

Module 1 Unit 2

This is an **OPTIONAL/SUPPLEMENTAL READING**.

Hamm, B. (2001). A human rights approach to development.
Human Rights Quarterly 23 (4): 1005-1031. [26 p.]

Hamm, B. (2001). A human rights approach to development. *Human Rights Quarterly* 23(4), 1005–1031. doi: 10.1353/hrq.2001.0055 (26 p.)

A Human Rights Approach to Development

*Brigitte I. Hamm**

I. INTRODUCTION

The end of the Cold War has supported the emergence of a more differentiated view of both global problems and the challenges that globalization brings to international relations. This change in perception has its repercussions on human rights. More and more, the equal status of all human rights is recognized in practice; economic, as well as social rights, become a major issue not only in the debate over human rights, but also in the practical human rights policy of both states and international organizations. Part of this rethinking is the rapprochement of development and human rights policy in a so-called human rights approach to development. The *Human Development Report 2000* published by United Nations Development Programme (UNDP) is a prominent example of this discussion.¹

I understand development and human rights as being interdependent. A human rights approach to development recognizes primarily the legal obligation of members of human rights treaties to development cooperation and development efforts and so goes beyond human rights as the content of development policy. The inclusion of this obligation into the human rights monitoring system of the United Nations (UN) is part of such an approach.

This article discusses different views concerning a human rights approach to development as a relatively new stream of thinking within the development and human rights context. Questions considered are: What

* *Brigitte I. Hamm* teaches International Relations at Gerhard-Mercator University, Duisburg, Germany; senior research fellow at the Institute for Development and Peace at Duisburg University; PhD in Political Science, research in the field of human rights, with a focus on economic and social rights.

1. See UNITED NATIONS DEVELOPMENT PROGRAMME, *HUMAN DEVELOPMENT REPORT 2000* (2000).

are the relationships between human rights and development? How useful is the right to development? What does a human rights approach to development mean and what should it look like, so that sustainable human development is promoted and human rights strengthened? How can a human rights approach be translated into practice?

II. ECONOMIC AND SOCIAL RIGHTS IN A HUMAN RIGHTS APPROACH TO DEVELOPMENT

While a human rights approach to development refers to all human rights and thus emphasizes the interrelation and interdependence of human rights, it pays special attention to economic and social rights as the authentic concern of development policy.

Economic, social, and cultural rights are often classified as second-generation rights, while political rights and civil liberties are considered as rights of the first generation. Many have understood this not as a mere categorization but as a ranking which puts economic, social, and cultural rights after political rights. Thus, the so-called second-generation rights have led a kind of shadow life until the late 1980s. This is more or less still true for cultural rights, which are mainly considered in the context of minorities. In contrast, economic and social rights have become part of the mainstream human rights discussion, although they have not yet received equal treatment as compared with political rights and civil liberties.

Some reasons for the reorientation of the human rights discussion are:

After the Universal Declaration of Human Rights had passed the General Assembly of the United Nations in 1948,² the distinction between the two groups of human rights quickly developed into a fierce ideological debate between the West and the Socialist states. Human rights became a major terrain in the battlefield of the Cold War. Although debate on human rights continues between North and South, the end of the Cold War has freed the human rights discussion from many ideological constraints, and human rights voices and demands from the South that always have emphasized economic and social rights are now considered more seriously.

Social indicators, e.g., for health and literacy, show improvements in respect to the standard of living on the aggregate level.³ Nevertheless, the gap between the rich and the poor on the global and national level continues to grow worldwide, as does the feminization of poverty. The

2. Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, pt. 1), U.N. Doc. A/810 (1948), *reprinted in* 43 AM. J. INT'L L. 127 (Supp. 1949).

3. HUMAN DEVELOPMENT REPORT, *supra* note 1, at 178, 186.

challenge to improve the situation especially of disadvantaged people in societies of the South has been met only insufficiently by policies of poverty reduction and the basic needs approach in development policy. This inadequacy demands a new perception of development policy.

The process of neo-liberal economic globalization threatens social standards, especially in countries of the South. The protection from negative outcomes of globalization requires a stronger consideration of human rights.

Global problems have an impact on the regional, national, and local level. They can no longer be dealt with effectively merely on the state level. The awareness that consensual solutions are needed is growing in the face of globalization. While more and more, the principle of national sovereignty is eroding, states, as well as non-state actors (nongovernmental organizations (NGOs) and transnational corporations (TNCs)), see the need for common standards in various global policy fields and are willing to cooperate to some extent.

A series of UN world conferences in the first half of the 1990s has helped to create the understanding that democracy, human rights, sustainability, and social development are interdependent. The demand for linking human rights and development policy was put forward especially at the World Conference on Human Rights (1993) in Vienna, the World Conference on Women (1995) in Beijing, and the World Summit for Social Development (1995) in Copenhagen.⁴

An important outcome of the Vienna conference and of the World Conference on Women in Beijing was the strengthening of women's rights. This has its repercussion on the strengthening of economic and social rights because worldwide women's rights can be promoted only by the participation of women in the development process and the improvement of their socio-economic position.

In this situation, where a more cross-sectoral perspective for problem-solving is emerging, where both development policy and human rights are freed from bloc thinking, there are chances for the furtherance of a human rights approach to development. Nevertheless, obstacles exist, especially because of doubts over the justiciability and institutionalization of economic and social rights. Reservations in this respect might weaken the

4. In the context of human rights and development the following conferences are most important: World Summit for Children (WSC), New York / USA (1990); United Nations Conference on Environment and Development (UNCED), Rio de Janeiro / Brazil (1992); World Conference on Human Rights, Vienna / Austria (1993); World Summit for Social Development, Copenhagen / Denmark (1995); Fourth World Conference on Women, Beijing / China (1995); World Food Summit, Rome / Italy (1996). See also UNITED NATIONS DEPT. OF PUBLIC INFORMATION, *THE WORLD CONFERENCES: DEVELOPING PRIORITIES FOR THE 21ST CENTURY* 1 (1997).

acceptance of the legal obligations that come with a human rights approach to development. Such doubts exist even among state parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR), entered into force in 1976 which is the main international treaty for economic and social rights. Other hurdles lie in the field of development policy and primarily refer to the need to subordinate states' interests to the more long-term view of a human rights approach.

III. LIMITATIONS OF THE RIGHT TO DEVELOPMENT

The fact that development and social progress are indispensable for the realization of human rights is already put down in Article 28 of the Universal Declaration of Human Rights from 1948: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."⁵

Preconditions of the realization of human rights are adequate political and socio-economic conditions, implying that the relationship between human rights and development is beyond question. Thus the universality of human rights not only refers to their universal applicability but also demands universal conditions under which human rights can be realized.

This view was reinforced at the UN world conferences of the early 1990s. The Vienna Declaration and Programme of Action of the World Conference on Human Rights, which was adopted on 25 June 1993 by all 171 participating states, dedicates several paragraphs to this topic, focusing on the interdependence and mutual reinforcement of democracy, human rights, and development, asking for international cooperation and support in the development process, and for effective development policies on the national and international level.⁶

This viewpoint has emerged after a period of disagreement. Discussions about the relationship between human rights and development have a long history. They were partly shaped by the Cold War and have been a continual cause of conflict in the relations among governments of the North and South. As early as 1972, at the UN Conference for Trade and Development (UNCTAD III) in Santiago de Chile, the governments of the South claimed the right to development as part of a new more just and egalitarian economic world order. After many years of debate, the General Assembly of the UN accepted the Declaration on the Right to Development

5. Universal Declaration of Human Rights, *supra* note 2, art. 28.

6. See World Conference on Human Rights, Vienna, 14–25 June 1993, Vienna Declaration and Programme of Action, A/CONF.157/23, § 1:8, 9, 10, 12, 14 (12 July 1993).

in 1986 (146 yes, 8 abstentions of mainly Western industrial countries, and 1 negative vote of the US). The declaration describes the right to development as an individual human right and as a collective right, with the collective aspect referring broadly to the peoples, although lacking a clear definition of who should be the holders of this collective right. This nourished the suspicion of Western industrial countries, who thought it likely that the governments of the South perceived of themselves as the right-holders and those of the North as the duty-bearers, meaning that the latter were obliged to give development aid.

The right to development is debated not only among governments but also among human rights activists and researchers. This is so because the content of this right remains unclear and its justiciability is negated. The right to development is not perceived of as a right of its own, but more as the synthesis of all human rights. In addition, the Declaration of 1986 offers a rather general concept of development, reflecting the historically bound thinking of the 1970s and 1980s, with its development optimism and the perception of development as a worldwide quasi-linear progress. This thinking does not take into account any limitations on development that may arise from the need for sustainability and does not question the possibility of such progress on the global level.

Over the years, the right to development has become a major topic in discussions on human rights, serving more as a topic for drawing lines between the North and the South than as one that increases understanding of the relationship between human rights and development. This divisiveness was also partly true of the World Conference on Human Rights 1993 in Vienna, where the right to development was put forward by countries of the South against the quest of the North for reaffirming the universality of human rights. The result was a compromise between North and South accepting both the universality of human rights (considering also cultural contextualization) and the right to development as an individual human right. After Vienna the right to development became part of the mandate of the UN High Commissioner for Human Rights (UNHCR) and has been a major topic in discussions within the Commission on Human Rights and other human rights organs.

In spite of the broad acceptance of the right to development after Vienna, critics continue to question its value for strengthening human rights in general. For example, Franz Nuscheler argues that one should focus on economic and social rights as such.⁷ Others, however, value the discussion

7. See Franz Nuscheler, *The "Right to Development": Advance or Greek Gift in the Development of Human Rights?*, in *THE INTERNATIONAL DEBATE ON HUMAN RIGHTS AND THE RIGHT TO DEVELOPMENT* 54–73 (Franz Nuscheler ed., 1998).

of the right to development as a chance to further intertwine development policy and human rights.⁸

As the right to development has become part of a common human rights language, one may use it to stimulate discussion, but one should focus on economic and social rights and strengthen their justiciability. The right to development cannot function as a substitute for a human rights approach to development, because of its vagueness, lack of legal obligation laid down in an international treaty, and lack of consensus.

IV. THE CONCEPT OF A HUMAN RIGHTS APPROACH TO DEVELOPMENT

For many decades development has been seen predominantly as economic growth. Some thought that both growth induced by industrialization and investment in the centers of developing countries would trickle down to the poor population and in so doing improve their situation.

Today, development is more and more understood as sustainable human development, addressing the human being in relation with both resource management and participation. From this perspective, economic growth has to serve human development. UNDP—a promoter of the new concept—defines “human development as the process of enlarging the range of people’s choices—increasing their opportunities for education, health care, income and employment, and covering the full range of human choices from a sound physical environment to economic and political freedoms.”⁹ The *Human Development Report 2000* combines this understanding of human development as the enhancement of capabilities with the concept of basic freedoms.¹⁰ UNICEF has a similar understanding of sustainable human development, embracing the economic, political, social, environmental, and cultural dimensions of development.¹¹ Such holistic visions of development are consistent with human rights standards because human rights also refer to the whole human being.

8. See Joachim Schmitt, *A Response from the Development Policy Perspective*, in THE INTERNATIONAL DEBATE ON HUMAN RIGHTS, *supra* note 7, at 74–76.

9. UNITED NATIONS HUMAN DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2 (1992). Based on this concept, presents the human development index (HDI) in its annual *Human Development Report* which combines indicators for life expectancy, educational attainment and income in a weighted arithmetic mean. More and more, the HDI has become a representative indicator for development which is in competition with the traditional GNP.

10. See HUMAN DEVELOPMENT REPORT, *supra* note 1, at 19.

11. See UNICEF: A HUMAN RIGHTS APPROACH TO UNICEF PROGRAMMING FOR CHILDREN AND WOMEN 9 (17 Apr. 1998).

Among the agencies that explicitly claim to follow a human rights approach to development are UNDP and UNICEF at the international level.¹² At the national level, some industrial countries (e.g., Australia, Denmark and other Nordic countries, Germany, the United Kingdom) express their will to implement such an approach. From the side of civil society, various development and human rights NGOs are active in this respect.¹³ FIAN International, a human rights NGO working for the right to food, underlines the necessity for a reorientation of development policy.¹⁴ The Human Rights Council of Australia (HRCA) has dedicated a lot of its recent work to this project. The HRCA perceives development as a subset of human rights.¹⁵

The Overseas Development Institute (ODI) in London states precisely what a human rights approach to development means: "A rights-based approach to development sets the achievement of human rights as an objective of development."¹⁶

While the goal is clear and more or less agreed upon, the views of how the goal should be reached vary in detail and there are differences in the main focus. However, one can delineate some common factors:

- Reference to and starting from human rights treaties;
- Non-discrimination, special focus on disadvantaged groups, explicitly women and children;
- Participation and empowerment;
- Good governance.

Considering these dimensions, only taking human rights as a frame of reference may be considered new, although some politicians and development activists argue that it always has been characteristic of development policy to deal with human rights.¹⁷ While this view refers to the implicit

12. See UNDP: INTEGRATING HUMAN RIGHTS WITH SUSTAINABLE HUMAN DEVELOPMENT: A UNDP POLICY DOCUMENT (1998); see also UNICEF, *supra* note 11.

13. See, e.g., Working Group 20/20 of the German Forum "World Summit on Social Development: Statement to the Hanoi Conference on 20/20, Bonn (Oct. 1998).

14. See Martin Wolpold-Bosien, Ein Perspektivwechsel in der Entwicklungspolitik ist notwendig, in: DED-Brief, No. 1/2000, 37–38.

15. See HUMAN RIGHTS COUNCIL OF AUSTRALIA INC., THE RIGHTS WAY TO DEVELOPMENT: A HUMAN RIGHTS APPROACH TO DEVELOPMENT ASSISTANCE 26 (2d ed. 1996).

16. See Overseas Development Institute (ODI), *What Can We Do with a Rights-Based Approach to Development?*, 3 BRIEFING PAPER 1 (Sept. 1999), available at <http://www.odi.org.uk/briefing/3_99.html> (visited 15 July 2001).

17. Human rights have been considered in development policy as criteria for the allocation of development assistance to specific countries. Thus according to US law (Harkin Amendment § 116(a) to the Foreign Assistance Act and § 502(B) of the Security Assistance Act) economic and military aid shall only be granted to states that are no gross

effect that development efforts such as poverty reduction may have for human rights it is not the same as a human rights approach to development, which explicitly follows human rights and accepts the legal obligation of development cooperation based on human rights treaties. The other dimensions (non-discrimination, participation, and good governance) are familiar issues in development policies. Therefore, some questions immediately arise: What is the value-added that a human rights approach brings to development policy? Is the human rights approach just a relabeling of traditional development policy?

A. Human Rights as Frame of Reference for Development Policy

During the past decades development policy has more than once experienced changes in respect to content and target groups and too often followed the political, strategic, and economic interests of the donor states. Thus, the bloc thinking of the Cold War strongly influenced development policy especially until the 1970s and even later. Some changes in development policy can be explained by the changes in the development paradigm discussed above. The development policy ranged from financing big technical projects to attempting to meet the basic needs of the most disadvantaged people to fighting poverty. All in all, the success of development policies in respect to development goals is quite debated. A human rights approach to development does not in itself guarantee more success; but it brings important changes and options for sustainable success for development and human rights.

In addition to human rights as content, human rights as a reference has three important implications, as follows:

- It is based on a broad consensus over the content of human rights.
- It implies a change in perspective because of the legal obligation.
- It influences the agents and changes the policy dialogue between donors and recipients.

human rights violators, except that the aid would reach those in need. Such conditionality exists in Germany explicitly since 1991, when the so-called five “criteria of German development cooperation” were introduced.

1. *Consensus over Human Rights: The Basis for a Human Rights Approach to Development*

Human rights can be the consensual frame for development policy because the moral commitment to human rights is universal, the majority of states have ratified major human rights treaties, and some core rights are universally valid because of customary law.

The moral commitment to development and international solidarity is already expressed in the Charter of the UN and in the Universal Declaration of Human Rights.¹⁸ Since the establishment of the human rights regime, the idea of human rights has gained an autonomous effect on international relations. The authors of *The Power of Human Rights* speak of them as international norms that shaped post-war international politics independently of national and bloc interests.¹⁹ Even if some skepticism of this rather euphoric view may be appropriate, the international spread of the idea of human rights after World War II cannot be denied.

International human rights standards offer a common frame of reference to which the states themselves have agreed by joining the UN and accepting the principles of the Charter. By ratifying human rights treaties, states voluntarily oblige themselves to human rights standards. The Convention on the Rights of the Child (CRC) represents a very broad basis of governmental agreement as all UN member states have ratified the CRC, except for Somalia and the US.²⁰ The ratification of other international human rights treaties is not as complete as with the CRC but most states are members of major treaties. The International Covenant on Civil and Political Rights (ICCPR) has been ratified by 144 states by April 2000 and the ICESCR ratified by 142.²¹ The most important treaty for women, the Convention on

18. See Universal Declaration of Human Rights, *supra* note 2.

19. See THOMAS RISSE, STEPHEN C. ROPP, KATHRYN SIKKINK, *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* (1999).

20. Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 45, U.N. Doc. A/44/49 (1989) (*entered into force* 2 Sept. 1990), *reprinted in* 28 I.L.M. 1448 (1989) [hereinafter CRC]. Since 1994, all states have entered at least one major human rights treaty. See Andrea Liese, *Staaten am Pranger. Zur Wirkung internationaler Regime auf die innerstaatliche Menschenrechtspolitik*, unpublished dissertation. (On file with author.)

21. International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976); International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976) [hereinafter ICESCR].

the Elimination of All Forms of Discrimination Against Women (CEDAW) has been ratified by 165 states by April 2000.²²

In addition to the ratification of human rights treaties, some core human rights have developed into *customary law* which must be respected by all states, no matter whether treaties have been ratified or not. Economic and social rights are not explicitly part of these core rights, but some basic rights (such as the right to food and to health) can be understood as being part of the right to life. The latter is considered to be a core norm that is protected by customary law.²³ Thus, a human rights approach to development is founded on broad international validity and acceptance of human rights.

2. Legal Obligation to International Cooperation for Human Rights

When human rights become a frame of reference for development policy, the perspective changes from a moral commitment and some hybrid form of welfare policy in the development sphere to legal claims of the right-holders, duties of donors, and governments receiving development aid. Thus, adequate food, education, and health are no longer a matter of charity, but every person has the right to have his or her basic needs met. This requires duty-bearers (donor and recipient states and international organizations) to design their development policies so that they respect, protect, and fulfill human rights. What this principle means in detail has to be realized in a human rights approach to development.

Development policy no longer depends on specific interests either of the donor countries or of the ruling class of the receiving state, because human rights (at least in principle) are beyond such interests. The realization of human rights becomes an interest in itself. State parties to human rights treaties not only are obliged not to violate human rights but also to contribute to political and socio-economic conditions favorable to respect, protect, and fulfill human rights on the national and international level.

In various human rights documents and treaties, the obligation to international cooperation in order to reach this goal always has existed. Explicitly the CRC expresses such an understanding in Articles 24 (4) on health and in Article 28 (3) on education. The wording of both articles is almost identical:

State Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to

22. See <<http://www.unhcr.ch/tbs/doc.nsf>> (Status of Ratification: by Treaty), June 2000.

23. See MATTHIAS PAPE, HUMANITÄRE INTERVENTION 303 (1997).

scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.²⁴

Article 2(1) of the ICESCR obliges the state parties to cooperate for the realization of all rights put down in the treaty:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means. . . .²⁵

The Committee on the ICESCR in its General Comments, the Limburg Principles, and the Maastricht Guidelines that deal with both the interpretation and implementation of the ICESCR underline the view that it is the duty of member states to consider the rights of the ICESCR in their development cooperation as put down in Article 2(1). The Limburg Principles explicate that international cooperation and assistance has to be designed to promote the human rights recognized by the covenant "irrespective of differences in their political, economic and social systems" and "based on the sovereign equality of states."²⁶ The Maastricht Guidelines underline that "[t]he obligations of States to protect economic, social and cultural rights extend . . . to their participation in international organizations. . . ."²⁷

Thus, international cooperation to work for conditions under which all human beings may enjoy their basic or core human rights has been a legal obligation for at least the member states of these treaties since they have been ratified. This legal obligation has never been recognized in practice. Development policy has not been part of the reporting process of donor states to the various human rights committees and has been neither monitored nor discussed with the treaty members by these committees. The same has been true for NGOs working for either human rights or development.

3. Agents in a Human Rights Approach to Development

Who are the agents in a human rights approach to development? This approach emphasizes the main responsibility of the states receiving development assistance; according to international law, states are responsible for

24. Convention on the rights of the Child, *supra* note 20, art. 24(4) & 28(3).

25. ICESCR, *supra* note 21.

26. See *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 122, 126 (1987).

27. See *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 20 HUM. RTS. Q. 691, 698, at §19 (1998).

the well-being of the people in their territory and the realization of human rights in their countries. The emphasis on the responsibility of the recipient country contrasts with the aforementioned understanding of the right to development, in which governments from the South have underlined their collective right to development aid. However, this emphasis supports the present reorientation in development policy of the Organisation for Economic Cooperation and Development/Development Assistance Committee (OECD/DAC) countries from mainly self-interest to partnership as expressed in the image of the recipient country in the driver's seat.²⁸

Although the main responsibility is with the receiving states, donor states also have the responsibility to follow human rights in their development policy. This obligation is laid down in the UN Charter and in some major human rights treaties, such as the ICESCR.²⁹ It expands to international organizations and International Financial Institutions (IFIs), as states who are members of human rights treaties are also members of these organizations and influence the shaping of their policy.

The enforcement of these obligations is weak within international law. Sanctions for even gross violations of human rights are lacking, and in general, there are no hard measures against human rights violators. In spite of this weakness, procedures in favor of human rights have developed over the years. There is the national and international shaming of violator governments by NGOs, media, and human rights committees and the Commission. The publicity threatens violators with the loss of legitimacy with both their own society and the international public. These joint pressures have led governments to respect, protect, and fulfill human rights, at least in their rhetoric, and have contributed to a culture of compliance to human rights norms that did not exist before the 1970s.

The international commitment to human rights affects development policy once it is included in the human rights monitoring mechanisms of the UN. This commitment will contribute to the gradual understanding of development policy as an integral part of human rights obligations. Making donor and recipient states accountable for how they consider human rights in their development policy and efforts will turn the understanding from that of a moral commitment to that of the acceptance of the legal obligation.

Understanding development policy as a common obligation based on the voluntary entry into human rights treaties will change the structure and the content of the policy dialogue between donor and recipient states; as both have the obligation to respect, protect, and fulfill human rights, both

28. See OECD/DAC: *SHAPING THE 21ST CENTURY: THE CONTRIBUTION OF DEVELOPMENT COOPERATION* (1996).

29. ICESCR, *supra* note 21.

become accountable for doing so. Moreover, not only developing but also industrial countries have human rights problems which are discussed in the UN human rights mechanisms.³⁰ This will change the structure to a more egalitarian one, that is less molded by interests and power. The content of the policy dialogue will change as well because human rights will no longer be an instrument of negative conditionality imposed by donors. The focus becomes the implementation of human rights and obstacles to their realization. In addition to the adherence to international and regional treaties, the support of international monitoring (access of rapporteurs, etc.) becomes part of the policy dialogue as well. UNICEF, which is explicitly mentioned in the CRC as an important agent for the implementation of the treaty, underlies this aspect.³¹

The human rights approach to development requires cooperation between agents in the two policy fields. An example is the evolving cooperation between UNDP and the office of the UNHCR, which takes place on the international and also the national level. UNDP underlines that this approach is needed especially at times when human rights are endangered, such as in conflict and peace-building situations and in socio-political transitions.³² Moreover, the committees established to survey human rights treaties can support the design and evaluation of a human rights approach to development of organizations working in the development sphere.

NGOs have played an important role in shaping the human rights regime. The same is true of the development sphere. A human rights approach to development works only as long as development and human rights NGOs cooperate and consider each other's work. These groups' monitoring and control necessarily complements the work of states and international organizations. Thus, the cooperation of state and non-state actors is needed so that a human rights approach to development is sustainable and successful.

B. Non-discrimination as Basic Dimension in a Human Rights Approach to Development

Non-discrimination is a basic principle of human rights and a precondition of peace and development. The Universal Declaration of Human Rights, as well as all other human rights treaties (e.g., Article 2(2) of the ICESCR and

30. See Claire Short, Secretary of State for International Development, United Kingdom, All Human Rights for All, Speech at the Law Society (3 Dec. 1998).

31. See UNICEF, *supra* note 11, at 10; CRC, *supra* note 20.

32. See UNDP, *supra* note 12.

Article 2(1) ICCPR), explicitly emphasize the principle of non-discrimination. In addition, a number of human rights treaties are exclusively dedicated to non-discrimination. Certain International Labor Organization (ILO) treaties are designed to avoid discrimination in employment and at the workplace.

Non-discrimination can be considered a core human right that is as protected by customary law as is the right to life, freedom from torture, and freedom from slavery.³³ Non-discrimination as customary law usually has referred to race. However, this view is historically bound to colonialism, segregation, and apartheid after World War II. Today, non-discrimination as such can be considered a core human right.

A human rights approach to development that includes non-discrimination pays special attention to disadvantaged groups and individuals in a society. Current development projects already address some of these groups, especially the poor, women, and children.

Thus, the human right to non-discrimination is quasi-traditionally included in many development projects. For a human rights approach to development, this practice has to be extended and supplemented by the recognition of the legal obligation of states and donor countries to consider non-discrimination in their development policy. This will broaden the consideration of non-discrimination to all spheres of development policy and ensure that measures against discrimination neither depend on specific programming nor change according to political decisions. The principle of non-discrimination becomes a basic criterion for designing programs and policies, and the elimination of discrimination becomes a benchmark for measuring their success.

C. Participation and Empowerment as Basic Dimensions of a Human Rights Approach to Development

The quest for participation of those concerned is another basic demand of a human rights approach to development. The HRCA considers participation to be most central in a human rights approach.³⁴ As with non-discrimination, the inclusion of participation in development policy is not new either.³⁵ Nevertheless, donors, development organizations, IFIs, and sometimes also NGOs have a rather formal understanding of participation, which means

33. See Pape, *supra* note 23, at 303.

34. See HUMAN RIGHTS COUNCIL OF AUSTRALIA, INC., *supra* note 15, at 117.

35. See German Ministry of Economic Cooperation and Development (BMZ): Sektorales Konzept-Partizipative Entwicklungszusammenarbeit, BMZ Aktuell No. 102, Sept. 1999.

informing the people concerned of more or less fully planned and designed projects. In contrast, a human rights approach implies that participation is a right and not an instrument to increase the acceptance of programs and projects that are "brought" to the people. The essential difference is that participation includes control of planning, process, outcome, and evaluation.

Participation in this sense is empowerment and implies that the people have the right to determine their path of development. For this they need other human rights, above all the rights to education and to information. An appropriate standard of living with adequate food, housing, health, etc. is another precondition for participation as well as an outcome.

This basic understanding of participation strongly affects development policy, for it changes the direction from top down to one that integrates from the bottom up. Participation of the people concerned requires the decentralization of programming from the headquarters to the local level, a state of events that is now unusual. In its policy paper of 1999, the Overseas Development Institute (ODI) states that a rights-based approach requires performance standards that are best negotiated locally.³⁶ This will not only strengthen civil society, but increase the sustainability of the outcome, because the measures are not imposed from above.

Participation as a right means that there are definite demands on all state agencies and NGOs involved. The emphasis on participation may redirect development policy from concrete development projects more to the consultation of those concerned. This underlines the relevance of the policy dialogue as one aspect of participation.

Different understandings of participation become apparent when development agencies discuss a human rights approach. Although the variation is sometimes not explicit, one can say that understandings range from an increase in traditional information policy as proposed by UNDP and a stronger inclusion of NGOs to an outspoken bottom-up approach, which is supported by the HRCA.

All in all, the understanding of participation as a human right both underlines the duty of those responsible to supply the conditions for participation and dismisses paternalism and charity. Participation in this sense strengthens civil society and democracy and conversely demands democracy and a strong civil society. However, there are also some slippery sides to participation in development policy.

Participation may be understood mainly as the inclusion of NGOs. The positive side of this understanding is the strengthening of civil society, the negative side is a tendency to privatize policy and states' functions. This

36. See OVERSEAS DEVELOPMENT INSTITUTE (ODI), *supra* note 16, at 3.

may weaken the legitimacy of national governments and parliaments in the South and thus also democracy.

One also has to ask, how can participation work in societies with weak democratic structures? The role and interest of group leaders may influence the way communities participate in and decide about development projects.

There is no simple recipe to avoid these possible traps. However, the promotion of democracy and of the general conditions that enable people to decide by themselves will be a contribution in this respect.

D. Good Governance as a Basic Dimension of a Human Rights Approach to Development

Good governance is indispensable to the realization of human rights in general and in the success of participation. One can imagine various forms of participation that do not necessarily coincide with a democratic socio-political structure. However, democratic institutions best guarantee stable and continuous participation and the growth of civil society and discourage dependence on paternalistic and arbitrary good will.

The strengthening of democratic institutions is the aim of good governance in development policy. Good governance as a complement to economic development was first propagated by the World Bank. The Bank perceives of good governance as a government's capability to manage a country's economic, political, and social affairs based on the rule of law. Characteristics are transparency, accountability, and efficiency.

In principle, good governance can be understood as a state's inner sovereignty, meaning the legitimacy based on the government's ability to fulfill general state functions such as the provision of public goods. This refers to both political rights, especially the rule of law, and economic and social rights, such as education, basic health care, and other public goods that states have to supply in some form or other for their population.

The HRCA for the most part criticizes the good governance concept. For HRCA good governance is just one of various new approaches to meet deficiencies in the development policies of the last decades. Just as with the buzz-words *decentralization*, *civil society*, *human security*, HRCA considers good governance as being insufficient. "[H]uman rights are replaced by vaguer concepts and . . . conditionality is imposed by the governments of the developed world as they promote certain economic or political models."³⁷ According to HRCA, while the term good governance has a

37. See HUMAN RIGHTS COUNCIL OF AUSTRALIA INC., *supra* note 15, at 46.

narrow technical perspective to describe managerial efficiency (accountability), the broader definition is based on human rights, but mainly on political rights as an attempt to impose a specific political model on developing countries. HRCA characterizes good governance as a distraction that lacks real significance. In HRCA's understanding, the good governance approach of the World Bank is based mainly on the more narrow approach. Human rights are taken into account, but in the narrow sense of introducing conditionality.

We do not accept good governance as the appropriate paradigm for strengthening an insistence on government responsibility. . . . [C]entral principles as participation, accountability, equity are being redefined in such a way as to limit the meaning already accorded to them in existing human rights agreements. Moreover these principles are reduced to tools. . . .³⁸

For the HRCA the good governance debate is nothing but the failure of too many governments to fulfill their responsibilities.³⁹ Although this skepticism points to the weakness of a formal understanding, good governance strengthens the rule of law, which is a precondition of and integral to the realization of human rights. For UNDP good governance is predominantly participatory, equitable, and promoting the rule of law.⁴⁰ Good governance touches directly on legal instruments that affect human rights. While referring to the rule of law as a focus, democratization and efforts in anti-corruption are important as well. "UNDP's support for legislative and judicial systems is relatively recent, brought about by demand from programme countries."⁴¹ There are three broad fields of UNDP's activities in this respect:

- Electoral assistance,
- Democratic institution-building,
- Peace-building and political transition.

For UNDP and UNICEF the ratification and implementation of human rights treaties is part of states' accountability and thus of good governance. Both aim at the strengthening of states' human rights capacities by supporting human rights institutions and education.

38. *Id.* at 51–52.

39. *Id.* at 51.

40. See UNDP, *supra* note 12, at 9.

41. *Id.* at 7.

V. REALIZATION OF A HUMAN RIGHTS APPROACH IN PRACTICE

A human rights approach to development requires an explicit human rights language in order not to be watered down to some implicit measures. Terms like good governance, human dignity, or human security might introduce the notion of government obligation only through the back door. This would dilute human rights standards and undermine the validity of the consensus over human rights.⁴²

The test of the implementation of a human rights approach to development in practice is lacking up to now. Only the intention to do so is expressed by various agents. Therefore, one can neither judge the effectiveness of the conceptually designed human rights approach nor assess the approach in contrast to traditional development policy. In addition, such an evaluation needs a longer period of practice in order to gain valid results.

The conceptual framework of a human rights approach to development needs to be supplemented by a practical framework that proposes adequate steps to be taken. This covers the planning, implementation, and evaluation of development according to human rights standards and criteria. HRCA has published a manual for a human rights approach for practitioners.⁴³ It emphasizes economic and social rights and covers all levels:

- Situational analysis (e.g., commitment to international human rights standards, legal and administrative framework);
- Goal and standard setting (e.g., human rights objectives, sectoral program objectives, policy dialogue);
- Plans and programs (e.g., country strategy);
- Monitoring and evaluation (e.g., indicators, monitoring over time);
- Participation (e.g., who and how).

42. See HUMAN RIGHTS COUNCIL OF AUSTRALIA, INC., *Symposium Papers—A Human Rights Approach to Development*, available at <<http://www.ozemail.com.au/~hrca/symposium.html>> (visited 14 Feb. 2000).

43. See HUMAN RIGHTS COUNCIL OF AUSTRALIA INC: *MANUAL FOR A HUMAN RIGHTS APPROACH TO DEVELOPMENT ASSISTANCE* (June 2000) available at <http://www.ozemail.com.au/~hrca/The_Rights_Way_to_Development_Manual.html>.

A. Human Rights as the Content of Development Policy

A human rights approach to development can be implemented successfully only when those responsible and involved (in ministries and international organizations as well as the people concerned) know human rights in depth. They not only should think of human rights as an inspiring moral idea but also need to know the existing human rights system of the UN. Therefore, both development agents and the people concerned must receive the human rights education necessary in order to become familiar with human rights standards, including the most important treaties and instruments of implementation and monitoring. Such knowledge cannot be taken for granted. For example, an expert from the German Ministry of Economic Cooperation and Development (BMZ) states that this knowledge is widely lacking within his ministry and that the development experts are not yet in a position to implement a human rights approach to development with all its consequences.⁴⁴ Especially, the knowledge of economic and social rights is at best rather general.

To translate a human rights approach into practice it must be clear which human rights will be addressed. Development policy, with its focus on the poor and other disadvantaged groups as well as delays and backlogs in development, emphasizes economic and social rights. However, as development in the socio-economic sphere demands an adequate political environment and the strengthening of civil society through participation and empowerment, political and civil rights are addressed by a human rights approach to development as well.

Which rights will be emphasized in practice will depend both on the general orientation of a development organization and on the concrete situation. This may vary from project to project or country to country. UNDP commits itself to the right to development and explicitly wants to focus on economic and social rights in its development programming. UNICEF emphasizes the rights of children and women.

There exists abundant information for evaluating the concrete human rights situation. In addition to national statistics and data collected by NGOs, these are especially the following:

- Reports that states deliver to committees of human rights treaties and the statements by these committees;
- Evaluations and warnings by country and thematic UN-rapporteurs;

44. See Joachim Schmitt, *Rechte—gestuetzte Entwicklung, Die Bedeutung der Menschenrechte fuer die deutsche Entwicklungspolitik*, in: *epd-Entwicklungspolitik* 14/15, at 40 (2000).

- Investigations by national and international NGOs among them the shadow reports to the official state reports;
- Media reports on the human rights situation of countries.

Only explicit human rights aims allow monitoring and evaluation of the concrete steps taken. Both the violation and progress made in the realization of human rights have to be documented.⁴⁵ For this reason, we need performance standards that reflect human rights and specific benchmarks to measure its outcome and success. Such benchmarks are still lacking. Social indicators as documented by UNDP in its *Human Development Report* do not render sufficient information on the human rights situation of disadvantaged groups whose rights are most endangered. To gain more information, these data must be disaggregated according to target groups. These are women and children, elderly people, landless peasants, marginalized peasants, rural workers, rural unemployed, urban unemployed, urban poor, migrant workers, and indigenous peoples.⁴⁶

The ICESCR distinguishes between rights that demand immediate implementation and those that must be realized progressively. Immediate implementation refers especially to the fact that economic and social rights should not be withheld from disadvantaged groups in a discriminatory manner. In addition, participation has to be realized immediately. With participation as a major dimension of a human rights approach to development, a focus of development policy must be the human rights education of the people. Because only knowing their rights will enable them to participate in a comprehensive way.

In contrast, the progressive realization of economic and social rights requires structural changes to create the appropriate conditions to fulfill economic and social rights in the long run. This difference has to be considered in their monitoring, documentation, and evaluation. While immediate implementation demands differentiated data which reflect the individual and group situation, the progressive realization can be shown by aggregate social and economic indicators, e.g., in time row analysis.

Indicators for economic and social rights must also document their access and availability in respect to cultural acceptability, quantity, quality, and sustainability. Here the General Comments of the Committee to the ICESCR offer useful operationalizations of specific rights and show in detail

45. See HUMAN DEVELOPMENT REPORT, *supra* note 1, at ch. 5; see also Audrey Chapman, A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights, 18 HUM. RTS. Q. 23 (1996).

46. See Philip Alston: *The International Covenant on Economic, Social and Cultural Rights*, in MANUAL ON HUMAN RIGHTS REPORTING 39 (1991).

what kind of data are needed to inform us about the implementation of economic and social rights. In addition, a human rights approach to development requires documenting how the different agents such as governments, international organizations, TNCs, and IFIs follow their obligation. Qualitative data can indicate the circumstances under which rights are violated.

As the legal frame of human rights is a major innovation compared to previous development policy, this must be reflected in practice. The adherence to human rights must be leading the policy dialogue between donors and receiving countries, and also among NGOs in the development field. The criterion is the ratification of the most important treaties. Although ratification itself does not guarantee the respect, protection, and fulfillment of human rights, it supports the accountability of the states. Therefore, one major effort by donor countries and development agencies should be that all states either ratify the major human rights treaties or withdraw their reservations to them.

B. Integration of Poverty Reduction and Basic Needs into a Human Rights Approach to Development

Poverty reduction and basic needs must be integrated into a human rights approach to development. In spite of the UN target that donor countries direct 0.7 percent of their GNP into Official Development Assistance (ODA), this percentage has been decreasing steadily over the years. In 1998, the average country effort was 0.4 percent, with the US at the lowest rank contributing only 0.1 percent of its GNP to ODA and Denmark with 0.99 percent holding the highest rank.⁴⁷ Thus, development assistance is more and more marginalized financially. Nevertheless, the change in understanding development policy more as a cross-sectoral task than previously with many agents (e.g., various ministries) involved carries the chance of a more holistic approach that may serve development and human rights.

There have been two major topics in the development assistance of Western industrial countries over the past years, namely meeting the basic needs of the most vulnerable groups and poverty reduction. Both may be integrated into a human rights approach to development. They touch major topics that are necessary for an adequate standard of living that is asked for in the Universal Declaration of Human Rights.

47. See OECD, *Development Co-operation, 1999 Report*, 1 DAC J. 69 (2000).

The basic needs orientation refers to the fulfillment of basic economic and social rights, especially the right to food, health, and education. The main change brought about by a human rights approach to development is less in content than in understanding that to meet one's basic needs is a claim and not a matter of charity. Moreover, there is the demand to strengthen vulnerable groups by their participation.

One major demand of the Social Summit in Copenhagen 1995 was that both donor and recipient countries should agree to direct 20 percent of development aid and 20 percent of the national budget of the receiving countries into basic needs as a way to fight poverty and to empower the poor who are at the edge or outside of the development process. However, the weak realization of this 20:20 initiative indicates that both sides are reluctant to implement such a basic needs approach as long as this is a voluntary agreement.

Poverty reduction serves human rights, because people in poverty are normally excluded from their rights and from social life. As Asbjørn Eide puts it: "The realization of human rights clearly requires the eradication of poverty worldwide. . . ." ⁴⁸

There are many efforts to cut back poverty. Of special importance is the aim of OECD/DAC's "Shaping the 21st Century" strategy to halve the global poverty rate by 2015.⁴⁹ This major goal is broken down and specified as the supply of basic education for all, gender equality in primary and secondary education, the reduction of the infant mortality rate by 2/3 (year of reference is 1990), and the access to reproductive health care for all. These goals are synonymous with the realization of basic economic and social rights.

More and more, IFIs such as the World Bank and the IMF also work for poverty reduction. Thus, the new Poverty Reduction Strategy Papers (PRSP) demand of the seventy poorest countries in the world that they themselves develop a coherent antipoverty program including the civil societies of their countries in the design and implementation of the programs. These plans are the precondition to qualify countries for debt relief and for new loans of bi- and multilateral donors.⁵⁰ This spreading of the underlying idea of the human rights approach beyond the limited development policies into related economic measures might become a shift in paradigm of the policies

48. See Asbjørn Eide, *The Right to an Adequate Standard of Living including the Right to Food*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS 90 (Asbjørn Eide, Catarina Krause & Allan Rosas eds., 1995).

49. See OECD/DAC, *supra* note 28.

50. See Walter Eberlei, *Taking a Lead in the Fight Against Poverty?: World Bank and IMF Speed Implementation of Their New Strategy*, in DEVELOPMENT & COOPERATION 23, 23–24 (2000).

of these IFIs. A similar direction is taken by the Participatory Poverty Assessments (PPAs) where poor people are encouraged to speak for themselves.⁵¹

These endeavors to meet the basic needs of people and to fight poverty go well with a human rights approach to development. To guarantee their continuity, we must explicitly understand them as being part of such an approach.

C. Promoters of a Human Rights Approach to Development

Especially in the beginning (until an international consensus and some kind of institutionalization within the existing human rights mechanisms are reached) a human rights approach to development needs supporters and advocates.

Human rights and development NGOs must enforce their lobbying and monitoring in this respect. On the state level, the promoters of such an approach should be members of major treaties and play an important role in the ODA.⁵² If one considers only the ten major ODA donor countries (in absolute amounts of ODA), the four major human rights treaties (ICCPR, ICESCR, CEDAW and CRC) offer a broadly agreed-upon starting point for a human rights approach to development (see Table 1). Nine of these countries have ratified all four human rights treaties. The US has ratified only the ICCPR. The total amount of ODA of the ten biggest donor countries covers roughly 86 percent of the total ODA of \$51.89 billion US in 1998, and without the US, still covers 66 percent of the total ODA of the DAC countries. If only these countries agreed to a human rights approach to development, a major part of ODA would be based on human rights. These ten (or nine) donor countries have more or less the financial power to change international development policy in order to strengthen human rights no longer only implicitly but directly. In addition, together they have more than half of the voting power in the IMF and World Bank and thus have an important say in the policy of these two major IFIs.

Most of these donors already emphasize human rights in their development policy in a way that includes social and economic rights at least to some extent. Human rights are part not only of negative conditioning but of a positive human rights dialogue. These countries are Canada, Denmark, Germany, the Netherlands, Sweden, and the United Kingdom. As a group of

51. See Short, *supra* note 30, at 6.

52. ODA is the Official Development Assistance of the OECD countries. The ODA in Tables 1 and 2 refers to 1998; see data for tbl. 1, *supra* note 47.

TABLE 1
The Ten Major DAC Donor Countries, their Voting Share in the IMF⁵³ and in the World Bank,⁵⁴ and their Membership in Human Rights Treaties

| | <i>Net ODA in US \$ Billion</i> | <i>Percent of Votes: IMF</i> | <i>Percent of Votes: WB</i> | <i>ICCPR</i> | <i>ICESCR</i> | <i>CEDAW</i> | <i>CRC</i> |
|----------------|---------------------------------|------------------------------|-----------------------------|--------------|---------------|--------------|------------|
| Japan | 10.64 | 6.22 | 10.58 | X | X | X | X |
| USA | 8.79 | 17.33 | 14.79 | X | — | — | — |
| France | 5.74 | 5.02 | 4.21 | X | X | X | X |
| Germany | 5.58 | 6.08 | 6.91 | X | X | X | X |
| United Kingdom | 3.86 | 5.02 | 4.90 | X | X | X | X |
| Netherlands | 3.04 | 2.42 | 2.17 | X | X | X | X |
| Italy | 2.28 | 3.30 | 2.89 | X | X | X | X |
| Denmark | 1.70 | 0.78 | 1.01 | X | X | X | X |
| Canada | 1.69 | 2.98 | 2.99 | X | X | X | X |
| Sweden | 1.57 | 1.13 | 1.98 | X | X | X | X |
| Total | 44.89 | 50.28 | 54.43 | 10 | 9 | 9 | 9 |

“like-minded” countries, they could function as promoters of a human rights approach to development.⁵⁵ The chances are slim that the US will follow a human rights approach to development, both because of the country’s reluctance to accept the obligations that come with it and because US development policy is much more conservative and guided by self-interest than that of most other major donors. Nevertheless, the joint efforts of the rest of these donors would be important for strengthening a human rights approach to development in practice.

The ten developing countries receiving the highest absolute amounts of ODA have all ratified at least the CEDAW and the CRC, and most have ratified the two covenants (see Table 2). These treaties can be taken as the legal obligation of these states to design their development efforts according to human rights. They can be the starting point for a common dialogue between donor and receiving countries on human rights and development

53. See *International Monetary Fund, IMF Member’s Quotas and Voting Power, and IMF Governors*, available at <<http://www.imf.org/external/np/sec/memdir/members.html>> (visited 30 Aug. 2000).

54. See World Bank Group, *International Development Association: Voting Power of Executive Directors*, available at <<http://www.worldbank.org/II/extdr/about/voting/kida.html>> (visited 30 Aug. 2000).

55. Japan already has a rather strong human rights impact in its development aid. However, because of World War II, Japan is reluctant to start an active human rights dialogue with receiving countries. The government wants to avoid resistance to Japanese interference in so-called inner affairs.

TABLE 2
Ten Major Net ODA Recipients (\$ million)⁵⁶

| | 1998 (\$ million) | ICCPR | ICESCR | CEDAW | CRC |
|-------------------------|----------------------|-------|--------|-------|-----|
| China | 2.359 | — | — | X | X |
| Egypt | 1.915 | X | X | X | X |
| India | 1.595 | X | X | X | X |
| Indonesia | 1.258 | — | — | X | X |
| Bangladesh | 1.251 | — | X | X | X |
| Vietnam | 1.163 | X | X | X | X |
| Pakistan | 1.050 | — | — | X | X |
| Mozambique | 1.039 | X | — | X | X |
| Tanzania | .998 | X | X | X | X |
| Bosnia & Herzegovina | .876 | X | X | X | X |
| Total | 13.504 | 6 | 6 | 10 | 10 |

efforts. Thus, there is a reciprocity in their obligations to human rights and development between the major donor and recipient countries.

Nevertheless, looking at these ten major ODA recipients, one easily realizes that, in spite of all kinds of commitments, development policy is more or less guided by the interests of the donors. While Bosnia and Herzegovina is a special case, as the aid is for the reconstruction after the war, only Bangladesh, Mozambique, and Tanzania belong to the group of least developed countries. The rest are developing countries with a strong economic dynamic and can be characterized as belonging to the new generation of NICs. Without going into detail, one would expect that development policy for and in these countries will not be based primarily on a basic needs approach, but follow and complement the economic interests of donor and recipient governments.

Thus, a human rights approach to development with its focus on the respect, fulfillment, and protection of basic human rights also will require a redirection of development aid. In order to avoid the often deplored double standards in human rights policy, coordination between donors and a strengthening of multilateralism in development policy is necessary. In this respect, joint efforts by these countries, in cooperation with the treaty committees, would be most effective.

56. OECD, *supra* note 47, at 214–17.

VI. CONCLUSION

One may speak of a “right to development” which is intrinsic to human rights, because, without development, human rights cannot be realized. As with gender mainstreaming as a means to end the discrimination of women and to achieve their equal status worldwide, human rights need a human rights mainstreaming so that they will be understood as a cross-cutting task and become a major issue in development efforts and international cooperation. The view that development is a precondition of human rights is based on various human rights treaties and thus is not the same as the right to development as laid down in the rather weak declaration of 1986.

Accepting human rights as frame of reference implies accepting the obligations that already exist in international treaties. The cooperation of agents and institutions in these spheres generates synergy to better serve human rights and development. In addition, there are fundamental characteristics that are indispensable to a human rights approach to development. These are non-discrimination, participation, and good governance, especially the rule of law. This view also affects NGOs active in the development field, because they must abstain from charity and focus instead on the empowerment and self-determination of the people concerned.

Both development and human rights gain with such an approach. Development gains, because, based on human rights treaties, donor and recipient countries and international organizations have the legal obligation to a development policy based on human rights. This makes states accountable for their development policy, increases the chance of its continuity, and makes it more independent from short-term interests than is now the case. In addition, the idea of claims and duties as important dimensions of human rights goes beyond development. “Since the process of human development often involves great struggle, the empowerment involved in the language of claims can be of great practical importance.”⁵⁷ Another important aspect that UNDP underlines is that human rights broaden the outlook from the more structural perspective of development to include the level of actors. This means considering the concrete situation of the individual person as the right-holder: “Gains in human development are not always attended by gains in human rights fulfillment, . . . a pure human development accounting may fail to pick up on the vulnerability of individuals and groups within a society.”⁵⁸ In addition, the duty-bearers are considered the responsible agents.

57. See HUMAN DEVELOPMENT REPORT, *supra* note 1, at 22.

58. See *id.*

Human rights gain because such a development approach strengthens human rights by working for their implementation and realization, by using them as the benchmark for development policy, and by orienting the policy dialogue towards human rights. In addition, the use of human rights as the common language in development increases the universal acceptance of human rights.

A precondition of the success of a human rights approach to development is its integration into the monitoring mechanism of human rights committees and human rights NGOs. In addition to this institutional level, the dialogue between human rights and development activists should follow the demands of such an approach and thus mutually strengthen their lobbying activities. The major ODA donor countries can function as promoters of such an approach, as many of them already now are discussing the possibility of its implementation.

Using the legal framework of human rights as the starting point for development policy implies that donor and receiving countries accept their legal obligation. The realization of human rights becomes the aim of development policy and thus human rights are the benchmark by which to evaluate the outcome of such policies. Based on human rights, all duty-bearers become legally accountable for their development efforts. This has to be recognized by donor and receiving states, as well as by international organizations. This perspective has to be integrated into the traditional human rights mechanisms so that the responsibility of treaty members includes their activities in the development policy on all levels—international, regional, national, and local. The multilateral and bilateral activities of states in the development sphere must become a topic in the human rights mechanisms of the UN.

The alignment of development policy with human rights implies that the financial means of ODA will flow primarily into countries where basic rights are most endangered and that a major part of these means will be channeled into human rights education and institution-building to make governments accountable and enforce the rule of law.