

Human Rights-Based Approaches and European Union Development Aid Policies



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Preface

This briefing paper is the result of a joint initiative by *Terre des Hommes International Federation*, *Action Aid International*, *Amnesty International EU Office* and *International Human Rights Network* (IHRN). These four organisations have jointly funded the initiative, with this paper being researched and written by IHRN.

The aim of this briefing paper is to inform those responsible for formulating, applying and reviewing EU development policies by recalling what human rights based approaches to development entail and exploring whether EU development policies reflect the legal principles enshrined in HRBA. The paper aims to be an advocacy tool for those seeking to strengthen EU accountability for HRBA, development actors, NGOs, their networks and developing world partners.

The briefing paper is based on a desk review of key policy documents, consultation with a range of EU and member state officials, development specialists and other stakeholders, through questionnaires, individual interviews and a workshop held in Brussels in December 2007. As such, the views outlined in the report are those of IHRN and may not necessarily reflect the views of all the participating organisations.

The promoters wish to acknowledge with appreciation the research input of Hannah Grene (IHRN), Silvia Fabbri and Francesca Lamedica (*Terre des Hommes International Federation, EU Office*) and Pilar San Martín (Amnesty International, EU Office).

Patrick Twomey
International Human Rights Network
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Executive Summary (EN)

Overview

The aim of this briefing paper is to inform those responsible for formulating, applying and reviewing EU development policies by examining those policies against the core content of human rights based approaches (hereafter HRBA) and to provide an advocacy tool for those seeking to strengthen EU accountability for HRBA.¹

“We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights”

UN Secretary-General, *In Larger Freedom: towards development, security and human rights for all* (2005)

First, the paper sets out the internationally agreed legal principles which underpin HRBA. To stimulate genuine change it is critical that these legal principles be clearly reflected in policies. The study reviewed a cross-section of policies, covering what the EU defines as *external development assistance*, examining the extent to which the legal commitments of HRBA are reflected in them.² A separate section of the briefing paper emphasises that the principles of HRBA apply equally to *all areas* of EU activity – across spheres that are encompassed within international law’s holistic concept of development.³ While institutional structures or budget/funding lines may distinguish geographical regions or substantive themes or sectors – the legal principles of HRBA nonetheless apply equally to all spheres of competence, internal or external, however classified, development, trade, humanitarian aid etc.

The final section outlines a number of recommendations for EU institutions, EU Member States, development partner states and civil society development actors.

Human Rights Based Approaches (HRBA)

Its political and economic significance makes the EU a leading global actor across a range of inter-related spheres, ranging from Common Foreign and Security Policy, European Security and Defence Policy, trade, enlargement as well as humanitarian and development assistance.

"Poverty eradication is a major human rights challenge of the 21st Century. A decent standard of living, adequate nutrition, health care, education decent work and protection against calamities, are not just development goals- they are also human rights" - UN Human Development Report 2000

As the world's largest development donor in monetary terms,⁴ EU efforts to alleviate global poverty entail significant financial commitment as well as engagement from a complex array of institutional actors and funding lines. These efforts take place within a framework of commitments which commits the EU to ensuring that human rights are at the heart of its development cooperation. These commitments are both political and legal. They flow from the legal obligations of the Member States as well as from EU treaty provisions which

¹An electronic copy of this briefing paper can be accessed at the websites of the participating organisations, www.terredeshommes.org, www.actionaid.org/, www.amnesty-eu.org, www.ihrnetwork.org.

² A range of EU development policies can be found at http://ec.europa.eu/development/policiesgen_en.cfm

³In 1986 the UN General Assembly defined development as: “a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”, GA Res. 41/128, 4 December 1986.

⁴ Combined with Member States, the EU is the largest financial contributor to the UN budget, and the largest donor of overseas development assistance.

⁶ http://ec.europa.eu/development/policiesgen_en.cfm

recognise human rights as common values underpinning EU partnership and dialogue with third countries.⁶

The legal framework of human rights obligations that applies to development assistance has been the subject of a growing international consensus, under the title “human rights-based approaches to development”. Flowing from the 2003 *Common Understanding*⁷ of UN agencies, this concept builds upon the universal framework of international human rights standards and acknowledges that the enjoyment of human rights must be both *the means* and *the goal* of development. A human rights based approach to development therefore means that development:

- Is explicitly based on the international human rights law framework;
- Involves policies and practices that seek to empower all those in the development relationship, as a matter of human rights;
- Involves policies and practices that promote the right of beneficiaries to “active, free and meaningful” participation;
- Addresses discrimination (across all grounds prohibited by human rights law) and prioritises groups that are vulnerable to having their human rights violated, and;
- Subjects development processes and actors to human rights accountability, through clarity regarding rights and duties, rights-holders and duty-bearers.

Stamford Common Understanding on HRBA

1. All programmes of development co-operation, 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.

The framework provided by these principles (each of which is also a legal norm) is the lens for reviewing core EU development policy documents to determine the extent to which they promote HRBA.

A coherent commitment to this framework by overarching EU development policy is a critical pre-condition for ensuring that subsidiary development policies and instruments (whether addressing particular themes, target groups or geographical areas) are in turn human rights based.

Even where policies contain an accurate, comprehensive commitment to HRBA, the challenge of ensuring HRBA in development practice remains considerable.⁸ However, policies that promote HRBA are a fundamental precondition for best practice in all phases of

⁷ The Human Rights Based Approach to Development Cooperation - Towards a Common Understanding Among UN Agencies, www.undp.org/governance/docshurist/030616CommonUnderstanding.doc

⁸ On the challenge of mainstreaming human rights, ECDPM/ICEI/ODI, *Assessment of the EC Development Policy- DPS Study Report 2005*, notes “lack of specialist staff, guidelines, resources, and lack of political will are the most commonly cited reasons for difficulties with their implementation.”

development programming, from identification, formulation, implementation through to monitoring and evaluation.

Overall Findings and Recommendations

- Despite increased use of human rights language, a range of key EU development policies do not coherently or consistently reflect the applicable international human rights framework. Weaknesses include substitution of legally precise human rights terminology with vague formulations of language; misrepresenting the relationship between policy commitments such as the Millennium Development Goals and the legal obligations of human rights; failure to identify core development challenges, such as poverty as a denial of human rights, or to acknowledge the equal status of economic, social and cultural rights and civil and political rights.
- The current EU overarching development policy framework, *the European Consensus on Development 2005* fails to provide a clear and accurate definition of human rights based development, one which acknowledges and promotes human rights as both *the means* and *the goal* of development.
- Development policy concepts such as “coherence”, “effectiveness”, and “best practice” must be understood as, and made subject to, human rights obligations.
- The formulation process and content of future development policies should be subject to scrutiny for HRBA, including legal accuracy, while existing development policies should be interpreted so as not to undermine international human rights law obligations.
- EU development policies and programming should seek to empower both rights-holders and duty-bearers by building upon the HRBA lessons learned by other organizations. This requires a human rights based approach to awareness raising and education (internally and externally) regarding development assistance.
- The European Commission should conduct an organisational review to identify steps required to give effect to HRBA in development policy formulation and implementation to ensure that development policy objectives and development assistance are coherent with applicable international law.
- As a critical element of accountability, inputs into development policy and practice by the European Parliament should be systematically framed in terms of the principles of HRBA.
- EU Member States and development partner states should insist that EU development policies and programmes are coherent with international law obligations.
- Development actors advocating on EU development policies should adopt HRBA as the overarching framework for their advocacy.

Résumé (FR)

Aperçu

Ce document vise d'une part à fournir un outil de travail pour toute personne en charge de la formulation, de l'application et de l'examen des politiques de développement de l'Union Européenne par l'analyse de ces politiques à la lumière des approches basées sur les droits humains (ABDH) et d'autre part à fournir un outil de plaidoyer pour ceux qui cherchent à renforcer la responsabilité de l'Union Européenne en matière de droits humains.⁹

" Il n'y a pas de développement sans sécurité, il n'y a pas de sécurité sans développement, et il ne peut y avoir ni sécurité, ni développement si les droits de l'homme ne sont pas respectés " - **Secrétaire général des Nations Unies, Dans une liberté plus grande : développement, sécurité et respect des droits de l'homme pour tous** (2005)

Tout d'abord, le document présente les principes juridiques internationalement reconnus qui sous-tendent les ABDH. Pour engendrer un véritable changement, il est indispensable que ces principes juridiques soient clairement reflétés dans les politiques. Dans cette recherche, les auteurs ont analysé un échantillon de politiques couvrant ce que l'Union Européenne appelle l'aide au développement extérieur, en examinant dans quelle mesure les obligations légales des ABDH y sont reflétées.¹⁰ Une partie spécifique du document rappelle que les principes des ABDH s'appliquent de la même façon à tous les secteurs d'activités de l'Union Européenne, et dans tous les domaines qui sont inclus dans le concept holistique de développement tel que défini en droit international.¹¹ Alors que les structures institutionnelles ou les lignes budgétaires peuvent établir des distinctions entre des zones géographiques, des thèmes ou des secteurs particuliers, les principes juridiques des ABDH s'appliquent toutefois de la même façon à tous les domaines de compétence de l'UE, interne ou externe, qu'il s'agisse de développement, de commerce, ou d'aide humanitaire.

La dernière partie du document définit certaines recommandations à l'intention des institutions européennes, des Etats membres de l'UE, des Etats partenaires et des acteurs du développement au sein de la société civile.

Approches basées sur les droits humains (ABDH)

Son importance politique et économique fait de l'UE un acteur mondial de premier plan dans de nombreux domaines étroitement liés, allant de la politique étrangère et de sécurité commune, à la politique européenne de sécurité et de défense, au commerce, et à l'élargissement ainsi qu'à l'aide humanitaire et à l'aide au développement.

" L'éradication de la pauvreté représente un défi majeur du combat pour les droits de l'homme au XXIe siècle. Des conditions de vie décentes, une nutrition adaptée, la santé et l'instruction, un travail correct et la protection contre les catastrophes ne constituent pas seulement des objectifs de développement. Ce sont aussi des droits de l'homme." - **Nations Unies, Rapport mondial sur le développement humain** (2000)

En tant que premier bailleur d'aide publique au développement dans le monde¹², les efforts de l'UE pour combattre la pauvreté mondiale impliquent un investissement financier significatif, ainsi que la mobilisation d'un grand nombre d'acteurs institutionnels et de nombreuses lignes de financement. Ces efforts sont menés dans un cadre légal contraignant qui engage l'UE à placer les droits humains au

⁹ Une copie électronique de ce résumé est accessible sur les sites internet des organisations promotrices de ce rapport, www.terredeshommes.org, www.actionaid.org, www.ihrnetwork.org, www.amnesty-eu.org.

¹⁰ Un aperçu des différentes politiques de développement de l'UE est accessible sur le site http://ec.europa.eu/development/policies/gen_fr.cfm

¹¹ En 1986, l'Assemblée Générale des Nations Unies définissait ainsi le développement: « un processus global, économique, social, culturel et politique, qui vise à améliorer sans cesse le bien-être de l'ensemble de la population et de tous les individus, sur la base de leur participation active, libre et significative au développement et au partage équitable des bienfaits qui en découlent » AG Res.41/128, 4 décembre 1986

¹² En comptant l'aide au développement des Etats membres, l'UE est le plus grand contributeur au budget de l'ONU et le plus grand bailleur de fonds aux pays en développement.

cœur de sa politique de coopération au développement. Ces engagements sont à la fois politiques et juridiques. Ils découlent des obligations légales des Etats membres ainsi que des clauses des traités de l'UE qui reconnaissent les droits humains comme valeurs communes qui sous-tendent le partenariat et le dialogue de l'UE avec les pays tiers.¹³

Le cadre légal des obligations en matière de droits humains qui s'applique à l'aide au développement est sujet à un consensus international grandissant, communément appelé "approches du développement basées sur les droits humains". Découlant de la *position commune*¹⁴ des institutions des Nations Unies datée de 2003, ce concept se base sur le cadre universel des standards internationaux des droits humains et reconnaît la jouissance des droits humains tant comme *moyen* que comme *finalité* du développement. Une approche du développement basée sur les droits humains signifie donc que le développement:

- Est explicitement basé sur le cadre du droit international des droits humains;
- Implique des politiques et des pratiques qui cherchent à renforcer la participation et les capacités de toutes les personnes impliquées dans le processus de développement, en accord avec les droits humains;
- Implique des politiques et des pratiques qui soutiennent le droit des bénéficiaires à une participation active, libre et significative;
- Aborde la discrimination (sous toutes ses formes interdites par les normes des droits humains) et donne la priorité aux groupes les plus à risque de voir leurs droits violés;
- Soumet les processus de développement et ses acteurs à une responsabilité à l'égard des droits humains, en définissant clairement les droits et les obligations, ainsi que les personnes qui jouissent de ces droits comme ceux qui ont l'obligation de les faire appliquer.

Accord Commun de Stamford sur l'ABDH

1. Tous les programmes de coopération, de politique générale et d'assistance technique visant à promouvoir le développement doivent favoriser la réalisation des droits humains, comme le stipulent la Déclaration universelle des droits de l'homme et les autres instruments internationaux concernant ces droits.

2. Les valeurs contenues dans la Déclaration universelle des droits de l'homme et les autres instruments internationaux, ainsi que les principes qui en découlent, guident l'ensemble des programmes et de la coopération au développement dans tous les secteurs et toutes les phases de la programmation.

3. Les programmes de coopération au développement contribuent à renforcer à la fois les capacités des individus qui ont des obligations à les respecter et de ceux qui ont des droits à les revendiquer.

Le cadre posé par ces principes (chacun d'entre eux étant aussi une norme légale) a été l'outil utilisé pour analyser des documents clés de la politique européenne d'aide au développement afin de déterminer dans quelle mesure ils promeuvent les ABDH. Que la politique globale de développement de l'UE démontre un engagement cohérent à ce cadre est une condition préalable déterminante pour s'assurer que les politiques subsidiaires de développement et ses outils (qu'ils concernent des thèmes, groupes cibles ou zones géographiques spécifiques) soient à leur tour basés sur les droits humains.

Même lorsque les politiques démontrent un engagement précis et global au regard des ABDH, le défi de les mettre en œuvre dans les pratiques de développement reste

¹³ http://ec.europa.eu/development/policiesgen_fr.cfm

¹⁴ *L'approche fondée sur les droits de l'homme dans le domaine de la coopération pour le développement – Vers une position commune des institutions des Nations Unies* www.unescobkk.org/fileadmin/user_upload/appeal/human_rights/UN_Common_understanding_RBA.pdf

considérable.¹⁵ Cependant, les politiques qui promeuvent les ABDH sont une condition indispensable pour obtenir de meilleures pratiques à toutes les phases de la programmation du développement, soit de l'identification à la formulation, la mise en œuvre, le suivi et l'évaluation.

Conclusions et recommandations

- En dépit d'une utilisation croissante du langage des droits humains dans les documents de politiques publiques, de nombreuses politiques de développement de l'UE ne reflètent pas de façon cohérente et constante le cadre normatif international des droits humains. Parmi les faiblesses observées, il faut compter: la substitution d'une terminologie juridique exacte en matière de droits humains par de vagues formulations; une mauvaise interprétation de la relation entre les engagements politiques comme les Objectifs du millénaire pour le développement et les normes du droit international relatif aux droits humains; l'incapacité d'identifier les véritables défis du développement, comme la pauvreté en tant que déni des droits humains, ou de reconnaître l'égalité de statut entre les droits économiques, sociaux et culturels et les droits civils et politiques.
- L'actuel cadre de la politique de développement global de l'UE, le *Consensus Européen pour le Développement* de 2005, ne donne pas une définition claire et précise d'un développement basé sur les droits humains, soit un développement qui reconnaît et promeut les droits humains tant comme *moyen* que comme *finalité* du développement.
- Des concepts inscrits dans les politiques de développement, tel que la "cohérence", "l'efficacité", les "meilleures pratiques" etc. doivent être compris comme des obligations relatives aux droits humains et donc mis en œuvre en tant que telles. Le processus de formulation et le contenu des futures politiques de développement devraient être soumis à l'examen minutieux des ABDH, y compris l'exactitude juridique, alors que les politiques de développement existantes devraient être interprétées de sorte à ne pas miner les obligations du droit international relatif aux droits humains.
- Les politiques et les programmes européens de développement devraient chercher à mobiliser les capacités (empower) à la fois de ceux qui ont des droits et de ceux qui ont des obligations en s'appuyant sur les enseignements tirés d'organisations utilisant les ABDH. Ceci implique d'appliquer une approche basée sur les droits humains au travail de la sensibilisation et de l'éducation au développement (au sein de l'UE et hors UE).
- La Commission Européenne devrait faire un bilan organisationnel pour identifier les étapes nécessaires afin de rendre effectives les ABDH dans la formulation des politiques de développement et leur mise en œuvre de manière à s'assurer que les objectifs de la politique de développement et l'aide au développement sont cohérents avec le droit international applicable.
- En accord avec le principe de responsabilité, le Parlement Européen devrait systématiquement inscrire ses prises de position relatives aux politiques et pratiques de développement dans le cadre des principes des ABDH.
- Les Etats membres de l'Union Européenne et les Etats partenaires du développement devraient insister pour que les politiques et les programmes de développement de l'UE soient cohérents avec leurs obligations dérivées du droit international.
- Les acteurs du développement cherchant à influencer les politiques de développement de l'UE devraient adopter les ABDH comme cadre global de leur plaidoyer.

¹⁵ A propos du défi d'intégrer les droits humains de manière transversale, ECDPM/ICEI/ODI, *Assessment of the EC Development Policy – DPS Study Report 2005*, note que "le manque de personnel spécialisé, de lignes directrices, de ressources, et le manque de volonté politique sont les raisons les plus souvent citées pour expliquer les difficultés quant à leur mise en œuvre"

Kurzfassung (DE)

Überblick

Diese Kurzstudie ist als Information für diejenigen gedacht, die für die Formulierung, Umsetzung und Überprüfung der EU-Entwicklungspolitik zuständig sind. Die Entwicklungspolitik der EU wird darin anhand der zentralen Inhalte menschenrechtsbasierter Ansätze (HRBA, human rights based approaches) überprüft. Gleichzeitig soll die Studie denjenigen als Lobbyinstrument dienen, die für eine stärkere Rechenschaftspflicht der EU im Hinblick auf die HRBA eintreten.¹⁶

“Ohne Sicherheit wird es keine Entwicklung geben und ohne Entwicklung keine Sicherheit – und wenn wir die Menschenrechte nicht respektieren, wird es keines von beiden geben“
- UN Generalsekretär, **In larger Freedom: towards development, security and human rights for all (2005)**

Zunächst stellt die Studie die rechtlichen Prinzipien dar, auf die man sich auf internationaler Ebene verständigt hat, und die den HRBA zugrunde liegen. Damit auch tatsächlich Veränderungen stattfinden, ist es von entscheidender Bedeutung, dass sich diese rechtlichen Prinzipien eindeutig in der Politik widerspiegeln. In der Studie wurde ein Querschnitt politischer Maßnahmen untersucht und zwar aus dem Bereich, den die EU als *Entwicklungszusammenarbeit* mit Drittländern definiert. Es wurde überprüft, in welchem Umfang sich die mit den HRBA eingegangenen rechtlichen Verpflichtungen in diesen politischen Maßnahmen widerspiegeln.¹⁷ In einem anderen Teil der Kurzstudie wird betont, dass die Prinzipien der HRBA für *alle Bereiche*, in denen die EU aktiv ist, gleiche Gültigkeit besitzen – übergreifend für alle Themenbereiche, die in dem ganzheitlichen Konzept von Entwicklung der internationalen Gesetzgebung enthalten sind.¹⁸ Die institutionellen Strukturen bzw. die Budgetlinien grenzen zwar geografische Regionen oder inhaltliche Themen bzw. Sektoren voneinander ab – die rechtlichen Prinzipien der HRBA gelten trotzdem in gleicher Weise für sämtliche Kompetenzbereiche, interne wie externe, unabhängig von ihrer Zuordnung zu beispielsweise Entwicklung, Handel, humanitärer Hilfe etc.

Im Schlussteil wird eine Reihe von Empfehlungen für die Institutionen der EU, die EU-Mitgliedstaaten, die Partnerstaaten der Entwicklungszusammenarbeit und für zivilgesellschaftliche Akteure der Entwicklungszusammenarbeit skizziert.

Menschenrechtsbasierte Ansätze (Human Rights Based Approaches, HRBA)

Aufgrund ihrer politischen und wirtschaftlichen Bedeutung spielt die EU auf globaler Ebene eine führende Rolle, als Akteur in den vielfältigsten, miteinander verflochtenen Bereichen von der Gemeinsamen Außen- und Sicherheitspolitik, der Europäischen Sicherheits- und Verteidigungspolitik über den Handel und die Erweiterung bis hin zu humanitärer Hilfe und Entwicklungszusammenarbeit.

"Die Beseitigung der Armut ist eine wesentliche Herausforderung für die Menschenrechte im 21. Jahrhundert. Angemessener Lebensstandard, ausreichende Ernährung, Gesundheitsversorgung, Bildung, menschenwürdige Arbeit und Schutz vor Missständen sind nicht nur Entwicklungsziele – sie sind auch Menschenrechte." - **Bericht über die menschliche Entwicklung (2000)**

¹⁶ Eine elektronische Kopie dieser Kurzstudie kann auf den Websites der beteiligten Organisationen www.terredeshommes.org, www.actionaid.org/, www.amnesty-eu.org, www.ihrnetwork.org heruntergeladen werden.

¹⁷ Eine Zusammenstellung von entwicklungspolitischen Maßnahmen der EU findet sich unter http://ec.europa.eu/development/policiesgen_en.cfm

¹⁸ 1986 definierte die UN-Generalversammlung Entwicklung als: "einen umfassenden wirtschaftlichen, sozialen, kulturellen und politischen Prozess, der darauf abzielt, das Wohlbefinden der gesamten Bevölkerung und sämtlicher Individuen auf der Grundlage ihrer aktiven, freien und sinnvollen Beteiligung am Entwicklungsprozess zu verbessern, und in der fairen Verteilung der Vorteile, die sich daraus ergeben", GA Res. 41/128, 4. Dezember 1986.

Die EU ist finanziell betrachtet der größte Entwicklungshilfegeber der Welt.¹⁹ Ihre Bemühungen, die Armut weltweit zu bekämpfen, beinhalten daher neben beachtlichen finanziellen Verbindlichkeiten auch ein Engagement im Rahmen einer komplexen Palette von institutionellen Akteuren und Budgetlinien. Diese Bemühungen werden im Kontext eines Bezugsrahmens von Zusagen umgesetzt, der die EU dazu verpflichtet, zu gewährleisten, dass die Menschenrechte bei ihrer Entwicklungszusammenarbeit eine zentrale Rolle spielen. Diese Zusagen sind sowohl politischer als auch rechtlicher Natur. Sie ergeben sich aus den rechtlichen Verpflichtungen der Mitgliedstaaten und aus den Bestimmungen des EU-Vertrags, in denen die Menschenrechte als gemeinsame Werte anerkannt werden, die der Partnerschaft und dem Dialog mit Drittländern zugrunde liegen.²⁰

Über den rechtlichen Rahmen der menschenrechtlichen Verpflichtungen, der für die Entwicklungszusammenarbeit Gültigkeit besitzt, ist unter dem Begriff „menschenrechtsbasierte Ansätze von Entwicklung“ auf internationaler Ebene zunehmend Konsens erzielt worden. Dieses Konzept geht auf das **Common Understanding**²¹ der UN-Organisationen aus dem Jahr 2003 zurück und baut auf den universellen internationalen Menschenrechtsstandards auf. In dem Konzept wird anerkannt, dass die Verwirklichung der Menschenrechte sowohl *Mittel* als auch *Ziel* von Entwicklung sein sollte. Ein menschenrechtsbasierter Ansatz von Entwicklung bedeutet daher, dass Entwicklungspolitik:

- Explizit auf der internationalen Menschenrechts-Gesetzgebung aufbaut;
- Politische Maßnahmen und Praktiken beinhaltet, die darauf ausgerichtet sind, alle am Entwicklungsprozess Beteiligten unter Menschenrechtsgesichtspunkten mit mehr Kompetenzen auszustatten;
- Politische Maßnahmen und Praktiken beinhaltet, die das Recht der Empfänger von Entwicklungshilfe auf „aktive, freie und sinnvolle“ Beteiligung fördern;
- Diskriminierung bekämpft (bei allen Straftatbeständen der Menschenrechts-Gesetzgebung) und sich vor allem der Bevölkerungsgruppen annimmt, deren Menschenrechte besonders leicht verletzt werden können und;
- Für Entwicklungsprozesse und deren Akteure im Hinblick auf die Einhaltung der Menschenrechte eine Rechenschaftspflicht einführt – durch Klarheit in Bezug auf Rechte und Pflichten und im Hinblick darauf, wem diese Rechte und Pflichten zuzuordnen sind.

¹⁹ Wenn man die einzelnen Mitgliedstaaten hinzurechnet, leistet die EU die größten finanziellen Beiträge zum UN-Haushalt und ist der größte Geldgeber von Entwicklungshilfe im Ausland.

²⁰ http://ec.europa.eu/development/policiesgen_en.cfm

²¹ *The Human Rights Based Approach to Development Cooperation - Towards a Common Understanding Among UN Agencies*, www.undp.org/governance/docshurist/030616CommonUnderstanding.doc

Das Stamford Common Understanding zu menschenrechtsbasierten Ansätzen (HRBA)

1. Alle Programme der Entwicklungszusammenarbeit, entwicklungspolitische Maßnahmen und technische Zusammenarbeit sollten die Verwirklichung der Menschenrechte fördern, wie sie in der Allgemeinen Erklärung der Menschenrechte und in anderen internationalen Menschenrechtsabkommen festgehalten worden sind.
2. Die Menschenrechtsnormen, die in der Allgemeinen Erklärung der Menschenrechte und in anderen internationalen Menschenrechtsabkommen enthalten sind, und die daraus abgeleiteten Prinzipien dienen als Leitlinie für die gesamte Entwicklungszusammenarbeit und für alle Entwicklungsprogramme in sämtlichen Bereichen sowie in allen Phasen des Ausarbeitungs- und Umsetzungsprozesses von Entwicklungsprogrammen.
3. Die Entwicklungszusammenarbeit trägt zur Entwicklung von Kompetenzen der 'Verantwortungsträger' (duty-bearers) bei, damit sie ihre Verpflichtungen erfüllen können, und/oder dazu, dass die, 'Anspruchsberechtigten' (right-holders) ihre Rechte einfordern können.

Der durch diese Prinzipien (jedes einzelne ist gleichzeitig auch eine rechtliche Norm) vorgegebene rechtliche Rahmen dient als Objektiv, durch das die zentralen Dokumente der EU-Entwicklungspolitik unter die Lupe genommen werden können, um zu entscheiden, in welchem Maße sie die HRBA fördern.

Eine kohärente Festlegung auf diesen Rahmen, der für die gesamte EU-Entwicklungspolitik gelten sollte, ist eine wesentliche Voraussetzung, um zu gewährleisten, dass auch untergeordnete entwicklungspolitische Maßnahmen und Instrumente (die sich beispielsweise auf einzelne Themenbereiche, Zielgruppen oder geografische Regionen beziehen) ihrerseits menschenrechtsbasiert sind.

Selbst wenn politische Maßnahmen ein präzises, umfassendes Bekenntnis zu HRBA enthalten, bleibt es immer noch eine beträchtliche Herausforderung, die HRBA tatsächlich in der entwicklungspolitischen Praxis zu gewährleisten.²² Eine Politik, die die HRBA fördert, ist jedoch eine grundlegende Voraussetzung, um in allen Stadien entwicklungspolitischer Programme – von der Identifizierung und Formulierung über die Umsetzung bis hin zum Monitoring und zur Evaluierung wirklich optimal vorzugehen.

Schlussbemerkungen und Empfehlungen

➤ In politischen Dokumenten werden zwar immer häufiger Aussagen zu Menschenrechtsaspekten gemacht, trotzdem spiegelt sich in einer ganzen Reihe von zentralen entwicklungspolitischen Maßnahmen der EU die anzuwendende internationale Menschenrechts-Gesetzgebung nicht kohärent bzw. konsistent wider. Einer der Schwachpunkte ist, dass die rechtlich präzise Menschenrechtsterminologie durch vage sprachliche Formulierungen ersetzt wird. Weitere Schwächen sind: Die Beziehung zwischen politischen Bekenntnissen wie den Millenniumsentwicklungszielen und den menschenrechtlichen Normen wird falsch wiedergegeben; und es wird versäumt, zentrale entwicklungspolitische Herausforderungen zu benennen, wie beispielsweise die Armut als ein Vorenthalten von Menschenrechten darzustellen, oder, den gleichberechtigten Status der wirtschaftlichen, sozialen und kulturellen Rechte und der bürgerlichen und politischen Rechte anzuerkennen.

²² Zu der Herausforderung, die Menschenrechte in sämtlichen entwicklungspolitischen Maßnahmen mit zu berücksichtigen, stellt der Bericht ECDPM/ICEI/ODI, *Assessment of the EC Development Policy- DPS Study Report 2005* fest, dass "das Fehlen ausgebildeten Personals sowie von Richtlinien und Ressourcen und der nicht vorhandene politische Wille die am häufigsten genannten Gründe dafür sind, dass Probleme bei der Berücksichtigung der Menschenrechte auftreten".

- Der gegenwärtige, für die gesamte EU-Entwicklungspolitik geltende politische Rahmen, der *Europäische Konsens zur Entwicklungspolitik 2005 (European Consensus on Development 2005)*, enthält keine klare und präzise Definition von menschenrechtsbasierter Entwicklung, sprich, eine Definition, die die Menschenrechte als *Mittel* und *Ziel* von Entwicklung anerkennt.
- Entwicklungspolitische Konzepte wie "Kohärenz", "Wirksamkeit", "Best-practice" etc. sollten als menschenrechtliche Verpflichtungen verstanden und als solche umgesetzt werden.
- Der Prozess der Ausarbeitung und der Inhalt künftiger entwicklungspolitischer Maßnahmen sollte einer Überprüfung im Hinblick auf HRBA, auch in Bezug auf eine rechtlich korrekte Formulierung, unterzogen werden. Gleichzeitig sollten bereits existierende entwicklungspolitische Maßnahmen so interpretiert werden, dass sie den Verpflichtungen aus der internationalen Menschenrechts-Gesetzgebung nicht zuwider laufen.
- Die entwicklungspolitischen Maßnahmen und Programme der EU sollten darauf abzielen, beide – Anspruchsberechtigte und Verantwortungsträger – mit mehr Kompetenzen auszustatten, indem sie auf den Erfahrungen aufbauen, die andere Organisationen mit den HRBA gemacht haben. Dazu ist ein menschenrechtsbasierter Ansatz bei der Bewusstseinsbildung und im Bildungsbereich (intern wie extern) im Hinblick auf die Entwicklungszusammenarbeit erforderlich.
- Die Europäische Kommission sollte eine organisatorische Überprüfung durchführen, um Schritte zu identifizieren, die erforderlich sind, damit HRBA bei der Ausarbeitung und Umsetzung entwicklungspolitischer Maßnahmen tatsächlich wirksam werden, und damit gewährleistet werden kann, dass die Zielsetzungen der Entwicklungspolitik und die Entwicklungshilfe mit der anzuwendenden internationalen Gesetzgebung in Einklang stehen.
- Ein zentrales Instrument der Rechenschaftslegung sind die Beiträge, die das Europäische Parlament zur Entwicklungspolitik und zur entwicklungspolitischen Praxis leistet. Sie sollten systematisch gemäß den Prinzipien der HRBA gestaltet werden.
- Die EU-Mitgliedstaaten und die Partnerländer der Entwicklungszusammenarbeit sollten darauf bestehen, dass die Entwicklungspolitik und die entwicklungspolitischen Maßnahmen der EU mit ihren Verpflichtungen gemäß der internationalen Gesetzgebung übereinstimmen.
- Die Akteure der Entwicklungszusammenarbeit, die entwicklungspolitische Lobbyarbeit in der EU leisten, sollten HRBA als den übergreifenden Bezugsrahmen für ihre Anwaltschaftsarbeit übernehmen.

1 Introduction

1.1 The meaning of "human rights based approaches" to development

Each individual EU member state - and each EU developing partner state - has agreed to be subject to the international legal framework. It is this framework which governs their relations with each other - and with their people. The cornerstone of this framework is provided by human rights standards which states have agreed in international and regional treaties. As a matter of law, each State has the primary responsibility to *respect, protect, and fulfil* the human rights of all within its jurisdiction. This means ensuring that human rights are fully enjoyed by whatever means required: legislative, administrative, budgetary, judicial, national and international development processes.

Human rights treaties are equally binding in law, whether they focus on civil and political rights or social, economic and cultural rights. EU Member States and their developing world partner states re-affirmed this in the *Vienna Declaration and Programme of Action* in 1993.²³

The internationally agreed definition of development involves all areas of national life, such as health, environment, housing, education, the distribution of resources, enhancement of people's capabilities and widening of their choices.²⁴ In 1993, 171 states reaffirmed at the World Conference on Human Rights at Vienna that *achieving development requires the implementation of the full spectrum of civil, political, economic, social, and cultural human rights as required by the international law.*

Human Rights Based Approaches to development means understanding human rights as both *the means* and *the goal* of development.

When the UN was established in 1945, its stated purposes meant that the organisation was expected to apply human rights based approaches to all aspects of its work. However, "development" was ideologically misinterpreted by the superpowers during the Cold War in order to prioritise their "preferred" human rights. A changed international environment in the 1990s saw major watersheds concerning the relationship between human rights and development, such as the adoption of the Vienna Declaration in 1993. In 1994 a genocide was perpetrated in Rwanda, at the time a country presented as a model of successful 'development'. The genocide caused many to acknowledge the dangers of development that is not human rights based.²⁵ In 1997, the UN re-committed itself to fully integrate human rights in all aspects of its work.²⁶ Since then, a range of actors have contributed to the evolution of HRBA, concepts and practice, notably UN agencies such as UNICEF, OHCHR and UNDP, a number of bi-lateral donors, including EU Member States, and NGOs.

"Poverty eradication is a major human rights challenge of the 21st Century. A decent standard of living, adequate nutrition, health care, education, decent work and protection against calamities, are not just development goals- they are also human rights" - **UN Human Development Report (2000)**

Five inter-connected principles, derived from the international legal framework, are internationally recognised as forming the core of HRBA. These principles are:

²³ www2.ohchr.org/english/law/pdf/vienna.pdf

²⁴ See the Declaration on the Right to Development, adopted by General Assembly Resolution 41/128 of 4 December 1986, www.unhchr.ch/html/menu3/b/74.htm

²⁵ See, for example, Uvin, *Aiding Violence: The Development Enterprise in Rwanda* (Kumarian Press, 1998).

²⁶ *Renewing the United Nations, Programme for Reform*, Report of the Secretary General to the General Assembly, 14 July 1997.

1. **Explicit, accurate use of the international human rights framework;**
2. **Empowerment as a precondition for effective participation - as of right;**
3. **Participation in development decisions - as of right;**
4. **Non-discrimination and prioritisation of groups vulnerable to human rights violations; and**
5. **Accountability of duty-bearers to rights-holders.**

HRBA is used in the plural ('approaches') as effective human rights change requires different approaches according to the particular sector being addressed, social and political context and the different actors involved. However, they are united by adherence to the five core legal principles.

The purpose of HRBA is to strengthen the implementation by states of their primary responsibility: ensuring the full enjoyment of human rights by all. It entails not just a formal commitment to respect human rights, but also to integrate the obligations involved into all policies, budgets and programmes. By definition HRBA is as concerned with **the process** of development as it is with **the outcome**. HRBA focuses on those who face discrimination on grounds prohibited by international law (including, but not confined to, gender and race) and those that are vulnerable to human rights violations (including, but not confined to, the poor). HRBA requires that development enhance empowerment, participation and accountability **as of right**.

An increasing number of multi-lateral and bi-lateral development actors have committed themselves to engaging in development that based upon the universal legal standards, by seeking to apply human rights-based approaches in their work. A key forum for EU Member States dialogue on development, OECD/DAC, for example, acknowledges the nexus between human rights and development as a key priority of its work.²⁷

Actors that have informed themselves about the meaning in practice of the five core principles of HRBA, acknowledge and advocate the added value of HRBA:

- Greater legitimacy through policies linked to universal minimum agreed standards of international law, standards that bind all states in the development relationship.
- Greater empowerment and participation as of right; linking development best practice to legal entitlements, providing an authoritative basis for advocacy by civil society.
- Greater relevance by focusing on powerlessness and social exclusion - moving from the realm of charity to one of obligation.
- Greater impact and sustainability based safeguards against unintentional harm by development aid - ensuring that human rights protection is organically incorporated into development policies and programmes.
- Greater accountability through clarity regarding duties and duty-bearers, and
- normative clarity provided by standard-setting bodies tasked with interpreting relevant treaties.

²⁷Such as the DAC's *Action-Oriented Policy Paper on Human Rights and Development*, adopted on 15 February 2007.

1.2 The legal imperative to apply HRBA

Is there a legal requirement compelling the EU to apply human rights based approaches in its development policies? Several interconnected legal arguments apply in this context, each of which alone requires that development assistance be premised upon the five principles of HRBA. These legal arguments are outlined here.

a) Human rights treaty obligations of EU Member States and partner developing states

EU Member States are each bound by a range of international treaties that set out their human rights obligations. Developing states on the whole are also party to the same multi-lateral human rights treaties. All states are mutually bound to respect the purpose of each treaty in their respective jurisdictions.²⁸ Flowing from these obligations, bi-lateral development assistance by EU Member States must respect the international human rights framework. Moreover, treaty obligations mean that a state receiving development assistance has a legal obligation *to refuse to accept* assistance that undermines the human rights of those in its jurisdiction. Thus, development 'donor' and 'recipient' states alike have a self-standing obligation to systematically measure the human rights impact of their development relationship, guarding against unintended negative effects of development programmes.

b) The obligation of states to respect their treaty obligations when they act through the entities they create

International human rights treaties must also be respected by states when they act collectively through entities they have created, such as the EU. This is required by the obligation to respect the purpose of the treaties to which they are party. This point was made by the European Court of Human Rights in 2005, which noted that while competence may be transferred to international organizations: "it remains the legal responsibility states parties to ensure that their human rights obligations receive an equivalent protection" when they pool their sovereignty.²⁹

"The fact that both donor and partner countries have ratified the international human rights treaties provides a uniquely valuable reference point for harmonisation efforts. A mutually agreed, universal normative framework already exists, supported not only by political commitment, but also by the force of legal obligation." - OECD DAC Update, April 2007

Some human rights treaties *explicitly* require parties to ensure that international assistance and co-operation is directed towards the realisation of the rights contained in those treaties.³⁰ Thus, under the general law of treaties Member States have a legal obligation to ensure that policies and practices regarding trade, aid, etc which they undertake in collaboration with each other, do not undermine their own - or other states' - obligations to respect, protect and fulfil human rights. This obligation attaches when states act in bi-lateral trade or development relationships, as well as their actions through multi-lateral organisations (such as the EC) or their agencies.

²⁸ See Vienna Convention on the Law of Treaties, http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

²⁹ *Bosphorus Airways v. Ireland*, Court Judgment of 30 June 2005. This principle applies no less where Member States rationalize their development interventions according to their respective "comparative advantage", as in the planned *EU Code of Conduct on Complementarity and Division of Labour in Development Policy*.

³⁰ Thus, for example, the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child* oblige States to "undertake all measures for the implementation of the rights recognized in the present Convention"... "to the maximum extent of their available resources and, where needed, within the framework of international co-operation".

c) The EU founding treaties

Reinforcing the above obligations, the EU Treaty itself makes explicit, in Article 6, that "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States..."³¹ While Article 177 of the treaty establishing the European Community specifies that the Community development policies: "shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms and "shall comply with the [..Member States commitments] in the context of the United Nations".³²

d) EU-ACP treaty relations

The EU has itself reinforced the obligations above by undertaking to promote and defend human rights as an express element of its relationship with third countries, such as in the *Cotonou Agreement* which governs its development relationship with a range of states. Cotonou stipulates that:

*"Cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development; this entails respect for promotion for all human rights. Respect for all human rights and fundamental freedoms (..) are an integral part of sustainable development."*³⁴

The EU's obligation to respect fundamental rights, including children's rights, implies not only a general duty to abstain from acts violating these rights, but also to take them into account wherever relevant in the conduct of its own policies under the various legal bases of the Treaties (mainstreaming).

- Towards an EU Strategy on the Rights of the Child, COM(2006) 367 final

³¹ Article 6(2) of the EU Treaty.

³² Article 177 of the Treaty establishing the European Community.

³⁴ ACP-EU Partnership Agreement signed in Cotonou in June 2000, http://europa.eu.int/comm/development/cotonou/index_en.htm

2. EU development policies – applying HRBA?

The various levels of legal obligation outlined above mean that human rights are required to be at the heart of EU development assistance. The key first step is to ensure that all institutions and staff tasked with implementing development assistance programmes are aided and instructed to adopt a human rights based approach by clear and consistent policies. A range of studies have highlighted challenges of common understanding regarding the fundamental objective and comparative advantage of EU development assistance.³⁵ This study goes further in posing the question: To what extent do EU development policies meet the legal requirements of HRBA? Each of the five principles of HRBA are considered in turn in the sections that follow.

The current overarching policy framework for EU development aid is the *Consensus on Development* - a policy statement jointly adopted in December 2005 by the Council and Member States, the European Commission and European Parliament.³⁶ As the stated framework within which the EU and its Member States undertake to implement their development policies, it is the starting point for assessing whether the legal obligation to apply HRBA is properly reflected in EU development policies.

This review also examined a cross-section of development policy and related documents policies concerning sample groups in the development context (children, women, disabled) and sample geographical contexts (EU *Strategy for Africa*, Euro-Mediterranean), as well as a selection of regional and country strategy papers. In addition a number of draft instruments were reviewed (e.g. concerning gender equality in development cooperation).³⁸



2.1 Principle 1: Express application of human rights framework

The first of the five HRBA principles requires that development policies be *explicit*, *accurate* and *consistent* in their use of human rights language. Each of these aspects is addressed in turn.

a) Human rights language must be explicit.

HRBA requires acknowledgment of the range of binding legal obligations. These obligations include not only treaties, but also the jurisprudence and other pronouncements elaborating upon treaty provisions over the past 60 years.³⁹ The legal framework also includes a range of principles, indicators and other tools for measuring human rights impact with legal accuracy – and policies should be explicit that these are to be used. If a particular policy

³⁵ See for example, *Whither EC Aid? From accountability to accountability: towards a new approach for the assessment of development cooperation*, (2008). Research report by ECDPM and ActionAid International on the future of European Commission Aid; ECDPM/ICEI/ODI, *Assessment of the EC Development Policy*, DPS Study Report, (2005), CER, *What Future For EU Development Policy?* (2007).

³⁶ Official Journal C 46/01, 24 February 2006.

³⁸ E.g. *European Strategy to promote gender equality in development cooperation*, COM(2007) 100 final.

³⁹ For example, General Comments of the international bodies established to supervise compliance with the treaties, see <http://www2.ohchr.org/english/bodies/treaty/index.htm>

objective is also a binding legal obligation, HRBA requires that this be stated explicitly – to do otherwise risks undermining awareness of the human rights standard.

The review found examples of explicit, legally accurate and comprehensive policy statements such as the 2007-2010 *Strategy Paper of the European Initiative for Democracy and Human Rights*. Equally, some instruments that elaborate upon policy commitments such as the *EU Guidelines for the Promotion and Protection of the Rights of the Child* adopted in December 2007 explicitly set out core human rights concepts (such as the “interdependence and interrelatedness of all human rights”). The objectives of the Guidelines include the “right to protection from discrimination and participation in decision-making processes”. More generally the Guidelines provide that the EU will “pursue a human rights-based approach in the implementation of these objectives”.

HRBA Principle 1 requires: express, accurate usage of legal framework

“... human rights and democratic principles are to be considered universal values, inextricably linked and to be pursued in their own right. ... These values are also seen as integral to the process of poverty reduction, alleviation of inequality and achievement of the Millennium Development Goals, as well as vital tools for conflict prevention and resolution, and are indispensable for combating terrorism.”

- Strategy Paper of the European Initiative for Democracy and Human Rights 2007-2010

“Children’s rights form part of the universal human rights that the EU is committed to respect under international and European treaties. In particular the UN Convention on the Rights of the Child (CRC)”

- Commission COMMUNICATION A Special Place for Children in the EU External Action (2008)

Similarly, the *EU Guidance Note on Disability and Development* observes that the *UN Standard Rules on the Equalisation of Persons with Disabilities* forms the basis for the human rights-based approach to disability and which the EU should follow in its work on development co-operation.⁴¹

Frequently, however, development policy documents employ *euphemisms* instead of the explicit language of human rights law. Examples include use of terms such as “needs”, “equity” etc to describe matters that are human rights or “citizens’ rights” being used in contexts where “human rights” apply. Similarly conceptual formulations such as “good governance” are used in a way that avoids reference to applicable human rights standards in what has been described as an “attempt to de-politicise development discourse”.⁴² These various deficiencies may in part be due to the flood of instruments, particularly, Communications, produced in recent years, some of which would seem not to have been duly considered for accuracy in terms of international human rights law before adoption. Problems may also stem from drafters reformulating concepts instead of using explicit international legal standards. It may also be, as some interlocutors with this review suggest, that vagueness of language is a product of “horse-trading” between EU Member States and institutions.

The 2006 Commission Communication: ‘*Governance in the European consensus on development*’⁴⁴ deploys a “democratic governance” definition that, on the face of it, acknowledges human rights but puts international legal standards on a par with ideological choices by including in the definition “the promotion of sustainable economic growth and social cohesion in a climate conducive to private investment”. The 2003 *Commission Communication on Governance and Development* offers a striking, and alarming, example of the rationale in some quarters for the avoidance of human rights language and “the disaggregation of governance and other topics such as human rights”. It states: “The real value of the concept of governance is that it provides a terminology that is more pragmatic than democracy, human rights, etc.”⁴⁵

⁴¹ UN Resolution 48/96, 20 December 1993.

⁴² BOND, *Ensuring Civil Society Participation in EC Development Assistance Programmes* (2004).

⁴⁴ COM(2006) 421.

⁴⁵ Commission Communication, *Governance and Development*, COM(2003) 615 fin.

Whatever the cause, the use of formulations such as “good governance”, “democracy” as if they are *alternatives* to human rights concepts serves to dilute the universal legal clarity provided by explicit use of human rights terminology.

b) Language used must be legally accurate.

This requires that policy documents⁴⁶ accurately set out the *hierarchy of relevant norms and standards*. Thus, for example, Commission Communication, *Children in EU External Action* states that:

*“Children’s rights are a part of universal human rights that the EU is committed to respect under international and European treaties, in particular the UN Convention on the Rights of the Child (CRC) and its two Optional Protocols. The CRC establishes four general principles that apply to all actions affecting children: non-discrimination (Article 2), the best interests of the child (Article 3), the right of the child to survival and development (Article 6) and respect for the views of the child (Article 12). The European Union also embraces the Millennium Declaration and the Millennium Development Goals.”*⁴⁷

A range of other development policy documents, however, misrepresent the hierarchical relationship between human rights law and the Millennium Development Goals (MDGs).⁴⁸ The MDGs are policy commitments by states reflecting political declarations they made in the 1990s world conferences.⁴⁹ While described as the “galvanising framework for development”,⁵⁰ they were not intended to, nor should they be presented, as an alternative to states’ existing legal obligations regarding health, education, poverty etc. The MDGs have been criticised for focusing on limited quantitative goals, and failing to capture other elements essential for human rights based development – such as addressing power relations in society. HRBA requires that the MDGs be interpreted and applied so as to help vindicate human rights.⁵¹

“Approaches to achieve the MDGs must be based on human rights, with attention not only to development results, but also to the ways in which development is pursued”
- Mark Malloch Brown, UNDP Administrator, 2005

The stated principal objective of the EU *Strategy for Africa*, for example, illustrates this misunderstanding. Rather than adopting a human rights based approach to development as the basis for achieving the MDGs, the Strategy compartmentalises, human rights, listing them as a sub-element of one of the nine primary activity areas. In failing to identify human rights as the over-arching means and goal of development, this approach also implies that human rights somehow are not at the heart of the other listed development areas.⁵² As one civil society perspective puts it; “it seems that human rights are only

⁴⁶ The imperative applies no less to legal instruments of the EU. *The EU Charter of Fundamental Rights of The European Union*, for example, refers in Article 14 to “the possibility to receive free compulsory education” a weaker formulation than the Child Rights Convention which provides in Art. 28(1), that; “States Parties ... shall, make primary education compulsory and available free to all ...”

⁴⁷ Commission Communication, *A Special Place for Children in the EU External Action*, COM(2008) 55 final.

⁴⁸ The Commissions Development Policies website adopts a similar approach with the opening statement that; “The primary and overarching objective of EU development policy is the eradication of poverty in the context of sustainable development, including the achievement of the Millennium Development Goals (MDGs).” http://ec.europa.eu/development/policiesgen_en.cfm

⁴⁹ For details of these conferences see www.unhcr.ch/development/

⁵⁰ *Financing for Development and Aid Effectiveness: Delivering more, better and faster* - Conclusions of the Council and the Representatives of the Governments of the Member States meeting within the Council, 11 April 2006.

⁵¹ Thus, for example, UNDP’s *Practice Note on Poverty Reduction and Human Rights* speaks of a “human rights-based approach in tailoring and customising the MDG targets to the local context”. [www.undp.org/governance/docs/HRPN_\(poverty\)En.pdf](http://www.undp.org/governance/docs/HRPN_(poverty)En.pdf)

⁵² The nine listed development areas are “conflict prevention and fragile states” “Trade and regional integration”; “environment and sustainable management of natural resources”; “infrastructure, communications and transport”; “water and energy”; “rural development, territorial planning, agriculture and food security”; “social cohesion and employment”.

considered as a means to its primary goal: good governance and not as an approach for broader development processes.”⁵³

More conceptual confusion flows from the fact that Part II of the *Consensus on Development* lists “the promotion of human rights” as a cross-cutting issue, distinct from “gender equality”, “democracy”, “good governance”, “children’s rights and indigenous peoples”, “environmental sustainability” and “combating HIV/AIDS”.

Conceptual coherence appears to be a challenge *between* and sometimes *within* policies.⁵⁴ The *Development Consensus*, for example, places “governance, democracy, human rights and support for economic and institutional reforms” separate from “human development”. It lists eight development “roles” for the European Commission distinguishing its role in “promoting development best practice” on the one hand and “promoting democracy, human rights, good governance and respect for international law” on the other, de-linking development from human rights by confining “human rights” to “democracy.”⁵⁵

Further conceptual incoherence sees “human rights” identified as a “cross-cutting issue” to be mainstreamed ‘into’ democracy, good governance, rights of children and indigenous peoples, gender equality, environmental sustainability and the fight against HIV/AIDS.

Combined with this categorisation, international treaty obligations risk being undermined by a lack of clarity that the *political commitments* of development policies are subject to the pre-existing *binding legal obligations*. This means that where a particular policy formulation is vague or open to more than one interpretation, the interpretation which is in line with international law requirements is the one that must prevail. Similarly, internal EU instruments, such as 2001 Communication, *The EU’s Role in Promoting Human Rights & Democratisation in Third Countries*,⁵⁶ must be read *subject to* the international treaty obligations of all the states concerned and not as an alternative legal framework.

“There is a need to end the false dichotomy of civil/political vs. social/economic rights because they are deeply interconnected in the development process, which needs a right-based approach. All rights are universal and inter-connected.

- Report of Roundtable, ‘Consolidation of Social Rights’, European Development Days Proceedings, 13-17 November 2006

Accurate use of human rights language also requires recognition of the legal principle that all human rights are *inter-related* and *inter-dependent*. This position is acknowledged in the 2007 *EU Annual Human Rights Report* which states that the EU attaches “the same importance to economic, social and cultural rights as to civil and political rights”.⁵⁷ However, this position is not reflected in development policy documents. Instead, there is repeated inaccurate use of ‘human rights’ as a synonym for civil and political rights and a general failure to acknowledge the legally binding status of socio-economic rights.⁵⁸

⁵³ Richard, *The new EU-Africa Strategy: a Civil Society perspective on “political dialogue” aspects* (2006).

⁵⁴ On the positive side as an example of complimentary coherence, the *EIDHR Strategy Paper 2007-2010* acknowledges “the continuing importance of support to civil society and human rights defenders to help empower citizens, allow them to claim their rights and build and sustain momentum for change and political reform”. This in turn is reinforced by *Guidelines on Human Rights Defenders* which explicitly acknowledges that human rights defenders include those active on socio-economic as well as on civil/political issues.

⁵⁵ Similar confusion is found in the Barcelona Declaration adopted at the Euro-Mediterranean Conference in November 1995.

⁵⁶ COM 252/2001. While the Communication does offer an explicit statement that “The European Union seeks to uphold the universality and indivisibility of human rights - civil, political, economic, social and cultural” there is general consensus that it has not resulted in systematic and coherent mainstreaming of human rights.

⁵⁷ According to the Annual Report on Human Rights 2007, jointly prepared by Presidency of the EU, the European Commission, and the General Secretariat of the Council.

⁵⁸ E.g. *Annual report on the European Community’s development policy and external assistance in 2006*.

The general failure to meet the standard required by the first principle of HRBA is illustrated by food aid policy. A positive shift is the policy shift food aid as part of the disposal of surplus EU food production and the decoupling of the Common Agricultural policy and food aid as part of overseas development policy. However, policy in the area of food aid has yet to be framed in human rights terms. Since the appointment of the first UN Special Rapporteur on the Right to Food twenty-five years ago, a comprehensive definition of the right to food has evolved:

"... the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear".⁶³

In 1999 the United Nations' expert Committee on Economic, Social and Cultural Rights released its landmark *General Comment 12 on The Right to Adequate Food*. This sets out the immediate, minimum obligation of every State concerning the right to food.

"It is immediately obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger."

Detailed guidance is given on each component of this obligation, as well as the other immediate obligations, (relating to non-discrimination and non-retrogression) in the enjoyment of the right to adequate food. Thus, the impact of food aid interventions is to be measured according to defined legal concepts set out by the international expert bodies authorized by states to interpret the legal framework.⁶⁶

"Availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture"

"Accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights." - UN General Comment 12, The Right to Adequate Food (1999)

Yet, the Commission Communication *Advancing the Food Security Agenda to Achieve the MDGs* makes clear from the outset that the clear, immediate human rights obligations above do not form the basis for EU policy. This is evidenced by absence of any reference to the detailed legal content of the right to food. Instead one finds vague political declarations

⁶³ Derived from Article 11 of the ICESCR and General Comment 12.

⁶⁶ This means EC food aid policy that is compliant with Art 11 of ICESCR, Article 6 of the ICCPR on the right to life etc. Food security engages a web of legal standards according to the context involved ranging from Article 2 of the Genocide Convention; Articles 20 and 23 of Refugee Convention; Article 12 of *Convention on Elimination of All Forms of Discrimination Against Women*; and Articles 24 and 27 of *Convention on the Right of Child*. The regional level adds a further tier to this framework with instruments such as the *San Salvador Additional Protocol to the American Convention on Human Rights* Article 12) , the *European Social Charter* Article 4(1) and the *African Charter on Human and People's Rights* (Article 21).

of intent and a fifteen year time-frame for achieving what are immediate legal obligations.⁶⁷ Factors contributing to food insecurity are set out – but with a notable avoidance of any reference to food insecurity as a denial of human rights in itself, or as a result of the denial of a range of other human rights.

The overall effect is that development assistance (in this case delivered in partnership with UN agencies such as the *UN Food and Agriculture Organisation*) undermines UN standard-setting by failing to situate policies in line with pre-existing legal obligations.

c) Policy coherence requires adherence to the applicable legal framework.

Policies in the area of development (as defined by EU) cannot be viewed in isolation from other spheres. It has long been recognized, for example, that humanitarian crises can stem from failed development interventions; that crises requiring emergency responses can endure for years, sometimes decades, and that humanitarian aid must include medium and long term development planning. The need, therefore, for humanitarian aid as well as development to adopt HRBA could not be clearer. Humanitarian crises expose individuals to a range of human rights violations, including those arising from natural disasters which disproportionately impact upon those vulnerable to human rights violations. Similarly, EU progress towards human rights based development policies is dependent upon complimentary EU policies regarding conflict, security etc. The legal imperative that development policies be human rights based applies no less in the context of foreign, security and defence policies.

This issue of policy coherence has been in receipt of increased EU attention. In 2007 the EU's first *Report on Policy Coherence for Development* highlighted the interactions and complementarities between development policy and twelve other internal and external EU policies that impact on developing countries.⁶⁸ The report is the first detailed consideration of the relationship between internal EC policies and its external development activities and reaffirmed the 2005 commitment by the Commission that policy coherence for development is a priority. Building upon a growing focus since the 1970s on coordination, complementarity and coherence in development, it highlights how EU policies ranging from bio-fuels, Economic Partnership Agreements and fisheries can have the effect of undermining development objectives. While premised on the understanding that internal policies negatively affecting development objectives are to be avoided, the understanding of coherence is limited to the objectives of meeting the MDGs, without reference to the applicable international human rights framework.

“In an era when universality and indivisibility are the touchstones of human rights, an external policy which is not underpinned by a comparably comprehensive and authentic internal policy can have no hope of being taken seriously. -
Alston & Weiler, An ‘Ever Closer Union’ in Need of a Human Rights Policy (1998)

Thus, while the *Policy Coherence* report acknowledges that the EU policy regarding the TRIPs Agreement and pricing of essential medicines is a fundamental stumbling block to stated development commitments in the health sector, it fails to acknowledge that issues such as licensing of essential medicines are also matters of human rights. The UN Committee on Economic, Social and Cultural Rights has, for example, repeatedly urged duty-bearers such as the EU to exercise the TRIPs flexibility clauses in order to ensure access to generic medicine as part of the enjoyment of the right to health.

⁶⁷ Commission Communication, *A thematic strategy for food security: Advancing the food security agenda to achieve the Millennium Development Goals*, COM(2006) 21 final.

⁶⁸ Trade; environment; climate change; security; agriculture; fisheries; social dimension of globalisation; employment and decent work; migration; research and innovation; information society; transport; and energy.

In terms of human rights based approaches the EU's *Report on Policy Coherence for Development* is both a potential step forward and at the same time a lost opportunity. Recognising that development is interrelated with other policy spheres is a fundamental starting point. However, the ultimate test of policy coherence is whether all policies adhere to the applicable international human rights framework. Policies that do not accurately reflect the over-arching legal framework that binds them are by definition incoherent. The success of human rights based development policy is ultimately dependent on a consistent approach being taken across the policy spectrum, internal as well as external, in socio-economic as well as "political" spheres, from arms export to agricultural policy.

Conclusion regarding Principle 1:

EU development policies do not systematically meet the first requirement of HRBA - that development be framed in human rights terms, with explicit, accurate and consistent use of human rights language. This risks diverting states from common international standards to which they have legally committed through their treaty ratification - undermining the international rule of law.

A range of factors are suggested for this failure, ranging from the demands of time and resources impeding systematic coherent input in policy drafting processes necessary to ensure legal accuracy. However, there is also some evidence of a political level revisionism designed to substitute human rights law standards with vaguer political commitments. Whatever the cause, the scale of the challenge is such that responsibility must be taken at political level in the institutions and by the Member States.

While a range of development policies fail the HRBA test in the first instance, by not satisfying this first principle, the following sections briefly survey the extent to which policies address the four remaining HRBA principles.

2.2 Principle 2: Empowerment

An acknowledged root cause of poverty is powerlessness - the inability to demand human rights change, often stemming from lack of access, or denial of access to information, education and decision-making processes. Violations of the human rights of the disadvantaged, marginalised and impoverished are fuelled by low awareness of human rights and low expectations of change. Where people are unaware of their human rights they cannot effectively organise to assert them.

The HRBA principle of empowerment requires that development policies provide for access to information and awareness of decision-making processes, by both rights-holders and duty-holders. Most fundamentally, policies must enhance ability to demand rights and to hold duty-bearers accountable. The antithesis of development that empowers is development that promotes supplication or a sense of charity. Ensuring that the HRBA principle of empowerment is met is a precondition for ensuring that the principles of participation and accountability can be delivered.



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An example of an EC policy document specifically addressing empowerment as a human right is the 2007 *Communication on Children in EU External Action*. The Communication commits the EU to “address the lack of third countries actual capacity to meet their international obligations ... by empowering children and adolescents to play an active role in those matters that affect them directly”.⁷⁰ In similar vein, the Communication, *Towards an EU Strategy on the Rights of the Child* acknowledges that “Children are able to exercise their rights only if they are properly aware of them and in a position to use them.”⁷¹

Development policies that adopt a clear position regarding empowerment as a human right have in common the fact that civil society actors committed to HRBA have been actively engaged in their formulation.⁷² However, generally development policies do not address empowerment as a *human right*, with specific content deriving from international human rights law and a necessary pre-condition for the vindication of other human rights.

A key pre-condition for human rights based development is *access to information*. The DG Development *External Assistance Communication Strategy 2005–2009* states that “to become an effective and transparent actor in development cooperation, the EU in general, and the RELEX family and DG Development in particular, must be able to explain policy initiatives in clear language to their various target audiences.”⁷³ However, information is seen by the Commission as an issue of effectiveness and transparency – not necessarily as a human right of the ‘various target audiences’. Provision of any information may empower, but this principle is truly respected only when information is provided on the basis of an explicit acknowledgment that access to information is a right, and distinct from other objectives such as increased donor visibility.⁷⁴ EuropeAid, for example, has a set of *visibility guidelines*, compulsory for all implementing partners, with the stated purpose of helping to raise the general profile of the EU across the world.⁷⁵

“If the poor are to enjoy the right to participate in poverty reduction strategies, they must be free to organize without restriction (right of association), to meet without impediment (right of assembly), and to say what they want without intimidation (freedom of expression); they must know the relevant facts (right to information) and they must enjoy an elementary level of economic security and well-being (right to a reasonable standard of living and associated rights).” - OHCHR, **Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies**

Conclusion regarding Principle 2:

Development policies reviewed vary as to their understanding of empowerment in the development relationship. While all development policy documents are marked by prevalent use of language such as ‘consultation’ and ‘ownership’, these concepts are sometimes used so as to suggest empowerment is seen as fundamental to targeted cost-effective development, but not necessarily as a matter of right.

⁷⁰ Commission Communication, *A special place for Children in EU external Action*, COM(2008) 55 final.

⁷¹ COM(2006) 367 final.

⁷² The Communication “Towards an EU Strategy on the Rights of the Child” saw a range of organisations and the European Parliament facilitate input of views based through circulation child-friendly translations of the Communication.

⁷³ http://ec.europa.eu/development/body/tmp_docs/external_strategy_en.pdf

⁷⁴ For example, European Development Days are annual events, launched in 2006, designed to enhance public awareness about development cooperation and strengthen the effectiveness of EU development assistance. The *EU strategy framework for Development Education and Awareness Raising* aims, *inter alia*, to contribute to: “an increase in the European public’s ability to enact their own and support others’ right to development”, specifically stating that the strategy is not concerned with “charity, organisational publicity or public relations exercises”.

www.deeep.org/fileadmin/user_upload/downloads/Consensus_on_DE/Final_Euro_DEAR_statement_with_annexes_301007.pdf

⁷⁵ http://ec.europa.eu/europeaid/work/visibility/documents/europeaid_visibility_guidelines_en.pdf

2.3 Principle 3: Participation

What is required of EU development policies under HRBA Principle 3? The right to participate in decisions which affect one's life is both a step towards enjoying human rights - and is a human right in itself. As with the other HRBA principles, the right to participate is a composite concept, which, to meet the international law definition of being "active, free and meaningful", requires the vindication of a range of rights; freedom of expression, association, assembly, the right to education, the right to receive and impart information, etc. It is underpinned by the principle of non-discrimination and the duty on states to make these human rights treaty obligations widely understood.⁷⁶

"Technocratic or instrumentalised 'participation rhetoric' continues in all too many cases, without reform in core mandates, policies or spending allocation".

"In DG External Relations and EuropeAid, officials often assume that the word 'participation' means funding NGO projects, and not much else".

- BOND, Implementors or Actors? Reviewing civil society's role in European Community development assistance in Kenya, Senegal, Bolivia and India (2004)

While internally within the EU, political, economic and social participation has long been seen as linked to the democratic legitimacy of the Union - it is also a fundamental element of human rights in external spheres. Reference to participation is now commonplace in development discourse as an essential element of good development practice to improve relevance and effectiveness of programming. As the Commission *Guidance Note on Disability and Development* succinctly puts it: "Nobody knows as much about disability and the processes of exclusion as disabled people themselves." The importance of participatory monitoring and evaluation have in recent decades been acknowledged by the EU and development actors generally. However, this evolution has not always been driven by acknowledgement of the human right to participate but rather by donors seeking "management by results", emphasis on cost effectiveness, moves towards decentralisation and devolution etc.⁷⁷ Development that acknowledges participation as a human right may be more cost-effective and targeted, but it is qualitatively distinguished by its role in framing the development power relationship. Thus, the key issue here is not whether EC policies refer to participation as good development practice, but whether it commits to ensuring 'active, free and meaningful' participation *as a right*, from policy formulation through to programming, implementation and M&E, with adequate allocation of time and material resources.

The *Consensus on Development* lists "participation of civil society" as a "Common Principle", with a commitment to build capacity of non-state actors in order "to strengthen their voice in development", as well as undertaking to "pay particular attention to development education and raising awareness among EU citizens." However, the document does not set out the HRBA meaning of the right to participate,⁸¹ with a range of terminology ("involvement", "consultation", "ownership") used without clarity as to any inherent legal obligation to ensure participation.

Likewise, the *Strategy for Africa* outlines the need for full participation by non-state actors on the basis that it will "to strengthen ownership and improve service delivery for the poor".

⁷⁶ See Kenny, *The Right to Participate in International Human Rights Fieldwork*, (2006) www.ihnetwork.org/human-rights-fieldwork.htm. Participation is also referred to in: the Universal Declaration on Human Rights (the right to take part in the government, the will of the people as the basis of the authority of government, the right to vote); the International Covenant on Civil and Political Rights (the right to take part in the conduct of public affairs, to vote); the Convention on the Rights of the Child (respect for the views of the child and 'safe spaces' in which they can be expressed); the Convention on the Elimination of Discrimination Against Women (participation of girls is a principle of 'paramount consideration', participation of rural women in the public and political life of their communities, and in particular in the design and implementation of development planning).

⁷⁷ Cornwall, *Making spaces, changing places: situating participation in development* (2002, IDS Working Paper 170).

⁸¹ The Consensus does not explicitly recognise this participation as a matter of right, even in the narrow case of indigenous peoples where stronger language is used, Para. 103.

The Strategy also notes that addressing land degradation “requires the participation of the resource users” - but does not set out the right to participate as such.⁸²

Commission Communication *Governance In The European Consensus On Development* identifies participatory evaluations as being about “ownership, participation and transparency” and “likely to stimulate demand for reform and thereby reinforce the processes of democratic governance”. This rightly highlights the importance of the demand for change – yet the Communication fails to take the opportunity to explicitly acknowledge this as a matter of human rights.⁸³

The Communication on *Participation of non-state actors in EC development policy*⁸⁴ has been criticised for not even involving “consultation with Southern civil society and little with European NGOs.”⁸⁵ Even the *Guidelines on Principles and Good Practices for the Participation of Non-State Actors in development dialogues and consultations* do not express participation in development as a matter of human rights, distinguishing “human rights” from “community based poverty reduction activities.”⁸⁶ Similarly, the Commission’s Communication *Advancing the Food Security Agenda to Achieve the MDGs* refers to ‘a participatory approach’ as a programming principle – not as a human right and the 2004 ECHO Policy Guidelines regarding children affected by humanitarian crises make no reference to participation (as of right or otherwise) addressing safe water, sanitation and food as “child needs”.



More positively, *Towards an EU Strategy on the Rights of the Child* clearly situates participation by children in processes affecting them as deriving from international law obligations.

“As recognised in Article 12 of the UNCRC, children need to express their views in dialogues and decisions affecting their lives. The Commission will promote and strengthen networking and children’s representation in the EU and globally, and it will gradually and formally include them in all consultations and actions related to their rights and needs.”

Similarly, clarity and legal accuracy on the right to participate is found in the Commission Communication, *A Special Place for Children in the EU External Action*.⁸⁷ “The inaudibility [of children’s voices] is in breach of Article 12 of the Convention on the Rights of the Child.”

Conclusion regarding Principle 3:

While development policies have much to say about participation of development beneficiaries, they fail to systematically provide for a *right to participate* in EU development aid processes. As with the principle of empowerment, the many references to participation in policy documents view participation from an aid effectiveness perspective, not as a matter of rights. There is a critical need for policy guidance for those tasked with formulating participation processes, at delegation level for example, which highlights the

⁸² COM(2005) 489 final.

⁸³ *Towards a harmonised approach within the European Union* COM(2006) 421 final.

⁸⁴ COM/2002/0598 <http://europa.eu.int/servlet/portail/>

⁸⁵ BOND, *Ensuring Civil Society Participation in EC Development Assistance Programmes*, (2004).

⁸⁶ *Guidelines on good practices on Principles and Good Practices for the Participation of Non-State Actors in the development dialogues and consultations*, November 2004.

⁸⁷ COM(2008) 55 final.

international law definition of “active, free and meaningful” participation. While recent momentum on policy commitment in the area of childrens’ rights offers an opportunity for lessons learned for the future, a need for systemic policy level clarity remains if participation in development is to move from being subject to the will and capacity of individuals, to being a matter of accountable institutional commitment.

2.4 Principle 4: Non-discrimination & vulnerable groups

What does the fourth principle of HRBA require of EU development policy? As with the other four HRBA principles, this principle also derives directly from the international law framework and is a cornerstone of the protection of human rights. The prohibition of discrimination in the enjoyment of human rights and prioritisation of vulnerable groups is a cross-cutting issue for all human rights as illustrated by its express inclusion in all human rights treaties.

“The European Community and its Member States have legally and politically committed themselves to the promotion of gender equality in all their actions, including in their development assistance. This is enshrined in various international agreements and declarations such as Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979), the Cairo Programme of Action (1994), the Beijing Platform for Action (1995), and the Millennium Declaration (2000) - **EC Programming Guidelines for Gender Equality (2006)**”



It is of crucial importance to understanding this principle that vulnerability is defined as *vulnerability to human rights violations* – which will vary according to circumstances and over time. A range of groups in society are vulnerable to human rights violations at any given time by virtue of their status, their difference or their exclusion from power. Different contexts may see individuals charged with particular offences (moral, political etc) vulnerable to torture, women and children of a particular ethnicity, social class or circumstance may be more or less vulnerable to non-state violence than women and children generally etc. Respecting HRBA Principle 4 is *not* a matter of assuming that all women and children are, *a priori*, vulnerable, as is often the case in development policies. The *human rights concept of vulnerability* is multi-layered, fluid and responsive, encompassing different groups in different societies and changes over time. As a starting point for human rights based strategies and practice, this concept needs to be reflected in EU development policies.

Illustrating this complexity, the *EC Guidance Note on Disability and Development* notes that “Disabled women and girls face double exploitation and discrimination. They are often excluded from education, health services, family life and employment and experience high rates of sexual abuse with the high risk of contracting HIV/AIDS.”

“Disabled people want equal rights, not charity. EU policy on development co-operation, as well as the supporting actions of the EU country delegations, must reflect this approach“ – **EC Guidance Note on Disability & Development (2004)**

Gender equality is a longstanding priority of EU development policy, and a cross-cutting theme.

The extent to which it is clearly situated as a human rights issue varies somewhat from one policy document to another. The 2007 Communication on *Gender Equality and Women Empowerment in Development Cooperation* offers the clear statement that: “Gender equality is recognised by the EU as a fundamental human right and as a necessary condition for the achievement of the EU objectives of growth, full employment and social

cohesion.⁸⁹ Meanwhile, the DG Development website sees gender equality as an “important goal in its own right, a cross-cutting issue and an issue of economic and social justice”. Despite strong statements in the 2006 *Programming Guidelines for Gender Equality*, the human rights basis required to build real gender equality is generally excised from policy commitment, reducing gender equality to being “... instrumental for achieving all the Millennium Development Goals (MDGs) and for reducing and eventually eradicating poverty.”⁹⁰ It speaks of mainstreaming “*priorities and needs*” of women and men of all ages in key EU development and cooperation policies and programmes – but not their human rights.

Conclusion regarding Principle 4:

Ultimately the test of success of a human rights based approach is the extent to which it encompasses and addresses as priorities the human rights of individuals or groups who are vulnerable to human rights violations, including discrimination. However, overarching policy documents such as the *Consensus on Development* do not address the full spectrum of prohibited discrimination as understood by international human rights law or frame vulnerability as a matter of human rights violations. Where development policies and other instruments are coherent in terms of situating vulnerability or discrimination within the human rights framework, there is evidence that they are the result of concerted lobbying and processes that themselves sought to be human rights based.

2.5 Principle 5: Accountability

Accountability has become something of a “buzzword in contemporary development debates ... with many competing ideas, interpretations and practices”.⁹⁴ The issue of accountability for EU development aid has had considerable attention due to the OECD *Paris Declaration* and evolving scrutiny by the European civil society. Yet it has been highlighted that:

*“a clear tension between upward accountability towards EU Member States and citizens and downward accountability towards partner governments and ultimately poor communities. This results in a focus on accountancy over accounting for impact.”*⁹⁵

Certain governance initiatives⁹⁶ are designed to promote a version of accountability: that policies and practices conform to agreed values. However, their voluntary nature means that while they may complement the human rights concept of accountability, they are not an alternative. Even in the absence of human rights language, the workings and results of such processes must not undermine the human rights obligations of participants.

The HRBA principle of accountability includes, but is not to be confused with “good programming practice” – certainly fiscal accountability does not *by itself* comply with this HRBA principle. Similarly, visibility for the purposes of public

⁸⁹ Communication, *Gender Equality and Women Empowerment in Development Cooperation*, COM(2007) 100 final.

⁹⁰ DG Dev website, see also for a compilation of EC instruments and tools on mainstreaming gender in development http://ec.europa.eu/development/policies/crosscutting/genderequ_en.cfm

⁹⁴ IDS, *Making Accountability Count*, POLICY BRIEFING, November 2006.

⁹⁵ *Whither EC Aid? From accountancy to accountability: towards a new approach for the assessment of development cooperation*, (2008) Research report by ECDPM and Action Aid International on the future of European Commission Aid

⁹⁶ Such as the Governance Initiative and NEPAD’s African Peer Review Mechanism (APRM). The APRM mandate is “to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance”.

relations is not to be confused with transparency for the purposes of enhancing accountability to rights-holders.

As is the case with each of the other HRBA principles, the human rights concept of accountability has a specific meaning derived from the treaty standards. The HRBA principle of accountability means accountability for meeting human rights obligations, including applying the above four HRBA principles: explicit and accurate use of the legal framework; empowerment, participation and prioritizing vulnerable groups to achieve human rights impact.

Accountability is a composite human right involving a range of rights: to information, to due process, to effective remedies, to equal treatment, etc. While it is not exclusively about prosecution or punishment, circumstances may require this. In the context of development June 2008 saw a further advance on this front with the UN Human Rights Council approving by consensus an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. A step towards enhanced accountability for ensuring economic, social and cultural rights was thereby taken through a right to submit a written communication to the Treaty Committee for examination.

The HRBA principle of accountability is one of the defining features of any organisation purporting to apply the *rule of law*. Generally, this principle includes accountability for transparent decision-making – both political and administrative. It requires appropriate human rights based benchmarks by which progress is measured, as well as reward and sanction for success and failure in achieving human rights change:



"States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law."⁹⁸

Accountability should encompass both process (how decision are taken, policies formulated etc) and result (impact on human rights of policies/practice/ budgets/programmes). Thus, the principle requires that policies are reinforced by appropriate procedures that:

- a) systematically identify performance in applying the principles of HRBA; and
- b) ensure accountability for gaps or omissions through legal, administrative, political means as appropriate. This includes procedures for the management of staff, performance appraisal – all the way through to accountability to the rights-holders themselves and to the Member States in whose name it acts.

There are efforts at addressing some form of EU development accountability through 'outcome-based conditionality' and 'results based' approaches. However, where development policies do address accountability, such as in monitoring and evaluation, they do not clearly state that impact and effectiveness are to be measured in terms of *human*

⁹⁸ *The Human Rights Based Approach to Development Cooperation - Towards a Common Understanding Among UN Agencies*, www.undp.org/governance/docshurist/030616CommonUnderstanding.doc

rights change, availing of the range of measurable detail provided by international law and premised upon systematic recognition of beneficiaries' *right to participate* in evaluations of programmes affecting them. Without such policies "[evaluation] results are often not made public, and the quality of the evaluations is criticised for taking a "checklist" approach on activities, rather than a fundamental look at the impact of programmes."⁹⁹ Properly resourced and mandated, initiatives by the Inter-Service Quality Support Group and the planned input into monitoring of the *European Forum for the Rights of the Child* are potential vehicles for advancing human rights based monitoring and evaluation. Commitments such as those in the Communication on *Children in External Action* to "improving data bases and surveillance systems and the development of indicators to gather, analyse and promote dissemination of child-rights disaggregated related data" represent a similar opportunity.¹⁰⁰ Weighed against this, however, Commission delegations (now receiving greatly decentralised programming authority from Brussels) continue to raise issues of lack of capacity to promote human rights based development.

Conclusion regarding Principle 5:

A range of EU development policies appear to be formulated and adopted without reference to others, with little consistent vision of HRBA uniting them. For minimal accountability, there is a need for clear responsibility (and necessary resources) within the policy-making process to vet *ALL* policies and guidelines for coherence with the applicable international law standards.

Crucially, to apply this principle EU development policy must ensure not only the capacities of rights holders to claim and exercise their rights, but also the capacity of duty bearers to fulfill human rights obligations – including EC officials. For example, it must ensure the allocation of necessary resources, capacity building and accountability for delivery of HRBA. There is need to address the lack of capacity to interpret policies in line with applicable human rights law, to develop and apply indicators for measuring human rights change and to ensure that contracted experts design, deliver and evaluate according in line with HRBA. Recent policy momentum on children's rights have been accompanied a commitment to strengthen the *Interservice Quality Support Group* and Evaluation Unit, with staff specialised in mainstreaming children's rights, as well as training programmes and seminars to enhance staff capacity.

The sections above considering the four previous HRBA principles highlight significant policy-level misunderstanding of the obligation to ensure that development assistance is human rights based. The accountability principle of HRBA applies not only to development assistance but to the development policies and the policy-making processes.

⁹⁹ Eberlei & Auclair, *The EU's Footprint in the South: does European Community development cooperation make a difference for the poor?* (2007, CIDSE & Caritas Europa).

¹⁰⁰ In contrast, the governance profile of the 2006 Communication, *Governance in the European consensus on development* is based on indicators from the *Economist Intelligence Unit*, with no reference to the array of work on indicators and measurements of human rights progress available from UN human rights treaty bodies, Special Rapporteurs, etc.

3. Overall Findings and Recommendations

3.1 Findings

This review of development policies has yielded examples, in particular concerning children and disability, of accurate statements of the human rights law framework and commitments to promoting the principles of HRBA. Yet a range of other development policies contain distortions and inaccuracies regarding applicable human rights law, and inadvertently or intentionally eschew human rights based development.

- Despite increasing inclusion of human rights language in policy documents, a range of development policies and related instruments (e.g. guidelines, regional/country strategy papers) do not coherently or consistently reflect the applicable international law framework that governs EU development aid.
- As the central stated goal, attaining the Millennium Development Goals, is incorrectly placed at the peak of the hierarchy of objectives. This does not accurately acknowledge the MDGs' standing as political commitments *subject to human rights law*.

But does policy really matter? Is it not, after all, just a matter of words? The UN Independent Expert on the Right to Development concluded in 2002 that the right to development has not been realized because *appropriate policies for realizing the rights based process of development have rarely been adopted*.¹¹⁵ Policy is the first step for transposing legal obligations into practice. Just as each state is obliged to ensure that its domestic arrangements conform with its international obligations, so too the EU has an obligation to ensure that policy documents which guide its development programming provide legal clarity and accuracy to its institutions and officials. The EU's role as the biggest provider of development aid in the world makes this all the more imperative. Without such clarity and accuracy, human rights obligations risk being reduced to optional extras, being diluted in difficult circumstances or in the face of time or budget constraints, being traded off against other perceived benefits, in the name of pragmatism.

3.2 Recommendations

While their resources, mandates, legal and other responsibilities may vary, the recommendations outlined here apply to the full spectrum of development actors. They apply to development beneficiaries in developing countries as well as EU Citizens, in whose name development policies are formulated, and with whose taxes development assistance is delivered. They apply to developing world and EU civil society, to EU Member States and developing country governments.



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1. Ensure that the policy framework provides a clear and accurate definition of human rights based development, capturing human rights as both *the means* and *the goal* of development.
2. Coherence should be expressly defined and interpreted to mean coherence with the five principles of HRBA.¹¹⁷ Effectiveness should be defined and interpreted to mean positive human rights process and impact. The legal requirements of HRBA should be reinforced, *not replaced*, by policy commitments, such as the Millennium Development Goals, *Paris Declaration on Aid Effectiveness*, etc. Progress towards these political goals should be explicitly measured in human rights terms with appropriate baselines, indicators and HRBA methodologies.
3. All policies, whether directly or indirectly relating to development, should be subject to systematic scrutiny for legal accuracy before adoption. This includes accuracy with regard to the hierarchy of norms (legal norms vis-à-vis MDGs, international treaties vis-à-vis policy documents) Moreover, the *processes* of formulating development policies should also meet the criteria of HRBA.
4. Development actors seeking to influence EU development policy should apply HRBA as the overarching framework for their advocacy (individually, in networks and in conjunction with developing country partners). They should target key development moments (eg periodic reviews of aid effectiveness) and structures (eg *EU-Africa Forum on Human Rights*, the *Consensus on Development* proposals regarding development research centres etc) to raise awareness of, and commitment to, HRBA.¹¹⁸
5. Development policies and programming should build upon the work of others advancing HRBA, including key UN agencies. OHCHR, as the UN system's focal point for ensuring HRBA, should input more actively into EU policy formation, proactively sharing lessons learned, as well as lobbying EU and Member States regarding their legal obligations.
6. Awareness-raising and education regarding development assistance, across EU and developing states, should be based on HRBA, specifically designed to empower people to demand human rights based development and to build their capacity to participate, actively, freely and meaningfully, in processes that impact on their lives.

¹¹⁷ Coherence should also encompass development interventions of other organisations mandated to apply HRBA, and particularly, UN Development Assistance Framework (UNDAF) at country level.

¹¹⁸ For example CONCORD/Aid Watch, *Delivering better aid: An opportunity for European Union leadership in the fight against global poverty*, (2008).

7. Member States should ensure that their obligations under international law are not undermined by EU policies and programmes. As part of doing so, policies that are imprecise or deficient in terms of HRBA must be interpreted to comply with international human rights standards. Necessary capacity building and resources need to be matched by legal and professional accountability. This requirement should be set down in a document of the highest normative value explicitly acknowledging human rights as the over-arching legal framework for all policies.
8. European Parliament input into development policy and scrutiny (in particular, through its Development Committee and Sub-committee on Human Rights) should be systematically framed in terms of HRBA.
9. Given its executive lead role, the European Commission should conduct an organisational review to identify steps needed to give effect to HRBA in policy formulation and implementation. This should encompass the selection and training of staff, performance appraisal/promotions, M&E systems and tools to systematically document the (full spectrum) human rights impact of development aid, processes for ensuring active, free and meaningful participation by right-holders, etc. Advancing accountability for human rights based development requires designated, resourced and visible responsibility at appropriate levels. This might include a senior HRBA champion, to mirror the Personal Representative on Human Rights to the High Representative on CFSP.

Appendix - What HRBA means for Development Policies

Core Principles	
1. Expressly apply human rights framework	<p>Development policies should:</p> <ul style="list-style-type: none"> • Define all goals in terms of relevant international human rights commitments and explicitly require that human rights obligations are taken into account at all stages of development cycle (identification of needs through to policy and programme identification as well as implementation, monitoring and evaluation). • Use accurate language that addresses the full spectrum of indivisible, interdependent and interrelated rights: civil, cultural, economic, political and social. • Ensure that all development sectors reflect the human rights framework (for example, health, education, housing, justice) and that poverty and poverty reduction is framed in human rights terms.
2. Empowerment	<p>Development policies should:</p> <ul style="list-style-type: none"> • Provide a basis for development assistance that promotes empowerment - not charity. This means ensuring people have the access, power, capacities (including education and information) needed engage on policies and associated development interventions. • Ensure timely and information sharing with stakeholders • Provide rights holders and duty bearers with a common understanding of human rights goals and the duties to respect, protect and fulfil them. • Build capacity of relevant EC officials, development partners, EU-based NGOs and developing world counterparts to apply the human rights framework in their work (e.g. training, specialised advice).
3. Participation	<p>Development policies should:</p> <ul style="list-style-type: none"> • Be formulated and reviewed by processes that satisfy this legal test • Be explicit that participation in development processes is a right in itself & should be "active, free, and meaningful" as defined by international law
4. Non-discrimination & vulnerable groups	<p>Development policies should:</p> <ul style="list-style-type: none"> • Address, as a priority, discrimination and groups vulnerable to human rights violations, • Ensure that objectives are explicitly rooted in the relevant international law standards, including treaties such as the <i>Child Rights Convention</i> and <i>Convention on Elimination of all Forms of Discrimination Against Women</i>. • Disaggregate data by race, religion, ethnicity, language, sex, migration status, age and other category of human rights concern. • Address poverty as a key (but not exclusive) cause and effect of vulnerability.
5. Accountability	<p>Development policies should:</p> <ul style="list-style-type: none"> • Provide for human rights impact assessment of development processes, programmes, and budgets to human rights impact. • Accurately identify obligations of duty-holders (to respect, protect, fulfil). • Identify claim-holders (and their entitlements) and corresponding duty-holders (and their obligations). • Promote the translation of universal human rights standards into benchmarks and indicators for measuring progress and enhancing accountability.

Selected HRBA Resources

The list below includes a range of materials regarding HRBA conceptual as well as practical. For additional HRBA resources see www.ihrnetwork.org

Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies. Report of UN Inter-agency workshop (2003)
www.crin.org/docs/resources/publications/hrbap/HR_common_understanding.doc
This Statement of Common Understanding looks specifically at HRBA to development cooperation and development programming by UN agencies.

UN Inter-Agency Asia Pacific Lessons -learned project HRBA resources
www.unescobkk.org/index.php?id=6117
Range of handbooks, case studies & HRBA materials from UN and other actors

UNDP, Human Rights-Based Approach (HRBA) Checklist for Programme Staff
http://hdr.undp.org/docs/network/hdr/thematics/HRBA_Checklist.pdf
Guide to human rights law + practical 'to do' list for implementing HRBA

CARE International, Basic Introduction to Human Rights and Rights-Based Programming
www.careinternational.org.uk/resource_centre/civilsociety/basic_introduction_to_human_rights.pdf
Facilitator's manual and HRBA training materials

Child Rights Information Network, Human Rights Based Programming Resources
www.crin.org/hrbap/
Collection of publications on human rights-based programming relating to children.

Centre for Human Rights Education and Training
www.erc.hrea.org
Information about human rights education including presentations and training manuals, on-line and other human rights training from a variety of organizations

Institute of International Education
www.iie.org/ see "Publications" link for a range of HRBA materials

AAAS Science and Human Rights Programme
<http://shr.aaas.org/manuals/>
Range of manuals covering HRBA & health, right to food etc

DFID, Developing a Human Rights based Framework for a Rights-Based Approach to Maternal Mortality (2005)
www.dfid.gov.uk/pubs/files/maternal-desk.pdf

Institute of Development Studies
www.ids.ac.uk
Discussion papers etc analysing HRBA

UN Common Learning Package on Human Rights-Based Approach
www.undg.org/index.cfm?P=531

UNDP www.undp.org/governance/publications_full.htm#app
Range of resources training and programming materials, case studies etc.

About the Organisations

ActionAid is an international anti-poverty agency working in over 40 countries taking sides with poor people to end poverty and injustice together. For more information see: www.actionaid.org

Amnesty International is a worldwide campaigning movement that works to promote all the human rights enshrined in the Universal Declaration of Human Rights and other international standards. Amnesty International's EU Office focuses on a range of EU policies including: Human rights in EU Member States and Accession countries; Human rights in EU foreign policy; Security and human rights; Asylum and refugee protection; Judicial and police co-operation; Human rights and the arms trade; and Co-operation and assistance programs. For more information see: www.amnesty-eu.org

The International Human Rights Network is a non-governmental organisation supporting others in applying Human Rights Based Approaches in their work since 1996. Support is provided to states, inter-governmental organisations such as UN agencies and regional organisations, NGOs and other civil society organisations as well as the private sector. See sample activities and policy papers at: www.ihrnetwork.org

Terre des Hommes International Federation is a network of eleven national organisations sharing the same name and pursuing the common goal of promoting concrete conditions for the full respect and implementation of the rights of the child within a framework of human-rights based approaches to sustainable and equitable development. TDHIF works in 67 countries supporting more than 1200 humanitarian and development projects. The International Bill of Human Rights and the UN Convention of the Rights of the Child guide the work of TDHIF. www.terredeshommes.org