

INTRODUCTION

THE NATURE OF HUMAN RIGHTS OBLIGATIONS

In *The Rights Way to Development* the Human Rights Council of Australia noted that the international human rights framework ‘offers a coherent body of principles and practical meaning for development cooperation’¹. The centrepiece of that framework is the International Bill of Rights which comprises the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols.

Other human rights conventions, including the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRoC), and the Convention on the Elimination of all forms of Racial Discrimination (CERD), elaborate on the Bill of Rights in relation to specific themes and sectors.

Each of these human rights instruments also makes reference to the imperative for the international community to act in concert to ensure the realization of the rights therein.

In the human rights world the interpretation of state obligations to ‘respect’, ‘protect’, and ‘fulfil’ human rights has now gained widespread acceptance and this formulation provides a framework for policy-setting for state parties as well as a means to monitor the human rights performance of governments.

The Committee on Economic, Social and Cultural Rights has provided further definition of these obligations in its General Comments and both UN and academic experts have refined and elaborated the formulation. One useful description of these obligations is provided by the Habitat International Coalition:

The obligation to respect ... requires the state and all its organs and agents to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of individuals or impinging on their freedom to access resources to satisfy their needs. It also requires that legislative and administrative codes take account of guaranteed rights.

The obligation to protect rights ... obliges the state and its agents to prevent the violation of rights by other individuals or non-state actors. Where violations do occur the state must guarantee access to legal remedies.

¹ *The Rights Way to Development: A human rights approach to development assistance*, Human Rights Council of Australia, Marrickville, 1995, p 11

The obligation to fulfil ... involves issues of public expenditure, governmental regulation of the economy, the provision of basic services and related infrastructure and redistributive measures. The duty of fulfillment comprises those active measures necessary for guaranteeing opportunities to access their entitlements.²

By virtue of donor governments' responsibilities as outlined in the International Bill of Rights to use international cooperation to further the realization of human rights, the obligations to respect, protect and fulfil rights apply as well to the provision of development assistance by donors. It is in the area of the fulfillment of human rights - particularly economic and social rights - that development assistance is most needed and welcomed by recipient governments. Therefore, the realization of human rights and the ways in which this can be achieved is the most important issue that must currently be addressed by donors.

PUTTING DEVELOPMENT ASSISTANCE TO BEST USE

We live in an era when virtually all donors have diminished their proportion of official development assistance to gross domestic product, and the UN-agreed target of ODA to GDP of 0.7% is now viewed by many donors as unrealistic; many refuse to commit themselves even to this modest figure. A small number of others, however, continue to lead the way by exceeding the target³. The World Bank is finding it more difficult to raise funds as the United States Congress displays ever-increasing hostility to multilateralism and cuts its contribution to UN bodies, using the need for restructuring as its excuse. At the same time the Bank is beginning to recognize its role in redressing the outcomes of structural adjustment and increasing debt burdens⁴.

While efforts will continue to be made to achieve the UN target of 0.7% of GDP, it makes sense to put the diminishing aid program to better use and to strive to ensure that the sustainability and effectiveness of projects is maximized. This is precisely what a human rights approach to development assistance can deliver⁵. Acceptance and use of a human rights framework through good project design and implementation will identify more accurately areas of greatest need and enable better monitoring, greater accountability and stabler societies.

The human rights approach contributes to the tasks of eradicating poverty in the longer-term and to alleviating poverty in the shorter-term. Since nearly all donors have begun to insist that their development assistance is designed to relieve poverty and to encourage 'democracy and human rights' the rights framework is a way for donors to deliver on their objectives to bring about good governance and democratic development.⁶

²Adapted from *When Push Comes to Shove: Forced Evictions and Human Rights*, Habitat International Coalition 1995

³Denmark 0.96; Norway 0.87; Netherlands 0.81; Sweden 0.77. Source: DAC 1997 report for 1995 figures.

⁴The International Monetary Fund has been criticized for the social fall-out of the economic policies it imposes on developing countries and the World Bank itself has begun to recognize this publicly by providing large grants for social safety nets to assist governments to address this fall-out. A recent example is the grant of \$300 million to Thailand.

⁵See *The Rights Way to Development: A human rights approach to development assistance*

⁶For example the Danish official aid agency Danida advises that "The reduction of poverty constitutes a fundamental principle of Danish development cooperation..." and it goes on "The promotion of democratization and respect for human rights have become increasingly central and integral elements of Danish development cooperation with the developing countries." Danish

ESSENTIAL STEPS FOR THE IMPLEMENTATION OF THE APPROACH

So what tools are required for applying the international human rights framework to implement a human rights approach to development assistance? Three steps are essential:

- the formulation of goals and implementation processes in human rights terms
- an agreement by all stakeholders on appropriate performance indicators including
 - the establishment of realistic time frames for achieving the objectives
 - concrete measures of progress
- an evaluation of the outcomes based on both human rights and participation.

The UN Committee on Economic, Social and Cultural Rights has provided some guidance to governments on meeting their obligations. Regardless of resource constraints, governments should:

- ensure that they satisfy their minimum obligations relating to each right;
- plan strategies and programs for the eventual fulfillment of all their obligations; and
- monitor both the fulfillment and the obstacles to the fulfillment of these obligations over time.

Both donor and recipient governments therefore need to agree on a common approach to realize these aims. This Manual is designed to make this possible. It addresses the basic essentials with which this can be achieved. These are:

- a thorough *situational analysis*,
- *goal and standard setting* with clear time-lines,
- *plans and programs of action* that are the responsibility of all levels of government and the bureaucracy, and
- the effective *monitoring of compliance and enforcement* involving both government authorities and the beneficiaries themselves.

Since the International Bill of Rights calls on states to cooperate to bring about the realization of human rights, donors need to base their development assistance on the commitment to support recipient states in meeting their human rights obligations. This Manual is designed to assist them

Development Assistance - The Plan for 1996-2000, Ministry of Foreign Affairs 1996, p 4. The Canadian agency CIDA puts it thus: "The purpose of Canada's ODA is to support sustainable development in developing countries, in order to reduce poverty and to contribute to a more secure, equitable and prosperous world", Canada in the World - Government Statement, Public Communications Branch CIDA Information Service, 1995, p 42.

in *making choices* in their design of *country programs*, in *establishing the priorities* within these *programs*, in deciding how the programs are to be *implemented and evaluated*, and in ensuring the kind of *meaningful participation* that is so forcefully demanded by the Declaration on the Right to Development⁷.

The Manual does not attempt to estimate the cost within donor programs of implementing a human rights approach to development assistance. Indeed it would be a mistake to assume that the recommendations in the Manual will necessarily entail any additional costs. This is because the approach does not require an increase in resources overall but, rather, a reallocation of the budget within the donor agency according to changed priorities. In case that the agency does decide to increase overheads to implement the approach, this would represent an added investment for sustainability. It would also reinforce the perception that the donor is committed to meeting its international obligations under Article 2 of the International Covenant on Economic, Social and Cultural Rights⁸.

THE DONOR-RECIPIENT RELATIONSHIP

There is a basic power inequality between donor and recipient governments. The very fact that donors are increasingly focusing on poverty alleviation demonstrates the fact that development assistance, whatever else it attempts to do, acknowledges the need for a redistributive process based on the ethical stance of the donor community. The power imbalance arises out of resource imbalance between donor and recipient.

This Manual takes a lead from the 1986 Declaration on the Right to Development which calls for ‘meaningful people’s participation’. A participatory approach, however, cannot simply be isolated to the community level. Recipient governments also need to be involved in the decisions that affect their ability to deliver on human rights. This will most often only be possible at the high-level discussions that lead to agreements on development cooperation between governments. The Manual attempts to sketch the process by which human rights are integrated into these discussions and suggests the nature of contracts that might produce more equitable arrangements than in the past.

The Manual also argues for greater coordination among donor governments. This is not simply to overcome the duplication and competition that arises from lack of such coordination, but also to recognize that uncoordinated, excessive and arbitrary demands on the recipients have all too often be a feature of development assistance in the past. This applies equally at the governmental level as at the community level. Accordingly, the Manual argues that recipient governments must not be excluded from the multilateral forums where decisions are taken on development assistance.

⁷It has been argued that development assistance can best address the obligation to fulfil since this is dependent on the overall resources available to a developing country. Development assistance has traditionally addressed the better management of these resources and has provided the means to fill the gap when resources are lacking. A human rights approach to the provision of development assistance should also support government efforts to meet the obligations to respect and to protect rights by not only providing advice but more concretely as we show below.

⁸ “Each State Party to the present Covenant undertakes to take steps, individually and *through international assistance and cooperation* (emphasis added), especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of rights in the present Covenant...”

The Manual focuses on government obligations under the international human rights framework and pays special attention on how these can be met. It does not deal with humanitarian crises where development assistance can be critical. There are other circumstances aside from such crises in which governments in developing countries are simply not in a position to meet these obligations. Sometimes these are brought on by the action of donor governments – the IMF-imposed structural adjustment programs have in many cases resulted in an incapacity to deliver on human rights. Civil unrest and armed conflict will also affect the ability for governments to deliver on their human rights obligations, and this is where humanitarian assistance can make a difference.

Finally, it is essential that donors be able to demonstrate their own commitment to human rights in both domestic policy and practice. To argue convincingly for human rights objectives in the policy dialogue with recipient governments, donors should not be in a position to ask more from their interlocutors than they are willing to deliver themselves. The credibility of a donor would be immediately undermined if it is not seen to meet its own international human rights obligations.

FOR WHOM IS THE MANUAL WRITTEN?

The main emphasis in this document is on cooperation. It recommends that the parties responsible for the delivery of development assistance accept that there are contractual obligations on each of them to work together to integrate human rights in their analysis, their strategy, their program design and implementation, and their monitoring and evaluation.

Many agencies are already thinking along these lines and have formulated policies on the integration of good governance and democratization into their development assistance programs. For the aid practitioner, however, it is sometimes difficult to implement the demands of the agency policy. There are many reasons for this but the principal one is often simply lack of experience in approaching the program from such a different perspective and having to adopt what the UNDP has called ‘a holistic approach’ to development⁹. Many practitioners are not overly familiar with the implications of implementing economic, social and cultural *rights* and what this might mean for the dialogue with recipient governments.

The Manual, then, is a response to those many readers of *The Rights Way to Development* who asked ‘what does it mean in practice’. It is designed to assist those who are charged with translating policy into practice in sometimes difficult environments, and it provides a practical guide to the implementation of a human rights approach to development assistance.

⁹ *Integrating Human Rights with Sustainable Human Development: A UNDP policy document*, United Nations Development Programme, New York, January 1998. (See Appendix A)

A model rights-based program – The EU Human Rights Program in South Africa

"The programme will focus on projects eliminating unequal access to law, basic services, land and housing as well as information ... Priority will be given to projects in deprived areas and the main beneficiaries will be disadvantaged groups who have historically been denied basic rights ... The program was developed through a wide-ranging consultative process by the Danish Centre for Human Rights with the principal players of the human rights sector in South Africa."

The areas of inequality identified by research were access to law, access to education and health, access to land and housing and access to information. The program was to focus on disadvantaged groups with special attention to women and children. The objectives of the program included bringing to the attention of the public institutions providing basic education and health services the needs of the beneficiaries; imparting knowledge of the international human rights framework to NGOs and developing their research skills and ability to lobby; establishing pilot networks of legal services to marginal communities; increasing human rights awareness among the beneficiaries.

The implementation of the program involved research by NGOs aimed at assessing current access to law, basic services, land and housing. This information would be passed on to relevant government institutions and form the basis of a limited number of advocacy campaigns.

The Programme supported the NGOs to monitor the performance of the South African government in the realization of the rights provided for in the new Constitution. In addition efforts were made to develop fair and efficient complaint mechanisms and codes of conduct in the public institutions providing basic education and health services.

A major focus of the program was awareness-raising on human rights among disadvantaged communities so that they could claim their constitutional rights.

The indicators identified in the program design included:

- assessing the laws relevant to the public institutions, determining their responsiveness to cases brought by the beneficiaries and the length of time taken to deal with them;
- measuring the number of complaints brought to the professional government groups in terms of the active steps to protecting constitutionally guaranteed rights;
- researching the complaints mechanisms and codes of conducts in public institutions and measuring whether they have improved access to services;
- measuring the effectiveness of NGOs by the demand for their services from government, public institutions and beneficiaries.

The background analysis to the project arose from research that included visits to NGOs in urban and rural areas as well as discussions with government officials. Two seminars with human rights NGOs were held at the beginning and end of the research period.