approach to assessment and development planning has been understood and implemented through a joint initiative by the UN Office of the High Commissioner for Human Rights (OHCHR) and the UN Development Programme (UNDP) in Bosnia and Herzegovina (BiH) - the Rights-based Municipal Assessment and Planning Project (RMAP) - this article will add to the growing wealth of ideas geared towards a relatively new international paradigm. Much has already been written from academic perspectives on rights-based approaches to development and there is a growing consensus regarding the key constituent features of a rights-based approach. A clear example of convergence within the UN system is provided by the 'UN Common Understanding'<sup>1</sup>, a document which attempts to reflect existing practice and policies of the UN Agencies and crystallise them into a basic, shared modus operandi for UN development programming. However, there remains a dearth of information on what a human rights based approach means in practice with recommendations for its implementation, particularly in terms of methodology and requisite capacities. Despite a clear need both for those involved in new initiatives to be able to refer to lessons learned and for a demonstrable systematisation of methodologies for implementing human rights-based development projects, these have still yet to be recorded. The intention here is therefore to contribute to a lessons learned process that is taking place at the global level, by reflecting on the implementation of the RMAP project from October 2002 until now.

---

\* MPhil Peace Studies (Trinity College, Dublin), Office of the United Nations High Commissioner for Human Rights (OHCHR) in Bosnia and Herzegovina (BiH), Human Rights Officer.

\*\* LLM (Nottingham), Researcher seconded by Nottingham Human Rights Law Centre (NHRLC) to the RMAP Project (June - October 2003), Human Rights and Migration consultant for OHCHR in BiH from November 2003 to August 2004. The authors have been working with the RMAP Project since May and June 2003 respectively. The views contained herein are given in a personal capacity and should not be attributed to the OHCHR or the RMAP project. The authors express gratitude to Mac Darrow and Lauren Matthews for comments on early draft.

<sup>1</sup> The Secretary-General's UN reform programmes of 1997 and 2002 identified human rights as a crosscutting issue that needed to be integrated into all UN agencies' activities - see Secretary General's report *Strengthening of the United Nations: an agenda for further change (A/57/387)*. As a result, a number of UN agencies have adopted a human rights-based approach to their development operations, but each agency has taken a different attitude towards adopting and operationalising the approach. Given the increasing level of co-operation amongst UN Agencies, a common approach to rights based development was required, and this was the reasoning behind the organisation of the Stamford Inter-Agency Workshop in May 2003, resulting in the formulation of the UN Common Understanding. *The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding Among UN Agencies*, Attachment 1 of the Report of the Stamford Inter-Agency

In overview, part I addresses current thinking on human rights based approaches to development, particularly within the UN system, and reflects on how this is being applied in the BiH context. Part II focuses upon the methodology applied in RMAP and the steps and tools necessary to conduct the RMAP assessments. Part III elaborates on some of the challenges encountered in defining and operationalising a human rights-based approach to assessment and analysis. Finally, observations will be made on the basis of our understanding and experience of human rights-based approaches in the field as to the importance of a HRBA.

## **I. Human Rights-based Approaches to Development in general and as applied in the BiH context**

### **1.1 Rationale and Definition of a Human Rights-based Approach to Development**

The evolution of modern development schemas has increasingly incorporated agendas specific to the livelihood and well being of individuals and communities, and it is within this context that we must consider the adoption of approaches relating human rights<sup>2</sup> with development. The concept of ‘human development’ evolved in response to past development failures, which focused on structural macro-economic development whilst failing to take account of the ‘human’ dimension of development<sup>3</sup>. This new thinking promoted a shift of focus; placing the individual at the centre of development efforts. In this sense, human development and human rights share a common focus (the human person), and a common objective – (an improvement in living conditions for all people). As stated in the introduction to the UNDP Human Development Reports, “Human development and human rights are mutually reinforcing, helping to secure the well-being and dignity of all people, building self-respect and the respect of others<sup>4</sup>.” This clearly expresses the complementarity of human rights and development, which is now widely acknowledged. Essentially, a human rights-based approach is strengthened by incorporating both human rights and human development factors and facilitates the realisation of their mutual objectives in a comprehensive, effective, and sustainable way.

---

Workshop, available on the website of the UN Development Group - [http://www.undg.org/documents/4128Human\\_Rights\\_Stamford\\_Final\\_Report.doc](http://www.undg.org/documents/4128Human_Rights_Stamford_Final_Report.doc), visited 30 December 2004.

<sup>2</sup> The term human rights in this article should be understood to refer to internationally agreed legal and moral standards and principles embodying international consensus on the minimum requirements of a life with dignity.

<sup>3</sup> As the UNDP Human Development Report 2000 states: “Growth alone is not enough. It can be *ruthless*, leaving losers to abject poverty. *Jobless*, creating little employment. *Voiceless*, failing to ensure participation of people. *Futureless*, destroying the environment for future generations. And *rootless*, destroying cultural traditions and history.” P.81.

<sup>4</sup> UNDP website, visited 31 August, 2004, Human Development Reports, ‘What is Human Development?’ <http://hdr.undp.org/hd/default.cfm>

A ‘human-rights based approach’<sup>5</sup> (HRBA) to development adds to the process of human development the notion of obligations and entitlements, normatively grounded in international human rights instruments. It utilises a conceptual framework that is operationally directed to ensuring that development programmes promote, and do not undermine, human rights and, in doing so, establishes the enjoyment of human rights as an explicit objective of development. This approach does not envisage a stand-alone human rights project supporting a larger development strategy, but rather advocates a distinct way of designing, implementing and monitoring development projects and programmes.

Within the overall framework of a HRBA, one can distinguish a number of approaches according to the degree to which they call attention to international human rights law and the role human rights play in their respective methodological structure. Several development agencies, such as the U.K. Department for International Development (DFID)<sup>6</sup>, have adopted an *empowerment* approach which privileges civil society interventions and advocacy, and focuses on the inspirational and moral aspects of human rights<sup>7</sup>, in a way that is closely related to ‘good programming’ practices<sup>8</sup>. Other approaches give precedence to the integration of human rights *principles* in development programming, such as non-discrimination and equality, participation, accountability, universality and inalienability<sup>9</sup>. Whilst some go further to stress the importance of making the link to international human rights *standards*, either explicitly or implicitly<sup>10</sup>. A good example of an approach that incorporates explicitly both human rights principles and standards, and stresses their relevance for guiding development

---

<sup>5</sup> 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. It should be noted that a HRBA could be interpreted as significantly different from a ‘rights-based approach’, since the latter addresses a broader spectrum of rights that are not necessarily linked to international human rights standards. See *OHCHR Background Paper No.1 to the Second Interagency Workshop Implementing a Human Rights based Approach in the Context of UN Reform, Stamford, USA, 5-7 May 2003*, p.5.

<sup>6</sup> In 2000, DFID described its human rights-based approach to development as “empowering people to take their own decisions rather than being the passive objects of choices made on their behalf.” DFID, *Realising Human Rights for Poor People*, 2000.

<sup>7</sup> Philip Alston made a useful distinction that “Human rights can be used to achieve two different goals: (i) to serve as an inspirational, mobilising force; or (ii) to facilitate access to a range of legal norms and enforcement mechanisms.” “The shortcomings of a ‘Garfield the Cat’ Approach to the Right to Development, *California Western International Law Journal*, 1985, pp. 512-13. The Institute of Development Studies (IDS) narrows down the role of an approach based on the international human rights framework and privileges one that has grown “primarily out of a myriad of social, cultural and political struggles and debates in both North and South. The process of ‘legalisation’ is just one aspect of the story.” IDS, ‘Thinking about a (Human) Rights-based Approach’, *Rights and Power Workshop Report*, February 2003.

<sup>8</sup> See the comparison drawn between ‘good programming’ and a human rights-based approach in *The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding Among UN Agencies*, supra note 2.

<sup>9</sup> See for example Swiss Agency for Development and Cooperation (SDC), *Integrating Human Rights and Poverty Reduction: An Issue Paper*, draft June 2004.

<sup>10</sup> CARE India’s Promoting Linkages for Urban Sustainable Development (PLUS) pilot project illustrates the differences in implementation and impact between an operationalisation of an implicit rights-based approach and an explicit one, based on human rights standards and obligations. Rand, J., *CARE’s Experience with Adoption of a Rights-based Approach: Five Case Studies*, 2002, pp.49-55.

programming in all phases and all sectors is the UN Common Understanding<sup>11</sup>. At the heart of the UN Statement of Common Understanding are three major points:

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.<sup>12</sup>

Although not a strong guiding force in the implementation of RMAP, particularly during the early stages as the project had begun six months prior to the UN Common Understanding, the three major elements of a HRBA extrapolated above have been reflected to varying degrees throughout the RMAP Project. Accordingly, RMAP could have been recognised as fulfilling different HRBA criteria at various times over the past year and half, whilst never really being clearly labelled as a set approach. As of today, the RMAP project has strong direction and resources for the purposes of making an explicit link to international human rights standards and principles at each stage of the process. Yet it is evident from the evolution of RMAP that, contrary to theories that categorise the variety of approaches (all of which arguably constitute recognisable human rights-based approaches) into separate schools of thought<sup>13</sup>, HRBAs are neither black nor white in practice, but rather varying shades of grey.

## 1.2. RMAP in the BiH context

In BiH today, approximately 50 percent of citizens live close to or below the official threshold of poverty<sup>14</sup>, national cohesion is still fragile due to the bitter wartime legacy,<sup>15</sup> and the country struggles with its unwieldy politico-administrative structures established by the Dayton Peace Agreement. In addition, the country is experiencing a difficult transition from socialism to a free market economy.

---

<sup>11</sup> See supra note 1.

<sup>12</sup> *The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding Among UN Agencies*, note 2.

<sup>13</sup> “There are roughly two schools on rights-based approaches: an empowerment model and one putting more emphasis on international human rights obligations and strategies to realise them”. Piron, L-H, and Court, J., *Learning from the U.K. Department for International Development’s Rights-based Approach to Development Assistance*, Overseas Development Institute, London, 2003, para 3.2.

<sup>14</sup> The Living Standard Measurement Survey of 2002 determined that 20% may be classified as poor. In addition, there is a large number of people (additional 30%) who are just above the poverty line, with limited revenues and who are sensitive to shocks such as employment insecurity or poor health condition]. See the PRSP summary at <http://www.bih.prsp.info/english/index2.htm> visited March 2004.

<sup>15</sup> Prior to declaring independence in 1992, BiH was one of the federal republics of Yugoslavia. The break up of Yugoslavia led to bitter fighting between the three major factions in BiH, the Bosniaks, Serbs and Croats. The conflict in BiH finally ended in December 1995 with the adoption of the General Framework Agreement for Peace (or ‘Dayton Agreement’).

The privatisation process is only one example of a situation in which corruption and non-transparency marginalise whole swathes of the population in decision making processes that disproportionately affect them, particularly in areas of employment, access to basic utilities, and general proceeds from the privatisation of state property.

The concept of a HRBA to development is thus extremely pertinent in BiH since the human rights framework provides a universally recognised foundation on which to establish legitimate institutions, good governance and socio-economic justice where potential violent conflict arising out of heightened inequalities, insecurity and social upheaval threatens peaceful development. Such an approach is evidently feasible since human rights standards and principles are already well established in the national legal and political frameworks of BiH: state authorities are directly bound by the ECHR, which is an integral part of the State constitution laid down in the Dayton Peace Agreement<sup>16</sup>, and the State looks towards the *Copenhagen Criteria*<sup>17</sup>, which highlights the importance of democracy, rule of law, human rights and minority rights, as a rigorous checklist that will eventually indicate the country's readiness to accede to the European Union<sup>18</sup>. Consequently, BiH is a country where legal and political motivations ensure that human rights factor, albeit to varying degrees, in almost all aspects of the decision making process, and the language of human rights is not entirely unfamiliar to authorities and the general public. Yet this is not to say that human rights obligations and entitlements are fully understood. Nonetheless, what this means for BiH in reality is that there is now strong potential for human rights concerns to prominently feature in development planning throughout all sectors, including civil society, and at all levels, from State to local municipalities.

It is important to note that the international community plays a significant role in policy and law making as BiH has not yet assumed full responsibility of government – much of the military and civil operations are administered by international agencies. Although international bodies in BiH are an essential driving force for development initiatives, their presence often negates the sense of responsibility and accountability that should be shouldered by authorities of any democratically elected government and constitutes a major component of a HRBA. It is evident in BiH that there is a

---

<sup>16</sup> The Dayton Agreement of 1995 establishes, in Annex 4, the Constitution of BiH. Article 2 para 2 states: “the rights and freedoms set forth in the [ECHR] shall apply directly in [BiH]. These shall have priority over all other law”. The Dayton Agreement also incorporates several other international HR treaties throughout its annexes and via this channel into the domestic legal framework of BiH.

<sup>17</sup> Criteria for EU membership, 1993, enumerated in articles 49 and 6 of the EU Treaty. The criteria cover 3 areas: Political – stability, democracy, rule of law, human rights and minority rights; Economic – established market economy and ability to deal with competition; *Acquis Communautaire* – convergence with political, economic and monetary aims of the EU.

<sup>18</sup> This process is being conducted under the auspices of the European Commission and in BiH has so far involved the publication of a Feasibility Study (report from the European Commission to the Council on the preparedness of BiH to enter into an SAA – the Study flags 16 requirements). The SAA (Stabilisation and Association Agreement) will be a country specific contract between BiH and EU that will allow negotiations to begin on the SAP. The SAP (Stabilisation and Association Process) is a regional framework for western Balkans

learned apathy amongst government bodies at local and state level due to the ultimate imposition of the will of the international community over decisions made by national bodies. The absence of any clearly differentiated duties and lines of authority between municipal, cantonal, entity and state bodies accentuate this lack of accountability, and is attributable to the complex politico-administrative structure endorsed by the Dayton Agreement.

It is in this context that the Rights-based Municipal Assessment and Planning Project (RMAP) is being conducted by OHCHR and UNDP, in cooperation with the State Ministry for Human Rights and Refugees. With the ultimate aim of improving the enjoyment of human rights locally, RMAP is a pilot project carrying out human rights-based assessment and development programming in selected municipalities in BiH<sup>19</sup>. The Project, which is currently half way through a four year implementation period, arose from a concern that grass roots human rights information was fragmented, undocumented or subjective and thus inhibited any action to effectively overcome problems facing the general population, and in particular vulnerable groups.

In practical terms the human rights-based assessment phase now operates through two municipal-level assessment teams, comprising two members per team, residing in selected municipalities for a 5 month period, and supported substantively, administratively and logistically by international and national staff from OHCHR and UNDP. As of January 2005 twenty-three human rights-based assessments had been conducted with the expectation of twenty-five being completed by the end of 2005. The initial target was to conduct 48 municipal assessments but this was reduced in order to channel resources into the development-planning phase of RMAP. This decision was driven by several factors, namely: (a) it took more time and resources than anticipated to conduct human rights-based assessment and analysis - partly due to the fact that there were few existing tools for utilisation by RMAP; (b) the extent of co-operative 'buy-in' within pilot municipalities exceeded initial expectations, increasing the feasibility of facilitating development plans; and (c) a shared understanding that human rights-based assessment reports are not ends in themselves, but rather tools for raising human rights awareness and building the capacity of duty bearers and claim holders to realise their rights and obligations.

Since April 2004, the two phases of RMAP have operated contemporaneously: while assessments of the municipalities continue, other teams revisit previously assessed municipalities to facilitate the formulation of local development plans. This is achieved through participatory approaches which are intended to strengthen the capacities of municipal authorities and civil society to address the human

---

co-operation with the EU and necessitates individual Country Strategy Papers to be drafted detailing how each country will work to fulfil the 1993 Copenhagen Criteria.

<sup>19</sup> The selection criteria for the municipalities were: 1) Number of minority returns; 2) Alleged levels of cleansing during the conflict; 3) Incidents reported to the international police force present in BiH; 4) Reported economic situation (although searches for information in this area proved fruitless); 5) Reported differential

rights issues identified in the respective assessment reports. However, since this latter phase of the project is still being developed and tested and the authors are not directly involved in this phase<sup>20</sup>, the focus of this paper shall remain on the ‘first phase’ of the Project (human rights-based assessment and analysis).

## **II. Methodology for Human Rights-based Assessment and Analysis**

Although rights-based approaches have gained in prominence and are being piloted worldwide, when the RMAP Project started there was little guidance as to what a human rights-based approach required in terms of tools and resources, and how such approach could be operationalised. In the absence of an established methodology, RMAP concentrated heavily on developing methodology and team training. This resulted in the adoption of key concepts and tools for human rights-based assessment and analysis that have since been tried and tested. After over two years of Project implementation, one can now reflect on the series of attempts made towards crystallising and operationalising a HRBA in practice. The role of human rights in the methodology has been defined through a flexible approach to piloting, testing, dismissing, selecting or improving different instruments and materials.

It was clear from the beginning of the Project that the development of tools would be essential for consistent and thorough assessments by field teams and a systematic approach would lend an element of scientific credibility to the project. Various tools have been developed to that end, and it has been the thinking that individual tools are necessary to accompany each step of the overall assessment and programming process, as one tool does not suffice. The following subsections elaborate on the steps that can be taken to conduct a human rights-based assessment and analysis<sup>21</sup>.

### **2.1. The prerequisite: Capacity to use a human rights framework**

The first point of departure for a human rights-based assessment and analysis is a sound knowledge of international human rights law and of the normative content of each relevant right<sup>22</sup>. This lens through which issues and problems are identified, assessed and analysed is the prerequisite factor for conducting a human rights based-assessment and analysis. Researchers doing such assessment do not need to be expert in human rights law but it is essential that they understand the core elements of the

---

access and enjoyment of rights amongst groups; 6) Political party participation in the municipality; 7) Level of civil society organisations and activities. The municipalities ranking highest or lowest were selected.

<sup>20</sup> At the time of writing, UNDP was taking the lead in the planning phase while OHCHR was dedicating its resources to the methodology and the lessons learned process.

<sup>21</sup> For more information on the methodology, see the RMAP *Methodology and Tools for Human Rights-based Assessment and Analysis*, which explains the overall methodology and provides guidance as to the application and complementarity of tools. . December 2004 publication.

<sup>22</sup> The normative content of human rights sets out specific entitlements of claim holders and obligations of duty bearers in relation to a particular right. The normative content of rights can be found in the General Comments of the Treaty Bodies, as well as Treaty Body Reporting Guidelines.

major rights being assessed and can translate concrete experiences and problems into human rights terminology<sup>23</sup>.

## 2.2. Identification and Prioritisation of issues and rights affected

After having done preliminary desk research on the general political and economic situation of the municipality, teams start identifying what the main problems in the municipality are. Prioritisation of problems (according to the priorities of municipal inhabitants) is done through participatory approaches and with reference to international human rights principles and standards. This guarantees that any assessment of the situation is directly linked to human rights, and it facilitates early identification of how problems may affect the enjoyment of human rights. The identification of vulnerable groups and the specific issues they might experience is crucial. Accordingly, RMAP developed a specific tool, the ‘Vulnerable Groups List’ to ensure that the principles of non-discrimination and equality were addressed throughout the project. The list contains a set of questions based on international human rights standards and relates specifically to vulnerable groups that live in BiH<sup>24</sup>

The combination of a participatory approach, a link to human rights and attention to vulnerable groups is encouraged in order that no issue is excluded. Dependence on participation alone, albeit a vital component of a HRBA, has limitations. Unless information is gathered based on a human rights framework, the value added through participatory approaches may well be diminished (due to lack of focus, subjective statements, political misuse, or elite capture<sup>25</sup>). Instead, a clear link to human rights standards and attention to vulnerable groups who are often excluded from participatory approaches allows us to identify problems that might be overlooked by the local authorities and by people interviewed in the participatory process.

For example, Roma rights in BiH municipalities are usually not prioritised. Given the cultural stigma attached to being of Roma identity in BiH, Roma will often not openly declare their ethnicity. They generally remain on the margins of society and face multiple forms of discrimination. Therefore, they are not easily identified at the municipal level and generally lack representation of any kind. The same

---

<sup>23</sup> Based on this premise, RMAP has emphasised the capacity of teams to understand human rights and human rights-based approaches to development and to apply that understanding at each stage of the project. As a result, frequent trainings were conducted (particularly on the seven major international treaties, the European Convention on

Human Rights, on human rights concepts and characteristics, and on the essential elements of major rights). In addition, RMAP developed tools that would enable assessment teams to link their research and assessment with human rights standards, from the earliest stage of assessment.

<sup>24</sup> Vulnerable groups included in that list are, among others, victims of domestic violence, female heads of households, people with disabilities, IDPs and returnees, national minorities, in particular Roma. The list is not exhaustive and teams were encouraged to use it as a basis for developing their own questions.

goes for victims of domestic violence. It is through reference to objective, pervasive concerns as elaborated in human rights instruments and applied in conjunction with issues relating to vulnerability and discrimination that teams succeed in obtaining a broad coverage of the human rights concerns of all inhabitants, particularly of the most vulnerable.

### 2.3. Gathering of information and indicators

Once problems are prioritised, teams gather more data related to each. In the process of doing so, teams develop human rights-based indicators, derived from human rights standards, in an effort to supplement the vulnerable groups list. The RMAP Project did not develop its own set of indicators. This decision was reached based on the assumption that reference materials produced by RMAP on human rights standards, combined with a list of questions regarding vulnerable groups and intensive training on human rights, will enable the teams to develop their own supplementary set of questions and human rights based indicators. It was also felt that (a) there cannot be an exhaustive lists of indicators since indicators are dependent on specific political, social, economic, national and international contexts that are constantly evolving; (b) producing exclusive lists could limit the assessment teams' initiative in gathering more extensive information (i.e. it would limit their creativity, intuition and their ability to make links between the different rights affected); (c) a clear understanding of the specific content of the rights is equally instrumental in gathering human rights-based information<sup>26</sup>; (d) and finally, after exploring current global initiatives on governance or rights-based indicators<sup>27</sup>, it became evident that RMAP did not have the resources to dedicate energy to the formulation of a comprehensive rights-based indicators list, without shifting the focus of the Project, since this would be far too labour intensive and time consuming.

---

<sup>25</sup> 'Capture' may be understood as the process by which elites skim development resources intended for legitimate development ends, and define policies in a way that protect their own interests. See Darrow, M., Tomas, A., supra note 1.

<sup>26</sup> For example, if one understands the content of the right "to have access, on general terms of equality, to public service" (International Covenant on Civil and Political Rights, article 25), one will automatically ask questions such as: Is there equal access to public service? If there is any discrimination, on which ground is it based? Is the discrimination based in law or in practice? How many are discriminated against? Are women and men affected differently? Why? Which vulnerable groups are particularly affected by this discrimination? Why? What are the criteria for recruitment? Are they available to the public? Which mechanisms are in place to ensure information about job opportunities and the recruitment process is available to everybody? Where are job opportunities advertised? Are those places accessible to all or are some groups more likely to have access to this information than others? What are the mechanisms for redress? Are those available for everybody? This list is not exhaustive. For more on the issue of indicators, see below sections 3.2. and 3.4. It needs to be stressed that the questions above lead to answers necessary for the analysis, and in that sense the lines between assessment and analysis are blurred.

<sup>27</sup> See for example: UNDP, *Sources for Democratic Governance Indicators*, 2004, providing an overview of 52 internet-accessible sources for governance indicators; and University of Essex, Human Rights Centre, *Map-Making and Analysis of the Main International Initiatives on Developing Indicators on Democracy and Good Governance*, 2003, commissioned by the Statistical Office of the Commission of the European Communities (EUROSTAT).

## 2.4. Analysis

Information gathered for each prioritised problem is subject to two types of analysis: one being a causal analysis of the problem and the other a capacity analysis. The causal analysis focuses on root causes of problems identified, on their impact on the enjoyment of the rights, who is affected and why. The capacity analysis requires examination of the capacity of individuals and groups to claim their rights, of duty bearers to meet their obligations, and of the relationship between the two. When looking at the capacity of claim holders, focus is trained on their ability to access information, to organise, to advocate policy change and to obtain redress. As for duty bearers, RMAP addresses: authority - power to act; responsibility – understanding of duties and how to conduct them; data – information necessary to conduct competent analysis; and resources - in terms of human, financial and organisational<sup>28</sup>. However, capacity as understood in RMAP goes beyond this conventional definition and also focuses on the institutional strengths and weaknesses of duty bearers, including political will, and on the external factors that have an impact on duty bearers and could constitute either a threat or an opportunity. This is done through a ‘swot analysis’ (Strengths, Weaknesses, Opportunities and Threats). ‘Forces at work’ are also identified, i.e. other State or non-State actors such as religious communities, media, political parties, and the analysis of their influence or interference with both claim holders and duty holders.

In terms of presenting findings, the RMAP assessment reports put together the analyses conducted and all relevant information gathered. The purpose of the reports is to highlight the gaps between what international human rights standards prescribe and the actual enjoyment of the rights in the relevant municipality, pertaining to, *inter alia*, the domestic legal framework and the capacities of duty bearers to fulfil their obligations and of claim holders to claim their entitlements. The reports clarify in the text which specific rights and aspects of each right are affected, footnoting relevant treaties and articles.

## III. Difficulties encountered in defining and operationalising a Human Rights-based Approach

Given the scarcity and novelty of projects taking an explicit HRBA on the global stage, effective implementation of the RMAP Project in BiH has required considerable effort. The experience of RMAP can deliver illustrative examples of potential problems to be faced by development agencies when integrating a human rights-based approach to their projects. The tumultuous series of progression and setbacks within the RMAP Project during these first two years can be attributed, *inter alia*, to the following factors: (i) an ongoing debate as to what a HRBA means in practice and what type of HRBA should be adopted; (ii) resistance towards an explicit link to international human rights standards and a fear of using human rights language; (iii) reluctance to be perceived as holding

---

<sup>28</sup> This definition of ‘capacity’ has been developed by UNICEF and is now increasingly used within the UN system.

national authorities accountable; (iv) and difficulties in striking an effective balance between human rights and established development concepts and methods.

### 3.1. Debate as to which Human Rights-Based Approach to apply

As a joint UNDP-OHCHR project, RMAP benefits from two different but complementary paradigms. It was therefore foreseeable that the type of HRBA to be applied would have to be negotiated and clarified. Initially, OHCHR met with considerable resistance when pushing for an approach that makes a direct link to international human rights standards. In that sense, RMAP mirrors the debates ongoing at a global level: questioning how much human rights should be in a human rights-based approach to development? And, more specifically, how explicit should the link to international human rights standards be?

As mentioned earlier, RMAP methodology has incorporated elements of different HRBAs to varying degrees and the ‘human rights’ component has wavered between high and low level integration. There are reasons for such fluctuation: primarily the fact that, in the first months of the Project, staff working on RMAP found themselves without concrete conceptual and practical support - a usual symptom of any pilot project. In addition, the level of understanding of HRBAs among staff involved in the Project varied considerably and so the initial stages were characterised by learning through trial and error. Finally, staff involved in RMAP had different opinions on the value added, or limitations, regarding the incorporation of human rights in the Project, as illustrated in sections below.

### 3.2. Towards an explicit link to international human rights standards

Manifest in the internal debate on the structure of reports and the insertion of human rights standards was a hesitancy to explicitly ‘speak human rights’ through using human rights terminology. There were concerns that explicit links to international human rights standards could jeopardise development objectives of the Project, since it was thought that a focus on human rights would narrow the development spectrum and limit the scope for presenting information useful for future development planning. It was also feared that the ‘legalistic’ nature of international human rights law would be inaccessible to the non-acquainted. In addition, concerns were expressed that too great an emphasis on human rights would be perceived as confrontational by the municipal authorities and may precipitate an abrupt end to any further cooperation with RMAP, based on the assumption that the nature of human rights is antagonistic<sup>29</sup>.

The debate on the content and form of the reports clearly showed the uneasiness towards using human rights terminology. Indeed, some of the staff working on the RMAP Project advocated for the absence of human rights standards in the text of the reports, thereby privileging an implicit link to international

human rights standards over an explicit link. As a result, human rights were temporarily relegated to the footnotes of the report. Reports were consequently disjointed and the link to human rights standards superficial.

However, after field-testing various formats, it was agreed that an implicit reference to human rights standards only stymied the educative value of the reports. Consensus was eventually reached on the notion that explicit reference to human rights standards throughout the assessment stage, including during teams' interactions with municipal officials, and subsequently in the reports, is instrumental in fostering effective dialogue with and between duty holders in the municipality for the purpose of human rights-based development. The reports themselves could then be used as a tool for building capacity of both duty bearers and claim holders in terms of human rights awareness raising and for drafting municipal development plans based on identified human rights issues. Hence the reports are now drafted so as to present, for each problem analysed: (a) the link between human rights and the problem identified; (b) an explanation of the normative content of specific rights affected and/or a focus on relevant aspects of each right (in plain language); and (c) footnoted reference to the appropriate international treaties(s) and article(s).

Integrating human rights standards throughout the methodology is essential if teams are to identify problems based on real human rights concerns: they will not necessarily be revealed through mere reference to human rights principles. One clear advantage of adhering to a human rights framework is that it provides an objective and authoritative basis for assessing development issues<sup>30</sup>. This framework mitigates unwarranted subjectivity<sup>31</sup> and draws attention to the real human rights issue. For example, teams repeatedly raised the issue of ethnicity, which has been used and misused in BiH, as a 'human rights problem'. When assessing the health sector, teams were gathering data concerning the ethnicity of doctors in hospitals without putting this information into the context of the right to health. They were not thinking in terms of accessibility, availability or quality of health, but rather in terms of the desire for a patient to be treated by a doctor of the same ethnicity. This concern should not be assessed in isolation as a human right nor be addressed through a development program in the name of human rights. Attention to such political and subjective issues cannot take precedence over the real human rights problems of accessibility and acceptability of health care.

---

<sup>29</sup> See Section 3.3.

<sup>30</sup> Human rights have become increasingly well-defined in recent years, codified in international, regional and national legal instruments. It must be born in mind, however, that human rights law cannot be looked at in isolation from the social and political processes and power relations that affect its formulation and implementation. The debate on the subjective or political origin of human rights law is beyond the scope of this paper.

<sup>31</sup> This is not to say that the perception of individuals is not a legitimate indicator of the level of human rights enjoyment.

Furthermore, reference to international standards guides the assessment and helps identify and clarify problems. This guidance prevents teams from gathering superfluous information for the sake of collecting as much data as possible, with no clear link to the ultimate objectives of a project. Initially, RMAP teams collected vast amounts of mostly quantitative data and statistics. Not surprisingly, it proved difficult to draw any human rights conclusions from such data. For instance, in the justice sector, teams were previously gathering information on the number and type of cases at the municipal and cantonal courts, rather than viewing the justice system in terms of pre-trial - trial - and post-trial rights. Similarly, indicators based on the number of schools in a municipality will not reflect a human rights issue until it is established whether the right to education is actually being denied or enjoyed by all on an equal basis. Hence it was quickly evident in RMAP that one could not identify a human rights problem with indicators that are not based on human rights. Making the explicit link to human rights standards and the essential features of each right underlines problems overlooked by other development approaches and sheds light on what is at the core of each problem identified. This in turn allows for more focused programming.

### 3.3. Holding authorities accountable

Opposition to explicit reference of international human rights standards can also be explained by the fear of holding the government accountable. The presentation of duty bearers' obligations using clear human rights terminology was initially resisted: while it was agreed that the word 'violation' should not be used, as RMAP does not have the authority of a judge, there was resistance even to stress clearly that the State, at all levels of authority, was the primary duty bearer and had clear obligations based on treaties enforced in BiH. As a result, there were some attempts to dilute emphasis on State obligations throughout the assessment process and the reports. This reluctance to promote accountability likely stems from the notion that assessing the fulfilment of State obligations will not be tolerated by government authorities and will ultimately preclude cooperation with government bodies.

Yet accountability is instrumental in development programming and should not be shied away from. As stated in the UNDP Poverty Report of 2000, "holding governments accountable is a bottom-line requirement for good governance".<sup>32</sup> Likewise, the Stamford Common Understanding considers accountability as a human rights principle that should "guide all development cooperation and programming"<sup>33</sup>. And so it is understood that development no longer belongs in the realm of charity, but is a duty of the state, which must be held accountable.

The underlying presumption that the promotion of accountability creates potential causes of conflict with government has proven to be a false premise. It has been found that teams are able to utilise

---

<sup>32</sup> *UNDP Poverty Report 2000*, cited in *UNDP Human Development Report 2000*, p.78.

human rights terminology when meeting with State authorities at municipal and higher levels. This came as a welcome surprise, since it was expected from the outset that municipal officials would be wary of assessment officers discussing human rights to the extent that further co-operation between the State and RMAP would be jeopardised. . On the contrary, the majority of municipalities have been keen to co-operate with RMAP teams and welcomed the return of teams to facilitate the formulation of development plans based on the findings of the reports. This has been extremely encouraging in terms of furtherance of the project and has led to major modifications in the programme cycle to incorporate this unsuspected willingness of authorities.

There are two major factors that have been influential in how the Project was received by the municipal authorities and the population as a whole. Firstly, in their presentation of the project to authorities, assessment teams underline that the RMAP Project is a human rights-based *development* project, and that they are not in the municipality as judges or investigators, but rather to promote municipal development. This is where it is important to distinguish between a human rights monitoring exercise, in the type of Human Rights Watch or Amnesty International, and a human rights-based development assessment. This way, municipal authorities understand that assessments based on human rights are instrumental in the ultimate formulation of appropriate development plans.

Secondly, the RMAP Project in BiH is operating in a context where it is possible to speak about human rights. Assessment teams have found that everybody, from municipal authorities to the population at large, including vulnerable groups, have a basic awareness of human rights<sup>34</sup>. Municipal authorities are usually aware that they should comply with international obligations even if they do not know how to act on their responsibilities or attempt to transfer responsibility to another level of authority. In some cases municipal authorities admitted openly that their actions fell short of international human rights law, often justifying it by the lack of resources at their disposal. This shows that municipal authorities are not resistant to human rights in principle, and are quite aware that they are accountable for their actions under domestic and international law.

In addition, the identification of duty bearers and their respective obligations has a clear empowerment aspect for both claim holders and duty bearers. In BiH, one of the weaknesses identified amongst claim-holders is their lack of knowledge about the specific content of their rights under international and domestic law; which authorities are responsible for the fulfilment of those rights; and what forms of redress are available in case of any violation. Interestingly, RMAP reports have also shown that

---

<sup>33</sup> *The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding Among UN Agencies*, supra note 2.

<sup>34</sup> Some groups have even a specific understanding of what it means, such as groups that have had to claim rights in their daily lives (e.g. returnees convinced of their right to return and to housing, or families of missing persons) or professionals having to use human rights law, such as judges and prosecutors. This is also facilitated by the fact that the European Convention on Human Rights supersedes national law in BiH.

some municipal officials had little idea about the specific responsibilities of their counterparts in other municipal departments or at higher levels of authority, and/or little power to make them act upon their obligations. Although BiH is partly a decentralised state, the municipalities cannot effectively influence many issues, particularly concerning socio-economic rights, since power remains at higher administrative levels<sup>35</sup>. In that sense, municipalities themselves become claim holders toward cantonal or entity ministries.

Clearly stating the obligations of all duty bearers, at municipal, cantonal, entity and state level is fundamental to future development planning. Any development plan needs to outline where responsibilities lie and the reports play a useful role for this purpose. Accordingly, human rights standards lend clarity, strength and authority to the assessment:

“All too often there are calls for ‘accountability’ in development as if it existed in a vacuum, begging a number of essential questions: ‘Accountability for what? Accountability by whom to whom? Why and by what measure? What are the limitations?’ (...) For the sake of credibility and determinacy - and in order to be rendered in programmatic terms - accountability must be susceptible to definition by reference to clearly identifiable obligations, duty-bearers and claim-holders.”<sup>36</sup>

Thus, accountability, linked to the international human rights framework, becomes a tangible concept that has direct significance to the problems faced by individuals and subsequent development plans.

### 3.4. Difficulties in striking the balance between human rights and development concepts and methods

As mentioned above, the perceived ‘trade-off’ between development and human rights concepts of the RMAP project has induced tensions and debates amongst RMAP staff when considering which type of HRBA to adopt and how to operationalise it. Problematically, the creation of tools, training and report editing has been heavily influenced by OHCHR, without any real alternative offered by development actors. A dearth of materials and training geared towards the ‘development’ aspects of the project led to reports being heavily focussed on human rights related information, often at the expense of ‘development’ data. Earlier reports were consequently criticised for being ‘too legalistic’.

Whilst a legalistic approach to problem identification and gap analysis is in fact fundamental to an HRBA, many critical thinkers and practitioners in the international development world<sup>37</sup> share the concern that development may be wider than the realm of international human rights law and a strict legalistic approach at all stages of the project could ignore information relevant to development which

---

<sup>35</sup> In the Federation of BiH, Cantons are primarily responsible for the funding and policy issues regarding education, social protection, and health care, while in Republika Srpska it is the responsibility of the respective ministries at entity level.

<sup>36</sup> Darrow, M., Tomas, A., ‘Power, Capture and Conflict: A Call for Human Rights Accountability in Development Cooperation’, *Human Rights Quarterly*, forthcoming Vol.26 (4), November 2004.

falls outside of the human rights legal framework<sup>38</sup>. Therefore, integrating human rights and development methods and concepts to a greater degree would improve the direct operational value of the assessments for development planning purposes.

This debate over what balance to strike between human rights and development highlights the difficulties faced in combining the two, albeit complementary, approaches in one project. The overall purpose of the project must dictate the weighting that is applied to either development or human rights at each stage of the operation. The audience, which in the case of RMAP is primarily the municipal authorities and development agencies, must find the information relevant and be able to work with the reports to further human rights-based development goals. For this reason it is imperative that human rights are seen to guide development concerns, and not limit them.

It was found that the reports required more development related information, such as: the number of SMEs, economic details of the main industries in a municipality, employment statistics. These are areas which are not addressed sufficiently by the human rights framework. This information, while not immediately recognisable as ‘human rights-based’ information, is necessary to aid development planning that will effectively address human rights concerns affected by the micro-economic situation<sup>39</sup>. Any supplementary development indicators would still need to be formulated in a way that respects and relates to the human rights framework, whilst informing the planning phase of the project<sup>40</sup>.

Taking a HRBA to development does not require any paradigmatic shift. It may be perceived to some degree as an expansion of good development programming. In addition, HRBAs increasingly include elements traditionally considered as being specific to a human development approach, in particular the

---

<sup>37</sup> For one critique, see Amartya Sen, *Development as Freedom*, Anchor Books, New York, 1999. Ch.10.

<sup>38</sup> International human rights law, being the results of governments’ negotiations at a global level, only crystallises the *minimum obligations* that States accept to fulfil. Some potential rights are deemed too controversial or too restrictive to be agreed upon in a Covenant. Therefore, international human rights law is limited in its scope and such limitations need to be kept in mind. One must note, however, that human rights law is evolving quite rapidly and gaining grounds in untouched areas, as illustrated in the debate on human rights obligations of non-State actors, such as Trans-national Corporations. See for example the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, adopted by the Sub-Commission on the Promotion and Protection of Human Rights in August 2003.

<sup>39</sup> This information can however be seen within a human rights framework and is instrumental for the State to realise the right to gain a living by work through fostering economic opportunities. See ICESCR article 6(2), “The steps to be taken by a State (...) to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment (...)”.

<sup>40</sup> However, care must be taken at this point to ensure that reports do not become unwieldy and that yet another balance is found between the desire to make a general assessment of the overall enjoyment of human rights in a municipality and the need to gather extremely detailed information for designing a development project on one specific issue. Indeed, RMAP reports have been criticised for being too lengthy (averaging around 80 pages) while at the same time lacking specific information needed, rendering them hard to access for some potential users, such as state authorities and international development agencies. A solution could be for these

analysis of political, economic and social contexts. The 2000 Human Development Report recognised the interface between human development and human rights, stating “the concepts and tools of human development provide a systematic assessment of economic and institutional constraints to the realisation of rights - as well as of the resource and policies available to overcome them”<sup>41</sup>. There is now growing consensus that this kind of assessment constitutes an integral part of a human rights-based approach<sup>42</sup>.

As shown in RMAP, root cause analysis of the non-enjoyment of rights points to problems within the socio-economic context and to economic, political or institutional constraints. Moreover, the broad understanding of capacity analysis<sup>43</sup> used within RMAP allows for the identification of the internal strengths and weaknesses of duty bearers as well as external factors that have an impact on their capacity, thus revealing the underlying economic and political context and the influence of other non-State actors.

Later RMAP reports have managed to find relative balance between human rights and development methods, resulting in a change of structure that portrayed the municipalities’ major underlying problems in a stronger and clearer way. Conceptually, this stems from a shared understanding between both UN agencies that neither human rights nor development encompass all issues but rather they complement each other<sup>44</sup>. However, it needs to be emphasised that a HRBA does not mean simply inserting or adding human rights to a development project, nor it is a mere combination of human rights and development. Rather, it is another *way* of doing development, a stand-alone approach that, although requiring input from human rights and development practitioners alike, is potentially bigger than the sum of its parts. RMAP experience shows how much effort is needed so that such approach is one of inclusive collaboration rather than exclusive compromise.

## Final Observations

Revisiting the UN Common Understanding, it is apparent that RMAP has applied the core elements detailed within that document to a significant extent<sup>45</sup>. Firstly RMAP states quite clearly that one of the main objectives of the Project is the furtherance of human rights. Secondly, due to consistent

---

development agencies to apply an RMAP-type methodology in their own programs, incorporating human rights-based indicators specific to their area of development.

<sup>41</sup> *UNDP Human Development Report 2000*, p.2.

<sup>42</sup> To illustrate, as agreed in the UN Common Understanding, a HRBA includes the identification of “the immediate, underlying, and structural causes of the non realisation of rights”. *The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding Among UN Agencies*, p.3, supra note 2.

<sup>43</sup> See Section 2.4. Analysis, p. 10.

<sup>44</sup> “In short, human development is essential for realising human rights, and human rights are essential for full human development.” *UNDP Human Development Report 2000*, ‘Overview: Human Rights and Human Development - for freedom and solidarity’, p.2. For more on this mutually reinforcing relationship, see same report, chapter one on ‘Human Rights and Human Development’.

efforts, the teams are now making assessments that have explicit link to international human rights standards. These guide the assessment and analysis phases of RMAP and provide a sound basis on which to conduct the planning phase. The requirement that human rights standards and principles guide all development cooperation and programming in *all sectors* and in *all phases* of the programming process has proved extremely complicated in RMAP. This is partly due to the sheer scope and intricacy of what this requires in practice.

The weighty task of operationalising a methodology for rights-based development meant that some programmatic elements were not prioritised, regarding both the *substance* of the assessment, and the *process* by which it was conducted. In terms of substance, the key factor that needs further attention is the balance struck between human rights and development in the two phases, specifically increasing the development aspect of the assessment and the human rights element of the planning. This will create a more coherent project cycle and will optimise the potential of a HRBA. In terms of process, not enough attention was paid to realising the principle of participation on one hand and building capacity on the other, with a view to promoting ownership of the Project by claim holders and duty bearers.

Importantly, participatory assessment remains limited. This was caused initially by the lack of project capacity to apply participatory approaches. Yet the degree of participation should remain limited to an acceptable level in an attempt to guarantee the project's objectivity and independence, i.e. by preventing dominant or powerful groups from exerting influence over process and outcomes. Ironically, teams members and other staff working for RMAP planning phase have voiced their concerns that the current planning process focuses almost solely on participatory approaches at the detriment of human rights standards and attention to vulnerable groups. It remains to be seen how the planning phase will find a balance and how the two phases of the RMAP project will become more integrated so that development plans fully reflect the findings of the assessment reports.

In contrast, the objective to build capacity of duty-bearers and claim-holders should in now way be limited, yet this element has not been progressed sufficiently within RMAP. Although the original project document foresaw a capacity building element in both informal (interviews and conversations) and formal ways (trainings or round tables discussions on human rights), RMAP has not put significant resources towards realising this component of the Project. It was assumed that teams would elaborate upon different aspects of the rights while interviewing people, and this informal capacity building does take place. However, there was never any additional effort made to help the teams build such capacity in a stronger way. It is in this regard that RMAP falls short of the expectations reflected in the UN Common Understanding, both in the assessment and planning phases.

---

<sup>45</sup> See supra 1.1 Rationale and Definition of a Human Rights-based Approach to Development, p.2.

Although the assessments are useful for development purposes in themselves, they are part of a bigger project cycle and represent an opportunity to develop capacity of duty bearers and claim holders at an early stage. This increased capacity would facilitate the task of planning teams, who have limited time to help formulate development plans with respective stakeholders in their municipalities. A focus on the production of one outcome, namely the municipal development plans, should not preclude consideration of how these plans will be implemented and monitored by national bodies, and with what capacity<sup>46</sup>. Optimally, capacity building should be done in both phases. However, in the case of RMAP, since the assessment phase is almost completed, it may be left to the planning phase to enhance capacity building efforts on the basis of the reports. ,

Effective participation and increased capacity of all actors within the municipality would lead to greater national ownership of the RMAP Project. ‘Ownership’ is essential to a human rights-based approach. Only through the ‘buy-in’ of duty bearers and claim holders can the objective of the project (the furtherance of human rights) have any chance of realisation and sustainability.

From these observations, it is clear that RMAP may be improved. However, despite its shortfalls, a major outcome of RMAP is the fact that it has shed light on the steps necessary to give effect to an operative human rights-based development project and therefore can provide strong grounds on which to found other projects.

*Word count: 7,000*

---

<sup>46</sup> At the time of writing, there is no clear direction within RMAP as to who would be responsible for implementing and monitoring the municipal development plans produced. For reasons of ownership and sustainability, it would be preferable if this were done by a national body, either governmental or non-governmental.