

Script of Interview with PATRICK TWOMEY, HRBA consultant and director of the International Human Rights Network

1. In 2019 SDC issued its guidance on human rights in development & cooperation. The human rights-based approach (HRBA) is at the centre of the guidance. One of our key commitments is: *“To endeavour to apply a human rights-based approach to all our interventions as part of project cycle management and strategic orientation, thereby contributing directly to the realisation of one or several human rights.”*

Can you comment briefly on the **Theory of change** of the HRBA and the **core principles** of HRBA?

Background:

- The HRBA is a conceptual framework comprising core principles which are also binding human rights law norms.
- Human rights-based development means human rights (HR) are both part of the means and part of the objective of development programming.
- HRBA as an expression emerged in 2003. It has supplanted HR ‘mainstreaming’ as standard language, but it is essentially a restatement of universal legal principles. (See also [HRBA to development towards a common understanding.](#))

Theory of change:

Human rights- based development as a ToC can be framed among others as:

- “Basing the objectives and methods of human development explicitly & accurately on human rights standards yields the optimum likelihood of addressing unjust distributions of power and of producing sustainable development for all.”
- “**If** Development objectives are HR based & If programming methods are HR based - **Then**... effective, sustainable, positive human rights change for all is more likely.. **Because** sustainable human development requires (as a matter of law and logic) universally agreed binding objectives, empowered participation of rights holders & accountability of duty bearers”.

Core HRBA principles:

1. Expressly apply human rights law norms and identify Duty-Bearers & Rights-Holders

This means situating all aspects of development interventions (objectives and methods) in a common universal framework of legally binding norms.

- o *For example, UN CESCR, in its [General Comment No 4](#) on the right to **adequate housing**, has interpreted the right to include: “....**safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.**”*
- o Similarly with “decent work”, “the highest attainable standard of physical & mental health”, “free & fair elections”

HRBA Principle 1 is also key in actors mapping to identify rights holders and duty bearers and to capture the precise nature of the obligations of duty-bearers, primarily the state. Not just, for example, to **not** interfere with rights, but also **to act positively, to protect rights holders from interference** by private, non-state actors.

HR treaties set minimum standards for states and duty-bearers. It does not preclude; indeed it encourages states to achieve more than the obligations in HR treaties. A national law or constitutional guarantee may go beyond the HR treaty standard. For example, the right to education only obliges states to make it free AND compulsory at primary level. **However, in many countries secondary education is also compulsory** (or at least up to the age of 16). In such cases the national law is the applicable HR standard. Similarly in some contexts the regional HR standard may be more elaborated than the universal equivalent eg CoE.

2. Focus on Empowerment

Development results are only sustainable if the target group are empowered to demand their continuation. Empowerment is a longstanding development focus but in HRBA it is reinforced as a legal right, requiring awareness-raising, education, information, capacity-building etc.

3. Focus on Participation

Long recognised as a means of maximising relevance of Development programming HRBA takes this further by elaborating this legal right and its content: to “Active free and meaningful” participation. Made explicit in many HR treaties CRC, CRPWD etc.

4. Addressing Gender, Non-discrimination/Equality & vulnerability

- includes the Agenda 2030 pledge of LNOB. A [HR based understanding of LNOB](#) is the obligation to ensure that HR of all people are guaranteed on an equal basis. It includes but is not confined to those in poverty;
- That some people don't benefit from human development is fundamentally about power... some have it: others don't & this is at the heart of the HRBA Theory of change.

5. Enhancing Transparency & Accountability (The 'Rule of Law')

- HR-based development means interventions must address the inequalities, the power issues that mean some people benefit from development and others do not. Accountability is key.
- The accountability principle stresses that a rule of law state (ie with transparent, functioning adequately resourced, accountable institutions) is a precondition for effective, sustainable human development.
- They are necessary to pre-empt HR violations and provide redress where violations occur.

2. A provocative question: what do you think of the argument that HR & HRBA are overly 'legalistic' and perhaps 'politicize' and therefore 'complicate' development efforts?

Its legal basis is a core strength of HR based development but that's not the same as legalistic. Legal accuracy is important but must be accompanied by practical, adaptable programming. The legal obligation on the state to realise HR is a “duty to be effective” and to deliver HR “by all appropriate means”.

Development is ultimately 'political': When a state is unable or unwilling to feed, educate, house all its population... and other states or IGOs step in temporarily to fill that gap that is by definition 'political'. However, it can & should still be **impartial** - but '**principled**' impartiality ie not diluting or undermining the status of established universal legal norms. To assert that development can be apolitical can itself be considered as a 'political' stance, as it denies a legal reality.

As for HR/HRBA 'complicating' development Yes it **might be easier to do 'charity'** based development A donor could just pay for the building of schools and hospitals, wells - but that would undermine international law obligations and the history of human development has shown: It just doesn't work...

HR also make development less complicated: A livelihood / employment programme based on the right 'decent work' can draw upon elaborated universally recognized content:

*" UDHR Arts 23/24: "everyone has the right to work, to **free choice of employment**, to **just and favorable conditions of work** and to **protection against unemployment**" ... including **equal pay for equal work**, to **just and favourable remuneration adequate for human dignity**, to **social protection**, to **rest and leisure**, to **limitations on work hours**, to **holidays with pay**, and to **join and form trade unions**"*

Also in terms of HR facilitating development programming: the **benchmarks & indicators** of each right, the work of various monitoring mechanisms (Treaty bodies etc) can assist development actors in setting objectives & measuring progress. It gives legal basis to development efforts.

Similarly, HR make concrete the focus in development on Capacity-building elaborating on the actual capacity that duty bearers in each sector & institution are meant to have.

3. A related question: it seems that when people hear the term human rights- they think of civil and political rights but not the whole spectrum of rights that also include economic, social and cultural rights. Can you comment on this tendency? Where does it stem from? And related to this, what does it mean that **human rights are interdependent**?

- There continues to be somewhat of a misunderstanding regarding the full content of HR. People instinctively think of the prohibition of torture, free and fair elections etc.
- In part it's a legacy of the cold war when East & West prioritized different sets of HR. But International law is clear: **all rights are of equal legal standing** and very much **interdependent on each other for full realisation**.
- It might be noted too that this classification can be an artificial distinction. The right to form and join a trade union, for example, is as much a 'political' as an 'economic' right.

- As for **interdependence**: the right to water is illustrative of the connections between HRs.... the human right to water and sanitation is inextricably linked with rights to housing, equality, health, food, to life Freedom from poverty and the right to development
 - If water isn't readily **accessible** as the HR standard requires, it may have to be drawn from afar; where this is so... it commonly falls to women and girls to draw water Girls tasked with walking long distances to collect water are less likely to be in school... Similarly water / sanitation in schools is a recognized element of the right to education.
- Example of **interdependence of a civil/political rights and socio-economic rights**: guaranteeing the right to vote is dependent upon the right to education - to properly make informed political choices; (the right to vote includes an obligation to provide voter education); similarly the right to vote is dependent on free press, freedom of movement, the right to privacy at the ballot etc. & possibly on the right to housing if an address is a prerequisite for voter registration.

4. In our new SDC guidance on human rights we endeavor "to promote the empowerment of vulnerable rights-holders and their active free and meaningful participation in development processes, thereby ensuring that no one is left behind." What is the link between HRBA and the SDG pledge to LNOB?

Agenda 2030 is based on international human rights law norms. LNOB is a global policy statement of a pre-existing international law obligations on all states. Therefore, people left behind, (vulnerable, excluded, marginalised) means **those most at risk of not having their civil, political, economic, social or cultural rights vindicated**. LNOB is a restatement of the HRBA 4th principle. It commonly includes those in poverty, some (often many) women and girls but is not confined to these groups. It varies by country, sector and can change over time ... In programming terms it's a fundamental part of context assessment.

5. A key SDC commitment in the Guidance on HR, is that: SDC will endeavor **to foster accountability at all levels**". Can you elaborate a bit more on what that means in practice?

- Enhancing accountability involves development programmes **supporting key duty bearer institutions**, formal and appropriate informal justice mechanisms, parliaments, local governments, ombudsman's offices, National Human Rights Institutions, etc.
- [UN ESCR General Comments No. 3 & 9](#) offers key guidance on accountability. It might be noted that the right to an effective remedy need not be interpreted as always requiring a judicial remedy.
- Accountability is **enhanced by informed empowered demand**. Supporting demand-side of HR; Rights holders, CSOs, media etc. building their awareness of rights and duties building their advocacy capacity or their capacity to participate effectively in processes that affect their rights.
- There is also the issue of **accountability of donors and implementers** themselves. This means
- Ensuring that ToRs for programme M&E measure actual human rights change; eg the quality of the participation of rights holders in process as well as what might have traditionally been understood as 'results'. Central to this is that development actors' accountability to **avoid becoming a substitute for partner states** but to **build those states' capacity to meet their human rights law obligations**.

6. The Covid Pandemic is perhaps the current most pressing global crisis, including for development interventions. Can you comment on what a HR based approach to Covid 19 entails and why it is important?

COVID is a major global threat to human rights (HR). The threat has many aspects ...

- It makes development programme implementation more difficult, which is a threat to HR.
- Economic recession also risks exacerbating popular sentiment that 'help should begin at home'.. which can threaten popular support for development budgets.
- While numerically some developing countries have not been hit as hard as developed countries, **their resilience to tackle the pandemic is much weaker**, weaker social protection nets etc. It puts developing world economies under further strain, reducing their 'available resources' .
- Some COVID-response measures also threaten HR: with a risk that temporary limitations of rights may become an accepted norm.
- Many countries have imposed emergency measures due to the COVID-19 crisis, without formally informing the UN of derogations from their HR obligations (with reasons, and details how the most vulnerable would be protected etc as required by law).
- COVID is at its core a human rights issue (centrally, but not exclusively) the right to health. It also impacts on a range of other rights, civil, political, social, economic and cultural. And there is general acknowledgment that those at risk of being left behind are at additional risk.

Right to health / right to safe working environment

Health sector rights: protection of health workers, discrimination and stigma, protect patient confidentiality, marginalized populations access to health care without discrimination, right to safe working environment and right to health of health workers is a particular risk

The right to work

Impact include work places closed, employers failing to provide COVID-safe working conditions or circumventing rights that protect workers from unjustified dismissal and offer social security and social assistance. Workers in informal employment at particular risk.

The right to education

Over 1.5 billion students – more than 90 percent of those enrolled around the world – have been out of school due to closures in almost all countries. Lower income households less likely to be able to avail of remote learning while UNESCO estimates 40 per cent of the poorest countries failing to support learners at risk during the COVID in 2020; school absences of girls linked to increased pregnancy & (as experienced in West Africa after Ebola) reduced likelihood to return to school after the pandemic.

Housing rights

UN Special Rapporteur on the right to adequate housing, has urged States requiring self-isolation at home, to set specific measures in place for those who are homeless or living in less than ideal conditions. Argentina, Australia, Ireland, and other states have announced measures preventing evictions.

Disproportionate impacts on women and girls

A particular concern is DV/GBV, with a rise documented in many states. Generally, vulnerable women/girls are additionally at risk in context of economic cost of COVID, the burden of domestic health care and from COVID-related restrictions.

Rights to water and sanitation

The African Commission on Human and Peoples' Rights has called for an "extension of timeline for payment for ... water bills." Spain & Argentina have guaranteed that water will not be cut off. Others have deferred utility payments or subsidising water costs.

On positive side

- COVID has seen an explicit [HR focus in responses](#) by IGOs, mobilisation of civil society, ([Stories from the Civil Society COVID-19 Response](#)) positive social welfare responses, G20 "debt service standstill" for least developed countries until the end of 2020 etc
- Let's do what we can, acknowledge the limitations of what is feasible, prepare for the aftermath and return to best practice "and this too shall pass"
- Continue to build capacity, integrating advocacy for HRBA in all programmes, prioritizing accountability for results