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Strengths and weaknesses in a human rights-based approach to international development – an analysis of a rights-based approach to development assistance based on practical experiences

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ABSTRACT

The human rights-based approach to development cooperation has found recent support from both development cooperation actors and non-governmental organisations active in developing countries. We set out to define this approach, how it is applied, and to identify its central agents and principal components. Through examples we show how the approach works in practice, and we identify and discuss three human rights principles that play particularly important roles in its implementation: (i) participation and inclusion, (ii) non-discrimination and equality, and (iii) accountability. We show that in terms of implementation, the approach is related to the processes of empowerment, forms of advocacy, and the use of legal instruments in defence of groups of people who are poor, discriminated against or marginalised. We conclude that a human rights-based approach provides new avenues for providing help to vulnerable groups, but at the same time a poverty-oriented approach must continue to play an important role.

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1. Introduction

Traditionally, law has played only a minor role in the field of international development assistance to developing countries. However, over the last decade, in particular, the question of applying a so-called ‘human rights-based approach’ – or HRBA as it is often abbreviated – has frequently arisen within the development cooperation context. Thus, international law in general and human rights law in particular have come to play increasingly important roles in this field. Since many professions are engaged in the development field the notion of a human rights-based approach has been formed in a cross-disciplinary setting. Nevertheless, as we shall show in this article, a human rights-based approach to development entails the promotion of legal rights and legal capacity building within the context of (international) development activities. In other words, with the introduction

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of a human rights-based approach to development, law has come to play a more prominent role in this area.

Below we set out to examine the meaning and workings of a human rights-based approach to development – and to identify strengths and weaknesses inherent in such an approach. In this respect, we first of all focus upon the application of a human rights-based approach to international development cooperation, that is, the application of a human rights-based approach in connection with the provision of international development assistance. However, it is important to stress that to a certain extent the application of a human rights-based approach has (equally) been adopted by domestic actors active in the field of development in the developing countries – meaning that a human rights-based approach to development may also apply to situations where no external (that is, ‘international’) development cooperation actor is involved. This aspect we illustrate in section 3 below.

For the purposes of the present article, a human rights-based approach to development is a way (or a ‘method’) of implementing human rights in a development context. In practice, the application of a human rights-based approach to development involves governments (government agencies), intergovernmental organisations and international as well as local non-governmental organisations (NGOs). It would seem only natural that also national human rights institutions were deeply involved in promoting a human rights-based approach, but our own experience so far indicates that they are less involved in this than are national NGOs.¹

Before embarking on our examination, it is important to make two caveats.

First, the variety of actors necessarily means that there are differences in the actual application, depending on the actor concerned. For example, whereas some NGOs may place considerable emphasis upon the advocacy elements, governments (first of all aid agencies of donor countries) are not likely to employ this element whilst intergovernmental actors like the United Nations (UN) will only do so in subtle ways such as indirectly by supporting local NGOs. Similarly, the emphasis that is placed on the inclusion of vulnerable groups will differ according to the actual target groups, and there may be considerable variations as to how prominent a role the application of legal instruments may play. There may equally be considerable variations with regard to how explicitly human rights standards are addressed. In other words, there is no single human rights-based approach, but rather a number of variations thereof exist. Still, despite these variations between the different approaches they all place particular emphasis on human rights implementation through human rights principles of non-discrimination and participation.² The fact that there is not merely ‘one approach’, but rather that there are more variations, is important to keep in mind in what follows. Indeed, in principle it would make good sense to refer to *human rights-based approaches* in the plural rather than to a *human rights-based approach* in the singular as is traditionally done – and as we have chosen to do in this article since it makes the text easier to read.

Second, it is important to emphasise the importance of contextual factors that influence the way in which a human rights-based approach is implemented. The nature of political regimes as well as of cultural and institutional factors may significantly influence the implementation of a human rights-based approach. Similarly, the specific application of the human rights-based approach will depend on the different stakeholders: rights-holders, duty-bearers, and supporting actors (NGOs and/or donors).

In what follows, we first set out to consider the background, the key components and the central characteristics of a ‘human rights-based approach to development’ (section 2). Next we examine the actual implementation of the human rights-based approach to development – and identify the central agents, the important components and provide illustrative examples (section 3). In the following section we compare a human rights-based approach to development with the more traditional approach to development cooperation of Western donors and we identify the pros and the cons of the former (section 4). Finally, we conclude on the extent to which a human rights-based approach to development is merely ‘window dressing’, or whether it implies a truly new approach to development cooperation. We also point out important lessons that can be learned from the existing experiences with the human rights-based approach. And we consider whether a human rights-based approach can completely replace the traditional, poverty-oriented approach to development cooperation (section 5).

2. What is a ‘human rights-based approach to development’?

After the horrors of World War II human rights gained prominence at a global level as an instrument of transformation and justice. Parallel to the growing importance of human rights, the processes of decolonisation unfolded. And particularly in Asia and Africa, development assistance became an important aspect of north–south relations. Even though human rights and development assistance each came to play a prominent role in the post-war years, in the early decades after World War II the two were only occasionally linked in operational development work.

That human rights were only occasionally linked to development assistance was to a considerable extent due to the Cold War; development assistance was an important tool for non-developing countries’ building of alliances with developing countries – sometimes at the cost of using the assistance as a tool for promoting human rights. However, in 1986 the UN General Assembly adopted the Declaration on the Right to Development, and this declaration was reaffirmed by the World Conference on Human Rights in Vienna in 1993, that is, immediately after the end of the Cold War.³ Democracy, human rights and sustainable development were thus expressly linked.⁴ The linking together of these broad concepts has since been taken up by UN bodies such as UNDP and UNICEF.⁵

Increasingly, different actors within the field of development cooperation would apply a human rights-based approach to development. However, it soon turned out that different actors applied rather diverging – sometimes even inconsistent – definitions of the notion of a human rights-based approach. Indeed, even different UN bodies would apply diverging approaches. This necessarily caused problems and in order to address these, in 2003, several UN bodies convened a workshop on the matter which in turn led to the production of a statement entitled *The Human Rights-Based Approach to Development Cooperation – Towards a Common Understanding Among the United Nations Agencies*.⁶ According to this statement the UN’s development policies must be guided by the principles of human rights, and the statement identifies and explains six human rights principles to which special weight must be given; namely:

- (i) Universality and inalienability;
- (ii) Indivisibility;

- (iii) Inter-dependence and inter-relatedness;
- (iv) Accountability and the rule of law;
- (v) Participation and inclusion;
- (vi) Equality and non-discrimination.⁷

To operationalise and implement the ideas on human rights-based development, principles iv, v and vi have played important roles in particular. Subsequently, the UN High Commissioner for Human Rights has developed and published 'Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation'.⁸ This FAQ particularly emphasises that whilst this approach necessarily has a normative basis in human rights, the starting point must be linked with the operational implementation of the rights (that is, the application of the rights in practice). By linking the normative basis to its concrete implementation, the human rights-based approach to development (and in particular the principles of accountability and the rule of law, participation and inclusion, and equality and non-discrimination) has created a methodological framework for the realisation of human rights in a development context.

However, it is not only the UN that has adopted a human rights-based approach to development assistance. Various NGOs, such as Oxfam,⁹ Save the Children¹⁰ and Care,¹¹ as well as international governmental assistance agencies such as SIDA in Sweden,¹² GTZ in Germany¹³ and, for a short period, DFID in the UK,¹⁴ followed the same route, often inspired by the UN's Common Understanding of a human rights-based approach. Also, the European Union (EU) has decided to mainstream human rights into all its external activities.¹⁵

While there is no unambiguous and generally accepted understanding of how a human rights-based approach to development should be operationalised, there are a number of common characteristics. In particular the following six such characteristics are important:

The *first* – and arguably most essential – aspect of human rights-based development is the employment of the concept of rights. Rights-based development thinking does not see development efforts as part of a charity- or alms-giving enterprise, but as part of efforts to fulfil rights. Under a rights-based approach, donors support duty-bearer efforts to fulfil their human rights obligations. In other words, development assistance contributes to the realisation of the rights entitlements of the recipients. A rights-based approach also entails supporting the rights-holders in claiming their rights. Where a donor goes from a 'traditional' development assistance approach to a human rights-based approach this implies conceptually that the recipients are transformed from *passive* recipients of alms to *active* rights-holders. This transformation may be compared to those that the modern European welfare states underwent almost a century ago; for example, the Danish social security system underwent deep reforms in 1933, when social benefits went from being thought of as a form of *alms* to being thought of as a legal *right* to which citizens were entitled under certain circumstances.

The *second* important characteristic of a human rights-based approach to development is that it only makes sense to talk of a 'right' if there is a *corresponding obligation*. In other words, a party who has a right must be able to assert this right against another party who holds a duty mirroring that right. In practice the duty-bearer will almost always be a public authority, that is, the state. A human rights-based approach to development therefore presupposes that it is possible to invoke the right against a sufficiently well-functioning state.

Indeed, even where private persons may appear to be the principal duty-bearers with regard to certain rights – such as the right to a healthy environment – a human rights-based approach still requires that the rights-holder is capable of enforcing this right against the duty-bearer, and in practice this is likely to mean that the rights-holder must have access to public authorities such as courts, police, and political representatives at the local or national levels. In other words, even where businesses (and other private parties) have obligations towards individuals and groups of individuals, it is for the state to ensure that the corresponding rights are enforceable against these private parties. Thus, also in the latter situation, a sufficiently well-functioning state will often be a precondition for a well-functioning human rights-based approach to development.

Third, as a natural consequence of the second characteristic, where a donor applies a human rights-based approach to development, the focus is likely to be less on service delivery and general capacity building. Instead, the focus is likely to be on enabling the duty-bearer – typically a developing country state – to respond to claims from the ultimate recipients of the development assistance and to ensure that minimum core-rights regarding health, education, housing and/or social security are fulfilled. Furthermore, the focus will also be on facilitating rights-holders' access to services, and to ensuring their participation as free citizens in matters relevant for their livelihood. Thus, the rights-holders (the target groups of governmental efforts, and of development assistance) must be empowered to claim their rights against the duty-bearer (the state). 'Empowerment' – which implies that each individual and (in cases of collective rights) group acquires the ability to think and to act freely, to take decisions and to fulfil his or her own potential as a full and equal member of society – hereby becomes a key concept in the field of the human rights-based approach to development.¹⁶ It follows that a key objective of such an approach is to give both individuals and groups political, social and/or economic power so that they are better able to take care of their own (rights-related) interests.

The *fourth* important aspect of a human rights-based approach to development is that it is based on the premise *that discrimination and inequality are among the most important causes of poverty*. The overall aim of development assistance for many Western donors has been to combat poverty. Traditionally, development assistance has therefore been particularly targeted at the poorest groups of the population in the world's poorest countries. However, under a human rights-based approach to development the poverty criterion will typically be complemented by the criteria of marginalisation and vulnerability to discrimination.

The *fifth* characteristic that must be mentioned concerns two important components when applying a human rights-based approach in the implementation of development; namely *activism and advocacy*. In the context of a human rights-based approach to development 'advocacy' refers to targeted measures in respect of fundamental human rights which influence decision-makers and citizens at local, regional, national and international levels, and which seek to form and guide political, economic, cultural and social processes and decisions with a view to improving the living conditions of relevant groups of the population.¹⁷ The importance of activism and advocacy follows from the fact that the principles of participation and inclusion are central to implementing a human rights-based approach to development. And in order to turn 'participation' and 'inclusion' into reality it is important to strengthen the capacity for autonomous action.¹⁸ In this way, activism and advocacy become important elements of the human rights-based

approach. In practice, increased activism and/or advocacy from the ground up often leads to the institutionalisation of cooperation in vital matters between vulnerable groups (rights-holders) and the state (duty-bearers). For instance, one of the present authors has seen how Care Denmark's engagement with forest dwellers in Uganda and with the Ugandan Forest Department authorities in areas where there was a national, Ugandan interest in the protection of the gorillas led to new ways of collaboration between forest people and the department so that real conflicts were avoided.¹⁹

A *sixth* important characteristic of a human rights-based approach to development is that *far from all forms of development can be directly cast as secured rights*. For example, the fight against corruption may well be linked to rights to information and participation, but the fight against corruption also concerns how society's institutions function and thus the interaction between different centres of power within a country. It follows that this cannot be directly converted into defined rights.

In summing up the above, while the 2003 definition of a human rights-based approach laid down by the UN bodies in *The Human Rights-Based Approach to Development Cooperation – Towards a Common Understanding Among the United Nations Agencies*²⁰ is widely quoted, it is rarely fully implemented; not even by the UN bodies themselves. Therefore, the most accurate general definition of a human rights-based approach to development is the one applied in the 'Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation':

A human 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.²¹

However, while a general *definition* of a human rights-based approach to development can be agreed upon, it is simultaneously important to emphasise that no common approach exists as to its *implementation*. In line with this understanding it is possible to identify the six common characteristics of the different human rights-based approaches to development that we have listed above.

3. Implementation of a human rights-based approach in practice

In a human rights-based approach policy, the analysis of the current status of human rights – including how diverse groups of rights-holders are subject to human rights violations – constitutes the primary tool for identification of donor support and for support to civil society actors. How duty-bearers may contribute and engage with rights-holders in redressing situations of violations and insufficient implementation will form part of the human rights-based approach analysis. For instance, bilateral donors may undertake a fairly elaborate analysis before engaging in a new rights-based programme. A human rights-based analysis implies the following three major components:

- The actual status of human rights in the setting where development assistance is to be provided. This includes the specific analytical perspective on rights-holders and duty-bearers in order to localise the actual status of human rights in relation to rights deprivations of rights-holders and the duty-bearers' commitment to respect, protect and fulfil human rights.

- The identification of specific vulnerable groups who should benefit from the proposed activities.
- A focus on human rights principles: for example, participation, accountability and non-discrimination.²²

Ideally, the rights-holders should be involved already at the stage of the analytical work. However, this may not always happen in practice.

The actors involved in designing human rights-based approaches to development are therefore likely to be the same as in traditional development assistance, but the role played by these actors may vary. In theory, a human rights-based approach confers accountability on the duty-bearers (primarily the state and its representatives) and grants a greater role to participating agents of the rights-holders (such as representatives of local communities).

As far as implementation of a human rights-based approach to development is concerned, the rights-holders are expected to be active participants in matters relating to their livelihood; thus advocacy and dialogues over rights with duty-bearers are central elements whereby the rights-holders may 'claim their rights'.

As will be clear from the above, applying a human rights-based approach to development entails a setup that is rather different from the one we find within the field of classical development assistance. Two examples may illustrate the on-the-ground workings – and implications – of applying a human rights-based approach in a developing country context and may at the same time show how a human rights-based approach to development is applicable to very different situations:

The first example concerns the rights of women. Both in relation to equality and in relation to violence, women's groups in developing countries have benefitted from the use of a human rights-based approach.

Example 1: Indian women's struggle against violence, rape and enforced prostitution.

In the Indian state of Uttar Pradesh over half of all women report that they have suffered physical violence from an existing or former partner or husband (a so-called 'intimate partner'). In response to this, women in the town of Kanpur formed Sakhi Kendra, an organisation that helps with re-housing, legal assistance and medical care for women who have been subject to violence, rape or enforced prostitution. The organisation has initiated training programmes for the police, among others, and it has begun monitoring the state's legislation and policy on domestic violence and discrimination.²³

The establishment of the Sakhi Kendra organisation illustrates the importance of advocacy in cases where wrongs are committed against oppressed or marginalised groups. Even though those who are exposed to assault are often engaged in sex work for reasons of poverty, in the above example the human rights-based aspect is clear, not least from the training of the police. The example also shows that the involvement of external (that is, foreign) parties is not a precondition for the application of a human rights-based approach – on the contrary, a human rights-based approach is equally suitable in circumstances where groups that are otherwise resource-poor gather together to demand their rights.²⁴

As a second example we turn to the governmental Danish assistance agency Danida. In 2012 a human rights-based approach was introduced into Danida's then new strategy. An

illustrative example of both continuity and change resulting from this mainstreaming of a human rights-based approach into Danish development assistance can be found in Danida's Governance and Rights Programme in Bangladesh covering the years 2016–2021.

Example 2: Danida's Thematic Programme on Governance and Rights in Bangladesh 2016–21.

Danida's Thematic Programme on Governance and Rights in Bangladesh (2016–21) was aligned to the Bangladesh government's 7th Five Year Plan titled 'Accelerated Growth and Empowerment of Citizens'. Danida's thematic programme is based on a theory of change according to which duty-bearers such as central and local government institutions, rights-based NGOs, and watchdogs, including monitoring organisations such as The Bangladesh Human Rights Commission and the local chapter of Transparency International, will promote the rule of law, accountability and rights, in particular for the poor and vulnerable groups. In turn, this promotion is expected to lead to better access to justice, more accountability on the part of governing institutions and better protection of the rights of these groups through, for instance, legal aid. One component of the Danida programme is to combat violence against women. Another is to bring services closer to the people in southern areas of Bangladesh, which are most exposed to the adverse consequences of climate change and at the same time are among the poorest in the country. The latter objective is to be attained by partnership between Danida, the Bangladesh Local Government Division and the UNDP. Prior to the introduction of the 2012 Danida strategy, Danida had also run a governance and rights programme which had been focusing on the effectiveness of central public sector management of resources (that is, a more traditional 'good governance strategy'). In connection with the new Danida strategy, this component of the thematic programme was changed so as to decentralise governance support to the local level, partly in order to bring development assistance closer to rights-holders and duty-bearers through local service provision. In contrast to the governance-oriented component of the Danida programme, the other component focusing on violence against women already reflected a human rights-based approach which meant that there was no need to adapt this as a consequence of the new strategy. Thus, this component was continued without substantial changes. The support from the Bangladesh government concerned both the goals of the programme and the provision of resources for its implementation.

Thus, Danida's application of a human rights-based approach as part of its development assistance in Bangladesh implies, on the one hand, a continuation of existing rights-oriented work (violence against women), while, on the other hand, it also displays a more procedural or institutional change (namely decentralisation of service support) as a consequence of the new human rights-based approach that aims to bring rights-based thinking closer to the rights-holders. In order to achieve this human rights-based approach objective, Danida used the new decentralised governance support to place particular emphasis on the participation of the poor and marginalised and on a strengthening of duty-bearer accountability through the strengthening of dialogues between rights-holders and duty-bearers at the local level.²⁵

As our two examples clearly illustrate, a human rights-based approach to development re-arranges the roles of the key players in a development context. This is first of all clear with regard to the resource poor citizen who is transformed from being a (passive) recipient of assistance to being an (active) rights-holder who can put forward demands. Also the developing country authorities are given substantially changed roles; from being parties to the development assistance agreement, to being duty-bearers. However, in the Bangladesh case the human rights-based approach does not represent a revolution when compared

with Danida's previous support for human rights and governance to Bangladesh. What is new is the emphasis on integrating rights-work in the cooperation with duty-bearers on a broader front than for instance violence against women. Also new in the Bangladesh case is the impetus to decentralise governance efforts more in order to make it easier for Danida to further its human rights-based approach. However, the effort to integrate a rights dimension into the duty-bearer's implementation of the development assistance agreement (such as the introduction of grievance complaints mechanisms for service provision) is done in a cautious manner. The donors' political relationship with partner governments in the global south is sensitive. Thus, donors like Danida are catalysts of stronger rights commitment, but they are also careful not to disrupt good working relations with their partners. In other words, since external partners like Danida will often address institutional issues in their rights implementation work and since they will be weary of not disrupting their relations with the authorities (in the developing country), the external partners will first of all be 'nudging catalysts of rights', especially of rights reinforcement among the most vulnerable groups.

In particular, the Bangladesh example illustrates the importance of the institutional aspects of a human rights-based approach to development. In this context it is useful to turn towards the research carried out by Cousins and Hall with regard to South African land reform in both communal and commercial farming areas.²⁶ The two authors have shown how these reforms were impeded by institutional inertia rooted in the objective of appeasing commercial landowners as well as traditional black leaders. However, the consequence of this has been a hampering of the endeavours to improve the rights of marginalised South African population groups. Thus, until now the absence of an institutional architecture integrated in South African land legislation has led to a disconnect between the realm of rights and the local realities inhabited by the rights-holders. In other contexts in South Africa (urban water, electricity, and sanitation), political contestation holds potential, as observed by Dugard, in tilting power balances in favour of otherwise weak communities, although outcomes are still unsettled.²⁷

4. Pros and cons of a human rights-based approach to development – an assessment

The advocates of a human rights-based approach to development often point to five areas where the approach gives particularly good results.

First and foremost the human rights-based approach is particularly suitable for ensuring that the weakest citizens have access to essential services such as health care, water, sanitation and education. Here it is the human rights anti-discrimination perspective that dominates. For example, it has been shown that migrants are often placed in very weak positions with regard to such services and that the obligation on states to eliminate discrimination against migrants is a key to ensure access thereto.²⁸

Second, the human rights-based approach is suitable for strengthening the concept of citizenship. This is particularly important for marginalised groups, whether poor farmers in Cameroon, women in Uttar Pradesh in India, or 'outcasts' in Bangladesh.²⁹ As pointed out by Duni et al. in relation to Cameroon, providing knowledge of what poor people are entitled to and demanding the strengthening of the channels by which they can assert these rights often play key roles.³⁰

Third, the human rights-based approach means that there is a natural focus on the use of legal mechanisms in development assistance and development policy in general.³¹ Advocates of the use of a human rights-based approach point out that such an approach ensures that individuals or groups are given legal means to help improve their conditions. The human rights-based approach more generally makes those people in developing countries, who are the ones who are the worst off, aware that they have rights that can be enforced. This may lead to a spillover (or perhaps rather a magnifying) effect, extending beyond the areas at which the human rights-based development assistance is targeted.

Fourth, research indicates that developing countries that are in transition from dictatorships to democracies are likely to comply with international obligations not to commit gross breaches of human rights (such as torture and other cruel, inhuman or degrading treatment or punishment) and that this compliance with international human rights does not appear to be due to ‘rewards’ provided by other states – for example in the form of development aid. Rather, a possible explanation seems to be that these states concede to (domestic and international) rights proponents.³²

Fifth, and finally, more widespread campaigns for a human rights-based approach can contribute to promoting legislation that benefits the poor or groups that are discriminated against.³³

A human rights-based approach enables development agents like bilateral donors, NGOs, or (more rarely) governments of the recipient state, to enter the political domain on a basis that is normative,³⁴ legal³⁵ and political in a broad sense of these three notions. However, as indicated in our example relating to Bangladesh, donors may be sensitive to the readiness for change of governments of the recipient state.³⁶ Thus, not only change but also continuity is a characteristic of the human rights-based approach in development.

Turning now to the limitations of a human rights-based approach to development, it may be recalled from our outline of the most common characteristics of such approach³⁷ that the focus is likely to be less on service delivery and general capacity building and more on enabling the duty-bearer (normally public authorities in a developing country) to respond to claims from the ultimate recipients of the development assistance and to ensure that minimum core rights regarding health, education, housing and/or social security are fulfilled. In other words, a human rights-based approach is not suitable for all types of development and it is not suitable for all types of recipient communities. We therefore take the view that the application of a human rights-based approach must be *strategic* whereas the approach is not suitable for *mainstreaming* in all aid interventions. This view also finds support in the examples provided above. It is predictable that mainstreaming strategies will lead to disappointment. With respect to, for example, rural areas, a human rights-based approach is argued by some scholars to be less effective because literacy is lower than average, and the state is less present.³⁸ While the uptake of a human rights-based approach may vary from one context to the next, it seems that donor practices in energy or in agricultural sector assistance apply this approach more rarely than in governance and rule of law support.³⁹ These distinctions may reflect different traditions, but they may also be a reflection of the fact that rights reinforcement may not be the strongest rational priority in addressing *all* sectorial problems and priorities. Moreover, as we have seen above, when implementing a human rights-based approach, the actors are faced with dilemmas where they have to make trade-offs between the

enforcement of rights, on the one hand, and the retaining of a satisfactory relationship with the public authorities (against whom the rights are typically enforced), on the other.⁴⁰ In practice this is likely to mean that we will often find that only a 'light version' of the human rights-based approach is applied.

Adopting a human rights-based approach also has other consequences that must be taken into due consideration. Thus, on the basis of the analyses in the work *Human rights-based Approaches to Development – Exploring the Potential and Pitfalls* the two editors, Hickey and Mitlin, point out in their concluding observations that a human rights-based approach to development tends to make development debates and action more political, but also that this approach strengthens law and legal arguments in development action.⁴¹

Moreover, Hickey and Mitlin simultaneously argue that in some cases a human rights-based approach can lead to:

On the one hand

- The provision of ideological and legal resources, which local groups can use to combat exclusion and discrimination

But on the other hand, equally to

- Promote inequalities and conflicts between different groups in society, and possibly even leading to the favouring of some groups in preference to others;
- Promote non-sustainable use of natural resources, where one group obtains control over natural resources at the expense of one or more other groups;
- Promote inappropriate governance, because the grant of rights can also be used to secure (increased) power to certain groups at the expense of other (less politically strong) groups.

Further to these critical observations it should be remembered that a more accurate analysis has yet to be made providing evidence that, overall, human rights-based development assistance has a more positive effect in combatting poverty than a 'needs-based' development approach has. As is apparent from our examination above, the information available so far tends towards the anecdotal, and is often based on qualitative data, similar to those examples we have provided. Moreover, it is worth noting that, for example, Hickey and Mitlin have argued that a human rights-based approach does not seem suitable for helping donors or others undertaking more detailed planning, such as establishing specific priorities.⁴²

5. Lessons learnt and perspectives for the future

As can be seen from the above, a human rights-based approach to development is not just a matter of old wine in new bottles. On the contrary, a human rights-based approach means that the very starting point for setting up development programmes and assistance becomes different, among other things because of the clear use of legal mechanisms, because of the connection to the normative foundation with regard to the duty-bearers' responsibilities, and because of the perspectives of non-discrimination and of universality,

for example universal access to health care. However, the integration of the human rights principles as key 'soft' elements in the promotion of the rights-based approach in development also means that what on the face of it may appear as major differences between the 'rights-based approach' and the 'development approach' based on human development are not so big in practice. For example, in the UN's earlier work to promote human development there was clearly great emphasis on the engagement of the recipients of assistance in the development of the projects, as well as a clear emphasis on equality and fairness.

In contrast to what the Nobel prize-winner Amartya Sen has otherwise suggested,⁴³ Hickey and Mitlin state that the human rights-based approach can primarily be connected with a broader approach to social justice rather than to freedom. And they are clearly right to say that the fight for social justice is what motivates many individuals and groups in developing countries to stand up for their rights.

An important lesson from the efforts made so far to realise a human rights-based approach to development is that in implementing development measures it is important to be aware that general political motivation plays an important role. This motivation stimulates individuals and groups, whether farmers, slum dwellers or indigenous peoples. Accordingly, a human rights-based approach to development gives highly relevant experience in how legal instruments can be used in relation to poverty and marginalisation. Such experience is relevant in the poorest countries as well as in middle-income countries. This last is important, not least because today the great majority of the world's poor people live in middle-income countries,⁴⁴ and because inequalities of income and of opportunity are often greater in middle-income countries than in the least developed countries.⁴⁵ The human rights-based approach to development is highly relevant in middle-income countries, but in these countries the approach is often promoted by domestic organisations and agents rather than by foreign donors – as illustrated in our example given above relating to India.⁴⁶

The human rights-based approach is also highly relevant for poor and marginalised groups by its use of advocacy, social mobilisation and the possibility of using legal arguments. In addition, the human rights-based approach can reach out to other vulnerable groups who are not necessarily suffering in a classic economic sense, such as sexual minorities that are exposed to assault. However, a lesson and a reminder of how the approach can be used is that the human rights-based approach presupposes that rights-holders can enforce their rights against duty-bearers, which will normally be the (developing country) state. In countries or territories where the state is weak or almost non-existent, it may not make much sense to try to enforce a right against the state. Still, even in countries with weak governments, the human rights-based approach may have local significance. For example, donors in Somalia often attach great importance to mobilising local groups and organisations since the central government is not always the best partner.⁴⁷ An important and obvious challenge with regard to a right-based approach in such (failed) states is that even at the local level it can be difficult to identify one single duty-bearer; this duty-bearer may be traditional or religious authorities or it may be the village elders who are dominating at the village level, possibly in combination with one or more other authorities.

As will have become clear from our examination of the human rights-based approach to development, this approach gives new and valuable possibilities for providing development assistance to vulnerable groups in the world. Donors as well as local and

international NGOs have been stimulated by this approach as we have seen above. Indeed, in several contexts human rights-based terminology has even entered the language of larger business undertakings.⁴⁸ In the development context, the experience so far indicates that the implementation of a human rights-based approach depends on other methods than those derived from an understanding of law. Contextual analysis, insights about institutional constraints and sensitivities are all important dimensions that must also be taken into account. Sensitivities may direct actors to nudging forms of advocacy rather than strongly formulated demands. The latter is especially relevant when international donors or international NGOs are involved. Across different types of actors involved in human right-based efforts, knowledge about the vulnerable groups that are being targeted seems to be very important. Generally, these contextual factors and their inherent sensitivities, institutions and path-dependent patterns are crucial in determining the success of human rights-based efforts. However, they also make the quest for mainstreaming a human rights-based approach in all areas of development work a challenging one. Thus, as has also been pointed out above, it is important to be aware that a *strategic and targeted* approach (adapted according to the sector, the rights-holders and the duty-bearers) should be pursued as distinct from an approach based on *mainstreaming* human rights in all aid interventions.

Notes

1. To our knowledge no research has yet been completed which systematically examines how national human rights institutions have been involved in a human rights-based approach. For more recent research on national human rights institutions, see Sonia Cardenas, *Chains of Justice. The Global Rise of State Institutions for Human Rights* (Philadelphia: University of Pennsylvania Press, 2014); and Richard Carver, *Measuring the Impact and Development Effectiveness of National Human Rights Institutions: A Proposed Framework for Evaluation* (Bratislava: United Nations Development Programme, 2014).
2. In contrast, the principle of accountability is sometimes not explicitly addressed.
3. See Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, in particular para. 10, <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf> (accessed 10 October 2016).
4. Brigitte I. Hamm, 'A Human Rights Approach to Development', *Human Rights Quarterly* 23, no. 4 (2001): 1005–31, at 1007.
5. See, for example, United Nations Development Programme (UNDP), 'Evaluation of the UNDP Global Human Rights Strengthening Programme 2008–2015', 2015; as well as UNICEF, 'Global Evaluation of the Application of the Human Rights-based Approach to UNICEF Programming. Final Report', 2012, https://www.unicef.org/policyanalysis/rights/index_62011.html (accessed 4 August 2017). See also Oestreich's review of how various important multilateral organisations have integrated human rights since the 1990s, cf. J. Oestreich, *Power and Principle. Human Rights Programming in International Organizations* (Washington, DC: Georgetown University Press, 2007).
6. Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (New York and Geneva: UN, 2006), 35, <http://www.ohchr.org/Documents/Publications/FAQen.pdf> (accessed 10 October 2016). This document quoted the statement of the Second Inter-Agency Workshop in Stamford during 2003 on the Human Rights-Based Approach to Development Cooperation.

7. See further Jacob Kirkemann Boesen and Hans-Otto Sano, 'The Implications and Value Added of a Human Rights-Based Approach', in *Development as a Human Right – Legal, Political and Economic Dimensions*, ed. Bård A. Andreassen and Stephen P. Marks, 2nd ed. (Antwerp/Oxford/Portland: Intersentia, 2010), 57–63.
8. See note 6.
9. See Oxfam, 'Our Commitment to Human Rights', <https://oxf.am/2sp23Vw> (accessed 27 October 2017).
10. *Child Rights Programming – How to Apply Rights-Based Approaches to Programming: A Handbook for International Save the Children Alliance Members*, 2nd ed. (Save the Children Sweden, 2006), <https://resourcecentre.savethechildren.net/node/2658/pdf/2658.pdf> (accessed 27 October 2017).
11. See Care International, 'Accountability', <https://www.care-international.org/who-we-are/accountability> (accessed 27 October 2017).
12. See SIDA, *Human Rights Based Approach at Sida*, <http://www.sida.se/English/partners/resources-for-all-partners/methodological-materials/human-rights-based-approach-at-sida/> (accessed 27 October 2017). See also *Swedish Government Communication 2013/14:131Aid Policy Framework*, 11–12, <http://www.regeringen.se/49b737/contentassets/6eef64a9a36e48ff9a95e4d6ad97ce84/aid-policy-framework> (accessed 27 October 2017).
13. German Federal Ministry for Economic Cooperation and Development, *Human Rights in German Development Policy – Strategy* (BMZ Strategy Paper 4 – 2011), https://www.giz.de/fachexpertise/downloads/Human_Rights_in_German_Development_Policy.pdf (accessed 27 October 2017).
14. Laure-Hélène Piron and Francis Watkins, *DFID Human Rights Review – A Review of How DFID Has Integrated Human Rights Into Its Work* (London: Overseas Development Institute, 2004), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2289.pdf> (accessed 27 October 2017).
15. Council of the European Union, *EU Action Plan on Human Rights and Democracy* (Luxembourg 2015), https://eeas.europa.eu/human_rights/docs/eu_action_plan_on_human_rights_and_democracy_en.pdf (accessed 10 October 2016); and, with particular regard to development, Joint Statement by the Council and the Representatives of the Governments of the Member States Meeting Within the Council, the European Parliament and the Commission, New European Consensus, 2017/C 210/01, [2017] OJ C210/1.
16. This definition of 'empowerment' is based on the one laid down by Danida in *Gender Equality in Danish Development Cooperation – Strategy* (Copenhagen: Danish Ministry of Foreign Affairs, 2004), http://amg.um.dk/en/~media/amg/Documents/Policies%20and%20Strategies/Social%20Progress/Gender%20Equality/gender_equality.ashx (accessed 10 October 2016).
17. This definition of 'advocacy' is based on Danida, *Generelle principper for støtte til udviklingsaktiviteter gennem danske civilsamfundsorganisationer* [General Principles Governing Support to Development Activities Implemented by Danish Civil Society Organisations] (Copenhagen: Ministry of Foreign Affairs, 2014) (only in Danish), <http://amg.um.dk/en/technical-guidelines/financial-management/accounting-and-auditing/> (accessed 14 August 2017).
18. M. Molyneux and S. Lazar, *Doing the Rights Thing – Rights-based Development and Latin American NGOs*, (London: ITDG Publishing, 2003), 27; and H.-O. Sano, 'Development and Human Rights: The Necessary, but Partial Integration of Human Rights and Development', *Human Rights Quarterly* 22 (2000): 734–75, 749.
19. H.-O. Sano, *Making Rights Work for the Poor and the Marginalized. Assessing the Impact of CARE's Rights-Based Work in South-Western Uganda* (Copenhagen: Danish Institute for Human Rights, 2009). See also the organisation of slum dwellers and their involvement in negotiations with local authorities. S. Patel and D. Mitlin, 'Reinterpreting the Rights-Based Perspective: A Grassroots Perspective on Rights and Development', in *Rights-Based Approaches to Development. Exploring the Potential and Pitfalls*, ed. S. Hickey and D. Mitlin (Stirling: Kumarian Press, 2009), 111–18.

20. Office of the United Nations High Commissioner for Human Rights, *The Human Rights-Based Approach to Development Cooperation*.
21. Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, 15.
22. See for instance Danida's, 'Tool for Human Rights-Based Approach (HRBA) and Gender Equality Screening', 2013, <http://amg.um.dk/en/technical-guidelines/guidelines-for-programmes-and-projects/~/-/media/amg/Documents/Technical%20Guidelines/Guidelines%20for%20programmes%20and%20projects/Tools%20and%20templates/HRBA%20screening%20note.docx> (accessed 10 October 2016).
23. See the reference in Michael Goodhart, *Human Rights. Politics and Practice* (Oxford: Oxford University Press, 2012) as well as the updated website: <http://sakhikendra.org/> (accessed 10 October 2016).
24. In principle, the lessons that we may draw from this example do not only apply to developing countries. Indeed, in section 5 we point out that the human rights-based approach should not be seen as exclusively applying to developing countries. The approach may also be applicable in a non-developing country context.
25. See Ministry of Foreign Affairs – Embassy Dhaka, Bangladesh, *Bangladesh Country Programme Document 2016–21*, 2016. On the aspect of continuity and change of rights-based programming, see also Joel L. Oestreich, *Development and Human Rights. Rhetoric and Reality in India* (Oxford: Oxford University Press, 2017), 180–2.
26. Ben Cousins and Ruth Hall, 'Rural Land Tenure – The Potential and Limits of Rights-Based Approaches', in *Socio-Economic Rights in South Africa – Symbols or Substance?*, ed. Malcolm Langford, Ben Cousins, Jackie Dugard and Tshepo Madlingozi (Cambridge: Cambridge University Press, 2013). 'Communal areas' refer to the former reserves in South Africa. 'Commercial farms' concern the situation where (black) South Africans reside as farm dwellers or farm workers.
27. Jackie Dugard, 'Urban Basic Services – Rights, Reality, and Resistance', in *Socio-Economic Rights in South Africa – Symbols or Substance?*, ed. Malcolm Langford, Ben Cousins, Jackie Dugard and Tshepo Madlingozi (Cambridge: Cambridge University Press, 2013).
28. Cf. Pia Oberoi, 'Defending the Weakest: The Role of International Human Rights Mechanisms in Protecting the Economic, Social and Cultural Rights of Migrants', *International Journal on Multicultural Societies (IJMS)* 11, no. 1 (2009): 19–35. Pia Oberoi points to examples of slavery-like conditions of migrant female domestic workers in Lebanon and the mandatory deportation of migrants with HIV/AIDS from Malaysia.
29. Mazharul Islam and Altaf Parvez, *Dalit Initiatives in Bangladesh* (Dhaka: Chowdhury Printers, 2013), 9, 14. See also Jeidoh Duni, Robert Fon, Sam Hickey and Nuhu Salihu, 'Exploring a Political Approach to Rights-Based Development in North West Cameroon: From Rights and Marginality to Citizenship and Justice', in *Rights-Based Approaches to Development. Exploring the Potential and Pitfalls*, ed. Sam Hickey and Diana Mitlin (Stirling: Kumarian Press, 2009), 50–1.
30. *Ibid.*, 49–50, 53–4.
31. Varun Gauri and Daniel Brinks, eds, *Courting Social Justice. Judicial Enforcement of Social Economic Rights in the Developing World* (Cambridge: Cambridge University Press, 2008), 34–5, 304–5; and Katharine G. Young, *Constituting Economic and Social Rights* (Oxford: Oxford University Press, 2012).
32. Beth Simmons, *Mobilizing for Human Rights. International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009), Ch. 7; and Richard A. Nielsen and Beth Simmons, 'Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime?', *International Studies Quarterly* 59 (2015): 197–208 at 205–6.
33. Hans-Otto Sano, 'Does Rights-Based Development Make a Difference?', in *Casting the Net Wider. Human Rights. Development and New Duty-Bearers*, ed. Margot E. Solomon, Arne Tostensen and Wouter Vandenhoele (Antwerp/Oxford: Intersentia, 2007), 70–2, 78.
34. Human rights are by definition normative/value-based.

35. In order for 'the use of rights' to be able to work, it is necessary that there is respect for legislation and the rule of law.
36. In this respect it must be observed that most aid recipients are signatories to the majority of key international and regional human rights instruments and are thus legally obligated to abide by their precepts as duty-bearers.
37. See section 2.
38. Dan Banik, 'Support for Human Rights-Based Development: Reflections on the Malawian Experience', *International Journal of Human Rights* 14, no. 1 (2010): 151.
39. In principle, the EU now mainstreams human rights into all its external activities – including also its development cooperation activities, see further note 15. However, when analysing 49 EU bilateral country programmes and their sectorial composition, we found that programmes focussing on democratisation, governance and justice included a stronger focus on human rights-based approaches in the EU-funded programmes compared to the ones in energy, the agricultural sector, and even in the social sectors. See Hans-Otto Sano and Kristoffer Marslev, 'The Nature and Consistency of Human Rights Integration in EU External Country Strategies', in *In Depth Studies of Selected Factors which Enable of Hinder the Protection of Human Rights in the Context of Globalisation*, ed. Eva Maria Lassen (FRAME, the Danish Institute for Human Rights, 2017).
40. In section 5 we argue that this dilemma may direct actors to nudging forms of advocacy rather than strongly formulated demands. Thus, rather than pursuing a 'tough on rights' approach, we would often expect the actors to pursue a 'soft nudging' approach.
41. Hickey and Mitlin, 2009, concluding chapter with the same title as the book: Hickey and Mitlin, *Rights-Based Approaches to Development*, Ch. 12, at 225.
42. *Ibid.*, 225. On the favouring of some groups over others, chapters in the book edited by Hickey and Mitlin refer to the neglect of women's rights in some cases and also to growing tensions between cattle-based communities and agricultural ones. See chapters by Duni et al. ('Exploring a Political Approach to Rights-Based Development in North West Cameroon') and Leonith Hinojosa-Valencia ('Property Rights and Rights-Based Sustainable Livelihoods'), on how a rights-based approach may also engender tensions between various groups of rights-holders.
43. Amartya Sen, 'Human Rights and Development', in *Development as a Human Right – Legal, Political and Economic Dimensions*, ed. Bård A. Andreassen and Stephen P. Marks, 2nd ed. (Antwerp/Oxford/Portland: Intersentia, 2010), 11. In contrast to the view put forward by Amartya Sen in *Development as Freedom* (Oxford: Oxford University Press, 1999), Hickey and Mitlin, *Rights-Based Approaches to Development*, 227, argue that rights can be most progressively related to justice struggles rather than to struggles for freedom. However, according to Sen in 'Human Rights and Development', it is quite clear that, while Sen is generally framing his discussion in terms of freedoms, he is well aware that the struggles for justice constitute a key dimension of rights work.
44. According to the World Bank, 73% of the world's poor live in middle-income countries, cf. <http://www.worldbank.org/en/country/mic> (accessed 10 October 2016).
45. See for example Isabel Ortiz and Matthew Cummins, 'Global Inequality: Beyond the Bottom Billion – A Rapid Review of Income Distribution in 141 Countries' (United Nations Children's Fund (UNICEF) Social and Economic Policy Working Paper, 2011), vii and 23.
46. Indeed, we would argue that the human rights-based approach is also relevant in high-income countries with particular regard to marginalised groups such as sexual and ethnic minorities. Not least in light of the all-encompassing approach the UN member states have taken as part of the Sustainable Development Goals (SDGs) (as compared to the Millennium Development Goals (MDGs)), this broader approach to the human rights-based approach would seem to be well in line with more recent developments.
47. See for example DFID Operational Plan 2011–2015 – Somalia (May 2011), 2 and 3, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67506/somalia-1.pdf (accessed 10 October 2016).

48. Arguably, this is most clearly reflected in the UN's 1999 Global Compact, a voluntary initiative based on CEO commitments to implement universal sustainability principles and to take steps to support the goals of the UN. See also the UN Guiding Principles on Business and Human Rights developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises and endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011.

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