UNITED NATIONS PHILIPPINES

RIGHTS-BASED APPROACH TO DEVELOPMENT PROGRAMMING: TRAINING MANUAL

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INTRODUCTION

The United Nations, as the organized international community, has clear obligations on human rights provided by the UN Charter. These obligations have been reasserted by the UN Secretary General in his guidance towards the achievement of the Millennium Development Goals, and previously in his 1997 Agenda for Reform. The later included a call to strengthen co-ordination among UN agencies under a common Development Assistance Framework (UNDAF), and to integrate human rights into the development work of the UN system.

A rights-based approach integrates the norms, standards and principles of the international and national human rights system into the plans, policies and processes of development. The relationship between human rights and sustainable human development is twofold:

1. First, the process of development can be seen as an expansion of human freedoms. Human development is concerned with the fulfilment of basic human rights and fundamental freedoms.

2. Second, human rights play an instrumental role in the process of development. They express goals to be achieved, and provide development workers with effective tools designed to eradicate poverty.

In December 2001, the UN Country Team in the Philippines agreed to strengthen the competence of UN staff in using a rights-based approach to development. In effect, on April 1-5 and 8-10 May, 2002, two UN Country Team training workshops on Rights Based Approach to Development were held. Participants included representatives of FAO, ILO, OHCHR, UNAIDS, UNDP, UNFPA, UNIC, UNICEF, UNIFEM, the Philippine National Economic and Development Authority and the National Anti-Poverty Commission. UN staff, prominent members of the human rights NGO community and academe, and officers of the Philippine Commission on Human Rights acted as resource persons and facilitators.

This training incorporates lessons learnt and insights from all participants in previous workshops. Its **objectives** are:

1) To provide UN staff with **a conceptual and operational understanding of rights based approach and its importance to development programming**

2) **To understand fundamental human rights concepts:** the national and international human rights framework applicable in the Philippines, the normative content of human rights and the notion of "human rights obligations", especially State obligations.

3) To master the use of **rights-based tools in the programming process**, including assessment and analysis, objective setting, design and implementation of capacity development strategies, and monitoring and evaluation.

4)   To understand the **role and added value of human rights in development strategies** towards the realization of the Millennium Development Goals (MDGs).

The training duration is five (5) days. Two (2) days to explore the notion of a rights-based approach to development and fundamental human rights concepts (Modules I and II), and two to three days for the programming part (Modules III to V). The training does not have to be continuous. It can be broken according to parts I and II, as long as the same participants are in both sessions.

The participants should be aware of the specific learning objectives for each part. Specifically, **participants should not expect to be able to program from a human rights perspective after the first part**:, as this only aims to provide the necessary understanding of the human rights concepts to be used in Part 2. Part 1 will give them a "human rights lens", Part 2 will build the necessary skills for programming using such lens.

The manual has **five modules**:

PART 1:

Module I.   Rights-based approach to development
Module II: Human Rights Concepts

PART 2:

Module III: Rights-based approach to Programming
Module IV: Rights-based approach towards the realization of the MDGs
Module V: Final considerations on a Rights-based Approach to Development

The training adopts participant-centered adult education techniques. Participants will provide much of the content, sharing their analysis, insights and experience. The training combines presentations, case studies, small group and plenary discussions. Facilitators play an important role and should be knowledgeable of the approach and how to implement it. The **Training Manual** is complemented by a **Resource Book** which contains national and international human rights instruments, General Comments adopted by the UN human rights treaty bodies, and relevant UN Declarations.

ACTIVITY 1: SETTING THE GROUND-RULES FOR THE WORKSHOP

Purpose: To set the "ground rules" for the workshop in the context of respect for the rights of participants.

Timing: 15 minutes

Materials: A flip-chart or whiteboard and markers is needed to record participants' responses. Copy of Universal Declaration of Human Rights (blue booklet).

Process: Explain that a workshop about human rights can be effective only if it is conducted in a spirit of respect for the rights of all participants. Using a brainstorming technique, ask participants to identify those rights that should be respected during the workshop. Record their responses on the flip-chart or whiteboard. Allow no more than 5 minutes for this. Lead a brief discussion of the rights that have been identified. List them to serve as the basic workshop guidelines. You should at least have the following elements covered:

Equality: Everyone in the workshop should be able to participate on an equal basis.
Participation: Everyone has the right to participate as fully as possible and participants have the right to alter the programme for the workshop if they feel it is not meeting their needs.
Expression of Views: Everyone has the right to say what they think and to have their opinions respected by the others.
Leisure: Participants have the right to breaks and the opportunity to move around during the workshop, as well as to free time in the evening.

Note that the exercise of the rights described also requires that participants take responsibility to ensure that those rights are respected. For example, they should listen when someone is talking, rather than carrying on their own conversations. If participants arrive on time so that the workshop can be conducted according to the schedule, they will have enough time for the breaks to which they are entitled. Point out that this connection between rights and responsibilities was established in the Universal Declaration on Human Rights (Article 29, paragraph 1).

MODULE I:
RIGHTS-BASED APPROACH TO DEVELOPMENT

This section examines the meaning of a rights-based approach to development in both conceptual and programmatic terms.

*The **objectives** of this section are:*

1) *To understand the **human rights mandate of all UN agencies.***

2) *To understand the role of power relations in the production and reproduction of poverty, and **poverty as a question of powerlessness** rather than the mere absence of commodities and services.*

3) *To understand that a rights-based approach as **a vision of development** as the economic, social, cultural and political process of working towards the universal realization of human rights and freedoms; and **a means to enhance existing programming methodologies.***

4) *To understand that **development should be guided towards the expansion of human freedoms**, including the realization of human rights principles and norms, and therefore **accountabilities** in the development process should be explored.*

5) *To understand the relationship between a rights-based approach to development and the **Right to Development.***

ACTIVITY 2: WHAT DOES IT MEAN TO BE POOR?

Purpose: To introduce the multidimensional character of poverty, the relation between poverty, powerlessness and human rights.

Timing: 15 minutes

Materials: Blue booklet "Universal Declaration of Human Rights". A flip-chart or whiteboard and marker to record participants' responses.

Process: Ask participants to write in meta cards typical features of a poor person. Collect the cards. On a board for everyone to see , introduce the results of the World Bank study "Voices of the Poor" (included in the Annexes to this Manual). Compare the responses of the participants with the responses of the poor. Stress those dimensions which were not highlighted by the participants' responses.

Ask the participants why these dimensions are often overlooked (if participation issues arise, relate those issues to powerlessness)

Ask the participants if they can relate the responses of the poor to human rights. Complete the participants' responses if necessary.

Ask the participants to identify the consequences of this for the design and implementation of development programmes.

NOTE: **THIS ACTIVITY SHOULD BE FOLLOWED BY A BRIEF PRESENTATION OF THE MAIN FEATURES OF A RIGHTS-BASED APPROACH TO DEVELOPMENT** (BOX 1 IN THE FOLLOWING READING) **AND THE EVALUATIVE/ INSTRUMENTAL ROLE OF HUMAN RIGHTS IN DEVELOPMENT** (POINT ON "CONCLUSIONS: THE ROLE OF HUMAN RIGHTS IN DEVELOPMENT", ALSO IN THE READING). Encourage participants to finish the Reading on a "Rights-based approach to Development" in their spare time.

Voices of the Poor: "Assets or capability" Examples mentioned by poor people to increase their freedom of choice and improve their lives

Material assets	Employment; ownership of productive assets; land; house; boat; savings;
Bodily health	Freedoms from hunger and disease; strong, healthy-looking bodies
Bodily integrity	Freedom from violence and abuse; sexual and reproductive choice; freedom of physical movement
Emotional Integrity	Freedom from fear and anxiety; love
Respect and dignity	Self-respect, respect from others and the community
Social belonging	Belonging to a collective; honor, respect, and trust within and across social groups
Cultural identity	Living in accordance with one's values; participation in rituals that give meaning; sense of cultural continuity
Imagination, inventiveness, Information and education	informed and educated decision making; literacy; entrepreneurship; problem solving capacity, expressive arts
Organizational capacity	Ability to organize and mobilize; particiàtion in representative organizations
Political representation and accountability	Ability to influence those in power, accountability of those in power

Reading: What is a Rights-based approach to Development?

Human rights are fundamental to the work of all UN Agencies. As part of the United Nations system, and guided by the United Nations Charter, UN Agencies have a responsibility to work towards the realisation of human rights along with all the system-wide institutions and in cooperation with all UN State members. In 1997 the UN Secretary General instructed all UN agencies to mainstream human rights in their work as an integral part of the UN Agenda for Reform.

The UN Charter states that the Organization has the mission to promote and sustain peace, development and human rights. Human development seeks to expand people's choices to live the lives they value. Human rights express those fundamental values and freedoms inherent to "human" life. To the extent development strategies are achieving such goals, they are contributing to human progress. Similarly, there is no better guarantee for peace than respect for human rights.

The origins of a human rights approach to development can be traced back to the UN Charter. It is one way of **looking at** development, as well as one way of **doing** development. Adopting a human rights approach to development means:

1. Understanding development not only as the economic, social, cultural and political *process* of achieving the *universal* realization of human rights and freedoms, by expanding people's choices and capabilities to live the lives they value; but **above all as the empowerment of people to decide what this process of expansion should look like**; and
2. Programming for development through a human rights lens.

Limitations in traditional approaches to development

Development is not a theoretical exercise to transform a certain amount of money into some other commodity, or some more money. Development is about people and deals with people's lives. 2.8 billion of these people strive to survive with less than $ 2 a day, most of them are women and live in our region.

Because it deals with people's lives, development practice should listen to what people, especially disadvantaged people, have to say about the development process. In 2002, the World Bank conducted a study where around 80,000 poor people worldwide were asked how it felt to be poor and what it meant to them in their everyday lives. The World Bank series "Voices of the Poor" is a revealing document that talks about poverty as felt by the poor themselves.

The responses of poor people are extremely significant for development practice. The perceptions of poor people pointed clearly at the fact that **poverty was not merely absence of commodities and services to meet basic needs, but rather a question of powerlessness**. Aside from the importance of material assets, health and education in improving people's lives, the poor mentioned the influence of factors such as emotional integrity; respect and dignity, social belonging, cultural identity, organizational capacity, and political representation and accountability.

Power relations and discrimination have a major influence in the production and reproduction of deprivation. The gender dimensions of poverty highlight this relationship.

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The World Bank study concluded, **"development should ultimately increase people's freedom to live the lives they value".** This is precisely what a rights-based approach tries to achieve, by providing an effective framework for a holistic analysis of development, including its social, cultural, political and economic dimensions; and effective tools for designing results-oriented, empowering and sustainable development strategies.

Recent development theory and research reinforce the conclusions of the World Bank study. Poverty cannot be simply measured in terms of per capita income, as it also includes other dimensions such as access to basic services, assets, and justice. Economic growth is necessary, but not sufficient for poverty eradication: a glaring fact that justifies the persistence of poverty in even the wealthiest countries in the world. Human rights are particularly significant in maintaining the link between social progress and economic growth because they enable the persons concerned to achieve fully their human potential.

Despite the recognition of the relationships between human rights and development in the UN Charter, development was for long pursued from a narrow economic perspective. In the light of persistent poverty, purely economic perspectives on development were progressively abandoned by most development agencies and substituted for "sustainable livelihoods" and "basic needs" approaches.

However, these approaches could not fully account for the way in which power relations and embedded social inequalities (such as discrimination of women and ethnic minorities), contribute to the production and reproduction of deprivation. As an example, while the "need" for some of the factors mentioned in the World Bank study, such as material assets and education is obvious, the need for others is frequently overlooked. However all these factors relate to human rights, reflecting poor people have a more holistic understanding of the dimensions of poverty and its root causes than development practitioners tend to assume. Poverty is not just lack of commodities and services, but rather a question of powerlessness.

Similar conclusions can be drawn from recent studies undertaken in the Philippines, where the "voices of the poor" and their perceptions on poverty were sought. Focus-group discussions with members of the informal sector throughout the country point to the inherent relationship between poverty, powerlessness and human rights issues. Informal sector workers feel they are not recognized as worthy members of the society they live in. They feel delegated to the periphery, looked down upon, and continuously harassed by government agents as well as by the public, except when their goods are needed. They expressed the desire to be involved through their significant active participation and contribution in either formulating appropriate development plans and/or in drafting ordinances and laws which greatly affect them. They are free to express themselves, but point to the fact that they are not listened to. According to them, what they say is not paid attention to because people do not see, are unaware or refuse to acknowledge the unique contribution of the informal sector to the economy (UNDP, 2002).

This recognition has major implications to development practice. There is much about poverty and the strategies addressing it, that is left unexplained by traditional development analysis, and consequently overlooked in development interventions This in turn jeopardizes the achievement of the Millennium Development Goals (MDGs). According to the latest Human Development Report (2002), for most developing countries the prospects of achieving such goals are bleak. Decrease in the share of income poor is still extremely slow, while the absolute number of poor people is on the rise. Inequalities

have widened nationally and internationally. Despite all the intellectual and financial resources devoted to poverty eradication over the last century, poverty persists.

Although more aid is needed to achieve the goals, there is no guarantee it will have the right impact in the right places. For transfers to hit the targets laid out in the Millennium Declaration, there needs to be not only more aid, but *better* aid. (HDR,2002)

**Development as the realization
of fundamental human rights and freedoms**

A rights based approach views **development as the process of realizing fundamental human rights and freedoms**, thus expanding people's choices and capabilities to live the lives that they value. Upholding human rights is crucial for guaranteeing people's well-being and securing a humane and non-discriminatory society – and for enabling an active and engaged citizenry.

Consequently, a rights-based approach integrates human rights concepts in the development process to effectively target human freedom. Specifically, it integrates human rights principles, the normative content of human rights, and human rights obligations, particularly state obligations, in development policies and programmes.

A rights-based approach **puts the poor, marginalized, vulnerable groups at the core of policy and the focus of capacity development strategies**. Gender analysis is an intrinsic part of a rights-based approach to development, not an add-on.

A rights-based approach to development, as a vision of development, brings certain **guiding principles** to the development arena. The most important and likewise implicit in the UN Charter, is that **development has a responsibility in achieving the full realization of human rights**. Human rights cannot be realized without development. **Development should seek empowerment both in the process and in the outcome of poverty eradication strategies**.

There are four **fundamental principles that should guide an empowering development process** in the realization of human freedoms:

1) **The human person is the central subject, active participant, owner, director and beneficiary of development.**

2) **Development** - and all stages in the development process - **should be based on human rights principles that:**

   a. Define development objectives
   b. Guide the formulation of policies, laws, strategies and other appropriate measures in the administrative, budgetary, judicial, educational, political, social and other fields.
   c. Direct the establishment of corresponding benchmarks and indicators; and
   d. Are integrated within every stage in the development process.

3) **Development** - and all stages in the development process - **should respect the normative content of human rights.**

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4) **Development** - and all stages in the development process - **should be coherent with the levels and nature of human rights obligations, particularly States obligations.**

Module II in this Manual (**Human Rights Concepts**) examines these guiding principles and their implications to the development process.

Poor people just want to live the lives they value, lives that allow them to realize fully their potential as human beings, enjoying and exercising all their rights and freedoms. Everybody, individually and collectively, has the right to realize and the obligation to collaborate in fully developing such potential. Development is both a right and an obligation in itself.

It should be noted that human rights are guides in a journey whose final destination is still elusive to most people. What really matters, however, is moving forward, and most importantly, not slipping back.

Box I. What is a Rights-based approach to development?

"A rights-based approach to development puts the protection and realization of human rights at the center. It uses established and accepted human rights standards as a common framework for assessing and guiding sustainable development initiatives. From this perspective, the ultimate goal of development is to guarantee all human rights to everyone. Progressively respecting, promoting and fulfilling human rights obligations are seen as the way to achieve development. A rights-based approach to development is both a vision and a set of tools: human rights can be the means, the ends, the mechanism of evaluation and the central focus of sustainable human development" (AWID)

The Right to Development

The vision of development as a human right is reflected in the 1986 UN declaration on the Right to Development, adopted by the UN General Assembly after years of effective advocacy by developing countries. The Declaration states that:

"The Right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized". (Art.1 (1)).

The declaration provides effective guidance on the goals and characteristics of the development process:

1) Development implies the full realization of human rights, and this realization is a human right in itself, individually and collectively.

   a. Everybody has a right to development, as **human rights are universal**.
   b. **Development implies the full realization and enjoyment by all of all rights**: civil and political, and economic, social and cultural. Development (the full realization and enjoyment by all of all rights) has economic, political, social and cultural dimensions. It cannot be reduced to economic growth.

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    c. Because **human rights are indivisible**, the Declaration states that "equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights".

    d. Everybody has the **right to participate** in this process. In fact, it is through the participation in this process that the right to development can be truly realized.

2) Because of its impact on human freedoms, there should be **equality** of opportunity for all in enjoying the benefits of development, therefore appropriate action should be taken to ensure women and other disadvantaged groups can exercise their right to participate in development, and reforms should pursue the eradication of all social injustices.

3) Human rights always imply **human duties**. The Right to development places duties towards the realization of development at four levels: the level of the individual, the level of organized collectivities, the level of the State, and the level of the international community as a whole. There is a right to enjoy development in all these levels and a duty to cooperate in its realization. Development assistance is not charity.

Most development practitioners recognize human rights and freedoms as ultimate goals to achieve, although sometimes statistics cannot express the actual impact on these goals. More often than not, impact is assumed to be a logical sequence of development interventions, although with usually undetermined levels of probability. Difficulties in measurement conceal the fact that it is equally probable that, under certain circumstances – and specially in the case of rapidly changing environments - some development interventions could probably have achieved a higher impact than they did, or could probably have achieved no impact at all. In fact, they may even have adversely effected and affected some particular groups. It is imperative that these impacts are adequately measured, and the root causes of problems understood, in order to effectively target development interventions.

Conclusions: Role of human rights in Development

In summary, human rights play two roles in the development process:

1)   **Evaluative role**: Development should be assessed in terms of its success in improving the human rights and freedoms of the members of the society, particularly the most vulnerable and disadvantaged. The progressive realization of human rights for all members of society gives a unique and precise criterion for development.

2)   **Instrumental role**: Human rights increase the effectiveness of development programmes.

    a. A human rights perspective helps identify the **root causes of poverty** by providing a holistic picture of development and the connections between the economic, social, cultural and political dimensions of the problem.

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b. A human rights perspective **brings the gender dimensions of development to the forefront.** Gender analysis is an intrinsic part of a human rights perspective, not an add-on.

c. A human rights perspective sees **development as an empowering process.** It highlights human beings as agents of change and not as passive recipients of charitable development programmes. With adequate social opportunities, individuals can effectively shape their own destiny and help each other. By ensuring development contributes to strengthen the ability of people to help themselves and influence the world, development programmes contribute to human freedom in outcome as well as in process, and therefore become more **sustainable**.

d. A human rights perspective **removes arbitrariness** from development programmes and objectives, because it provides a basis to assess the "developmental" contribution of a particular intervention. Design of development programmes can be done on a more rational basis due to the greater normative clarity provided by national and international human rights norms.

e. A human rights perspective provides **objective standards** that can be used as a guide **in a dynamic process**, as they include guidance for "immediate" and "progressive" realization.

f. A human rights perspective strengthens **accountability** in the development process by highlighting the fact that human rights imply human duties. The improvement of quality of life and the eradication of social injustices are tasks that everybody has, individual and collectively, the right and the duty to pursue. Human Rights obligations may lay on the State, non-State actors and individuals, and the international community as a whole.

A Rights-based approach to development programming

A rights-based approach looks at the final outcomes of development programmes as well as the processes involved through which these outcomes came about.

For development strategies to become **less arbitrary, more effective, more rational and more sustainable**, development programmes should ensure that both outcomes and processes are considered from a rights-perspective. This can be achieved by bringing human rights into the programming cycle.

Human rights can be brought into the programming cycle in different ways. A rights-based approach to development programming is not a methodology on its own. It is a way of improving existing methodologies and approaches. A human rights approach proposes **the use of human rights concepts and standards in the analysis of development problems and in the design of projects and programmes, including mechanisms to assess the impact of these programmes and the process by which they are developed and implemented**.

The use of human rights concepts and standards in the programming process helps to:

- undertake a comprehensive analysis of the problem,
- define measurable objectives in relation to the realization of human freedom,
- identify capacity problems affecting the full realization of human freedom,
- design strategic interventions to develop such capacities,
- define effective mechanisms to assess the impact of such interventions on capacities as well as on the quality of life of people; and
- ensure the development process becomes empowering in itself.

Module I: Summary Points

A rights-based approach can be traced back to the UN Charter and is linked to the Right to Development and the Sustainable Human Development paradigm. It is consistent with the human rights mandate of all UN Agencies.

A rights-based approach to development views **development as the *process* of realization of fundamental human rights and freedoms**.

It understands poverty as a question of **powerlessness** rather than mere lack of commodities and services, and consequently recognizes the need to bring political, economic, social and cultural dimensions into the analysis of poverty.

Development programming should adopt a human rights perspective: the approach proposes the use of human rights concepts and standards in the analysis of development problems and in the design of projects and programmes, including mechanisms to assess the impact of these programmes and the process by which they are developed and implemented. In a rights-based approach, **the process is as important as the outcome**.

A rights-based approach **puts the poor, marginalized, vulnerable groups at the core of policy and the focus of capacity development strategies**. Gender analysis is an intrinsic part of a rights-based approach to development, not an add-on.

The four broad benefits of a human rights approach can be described as: **(1) holistic and multidimensional analysis of development issues, (2) enhanced accountability, (3) genuine empowerment and (4) greater normative clarity.**

The operationalization of the approach in development programming is still at its early stage and evolving.

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MODULE II: HUMAN RIGHTS CONCEPTS

This module examines the fundamental human rights concepts needed to understand the guiding principles of the development process:

1) *Development – and all stages in the development process – should be based on **human rights principles**: We will look at the notion of "human rights principles", its the meaning and their implications to the development process.*

2) *Development – and all stages in the development process – should respect the **normative content of human rights**: We will explore the notion of "human rights", the national and international human rights framework, and the normative content of fundamental human rights and freedoms.*

3) *Development –and all stages in the development process – should be coherent with the levels and nature of a State's **human rights obligations** : We will examine the notion of human rights obligations and its implications at three levels – the level of the State, the level of the individual, and the level of the international community.*

The module starts with some <u>clarifications on common debates and issues on the application of human rights concepts in development</u>, followed by four sections:

Introduction: *Clarification of common questions arising on a Rights-based approach.*

Section 1: *National and International Human Rights Framework*

Section 2: *Human Rights Principles*

Section 3: *Normative Content of Human Rights*

Section 4: *Human Rights Obligations and Accountabilities*

MODULE II, INTRODUCTION: CLARIFICATIONS ON A RBA

For those who are not very familiar to the notion of human rights, the use of human rights concepts poses a series of questions that require appropriate clarification. Despite the fact that human rights are basic human entitlements and they imply obligations and accountabilities, a rights-based approach does not require a "legal mind" to be used and understood. Neither it calls for conditionalities in the provision of development assistance. A rights-based approach seeks simply to enhance human dignity and freedom through effective development strategies.

For those unfamiliar with human rights concepts, the following questions may arise (see ODI, 1999; and J. Loubser, 2002):

1) Is there a hierarchy of rights?

No, there is not. It is legitimate and worthwhile to take a comprehensive approach to rights, including civil and political, economic, social and cultural rights. This. however, does not prevent to identify some rights that are more strategic than others in advancing human freedom in specific situations.

2) What is the right balance between individual and collective rights?

Rights need to be complemented by individual responsibility, and they cannot be unbounded if they impose costs on others.

3) Is "progressive realization" an acceptable strategy? Shouldn't all rights be realized immediately?

States have the duty to respect rights, and to help promote, protect and fulfill rights – even if most times all they can do is to realise them "progressively". However, States have the duty to prove and ensure there is a constant improvement in the realization of rights within the maximum of their available resources, and most important, non-retrogression.

4) How do we know when available resources are maximized?

"Available resources" refer not only to financial resources, but also to technical, human and natural resources. They also include development assistance resources, as well as loans. The examination of the "maximized use" of resources should take all these elements into consideration.

5) Who are the duty-bearers?

Although States are the main duty-bearers, individuals have clear accountabilities relating to human rights. These accountabilities are often of a legal nature at the national level – though rarely at the international level.

Since rights are universal, the wider international community has a moral and financial duty to support rights in partnership with states. This moral obligation may extend to non-state actors, particularly international financial institutions, transnational corporations, and NGOs.

6) Are performance standards necessary?

The implementation of a rights-based approach requires a set of performance standards though these should be best negotiated locally.

7) Does accountability necessarily imply legal recourse?

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.

MODULE II, SECTION 1:
NATIONAL AND INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The objective of this session is to provide an overview of the national and international sources of human rights law applicable in the Philippines.

If the participants are already familiar with the existence of human rights treaties, and with the recognition of human rights by the Philippine Constitution, this section does not require a presentation during the training workshop. It might be recommended as a reading before or during the training.

The end of the section contains basic Summary Points and suggested bibliography.

**Reading: National and International
Human Rights Framework**

1. The History of Rights

The basic component of human rights, the principle that no one should treat other people in a way that he or she would not want to be treated himself or herself, is found at every level of society around the world. Human rights are not only the instruments that exist at the international level. Every human right at the international level has a corresponding or similar right in every legal system, religion, culture and tradition.

The global community has, over more than fifty years , engaged in a continuing process of defining, describing and promoting concepts of human rights. Each new expression reflects more clearly and accurately what the human race as a whole expects for the treatment of each person, and for every society, in order to achieve the goals of peace, justice and social progress. The history of human rights is the history of defining the legal foundations of human dignity. They define and enshrine our humanity. International human rights are just a phase in this historical process. Their aim is to internationalise human rights and make them known to all people. It is not to replace domestic protection of individuals, but to make the protection of human rights more effective within national systems.

Human rights are indeed **legal rights**. However, human rights are rights not solely because they are recognized in legal instruments: they are inherent to the very nature of the human person. They exist to ensure human life remains human. Human Rights are "human" because they protect the special worth of all human beings: not being arbitrarily killed, not being tortured or enslaved, having sufficient food not to die and grow healthy, being able to work to support one's family, being treated with justice. These rights are inherent to the person and belong equally to all human beings regardless of their race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.

International human rights law is relatively new. For the most part, it has developed after the United Nations was established at the end of the Second World War in 1945. All States joining the UN must accept its founding document, the UN Charter. The Charter includes the promotion and respect for human rights as a key purpose of the UN, and

requires UN Member States to co-operate with the UN in this task. In its preamble, the Charter declares as a primary purpose of the United Nations:

"Promoting and encouraging respect for human rights
and for fundamental freedoms for all without distinction
as to race, sex, language or religion"

The UN Charter does not provide a list of human rights. The first UN document to do so was the **Universal Declaration on Human Rights**, adopted by the UN General Assembly in 1948. The General Assembly is the UN body in which each Member State is represented and can vote. The Universal Declaration of Human Rights recognises most human rights, including civil and political rights – such as the right to life, to free speech, to freedoms of religion and to take part in government – and economic and social rights such as the right to work, to social security and to education. The Universal Declaration takes the form of a resolution passed by the UN General Assembly. It is not a treaty that States formally sign.

After the Universal Declaration of Human Rights was adopted, the Member States of the UN began to work on drafting **international human rights treaties**. The main UN human rights treaties are listed bellow. The date beside each indicates the year the treaty was adopted. The Philippines has ratified all of them:

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (1966)

Convention on the Elimination of All Forms of Discrimination Against Women (1979)

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

Convention on the Rights of the Child (1989)

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

When a state has ratified a treaty, it is obliged to adopt appropriate measures to ensure that the treaty is implemented at the national level. This can be done either through implementing legislation which corresponds to the subject matter dealt with in the treaty, or through making the treaty directly applicable in the domestic legal system. This is important to note because if the domestic legal system has implemented and made applicable international human rights law, then remedies can be sought through the domestic system. **It is under national systems where respect of the rule of law can be fully and effectively ensured**. In fact, weak international mechanisms to ensure such respect at the international level contribute to persistent poverty and conflict in the world - although partial improvements have been achieved over the past decades in the field of international justice, such as the creation of an International Criminal Court.

However, despite weak mechanisms of enforcement at the international level, the inclusion of human rights in the mandate of the United Nations by the UN Charter implicitly meant that **human rights are no longer within the domestic jurisdiction of States**. The Vienna Declaration and Programme of Action made such conclusion explicit. A State cannot claim "national sovereignty" to justify its decision to deny basic human rights to its citizens. **Human rights are a legitimate concern for the international community**, and gross violations of human rights can presently justify military intervention under the UN Charter as a last resort for the international community to deal with the situation. **Human rights are a specific mandate of the United Nations and its different UN agencies and institutions.**

2. Sources of International Human Rights Law

Treaties and Standards

The terminology of UN human rights instruments is complex: we may find covenants, conventions, treaties, declarations, standards, rules, etc. However, there are only two main types of UN human rights instruments*:*

(i.) **Treaties**, also called conventions or covenants, which are formal legal texts to which states become party, and which create binding legal obligations; and

(ii.) **UN standards**, also called UN principles, rules or declarations, which are passed by resolutions of a UN body, usually the General Assembly. They are not treaties because states cannot become parties to them and in that sense they do not create binding legal obligations. But the rules they set out are often even more detailed than those found in treaties. What is their status? They are authoritative standards which states should respect because:

They are often negotiated over a period of many years, and all UN Member States can participate in this process; and

They are usually adopted by consensus, meaning states did not object to the rules they contain.

Today, a UN compilation of human rights instruments lists 95 conventions, treaties, declarations and resolutions setting human rights standards.

International Human Rights Treaties

The main human rights treaties have been listed above. Human rights treaties imply binding legal obligations to the State that has ratified them. The State becomes **legally accountable to the international community** for the implementation of the treaty. This accountability may be expressed through the UN General Assembly or the UN Security Council.

Human rights are thus given the force of international law, give rise to entitlements, and increasingly carry greater weight in international and national policy dialogue. They retain their legal character even when some of these rights are not yet legislated. When becoming party to a human rights international treaty, the States are deemed to submit to

a legal order in which they, for the common good, assume various obligations, in relation to other States, and towards all individuals within their jurisdiction.

In addition to UN "constitutional" or "charter-based" bodies, such as the General Assembly, there are other bodies of experts. Many of them are established by human rights treaties and thus called "treaty-bodies". Human rights treaties include specific supervisory procedures through specific Committees composed of experts of different nationalities appointed by State parties. Other than these, the ILO has a Committee on Experts on the Application of its Conventions and Recommendations. These bodies handle communications and reports from Governments and NGOs, and produce general and specific observations. Their observations often guide the interpretation and understanding of treaties. Furthermore, these committees monitor the State's compliance with its obligations, and assist them by pointing out certain remedies that can be undertaken for a full realization of the rights under the specific Treaty, Covenant, etc.

Box 1: Reporting Mechanisms of Human Rights Treaty Bodies

All human rights conventions are supervised by international "Treaty Bodies" or "Committees" (one per Convention). They are composed of experts of different nationalities appointed by State parties. Committees perform a double function:

- to monitor the State's compliance with the treaty, and
- to assist the state in complying with its obligations by pointing out certain remedies that can be undertaken in relation to the rights under the Covenant.

These functions are undertaken through the so-called **"reporting mechanism".** States are requested to submit periodic reports to the Committees –usually every four to five years, on the progress made regarding the implementation of a particular covenant. Through the reporting mechanism, the State party evaluates its own progression and sets its own benchmarks. The report must be made public to the citizens of the State, either through dissemination in book form, or through the web, or through newspapers.

Each Committee will then call the State Party to appear before it and have a constructive dialogue, in which a process of questions and answers (on the conditions in the country and its compliance with the Covenant) takes place. The dialogue is open to the public; civil society and their representatives can also submit information in written form.

At the end of the dialogue, the Committee deliberates and draws up a set of concluding observations. These are made public, even if the Committee deliberations are in private. The concluding observations consist first, of positive aspects, where the state has achieved progress from the last time it appeared before the Committee. Second are subjects of concern, where the Committee identifies gaps, non-compliances and violations. Sometimes, particularly in the case of economic, social and cultural rights, it is difficult to say immediately that a state is in violation of its treaty obligations. The country may have all willingness to comply, but be totally unable to do so; in this case, while the state may not be in compliance, it would not be correct to say it is in violation of the treaty. The Committee also presents suggestions and recommendations in relation to subjects of concern. These suggestions and recommendations are the basis from where the Committee will start its evaluation the next time the State presents a report.

Some Covenants – such as the First Optional Protocol to the International Covenant of Civil and Political Rights, offer also the possibility for individuals to bring a human rights violation before the Committee, when all national remedies have failed. The Committee may then state its opinion of whether a violation has been committed.

Box 2: What a UN Country Office can do to assist the international human rights system

1) It can assist the government in meeting its reporting obligations to the human rights treaty-bodies and furnish the treaty-bodies with country specific information (e.g. on progressive realization or obstacles thereto) of relevance to the mandate of the treaty body.
2) It can assist the government in responding to the comments and recommendations made by the treaty bodies.
3) It can support the work of the Thematic Rapporteurs/ Representatives and, where appropriate, the work of the Country Rapporteurs/ Representatives
4) It can furnish information (e.g. on good practices) to headquarters, of relevance to the UN Agency's annual presentation before bodies such as the UN Human Rights Commission
5) It can draw upon the country-specific human rights information generated by the UN human rights system and contribute to such information (e.g. through national human rights reports)

UN Standards

UN Standards on human rights are found in a wide range of international instruments, usually in the form of Declarations adopted by the UN General Assembly, such as the UN Guiding Principles on Internal Displacement, the UN Principles on the Independence of the Judiciary, the UN Declaration on Human Rights Defenders, etc. Although they do not create legal obligations, they express the State's **political commitment to comply and respect these standards as member of the international community**.

Human Rights standards can be supervised by independent experts appointed by the General Assembly or UN Committees, these are called "Special Rapporteurs" and cover thematic areas (eg. displacement, etc.) or specific countries. Special Rappourteurs can also be appointed for specific rights in the treaties (eg. torture). Special Rapporteurs present their reports to the General Assembly of the United Nations, to UN Committees and/or to UN Treaty Bodies.

Special cases: the 1948 Universal Declaration on Human Rights and the 1986 UN Declaration on the Right to Development

The Universal Declaration of Human Rights:

Despite being a Declaration, and not a treaty, the Universal Declaration of Human Rights includes elements of "international customary law": that is, norms that are legally binding to all states, regardless of whether they are set out in treaties to which a State is a party. These norms are considered "basic principles" of international law, and they include the prohibition of:

- Slavery and the slave trade;
- Extra judicial killing or causing the "disappearance" of individuals;
- Torture or other cruel, inhuman or degrading treatment or punishment;
- Systematic racial discrimination (e.g. apartheid);
- Prolonged arbitrary detention;
- Genocide.

The UN Declaration on the Right to Development:

The UN Declaration of the Right to Development was adopted by the UN General Assembly in 1986, after years of strong advocacy from developing countries in the framework of the United Nations. But despite being a Declaration, its status is not completely settled as merely a UN standard and neither a treaty.

The right to development was recognized as a fundamental human right in the World Conference on Human Rights held in Vienna in 1993. But the real situation is complex: it embodies elements of binding international law (as the right to development embraces other fundamental human rights recognized by treaties), but opinions are divided between those who consider the Right to Development is not an international norm because it has not been formally ratified, and those who consider it as a fundamental human right despite being established by a Declaration and not a treaty. The position of the international community at the 1993 Vienna Conference was the later, although the Vienna Declaration and Plan of Action are not legally binding instruments.

The Right to Development was also integrated in the Millennium Declaration.

3. Human Rights in the 1987 Philippine Constitution

The Philippine's quest for human rights in the 20th century traces back to the era of tyrannical colonial rule. The leader of the Philippines' independence in 1898, Jose Rizal, defined the struggle against Spanish domination as a struggle for "greater justice, liberty, and the sacred rights of mankind".

After regaining its independence in 1946, efforts to establish a solid democracy in the country continued. The overthrow of a dictatorial regime in 1986 in the EDSA revolution opened a new era for the Philippine society. The framers of the 1987 Constitution made sure full and detailed recognition was given to human rights in the fundamental law of the land ratified by the people. Thus Section 11, Article II of the Constitution reads: "The State values the dignity of the human person and guarantees full respect for human rights". Section 10 defines the promotion of social justice in all phases of national development as one of the goals of the State. Furthermore, the 1987 Philippine Constitution explicitly recognizes a wide range of civil, political, economic, social and cultural rights (see Box 2)

To further the State's role in promoting social justice and human rights, the Constitution establishes that the Congress "shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities" (XIII.1).

Box 3: Human Rights and Development under the 1987 Philippine Constitution

The 1987 Constitution establishes a democratic State and recognizes that sovereignty resides on the people (II.1). Therefore the prime duty of the government is to serve and protect the people (II.4). The promotion of social justice in all phases of national development is one major goal of the State (Section 10). The Constitution recognizes the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making (XIII.16). Together with the establishment of a "Bill of Rights" and a detailed description of civil and political rights (security of person, freedom of expression, freedom of religion, due process of law, right to privacy, right to peaceful assembly, right to information, right to association, access to justice and legal aid), the Constitution refers explicitly to economic, social and cultural rights in a number of provisions. It establishes specific obligations for the State, such as:

- Afford full protection to labour, local and overseas, organized and unorganised, and promote full employment and equality of employment opportunities for all (XIII.3)
- Guarantee the rights of all workers to security of tenure, human conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights as may be provided by law (XIII.3)
- Establish policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all (II.9)
- Protect the rights of the family, including the right to a family living wage and income (XV.3)
- Protect the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation or other conditions prejudicial to their development (XV.3)
- Protect and promote the people's right to health (II.15)
- Protect and promote the people's right to a balanced and healthful ecology (II.16)
- Ensure free primary and secondary education to all and promote quality of education at all levels (XIV.1)
- Recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions (XIV.17)

Summary Points:
National and International Human Rights Framework

Human rights are standards of human dignity and identity rooted in every culture, religion and tradition throughout the world.

International human rights are just a phase in defining the legal foundations of human dignity. Their aim is to bring human rights into the international legal framework and make them known to all people. It is not to replace domestic protection of individuals, but to **make the protection of human rights more effective within national systems.**

The inclusion of human rights in the UN Charter and the explicit statements made by the Vienna declaration and Programme of Action mean that **human rights are no longer exclusively within the domestic jurisdiction of states**; they are a legitimate concern of the international community.

There are two types of international human rights instruments: **Human Rights treaties and UN Standards**. The first are legally binding, the second express political commitments towards the international community. The implementation of human rights treaties is supervised at the international level by **UN treaty bodies**. Another supervisory mechanisms is that of **Special Rapporteurs**. These are independent experts appointed by the UN General assembly for specific rights in the treaties or for UN standards. International supervisory procedures do not have enforcement mechanisms, they can only undertake "pressure" arising from their continuous supervisory actions.

There are 7 fundamental human rights treaties: **International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and the International Convention on the Rights of Migrant Workers and their Families.** The Philippines has ratified all of them.

Sources of national human rights law are also found in the Constitution. **It is at the national level where respect for the rule of law can be fully and effectively ensured. The 1987 Philippine Constitution** is a major example of the protection of human rights at the national level.

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MODULE II, SECTION 2:
HUMAN RIGHTS PRINCIPLES

The objective of this section is to understand the meaning, use and added value of human rights principles in development programmes.

One of the principles underlying a rights-based approach is that development - and all stages in the development process - should be based on human rights principles that:

a. *Define development objectives*
b. *Guide the formulation of policies, laws, strategies and other appropriate measures in the administrative, budgetary, judicial, educational, political, social and other fields.*
c. *Direct the establishment of corresponding benchmarks and indicators; and*
d. *Are integrated within every stage in the development process.*

*The inclusion of human rights principles in development programmes **ensures these programmes are effectively creating an enabling environment to exercise human rights for all.** Human Rights principles are extremely helpful in making an empowering development process. Similarly, the inclusion of human rights principles in the analysis of policies and programmes helps in assessing the impact of these policies and programmes on creating or affecting necessary conditions for the exercise of human rights by all.*

Reading: Human Rights Principles

1. The Role of Human Rights Principles in Development

Human rights express what we are automatically entitled from the moment we are born, solely by reason of our inherent dignity. Human rights establish norms of conduct both for people to relate with each other and for people to relate with their government. However, these relationships are not established among equals, as there are differences in power among people and among citizens and institutions. Therefore, certain conditions should be respected to prevent abuses and to ensure human rights are effectively exercised by all. These relationships require fairness and equity, non-discrimination and equality, and other conditions aimed to allow everyone to exercise what we are entitled to, as fully and as meaningfully as we can.

Human rights principles are necessary conditions to enable the actual enjoyment of rights through the development process. Certain human rights principles applied in development, such as universality, indivisibility, equality and non-discrimination, and accountability, are inherent to the concept of human rights. Others, such as transparency, participation, independence of the judiciary and rule of law, refer to the notion of good or democratic governance. From the human development perspective (see Box 4), good governance is "good" in the sense that it is "democratic" and promotes human rights. However, democracy is a process rather than a final destination; therefore the list of human rights principles related to good or democratic governance is not a closed list.

Good governance follows the rule of law and assures that corruption and abuse are minimized, and the views of the vulnerable and marginalized are taken into account. It is responsive to the present and future needs of the society. Good governance means that both structures and processes within institutions are coherent with the public role that such institutions are mandated to perform. The true test of "good governance" is the degree to which it delivers on the premise of civil, political, economic, social and cultural rights.

On the basis of human persons as the central subjects and principal actors of development, a rights-based approach is guided by and geared towards an overarching principle: the principle of empowerment.

Human Rights principles should:

a. Define development objectives
b. Guide the formulation of policies, laws, strategies and other appropriate measures in the administrative, budgetary, judicial, educational, political, social and other fields.
c. Direct the establishment of corresponding benchmarks and indicators; and
d. Are integrated within every stage in the development process.

Box 4: Characteristics of Good Governance from the Human Development perspective

From the human development perspective, good governance is democratic governance. Democratic governance means that:
• People's human rights and fundamental freedoms are respected, allowing them to live with dignity.
• People have a say in decisions that affect their lives.
• People can hold decision-makers accountable.
• Inclusive and fair rules, institutions and practices govern social interactions.
• Women are equal partners with men in private and public spheres of life and decision making.
• People are free from discrimination based on race, ethnicity, class, gender or any other attribute.
• The needs of future generations are reflected in current policies.
• Economic and social policies are responsive to people's needs and aspirations.
• Economic and social policies aim at eradicating poverty and expanding the choices that all people have in their lives

Source: Human Development Report, 2002

We will examine the following principles:

• **Inherent to the content of human rights:**

  1) **Universality**
  2) **Non-discrimination and Equality**
  3) **Indivisibility**
  4) **Interdependence and Interrelatedness**
  5) **Accountability**

• **Inherent to the content of good and democratic governance**

  6) **Attention to Vulnerable Groups**

7) **Equity**
8) **People's participation**
9) **Independence of the Judiciary**
10) **Legislative Capacity and the Rule of Law**
11) **Transparency**

- **Overarching principle**

    12) **Empowerment**

2. Human Rights Principles that Guide Development

1. Universality

Human rights belong to everyone, everywhere. All human beings are born free and equal in dignity and rights. Dignity is permanent and constant; it is the same at all times and at all places; its essence transcends cultural nuances.

In reality, human rights were – and often in practice continue to be, by and large, the attributes of privileged people. Most people of coloured skin, female sex, non- Christian faith or low income were excluded from and deprived of the enjoyment of many human rights.

The principle of universality brings all human beings within the scope of human rights. In the country-level work of UN agencies, the application of this principle means that country programmes of co-operation need to identify issues of exclusion and injustice as central concerns. This is closely related to other human rights principles, such as equality, non-discrimination and attention to vulnerable groups.

2. Non-discrimination and Equality

All persons are entitled to human rights. There can be no restrictions based on race, colour, gender, language, age, religion, political or other opinion, social origin, property, birth or other status.

This means all persons should enjoy all human rights on an equal basis. Equality demands that women and men equally enjoy and exercise all fundamental rights and freedoms. Equality does not mean identical treatment in every instance. For example, the International Covenant on Civil and Political Rights prohibits the death sentence from being imposed on persons below 18 years old, and from being carried out on pregnant women. The principle of equality sometimes requires to take affirmative action in order to diminish or eliminate conditions that perpetuate discrimination. Such approach is considered "equity", which is also a fundamental human rights principle. Such action may involve granting for a time to the part of the population concerned certain preferential treatment.

Paying attention to equality in development implies analysing issues of differential impact of development programmes and inequality in access to assets and resources. Because the situation of different groups in society, such as women, is unequal, these groups are affected differently from others by the same issues.

3. Indivisibility

All rights have equal status as rights and it is necessary to look holistically at all aspects of human dignity: civil, political, economic, social and cultural. Some rights cannot be classified as being more important than others: all human rights are equally important and equally essential to the respect for the dignity and worth of every person. The principle of indivisibility, however, does not preclude development programmes to establish priorities for action, based on a combination on situation assessment, problem analysis, and available resources.

4. Interdependence and Interrelatedness

Human rights are so inextricably intertwined that the absence of one affects the presence of others. For example, if the right to health is affected, other rights, such as the right to work, are also affected. The right to political participation implies certain level of information and education, etc.

The attributes of interdependence and interrelatedness make human rights useful in problem analysis, because they allow the identification of links of cause and effect, and therefore help development planners in analysing the root causes of poverty and establishing strategic entry points for action.

5. Accountability

Human rights do not simply define the needs of people, but also recognise people as active subjects and claim-holders, thus establishing the duties and obligations of those against whom a claim can be brought.

Accountability is a major pillar of democracy. According to the Philippine Constitution, "sovereignty resides on the people and all government authority emanates from them". The duty of the government is to serve and protect the people. Therefore, government is accountable to the people. The existence of rights per se implies the existence of accountabilities. Rights without duties, and accountability for these duties, are meaningless.

The main accountability resides in the State, including government and sub-organizational units, and legislative and judicial powers. The State has the duty to respect, protect, promote and fulfil human rights; and can be held accountable at the international level. State accountability can also be demanded among government agencies. For example, oversight development agencies have the right to demand accountability to implementing agencies on the impact of development programmes and on financial management. Implementing agencies are accountable for demonstrating programmes are oriented towards a clear development impact; the mere completion of activities is not enough. For instance, if a particular department demands development assistance for training, it should demonstrate the impact of such training on their performance and particularly on the situation of disadvantaged groups.

Non-state actors and individuals can also be held accountable, clearly at the national level, and with certain limitations, at the international level. In development

programmes, however, accountability of non-State actors and individuals resides primarily at the national and local levels.

Individuals have two types of accountability:

- First, they have the duty to exercise their rights responsibly.
- Second, they have duties to other individuals and to the community. Human rights concerns experienced by disadvantaged groups are often influenced by other individuals in those groups or in other groups. Government should ensure individuals are accountable for these responsibilities.

6. Attention to Vulnerable Groups

Vulnerable groups are those who experience major obstacles in the realization of human rights. They are explicitly mentioned as an special target both in international human rights instruments and in the Philippine Constitution. Vulnerable groups are not limited to the poor, they may also include children, persons with HIV/AIDS and disabled persons who are non-poor. Moreover, there are different degrees of vulnerability among the poor: the goal of development programmes is to target those who are the most disadvantaged of all.

There are two reasons for this: First, human rights are not value-free. They express universal values about treating others humanly. These values are rooted in all cultural and religious traditions. These traditions establish clearly the need to pay special attention to the disadvantaged. Second, there is a reason of effectiveness in development programmes. Focusing only on those among the poor who are relatively less vulnerable (e.g. poor men) will inevitably result in increasing inequalities of those who are relatively more vulnerable (e.g. poor women). This type of interventions would risk achieving the opposite result that they expected – reduction in inequality of opportunity-. Attention to the most vulnerable groups should always be taken into consideration in development programmes.

7. Equity

Equity is inextricably linked to equality. It may be considered as an approach for the achievement of equality, as well as a principle in itself. Equity is fairness, justice and impartiality in the guarantee of fundamental rights and freedoms. Equity demands attention to the burden carried by certain groups for reason beyond their control – for example, due to deeply rooted historical or social injustices. It demands taking into account that, under certain circumstances, equal treatment can in fact reinforce inequality: under these circumstances, the approach to achieve the goal of equality is equity.

8. People's participation

The Declaration on the Right to Development states that "every person and all peoples are entitled to participate in, contribute to, and enjoy civil, economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realised". This means that participation is not simply something desirable

from the point of view of ownership and sustainability, but rather a right with profound consequences for the design and implementation of development activities.

Participation is more than merely consulting people. Participation is involving people at all levels of social, political and economic decision-making process: in assessing the situation, in setting targets, in formulating priorities and policies, in designing plans, projects, programmes or activities, in implementing these plans, projects, programmes or activities, in monitoring and in evaluating progress.

Participation must be free, voluntary, effective and full and should not be subjected to sanction or threat. This does not imply that participation, as mentioned above, is totally free of responsibilities. The rights-based approach promotes responsible participation: those who participate should be responsible, aware that participation brings accountabilities to them.

For people to freely participate in development and development process, it is essential that people are provided with the information needed to make informed and well thought decisions. It is also important that people are encouraged to organize themselves and to respect and promote the autonomy of popular or grassroots organizations at local, regional and national levels at all times.

Methods and tools used to maximize participation should be adaptable to specific situations like the use of popular education techniques. For participation to be genuine, formal/ legal mechanisms need to be in place so that people can question decisions, bring complaints, demand compensation or restitution, and hold duty-holders accountable.

9. Independence of the Judiciary

Independence of the judiciary is one major characteristic of good governance. It is highlighted as a human rights principle on its own because of the crucial role of the judiciary in protecting, respecting and fulfilling all human rights. The judiciary is the final arbiter of all disputes that may arise from the exercise of human rights. It should decide all matters with impartiality on the basis of fact, in accordance with the law, and without any improper influence or pressure.

10. Legislative Capacity and the Rule of Law

Legislative capacity and the rule of law are essential attributes of good governance, and inherent to the concept of human rights. Human rights must be guaranteed by law. Hence, the capacity of the legislature to enact laws that aim to uphold the inherent dignity of every person, is important to the exercise, enjoyment and realization of all human rights.

All persons are equal before the law, and are entitled to equal protection. Without a sound legal framework, the same as without an independent and honest judiciary, economic and social development risk collapse.

11. Transparency

Transparency allows all persons to see openly into the activities of government, including decision making process, objectives and results. Secrecy in the activities of government undermines accountability and jeopardizes the exercise of human rights.

Transparency takes many forms, such as:

- <u>Full, free and public disclosure of decisions, policies, rules, etc.</u> This requires effective efforts to build public understanding of the objectives of policy, nature of responsibilities of public authorities and the process of governance. Information must be freely available and directly accessible to those who will be affected by such decisions and implementation. Sufficient information must be provided in understandable and popular forms and medium on a timely basis. Creating effective transparency requires more than just making information available about policy objectives, policy responsibilities, policy decisions and performance results. Transparency demands a high standard of the quality of information disclosed in terms of content, clarity, accessibility and data.

- <u>Access and participation to important meetings</u> and providing inputs into government decisions and rule making at all levels of governance.

12. Empowerment

From a rights based approach, development is about human life and the pursuit of human dignity. With adequate social opportunities, individuals can effectively shape their own destiny and help each other. A rights-based approach to development sees people as the actors, agents and architects of development. Development work is not charity: it is giving people what is due to them because of their inherent dignity. People are entitled to development.

One of the major characteristics of a rights-based approach to development is that it views the development process as empowering in itself. It stresses the need to ensure empowerment in all the phases of the programme cycle. This implies building the necessary capacities in stakeholders to assess the situation, articulate their needs and aspirations, set objectives, and work towards improving their situation. Empowerment is the key to sustainability.

Summary Points:
Human Rights Principles

The inclusion of human rights principles at all stages in the development process helps to ensure development programmes and policies are **creating an enabling environment conducive to the exercise of human rights and freedoms by all.**

Human rights principles refer to those inherent to the concepts of human rights and good governance, and include empowerment as major guide in the development process. Basic human rights principles are:

UNIVERSALITY: Human Rights belong to all human beings simply because they are human.

NON-DISCRIMINATION AND EQUALITY: Human Rights should be enjoyed by all on the basis of equality and without discriminations on the grounds of race, age, sex, language, etc.

INDIVISIBILITY: Economic, social, civil, cultural and political rights are linked; negation of a group of rights implies negation of all rights.

INTERDEPENDENCE AND INTERRELATEDNESS: Human rights reinforce and affect each other

ACCOUNTABILITY: Rights imply duties and accountabilities for these duties. The main subject of accountabilities is the State, although there are also individual accountabilities.

ATTENTION TO VULNERABLE GROUPS: Priority attention should be given to those facing special obstacles for the realization of human dignity.

EQUITY: Fairness in treatment and results; in order to achieve real equality of opportunity sometimes preferential treatment is needed.

PEOPLE'S PARTICIPATION: Development belongs to people; people have the right to participate fully, effectively, freely and voluntarily.

INDEPENDENCE OF THE JUDICIARY: The judiciary is the final arbiter, it should be independent and impartial in deciding disputes arising from the exercise of human rights.

RULE OF LAW AND LEGISLATIVE CAPACITY: Human rights must be guaranteed by law.

TRANSPARENCY: Secrecy and lack of information prevents effective empowerment, undermines accountability and jeopardizes the exercise of human rights.

EMPOWERMENT: Persons are actors in development and should be empowered to shape their own future and help each other.

ACTIVITY 3: PERSONAL EXPERIENCES RELATED TO HUMAN RIGHTS

Purpose: To help participants internalise the concepts of human rights by making them realize of the direct impact of human rights principles and its effect to themselves and to others.

Timing: 15 to 25 minutes (depending on the size of the group and the extent of the discussion)

Materials: No specific materials are required for this activity.

Process: Arrange the participants in buzz groups of three or four. Ask the participants in each group to share among each other one example of when they felt their rights (or those of people they know) were affected due to the absence of one (or more) human rights principle. Ask them what they felt in that situation. Allow ten to fifteen (10-15) minutes for discussion. Ask three to four volunteers to share their experiences with the plenary. From the experiences shared, explore the range of human rights principles as creating an enabling environment for the exercise of human rights. Add that while most of our human rights are generally fulfilled, we tend to remember the difficulties in fulfilling them most clearly.

MODULE II, SECTION 3:
NORMATIVE CONTENT OF HUMAN RIGHTS

One of the most important contributions of the legal framework of human rights to development is its provision of objective standards to guide the development process. These standards tell us something about development effectiveness, that is, the extent to which we achieve desired changes in the lives of people.

The normative content of a particular right refers to the specific standards protected by such right, what the right actually "means". It may be considered the "legal" description of the right. This is important to development since when we look at the normative content of a particular right, we obtain a clear picture of what specific issues affecting human dignity should be improved in a particular situation. Human rights standards become valuable guides in a dynamic process like development, because the normative content of human rights includes guidance for "immediate" and "progressive" realisation.

The normative clarity provided by human rights norms removes arbitrariness from development programmes: we know what is important, what has a value in itself, and what is merely instrumental for the realization of human dignity and freedom.

The normative content of human rights may be found at the national level, through jurisprudence and legislation, and at the international level, through the "General Comments" elaborated by UN Treaty Bodies over the years. General Comments providing human rights standards are included in the Resource Book accompanying this Manual; their reading is strongly encouraged to obtain a sound understanding of the scope of each right.

Rights discussed in this section are by no means intended to limit the rights that the United Nations should realize or prioritise through its activities. These are provided as discussion and support to the subsequent practical exercises only.

Right to Life

The right to life is the supreme human right from which no derogation is permitted, even in time of war or public emergency. The protection of the right to life goes beyond the prohibition of arbitrary killings by state agents and the criminal prohibition of homicide offences. The right to life is more than mere existence: it involves conditions that enable all persons to enjoy life and live life to the fullest – e.g. by taking measures to reduce infant mortality and to increase life expectancy.

There is controversy as to **when the right to life begins**. Under international human rights law, it is at birth. Under Philippine law, it is at conception.

Despite a clear trend towards abolition of the **death penalty** in international law and in the practice of many States, the execution of a person who was sentenced to death for a capital offence after a fair trial by a competent court does not (yet) amount to a violation of the right to life. But there are strict limitations on the imposition of death

penalty: if these limitations are not respected, death penalty constitutes a violation of the right to life. Such limitations are:

1) The death penalty may be imposed only for the most serious crimes: There are no examples of what could constitute a "most serious crime". In fact, the International Criminal Court rules out the possibility of death penalty even for genocide.
2) The death penalty shall not be re-established in states which have abolished it.
3) Death penalty shall not be imposed for crimes committed by persons under 18 years of age and it shall not be carried out on pregnant women.

Right to Life: Examples of State Obligations

Obligation to Respect: State authorities must not commit extrajudicial killings or forced disappearances, the State must not re-establish the death penalty once it has been abolished, it must not impose death penalty without a due process of law and only for the most serious offences, etc.

Obligation to Protect: Criminal prohibition of homicide, imposition of penalties

Obligation to Fulfill (facilitate): Taking measures to reduce infant mortality and to increase life expectancy.

Right to Life: Normative base

Art. 3, UDHR
Art. 6, ICCPR
GC 6, HRC (1982)
Art. 5(b), CERD
Art. 6, CRC
Sec.1, Art. III, 1987 Constitution

* There is a List of Abbreviations at the back of this Manual

Equality and Non-Discrimination

The right to equality goes beyond "formal equality" (equality before the law), to include also **"substantive equality"** (right to equal protection of the law). Its most essential element is the prohibition of discrimination on grounds of race, colour, gender, language, disability, age, religion, political or other opinion, national or social origin, property, birth or other status.

Equality is not the same as equal treatment. Practice shows that, in the case of deeply rooted privileges or discriminatory attitudes against certain groups of the population, mere prohibitions of discrimination are insufficient to guarantee true equality. Those who are disadvantaged have to catch up in order to achieve real equality of opportunity. The treaties always take into account groups that are particularly vulnerable. Many documents (CEDAW and CERD) talk about **positive measures of protection** that **may be taken**, such as affirmative action programmes or quota systems. The treaties make it clear, that whatever measures are taken to compensate should only be **temporary: once the purpose for which they were created is achieved, they must be discontinued.**

Issues of equality and non-discrimination are not limited to gender relations. For instance, laws that require a baptism cell as proof of minority of age are discriminatory for non-Christians. Similarly, labour laws protecting fundamental rights at work that are only applied to some sectors of society, such as formal workers, while excluding others from protection, such as informal workers, may also be deemed as discriminatory.

Normative base: Equality

Art. 7, UDHR Art. 3, ICESR Art. 3, ICCPR Art. 8 (1), Right to Development Art. 5, CERD Arts. 9, 15, CEDAW Sec. 1, Art. III, 1987 Constitution

Normative base: Non-discrimination

Art. 7, UDHR Art. 2(2), ICESR Arts. 2(1), Art. 20(2), ICCPR Art. 6(1), Right to Development Art. 1,3,4, CERD Arts. 1,2,4,7, CEDAW Art. 2, CRC

POLITICAL RIGHTS AND FREEDOMS:
Right to Participate in Government, Freedoms of
Opinion and Expression, Freedom of Movement,
Right of Peaceful Assembly and Association

These rights may be exercised directly or indirectly, individually or collectively. But it must be **free, genuine exercise**, where people voluntarily come together. **The effective exercise of these rights requires availability and accessibility to information**.

The exercise of political rights and freedoms carries with it special duties and responsibilities: there may be **some limitations, but only to the extent necessary in a democratic society**. For example, any propaganda for war as well as incitement to national, racial or religious hatred shall be prohibited by law.

Normative base:

Freedom of Opinion and Expression

Art. 19, UDHR Art.19, ICCPR Art. 5(d)(viii), CERD Arts. 12, 13, CRC Sec. 4, Art. III, 1987 Constitution

Right to Participate in Government

Art. 21, UDHR Art. 5, CERD Sec. 16, Art. XIII, 1987 Constitution

Freedom of Movement

Art. 13, UDHR Art. 12, ICCPR Sec. 6, Art. III, 1987 Constitution

Right to Peaceful Assembly and Association

Art. 20, UDHR Art. 20, 21, ICCPR Art. 5(d)(ix), CERD Art. 15, CRC Art. 2, ILO C87 Art. 1, 2, 3 ILO C98 Sec. 4, Art. III, 1987 Constitution

Right to Social Security

Everyone has the right to social security. This implies a **right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond one's control.**

ILO has developed standards on social security through its Convention No. 102 (Social Security [Minimum Standards] Convention of 1952). It includes:
1) Medical care
2) Sickness benefit
3) Unemployment benefit
4) Old-age benefit
5) Employment injury benefit
6) Family benefit
7) Maternity benefit
8) Invalidity benefit
9) Survivor's benefit

The Right to Social Security includes general rules of compulsory old-age insurance, establishment of retirement age, provision for survivors' and orphans' benefits upon death of breadwinner covered by social security or pension, non-contributory benefits and other assistance for all older persons, income maintenance schemes, including support for those who care for the elderly and the disabled. Normally, these are unpaid women, family members, who are oftentimes single. The right of social security extends to those people who take care of the elderly, regardless of whether they are paid.

Institutionalization of disabled persons and the elderly is not considered an adequate substitute for social security under international law.

Social Security: Examples of State Obligations

Obligation to Protect: Obligation to ensure that in contractual labour relationships, provisions are made for social insurance. Includes also the obligation to ensure these insurance arrangements are effective, and that guarantees are established so that, even in cases of bankruptcy, the necessary payments are available to the beneficiaries. **Obligation to Fulfill (facilitate):** Establishing institutions administering the insurance, adding through state funding to the contributions made by the worker and the employer. **Obligation to Fulfill (provide): (Social assistance)** Providing assistance to those who are not covered by social insurance.

Right to Social Security: Normative Base

Art. 22, UDHR
Art. 9, ICESCR
GC 5,6, CESR (1994/1995)
Art. 8(1), Right to Development
Art. 11(e), CEDAW
Art. 25, CRC
Art. 3,4,5,6 ILO C103
All articles ILO C102
Art. 2,3,4,5,6,7 ILO C118
All articles ILO C157

Right to Work

The right to work has at least two significant social functions: it is a **source of livelihood and income** and a **source of dignity and self-realization**. To be a source of livelihood, everyone must have access to work, and it must provide a just remuneration ensuring an existence worthy of human dignity. To be a source of dignity and self-realization, it must be work which a person freely chooses or accepts, and he or she must enjoy safe and healthy working conditions, equal remuneration and equal opportunity for promotion free from discrimination on the basis of gender, race, etc.

The right to work **involves many other related rights**, such as: the right to opportunity to gain living by work freely chosen or accepted; technical and vocational guidance and training programmes; just and favourable conditions of work; fair wages, equal pay for equal work without discrimination; remuneration that provides decent living; safe and healthy conditions of work; rest and leisure; periodic holidays with pay, form trade unions, join trade unions, etc.

Right to Work: Examples of State Obligations

Obligation to Respect: The State shall not discriminate the access to public work on the basis of race, colour, ethnic origin, or gender (although access to public service can be restricted to citizens of the country)

Obligation to Protect (e.g. through appropriate legislation, inspections and penalties): Protection against forced labour, protection against discrimination in access to work and in working conditions, protection against arbitrary dismissals (legislation on job security), protection of just conditions of work (reasonable daily and working hours, annual and public holidays with pay, safety and health regulation, right to fair remuneration, equal pay for work of equal value, etc.)

Obligation to Fulfill (facilitate): Facilitating access to work through vocational guidance, technical or vocational training, etc.

Obligation to Fulfill (provide): Although it does not require that the State guarantees a job to everyone, it does require that the State adopts policies for employment, addressing groups of persons or regions particularly affected by unemployment, and moves towards a higher level of employment.

Right to Work: Normative base

Art. 23, UDHR
Art. 6,78, ICESR
Art. 8(1), Right to Development
Art. 5(e)(i)(ii), CERD
Art. 11, CEDAW
Art. 32, CRC
Sec. 3, Art. XIII, 1987 Constitution

Right to Health

The right to health is not to be understood as the right to be *healthy*. The right to health involves both involves freedoms and entitlements. There is a **freedom to choose or to control one's health** (e.g. reproductive health issues). There is also an **entitlement to a system of health protection, facilities, services, etc.**

The right to health has two major dimensions:

1) First, the right to health is a **right to access and enjoyment to both health services and the underlying determinants of health, such as safe and potable water and adequate sanitation facilities**, on the basis of non-discrimination and equality.

2) Second, it is a **right to enjoy certain social conditions,** which carries obligations to the state to take specific measures of safeguarding public health (e.g. prevention, treatment and control against epidemic, occupational and other diseases, including measures of hygiene and sanitation, environmental protection, dissemination of information on health-related matters, and establishing conditions which ensure that care can be given to children, disabled persons and the elderly).

The right to health includes:

1. **Availability** – The presence of health facilities, goods and services. How many? Where are they located? Are they sufficient for the population? Are there enough medicine? Are there enough doctors, nurses, midwives, health professionals?

2. **Accessibility** – involves four aspects:

   a. **non-discrimination**; - health facilities, goods and services must be accessible to all, especially the most vulnerable and marginalized.
   b. **physical accessibility** – e.g., safe physical access to a health center adequately equipped with health professionals, medicine and supplies. It also includes adequate access to building for persons with disabilities.
   c. **economic accessibility** - Refers to affordability, the price of health services, including hospitalization, check-ups, medicine, etc. Payment for health-care services has to be based on the principle of equity: equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.
   d. **information accessibility** – Accessibility includes the right to seek, receive and impart information and ideas concerning health issues. The government is not supposed to hide anything that could cause a disease.

3. **Acceptability –** All health facilities, goods and services must be **respectful of medical ethics and culturally appropriate.** It involves recognition of traditional alternative forms of medicine and practices of health that will not result to injuries. This also refers to being sensitive to people of different life cycles and gender,

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religious and cultural communities, acceptance of indigenous alternative health practices. Information programs should be designed to be acceptable to people.

4. **Quality** – Health facilities, goods and services must be scientifically and medically appropriate and of good quality. In the Philippines, it is the Professional Regulatory Board who sets the standards on the quality of nursing staff and service professionals in the field of health. The issue of waivers for a hospital's non-accountability for services has often been raised, although so far there is no existing Philippine legislation in this field.

Biological and sociocultural factors play a significant role in influencing the health of **men and women**. A major goal should be reducing women's health risks, particularly lowering the rates of maternal mortality. Measures should also be taken to reduce infant mortality and promote the healthy development of **infants and children**. Special considerations including preventive, curative and rehabilitative health treatment should be taken with regard to **older persons and persons with disabilities**.

With regard to **indigenous peoples**, health services should be culturally appropriate, taking into account traditional practices, and including the protection of medicinal plants, animals and minerals necessary for those practices. Denying indigenous peoples of their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.

Right to Health: Examples of State Obligations

Obligation to Respect: States cannot deny or limit access to health for particular groups (e.g. prisoners, asylum seekers, etc.), they should not market unsafe drugs; they should not censor, withhold or misrepresent health-related information, etc. In ensuring the right to health, state authorities have to respect the other human rights of the persons concerned. E.g., in addressing the HIV/AIDS epidemics, measures should not cause severe discrimination of persons infected or suffering – or suspected of being infected or suffering – from HIV/AIDS. Furthermore, retrogressive measures taken in relation to the right to health are not permissible.

Obligation to Protect: the State should ensure that privatisation of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health services; States should remove as much as possible the causes of ill-health, and prevent as much as possible epidemic, endemic and other diseases.

Obligation to Fulfill (facilitate):, States should ensure primary health care is extended to all and is effective, efficient, affordable and acceptable; they should provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; they should provide adequate training for health personnel; they should formulate policies aiming at reducing and eliminating causes of ill-health (e.g. pollution), etc.

Obligation to Fulfill (provide): the State should provide those who do not have sufficient means with the necessary health insurance and health-care.

Right to Health: Normative base

Art. 25, UDHR
Art. 12, ICESCR
GC 14, CESCR (2000)
Art. 8, Right to Development
Art. 5(e)(iv), CERD
Art. 12, CEDAW
Art. 24, CRC
Sec. 11, 12, 13 Art. XIII, 1987 Constitution

Right to Food

The Right to Food implies:

1) **Availability and adequacy of food supply:**

   a. **Sufficient to satisfy nutritious/dietary needs**, including micronutrients such as vitamins and iodine. Dietary needs vary throughout the life cycle.
   b. **Safe** – clean, free from contaminating substances.
   c. **Culturally acceptable** – appropriate to the prevailing food or dietary culture.
   d. **Availability** – possibilities for either feeding oneself directly from land or other productive resources, or for efficient distribution and market systems.

2) **Accessibility of food supply:**

   a. **Physical accessibility** – this does not refer merely to presence, it also involves factors such as presence of roads from the farm to the market. Adequate food must be accessible to everyone; therefore victims of natural disasters and other disadvantaged groups may need special attention. A particular vulnerability is that of many indigenous populations whose access to ancestral domains may be threatened.
   b. **Economic accessibility**. How affordable is the available food? Socially vulnerable groups may need special attention and special programs.

3) **Stability of the supply and access to food:** The right to food is not only for the present generation; current use and production pattern should consider food security for the future generation. This presupposes:

   a. **Environmental sustainability**: management of natural resources taking into account food supply.
   b. **Economic and social sustainability**: just income distribution, effective markets, import/ export of food supplies, etc.

As with most human rights, there are important **gender dimensions** to consider regarding the right to food. The nutrition and health of the family are largely determined by the mother; she decides what to buy, cook and serve. If she is pregnant and lactating, and not eating enough, this will affect the baby she is carrying. These are important issues to consider not only regarding the right to food, but also other human rights.

Right to Food: Examples of State Obligations

Obligation to Respect: States may not take any measures that result in preventing access to adequate food or in the occurrence of famines (e.g. by marketing unsafe food, or in the context of population displacement due to armed conflict, etc.)

Obligation to Protect: States must take measures to ensure that enterprises or individuals do not deprive people of access to adequate food (e.g. by storing food for speculative purposes)

Obligation to Fulfill (facilitate): States must take positive measures to promote access and use of food (e.g. roads to markets, price regulation, etc.)

Obligation to Fulfill (provide): Providing food to those unable, for reasons beyond their control, to enjoy the right to adequate food (e.g. providing food to victims of natural disasters)

Right to Food: Normative base

Art. 25, UDHR
Art. 11, ICESCR
GC 12, CESCR (1999)
Art. 8, Right to Development

Right to Housing

Essential to human dignity is adequate housing. The United Nations estimates that there are over 100 million homeless persons worldwide and over a billion who are inadequately housed. There is no indication that this number is decreasing.

The right to adequate housing should be seen as the **right to live somewhere in security, peace and dignity**. The core contents of this right are:

1. **Legal security of tenure** – Persons must have places to live where they cannot be forcibly evicted or harassed at any time. Tenure can take many forms, such as rental, ownership, lease to own, etc.
2. **Availability** – This does not only refer to housing backlogs, though the annual backlog in the Philippines is somewhere between 2-3 million housing units per year, according to the Government. Availability refers to services, materials, facilities, and infrastructure. It includes facilities for health, security, comfort and nutrition. It takes into account access to resources, safe drinking water, energy for cooking, and drainage.
3. **Affordability** – Personal or household financial costs associated with housing should be in a level that the attainment and satisfaction of other basic needs are not threatened or compromised. In this regard, the World Bank has suggested that no one should pay more than 15% of monthly income on housing related costs. Regarding lease tenants, a recent extension of the Philippine law prevents landlords from increasing the rent without sufficient justification.
4. **Habitability** – People must have adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease. Space should provide for different gender and life cycles.
5. **Accessibility** – Disadvantaged groups should have some degree of priority consideration in the housing sphere.
6. **Location** – Housing must be accessible to markets, schools, hospitals, etc.
7. **Cultural adequacy** – The design and the materials used in building the house should express cultural identity.

Right to Housing: Examples of State Obligations

Obligation to Respect: Refrain from destroying houses in armed conflict, refrain from forced evictions,.

Obligation to Protect: Adopt and enforce legislation against forced eviction and ensure that the law is enforced against its agents or third parties that carry forced evictions.

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Obligation to Fulfill (facilitate): Adopt legislation to extend security of tenure, ensure adequate, accessible and affordable housing schemes, etc.

Obligation to Fulfill (provide): Ensure adequate housing for victims of natural disasters, armed conflict, etc.

Right to Housing: Normative base

Art. 25, UDHR
Art. 11, ICESCR
GC 4, CESCR (1991)
GC 7, CESCR (1997)
Art. 8, Right to Development
Art. 5(e)(iii), CERD
Sec. 9, 10, Art. XIII, 1987 Constitution

Right to Education

Education determines the kind of economic growth and the type of society we have. It is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty. But the importance of education is not just practical: a well-educated, active and enlightened mind is one of the joys of human existence.

Aims and Objectives of Education:

1. Education should be directed to full development of the human personality
2. Education should enable all persons to participate effectively in free society
3. Education should promote understanding among all ethnic groups, nations, racial and religious groups
4. Education should promote gender equality
5. Education should promote respect for the environment

Content of the right to receive an education

1. **Availability** – Includes functioning educational institutions and programs available in sufficient quantity; trained teachers receiving local competitive salaries; teaching materials, etc.

2. **Accessibility**

   a. **Non-discrimination** – Education should be accessible to all, especially the most vulnerable
   b. **Physical accessibility** – Educational facilities should be within safe physical reach
   c. **Economic accessibility** – Education should be affordable. While primary education should be available free to all, States are required to progressively introduce free secondary and higher education if they can afford to do so.

3. **Acceptability** – Form and substance of education must be relevant, culturally appropriate and of good quality.

4. **Adaptability** – Education should be flexible, adaptable to the needs of changing societies and communities

5. Education should keep always in mind the **best interest of the child**.

6. **The right to receive an education includes rights to**

    a. *Free universal primary education* – this is a state obligation.
    b. *Secondary education* – it is not necessarily free, but must be universal. Everyone should be allowed access to secondary education, even if they do not have the capacity. States should move towards introducing free secondary education if they can afford to do so, although it is not compulsory as in the case of primary education and depends on the availability of resources. States should, nevertheless, ensure costs for secondary education are affordable.
    c. *Higher education* – it is based on capacity and qualifying exams and should be accessible (and affordable). Government should begin to introduce free higher education if they can afford to do so, but again this depends on the availability of resources.
    d. *Fundamental education* is different from basic education (primary education is the most important component of basic education). Fundamental refers to adult literacy or functional literacy whether a person can count, read or write or can use basic skills in their daily operations, etc.
    e. *Technical and vocational education*.
    f. Governments are required to set up a *school system*. If the state cannot afford this or lacks resources to set this up, it becomes an obligation on all development partners, to assist the state to create this system. This also includes fellowships, materials, and salaries for educators. The fellowship system should enhance equality of educational access for individuals of disadvantaged groups.
    g. *Educational freedom* –freedom of parents/guardians where they want to send their child to school, and academic freedom.

Special Topics to consider:

1. **Non-discrimination** – Adoption of temporary special measures intended to bring out de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination in education. Wide disparities in spending policies that results in different qualities of education for persons residing in different locations may constitute discrimination.
2. **Discipline in schools** – Corporal punishment and public humiliation are inconsistent with human dignity.
3. **Academic freedom and institutional autonomy**.

Right to Education: Examples of State Obligations

Obligation to Respect: Public schools should not prevent attendance on the basis of discrimination (e.g. to girls in Muslim veils, to pregnant girls, etc.), States should not deny academic freedoms, etc.

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Obligation to Protect: Take measures to prevent third parties (e.g. parents, employers) from interfering with the enjoyment of the right to education (e.g. by preventing girls from going to school)

Obligation to Fulfill (facilitate): Obligation to ensure that curricula are directed towards the objectives of education; take positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all; ensure that an educational fellowship system is in place to assist disadvantaged groups, etc.

Obligation to Fulfill (provide): Developing a system of schools, including infrastructure, human resources and materials.

Right to Education: Normative base

Art. 26, UDHR
Art. 13, ICESCR
GC 11, CESCR (1999)
GC 13, CESCR (1999)
Art. 8(1), Right to Development
Art. 5(e)(v), CERD
Art. 10, CEDAW
Arts. 28,29, CRC
Art. XIV, 1987 Constitution

Progressive realization to the Maximum of the State's available resources

State's available resources are not only financial, but also include technological, human and natural resources. The notion of State obligations acknowledges that a state may not have the capacity or the resources to provide or create conditions today, and that it may need more time, resources, and planning to do it. That is referred to as **progressive realization**. However, governments often use "progressive realization" as an excuse for inaction. Nevertheless, the government is required to take certain steps regardless of the level of economic resources. The government cannot defer the realization of economic, social and cultural rights; it must prove that is constantly and substantially moving towards a particular goal.

Summary Points:
Normative Content of Human Rights

ROLE OF NORMATIVE CONTENT IN DEVELOPMENT

The normative content of human rights provides objective standards of human dignity to the development process: these standards can be used as effective **guides for the analysis, design, direction and assessment of development policies and programmes**.

Right to Life

Right to Life:
        Narrow interpretation (existence)
        Broad interpretation (conditions that allow to live life to the fullest)

Right includes phenomenon of involuntary disappearances, war, genocide, other acts of mass violence, extralegal executions, murder by criminal acts.

Right begins:

> International Law – at birth
> Philippine Law – at conception

No derogations permitted even in times of public emergency

Equality and Non-Discrimination

Equality – ALL Women and Men equally enjoy ALL rights and freedoms; Does not mean equal treatment ("formal equality" vs. "substantive equality")

Non-Discrimination on basis of race, colour, gender, language, disability, age, religion, political or other opinion, national or social origin, property, birth or other status

Political Rights and Freedoms:
Right to participate in government, Freedoms of opinion and expression, Freedom of Movement, Right of Peaceful Assembly and Association

Exercise must be free, genuine.

Effective exercise of these rights requires availability and accessibility to information.

Exercise carries with it special duties and responsibilities: There may be some limitations, but only to the extent necessary in a democratic society.

Right to Social Security

Further developed by ILO Convention No. 102 (Social Security (Minimum Standards)). It includes:

1) Medical care
2) Sickness benefit
3) Unemployment benefit
4) Old-age benefit
5) Employment injury benefit
6) Family benefit
7) Maternity benefit
8) Invalidity benefit
9) Survivor's benefit

Right to Work

Right to work is: - Source of livelihood and income
                       - Source of dignity and self-realization

Involves many other related rights, such as:

1) Right to opportunity to gainfully work freely chosen or accepted;
2) Technical and vocational guidance and training programmes;
3) Just and favourable conditions of work;
4) Fair wages;
5) Equal pay for equal work without discrimination;
6) Remuneration that provides decent living;
7) Safe and healthy conditions of work;
8) Rest and leisure; periodic holidays with pay,
9) Form trade unions, join trade unions, etc.

Right to Food

- Have physical and economic access at all times to adequate food or means of availing food
- Not limited to calories, proteins and specific nutrients
- Linked to sustainability for present and future generations

Core Content

1. Availability and Adequacy
   a. Availability in sufficient quantity and quality to satisfy dietary needs
   b. Free from adverse substances (contamination, adulteration, etc.)
   c. Cultural or consumer acceptability

2. Accessibility
   a. Physical accessibility
   b. Economic accessibility

3. Stability of the supply
   a. Environmental sustainability
   b. Economic and social sustainability

Right to Health

Right to Highest Attainable Standard of Health
(not same as right to be healthy)

Two dimensions:
1) Right to access and enjoyment of <u>functioning</u> health services and facilities
2) Right to enjoy social conditions favourable to the highest attainable standard of health

Consists of:
a. Freedoms – Right to control health; Freedom from interference
b. Entitlements – Right to system of health protection

Underlying Determinants – food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, healthy environment, education, participation

Includes rights to

- Maternal, child and reproductive health
- Healthy natural and workplace environments
- Prevention, treatment and control of diseases
- Health facilities, goods and services
- Non discrimination and equal treatment

Core content

a) Availability – Sufficient quantity

- Extends to underlying determinants of health
- Includes hospitals, clinics, centers, etc.
- Includes trained medical/ health professionals receiving local competitive salaries
- Includes essential drugs

b) Accessibility (Non-discrimination; Physical accessibility, Economic Accessibility, Information Accessibility)

c) Acceptability

- Respectful of medical ethics
- Respectful of culture
- Sensitive to gender, life cycle

d) Quality

- Scientifically and medically appropriate
- Good quality
- Skilled personnel
Scientifically approved and unexpired drugs
- Extends to underlying determinants of health

Right to Housing

Right to live somewhere in security, peace and dignity
Integrally linked to other human rights and principles

Core Content

1. Legal Security of Tenure – Guarantee legal protection from forced eviction, harassment and other threats

2. Availability – Services, materials, facilities, infrastructure

- Sustainable access to natural and common resources
- Safe drinking water
- Energy for cooking, heating, lighting
- Sanitation and washing facilities
- Means of food storage
- Refuse disposal
- Site drainage

- Emergency services

   3. Affordability

   4. Habitability – Adequate space, protection from elements, health or structural hazards and diseases
   5. Accessibility – Full and sustainable, particular attention to disadvantaged groups

   6. Location – allows accessibility to

- Employment options
- Health care
- Schools
- Child care
- Other social facilities

   7. Cultural Adequacy – enable expression of cultural identity and diversity

Right to Education

Aims of Education

   1. Directed to full development of human personality
   2. Enable everyone to participate effectively in free society
   3. Promote understanding among all ethnic groups, nations, racial and religious groups
   4. Promote gender equality
   5. Promote respect for environment

Rights included
   1. Receive education
   2. Primary education
   3. Secondary education
   4. Technical or vocational education
   5. Higher education
   6. Fundamental education
   7. School system; adequate fellowship system; material conditions of teaching staff
   8. Educational freedom

Related topics
   1. Non-discrimination and equal treatment
   2. Academic freedom and institutional autonomy
   3. Discipline

Core Content – Functioning educational institutions and programs

   1. Availability – sufficient quantity, includes buildings or other protection from elements; sanitation facilities for both sexes; safe drinking water; trained teachers receiving domestically competitive salaries; teaching materials

   2. Accessibility

a. Non-discrimination
b. Physical and safe accessibility
c. Economic accessibility (Affordability)

5. Acceptability – Form and substance of education must be :
   a. Relevant
   b. Culturally appropriate
   c. Of good quality

4. Adaptability – Flexible, adaptable to the needs of changing society and students within diverse cultural settings

ACTIVITY 4: HUMAN RIGHTS BELONG TO EVERYONE

Purpose: To help participants internalise the scope and relevance of human rights to their work.

Timing: 30 minutes in plenary (after presentation on normative content by resource person and Q&A)

Materials: No materials needed, participants can support their discussions with the Summary of Section 3.

Process: Ask the participants to provide examples of specific rights inherent in their work, including examples of activities addressing the normative content of such rights (eg. quality of curricula in education, occupational safety and health, etc.) Ask them the main obstacles they face in promoting such rights and what other specific rights should be equally promoted for their interventions to obtain a greater impact.

MODULE II, SECTION 4:
HUMAN RIGHTS OBLIGATIONS AND ACCOUNTABILITIES

A right claimed by one person must imply a corresponding duty for someone else to take, or not take, a certain course of action. Human rights always imply human duties and responsibilities. Most of these duties (obligations) lay on the State. Non-State actors and individuals, and the international community have also responsibilities in relation to human rights.

One of the principles underlying a rights-based approach is that development should be in accordance with the levels and nature of the State's human rights obligations. Although there is a particular stress on State accountability, we should bear in mind that States are not the only actors in the development process - as private sector, individuals and development institutions are also involved, and therefore their accountability is also needed for the realization of human dignity. Nevertheless, because the State plays a major and crucial role in the process of development, State capacities to comply with its obligations should be developed and reinforced with priority. The State is the main subject of responsibilities under international law. A rights-based approach examines State obligations at different levels.

The objective of this section is to examine the notion of "human rights obligations and accountabilities" and the role they play in the development process. We will focus primarily on the nature and levels of State obligations, because the state plays a major role in formulating and implementing development policies, and in protecting the rights of the people. We will further examine human rights obligations at the level of the individual, and at the level of the international community , particularly, the organized international community: the United Nations.

Reading: Human Rights Obligations and Accountabilities

Roles in the realization of human rights

There is a range of tasks and functions that have to be performed at national and international levels if human rights are to be effectively realised. There is, therefore, much scope for division of labour between governmental, non-governmental and international organisations, private sector and individuals. Most of these task and functions imply duties and obligations and need to be performed at the national level.

A Rights-based approach requires a different conceptualisation of the development process and the participants in it. In economic development the focus is on producers and consumers of good and services, while in the basic needs perspective there is a stress on needs and appropriate (or charitable) responses.

In the human rights approach the focus is on rights holders and duty bearers. That is, there is someone whose right is being affected (right-holder), and someone else who has the obligation to respond to that situation (duty-bearer).

Rights Holders

In a conceptual sense , it is obvious who the rights holders are: all people, men and women and children regardless of any other consideration. In development analysis, human rights concerns are identified in situations where it is some people's fundamental human rights are being affected: these people are called rights-holders.

Rights do not exist in a vacuum, they involve corresponding obligations in the rights holders themselves. The responsibilities of rights-holders include respecting and defending the rights of others, seeking the well-being of all and support justice and equity for all. Although the rights of rights holders are not conditional in the performance of their duties , it is clear that every rights holder is also a duty bearer in the human rights system. The section on "individual obligations" in this chapter elaborates on this issue.

Rights holders need appropriate capacities to claim and exercise their rights fully and responsibly. One of the most important capacities for people to claim and exercise human rights (even when these are recognised by law), is when they know of such rights. Poor and disadvantaged people are often unaware of the rights that protect them, and therefore vulnerable to exploitation and abuse. Other important capacities include organizational capacities, information, capacity to articulate their claims, etc. Capacity gaps provide the entry points for supporting rights holders through the development process.

Duty bearers

The duty bearers are those with responsibilities in the realisation of rights. In the traditional or legal approach to human rights , the state is often assumed to be the sole duty bearer. The issue of who are the duty bearers is being debated with regard to both the extent of the duty of states for the human rights outside their boundaries and the duties of non-state actors who are not party to international conventions. In a rights-based approach, this issue is not so important since the concern is mainly with the responsibilities of all parties and partners to contribute in the realisation of rights as a moral duty or social responsibility .

Many factors can influence duty bearers in fulfilling their responsibilities to rights holders like whether they have the necessary authority to make decisions, whether they have the capacity – human, social, informational, financial, material – and the resources to do so. These factors provide the entry points for supporting duty bearers in the realisation of human rights and human development.

Box 5: Types of duty bearers included in stakeholders analysis under a rights-based approach:

1. Those who are immediately responsible for particular groups of rights holders. For example, parents for children, teachers for students, police for crime suspects, prison officers for prisoners, and so on.
2. Those institutions or organisations with immediate jurisdiction over the above duty-bearers, either as governmental agencies or as non-governmental agencies at the local or community level. For example, barangay officers, local government officers, community based organisations, non-governmental organisations with a local presence, and so on.

3. Those institutions or organisations at higher levels, either as governmental agencies or as non-governmental agencies. This category would group together all the remaining duty bearers in a particular country, for example, the various levels of local and regional governance, national institutions and organisations, private sector organisations (national or multinational), civil society organisations, donor agencies operating in the country (bilateral or multilateral).
4. Finally, there are also "external" duty bearers: those countries, institutions and organisations with any direct involvement in the country at any point in time, but who are involved in the international economic, legal, military or trade systems that impact on the capacities of the other categories of duty bearers to meet their obligations. For example, the WTO, the IMF, the UN Security Council, the ASEAN, arms traders, terrorists and so on.

Note: the above section has been excerpted from the study prepared by Jan L. Loubser for the Uganda Human Rights Commission (see bibliography).

State Obligations

The main subject of responsibilities is the State. This is so for very obvious reasons: the State's political, economic and military power over its citizens is both the major threat to human rights and also its major guarantee and protection. Under international law, only States can be held accountable – although individuals can be held accountable in special circumstances such as in crimes against humanity. In fact, international law recognizes specific duties for individuals relating to human rights, although it generally lacks the mechanisms to demand individual accountability. Under national law, on the contrary, non-State actors and individuals can also be held accountable.

The nature and level of the State's human rights obligations serves as a valuable entry point for the identification of capacity development strategies. Development is about strengthening the capacities of government, individuals and communities for the realization of human rights. States have multiple roles in the realization of rights; a clear examination of these roles, and of the strengths and weaknesses of State actors in performing such roles, can help in identifying where capacity development strategies should focus if a meaningful impact on the quality of life and human dignity of people is to be achieved

State Obligations **emanate from the national and international human rights framework**. They arise from the Constitution and from the ratification of a human rights treaty. Duties are both *positive* (relating to acts of commission) and *negative* (relating to acts of omission). **State obligations require a particular conduct now ("immediately") and also the attainment of certain results over time ("progressively")**. A common distinction generally made between economic, social and cultural rights on the one hand, and civil and political rights on the other, is that whereas the later may be "immediately" provided for, the first can only be "progressively" realized.

However this distinction is no longer sustained. All human rights imply immediate obligations now, and also obligations to attain certain results over time. For instance, although States can immediately ensure legislation is passed to establish the presumption of innocence of the accused, full access to justice for all is not easily achievable overnight, as it depends to a large extent on the availability of a sufficient number of qualified judges, lawyers and prosecutors. Similarly, there are immediate obligations in the case of economic, social and cultural rights, such as the obligation to ensure there is no discrimination in access to education.

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The notion of **"progressive realization"** (the commitment to produce results over time) implies the obligation to prove there has been, indeed, progress: the State is under **the obligation to take steps, to the maximum of its available resources and by all appropriate means, with a view to achieving progressively the full realization of rights**.

a)   **The obligation to take steps by all appropriate means implies:**

- Once it has ratified a treaty, or from the moment a human rights obligation is enshrined in the Constitution, **the State must take targeted and concrete steps towards the progressive realization of rights,** and it must continue doing so in the future.

- "All appropriate means" are **not limited to the adoption of legislative measures**, they also include, for instance, provision of judicial remedies, administrative, judicial, budgetary, social and other measures. It is important to note that legislation, if not enforced, or plans of action, if not implemented, will not per se prove that the State is complying by all appropriate means.

b)   **To the Maximum of its available resources**

- Available resources include physical, human and natural resources, as well as national financial resources, loans and assistance programmes. **The State must demonstrate that every effort has been made to use all resources that are at its disposition** in order to satisfy, as a matter of priority, minimum obligations. This usually requires an analysis of the available national budget and its priorities.

State obligations require, both **conducts and results**. For instance, the State should not discriminate in providing access to free primary education (e.g. by not allowing Muslim girls to wear veil in school uniforms): that is an obligation of conduct. The State should also ensure the presence of free primary education available to everyone: this is an obligation of result.

State obligations exist at three levels (**Respect, Protect and Fulfill, also known as "Levels of State Obligations")**. But distinctions among these levels are not clear-cut: State obligations on a particular right often exist at more than one level, and it is not always easy to define what type of action can be considered as belonging to one particular level or another. Some examples have been included in the former section (Normative Content of Human Rights). It is important to identify the types of actions deriving from a particular right even when these actions cannot be entirely classified as belonging to one particular level rather than another. The fact that State obligations exist at different levels means that the effective realisation of human rights requires a range of tasks and functions, all of them are equally necessary and can be demanded from the State. The levels of obligations help identify the different type of governmental duty-bearers involved.

The State should not directly violate the rights of its citizens (obligation to respect), it should protect its citizens from violations committed by others (obligation to protect), and it should facilitate and promote the full exercise of rights

by its citizens, becoming a direct provider in exceptional circumstances (obligation to fulfill).

1.   Obligation to Respect

The State should refrain from violating the rights of its citizens. States must not destroy people's livelihood, people's personal security or health, people's homes, people's cultural identity, etc.

For example, the State should refrain from manufacturing electoral results or denying the right to vote on the grounds of religious or political beliefs; it should not dislocate people from the homes and the land from which the persons concerned make their living or find their shelter without providing adequate compensation and resettlement in other places; it should not imprison anyone without due process of law, or torture anybody, or take any measure that results in preventing access to food, etc.

2.   Obligation to Protect

Human rights violations are also – and often - committed by individuals on other individuals. The State has the obligation to prohibit and prevent this from happening. This would imply:

b)   ensuring adequate access to legal remedies in case of violations by third parties

c)   not conniving with or allow any third party to destroy people's livelihood, people's health, people's personal security, people's homes, people's cultural identity, etc.

This usually requires effective implementation of extensive national legislation and the establishment of appropriate legal remedies. For example, the State should prevent the encroachment of the lands of indigenous peoples and vulnerable groups, it should ensure the foods on the market are safe and healthy, and that medical practitioners meet adequate standards of education and professional ethics, etc.

3. Obligation to Fulfill

The obligation to fulfill has **two dimensions**:

a. Obligation to facilitate or promote

The State should facilitate the exercise of human rights by all persons. This implies that the State should remove the obstacles which impede disadvantaged groups to enjoy opportunities that are available to others. It does not necessarily mean that the State should provide direct material support, but it does mean that the State should take the necessary measures to "facilitate" as much as possible the exercise of rights by individuals, by ensuring real opportunities for people to exercise their rights fully. This requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional or other measures towards the full enjoyment of rights by all.

The obligation to facilitate depends on each particular circumstance and the type of obstacles faced by disadvantaged groups. Real equality of opportunity may require, for example, availability of credit arrangements which assist the vulnerable but which do not create dangerous indebtedness, dissemination of nutritional knowledge, technical and vocational training programmes to improve the capacity of persons to earn their own living, special training programmes for the disabled, price regulation and subsidies on food, agricultural reform, etc.

   b. Obligation to be the provider

When individuals or groups are unable to realize their rights by the means at their disposal, for reasons beyond their control (e.g. natural or human disasters, imprisonment, internal displacement, children not being taken care of by their parents, etc.) the State has the obligation to directly provide the right in question.

Some rights (such as the right to free education) impose the obligation to provide even in the absence of extraordinary circumstances.

Conclusions: State Obligations and Development Programmes

As the **States have a responsibility to comply with their obligations, development assistance should support governments in developing their capacities to do so**. For example, what are the strengths and weaknesses of government agencies in complying with their obligation to respect the right to housing and avoiding forced evictions? What are their capacities to provide free education for all?

Obligations of Individuals

"Freedom" and "equality" require responsibility and solidarity. "Solidarity" usually refers to economic and social rights and is applied through redistributive policies. It embraces duties towards the community, particularly towards the most vulnerable and marginalized members of society. "Responsibility" refers to the legal exercise of human rights.

Despite the fact that human rights guaranteed in the international law and in the Constitution generally create duties on State authorities, individuals also have duties under national and international law. **Apart from the general duties of individuals vested with authority to respect, protect and promote human rights, individual duties on human rights may be of two kinds:**

A) Duties of individuals to exercise their rights

Personal freedoms are not restricted. Individuals must exercise their rights responsibly, and in fact most human rights establish certain limitations to ensure rights and duties go together. The well being of the community and the rights of others should be preserved.

For example, the right to freedom of expression can be limited to ensure respect for the rights and reputations of others. Individuals exercising their right to free speech are

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under a legal duty not to use this right to spread lies about someone else, or to spread opinions that incite to violence, racial hatred or war.

International law places limits to rights – and consequently individual responsibilities – in the form of clauses ("limitation clauses") that typically follow the recognition of particular rights and indicate the circumstances in which those rights may be restricted by State authorities. Limitation clauses also place limits on the ability of governments to restrict rights. By setting out what limitations are allowed, these clauses intend to ensure that any government restriction on a right must fall within the terms of the clause.

Not all human rights are subject to limitation clauses. The rights to non-discrimination, to fair trial, to protection against arbitrary arrest and detention, torture and slavery do not include limitation clauses. However, rights to freedom of movement, to practice one's religion, to free expression, and freedoms of assembly and association typically do include limitation clauses. A country can prevent nude sunbathing, or require that a demonstration is duly notified to authorities and held at a particular place for reasons such as ease of traffic or crowd control.

In addition to duties that arise from the limits placed on certain rights, international human rights law makes clear that individuals are under a duty not to use the cover of human rights protection as a means to destroy human rights.

Nevertheless, we should bear in mind that the enforcement of individual responsibilities is practically non-existent at the international level, unless in the case of genocide and crimes against humanity through the recently created International Criminal Court. Therefore, individual accountabilities are primarily ensured at the national level.

But even at the national level, States may have limitations in ensuring responsibilities of non-state actors, such as transnational corporations. Efforts have been made at the international level to advocate for the adoption of "codes of conduct" by corporations, covering aspects such as forced and child labour, conditions of work, protection of the environment, etc. These codes of conduct, however, are voluntary and depend on the goodwill of the private sector to respond to their human rights responsibilities. Social pressure by consumers sensitive to these issues has resulted in a number of corporations adopting "codes of conduct" over the past years.

B) Duties of individuals to others and the community

Human rights law is attentive to right and wrong, it is not value-free. Human rights standards show a clear bias towards certain types of behaviour. In particular, they promote the values of solidarity, equality, freedom, tolerance and non-discrimination. As one author puts it: "At the very foundation of human rights, is the conviction that because every one of us human beings is sacred, every one of us bears certain responsibilities to every one of us".

The idea of solidarity – that we should care about what happens to other people for no other reason that they too are humans – is inherent to human rights. It is found in references that require individuals to promote and observe human rights, and in the recognition that everyone has duties to the community, as only in community the free and

full development of his or her personality is possible (art.29,1, Universal Declaration on Human Rights).

Obligations of the international community

The UN Charter places peace, development and human rights as the major objectives of the organization. The United Nations Organization is composed by States members who **individually, as well as collectively**, have committed to achieving these goals. For this reason, gross human rights violations can justify the intervention of the international community under the UN Charter. Similarly, human rights treaties recognize duties of the international community in ensuring the full realization of rights. The International Covenant of Economic, Social and Cultural Rights states that international cooperation is necessary for the realization of these rights, and the UN Declaration of the Right to Development makes similar statements. A major consequence of this is that development assistance should not be considered as charity, but rather as an obligation of the international community and of each of its members.

Solidarity may not be enforceable, but it is nevertheless a human rights obligation. At the international level, it is usually pursued on a voluntary basis. Hence, calls are made to devote a minimum of 0.7% of GDP to development assistance, and to effectively implement initiatives such as the 20/20. However, despite repeated international calls in this respect, implementation continues to be unsatisfactory. There have also been initiatives to promote an active human rights role by the private sector, such as the "Global Compact", on a voluntary basis. Initiatives of this kind are based on the need to balance freedom and equality in a world of both plenty and deprivation.

In the light of declining Overseas Development Assistance (ODA), **the responsibility of the international community should be reasserted**. Not only more development assistance is required, but this should also be more effective in the realization of human rights. A rights-based approach to development makes a call to all States and development institutions to increase their efforts in this regard as a matter of priority.

The United Nations, as the organized international community, has clear obligations on human rights as provided by the UN Charter. These obligations have been reasserted by the UN Secretary General in his 1997 Agenda for Reform and in his guidance towards the achievement of the Millennium Development Goals.

The United Nations should promote and encourage respect of human rights for all. Human rights should be mainstreamed in the activities of all the UN system. All UN agencies should strive for the realization of human rights in the world. In particular, development programmes should:

1) promote the realization of human rights and;
2) not violate human rights as a consequence of their implementation. The Organization should also protect the human rights of people under its jurisdiction, such as in case of peace-keeping interventions or in territories under direct UN administration, as in Kosovo or East Timor.

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Summary Points:
Human Rights Obligations and Accountabilities

Human rights always imply **human duties and responsibilities**.

A rights-based approach brings **accountability** to the core of the development process. It states there are right holders and duty bearers in specific situations. Duty bearers include a range of actors, from individuals to private sector and the international community, although the main subject of human rights obligations is the State.

Individuals can demand Government agencies to comply with their human rights obligations. Government agencies can also demand such compliance from other government agencies and from individuals.

Accountability can be demanded by many complementary approaches: monitoring, reporting, public debate, greater citizen participation in public service delivery, and justiciability in courts.

The obligations of the State derive from the Constitution and for the ratification of treaties, exist at different levels. **The State should not directly violate the rights of its citizens (obligation to respect), it should protect its citizens from violations committed by others (obligation to protect), and it should facilitate and promote the full exercise of rights by its citizens, becoming a direct provider in exceptional circumstances (obligation to fulfill)**.

States have the obligation to produce **immediate** results now, and also to achieve results over time (progressively). The **progressive realization of rights** is ensured **to the maximum of the State's available resources and by all appropriate means**.

Non-compliance with State obligations is not necessarily a result of unwillingness, it may also be due to inability. Such inability should be proved, and **development programmes should focus on building the State's capacity to comply with its obligations to respect, promote and fulfill human rights.**

Although only States can be held accountable under international law, **individuals** have specific human rights obligations: they **should respect the human rights of others, exercise their human rights responsibly, and fulfill their responsibilities towards the community.**

The responsibilities of **transnational corporations** on human rights are difficult to maintain at national and international levels and they usually adopt the form of voluntary **"codes of conduct"**.

The **international community** has responsibilities on human rights as provided by the UN Charter and by international treaties. In particular, **development assistance is not charity** and the international community should direct more effective development assistance is devoted towards the realization of human rights.

All **UN Agencies have specific responsibilities on human rights and should ensure these are both integrated and mainstreamed into their activities and programmes**.

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ACTIVITY 5: USING HUMAN RIGHTS CONCEPTS

Purpose: To help participants internalise and apply concepts of human rights in specific situations by analyzing a case study.

Timing: 60 minutes (depending on the size of the group and the extent of the discussion)

Materials: Case Study 1 (Marcopper's First Major Waste Victim Continues to Suffer), Summaries of Module II.

Process: Arrange the participants in buzz groups of four or five. Ask the participants in each group to analyze the Marcopper's case through a human rights lens by using the concepts learned in Module 2. At the end of the discussions, participants should identify:

1)   The **Right-holders**: who are those affected by the situation, who are the most vulnerable groups among those, specific vulnerabilities related to gender, age, etc. and their causes.

2)   **Specific rights** of the right-holders being affected (normative content at stake).

3)   **Specific human rights principles** whose absence/ presence affected the situation of the right-holders.

4)   **Duty-bearers** (see Box 5, Module II, Section 4).

5)   Cases where duty bearers were **complying** with their obligations and the impact of such compliance on the situation of rights-holders.

6)   Cases where duty bearers where **not complying** with their obligations and the impact of non-compliance on the situation of rights-holders, causes of non-compliance (unwillingness vs. inability).

In the plenary, ask participants their difficulties in applying human rights concepts. Encourage the group to exchange their perspectives on how they applied the concepts. Explain concepts when necessary. Finalize by brainstorming on whether **asymmetries in power** influenced the situation and the links between poverty, powerlessness and human rights

CASE STUDY 1:
MARCOPPER'S FIRST MAJOR MINE WASTE VICTIM
CONTINUES TO SUFFER

(Excerpted from *Catherine Coumas*, Philippine Center for Investigative Journalism, first published in the Philippine Star, Businessworld, Malaya on March 24-26, 1999)

CALACAN BAY, MANRINDUQUE – In its first 20 years in the Philippines, the Marcopper Mining Corp. is estimated to have earned more than $1 billion. During the same period, the company also contributed as much as P18.5 billion to the national government's coffers.

But it was also during much of this time that Marcopper, under the management of Canadian transnational Placer Dome Inc., was busy establishing a disturbing pattern of mine waste disposal in Marinduque. Specifically, it was dumping mine waste into shallow and coral rich waters of Calacan Bay, in the town of Sta. Cruz.

Before the dumping started, most of 15,000 people spread in some 12 villages around the bay were able to make a living quite easily by simply paddling out into the shallow protected bay and fishing for a couple of hours. Motorized bancas were rare and unnecessary. Fishing provided both family food and a product to sell in the market for income. Increasing habitat destruction related to the dumped tailings, however, made fishing more difficult over time; turbulence caused by the day and night dumping also drove away many species.

The degradation of Calacan Bay took place over 16 years, between 1975 and 1991. Today, some 80 sq. km of corals and sea grasses on the bottom of the bay are smothered in tailings of some 200 million tons. The company continues to deny that the 200 million tons of mine sludge caused residents to lose their livelihood – and most probably exposed them to serious health risks.

However in 1996, Pacer Dome accepted its responsibilities for a sudden tailing spill in another locality (Boac River), where more than three million tons of tailings killed the river there and flowed out to the sea. The company accepted that in that incident corals were covered by mine waste and turbulence drove away the fish. It is now proceeding to compensate the affected fisherfolk there. Its attitude with regard to Calacan Bay is much different. Placer Dome has steadfastly denied damage to the bay or to the fishing so has never paid the villagers compensations for their losses.

Placer Dome never sought nor received the consent of Calacan Bay villagers to use the bay as a dunmpsite and in fact went ahead over vigorous protest. When village leaders first learned of the plan to dump mine waste into Calacan Bay in 1974, they banded together ans sent the first of what was to become a non-stop flow of letters and pleas for help to all levels of government. The next year, however, tailings began flowing into the bay.

In 1981, a review of the situation by the then National Pollution Control Commission (NPCC) led to an order that the mine "cease and desist" dumping into the bay. But the then President Ferdinand Marcos overruled the cease-and-desist order and allowed the mine to continue operating "without restraints". He did this in direct response to an appeal made by the mine's president, Placer Dome's Garth Jones, who dismissed reports regarding the destruction of coral and fish loss as "slanderous". Only when Marcos was

deposed in 1986 did the villagers learn that Placer Dome's partner in the mine had been the Marcos family, which owned 50 per cent of Marcopper shares through four front corporations.

The ouster of Marcos and the coming into power of the popular Aquino began a second period of hope for the villagers, who soon renewed their letter writing campaign. The villagers launched a class action suit with the pro bono legal assistance of then Senator Lorenzo Tañada and Domingo Abadilla. But before the case could be decided, Dulgencio Factoran Jr., then chair of the Pollution Adjudication Board (PAB), noted that Marcoper had been operating without a valid permit since February 10, 1987, and on April 11 1988 issued an order to Marcopper to immediately cease and desist dumping mine tailings into Calacan Bay.

Marcopper management responded eight days later by shutting down without prior warning and thereby shutting off the electricity the mine had produced and sold locally to Marinduque. This led to massive rallies on the island. The parish pries to the municipality where the fishermen lived received death threats because of his support of the fishermen and fled his parish for a month. Two of the fishermen in the court case also received death threats and temporarily fled the island. Eventually, the mine's president, Placer Dome's John Dodge, appealed directly to President Aquino to overrule the cease-and-desist order "from above".

The company also threatened to take legal action against the ruling. To the great dismay of the fisherfolk in Calacan Bay, Aquino apparently took the advice of people who feared that the government would not win a battle with Marcopper's legal team; the President granted the company the right to continue dumping in the bay, and ordered the company to make daily "payments" of P30,000 for the rehabilitation of the bay. Marcopper complied, but arbitrarily stopped the payments in July 1991, when it closed the mine.

Throughout the time the dumping was going on, environmental impact assessment recognized the potential for metal leaching of the tailings. According to health experts, lead and cyanide both attack the central nervous system and poison blood, thereby leading to shakiness, lack of balance and anemia. Lead poisoning especially leads to reduced mental functioning and memory loss; in children, it can result in retarded mental development.

Although in discussions with concerned groups in Canada Placer Dome officials hacve, to this day, denied the possibility of metal leaching from the tailings in Calacan Bay, in 1997 a joint team of medical professionals from the Department of Health and the University of the Philippines (DOH-UP) conducted limited health studies among 108 Calacan Bay villagers and established unacceptable lead and mercury levels in nearly 25% percent of them, most of them children. Then Health Secretary Carmencita Reodica commented, "In the long run, if we continue to monitor, we will find more and more cases". She also warned Calacan Bay villagers "to exercise extreme caution" in eating oysters and fish from the bay.

An expanded follow-up study was conducted the same year by the DOH-UP team. Blood, air and soil samples were collected in the area. In this study, all of the 59 children tested proved to have unacceptable levels of lead in their blood, while 25 percent of these children had unacceptable blood cyanide levels. Soil and air samples also showed unacceptable levels of lead.

Based on the DOP-UP's team findings, seven government agencies petitioned the Office of the President to declare a state of calamity for health reasons in Calacan Bay, which President Ramos did in March of 1998.

The people of Calacan Bay have not given up on their fight despite the many setbacks they have encountered. Ten years after they launched their first class action lawsuit, they filed another lawsuit against Marcopper and Placer Dome.

MODULE III:
RIGHTS-BASED APPROACH TO PROGRAMMING

The previous modules have provided an overview of a rights based approach to development and the basic human rights concepts needed for its implementation. This module examines, in practice, what the rights-based approach can bring to development programming in the different stages of the programme cycle: assessment and analysis, objective setting, design and implementation of capacity development strategies, and monitoring and evaluation.

*The four broad benefits of a human rights approach can be described as **holistic and multidimensional analysis of development issues, enhanced accountability, genuine empowerment and greater normative clarity.** A rights-based approach builds on existing programming methodologies and improves them.*

*The use of a human rights perspective in the programming cycle is examined by **analysing a case study**. Sections are divided according to the programme cycle. Each section specifies the objectives, describes the rationale of the workshop, and suggests steps to ensure the objectives of each session are met.*

This module starts with the presentation of the difference between a needs-based and a rights-based approach. The difference is not only theoretical but in practice as well.   The rest of the module is divided into three sections:

Section 1: *   Assessment and Analysis: assessment of the development problems, the target groups: claim-holders and duty-bearers involved*

Section 2: *   Designing a development strategy*

Section 3: *   Monitoring and Evaluation: examination of a monitoring framework from a rights-perspective and its application and added value at all the stages of the programme cycle.*

ACTIVITY 6: NEEDS VS. RIGHTS:
EFFECTIVENESS AND SUSTAINABILITY IN DEVELOPMENT PROJECTS

Purpose: To help participants understand the differences between a needs-based and a rights-based approach to development, and their consequences for development efficiency, effectiveness and sustainability

Timing: 30 minutes (depending on the size of the group and the extent of the discussion)

Materials: Case Study 2: "Resettlement houses of 608 Pampanga families crumbling" Normative content of the right to housing. List of Human Rights principles. Three white boards on "efficiency", "effectiveness" (impact on the lives of target groups) and "sustainability"

Process: In Plenary, ask participants to read Case Study 2. Is the case consistent with a needs approach to development? And with a human rights approach? Give participants meta cards of two different colours (one for "needs-based" and another for "rights-based") and ask them to provide comments on how the adoption of one or the other would have impacted on the project's *efficiency (economic cost), effectiveness (impacts on the lives of people) and sustainability*. Process their answers.

Finally, ask participants what specific approach (needs-based or rights-based) could be more effective in preventing similar situations to occur in the future.

CASE STUDY 2:
"RESETTLEMENT HOUSES OF 608 PAMPANGA FAMILIES CRUMBLING"

(By Ding Cervantes, The Philippine Star, July 26, 2002)

MAGALANG, Pampanga – After years of languishing in evacuation centers and finally finding refuge in resettlement sites, at least 608 families have again abandoned their government-built homes which have started to crumble at the P450-million San Isidro resettlement here.

Engineer Wilson Musngi, of the Pinatubo Project Management Office (PPMO), the forerunner of the defunct Mt. Pinatubo Commission, admitted to The STAR that the concrete floors of the 608 housing units have cracked and sunk since monsoon rains battered Central Luzon last July 6.

"The walls have also started to lean because they were not founded on the tie beam"; Musngi said.

The houses were constructed late last year. There are a total of 2,000 housing units at the San Isidro resettlement site, each with a floor area of 26 square meters.

Fearing for their safety, the families have abandoned their homes amid the continuing heavy rains. Some of them have sought shelter in relatives' homes elsewhere, while the others have pleaded to temporarily stay in undamaged dwellings at the resettlement site.

Rodrigo Bermudez, the PPMO's project manager for resettlement sites in Pampanga, said the duplex housing units at San Isidro were built by the Philippine Army's 51st Engineering Brigade, headed by Brig. Gen. Francisco Bravo.

While each unit costs P86,000, he said the government spent some P450 million to develop the entire 36-hectare resettlement site. The resettlers, however, still have no electricity and a water system.

Musngi said the cracked concrete floors were noted to be only about two inches thick when the design specified three inches.

He said the houses were constructed on top of one-and-a-half meter thick earth filling. "When the rains came, the materials apparently compacted underneath the floorings", he said.

PPMO chief Flor Arrozal, however, said the 51st Engineering Brigade has started to repair the damage at no extra cost to the government.

ACTIVITY 7: GUIDING PRINCIPLES UNDERLYING A RIGHTS-BASED APPROACH TO DEVELOPMENT

Purpose: To help participants understand how programming from a rights perspective is guided by considerations of PRINCIPLES and DEVELOPMENT EFFECTIVENESS.

Timing: 30 minutes (depending on the size of the group and the extent of the discussion)

Materials: The four guiding principles of RBA on a board:

1) **The human person is the central subject, active participant, owner, director and beneficiary of development.**

2) **Development** - and all stages in the development process - **should be based on human rights principles that:**

    a. Define development objectives
    b. Guide the formulation of policies, laws, strategies and other appropriate measures in the administrative, budgetary, judicial, educational, political, social and other fields.
    c. Direct the establishment of corresponding benchmarks and indicators; and
    d. Are integrated within every stage in the development process.

3) **Development** - and all stages in the development process - **should respect the normative content of human rights.**

4) **Development** - and all stages in the development process - **should be coherent with the levels and nature of human rights obligations, particularly State obligations.**

Process: Ask participants to review the contents of Module I and the responsibility of development in achieving the full realization of human rights.
Arrange the participants in four groups. Ask each group to brainstorm on the implications of these 4 principles for each of the phases in the programming cycle – assign one phase per group: (1) assessment and analysis; (2) objective setting; (3) design of capacity development strategies; and (4) monitoring and evaluation.
Ask each group to present the results in plenary and encourage comments from the rest of participants.
Finally, ask participants to write in meta cards the potential added value to their current programming, from the perspective of development effectiveness (IMPACT ON THE LIVES OF PEOPLE) , if any.
Process the results in the plenary and group them according to instrumental value (see Module I)

NOTE: THIS ACTIVITY SHOULD BE FOLLOWED BY THE PRESENTATION OF THE **"STEP-GUIDE FOR RIGHTS-BASED PROGRAMMING"**. ADJUST/ COMPLETE STEP GUIDE WITH THE COMMENTS PROVIDED BY THE PARTICIPANTS IN THIS EXERCISE.

STEP GUIDE: RIGHTS- BASED APPROACH TO DEVELOPMENT

ASSESSMENT AND ANALYSIS

Identification of claim-holders: Vulnerable groups; groups facing discrimination in access to power and resources; different degrees of vulnerability among those groups (profiles on which data should be disaggregated)

Specific human rights concerns: Elements of rights being affected (normative content); principles whose absence/ weakness is affecting the realization of rights. Interrelations among those concerns: What human right concern(s) seems to be <u>more influential</u> in affecting others in this particular situation?

Identification of duty-bearers: Duty-bearers at all levels, and specific duties involved with regard to the main human rights concerns, including duties of claim-holders.

Capacities affecting the realization of rights: Strengths and capacities that could be reinforced in claim-holders and duty-bearers to exercise rights and duties more effectively, weaknesses and vulnerabilities preventing the effective exercise of rights and duties.

Underlying causes: Systems/ events/ actions/ attitudes and behaviours affecting the lack of capacities, and interrelationships among them.

OBJECTIVE SETTING AND DESIGN OF CAPACITY DEVELOPMENT STRATEGIES

Identification of levels (individual, community, policy – institutional national) where action is required and specific results (**immediate objectives, outputs**) to be achieved at those levels.

Identification of **indicators to measure such results (outputs)**

Objective setting (general objective, outcome): desired changes on the lives of claim holders that such actions could influence/ contribute to (specific improvements in the elements – normative content- of the rights being directly and indirectly affected).

Identification of **indicators to measure such changes (outcomes**)

Draw up activities aiming to achieve the immediate objectives (outputs)**, that (a) emphasize strategies of empowerment, (b) guarantee access to the development process, institutions and information, (c) incorporate mechanisms of redress and accountability, and (d) include express safeguards to protect against threats to human rights and guard against reinforcing existing power imbalances. Assess the implications for women and men of all plans, projects and service delivery activities**

Include process indicators that reflect (a) participation; (b) transparency and accountability in project implementation

Identify Resource (financial), Administrative, Technical and Support Requirements

Adopt Realistic and Achievable Time Frame

MONITORING

Establish accountabilities for reporting on indicators related to (a) outcomes (general objectives), (b) outputs (immediate objectives); (d) process; (c) completion of activities, and (e) financial reporting.

Devise **mechanisms to ensure transparency and participation** of claim-holders and duty-bearers in monitoring

EVALUATION

Assess overall results in terms of: human rights situation, participation, development objectives articulated in human rights terms, mechanisms of access to the development process, effectiveness of capacity building in improving duty-bearers performance, empowerment, impact for women and men, efficiency of mechanisms of redress and accountability, efficiency of safeguards

Annex: Simple Questions to ask in the Development process

1) **Who is the most affected?[1]**

2) **What are the major human rights concerns?[2]**

3) **What improvement is needed?[3]**

4) **What should be done?[4]**

5) **Who should do it?[5]**

6) **What can't s/he do it?[6]**

7) **How could s/he do it better?[7]**

8) **What does s/he need to do so?[8]**

9) **What intended and unintended impacts are expected?[9]**

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[1] Includes identification of especially vulnerable/ disadvantaged sub-groups

[2] Includes identification of human rights concerns, and specific elements of such rights, that have a major impact on the overall situation

[3] Includes definition of indicators to that particular situation and realistic benchmarks

[4] Includes results to be pursued by those who are accountable for such rights: claim-holders and duty-bearers

[5] Includes identification of duty-bearers (government, claim holders, and other stakeholders)

[6] Includes capacity analysis of the obstacles in delivering on such accountabilities

[7] Includes capacities that need to be strengthened for the realization of rights

[8] Includes strategies, plans and mechanisms to build such capacities.

[9] Includes indicators and benchmarks on capacities and intended results, as well as the identification of potential risks.

MODULE III, SECTION 1:
ASSESSMENT AND ANALYSIS FROM A RIGHTS PERSPECTIVE

Adequate understanding of development problems is important to address and design effective strategies. This requires full participation of stakeholders: they experience the problem and fully understand what it means for their lives.

Development has multiple dimensions: civil, political, economic, social and cultural. Overlooking essential components of a problem in the assessment stage may result not only in inadequate interventions but also in erroneous assumptions of risk. This may in turn lead to adverse consequences on disadvantaged groups, and to inefficient use of scarce development resources.

An example of the risk of "overlooking" essential components for development success is the often inadequate treatment of the gender dimensions of poverty and development. As long as development strategies do not bring the gender dimensions of poverty to the forefront, gender inequality may be expected not only to last, but also to be reinforced, and therefore poverty eradication will be difficult, if not impossible to achieve.

Because poverty is a question of disempowerment and denial of human rights, human rights concepts (normative content and human rights principles) provide useful tools in analyzing issues and identifying linkages among different dimensions of a problem, allowing for a clear understanding of strategic entry points.

*The **Objectives** of this section are:*

1) *To apply human rights concepts in conducting a holistic assessment of development problems, identifying the root causes of poverty and the interrelations among them*

2) *To conduct stakeholders analysis from a rights perspective, including the analysis of claim-holders and duty-holders, and to identify their strengths and weaknesses for the realization of rights as entry points for capacity development strategies*

3) *To use gender analysis as a necessary component for an effective understanding of the root causes of poverty and the strategies to address them*

4) *To identify ways to enhance and strengthen participation of duty-holders and claim-holders in the assessment and analysis of development problems*

Introduction to the activity:
Assessment and Analysis from a Rights Perspective

During this workshop you will analyse the situation facing the Badjao people –an indigenous community in Southern Philippines – from a rights-perspective. Please bear in mind that this is just a workshop exercise. In reality , assessment and analysis will take considerable time. From a rights perspective, the participation of the relevant stakeholders is very important. Therefore, you should try not to get carried away by comprehensive and detailed discussions on specific issues. Furthermore, there is not enough data in the case study to allow you to do so. What is important is you can analyse issues using a human rights lens: which means being able to ask and answer specific questions on the development problem, especially the role of power relations in the production and reproduction of deprivation.

1) Your goal is to get a **holistic picture of the development problem and the inter-relations among the root causes of poverty in this situation**. In order to do so, it is necessary to:

a. **Identify who are those affected** by the consequences of the problematic situation, and the different degrees of vulnerability among them. Issues such as age and gender can influence how people from the same group experience a particular problem in a different way (this is called "differential impact"). In order to achieve equality of opportunity, it is crucial to obtain a clear picture of existing inequalities and their impact on how development problems are experienced by people.

b. **Identify the social, cultural, economic and political dimensions of the problem, and the inter-relationships among them**. Since human rights are at the core of poverty, you should examine human rights issues (by using human rights norms and human rights principles) and the interrelationships among them.

2) A major component in the assessment and analysis of development situations is the **"stakeholders analysis"**. The identification of human rights issues is an effective guide in stakeholders analysis. **The ultimate objective of stakeholders analysis is to identify their strengths and weaknesses for the realization of human rights**.

a. Development interventions should be directed towards an impact on the human situation of disadvantaged groups, these groups are **claim-holders** with rights and entitlements. They experience certain strengths and weaknesses in their capacities to claim and exercise those rights.

b. Government agencies at all levels have the duty to respond to these claims are considered **duty-holders**. Duty-holders also experience strengths and weaknesses in their capacity to respond effectively.

c. Other stakeholders may have an influence on the capacities of both duty-holders and claim-holders.

3) A rights-based approach brings **participation** to the forefront of development strategies. In fact, in real development work, assessment and analysis of the development situation should be done with the full participation of stakeholders.

a. The rights of **claim-holders** include the right to participate in the analysis of their own situation. Participation is a mechanism for empowerment and by participating in the analysis of the problem, claim-holders are already benefiting positively from a development intervention. In this workshop , you will identify ways to ensure participation of the Badjao in the analysis of the situation. You can use popular education techniques, or other means you consider necessary to obtain an informed and meaningful participation of claim-holders.

b. **Duty-holders** have the right to participate in the analysis of the development situation, their participation is a crucial mechanism to develop their capacities to respond to human rights obligations.

ACTIVITY 8: ASSESSMENT AND ANALYSIS FROM A RIGHTS PERSPECTIVE

Suggested total time for the Workshop: 2 hours

Suggested Process:

Arrange participants in groups of 5 and ask them to read the description of the workshop and the Case Study (Twilight of the Sea People).

By the end of the exercise the participants should have determined:

1) **Specific human rights issues where improvement is needed**
2) **A clear picture of the problem, including cause-effect relationships**
3) **Groups by which data should be dissaggregated**
4) **Levels (individual, community, policy, institutional - local, national-) where action is required and specific results to be achieved at those levels.**

With the assistance of a facilitator (who may use the "Question Guide for facilitators" for this activity included in the annexes), participants should discuss:

a. Claim-holders

Identification of who are those most adversely affected in this situation, and whether there are particular groups of persons among them who are more vulnerable or more affected than others on the grounds of age, gender, etc. (disaggregating profiles of persons being affected)

b. Human rights concerns

Identification of relevant human rights problems being experienced by those groups (and sub-groups), including the specific elements (normative content) of the rights being affected (eg. availability, affordability). What specific human rights concern(s) seems to be more strategic in affecting others in this particular situation?

Human rights principles that are weak or lacking and affecting the realization of such rights (eg. transparency, accountability, etc.).

c. Duty-bearers

Identification of who has the duty to respond to the main human rights concerns (you may use Box 5 – examples of duty bearers-), and the specific duties involved.

d. Capacity analysis

Identification of what are the capacities and vulnerabilities (strengths and weaknesses) of claim-holders and duty-bearers for overcoming such human rights concerns.

e. Underlying causes

Identification of causes affecting the capacities of:
1) claim-holders to exercise and fulfil their rights; and

duty bearers to comply with their obligations.

  f. Identification of levels (individual, community, policy, institutional – local, national) where action is required and specific results to be achieved at those levels.

You may want to present your results in the following template (alternative ways to present results are also encouraged – see example in the Guide for Facilitators):

Human Rights Concern (including specific element of the right being affected – eg. quality of health services)	Weaknesses and Vulnerabilities		Underlying causes (systems/ events/ actions/ attitudes and behaviours causing/ reinforcing such weaknesses and vulnerabilities)	Levels of action and desired results (levels (individual, community, policy, institutional – local, national) where action is required and examples of specific results to be achieved at those levels)
	Rights-holders (right holder and specific weakness/ vulnerability to overcome human rights concern)	Duty-bearers (duty-bearer and specific weakness/ vulnerability to comply with obligation)		

QUESTION GUIDE FOR FACILITATORS
ACTIVITY 8: ASSESSMENT AND ANALYSIS FROM A RIGHTS PERSPECTIVE

Facilitators should encourage the group to discuss freely and spontaneously while ensuring all members are sharing their views and providing inputs. The responsibilities of the facilitator are to ensure that:

a. All participants are able to provide inputs
b. All participants' views are respected.
c. The discussion manages to identify a picture of the problem, including cause-effect relationships, claim holders, human rights concerns and main duty bearers involved, levels where action is required and examples of specific results to be achieved
d. Gender issues are included in the discussion

The following are guide questions for facilitators to direct and manage a discussion towards its desired results. Facilitators should allow the participants to pose their own questions.

- **Identification of Rights-holders:**

   a. Which groups(s) have least access to resources/power? Do they face discrimination?

   b. Who are those affected by the adverse consequences of this situation?

   c. Who, among those affected, are **the most vulnerable**? Why?

   d. Did **women** and men experience the situation differently?

- **Identification of Human Rights concerns**

   a. What specific human rights of claim-holders are being affected? What specific elements of such rights?

      (e.g. Do they have access to food supply? Do they have access to education which is acceptable to them, without discrimination? Are they protected equally and fairly by the law? How does the community participate politically?)

   b. Would women have different concerns, aside from or other than the concerns of men?

   c. Did **women** and men experience the situation differently? Would women have different concerns, aside from or other than the concerns of men?

   d. What specific human rights concern(s) seem to be more influential in affecting other human rights concerns in this particular situation?

   e. What specific human rights principles are weak and affecting the rights of claim-holders?

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- **Duty bearers**

a. Who are the duty-bearers on each of the most influential human rights concerns identified above? (see Box 5, Module II, Section 4) Who has the capacity to respond to such concern? Who has the obligation to respond?

b. What are the specific duties of duty-bearers with regard to such concerns?

c. What are the duties of claim-holders?

- **Capacity analysis**

a. What strengths and capacities are available for rights-holders to claim and exercise such rights?

   (eg. what are the sources of income? Do right-holders have capacity for self-reliance and mutual cooperation? Do they have the right type of skills? Are they organized? Are they able to obtain support form other groups? What are their practices for maintaining health? Do they have effective and fair mechanisms of conflict-resolution?)

b. What weaknesses and vulnerabilities are rights-holders experiencing to claim and exercise such rights?

   (eg. are they able to articulate their concerns to decision-makers? are their sources of income being eroded? Do right-holders experience lack of confidence or energy, distrust, hostility, fear, lack of shared values? Do they have the right type of skills? Are they organized? Are they able to obtain support form other groups? Do they have effective and fair mechanisms of conflict-resolution?, etc.)

c. What strengths and capacities are available for duty-bearers to comply with their obligations to respect, protect and fulfil the rights of claim-holders more effectively?

   (eg. Do they have sufficient authority? Do they have adequate legal capacities? Do they have access to adequate economic and technical resources? Are they supported by other stakeholders?, etc.)

d. What weaknesses and vulnerabilities prevent duty-bearers from complying with their obligations to respect, protect and fulfil the rights of claim-holders more effectively?

   (eg. Are they aware of their obligations? Are they willing to comply? Do they have sufficient authority? Are they pressured by other stakeholders? Do they have adequate legal capacities? Do they have access to adequate economic and technical resources?, etc.)

- **Underlying causes**

a. What are the structures/ events/ actions/ attitudes or behaviours that cause/ reinforce such weaknesses and vulnerabilities?

Example of results from assessment and analysis of this case in previous trainings:

Human rights concern (obligation not being complied with)	Awareness of duty bearers of respective obligation	Why (underlying cause)	Strengths	Weaknesses
Protection of access to productive resources	Aware (PNP, LGU)	Perceived to be optional No logistics, resources or personnel	LGUs can legislate Legal framework available (IPRA) Technologies available	No operational guidelines in IPRA Lack of resources
Promotion and fulfilment of right to health	Aware (LGU, DOH)	Insufficient resources	Good service delivery structures Well trained health workers	Insufficient resources Limited transportation to reach
Fulfilment of right to education	Aware (DECS), but only of access, not of cultural appropriateness	Discrimination	Resources available Technologies available to outreach	Attitude problem (insensitive to IP)
Protection and promotion of right to food	Not aware (LGU)	Thought to be humanitarian		Do not know where to spot the problem No monitoring and reporting
Protection of free and fair elections	Aware (LGU, COMELEC)	POWER	Sufficient legal framework	Corruption; lack of resources No mechanisms for voting by illiterate It's not a priority
Protection of right to life	Aware (ONP, OND, DOJ, LGU)	Discrimination	Mandate; laws are in place	It's not a priority
Protection of cultural integrity	LGU (not aware) NCIP (aware)	Do not know IPRA/ rights of IPs	IPRA RA 8425 (SRPAA)	No operational guidelines LGU not well capacitated Little budget Conflict with other laws

CASE STUDY 3: "TWILIGHT OF THE SEA PEOPLE"

(Excerpted from *Jose Torres Jr. and Iris Cecilia Gonzales*, Investigative Reporting Magazine, Vol. VII, No. 2, April-June 2001, pages 31-35)

In one of the houses on stilts along the shore of Teheman, beyond the mangrove trees in this coastal town in Mindanao, a mother is singing to her six-month-old daughter. But as the child is lulled to sleep, another listener is moved to tears.

Beautiful Hanang cries as she curls up on her colourful bridal mat. Her neighbour Furaydah's songs of lost love have brought on memories of Misdal, her husband, who left months ago to join the pirates and never returned. Just this afternoon, Hanang, all of 14, had an abortion. Although her eyes are filled with tears, she says it is all for the best, since she would have been unable to feed her fatherless baby.

"It would be a shame for her to have a child without a father," agrees Hanang's mother. "The child will just die because we will not be able to feed it. It would just be a problem for us later. We don't have any burial place to bury it."

Hanang, however, is unlikely to be the last in her community to make such a decision. For she is one of the Badjao, and for many years now, these once proud people have been taking steps that have broken their hearts and led them farther away from what they used to be—self-reliant people of the sea.

In the past, the Badjao lived almost their entire lives on water. A peaceful people, they would simply float away on their houseboats whenever they felt threatened by groups encroaching on their territory or when adverse conditions impinged upon their community.

Today, after centuries of living and roaming the southern Philippine seas, only a few Badjao still live on their boats, most of them in parts of Tawi-Tawi, Sulu and Zamboanga. Here on Basilan and elsewhere, Badjao boat communities have coalesced into larger pole house villages, where their ways are slowly being taken over by those of the surrounding shore population, and where they now live in abject poverty. Perla de Castro, the Region IX director of the National Commission on Indigenous Peoples, herself says, "It is quite clear that the Badjao are the most marginalized among all the indigenous people's communities."

It is not by choice that the Badjao have gone onshore. For decades now, they have been losing their traditional fishing grounds to both legal and illegal fishing vessels intruding into their territory. In more recent years, they have become the favourite prey of pirates roaming the seas. Unable to fish and fearing for their safety, the Badjao have been forced to abandon their traditional homes on boats for stilt houses where they thought they would be able to live in peace.

But on land, the Badjao have no real means of livelihood. This is why the first—and often, only—meal of the day comes as late as two in the afternoon, when the few men who have boats return with their catch. Desperate to feed their families, many of the tribe's members, male and female, have left for faraway cities to beg. A growing number of the women left behind are also opting to abort their unborn children rather than see their offspring die later of hunger or disease. In fact, many Badjao children now suffer from malnutrition, dysentery, malaria, tuberculosis and ulcer.

"We don't have food for the children anymore," says Dalpaki, a 35-year-old Badjao community leader who looks twice his age. "They are now dying or are even killed inside the womb of their mothers."

Indeed, even burying their dead has become a problem for these gentle people. Their traditional burial ground, a small island off the shore of Maluso, has been taken over by a Tausug community who fled from the poverty and the sporadic fighting between Moro rebels and government soldiers in the nearby province of Sulu. Says Dalpaki: "We have to dig up our ancestors to bury our dead. Sometimes we have to travel far to bring our beloved to some desolate island in the middle of the ocean for burial."

…

In a recent study, …, Prof. Aurora Roxas-Lim of the University of the Philippines' Asian Center, says that the prejudices against the Badjao often stem from the preconception that all nomadic people are by nature shiftless, rootless, irresponsible and unreliable.

Whatever the reason, it is obvious that the insults flung at the tribe hurt, and hurt deeply. Jainal, an 11-year old Badjao who is lucky enough to attend school, says, "My Muslim classmates despise the Badjao because, they say, we are ugly and we smell bad."

Estrellita Vicente, who last February headed a conference in Zamboanga City on the history and culture of the tribe, also says discrimination against the Badjao may be partly why it always seems as if they are "overwhelmingly outnumbered" by their Tausug and Samal neighbours. As Vicente sees it, the inferior status accorded to the Badjao may have led tribal members now living onshore to identify themselves to census takers as Tausug and Samal.

Some Badjao, especially those who have married Samal or other land dwellers, have also adopted modern practices, thereby making them less distinct from other people. Hadji Musa Malabong, a Badjao from Sitangkai who now works with the Department of Education, Culture and Sports, said that in the old days, the sound of the tribe's musical instruments such as the *tambul, kulintangan* and *agung* could be heard for miles during celebrations such as weddings. Today, though, the Badjao on land would rather hire bands or rent *karaoke* sets. They also rarely perform traditional dances, such as the *igal*, which the women used to do while at sea, on the boat. There is the radio to listen to, and beer to swill, instead.

…

Yet for all these attempts to be like the land dwellers, the Badjao remain on the fringe of society. Observers say this is partly because of the tribe's own tendency to keep to itself. When it has something to sell, for instance, it does so not in the public market, but on the street, well away from other vendors.

Some social workers also say that the Badjao's distrust of outsiders is a hindrance to efforts to help the tribe "develop." Arnel Alcober, a Claretian missionary working with the Badjao in Teheman, says that when he first arrived here, he found himself sighing in frustration several times. …

Like many other indigenous peoples, the Badjao have no sense of birth dates. Most of them do not know their age and many do not even have names. …

At first, while the children were at school, the Badjao parents were taught to read and write. But Alcober says he realized that this might not be the kind of education suited to the Badjao. He says, "The Badjao just want to survive. The need to learn how to read and write sometimes escapes their understanding."

He has since changed the approach of the adult literacy program, and the Badjao grown-ups are now being taught operational literacy. "Like how to compute numbers if they would want to run a *sari-sari* store, or to know if they're getting the right amount every time people buy their fish," explains Alcober. He reports that little by little, the Badjao are learning, adding, "To teach them is really a struggle but it is also a self-actualization which makes the best in people come out."

It is no secret, though, that what most Badjao want is to return to the sea. If they can no longer live there like before, then at least they want to be able to continue to live from its resources. To do that, many Badjao believe they will have to have motorized *bancas* that will enable them to fish further into the ocean.

Then again, a motorized *banca* is no guarantee that they will be able to bring their catch to shore, set side some for their meals and sell the rest. After all, there are the pirates and the bigger boats to worry about even that far in the water, and anything can happen between the time a *banca* leaves the community and comes back.

Sabiya, Dalpaki's sister, recalls that at one point, she summoned enough courage to borrow P50,000 from a Tausug businessman, just so she could buy a motorized *banca*. "For three years," she said, "we were not able to pay him a single centavo."

Dalpaki notes that almost all the Badjau in Teheman are indebted to the same Tausug businessman who has been charging high interest rates. "Even until we die, we will not be able to pay our debts," he says.

Dalpaki himself chose not to take out a loan from the businessman when things began to get really desperate for his family. Instead, he went to Manila, where he spent six months trying to sell pearls and corals. He boasts that he even went as far as Baguio and Ilocos. He says, though, that he had to pawn his wife's earrings and necklaces to pay for his fare to Luzon.

"It was hard to survive in Manila," says Dalpaki. "Some of us were forced to beg especially when we could not sell anything." But at least he was able to bring home P5,000, which he used to buy a second-hand motorized *banca* for fishing.

Asked what he would do if he encounters a pirate, Dalpaki's response is far from what one would expect of a member of a peace-loving tribe. He says, "Many Badjao have been killed because we don't have firearms. But if you give us guns, we are now willing to fight back."

That willingness to take up arms may have come about in part from watching even young Badjao beg for a living. At the ports of Zamboanga and Basilan, for example,

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hordes of naked Badjao children entice ship passengers to throw coins, which they try to catch as they dive deep into the waters. Some travelers perhaps see the youngsters as daring divers showing off their skills. But the Badjao themselves know these children are beggars at sea.

Yet, eight-year-old Anina doesn't seem to mind the work, or that her long hair has been sun-bleached after numerous dives almost every weekend. She says, "We usually get P10. On good days, when there are many commuters, we get P40."

Fourteen-year-old Absari, meanwhile, has gone as far as Manila to join her grandmother and other Badjao in begging. For three months, she braved dark, cold nights sleeping on the pavement outside the Baclaran church. She says that if they were "lucky," they would get as much as P100 a day. They would then buy some fish for dinner, and whatever was left they bet at card games with fellow Badjao beggars.

Academic Roxas-Lim urges that policy implications on how to deal with marginalized sectors should include the Badjao. "The plight of the Badjao can serve as the litmus test of how well our so-called democratic system and our national patrimony and the environment are faring," she argues in her study.

She observes that the Badjao's political participation is almost nil. And when they do participate in elections, they are either relegated to voting for predetermined candidates or caught in the crossfire of feuding political factions and political dynasties.

In this year's elections, Sabiya confesses that they had "no choice" but to participate. "The Tausug businessman has already commissioned us to vote for certain politicians," she says. "We're afraid that if we do not heed his request, we will no longer be able to borrow money from him."

The Badjao are under no delusion that the polls will bring any change to their lives. Says Dalpaki: "It is better that we don't vote because we don't get anything from government anyway."

He points out that in 1999, the Department of Social Welfare and Development (DSWD) turned over P120,000 to the local government of Maluso as development fund for the Badjao of Teheman. "But not a single centavo came to us," says Dalpaki. "For some strange reason, the money got lost along the way."

"People come to talk to us about our problems but nothing has happened," says his neighbor Marriam. "We still have no boats. Just listen to the song of Furaydah. If you will understand, you will know our story and you will not talk to us anymore."

But Furayda's singing is interrupted by the distant crack of a rifle. A child starts crying.

Marriam says to the visitors, "Don't worry. Go to sleep now. We will know tomorrow who it is this time. It's normal here. People get killed."

Her husband quickly admonishes her, "Hush, don't frighten them. They will still have to write our story."

MODULE III, SECTION 2:
DESIGNING A DEVELOPMENT STRATEGY

From a rights perspective, the ultimate goal of the development process is the realization of fundamental rights and freedoms. Human rights provide objective and detailed standards of human dignity, and these standard serve as guides for setting objectives and indicators in the development process.

We should measure the desired changes on the lives of affected people, particularly the most disadvantaged groups, in order to set strategic priorities for action. This requires full understanding of what our development programmes are offering and contributing, as well as complete data disaggregation of the disadvantaged groups. Average data do not allow for a clear identification of issues and potential target groups, as they may hide very unequal situations.

Development interventions contribute to general objectives, but they usually cannot achieve those objectives on their own. *there are multiple factors influencing the achievement of a particular goal. Development strategies are just one of them, there are also others such as budget allocation, internal conflict, etc. Some factors are "external", that is, factors on which the State has little or no control (e.g. a drought, trade and capital flows, international financial crisis, the appearance of new diseases, etc.) Progress made on particular goals is extremely important as a guide in designing development strategies and setting priorities for action.*

Even when a particular development strategy is minimal in nature and contribution to a much wider general objective, an appropriate definition of such objective and a general picture of the situation is still required. As such, the assessment whether our strategies are still relevant, or whether they should be complemented by other types of measure, to achieve a meaningful impact is necessary. Adequate setting and assessment of general objectives becomes a valuable input for policy advice.

Realistic and effective objective setting should be made with the active and meaningful participation of stakeholders. Participation in objective setting is a right and an essential component of all capacity development strategies.

Capacity Development *is defined as the process by which individuals, organizations, institutions and societies* ***develop their abilities*** *individually and collectively, to perform functions, solve problems, set and achieve objectives. Participation and empowerment at all stages of the development process is crucial in achieving meaningful capacity development.*

But what capacities should be specifically developed in a particular situation? Human rights provide an effective guidance in the design of capacity development strategies. From a rights-perspective, "abilities to perform functions" refer to the abilities and functions needed for the protection, promotion and full realization of human rights; "problems" refer to problems in ensuring and exercising rights due to internal and external factors, and objectives are geared towards the realization of human dignity.

Regarding government agencies, the level and nature of the State's human rights obligations provide an adequate classification of the types of functions needed by State actors for the realization of human dignity. The process of development should empower government agencies to perform these functions for their people. Individuals and communities should also be empowered to analyse issues, hold duty-holders accountable, bring about the necessary changes in their lives and help other people.

The implementation of capacity development strategies should therefore be an empowering, participatory and transparent process; where accountabilities, including accountabilities from development agencies and institutions, should be clearly defined and ensured.

*The **Objectives** of this section are:*

1) *To identify and define objectives in human rights terms, including specific gender-related objectives if necessary*

2) *To identify and define rights-based indicators for such objectives that allow for assessing impact on vulnerable groups, including women*

2) *To identify capacity gaps for the realization of human rights, including the identification of gender-related gaps*

3) *To identify capacity development strategies for claim-holders and duty-holders*

4) *To develop indicators for capacity development strategies, including process indicators based on human rights principles*

5) *To understand the dynamics of a participatory process in designing development strategies.*

ACTIVITY 9:
DESIGNING A DEVELOPMENT STRATEGY FROM A RIGHTS-PERSPECTIVE

Purpose: To help participants understand how to use concepts of human rights in designing a development strategy using a participatory approach.

Timing: 90 minutes (depending on the size of the group and the extent of the discussion)

Materials: Case Study "Twilight of the Sea People" and Role Play instructions. (At the end of the activity, facilitators should use the "Question Guide for Facilitators" included in the annexes)

Process: Arrange the participants in buzz groups of five. Explain to them that the exercise is going to recreate a planning meeting in which different stakeholders will have to come up with a project. Ask them to select a specific focus for the project (environment, health, education, employment, or governance) Distribute roles (see annexes) among the participants.

With a facilitator, participants should:

a) **Come up with consensus on a project (development strategy)**
b) **Identify who does what.**

The development strategy should include:

- GENERAL OBJECTIVE: Using the normative content of human rights, identify specific concerns and indicators for such concerns.

- ACTIVITIES, MECHANISMS, etc. that address the capacity of claim-holders to claim and exercise their rights and duty-bearers to fulfill their obligations.

- INDICATORS for the results of such activities (OUTPUTS) that effectively reflect an improvement in capacities.

- PROCESS INDICATORS.

- ARRANGEMENTS FOR MONITORING AND EVALUATION.

- IDENTIFICATION OF POSSIBILITIES FOR UNINTENDED NEGATIVE IMPACTS AT DIFFERENT LEVELS (eg. Intra-community conflict, reinforcement of existing power inequalities, etc.), AND OF WAYS TO MINIMIZE THEM.

NOTE FOR THE FACILITATORS: Arrange for a coffee-break after 45 minutes. Remind the participants the role play is not finished and they may want to use the break to exchange views with participants from other groups, as long as everybody remains in his/her respective role. Encourage specially IP women to exchange views among them.

At the end of the exercise, the main experiences and lessons learnt from the exercise should be discussed in plenary.

ACTIVITY 9: ROLE PLAY INSTRUCTIONS FOR THE LOCAL GOVERNMENT OFICIAL

You are a powerful Mayor of a municipality in a Southern province in Mindanao that has an Indigenous Peoples (IP) community – the Badjao. Although they remain a minority in your community, their presence is strong. They tend to move from one community to another and some cannot be considered as permanent members of your community.

It is a difficult job; you have to deal with sporadic threats of conflict in the area, you have scarce budget and unskilled staff. Poverty is pervasive and lack of investment and weather conditions are not helping in improving the economic situation. You want to undertake a project to improve the situation of the Badjao for a number of reasons: (a) it will reduce the possibilities of the Badjao supporting insurgent groups in the area; (b) it will bring the necessary funds you lack to undertake similar interventions with government's budget, therefore releasing funds for other purposes; (c) it will strengthen your position among the poorest sectors and therefore improve your chances for the local elections to be held in two years time; (d) it will allow you to show specific results in poverty eradication to report to national agencies in Manila.

You should raise this issue:

Your government is in need of funds, equipment and appropriate skills. Some national policies and laws are not implemented because you don't have the technical capacities to draft appropriate regulations and implement them in all the areas devolved to the Local Government through the Local Government Code. Even when competencies have been transferred, funds are not. On other issues, there are unclear policies at the national level.

Others may raise these issues, and you may want to respond:

The Badjao leader may accuse you of discrimination against their group. It is true that there is no Badjao holding decision-making positions at the Local Government, but you have started hiring some Badjao staff in maintenance and clerical positions lately. Moreover, Badjaos are not always willing to cooperate with other groups. Although most of your allies belong to other groups, they have been cooperative in your policy of hiring Badjaos for the Local Government. But you have no funds to hire more staff. Furthermore, you need the support of other groups to be re-elected and you don't want to confront those groups unnecessarily. You have also heard that some Badjao fishermen have started to buy weapons despite your policy of eliminating small arms in the community. You mistrust the Badjau leader because you suspect he has a hidden political agenda to control over what they claim as their ancestral domains. You are afraid these claims could harm commercial fishing in the area, from which your government gets important revenues.

The NEDA representative may bring up the issue of corruption and deficient reporting in the past. You are aware corruption might have occurred before you held office, and petty corruption cases are difficult to control. On financial and substantive reporting, your local government has very low capacities in this field. Even when no corruption occurs, reporting may still be deficient.

On women's participation, you think it is inappropriate to bring up the issue as this is a concern for other groups too. Cultural perceptions in the community do not see women as equal partners with men in decision making. You have attended gender trainings in the past but you cannot act against the community's will.

ACTIVITY 9: ROLE PLAY INSTRUCTIONS FOR THE NEDA REPRESENTATIVE (CHAIRING THE MEETING)

You are an official in the National Economic and Development Authority (NEDA) Regional office. It is a difficult and sometimes frustrating job, as the region is one of the poorest in the Philippines and the conflict situation is not helping. You have to deal with increasing demands from Local governments, national agencies and civil society groups; but you find it impossible to satisfy all of them given the limited development resources available. Donor agencies have often their own agenda and they do not co-operate among each other; duplication is common but your negotiating capabilities are weak, given the need for resources.

The national government is pressuring your agency to provide concrete results in poverty eradication, one of the main priorities at the national level. Your region is under special pressure given the conflict situation, but despite the overall increase in ODA funds devoted to the region, results have not improved satisfactorily as expected. The evaluation officers in Manila have been constantly reminding you of deficient reporting on gender.

You were involved in a number of training projects with the same Local government over the past years. You are aware corruption cases arose in some of them and monitoring and evaluation was generally unsatisfactory. Your main concern, however, is the lack of follow up on those projects in terms of impact on the actual capacities of the LGU and poverty eradication. There are a number of other LGUs who have been able to provide satisfactory results and who are competing for support from your agency. Still, given the pervasive poverty in this particular community, you are concerned that lack of support will only worsen the situation and you are resolved to support a development strategy.

You are familiar with Indigenous People's issues and aware that their participation and support is essential in obtaining adequate project implementation. You would like them to participate to the maximum extent possible, however you are aware that consultations and agreements could delay project implementation. Donor agencies are continuously complaining on financial delivery and have insinuated funding could diminish as a consequence of slow delivery rate.

With your role as a link to local and national institutions to ensure achievement of the local and national development agenda , you want to find from the meeting what other institutions and mechanisms you can tap that will help the overall development situation of the stakeholders

You should raise this issue:

As an oversight agency, your main concern is in reporting and monitoring results. You understand the needs in the community and you are willing to advocate to your colleagues to provide appropriate support, but you have more demands than you can actually fulfill and you need to prove the project is going to have an impact on poverty eradication, and that adequate M&E will be provided, particularly on gender.

You have also some concerns regarding corruption cases in the past, although you know that the present local administration has a clear policy against corruption. However, you are doubtful of their capacities to implement it.

ACTIVITY 9: ROLE PLAY INSTRUCTIONS FOR THE BADJAO LEADER

You are a respected community leader among the Badjao. For years, you have observed how national and local governments marginalized your people. You like the attitude of the current LGU in responding to your claims to improve the situation of your people, but you have witnessed similar intentions in the past which only benefited those who were already powerful. You also distrust national and donor agencies. They did not help you in the past - improving the situation of other groups while marginalizing yours.

You don't think the people attending the meeting understand the real concerns of your people. Their vision of the world is completely different from yours. You are also reluctant to believe they will take your issues seriously , and you refuse to accept any charity from them.

You should raise this issue:

All interventions addressed to your community should seek to respect your cultural identity. But you do not trust the LGU's capacity to do so. They were reluctant to hire Badjao staff in the LGU and they lack real understanding of your culture. You strongly feel your community is being discriminated in favour of other groups with stronger political influence.

You feel the increasing difficulties to continue fishing and you are not willing to take any new activities not related to the sea, as the Badjao's culture cannot be separated from it. You fear abandoning the sea will destroy your cultural identity, which is currently under threat. You are concerned of the continuous loss of your cultural identity and degradation of your people. You are forced to conform with other cultures while yours is being destroyed.

Others may raise these issues, but you may want to respond:

On the LGU's perceptions of the Badjau wanting to keep apart from other groups, you want to stress that the feeling of social belonging in your community is being threatened, your traditional culture endangered.

On women's participation, you think it is not important since there is also lack of participation of Badjao men. There are also traditional roles for men and women in your community that you think should be preserved. Nevertheless, you have agreed to bring along a Badjao woman to the meeting. You are aware of the special difficulties faced by women and children and you believe it is your responsibility as IP leader to ensure the well being of all members in the community.

The LGU may mention that some members of your group have been trying to get weapons. You want to stress that the root cause of the problems experienced by your people is the fact that they are losing their traditional fishing grounds. They have been displaced by commercial fishing and suffer the continuous threats of piracy. The government did not protect your people, therefore it is natural that your people want to have the capacity to defend themselves. You are aware there is a policy of eliminating small arms in the community, but this should not be applied to your own community when some of your members are under constant threat.

ACTIVITY 9: ROLE PLAY INSTRUCTIONS FOR THE IP WOMAN

You are the sister-in-law of the IP leader attending the meeting. You are a respected woman in your community, but you failed to share with other women the purposes of this meeting and in fact you still think you don't have sufficient knowledge to participate. You are illiterate, and unsure of whether your views will make sense in a meeting as important as this or whether the men attending the meeting will consider them worthy. Therefore, you would rather let your IP leader do all the talking, so you can just agree to everything he says.

You have some concerns, even if you prefer not to raise them openly. You are mainly worried about children's health and the fact that you cannot provide them with sufficient food. You want them to be educated but you know they suffer discrimination in school, so you prefer not to send them to school to avoid humiliation; besides you need their help in the house. You do not believe that school education can provide them a future since the basic skills they need for survival can be taught in the house and in the sea.

You find it difficult to sell fish at the market. Most women in your community cannot get any income from the market and some of them have emigrated to Manila as beggars.

You are worried about supporting your children. Badjao women marry early and they usually have many children. You are reluctant to go to the local health center because it is too far from your community, transportation is expensive and women feel humiliated. You do not fully understand the information being provided in those centers, and traditional health practitioners in your community are disappearing.

You realise Badjao women share common concerns, but you trust that the community leader can understand and articulate the problems of women and children better than yourself. You are not familiar with local politics and feel totally lost on political issues.

ACTIVITY 9: ROLEPLAY INSTRUCTIONS FOR THE UN OFFICIAL

You are a Programme Officer in a UN agency based in Manila. Your agency is supporting the National Economic and Development Authority (NEDA) and other national stakeholders in ensuring development efforts reach the local level. You spend most of your time providing technical and policy advice to national and local stakeholders. You assist them in developing and implementing programmes and preparing financial and substantive reports for your organization and other donor agencies.

All UN agencies in the Philippines are resolved to support the development of this region and the Indigenous Peoples in general. Although the scope of your agency is specific, the UNDAF framework gives you the possibility of identifying issues and problems other UN agencies may be able to tackle.

In this issue, you want to assist the local government and the Badjao community to collaborate and improve the situation. Your organization has extensive networks at national and international levels to provide appropriate technical assistance and capacity development. But overall funding has been decreasing in the past years. You need to make sure the available budget in your organization achieves the maximum impact on the lives of people and the overall situation. Therefore, effective monitoring and evaluation of such impact is a major concern.

You are also concerned with sustainability. You want to ensure appropriate capacities are built at institutional and community levels. The project should ensure these capacities are effectively used and can be sustained in the long term. You also need to ensure that all development interventions supported by your agency are consistent and uphold the UN goals of peace and human rights.

As an experienced development practitioner, you are aware that in order to achieve your goals you should be an effective advocate and provide quality technical advise, but you have to avoid taking decisions stakeholders should take by themselves. It is only if stakeholders understand and recognise the nature of the problem they are facing that solutions are likely to be effective and sustained. However, you need to make sure all the stakeholders present at the meeting effectively participate in taking such decisions and are supportive of them. You are especially concerned with women's effective participation, as you know there are certain dimensions of the problem that are experienced differently by women, and that development interventions do not necessarily affect women in the same way as men. Promoting gender equality is one of the goals of your organization.

You think that this meeting can also help you find out other interventions and institutions your agency should support in the Philippines to obtain a significant impact on the overall situation in the community, or the indigenous peoples in general.

ACTIVITY 9: QUESTION GUIDE FOR FACILITATORS: DESIGNING A DEVELOPMENT STRATEGY FROM A RIGHTS PERSPECTIVE

Facilitators should let the group discuss freely and spontaneously, without interfering if some members in the group are participating more than others. **At the end of the activity, facilitators should allow 20 minutes to ask the group the following questions:**

1) Do your general objective and its indicator(s) reflect an improvement on the lives of the most vulnerable? What specific rights are being addressed?

2) Is that objective reinforcing existing power imbalances among the Badjao? Do indicators reflect an improvement in the situation of women?

3) Will your strategy improve the capacities of the Badjao to claim and exercise their rights? How? Will the strategy improve the capacities of Badjao women to do so? How?

4) Would you consider your strategy as empowering the Badjau? Is it empowering Badjao women? In what ways?

5) Will your strategy improve the capacities of the LGU to comply with its obligations more effectively? How?

6) Do your immediate objective(s) (outputs) reflect an improvement in such capacities – in both claim-holders and duty-bearers?

7) Are output (immediate objective) indicators reflecting such improvement?

8) Do mechanisms for data gathering ensure transparency and objectivity? Will claim-holders be involved? How?

9) Do your process indicators ensure transparency? Do they ensure adequate access to institutions and information by the claim-holders?

10) Do your process indicators ensure participation of claim-holders? Do they ensure adequate women's participation?

11) Do your process indicators incorporate mechanisms of accountability? Can these be effectively exercised?

Example of Template to present the results of this exercise:

General objective and indicators	Expected improvement in claim-holders and duty-bearers capacities	Strategies, activities	Process Indicators

ACTIVITY 10: ENSURING PARTICIPATION AT ALL STAGES IN THE DEVELOPMENT PROCESS

Purpose: To help participants understand the value and obstacles of participation in the development process

Timing: 35 minutes (depending on the size of the group and the extent of the discussion)

Materials: A board with the following matrix:

	Obstacles for participation of disadvantaged groups	Ways to ensure participation	Value added for development effectiveness and sustainability	Burdens of participation for project delivery and implementation
Assessment and analysis				
Design of capacity development strategies				
Implementation				
Monitoring				
Evaluation				

Process: Arrange the participants in buzz groups of four. Ask them to brainstorm and complete the matrix. Allow them 20 minutes for discussion. Reconvene the plenary and ask one group to present its results. Other groups should complete and comment on the results of the first group.

MODULE III, SECTION 3: MONITORING AND EVALUATION

Monitoring and Evaluation is not one more stage in the programming process: it is an inherent component of all the stages in the programming process. In fact, good monitoring and evaluation is essential for effective programme implementation and for the formulation of subsequent programmes and projects.

*However, the reality of development work tells us that there is no such thing as a programme "cycle": That is, monitoring and evaluation is not the major starting point in the formulation of projects and programmes. Our tools for monitoring and evaluation usually tell us something about the completion of the project and of specific activities, rather than about **development effectiveness**: that is, the extent to which an institution or intervention has brought about targeted change in a country or in the lives of target groups.*

*Rights-based monitoring and evaluation has an important added value in measuring development effectiveness and ensuring development programmes become empowering in themselves. This is achieved through the use of «process indicators». A **framework for Rights-based monitoring and evaluation is explained in the annex at the end of this section**.*

Rights-based monitoring and evaluation assess both the process and the outputs of development programmes, which in turn helps in the identification of best practices for replication. Rights-based monitoring and evaluation is more effective than traditional approaches in assessing the following dimensions of development effectiveness:

1) *Impact – the overall effect of an intervention. Impact goes beyond the achievement of outputs and immediate objectives and tries to capture the social, economic, environmental, political, cultural and other developmental changes that have taken place as a consequence of the project or programme. Because rights-based assessment and analysis gives a clear picture of the inter-relationships among different issues, impact assessment of development interventions is easier to define.*

2) *Sustainability – the appropriateness of positive project results after the termination of the project. Rights-based strategies are usually empowering in themselves and therefore contribute to sustainability from the beginning of the programme cycle.*

3) *Contribution to capacity building – the extent to which a project enables target groups to be self-reliant and makes it possible for government institutions, the private sector, and civil society organizations to use positive experience with the project in addressing broader development issues.*

***Participation** in monitoring and evaluation is a crucial component of capacity development, and that participation is specifically relevant in the case of women. Stakeholders should assess their own problems and the progress, or lack of it, in achieving development objectives, in order to design strategies to improve their own situation.*

*The **Objectives** of this section are:*

1) *To formulate rights-based outcome and process indicators*

2) *To distinguish outcome and process indicators that are rights-based from those that are not;*

3) *To enhance and improve outcome indicators from a rights-perspective*

4) *To recognize the links of monitoring with other programming stages*

5) *To identify approaches to maximize the use of monitoring results in rights-based programming*

ACTIVITY 11: FORMULATING RIGHTS-BASED OUTCOME AND PROCESS INDICATORS

Purpose: To apply human rights concepts in developing rights-based outcome and process indicators

Timing: 45 minutes (depending on the size of the group and the extent of the discussion)

Materials: Case studies Activity 11 (Right to Health, Right to Housing, Right to Education). Facilitator can use examples of results from this activity in previous workshops (Guide for Facilitators Activity 11)

Process: Arrange the participants in buzz groups of four. Ask them to choose a particular case study (health, housing or education). With a facilitator, participants should:

1) Formulate an **outcome** that reflects an impact on the lives of target groups, on the basis the main human rights concerns identified

2) Identify **outcome indicators** that reflect (a) improvement in the lives of claim-holders based on the normative content; (b) improvement in duty-holders compliance with their obligations

3) Formulate **process indicators** on the basis of human rights principles (eg. transparency, participation, attention to vulnerable groups)

ACTIVITY 11: CASE STUDIES

CASE A: RIGHT TO HEALTH

Three new cases of polio were detected in 2001 (Cagayan de Oro, Laguna and Cavite). The 3 children (aged 8, 3, and 14 months; two boys and one girl) developed a "mutant" poliovirus, vaccine-derived poliovirus (VDPV), from the Oral Polio Vaccine (OPV) they had received. It is possible for a child who has received OPV to develop VDPV is s/he is malnourished or if the vaccine received did not work as effectively as it should.

The Philippines is the 4th country in the world to have VDPV. Controlling VDPV entails only a large-scale mass vaccination campaign using OPV. Without OPV, children may be infected by "wild" poliovirus, which could lead to irreversible paralysis. Immunization stops the spread of "mutant" VDPV, which could even turn back into its "wild virulence". The Department of Health has scheduled mass immunizations on February 2-8 and March 2-8, 2002[10].

CASE B: RIGHT TO HOUSING

According to a World Bank publication, slum and squatter communities in the country have been estimated to contain 17 percent of the country's population and nearly 40 percent of the urban population. Many of the urban poor live in dangerous locations: along railway lines and canals, under bridges, along shorelines or banks or steep hills. Urban housing has become unaffordable particularly for the urban poor and land costs are too prohibitive. Security of tenure – a fundamental component of the right to housing – is unavailable for most of the urban poor, yet is critical to effectively address poverty reduction in urban areas[11].

Data provided by the *Urban Poor Associates* point precisely to the lack of security of tenure among the poor in Metro Manila. For the first nine months of 2001, there were 27 incidents of demolitions in Metro Manila alone[12]. These occurred on government-owned property, while 5 incidents occurred on private lands. In 12 incidents, the affected families were relocated to other areas but in 15 incidents, the affected families were not provided with any relocation sites. There have also been 10 instances where the demolitions were accompanied by violence, committed largely against the affected families by goons, policemen, and the demolition team. On one occasion, policemen pointed their guns at the affected families[13]. On another, goons arrived in the middle of the night and shot at the community; one woman died and scores were injured.[14]

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[10] Philippine Daily Inquirer, 12 January 2002
[11] World Bank, "A Strategy to Fight Poverty in the Philippines", March 1996, chapter 3
[12] "Demolition Monitor, January to June 2001; Demolition Monitor, July to September 2001
[13] March 13, 2001, involving 174 families on proivate land, at Letre Road, Tonsuya, Malabon, 95 families received Peso 15,000 each.
[14] August 20, 2001, involving 700 families on private land, at Area F, DBB, Cavite

CASE C: RIGHT TO EDUCATION

As a result of the Asian Financial crisis, the greater proportion of household coming from the poorest decile took their children out of school[15]. Field studies conducted by Nebres (1997) revealed than more than half of the children who do not get to finish grade 6th actually drop out after the first or second grade – which means that at seven and eight years old, they are already condemned to a life of poverty[16].

A World Bank report claims that public elementary education is far from free. Families spend about 2% of total household expenditures on each child enrolled in a public elementary school. A fifth of this amount goes to miscellaneous fees and donations for the school's upkeep. These fees are particularly high in the Visayas. Transportation accounts for about half of education expenses, and uniforms for about one fourth.

The report further claims that drop-outs are mostly from poor families. About three-fourths of the drop-outs belong to poor households. Two out of five Filipino children not in school are Mindanao residents. Boys tend to drop out more than girls. Of those children who drop out of elementary school, 60% do so in grades 4 and 5. Children drop out for health and economic reasons. Poor health (or disability) is the top reason for dropping out, followed by economic reasons, like the high cost of education, or the need for the child to work[17].

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[15] Arsenio M. Balicasan, in Philippine Review of Economics, Vol. XXXVIII, No. 1, June 2001, pages 15-50

[16] Solita Collas-Monsod and Toby C. Monsod, in Balicasan and Fujisaki, "Growth, Poverty and Income Inequality in the Philippines", Tokyo 1998, pages 48-49

[17] World Bank report No. 22181-PH, "Philippines: Filipino report Card on pro-Poor Services", May 30, 2001

ACTIVITY 11: GUIDE FOR FACILITATORS

AN EXAMPLE OF THIS ACTIVITY IN PREVIOUS TRAININGS: (RIGHT TO HOUSING)

Assumption: Programmes can be pursued at the national level

Targets: Poor people in danger areas in highly urbanized communities (informal settlers) (i.e. "esteros", people living under bridges and next to railtracks)

Needs: In city (not on-site)

Issues :

1) Legal security of tenure
2) Availability – safe drinking water, sanitation, refuse disposal, site drainage, emergency services
3) Affordability
4) Habitability – adequate space, privacy, safety
5) Accessibility
6) Location – employment options, health, schools, etc.)

Obligations:

No eviction without appropriate relocation; no eviction without consultation; No forcible demolition; adequate relocation; availability of affordable housing programmes; no discrimination in access to housing programmes

Outcome: _"Improved adequate housing of urban poor living in danger areas"_

Outcome indicators:

Claim-Holders:

1) Number of people evicted without force or violence
2) Number of people evicted being relocated
3) Distance from resettlement site to employment and education facilities (employment facilities to match resettlers' skills)
4) Number of organized and functional urban poor groups (data must be disaggregated according to age and gender)
5) Proportion of income allotted to housing

Duty holders: (Shelter agencies, NAPC, OP, PCUP, LGUs; PNP, DPWH, DSWD, DOH, TESDA, DOLE, PCFC, Judiciary, Congress)

1) Passage of policies on eviction and resettlement consistent with human rights principles (PNP, DPWH, LGU) – NHA for financing
2) Number of illegal evictions reduced (notice, consultation, relocation)
3) Number of houses with adequate facilities as compared to total number of families evicted
4) Number of "returnees" to the danger areas
5) Incremental increase in budget for housing

Process indicators (participation and empowerment)

1) Claim-holders participating in consultation (eg. designing relocation sites): number, profile
2) Number of organized groups involved, percentage of women participants in those groups

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Examples of Normative Content to identify issues/ concerns, and therefore outcomes and outcome indicators (ask participants to verify and complete with Module 2, Section 3, or General Comments included in the Resource Manual):

Right to Education	Right to Housing:	Right to Health
Availability Accessibility (non-discrimination, physical and safe accessibility, affordability) Acceptability (relevant, culturally appropriate, of good quality) Adaptability	Legal security of tenure Availability (infrastructure, water, sources of energy, drainage) Affordability Habitability Accessibility Location (access to health, education and employment facilities) Cultural adequacy Non-discrimination in access to government housing programmes; attention to vulnerable groups	Availability (services, drugs, etc.) Accessibility (non-discrimination, physical accessibility, affordability, information accessibility) Acceptability (culture, medical ethics, sensitive to gender and life cycle) Quality

ACTIVITY 12: STRENGTHENING INDICATORS FROM A RIGHTS-PERSPECTIVE

Purpose: To help participants assess their own indicator setting and how to improve it from a rights perspective

Timing: 1 hour

Materials: Participants were advised to bring a project concept or a logframe of one of their projects to this training. This document should contain a situation analysis, objectives and strategies

Process: Arrange the participants in buzz groups of four (ideally of people working on similar sectors).

Ask them to examine their project document, its situation analysis, objectives and strategies. Are they rights-based? If not, how can you make them rights-based?

Examine the substantive indicators (**outcome indicators, or general objective indicators**). Are they rights-based? Do they show the extent to which enjoyment of rights, particularly of the most vulnerable, is improving? Can your current M&E indicators be deliberately used to promote rights-based planning and programming? Improve or change the indicators to make them rights based. Refer to the normative content of rights, human rights principles and State obligations.

Examine the **process indicators**. Can you find process indicators in your project document? Are they rights-based? Do the indicators show how the most vulnerable groups, and especially women, participate in the M&E processes and whether there are sufficient measures to strengthen their capacities for effective participation? Give some examples of process indicators that would improve your project.

Finally, ask participants to brainstorm on the following questions (to be presented in plenary):

a. From your experience in the workshop, what does your group think are the main characteristics of a rights-based indicator?
b. What are the considerations in formulating a rights-based indicator?

EXAMPLE: RIGHTS-BASED INDICATORS IN MONITORING THE IMPACT OF JUDICIAL REFORM PROGRAMMES[18]

Outcome: "Strengthened access to justice by the disadvantaged"

Definition of **Access to Justice**: *"Ability of persons from **disadvantaged groups** to seek and obtain a **legal remedy** in conformity with **relevant international human rights standards"**.*

Disadvantaged Groups *by which the data will be disaggregated: Women; Minors; Persons with physical/mental impairment; Indigenous groups; Urban poor; Rural Poor; Minorities (linguistic, religious, etc.)*

Legal Remedies	Principal Actors (duty-holders)	Relevant Human Rights	Main barriers and concerns (based on normative content), and corresponding indicators and sources of data
Quasi-judicial legal remedies	*(1) Barangay Justice System (Department of Interior and Local Government)* *(2) Indigenous Dispute resolution mechanisms (DILG, NCIP)* *(3) Other alternative dispute resolution mechanisms (e.g. Department of Agrarian Reform Adjudication Board, National Labour Relations Commission)*	*Non-discrimination (Art. 2, ICCPR)* *Right to an effective remedy (Art. 2(3), ICCPR)*	***Concern: Unavailability of a local mechanism*** *Percentage of Barangays where a lupon is established (DILG statistics)* *Number of indigenous dispute settlement mechanisms registered (DILG statistics)* ***Concern: Unacceptability or non-enforcement of decisions*** *Number of decisions repudiated (DILG statistics)* *Level of satisfaction by users (sample survey of users)* ***Concern: Lack of information*** *Level of knowledge of availability and function of non-judicial and judicial procedures (sample survey general population)*

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[18]PHI/98/006 Supreme Court – UNDP, "Technical Assistance to the Philippine Judiciary on Justice and Development"

Judicial Legal Remedies	Philippine National Police Court System National Prosecutors Office National Bureau of Investigation Public Attorney's Office Bureau of Jail Management and Penology Integrated Bar of the Philippines Alternative Law Groups Commission on Human Rights	Non-discrimination (Art.2, ICCPR) Right to an effective remedy (Art. 2(3), ICCPR) Right to a fair trial (Art. 14, ICCPR), including: o Equality before the courts o Access to adequate legal counsel o No undue delays o Free access to interpreters o Special considerations to juveniles Prohibition of arbitrary arrest and detention (Art. 9, ICCPR), including: o Based on legality, necessity and proportionality Speedy arraignment and consideration for bail	*Concern: Negative attitudes and lack of information* Level of general knowledge of legal protections and perceptions of the justice system (sample survey of general population) Level of knowledge and understanding by accused of legal protections and status of his/her case (survey of detainees) Percentage of Barangays where Barangay Human Rights Centers or legal clinics established (data collected by DILG, Commission on Human Rights and Alternative Law Groups) *Concern: Lack of adequate legal defense* Availability of adequate legal aid, particularly between arrest and arraignment (PAO reporting on vacancies, staff turn-over and caseloads, number of postponements due to absence of PAO lawyer, survey of detainees) Access to clients and availability of legal records to PAO lawyers in advance of court appearances (survey PAO lawyers) *Concern: Unlawful or unreasonable delays* Actual pace of litigation against legal time limits, disadvantaged groups, included detainees, compared to general population (expanded caseload survey) *Concern: Unlawful/unreasonable incarceration* Discrimination in access to bail, comparison of court-appointed attorney cases and private attorney cases granted bail by type of crime (expanded caseload study; expanded court reports) Number of overstayed detainees (survey of detainees) *Concern: Prohibitive costs* Costs and charges incurred (official and unofficial) by case, as compared to average costs to cover basic needs and average income (survey of PAO lawyers and National Statistics Office data; survey of the Integrated Bar of the Philippines and alternative lawyers) *Concern: Lack of effective remedy for disadvantaged plaintiffs* Percentage of archived cases where plaintiff is disadvantaged compared to percentage of cases filed by a disadvantaged plaintiff (expanded caseload survey) *Concern: Lack of protection for juvenile offenders* Number of juveniles in detention not separated from adults (BJMP and PNP) Percentage of local governments where juvenile detention facilities are established (DILG)

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Annex:
**Identifying the Human Rights links between Monitoring
and other Stages in the Development Process**

Stages in the Development process	Human Rights links to M&E
ASSESSMENT AND ANALYSIS	**Effects of the problem on the most vulnerable** (What are the human rights concerns? Whose rights? To what extent? Who suffers most?) **Root of the problem, factors that reinforce the problem and their effects** (What inabilities face the most vulnerable? What State obligations are not being complied? Why? Who is supposed to do so?)
OBJECTIVES SETTING	**Desired changes on the lives of the affected people** (What improvement on the lives of the most vulnerable is desired? Who denies the desired change and how? **Process and Outcome indicators may be initially identified side by side with each objective. These indicators will be improved as specific strategies are determined**
CAPACITY DEVELOPMENT STRATEGIES	**The "means" to attain the desired change on the lives of the affected people** (What is most strategic way to attain the desired improvement on the lives of the most vulnerable? Who determines the "means" and how? How will the "means" develop the capacities of the most vulnerable to help themselves? What rights, principles and obligations are addressed in the process?
IMPLEMENTATION	**Gathering data that will indicate levels of performance and success (process and outcomes)** **Assessment of the data gathered:** a) **Appropriateness -** Whether strategies are helping claim-holders enjoy rights and duty-holders exercise duties b) **Adequacy -** Whether interventions are enough to reduce or eliminate the obstacles to the enjoyment of rights; whether obligations are sufficiently complied with c) **Efficiency -** Whether compliance to

	obligations conforms with principles and normative content of concerned rights as shown in the timely delivery of services and rational use of resources
MONITORING	**CONTENT** (Progress in achieving expected outputs) **PROCESS** (How are claim-holders participating in data gathering and assessment? Are there popular feedback strategies? What adjustments need to be made, if any, to better attain the objectives?
EVALUATION	**RELEVANCE** : Does the rationale of the programme respond to the concerns and problems identified? **OPPORTUNITY:** Were the stakeholders given the resources (human and financial capital) necessary to achieve the objectives identified? **UTILITY**: Doe the results achieved by the programme respond to the concerns of stakeholders? What was the final impact on the capacity of stakeholders for the realization of rights? Was there a immediate impact on the situation of disadvantaged groups? Is the programme effective among different types of stakeholders? How will the findings influence future action?

MODULE IV:
A RIGHTS-BASED APPROACH TOWARDS THE ACHIEVEMENT OF THE MILLENNIUM DEVELOPMENT GOALS (MDGs)

The UN system is currently focused in achieving the Millennium Development Goals (MDGs). The presentations in this session will examine the Millennium Development Goals (MDGs) and their linkages to human rights and to human dignity. The annexes in this Manual include excerpts from the Millennium Declaration, the list of MDGs and their indicators, and the guidance note of the UN Secretary General towards their achievement.

The workshop in this section aims show how human rights can be used in analysing the MDGs, and their significance to strengthen national and international efforts. The MDGs cannot be separated from the framework of the Millennium Declaration, which states clearly the need to promote and protect human rights.

The UN agencies can enhance their contributions to effectively achieve the MDGs at national and international levels by using rights based tools and methodologies.

*The **Objectives** of this section are:*

1) *To understand MDGs as international commitments towards the improvement of human dignity.*

2) *To use rights-based tools in developing strategies towards the realization of the MDGs*

ACTIVITY 12: DEVELOPING RIGHTS-BASED STRATEGIES TOWARDS THE ACHIEVEMENT OF THE MILLENNIUM DEVELOPMENT GOALS.

Purpose: To use rights-based tools in assessing and developing strategies towards the achievement of the MDGs .

Timing: 1 hour

Materials: Millennium Declaration, List of MDGs and their corresponding indicators. A question guide for facilitators and results from previous trainings are included in the annexes.

Process: Arrange the participants in buzz groups of five. Distribute MDGs among groups.

With a facilitator, they should try to:

a) **Undertake a rights-based assessment of the MDG**

    a. Relation to human rights, relation to normative content of such right(s).
    b. Main targets in the Philippine context, most vulnerable groups among them.
    c. Relation to the nature of relevant State obligations regarding such right(s).
    d. Relation to human rights principles essential to its achievement.

Ask the group whether, in the light of the assessment, would they include specific indicators or reformulate the MDG from a rights perspective.

b) **Identify a rights-based strategy to achieve it.**

    a. Strengths and weaknesses of target groups regarding the MDG. Identification of strategic entry point(s) for UN support.
    b. Organizations (including sub-organizational units) primarily responsible for achieving the MDG and capacities needed. Identification of strategic entry point(s) for UN support in this regard.

**ACTIVITY 12: GUIDE FOR FACILITATORS
DEVELOPING RIGHTS-BASED STRATEGIES TOWARDS THE ACHIEVEMENT OF
THE MILLENNIUM DEVELOPMENT GOALS**

Facilitators should encourage the group to discuss freely and spontaneously while ensuring all members are sharing their views and providing inputs.

The following are guide questions for facilitators to direct and manage a discussion towards its desired results. Facilitators should allow the participants to pose their own questions.

RIGHTS-BASED ASSESSMENT OF THE MDG IN THE PHILIPPINE CONTEXT:

- Is the MDG related to human rights? If so, which right(s)? Is the normative content of such right(s) reflected?

- Who are the groups most affected by that particular MDG? Who are the most vulnerable/ disadvantaged among those? Does it affect men and women equally?

- Is the profile of such groups reflected in the indicators?

- Does the MDG highlight the nature of State obligations? Which obligations, if any, are not highlighted?

- Is there any human rights principle that is not reflected in the MDG and that may be essential for its achievement?

STRATEGY DESIGN

- What are the strengths and weaknesses of target groups in this regard?

- What strategic entry points can be chosen, given UN's mandate, expertise and resources?

- Who is primarily responsible for achieving the MDG? Identify the organizational (and sub-organizational) units. Do this units have appropriate capacities to achieve the MDG? What strategic entry points can be chosen, given UN´s mandate, expertise and resources?

ACTIVITY 12: EXAMPLE OF RESULTS FROM PREVIOUS TRAININGS

MDG 6: COMBAT HIV, MALARIA AND OTHER DISEASES	
Rights (life, health)	Access to information is missing
Main targets in the Philippine context:	Persons living with HIV/ AIDs, migrant workers, prostitutes, children, women, general public
Most vulnerable/ disadvantaged	Entertainment workers; sexually exploited women; drug-addicts; commercially and sexually exploited children; street children; prostitutes; seafarers and their families; orphaned children
Impact on women?	Affects women more, due to: - Men's submissive perception of women - Distorted image of women as portrayed by media - More women are affected by HIV/AIDS
Principles	Attention to vulnerable groups, non-discrimination (of those already infected with HIV/AIDS) is missing
Obligations	Obligation to fulfill (facilitate) access to medical treatment, services and facilities is clear in the case of Malaria, but unclear in the case of HIV/AIDS (discrimination). Attention to vulnerable groups and quality of service should be considered.
Proposed reformulation:	*"Combat HIV/AIDs, Malaria and other diseases with special attention to vulnerable and high risk groups like women and children"*
Capacities of claim holders (men and women)	- Some have more access to information (eg. seafarers) - Women in the sex industry lack the capacity to choose partners and use contraceptives, but have the capacity to be emotionally prepared. - The poor have less access to information and medical attention - Lack of support services for families of persons living with HIV/AIDS
Strategic entry point	- Information on prevention/ treatment – Media and NGOs - Legislation on HIV/AIDS - Assessment of the capacity of health institutions, health care workers; capability building on rehabilitation
Responsible organizations to achieve MDG	DOH; DSWD; PNAC; LGUs

ANNEXES MODULE IV

Reading:
***Excerpt*, Millennium Declaration**
Millennium Development Goals

III. Development and poverty eradication

11. We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.

12. We resolve therefore to create an environment – at the national and global levels alike – which is conducive to development and to the elimination of poverty.

13. Success in meeting these objectives depends, *inter alia*, on good governance within each country. It also depends on good governance at the international level and on transparency in the financial, monetary and trading systems. We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system.

14. We are concerned about the obstacles developing countries face in mobilizing the resources needed to finance their sustained development. We will therefore make every effort to ensure the success of the High-level International and Intergovernmental Event on Financing for Development, to be held in 2001.

15. We also undertake to address the special needs of the least developed countries. In this context, we welcome the Third United Nations Conference on the Least Developed Countries to be held in May 2001 and will endeavor to ensure its success. We call on the industrialized countries:

   • To adopt, preferably by the time of that Conference, a policy of duty- and quota-free access for essentially all exports from the least developed countries;

   • To implement the enhanced program of debt relief for the heavily indebted poor countries without further delay and to agree to cancel all official bilateral debts of those countries in return for their making demonstrable commitments to poverty reduction; and

   • To grant more generous development assistance, especially to countries that are genuinely making an effort to apply their resources to poverty reduction.

16. We are also determined to deal comprehensively and effectively with the debt problems of low- and middle-income developing countries, through various national and international measures designed to make their debt sustainable in the long term.

17. We also resolve to address the special needs of small island developing States, by implementing the Barbados Programme of Action and the outcome of the twenty-second special session of the General Assembly rapidly and in full. We urge the international

community to ensure that, in the development of a vulnerability index, the special needs of small island developing States are taken into account.

18. We recognize the special needs and problems of the landlocked developing countries, and urge both bilateral and multilateral donors to increase financial and technical assistance to this group of countries to meet their special development needs and to help them overcome the impediments of geography by improving their transit transport systems.

19. We resolve further:

   • To halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water.

   • To ensure that, by the same date, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.

   • By the same date, to have reduced maternal mortality by three quarters, and under-five child mortality by two thirds, of their current rates.

   • To have, by then, halted, and begun to reverse, the spread of HIV/AIDS, the scourge of malaria and other major diseases that afflict humanity.

   • To provide special assistance to children orphaned by HIV/AIDS.

   • By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the "Cities Without Slums" initiative.

20. We also resolve:

   • To promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.

   • To develop and implement strategies that give young people everywhere a real chance to find decent and productive work.

   • To encourage the pharmaceutical industry to make essential drugs more widely available and affordable by all who need them in developing countries.

   • To develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication.

   • To ensure that the benefits of new technologies, especially information and communication technologies, in conformity with recommendations contained in the ECOSOC 2000 Ministerial Declaration, are available to all.

Human Rights and Development:
Guidance from the Secretary General
Extracts from the Report of the Secretary-General: Roadmap towards the implementation of the United Nations Millennium declaration
A756/326, 6 September 2001

82. … Human rights should be at the centre of peace, security and development programmes.

…
195. … The United Nations exists to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, the equal rights of men and women, and the right of minorities and migrants to live in peace. All human rights – civil, political, economic, social and cultural – are comprehensive, universal and interdependent. They are the foundations that support human dignity, and any violations of human rights represent an attack on human dignity's very core. Where fundamental human rights are not protected, States and their peoples are more likely to experience conflict, poverty and injustice.

…
201. Human rights are also a central tenet of United Nations reform, which emphasizes the centrality of human rights in all activities of the system. The cross-cutting nature of human rights demands that whether we are working for peace and security, for humanitarian relief or for a common development approach and common development operations, the activities and programmes of the system must be conducted with the principles of equality at their core…

202. Human rights are an intrinsic part of human dignity and human development can be a means towards realizing these rights. A rights-based approach to development is the basis of equality and equity, both in the distribution of development gains and in the level of participation in the development process. Economic, social and cultural rights are at the heart of all the millennium development goals related to poverty reduction, hunger alleviation, access to water, education for boys and girls, the reduction of maternal and under-five child mortality, combating HIV/ AIDS and other major diseases, and promoting gender equality and the empowerment of women…

203. … An increasing number of Member States have recognized the value of the rights-based perspective on development and should be encouraged to implement this approach at the national level.

Millennium Development Goals: Indicators

Goals and Targets		
Goal 1:	**Eradicate extreme poverty and hunger**	
Target 1:	Halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day	1. Proportion of population below $1 per day (PPP-values) 2. Poverty gap ratio (incidence x depth of poverty) 3. Share of poorest quintile in national consumption
Target 2:	Halve, between 1990 and 2015, the proportion of people who suffer from hunger	4. Prevalence of underweight children (under-five years of age) 5. Proportion of population below minimum level of dietary energy consumption
Goal 2:	**Achieve universal primary education**	
Target 3:	Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling	6. Net enrolment ratio in primary education 7. Proportion of pupils starting grade 1 who reach grade 5 8. Literacy rate of 15-24 year olds
Goal 3:	**Promote gender equality and empower women**	
Target 4:	Eliminate gender disparity in primary and secondary education preferably by 2005 and to all levels of education no later than 2015	9. Ratio of girls to boys in primary, secondary and tertiary education 10. Ratio of literate females to males of 15-24 year olds 11. Share of women in wage employment in the non-agricultural sector 12. Proportion of seats held by women in national parliament
Goal 4:	**Reduce child mortality**	
Target 5:	Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate	13. Under-five mortality rate 14. Infant mortality rate 15. Proportion of 1 year old children immunised against measles
Goal 5:	**Improve maternal health**	
Target 6:	Reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio	16. Maternal mortality ratio 17. Proportion of births attended by skilled health personnel
Goal 6:	**Combat HIV/AIDS, malaria and other diseases**	
Target 7:	Have halted by 2015, and begun to reverse, the spread of HIV/AIDS	18. HIV prevalence among 15-24 year old pregnant women 19. Contraceptive prevalence rate 20. Number of children orphaned by HIV/AIDS
Target 8:	Have halted by 2015, and begun to reverse, the incidence of malaria and other major diseases	21. Prevalence and death rates associated with malaria 22. Proportion of population in malaria risk areas using effective malaria prevention and treatment measures 23. Prevalence and death rates associated with tuberculosis 24. Proportion of TB cases detected and cured under DOTS (Directly Observed Treatment Short Course)

Goal 7:	**Ensure environmental sustainability**	
Target 9:	Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources	25. Proportion of land area covered by forest 26. Land area protected to maintain biological diversity 27. GDP per unit of energy use (as proxy for energy efficiency) 28. Carbon dioxide emissions (per capita) (Plus two figures of global atmospheric pollution: ozone depletion and the accumulation of global warming gases)
Target 10:	Halve, by 2015, the proportion of people without sustainable access to safe water	29. Proportion of population with sustainable access to an improved water source
Target 11:	By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers	30. Proportion of people with access to improved sanitation 31. Proportion of people with access to secure tenure (Urban/ rural disaggregation of several of the above indicators may be relevant for monitoring improvements in the lives of the slum dwellers)
Goal 8:	**Develop a Global Partnership for Development**	
Target 12:	Develop further an open, rule-based, predictable, non-discriminatory trading and financial system Includes a commitment to good governance, development, and poverty reduction - both nationally and internationally	*Some of the indicators listed below will be monitored separately for the Least Developed Countries (LDCs), Africa, landlocked countries and small island developing states* *Official Development Assistance* 32. Net ODA as percentage of DAC donors' GNI (targets of 0.7% in total and 0.15% for LDCs)
Target 13:	Address the Special Needs of the Least Developed Countries Includes: tariff and quota free access for LDC exports; enhanced programme of debt relief for HIPC and cancellation of official bilateral debt; and more generous ODA for countries committed to poverty reduction	33. Proportion of ODA to basic social services (basic education, primary health care, nutrition, safe water and sanitation) 34. Proportion of ODA that is untied 35. Proportion of ODA for environment in small island developing states 36. Proportion of ODA for transport sector in land-locked countries
Target 14:	Address the Special Needs of landlocked countries and small island developing states (through Barbados Programme and 22nd General Assembly provisions)	*Market Access* 37. Proportion of exports (by value and excluding arms) admitted free of duties and quotas 38. Average tariffs and quotas on agricultural

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Target 15:	Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term	products and textiles and clothing 39. Domestic and export agricultural subsidies in OECD countries 40. Proportion of ODA provided to help build trade capacity *Debt sustainability* 41. Proportion of official bilateral HIPC debt cancelled 42. Debt service as a percentage of exports of goods and services 43. Proportion of ODA provided as debt relief 44. Number of countries reaching HIPC decision and completion points
Target 16:	In co-operation with developing countries, develop and implement strategies for decent and productive work for youth	45.Unmeployment rate of 15-24 year olds
Target 17:	In co-operation with pharmaceutical companies, provide access to affordable, essential drugs in developing countries	46. Proportion of population with access to affordable essential drugs on a sustainable basis
Target 18:	In co-operation with the private sector, make available the benefits of new technologies, especially information and communications	47. Telephone lines per 1000 people 48. Personal indicators per 1000 people

MODULE V: FINAL CONSIDERATIONS ON A RIGHTS BASED APPROACH TO DEVELOPMENT

The previous sections of the training have focused in the conceptual and practical implications of a rights-based approach to development.

This section compares the rights-based approach to existing development approaches, particularly the "basic needs" and "sustainable livelihoods" approaches. The rights-based approach builds on these two approaches, by adding new dimensions that improve our understanding of development problems and our strategies addressing them.

A rights-based approach, as an approach to development programming, is also a consequence of the increasing focus on results-oriented programmes and capacity development strategies. This section examines what the specific added value of a rights based approach to both practices.

A rights-based approach, however, is not an easy exercise. This section concludes with an examination of some of the challenges and difficulties in conducting and advocating for the effective implementation of a rights-based approach to development.

*The **Objectives** of this module are:*

1) *To understand the added value of a RBA to existing development approaches and practices (basic needs, sustainable livelihoods, capacity development, results-oriented development)*

2) *To understand the limitations, challenges and difficulties in implementing a rights-based approach to development*

ACTIVITY 13: ADDED VALUE OF A RIGHTS-BASED APPROACH TO DEVELOPMENT

Purpose: To reflect on the potential added value of a RBA to existing development approaches.

Timing: 40 minutes

Materials: One while board, meta cards.

Process: In the plenary, explain to the participants that development paradigms are "visions" of reality. They are not reality as such and therefore have limitations to embrace all its complexity. A rights-based approach views reality through a human rights lens. It "labels" development as "sustainable human development" or "rights-based development". It builds on existing approaches and paradigms, rather than substituting them. Ask the participants to provide examples of other lenses to view development and other "labels". Select three (if possible, select needs-based approach, sustainable livelihoods, sustainable development, capacity development)

Post the three paradigms on a board and ask participants to reflect individually on the added value of a rights-based approach to those paradigms, in terms of <u>development efficiency, effectiveness (impacts on the lives of people) and sustainability</u>. Participants should write their responses (two or three words) in a meta card. In the plenary, process the answers of participants and ask them to explain their answers. Allow at least 30 minutes for this discussion in the plenary.

ACTIVITY 14: OBSTACLES IN IMPLEMENTING A RIGHTS-BASED APPROACH TO DEVELOPMENT

Purpose: To reflect on the obstacles and challenges for RBA implementation and strategies to address them.

Timing: 40 minutes

Materials: One while boards, meta cards.

Process: Ask participants to reflect individually and write in the meta cards what _internal and external_ obstacles their organization may face in implementing a rights-based approach. Process their answers on a board. In plenary, ask them to suggest internal and external strategies, actions and mechanisms that their organization could pursue in order to overcome such obstacles.

Reading: Final Considerations on a Rights Based Approach to Development

Poverty is not only a failure to achieve minimum levels of well-being, but also the lack of power to exercise freedoms

"Throughout the world, poor people's relationships with institutions reflect their powerlessness in society. They often experience institutions as corrupt, lawless, and discriminatory, and as functioning on the basis of clientelism and patronage. Not surprisingly, poor people have little trust in and low expectations of the institutions that are supposed to help them. There is little evidence that institutions treat poor women and men as citizens with rights, including the right to be treated with respect and dignity" (World Bank series, "Voices of the Poor").

Historically, poverty was framed as a failure in terms of achievements (i.e. in terms of income or consumption poverty lines, Minimum Basic Needs, UN Human Poverty Index). But from a rights perspective, poverty is also, and most of all, the pervasive denial of basic human entitlements, i.e. the failure of individuals, peoples, and communities to achieve minimum acceptable standards of well-being; and the inability to exercise basic human rights and fundamental freedoms. The rights-perspective is consistent with the reality of poverty as experienced by poor people themselves, and with the prevailing consensus that sees poverty as lack of security, empowerment, and limited opportunities, as expressed in the different issues of Human Development Reports since 1990 and the World Development Report of 2000.

A rights-based approach is an empowering approach to development. Those who care most about reducing poverty are poor people themselves. Hence, effective poverty reduction must be included into the motivation, desire, determination, imagination, knowledge, networks, and organisations of poor women, men and children.

A rights-based approach offers an added value for our understanding of poverty and for our strategies to address poverty. The four broad benefits of a human rights approach can be described as **holistic and multidimensional analysis of development issues, enhanced accountability, genuine empowerment and greater normative clarity.** A rights-based approach builds on these existing approaches and improves on them.

In this section, we will examine the specific added value of a rights based approach to existing development approaches. However, because a rights-based approach aims to achieve fundamental social changes at national and international levels, we should not forget that the implementation of a rights-based approach faces immense difficulties and constraints. These obstacles should not discourage development practitioners, but rather challenge them to face reality and strive for effective advocacy and strategies to progressively overcome such obstacles, in order to give poor and disadvantaged people the responses they legitimately deserve and expect.

Added value of a rights-based approach to "basic needs" and "sustainable livelihoods" approaches

A rights-based approach differs from previous approaches in two aspects:

1) First, it implies a shift from a traditional understanding of development as the fulfilment of basic needs, to development as a realization of rights and as a right in itself.
2) Second, it requires the expansion of the concept of "sustainable livelihoods" to include an analysis of the micro-macro policy linkages and the issues of politics, power and authority.

It should be noted that the rights-based approach does not imply the substitution of existing approaches, but rather their improvement. Existing approaches provide a much clearer understanding of the notion and processes for sustainable human development than a mere examination of income and national wealth. A rights-approach builds on previous conceptual frameworks to improve our understanding of the root causes of poverty and conflict in order to establish more effective strategies to address them. Box 1 highlights the added value of a rights-based approach to the "basic needs" and "sustainable livelihoods" approaches.

Added value of a rights-based approach to Capacity Development

"Capacity development" has rapidly become the dominant strategy in technical cooperation. The term emerged in the 1980s and replaced concepts like capacity building, institution strengthening, institution building or human resource development. There are almost as many definitions of capacity development as there are authors on the subject. A simple definition of capacity development is "the process by which individuals, organizations, institutions, and societies develop their abilities individually and collectively to perform functions, solve problems, and set and achieve objectives" ("Development Effectiveness: Review of Evaluative Evidence", UNDP Evaluation Office, 2001).

A rights-based approach gives full meaning to the notion of capacity development, by providing an over-arching framework for its operationalization. Box 2 examines the added value of a human rights approach to the requirements of capacity development.

Box 1: Added value of the Rights-Based approach to the Basic Needs and Sustainable Livelihoods approaches[1]

Basic Needs and Sustainable livelihoods approaches	Rights-based approach
Stronger on micro-detail than in micro-macro policy linkages	Examines the micro-level, the macro-level, and the linkages between them
Do not take into account the ways in which power relations produce and reproduce deprivation	Provides a conceptual framework for the analysis of power and authority
Needs can be met through charity and benevolence	Development is an entitlement
Needs are not necessarily universal and some needs are more important than others	Rights are universal and indivisible, although some rights may be more instrumental than others in particular situations
Basic needs can be met by goal or outcome strategies	Attention should be paid equally to both outcome and process
Needs are met or satisfied	Rights are realised (respected, protected, facilitated, and fulfilled)
Stakeholders analysis identifies actors and roles	Stakeholders analysis also identifies

	accountabilities in claim-holders and duty-holders
Lack of political will is an obstacle for the fulfilment of basic needs	Impunity and lack of accountability hinder the realization of rights

[1] From "Operationalization of ESAR of UNICEF Global Guidelines for Human Rights Programming", UNICEF, Nairobi Regional Office, October 2001; and C. Moser and A. Norton, "To Claim our Rights: livelihood security, human rights and sustainable development", Overseas Development Institute, 2001

A Rights-based approach and Results-oriented development

Decreasing resources and a growing climate of criticism in development assistance in the light of persistent poverty and conflict throughout the world has resulted increasing calls at national and international levels for the achievement of clear and measurable results in development strategies. Traditionally, development cooperation had adopted the form of projects, evaluated in terms of efficiency rather than effectiveness or impact. Efficiency refers to the extent to which financial costs have been minimized in the translation of inputs into outputs. The overall contribution of a series of projects to a particular goal was difficult to measure.

A results-oriented approach requires a sound understanding of the problem and the strategic goals to be achieved. It also requires on-going monitoring and assessment of performance and impact, and improved accountability of all actors involved in the process, including accountability of donor agencies, implementing agencies and target groups.

The operationalization of a rights-based approach in development programming follows the premises of results-oriented tools and methodologies. A rights-based approach provides concrete and objective yardsticks for results-oriented development programmes. A results-oriented approach by itself is just oriented to produce results without specifying the nature of such results.

The rights-based approach determines which types of results can be said to be contributing to development. Being a results-oriented methodology, it provides useful and objective tools for undertaking the analysis, setting the objectives, defining the process and assessing the impact of development policies and programmes. After all, if development is about the realization of human freedoms, **development programmes should establish concrete mechanisms towards the realization of human freedoms and be assessed on the grounds of their overall contribution to them**.

A rights-based approaches provides a valuable reminder that **equal emphasis should be placed on the process of development, and not merely on its results. An empowering process is a development result in itself.**

Box 6: Added Value of a Rights-based approach to Capacity Development

Capacity development has **clear and measurable goals**: the fulfillment of all rights and fundamental freedoms.

The rights based approach pays **equal attention to both the process and the outcome: the process becomes empowering in itself** and capacities are developed accordingly.

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The analysis of problems and the definition of objectives and strategies should be done **by stakeholders themselves.**

Actors are supported by a set of "rules" or norms which relate directly to the process and the goals of the strategies they are involved in.

Problem identification is facilitated by relating issues to human rights concerns, which are universal, indivisible, interrelated and interdependent. A rights-based approach explores empirical and mutually reinforcing connections between rights of different kinds.

Provides a holistic view of different processes needed to respect, protect, promote and facilitate the realization of rights, the types of actors involved, and the different capacities required to perform effectively their tasks.

Accountability mechanisms and meaningful participation are constantly monitored and assessed

The notion of **"progressive realization"** allows for the establishment of objective benchmarks to measure progress.

Limitations and Difficulties in Undertaking a Rights-based approach to development

Using a rights-based approach to development is not an easy exercise. As we have mentioned, there is a need for strong advocacy at national and international levels. Development practitioners need to familiarize themselves with new concepts and principles and with the very idea of bringing a "normative" dimension to development practice. The rights-based approach is highly demanding in terms of quality of analysis, assessment, and programme design and implementation. It also demands effective co-ordination among a wide range of actors, most of them undertaking different approaches to development practice.

Advocating for Accountability and Social Transformation

A rights-based approach brings the power dimensions of poverty and deprivation to the forefront, it addresses abuses of power and discrimination and therefore it is expected to encounter resistance in this regard. Strong advocacy is required, particularly because there is no other alternative for effective poverty eradication.

On the other hand, there is a need to stress that human rights imply human duties. Those who claim freedoms are not always ready to recognize that the exercise of freedoms implies the exercise of duties. A clear example of this is found in the fields of economic freedom and free markets. The discourse of human rights has, for too long, been focused on the exercise of rights without responsibilities. It is time to advocate for human duties and responsibilities towards the achievement of human dignity for all. These duties lay primarily on the state, but also on individuals and corporations, and on the international community as a whole.

Implications for Monitoring and Evaluation

Rights-based programming needs the establishment of adequate baseline data and monitoring indicators with a high degree of data disaggregation, in order to capture the

impact on disadvantaged groups. Whereas indicators may be relatively easy to define, baseline data for these indicators are often lacking and therefore realistic benchmarks are difficult to establish. Monitoring and evaluation costs are expected to be high in the early stages of rights-based programming, and in fact they may be as high as 20% of the total project costs.

However, we should distinguish between "absolute" and "relative" costs for monitoring and evaluation. It should be noted that the rights based approach gives full meaning to the notion of a programme "cycle". More often than not, programme monitoring and evaluation is not the basis for subsequent programming. The so-called programme "cycle" is often linear in development practice. In fact, when monitoring and evaluation becomes a sustainable basis for programming, ensuring an adequate assessment of the effectiveness and impact of programmes and providing a rational basis for policy advice, the relative cost of monitoring and evaluation actually diminishes despite an initial increase in absolute terms.

Building National Capacities

Adopting a rights-based approach requires understanding the approach and develop the skills to implement it. This should first and foremost be undertaken at the national level. Developing capacities in national counterparts will necessarily take time and resources.

Building Capacities at the UN level

A rights-based approach may not necessarily change the ultimate goal of what we do – as it is directly related to the Sustainable Human Development paradigm, but it does change the process and even the specific content of the programmes by which we try to do it. It brings new dimensions to participation, accountability, transparency and empowerment in the development process. It stresses the need for careful analysis and assessment, and substantive and effective mechanisms for monitoring and evaluation. It aims not only to provide results, but also to demonstrate that results have been achieved. Most of all, if requires effective co-ordination among UN agencies. This will also take time and resources.

Increased co-ordination among UN Agencies and other partners

A rights-based approach requires a better and more effective co-ordination among UN agencies, and therefore calls for strengthening the UNDAF mechanisms at the country level. It also requires more effective coordination with other partners. In the midst of a decline, in real terms, of ODA, there has been a proliferation of institutional vehicles – international organizations, non-governmental organizations (NGOs), bilateral aid partners -, through which assistance can be shaped, allocated or implemented. UN agencies and their national counterparts work often in partnership with other donor agencies and institutions. These agencies need to understand the operational implications of the approach if an effective co-ordination to maximize the overall impact on the situation of disadvantaged groups is to be achieved.