A Human Rights Based Approach to Development: Strategies and Challenges

By

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Distinguishes colleagues and guests,

For far too long, human rights had been seen as a luxury. A question has been: what should come first - human rights or development? In an informal meeting between the High Commissioner for Human Rights and a member state, the High Commissioner welcomed the recent ratification of certain human rights instruments by that state. She then raised the issue of establishing a national human rights commission. Concerning its establishment and the provision of human rights education she noted that the state could draw on the experiences of its neighbours. In reply, the representative pondered whether one should look at human rights or rather see development as a priority. For the representative’s state the right to survival was paramount. The question was presented in a formula which demonstrated that sometimes we cannot always see the importance of a range of human rights which can also support the meeting of one’s basic survival needs. Instead of an either/or, what should come first approach - human rights or development - there can exist a human rights based approach to development. I hope in today’s discussion to bring out some of the important strategies and challenges which we face, and in particular those relating to national human rights institutions.

In short, a human rights approach to development promotes “human-centered development”. It concentrates on people. By recognizing each person’s inherent dignity and worth without discrimination, it promotes equal opportunities and choices. Each person has the opportunity to develop his or her own unique potential. They are then in a position to contribute to the economic and social progress of a society.

The content of rights, and therefore the strategies to realise them, can be seen from the international, regional and national levels.

In 1981, Africa recognized the right to development as a basic human right in the African Charter on Human and Peoples' Rights. From these regional efforts came the 1986 international United Nations Declaration on the Right to Development. These initiatives spurred current thinking about a rights-based approach to development that contributes to the fulfilment of universal human rights and dignity.

At the international level the United Nations Declaration on the Right to Development defines the right to development as the right by which everyone is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development. This right includes:

- Permanent sovereignty over natural resources;
- Self-determination;
• Popular participation;
• Equality of opportunity; and
• The advancement of adequate conditions for the enjoyment of other civil, political, economic, cultural and social rights.

Indeed, as mentioned, the 1993 World Conference on Human Rights confirmed the indivisibility and interdependence of human rights.

The right to development belongs both to individuals, and collectively to peoples. It is an obligation of the international community, for example in promoting fair development policies, and on individual states.

A rights-based approach to development is a framework based on the norms and standards contained in a number of international treaties and declarations. The benefit of a human rights-based approach is that it is based on both moral consensus and legal obligation. The relevant duty holders and beneficiaries are identified and policy-makers are enabled to evaluate an initiative’s impact in terms of people’s enhanced dignity. As it is a home-grown and people-centered development it cannot be reversed by the withdrawal of outside charity. A challenge to the human rights based approach is that it not only be process oriented but also focuses on the result.

The approach stresses the following key elements: express linkage to rights, non-discrimination and attention to vulnerable groups, participation, empowerment, and accountability. I will go through these in turn.

The objectives of development and aid are defined in terms of particular, legally enforceable rights with express links to international, regional and national human rights instruments. Rights-based approaches are comprehensive in their consideration of the full range of indivisible, interdependent and interrelated rights: civil, political, economic, social and cultural. This reflects a development framework with sectors mirroring internationally guaranteed rights covering a whole host of rights relating to health, education, housing, the administration of justice, personal security, political participation, and so on. A rights based approach does not condone development policies that violate rights, and they permit no “trade-off” between development and rights.

The human rights imperative of such approaches also means that particular attention must be paid to discrimination, equality, equity, vulnerable groups – and including in them women, minorities, indigenous peoples, and prisoners. As there is no universal checklist of who is most vulnerable in any given context, a rights-based approach requires such questions to be answered locally: who is vulnerable here and now? Therefore it is important that, to the extent possible, development data is disaggregated by race, religion, ethnicity, language, sex and other categories of human rights concern.

Determinations must be made about whether and how the benefits of development are fairly distributed, who in particular benefits, and who is excluded. Rights-based approaches demand the incorporation of express safeguards for minorities, migrants and other domestically marginalized groups. All development decisions, policies, and initiatives, while seeking to empower local participants, must not reinforce existing
power imbalances as between women and men, landowners and peasants, and
workers and employers, for example.

An effective rights-based approach requires a high degree of participation, including
of communities, civil society, minorities, indigenous peoples, and women. This
participation must be active, independent, and meaningful. Routine or going through
the motions contacts with beneficiaries are not sufficient.

Rights-based approaches give due attention to issues of accessibility, including
to development processes, institutions, information and redress or complaints
mechanisms – many of which fall clearly within the purview of national human rights
institutions. This means situating development activity mechanisms in proximity to
partners and beneficiaries. Such approaches necessarily lean towards process-based
development methodologies and techniques rather than externally conceived quick
fixes and imported technical models which are not in harmony with the local
conditions.

Effective rights-based approaches also give preference to strategies for empowerment
of local actors. They focus on beneficiaries as the owners of rights and the leaders of
development. The human person is at the centre of the development process either
directly, through its advocate and through national institutions and civil society. The
goal is to give people the power, capacities, capabilities, and access necessary to
change their own lives, improve their own communities, and influence their own
destinies.

Rights-based development not only assesses the problem - the “What? - and the right
being claimed. It asks “Who?” - who is entitled to the right and is not benefiting from
development, and who owes the duty corresponding to unrealized rights. The
obligations are both positive obligations - to respect, protect, and fulfill - and negative
obligations - to abstain from violations. This approach takes into account the duties
of a full-range of relevant actors, including individuals, communities, states, local
organizations and authorities, national institutions, private companies, aid-donors, and
international institutions.

A rights based approach then identifies why - the root causes including social
practices, laws, leadership, institutions and information. Such information permits
one to contribute to the establishment of adequate laws, policies, institutions,
administrative procedures and practices, and mechanisms of redress and
accountability to deliver on entitlements and respond to denial and violations. These
will include the judiciary, effective parliamentary mechanisms, national human rights
institutions, and a vibrant civil society. Greater normative clarity and details provided
by international and regional instruments is important. These tools can guide in the
implementation of a human rights approach to development

The implication of such action is that administrative panels and tribunals, national
human rights institutions, special commissions and ombudsman offices will ensure
the translation of the universal standards to the local level with effective benchmarks
to measure progress and enhance accountability. The accountability mechanisms,
whatever form they take – and in our area of interest national human rights
institutions – must be accessible, transparent and effective.
The content of rights within your continent is defined in the African Charter on Human and Peoples’ Rights which in addition to recognizing the right to development accords a high priority to economic, social and cultural rights.

The Charter establishes the African Commission on Human and Peoples’ Rights which, as you will hear during this Conference, has wide ranging functions including encouraging the establishment of national human rights institutions under Article 26.

This system had been potentially strengthened in 1998 with the establishment of the African Court on Human and Peoples’ Rights with jurisdiction to enforce all Charter rights. The Protocol requires 15 countries to bring it into force. As of today only 4 states have ratified it.

A further watershed development has been the *New Partnership for Africa’s Development* (NEPAD). NEPAD is, in a sense, at the regional level adopting a human-rights based approach to development. In July of this year, in the context of proclaiming the new African Union, NEPAD was adopted as the road map for development in all of Africa. NEPAD, the pledge by African leaders to consolidate and accelerate the gains in the protection of human rights and people-centred development is a long-term vision of an African-owned and African-led development programme. For NEPAD to continue to be a human-rights based approach to development popular participation must be encouraged. While information officers are being appointed and the institutional mechanisms are being strengthened, there is an important role for national institutions in Africa to get the NEPAD message out.

An important challenge for NEPAD will be the attention which needs to be paid to vulnerable and marginalized groups. NEPAD reinforces the social, economic and cultural rights and the right to development provisions of the African Charter, but adopts a gender-neutral approach. A conscious effort should be made to ensure that the human rights approach to development that is explicit in the documents sufficiently recognizes the needs of women and young people at the implementation stage.

NEPAD has identified a number of Conditions for Sustainable Development. Under NEPAD there is a pooling of resources in order to achieve these conditions and efforts are being centered towards creating and strengthening continental, sub-regional and national structures that support, among other initiatives, peace and good governance.

It is self-evident that without peace and stability, there can be no hope of development. Without good governance, the poor are deprived of their right to participation and the presence of corruption is a tax on the poor. Corruption saps energy out of society and only heightens disparities and divisions within society.

NEPAD’s peace and security initiative highlights building the capacity of African Institutions for early warning, as well as enhancing African institutions’ capacity to prevent, manage and resolve conflicts. Efforts include combating the illicit proliferation of small arms, light weapons and landmines, among other initiatives. As many of you may recall from the discussions in Durban at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance national
institutions have an important role in the early warning process and the results of your work has already been well demonstrated.

There is an undertaking to respect the global standards of democracy which is noted in NEPAD. The core elements include political pluralism, allowing for the existence of several political parties and workers’ unions, and fair, open, free and democratic elections periodically organized. As the explanatory document on NEPAD notes, the purpose of the Democracy and Governance initiative is to contribute to strengthening the political and administrative framework of participating countries, in line with the principles of democracy, transparency, integrity, respect for human rights and the promotion of the rule of law. It is strengthened by and supports the Economic Governance Initiative, with which it shares key features, and taken together is intended to bring together Africa’s energies towards development and poverty eradication. A process of targeted capacity-building initiatives has been promised to be undertaken and national institutions may consider how they can contribute to, and benefit from, these initiatives.

Institutional reforms emanating out of NEPAD will focus on:

- administrative and civil services;
- strengthening parliamentary oversight;
- promoting participatory decision-making;
- adopting effective measures to combat corruption and embezzlement; and
- undertaking judicial reforms

Again, given the mandates of national institutions, there is a clear role for you to play in this reform process.

As the theme of this discussion is strategies and challenges relating to a rights based approach to development I would like to look at some of the common themes raised at the regional and national levels which are considered challenges for Africa’s development and how a human rights based approach may go about addressing it. As you will no doubt agree the most important and immediate level for giving effect to human rights norms and meeting these challenges is at the national level.

I’ll cite one example which is of particular relevance to your work on this continent:

An examination of poverty shows that it cannot solely be seen in terms of figures – for example whether there is insufficient income to buy a minimum basket of goods and services – rather one must look at the broader lack of basic capabilities to live in dignity. Poverty is about physical and economic insecurity, fear of the future and a constant sense of vulnerability. It is about lost opportunities and a sense of powerlessness.

Over 40% of Lesotho, Ghana, Kenya, Nigeria, Zambia, Tanzania, Uganda, The Gambia and Sierra Leone live either below the national poverty line or below an income of US $1 a day! Poverty forces both women and men into precarious economic and social lifestyles that shape their vulnerability to disease: HIV/AIDS, malaria and tuberculosis.
The South African Human Rights Commission, in its own domestic context, along with the Commission on Gender Equality and the South African National NGO Coalition (SANGOCO) held a series of 10 hearings on poverty in 9 provinces called Speak Out On Poverty. About 10,000 people participated in the hearings, either by making written submissions, attending the hearings or mobilizing others to participate; communities were mobilized to attend. About 600 presented oral evidence over 35 days of hearing in 1998. Themes ranged from access to land and rural development, the right of access to adequate housing and urban development, the right to sufficient food and water, rights of access to health care services, social security and education, labor rights and the right to work and the right to an environment that is not harmful to one’s health and well-being.

The methodology adopted was very much a human rights-based approach with a direct examination of the linkage of these rights to those in the South African Constitution and Bill of Rights. The methodology of the subsequent report then ascertained the past violations of these rights under Apartheid, their current impact, people’s understandings of their rights and the main obstacles experienced by the poor in gaining access to the right. As SANGOCO noted, by recognizing these rights, the eradication of poverty became not merely a policy choice for the State, but a legally binding responsibility for which it was accountable. The various ways in which accountability could be demanded from the State for the realization of these rights were then explored.

The resulting report identified that the challenge facing human rights activists in South Africa was transforming the economic and social rights in the Constitution into tools of empowerment and mobilization in the hands of the poor. No doubt the sharing of the perspectives of the poor in the Poverty Hearings and the identification of that which was lacking between constitutional rights, laws and policies on the one hand, and people’s experiences and realities on the other provided impetus to many of the ideas for the South African Human Rights Commission’s subsequent initiatives.

This last example demonstrates the important role national institutions play in translating rhetoric and words into action, and promoting human rights and providing remedies to violations. The Office of the High Commissioner for human rights encourages you to seize the opportunity at hand through your regional institutions, including the African Union, and important milestones such as NEPAD to ensure that a rights based approach to development is applied across the continent.

Thank you