WHAT CAN WE DO WITH A RIGHTS-BASED APPROACH TO DEVELOPMENT?

A rights-based approach to development sets the achievement of human rights as an objective of development. It uses thinking about human rights as the scaffolding of development policy. It invokes the international apparatus of human rights accountability in support of development action. In all of these, it is concerned not just with civil and political (CP) rights (the right to a trial, not to be tortured), but also with economic, social and cultural (ESC) rights (the right to food, housing, a job) (Box 1).

A rights discourse which encompasses both CP and ESC rights is not new – indeed both are found in the Universal Declaration of Human Rights, and in subsequent covenants and conventions (Box 2). However, ESC rights, in particular, have been rising up the agenda: for example in statements and speeches made to commemorate the fiftieth anniversary of the Universal Declaration, in December 1998. The indivisibility of rights is captured in the phrase 'All Human Rights for All'.

The new rights agenda runs alongside an agenda derived from the international development targets, which focuses on poverty and human development. CP and ESC rights are both a component of human development, and a means to it: participation and the elimination of discrimination against women, for example, are desirable in their own right, and also necessary conditions for the material well-being of the poor to increase. But, in this case, it is legitimate to ask whether a rights-based approach offers value-added over a poverty or a human development approach. Is a rights discourse simply another form of advocacy for human development?

Many other questions arise. Are rights really indivisible, in the sense that ESC rights are equally as important as CP rights? If ESC rights are legitimate, how can they be made operational? And who has the responsibility to protect and fulfil those rights? Is it the state in which the right-holder lives, or do others (other states, non-state actors) carry a share of the burden? There are challenges here to theory and to law, but more important to the policy and practice of many different actors in the international community.

The legislative basis of a rights-based approach

The distinctive feature of a rights-based approach is its legal foundation, internationally, regionally, and at national level. The edifice is incomplete, however: ratification is patchy, and few countries have translated international obligations into national legislation. The protection afforded by law is therefore limited. Europe may be the most advanced region in this respect (Box 3), though a Convention for the Americas was agreed in 1969, and an African Charter on Human and People's Rights in 1981. Africa has also now agreed the creation of a regional Court on Human Rights.

The Universal Declaration, and the two 1966 Covenants, respectively on CP and ESC rights, provide the cornerstone, with other Conventions, for example the Convention on the Rights of the Child, adding depth and rigour. ILO Conventions, which define core labour standards, for example on safety at work or home-working, also play a part in the international system. However, the US, to take the main example, although it complies in large part with the standards laid down in international law, has never ratified key instruments of ESC rights, including the 1966 Covenant and the Convention on the Rights of the Child. Some observers have also complained that non-state actors, including the World Bank, the IMF, multinational companies, and NGOs, are formally outside the system of ratification, and cannot therefore be held accountable internationally for the degree to which they respect rights.

Some international jurisprudence is still new. For example, a 1998 treaty established the principle of an International Criminal Court, to provide a mechanism for pursuing individual

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Box 1: A summary of Human Rights

Human rights necessary for survival and dignified living include:

- The rights to life and liberty
- The right to a standard of living adequate for health and wellbeing of the individual and his/her family
- The right to social protection in times of need
- The right to the highest attainable standard of physical and mental health
- The right to work and to just and favourable conditions of work
- The rights to food, and housing
- The rights to privacy and to family life

Human rights also cover those rights and freedoms necessary for human dignity, creativity and intellectual and spiritual development, for example:

- The right to education and to access to information
- Freedoms of religion, opinion, speech, and expression
- Freedom of association
- The right to participate in the political process
- The right to participate in cultural life

They also include those rights necessary for liberty and physical security, for example:

- Freedom from slavery or servitude
- The right to security of person (physical integrity)
- The right to be free from arbitrary arrest or imprisonment
- Freedom from torture and from cruel, inhuman or degrading treatment or punishment.

Cross-cutting are the twin principles of the equal rights of women and men, and the prohibition of discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
Source: Häusermann 1998:56

liability for war crimes, crimes against humanity and genocide. Sixty ratifications are required for the ICC to come into effect. Sixty five countries signed the treaty, but only two have so far ratified. On past experience, it may take a decade to reach the threshold.

Many countries which have ratified international instruments for ESC rights have no provision in domestic law. Some do, however. The South African Constitution is a much-cited example, recognising ESC rights, and committing the country to progressive realisation. Other cases include Portugal, Brazil and Spain.

The apparatus for rights

Despite legal loopholes, a significant apparatus exists to monitor the degree to which both CP and ESC rights are (key words) respected, promoted, protected and fulfilled. There has been innovative work, mainly by NGOs, on performance standards and codes of conduct, especially in the humanitarian field.

The international apparatus is largely toothless, but can make an important contribution to a 'culture of compliance'. The UN has six treaty monitoring bodies covering the main rights instruments (CP, ESC, torture, race, women, and children). These committees 'receive' reports from countries, and issue 'General Comments' on various topics. For example, the Committee on ESC rights has recently issued a General Comment on the Right to Food, which highlights many current concerns (Box 4). The UN also has a High Commissioner for Human Rights (Mary Robinson), whose office has an advocacy, research and support role. Special UN Rapporteurs may be appointed, as for example the UN Special Rapporteur on structural adjustment and ESC rights.

Accountability has been taken further outside the UN. A popular strategy has been to define and seek approval for a code of conduct, which is specific enough to contain performance standards; then to monitor compliance; and, in the best cases, to provide a mechanism for complaint and for regulation of the code. An early example was the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, approved in 1995, and now adopted by over 100 organisations. A more recent example is the SPHERE project for principles and performance standards in humanitarian operations. The SPHERE project explicitly adopts the language of rights, lays down a humanitarian charter, and sets performance standards for water

and sanitation, nutrition, food aid, shelter, site planning and health services. Both impact standards and process standards are specified.

The SPHERE project does not provide for accountability, but other parties are working on the possibility of an ombudsman for relief operations, at least to provide a channel for complaints. A first experiment is taking place among refugees from Kosovo.

Key debates

Performance standards and accountability are two of the issues that arise in trying to operationalise a rights-based approach, particularly one that deals with ESC rights. There are others, however. Six key questions need to be settled.

Is there a hierarchy of rights?

A long-standing debate is between those who argue for the primacy of CP rights, and those who place ESC rights at the apex. During the cold war, this debate often divided the Western liberal democracies, emphasising liberty, from the socialist states and many developing countries, giving priority to material well-being. Recently, the debate has lost ardour, partly reflecting a realisation that CP and ESC rights are intimately linked. For example, for many poor, rural people in developing countries, access to land is essential to earn a living: this is an element of ESC rights. Yet land rights are a judicial matter, requiring protection in the courts, and this is a CP issue. The inseparability of rights was agreed at the World Conference on Human Rights in Vienna in 1993. The more interesting current question may not be about hierarchies, but rather about entry points and sequencing.

How to balance individual and collective rights (and responsibilities)?

Rights are largely assigned to individuals, but problems arise. For example, can individuals exercise their rights in ways which impose costs on others? And do individuals have rights, for example to state support, even when they themselves have failed to make elementary provision for their own needs?

An example of the tension between individual and collective rights arises in the case of birth control. Individuals have reproductive rights, which implies the right to have children. Yet society may have to educate those children and provide social protection over their lifetime – this is a cost for others. In the UK, a rich country, much debate has been generated over rights to treatment in the National Health Service: is rationing, an inevitable feature of such a system, compatible with the right to health care?

Individual responsibility also presents difficulties. Do the undeserving poor, if such exist, who could support their families, but spend all their income on vices of various kinds, have an automatic right to social protection? If not, who is to judge whether minimum standards of individual responsibility have been met?

There is no easy answer to these dilemmas, except to say that universal standards require local debate, leading to the definition of locally appropriate performance standards. ESC rights are inevitably more difficult to define in practical terms than CP rights.

Is progressive realisation meaningful? Morally defensible?

The difficulty is exacerbated by the response of writers on rights to the problem of financial constraints. Rights might be universal, but they are also expensive. If states are the ultimate duty-bearers, and those states are poor, then immediate and universal fulfilment of rights is simply not an option. The answer, in the literature and the legislation, has been to speak of 'progressive realisation'. In the short-term, states have not a maximum, but a minimum obligation, which means providing the 'maximum available' resources. In practice, this means taking at least some steps, which are (more key words) deliberate, concrete, targeted, and appropriate.

Some criticise the formulation of progressive realisation as being too imprecise, and letting states off the hook. The risk is that ESC rights become largely aspirational, or 'manifesto rights'. How big exactly are 'maximum available resources' supposed to be, at different levels of development? Is it enough to spend 20% of the government budget on social sectors (as recommended by the 20/20 initiative)? And what assumption is then made about how big a share of the national income should be taxed for the government budget?

What is the role of international and non-state 'duty-bearers'?

A related imprecision derives from the ambiguous role of international duty-bearers, whether these are other states or non-state actors. Do rich countries have a legally-defined duty in this framework, to help poor countries underwrite the ESC rights of their citizens (and their CP rights, come to that: elections are expensive)? If so, to what extent? Similarly, do NGOs have a legal obligation to meet certain standards of care in emergency situations? And how would an ombudsman decide whether failure was the NGOs' fault, or due to factors beyond their control (like the slowness of donors in delivering food)? Do multinationals or international financial institutions have obligations?

There are different views here. Some believe that the rights framework firmly identifies states parties to the various Conventions as being fully responsible for the promotion, protection, and fulfilment of the CP and ESC rights of their own citizens, and those citizens only. Others believe that countries do have other responsibilities: to provide aid, to abstain from actions that may hurt the poor, and so on. Certainly, there is material in the current discussion of development partnership which implies reciprocal obligations between different partners, especially rich and poor countries. Human rights have also been invoked in debates over issues like NATO intervention in Kosovo.

The position of non-state actors is complex, and contested. They are not parties to international treaties, but may have self-imposed standards, or obligations under national law. Self-regulation seems to be the preferred way forward, as we have seen with NGOs.

Are performance standards necessary for accountability?

Performance standards provide a standard against which the implementation of rights can be measured. They are difficult to design, however. As has been seen with a target-based approach more generally, including the international development targets, universal targets can over-simplify complex problems and encourage distortions in public expenditure. Many ESC rights are problematic from this point of view. Poverty, for example, means different things to different people, with greater or less emphasis on material well-being, compared to self-respect or other subjective aspects. Even an apparently simple right like enough food is difficult: food needs vary markedly according to age, sex, health status, occupation, and environment. How much is 'enough'?

A resolution of this particular dilemma can be found, not by abandoning performance standards, but by making sure that they are negotiated locally, to reflect local conditions, and to allow for participation by local people. To do this does not, in principle, undermine the idea of universal rights. What it does do is to ensure that universal rights are locally relevant.

Does accountability imply legal recourse?

Finally, there is an active debate about whether the rights approach requires the full panoply of legal enforcement, or whether alternative approaches exist. Purists argue for legal frameworks, but others point to the weakness of legal systems in many of the countries which suffer the greatest failures in delivering rights. Over-reliance on law, it is argued, can be counter-productive. There are alternatives.

First, the very act of monitoring the fulfilment of rights acts as a disincentive to back-sliding and helps to create a culture of compliance. The work of the UN Committees on CP and ESC rights exemplifies this point.

Secondly, publicity and advocacy help to create political structures, policy changes, and budget allocations which favour the implementation of rights. Strategies such as the production of score-cards, or 'naming and shaming' have been proved to

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Box 4: The Right to Food

In May 1999, the UN Committee on Economic, Social and Cultural Rights agreed a General Comment on the Right to Adequate Food. This was the culmination of a long process of analysis and advocacy by those concerned with the plight of more than 800 million people in the world without access to sufficient food.

The General Comment recognises the legal basis of the right to adequate food, most clearly expressed in the 1966 Covenant on ESC Rights. It acknowledges that the right will have to be realised progressively, but charges states with 'a core obligation to take the necessary action to mitigate and alleviate hunger'. States are required to respect, protect, and fulfil the right to food, making every effort to meet minimum obligations 'to the maximum of available resources'. Non-state actors have responsibilities, too, and states should regulate accordingly and provide a conducive environment. Internationally, states and international organisations are required to cooperate in 'joint and separate action' to achieve the full realisation of the right to food.

The General Comment advocates specific measures: a national strategy, framework legislation, verifiable benchmarks, monitoring, a judicial process, and adequate reparation for victims of violation. National ombudsmen and human rights commissions should address violations of the right to food.

be successful – for example, UNICEF's annual Progress of Nations Report lists countries which have not ratified the relevant Conventions. At a national level, the NGO campaign in Kenya, Basic Needs as Basic Rights, has done much to raise public awareness of ESC rights.

Thirdly, there is scope for providing accountability through administrative means – specifying service delivery standards, and holding public and private agencies to account if these standards are not met. At the international level, the World Trade Organisation is an example of a rules-based approach to setting standards and settling disputes. At the national level, the Citizens' Charter initiative in the UK is an example of a wide-ranging exercise to set performance standards and define channels of redress.

Fourthly, many argue that the rights-based approach needs to be rooted in a participatory and political process. Such an approach, they argue, provides poor people with 'voice', and contributes to empowerment and more active citizenship. Greater openness by service delivery organisations, and greater public accountability, can be matched by greater public involvement in all stages of their work.

Conclusions

The debates on CP and ESC rights are far from settled, but the above review does suggest some working principles:
• It is legitimate and worthwhile to take a comprehensive approach to rights, including both CP and ESC rights;
• Rights need to be complemented by individual responsibility, and they cannot be unbounded if they impose costs on others;
• Nevertheless, states do have the duty to respect rights, and to help promote, protect and fulfil rights – even if all they can do is make a start with progressive realisation;
• Because rights are universal, the wider international community has at least a moral duty to support rights, including financially, in partnership with states;
• This moral obligation may extend to non-state actors, particularly international financial institutions, TNCs, and NGOs;
• The implementation of a rights-based approach requires performance standards to be set, though these are best negotiated locally;
• Accountability can – and probably should – imply justiciability in the courts, but there are many complementary approaches involving monitoring, reporting, public debate, and greater citizen participation in public service delivery.

On this basis, the concerns of a rights-based approach can be seen to overlap to a considerable extent with the priorities of a poverty reduction or human development approach. There are many commonalities: a holistic approach, an emphasis on performance targets and accountability, the idea of international partnership. At the same time, a rights-based approach does offer value-added, perhaps particularly in providing a legal basis for basic needs advocacy, and in identifying legal mechanisms for public service accountability.

There are, of course, many problems. The legal recourse is the hardest hurdle to jump in achieving rights, especially so in countries where legal recourse is most needed, but also in others: for example, in India, which has a well-developed legal framework, it has been estimated that it would take 350 years to clear the current backlog of court cases, even if no new cases were added. It is also easy to think of countries where any dialogue about rights would be extremely difficult.

Nevertheless, we should end on an optimistic note. The humanitarian community has shown that it is possible to build a dialogue on rights even in war situations, building on the Geneva Convention and other components of humanitarian law, as well as country-specific codes of conduct. South Sudan, Liberia, and Sierra Leone are just three countries where a rights perspective has helped inform local arrangements.

More generally, other agencies have found ways to develop a rights approach. For example, the Human Rights Council of Australia has developed methods which build on a situational analysis, set goals and standards, support the writing of action plans, and provide monitoring of compliance, all with high degrees of citizen participation. Similarly, UNICEF is using the Convention on the Rights of the Child as its core planning and programming framework, with many practical outcomes, including implementation check-lists covering such topics as legislation, budget allocations, monitoring, independent accountability and international cooperation. Other donors are following suit.

Further reading

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Hodgkin, R. and Newell, P. for UNICEF (1998) 'Implementation Handbook for the Convention on the Rights of the Child'. New York: United Nations Children's Fund.

Human Rights Council of Australia (1995) 'The Rights Way to Development: A Human Rights Approach to Development Assistance'. Sydney: Human Rights Council of Australia.

Short, C. (1998) 'All Human Rights for All'. Speech delivered to the Law Society, London, 3 December 1998. London: Department for International Development.

Sphere Project (1998) 'Humanitarian Charter and Minimum Standards in Disaster Response'. Geneva: Sphere Project.

UNDP (1998) 'Human Development and Human Rights' Report of the Oslo Symposium, 2–3 Oct. 1998. Copenhagen: UNDP

Useful websites

Eldis: http://nt1.ids.ac.uk/eldis/humr/hum.htm (Eldis is a gateway to online information on development in countries of the South).

OneWorld: www.oneworld.net/ OneWorld is dedicated to promoting human rights and sustainable development.

United Nations Children's Fund: www.unicef.org/crc/

United Nations High Commissioner for Human Rights: www.unhchr.ch/

Human Rights Watch: www.hrw.org/links.html

For further information, please contact the principal author, Simon Maxwell, ODI Director at (s.maxwell@odi.org.uk)

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