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Brief Introduction on the human rights-based approach to development

In recent years, international efforts to deal with development issues have increasingly used a rights-based language, focusing on human rights-based approaches to development. The linkages of development and human rights, and attempts to redefine development as a normative conception grounded in the human rights doctrine has had a growing support. But it is also a contested concept in the development discourse and among development practitioners. While some argue that it represents a new conceptualisation of development enhancing human development and capabilities, sceptics insist on clarifying its “added value” to existing conceptions, and claims that unless “value is added” in terms of “better and more development” are not properly demonstrated, the conception has little to offer in terms of supporting people’s own efforts to improve their standards of living and have their rights respected and protected.

The UN Millennium Declaration states that “freedom” is one of the fundamental values to be essential to international relations in the twenty-first century and adds that “men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice.” A rights-based approach to development supposes that participatory and democratic governance and rule of law are needed to assure these and other fundamental rights and freedoms to subsistence, participation and security.

Human rights-based approaches to development have been formulated and are being tested out in a period of neo-liberal globalisation. Rights-based approaches grew out of searches to develop human-centred approaches to development in the 1990s, responding to failures of contemporary processes of globalisation to resolve fundamental problems of subsistence and security, social injustice, political oppression and recurring high levels of poverty, marginalisation and social exclusion. The fact that at present more than one billion people live in severe poverty

demonstrates that international human rights politics and law enforcement are still far from achieving its goal of ensuring people's basic human rights to subsistence, participation and security.

The lecture presented below argues that the international development and human rights communities have not so far been able to engage in effective and constructive policy-related dialogue in order to spell out operational models for human rights based development in national contexts and in international realtions. The two agendas are, as one international lawyer (Philip Alston) has argued "ships passing in the night", blindfolded by the dark to interlink with effectiveness and enthusiasm. The presentation further argues that the quest for establishing development models and projects that interlink international human rights law on the one hand and national and international development on the other, has a firm support in human rights law, back to the UN Charter (1945) and the UN Covenant on Economic, Social and Cultural Rights (1966/76). It is also argued that "shifts in the development thinking" over the last four to five decades have provided a better conceptual platform for making human rights a central concern for international development and co-operation, and discusses this in historical perspective. It is emphasised that a human rights based approach to development requires that development interventions (projects and programs) reflect, above all, not breaking fundamental human rights (the "no harm" principle) and that explicit linkages are made to human rights standards in policies and programs. It further assumes that human rights implementation is defined as an overarching goal of development; that it is recognized and reflected that the state should uphold a legally grounded accountability to human rights respect, protection and fulfillment, and thus secure capabilities and freedoms of people; that development policies and programs are making people active subjects of development by social, political and legal empowerment, including empowerment of people to claim their rights and that the principle of non-discrimination is respected, and that social equality enhanced. In particular, development interventions should draw attention to vulnerable groups.

In the final section some practical implications, e.g., implications for policy analysis, conflicts between value and legal systems, mainstreaming of human rights in development programming and policies, and monitoring and impact assessment are addressed, and selected "unresolved issues" pointed out.

What's "the human rights based approach" to development?

I "Ships passing in the night": The current state of affairs?

Since 1948/UDHR (Universal Declaration of Human Rights), human rights and development have had little interaction and little awareness of each other; ships passing one another in the night

Why? Complex issue:

- ▶ Political reasons
- ▶ Conceptual reasons (hegemonic development conceptions)

Is this still the case?

- ▶ Cf. The Millennium Development Goals
- ▶ Cf. The practices of main development institutions, and global economic policies

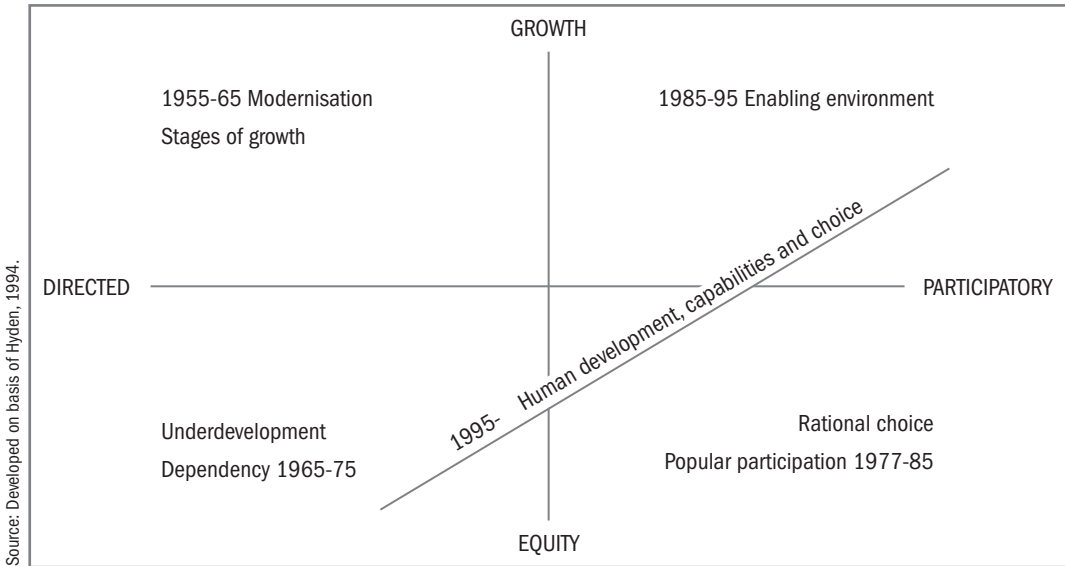
Yet, the 1990s – towards a shift?

II HRBAD in conceptual and historical context

CONCEPTUALLY

- ▶ The UN Charter art 1.3 – international cooperation for solving development problems; encourage respect for human rights
- ▶ Article 28: Everyone is entitled to an international order in which the rights and freedoms of the UDHR can be fully realised
- ▶ The rise of the concept of a Human Right to Development;
 - From New International Economic Order (NIEO) to the right to development and global equity
 - The North vs. the South?
 - The 1986 Declaration on the Right to Development

A model of shifts in the development discourse



CONCEPTUAL TRENDS

- ▶ During the 1970s, development should be directed towards basic needs
- ▶ From the mid-1980s: Human rights and conditionality (catalyst: Massacres of Tamils in Sri Lanka in 1982)
- ▶ In the 1989, the World Bank and good governance (re-focus on the state)
- ▶ From a growth centred agenda towards a more human centred and poverty oriented understanding of development. The UNDP and the HDI (Human Development Index) (1989/90)
- ▶ The World Conference on Human Rights in Vienna, 1993: The right to development endorsed in final document
- ▶ The UN reform process starting in 1997 (Kofi Annan); focus on human rights mainstreaming

III HRBAD – the when

Emerged from the mid-1990s

- ▶ “integrating human rights with sustainable human development” (UNDP, 1998)

Definition (Australian HRC, 1995)

“international *human rights law* is the only *agreed international framework* which offers a *coherent body of principles and practical meaning* for *development cooperation*, (which)

provides a *comprehensive guide* for appropriate official development assistance, for the *manner* in which it should be delivered, for the *priorities* that it should address, for the *obligations* of both donor and recipient governments and for the way that official development assistance is *evaluated*”

Leads to

- ▶ Goals and processes of international assistance reflect the principles and norms embodied in the international human rights instruments. Need for institutional reforms
- ▶ a means of integrating human rights principles and aspirations with other measures of planned and institutional change
- ▶ a growing but contested “acceptance” of human rights as a concern for international assistance

In sum:

Rights-based approaches have been driven by a number of political and institutional factors; the practical implications of this conceptual development are still being worked out in experimentation and trial and error-processes.

IV HRBAD –the what?

Explicit linkage to human rights. Human rights implementation as a goal of development

Accountability of the state to uphold rights, and secure capabilities and freedoms of people

Empowerment: Empower people to claim their rights; capability of making choices, participation, involvement, making rights claims.

Participation

Non-discrimination, equality and attention to vulnerable groups

State accountability – the responsibility of the state respect, protect, fulfil: facilitate (enable capabilities), provide (services, provisions)

Increasingly: Focus on non-state actors

The rights-based approach is seen as a means of

- ▶ Empowering people to exercise their voice, and influence processes of change and social transformation.
- ▶ Helping the state to clarify its responsibilities towards its citizens, by respecting, protecting and fulfilling (by facilitation or provision) their rights.
- ▶ Helping donors to identify how pro-poor political change can best be supported.

- ▶ Helping to support principles of international conventions into practical action (DFID).

CONCEPTUAL UNDERPINNINGS

- ▶ Development is a normative concept (“ought to”); reflects values. A “holistic” conception of human rights
 - Human rights as indivisible, interdependent, non-hierarchical
 - The Right to Development discourse: a right to a process? Rightsconductive economic growth
- ▶ A HRBAD; from *charity to claim-rights* and state obligations.
- ▶ Implementation of human rights represents (minimal?) *social justice*.
- ▶ Freedom of choice and capability to make choices are *conditioned by* rights
 - Equal opportunity – rights-based
 - Non discrimination – rights protected
- ▶ The importance of *human rights education*: General and specific.

PROGRESSIVE REALISATION AND RESOURCE CONSTRAINTS:

- ▶ Take steps, individually and through international assistance to the maximum of its available resources achieving progressively the full realization of the right.
- ▶ Long-term as well as short term measures (immediate obligations).
- ▶ Obligations of conduct (process).
- ▶ Obligations of result (output).

DUE DILIGENCE – WHAT IS REASONABLE THAT THE STATE CAN DO?

Immediate obligations:

- ▶ Legislative measures (Art 2.1 of ICESCR)
- ▶ Guarantee rights without discrimination
- ▶ Take deliberate, concrete and targeted steps
- ▶ By all appropriate means (Committee assesses)
- ▶ Progressive: “move as expeditiously and effective as possible”
- ▶ Minimum core obligations (minimum essential levels)

Levels of rights and rights-good provision

- ▶ International: International agents, International economic policies (WTO), WB etc.
- ▶ National
- ▶ Regional
- ▶ Local
- ▶ Household

Modes of provision

- ▶ State
- ▶ Market, production, distribution systems
- ▶ Autonomous self-provision

V HRBAD - Practical implications:

Policy analysis, conflicts between value and legal systems, mainstreaming, programming, monitoring

- ▶ The need for analyzing government policies as a whole
- ▶ To identify progress or retrogression and their causes (inside outside the scope of the government?)
- ▶ The role of non-state actors as constraining factors
- ▶ To identify "factors and difficulties" affecting compliance (Art 17, ICESCR)
- ▶ Main obstacle to realizing HRBAD: lack of political will and commitment
- ▶ The use of international resources; development compacts from the RtD discourse
- ▶ HRBAD: claim-rights, but also respected / implemented without resort to the law

Some issues

- ▶ Do people have the means and options of claiming rights?
- ▶ Can people be assisted in claiming their rights: social movements?
- ▶ Are people empowered to self-provision?
- ▶ Do people have resources, e.g. information to claim rights?
- ▶ Why people are denied their rights? (power relations)
- ▶ How can national and international networks empower people to claim rights? Is it legitimate (state sovereignty)?
- ▶ Do governments take rights seriously? What's the role of "partners" (donors)?
- ▶ How can donors/international make strategic support to advance HR?

Guidelines and monitoring mechanisms:

- ▶ To identify progress or retrogression, and their causes inside/outside the scope of the government. International assistance.
- ▶ Benchmarks and national plans and priorities.
- ▶ To identify "factors and difficulties" affecting compliance (Art 17).