

Expert Meeting on the Right to Development and its Practical Application

30 November 2006, Hotel Mövenpick, Geneva, Switzerland

Conference Report

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On 30 November 2006, the Chair of the Working Group on the Right to Development and the Geneva Office of the Friedrich-Ebert-Stiftung, invited to an informal meeting on the meaning and importance of the right to development (RtD) in current development partnerships. The meeting was attended by representatives of national and international development agencies and organizations.

The purpose of the meeting was to exchange views on how the right to development relates and can possibly contribute to the different phases of development programming. It aimed to assist the Working Group in their application of recently adopted criteria concerning the implementation of the right to development on the ground (see report of the 7th session of the Working Group, E/CN.4/2006/26). It also aimed to provide the Working Group with an overview of the extent to which the right to development was present in development programmes currently implemented by major agencies.

The meeting was framed by the two following questions:

- 1) How do human rights, and in particular the right to development, or a human rights-based approach (HRBA) feature – explicitly or implicitly – in the policy and programming work of development agencies?
- 2) What would be the value-added of the present RtD-criteria to the policy and programming work of development agencies?

The representatives of the development agencies were asked to prepare a short presentation mainly on the first question, while suggestions concerning the

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second question were given through comments by *Professor Nico Schrijver* (member of the High-level Task Force on RtD), *Margaret Sekaggya* (member of the HLTF on RtD and Chairperson of the Uganda Human Rights Commission) and *Susan Mathews* (University of Tilburg). Yet, the development practitioners themselves also offered substantial input on the second question, elaborating how, in their view, their work could benefit from workable RtD-criteria for the evaluation of the partnerships and programs they were involved in. Those suggestions were again summed up by *Ambassador Ibrahim Salama* (Chairperson of the Working Group on RtD)

Welcoming the participants and opening the discussion, *Erfried Adam*, Director of the Geneva Office of the Friedrich-Ebert-Stiftung, recalled the major problem of the Right to Development: while being generally acknowledged by all stakeholders, the interpretation and implementation of this human right were lacking behind. Often organizations committed themselves to promoting the RtD, but its incorporation at the working level proved difficult. He mentioned that FES' country programs were not an exception. They focused on equity in the sense of social justice but not explicitly on the RtD. This did not mean that the organizations were only paying lip service to the RtD, but was due to the nature of this right, and the meagre practical guidance in how to apply the RtD in concrete projects and partnerships. He called for more openness within the organizations to embrace new ideas and approaches in their practical work.

Recognizing the broad spectrum of participants, *Ambassador Ibrahim Salama* added in his welcoming remarks that the practical experience and the varied backgrounds of the representatives of the development agencies and organizations was exactly what was needed to further the discussion in Geneva. Their views on an applicable notion of the RtD would be a great asset for the future work of the High-level Task Force (HLTF) and the Working Group (WG) on the RtD in determining ways for a practical application of the RtD.

He also underlined that he saw in this meeting a possibility to publicize the 5 principles of the RtD among development practitioners: equity, participation, non-discrimination, transparency, and accountability. With this basic understanding of the RtD the often problematic misconceptions could be overcome. That problems with the implementation of the RtD also go beyond misconceptions became obvious in the following remarks and comments on the main questions.

[As this meeting was informal by nature, the present report will only refer to the issues raised, without attributing them to specific speakers. At this point we also wish to thank all the speakers for their informative and frank input to this "brainstorming" meeting which may also provide some guidance for the High-level Task Force and the Working Group on the Right to Development in determining their future agenda of work.]

1) How do human rights, and in particular the right to development, or a human rights-based approach (HRBA) feature – explicitly or implicitly – in the policy and programming work of development agencies?

In preliminary remarks concerning this question, participants clarified that it was important for donor countries to stress the difference between a Declaration (like the one on the RtD) and a legally binding Human Rights Convention. A Declaration only stated the moral commitment of the signatories, but does not legally bind them to any policies. It was further recalled that the right-holder of the RtD was the individual person and the primary duty-bearer the nation state (meaning the home state of the citizen concerned). Yet, high value was given to the moral obligation established by the Declaration. The commitment of the signatories, it was pointed out, could be seen in the change in development strategies undertaken since the Declaration's adoption in 1986. Generally the focus had switched from structural programs focussing on development outputs to policies of poverty reduction, pro-poor programs, incorporating gender assessments and focussing on the development process rather than only on the outcomes. Even the evaluation of the outcomes had shifted in focus, as they were now measured against the Millennium Development Goals (MDGs).

Generally speaking all agencies reiterated their commitment to agreed UN principles and to integrating human rights into their policies and programs, and they specified the various levels on which this had already taken place. It was evident that some agencies have already further advanced than others and that there is also a great interest to learn from each others experiences. Practically the degrees of human rights involvement vary from undertaking explorations of the possible impact a HRBA approach might have on the work of the agency concerned, to overall approaches which rather make reference to human rights than being human rights based, to pilot projects of an HRBA in some countries, to implementation of a HRBA in key areas that offer themselves more easily to a HRBA (i.e. where rights are supported directly: e.g.: right to education; right to health...), to outright RtD compatible policies that work with direct budgetary aid on the basis of partnerships with defined common values and interests. For all development cooperation the human rights situation in a country does impact on what kind of partnership is chosen or whether any cooperation is being taken up at all (outside of humanitarian aid and disaster relief): in the partnership with a country with poor human rights record, the focus would be on strengthening human rights. A country with good human rights record on the other hand, might receive more direct budgetary aid. It was also stressed that political human rights abuses did have more impact on the future of a development partnership than economic non-compliance, given that political dialogue and shared values were the basis for any partnership.

The overall problem with the RtD, it was stated, was not necessarily its theoretic basis – the participants did not perceive much disagreement on that – but rather the possibilities of practical implementation. Notions of equality or “growth with

equity” are basics in any development work, but how to link or ground this in the RtD context presented a difficult task for many.

Within the work of the agencies, RtD advocates face a number of obstacles: there are practical constraints of cost effectiveness in pro-poor approaches or when focusing specifically on the most marginalized parts of society. Among the staff of an agency different opinions on preferable approaches to development prevail; a HRBA and even more the RtD will need more “mainstreaming” to reach the working and country level of organizations and agencies. Those approaches might also face strong opposition from other departments of a donor country. Especially the RtD is seen to have unforeseeable impact on the negotiation of trade agreements, and therefore policies containing the RtD are subjected to outmost scrutiny and sometimes resistance from outside the development ministries as well.

To overcome those constraints a need for human rights training within the agencies was pointed out, enabling them to use human rights as ethical framework for their own work, and to measure accountability in development projects against human rights standards. It would be an advantage to ground the agencies’ own policies explicitly in human rights, because this would lend more credibility to the request that partner countries implement a HRBA in their development strategies.

To promote a HRBA, steps were identified that all agencies could undertake (and are already undertaking in different degrees): support the promotion of human rights within a partnership; respect human rights based decisions of partner countries; protect human rights in partner countries against possible negative impacts of third party’s action (e.g. transnational corporations); support partner countries in fulfilling their own human rights obligations.

As remaining problems in implementing a HRBA, the difficulty on the donor side to switch from a structural to a pro-poor approach and adopt a HRBA for policy sectors that did not offer an obvious link to a specific human right was pointed out. “Cost effective” classical development programs might on the other hand infringe upon the rights of the most disadvantaged and marginalized. In partner countries a growing human rights commitment was observed, but often the implementation seemed to lack behind. Also, partner countries perceived a HRBA or the implementation of the RtD often as a donor driven agenda and deplored the new “conditionality” that was tied to the partnerships

2) What would be the value-added of the present RtD-criteria to the policy and programming work of development agencies?

While some participants had already touched upon the second question earlier, the opening remarks by Nico Schrijver, Susan Mathews and Margaret Sekaggya added perspectives on which all participants were asked for comments subsequently. From this second round resulted numerous suggestions for the further work of the HLTF and WG on the RtD.

Nico Schrijver commented on the need to further a common understanding of the RTD. While it was comprehensive and important, it remained “fuzzy” for many. It was important to stress that it was not a “right to everything.” He noted that there seemed to be little difference between government position and the opinions voiced by agencies – wondering if this discussion was kept internal or whether governments and agencies were really agreed on the topic. He pointed out that in the discussion on RtD it was important to realize that there were always political power relations involved: among ministries, the RtD was still disputed. Then he defined what he saw as key questions concerning the future implementation of the RtD: How can the RtD be translated into programs? What are the consequences for (donor-) agencies and partners? What are the implications of RtD mainstreaming in South-South relationships? What are the challenges?

Referring to a proposal brought up earlier about the possible role of ECOSOC as forum where policy coherence could be fostered, he remarked that in this regard ECOSOC might be a “sleeping beauty”, but the function should rather be asked from the Human Rights Council. It could strengthen the RtD by linking it via an explicit mandate to the MDGs. This would attend to the often called-for strengthening of coherence between policies of economic and “human” development.

Susan Mathews drew a rather sceptical picture of past efforts in development. In her comments she balanced her scepticism with an assessment of the possibilities. She stated that the criteria developed by the HLTF might in their present form not be suitable for the application to partnerships. In a pilot project, they would have to be refined and explained because in their present form they would only provide a checklist. In her opinion, reorganization was needed in three areas concerning 1) the enabling environment, 2) incorporation of human rights into the understanding of development, 3) a focus of the resulting improvement, taking into account notions of fair distribution and well-being of the entire population. In the context of social justice the redistribution of wealth and the fair distribution of *disadvantages* had to be addressed as well.

She also called for the RtD to move beyond partnerships and HRBA. Underlining the difference between a HRBA and the RtD approach she added that what set the criteria under the RtD apart from other rights-based approaches was their

preoccupation with the enabling economic, social and political environment in which development takes place. This was important to note, in light of the possible confusion of the two concepts and the synonymous use of the terms among the participants.

Margaret Sekaggya reported on the Ugandan experience: Most remarkably she said was that, when a HRBA was introduced in the Ugandan development cooperation, the majority of people dealing with it, no matter on which side, had no idea what it was. Therefore partners *and* donors needed capacity building to understand what a HRBA is, starting at the very basics. This strengthening of capacities and mainstreaming of the HRBA had to go through all ministries, and not remain restricted to the development ministries!

Monitoring and evaluation did, according to her observations, not yet follow a HRBA; efficiency was still rather measured at a classical scale where cost efficiency was the important factor. She urged that this should be changed and emphasis be placed also on the procedural issues of a HRBA. Concerning the debate on a HRBA she questioned whether all parties were on the same level and really talked about the same thing.

The *participants* underlined that the HLTF and WG on the RtD should try to strengthen the understanding that a HRBA was not a new form of imposed conditionality but the basis of any genuine partnership (as proclaimed under MDG 8) which by its nature required a set of shared values.

Also a need was expressed for further clarification by the HLTF. Was a pro-poor approach really at the same time a HRBA? Some basic notions of a partnership should be elaborated, taking the legal framework and national constitutions of the partner countries into account and using them as a guiding tool in human rights commitments, which would avoid the discussion about moral vs. legal obligations of human rights documents.

Value-added by the criteria was seen by the participants in the following points:

The criteria would have a new focus on state vs. non-state responsibilities. This would help to “ground” responsibility, using the RtD as a value baseline, which could even provide a legal framework for development programs and support empowerment, accountability and internal stability to the (emerging) democracies in developing countries. Applying the criteria could strengthen pro-poor approaches and sectoral development strategies as usable criteria would help in the evaluation and documentation of existing and the set-up of new programs. An evaluation along the criteria could also lead to the establishment of empirical evidence which was so far lacking, making it very difficult to persuade “non-believers” to implement the RtD. Concise criteria would also help to clarify the position of donors as duty bearers. In the formulation of partnerships, the RTD criteria could be toolkit, help in the education of staff, and

ensure that programs do focus on human rights, avoiding the danger of a mere rhetorical repackaging. The RtD criteria should be used to complement already existing (mostly social and environmental) impact assessments in the evaluation of existing partnerships, the determination of new ones and in any ex-ante assessment preceding decisions on loans or investments.

This wide array of possible value-addition by the criteria shows the real demand for such workable criteria as developed by the HLTF and the WG and their further elaboration.

Ambassador Ibrahim Salama, in summing up the main suggestions for the future work of the HLTF and WG given in the contributions, stressed the need to take the “outer world” into account when discussing in Geneva. While states had accepted development as a right, they had not defined it, which would at the implementation level continually pose problems. The lack of definition was also causing some states’ reluctance against incorporating the RtD into their development policies without knowing about possible implications. So before any move towards a Convention on RtD was to be made, further clarification and most of all workable criteria had to be presented. It was not possible to ask for the implementation of something that was not properly defined and still lacked the necessary methodological guidance. He also mentioned that the importance of stressing the interrelatedness of RtD with civil, political, economic, social and cultural rights did not diminish.

Questions that he noted concerning the future work of the HLTF were how to consolidate the current successful RtD approach within the UN and transform it into a continued process with a structured road map, harmonised and usable outcome and in a sustainable, non politicised manner. The evaluation of partnerships had to proceed in a manner that consolidated the existing agreement without restraining further refinement. Regarding the past efforts of the HLTF and the WG, he noted the need to link the various conclusions in a continuum that was easily accessible outside the WG as well. This could foster the exchange with national development agencies and make the discussion of the WG more accessible for them, allowing the WG in turn to benefit from their lessons learned concerning a HRBA in practice.

Coherence had been an issue raised often by the participants. Therefore it would be obligatory for the HLTF and WG to address this issue, trying to promote coherence among all development related policies of a given country to ensure that the RtD would be taken into account on all levels. Diplomats in New York and Geneva often seemed to pursue different aims, which presented a much greater obstacle to coherence than a mere lack of communication would do. The adequate forum had to be identified to push for this agenda: was it ECOSOC or rather the Human Rights Council? In the end, only a coherent RtD approach could guarantee the fulfilment of this right and prevent the RtD to be subsumed under a general HRBA, neglecting its specific overarching nature.

Closing the meeting, he remarked that it had become clear that the agencies were welcoming the criteria and that their application (and applicability) would stay a matter of priority for the HLTF. But what would be the next topic to engage with? Trade and trade agreements had been named by the participants, as those were policy areas which could thoroughly undermine the enjoyment of the RtD. The topic of migration seemed to gain more importance in development programs as well. He noted the recurring wish of the agencies that the HLTF and WG should provide theoretical background and guidance for the implementation of the RtD and that they also could serve as a forum for exchange among the agencies, by compiling data on best practices and lessons learned. He also expressed his hope that the fruitful and open dialogue between the WG and the development agencies could be carried on and expanded in the future.

List of Participants

FES-OHCHR Expert Meeting on the Right to Development Criteria

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DEZA - Swiss Agency for Development and Cooperation

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