

IDS Working Paper 234

**What is the “rights-based approach” all about?
Perspectives from international development agencies**

Celestine Nyamu-Musembi and Andrea Cornwall

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Summary

In the last few years, there has been growing talk amongst development actors and agencies about a “rights-based approach” to development. Yet what exactly this consists of remains unclear. For some, its grounding in human rights legislation makes such an approach distinctive, lending it the promise of re-politicising areas of development work that have become domesticated as they have been “mainstreamed” by powerful institutions like the World Bank. Others complain that like other fashions it has become the latest designer item to be seen to be wearing and has been used to dress up the same old development.

This paper seeks to unravel some of the tangled threads of contemporary rights talk. Where is today’s rights-based discourse coming from? Why rights and why now? What are the differences between versions and emphases articulated by different international development actors? What are their shortcomings, and what do these imply for the practice and politics of development? Reflecting on these questions, we explore some of the implications of the range of different ways of relating human rights to development.

We argue that ultimately, however it is operationalised, a rights-based approach would mean little if it has no potential to achieve a positive transformation of power relations among the various development actors. Thus, however any agency articulates its vision for a rights-based approach, it must be interrogated for the extent to which it enables those whose lives are affected the most to articulate their priorities and claim genuine accountability from development agencies, and also the extent to which the agencies become critically self-aware and address inherent power inequalities in their interaction with those people.

Keywords: rights, donors, rights-based approaches.

Contents

Summary	iii
Preface	vii
Acknowledgements	ix
Abbreviations	xi
1 Introduction	1
2 Situating the turn to rights	2
2.1 What does rights talk offer development?	2
2.2 Rights as a normative framework – competing perspectives	4
2.3 Who is talking rights? The politics of location	5
3 Historical dimensions of rights-based approaches	6
3.1 Precedents – rights in anti-colonialism struggles	6
3.2 The right to development: demanding a new international economic order	8
3.3 Why rights? Why now?	10
3.3.1 <i>The end of the Cold War</i>	10
3.3.2 <i>NGO initiatives in integrating rights and development</i>	10
3.3.3 <i>Shifts in aid delivery</i>	11
3.3.4 <i>Rights as way of reframing participation</i>	11
3.3.5 <i>Distancing the discourse of rights-based approaches from the right to development</i>	11
4 What do international agencies say about a rights-based approach to development?	12
4.1 Multilateral agencies	15
4.1.1 <i>The UN</i>	15
4.1.2 <i>World Bank</i>	23
4.2 Bilateral agencies	29
4.2.1 <i>Sida</i>	29
4.2.2 <i>The UK Department for International Development</i>	34
4.3 International development NGOs	37
4.3.1 <i>CARE</i>	37
4.3.2 <i>ActionAid</i>	42
5 What is a rights-based approach all about?	45
5.1 Common principles, different emphases	45
5.2 Changing power relations	47
References	49

Figure

Figure 4.1	The relationship between democracy and human rights	31
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Box

Box 4.1	Talking rights: definitions and distinctions	13
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Preface

As different sectors of civil society grapple with increasing challenges of poverty, exclusion, and violence, there is a growing trend to combine concepts and experiences from the fields of human rights and participatory development into their programmes. Interest in shifting to a “rights-based approach” to development has intensified in recent years. International development agencies have increasingly begun to frame their work in terms of rights. Similarly, human rights organisations have been exploring concepts and strategies of participation and how to apply them to their work. Yet whilst there is a great deal of “rights talk” and “participation speak” at the international level, what exactly is a “rights-based approach” all about and how does it link with what’s being done in the name of “participation”? To what extent are development organisations changing their practices from the fulfilment of needs to engagement with rights issues? To what extent are human rights groups incorporating participation into their work? What are some of the historical and contextual factors driving these shifts? And what new practices are emerging in which rights and participation come together?

This series of Working Papers draws on the findings of *Linking Rights and Participation*, an action research project co-convened by the IDS Participation Group and Just Associates in collaboration with partners in Brazil, India, Indonesia, Kenya, Mexico, Nigeria and Zimbabwe. The project sought to contextualise the rights-based approach through deepening understandings of how different actors in different countries frame the links between rights and participation, what various rights-based approaches look like in practice, and what makes some of these approaches powerful forces for change. As part of this, it examined how groups understood ideas of participation and power and applied them to their work. The project brought together a range of development and human rights organisations, from grass-roots CBOs to international agencies, to explore possibilities for enhancing and strengthening links and improving practice. Additional publications from this project are available as listed below.

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Celestine Nyamu-Musembi and Andrea Cornwall

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‘Rights-based approaches and beyond: challenges of linking rights and participation’

Lisa VeneKlasen, Valerie Miller, Cindy Clark and Molly Reilly

Just Associates, Washington D.C.

IDS Working Paper 235

‘Kenyan civil society perspectives on rights, rights-based approaches to development, and participation’

Celestine Nyamu-Musembi and Samuel Musyoki

Institute of Development Studies, Sussex

In collaboration with Mwambi Mwasaru and Patrick Mtsami

ILISHE Trust, Mombasa, Kenya

IDS Working Paper 236

The following **Country Studies** from this project are also available online at

www.ids.ac.uk/ids/particip/research/rights

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‘Linking Rights and Participation: Brazil Country Study’, by Almir Pereira Júnior, Marta Antunes and Jorge O. Romano, ActionAid Brasil

India

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‘Linking Rights and Participation: Mexico Country Study – Exploring the Relationship Between Human Rights and Citizen Participation’, by Mónica Jasis, Centro Mujeres and Mayela García, CIDEM

Nigeria

'Linking Rights and Participation: Nigeria Country Study – Exploring Experiences from the Niger Delta to the North West Region', by Nkoyo Toyo, Gender and Development Action, with inputs from Justice C. C. Nweze, Kaine Agary, Timiebi Koripamo Agary, Hussani Abdu and Ibrahim Nai'ya Sada

Zimbabwe

'Linking Rights and Participation: Zimbabwe Country Study', by Revai Makanje, Luta M. Shaba and Everjoice J. Win

In addition, *IDS Bulletin* Vol 36 No 1, edited by Jethro Pettit and Joanna Wheeler (January 2005) is dedicated entirely to the theme of rights.

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Abbreviations

BNBR	basic needs are basic rights campaign
CBO	Community Based Organisations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CGD	Centre for Governance and Development
COHRE	Centre on Housing Rights and Evictions
CRC	UN Convention on the Rights of the Child
DFID	Department for International Development
FAO	Food and Agriculture Organisation
GAPP	Garissa Pastoral Partnership Project
HDR	Human Development Report
HIPC	Highly Indebted Poor Countries
HLS	Household Livelihood Security
HURIST	Human Rights Strengthening Initiative
HURITALK	Human Rights Policy Network
IFI	international financial institution
ILO	International Labour Organization
IMF	International Monetary Fund
MRG	Minority Rights Group
NIEO	New International Economic Order
NGO	non-governmental organisation
PRAMs	Participatory Rights Assessment Methodologies
PREM	Poverty Reduction and Economic Management Network
PRSP	Poverty Reduction Strategy Paper
RAP	Refugee Assistance Project
RBA	rights-based approaches
REAP	Rural Enterprise and Agri-services Promotion
SLSA	Sustainable Livelihoods in Southern Africa
TRIPS	Trade Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UN OHCHR	Office of the United Nations High Commissioner for Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNDG	United Nations Development Group
UNDP	United Nations Development Program
UNFPA	United Nations Population Fund (formerly United Nations Fund for Population Activities)
UNICEF	United Nations Children's Fund

UNIFEM	United Nations Development Fund for Women
WB	World Bank
WHO	World Health Organisation
WSC	World Summit for Children
WTO	World Trade Organisation

1 Introduction

In the last few years, there has been growing talk amongst development actors and agencies about a “rights-based” approach to development. Yet what exactly this might consist of remains unclear. For some, like Ferguson (1999) and Eyben (2003), the grounding of such an approach in human rights legislation makes it distinctively different to others, lending it the promise of re-politicising areas of development work – particularly, perhaps, efforts to enhance participation in development – that have become domesticated as they have been mainstreamed by powerful institutions like the World Bank. Others, like Uvin (2002), suggest that today’s “rights-based” talk needs to be treated with some caution. “Rights-based” has become the latest development fashion item to be seen to be wearing; and fears that it is being used to dress up the same old development in what may amount to the Emperor’s New Clothes point to the need for a more cautious appraisal of what is going on amongst the international agencies who have turned to rights talk in recent years.

The purpose of this paper is to begin to unravel some of the tangled threads of this contemporary rights talk and to situate competing interpretations of what a “rights-based approach” consists of against a backdrop of the emergence of a discourse on rights amongst development actors and agencies. It seeks to build on a number of recent reviews, which have been more narrow in their scope, focusing either on particular kinds of institutions (Offenheiser and Holcombe 2001; Harris-Curtis 2003) or on linkages with particular development frameworks, such as sustainable livelihoods (Moser and Norton 2001; Farrington 2001; SLSA Team 2003). We argue that today’s rights-based development discourse needs to be interrogated for:

- Where it is coming from: why rights, why now? What historical roots, acknowledged or unacknowledged, do current articulations of the links between human rights and development have?
- Who is articulating it, and what positions do the various actors occupy in the contemporary development landscape?
- What are the differences between the various versions and emphases of the rights-based approach articulated by different international development actors?
- What are their shortcomings, and what do these shortcomings imply for the practice and politics of development?

We begin with a brief consideration of the normative, pragmatic and ethical justifications for rights-based approaches to development. This is followed by reflection on implications that flow from treating rights as a normative framework for development, and some of the dilemmas that have been pointed out by proponents of other approaches, such as sustainable livelihoods. We go on to explore a provisional history of rights-based approaches to development, and share some preliminary reflections on how and why rights have become an issue at this particular time. The historical discussion juxtaposes current usage of

rights language in development with talk of rights in other times, such as in anti-colonial struggles in the 1950s and 1960s, and the movement for a New International Economic Order in the late 1960s, 1970s and early 1980s.

We then zero in on a selection of international development agencies, in order to explore in more detail what a rights-based approach means to them and what it might consist of in practice. Rather than seek to cover a wide spectrum of different agencies, we have chosen to analyse selected actors from the following three categories: multilateral institutions, bilateral agencies and international NGOs. Among the multilateral institutions we contrast the position of the World Bank with that of two UN agencies that have championed a rights-based-approach: United Nations Children's Fund (UNICEF) and the United Nations Development Program (UNDP). Among the bilateral agencies we analyse the policies of UK's DFID and Sweden's Sida. The discussion on international development NGOs focuses on CARE International and ActionAid. Intended as a background document to inform subsequent research, our analysis of these agencies' work is partial and provisional. We conclude with a summary of key elements and differences in approaches to linking human rights and development, and a brief discussion of the shortcomings that emerge across the board in contemporary international development agencies' talk and practice around rights-based approaches to development.

2 Situating the turn to rights

2.1 What does rights talk offer development?

The various justifications for the value of rights in development can be classified into three broad categories: normative, pragmatic and ethical. The normative justification is that rights put values and politics at the very heart of development practice. Hausermann (1998) argues that what is distinctive about a human rights approach to development is that it works by setting out a vision of what ought to be: that is, it provides a powerful normative framework to orient development cooperation. In doing so, she suggests, it brings an ethical and moral dimension to development assistance, one that by implication has been lacking.¹ By stipulating an internationally agreed set of norms, backed by international law, it provides a stronger basis for citizens to make claims on their states and for holding states to account for their duties to enhance the access of their citizens to the realisation of their rights.²

Some commentators reinforce this argument by contrasting a rights-based approach with other approaches such as the needs-based approach. Whereas a needs-based approach focuses on securing additional resources for delivery of services to marginalised groups, a rights-based approach calls for existing resources to be shared more equally, and assisting the marginalised people to assert their rights to

¹ Others would argue, of course, that such a vision is so infused with the values of the Enlightenment that its cultural and historical specificity undermines any claims to universality (see Kabeer 2002).

² As the Committee on Economic, Social and Cultural Rights made clear, such obligation extends to the creation of enabling conditions rather than direct provisioning.

those resources, thus making the process explicitly political.³ The two can be motivated by radically different things: needs can be met out of charitable intentions, but rights are based on legal obligations (and in some cases ethical obligations that have a strong foundation in human dignity even though they are only in the process of being solidified into legal obligations). Commentators also draw attention to contrasts between the normative force of a rights-based approach and utilitarian-driven approaches such as “low cost high impact” project approach and cost-benefit analysis. A rights-based approach, for example, is likely to give priority to severe or gross types of rights violations even if these affect only a small number of children, while these other approaches would offer a basis for justifying a focus on less severe types of violations that affect a larger number of children.⁴

There are also pragmatic reasons for the use of rights talk. As we go on to suggest, the current architecture of aid makes new demands for ensuring accountability on the part of recipient states. Ferguson argues that to talk in terms of rights is in itself a ‘vehicle for increasing the accountability of government organisations to their citizens and consequently increasing the likelihood that policy measures will be implemented in practice’ (1999: 23). But for actors keen on giving meaning to rights beyond the accepted boundaries of state accountability, the language of a rights-based-approach in the development context also offers the possibilities for an expanded notion of accountability for rights to non-state actors. In its *Draft Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, the Office of the UN High Commissioner for Human Rights expresses this broader notion of accountability as follows:

Perhaps the most important source of added value in the human rights approach is the emphasis it places on the *accountability* of policymakers and other actors whose actions have an impact on the rights of people. Rights imply duties, and duties demand accountability.

(UN OHCHR 2002: paragraph 23)

Under international law, the State is the principal duty-bearer with respect to the human rights of the people living within its jurisdiction. However, the international community at large also has a responsibility to help realize universal human rights. Thus, monitoring and accountability procedures must not only extend to States, but also to global actors – such as the donor community, intergovernmental organizations, international NGOs and TNCs – whose actions bear upon the enjoyment of human rights in any country.

(UN OHCHR 2002: paragraph 230)

Lastly, a rights-based approach can also serve as an opportunity to reflect more broadly on the power dynamics inherent in the practice of international development and on questions of ethics. For Eyben (2003), for instance (Eyben and Ramanathan 2002), to talk of rights is to talk about power and about the obligations of those engaged in development assistance. What lies at the heart of such an approach, she

³ Jonsson (2003).

⁴ Jonsson (2003) – see chapter on ‘Programming Implications of a Human Rights Approach’.

contends, is an impetus to actors involved in development to engage reflexively with issues of power. As such, rights-based approaches can work both to sharpen the political edges of participation in the wake of the instrumentalism produced by mainstreaming, and to make critical linkages between participation, accountability and citizenship (Cornwall 2000; Eyben and Ramanathan 2002; Eyben 2003; Kabeer 2002; Gaventa 2002).

2.2 Rights as a normative framework – competing perspectives

Many of the debates about the rights-based approach have come to turn on the use of legislative instruments in development, and on the usefulness of a normative framework that has its basis in international covenants and conventions. For some of those involved with promoting a rights-based approach, it is precisely because it has its referents in a set of internationally agreed legal documents that it provides a different, and potentially more powerful, approach to development. Whilst many would concede that what is actually being promoted as ‘rights-based’ is not in itself strikingly different to what a number of those working in development have been doing all along – such as advocacy and empowerment work to build political capabilities and consciousness, or work in participatory development to engage “beneficiaries” in a more active process of social transformation – there is also a view that lending these practices the support of internationally agreed legislation *does* change the way in which they come to be viewed by development agencies and national governments. As such the label ‘rights-based’ can serve as a means of legitimising a more progressive, radical even, approach to development (cf. Slim 2002).

Yet while “rights-based” may offer a useful frame for development actors, one that may help wrest back notions like “participation” and “empowerment” from neo-liberal instrumentalism, invoking distant international human rights standards also presents its own problems. One is that most poor people have little access to the institutions that might enforce their rights, and that the interface between different legal systems governing their access to entitlements makes the process of recognising and claiming rights complex (Nyamu-Musembi 2002; Moser and Norton 2001). The lack of acknowledgement by advocates of the rights-based approach of the wide range of strategies, tactics and institutions through which people frame and make rights claims *outside* of formal legal instruments and institutions is highlighted by the critique levelled at the RBA by the Sustainable Livelihoods in Southern Africa (SLSA) team (see SLSA 2003). Farrington (2001) points out other more pragmatic reasons for remaining suspicious of what this approach would actually be able to accomplish, arguing that finite financial resources demand the establishment of priorities, which in turn undermines the principle of indivisibility, and highlights the dilemma of dealing with competing rights.⁵ These differences of perspective turn on different views of the

⁵ However, this argument reflects a mischaracterisation of the principle of indivisibility of rights. Indivisibility does not mean that in working out policies in a context of limited resources it is impermissible to prioritise certain types of claims over others. Prioritisation is inevitable. However, the prioritisation must reflect reasonable use of the resources available and it must demonstrate that reasonable steps are being taken towards the progressive realisation of rights in a comprehensive manner, as required under article 2 of the International

role of law, and legislative instruments, in development, a theme which is beyond the scope of this paper, but is an important dimension of the debate on human rights and development (see Nyamu-Musembi 2002; Crook and Houtzager 2001).

A point of caution is necessary here. Whilst official policy statements and professions of intent provide some material with which to analyse the normative positions of development agencies and actors on what a rights-based approach consists of and its links to previous approaches such as participation, there is a limit to how much any such generalisation can make sense of the politics of development policy and practice. Some agencies can proclaim their commitment to human rights, yet the bulk of their practice remains entirely unaffected by nice-sounding policies as it is framed by older or competing development models that remain hegemonic in practice. Others may have no official policy, yet individuals within them or particular country programmes are able to carry out work that is informed by broadly similar principles to those articulated within the rights discourse without ever calling what they are doing “rights-based”. Others still may selectively adopt some elements of the rights discourse, turning it to suit their own purposes: this is, after all, a discourse that offers almost everyone what they might be looking for. Examples of these different uses of the rights discourse will emerge as we discuss the practice of specific organisations in the sections that follow. Care needs to be exercised about drawing any hard and fast conclusions about the normative influence of rights in what remains a shifting and contested terrain, even within the agencies that have the most assertive declarations of support for such an approach.

2.3 Who is talking rights? The politics of location

Unlike other approaches to development, taking a rights-based approach puts the spotlight on the politics of the location of development agencies. A commitment to participation might be voiced across the development spectrum, with the institutions of global governance using the same language as radical social movements. Rights talk brings with it the reciprocal notion of obligation, requiring those who use the language of rights to reflect on their own location. The implications of the use of rights talk by the development assistance department of a donor nation-state to examine the international human rights obligations of another nation-state differ considerably from those implied if they were a multilateral lending institution or a global social movement. This is an account of the fact that both donor and recipient states have obligations under international human rights law. The obligations of one nation-state to another (e.g. under a treaty) and to its own citizens are considerably more established and precise than those of multilateral institutions or international NGOs. The accountability of multilateral institutions to beneficiaries of their programmes is an issue that is still in flux, as the discussion on multilateral institutions below will show. The accountability of international NGOs is often fractured between its

Covenant on Economic, Social and Cultural Rights. The process of prioritisation must also adhere to principles of non-discrimination, equality and participation, principles which would disallow trade-offs that result in injustice and violation of basic rights. For arguments along these lines see Office of the UN High Commissioner for Human Rights, ‘Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies’ (2002); Hunt, Osmani and Nowak (2002).

dependence on the financial support of rich nation-states and the NGO's beneficiaries in developing countries. Discussion on what genuine NGO accountability would look like is only just picking up in earnest (Archer 2003).

Questions about the geopolitical location of the actors promoting and practising a rights-based agenda also echo concerns about the continuity of “new” forms of development intervention that speak of participation, country ownership and rights with (neo)-colonial/imperialist “development business as usual”. The Indian MP S. Jaipal Reddy, for example, draws a distinction between a rights-based approach to public policy at the national or local level, and a rights-based approach to development cooperation:

A rights-based approach to public policy is most desirable. It needs, however, to come from within. Movement away from political, economic or social oppression can only be sustainable when it springs from within a society and is in harmony with local culture and values. The rights-based approach to development cooperation seeks to bring about empowerment through external pressure and is based on the dogma that all that is required for poverty eradication is “good” leadership, “good governance” and the empowerment of ordinary people. That is patronising to say the least, as it is based on the assumption that good governance is the only missing link between national poverty reduction intentions and actual poverty reduction. The underlying approach seems to be of moral superiority of the donor and also of superiority with regard to insights into what would be in the best interests of the South. (2002)

All this makes for an extremely complex configuration of interests, which impinge on how rights talk is articulated as well as how it comes to inform what is actually done.

3 Historical dimensions of rights-based approaches

Where has all this rights talk come from? What is now termed the rights-based approach to development has a relatively recent history in the discourse of international development agencies, emerging in the post-Cold War period in the early 1990s, and gathering momentum in the build up to the Copenhagen Summit on Social Development in 1995. Yet many of the principles which are articulated as part of this approach are not new. They have long been part of struggles for self-definition and for social justice long before the discourse of rights “went global” in the post-World War II period. It is ironic to reflect on the framing of current rights discourses given these antecedents. It is also of critical importance to locate today's rights talk historically, as many of the tensions and possibilities that flow from the articulation of a rights-based approach to development need to be understood as emergent from longer-standing relations between the states, powers and institutions that are involved in current rights discourse.

3.1 Precedents: rights in anti-colonialism struggles

Talk of rights in development may be new amongst international agencies. But struggles for the realisation of social, economic and cultural, as well as civil and political, rights have long been a feature of the

political landscape in many developing countries. Rights talk was, and remains, a defining feature of resistance and liberation movements in developing countries; nationalist and anti-colonial movements framed their demands for self-rule in terms of the everyday constraints that colonial administrations imposed not just on their liberty, but on their livelihoods (Mamdani 1996; Kabeer 2002). In these settings, the right to citizenship was not regarded in the classic liberal sense as something bestowed by a benevolent nation state, together with a bundle of entitlements to which individuals could lay claim. It was seen as something that needed to be fought for, and won, on the basis of prejudice against and the exclusion of the majority of the population, on their exclusion from participation in the decisions that affect their lives and on the basis of the lack of obligation on the part of the state to guarantee certain basic rights. Manji argues:

The struggle for independence in Africa was thus informed, at the base, by the experience of struggles against oppression and brutal exploitation experienced in everyday life. These struggles constituted the emergence of a tradition of struggles for rights which was organic to and informed by the specific histories and experiences of those involved . . . The concept of rights was . . . forged in the fires of anti-imperialist struggles. It was informed by the need to overthrow all forms (not just colonial) of oppression and exploitation, not by constructs which had either been embodied in the UDHR or imported into Africa by those nationalist leaders who had spent periods in exile or study in the imperial homeland. (1998: 14)

It was *in the act of struggling* that rights were articulated and came to form the basis for action for social justice (Mamdani 1996; Manji 1998; Nyamu-Musembi 2002). Rights, in the broader sense of awareness of injustice, in contexts such as these was something that sprang from popular opposition to colonial rule – whether in incidents like the Aba Women’s War in Nigeria or the rebellions of Kikuyu women in colonial Kenya, or the mobilisation of anti-colonial forces in Zimbabwe’s Chimurenga wars and the non-violent direct actions led by Gandhi in India. It was with the advent of “development”, Manji charges, that the social energy created through popular organisation began to be dissipated as the state took over, codifying rights in ‘laws and constitutions whose relevance or application was determined by the self-proclaimed, and increasingly unaccountable, guardians of the State’ (1998: 16). The shift from rights to development, Manji argues, hastened the depoliticisation of “poverty”. With it came the transmutation of the structures that had emerged to organise around basic rights into “development” institutions.

Some would charge that today’s rights-based development ignores this history. It certainly resonates remarkably little with its politicised history, given the locus of those who are its principal promoters. What does seem evident is that scant attention appears to be paid to the fact that the very agencies who are trying to promote it have their own situated relationships with the countries in which they are engaging – the case of Britain and its ex-colonies being the most obvious example. Yet there are other dimensions of this history that are worth remembering. The colonial project was uneven and contradictory: it was not a seamless process of extraction and oppression. Spaces were opened through its contradictions for certain

social groups, for instance women, to gain access to new opportunities and realise new rights that traditional society did not recognise.⁶ This gave rise to tangible new opportunities for certain excluded groups. The paradox of the ways instrumentalist intervention was actively transformed by people into something that they could make use of in securing freedoms has considerable contemporary resonance, as we suggest later in this paper.

3.2 The right to development: demanding a new international economic order

From the colonial era to the period after World War II in which “development” began to be articulated as a project with the dimension of international cooperation, “development” and “human rights” were seen as separate domains. “Development” was the terrain of economists, for the most part; “human rights”, the territory of lawyers and activists (Human Development Report 2000). It was, Mary Robinson (2001) argues, the entry of newly independent southern nations into the United Nations in the 1960s and 1970s that spurred the beginnings of attempts to bridge the two domains. The 1966 *International Covenant on Economic, Social and Cultural Rights* provided an important starting point for a host of Third World-led initiatives one of whose outcomes was the Declaration on the Right to Development in 1986.

The 1986 UN Declaration on the Right to Development marked one key milestone in a decade and a half of struggles by radical Third World states within the UN to pass a package of reforms that would result in a New International Economic Order (NIEO) that was fair to poor countries. The declaration is non-binding, and some view it as a watered-down version of the radical redistributive measures sought by the NIEO movement. Nonetheless it does reflect some of the radical politics of that era. For instance, rather than confine itself to a conventional understanding of rights as being about state-citizen relations, it places an emphasis on the global dimension. Pointing to inequalities between North and South, it stresses the collective obligation of all states to create a just and equitable international environment for the realisation of the right to development. It emphasises a collective duty of all states to eliminate barriers such as unfair trade rules and the debt burden, effectively pointing an accusing finger at the industrial countries. For this reason it has been opposed by Western states. The voting pattern on the resolution adopting the declaration shows this North-South split.⁷ Although eight industrial states voted in favour of adopting the declaration, this number dropped drastically when a subsequent resolution tried to lay out a

⁶ One example of contradictions within the colonial project that opened up spaces for some social groups is in the area of marital relations. Chanock discusses the example of a colonial officer and a Chewa paramount chief in North Eastern Zambia in the 1920s who took it upon themselves to grant divorces to rural women who had been abandoned by their husbands. The husbands had migrated into mining centres and towns and had entered into relationships with other women and did not remit money to their wives. Yet the area’s Native Authorities and the Catholic Missionaries would not allow them to divorce their husbands. The unilateral actions of the colonial officer and the Chewa paramount chief freed them to move on and explore new economic opportunities for themselves (Chanock 1985: 152).

⁷ There were 146 votes in favour. Industrial countries that voted in favour of the declaration include Australia, Belgium, Canada, France, Italy, Netherlands, New Zealand and Norway. The single vote against the declaration came from the United States. Eight abstained, including Japan, Germany and the United Kingdom. Source: Brownlie (1989).

detailed plan of action to put the Right to Development into practice (Res 41/133 of 4 Dec 1986).⁸ This second resolution called for international cooperation aimed at stable and sustained economic growth and increased concessional assistance to developing countries. It called on states to build world food security, resolve the debt burden, eliminate trade barriers, promote monetary stability and enhance scientific and technical cooperation (Brownlie 1989: 12). The industrial countries rejected this because they saw it as the imposition of one-sided obligations, and an invasion into what should be, according to them, the discretionary/voluntary field of development assistance, where spelling out precise obligations is anathema.

Within the arena of international human rights practice there continued to be some resistance over the course of the later 1980s and 1990s to the types of rights that were seen as “development concerns” e.g. shelter, water and food. Resistance to economic and social rights by the West (especially the United States) has roots in the Cold War. The situation has changed since the end of the Cold War. The principle of the indivisible, interdependent and non-hierarchical nature of rights has become the mantra since the 1993 World Conference on Human Rights held in Vienna. However, social and economic rights still encounter a degree of scepticism (mostly US-led) as to their status as rights. Mainstream Western-based human rights NGOs only began to work on these since the mid-1990s. Indeed, the human rights movement has tended to remain aloof to issues of economic and social justice. Mainstream human rights groups such as Amnesty International did not get into the language of “rights-based approach” to development’ until 2001/2 (Amnesty International speech at World Social Forum, Porto Alegre 2002).

The contemporary talk on rights based approaches within international development circles displays little awareness of the earlier struggles around the Right to Development. The absence of the Right to Development from the rights vocabulary of international development actors is explained partly by a deliberate effort to steer clear of the controversies raised by its reference to global inequalities. DFID for instance, makes no reference to the Right to Development in either of its two White Papers (DFID 1997; 2000a) and only a passing reference in the Target Strategy Paper on rights (2001). The UK Foreign and Commonwealth Office specifically advised proponents of a rights-based approach within the UK Department for International Development (DFID) to exclude any reference to the declaration. DFID makes it quite clear that it does not ground its approach to development assistance in the UN Declaration on the Right to Development, and that its assistance is based on a moral – not legal – obligation to alleviate poverty (Piron 2002). The other partial explanation is simply staff’s lack of familiarity with these earlier struggles.⁹

⁸ On this subsequent resolution, eleven states voted against (United States, Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, Netherlands, Portugal, and the United Kingdom). The total number of votes in favour fell to 133. Australia, which had voted in favour of the first resolution, abstained this time around. Source: Brownlie (1989).

⁹ A workshop on ‘Rights and Power’ held at IDS in November 2003 included an exercise to draw out the key historical events that have influenced the emergence of rights based approaches in development. When the Declaration on the Right to Development was mentioned by one of the authors no more than four of the 26 participants drawn from donor agencies had ever heard of it.

3.3 Why rights, why now?

Why, then, in view of this history of hostility to the language of rights in the development sphere, have many international development agencies displayed such evident warmth towards mid-1990s discourse on “rights based approach” to development? A confluence of factors has contributed to this:

- The end of the Cold War;
- NGOs taking the initiative ahead of governments to adopt and promote a more integrated view of rights and development concerns;
- Shifts in the ways in which aid is delivered in the changed global and domestic political context;
- As an outgrowth of the increasing emphasis in development practice (and rhetoric) on participation as an essential aspect of strategies for poverty reduction (Hausermann 1998; DFID 2000b; Eyben 2003);
- The tacit assurance to the governments of rich countries that the contemporary language of a rights-based approach does not bring with it the ideological baggage of the Right to Development.

We discuss each of these five factors briefly.

3.3.1 The end of the Cold War

The end of the Cold War made possible a more comprehensive view of rights as encompassing all rights: civil, political, economic, social and cultural. From this point it is not a long jump to framing “development” concerns such as food security and population as issues of rights. There is less contestation over their status as rights claims, unlike in the sterile debates that characterised the Cold War era.

3.3.2 NGO initiatives in integrating rights and development

A “development caucus” made up largely of “development” and “humanitarian relief” NGOs, as well as disparate small groups or movements based in the South spearheaded a campaign for a rights-based approach at the World Social Development Summit at Copenhagen in 1995. The campaign was not spearheaded by the mainstream international human rights movement, as one would expect. But changes in the attitudes of mainstream human rights groups did influence this campaign. While the prominent core of the movement (namely large Western-based NGOs) had remained aloof to issues of economic and social justice, this situation began to change around the time of the Vienna Conference on Human Rights in 1993. The Vienna conference is significant in that it was the first post-Cold War international conference on human rights, and therefore it emphasised the integrated nature of rights, thus raising the profile of economic and social rights. By the time of the Copenhagen summit, examples had begun to emerge of collaboration between mainstream human rights NGOs and development-oriented NGOs (Nelson and Dorsey 2003). This has increased in recent years.

3.3.3 Shifts in aid delivery

In general, the disbursement of development assistance has begun to shift in recent years from sector-specific or project-based intervention to direct budget support to governments. Much aid still takes the shape of programme or project support, but budget support delivered through coordination between donors is becoming the new modality for aid. Budget support offers donor governments opportunities to influence the shape of recipient government policies, and some opportunities to affect service delivery. But the challenge remains as to how donor governments can ensure that this money is actually spent accountably once it is released into the recipient country's treasury. The response has been to support a two-way process: reform and strengthening of public institutions on the one hand, and bolstering the capacity of civil society to hold the public sector to account on the other (Jenkins and Goetz 1999; Goetz and Gaventa 2001). Within this context, the turn to rights might be seen as a means through which the kinds of openly intrusive conditionalities that no longer befit today's rhetoric of partnership and policy dialogue can be brought in through another route.

3.3.4 Rights as way of reframing participation

Whilst broad-based participation is now seen as an important means through which rights can be claimed and gained, the effective separation between participation as a means through which projects and programmes were implemented, and participation as a political process involving advocacy and mobilisation (Gaventa and Valderrama 1999) dominated approaches to participation in the 1990s. For some of those working with participation, the turn to rights at the end of that decade came as a way of re-politicising an approach to development that had turned instrumentalist as it was popularised in the mainstream. Rights talk provides a new frame within which to signal a move towards a more genuinely inclusive and democratic process of popular involvement in decision-making over the resources and institutions that affect people's lives. The focus in rights-based versions of participation is about shifting the frame from assessing the needs of beneficiaries or the choices of customers or clients, to foster citizens to recognise and claim their rights and obligation-holders to honour their responsibilities (Eyben and Ramanathan 2002; Eyben 2003; Cornwall 2000).

3.3.5 Distancing the discourse of rights-based approaches from the right to development

Finally, what has made the language of rights-based approaches at least tolerable to the institutions that have been careful to keep the Right to Development at arm's length? We speculate that it is because the mid-1990s dialect of the rights language is shorn of any reference to the global inequality that is the central focus of the 1986 declaration. In the mid-1990s dialect, there is no conception of human rights duties beyond that of one's "own-state". In fact, even though RBA language is being employed in the context of "international cooperation" and in "aid" it is quite clear that the funder countries, while insisting that they now see the people in the recipient countries as rights-bearers, they do not see themselves as bearing any

defined duties that contribute to the concrete realisation of these rights. Beyond the acknowledgement that the primary duty flows from the recipient state to its citizens, it is not clear where the funder countries position themselves in the “rights-duties” equation.

When a rights-based approach is deployed in the context of bilateral and multilateral assistance programmes, where do the obligations lie? Obviously primarily with the recipient state to ensure that the aid is used in a manner that respects and fulfils its citizens’ rights. What then is the position of the funding government: does it also invite upon itself obligations to monitor the recipient government’s disbursement and use of its funds to ensure that it is consistent with human rights principles? Does it take responsibility for any negative human rights impact flowing from projects it has funded? None of these implications of rights-based approaches are explained clearly in any agency’s policies. Perhaps it is the lack of clarity on corresponding duties that makes the contemporary language of rights in development less threatening to the governments of rich countries than the Right to Development?

4 What do international agencies say about a rights-based approach to development?

In this section, we turn to take a closer look at what a range of different international agencies are saying and doing with the rights-based approach. Rights talk may be becoming the latest development language, but it is striking to note the diversity of representations within the language used by international agencies. Within as well as across agencies the term ‘rights-based approach to development’ is open to an enormous range of interpretations and is associated with a range of different methodologies and practices (see Box 4.1).

As becomes evident as one reads down this list, exactly what a rights-based approach does mean to different agencies differs considerably – and sometimes not just in degree, but rather more fundamentally. Definitions of “rights-based” development may invoke universal agreements, God, responsibilities, empowerment; it may be regarded as a conceptual framework to be applied, much as a checklist, or as something that must permeate how development is done much more deeply.

In this field of definitional differences, slippages between talk of a ‘rights-based approach to development’ with that of a ‘human rights approach to development’ are common, and distinctions remain fuzzy and inconsistent. The UN Office of the High Commissioner for Human Rights, for example, defines a “rights-based-approach” as being inextricably linked to the international human rights framework. Even though the UN OHCHR definition also draws in broad principles of empowerment, participation, equality, equity and non-discrimination, they are seen as *the* underlying principles in the international human rights framework.¹⁰ In contrast, Eyben (2003) argues that there *is* a subtle but

¹⁰ See UN Office of the High Commissioner for Human Rights, ‘What is a Rights-Based Approach to Development?’ at www.unhchr.ch/development/approaches-04.html (visited 15 December 2003).

Box 4.1 Talking rights: definitions and distinctions

A **rights-based approach** is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.

(Mary Robinson, UN High Commissioner for Human Rights 2001)

The **human rights approach** to development means empowering people to take their own decisions, rather than being the passive objects of choices made on their behalf.

(DFID 2000b: 7)

A **rights-based approach** to development describes situations not simply in terms of human needs, or developmental requirements, but in terms of society's obligations to respond to the inalienable rights of individuals, empowers people to demand justice as a right, not as a charity, and gives communities a moral basis from which to claim international assistance when needed.

(UN Secretary-General 1998)

The **human rights approach** brings to the development discourse . . . a conceptual framework from which to begin assessment and analysis, keeping in mind that the overall aim is the realization of all human rights for all people.

(Rios-Kohn 2001)

A democracy and **human-rights approach** translates poor people's needs into rights, and recognises individuals as active subjects and stakeholders. It further identifies the obligations of states that are required to take steps – for example through legislation, policies and programmes – whose purpose is to respect, promote and fulfil the human rights of all people within their jurisdiction.

(Sida 2002: 34)

A **rights-based approach** affirms that all citizens are entitled to the resources that satisfy their basic needs. Additionally, every citizen – rich and poor – has the right to information and participation in the development process.

(ActionAid Kenya 2002)

SCF supports a **rights-based approach** . . . because: rights imply obligations; . . . rights provide a move from dependency to empowerment; . . . rights can encourage responsibilities.

(SCF UK website (www.scf.org.uk) 2002)

A **rights-based approach** deliberately and explicitly focuses on people achieving the minimum conditions for living with dignity. It does so by exposing the root causes of vulnerability and marginalization and expanding the range of responses. It empowers people to claim and exercise their rights and fulfil their responsibilities. A rights-based approach recognises poor people as having inherent rights essential to livelihood security – rights that are validated by international standards and laws.

(CARE 2000: 38)

In this 50th anniversary year of the signing of the Universal Declaration of Human Rights, it is important to remind ourselves of the value of a **rights-based approach**. Christian Aid affirms the equal rights of all people as 'made in the image of God'.

(McGee, Robinson and van Diesen 1998)

An ethical approach to globalization can mean nothing less than a **rights-based approach** to development. We must struggle not only against torture, arbitrary detention and unfair trials, but also against hunger, illiteracy and discrimination if human rights are to be meaningful in developing countries.

(Amnesty International 2002: 4)

important difference between the two. A “human rights approach”, she contends, signals an emphasis on legal codification and normative universality of rights, while a “rights-based-approach” incorporates a more all-encompassing reference to people’s general sense of equity, justice, entitlement and/or fairness.

Eyben’s distinction makes an important point: the degree to which the legal or universal dimension of rights is emphasised *does* make a difference for the form of intervention that a particular organisation adopts. And the shape that any given intervention takes comes also to depend on how agencies interpret ‘rights’ in relation to other prevailing development terms, such as ‘democratic governance’, ‘good governance’, ‘accountability’, ‘empowerment’, ‘participation’ – amongst others (Cornwall and Brock 2004). For some organisations, maintaining coherence with the meaning that they give to other concepts has dictated selective use of rights talk. For the World Bank, for example, a specific and narrow reference to economic, social and cultural (ESC) rights has become a way to repackage their existing “development” activities as “rights-based”, while also maintaining that their work on good governance and anti-corruption simply creates a favourable environment for civil and political rights rather than engaging more directly with those rights (which, being marked as “political”, helps maintain the fiction that the work of the Bank remains “non-political”).

The lack of precision with which the term rights-based approach is used makes it easy for it to become a new bottle for old wine; it is easy enough for international organisations simply to repackage what they have always done in the new language. For example, the World Bank’s 1998 *Development and Human Rights* report touts existing World Bank activities, including macroeconomic reform programmes, as part of the agenda of realising economic and social rights. Another example is the reframing of Poverty Reduction Strategy Papers as somehow “rights-based” on the basis that they involved the participation of “civil society”. Indeed, such cases would appear to simply add fuel to the suspicion that the rights-based approach is nothing more than a sexy new term to dress up old-style development, and one that will last only a couple of years before being cast aside for the next bit of fashionable jargon.

In the sections that follow we take a closer look at the way in which a selection of international agencies has interpreted the rights discourse. We focus on three distinct categories of agencies: multilateral, bilateral and international non-governmental organisations. We do so with the following provisos. Our analysis is necessarily partial and largely descriptive, in view of the limitations of drawing firm conclusions based on policy statements. We recognise that policy statements have different resonance in different parts of an organisation, and cannot in themselves be taken as evidence of a shift in approach or practice across the agency as a whole even when this is the declared intention of the policy. We also acknowledge that the presentational – even performative – uses of policies may exaggerate the gap between ideals and actual daily practice, especially when parallel agendas and processes co-exist within different parts of the organisation. And, lastly, we recognise that written policies may capture, but do not in themselves convey struggles over meaning and of power within organisations; and that it is these struggles that shape what is actually done. Nevertheless, the ways in which written policies are framed

provides some insights into the ways in which these kinds of organisations “think” and is worth some exploration. For some of the agencies a reading of policy statements is backed up by interviews with staff – but this was not possible for all the agencies profiled here.

4.1 Multilateral agencies

Multilateral agencies are positioned as actors in the rights arena at the supra-national as well as the international level. Both the institutions associated with the UN and the Bretton Woods Institutions are notionally representative of the interests of member states, although in distinctively different ways. This both facilitates and constrains the positions that they themselves might take on rights-based development, as well as those they are in a position to promote with others. In this section, we turn first to the UN and then go on to look at what the World Bank has to say about rights-based development.

4.1.1 The UN

The UN’s post-World War II programme for international cooperation proceeded in a fragmented manner, “development cooperation” being dealt with separately from “human rights” in specialised UN agencies. In an attempt to change this state of affairs, Kofi Annan made the mainstreaming of human rights in all UN programmes a central feature of the reform of the UN. In a 1997 speech he called for a reorientation of the UN’s mission to reflect the realisation of human rights as the ultimate goal of the UN (UNDG 2003). Human rights are supposed to underlie the discharge of the respective mandates of the various specialised agencies. The 50th anniversary of the Universal Declaration of Human Rights in 1998 provided further opportunity for the Secretary-General, through the Office of the High Commissioner for Human Rights, to require all UN agencies to come up with a statement showing how their work contributes or could contribute to the realisation of human rights. That is why most agencies’ stated policies on rights based approaches will date back to 1997/98. For some there have been many policy statements on the subject since then.

Annan’s speech embodies the ideal that the realisation of human rights would become the core value that drives the UN’s work, and that this would be reflected in the work of all UN agencies and other agencies that have a relationship agreement with the UN. The implications that this ideal would have in transforming the work of the UN are spelled out by Skogly (2001). First, that it would lead to genuine “self-monitoring” by UN agencies to assess the human rights impact (positive or negative) that their activities may have in the countries in which they operate (Skogly 2001: 99). This would introduce a sense of balance by shifting the attention of human rights scrutiny from a singular focus on (often poor) countries’ record to the record of multilateral organisations as well, since these too have an impact on people’s ability to exercise rights. Second, it would mean that all the institutions and agencies would see themselves as sharing in the core mission of the UN as articulated in the UN charter, which includes the protection and promotion of human rights as one of the five main goals (Skogly 2001: 101). If the agreement between the UN and specialised agencies such as the World Health Organisation, World Bank and IMF is to mean anything at all, it should at a minimum mean that they cannot conduct themselves in a

manner that contravenes the UN charter's core objectives. Third, it would change the way in which multilateral organisations relate with their member-states: international agencies would have to take note of the fact that UN Charter obligations are binding on their member states. According to the UN Charter, obligations taken up by member states under the charter supersede any other obligations that a UN member-state may enter into under any other international agreement (UN Charter, article 103).¹¹

Skogly amplifies this third argument as follows: international organisations are made up of states who already hold pre-existing obligations under the UN charter. When states become members of such international organisations, they “migrate” with their existing obligations into these organisations. The organisations therefore have human rights obligations on two counts – through individual obligation on the part of each member-state, and collectively as states acting through the international organisation. Therefore international institutions, such as the World Bank and IMF (who are the focus of Skogly's analysis) would have no basis for requiring their borrower states to adhere to conditions that would require them to violate pre-existing human rights obligations to their citizens, for instance with respect to basic right to education and health (Skogly 2001: 107).

What progress has the UN made since Annan's 1997 speech in making this ideal a reality (i.e. in mainstreaming the normative framework of rights throughout the UN's work)? Some agencies, such as UNICEF, UNIFEM and UNDP are ahead of the rest in linking their programming to the policies they articulate with respect to rights-based development. On the whole however, it seems that most agencies are still trying to figure out what a rights approach as such means, and what programming around it would entail. Efforts to clarify this and come up with a consistent practice throughout the UN are being made through an inter-agency forum coordinated by the UN Development Group (UNDG).¹² This inter-agency forum held a workshop in May 2003.

The workshop proceedings show that the UN is still dealing with very basic questions, and is far from achieving the ideal articulated in Annan's 1997 speech, but that the issue has generated lively debate. Among the issues raised are (UNDG 2003):

- that many staff view human right as a specialized area of work rather than a cross-cutting feature of all programme work;
- whether there is a difference between a rights approach and “good development practice”: ‘what is the significance for development practitioners of an approach that converts discretionary good practices into mandatory rights, with rights-holders having claims to assert against duty-bearers?’;
- the need to develop human rights-based programming methodologies;

¹¹ Article 103 of the UN Charter states as follows: ‘In the event of a conflict between the obligations of members of the United Nations under the present charter and their obligations under any other international agreement, their obligations under the present charter shall prevail.’

¹² The UN Development Group comprises several UN agencies and related international organisations, among them UNDP, UNICEF, UNFPA, UN Habitat, UNCTAD, the World Bank, International Labour Organization and the Office of the UN High Commissioner for Human Rights. For a full list of members see www.undg.org

- the need to develop the capacity of UN staff and partners;
- how can the UN build or encourage country ownership of programmes and at the same time exercise human rights responsibility and leadership?

In a statement of common understanding issued from this workshop, three principles were identified:

1. All programmes of development cooperation, 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.

(UNDG 2003: 1)

Since practice varies quite considerably from agency to agency, this section will examine and compare the policies of UNICEF and UNDP.

UNDP

The UNDP has been enthusiastic (at least at the rhetorical level) about incorporating a rights-based approach in its development agenda. It has also been a notable intellectual leader within the UN in elaborating on what mainstreaming a rights-based approach means. A key example is its Human Development Report 2000 on Human Rights and Human Development. UNDP’s 1998 statement called for recognition of ‘the mutual dependency and complementarity of sustainable human development and social, economic, cultural, civil and political rights.’¹³ It noted that the UNDP’s work was already applying the right to development, and promoting economic, social and cultural rights, and that some country programmes had already expanded into civil and political rights. The UNDP however saw the need to develop a human rights framework for all dimensions of its work in anti-poverty and sustainable human development. The UNDP’s explanation of the conceptual basis for RBA in their work is as follows:

The central goal of development has and will be the promotion of human well being. Given that human rights define and defend human well being, a rights-based approach to development provides both the conceptual and practical framework for the realization of human rights through the development process.¹⁴

¹³ UNDP (1998: 7).

¹⁴ (UNDP: www.undp.org/rbap/rights/Nexus.htm)

Some of the rights it viewed as being central to its development work reflect their integrated view of rights, at least at a conceptual level. These include:¹⁵

- Rights of participation (freedom to assemble and speak freely, essential to building civil society);
- Rights to food, health, habitat and economic security (obligations rest on states as well as UN agencies such as Food and Agriculture Organisation (FAO) and World Health Organisation (WHO), International Labour Organisation (ILO), United Nations Development Program (UNDP));
- Rights to education (formal education as well as civic training to facilitate people's awareness and exercise of rights);
- Rights to work (includes reducing risks from policies such as structural adjustment programmes that create unemployment) and rights of workers (especially collective bargaining and non-discrimination);
- Rights of children;
- Rights of minorities and indigenous peoples;
- Rights to land (including those rights grounded in customary law);
- Rights to equality, rule of law and administrative due process;
- Rights to environmental protection.

Specific rights would be prioritised based on country context. The UNDP has been very careful to present its interventions in linking rights and development as responsive to country needs and priorities. It therefore emphasises that UNDP is guided by National Action Plans, while acknowledging that UNDP plays a “sensitising” role to make policymakers in individual countries aware of the dynamic connection between development and human rights. By emphasising the National Action Plans the UNDP is trying to avoid the impression that the rights agenda is an external or top down imposition. This is most evident in its Asia-Pacific regional programme.¹⁶

Some of the strategies it sees as relevant include shifting from micro-level field projects to an advisory role aimed at helping build domestic capacity;¹⁷ targeting disadvantaged and excluded groups; partnering with NGOs involved in advocacy (but only with the government's approval, which sometimes poses problems); and strengthening governance institutions and developing human rights capacity within those institutions and among NGOs that monitor compliance with human rights norms. To implement this last strategy the UNDP has teamed up with the Office of the UN High Commissioner for Human Rights to set up HURIST (the Human Rights Strengthening Initiative), which is geared toward developing the capacities of governments to further promote rights and to meet their obligations, including treaty obligations. The initiative has facilitated the setting up of human rights institutions such as national human

¹⁵ UNDP (1998: 12).

¹⁶ See www.undp.org/rbap/rights/Nexus.htm

¹⁷ Mark Malloch Brown (UNDP administrator), 2000.

rights commissions and ombudspersons; states' ratification of relevant treaties, and operationalisation of those treaties through enactment and implementation of national legislation.

Unlike the World Bank, the UNDP's definition of governance is all-encompassing and is not restricted to economic considerations only. It emphasises broad-based participation in decision-making:

Good governance is . . . participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.¹⁸

Its Human Development Report for 2000 focused on 'human rights and human development', making strong arguments for the two approaches to merge in order to be more effective in carrying out their shared mission of eradication of poverty and inequality.

In grappling with the implications of operationalising a rights based approach in its work, UNDP poses for itself the question: 'what would be distinctive and different if UNDP were to consciously adopt . . . a rights-based approach to poverty, instead of focusing on poverty eradication *per se*? What would be the nature of anti-poverty programmes designed with an explicit rights-based concern?'

Answers that have been put forward in UNDP documents include:

- Since RBA focuses simultaneously on social-economic as well as civil-political rights, it would need a redefinition of poverty, beyond simply insufficient income, to focus on *ability* to attain a decent standard of living (therefore empowerment not just provision), and therefore a focus on measuring not only inputs but also outcomes: is a person more able to attain a decent standard of living? The focus would be on expanding choices and freedoms, rather than increasing income through economic growth. Growth is still an important prerequisite, but must be checked by strong government institutions and rule of law to ensure access, non-discrimination and equity-based growth.
- It would focus attention on obligations. Obligation in development discourse is a broader notion compared to the meaning assigned to it in legal discourse. Obligations are not restricted to 'own-state', but 'encompass civil society, corporations, international community and other states'.
- The 'rights and development framework' makes it possible to design programmes around specific rights. UNDP lays out a two-step initial process of Assessment and Analysis. Assessment will raise questions such as what the official policy of the government is in relation to human rights; whether a country has ratified international human rights treaties, with reservations or without, and whether it regularly submits reports as required. If not, why not, and what national mechanism is in place for meeting reporting obligations. It would also evaluate social and cultural obstacles to realizing rights,

¹⁸ *Ibid*: 9.

e.g. does customary law supersede national law; are there biases toward certain groups on grounds such as gender, caste, religion? What are the mechanisms for accountability of state and non-state actors for violations? The analysis takes specific areas of rights such as education and health, and gathers information specifically with reference to impact on the situation of groups defined by factors such as gender, class, ethnicity, religion, and refugee status, so as to assess the greatest needs of the most disadvantaged that need to be addressed in law and policy. One document even suggests a matrix/logframe working from identifying a specific right, to what to take into account in assessing its fulfilment, then formulating the relevant “objective” and “output indicators”.¹⁹

We have not been able to find application of this rights assessment formula to any specific country programme. Clearly a deliberate attempt is being made to systematise and “plan” for rights in the same way that one would plan for any development project. Perhaps this is driven by a desire to show “programme” people that it is possible to accommodate rights within the development project cycle, using the same tools and methodologies used in conventional development planning.

In general it appears that the UNDP’s work on rights has leaned heavily toward governance institutions – parliamentary support, judicial reform, civil service reform, media support, and anti-corruption. A look at UNDP’s “world map” of rights related work in its 160 country offices confirms this focus.²⁰ The available information suggests that UNDP has done less to integrate a rights focus into its programmes on poverty eradication and sustainable human development. In the view of one development professional who worked with the UNDP in the past, this is partly explained by the fact that UNDP operates a country office model, and each country office has a degree of autonomy. It has therefore proved quite difficult to get the various country representatives to agree to a common programme of action in re-orienting their human development work to incorporate a rights-based approach. In terms of organisational politics it is much easier to start new programmes in the new area of democratic governance and the strengthening of human rights institutions.²¹

Initiatives toward integrating rights into UNDP’s sustainable human development work have a very recent history, and have focused on equipping UNDP staff through training and production of materials, largely through the HURIST programme. The UNDP has also set up a forum (HURITALK) to enable its staff to dialogue with each other and with other UN and bilateral agencies, NGOs and research institutions on human rights issues. The production of materials is also supposed to benefit developing country governments and civil society. Examples of materials that have addressed substantive areas of rights in development include a discussion paper on land rights and development developed jointly with

¹⁹ See www.undp.org/rbap/rights/Nexus.htm

²⁰ See www.undp.org/oslocentre/hrmap

²¹ Interview with Sir Richard Jolly, Institute of Development Studies, 5 June 2003.

the Geneva-based Centre on Housing Rights and Evictions (COHRE), and a discussion paper on minority rights and development written jointly with the Minority Rights Group.²²

It would be useful to undertake an in-depth analysis of specific country office activities against the background of UNDP's policy statements on mainstreaming a rights-based approach throughout its work. Such analysis is beyond the scope of this paper.

UNICEF²³

UNICEF is arguably the first UN development agency to take up a rights-based approach in its programming. For UNICEF, the rights-based approach has antecedents in UNICEF's earlier efforts throughout the 1980s and 1990s to make the development process more people-centred, for instance through its campaign on 'Adjustment with a Human Face', which criticised World Bank and IMF Structural Adjustment policies. UNICEF was emphatic that development should not result in further marginalisation of poor people, but rather in their empowerment. Until the late 1980s UNICEF's approach had been goal oriented, based on identified needs. One example was the goal of reducing infant and child mortality rates through universal immunisation, promotion of oral rehydration therapy, and Vitamin A supplementation among other health and nutrition interventions. These campaigns had proved the goal-oriented approach to be very effective and successful.²⁴ Thus the shift to a rights orientation (championed by the board) was not smooth. It encountered objections from key people within the secretariat who wondered what a shift to rights would add to what was already a very successful approach.²⁵

Explicit "rights talk" within UNICEF eventually filtered in with the campaigns that resulted in the enactment of the UN Convention on the Rights of the Child (CRC) which was adopted in 1989. The explicit adoption of a rights-based approach guided by the convention as the organising framework for UNICEF's work took place after 1995 with the new director, Carol Bellamy. UNICEF's Mission Statement was revised in 1996 to recognise the CRC and CEDAW as the foundations for the organisation's work. The Mission Statement also recognised the goals set at the World Summit for Children (WSC) in 1990 as obligations of countries that have ratified the CRC.

²² For details on this and other UNDP initiatives see 'Implementing a Human Rights-Based Approach to Development in UNDP' (Report to 2nd UN Inter-agency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform, Stamford, USA May 2003). For country-specific information on UNDP's work in the area of rights generally see www.undp.org/oslocentre/hrmap

²³ Unless otherwise indicated, information on UNICEF is based on Jonsson (2003).

²⁴ However, Urban Jonsson points out that the goal-oriented approach was less successful on other issues that have more complex causality, such as maternal mortality, education, sanitation and hygiene. Success in these issues would require processes of empowerment of individuals, families and communities and not simply linear intervention through delivery of services (Jonsson 2003).

²⁵ Interview with Sir Richard Jolly, 5 June 2003.

UNICEF's approach to implementing a rights-based approach involves integrating it into its Community Capacity Development strategy. In practical terms this means going through specific steps in programming, outlined clearly in a book by Urban Jonsson, the former Regional Director for Eastern and Southern Africa, and summarised here (Jonsson 2003):

- Causality analysis: beyond immediate and underlying causes, to identification of the basic causes of a problem. UNICEF recognises that basic causes, such as gender discrimination, are the most difficult to address in programming, and therefore a lot is devoted to equipping their staff to analyse and understand the systemic nature of violation of children's rights. This process is undertaken at both local and national level.
- Role or pattern analysis: an exploration of the complex web of relationships between rights-holders and duty-bearers. This requires detailed analysis that appreciates that there can be overlap between the two: some duty-bearers may be unable to fulfil their duties because their own rights are not met, as in the case of parents who are unable to fulfil their children's rights due to their own limited access to services and resources. In children's rights the pattern of relationships connects a range of actors – children, parents, immediate family, extended family, community members, district and national officials in various sectors, and the impact of each of these connected actors' behaviour in relation to a particular issue must be explored in designing programmes. The analysis also helps identify gaps in the "pattern-roles" or actors whose presence is necessary in order for certain rights to be realised but who are absent.
- Analysis of capacity gaps: proceeds from the assumption that more often than not, rights violations occur because specific duty-holders lack the capacity to fulfil their obligations. The analysis explores capacity in terms of issues such as responsibility (the extent to which the duty-holders have internalised and accepted their obligations), authority (whether it is legally, politically, socially and culturally legitimate for them to act on these duties), resources (human, economic and organisational), capability to make informed decisions and learn from the results, capability to communicate (being able to access information and participate in the generation and sharing of information).
- Identification of "candidate actions": this penultimate step identifies actions to address the capacity gaps identified among rights-holders and duty-bearers in relation to a specific issue or right being violated. These actions may include social mobilisation, advocacy, information, training/education and or service delivery.
- Programme design: the final step, which involves aggregating the priority actions into programmes and projects sensitive to the level of society at which each action is being undertaken.

The application of this approach in specific country programmes depends on local circumstances and priorities, as well as the history of previous UNICEF interventions. In Tanzania in the mid-1990s HIV/AIDS was identified as one of the chief threats to children, and this was seen as an issue that

dictated a broad policy approach addressing the political, social, cultural and legal dimension, much more than a localised service-oriented response that was likely to limit itself to the medical dimensions of the problem. UNICEF Tanzania has focused on working with young adolescents on HIV/AIDS. In terms of process, UNICEF's view is that it was much easier to facilitate dialogue between the youth and policymakers, and to create effective structures for the youth's participation in decision-making processes affecting them, once the discussions were grounded in a clear understanding of the framework of rights, duties and capacity. It has also used a human rights approach as a basis for pointing out shortcomings in the decentralisation programme: the focus has been on making local government authorities accountable to the central government and to donors, rather than ensuring the active participation of their constituents whose rights and responsibilities are likely to be put at risk by the local government authorities' policies.

In Zimbabwe, a rights-based approach initially encountered strong opposition and scepticism from the government, which was opposed to the idea of a development agency taking on a rights focus that would assert that the government had duties. Similar opposition was experienced at the local level, particularly due to the premium given to children's and women's rights. Therefore a lot of time (two years) was invested toward gradual assimilation of the fundamental values represented by a rights approach and showing that these were not entirely strange and that many of these values could be found in the local socio-cultural context. Once this was accepted, human rights provided an ethical basis for justifying the full participation of women and youth in decision-making forums, particularly in programmes around HIV/AIDS. A wide-reaching network of district facilitators and community mobilisers became the chief avenue through which UNICEF carried out its assessment, analysis and programming work, so that initiatives could be seen to be emerging from locally developed action plans. This had enormous impact because people were accustomed to a heavy bureaucratic central planning approach.

In summary, UNICEF's understanding of and implementation of a rights-based approach to development means that rights provide the ethical basis for their work; that it provides a tool for analysis of the complex web of social and political relationships that must be understood before any intervention; that in order for it to be grounded it must be integrated into a community capacity building programme that enables people (e.g. children) to claim their rights, while also empowering the obligation holders (e.g. parents, communities and government agencies). Perhaps compared to other UN agencies, it is easier for UNICEF to come up with a clear articulation of a rights framework because it is dealing with an already defined "constituency" – children – whose moral claims are generally accepted, as is evidenced in the near universal ratification of the CRC.

4.1.2 World Bank

The World Bank's policy and practice around rights raises three main issues for discussion:

- First, the bank's selective affirmation of economic over political rights, ostensibly dictated by its Articles of Agreement which forbid involvement in political considerations.

- Second, recent labelling of some of the bank’s programmes as rights-based, which calls for scrutiny that goes beneath the label to examine what exactly the bank means by its version of rights-based programming.
- Third, the bank’s reluctance to take measures that firm-up its own accountability for negative human rights impact of its work.

4.1.2.i Selective affirmation of economic rights over political rights

The World Bank’s position on human rights has evolved slowly from an outright rejection of the rights agenda as political and therefore anathema under the bank’s Articles of Agreement; to arguing that the bank views its work as geared toward poverty reduction and therefore that it contributes to the realisation of social and economic rights. The Bank takes the position that its mandate does not allow it to become involved in rights of a civil and political nature or to take a position on rights in general, but that its work on good governance and anti-corruption creates the conditions necessary for the enjoyment of all rights, including civil and political rights.

The Bank emphatically took this position in a report that it released at the request of the UN High Commissioner for Human Rights to mark the 50th anniversary of the Universal Declaration of Human Rights in 1998 (World Bank 1998). The reason the Bank is evasive about taking a position on rights in general, which would integrate civil and political rights is the much-discussed “anti-politics” provision in its Articles of Agreement, which states as follows:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.²⁶

Ironically, this dichotomous position on rights positions the Bank in the Soviet camp in the Cold War debate on the relative validity and importance of economic and social rights on the one hand, and civil and political rights on the other. The Soviet position dismissed civil and political rights as political ideology.²⁷

The Bank’s insistence on this position seems contradictory when we consider the Bank’s agenda on anti-corruption measures, good governance and the rule of law which no doubt are in every way “political”. Even in pursuing these agendas however, the Bank is at pains to find economic justification for its involvement. For example a 1994 publication states:

²⁶ World Bank Articles of Agreement, art. IV, sec. 10 (as amended 16 Feb 1989), available at www.worldbank.org/html/extdr/backgrd/ibrd/art4.htm#I11.

²⁷ Credit to Richard Jolly for pointing out this irony.

In analysing governance the World Bank draws a clear distinction between the concept's political and economic dimensions. The Bank's mandate is the promotion of sustainable economic and social development. The Bank's Articles of Agreement explicitly prohibit the institution from interfering in a country's internal political affairs and require it to take only economic considerations into account in its decisions. Thus the Bank's call for good governance and its concern with accountability, transparency, and the rule of law have to do exclusively with the contribution they make to social and economic development and to the Bank's fundamental objective of sustainable poverty reduction in the developing world.²⁸

By claiming in the 1998 report that the Bank's work contributes to economic and social rights, and creates a 'favourable environment in which people may pursue a broad range of rights', the Bank gives the impression that it would like to be seen as promoting a rights-based approach to development through its current programming, and that there is no need for it to take any further specific steps to implement a rights-based approach. In other words, the Bank does not need to do any more, by way of rights, than it is already doing.

Clearly this has not impressed even the UN agencies charged with implementing economic, social and cultural rights. The UN Committee on Economic, Social and Cultural Rights has called upon the World Bank to make good its proclaimed commitment to economic, social and cultural rights by incorporating them explicitly in its dealings with borrower countries, thus help in the identification of country-specific benchmarks for achieving these rights. The Committee has also called upon the Bank to develop appropriate remedies for rights violations resulting from bank-funded projects.²⁹ Similar calls have been made by the UN Sub-Commission on the Protection and Promotion of Human Rights.³⁰

4.1.2.ii Beneath the label: the Bank's "rights-based" work in practice

The Bank's claim that its work promotes economic and social rights needs to be held up against other statements that the Bank makes which are in tension with the achievement of basic economic and social rights. One example is with respect to the privatisation of water services, which ironically is justified in terms of rights and labelled 'rights-based water sharing'. A joint World Bank/Netherlands water partnership programme (operating in Brazil, Chile, Indonesia, Philippines and Yemen, with planned

²⁸ World Bank, *Governance: The World Bank's Experience* (1994: vii).

²⁹ United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights, 'Globalization and Economic, Social and Cultural Rights', Statement by the Committee on Economic, Social and Cultural Rights (issued on 11 May 1998), available at www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/0fad637e6f7a89d580256738003eef9a?OpenDocument&Highlight=0,globalization. (Visited 18 December 2003).

³⁰ Oloka-Onyango and Udagama (2001: para. 72).

extension to India and Kenya) describes the objective of the “water rights system” as ‘stimulating the use of rights-based systems for the allocation of water in World Bank assisted projects (through market mechanisms)’.³¹

What is being called a “rights-based” system is basically no more than a system of tradable permits in water. The joint programme describes the system as follows:

In cases where the demand for water is great from other users, water rights provide the foundation to transfer water from one use to another use, so those choosing to forego their water allocation have a recognised entitlement to negotiate fair compensation and gain from the water transfer.³²

Although the system is justified in terms of giving secure water rights to less powerful groups such as farmers, the talk of ‘allowing water to move from lower to higher value uses’ and therefore ‘increasing efficient use’ suggests that the emphasis is on profitable use of water, rather than ensuring adequate supply for all, and the system is therefore likely to favour large commercial users. Poor people could instead end up being more vulnerable, through transfers coerced by desperate circumstances. More importantly, there is no reference to the need to first secure a minimum level of entitlement that should be available to all before the proposed market mechanisms are considered, if at all.

Contrast this with an approach that has been described by the same name— “rights-based” – in a UNICEF publication (Nigam and Rasheed 1998). The emphasis is on securing basic levels of service for all, and on the need for regulation to ensure both efficiency and fairness. The authors point out that the market cannot be relied upon to safeguard and allocate water resources equitably across income groups and across competing uses.

4.1.2.iii Human rights accountability within the Bank

Civil society groups have, over the years, called upon the Bank to take at least two measures: first, explicit recognition of the applicability of international human rights standards in evaluating the Bank’s work. Second the establishment of institutionalised measures to recognise and redress negative human rights impact of its work. Despite numerous such calls the World Bank refuses to consider itself responsible for human rights violations that may occur as a direct result of projects it funds. Instead, the Bank has only made certain conciliatory gestures to address the second demand. The gesture that comes closest to an acknowledgement that people are entitled to some redress for human rights violations resulting from Bank projects is the establishment of the Inspection Panel in 1993, following the high profile campaigns against the Sardar Sarovar dam on the Narmada river in India. The Inspection Panel is composed of three members who are recruited based on nominations from World Bank member-states as well as applications

³¹ Bank/Netherlands Water Partnership Program, Water Rights Concept Note (Managed by Ashok Subramanian and John Briscoe). For this and other relevant materials *see* www.worldbank.org/water

³² Bank/Netherlands Water Partnership Program, Water Rights Concept Note (Managed by Ashok Subramanian and John Briscoe). See also Thobani (1995). For other relevant materials see www.worldbank.org/water

from individuals whose states must be World Bank members. A request for inspection may be filed by any two or more local persons affected by a World Bank-funded project. The panel's mandate is to evaluate the complaint and make a decision as to whether the Bank's Operational Policies were contravened in the implementation of the project. The panel's frame of reference is the bank's own Operational Manual, not external standards such as international human rights standards for instance.³³

Some analysts have referred to this and other Bank-initiated mechanisms as recourse without redress (Clark 2002: 217). This is because the Inspection Panel's authority is limited to investigating the complaint and making recommendations to the Bank's Board of Executive Directors, who then give the Bank's Management six weeks within which to develop an Action Plan in line with the panel's recommendations. Once this stage is reached, the panel has no further powers of oversight over the implementation of the action plan, nor any evaluation to satisfy itself and the complainants that their grievance has been addressed. The only force that keeps the Bank focused on the Action Plan is civil society pressure. There is no institutionalised mechanism within the Bank that sustains this momentum. As a result, some groups are able to obtain redress while others' cases get lost in the system. The latter fate is suffered particularly by those cases relating to projects that are already under implementation and there is little political will to interfere with them (Clark 2002: 220).

Furthermore, some individuals and groups have faced reprisals from their governments for filing complaints to the Bank's inspection panel.³⁴ As an institution the Bank refuses to speak out or take action against these incidents, citing the anti-politics provision in its Articles of Agreement. In some rare incidences, the Bank President has intervened by privately negotiating with the government leaders involved (Clark 2002: 210–11). This is yet another illustration of the absurd outcome of the anti-politics/anti-civil and political rights position.

Since the 1998 report, the Bank began to engage with the Office of the UN High Commissioner for Human Rights, as is evidenced by the fact that the High Commissioner (Mary Robinson) was invited to give the Presidential Fellows Lecture in December 2001,³⁵ which spawned a 'joint staff learning seminar on human rights and development' between the Bank's staff and the OHCHR staff in June 2002. The seminar proceedings reveal that even though there is commitment in principle on the part of the Bank's President (James Wolfensohn) the question of rights continues to be a vexed one among Bank staff, and the rights agenda is greeted with varying degrees of trepidation:³⁶ The Vice President of Operations Policy and Country Services emphasised that the Bank's guiding principles are client-centred and that the Bank works in partnership (suggesting that the Bank cannot therefore dictate human rights conditionality to its

³³ The Bank's Operational Manual is available at <http://wbln0018.worldbank.org/institutional/manuals/opmanual.nsf>

³⁴ *Ibid* at 207, citing examples from the Chixoy dam project in Guatemala, the Chad-Cameroon oil pipeline project and an Inspection Panel complaint relating to a project in Singrauli, India.

³⁵ Robinson (2001).

³⁶ See 'Joint Staff Learning Seminar on Human Rights and Development', World Bank Headquarters 10–11 June 2002. Available at www.worldbank.org/wbi/communityempowerment/Documents/Summary-HR.htm (visited 26 March 2003).

clients). The Senior Vice President of Development Economics and Chief Economist underscored the ‘necessity for positive statements rather than emotional assertions in debating rights issues . . . to identify a finite and achievable list of universal entitlements.’ The Lead Counsel from the Bank’s Legal Department cited the Articles of Agreement and emphasised that the Bank ‘may only conduct business with the official fiscal agency of member countries’ (not famed for their enthusiasm for human rights considerations). The Senior Adviser of the Poverty Reduction and Economic Management Network (PREM) (Deepa Narayan) advocated a “pragmatic”, as opposed to “moral” approach in implementing human rights. This would encompass ‘provision of basic services, improved local governance, improved national governance, pro-poor market development and access to justice’. The Bank already claims to be doing all these things, so essentially her attitude mirrors that of the 1998 report – that the Bank needs not do any more to implement a rights-based approach in its work.

In an effort to try and get the Bank to embrace a rights-based approach, some proponents have been adopting a “Bank-friendly” way of speaking about rights. Two examples will suffice here.

In a presentation on PRSPs and Human Rights, José Miguel Vivanco, the Executive Director of the Americas Division of Human Rights Watch assured World Bank staff that ‘human rights is not politics’. Since international human rights are defined in standards of legal obligation already accepted by the state this sanitises them and distinguishes them from ‘more arbitrary and political considerations.’³⁷ Obviously there is everything political about rights, and the pressure should aim at getting the Bank to drop the anti-politics restriction and amend its Articles of Agreement because its work *is* political.

In the same speech, the Bank is urged to pay attention to civil and political rights for a very instrumental reason – that the failure to do so will make the Bank’s work ineffective:

We know that the Bank is not a watchdog organization. Nonetheless, it must recognize the threat posed to its effectiveness by violations of civil and political rights. Limiting its efforts to promotion of economic, social and cultural rights alone undermines the effectiveness of the Bank’s aid.

The second example is from Mary Robinson’s (former UN High Commissioner for Human Rights) speeches to the Bank. The tone is one of guarded criticism of the Bank’s position, coupled with reassurance that rights are “safe” for the Bank. On the one hand she points out that a rights-based approach to development is about asking ‘hard questions about obligations’ and that all development partners must be prepared to accept higher levels of accountability. On the other hand, she is quick to reassure her audience that in the field of development, human rights accountability is not necessarily tied to formal redress through legal processes and institutions. Rather, ‘human rights need to be seen as open-textured and flexible, and capable of policy application in diverse situations in ways not limited to adjudication in courts and tribunals.’ (Do not worry: taking up a rights agenda does not mean you will be hauled before a UN committee or national court.) While it is realistic to expect that there will be flexibility

³⁷ José Miguel Vivanco, ‘PRSPs and Human Rights’ (n.d.); available at www.worldbank.org/poverty/strategies/events/092502_vivanco.pdf

in the translation of human rights principles into policy, this emphasis on an “open-textured” and loose definition of accountability appears to tone down the OHCHR’s emphasis on “legal obligations” in spelling out what a human rights approach to poverty reduction entails.

The Office of the UN High Commissioner for Human Rights continues to try to influence the World Bank’s work. A recent initiative is the recently developed ‘Draft Guidelines on A Human Rights Approach to Poverty Reduction Strategies’.³⁸ A human rights approach, it is argued, will add value to the PRSP process by contributing principles drawn from the international human rights normative framework. As the drafters of the guidelines point out, it is a framework that carries a measure of legitimacy as many states have ratified it, and therefore *prima facie* it embodies a state’s acknowledgment that its citizens do have those basic entitlements, and that it commits itself to their fulfilment through progressive realisation.

More importantly, at a time when most poor countries are under some conditionality or the other from international financial institutions (IFIs) such as the World Bank, and also have to comply with trade rules set by the WTO, explicit recognition of a state’s obligations under human rights treaties gives a basis for requiring that those organisations (i.e. IFIs, WTO) ‘avoid policies and practices that make it more difficult for that government to conform to [human rights] treaty obligations it owes to individuals and groups within its jurisdiction’ (Hunt *et al.* 2002: 12). In other words, integrating human rights into the PRSP process could give a developing country a tool for bargaining with IFIs and international trade organisations, indirectly forcing these international institutions to respect international human rights standards in their work, rather than maintain the attitude that human rights have no place in monetary or trade affairs. Whether this will change the Bank’s practice with respect to PRSPs or any other aspect of its work remains to be seen.

4.2 Bilateral agencies

4.2.1 Sida

Sweden has long been associated with the promotion of human rights as part of development cooperation activities, perhaps more so than any other donor. Whilst the word “solidarity” disappeared from Sida’s mandate in the mid-1990s, the goal of tackling not only poverty but oppression remains central to Swedish development assistance. Before the term “rights” had become part of development-ese, Sida and

³⁸ Office of the High Commissioner for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002) [available at www.unhchr.ch/development/povertyfinal.html]. Poverty Reduction Strategy Papers (PRSPs) a joint initiative of the World Bank and IMF which was launched in 1999. The strategy papers are required of poor countries to evaluate their eligibility for concessional lending and for debt reduction under the Highly Indebted Poor Countries (HIPC) initiative. The strategy papers are expected to fulfil certain principles, among them that the process of generating them must be participatory and country-driven (involving civil society and private sector as well as bilateral and multilateral development partners), must focus on outcomes that benefit the poor and reflect a long-term perspective on poverty eradication, with clear indicators and appropriate mechanisms for monitoring and evaluation. See www.worldbank.org/poverty/strategies/overview.htm.

Sweden's Ministry of Foreign Affairs were using it to convey elements of its mission that looked – at face value at least – very different to the more “conservative” approaches of many other bilateral agencies.

The Swedish government has had a long and close association with movements engaged in struggles for self-determination, particularly in southern Africa where direct support was given to anti-colonial and anti-apartheid liberation movements labelled “communist” or even “terrorist” by other Western governments in the form of humanitarian aid, amounting to some 40 per cent of official spending in the region in the period 1950–1994 (Sellström 1999). Arguing against the potential charge of breaching international law by interfering in the internal affairs of another country, a Standing Committee of the Swedish parliament argued, in 1969:

With regard to liberation movements in Africa, humanitarian assistance and educational support should not be in conflict with the said rule [that no state has the right to interfere in the internal affairs of another] in cases where the United Nations unequivocally has taken a stand against oppression of peoples striving for national freedom.

(Cited in Sellström 1999: 17)

Sida continues to talk of working to bring about ‘a world free of poverty *and oppression*’, and does so using language that is stronger than many of its fellow bilateral agencies.

Sweden has remained at the forefront of attempts by bilaterals to link rights and development. A 1996/7 report by Sweden's foreign ministry, *The Rights of the Poor – Our Common Responsibility*, links poverty, development, participation and rights:

It is estimated that 1.3 billion people live in acute poverty today. Almost a quarter of the earth's population are unable to satisfy their basic human needs . . . These people should have the same rights as anybody else to assert their rights, free themselves from poverty and take control of their own lives and their future . . . In the final analysis, development cooperation is about respecting the equal value of all human beings and about common security, understood not merely as the security of states but in the context of people's living conditions in the broad sense . . . reflected in the UN's extensive normative work . . .

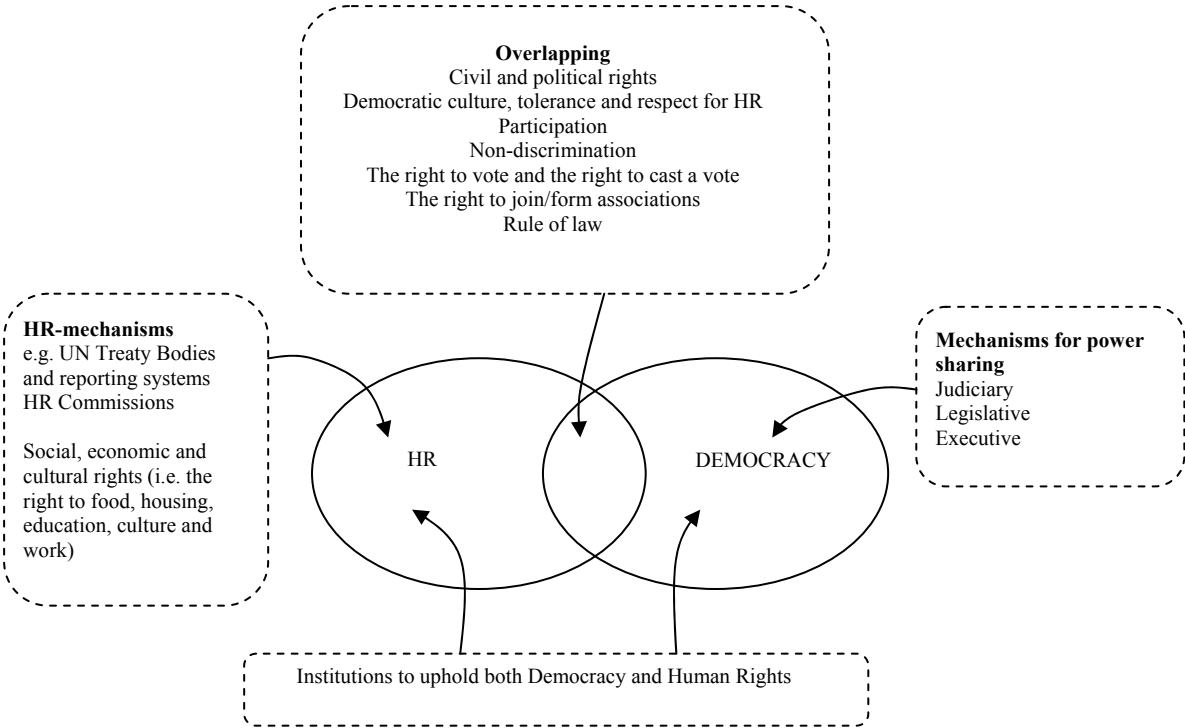
(MFA 1996/7: 7)

For those who work with human rights within Sida, the key distinguishing feature of their work – that which makes them different from other bilaterals – is the extent to which their human rights work is linked to a broader concern with democratisation, and with the institutions of democratic governance in particular. This, however, is also where Sida's critics identify some of the shortcomings of their approach. For much of Sida's work in this area takes what might be regarded as a conventional governance approach to human rights and democracy, and as such has not in the past sought to offer a broader frame through which other kinds of development interventions might come to be regarded. “Democracy” is largely seen as inhering in formal political institutions and “human rights” is interpreted in a very legalistic way, which

translates into a very narrow programme at their intersection – leaving outside much of what other actors analysed in this paper, such as CARE, DFID and ActionAid would take as *their* primary focus when they talk about “rights-based” development. Indeed, it is worth noting that Sida does not generally use the term “rights-based approach” to describe its work; the term yielded no hits on the search engine for Sida’s publications, and was not evident in any of the documents we examined.

Education, Democracy and Human Rights in Development Co-operation, published in April 2001, puts forward a view of the linkages between “human rights” and “democracy” that exemplifies this conventional governance approach (see Figure 4.1).

Figure 4.2.1 The relationship between democracy and human rights (Sida 2001a)



This approach leaves little room for the support of the processes of rights-framing and claiming that are more closely associated with a more social development approach (see, for example, Moser and Norton 2001; Eyben 2003) – note, for example, the absence of social and economic rights at the intersection of HR and democracy. Efforts to broaden and deepen participation are less prominent here than efforts to strengthen formal institutions and mechanisms.

In this document, a ‘democracy and human rights approach’ is laid out, as based in:

- a *shared pool of values* based on the international conventions on human rights
- a clear *division of responsibility* based in principle on the state’s obligations and the individual’s human rights

- a *process* in which participation is a fundamental principle, and
- a *holistic view* of the individual person's problems and potential, as well as of society's power relationships and power structures, which form the framework within which individuals act, alone or in a group,
- an *analytical tool* which facilitates and contributes to the identification of target groups, problem areas, power relations and structures, and thereby leads to more efficient collaboration with cooperation partners and countries
- a *measuring instrument and indicator* that facilitates a clearer scrutiny of which gains have been made.

(2001a: 1)

The document goes on to argue that linking democracy, rights and development works to put the spotlight on 'power structures and power relationships at all levels that affect the poor person's opportunities to participate in decisions and regulate conflicts of interest that affect his/her situation in life' (2001a: 2). It is this explicit naming of power structures and power relationships that is particularly interesting, providing a potential lever for work that would focus – as Eyben (2003) argues ought to be the case more broadly in development assistance – on development agencies as actors who need to be more reflexive about their own agency. The document also highlights the significance of such an approach for revealing, and providing a means to tackle, discrimination, another dimension of power relationships that previous development paradigms did little to recognise let alone address.

A guidance document, produced by the same department, for Sida's country strategy development from a democracy and human rights perspective makes the link with poverty reduction explicit:

In principle, the Swedish intention is to support the struggle against poverty, using an analysis of both the society in question and our intervention in it, from the perspective of democracy and of respect for human rights at all levels of the society. In its broad definition, poverty is a state of the violation of almost all human rights; and lack of democracy excludes the poor and leads to greater poverty in the long term. If we can help to bring about respect for, promotion, protection and fulfilment of human rights and assist in democratisation, we will make a major contribution to poverty reduction.

(2001b: 1)

Emerging from a different department within Sida, but with a reach that sought to involve the institution as a whole, the Policy Department's document *Perspectives on Poverty* (2002) takes a step further in bringing human rights into the centre of Sida's work, arguing that human rights provide a normative basis for poverty reduction:

A democracy and human-rights approach translates poor people's needs into rights, and recognises individuals as active subjects and stakeholders. It further identifies the obligations of states that are required to take steps – for example through legislation, policies and programmes – whose purpose is to respect, promote and fulfil the human rights of all people within their jurisdiction.

(2002: 34)

Some of the tensions between, on the one hand, an approach to poverty that recognises its multi-dimensionality and the need to work to enhance people's sense of themselves as agents – that is, to work on issues of power and powerlessness – and, on the other, a continued emphasis on a rather legalistic approach to human rights comes through in this statement. In the new government policy, *Shared Responsibility* (2002), rights are pivotal in the way in which development is conceived: it stipulates that the implementation of the policy should be permeated by 'a rights perspective', defined as containing 'human rights, gender equality, democracy and child rights'.

The multi-dimensional approach to poverty that Sida has now adopted (Sida 2002) presents a significant opportunity for creating new intersections between human rights, democracy and development within Sida's work, by bringing issues of power and powerlessness into the heart of what "poverty" is taken to mean. The democratic governance department have recently been seeking to use power analysis to gain greater depth in their programming work. This has focused greater attention on political dynamics, although definitions of "power" that are being used limit the depth of understanding of the dimensions and dynamics of power that might be realised through such an approach.

Understanding and acceptance of human rights as central to Sida's work is increasing, according to the Senior Human Rights Adviser Inger Axell. And steps are being taken to translate this commitment into tools for practice. Four key principles have been identified for operational use: accountability; participation; openness and transparency; and equality in dignity and rights (Helena Bjuremalm, interview, 2004). Sida is at present developing a simple, generic, checklist to be used by staff for pre-appraisal of programmes, which takes account of the significant contextual differences between the countries in which it is active as a donor. Participation features prominently in the kinds of questions this checklist aims to raise, alongside discrimination, access to information, dignity and accountability. Recent work in the department of democratic governance is focused on developing and applying a power analysis to explore this intersection, and using this as an entry-point for programming as part of their country strategy processes (Bjuremalm, interview, 2004).

One ever-present danger for working with rights in Sida is what Bjuremalm calls 'mainstreaming fatigue'. Sida staff complain about having so many "layers" that they need to include in their programmes that they become virtually meaningless. Yet the high profile that human rights now have in Sida's work – being the counterpart of an emphasis on poor people's own perspectives as the headline themes that should guide all the work that Sida does – means that the institutional backing is there in ways that other "mainstreamed" terms might have lacked in the past. Lessons might well be learnt from experiences with institutionalising "participation" over the course of the 1990s, which point to the importance of dialogue

and deliberation across the agency to avoid compartmentalised, and contradictory, meanings and practices that can end up working at cross-purposes to Sida's overall goals (Cornwall and Pratt, forthcoming). As Bjuremalm argues, 'once the approach is demystified, people in general seem to appreciate the value it adds to their work' (interview, 2004). Inger Axell contends:

I put priority right now on getting a common understanding of the concept among people with different professional backgrounds. Human rights are far too important to be handled only by lawyers. To deepen the dialogue in the field with partners of different kind we can't do without socio-anthropologists as we need to go far beyond the language in the conventions to make people see that the values are truly universal. There is a blockage because of politics and history. The dialogue in the field can improve matters a lot, but to do this will require knowledge of the concept.

(Email 2004)

In Kenya, for example, Sida has sought to take this dialogue approach forward by organising seminars in collaboration with Kenyan authorities and civil society organisations on issues such as access to water. As Helena Bjuremalm reports, this has contributed to more focused dialogue, and a better understanding of the challenges, rights and responsibilities. One further dimension of Sida's engagement with issues of rights is worth drawing attention to in this respect. Their championing of sexual and reproductive rights provides an important source of support in the face of the increasingly hostile international climate. Extending the principles of human rights to the right of every human being to have loving relationships, irrespective of their sexual orientation, is an application of the "human rights approach" that speaks more broadly to a positive freedom to be, as well as protection, respect and fulfilment of rights that are routinely violated by state and non-state actors.

Considerable resources are invested in human rights, relative to other programmes, by the democratic governance department, ranging from support to international advocacy NGOs such as Minority Rights, regional and national HR organisations to national authorities such as the Office of the Status of Disabled Persons in South Africa. Providing opportunities for dialogue that promote new linkages in thinking and in operational work remains a priority for the organisation. It remains to be seen how the ambitious agenda for integrating human rights and participation of the poor into every dimension of Sida's work takes shape.

4.2.2 The UK Department for International Development

For DFID, the cornerstones of a rights-based approach, as articulated in its 2000 target strategy paper *Human Rights for Poor People*, are three principles: participation, inclusion and fulfilling obligation. Participation is defined as 'enabling people to realise their rights to participate in, and access information relating to, the decision-making processes which affect their lives' (2000b: 7), which is arguably both a progressive formulation of the concept and at the same time a more restricted notion. If simply having access to information is presented as "participation", the concept gains considerable elasticity. It is clear,

however, from DFID's target strategy paper and from subsequent moves to institutionalise a rights-based approach, that the most radical component of this move to rights is naming participation as in itself a human right, one that is prior to the realisation of other rights.

DFID's approach emphasises discrimination as one of the barriers to realising rights, putting social inclusion at the heart of an approach to tackling poverty. Whilst the strategy is primarily directed at redressing the situation of poor people, all three of its principles have universal application and as such hold the potential to be used by other marginalised groups in struggles over discrimination, access to the means to participate meaningfully in decision-making processes and in contesting the obligations of governments to respect, protect and fulfil their basic human rights. The target strategy paper makes explicit the move beyond a convenient patchwork of consensus towards a recognition of issues of difference, and the resolution of conflicts in favour of poor and marginalised people: 'a rights approach forces us to recognise difficult issues and provides a framework for trying to resolve existing conflicts which protect the interests of the poorest and most marginalised' (2000b: 17).

Like other organisations who have adopted a rights-based approach, DFID has begun to use the term in a rather looser way than the architects of its strategy paper might have intended. In *Poverty: Bridging the Gap* (2001), for example, it is argued:

A "rights-based approach" to the development of targets to access . . . reproductive health services would recognise an unmet need for a service . . . Women have a right to the service, despite the possible fears, doubts or prejudices of family or community members. As well providing the primary health care service, a rights approach would ensure dialogue with women and men in the community about the advantages of spacing the births of children, the different methods of contraception and possible side-effects and the rights and responsibilities of parents.

(2001: 87)

Here we have an extension of the euphemistic use of "reproductive health" to repackage family planning with the use of rights language as attractive-looking packaging for "business as usual".

As Eyben's rich and insightful account of the challenges of operationalising rights in DFID Peru (Eyben 2004) and her reflections on the implications of RBA for DFID India (Eyben and Ramanathan 2002) illustrate, donor efforts to make rights real bring a host of otherwise hidden considerations right out into the open and as such have the potential for linking rights and participation in new and unexpected ways. In their support to civil society organisations working in Peru's remote rural areas to deliver citizenship and voter education, DFID were able to create spaces for dialogue between voters and those who would represent them, as well as open spaces at the national level for dialogue with the National Election Commission and the Ombudsman's office, as well human rights NGOs (Eyben 2004). Similar activities were subsequently funded for the 2002 local government elections, including initiatives in participatory budgeting. These experiments in supporting political accountability have been, Eyben reflects, an opportunity for DFID as a donor to explore its own multiple accountabilities. The complexity

of the issues provoked by these reflections highlights some of the less obvious dimensions of a rights-based approach: the provocation it might present to donor agencies to how they regard, and indeed administer, aid.

In Brazil, applying a rights-based approach has led to some of the most exciting work amongst development agencies on a long-neglected issue: that of race. As set within a focus on inequality, and bringing lessons from UK experiences of work on institutional racism to bear on the Brazilian experience, work funded by DFID has made significant contributions to debates on policies and priorities in health and approaches to mainstreaming race issues across government. This work has been strengthened by the rights-based language of non-discrimination, by DFID's work with political and policy actors in government and civil society as well as by the potential of bringing a multiplicity of associated rights to bear on questions of embedded racial discrimination and its effects on poverty, education and life chances.³⁹

Yet, despite these exciting and progressive examples, the dominant view within DFID appears from Piron's (2003) account suggests that the way in which rights have been taken up in the organisation has tended to be rather more instrumental. Analysing some of DFID's programmes, Piron observes that the focus of implementation appears to be on community participation in service delivery, and civil society advocacy. This is, she notes, not the same as 'demanding and being able to ensure the respect or protection of specific rights, such as, for example, the right to health or education' (2003: 20). She also comments on the way in which talk of a "rights-based" approach has been used to tone down reference to "human rights" that might otherwise be perceived as "too political" by certain governments. Whilst the TSP speaks of the right to *participation*, Piron shows how DFID's engagement with the right to *development* has been careful to emphasise the obligations of *national* governments, and suggests that DFID is rather more vague about their own human rights obligations as indeed those that they may have to people in the countries to which DFID gives development assistance.

Whilst DFID has supported the development of Participatory Rights Assessment Methodologies (PRAMs, see CDS 2002), it has not as yet issued formal instructions that require rights-based programming nor provided guidance as to how to incorporate a rights-based approach into impact assessment or policy development. Those country programmes that have taken up the approach have largely done so as the result of successful advocacy on behalf by Social Development advisers, and, as Piron's review makes clear, there is considerable diversity in the way in which rights-based approach is understood and implemented across DFID. It is difficult to generalise, but it does appear to be the case that there is less use of human rights *standards per se* than the broad principles informed by a human rights perspective – and, in particular, the ways in which those principles articulate with DFID's focus on social exclusion and good governance.

³⁹ Source: interview with Sue Fleming, DFID Brazil, December 2003.

With the loss of its most highly-placed champion – Clare Short, former Minister for Overseas Development – and the recent period of turbulence in the organisation as a result of internal restructuring, there have been some setbacks in implementing a rights-based approach within DFID. Piron’s (2003) review points to patchy take-up in country programmes and a lack of capacity at the centre to make the most of lesson learning from operational work. Recent developments suggest, however, that new opportunities may be opening up with the reconfiguration of DFID’s teams giving rise to a newly constituted team mandated to focus on exclusion, rights and justice, and a renewed focus on the potential of a rights-based approach in the governance arena. This may indeed generate renewed energy for bringing rights more fully into the work of the organisation, and allow some of the promise of the TSP as well as of the experiments that have been taking place in country offices such as Peru and Brazil, to be realised.

4.3 International development NGOs

4.3.1 CARE

The drive behind CARE International’s rights-based programming work is the need to maximise impact and efforts, to tackle poverty and social injustice. CARE believes this can only be achieved by supporting interventions which explicitly focus on people achieving minimum conditions for living with dignity (i.e. attaining their human rights – as validated by national and international law). A “rights-based approach” to human rights empowers poor communities to claim and exercise their rights and enables those responsible to fulfil their duties.⁴⁰

CARE launched its Human Rights Initiative in January 1999. Since then, the focus has been on:

- raising awareness and promoting a shared understanding of a human rights approach as it applies to CARE’s work;
- building staff capacity to apply a rights approach in every stage of CARE’s programmes;
- ensuring that CARE’s principles, policies and systems facilitate rights-based programming; and
- forging strategic alliances with other organizations to enhance mutual learning.

(CARE 2000)

As part of the initiative, CARE publishes a newsletter – *Promoting Rights and Responsibilities* – which features field experiences by CARE staff, as well as external contributions on implementing rights-based programming. Contributions also address conceptual issues on rights-based development. CARE has also compiled country-specific case studies of its experiences in implementing rights-based programming (CARE 2002c). CARE has developed a framework known as the “benefits-harms” analysis to examine

⁴⁰ www.careinternational.org.uk/resource_centre/humanrights.htm

and plan to mitigate the unintended negative impact of its work, as well as assess how differently positioned people within the same community may experience harm or benefit from the same intervention (CARE 2001a; 2001b). In addition, CARE looks beyond its own responsibility and takes up the responsibility of holding other key actors accountable to their human rights obligations. For this, CARE has developed an analytical framework known as the Rights, Responsibilities and Root Causes Analysis, which entails playing an advocacy role by identifying violations and getting actors such as governments, donors, partners and other responsible actors to live up to their responsibilities (CARE 2001a; 2001b).

What the adoption of a rights-based approach means for CARE was articulated in a statement issued from a workshop of CARE's RBA Reference Group in October 2001 (CARE 2002a). Some excerpts from the statement give a sense of the depth of CARE's awareness of the commitment, both at a programme and personal level, that is called for by rights-based programming:

1. 'We stand in solidarity with poor and marginalized people whose rights are denied, adding our voice to theirs and holding ourselves accountable to them.' Under this broad commitment, CARE staff include specific commitments such as:
 - a. confront, in a spirit of principled engagement, those responsible for denial of rights;
 - b. not to accept funding where a significant portion of the poor and marginalized people CARE intends to support feel that such funding will impede realization of rights;
 - c. provide the people with all relevant programme information and avail them the opportunity to assess the programme;
 - d. ensure that the poor and marginalized people take the lead in determining the pace of change and level of acceptable risk.
2. 'We oppose any discrimination based on sex/gender, race, nationality, ethnicity, class, religion, age, physical ability, caste or sexual orientation.' Specific commitments listed include:
 - a. not to partner with any organization that practices such discrimination without openly confronting and seeking to redress it;
 - b. differentiating and disaggregating social information so as to uncover and address hidden discrimination;
 - c. exemplifying non-discrimination in all of CARE's operations.
3. 'We examine and address the root causes of poverty and rights denial.' This includes:
 - a. looking closely and systematically at social, political and economic structures of power at all levels;
 - b. advocating in public spheres with, and/or on behalf of, poor and marginalized people.

CARE staff have continued to raise and debate the practical implications of these commitments (CARE 2002b). For instance, with respect to the commitment not to accept funding where a significant portion of

the community considers it detrimental to the realisation of rights, what would constitute a “significant” portion? What about the interests of people that CARE does not intend to support, but whose interests are nonetheless affected by the programme?

In order to understand what the adoption of a rights approach has meant in practice, the remainder of this section will focus on CARE’s work in Kenya, where we were able to interview three officials and one former programme officer. We focus on two insights that emerge from two programme activities. The first insight relates to piloting of a rights-based approach to programming in the context of a refugee assistance project: implementing a rights approach for the benefit of people whose rights status is contested encounters opposition, and regardless of professed organisational commitment to “solidarity with the marginalised” it is often down to the conviction and determination of staff on the ground. From the perspective of these staff, the organisational commitment to a rights approach is as crucial for the purpose of engaging in difficult negotiation with objectors within the organisation and with partners as it is a tool for serving the marginalised communities.

The second insight relates to the attempt to harmonise CARE’s Household Livelihood Security approach with a rights-based approach. Although numerous conceptual discussions were held on this issue (CARE 2001c), the translation of this fusion on the ground is heavily dependent on what the relevant staff perceive as the organisation’s central priorities, and the experience is one of a co-existence of harmony and tension in the approaches, as examples from the empowerment of farmers illustrate.

4.3.1.i Implementing a rights-based approach in a refugee assistance project

It was in Kenya that CARE’s policy on rights-based programming was first piloted, in the Water and Environmental Sanitation sector of the Refugee Assistance Project (RAP) in Dadaab camp in Northern Kenya (CARE Kenya, Refugee Assistance Project 2001). As the former Sector Manager pointed out, the area of humanitarian relief is characterised by the attitude that the situation of the people receiving assistance is so precarious that they are expected to make do with whatever relief agencies are able or willing to offer. A focus on rights requires a shift in thinking on the part of relief agencies to recognise them as human beings who are entitled to a threshold of service provision necessary for a life of dignity.⁴¹

A former CARE staffer used the following analogy to explain this shift:

When we are focusing on needs, it is alright to provide half a glass if half a glass is what we have. But in RBA, if the principles state that people are entitled to a full glass then we have to provide the full glass. But in practice, in the context of limited resources, I do what the budget allows me to do. The only difference is that now I am aware that I am falling short of the standard.⁴²

⁴¹ Interview with Barasa Chaungo, Project Manager, Garissa Pastoral Partnership Project (GAPP) (formerly in charge of Water and Environmental Sanitation in the Refugee Assistance Project), Nairobi, 28 April 2003.

⁴² Interview with Jackson Thoya, former Programme Officer in charge of Reproductive Health and HIV/AIDS, Western Kenya, 8 April 2003, Nairobi.

It also entails a shift from simply provisioning to building the refugee community's capacity through equipping them with vocational and economic skills, and promotion of income generation activities, with a view to eventual repatriation or resettlement (Care Kenya, Refugee Assistance Project 2001).

For the official who was in charge of the Water and Sanitation sector of the Refugee Assistance Project at the time when Rights-Based Programming was piloted, what proved important was not simply the fact of a rights-based approach, but that it enabled him freedom to do things he would otherwise have had difficulty doing. Primarily it gave him an advocacy platform from which to call into question some UNHCR practices, such as setting standard water rations that did not take livestock into account, yet it was well known that refugees in North-Eastern Kenya had brought their livestock with them.

He was also able to challenge an unspoken policy of neglect by UN OHCHR in an incident that involved Tanzanian refugees who had crossed into Kenya at Ifo transit point. They had set up a makeshift camp, and the UNHCR was keen on closing it down and getting them out of the country, under pressure from the Kenya government. The Kenya government did not want to receive them. There was an unspoken policy not to provide them with any services, so as not to encourage them to stay. CARE staff in the Refugee Assistance Project, at the risk of losing their jobs, wrote an advocacy paper arguing that UNHCR had a duty to work to improve the services in recognition of the refugees' rights as human beings. The UNHCR could not be complicit in a policy of neglect. It was up to the Kenya government to look for diplomatic ways of solving the crisis, but in the meantime the refugees' needs had to be provided for because they had rights as human beings.⁴³

4.3.1.ii Translating rights into livelihood security

CARE sees a rights-based approach as enriching their Household Livelihood Security (HLS) framework.⁴⁴ In marrying CARE's Household Livelihood Security focus with the RBA, CARE has zoomed in on the 'right to self-determination' as the organising principle: the most important thing is that people have the freedom to make decisions on their own well-being, and securing livelihoods enables them to do so. Care Kenya has taken this logic a step further to argue that increasing household income ("household self-development") is the surest way to achieve livelihood security and therefore self-determination. This is articulated through their *Nuru* strategy, which spells out their current plan. This focus on increasing income as the strategy for building self-determination was emphasised in separate interviews with two CARE officials. One of them phrased it as follows:

We look at what resources a community has, and then we help them to turn the resources into a source of income; to commercialise them. We focus on empowering the community to be able to engage with important players, such as local government. Basically we help people achieve their right

⁴³ Interview with Barasa Chaungo, Care Kenya, Nairobi, 28 April 2003 (at the time Project Manager, Garissa Pastoral Partnership Project; formerly in charge of Water and Sanitation Project, Dadaab refugee camp).

⁴⁴ See www.kcenter.com/phls/rba.htm

to self-determination. The basis for human rights is *self determination*. Dignity is all about self-provisioning. CARE's role should not be to undermine or take away that fundamental right from people, but to facilitate its enjoyment.⁴⁵

Both officials drew on the example of CARE's Rural Enterprise and Agri-services Promotion (REAP) project in Kibwezi, Makueni district. There, horticultural farmers have organised into a company for marketing of horticultural produce. CARE helped them to secure Forward Contracts with exporters which guaranteed them a market and access to credit facilities. The farmers use their numbers to access good quality services that they could not otherwise afford as individual farmers. So, for example, rather than wait for government agricultural extension officers to show up whenever it suits them to advise the farmers, 30 farmers get together and share the cost of hiring one farm manager who is answerable to them, and whom they can fire if they are dissatisfied with his services – something they cannot do with the free government-provided extension agricultural extension officers.

Obviously it must be empowering to have the freedom to choose, and also to exercise voice through collective action, both of which are consistent with a rights-based approach. However, at the same time this example does raise some dilemmas, and point to possible conflict between an approach that focuses on increasing household income and one that seeks to create a climate in which people and communities more broadly are able to exercise their basic rights. The approach advocated by these two CARE officials suggests that ultimately the process of asserting and realising the farmers' rights translates into a "right to opt out" of public services. In such circumstances where will the impetus for improvement in public services come from? Since not all farmers can afford to be members of the company, when the relatively well-off and influential farmers in the area join the company and "opt out", does that take the pressure off the government to improve public services? Who will be left to speak up with those who have no choice but to depend on the government services? The government would only act if it sees that there is some value in competing with the private providers. What implications does an income strategy have for the broader social and political environment for claiming and realisation of rights?

In the broader development environment in which CARE operates there are misgivings about this approach. One of the officials pointed out that it was proving rather difficult to get donors enthusiastic about funding such initiatives because of the perception that they are "too commercial". As he put it, a donor would rather spend huge sums of money funding training of community-based non-professional health workers and traditional birth attendants year after year, but will not support a request to subsidise a local private doctor to get him to devote two days a week to serving in a community and providing back-up to community-based health workers: it's too commercial. He raises a very valid question: 'Are the poor not entitled to the best health care there is, or have we come to accept that they only have a right to "the alternatives"?' In his view, such an attitude contradicts what building the right to self-determination is really about.

⁴⁵ Interview with Muhoro Ndung'u, Assistant Country Director (outgoing), Nairobi 10 April 2003.

The tensions that emerge from officials' attempt to fuse rights-based and income-focused livelihood security approaches is reflected in variations in people's preferred terminology. While some are comfortable describing what they do as a rights-based approach, others refuse to use that term and prefer "self-determination" or "self-provisioning" or "household self-development". On the whole, even though CARE is still unravelling the multiple challenges of understanding and implementing a rights-based approach in the context of existing programming approaches, it is encouraging that many within the organisation have taken the introduction of the policy on rights-based programming as an opportunity for deeper reflection on their work and their own positioning as individual actors within the organisation and within development broadly.

4.3.2 ActionAid

ActionAid's take on rights-based approaches has meant 'siding with the marginalised' and taking up policy advocacy at local, national and international levels. The degree to which this has been effective varies among the various country offices. This section will rely both on general information that relates to the organisation as a whole, and on country-specific information based on interviews with two officials in ActionAid Kenya and a consultant on one of ActionAid Kenya's campaigns.

In general ActionAid worldwide is committed to integrating rights into its work on fighting poverty. ActionAid defines poor people as those who are

suffering the injustice of the denial of basic human rights that should give them voice and citizenship . . . ActionAid believes that enduring and meaningful change towards pro-poor policies can only come about through the direct and active engagement by those who are themselves denied rights.⁴⁶

Since 2001 ActionAid has introduced a process of Participatory Review and Reflection which begins with communities and Community-based Organisations at the country programme level, and feeds into a regional (continent-wide) and interregional reflection process. ActionAid has decided that awareness of rights and engagement in processes of claiming rights would be the focal point in evaluating the effectiveness of its work. Therefore they evaluate their work in terms of gains in rights: the extent to which previously marginalised groups have become aware of their rights, are able to actively participate in organising around claiming them, and are able to impact positively on public accountability.⁴⁷

ActionAid has been bold about attributing poverty to unequal power relations, and therefore speaking of it as a violation of rights, and seeing a rights based approach as a powerful tool for challenging those unequal power relations. For instance, ActionAid Kenya's Country Strategy Paper for 2002–5 articulates the argument as follows:

⁴⁶ See www.actionaid.org/policyandresearch/policyandresearch.shtml

⁴⁷ ActionAid, *Fighting Poverty Together: Participatory Review and Reflection 2001* (CD-ROM 2002).

Poverty is caused and perpetuated by a diverse set of power relations that deny life-skills, assets and resources to people. These deprive them of their basic needs and are violations of their basic rights. The core causal mechanisms for the violation of rights are inequity and injustice particularly in the distribution of, and access to, resources.⁴⁸

ActionAid Kenya therefore adopts a two-pronged strategy to challenge denial of rights: First, by strengthening poor people and their organisations to claim rights. Second, by working “constructively but critically” with governments, donors and the private sector so as to create an enabling policy and institutional environment for the eradication of poverty. Among the major international development NGOs, ActionAid places the most emphasis on creating a favourable policy environment, both nationally and internationally, and therefore puts a lot of effort into policy advocacy campaigns. At the international level these have included the food rights campaign, which targets the WTO, in particular the General Agreement on Trade Related Aspects of Intellectual Property (TRIPS) and the Agreement on Agriculture, challenging actual and potential adverse impact on farmers in poor countries.

Country-level campaigns vary, and within a country regional campaigns vary depending on the pressing issues. In Kenya, for instance, the national level campaigns are children’s rights and the ‘basic needs are basic rights’ (BNBR) campaign. The BNBR campaign is a collaboration with 11 other organisations in Kenya to lobby for the inclusion of economic and social rights such as education, health and housing in the draft constitution of Kenya which is under discussion.⁴⁹ Within Kenya, the regional campaigns are organised around the economic mainstay of each region; for instance, sugar, fish and forests in Western Kenya, and the cashew nut industry and mining in the coastal region. The Sugar Campaign has had significant successes, among them the securing of farmers’ representation on the Sugar Board (seven out of the eleven members) and insisting that those representatives be directly elected by farmers rather than appointed by the Minister for Agriculture.⁵⁰

The campaigns are coordinated through a Policy Research and Advocacy unit. ActionAid Kenya often partners with groups that have had a longer history in engaging in advocacy. For instance, on the Sugar Campaign which involved engaging with a (deliberately) poorly drafted government bill, ActionAid teamed up with the Centre for Governance and Development (CGD) which has a well developed legislative programme. The campaign also drew in Transparency International and a media network.

ActionAid’s campaign approach raises questions about how best to adapt the tools used in conventional human rights advocacy campaigns into participatory community development work. ActionAid hired people who had a background in rights advocacy to staff the new units dealing with policy research and advocacy, in recognition of the fact that such capacity was lacking in the organisation.

⁴⁸ ActionAid Kenya, Country Strategy Paper 2002–2005 (2002: i).

⁴⁹ See Basic Rights Steering Committee, *A Basic Rights Charter for Kenya* (May 2002); *Basic Needs are Basic Rights: The Core Challenges for Constitutional Reform in Kenya* (1999).

⁵⁰ Interview with Peter Kegode, ActionAid Consultant on Sugar Campaign, Nairobi, 15 August 2002; interview with Njeri Kinyoho, Policy Research Manager, ActionAid, 15 August 2002, Nairobi.

The person in charge of the food rights campaign in the Kenya office for instance, was a lawyer familiar with issues of international trade as they relate to food security. While filling this capacity gap, however, ActionAid may have sacrificed the integration of the campaigns into its ongoing work, particularly at the community level. Staff found it rather challenging, for instance, to translate the food rights campaign which had started off with a heavily international focus around agreements such as the WTO's TRIPS (Trade Related Aspects of Intellectual Property Rights),⁵¹ into something that the farmers involved in programmes at the national and sub-national levels would see as directly relevant to them.⁵²

In addition, staff in the policy research and advocacy unit have had their own working style which drew little from existing methodological approaches within ActionAid. In our assessment the "campaign approach" as is currently being applied in ActionAid reflects an attempt to blend the methods of "traditional" rights advocacy groups, who tend to focus more on engaging with macro-level political institutions and policy processes, with the needs of a community development agency that has previously emphasised participatory approaches in working at the grass-roots level. It seems that ActionAid's embrace of the campaign model has come at the expense of taking the trouble to adapt for advocacy more participatory tools that have been in use within the organisation. Such adaptation would make it easier for a broader range of people working in various programme areas to incorporate rights advocacy into their work, thus mainstreaming the approach within the organisation, rather than pigeon-holing it into a policy advocacy unit. In contrast to CARE therefore, while CARE's first attempt at implementing RBA was to pilot it in a water and sanitation programme in a refugee camp, ActionAid's prompting was to create a distinct policy and advocacy division to agitate for policy change nationally and internationally.

One other question that emerges from ActionAid's approach is how to negotiate their strong advocacy-oriented position ("siding with the oppressed") in the context of relationships with funders and host governments. Anecdotes on reactions of Kenya government and DFID-Kenya officials to the Sugar Campaign showed clearly that this is an issue that ActionAid, their partner organisations (in this case the Centre for Governance and Development, and HEMNET – the journalists' organisation) and the communities have to negotiate time and again.⁵³

⁵¹ See description of the campaign at www.actionaid.org/policyandresearch/foodrights/foodrights.shtml

⁵² Interview with Gichinga Ndirangu, then Food Rights Campaign Manager, Nairobi, 13 August 2002.

⁵³ ActionAid staff involved in the Sugar Campaign were summoned to a meeting convened by DFID (from whom ActionAid receives substantial funding) to "clarify" their approach to the campaign. There appeared to be a perception that the campaign was an attack on British commercial interests: at the time, two British firms held lucrative contracts to manage sugar factories that were under receivership. Interview with Peter Kegode, ActionAid Consultant on Sugar Campaign, Nairobi, 15 August 2002.

5 What is a “rights-based approach” all about?

Any version of the rights-based approach needs to be analysed in terms of its normative content – that is, in terms of what ideals it invokes, what vision it represents, and how this vision is contrasted with existing practice and turned into a basis for reorienting development practice and practitioners (cf. Moser and Norton 2001). In this final section, we explore some of the points of contrast and reflect more broadly on the implications of the ways international agencies are talking about and doing “rights-based development”.

5.1 Common principles, different emphases

Most, if not all, organisations see a “rights-based” or “human rights” approach as a catalyst that can transform the practice of development from a focus on identifying and meeting needs to enabling people to recognise and claim rights that are enshrined in the UDHR. For most, too, this entails (1) work with duty-holders – generally state, but also increasingly non-state actors – to strengthen their capacity to respond and be accountable in protecting, respecting and fulfilling human rights: what DFID terms “obligation”, and the UN OHCHR terms “accountability”; and (2) work to build the capacity of citizens to claim their rights, by working alongside them as advocates and by seeking to provide opportunities for people to empower themselves. The common principles of rights-based development, then, might be seen to reside in shifting how development actors “do business”, offering them – in theory – the potential to change their ways from unreflective patronage to the self-aware exercise of agency in support of those who are discriminated against and marginalised (cf. Eyben 2004). The way in which different organisations interpret this broad framework, and the role the approach is seen to play in the work of the organisations is, however, distinctively different.

There is considerable slippage in the discourse of international agencies between talk of “human rights and development”, a “human rights approach to development”, a “rights-based approach to development” and so on. Different language may mask broadly similar purposes; similar terms may come to carry vastly different meanings. But there is a clear line of distinction to be drawn between agencies who take a more *legalistic* approach, using human rights as standards against which development interventions might be approached or assessed, and those for whom the realisation of human rights is seen as *underpinning the entire development enterprise* and therefore provides a more broad-based normative framework which requires the definition of intermediate developmental goals.⁵⁴

A closer look at the variety of approaches that come under the rubric “rights-based” reveals how little of what is actually *done* involves the kind of institutions, or even instruments, conventionally associated with human rights. For DFID, for example, a rights-based approach takes the principle of human rights to make possible more inclusive, participatory way of doing development; “rights-based”

⁵⁴ In practice, things are rather more blurred, as recourse may be made to particular rights at the same time as arguing for broadly-based facets of development processes, such as the importance of participation and inclusion.

appears to offer, more than anything else, a way of framing an approach to poverty reduction. As can be seen from the example not just of UNICEF and UNDP, but also of CARE and ActionAid, using the term “rights-based” has the potential to describe an arena for engagement and intervention that is far broader than those conventionally associated with “human rights”.

A further line of distinction might be drawn between the discourse of rights as a means of addressing issues of accountability of state and non-state duty-holders, and as about enabling people to empower themselves to overcome obstacles to the realisation of social and economic rights, which may – as in the example of CARE’s work in the agricultural sector in Kenya – involve “opting-out” of public services rather than making demands on the state as duty-holder. Both may be pursued by different departments within a single agency, or in different dimensions of an agency’s work, but this distinction helps highlight the differences between the approach taken by ActionAid and that taken by CARE, as well as the way in which the World Bank’s framing of social and economic rights can be squared with a more neo-liberal “users and choosers” approach (Cornwall and Gaventa 2001) with no apparent contradiction.

From our analysis of the differences between approaches, it is possible to identify four ways in which human rights are deployed in rights-based approaches to development:

1. *As a set of normative principles* to guide the way in which development is done, as in DFID’s Target Strategy Paper, Sida’s multidimensional definition of poverty, and ActionAid and CARE’s statements of solidarity with the marginalised as a guiding principle for their work.
2. *As a set of instruments* with which to develop assessments, checklists and indicators against which interventions might be judged, as in Sida’s guidance for country strategy processes and UNICEF’s five-step assessment.
3. *As a component to be integrated into programming* – as, for example, in UNICEF’s integration of rights into its Community Capacity Development approach or CARE’s integration of rights into its Household Livelihood Security approach.
4. *As the underlying justification for interventions aimed at strengthening institutions*, whether to develop the advocacy skills of organisations representing marginalised people, as in the case of ActionAid, or to create or strengthen accountable governance institutions as in the case of Sida and UNDP.

Each of these four dimensions has its strengths but also limitations, and therefore pursuing any one on its own is likely to prove inadequate. For instance, regarding the rights-based approach as a broad set of principles defining an overarching approach to development can mean that the approach simply serves as a new way of repackaging interventions, one that does not need to refer to anything more than good intentions. At the same time reducing the rights-based approach to a set of instruments (e.g. a narrow set of international conventions) or a checklist to be ticked off runs the risk of making it yet another “layer” to be considered, and something to which only tokenistic lip-service may be given. This also poses the additional risk of establishing a comfort zone within the bounds of well established rights rather than allowing for a broader interpretation of human rights that would encompass much that development

agencies might wish to pursue. With respect to the third dimension, the obvious danger of seeing rights as a component to be incorporated into programmes is that they become an add-on, with no intrinsic or organic influence on how things are done. The fourth dimension runs the risk of focusing only on formal institutions – as is the current practice of virtually all donor organisation – which may be inaccessible to marginalised groups and there is no guarantee that they will behave fairly. Strengthening the capacity of organisations of marginalised groups may help those particular groups exercise rights, but may have limited impact in terms of broader societal transformation. Mainstreaming a rights-based approach will therefore require work to promote *all four* dimensions.

5.2 Changing power relations

Ultimately, however it is operationalised, a rights-based approach would mean little if it has no potential to achieve a positive transformation of power relations among the various development actors. Thus, however any agency articulates its vision for a rights-based approach, it must be interrogated for the extent to which it enables those whose lives are affected the most to articulate their priorities and claim genuine accountability from development agencies, and also the extent to which the agencies become critically self-aware and address inherent power inequalities in their interaction with those people.

In the context of bilateral development assistance it seems difficult to envision this level of transformation because of the manner in which accountability channels in aid relationships are currently structured. A bilateral development agency's primary accountability is to citizens/taxpayers in its own country, through the treasury. Accountability to the recipient state's government is of a loose diplomatic nature, rather than a legal one with clearly defined rights and obligations. The Memoranda of Understanding entered into has no binding legal force. Direct accountability to the communities who are the ultimate recipients is non-existent.⁵⁵ This is as much, if not especially, the case for NGOs, most of whom lack any defined accountability and are even less amenable to being held to account than multilateral or bilateral development actors. The only formal accountability communities can expect is from their own government. Likewise, recipient governments have only a loose accountability to donor governments – accountability based on the power differential rather than on legal obligations.

Without the possibility of direct accountability in the international development assistance structure, is there any substance to the claim in current donor literature that aid recipients have now been transformed from passive beneficiaries to rights-holders? What rights exactly *do* they hold? A question for reflection therefore is, in view of the absence of the key ingredient that distinguishes a rights-based approach from a practice of development that is dictated by discretion and pragmatism, can the policies of bilateral agencies be described as “rights-based”? It seems fair to suggest that international development

⁵⁵ Some development agency practitioners have suggested possible innovative ways to fill this gap. See, for example, Eyben (2004).

agencies – to varying degrees– use the language of rights-based approach to development’ largely to invoke the discursive power of the concept of rights, without intending to bear the weight of the entirety of consequences that flow from it.

It is important, however, not to lose sight of the significance of the discursive shifts that have taken place in recent years and the opportunities that these might provide for reinvigorating and recuperating some of the ideals that infused development in earlier times, as for moves towards a clearer and more congruent approach to development assistance. If “rights-based approaches” are to make the difference that they promise, however, there is an urgent need to meet more effectively the challenge of aligning human rights principles with procedures and practices – whether methodological, programmatic or evaluative – that can really embed them in the work that international development agencies do. Congruence has proven extraordinarily difficult for these kinds of organisations to achieve, as experiences with mainstreaming gender equality or participation have shown. Yet the potential gains are of significance beyond the arena of human rights, signalling possibilities for the transformation in the very ways in which we think about “development”.

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