HUMAN RIGHTS BASED APPROACH

Orienting development efforts towards human rights

Poverty and inequality are not simply development issues. Working to alleviate poverty and reduce inequality is directly linked to fundamental rights set out in the Universal Declaration of Human Rights of the UN and subsequent international human rights law. Human rights and development both promote well-being and freedom, based on the inherent dignity and equality of all human beings. Integrating both of them means anchoring development policies and strategies in the human rights framework.

The Human Rights Based Approach (HRBA) does not discard previous development approaches, but builds upon them, with the aim of empowering the right holders to claim their rights and strengthening the duty bearers to fulfil their obligations. Helvetas is aligned with these goals and has incorporated the values and principles of the HRBA into its programmes and projects.

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INTRODUCTION

The Human Rights Based Approach (HRBA) is a conceptual framework which is normatively based on international human rights standards. The major treaties comprise the following three documents and are complemented by various independent protocols on specific issues.

- Universal Declaration on Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR), ratified by 149 states
- International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by 146 states

The human rights (HR) framework builds a common basis for harmonising and guiding development efforts, as all States who have ratified the treaties are obliged to "respect, protect, and fulfil" human rights. The HRBA does not merely aim to comply with human rights, but strives to embed the whole programming context in the HR framework in order to contribute to its realisation. Helvetas adheres to the HRBA and "orients all its activities towards human rights" (strategy 2005 – 2010). All working area strategies refer to the HRBA as well.

HUMAN RIGHTS AND DEVELOPMENT

POVERTY FROM A HUMAN RIGHTS PERSPECTIVE

Poverty is more and more understood as a human condition characterised by the sustained deprivation of resources necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights. Even when resources are available, access to them is often denied to the poor because of who they are, where they live, or simply because of neglect and lack of concern. Thus, discrimination and marginalisation is one root cause of poverty and deprives people of their basic rights. The HRBA does not describe poverty situations in terms of human needs or areas of development, but in terms of the obligation to respond to the rights of individuals. The focus is on the realisation of the rights of the excluded and marginalised people and those whose rights are at risk of being violated.

FROM NEEDS TO RIGHTS

Development cooperation used to base its interventions on the needs-based approach. Although the needs were recognised as valid claims, the beneficiaries were perceived as objects of development. The HRBA however understands needs as the basis for claiming human rights. Thus, a development organisation such as Helvetas, who adheres to the HRBA, should not campaign for the needy, but support marginalised people in their efforts to claim their rights. The status of the passive and aid recipient "beneficiaries" therefore changes and moves towards an active role of right holders who take responsibility for their own development, based on legitimate claims. This leads to increased ownership and sustainability of development efforts. Poor and marginalised people have the right to overcome poverty and live a life in dignity.

FROM CHARITY TO OBLIGATION

Rights cannot be addressed without raising the question of who has an obligation to respond to the claims. Primarily the State is a so-called *duty bearer* obliged to meet the claims of citizens. But also development organisations, private sector companies and other civil society organisations – legally recognised by a State who has ratified the HR treaties – have a duty to work towards the fulfilment of HR. Providing services to the citizens should no longer be perceived as "charity", but as an obligation to respect, protect and fulfil the treaties a State has ratified.

However, the citizens also have obligations, which are mainly spelled out in national legislation. Nevertheless, the human rights framework addresses individuals as well, especially with regard to crimes against humanity.

GUIDING PRINCIPLES

The HRBA comprises eight principles in four pillars. These principles are closely linked to the concept of good governance. The value of the HRBA is that they become a mandatory basis in all projects and interventions.

Universality and indivisibility

Human rights are inherent to the dignity of every human person. Everybody is entitled to HR simply by virtue of being human and nobody can give them up voluntarily. This requires that no group is left out of development. Strictly speaking, there is no primacy or superiority of one right over another. However, progressive realisation with prioritisation is the realistic approach.

Non-discrimination and equality

All individuals are equal and entitled to the same HR, without discrimination of any kind based on sex, race, or age. The focus of development cooperation however is on the vulnerable and marginalised individuals and groups. The state as the primary duty bearer is addressed in order to achieve a structural transformation to redress past patterns of discrimination.

Accountability and Rule of Law

Human rights are intrinsically linked to the Rule of Law, which guarantees the legal aspects of transparency and access to information. Duty-bearers are accountable to the right-holders and need to have mechanisms in place to ensure accountability. In addition, empowerment of right holders to exercise their right to information and demand accountability is crucial to keep the balance. Civil society has an important role as watch dog.

Participation and inclusion

Participation as a right can be traced in all major HR instruments. It is the general right of everyone to participate actively, freely and meaningfully in the political, economic and cultural life. An enabling environment (channels and platforms) has to be created for participation of all stakeholders, especially vulnerable and marginalised groups.

## THE HRBA AS A BASIS FOR DEVELOPMENT PROGRAMMES

The HRBA includes more than merely complying with and fulfilling HR within the programmes and projects, but uses HR actively as a basis. The HR framework is comprehensive and comprises a full range of indivisible, interdependent and interrelated rights. Although there is no superiority of one right over another, projects need to give priority to certain rights depending on the working area. Furthermore, development interventions should address both the demand and supply side, meaning the State as well as the people.

Empowering right holders to know, claim, access and realise their rights through
- HR education to promote awareness among the people on their rights and entitlements (see the material of UNHCHR on awareness raising on http://hre.ohchr.org/hret/Intro.aspx?Lng=en)
- Fostering confidence, skills and resources to communicate with duty bearers, advocate and claim the rights.

Strengthening duty bearers to comply with their human rights obligations and duties by
- Identification of the reasons for their underperformance of their duties
- Awareness raising on their obligations under international, regional and domestic law and identify their responsibilities
- Capacity development, so that they can meet their obligations e.g. service delivery (this may include technical assistance or financial resources)
- Fostering accountability mechanisms which include downward accountability
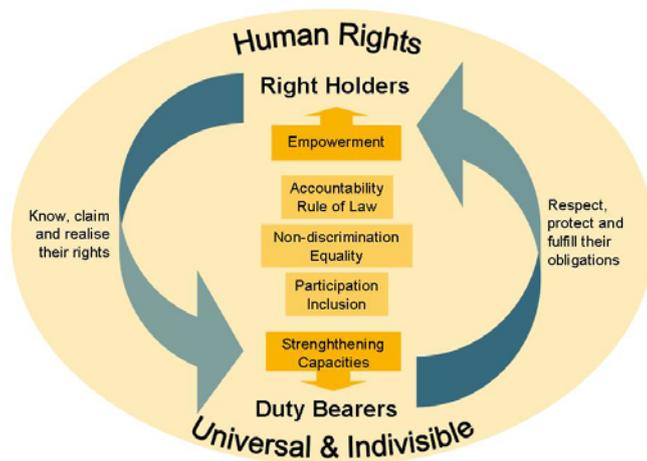
HRBA Framework (based on SDC, 2008).

The HRBA uses both top-down as well as bottom-up methods and tries to link them optimally together. The principles of the HRBA are closely related to other important working modalities of development cooperation, such as inclusion, empowerment, gender, participation, and accountability. Human rights are either addressed in a sectoral way – by implementing projects specifically promoting HR, or in a more transversal approach by integrating HR in the programme cycle.

SPECIFIC RIGTHS AND THEIR ELEMENTS TO BE PROTECTED AND ENSURED

a. Right to Life, Liberty and Security
Right to livelihood and dignity
Right not to be deprived of liberty, except in accordance with the law
Protection of physical integrity

b. Right to Water
Availability
Accessibility
Quality
Affordability

Right to Sanitation (closely linked)
Safety
Cultural Adequacy

c. Right to Food
Availability
Adequacy
Accessibility
Affordability
Stability of food supply

d. Right to Education
Availability
Accessibility
Acceptability
Adaptability

e. Right to Health
Includes underlying determinants of health (nutrition, housing, etc.)
Availability
Accessibility
Acceptability & Quality

f. Right to Housing
Legal security of tenure
Availability of infrastructure
Habitability
Accessibility

g. Rights of Minorities
Equality before the law and non-discrimination
Right to profess and practice one's religion (also freedom of religion)

h. Right to Culture
Right to enjoy one's own culture
Right to use one's own language

i. Political Rights and Freedoms
Effective exercise requires access to information
Right to participate
Freedom of opinion/ assembly/ etc.
Non-discrimination
Right to a fair trial

This section provides steps and key questions which need to be asked when implementing the HRBA (based on SDC, 2008). It is crucial to include a human rights perspective in all stages of the project cycle in order to align and orient all activities towards human rights. Interventions need to be normatively based on human rights standards and operationally directed to realising human rights.
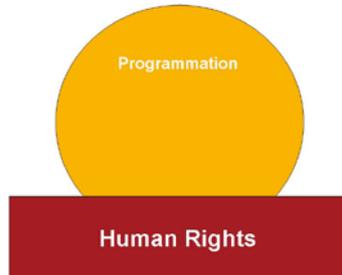
Human rights build the basis for programming

Context Analysis
- Based on disaggregated data (sex, ethnicities, etc.)
- Assessment of legal (international, regional, national) framework and national policies
- What are the main development challenges in the light of realising human rights in the respective country?
- Stakeholder analysis: Who are the right holders and duty bearers? What capacities do they already have?
- Who is vulnerable?
- What are the needs and the corresponding rights of the rights holders?

Planning and Design
- Formulation of goals and objectives in the human rights language (realising rights and fulfilling duties) and ensure that they address the principles as well as the concerned rights
- Participation of stakeholders in decision-making process
- Identification of target groups: whose rights are to be realised? Which institutions should be supported in fulfilling duties?
- Which are the affected HR?
- How can the causes of the challenges be tackled?

Implementation
- Ensure not to loose sight of the principles during project implementation
- Does the implementation process take into the account the power relations between duty bearers and right holders and try to overcome the prevailing gaps?
- Rights of the vulnerable remain in the centre
- Meaningful dialogues between stakeholders need to be established.

Monitoring and evaluation
- Important not to monitor the results only, but also the process
- Use of disaggregated data
- Participatory monitoring (complaint mechanisms, public audit, community scorecards, etc.).

INSTRUMENTS AND TOOLS: REFERENCE LIST

- Berghof Research Centre for Constructive Conflict Management (2009), *Rethinking Conflict Transformation from a Human Rights Perspective*, available at http://www.berghof-handbook.net/documents/publications/parlevliet_handbook.pdf

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- SDC, *Human Rights,* available at http://www.sdc.admin.ch/en/Home/Themes/Rule_of_Law_Democracy/Human_Rights

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- UNDP (2006), *Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users' Guide,* available at http://www.undp.org/oslocentre/docs/HR_guides_HRBA_Indicators.pdf

- UNDP Nepal (2003), *A Human Rights Based Approach to Development. Primer for Development Practitioners.*, available at http://www.crin.org/docs/resources/publications/hrbap/RBA_training_UNDP_primer.doc

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