APPLYING THE HUMAN RIGHTS-BASED APPROACH TO ENVIRONMENTAL DEVELOPMENT

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- *"The success of the global response to AIDS will rely on tackling not only the encroaching virus itself but also the affects of climate change such as food and water shortages, growth in poverty and an increase in natural disaster,… equally, strengthening the response to the AIDS epidemic will mean that individuals, communities and societies will have greater social resilience in the face of a range of climate change threats and will be better able to deal with their consequences*

The State of the World Population report released by United Nations Population Fund (UNFPA) in November 2009 at http://www.unfpa.org/rights/principles.htm

Topics

- The fundamentals of Human Rights,
- The Human Right to Development and Developing Human Rights
- What is the human rights based approach (HRBA)
- Human Rights are Central to Human Development
- Protecting, Promoting and Realizing Human Rights: Complementary Approaches - Reactive and Pro-active Approaches
- Adopting a Human rights-based approach to Development: Why; What; How?
- Applying the HRBA to an Environmental Programme
- Discussion and Q&A

The fundamentals of Human Rights,

- **What are Human Rights**
- "a privilege,"
- "an entitlement"
- 'human rights' are as fundamental as "human needs" that had to be elevated to the "rights status" so that it could be claimable in law.

- *Human rights are:*
- *universal*
- *inalienable;*
- *indivisible;*
- *interdependent and interrelated.*
- *upheld by the rule of law*
- *strengthened through legitimate claims for duty-bearers to be accountable to international standards.*

Duty Bearers Vertical and Perpendicular

Vertical

State is the guarantor of Rights – the citizen-State contract hence binding upon the State, Statutory bodies and employees of the State

Perpendicular

Individuals so as corporations. "Can only enjoy your rights as long as you don't infringe the rights of others"

Human Rights Laws bind the Government the Legislature, the Executive and the Courts -

The Human Right to Development and Developing Human Rights

- S3 of Fiji 1996 Constitution

In the interpretation of a provision of this Constitution:
(b) regard must be had to the context in which this Constitution was drafted and to the intention that constitutional interpretation take into account social and cultural developments, especially: (i) developments in the understanding of the content of particular human rights; and (ii) developments in the promotion of particular human rights

The UN Declaration to the Right to Development - 1998

"...Confirming that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations, ...

Proclaims the following Declaration on the Right to Development:

What is the human rights based approach (HRBA)

- End of the Cold War, a more differentiated view of both global problems and the challenges that Globalization brings to international relations emerged.

- The equal status of all human rights became widely recognized

- Included economic and social rights

- Part of this rethinking is the rapprochement of development and human rights policy in a so-called human rights approach to development

UN Statement of Common Understanding

- *Human rights principles guide programming in all sectors, such as health, education, governance, nutrition, water and sanitation, HIV/AIDS, employment and labour relations and social and economic security. This includes all development cooperation directed towards the achievement of the Millennium Development Goals and the Millennium Declaration. Consequently, human rights standards and principles guide both the Common Country Assessment and the UN Development Assistance Framework. ...Human rights principles guide all programming in all phases of the programming process, including assessment and analysis, programme planning and design (including setting goals, objectives and strategies); implementation, monitoring and evaluation.*

Human Rights are Central to Human Development

- Human rights, and in particular the human right to development, provide the values, principles and standards essential to safeguard that most precious of all rights — the right to be human; of which the right to be woman; to have been infected by a virus called HIV and yet still is human; and to be owners or dependents of natural resources, are   integral components.

Protecting, Promoting and Realizing Human Rights: Complementary Approaches -

Reactive

This typically focuses and seeks to impose sanctions on the violator. But it could also help victims seek redress and gain security, relief, and rehabilitation. A violations approach could also focus on the bystander (one who is neither victim nor violator) and seek to mobilize awareness, indignation and concern.

Reactive

- The violations approach is important as a diagnostic: focusing on the system of institutions of governance. Patterns of violations indicate systematic weaknesses which need to be addressed through institutional strengthening or reform. The institutions involved include those responsible for implementation and enforcement of laws.

Pro-Active Approach

- Promotion of awareness about human rights and remedies for redress and grievances through, for example, human rights education;

- Strengthening of mechanisms for the protection of human rights such as the judiciary, national human rights commissions, ombudsperson, and the media

- Furthering the realisation and fulfillment of human rights through development programs in poverty alleviation, crisis prevention and recovery, HIV/AIDS, energy and environment and democratic governance.

- Further strengthening the normative processes ongoing in the UN system through operational activities .

Adopting a Human rights-based approach to Development: Why; What; How?

A human rights-based approach to development programming builds upon elements of traditional 'good programming practice', such as:

- emphasizing the process as well as the outcome of programming;

- including the most marginalized in equitable service delivery;

- extending and deepening participation;

- ensuring local ownership of development processes; and strengthening the accountability of all actors

WHY: adopt a human rights-based approach to development?

- It makes good sense and results in good development practice
- It is mandated by international human rights treaties, national constitutions and laws
- It is a practical necessity to realize the complementary and interdependent paradigms of sustainable development and human rights
- There is value-added in:
  - o universality and indivisibility;
  - o equality and non-discrimination;
  - o participation and inclusion; and
  - o accountability and the rule of law

WHAT: does adopting a human rights-based approach to development entail?

- Internalizing human rights values and principles organisationally, nationally and individually

- Developing a human rights-sensitive organisational culture

- Strengthening internal and national human rights capacities

- Expressing institutional will in policies and demonstrating commitment in programming, for the promotion, protection and realisation of human rights

HOW: can the human rights-based approach be applied to development programming?

It involves applying international human rights values, principles, standards and goals in all stages of policy, programme and project formulation:

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Applying the HRBA to an Environmental Programme

In practical terms, the application of the human rights-based approach influences programming in at least four ways:

- First, it forces programme staff and policy-makers to reflect upon the why and how of their actions beyond the question of what should be done;

- Second, the global legitimacy of human rights provides an objective starting point for dialogue and discussions with government, the people, and external partners;

- Third, it helps policy-makers and citizens recognise the power dynamics of the development process;
- Fourth, the accountability structure pursued through a human rights-based approach facilitates the development of quantitative benchmarks and indicators for measuring progress in development planning and delivery. It also influences institutions to resolve grievances and moderate conflicts arising through the development process both at the project-level as well as the national level.

Discussion

Participation.

i) ***Broad-Based Participation:*** Development agencies have found that integrating human rights into their work can prove challenging; in particular with regards to the principles of participation.

WaterAid, for example, states that sensitive cultural factors such as gender equity, belief systems and local political, social and economic power structures make it hard to achieve broad-based participation in decision-making and community management of shared water resources. And with time-frames imposed on projects, ensuring cross-cultural representation consistently is sometimes impossible.

- For example, women may not be allowed to sit on village committees, or when present sit silently outside the discussion circle. In such circumstances, development practitioners have found that extra steps are needed to ensure that they receive the input of these groups. Steps may include visiting vulnerable groups at home, developing the capacity of these groups to participate more effectively, and structuring the 'roundtable' to limit the dominance of the powerful

- Recognizing that there will often be practical limits to achieving broad-based participation, practitioners will have to work out specific ways for how best to integrate this principle in each given context. To work in environments where power imbalances, inequality and discrimination exist, development practitioners will need negotiation skills, gender sensitivity and understanding of different lifestyles and cultures. Experience show that including all groups, in particular vulnerable groups, in the programming process is "expensive in time, money and human resources but it is an essential investments in achieving sustainable outputs which benefit those people whose need is the greatest".

Elite Capture' of Programmes:

- There is a danger that in attempting to become more open and participatory, environment and energy programmes can inadvertently become exclusive. By only inviting the main stakeholders to the decision-making table, or only working with existing local leaders (and thereby entrenching existing leadership), the development process remains closed to many other sectors of the public. As highlighted above, often the weaker and more marginalized groups that lack the capacity to organise and advocate for their rights are left out of the process. Yet in the energy and environment sector, children, women, the poor, and other marginalized groups are disproportionately affected by lack of access to natural resources and energy services. It is therefore often important to focus on these groups and to specifically address their needs in programming activities

<u>Provincial Government Obligation to the local population</u>

In Argentina in 1996 the Children's Public Defender of Minors filed and won an injunction against the local government for failing to prevent the polluting of an indigenous community's water supply. The case was won on the grounds that the provincial government neglected its obligation to safeguard the health of the population.

- For full details of this case, please refer to http://www.righttowater.org.uk/code/legal_4.asp

Conflicts Over Shared Resources.

- Human rights in themselves will not resolve the complex issues and difficult policy choices that arise in the energy and environment sector. A particular contentious issue is that of competing claims to scarce resources and service use; for example, the inter-generational right to a balanced and healthful ecology, which demands preservation of forests as an entitlement of all, versus the right to an adequate standard of living of forest dwellers.

- However, human rights standards and principles provide a useful framework in which to acknowledge and address these sensitive issues, negotiate solutions and prevent inevitable grievances spilling over. Human rights principles can help to identify minimum protected interests that should not be bargained away in the course of policy trade-offs

Challenging Political and Social Contexts.

Adopting a human rights-based approach to programming is challenging when working in countries where general awareness and respect of human rights is poor.

States may refuse to recognise their international commitments and lack the political will to protect and enforce the rights enshrined in national law. Similarly, states with repressive regimes, with corrupt and inefficient bureaucracies, and which are dominated by patronage networks will not respond positively to concerns with strengthening accountability institutions and promoting human rights.

They may even be overtly hostile to a human rights-based approach.

Other experiences, fears and doubts

- Vinaka vakalevu